

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM
ECL §27-1401 *et seq.*

In the Matter of a Remedial Program for

**AMENDMENT TO BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C203078-03-15**

Brook 156

DEC Site Nos: C203078

Located at: 740 Brook Avenue, Bronx, Bronx County, NY 10451
Hereinafter referred to as "Site"

by:

Brook 156 Housing Development Fund Corporation
902 Broadway, 13th Floor, c/o Phipps Houses, New York, NY 10010
Hereinafter referred to as "Applicant"

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

WHEREAS, the Department and the Applicant seek to amend the existing BCP Agreement for the Site, based on the 2015 changes to the BCP.

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

I. Tax Credit Status & Deadline for receipt of Certificate of Completion (COC)

Based on the fact that the Site did not receive a COC by December 31, 2019, it is hereby subject to the terms of the BCP in effect as of July 1, 2015, including, but not limited to, the tax credit structure and the deadline of March 31, 2026.

With respect to eligible costs incurred under the BCP, this Amendment shall not change the effective date of the Agreement, and otherwise eligible costs incurred from the original effective date of the agreement will still be eligible costs for tax credit purposes.

The Site is located in a City having a population of one million or more and the Applicant has not submitted documentation sufficient to demonstrate that at least one of the following conditions exists: at least half of the site area is located in an environmental zone as defined in section twenty-one of the tax law, the property is upside down, the

property is underutilized, or the project is an affordable housing project. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category. For sites seeking eligibility for tangible property tax credits under the underutilized category, the Applicant will apply for an additional amendment to the Agreement within sixty (60) days of the effective date of this Amendment. Should the Applicant fail to submit an amendment application for a determination that the site is eligible for tangible property tax credits under the underutilized category within sixty (60) days, the Applicant will not be able to receive tangible property tax credits under this category.

II. Miscellaneous

A. Except for the modifications set forth herein, the original Agreement shall remain in full force and effect and the terms thereof and the obligations therein are incorporated herein and shall apply with the same force and effect to the provisions of this Amendment. The terms of the original Agreement, including all exhibits, appendices and subsequent modifications, are not otherwise modified or expanded in any way.

B. The terms herein shall constitute this complete and entire Amendment of the Agreement. No term, condition, understanding or agreement purporting to modify the terms of the Agreement shall be binding unless subscribed to by both parties in accordance with the terms of the Agreement.

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

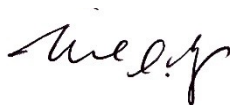
D. This Amendment may be signed in counterparts.

DATED:

August 24, 2020

THIS BROWNFIELD CLEANUP AGREEMENT
AMENDMENT IS HEREBY APPROVED, Acting by and
Through the Department of Environmental Conservation as
Designee of the Commissioner,

By:



Michael J. Ryan, P.E., Director
Division of Environmental Remediation

CONSENT BY APPLICANT

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

Brook 156 Housing Development Fund
Corporation

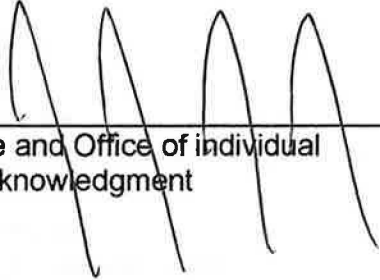
By: Michael Wudmen

Title: VICE PRESIDENT

Date: 4/10/2020

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the 10th day of April in the year 2020, before me, the undersigned, personally appeared Michael Wudmen, 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.



Signature and Office of individual
taking acknowledgment

James Robert Pigott, Jr.
Notary Public, State of New York
No. 02PI6213949
Qualified in New York County
Commission Expires December 21, 2021

Rider to BCA Amendment #1 to Document a Tangible Property Tax Credit Determination

Site Name: Brook 156

Site Number: C203078

1- The Department has determined that the Site is eligible for tangible property tax credits pursuant to ECL § 27-1407(1-a) because the Site is located in a City having a population of one million or more and:

- ☒ At least half of the site area is located in an environmental zone as defined in section twenty-one of the tax law
- ☐ The property is upside down, as defined by ECL 27-1405 (31)
- ☐ The property is underutilized, as defined by 375-3.2(l).
- ☐ The project is an affordable housing project, as defined by 375-3.2(a).

2- The Site is located in a City having a population of one million or more and the Applicant:

☐ Has not requested a determination that the Site is eligible for tangible property tax credits. It is therefore presumed that the Site is not eligible for tangible property tax credits. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category.

☐ Requested a determination that the Site is eligible for tangible property tax credits and pursuant to ECL § 27-1407(1-a), the Department has determined that the Site is not eligible for tangible property tax credits because the Applicant has not submitted documentation sufficient to demonstrate that at least one of the following conditions exists: at least half of the site area is located in an environmental zone as defined in section twenty-one of the tax law, the property is upside down, the property is underutilized, or the project is an affordable housing project. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category.

3- For sites statewide, where applicable:

☐ In accordance with ECL § 27-1407(1-a), based on data submitted with the application the Department has determined the Site is not eligible for tangible property tax credits because the contamination in ground water and/or soil vapor is solely emanating from property other than the Site.

☐ The remedial investigation or other data generated during the remedial program the Department has identified an on-site source of contamination, which now makes this site eligible for tangible property tax credits.

☐ The Department has determined that the Site or a portion of the Site has previously been remediated pursuant to Article 27, Title 9, 13 or 14] of the ECL, Article 12 of the Navigation Law or Article 56, Title 5 of the ECL. Therefore, in accordance with ECL § 27-1407(1-a), the Site is not eligible for tangible property tax credits.

THIS RIDER TO AN AMENDMENT TO THE BCA ESTABLISHING ELIGIBILITY
FOR TANGIBLE PROPERTY TAX CREDITS IS HEREBY
APPROVED, Acting by and Through the Department of
Environmental Conservation as Designee of the Commissioner,

By:



08/24/20

Michael J. Ryan, P.E.
Director
Division of Environmental Remediation

Date

**UNANIMOUS WRITTEN CONSENT OF
THE BOARD OF DIRECTORS OF
BROOK 156 HOUSING DEVELOPMENT FUND CORPORATION**

August 19, 2020

The undersigned, being all of the members of the Board of Directors of Brook 156 Tremont Housing Development Fund Corporation, a New York not-for-profit corporation (the "Corporation") hereby certify as of the date set forth above, take the following actions and adopt the following resolutions and authorize the Company to authorize and direct Matthew Kelly (the "Authorized Signatory") to take the following actions on behalf of the Company:

WHEREAS, the Corporation desires to authorize the Authorized Signatory to undertake actions necessary to redevelop 740 Brook Avenue, Bronx, New York Block 2360, Lots 1 and 3 (the "Property" or the "Site").

WHEREAS, in connection with the redevelopment of the Property, the Corporation has or will prepare and submit an application to participate in the New York State Brownfield Cleanup Program ("BCP") and, if accepted into the BCP, enter into a Brownfield Cleanup Agreement ("BCA"); file related documents with the New York State Department of Environmental Conservation ("DEC") to participate in the BCP; and undertake certain environmental remediation work related thereto consistent with applicable laws, regulations and guidance under the BCP (collectively referred to as the "Remedial Program Requirements");

WHEREAS, the Board of Directors of the Corporation desires to change its sole member to PH Affordable Housing Fund, Inc, and evidence such change by adopting the second amended and restated by-laws attached hereto as Exhibit A (the "A&R By-Laws");

WHEREAS, in connection with the redevelopment of the Property, the Corporation, as nominal fee owner of the Property, pursuant to that certain declaration of interest and nominee agreement to be entered into by and among, Brook 156 Associates, L.P., the equitable and beneficial owner of the Property (the "Borrower"), will develop a new building containing two condominium units consisting of approximately 52 units of residential rental affordable housing and approximately 1,115 square feet of community facility space and ancillary spaces related thereto (collectively, the "Project");

WHEREAS, in connection with the development of the Project, the Borrower will enter into a Construction Contract with the Corporation and Mountco Construction and Development Corp. ("General Contractor"), pursuant to which General Contractor will construct the Project and will receive certain fees in connection therewith (the "Construction Contract"); and

WHEREAS, in connection with the development of the Project, the Borrower will enter into an Architect Agreement with the Corporation and Dattner Architects, P.C. ("Architect"), pursuant to which Architect design and provide construction administration services for the Project and will receive certain fees in connection therewith (the "Architect Agreement").

NOW THEREFORE, BE IT

RESOLVED, the Authorized Signatory be, and hereby is, authorized and directed, in the name of and on behalf of the Corporation, to execute and to deliver all applications, documents and instruments required to effectuate the BCA (including execution of the BCA), and make any filings required to comply with the BCA consistent with the Remedial Program Requirements; and be it further;

RESOLVED, that the Board of Directors of the Corporation, hereby authorizes and directs the Corporation to adopt the A&R By-Laws and hereby accepts, approves, and ratifies all acts taken by the officers of the Corporation and their appointed and retained representatives, agents, consultants, advisors, and counsels in, inter alia, conceiving, planning, analyzing, modeling, drafting, documenting, directing and implementing said acts; and be it further

RESOLVED, the Board of Directors of the Corporation hereby authorizes and directs the Corporation (i) enter into the General Contract with General Contractor, the Architect Agreement with Architect, and (ii) hereby accepts, approves and ratifies all acts taken by the officers and directors of the Corporation and their appointed and retained representatives, agents, consultants, advisors, and counsels in, inter alia, conceiving, planning, analyzing, modeling, drafting, documenting, directing and implementing the Project, including but not necessarily related other pre-development construction contracts ; and be it further

RESOLVED, that the Board of Directors of the Corporation hereby accepts, approves, and ratifies all acts, in all respects, taken by the officers of the Corporation, including without limitation, Matthew Kelly, Vice President of the Corporation, and each of their appointed and retained representatives, agents, consultants, advisors, and counsels in, inter alia, conceiving, planning, analyzing, modeling, drafting, documenting, directing and implementing the transactions contemplated by these resolutions, including without limitation the execution and delivery of any agreements, instruments and documents and the payment of any fees, expenses and taxes, in the name and on behalf of the Corporation; and it is further


RESOLVED, that the taking of any action or the execution of such documents and/or instruments by any officer of the Corporation, pursuant to the terms of these resolutions shall be deemed conclusive evidence of the determination of such executing person that such action or execution was appropriate and in the best interests of the Corporation; and it is further

RESOLVED, that DEC, Citibank, N.A. ("Bank"), City of New York acting by and through its Department of Housing Preservation and Development ("HPD"), New York State Division of Housing and Community Renewal ("HCR"), New York State Housing Trust Fund Corporation ("HTC") and U.S.A. Institutional Tax Credit Fund CXXXII LP, or any successor thereto as investor limited partner of Landlord ("Investor Member") are hereby authorized to rely upon these resolutions, and upon any certificate of any officer of the Corporation with respect thereto until receipt of actual written notice of the revocation thereof, and may conclusively presume that the persons so designated continue to hold office until actual receipt of a certificate from the Secretary of the Corporation to the contrary; and be it further

RESOLVED, that this Authorization may be signed in any number of counterparts, including but not limited to electronic, and shall become effective as of the date herein below

written when each person named below shall have signed a copy hereof; and

RESOLVED, The Authorized Signatory is authorized to bind the Corporation as an Authorized Signatory for the purposes set forth in this Authorization, the signature set forth opposite his name below is his actual signature:

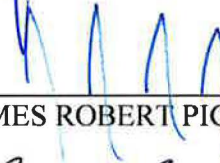
<u>Authorized Signatory</u>	<u>Signature</u>
Michael Wadman	

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the following, being all of the members of the Board of Directors of Brook 156 Housing Development Fund Corporation, hereby execute this Unanimous Written Consent as of the date and year first set forth above.



ADAM WEINSTEIN



JAMES ROBERT PIGOTT, JR.



BRIAN BRICKER

EXHIBIT A

(Second Amended and Restated By-Laws with PH Affordable Housing Fund, Inc. as the sole member – attached behind)

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by:

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Hereinafter referred to as "Applicant"

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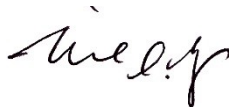
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DATED:

August 24, 2020

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Designee of the Commissioner,

By:




Michael J. Ryan, P.E., Director
Division of Environmental Remediation

CONSENT BY APPLICANT

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New York City Housing Preservation and
Development

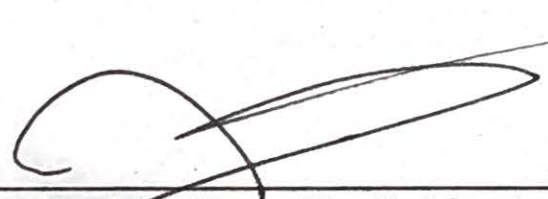
By: 

Title: Assistant Commissioner

Date: 6/3/20

STATE OF NEW YORK)
COUNTY OF New York) ss:

On the 3rd day of June in the year 2020, before me, the undersigned, personally appeared Rona Reodica, 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.


Signature and Office of individual
taking acknowledgment

JENNIFER A KUBICKI
Notary Public, State of New York
No. 02KU6278123
Qualified in Kings County
Commission Expires Sept. 6, 2021

**THE CITY OF NEW YORK
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT
Office of Development**

DEPARTMENTAL MEMORANDUM

DATE: October 8, 2019

TO: Delegation File

FROM: Elizabeth Oakley 

SUBJECT: Delegation of Authority To Rona Reodica

I am the Deputy Commissioner for Development of the Department of Housing Preservation and Development of the City of New York ("HPD"). In such capacity, I have been authorized, pursuant to delegation of authority from the Commissioner, dated October 8, 2019, to execute certain legal documents on behalf of HPD.

I hereby authorize Rona Reodica, HPD's Assistant Commissioner for Building and Land Development Services, to execute all environmental review determinations and findings by, and all contracts of, the Division of Building and Land Development Services which would normally require my signature.

cc: Rona Reodica
Nicholas Lundgren