



**AFFORDABLE HOUSING PROGRAM GENERAL
FUND FOR OWNER-OCCUPIED PROJECTS
RETENTION DOCUMENTS**

Declaration of Restrictive Covenant

FOR USE WITH FHA LOANS ONLY

The following documents, in form fillable pdf format, are required to be executed at the closing of an FHA-insured loan receiving an Affordable Housing Program (“AHP”) subsidy from the Federal Home Loan Bank of New York (the “FHLBNY”):

- Declaration of Restrictive Covenant; and
- Certification of Intent to Record.

FOR FHFA-HUD LOANS, THE DECLARATION OF RESTRICTIVE COVENANT REPLACES THE SUBORDINATE MORTGAGE. PARTICIPATING MEMBER INSTITUTIONS ARE REQUIRED TO COMPLETE AND RECORD A DECLARATION OF RESTRICTIVE COVENANT IN THE FORM ATTACHED. WITHIN TWENTY (20) DAYS OF CLOSING, THE MEMBER SHALL EMAIL TO THE FHLBNY (AT AHP@FHLBNY.COM) COPIES OF THE EXECUTED DELCARATION OF RESTRICTIVE COVENANT AND CERTIFICATION OF INTENT TO RECORD.

By providing member institutions with the attached document, the FHLBNY is not providing legal advice to participating member institutions. The FHLBNY strongly suggests that declarants, sponsors and member institutions consult legal counsel to ensure full compliance with recording requirements and all other applicable laws, including FHA-HUD requirements.

The declaration of restrictive covenant should conform with and reflect the terms and conditions of the approved Affordable Housing Program application previously submitted by the participating member institution and the sponsor. No modifications to this form of declaration of restrictive covenant are permitted without the prior written consent of the FHLBNY.

PLEASE REMOVE THIS INSTRUCTION PAGE AND CERTIFICATION OF INTENT TO RECORD BEFORE RECORDING THE DECLARATION OF RESTRICTIVE COVENANT

After Recording, Return to:
[Insert Member Institution Mailing Address]

**AFFORDABLE HOUSING PROGRAM FOR OWNER-
OCCUPIED PROJECTS
DECLARATION OF RESTRICTIVE COVENANT**

THIS DECLARATION OF RESTRICTIVE COVENANT (“Declaration”) for the Federal Home Loan Bank of New York (“FHLBNY”) Affordable Housing Program (“AHP”) funds is made on _____ (the “Closing Date”) by _____ (the “Declarant”), residing at _____, in favor of _____ (the “Member”), organized and existing under the laws of _____, with an office located at _____.

WITNESSETH

WHEREAS, Declarant is a participant in the FHLBNY Affordable Housing Program (“AHP”) whereby the FHLBNY is providing, through the Member, a subsidy in the amount of \$ _____ (the “Subsidy”) for the purchase, or purchase in conjunction with rehabilitation or construction of an owner-occupied unit on real property located at _____, in the city/town of _____, County of _____, State of _____, Zip Code _____ (the “Property”), as more particularly described in the Legal Description, attached hereto as Exhibit A;

WHEREAS, the FHLBNY is providing, through the Member and AHP Project Sponsor, the Subsidy to the Declarant, for the purchase, or purchase in conjunction with rehabilitation or construction of the Property, which will be used as the Declarant’s primary residence;

WHEREAS, the FHLBNY is providing the Subsidy to the Declarant, through the Member, pursuant to the terms and conditions of a member participation agreement between Member and the FHLBNY and in accordance with to the AHP Implementation Plan, AHP policies, procedures, guidelines, and instructions, and the Federal Housing Finance Agency’s Affordable Housing Program Regulations (12 CFR Part 1291), as may be amended from time to time (the “AHP Regulations,” and collectively, the “AHP Requirements”);

WHEREAS, the Member has determined that the Declarant meets the AHP Requirements; and

WHEREAS, capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the AHP Regulations or the AHP Requirements.

NOW, THEREFORE, Declarant agrees to maintain ownership and reside in the Property as a primary residence for a period of not less than five (5) years from the Closing Date (“Retention Period”) and further agrees as follows:

1. Notice. The FHLBNY and the Member shall be given prompt written notice of a sale, transfer, assignment of title or deed, or refinancing of the Property during the Retention Period.

a. Notice to the FHLBNY shall be provided by first-class mail to the following address:

Federal Home Loan Bank of New York
101 Park Avenue
New York, New York 10178
Attention: General Counsel
generalcounsel@fhlbny.com

b. Notice to the Member shall be provided by first-class mail to the following address:

2. Repayment of Subsidy; Exceptions. Pursuant to the AHP Regulations, if the Declarant sells, transfers, assigns the title or deed, or refinances the Property during the Retention Period, an amount calculated by the Member using a Federal Housing Finance Agency prescribed calculation verified by the FHLBNY, equal to the lesser of: (a) the Subsidy, reduced on a pro rata basis per month until the Property is sold, transferred, or its title or deed transferred, or refinanced; or (b) any net proceeds from the sale, transfer, or assignment of title or deed of the Property minus the Declarant’s investment in the Property as defined under 12 CFR 1291.15(a)(7), as amended, as any acquisition costs, down payments and reductions of principal on the Property’s first mortgage (as documented by written evidence such as closing disclosures and mortgage servicing statements), and the cost of any post-closing capital improvements made to the Property (as documented by written evidence such as construction or home improvement invoices) (all documentation to be submitted and subject to the review and approval of the Member and/or the FHLBNY), shall be repaid to the Member for reimbursement to the FHLBNY unless one of the following exceptions applies in which case repayment of the Subsidy shall not be required:

- (i) if the Property is assisted with a permanent mortgage loan funded by an AHP subsidized advance;
- (ii) if the subsequent purchaser, transferee or assignee of the Property is a very low, low, or moderate income household at or below 80% of the over median income, as verified to the satisfaction of the Member and the FHLBNY through

documentation supplied by the Borrower in accordance with the AHP Requirements;

- (iii) if the calculated repayment Subsidy amount is equal to or less than \$2,500;
 - (iv) in the case of any refinancing during the Retention Period, if the Property continues to be subject to a deed restriction or other legally enforceable retention agreement similar to this and in compliance with 12 CFR 1291.15(a)(7), as amended;
 - (v) in the case of a foreclosure, deed-in-lieu, or assignment of a FHA first mortgage to HUD (assuming AHP funding is used in conjunction with FHA financing), the death of the Borrower and/or if certain conditions are satisfied as set forth in the FHA Regulations at 24 CFR 203.41, as may be amended from time to time; or
 - (vi) upon the death of the sole owner of the Property or the death of the last owner of the owners of the Property in the case of multiple title holders.
3. FHLBNY as Third-Party Beneficiary. The Declarant agrees that the FHLBNY is an intended third-party beneficiary of this Declaration and is entitled to rely upon all rights, representations, warranties, and covenants made by Declarant herein to the same extent as if FHLBNY were the Member hereunder.
 4. Declarant and Member Agreement. Declarant and Member acknowledge that the FHLBNY may request additional documentation to assist with finalizing any property disposition that occurs during the Retention Period.
 5. Modification and Assignment. This Declaration may not be changed or terminated orally. This Declaration may not be modified and/or assigned by either party, in whole or in part, without prior written consent of the other party and the FHLBNY. Any attempted modification and/or assignment without written consent shall be null and void.
 6. WAIVER OF JURY TRIAL. THE DECLARANT KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS DECLARATION AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COMPETENT COUNSEL.
 7. Governing Law. This Declaration shall be deemed to be a contract entered into pursuant to the laws of the State of New York and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York (without regard to principles of conflicts of laws).
 8. Severability. If any term or provision of this Declaration is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will attach only to such provision and will not affect or render invalid or unenforceable any other provision of this Declaration.
 9. Counterparts; Electronic Signatures. This Declaration may be executed in one or more counterparts, each of which is an original, and all of which together constitute only one

agreement between the parties. To the extent that electronic signatures are acceptable for recordation in the jurisdiction in which the Property is located, the parties agree that the execution of this Declaration via an electronic signature is intended to authenticate this writing and to have the same force and effect as manual signatures.

10. Termination. This Declaration shall become effective upon execution by Declarant and shall terminate upon the expiration of the five (5) year Retention Period unless the Declaration is otherwise sooner terminated. All provisions of this Declaration are hereby declared covenants running with the land and are fully binding on Declarant and its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any owners and/or users of the Property.

[SIGNATURE(S) ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year set forth above.

By: _____
(Declarant)

(Print Name)

By: _____
(Declarant)

(Print Name)

STATE/COMMONWEALTH OF _____

ss.:

COUNTY OF _____

On the _____ day of _____ in the year _____ before me, the undersigned, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

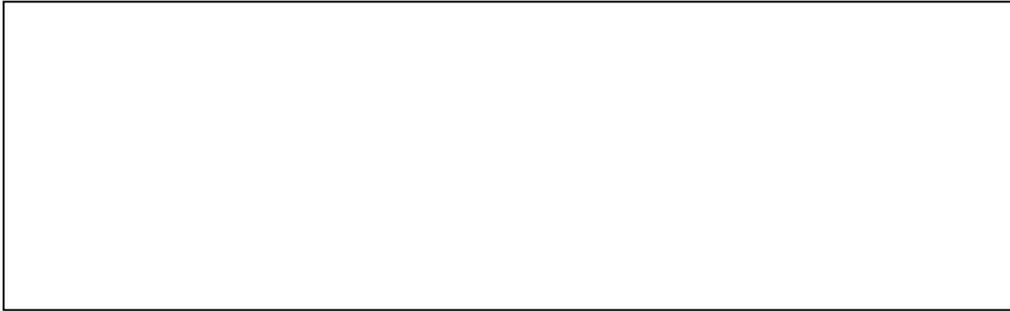
WITNESS my hand and official seal,

Notary Expires: _____

State of _____ County of _____

EXHIBIT A

(Legal description subject property)



NMLS ID #: _____

NMLS NAME: _____

**AFFORDABLE HOUSING PROGRAM
FOR OWNER-OCCUPIED PROJECTS**

**CERTIFICATION OF INTENTION
TO RECORD DECLARATION OF
RESTRICTIVE COVENANT**

MEMBER: _____

DECLARANT: _____ **FHC or HDP #** _____

PROPERTY ADDRESS: _____

Title Number: _____

Title Company: _____

Attached is a copy of a Declaration of Restrictive Covenant that encumbers the above-referenced property.

The original of this Declaration of Restrictive Covenant is being taken from the closing for public recording on _____
Date

**Name of Title Company, Law Firm or
Federal Home Loan Bank of New York Member**

Signature of Authorized Representative

Printed Name

Date