



AFFORDABLE HOUSING PROGRAM GENERAL FUND

FEDERAL HOME LOAN BANK OF NEW YORK

RIDER TO SUBORDINATE MORTGAGE

For Rental Projects Using Low Income Housing Tax Credits

This Rider to Subordinate Mortgage (“Rider”) amends and is made a part of the Subordinate Mortgage made by _____ (“Sponsor”) and _____ (“Owner”) to _____ (“FHLBNY Member Financial Institution” or “Lender”), dated _____ of even date herewith (“Subordinate Mortgage”). In the event of any conflict between the provisions of this Rider and the Subordinate Mortgage, the terms of this Rider shall govern. The Subordinate Mortgage and this Rider, to the extent applicable, are required to be executed at the closing of a loan receiving an Affordable Housing Program General Fund (“AHP”) subsidy from the Federal Home Loan Bank of New York (the “FHLBNY”). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Subordinate Mortgage.

Article 1.0

For purposes of this Rider the following terms are defined as follows:

“**FHLBNY**” shall refer to the Federal Home Loan Bank of New York

“**Lender**” shall refer to _____
(the FHLBNY’s member institution’s name)

“**Sponsor**” shall refer to _____
(the not-for-profit or other legal entity sponsor’s name)

“**Owner**” shall mean _____
(the entity’s name who owns the property)

Article 2.0

The Owner and Sponsor agree that the Property encumbered by the Subordinate Mortgage is a rental project (“Project”) subject to the regulations that govern the FHLBNY’s administration of the Affordable Housing Program General Fund (“AHP”) as promulgated by the Federal Housing Finance Agency in 12 CFR Part 1291 and any amendments made thereto (“AHP Regulations”), and the FHLBNY’s AHP Implementation Plan (“Plan”) and related policies, procedures, guidelines, and instructions, as may be amended from time to time (collectively, “AHP Requirements”):

- (i) The Project’s rental units will remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP Application for the duration of the AHP 15-year retention period (the “Retention Period”), unless otherwise extended in a modification agreement due to unforeseen circumstances, commencing on the date of the completion of the Project. These income levels, as committed to be served in the AHP application (as submitted to and approved by the FHLBNY and, if applicable, subsequently modified with the consent of the FHLBNY, the “AHP Application”), are established at initial income qualification for the household desiring eligibility to rent. Future household “increases” in income will not affect eligibility for tenant, Owner and/or Sponsor. As rental units turn over, Owner and Sponsor shall continue to comply with AHP Application commitments regarding initial household income qualification levels;

- (ii) The FHLBNY, whose mailing address is 101 Park Avenue, New York, NY 10178, and Lender (at Lender's designated address or such other place as Owner and/or Sponsor is/are notified in writing) and, at its discretion, its designee shall be given notice of any sale, transfer, assignment of title or deed, or refinancing of the Project by the Owner occurring during the Retention Period;
- a. In accordance with Section 3 of the Subordinate Mortgage, in the case of a sale, transfer, assignment of title or deed, or refinancing of the Project by the Owner during the Retention Period, the full amount of the Subsidy received by the Owner shall be repaid to the FHLBNY, unless one of the following exceptions applies:
 - b. The Project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the AHP Application for the duration of the Retention Period; or
 - c. If authorized by the FHLBNY, in its discretion, due to the exercise of eminent domain or for the expansion of housing or services, the households are relocated to another property that is made subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the AHP Application for the remainder of the Retention Period.

(iii) The income-eligibility and affordability restrictions applicable to the Project shall terminate after any foreclosure.

Article 3.0

The Lender, Owner and Sponsor agree to comply with the monitoring requirements as follows:

- (i) During the period of construction or rehabilitation, the Owner and/or Sponsor shall report to the FHLBNY and Lender semi-annually on whether reasonable progress is being made towards completion of the Project;
- (ii) Within the first year after Project completion, the Owner and/or Sponsor shall:
 - A. Certify to the Lender and the FHLBNY that the services and activities committed to in the AHP Application have been provided in connection with the Project;
 - B. Provide a list of actual tenant rents and incomes to the Lender and the FHLBNY and certify that:
 1. That tenant rents and incomes are accurate and in compliance with the rent and income targeting commitments made in the AHP Application; and
 2. The Project is habitable.
 - C. Maintain documentation regarding tenant rents and incomes and Project habitability available for review by the FHLBNY and/or the Lender, to support such certifications.
 - D. Certify to the Lender and the Bank that the Project is in compliance with AHP Regulations, including, without limitation, that the subsidies were used for eligible purposes in accordance with the commitments made in the AHP application (as approved by the Bank and, if applicable,

subsequently modified with the consent of the Bank), that the Project is subject to a deed restriction or other legally enforceable retention agreement, and that the Project's costs were reasonable in accordance with the Bank's project cost guidelines and necessary for completion of the Project as currently structured.

Article 4.0

In the second year after completion of the Project and annually thereafter until the end of the Project's retention period, the Owner and/or Sponsor shall:

- (i) Certify to the FHLBNY and Lender that:
 - A. The tenant rents and incomes are in compliance with the rent and income targeting commitments made in the AHP Application; and
 - B. The Project is habitable.
- (ii) Maintain documentation regarding tenant rents and incomes and Project habitability available for review by the FHLBNY and/or Lender, to support such certifications.

Article 5.0

The Owner and/or Sponsor agree to use the Subsidy in accordance with the terms of the AHP Application and the requirements of the AHP Requirements.

Article 6.0

The Owner and/or Sponsor agree to repay the Subsidy (plus interest, if appropriate) in accordance with the following requirements:

- (i) In the case of a sale, transfer, assignment of title or deed, or refinancing of the Property, the Owner and/or Sponsor must repay the Lender in accordance with the AHP Regulations. The Lender, in turn, must remit the proceeds of the Subsidy to the FHLBNY forthwith;
- (ii) The Lender shall, through foreclosure and other reasonable collection efforts, recover from the Owner and/or Sponsor (100%) of the Subsidy (plus interest, if appropriate) or an amount, as determined by the FHLBNY, that, as a result events of unresolved noncompliance with the AHP Requirements and/or the terms of the application for the Subsidy. The Lender, in turn, must remit the proceeds of the Subsidy to the FHLBNY forthwith approved by the FHLBNY, and the requirements of this part;
- (iii) In the event the property is not used in compliance with the terms of the application for the Subsidy (as approved by the FHLBNY and, if applicable, subsequently modified with the consent of the FHLBNY) and consistent with the requirements of AHP Requirements, the Owner and/or Sponsor may be obligated to repay the Lender an amount equal to (100%) of the Subsidy (plus interest, if appropriate) or an amount, as determined by the FHLBNY, unless:
 - A. The Owner and/or Sponsor cures the non-compliance within a reasonable period of time as determined by the FHLBNY; or

- B. The circumstances of non-compliance are eliminated through a modification of the terms of the application for the Subsidy, subject to the consent of the FHLBNY.

If the Member or Project Sponsor lends AHP direct subsidy to a Project, any repayments of principal and payments of interest received by the member or the Project Sponsor must be paid forthwith to the FHLBNY, unless the direct subsidy is being both lent and re-lent by a revolving loan fund pursuant to 12 C.F.R. § 1291.31(d).

IN WITNESS WHEREOF, the undersigned have executed this Rider as of the date and year above set forth.

OWNER

By: _____

Name: _____

Title: _____

SPONSOR

By: _____

Name: _____

Title: _____