



## ADVANCES, COLLATERAL PLEDGE AND SECURITY AGREEMENT

AGREEMENT, dated as of \_\_\_\_\_, 20\_\_ between \_\_\_\_\_ having its principal place of business at \_\_\_\_\_ (“Member”) and Federal Home Loan Bank of New York, having its principal place of business at 101 Park Avenue, Fifth Floor, New York, NY 10178-0599 (“Bank”).

WHEREAS, the Member desires from time to time to borrow funds from the Bank under the terms of this Agreement and the Bank is authorized to make advances to the Member, subject to the provisions of the Federal Home Loan Bank Act, as now and hereafter amended (the “Act”), and the regulations and guidelines of the Federal Housing Finance Agency now and hereafter in effect (collectively, the “Regulations”); and

WHEREAS, the Bank requires that advances by the Bank be secured pursuant to this Agreement, and the Member agrees to provide such security as requested by the Bank by the means set forth in this Agreement.

NOW THEREFORE, the Member and the Bank agree as follows:

### **ARTICLE I: DEFINITIONS**

#### Section 1.01 **Definitions.**

As used herein, the following terms shall have the following meanings:

- (A) “Advance Application” means a writing or machine-readable electronic transmission, in such form or forms as shall be specified by the Bank from time to time, by which the Member requests, and which if executed by the Bank shall together with this Agreement evidence the terms of, an Advance.
- (B) “Advance” or “Advances” means any and all loans or other extensions of credit heretofore, now or hereafter granted by the Bank to the Member.
- (C) “Capital Stock” means all of the capital stock of the Bank and all payments which have been or hereafter are made on account of subscriptions to, and all unpaid dividends, on such capital stock.
- (D) “Collateral” means all property, pledged to the Bank pursuant to Section 3.01 hereof.
- (E) “Collateral Maintenance Level” means such aggregate Fair Market Value of Qualifying Collateral as is specified in writing by the Bank from time to time as being the Collateral Maintenance Level that the Member is required to maintain hereunder. The Bank may increase or decrease the Collateral Maintenance Level at any time.
- (F) “Commitments” means any and all agreements under which the Bank is contractually obligated to make Advances to Member, or payments on behalf of or for the account of the Member, at a future date to or for the benefit of the Member, including without limitation letters of credit, firm commitments, guarantees or other arrangements intended to facilitate transactions between the Member and third parties (but excluding any obligations that the Bank may now or hereafter have to honor items or transfer orders under a Correspondent Services Agreement between the Member and the Bank), and irrespective of whether the Bank’s obligation under such agreement is contingent upon the occurrence or non-occurrence of a condition subsequent.
- (G) “Fair Market Value” means the fair market value of Collateral determined in such manner as specified in writing by the Bank from time to time.
- (H) “Indebtedness” means all indebtedness, now or hereafter outstanding, of the Member to the Bank,

including, without limitation, all Advances, interest, fees, prepayment fees, charges, costs, expenses and all other obligations to pay and liabilities of the Member to the Bank.

- (I) "Instrument" means a negotiable or nonnegotiable Instrument as defined in section 9-102(a)(47) of the New York Uniform Commercial Code as in effect as of December 31, 2014.
- (J) "Mortgage Notes Collateral" means Mortgage Instruments (excluding participation or other fractional interests therein) and all endorsements or assignments thereof to or by the Member, and any ancillary documents pertaining thereto (including, but not limited to, assignments of leases and/or rents, policies and certificates of insurance or guarantees, evidences of recordation, applications, underwriting materials, surveys, appraisals, approvals, permits, notices, opinions of counsel, loan servicing data, and all other electronically stored and written materials relating to such Instruments).
- (K) "Mortgage Instruments" means an Instrument that relates to a mortgage or a deed of trust.
- (L) "Mortgage Documents" means first mortgages and deeds of trust (herein "mortgages") and all assignments thereof.
- (M) "Other Collateral" means such items of personal property, other than Capital Stock, Mortgage Notes Collateral, Securities Collateral, and Secondary Collateral which are offered as collateral by the Member to the Bank and are specifically accepted by the Bank as collateral for Indebtedness or Outstanding Commitments.
- (N) "Outstanding Commitments" means, at any point in time, the maximum aggregate principal amount of Advances or payments which the Bank may be obligated to make under Commitments that are then in effect.
- (O) "Qualifying Collateral" means Collateral other than Capital Stock which: (i) qualifies as security for advances under the terms and conditions of the Act and the Regulations and satisfies the requirements that may be established by the Bank; (ii) is owned by the Member free and clear of any liens, encumbrances or other interests other than the assignment to the Bank hereunder; (iii) has not been in default within the most recent 12- month period excepting only, in the case of Mortgage Notes Collateral, payments which are overdue by not more than the amount of time specified in writing by the Bank from time to time; (iv) in the case of Mortgage Notes Collateral, relates to residential real property on which is located a one to four family dwelling that is covered by fire and hazard insurance in an amount at least sufficient to discharge the mortgage loan in full in case of loss and as to which all real estate taxes are current; (v) in the case of Mortgage Notes Collateral, does not evidence an indebtedness on which any director, officer, employee, attorney or agent of the Member or any Federal Home Loan Bank is personally liable; and (vi) in the case of Secondary Collateral, has been offered as Qualifying Collateral by the Member and specifically accepted as Qualifying Collateral by the Bank.
- (P) "Securities Collateral" means mortgage-backed securities (including participation certificates) issued by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, obligations guaranteed by the Government National Mortgage Association, consolidated obligations of the Federal Home Loan Bank System and obligations of or guaranteed by the United States.
- (Q) "Secondary Collateral" means (i) second lien Mortgage Notes Collateral (ii) securities issued by REMICs, mortgage-backed debt obligation, collateralized mortgage obligations, mortgage pass-through certificates, mortgage participation certificates, and other mortgage-backed securities (other than those included within the definition of Securities Collateral); (iii) demand deposit accounts held with the Bank (iv) obligations issued or guaranteed by any agency of the United States (other than those included within the definition of Securities Collateral); (v) obligations issued by any state, county, municipality or other political subdivision or any agency thereof; (vi) corporate debt securities; (vii) Federal Home Loan Mortgage Corporation and Federal National Mortgage Corporation (or their respective legal successors') preferred stock and all other common and preferred corporate stock; (viii) promissory obligations secured by collateral other than real estate, including but not limited to automobile, co-operative and mobile home loans; and (ix) unsecured Instruments.

(R) "REMIC" means a "real estate mortgage investment conduit" within the meaning of Section 860D of the Internal Revenue Code of 1986, as amended, or any successor provision thereto.

## **ARTICLE II: ADVANCES**

### **Section 2.01 Application and Procedures for Advances.**

The terms of each Advance shall be established by this Agreement and by an Advance Application that has been executed by the Bank. In the event that the Bank determines that an Advance Application submitted to it by the Member is incomplete or must be modified in any manner in order to be acceptable to the Bank, or in the event that the Member requests that the Bank agree to make an Advance prior to the time that an Advance Application has been received by the Bank, the Bank may at its sole option complete or modify an Advance Application submitted by the Member or prepare a new Advance Application, as appropriate, based upon information furnished by the Member to the Bank and upon terms agreed to by the Bank and the Member by telephonic or other unwritten communication. Any Advance Application that has been completed, modified or prepared by the Bank and that has been executed by the Bank shall be sent by the Bank to the Member. The Member shall execute and return such Advance Application to the Bank within five business days of the date such Advance Application is sent by the Bank to the Member. Notwithstanding the foregoing, however, unless within such five business day period the Member has delivered to the Bank written notice specifying any disputed term or condition of the related Advance, the Advances Application as executed by the Bank shall be conclusive as to the terms of the related Advance, and the Member shall be estopped from asserting any claim or defense with respect to the repayment of such Advance and all interest, fees and other charges thereon or in connection therewith. Upon the request of the Bank, the Member shall execute and deliver to the Bank a promissory note or notes, in such form as may be required by the Bank, evidencing any Advance. Unless otherwise agreed to by the Bank, each Advance shall be made by crediting the Member's demand deposit account(s) with the Bank.

### **Section 2.02 Repayment of Advances.**

The Member agrees to repay each Advance in accordance with this Agreement and the terms and conditions of the Advance Application evidencing such Advance. Unless otherwise specified in the related Advance Application, interest shall be paid on the first Bank business day of each month on the daily outstanding principal amount of each Advance during the prior month at the rate applicable to such Advance as stated in the related Advance Application. Interest will be charged for each day that an advance is outstanding and will be computed on the basis of the actual number of days in the year. Member shall pay to Bank immediately and without demand, interest on any past due principal of and interest on any Advance at the rate in effect and being charged by the Bank from time to time on overdrafts on demand deposit accounts of its Members. The Member shall maintain in the Member's demand deposit account(s) with the Bank an amount at least equal to the amounts then currently due and payable to the Bank with respect to Advances, and the Member hereby authorizes the Bank to debit the Member's demand deposit account(s) with the Bank for all amounts due and payable with respect to any Advance and for all other amounts due and payable hereunder. In the event that the balance in such demand deposit account(s) is, at any time, insufficient to pay such due and payable amounts, the Bank may without notice to the Member apply any other deposits, credits, or monies of the Member then in the possession of the Bank to the payment of such due and payable amounts. All payments with respect to Advances shall be applied first to any fees or charges applicable thereto, then to interest due thereon and then to any principal amount thereof that is then due and payable.

### **Section 2.03 Right of Bank to Make Advances with Respect to Outstanding Commitments.**

In the event that one or more Commitments are outstanding at the time of an Event of Default under Section 4.01 hereof, the Bank may at its option make an Advance by crediting a special account with the Bank in an amount equal to the Outstanding Commitments. Amounts credited to such special account shall be utilized by the Bank for the purpose of satisfying the Bank's obligations under the Commitments. When all such obligations have expired or have been satisfied, the Bank shall disburse, the balance, if any, in such special

account first to the satisfaction of any amounts then due and owing by the Member to the Bank and then to the Member or its successors in interest. Advances made pursuant to this Section 2.03 shall be payable on demand and shall bear interest at the rate in effect and being charged by the Bank from time to time on overdrafts on demand deposit accounts of its Members.

### **ARTICLE III: SECURITY AGREEMENT**

#### **Section 3.01 Creation of Security Interest.**

As security for all Indebtedness and Outstanding Commitments, the Member hereby assigns, transfers, and pledges to the Bank, and grants to the Bank a security interest in all of the Capital Stock, Mortgage Notes Collateral, Securities Collateral, Secondary Collateral and Other Collateral now or hereafter owned by the Member, and all proceeds thereof, *provided, however*, that Mortgage Notes Collateral, Securities Collateral, Secondary Collateral and Other Collateral that is encumbered or disposed of by the Member in conformity with the requirements of Section 3.03(A) hereof shall not be subject to the security interest created hereunder.

#### **Section 3.02 Member's Representations and Warranties Concerning Collateral.**

The Member represents and warrants to the Bank, as of the date hereof and the date of each Advance hereunder, as follows:

- (A) the Member owns and has marketable title to the Collateral and has the right and authority to grant a security interest in the Collateral and to subject all of the Collateral to this Agreement;
- (B) the information contained in any status report, schedule or other documents required hereunder and any other information given from time to time by the Member as to each item of Collateral is true, accurate and complete in all material respects; and
- (C) all the Collateral meets the standards and requirements with respect thereto from time to time established by the Act and the Regulations.

#### **Section 3.03 Collateral Maintenance Requirement.**

- (A) The Member shall at all times maintain as Collateral an amount of Qualifying Collateral which has a Fair Market Value that is at least equal to the then current Collateral Maintenance Level. The Member shall not assign, pledge, transfer, create any security interest in, sell, or otherwise dispose of any Collateral if: (i) such Collateral has been specified pursuant to Section 3.04 hereof or is held by or on behalf of the Bank pursuant to Section 3.05 hereof, or the Bank has otherwise perfected its security interest in such Collateral; or (ii) at the time of or immediately after such action, Member is not or would not be in compliance with the collateral maintenance requirements of the first sentence of this Section 3.03 (A) or is otherwise in default under this Agreement. The Member shall not grant a junior security interest in the Collateral to any other person.
- (B) Subject to Section 3.04 hereof, Collateral shall be held by the Member in trust for the benefit of, and subject to the direction and control of the Bank, and will be physically safeguarded by the Member with at least the same degree of care as the Member uses in physically safeguarding its other property. Without limitation of the foregoing, Member shall take all action necessary or desirable to protect and preserve the Collateral and Bank's interest therein, including without limitation maintaining or causing to be maintained insurance on property securing mortgages constituting Collateral (such policies and certificates of insurance or guaranty relating to such Mortgages are herein called "insurance"), the collection of payments under all mortgages and under all insurance, and otherwise assuring that the loans comprising part of the Mortgage Notes Collateral are serviced in accordance with the standards of a reasonable and prudent lender. Member, as Bank's agent, shall collect all payments when due on all Collateral. If Bank requires, Member shall hold such collections separate from its other monies and apply them to the reduction of Indebtedness as it becomes due; otherwise, Bank consents to Member's use and

disposition of all such collections.

#### Section 3.04 **Specification and Segregation of Collateral**

- (A) Upon the Bank's written or oral request, or promptly at any time that the Member becomes subject to any mandatory collateral specification and segregation requirements that may be established in writing by the Bank, and in either case within ten days of each valuation date established by the Bank, and at such other times as shall be necessary to satisfy the requirements of this Section, the Member shall deliver to the Bank a status report and accompanying schedules, all in the form prescribed by the Bank, specifying and describing such amount of Qualifying Collateral as may be necessary so that the Fair Market Value of the Qualifying Collateral so specified meets or exceeds the Collateral Maintenance Level at all times.
- (B) The Member shall physically segregate any Mortgage Notes Collateral specified in each status report delivered pursuant to subsection (A) of this Section 3.04 from all other property of the Member in a manner satisfactory to the Bank. The Member shall hold each Mortgage Document package which is a part of such segregated Collateral in a separate file folder with each file folder clearly labeled with the loan identification number and the name of the mortgagor. Each such file folder shall be clearly marked or stamped with the statement: "The Mortgage and Note Relating to this Loan Have Been Assigned to the Federal Home Loan Bank of New York." All Securities Collateral and, unless otherwise specified by the Bank, all other Collateral specified in such a status report shall be delivered to the Bank or to a custodian designated by the Bank, or in the case of uncertificated securities, transferred to the Bank in the manner specified in Section 3.05 (B) hereof.

#### Section 3.05 **Delivery of Collateral**

- (A) Upon the Bank's written or oral request, or promptly at any time that the Member becomes subject to any mandatory collateral delivery requirements that may be established in writing by the Bank, and in either case from time to time thereafter, the Member shall deliver to the Bank, or to a custodian designated by the Bank, such Qualifying Collateral as may be necessary so that the Fair Market value of Qualifying Collateral held by the Bank, or such custodian, meets or exceeds the Collateral Maintenance Level at all times. Mortgage Notes Collateral and Mortgage Documents delivered to the Bank shall be endorsed or assigned by the Member to the Bank. Unless otherwise indicated by the Bank, such endorsements or assignments may be in blanket form provided, that, in the case of Mortgage Documents, the assignments shall be in recordable form and there shall be separate endorsements and assignments for each county or recording district in which the real property covered by such Mortgage Documents is located. The Member need only deliver the Mortgage Documents unless otherwise directed by the Bank, and may retain all written and electronic information, documents, and instruments relating thereto. Concurrently with the initial delivery of Collateral and within ten days of each subsequent valuation date established by the Bank (and at such other times as the Bank may request), the Member will deliver to the Bank a status report and accompanying schedules, all in the form prescribed by the Bank and dated as of the then most recent valuation date, describing the Collateral held by the Bank or its custodian.
- (B) With respect to uncertificated securities pledged to the Bank as Securities Collateral or Other Collateral hereunder, the delivery requirements contained in this Agreement shall be satisfied in such a manner as to enable the Bank to have a first priority security interest therein.
- (C) The Member agrees to pay to the Bank such reasonable fees and charges as may be assessed by the Bank to cover the Bank's overhead and other costs relating to the receipt, holding, redelivery and reassignment of Collateral and to reimburse the Bank upon request for all recording fees and other reasonable expenses, disbursements and advances incurred or made by the Bank in connection therewith (including the reasonable compensation and the expenses and disbursements of any custodian that may be appointed by the Bank hereunder, and the agents and legal counsel of the Bank and of such custodian).

**Section 3.06 Withdrawal or Reassignment of Collateral.**

Upon receipt by the Bank of writings in the form specified by the Bank constituting (i) a request from the Member for the withdrawal or reassignment of Collateral which has been specified pursuant to Section 3.04 hereof or has been delivered pursuant to Section 3.05 hereof, or as to which the Bank has otherwise perfected its security interest, (ii) a detailed listing of the Collateral to be withdrawn or reassigned, and (iii) a certificate of a responsible officer of the Member certifying that the Fair Market Value of the Qualifying Collateral that is specified to or will be held by the Bank, as appropriate, after such withdrawal or reassignment would not be less than the Collateral Maintenance Level, the Bank shall promptly redeliver or reassign to the Member the Collateral specified in said officer's certificate. Notwithstanding anything to the contrary herein contained while an Event of Default hereunder shall have occurred and be continuing, or at any time that the Bank reasonably and in good faith deems itself insecure, the Member may not obtain any such withdrawal or reassignment.

**Section 3.07 Reports. Collateral Audits: Access**

- (A) If the Fair Market Value of Qualifying Collateral owned by the Member, free and clear of any liens or encumbrances, shall at any time fall below the Collateral Maintenance Level, the Member shall immediately notify the Bank. The Member shall furnish to the Bank annually, and at such other times as the Bank may request, an audit report prepared by the Member's external auditor in accordance with generally accepted auditing standards certifying that the Member owns, free and clear of any liens or encumbrances. Qualifying Collateral with a Fair Market Value at least equal to the Collateral Maintenance Level. If the Member is required to specify or deliver Collateral pursuant to Sections 3.04 or 3.05 hereof, such audit report shall refer only to Qualifying Collateral that is so specified or is held by the Bank as of the date of such audit report. If requested by the Bank, the Member shall furnish to the Bank a written report covering such matters regarding the Collateral as the Bank may require, including listing of mortgages, securities, and unpaid principal balances thereof; and certifications concerning the status of payments on mortgages, securities, and unpaid principal balances thereof; and certifications concerning the status of payments on mortgages and of taxes and insurance on property securing mortgages. If so requested by the Bank, the Member shall promptly report to the Bank any event which reduces the principal balance of any mortgage or security by five percent (5%) or more, whether by prepayment, foreclosure sale, insurance or guaranty payment or otherwise. The Member shall give the Bank access at all reasonable times to Collateral in the Member's possession and to the Member's books and records of account relating to such Collateral, for the purpose of the Bank's examining, verifying or reconciling the Collateral and the Member's report to the Bank thereon.
- (B) All Collateral and the satisfaction by the Member of the Collateral Maintenance Level shall be subject to audit and verification by or on behalf of the Bank. Such audits and verifications may occur without notice during the Member's normal business hours or upon reasonable notice at such other times as the Bank may reasonably request. The Member shall provide access to, and shall make adequate working facilities available to, the representatives or agents of the Bank for purposes of such audits and verifications. The Member agrees to pay to the Bank such reasonable fees and charges as may be assessed by the Bank to cover overhead and other costs relating to such audit and verification.

**Section 3.08 Additional Documentation.**

The Member shall make, execute, record and deliver to the Bank such, notices, assignments, listings, powers, and other documents with respect to the Collateral and the Bank's security interest therein and in such form as the Bank may require. The Bank may file a UCC financing statement describing the Collateral as that conveyed herein, or more broadly, as it determines in its sole discretion, and may file such financing statement before the execution, but in contemplation of, this Agreement. Any financing statement so filed is hereby ratified.

**Section 3.09 Bank's Responsibilities as to Collateral.**

The Bank's duty as to the Collateral shall be solely to use reasonable care in the custody and preservation of the Collateral in its possession, which shall not include any steps necessary to preserve rights against prior parties nor the duty to send notices, perform services, or take any action in connection with the management of the Collateral. The Bank shall be deemed to have exercised reasonable care if it treats such collateral in the same manner as it treats property of the same general type held by the Bank in its proprietary capacity. The Bank shall not have any responsibility or liability for the form, sufficiency, correctness, genuineness or legal effect of any instrument or document constituting a part of the Collateral, or any signature thereon or the description or misdescription, or value of property represented, or purported to be represented, by any such document or instrument. The Member agrees that any and all Collateral may be removed by the Bank from the state or location where situated, and may there be dealt with by the Bank as provided in this Agreement.

**Section 3.10 Bank's Rights as to Collateral: Power of Attorney.**

At any time or times, at the expense of the Member, the Bank may in its discretion, before or after the occurrence of an Event of Default as defined in Section 4.01 hereof, in its own name or in the name of its nominee or of the Member, do any or all things and take any and all actions that are pertinent to the protection of the Bank's interest hereunder and are lawful under the laws of the State of New York, including, but not limited to, the following:

- (A) Terminate any consent given hereunder;
- (B) Notify obligors on any Collateral to make payments thereon directly to the Bank;
- (C) Endorse any Collateral in the Member's name;
- (D) Enter into any extension, compromise, settlement, or other agreement relating to or affecting any Collateral;
- (E) Take any action the Member is required to take or which is otherwise necessary to: (i) sign and record a financing statement or otherwise perfect a security interest in any or all of the Collateral; or (2) to obtain, preserve, protect, enforce or collect the Collateral;
- (F) Take control of any funds or other proceeds generated by the Collateral and use the same to reduce Indebtedness as it becomes due; and
- (G) Cause the Collateral to be transferred to its name or the name of its nominee.

The Member hereby appoints the Bank as its true and lawful attorney, for and on behalf of the Member and in its name, place and stead, to prepare, execute and record endorsements and assignments to the Bank of all or any item of Collateral, giving or granting to the Bank, as such attorney, full power and authority to do or perform every lawful act necessary or proper in connection therewith as fully as the Member might or could do. The Member hereby ratifies and confirms all that the Bank shall lawfully do or cause to be done by virtue of this special power of attorney. This special power of attorney is granted for a period commencing on the date hereof and continuing until the discharge of all Indebtedness and Commitments and all obligations of the Member hereunder regardless of any default by the Member, is coupled with an interest and is irrevocable for the period granted.

**Section 3.11 Subordination of Other Loans: Mortgage Notes Collateral.**

The Member hereby agrees that (i) all mortgage notes which are part of the Mortgage Notes Collateral or Secondary Collateral and (ii) any notes secured by personal property which are part of the Secondary Collateral (collectively, the "pledged notes") shall have priority in right and remedy over any claims for other

loans, whenever made and however evidenced, which are also secured by the mortgages or security agreements securing the pledged notes. The pledged notes shall be satisfied out of the property (or proceeds thereof) covered by such mortgages or security agreements before any payment is made on the loans which are not part

of the Collateral. To this end, the Member hereby subordinates the lien of such mortgages and security agreements with respect to such other loans to the lien of such mortgages and security agreements with respect to the pledged notes. The Member further agrees to retain possession of all notes or other instruments evidencing such other loans and not to pledge, assign, or transfer the same, except insofar as such other loans may be pledged to the Bank as part of the Mortgage Notes Collateral.

#### **ARTICLE IV: DEFAULT: REMEDIES.**

##### **Section 4.01 Events of Default: Acceleration.**

In the event of the occurrence of any of the following events or conditions of default ("Event of Default"), the Bank may at its option, by a notice to the Member, declare all Indebtedness and accrued interest thereon, including any prepayment fees or charges which are payable as provided in Section 4.03 hereof, to be immediately due and payable without presentment, demand, protest or any further notice; *provided, however*, that for the events described in subsection (G) hereof, all Indebtedness and accrued interest thereon, including any prepayment fees or charges which are payable as provided in Section 4.03 hereof, shall be automatically and immediately due and payable without any such notice by the Bank to Member and without presentment, demand, protest or any further notice:

- (A) Failure of the Member to pay when due any interest on or principal of any Advance; or
- (B) Failure of the Member to perform any promise or obligation or to satisfy any condition or liability contained herein, in any Advance Application, or in any other agreement to which the Member and the Bank are parties; or
- (C) Evidence coming to the attention of the Bank that any representations, statements, or warranty made or furnished in any manner to the Bank by or on behalf of the Member in connection with any Advance or Commitment, any specification of Qualifying Collateral or any certification of Fair Market Value was false in any material respect when made or furnished; or
- (D) Failure of the Member to maintain adequate Qualifying Collateral free of any encumbrances or claims as required herein; or
- (E) The issuance of any tax, levy, seizure, attachment, garnishment, levy of execution, or other process with respect to the Collateral; or
- (F) Any suspension of payment by the Member to any creditor of sums due or the occurrence of any event which results in another creditor having the right to accelerate the maturity of any indebtedness of the Member under any security agreement, indenture, loan agreement, or comparable undertaking; or
- (G) Appointment of a conservator, receiver, trustee or similar official for the Member (or any subsidiary of the Member) or the Member's property, entry of an order for relief, judgment or decree adjudicating the Member or any subsidiary of the Member insolvent or bankrupt, the filing of an involuntary bankruptcy petition against the Member (or any subsidiary of the Member) which is not dismissed within 60 days after the filing thereof, an assignment by the Member (or any subsidiary of the Member) for benefit of creditors, or an admission in writing by the Member (or any subsidiary of the Member) of its inability to pay its debts or its insolvency; or
- (H) Sale by the Member of all or a material part of the Member's asset or the taking of any other action by the Member to liquidate or dissolve; or



- (I) Termination of the Member's Membership in the Bank, or the Member's ceasing to be a type of financial institution that is eligible under the Act to become a Member of the Bank; or
- (J) Merger, consolidation or other combination of the Member with an entity which is not a Member of the Bank if the nonmember entity is the surviving entity; or
- (K) With respect to Advances made pursuant to Section 11 (g)(4) of the Act, if the creditor liabilities of the Member, excepting liabilities to the Bank, are increased in any manner to an amount exceeding five percent (5%) of the Member's net assets; or
- (L) The Bank reasonably and in good faith determines that a material adverse change has occurred in the financial condition of the Member from that disclosed at the time of the making of any Advance or from the condition of the Member as theretofore most recently disclosed to the Bank.

#### Section 4.02 **Remedies.**

Upon the occurrence of any Event of Default, the Bank shall have all of the rights and remedies provided by applicable law which shall include, but not be limited to, all of the remedies of a secured party under the Uniform Commercial Code as in effect in the State of New York. In addition, the Bank may take immediate possession of any of the Collateral or any part thereof wherever the same may be found. The Bank may sell, assign and deliver the Collateral or any part thereof at public or private sale for such price as the Bank deems appropriate without any liability for any loss due to decrease in the market value of the Collateral during the period held. The Bank shall have the right to purchase all or part of the Collateral at any public sale. If the Collateral includes insurance or securities which will be redeemed by the issuer upon surrender, or any accounts or deposits in the possession of the Bank, the Bank may realize upon such Collateral without notice to the Member. If any notification of intended disposition of any of the Collateral is required by applicable law, such notification shall be deemed reasonable and properly given if mailed, postage prepaid, at least 10 days before any such disposition to the address of the Member appearing on the records of the Bank. The proceeds of any sale shall be applied in the order that the Bank, in its sole discretion, may choose, subject to applicable law. The Member agrees to pay all the costs and expenses of the Bank in the collection of the Indebtedness and enforcement of the Bank's rights and remedies in case of default, including, without limitation, reasonable attorneys' fees. The Bank shall, to the extent required by law, apply any surplus after payment of the Indebtedness, provision for repayment to the Bank of any amounts to be paid or advanced under Outstanding Commitments, and all costs of collection and enforcement to third parties claiming a secondary security interest in the Collateral, with any remaining surplus paid to the Member. The Member shall be liable to the Bank for any deficiency remaining.

#### Section 4.03 **Payment of Prepayment Charges.**

Any prepayment fees or charges for which provision is made, whether under the Advance Application or otherwise with respect to any Advances, shall be due on the earlier of (i) an acceleration of the Indebtedness pursuant to Section 4.01 hereof and (ii) at the time of any voluntary or involuntary payment of the principal of any Advances prior to the originally scheduled maturity thereof including, without limitation, payments that are made as a part of a liquidation of the Member or under any plan of reorganization of the Member, whether such payment is made by the Member, by a conservator, receiver, liquidator or trustee of or for the Member, by the Member as debtor-in-possession, or by any successor to or any assignee of the Member, and shall be payable at the time of any voluntary or involuntary payment of the principal of such Advances prior to the originally scheduled maturity thereof.

### **ARTICLE V: MISCELLANEOUS**

#### Section 5.01 **General Representations and Warranties by the Member.**

The Member hereby represents and warrants that, as of the date hereof and the date of each Advance or Commitment hereunder:

- (A) The Member is not, and neither the execution of nor the performance of any of the transactions or obligations of the Member under this agreement shall, with the passage of time, the giving of notice or otherwise, cause the Member to be: (i) in violation of its charter or articles of incorporation, by-laws, the Act, or the Regulations, any other law or administrative regulation, or any court decree; or (ii) in default under or in breach of any indenture, contract, or other instrument or agreement to which the Member is a party or by which it or any of its property is bound.
- (B) The Member has full corporate power and authority and has received all corporate and governmental authorizations and approvals (including without limitation those required under the Act and the Regulations) as may be required to enter into and perform its obligations under this Agreement, to borrow each Advance and to obtain each Commitment.
- (C) The information given by the Member in any document provided, or in any oral statement made, in connection with an application or request for an Advance or Commitment, is true, accurate and complete in all material respects.

#### Section 5.02 **Assignment.**

The Bank may assign or negotiate to any other Federal Home Loan Bank or to any other person or entity, with or without recourse, any Indebtedness of the Member or participations therein, and Bank may assign or transfer all or any part of Bank's right, title, and interest in and to this Agreement and may assign and deliver the whole or any part of the Collateral to the transferee, which shall succeed to all the powers and rights of the Bank in respect thereof, and the Bank shall thereafter be forever relieved and fully discharged from any liability or responsibility with respect to the transferred Collateral. The Member may not assign or transfer any of its rights or obligations hereunder without the express prior consent of the Bank.

#### Section 5.03 **Discretion of Bank to Grant or Deny Advances.**

Nothing contained herein or in any documents describing or setting forth the Bank's credit program or policy shall be construed as an agreement or commitment on the part of the Bank to grant Advances or extend Commitments hereunder, the right and power of the Bank in its discretion to either grant or deny any Advance Commitment or requested hereunder being expressly reserved.

#### Section 5.04 **Amendment: Waivers.**

No modification, amendment or waiver of any provision of this Agreement or consent to any departure therefrom shall be effective unless executed by the party against whom such change is asserted and shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Member in any case shall entitle the Member to any other or further notice or demand in the same, or similar or other circumstances. Any forbearance, failure or delay by the Bank in exercising any right, power or remedy hereunder shall not be deemed to be a waiver thereof, and any single or partial exercise by the Bank of any right, power or remedy hereunder shall not preclude the further exercise thereof. Every right, power and remedy of the Bank shall continue in full force and effect until specifically waived by the Bank in writing.

#### Section 5.05 **Jurisdiction: Legal Fees.**

In any action or proceeding brought by the Bank or the Member in order to enforce any right or remedy under this Agreement, the parties hereby consent to, and agree that they will submit to, the jurisdiction of the United States District Court, for the Southern District of New York or, if such action or proceeding may not be brought in federal court, the jurisdiction of the courts of the City of New York, Borough of Manhattan. The Member agrees that, if any action or proceeding is brought by the Member seeking to obtain any legal or equitable relief against the Bank under or arising out of this Agreement or any transaction contemplated hereby, and such relief is not granted by the final decision, after any and all appeals, of a court of competent jurisdiction,

the Member will pay all attorneys' fees and other costs incurred by the Bank in connection therewith.

**Section 5.06 Notices.**

Except as provided in the next sentence, any notice, advice, request, consent or direction given, made or withdrawn pursuant to this Agreement shall be in writing or by machine-readable electronic transmission, and shall be deemed to have been given to and received by a party hereto when it shall have been mailed to such party at its address given above by first class mail, or if given by hand or by machine-readable electronic transmission, when actually received by such party at its principal office. Any notice by the Bank to the Member pursuant to Sections 3.04 (A) or 3.05(A) hereof may be oral and shall be deemed to have been duly given to and received by the Member at the time of the oral communication.

**Section 5.07 Signatures of Member.**

The Secretary or the Assistant Secretaries of the Member shall from time to time certify to Bank on forms provided by the Bank the names and specimen signatures of the persons authorized to apply on behalf of the Member to the Bank for Advances and otherwise act for and on behalf of the Member in accordance with this Agreement. Such certifications are incorporated herein and made a part of this Agreement and shall continue in effect until expressly revoked by the Member notwithstanding that subsequent certifications may authorize additional persons to act for and on behalf of Member.

**Section 5.08 Applicable Law: Severability.**

In addition to the terms and conditions specifically set forth herein and in any Advance Application between the Bank and the Member, this Agreement and all Advances granted and Commitments extended hereunder shall be governed by the laws of the United States and the laws of the State of New York exclusive of its choice of law provisions, except for Section 1401 of its General Obligations Law, and the mandatory choice of law provisions of Article 9 of its Uniform Commercial Code. In the event that any portion of this Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Agreement which can be given effect without the conflicting provision, and to this end the provisions of this Agreement are declared to be severable.

**Section 5.09 WAIVER OF JURY TRIAL.**

**THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT, AS APPLICABLE, AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH PARTY WARRANTS AND REPRESENTS THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.**

**Section 5.10 Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Member and the Bank.

**Section 5.11 Entire Agreement.**

This Agreement embodies the entire agreement and understanding between the parties hereto relating to the subject matter hereof and supersedes all prior agreements between such parties which relate to such subject matter. Notwithstanding the above, Advances and Commitments made by the Bank to the Member prior to the execution of this Agreement shall continue to be governed exclusively by the terms of the prior agreements

pursuant to which such Advances and Commitments were made, except that (1) any default thereunder shall constitute an Event of Default hereunder, (2) Collateral furnished pursuant to this Agreement shall also secure such prior Advances and Commitments and (3) the rights and obligations of the parties with respect to such Collateral shall be governed by the terms of this Agreement.

**IN WITNESS WHEREOF**, Member and Bank have caused this Agreement to be signed in their names by their duly authorized officers as of the date first above mentioned.

\_\_\_\_\_  
(Name of Member)

**FEDERAL HOME LOAN BANK OF NEW YORK**

By: \_\_\_\_\_

By: \_\_\_\_\_  
Senior Vice President

Title: \_\_\_\_\_

By: \_\_\_\_\_  
Corporate Secretary

**CORPORATE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_) ss:

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known who being by me duly sworn, did depose and state that /s/he resides at \_\_\_\_\_: that /s/he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the above instrument; that /s/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that /s/he signed his /her name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

**CORPORATE ACKNOWLEDGMENT**

STATE OF NEW YORK, COUNTY OF NEW YORK) ss:

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, and \_\_\_\_\_, to me known who being by me duly sworn, did depose and state that they reside at New York, New York; that they are the Senior Vice President and the Corporate Secretary of the Federal Home Loan Bank of New York, the corporation described in and which executed the above instrument;

that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that they signed their names thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public