

# Retention Agreement Requirements

*Retention Agreement for Owner-occupied/Ownership Projects  
(AHP Competitive and Welcome Home Program)*

*Retention Agreement for Rental Projects  
(AHP Grant < \$750,000)*

*Retention Agreement for Rental Projects  
(AHP Grant > \$750,000)*

## Retention Agreement for Owner-occupied/Ownership Projects (AHP competitive grant and Welcome Home Program grant)

***The language below should be inserted into the Warranty Deed or as a Restrictive Covenant to the Warranty Deed. If it is attached to the Warranty Deed as an addendum or attachment, the Warranty Deed must reference the addendum or exhibit. If recorded as a Restrictive Covenant, the document must reference the Warranty Deed.***

Grantees, for and in consideration of receiving direct subsidy funds from the Federal Home Loan Bank of Cincinnati's (the FHLB Cincinnati) Affordable Housing Program (AHP), must maintain ownership in this property for a period of five (5) years (Retention Period) from the date of the recording of this deed.

- (i) The FHLB Cincinnati, whose mailing address is P.O. Box 598; Cincinnati, OH 45201-0598, is to be given notice of any sale, refinancing, foreclosure, conveyance by deed in lieu of foreclosure, assignment of the first mortgage to the Secretary of HUD, or change in ownership of the unit occurring prior to the end of the Retention Period.
- (ii) In the case of a sale or refinancing of the unit prior to the end of the Retention Period, an amount equal to a pro rata share of the AHP Subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the seller owned the unit, shall be repaid to the FHLB Cincinnati from any net gain realized upon the sale or refinancing of the unit; unless:
  - 1. The unit was assisted with a permanent mortgage loan funded by an AHP advance;
  - 2. The purchaser is a very low- or low- or moderate-income household as defined in the applicable Federal Housing Finance Agency regulations for the AHP (in which case the retention period ends with the conveyance to such purchaser); or,
  - 3. Following a refinancing, the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism, incorporating the requirements of clauses (i), (ii), and (iii) contained herein.
- (iii) The obligation to repay Subsidy to the FHLB Cincinnati shall terminate after any foreclosure or conveyance by deed in lieu of foreclosure or any assignment of the first mortgage to the Secretary of HUD.

## Retention Agreement for Rental Projects (AHP Grant $\leq$ \$750,000)

***The language below should be inserted into the Warranty Deed or recorded as a Restrictive Covenant to the Warranty Deed. If it is attached to the Warranty Deed as an addendum, the Warranty Deed itself must reference the addendum or exhibit. If recorded as a Restrictive Covenant, the document must reference the Warranty Deed.***

As a condition and in consideration of receipt of direct subsidy funds from the Federal Home Loan Bank of Cincinnati's (the FHLB Cincinnati) Affordable Housing Program (AHP), the Project Owner, for itself and all successors, agrees that:

- (i) The \_\_\_\_\_ ("Project's") rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below \_\_\_\_\_ (insert levels committed to be served in the approved AHP Application) or as modified by FHLB for a period of fifteen (15) years ("Retention Period") from the date of the recording of this deed;
- (ii) The FHLB Cincinnati, whose mailing address is P.O. Box 598; Cincinnati, OH 45201-0598, is to be given notice of any sale, refinancing, foreclosure, or change in ownership of the Project occurring prior to the end of the Retention Period;
- (iii) In the case of a sale or refinancing of the Project prior to the end of the Retention Period, an amount equal to the full amount of the direct subsidy shall be repaid to the FHLB Cincinnati, unless 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 (as stated above) for the duration of the Retention Period; and
- (iv) The income-eligibility and affordability restrictions applicable to the Project terminate after any foreclosure, deed in lieu of foreclosure, or assignment of the first mortgage to the Secretary of HUD.

## Retention Agreement for Rental Projects (AHP Grant > \$750,000)

Unless otherwise approved in advance, and in writing, by the Federal Home Loan Bank of Cincinnati (the “FHLB” or the “FHLB Cincinnati”), all Affordable Housing Program (“AHP”) projects receiving more than \$750,000 in AHP subsidy will be subject to a promissory note and a real property security instrument (e.g. a mortgage, deed of trust, a deed to secure debt, or other appropriate security instrument under applicable law) between the Project Sponsor or Project Owner as mortgagor (as applicable based on the structure of the specific AHP project) and the Member as mortgagee, of a type that is customarily used by the Member in the jurisdiction where the real property is located.

There must be a separate note and security instrument securing solely the AHP subsidy in connection with the Project.

The note must have a zero percent (0%) interest rate;

The note must have maturity period of 15 years; and,

The note must specify that repayments of principal and interest must be paid forthwith to the FHLB.

Members should use the form of note and security instrument that they would normally use to document a similar loan for their own account in the same jurisdiction where the AHP project is located. The Rider is a document designed to be attached to the Member's security instrument and recorded with such instrument.

The minimum retention requirements of the AHP Regulations must be incorporated under a rider to the Member’s security instrument and must be recorded with such instrument. FHLB Cincinnati provides a sample AHP Rider only as a guide when preparing a project-specific rider to the security instrument. The FHLB makes no representation or warranty that a court will enforce these form documents in accordance with applicable state law. The FHLB strongly recommends that each Member have its counsel review the documents to address suitability and any state law requirements, including but not limited to consumer credit laws, notary requirements, usury laws, recording procedures and requirements, and requirements for mortgage states. The final note, security instrument and rider to the security instrument must meet the requirements of the Project’s jurisdiction.

Members should incorporate the Rider into the security instrument by adding the following provision to the Member’s form of security instrument:

**“Federal Home Loan Bank of Cincinnati Affordable Housing Program Retention Agreement Requirements.** The Rider to Security Instrument – Federal Home Loan Bank of Cincinnati Affordable Housing Program Retention Agreement (“Rider”) is attached hereto and by this reference made a part hereof. The provisions set forth in the Rider shall supersede any conflicting provision contained in this agreement, but only to the extent of such inconsistency.”

Finally, the FHLB recognizes that the Department of Housing and Urban Development may require subordination of other security instruments. If that is the case, please contact the FHLB Cincinnati for a copy of a sample HUD/FHLB Cincinnati subordination agreement.

### **RIDER TO SECURITY INSTRUMENT**



## FEDERAL HOME LOAN BANK OF CINCINNATI AFFORDABLE HOUSING PROGRAM RETENTION AGREEMENT

### (Rental Project Receiving More Than \$750,000 in AHP Subsidy)

This Rider to Security Instrument is attached to and made part of the foregoing security instrument (the “Security Instrument”). In this Rider, the beneficiary of the Security Instrument is referred to as the “Lender” and the trustor or grantor under the Security Instrument is referred to as the “Borrower.” This Rider is a form of “retention mechanism agreement” referred to below.

#### RECITALS:

- A. Whereas**, pursuant to Section 721 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (“FIRREA”), the Federal Housing Finance Agency (“Finance Agency”) is required to cause each Federal Home Loan Bank to establish an Affordable Housing Program (“AHP”) to assist members of each Federal Home Loan Bank to finance affordable housing for very low-, low-, and moderate-income households.
- B. Whereas**, the Federal Home Loan Bank of Cincinnati (“FHLB Cincinnati”) has also established an Affordable Housing Program Implementation Plan (as the same may be modified from time to time, the “**AHP Implementation Plan**”), and AHP policies, procedures, guidelines, and instructions covering, among other things, feasibility, funding, monitoring, and modifying affordable housing projects participating in the FHLB Cincinnati’s AHP (together with the Implementation Plan, collectively, as the same may be modified from time to time, the “**FHLB Cincinnati’s AHP Policies and Procedures**”; and together with the AHP Regulations, collectively, “**AHP Requirements**”);
- C. Whereas**, Lender, a Member of FHLB Cincinnati, submitted an application to FHLB Cincinnati (the “AHP Application”) for an AHP subsidy (defined below) in connection with the real property identified in the AHP Application and the improvements and tangible and intangible personal property associated or connected therewith, all of which is encumbered by the Security Instrument (the “Project”).
- D. Whereas**, pursuant to applicable regulations (including, without limitation, those contained in 12 CFR Part 1291) promulgated by the Finance Agency pursuant to FIRREA (the “AHP Regulations”), members of each Federal Home Loan Bank are required to provide for the repayment of any direct subsidy should said direct subsidy or the Project or a portion of the Project be improperly used.
- E. Whereas**, in connection with the Project, Borrower as “Project Owner” entered into an Affordable Housing Program Agreement (the “AHP Agreement”) with FHLB Cincinnati and Lender, pursuant to which Borrower and Lender agreed to be bound by the AHP Regulations and perform certain monitoring functions with respect to the Project and related AHP Subsidy (defined below).

**F. Whereas,** Lender has advanced or agreed to advance the AHP Subsidy to Borrower in connection with Borrower’s purchase, construction and/or rehabilitation of real property described in the Security Instrument, and in connection with the AHP Subsidy, Borrower has executed the Security Instrument, which includes this Rider.

**G. Whereas,** the Parties desire to cause the Income and Affordability Restrictions and related covenants and restrictions required by the AHP Agreement to become recorded restrictions burdening the Project as defined below.

By signing the Security Instrument, Borrower hereby agrees as follows:

**1. Project Information**

Name and address of the  
Project Owner:

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Name and address of the  
Project:

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AHP Project Number:

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Amount of the AHP Subsidy:

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**2. AHP Subsidy.** The secured obligation described in and secured by the Security Instrument represents the “AHP Subsidy” used in connection with the purchase, construction or rehabilitation of the Project.

**3. Definitions.** As used in this Rider, the following capitalized terms have the following meanings:

“**Income and Affordability Restrictions**” means income limitations as amended or modified or adjusted annually according to the current applicable median income data from time to time with the approval of FHLB Cincinnati and rent limitations such that the Project units are affordable for households with incomes at or below the levels committed to be served in the AHP Application.

“**Loan**” means the advance of funds evidenced by the Note.

"**Loan Documents**" means the Note, the AHP Agreement, the Security Instrument, and all other documents relating to or securing the Note, each as renewed, amended, modified, restated and extended from time to time.

“**Note**” means the promissory note secured by the Security Instrument.

All other capitalized terms not otherwise defined herein or in the Security Instrument shall be as defined in the AHP Agreement.

#### 4. Covenants

- a. The Project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below \_\_\_\_\_ (insert levels committed to be served in the approved AHP Application) or as modified by FHLB for a period of fifteen (15) years (“Retention Period”) from the date of the recording of this deed,
- b. Each of FHLB Cincinnati and the Lender is to be given notice of any sale or refinancing of the project occurring prior to the end of the 15-year AHP Retention Period,
- c. In the case of a sale or refinancing of the project prior to the end of the 15-year AHP Retention Period, an amount equal to the full amount of the direct subsidy shall be repaid to FHLB Cincinnati unless the Project continues to be subject to a retention mechanism agreement incorporating the income eligibility and affordability restrictions committed to in the AHP Application for the duration of the 15-year AHP Retention Period, and
- d. The income-eligibility and affordability restrictions applicable to the Project terminate after any foreclosure, conveyance by deed in lieu of foreclosure or any assignment of the first mortgage to the Secretary of HUD. However, any obligation to repay the AHP subsidy for any period of noncompliance arising prior to the foreclosure, deed in lieu, or assignment to the Secretary of HUD shall not be extinguished by such actions.
- e. In the event that the AHP Subsidy is disbursed to the Project Owner prior to completion of construction of the Project, then at all times prior to completion, (a) any sale of the property (or any portion thereof) to any person or entity shall be prohibited without the prior written consent of the Lender; and (b) any failure to develop the property in accordance with the AHP Agreement for the Project, or any other failure by the Project Sponsor to comply with said AHP Agreement, the Retention Mechanism agreement, or any AHP Regulation, shall result in a default requiring repayment of the subsidy to FHLB Cincinnati.

**5. Inconsistent Provisions.** The provisions of this Rider shall supersede any conflicting provision contained in the Security Instrument, but only to the extent of such inconsistency. No provision herein shall impair any obligation of Borrower under the AHP Requirements.

IN WITNESS WHEREOF, Borrower has caused this instrument to be executed and sealed the day and year first above written.

**Borrower/Trustor**

**Notary**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Date \_\_\_\_\_