

**AFFORDABLE HOUSING PROGRAM  
DIRECT SUBSIDY AGREEMENT**

This Affordable Housing Program (“AHP”) Direct Subsidy Agreement (“AHP Agreement”), dated \_\_\_\_\_, is between the Federal Home Loan Bank of New York (“FHLBNY”), \_\_\_\_\_ (“FHLBNY Member Financial Institution”), and \_\_\_\_\_ (“Sponsor”).

WHEREAS, the parties are entering into this AHP Agreement in connection with \_\_\_\_\_ (“Project”), as fully described in the AHP Application (defined below) submitted to the FHLBNY on \_\_\_\_\_ (“AHP Application Date”).

WHEREAS, the FHLBNY has committed to issuing the FHLBNY Member Financial Institution a direct Subsidy in the amount of \$ \_\_\_\_\_ (“AHP Subsidy”) for the Project, which was approved by the Board of Directors of the FHLBNY on \_\_\_\_\_, the effective date of this AHP Agreement.

The parties hereby agree as follows:

- 1. AHP Application:** The FHLBNY Member Financial Institution and Sponsor shall comply with the terms and conditions governing the approval and funding of the AHP Application, including any and all representations in the AHP Application and any approved modifications to the Application.
- 2. Regulations and Requirements:** The FHLBNY Member Financial Institution and Sponsor hereby acknowledge notice of and shall comply with the terms of:
  - A. The Federal Home Loan Bank Act, as may be amended (12 U.S.C. 1421 et seq.).
  - B. The AHP Regulations (12 C.F.R. Part 1291) and any other directives of the Federal Housing Finance Agency (“FHFA”), including, but not limited to, Advisory Bulletins, Regulatory Interpretations, etc., as may be amended, or the regulations in effect of any successor in interest to the FHFA. To the extent the AHP Regulations are inconsistent with any term or provision of this AHP Agreement, the AHP regulations shall control and govern the conduct and obligations of the parties.
  - C. The FHLBNY’s AHP Implementation Plan (“Plan”) and related policies, procedures, guidelines, and instructions, as may be amended (“FHLBNY AHP Requirements,” and, together with the Bank Act, the AHP Regulations, and the FHLBNY AHP Requirements, the “AHP Requirements”).
- 3. Standard of Conduct:** The Sponsor shall comply with the following standard of conduct:
  - A. The Sponsor shall ensure that the AHP Subsidy is used solely for the purposes set forth in the approved AHP Application and in accordance with this Agreement and the AHP Requirements. The Sponsor shall manage and utilize the Subsidy in an accountable and honest manner. The AHP Subsidy shall not be misappropriated, embezzled, misdirected, misused, lost or unaccounted for in any manner.
  - B. With respect to the Project, the Sponsor shall not, directly or indirectly, including through an agent or other intermediary, engage in corrupt, fraudulent, illegal practices or in covered

misconduct, as that term is defined in 12 C.F.R. Part 1227.

- C. The Sponsor shall comply with all applicable laws, regulations, and rules, including all civil and criminal laws, and the AHP Requirements.
- D. The Sponsor shall exercise diligence in regularly examining Project operations to ensure that they are conducted in accordance with this Agreement and the AHP Requirements. The Sponsor shall notify the FHLBNY in writing upon discovery of conduct which is inconsistent with this Agreement or the AHP Requirements, and take timely and appropriate remedial or corrective actions in such situations, and, if necessary, coordinate such actions with the FHLBNY.
- E. As otherwise required by section 22 of this Agreement, the Sponsor shall fully cooperate with the FHLBNY in audits, investigations, financial reviews, forensic audits, evaluations or other activities that the FHLBNY deems necessary to ensure the AHP Subsidy is used and the Project is managed in accordance with this Agreement and the AHP Requirements. Cooperation includes access to all relevant records, documents, personnel, sites, electronic materials and computerized records generated, or in the possession of, the Sponsor that pertain to activities and expenditures to support the Project.
- F. The Sponsor shall respond promptly to all requests for information and provide comprehensive, accurate, and current information to the FHLBNY.
- G. The Sponsor agrees that now or in the future if any of its employees, partners or agents serves on the FHLBNY's Advisory Council, the Advisory Council member shall not participate in or attempt to influence decisions by the FHLBNY regarding this Project or any future project of the Sponsor.
- H. The Sponsor shall act in good faith in all its dealings with the FHLBNY.

**4. Operational Feasibility and Need for the Subsidy:** Pursuant to 12 C.F.R. § 1291.5 (b)(2)(iii), the Project must be operationally feasible and the requested Subsidy must be necessary for the financial feasibility of the Project. To ensure compliance with these requirements, the FHLBNY may reevaluate the need for AHP Subsidy on an ongoing basis throughout the development of the Project. The FHLBNY, in its sole discretion, will only fund that portion of the requested Subsidy that it deems necessary to maintain the Project's operational and financial feasibility. During such reevaluation, the FHLBNY will consider financial data including, but not limited to:

- A. All sources of funds, including estimates of funds from all other sources, whether or not actually committed to the Project;
- B. An estimate of the market value of in kind donations and volunteer professional labor and services, but not the value of "sweat equity";
- C. Project costs including, as reflective in the Project's development budget, all reasonable and customary costs in light of industry standards for the geographic location of the Project and long term financial needs; and
- D. Prior to disbursement of the Subsidy, the FHLBNY will determine whether the Project is operationally feasible pursuant to the AHP Requirements, including but not limited to, applicable financial ratios, geographic location, needs of the Project owner occupant households, and other non-financial characteristics of the Project. The approved amount of the Subsidy must continue to be necessary for the financial feasibility of the Project and the rate of interest, points, fees, and other charges for all loans financing the Project must not exceed a market rate of interest, fees, and other charges for loans of similar maturity, terms, and risk.

**5. FHLBNY Decisions Entitled to Deference:** The FHLBNY's decisions or actions under the AHP shall

be reviewed under an arbitrary and capricious standard. The FHLBNY, as a government-sponsored enterprise, is entitled to a broad degree of discretion in administering the AHP, and nothing in this AHP Agreement shall be construed to limit such discretion.

**6. Funding:** The FHLBNY Member Financial Institution may request disbursement of all or part of the Subsidy from the FHLBNY when the Project is ready to receive all or part of the Subsidy, as the case may be. Pursuant to the AHP Requirements, the FHLBNY Member Financial Institution and/or the Sponsor shall provide the requisite forms and information to request disbursement.

- A. Funding requests will be processed in accordance with the AHP Requirements. The FHLBNY, in its sole discretion, may withhold or deny disbursement of the Subsidy if the AHP Requirements have not been met, including where the FHLBNY is not satisfied of :
- i. the FHLBNY Member Financial Institution's creditworthiness and compliance with the AHP Application and AHP Requirements, , the FHLBNY's Credit Risk Management policies, and the Advances, Collateral Pledge and Security Agreement ("Advances Agreement"); or
  - ii. the Sponsor's compliance with the requirements of the AHP Application and the AHP Requirements.
- B. The FHLBNY may in the future decrease the amount of the Subsidy, including where:
- i. the Subsidy is used to write down the principal or interest rate on a loan to the Project, and at closing of the loan, the debt service cost for the loan has decreased due to a decrease in market interest rates between the time of the FHLBNY's approval of the AHP Application and the time that the lender commits to the interest rate on the loan to finance the Project; or
  - ii. the FHLBNY determines, based on the FHLBNY's periodic review or monitoring of the Project, or a review conducted in connection with the transfer or modification of the Project, that the amount of the Subsidy is not, or was not, necessary for the Project.

The Repayment and Recovery Provisions set forth below shall apply where an adjustment is made by the FHLBNY to decrease the amount of the Subsidy already disbursed by the FHLBNY for the Project.

- C. In the event that the FHLBNY Member Financial Institution requests a disbursement of all or part of the Subsidy from the FHLBNY in order to directly provide the Sponsor with AHP assistance during the construction and/or rehabilitation phase of the Project units, prior to their sale to income-eligible owner-occupants, the FHLBNY Member Financial Institution:
- i. shall have in place a separate, legally enforceable agreement with the Sponsor whereby the Sponsor agrees to use the Subsidy in accordance with the terms of the AHP Application, the requirements of the AHP Regulation, and the FHLBNY's AHP Requirements;
  - ii. shall ensure that the Subsidy directly benefits each household which has been approved either by the FHLBNY Member Financial Institution or the Sponsor to purchase and occupy a Project unit;
  - iii. shall monitor and track the disbursement of the Subsidy from Sponsor to each household which has been approved either by the FHLBNY Member Financial Institution or the Sponsor to purchase and occupy a Project unit; and
  - iv. shall prepare any documents or agreements which formally release the Sponsor from

complying with the requirements of the AHP Requirements and the AHP Application and then assign such responsibilities to each household which has been approved either by the FHLBNY Member Financial Institution or the Sponsor to purchase and occupy a Project unit.

- 7. Disbursement of Subsidy:** Disbursement of the Subsidy shall be made by electronic credit to the FHLBNY Member Financial Institution's demand deposit account at the FHLBNY. Once the FHLBNY Member Financial Institution receives a credit of the AHP Subsidy, the FHLBNY Member Financial Institution agrees to deliver the full dollar amount of the funded AHP Subsidy to the Sponsor or owner within thirty (30) days. If the funds cannot be delivered to the Project within this time, the FHLBNY Member Financial Institution must return any unused AHP Subsidy to the FHLBNY. The FHLBNY Member Financial Institution hereby acknowledges that any AHP Subsidy not returned to the FHLBNY may be subject to per diem interest charges at a rate equal to the Federal Funds Effective Rate for each day exceeding the aforementioned 30-day period.
- 8. Use of Subsidy:** The FHLBNY Member Financial Institution and the Sponsor shall use the Subsidy only as set forth in the AHP Application, consistent with the requirements of the AHP Regulation and the FHLBNY's AHP Requirements.
- 9. Subsidy Pass Through:** The FHLBNY Member Financial Institution shall pass on to the Sponsor the full amount of the Subsidy funded to the FHLBNY Member Financial Institution by the FHLBNY.
- 10. Subsidy Timing:** The Subsidy must be drawn down and used by the Project within the time periods set forth in the Plan. Therefore, all sources of funding must be committed within a reasonable period of time from the AHP Application's approval. If the Subsidy approved is not drawn down and used by the project within the time periods specified, the FHLBNY may cancel its approval (unless the approved AHP Application is modified in writing by the FHLBNY), and the FHLBNY Member Financial Institution must promptly return any funded Subsidy to the FHLBNY.
- 11. Transfer of Subsidy:** In the event of its loss of membership in the FHLBNY before the funding of the Subsidy, the FHLBNY Member Financial Institution is prohibited from requesting any disbursement of all or part of the Subsidy. The FHLBNY Member Financial Institution shall use its best efforts to transfer its obligations under the AHP Application and this AHP Agreement to another FHLBNY Member Financial Institution, subject to the formal written consent of the FHLBNY.
- 12. Lending of Subsidy:** The FHLBNY Member Financial Institution shall disburse the Subsidy to the Sponsor as a conditional grant pursuant to the AHP Requirements. In the event that the FHLBNY Member Financial Institution lends the Subsidy to either the Sponsor or Project household, any repayments of principal and payments of interest received by the FHLBNY Member Financial Institution shall be paid to the FHLBNY.
- 13. Modification:** FHLBNY Member Financial Institution and Sponsor shall not make any modifications to the Project's specifications, as set forth in the AHP Application, without the prior written approval of the FHLBNY. The FHLBNY Member Financial Institution shall submit to the FHLBNY a written request for approval describing the proposed modification in detail and including all supporting documentation. Unless the AHP Application is modified as permitted under the AHP Requirements, the FHLBNY, in its discretion, may withdraw the Subsidy if there are any modifications or changes to the Project after the date of approval of the AHP Application that would change the score that the AHP

Application originally received.

**14. Progress Reporting:** The FHLBNY Member Financial Institution and the Sponsor shall perform their respective progress reporting requirements set forth in the Plan. The FHLBNY Member Financial Institution and the Sponsor shall also perform such other reporting as may be required by the AHP Requirements or as may otherwise be requested by the FHLBNY.

A. Owner-Occupied Projects

- i. During the period of construction or rehabilitation of the Project, the Project Sponsor shall report to the FHLBNY Member Financial Institution semi-annually (or more frequently at FHLBNY Member Financial Institution's request) on whether reasonable progress is being made towards completion of the Project. During such period, the FHLBNY Member Financial Institution shall take steps necessary to determine whether reasonable progress is being made towards completion of the Project and shall report to the FHLBNY semi-annually (or more frequently at the FHLBNY's request) on the status of the Project.
- ii. Household income shall be defined as total annualized reportable income as specified in the FHLBNY's Plan. Depending on the median income standard that the Sponsor selected in the AHP Application, area median income and very low-, low-, and moderate-income levels shall be defined according to guidelines as published by the U.S. Department of Housing and Urban Development ("HUD") or the appropriate state housing agency mortgage revenue bond ("MRB") guidelines. The incomes of the residents of the Project must conform to median income data, adjusted for family size, for the Project's statistical area, as defined by either HUD or MRB.

B. Rental Projects

- i. During the period of construction or rehabilitation, the FHLBNY Member Financial Institution must take appropriate steps to ensure that "reasonable progress" is being made towards completion of the Project. As such, the Sponsor, the corporate entity that owns the Project site and improvements thereon ("Owner"), or an agent of the Sponsor is required to submit verifiable evidence to the FHLBNY Member Financial Institution that the Project is being developed in accordance with the terms and conditions of the Application and the AHP Requirements. In turn, the FHLBNY Member Financial Institution must coordinate this documentation and provide the FHLBNY with a semi-annual report (or as otherwise directed by the FHLBNY) which certifies the status of the development of the Project.

**15. Initial Monitoring:** The FHLBNY Member Financial Institution and the Sponsor each agree to perform their respective initial monitoring requirements set forth in the Plan. The FHLBNY Member Financial Institution and the Sponsor each further agree to perform such other reporting as may be required by the AHP Requirements, or as may otherwise be requested by the FHLBNY.

A. Owner Occupied

- i. Within eighteen months of the completion of the construction and/or rehabilitation of the Project and its placement into operation, supporting documentation must be prepared by the Sponsor or owner, submitted and acceptable to the FHLBNY, in its sole discretion, certifying that:
  1. the AHP subsidies have been properly used as specified in the approved AHP Application;

2. the AHP owner-occupied Project units are subject to AHP Subordinate Mortgages or other legally enforceable retention agreements or mechanisms where a household receives AHP subsidy for purchase, purchase in conjunction with rehabilitation or construction; and
  3. the Project has achieved its approved levels of performance, as specified in the AHP Application or FHLBNY approved modification to the Application..
- ii. In cases where the Sponsor is constructing or rehabilitating Project units for subsequent resale to income eligible owner occupants, the FHLBNY may require the FHLBNY Member Financial Institution and the Sponsor to perform an on-site inspection of the exterior, and where appropriate, the interior living areas of the completed Project units.

**B. Rental Projects**

- i. Within eighteen months of the completion of the construction and/or rehabilitation of the Project and its placement into operation, supporting documentation must be provided by the Sponsor or owner, acceptable to the FHLBNY, in its sole discretion, demonstrating that:
  1. the Project meets its income targeting commitments;
  2. the rents charged for income-targeted units do not exceed the maximum levels specified and approved in the Application; and
  3. the Project has satisfied its other approved levels of performance.

**16. Long Term Monitoring:** The FHLBNY Member Financial Institution and the Sponsor shall each perform their respective long term monitoring obligations set forth in the Plan and AHP Requirements. The FHLBNY Member Financial Institution and the Sponsor shall each further perform such other reporting as may be required by the AHP Requirements, or as may otherwise be requested by the FHLBNY.

**A. Owner Occupied Projects**

- i. Transfers of title for owner-occupied projects are monitored through the AHP Subordinate Mortgage where a household receives AHP subsidy for purchase, purchase in conjunction with rehabilitation or construction of an owner-occupied unit.

**B. Rental Projects**

- i. The AHP Regulation requires the FHLBNY to monitor rental projects for a period of fifteen (15) years (“Project Retention Period”). The Sponsor must submit a formal certification to the FHLBNY on an annual basis, beginning on the second anniversary date of Project completion (i.e., issuance of the final certificate of occupancy), that a) the tenants’ rents and incomes are in compliance with the rent and income targeting commitments made in the AHP Application; and b) the Project continues to be operated as an affordable housing initiative.

ii. The required documentation schedule for rental projects is as follows:

Long Term Monitoring Documentation Schedule		
Project Characteristics	Status Report Frequency	Annual Certifications
LIHTC allocation	None required	No
AHP subsidy ≤ \$50,000	None required	Yes
Project-based rental assistance	6 years	Yes
AHP subsidy > \$50,000 or ≤ \$400,000	6 years	Yes
AHP subsidy > \$400,000 ≤ \$750,000	4 years	Yes
AHP subsidy > \$750,000	2 years	Yes

iii. For rental projects that receive an allocation of Federal Low Income Housing Tax Credits (“LIHTC”) or (“tax credits”) as a funding source, the FHLBNY will rely on the compliance monitoring performed by the state-designated housing credit agency administering the tax credits of the income targeting and rent requirements applicable under the LIHTC Program. The FHLBNY will not obtain and review reports from the tax credit agency or otherwise monitor the Project’s long-term AHP compliance.

iv. Rental Projects that do not have an LIHTC allocation are subject to the following requirements:

1. Requirements for Project Sponsors:

Projects sponsors will be required to submit long-term monitoring reports in accordance with the above Long Term Monitoring Documentation Schedule and related supporting documentation.

In the second year after Project completion and annually thereafter until the end of the Project’s Retention Period, the Project Sponsor must maintain documentation and certify to the FHLBNY:

- that the Project continues to be owned and managed in compliance with the AHP Requirements;
- that tenant rents and incomes are in compliance with the rent and income targeting commitments specified in the AHP Application;
- that all real estate tax remittances are current; and
- that any debt payments on the Project are current.

2. Income Eligibility Documentation and Rent Structure Verification:

For the FHLBNY to ensure that the incomes of tenants and the rent structure of an AHP-assisted project comply with the income targeting and rent commitments made in the approved AHP application, a risk based sample of the occupied units will be selected for review by the Bank in conjunction with the FHLBNY’s monitoring practices. For each household selected as part of the sample, income source documentation and a copy of the rental lease must

be submitted. Dependent upon the Project characteristics, the FHLBNY, in its discretion, may accept alternate documentation as follows:

- If a Project receives project-based Section 8 assistance, a copy of the Section 8 contract may be submitted to the FHLBNY in lieu of income source documents.
- If a Project receives tenant-based Section 8 assistance, a copy of the Section 8 voucher (or other comparable evidence) may be submitted to the FHLBNY in lieu of income source documents.
- If a Project receives rent subsidy from a local, state, or federal agency that targets very low- and low-income households, a copy of the executed subsidy agreement may be submitted in lieu of income source documents, provided that the income references set forth in the subsidy contract/agreement are consistent with the income targeting commitments made in the AHP Application.
- If a Project targets homeless households, the FHLBNY may in its discretion require supporting income documentation for the units that are allocated for the housing of homeless households.
- For AHP rental projects that received funds other than tax credits from federal, state, or local government entities, FHLBNY may rely on the monitoring by these entities of the income targeting and rent requirements, provided that FHLBNY can show that: (i) the compliance profiles regarding income targeting, rent, and retention period requirements of the AHP and the other program are substantively equivalent; (ii) the entity has demonstrated and continues to demonstrate its ability to monitor the project; (iii) the entity agrees to provide reports to the FHLBNY on the project's incomes and rents for the full 15-year AHP Retention Period; and (iv) FHLBNY receives and reviews the reports from the monitoring entity to confirm that they comply with the FHLBNY's monitoring policies.

## **17. Retention Agreements:**

### **A. Owner-Occupied Projects**

- a. For Owner-Occupied Projects, the term "Retention Period" shall mean five (5) years from closing on an AHP-assisted unit that is part of the Project where a household receives AHP subsidy for purchase, purchase in conjunction with rehabilitation or construction of an owner-occupied unit. The final cost certification will evidence completion of the proposed renovations.

### **B. Rental Projects**

- a. For Rental Projects, the term "Retention Period" shall mean fifteen (15) years from the date that the construction or rehabilitation of the Project is completed and the Project is fully operational. The completion date commences on the issuance date of the Certificate of Occupancy, Certificate of Substantial Completion, or other comparable documentation.

## **18. Repayment and Recovery Provisions:**

### **A. FHLBNY Member Financial Institution Repayment**

- a. The FHLBNY Member Financial Institution must repay to the FHLBNY that portion of the Subsidy (including, but not limited to, interest at the FHLBNY's fixed rate of interest for a comparable term measured from the date the Subsidy was granted as determined by the FHLBNY in its discretion) that as a result of the FHLBNY Member Financial Institution's actions or omissions, is not used in compliance with the terms of the AHP Application or the AHP Requirements, unless such non-compliance is cured by the FHLBNY Member Financial Institution within a reasonable period of time as determined by the FHLBNY or the circumstances of such non-compliance are eliminated through a modification of the AHP Application, as approved in writing by the Bank, pursuant to the AHP Requirements. If recapture of the Subsidy or recovery of the Subsidy is required pursuant to the AHP Requirements, the amount to be recaptured or to be recovered shall be immediately deemed to be an advance issued to the FHLBNY Member Financial Institution by the FHLBNY, and will be subject to the terms and conditions of the Advances Agreement and the FHLBNY's Credit and Collateral Member Escalation Policy, and the FHLBNY will determine what actions permitted under the AHP Requirements will be taken.

#### B. Sponsor Repayment

- a. The Sponsor shall repay to the FHLBNY Member Financial Institution and the FHLBNY Member Financial Institution shall recover and repay to the FHLBNY that portion of the Subsidy (including, but not limited to, interest at the FHLBNY's fixed rate of interest for a comparable term measured from the date that the Subsidy was granted as determined by the Bank in its discretion) that, as a result of the Sponsor's actions or omissions, is not used in compliance with the terms of the AHP Application or the AHP Requirements, unless such non-compliance is cured by the Sponsor within a reasonable period of time as determined by the FHLBNY or the circumstances of such non-compliance are eliminated through an approved modification of the AHP Application pursuant to the AHP Requirements. Alternatively, the Sponsor may repay the Subsidy directly to the FHLBNY.
- b. Where the obligation to repay the Subsidy arises solely as a result of the Sponsor's actions or omissions, the FHLBNY Member Financial Institution shall not be obligated to the FHLBNY for the return of the amount of the Subsidy that cannot be recovered from the Sponsor through reasonable collection efforts by the FHLBNY Member Financial Institution. The FHLBNY Member Financial Institution agrees to report in writing to the FHLBNY the reasonable collection efforts taken by the FHLBNY Member Financial Institution. In the case of a foreclosure, the Sponsor's obligation to repay the direct Subsidy to the FHLBNY Member Financial Institution shall terminate upon final settlement or disposition.

#### C. Repayment Obligations

- a. Repayment obligations of the FHLBNY Member Financial Institution or the Sponsor are unconditional and irrevocable, and will be strictly enforced in accordance with this AHP Agreement and the AHP Requirements without regard to any other circumstances, including but not limited to:
  - i. the lack of validity or enforceability of any of the loan documents or other agreements relating to the Project, including any other agreement between the FHLBNY Member Financial Institution and the Sponsor pertaining to the Project (the "Related Documents") or
  - ii. any amendment or waiver of or any consent to or departure from all or any of the Related Documents, except that action taken or omitted in accordance with any

such amendment, waiver or consent by the FHLBNY or any such approved departure shall not, without more, give rise to a repayment obligation or be deemed to be an occurrence of noncompliance with the requirements of the AHP Requirements or this Agreement.

- b. To avoid the potential windfall profits from the premature sale of rental projects which were either developed or rehabilitated with AHP Subsidy, FHLBNY Member Financial Institutions are required, in the event of such a sale or transfer, to provide the FHLBNY with:
  - i. Evidence that an AHP Subordinate Mortgage or other legally enforceable retention mechanism is in place that ensures ongoing affordability and that the rental property will continue to be used for the purpose originally intended;
  - ii. Evidence if the project is refinanced that the project continues to be subject to an AHP Subordinate Mortgage and the successor sponsor or FHLBNY Member Financial Institution agrees to continue monitoring reporting for the remainder of the project; or
  - iii. Reimbursement of the full amount of the AHP Subsidy provided to the project.
- c. Pursuant to the AHP Requirements, if an owner-occupant sells, transfers, assigns the title or deed, or refinances the Property during the Retention Period, a portion of the AHP Subsidy may need to be repaid to the FHLBNY. However, if any one of the following conditions outlined in the AHP Requirements are met, a portion of the Subsidy may not be required to be repaid:
  1. The Property was assisted with a permanent mortgage loan funded by an AHP subsidized advance.
  2. The subsequent purchaser, transferee, or assignee is a low-or moderate- income household, as determined by the FHLBNY pursuant to the AHP Requirements.
  3. The portion of the AHP Subsidy required to be repaid under the AHP Requirements is \$2,500 or less.
  4. Following a refinancing, the Property continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism in compliance with the AHP Requirements.
  5. Following an event of foreclosure, transfer by deed-in-lieu of foreclosure, an assignment of a Federal Housing Administration first mortgage to HUD, or death of the AHP-assisted homeowner.

#### D. Collection Expense Reimbursement

- a. For the Project, the Sponsor shall pay all charges and expenses incurred by the FHLBNY or the FHLBNY Member Financial Institution (including, but not limited to, reasonable attorneys' fees and expenses) in connection with
  - i. any investigation by the FHLBNY or the FHLBNY Member Financial Institution with respect to the AHP Agreement, any related document or any other AHP Requirement as it relates to the Project;
  - ii. the enforcement, protection or preservation of any right or claim of the FHLBNY or the FHLBNY Member Financial Institution against the Sponsor under the AHP Agreement, any related document, or any other AHP Requirement as it relates to the Project; or
  - iii. the collection of any amounts due under the AHP Agreement, any related document, or any other AHP Requirement as it relates to the Project. As used in this

provision, “related document” includes, but is not limited to, the retention/recapture documents required by the AHP Agreement and the AHP Requirements.

#### **19. FHFA Compliance:**

- A. The FHLBNY Member Financial Institution and the Sponsor acknowledge that the FHLBNY and the FHLBNY’s AHP are subject to the regulatory, supervisory and examination authority of the FHFA. The FHLBNY Member Financial Institution and the Sponsor acknowledge further that pursuant to such authority, following due notice to FHLBNY Member Financial Institution, the FHFA may determine at any time, based on its review of the FHLBNY’s records for the Project, that the Subsidy has not been used in compliance with the terms of the AHP Application or the requirements of the AHP Regulation, and that such noncompliance is the result of the FHLBNY Member Financial Institution’s or the Sponsor’s actions or omissions. If the FHFA makes such a determination, the FHLBNY will notify the FHLBNY Member Financial Institution and the Sponsor in writing of the FHFA’s determination and may require remedial action by the FHLBNY Member Financial Institution or the Sponsor, or both, in accordance with the terms of the AHP Regulation and this AHP Agreement. The FHLBNY Member Financial Institution and the Sponsor agree that within thirty (30) calendar days after receipt of such notice, or within such other period of time as the FHLBNY may approve, if the FHLBNY Member Financial Institution or the Sponsor have not otherwise made a request to the FHLBNY, the FHLBNY Member Financial Institution or the Sponsor, or both, as may be directed by the FHLBNY pursuant to a supervisory determination of the FHFA to cure the noncompliance, eliminate the noncompliance through an approved modification of the AHP Application or repay the Subsidy to the FHLBNY in accordance with this AHP Agreement.
- B. Upon its own determination or pursuant to an order issued by the FHFA, the FHLBNY, following due notice to FHLBNY Member Financial Institution, may suspend or debar the FHLBNY Member Financial Institution or the Sponsor from further participation in the AHP due to (i) a pattern of noncompliance or (ii) a single instance of flagrant noncompliance with the AHP Regulation, the FHLBNY’s AHP Requirements, the AHP Application or this AHP Agreement.
- C. Subject to the conditions stated in this section and in the AHP Regulation, the FHLBNY Member Financial Institution and the Sponsor consent to be parties in any enforcement proceeding initiated by the FHFA regarding repayment of the Subsidy, or regarding the suspension or debarment of the FHLBNY Member Financial Institution or the Sponsor, and agree to be bound by the FHFA’s final determination in the proceeding, except that the FHLBNY Member Financial Institution shall not be deemed to have waived any right to obtain judicial review of such determination as provided by law.

**20. Noncompliance:** FHLBNY, in its sole discretion, may de-obligate, recapture, or cancel funds associated with the Project for any event of noncompliance, including but not limited to, regulatory requirements, FHLBNY’s AHP Policies and Practices, progress reporting milestones, and monitoring requirements.

#### A. Notices

The FHLBNY Member Financial Institution or the Sponsor, as the case may be, shall promptly

give written notice to the FHLBNY of an occurrence of noncompliance with this AHP Agreement or the AHP Requirements at the earliest possible date after discovery of such noncompliance, and after reasonable time to investigate and evaluate the occurrence which may constitute noncompliance, but, in any event, notice shall be given no later than fifteen (15) calendar days following discovery of an occurrence that constitutes noncompliance.

**21. Sponsor's Representations and Warranties:** The Sponsor represents and warrants to the FHLBNY that as of the effective date of this Agreement, on each funding date of the Subsidy, and as of the dates that the Sponsor provides monitoring information and certifications to the FHLBNY, the following:

A. Existence

The Sponsor is a sponsor as such term is defined in § 1291.1 of the AHP Regulation, and is in good standing in the State or Commonwealth of its organization. The Sponsor is duly qualified to do business in each state in which the ownership of its respective property or the nature of its respective business makes such qualification necessary and where the failure to so qualify would reasonably be expected to have a materially adverse effect on the business and operations of the Sponsor. The Sponsor has all powers and all material governmental licenses, authorizations, consents and approvals required to carry on its respective business as now conducted, except for such matters, the failure of which to so maintain, would not reasonably be expected to have a material adverse effect on the operations or financial condition of the Sponsor.

B. Power and Authority

The execution, delivery and performance by the Sponsor of this AHP Agreement and the Related Documents to which the Sponsor is a party are within the corporate or other powers of the Sponsor, has been duly authorized by all necessary action, does not contravene or constitute a default under any provision of applicable law or regulation or of any judgment, injunction, order, or decree binding on the Sponsor, or its property.

C. Enforceability

This AHP Agreement and the Related Documents to which the Sponsor is a party have been or will be duly executed and delivered and are, or upon execution will be, the valid and legally binding obligation of the Sponsor, enforceable against the Sponsor in accordance with their respective terms.

D. No Breach

The consummation of the transactions contemplated hereby and the execution, delivery and performance of this AHP Agreement and the other Related Documents by the Sponsor will not violate or constitute or result in a material breach of or a default under any agreement, mortgage, deed of trust, lease, loan or security agreement, corporate charter, articles, or bylaws, as applicable, or any other instrument to which the Sponsor is a party or by which it may be bound or affected.

E. Statements

The information given by the Sponsor in the AHP Application and in other documents provided to the FHLBNY and the FHLBNY Member Financial Institution, and in any oral statement made by the Sponsor, in connection with the AHP Application and the Project, are complete and accurate in all material respects.

F. Eligibility Standards, Use of Funds

The Project meets, or will meet upon its completion, the applicable minimum eligibility standards set forth in § 1291.5 of the AHP Regulation. The Subsidy will be used only as set forth in the AHP Application, and consistent with the AHP Requirements.

**22. FHLBNY Member Financial Institution's Representations and Warranties:** The FHLBNY Member Financial Institution represents and warrants to the FHLBNY that as of the effective date of this Agreement, on each funding date of the Subsidy, and as of the dates the FHLBNY Member Financial Institution provides monitoring information and certifications to the FHLBNY and the AHP Regulation, the following:

A. Power and Authority

The execution, delivery and performance by the FHLBNY Member Financial Institution of this AHP Agreement and the Related Documents to which the FHLBNY Member Financial Institution is a party are within the corporate or other powers of the FHLBNY Member Financial Institution, have been duly authorized by all necessary action, does not contravene or constitute a default under any provision of applicable law or regulation or of any judgment, injunction, order, or decree binding on the FHLBNY Member Financial Institution, or its property.

B. Enforceability

This AHP Agreement and the Related Documents to which the FHLBNY Member Financial Institution is a party have been or will be duly executed and delivered and are, or upon execution will be, the valid and legally binding obligation of the FHLBNY Member Financial Institution, enforceable against the FHLBNY Member Financial Institution in accordance with their respective terms.

C. No Breach or Default

The consummation of the transactions contemplated hereby and the execution, delivery and performance of this AHP Agreement and the other Related Documents by the FHLBNY Member Financial Institution will not violate or constitute or result in a material breach of or a default under any agreement, mortgage, deed of trust, lease, loan or security agreement, corporate charter, articles, or bylaws, as applicable, or any other instrument to which the FHLBNY Member Financial Institution is a party or by which it may be bound or affected. To the best of the FHLBNY Member Financial Institution's knowledge, the FHLBNY Member Financial Institution is not in default under the Advances Agreement. To the best of the FHLBNY Member Financial Institution's knowledge, the FHLBNY Member Financial Institution is in full compliance with the FHLBNY's capital stock and collateral requirements on the funding date.

D. Statements

The information given by the FHLBNY Member Financial Institution in the AHP Application and in other documents provided to the FHLBNY, and in any oral statement made by the FHLBNY Member Financial Institution, in connection with the AHP Application and the Project, are complete and accurate in all material respects.

E. Eligibility Standards; Use of Funds

The Project meets, or will meet upon its completion, the applicable minimum eligibility standards set forth in § 1291.5 of the AHP Regulation or any other applicable AHP Requirements and the District Eligibility Requirements set forth in the Plan. The Subsidy will be used only as set forth in the approved AHP Application, and will be consistent with the AHP Requirements.

- 23. Access to Information:** The FHLBNY Member Financial Institution and the Sponsor each expressly authorizes the FHLBNY, and the Sponsor expressly authorizes the FHLBNY Member Financial Institution, to audit the Project, including loan documentation and books and records of account, and to conduct on-site inspections of the Project during normal business hours, and upon reasonable advance notice. The FHLBNY Member Financial Institution and the Sponsor each agree to fully cooperate in and with the FHLBNY's review of the Project, and to promptly provide to the FHLBNY all documents and information reasonably requested by the FHLBNY. The Sponsor agrees to fully cooperate in and with the FHLBNY Member Financial Institution's review of the Project, and to promptly provide to the FHLBNY Member Financial Institution all documents and information reasonably requested by the FHLBNY Member Financial Institution.
- 24. Suspended Counterparty Program:** The FHFA prohibits the FHLBNY from engaging, directly or indirectly, in certain transactions with individuals or entities on the FHFA's list of suspended counterparties, which is available on FHFA's website. Accordingly, neither the FHLBNY Member Financial Institution nor the Sponsor shall employ, contract for, or otherwise use the services of any person or entity on the FHFA's list of suspended counterparties (a suspended party) such that the suspended party would directly or indirectly participate in any contractual relationship in the mortgage, securities or other lending product business with the Bank.
- 25. Assignment:** Neither the FHLBNY Member Financial Institution nor the Sponsor may (assign or transfer any of its rights or obligations under this Agreement without the express prior written consent of the FHLBNY. The Sponsor shall notify the FHLBNY in writing of any such assignment before the funding of the Subsidy. In the event that the FHLBNY Member Financial Institution fails to obtain or loses its membership in the FHLBNY, the FHLBNY may disburse the Subsidy to another FHLBNY Member Financial Institution of the FHLBNY to which the FHLBNY Member Financial Institution has transferred its obligations under the AHP Application, or the FHLBNY may disburse the Subsidy through another Federal Home Loan Bank District to a member of that Federal Home Loan Bank District that has assumed the FHLBNY Member Financial Institution's obligations under the AHP Application.
- 26. Amendment; Waivers:** No modification, amendment, or waiver of any provision of this AHP Agreement or consent to any departure therefrom shall be effective unless set forth in writing and executed by the parties to this AHP Agreement. Any forbearance, failure, or delay by a party hereto, in exercising any right, power, or remedy hereunder or under law or regulation shall not be deemed to be a waiver thereof, and any single or partial exercise by a party of any right, power, or remedy shall not preclude the further exercise thereof. Every right, power, and remedy of a party shall continue in full force and effect until specifically waived by the party, in writing.
- 27. Jurisdiction; Legal Fees:** In any action or proceeding brought by the FHLBNY, the FHLBNY Member Financial Institution, or the Sponsor in order to enforce any right or remedy under this AHP 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 New York State courts located in the City of New York, Borough of Manhattan to the exclusion of all other courts. The FHLBNY Member Financial Institution, and the Sponsor agree to pay all attorneys' fees and other costs incurred by the FHLBNY in connection with any action or proceeding to enforce any right or remedy under this AHP Agreement.

- 28. Applicable Law; Severability:** This AHP Agreement shall be governed by the statutory and common law of the United States and, to the extent federal law incorporates or defers to state law, the laws of the State of New York (excluding, however, the conflict of laws rules of such State). In the event that any portion of this AHP Agreement conflicts with applicable law, such conflict shall not affect other provisions of this AHP Agreement that can be given effect without the conflicting provision, and to this end the provisions of this AHP Agreement are declared to be severable.
- 29. Environmental Indemnity:** The FHLBNY Member Financial Institution and the Sponsor jointly and severally agree to indemnify and hold FHLBNY harmless from and against all liabilities, claims, actions, whether foreseeable or unforeseeable, consequential damages, costs and expenses (including, but not limited to, sums paid in settlement of claims and all reasonable consultant, expert and legal fees and expenses of the FHLBNY's counsel) or loss directly or indirectly arising out of or resulting from any Hazardous Substance (as such term is defined below) being present at any time, whether before, during or after construction or rehabilitation, in or around any part of the Project, or in the soil, groundwater or soil vapor on or under the Project, including, but not limited to, those incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work, or any resulting damages or injuries to the person or property of any third parties or to any natural resources. For the purposes of this paragraph, the term "Hazardous Substance" means any substance which is or becomes designated as "hazardous" or "toxic" under any federal, state or local law. This indemnity shall survive the expiration or termination of this AHP Agreement.
- 30. Notices:** All notices, requests or communications required hereunder shall be in writing and shall be deemed to have been duly given (i) upon delivery, if delivered personally, (ii) three (3) days after posting by certified mail, postage prepaid, return receipt requested, (iii) upon e-mail or (iv) the next day if delivered by a recognized overnight commercial courier, such as Federal Express, addressed in each instance to the parties at the following addresses or at such other addresses as shall be given by either of the parties to the other in accordance with this Section:

If to FHLBNY:

Federal Home Loan Bank of New York  
 101 Park Avenue  
 New York, New York 10178  
 Tel: [ 212-441-6850 ]  
 E-mail: [ [ahp@fhlbny.com](mailto:ahp@fhlbny.com) ]  
 Attention: [ Affordable Housing Operations ]

If to FHLBNY Member Financial Institution:

(Institution Name)

(Institution Street Address)

(Institution City, State, Zip)

Tel: [ \_\_\_\_\_ ]

E-mail: [ \_\_\_\_\_ ]

Attention: [ \_\_\_\_\_ ]

If to Sponsor:

(Sponsor Name)

(Sponsor Street Address)

(Sponsor City, State, Zip)

Tel: [ \_\_\_\_\_ ]

E-mail: [ \_\_\_\_\_ ]

Attention: [ \_\_\_\_\_ ]

- 31. Counterparts:** This AHP Agreement may be executed by the parties hereto on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same agreement.
- 32. Headings:** Paragraph headings in this AHP Agreement are included herein for convenience of reference only and shall not constitute a part of this AHP Agreement for any other purpose.
- 33. Consents:** Any time the FHLBANY's consent or approval is required hereunder, such consent or approval shall be consistent with the applicable requirements of the AHP Regulation and the FHLBANY's AHP Requirements.
- 34. Other Rights and Remedies:** Nothing in this AHP Agreement shall be deemed in any way to limit the FHLBANY's rights and remedies at law or in equity, or prevent the FHLBANY from taking any action at law or in equity in the event of the FHLBANY Member Financial Institution's or the Sponsor's failure, for whatever reason, to comply with any provision of this AHP Agreement, or to perform any promise or obligation or to satisfy any condition or requirement contained in this AHP Agreement or the AHP Requirements. Nothing in this AHP Agreement shall be deemed in any way to limit the FHLBANY Member Financial Institution's rights and remedies at law or in equity, or prevent the FHLBANY Member Financial Institution from taking any action at law or in equity in the event of the Sponsor's failure, for whatever reason, to comply with any provision of this AHP Agreement, or to perform any promise or obligation or to satisfy any condition or requirement contained in this AHP Agreement or the AHP Requirements.
- 35. Equal Opportunity and Non-Discrimination:** As required by the Housing and Economic Recovery Act of 2008, during the performance of this AHP Agreement, the Sponsor agrees that it shall practice the principles of equal employment opportunity and non-discrimination in all its business activities. The Sponsor shall include the provisions of the preceding sentence in any subcontract that it may enter for services or goods provided for the Project.
- 36. Entire Agreement:** The FHLBANY Member Financial Institution agrees that this AHP Agreement is subject to the terms and conditions of the Advances Agreement entered into between the Bank and the FHLBANY Member Financial Institution, which is incorporated by reference.

Except as referenced in the previous sentence, this AHP Agreement embodies the entire agreement and understanding between the parties hereto relating to the subject matter hereof and supersedes all prior agreements between the parties that relate to the Project.

[SIGNATURE PAGE FOLLOWS]



**PROJECT: FHFA # \_\_\_\_\_**

**PROJECT NAME: \_\_\_\_\_**

**FEDERAL HOME LOAN BANK OF NEW YORK:**

By: \_\_\_\_\_  
*(Signature)*

By: \_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Print Name)*

\_\_\_\_\_  
*(Print Name)*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

**FHLBNY MEMBER FINANCIAL INSTITUTION:**

By: \_\_\_\_\_  
*(Signature)*

By: \_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Print Name)*

\_\_\_\_\_  
*(Print Name)*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

**SPONSOR:**

By: \_\_\_\_\_  
*(Signature)*

By: \_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Print Name)*

\_\_\_\_\_  
*(Print Name)*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*