

## Attachment E. Sample Retention Agreements

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The following documents represent samples of the required Real Estate Retention Agreement. The documents included in this Attachment E are current as of the most recent approval of this Implementation Plan by the Bank's Board of Directors and may have changed after that date as a result of subsequent regulatory or other requirements. Please contact the Bank for the most recent versions of the Retention Agreement in force at the time of execution. The current approved agreements must be utilized for approved projects and recipients of AHP subsidies.

- [Real Estate Retention Agreement – AHP Direct Subsidy – Homeownership/Owner-Occupied Projects](#)
- [Real Estate Retention Agreement – AHP Direct Subsidy – Rental Projects](#)
- [Real Estate Retention Agreement – AHP Direct Subsidy – Lease Purchase Projects](#)
- [Real Estate Retention Agreement – Homeownership Initiatives](#)
- Real Estate Retention Agreement – Homeownership Initiatives – Projects on Tribal Lands (Available upon request)
- Real Estate Retention Agreement – AHP Direct Subsidy – Projects on Tribal Lands (Available upon request)
- Real Estate Retention Agreement – AHP Subsidized Advance – Rental Projects (Available upon request)

# Real Estate Retention Agreement

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## Affordable Housing Program Grant Award (**Homeownership**)

AHP Project No.: \_\_\_\_\_

For purposes of this Agreement, the following terms shall have the meanings set forth below:

"FHLBI" or "the Bank" shall refer to the Federal Home Loan Bank of Indianapolis. "Member" shall refer to \_\_\_\_\_, (The Bank's Member institution), located at \_\_\_\_\_.

"Borrower(s)" shall refer to \_\_\_\_\_.

For and in consideration of receiving direct subsidy funds (the "Subsidy") in an amount not to exceed

\$ \_\_\_\_\_ under the Affordable Housing Program ("AHP") of the Bank through the Member, with respect to that certain real property located at \_\_\_\_\_, in the city/town of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, which is more fully described as follows, or as attached hereto as Exhibit A and made a part hereof.

Borrower(s) hereby agree that they shall maintain ownership and reside in this property as their primary residence for a period of five (5) years ("Retention Period") from the date of closing and further agrees with the Member that:

- (i.) FHLBank Indianapolis, whose mailing address is 8250 Woodfield Crossing, Indianapolis, Indiana 46240, Attention: Community Investment Division, is to be given immediate written notice of any sale or refinancing of this property occurring prior to the end of the Retention Period;
- (ii.) In the case of a sale, transfer, or assignment of the title/deed prior to the end of the Retention Period, an amount calculated by the Bank, equal to the lesser of: (a) the Subsidy, reduced on a pro rata basis per month until the unit is sold, transferred, or its title or deed transferred, during the Retention Period; or (b) any net proceeds from the sale, transfer, or assignment of title or deed of the unit, minus the AHP-assisted household's investment, shall be repaid to the Member for reimbursement to the Bank, unless the purchaser is a very low-, low- or moderate-income household which is defined as having not more than 80% of the area median income, the unit was assisted with a permanent mortgage loan funded by a AHP subsidized advance and not a direct subsidy, or the amount of Subsidy required to be repaid pursuant to this paragraph is \$2,500 or less. For purposes of determining whether a subsequent sale, transfer, or assignment of the unit is to a purchaser that qualifies as a very low-, low-, or moderate-income household, the Bank shall determine the purchaser's income using one or more proxies that are reliable indicators of the subsequent purchaser's income, and which shall be selected by the Bank prior to such determination and stated in the Bank's AHP Implementation Plan, unless documentation demonstrating that household's actual income is made available to the Bank;
- (iii.) In the case of a refinancing prior to the end of the Retention Period, an amount equal to the lesser of: (a) the Subsidy, reduced on a pro rata basis per month until the unit is refinanced, during the Retention Period; or (b) any net proceeds from the refinancing of the unit, minus the AHP-assisted household's investment, shall be repaid to the Member for reimbursement to the Bank, unless the property continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism, incorporating the requirements of clauses (i), (ii), (iii), (iv), and (v) contained herein, or the unit was assisted with a permanent mortgage loan funded by a AHP subsidized advance, or the amount of Subsidy required to be repaid pursuant to this paragraph is \$2,500 or less;

- (iv.) In the case of a foreclosure, the obligation to repay the Subsidy to the Member (and the Member to the Bank) shall terminate upon final settlement once foreclosure action is completed. Otherwise, the covenants contained herein shall continue until release by the Member in writing or the expiration of the Retention Period, whichever should first occur; *and*
- (v) Upon the death of the AHP-assisted sole owner, or owners in the case of multiple title holders, the Retention Agreement terminates and there is no obligation to repay the AHP Subsidy.

# Real Estate Retention Agreement

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## Affordable Housing Program Grant Award (**Rental Project**)

AHP Project No.: \_\_\_\_\_

For purposes of this Agreement, the following terms shall have the meanings set forth below:

"FHLBI" or "the Bank" shall refer to the Federal Home Loan Bank of Indianapolis. "Member" shall refer to \_\_\_\_\_, (The Bank's Member institution) located at \_\_\_\_\_

"Sponsor" shall refer to \_\_\_\_\_, (The not-for-profit sponsor) located at \_\_\_\_\_

"Project Owner" shall refer to \_\_\_\_\_, (The entity which owns the property subject to this mortgage) located at \_\_\_\_\_

As a condition and in consideration of receipt of direct subsidy funds (the "Subsidy") under the Affordable Housing Program ("AHP") of the Bank through the Member, with respect to that certain real property located at \_\_\_\_\_, in the city/town of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, which is more fully described as follows:

See "EXHIBIT A" attached hereto and made a part hereof.

The Project Owner/Sponsor, for itself and all successors to the property, agrees with the Member that:

- (i) The rental units contained in \_\_\_\_\_ ("Project"), or applicable portion thereof, must remain occupied by and affordable for households with incomes as committed to in the AHP Application, or as modified and approved by the Bank, for a period of fifteen (15) years ("Retention Period") from the date of the completion of the project (unless otherwise extended in a modification agreement due to unforeseen circumstances);
- (ii) The Bank, whose mailing address is 8250 Woodfield Crossing, Indianapolis, Indiana 46240, Attention: Community Investment Division, is to be given immediate written notice of any sale or refinancing of this property 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 Member, for reimbursement to the Bank, unless the Project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the requirements of clauses (i), (ii), (iii), and (iv) contained herein or if authorized by the Bank, in its discretion, the households are relocated, due to the exercise of eminent domain, or for expansion of housing or services, 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 approved AHP application for the remainder of the retention period; *and*
- (iv) The income-eligibility and affordability restrictions applicable to the project terminate after foreclosure. Otherwise, the covenants contained herein shall continue until released by the Member in writing or the expiration of the Retention Period, whichever should first occur.

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# Real Estate Retention Agreement

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## Affordable Housing Program Grant Award (**Lease/Purchase Project**)

AHP Project No.: \_\_\_\_\_

For purposes of this Agreement, the following terms shall have the meanings set forth below:

"FHLBI" or "the Bank" shall refer to the Federal Home Loan Bank of Indianapolis.

"Member" shall refer to (The Bank's Member institution), located at

"Sponsor" shall refer to (The not-for-profit sponsor), located at

"Project Owner" shall refer to (The entity which owns the property subject to this mortgage), located at

As a condition and in consideration of receipt of direct subsidy funds (the "Subsidy") under the Affordable Housing Program ("AHP") of the Bank through the Member, with respect to that certain real property located at , in the city/town of , County of , State of , which is more fully described as follows:

See "EXHIBIT A" attached hereto and made a part hereof.

The Project Owner/Sponsor, for itself and all successors to the property, agrees with the Member that:

- (i) The lease/purchase units contained in ("Project"), or applicable portion thereof, must remain occupied by and affordable for households with incomes as committed to in the AHP Application, or as modified and approved by the Bank, for a period of fifteen (15) years ("Lease Retention Period") from the date of completion of the project;
- (ii) Once the lease obligation is terminated with respect to any one or more units, and the unit is purchased by an AHP-eligible homebuyer, the Retention Period under paragraph (i) reverts to five (5) years from the date of completion of the project ("Purchase Retention Period") with respect to such purchased units only, and the Lease Retention Period remains in effect for unsold units;
- (iii) The Bank, whose mailing address is 8250 Woodfield Crossing, Indianapolis, Indiana 46240, Attention: Community Investment Division, is to be given immediate written notice of any sale or refinancing of any unit occurring prior to the end of the applicable Retention Period under Paragraphs (i) and (ii);
- (iv) In the case of a sale or refinancing of any unit prior to the end of the Lease Retention Period under paragraph (i), an amount equal to the full amount of the direct Subsidy shall be repaid to the Member, for reimbursement to the Bank, unless the Project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the requirements of clauses (i), (ii), (iii), (iv), (v), (vi), (vii), and (viii) contained herein, or if authorized by the Bank, in its discretion, the households are relocated, due to the exercise of eminent domain, or for expansion of housing or services, 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 approved AHP application for the remainder of the retention period;
- (v) In the case of a sale, transfer, or assignment of a unit prior to the end of the Purchase Retention

Period under Paragraph (ii), an amount equal to the lesser of: (a) the Subsidy, reduced on a pro rata basis per month until the unit is sold, transferred, or its title or deed transferred, during the Purchase Retention Period; or (b) any net proceeds from the sale of the unit, minus the AHP-assisted household's investment, shall be repaid to the Member for reimbursement to the Bank, unless the purchaser is a very low-, low-, or moderate-income household which is defined as having not more than 80% of the area median income. For purposes of determining whether a subsequent sale, transfer or assignment of the unit is to a purchaser that qualifies as a very low-, low-, or moderate-income household, the Bank shall determine the purchaser's income using one or more proxies that are reliable indicators of the subsequent purchaser's income, and which shall be selected by the Bank prior to such determination and stated in the Bank's AHP Implementation Plan, unless documentation demonstrating that household's actual income is made available to the Bank;

- (vi) In the case of a refinancing of a unit prior to the end of the Purchase Retention Period under Paragraph (ii), an amount equal to the lesser of: (a) the Subsidy, reduced on a pro rata basis per month until the unit is refinanced, during the Purchase Retention Period; or (b) any net proceeds from the refinancing of the unit, minus the AHP-assisted household's investment, as calculated by the Bank, shall be repaid to the Member for reimbursement to the Bank, unless the property continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism, incorporating the requirements of clauses (i), (ii), (iii), (iv), (v), (vi), (vii), and (viii) contained herein;
- (vii) The income-eligibility and affordability restrictions applicable to the project terminate after foreclosure settlement, deed-in-lieu, or assignment of the first mortgage to the Secretary of HUD (assuming AHP funding is used in conjunction with FHA financing). Otherwise, the covenants contained herein shall continue until released by the Member in writing or the expiration of the Retention Period, whichever should first occur; *and*
- (viii) Upon the death of the AHP-assisted sole owner, or owners in the case of multiple title holders, the Retention Agreement terminates, and there is no obligation to repay the AHP Subsidy.

# Real Estate Retention Agreement

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## Homeownership Initiatives

Grant Award:

Grant Type: LAUNCH Project/ID#:

For purposes of this Agreement,<sup>19</sup> the following terms shall have the meanings set forth below:

"FHLBI" or "the Bank" shall refer to the Federal Home Loan Bank of Indianapolis. "Member" shall refer to (The Bank's Member institution), located at

"Borrower(s)" shall refer to

For and in consideration of receiving direct subsidy funds (the "Subsidy") in an amount not to exceed

\$ under the Affordable Housing Program ("AHP") of the Bank through the Member, with respect to that certain real property located at , in the city/town of

, County of , State of , which is more fully described as follows, or as attached hereto as Exhibit A and made a part hereof:

Borrower(s) hereby agree that they shall maintain ownership and reside in this property as their primary residence for a period of five (5) years ("Retention Period") from the date of the closing and further agrees with the Member that:

- i. The Bank, whose mailing address is 8250 Woodfield Crossing, Indianapolis, Indiana 46240, Attention: Community Investment Division, and the Member are to be given immediate written notice of any sale or refinancing of this property occurring prior to the end of the Retention Period;
- ii. In the case of a sale prior to the end of the Retention Period (including transfer or assignment of the title or deed to another owner, subject to certain exceptions outlined herein), an amount calculated by the Member via a Bank prescribed calculation and verified by the Bank, equal to the lesser of: (a) the Subsidy, reduced on a pro rata basis per month until the unit is sold, transferred, or its title or deed transferred, during the Retention Period; or (b) any net proceeds from the sale, transfer, or assignment of title or deed of the unit, minus the AHP-assisted household's investment, shall be repaid to the Member for reimbursement to the Bank, unless the purchaser is a very low-, low-, or moderate-income household which is defined as having not more than 80% of the area median income, or the household had obtained a permanent mortgage funded by an AHP subsidized advance and not a direct subsidy, or the amount of Subsidy required to be repaid pursuant to this paragraph is \$2,500 or less. For purposes of determining whether a subsequent sale, transfer or assignment of the unit is to a purchaser that qualifies as a very low-, low-, or moderate-income household, the Bank shall determine the purchaser's income using one or more proxies that are reliable indicators of the subsequent purchaser's income, and which shall be selected by the Bank prior to such determination and stated in the Bank's AHP Implementation

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<sup>19</sup>This Real Estate Retention Agreement complies with FHA requirements at 24 CFR §203.41, HUD 4155.1, Mortgage Credit Analysis for Mortgage Insurance 5.B.7.d. and AHP regulations codified at 12 CFR §1291, et seq. and the directives of the Federal Housing Finance Agency.

Plan, unless documentation demonstrating that household's actual income is made available to the Bank. Upon the sale of the home, the purchaser has no retention or AHP Subsidy repayment obligations, regardless of whether or not the purchaser is very low-, low- or moderate-income.

- iii. In the case of any refinancing prior to the end of the Retention Period, an amount calculated by the Member via a Bank prescribed calculation and verified by the Bank, equal to the lesser of: (a) the Subsidy, reduced on a pro rata basis per month until the unit is refinanced, during the Retention Period; or (b) any net proceeds from the refinancing of the unit, minus the AHP-assisted household's investment, shall be repaid to the Member for reimbursement to the Bank, unless the property continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the requirements of clauses (i), (ii), (iii), and (iv) contained herein, or the household had obtained a permanent mortgage funded by an AHP subsidized advance and not a direct subsidy, or the amount of Subsidy required to be repaid pursuant to this paragraph is \$2,500 or less; *and*
- iv. In the case of a foreclosure, deed-in-lieu, or assignment of the first mortgage to the Secretary of HUD (assuming AHP funding is used in conjunction with FHA financing), the obligation to repay the direct Subsidy to the Member shall terminate upon final settlement or disposition once such action is completed. Otherwise, the covenants contained herein shall continue until release by the Member in writing or the expiration of the Retention Period, whichever should first occur.
- v. Upon the death of the AHP-assisted sole owner, or owners in the case of multiple title holders, the AHP Retention Agreement terminates, and there is no obligation to repay the AHP Subsidy.