



AFFORDABLE HOUSING PROGRAM GENERAL FUND FOR RENTAL PROJECTS RETENTION DOCUMENTS

The Subordinate Mortgage, in form fillable pdf format, is required to be executed at the closing of a loan receiving an Affordable Housing Program subsidy from the Federal Home Loan Bank of New York (the "FHLBNY").

PARTICIPATING MEMBER INSTITUTIONS ARE REQUIRED TO COMPLETE AND RECORD A SUBORDINATE MORTGAGE IN THE FORM ATTACHED. WITHIN TWENTY (20) DAYS OF CLOSING, THE MEMBER SHALL EMAIL TO THE FHLBNY (AT AHP@FHLBNY.COM) A COPY OF THE EXECUTED SUBORDINATE MORTGAGE.

By providing member institutions with the attached form of subordinate mortgage, the FHLBNY is not providing legal advice to participating member institutions. The FHLBNY strongly suggests that the borrowers, sponsors and member institutions each consult legal counsel to ensure full compliance with recording requirements and all other applicable laws.

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

PLEASE REMOVE THIS INSTRUCTION PAGE BEFORE RECORDING THE SUBORDINATE MORTGAGE

After Recording, Return to:

[Insert Member Institution Mailing Address]

**AFFORDABLE HOUSING PROGRAM GENERAL FUND
SUBORDINATE MORTGAGE
FOR RENTAL PROJECTS**

AHP PROJECT #: _____

THIS SUBORDINATE MORTGAGE, made for the benefit of the Federal Home Loan Bank of New York (“FHLBNY”), is effective as of _____ (the “Closing Date”), and is made by _____, with an office at _____ (together with all legal successors, collectively, the “Sponsor”) and _____, with an office at _____ (together with all legal successors, collectively, the “Owner”) to _____, a banking organization, organized and existing under the laws of _____, with principal offices at _____ (together with all legal successors and assigns, collectively, the “FHLBNY Member Financial Institution”);

WHEREAS, Sponsor is a participant in the FHLBNY Affordable Housing Program General Fund (“AHP”) whereby the FHLBNY is providing, through the FHLBNY Member Financial Institution, direct subsidy funds (the “Subsidy”) in an amount not to exceed \$ _____ with respect to that certain real property located at _____, in the city/town of _____, County of _____, State of _____ (the “Property”), as more particularly described in the Legal Description, attached hereto as Exhibit A and made a part hereof, consisting of _____ residential rental units together with certain other building and site improvements (the “Project”);

WHEREAS, the FHLBNY is providing the Subsidy to the Sponsor, through the FHLBNY Member Financial Institution, pursuant to the terms and conditions of a member participation agreement between FHLBNY Member Financial Institution 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 FHLBNY Member Financial Institution has determined that the Sponsor 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, Sponsor and Owner, each for itself and all successors and assigns to the Property, agree with the FHLBNY Member Financial Institution that:

1. Affordability Restrictions.

The rental units contained in the Project, or applicable portion thereof, shall be used for the residential purposes as originally intended, remain occupied by and affordable for households with incomes at or below the levels committed to be served in the approved AHP application (as submitted to and approved by the FHLBNY and, if applicable, subsequently modified, “AHP Application”) (or as modified and approved by the FHLBNY), for the duration of the AHP 15-year retention period (“Retention Period”),

unless otherwise extended in a modification agreement due to unforeseen circumstances, commencing on the date of the completion of the Project. Notwithstanding anything contained herein to the contrary, the income-eligibility and affordability restrictions applicable to the Project shall terminate after any foreclosure.

2. Notice. The FHLBNY shall be given prompt written notice of any sale, transfer, assignment of title or deed, or refinancing of the Project by the Sponsor and/or the Owner occurring 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 FHLBNY Member Financial Institution shall be provided by first-class mail to the following address:

3. Repayment of Subsidy; Exceptions. To preclude the Sponsor and/or Owner from receiving potential windfall profits from the premature sale of rental projects which were either developed or rehabilitated with AHP subsidy funds, the FHLBNY Member Financial Institution is required, in the case of a sale, transfer, assignment of title or deed, or refinancing of the Project by the Sponsor and/or Owner during the Retention Period, to repay to the FHLBNY the full amount of the Subsidy received by the Sponsor and/or Owner, unless one of the following exceptions applies:
- 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
 - 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.
4. FHLBNY as Third-Party Beneficiary. The Sponsor and Owner agree that the FHLBNY is an intended third-party beneficiary of this Subordinate Mortgage and is entitled to rely upon all rights, representations, warranties, and covenants made by Sponsor and Owner herein to the same extent as if FHLBNY were the FHLBNY Member Financial Institution under this Subordinate Mortgage.
5. Sponsor, Owner and FHLBNY Member Financial Institution Agreement. Sponsor, Owner and FHLBNY Member Financial Institution acknowledge that the FHLBNY may request additional documentation to assist with finalizing any property disposition that occurs during the Retention Period.
6. Modification and Assignment. This Subordinate Mortgage may not be changed or terminated orally. This Subordinate Mortgage 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.

7. WAIVER OF JURY TRIAL. THE SPONSOR AND THE OWNER EACH 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 SUBORDINATE MORTGAGE 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.
8. Governing Law. This Subordinate Mortgage 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).
9. Severability. If any term or provision of this Subordinate Mortgage 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 Subordinate Mortgage.
10. Counterparts; Electronic Signatures. This Subordinate Mortgage 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 Subordinate Mortgage via an electronic signature is intended to authenticate this writing and to have the same force and effect as manual signatures.
11. Termination. This Subordinate Mortgage shall terminate upon the earlier occurrence of: (i) the indefeasible payment in full of the Subsidy if required pursuant to the terms hereof, or (ii) upon the expiration of the Retention Period. Upon Sponsor's and/or Owner's request and expense, the FHLBNY Member Financial Institution agrees to execute and deliver to Sponsor and/or Owner a satisfaction of this Subordinate Mortgage.

**[REMAINDER OF PAGE INTENTIONALLY
LEFT BLANK]**

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

WITNESS:

(Sponsor name)

(Signed)

(Printed name of authorized representative)

(Title)

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 _____

[SIGNATURE(S) ON FOLLOWING PAGE]

WITNESS:

(Owner name)

(Signed)

(Printed name of authorized representative)

(Title)

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)

