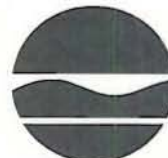


New York State Department of Environmental Conservation
Division of Environmental Remediation
Office of the Director, 12th Floor
625 Broadway, Albany, New York 12233-7011
Phone: (518) 402-9706 • Fax: (518) 402-9020
Website: www.dec.ny.gov



Joe Martens
Commissioner

JUN 28 2011

East One Thirty Eighth Housing Development Fund company, Inc.
Attn: John-Scott R. Johnson
2345 Broadway
New York, New York 10024

RE: Site Name: Borinquen Court
Site No.: C203056
Location of Site: 285 E. 138th St., Bronx, New York

Dear Mr. Johnson:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Borinquen Court Site.

If you have any further questions relating to this matter, please contact Gail Hintz, Esq., NYS Department of Environmental Conservation, Office of General Counsel, Region 2, One Hunters Point Plaza, 47-40 21st Street, Long Island City, NY 11101, or by email at gmhintz@gw.dec.state.ny.us.

Sincerely,

Dale A. Desnoyers
Director
Division of Environmental Remediation

cc w/out att: M. Yau

cc w/att: B. Conlon (E. Armater)
G. Hintz



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM

ECL §27-1401 *et seq.*

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No.: C203056-05-11**

Borinquen Court

DEC Site No.: C203056

Located at: 285 E. 138th St
Bronx County
Bronx, NY 10454

Hereinafter referred to as "Site"

by:

East One Thirty Eighth Housing Development Fund Company, Inc.
2345 Broadway, New York, NY 10024

Hereinafter referred to as "Applicant"

WHEREAS, the Department of Environmental Conservation (the "Department") is authorized to administer the Brownfield Cleanup Program set forth in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

WHEREAS, the Applicant submitted an application received by the Department on December 21, 2010; and

WHEREAS, the Department has determined that the Site and Applicant are eligible to participate in the BCP.

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Applicant Status

The Applicant, East One Thirty Eighth Housing Development Fund Company, Inc., is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 1.819 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 9-2314-1
Street Number: 271-285 E. 138th Street, Bronx
Owner: Borinquen Court HDFO

Tax Map/Parcel No.: 9-2314-1
Street Number: 270-300 East 139th Street, Bronx
Owner: Borinquen Court HDFO

Tax Map/Parcel No.: 9-2314-1
Street Number: 2550-2562 Third Avenue, Bronx
Owner: Borinquen Court HDFC

III. Payment of State Costs

Invoices shall be sent to Applicant at the following address:

East One Thirty Eighth Housing Development Fund Company, Inc.
Attn: John-Scott R. Johnson
2345 Broadway
New York, NY 10024
jjohnson@wsfssh.org

IV. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Applicant shall be sent to:

Mandy Yau
New York State Department of Environmental Conservation
Division of Environmental Remediation
Region 2
One Hunters Point Plaza
47-40 21 St
Long Island City, NY 11101
mxyau@gw.dec.state.ny.us

Note: one hard copy (unbound) of work plans and reports is required, as well as one electronic copy.

Steven Bates (electronic copy only)
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, NY 12180-2216
smb02@health.state.ny.us

Gail Hintz, Esq. (correspondence only)
New York State Department of Environmental Conservation
Region 2
Office of General Counsel
One Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101
gmhintz@gw.dec.state.ny.us

2. Communication from the Department to Applicant shall be sent to:

East One Thirty Eighth Housing Development Fund Company, Inc.
Attn: John-Scott R. Johnson
2345 Broadway
New York, NY 10024
jjohnson@wsfssh.org

B. The Department and Applicant reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Applicant provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph III.

V. Miscellaneous

A. Applicant acknowledges that it has read, understands, and agrees to abide by all the terms set forth in Appendix A - "Standard Clauses for All New York State Brownfield Site Cleanup Agreements" which is attached to and hereby made a part of this Agreement as if set forth fully herein.

B. In the event of a conflict between the terms of this BCA (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this BCA shall control.

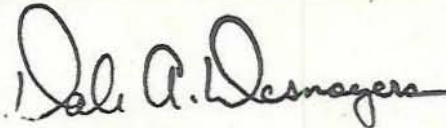
C. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED:

JUN 28 2011

JOSEPH J. MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Dale A. Desnoyers, Director
Division of Environmental Remediation

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

East One Thirty Eighth Housing Development Fund
Company, Inc.

By: Laura Jenkins

Title: Vice President

Date: 6/23/11

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 23rd day of June in the year 2011, before me, the undersigned, personally appeared Laura Jenkins, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name 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.

NOTARY PUBLIC-STATE OF NEW YORK

No. 01W16113777

Qualified in New York County

My Commission Expires August 02, 2012

[Signature]
Signature and Office of individual
taking acknowledgment

EXHIBIT A

SITE MAP

Tax Map
Borinquen Court
Block 2314, Lot 1

Source: NYC Department of Finance Digital Tax Maps



APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "the BCA" or "the Agreement" or "this Agreement") agree to be bound by the following clauses which are hereby made a part of the BCA. The word "Applicant" herein refers to any party to the Agreement, other than the New York State Department of Environmental Conservation (herein after "Department").

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Agreement, Applicant shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of ECL § 27-1417 and 6 NYCRR §§ 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Agreement.

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14, 6 NYCRR §§ 375-1.6(a) and 375-3.6, and all applicable laws, rules, regulations, and guidance documents. The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and, if the Applicant is a "Participant", the extent of contamination emanating from such Site. If the Applicant is a "Volunteer" it shall perform a qualitative exposure assessment of the contamination emanating from the site in accordance with ECL § 27-1415(2)(b) and Department guidance;

2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site and, if the Applicant is a "Participant", the contamination that has emanated from such Site;

3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or

4. "Site Management Plan" if the Work Plan provides for the identification and implementation of

institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

5. "Supplemental" if additional work plans other than those set forth in II.A.1-4 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) days after the effective date of this Agreement. Thereafter, the Applicant shall submit such other and additional work plans as determined in a schedule to be approved by the Department.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities to be conducted in accordance with current guidance, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR § 375-3.6(b) to approve, modify, or reject a proposed Work Plan within forty-five (45) days from its receipt or within fifteen (15) days from the close of the comment period, if applicable, whichever is later.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein.

ii. If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(3) shall apply.

iii. If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(4) shall apply.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a

Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6 NYCRR § 375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL § 27-1413 and 6 NYCRR § 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL §§ 27-1419(1) and (2) and 6 NYCRR § 375-1.6. The Department shall review such Report, the submittals made pursuant to this Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL § 27-1419, 6 NYCRR §§ 375-1.9 and 375-3.9.

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR § 375-1.6. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may request Applicant to modify or expand the submittal. Within fifteen (15) days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Paragraph XII. If Applicant submits a revised submittal and it is disapproved, the Department

and Applicant may pursue whatever remedies may be available under this Agreement or under law.

E. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final Report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL § 27-1417(3)(f). The Department shall provide timely notification to the Applicant of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicant shall cause to be recorded an Environmental Easement in accordance with 6 NYCRR § 375-1.8(h).

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Applicant shall submit a written

certification in accordance with 6 NYCRR §§ 375-1.8(h)(3) and 375-3.8(h)(2).

III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event as described at 6 NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL § 27-1431. Applicant agrees to provide the Department upon request with proof of access if it is not the owner of the site.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement. The Department will generally conduct such inspections during business hours, but retains the right to inspect at any time.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Agreement pursuant to Paragraph XII.

V. Payment of State Costs

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR § 375-1.5 (b)(3)(i).

B. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

Director, Bureau of Program Management

Division of Environmental Remediation
New York State Department of Environmental
Conservation
625 Broadway
Albany, New York 12233-7012

D. The Department shall provide written notification to the Applicant of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL § 27-1423 and ECL § 71-4003.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL § 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR §§ 375-1.9 and 375-3.9.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New

York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in ECL § 27-1425, which is proposed for the Site, in accordance with the provisions of 6 NYCRR § 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR § 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after

the Department's approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain a certified copy provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) day period), which shall be deemed to be incorporated into this Agreement.

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of public health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or Qualified Environmental Professional as defined at 6 NYCRR § 375-1.2(ak) approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph III.A.1 of the Agreement by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Applicant in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XII. Termination of Agreement

Applicant or the Department may terminate this Agreement consistent with the provisions of 6 NYCRR §§ 375-3.5(b), (c), and (d) by providing written notification to the parties listed in Paragraph III of the Agreement.

XIII. Dispute Resolution

A. In the event disputes arise under this Agreement, Applicant may, within fifteen (15) days after Applicant knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR § 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Agreement.

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, VII.B, and VIII, shall be null and void ab initio fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

B. By entering into this Agreement, Applicant agrees to comply with and be bound by the provisions of 6 NYCRR §§ 375-1, 375-3 and 375-6; the provisions of such subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement.

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or

other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR §§ 375-1.12(b), (c), and (d).

D. 1. Applicant shall use "best efforts" to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Applicant's obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicant's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Applicant shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to 6 NYCRR § 375-1.6(d)(3) to reflect changes necessitated by Applicant's inability to obtain such interest.

E. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Applicant of its obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s). Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties in Subparagraph IV.A.1 of the Agreement.

ii. If Applicant seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph IV.A.1 of the Agreement.

iii. Requests for a change to a time frame set forth in this Agreement shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Applicant promptly.

G. 1. If there are multiple parties signing this Agreement, the term "Applicant" shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

4. Any change to parties pursuant to this Agreement, including successors and assigns through acquisition of title, is subject to approval by the

Department, after submittal of an application acceptable to the Department.

H. Applicant shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL § 27-1421(6) and 6 NYCRR § 375-1.5(b)(5).

I. Applicant shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

J. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicant's obligations under this Agreement represent payment for or reimbursement of State costs, and shall not be deemed to constitute any type of fine or penalty.

M. In accordance with 6 NYCRR § 375-1.6(a)(4), the Department shall be notified at least 7 days in advance of, and be allowed to attend, any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

N. In accordance with 6 NYCRR § 375-1.11(a), all work plans; reports, including all attachments and appendices, and certifications, submitted by a remedial party shall be submitted in print, as well as in an electronic format acceptable to the Department.

O. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

CSC 45
DRAW DOWN

100115000056

CERTIFICATE OF INCORPORATION

of the

EAST ONE THIRTY EIGHTH HOUSING DEVELOPMENT FUND COMPANY, INC.

*Pursuant to Article XI of the Private Housing Finance Law and Section 402
of the Not-For-Profit Corporation Law*

The undersigned incorporator, a person of full age, for the purpose of forming a Corporation pursuant to Article XI of the Private Housing Finance Law and the Not-For-Profit Corporation Law both of the State of New York, hereby certifies:

I

The name of the proposed corporation is: EAST ONE THIRTY EIGHTH HOUSING DEVELOPMENT FUND COMPANY, INC. and is hereinafter referred to as the "Corporation".

II

1. The Corporation is not formed for pecuniary profit or financial gain. The Corporation is organized exclusively for the charitable purpose of owning, constructing, rehabilitating, leasing, managing, equipping, maintaining, developing and operating a housing project at 285 East 138th Street, Bronx, New York, Block 2314, Lot 01, for persons of low income. The Corporation is empowered to do and perform all acts necessary to accomplish the foregoing corporate purposes, including, but not limited to, the purchase or lease of real property and the execution of such instruments, regulatory agreements and undertakings as may be required by any governmental body or lending institution giving financial assistance to the Corporation. Nothing contained in this Certificate of Incorporation shall authorize the Corporation to undertake or carry on any of the activities specified in Section 404(a)-(v) of the Not-For-Profit Corporation Law.

2. The Corporation is a Type D Not-For-Profit Corporation and is a corporation as defined in Section 102(a)(5) of the Not-For-Profit Corporation Law. Its duration shall be perpetual.

III

1. All income and earnings of the Corporation shall be used exclusively for corporate purposes, and no part of the net income, net earnings, or assets of the Corporation shall inure to the benefit or profit of any private individual, firm, corporation or association.

2. In furtherance of the foregoing purposes of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the purposes specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not carry on any

activities not permitted to be carried on by a corporation exempt from federal income tax under said Section 501(c)(3) or corresponding provisions of any subsequent federal tax law.

3. Nothing contained in this Certificate of Incorporation shall authorize the Corporation to carry on propaganda or otherwise attempt to influence legislation, or to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

4. In the event of the dissolution of the Corporation the assets and property of the Corporation, after payment of all expenses and the satisfaction of all liabilities, shall not be conveyed or distributed to any individual or organization created or operated for profit, but shall be conveyed or distributed only to any organization or organizations created and operated for non-profit purposes which shall qualify as exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 (or any corresponding provision of subsequent Federal tax law) or to the Federal Government, or state or local government for a public purpose subject to the approval of a Justice of the Supreme Court of the State of New York pursuant to the laws of the State of New York.

IV

If the Corporation receives a temporary loan advance from the Municipal Housing Development Fund, as established by or pursuant to Article XI of the Private Housing Finance Law, or from other funds of the municipality, it shall be authorized to enter into an agreement with the New York City Department of Housing Preservation and Development, the Supervising Agency, providing for regulation with respect to rent, profits, dividends and disposition of the property or franchises.

V

If the Corporation receives a temporary loan or advance from the Municipal Housing Development Fund, as established by or pursuant to Article XI of the Private Housing Finance Law, or from other funds of the municipality, the Supervising Agency shall have the power, if, in its discretion, it determines either that any such temporary loan or advance is in jeopardy of not being repaid, or that the proposed housing project for which such temporary loan or advance was made is in jeopardy of not being constructed, to appoint to the Board of Directors of the Corporation a number of new Directors, which number shall be sufficient to constitute a majority of such board, notwithstanding any other provision of this Certificate of Incorporation, By-Laws or of any other provision of law.

VI

This Certificate of Incorporation shall not be filed by the Secretary of State or be altered or amended without the prior written consent of the Supervising Agency or its successor. Dissolution of the Corporation shall not be authorized without obtaining written approval of the Supervising Agency.

VII

The office of the Corporation shall be located in the County of New York, State of New York.

VIII

A copy of this Certificate of Incorporation, together with a Statement of the Block and Lots of real property owned by the Corporation and located within the City of New York, and a copy of the filing receipt issued by the Department of State, Division of Corporation, shall be delivered to the Commissioner of the Department of Housing Preservation and Development and the Real Property Assessment Bureau of the City of New York when such filing receipt is received, or, if no such real property is owned by the Corporation at the time of filing, upon the acquisition of any such real property by the Corporation.

IX

Subject to the Not-For-Profit Corporation Law, the Corporation shall have the power to indemnify any director or officer or former director or officer of another corporation, with or without payment, against expenses actually and necessarily incurred in connection with the defense of any action, suit or proceeding in which he or she is made a party by reason of being or having been such director or officer provided he or she acted in good faith for a purpose that he or she reasonably believed to be in the best interest of the corporation or in the case of criminal actions, had no reasonable cause to believe that the conduct was unlawful. Such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled under any by-law, agreement, vote of the board of directors or members, or otherwise.

X

The number of Directors of the Corporation shall not be less than three and the names and addresses of the Directors until the first annual meeting are:

Sheldon Fine
884 West End Avenue
New City, NY 10025

Laura R. Jervis
382 Central Park West
New York, NY 10025

Laura L. Tavormina
900 West 190th Street
New York, NY 10040

The directors of the Corporation shall, at all times, be limited to the individuals who are either members of the board of directors of West Side Federation For Senior And Supportive Housing, Inc. ("WSFSSH") or who have otherwise been appointed or elected directors of the Corporation by WSFSSH. In the event that WSFSSH dissolves or ceases to have written recognition of exemption pursuant to §501(c) (3) or §501(c) (4) of the Internal Revenue Code of 1986, as amended, or any successor statute from the United States Internal Revenue Service or any successor agency, the directors of the Corporation shall, at all times, be limited to individuals who have been appointed or elected by a comparable entity which has such exemption and which was formed for purposes that include providing housing accommodations for persons and families of low income.

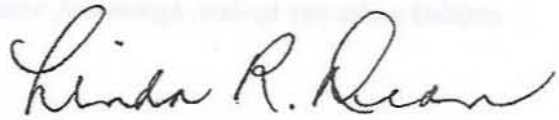
XI

The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary shall mail copies of any process against the Corporation served upon such secretary is:

c/o WSFSSH
2345 Broadway
New York, NY 10024
Attn: Laura R. Jervis, Executive Director

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate and affirms that the statements contained herein are true under the penalties of perjury this 14th day of December, 2009.

Sign:



Linda R. Dean, Incorporator
2095 Broadway - Suite 304
New York, NY 10023



RAFAEL E. CESTERO
Commissioner
HOLLY M. LEIGHT
Deputy Commissioner
RUTHANNE VISNAUSKAS
Acting Associate Commissioner

Office of Development
Preservation Finance
100 Gold Street
New York, N.Y. 10038

CONSENT OF THE DEPARTMENT OF HOUSING

PRESERVATION AND DEVELOPMENT

I, RuthAnne Visnauskas, an Acting Associate Commissioner of the Department of Housing Preservation and Development of the City of New York, in reliance on the representations of the Incorporators, do this **6th day of January, 2010** hereby approve the foregoing ***Certificate of Incorporation of East One Thirty Eighth Housing Development Fund Company, Inc.*** for the purposes of, and as provided by, Article XI of the Private Housing Finance Law of the State of New York, and pursuant to said Article XI, do hereby certify that I consent to the filing of said ***Certificate of Incorporation*** with the Secretary of State of the State of New York.


RuthAnne Visnauskas



CSC 45
DRAW DOWN

100115000056

CERTIFICATE OF INCORPORATION

OF

EAST ONE THIRTY EIGHT HOUSING DEVELOPMENT FUND
COMPANY, INC.

Pursuant to Article XI of the Private Housing Finance Law
and Section 402 of the Not-for-Profit Corporation Law

100
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JAN 15 2010

TAXS

BY:

Filer: Mccarthy & Sullivan
Suite 304
2095 Broadway
New York, NY 10023
Cust. Ref#251298Ajc

DRAWDOWN

100115000061

2010 JAN 15 AM 8:03

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2010 JAN 14 PM 4:03

RECEIVED

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

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ENTITY NAME: EAST ONE THIRTY EIGHTH HOUSING DEVELOPMENT FUND COMPANY,
INC.

DOCUMENT TYPE: INCORPORATION (NOT-FOR-PROFIT)

TYPE: D COUNTY: NEWY

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FILED: 01/15/2010 DURATION: PERPETUAL CASH#: 100115000061 FILM #: 100115000056

FILER:

EXIST DATE

MCCARTHY & SULLIVAN
SUITE 304
2095 BROADWAY
NEW YORK, NY 10023

01/15/2010

ADDRESS FOR PROCESS:

C/O WSFSSH
ATTN: LAURA R. JERVIS EXEC DIR
NEW YORK, NY 10024

2345 BROADWAY

REGISTERED AGENT:



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SERVICE COMPANY: CORPORATION SERVICE COMPANY - 45

SERVICE CODE: 45

FEEs 135.00

FILING 75.00
TAX 0.00
CERT 0.00
COPIES 10.00
HANDLING 50.00

PAYMENTS 135.00

CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 135.00
OPAL 0.00
REFUND 0.00

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251298AJC

DOS-1025 (04/2007)

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of
the Department of State, at the City of
Albany, on January 15, 2010.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State