



Department of Environmental Conservation

# BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

## PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

Amendment to [check one or more boxes below]

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- Add
- Substitute
- Remove
- Change in Name

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applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site?  Yes  No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

**Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

The current site owner is 1675 Westchester Avenue Housing Development Fund Corporation.

This application is being submitted to: (1) document the change of address from 1675-1679 Westchester Avenue to 1230 Metcalf Avenue, as recently filed with the New York City Department of Buildings; (2) document the removal of 1675 JV Associates LLC as a Requestor/Applicant/Volunteer in the BCP; (3) to add 1675 Westchester Avenue Associates LLC and 1675 Westchester Avenue LIHTC Associates LLC as Requestors/Applicants/Volunteers in the BCP; and (4) to reduce the BCP site acreage from 0.847 acres to 0.774 acres.

In addition, although the property was deemed eligible for tangible property tax credits due to its location in an environmental zone, proof that the development is an affordable housing project is also included.

**\*Please refer to the attached instructions for guidance on filling out this application\***

<b>Section I. Existing Agreement Information</b>			
BCP SITE NAME: 1675 Apartments		BCP SITE NUMBER: C203107	
NAME OF CURRENT APPLICANT(S): 1675 JV Associates LLC and 1675 Westchester Avenue Housing Development Fund Corporation			
INDEX NUMBER OF EXISTING AGREEMENT: C203107-04-18		DATE OF EXISTING AGREEMENT: 5/17/18	
<b>Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)</b>			
NAME <b>1675 Westchester Avenue Associates LLC</b>			
ADDRESS <b>902 Broadway, 13th Floor</b>			
CITY/TOWN New York		ZIP CODE 10010	
PHONE (646) 388-8216	FAX (646) 336-5850	E-MAIL mwadman@phippsny.org	
Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
<ul style="list-style-type: none"> <li>If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation &amp; Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.</li> </ul>			
NAME OF NEW REQUESTOR'S REPRESENTATIVE <b>Michael Wadman</b>			
ADDRESS <b>902 Broadway, 13th Floor</b>			
CITY/TOWN New York		ZIP CODE 10010	
PHONE (646) 388-8216	FAX (646) 336-5850	E-MAIL mwadman@phippsny.org	
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) <b>Deborah Shapiro, AKRF, Inc.</b>			
ADDRESS <b>440 Park Avenue South, 7th Floor</b>			
CITY/TOWN New York		ZIP CODE 10016	
PHONE (646) 388-9544	FAX (212) 726-0942	E-MAIL dshapiro@akrf.com	
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) <b>Oliver Chase, Hirschen, Singer &amp; Epstein, LLP</b>			
ADDRESS <b>902 Broadway, 13th Floor</b>			
CITY/TOWN New York		ZIP CODE 10016	
PHONE (212) 819-1130	FAX (212) 302-8536	E-MAIL ochase@hseny.com	
Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Describe Requestor's Relationship to Existing Applicant:			
The Requestor and the Existing Applicant are related entities. See operating agreement and flow chart for relationship detail.			

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<b>Section I. Existing Agreement Information</b>		
BCP SITE NAME: 1675 Apartments		BCP SITE NUMBER: C203107
NAME OF CURRENT APPLICANT(S): 1675 JV Associates LLC and 1675 Westchester Avenue Housing Development Fund Corporation		
INDEX NUMBER OF EXISTING AGREEMENT: C203107-04-18		DATE OF EXISTING AGREEMENT: 5/17/18
<b>Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)</b>		
NAME 1675 Westchester Avenue LIHTC Associates LLC		
ADDRESS 902 Broadway, 13th Floor		
CITY/TOWN New York		ZIP CODE 10010
PHONE (646) 388-8216	FAX (646) 336-5850	E-MAIL mwadman@phippsny.org
Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<ul style="list-style-type: none"> <li>If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation &amp; Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.</li> </ul>		
NAME OF NEW REQUESTOR'S REPRESENTATIVE Michael Wadman		
ADDRESS 902 Broadway, 13th Floor		
CITY/TOWN New York		ZIP CODE 10010
PHONE (646) 388-8216	FAX (646) 336-5850	E-MAIL mwadman@phippsny.org
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) Deborah Shapiro, AKRF, Inc.		
ADDRESS 440 Park Avenue South, 7th Floor		
CITY/TOWN New York		ZIP CODE 10016
PHONE (646) 388-9544	FAX (212) 726-0942	E-MAIL dshapiro@akrf.com
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Oliver Chase, Hirschen, Singer & Epstein, LLP		
ADDRESS 902 Broadway, 13th Floor		
CITY/TOWN New York		ZIP CODE 10016
PHONE (212) 819-1130	FAX (212) 302-8536	E-MAIL ochase@hseny.com
Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Describe Requestor's Relationship to Existing Applicant:		
The Requestor and the Existing Applicant are related entities. See operating agreement and flow chart for relationship detail.		

**Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)**

OWNER'S NAME (if different from requestor) 1675 Westchester Avenue Housing Development Fund Corporation

ADDRESS 902 Broadway, 13th Floor

CITY/TOWN New York

ZIP CODE 10010

PHONE (646) 388-8216

FAX (646) 336-5850

E-MAIL mwadman@phippssny.org

OPERATOR'S NAME (if different from requestor or owner)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

**Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)**

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site?  Yes  No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site?  Yes  No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site?  Yes  No  
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment.  Yes  No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information.  Yes  No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants?  Yes  No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state?  Yes  No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department?  Yes  No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application?  Yes  No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order?  Yes  No
11. Are there any unregistered bulk storage tanks on-site which require registration?  Yes  No



THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

**If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.**

Requestor's Relationship to Property (check one):

Prior Owner  Current Owner  Potential /Future Purchaser  Other New Requestor/Volunteer

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached?  Yes  No Same owning entity; see attached Access Agreement Letters.

**Note: a purchase contract does not suffice as proof of access.**

**Section V. Property description and description of changes/additions/reductions (if applicable)**

ADDRESS **1675-1679 Westchester Avenue**

CITY/TOWN Bronx

ZIP CODE 10472

TAX BLOCK AND LOT (TBL) (in existing agreement )

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
1675-1679 Westchester Avenue			3780	1	0.847

Check appropriate boxes below:



Changes to metes and bounds description or TBL correction



Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: \_\_\_\_\_

**ADDITIONAL PARCELS:**

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
1230 Metcalf Avenue			3780	1	0.774



Reduction of property

Approximate acreage removed: 0.073

**PARCELS REMOVED:**

A revised metes and bounds

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
1230 Metcalf Avenue			3780	1	0.073

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

**Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.**

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Please answer questions below and provide documentation necessary to support answers.</b>	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see <a href="#">DEC's website</a> for more information.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>From ECL 27-1405(31):</b>	
<p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>	
3. Is the project an affordable housing project as defined below?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>From 6 NYCRR 375- 3.2(a) as of August 12, 2016:</p> <p>(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.</p> <p>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.</p> <p>(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.</p> <p>(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.</p>	

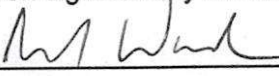
**PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT**

<b>Existing Agreement Information</b>	
BCP SITE NAME: 1675 Apartments	BCP SITE NUMBER: C203107
NAME OF CURRENT APPLICANT(S): 1675 JV Associates LLC and 1675 Westchester Avenue Housing Development Fund Corporation	
INDEX NUMBER OF EXISTING AGREEMENT: C203107-04-18	
EFFECTIVE DATE OF EXISTING AGREEMENT: May 17, 2018	

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

<b>Statement of Certification and Signatures: New Requestor(s) (if applicable)</b>
<p>(Individual)</p> <p>I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.</p> <p>Date: _____ Signature: _____</p> <p>Print Name: _____</p> <p>(Entity)</p> <p>I hereby affirm that I am (title <u>member</u>) of (entity <u>1675 Westchester Avenue Associates LLC</u>); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.</p> <p>My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.</p> <p>Date: <u>9/17/20</u> Signature: <u></u></p> <p>Print Name: <u>Michael Wadman</u></p>



**PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT**

<b>Existing Agreement Information</b>	
BCP SITE NAME: 1675 Apartments	BCP SITE NUMBER: C203107
NAME OF CURRENT APPLICANT(S): 1675 JV Associates LLC and 1675 Westchester Avenue Housing Development Fund Corporation	
INDEX NUMBER OF EXISTING AGREEMENT: C203107-04-18	
EFFECTIVE DATE OF EXISTING AGREEMENT: May 17, 2018	

Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

<b>Statement of Certification and Signatures: New Requestor(s) (if applicable)</b>
(Individual)
I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: _____ Signature: _____
Print Name: _____
(Entity)
I hereby affirm that I am (title <u>member</u> ) of (entity <u>1675 Westchester Avenue LIHTC Associates LLC</u> ); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.
My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: <u>9/17/20</u> Signature: <u>[Handwritten Signature]</u>
Print Name: <u>Michael Wadman</u>

**Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)**

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

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

(Entity)

1675 Westchester Avenue  
Housing Development Fund

I hereby affirm that I am member (title) of Corporation (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 9/17/20 Signature: 

Print Name: Michael Wadman

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

<input type="checkbox"/> <b>PARTICIPANT</b> A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input checked="" type="checkbox"/> <b>VOLUNTEER</b> A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
---	--

Effective Date of the Original Agreement: 5/17/18

Signature by the Department:

DATED: 10/13/20

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

**Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)**

(Individual)


I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

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

(Entity)

I hereby affirm that I am member (title) of 1675 JV Associates LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 9/17/20 Signature: 

Print Name: Michael Wadman

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

<input type="checkbox"/> <b>PARTICIPANT</b> A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input checked="" type="checkbox"/> <b>VOLUNTEER</b> A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
---	--

Effective Date of the Original Agreement: 5/17/18

Signature by the Department:

DATED: 10/13/20

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

**Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)**

(Individual)


I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

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

(Entity)

I hereby affirm that I am member (title) of 1675 JV Associates LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 9/17/20 Signature: 

Print Name: Michael Wadman

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

<input type="checkbox"/> <b>PARTICIPANT</b> A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input checked="" type="checkbox"/> <b>VOLUNTEER</b> A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
---	--

Effective Date of the Original Agreement: 5/17/13

Signature by the Department:

DATED: 10/13/20

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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



**SUBMITTAL INFORMATION:**

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:

Chief, Site Control Section  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7020

---

**FOR DEPARTMENT USE ONLY**

**BCP SITE T&A CODE:** \_\_\_\_\_ **LEAD OFFICE:** \_\_\_\_\_

**PROJECT MANAGER:** \_\_\_\_\_

**ATTACHMENT A**

**NYSDOS ENTITY DATABASE INFORMATION:**

**1675 Westchester Avenue Housing Development Fund Corporation, 1675 Westchester Avenue Associates LLC, and 1675 Westchester Avenue LIHTC Associates LLC**

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through September 14, 2020.

---

**Selected Entity Name:** 1675 WESTCHESTER AVENUE HOUSING DEVELOPMENT FUND CORPORATION

Selected Entity Status Information

**Current Entity Name:** 1675 WESTCHESTER AVENUE HOUSING DEVELOPMENT FUND CORPORATION

**DOS ID #:** 5209830

**Initial DOS Filing Date:** SEPTEMBER 28, 2017

**County:** NEW YORK

**Jurisdiction:** NEW YORK

**Entity Type:** DOMESTIC NOT-FOR-PROFIT CORPORATION

**Current Entity Status:** ACTIVE

Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

1675 WESTCHESTER AVENUE HOUSING DEVELOPMENT FUND CORPORATION

C/O PHIPPS HOUSES

902 BROADWAY, 13TH FLOOR

NEW YORK, NEW YORK, 10010

**Registered Agent**

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by [viewing the certificate](#).

#### \*Stock Information

# of Shares	Type of Stock	\$ Value per Share
		No Information Available

\*Stock information is applicable to domestic business corporations.

#### Name History

Filing Date	Name Type	Entity Name
SEP 28, 2017	Actual	1675 WESTCHESTER AVENUE HOUSING DEVELOPMENT FUND CORPORATION

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through September 14, 2020.

---

**Selected Entity Name:** 1675 WESTCHESTER AVENUE LIHTC ASSOCIATES LLC  
Selected Entity Status Information  
**Current Entity Name:** 1675 WESTCHESTER AVENUE LIHTC ASSOCIATES LLC  
**DOS ID #:** 5420761  
**Initial DOS Filing Date:** OCTOBER 04, 2018  
**County:** NEW YORK  
**Jurisdiction:** NEW YORK  
**Entity Type:** DOMESTIC LIMITED LIABILITY COMPANY  
**Current Entity Status:** ACTIVE

#### Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

THE LIMITED LIABILITY COMPANY  
902 BROADWAY, 13TH FLOOR  
NEW YORK, NEW YORK, 10010

**Registered Agent**

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

#### \*Stock Information

# of Shares	Type of Stock	\$ Value per Share
	No Information Available	

\*Stock information is applicable to domestic business corporations.

#### Name History

Filing Date	Name Type	Entity Name
OCT 04, 2018	Actual	1675 WESTCHESTER AVENUE LIHTC ASSOCIATES LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through September 14, 2020.

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**Selected Entity Name:** 1675 WESTCHESTER AVENUE ASSOCIATES LLC  
Selected Entity Status Information  
**Current Entity Name:** 1675 WESTCHESTER AVENUE ASSOCIATES LLC  
**DOS ID #:** 5420772  
**Initial DOS Filing Date:** OCTOBER 04, 2018  
**County:** NEW YORK  
**Jurisdiction:** NEW YORK  
**Entity Type:** DOMESTIC LIMITED LIABILITY COMPANY  
**Current Entity Status:** ACTIVE

#### Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

THE LIMITED LIABILITY COMPANY  
902 BROADWAY, 13TH FLOOR  
NEW YORK, NEW YORK, 10010

**Registered Agent**

NONE

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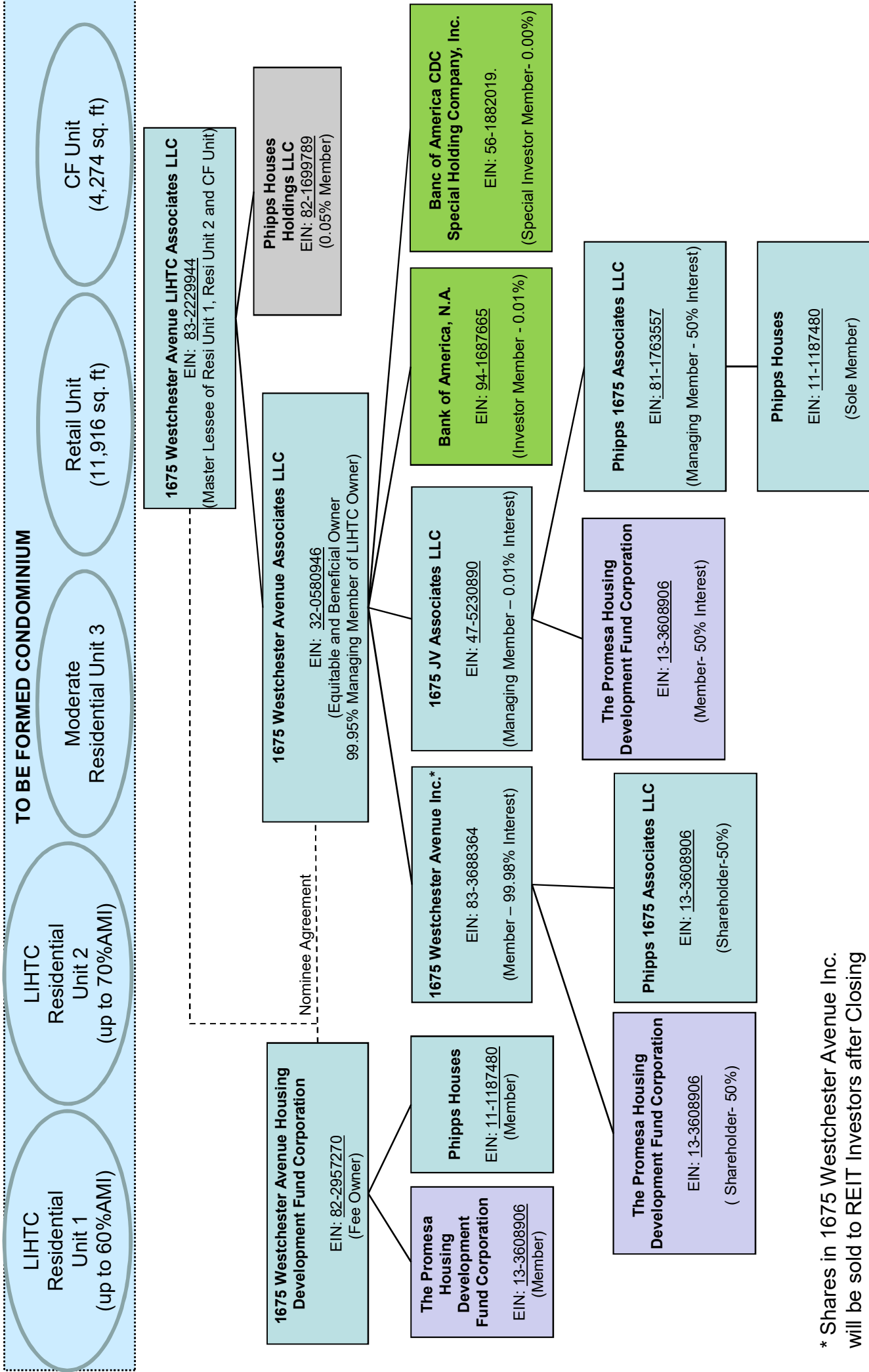
**ATTACHMENT B**  
**ENTITIES OPERATING AGREEMENTS AND RELATIONSHIP FLOW**  
**CHART**

# 1675 WESTCHESTER AVENUE ORGANIZATIONAL CHART

## AT CONSTRUCTION LOAN CLOSING

1230 Metcalf Avenue, Bronx New York

Block 3780 Lot 1

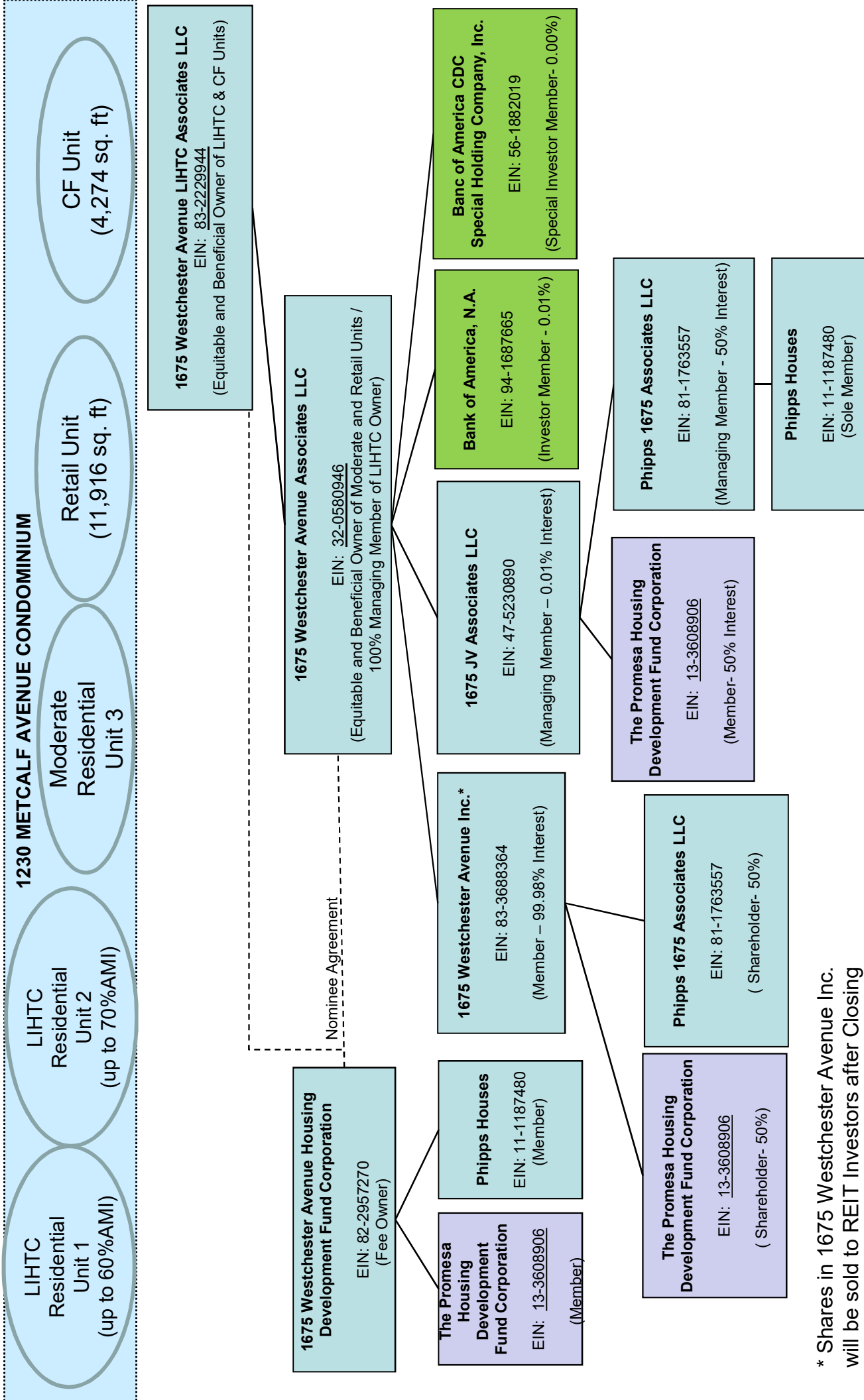


\* Shares in 1675 Westchester Avenue Inc. will be sold to REIT Investors after Closing

# 1675 WESTCHESTER AVENUE ORGANIZATIONAL CHART

## AT CONDOMINIUM FORMATION

1230 Metcalf Avenue, Bronx New York  
Block 3780 Lot 1

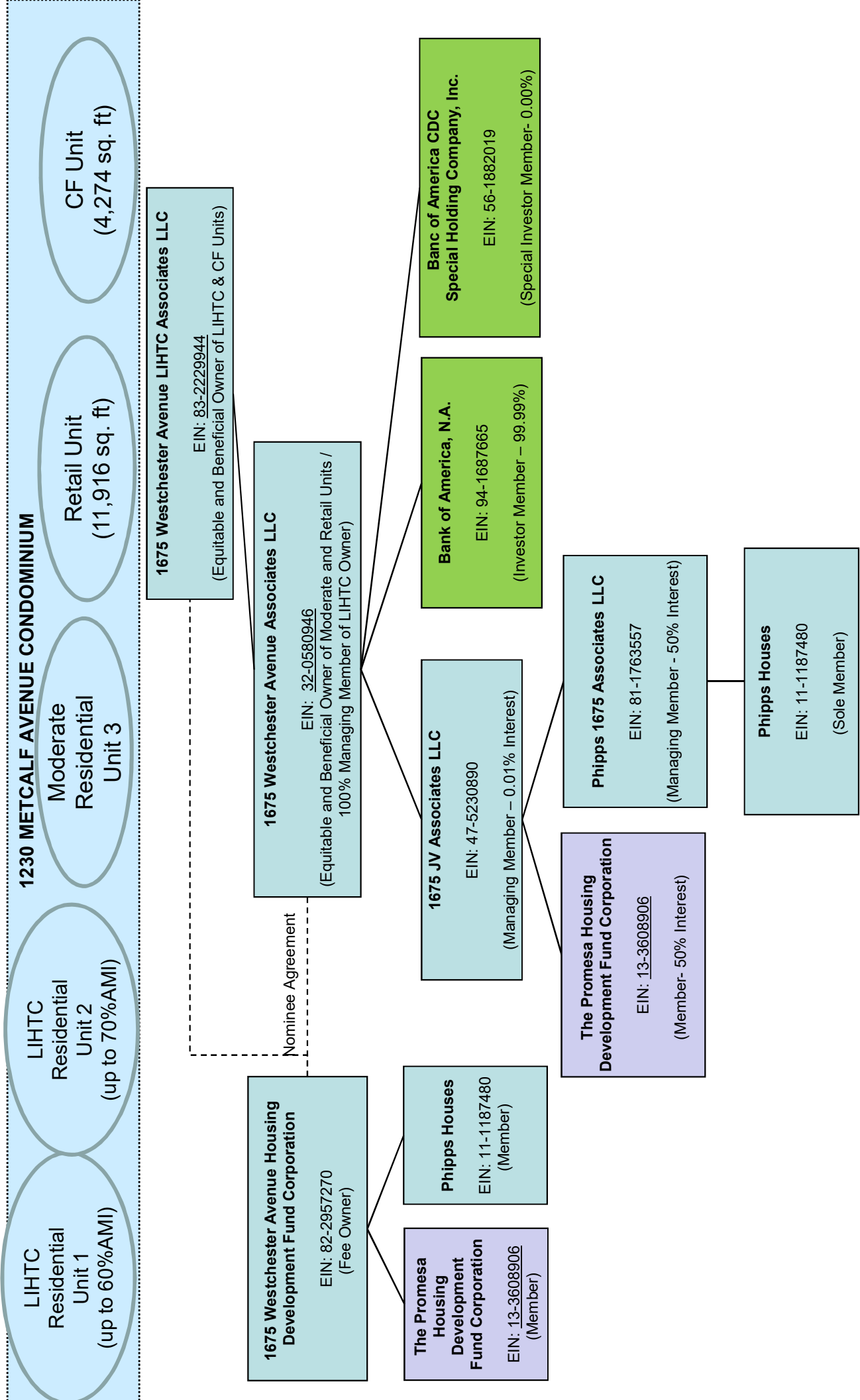


\* Shares in 1675 Westchester Avenue Inc. will be sold to REIT Investors after Closing

# 1675 WESTCHESTER AVENUE ORGANIZATIONAL CHART

**AT PLACED IN SERVICE**

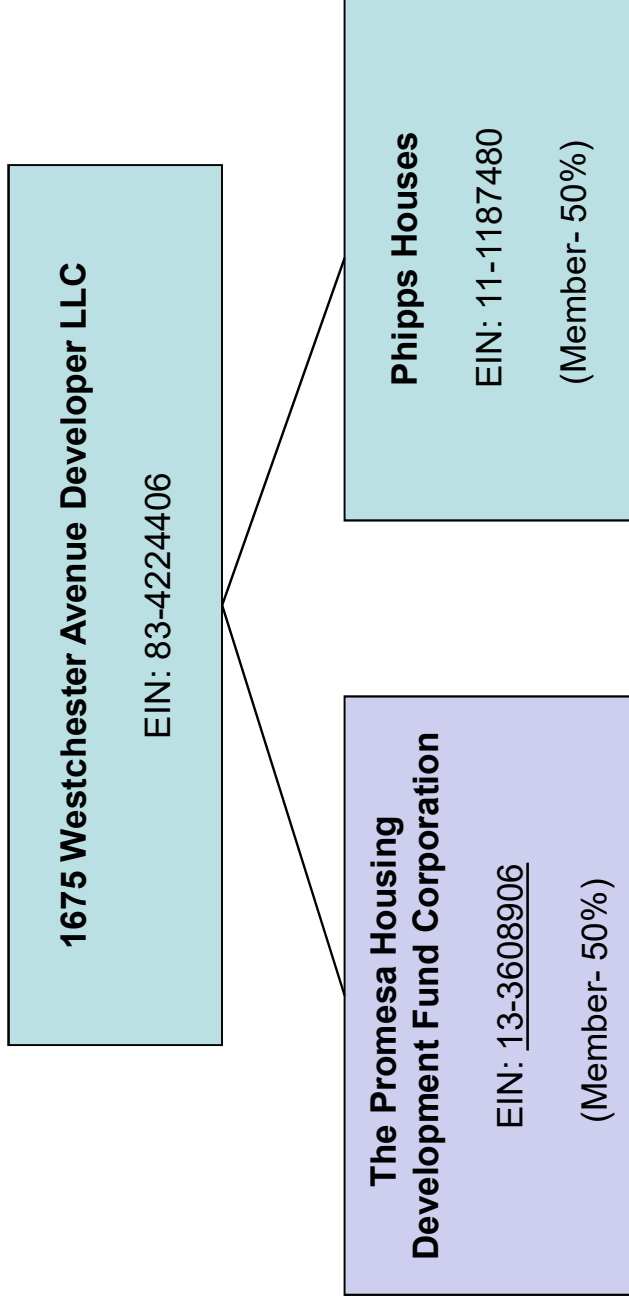
1230 Metcalf Avenue, Bronx New York  
Block 3780 Lot 1



# 1675 WESTCHESTER AVENUE ORGANIZATIONAL CHART

1230 Metcalf Avenue, Bronx New York  
Block 3780 Lot 1

## DEVELOPER ENTITY



**EXHIBIT 74e**

**Amended and Restated Operating Agreement of LLC**

**(see Tab 55)**

**1675 JV ASSOCIATES LLC**  
**AMENDED AND RESTATED**  
**OPERATING AGREEMENT**

AMENDED AND RESTATED OPERATING AGREEMENT dated as of May 18, 2016 between The Promesa Housing Development Fund Corporation (“Acacia”), a New York not-for-profit corporation, with an address c/o Office of Legal Affairs, 300 East 175<sup>th</sup> Street, Bronx, New York 10457 and Phipps 1675 Associates LLC (“Phipps” and together with Acacia, the “Members”), a New York limited liability company with an address at 902 Broadway, 13<sup>th</sup> Floor, New York, New York 10010.

WHEREAS, 1675 JV Associates LLC (the “Company”) was formed on October 5, 2015 by the filing of Articles of Organization with the Secretary of State of the State of New York.

WHEREAS, Phipps entered into that certain Operating Agreement of the Company dated as of October 5, 2015 as the sole member of the Company (the “Original Agreement”).

WHEREAS, Acacia desires to be admitted to the Company as a Member and Phipps and Acacia desire to continue the Company pursuant to the Act (as defined herein).

WHEREAS, the parties hereto now desire to enter into this Amended and Restated Operating Agreement to (i) continue the Company under the Act; (ii) admit Acacia to the Company as a Member and (iii) set forth of the terms and provisions governing the Company.

WHEREAS, the parties hereby acknowledge this Agreement amends and restates the Original Agreement in its entirety.

WHEREAS, until closing of the Construction Loan, the Company will be the sole member of 1675 Associates LLC, a to-be-formed New York limited liability company which will serve as the equitable and beneficial owner of the Project (the “Borrower”) and from and after the closing of the Construction Loan (as defined herein) the Company shall serve as the managing member of the Borrower.

WHEREAS, the Company was formed to directly or indirectly acquire, own, finance, develop, construct, lease, manage, operate, and dispose certain real property together with certain improvements thereon, known as 1675 Westchester Avenue and designated as Block 3780, Lot 1 on the Tax Map of the City of New York, Bronx County and potentially, as further described herein, 1679 Westchester Avenue designated as Block 3780 Lot 51 on the Tax Map of the City of New York, Bronx County (the “Project Site”), upon which the Company proposes to assemble, develop, construct, own, operate, and manage a multifamily residential building consisting of approximately 100-265 rental apartments community facility and/or retail space and accessory parking (the “Project”).

WHEREAS, the parties to this Agreement (individually referred to as a "Member" and

collectively as the "Members") desire to establish their respective rights and obligations pursuant to the New York Limited Liability Company Law in connection with forming such a limited liability company;

NOW, THEREFORE, the Members hereby agree as follows:

## ARTICLE ONE

### Definitions

The defined terms used in this Agreement shall, unless the context otherwise requires, have the meanings specified in this Article One.

"Act" shall mean the New York Limited Liability Company Law, chapter 34 of the consolidated laws of the State of New York, Section 101, et. seq., as it may be amended from time to time, and any successor to said Law.

3.1.1. "Additional Capital Contribution" shall have the meaning set forth in Section

6.2.1. "Adjusted Capital Account Deficit" shall have the meaning set forth in Section

"Affiliate" shall mean with respect to any Member, a Person that directly or indirectly, through one or more intermediaries, has control of, is controlled by, or is under common control with, such Member. For these purposes, control means the possession, directly or indirectly, of the power to direct or cause the direction of the management of any Person whether through the ownership of voting securities, by contract or otherwise.

"Approved Scope of Work" shall mean the plans and specifications of the work to be performed in connection with the Construction as determined by the Manager and, to the extent required by Section 2.7.4 hereof, with the consent of Acacia, provided, however that the Manager shall in all cases in good faith consult with Acacia in connection with all decisions made with respect to design and construction plans and specifications.

"Architect" shall mean Dattner Architects, DPC.

"Articles of Organization" shall mean the Company's Articles of Organization as filed with the Secretary of State, as it may be amended, supplemented or restated from time to time.

"Borrower" shall have the meaning given in the recitals.

"Capital Account" shall have the meaning set forth in Section 3.2.

"Capital Contribution" shall mean the amount of cash and the fair market value of



any property (other than cash) that a Member contributes or is deemed to have contributed to the Company pursuant to Section 3.1.1.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of any succeeding law).

"Company" shall have the meaning set forth in Section 2.1.

"Consent" or "Consent of the Members" shall mean the affirmative vote of not less than 51% of the Members (as may be applicable) then entitled to vote on such matter, provided, however, if there are two (2) Members (as may be applicable) entitled to vote on such matter, Consent shall mean the affirmative vote of no less than 100% of the Members then entitled to vote on such matter.

"Construction" shall mean the construction of the Project to be performed in accordance with the Approved Scope of Work.

"Construction Loan" shall mean the construction mortgage loan to be made to the Borrower to finance a portion of the cost of the Construction of the Project.

"Depreciation" shall mean, with respect to each fiscal year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to a Company asset for such year or other period, except that, if the Gross Asset Value of an asset differs from its adjusted basis for Federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the Federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the Federal income tax depreciation, amortization, or other cost recovery deduction for such asset for such year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managers.

"Developer" shall mean 1675 Developer LLC, a to-be-formed New York limited liability company which will be owned 50% by Acacia and 50% by Phipps or their respective Affiliates and shall be governed by an operating agreement having terms and conditions substantially identical to those contained herein.

"Developer Fee" shall mean that certain fee to be paid by the Borrower to Developer pursuant to that certain Development Agreement to be entered into on or about the date of the closing on the Construction Loan.

"Developer Loans" shall have the meaning set forth in Section 3.3.

"Development Budget" shall mean the projected budget for the hard and soft costs for the development and construction of the Project in accordance with the Project Financing approved by the Members pursuant to Section 2.7.15.

**"Distributive Rights"** shall mean a Member's right to receive distributions under this Agreement.

**"General Contractor"** shall mean general contractor for the Project as selected by the Members, subject to Section 2.7.1.4.

**"Gross Asset Value"** shall mean the adjusted basis for Federal income tax purposes of each item of Company property, except that the Gross Asset Value of each such item shall be adjusted to equal its gross fair value at the time of any of the events described in Section 3.2.3. Following any such adjustment, the Gross Asset Value of such item shall be reduced by Depreciation with respect to such item.

**"HDFC"** shall mean 1675 Westchester Avenue Housing Development Fund Corporation, a to-be-formed New York not-for-profit corporation which will serve as the nominal owner of the Project and have Acacia and Phipps as its two members. The by-laws and certificate of incorporation of the HDFC shall provide that the HDFC shall have six directors, three (3) of whom shall be appointed by Acacia and three (3) of whom shall be appointed by Phipps. The by-laws shall further provide that (i) the directors appointed by Acacia and the directors appointed by Phipps shall each appoint two (2) officers of the HDFC, and (ii) for all matters before the board of directors of the HDFC, other than Major Decisions (as defined in Section 2.7.4.1 hereof), the directors appointed by Phipps shall have the final decision-making authority in the event of deadlock between the Acacia appointed directors and the Phipps appointed directors. With respect to deadlocks as to Major Decisions, the HDFC by-laws shall provide for dispute resolution in accordance with Section 2.7.4.2 hereof.

**"Indemnified Person"** shall have the meaning set forth in Section 4.3.

**"Initial Contribution"** shall have the meaning set forth in Section 3.1.1.

**"Investor Member"** shall mean the federal low income housing tax credit investor selected by the Members in accordance with Sections 2.7.1.5 and 2.7.4 hereof, as the non-managing investor member of Borrower.

**"Lender"** or **"Lenders"** shall mean the party or parties providing debt financing or credit enhancement for the Project at any stage of its development.

**"Loan Documents"** shall mean any and all documents entered into with Lender and binding on Borrower or the Company in connection with the debt financing for the Project at any stage of its development.

**"Manager"** or **"Managers"** shall have the meaning set forth in Section 2.7.1.

**"Management Agreement"** shall have the meaning set forth in Section 2.7.8.

**"Managing Agent"** shall mean Phipps Houses Services Inc.

**"Member(s)"** shall have the meaning set forth in Section 2.6.1.

**"Membership Interest"** or **"Membership Interests"** shall have the meaning set forth in Section 2.6.1.

**"Net Cash Flow"** shall mean the gross receipts on a cash basis derived from operations of the Company and Developer, including Developer Fee, funds available to the Company as a result of mortgage financing or refinancing, the sale of a portion or the whole of the assets of the Company or Borrower (including the principal and interest received in payment of any note received as consideration for any such sale), an award in partial condemnation, or proceeds of insurance, arising by reason of a taking, or damage to, or destruction of part of the Project not applied to the costs of restoration thereof, interest, brownfield tax credits, or other income from reserves or from any source including without limitation the Company or Borrower, other than the capital contributions of the Members, plus any reductions in the amount of the reserve previously established pursuant to subparagraph (iii) hereof, less (i) cash expenses incurred in the operation of the Company or the Project, including interest and principal repayments on obligations to third parties, if any, interest and principal on loans from Members, taxes, insurance, payments of project management fees, leasing and sales commissions and finder's fee and all other operating expenses (but not including depreciation or amortization taken with respect to the Company's assets), (ii) cash expenditures for capital expenses, improvements and replacements, to the extent not funded by borrowing, capital contributions, or similar means, and (iii) a reasonable reserve, if any, which is required by any Lender or the Investor Member.

**"Net Income"** or **"Net Loss"** shall mean with respect to each fiscal year or other period, an amount equal to the Company's Taxable Income or Tax Loss, as the case may be, for such year or period, together with the following adjustments:

(a) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition shall be added to such Taxable Income or Tax Loss;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations §1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition shall be subtracted from such Taxable Income or Tax Loss;

(c) in the event the Gross Asset Value of any Company property is adjusted pursuant to Section 3.2.3, (A) the amount of such adjustment shall be taken into account as a gain or loss on disposition of such property for purposes of computing Net Income and Net Loss, and (B) in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with the definition of Depreciation herein;

(d) gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for Federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property may differ from its Gross Asset Value; and

(e) notwithstanding any other provision of this definition of Net Income and Net Loss, any items comprising the Company's Net Income or Net Loss that are allocated pursuant to Section 6.2 shall not be taken into account in computing Net Income or Net Loss.

**"Nominee Agreement"** shall mean that certain Declaration and Nominee Agreement to be entered into upon closing of the Construction Loan by and between the HDFC and the Borrower pursuant to which the HDFC will convey all equitable and beneficial title in and to the Project to Borrower.

**"Non-Managing Member"** shall have the meaning set forth in Section 2.7.1.1.

**"Ownership Change"** shall have the meaning set forth in Section 6.3.2.

**"Person"** shall mean any individual, partnership, corporation, limited liability company, unincorporated organization or association, trust or other entity.

**"Predevelopment Budget"** shall mean the projected budget for Predevelopment Expenses (as defined in Section 2.7.10 hereof) annexed hereto as Exhibit C, as such Predevelopment Budget shall be amended from and after the date hereof, subject to the terms of Section 2.7.4.

**"Prime Rate"** shall mean a rate per annum equal to the annual rate of interest publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate in effect at its principal office in New York City.

**"Proceeding"** shall have the meaning set forth in Section 4.3.

**"Project"** shall have the meaning set forth in the recitals. An organizational chart showing the contemplated ownership of the Project is attached hereto as Exhibit A. The Members agree and acknowledge that the Investor Member may require prior to or after closing of the Construction Loan that the Company be "disaffiliated" for tax purposes from the Developer. In such event the Members will jointly select a Person (the "**Disaffiliating Party**") reasonably acceptable to both Members to whom the Members will transfer between 21% and 25% (as determined by the Investor Member) of the Membership Interests in the Company, such that, after such "disaffiliation" each of Acacia and Phipps will own either 39.5% or 37.5% of the Membership Interests of the Company. It is the intention of the Members that, to the maximum extent permitted by the Investor Member, the Disaffiliating Party have no voting rights as a Member and no rights to any Net Cash Flow or other rights or benefits whatsoever relating to the Project, the Company, the Developer, the Borrower or the HDFC.

**"Regulations"** shall mean the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of any

succeeding regulations).

**"Secretary of State"** shall mean the New York Secretary of State.

**"Substitute Member"** shall mean any Person who or which is admitted to the Company as a Substitute Member pursuant to Section 7.2.

**"Taxable Income"** or **"Tax Loss"** shall mean with respect to each fiscal or other period, an amount equal to the Company's taxable income or loss for such year or period determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in such taxable income or loss).

**"Tax Matters Member"** shall have the meaning set forth in Section 10.6.

**"Transfer"** shall mean any sale, transfer, gift, assignment, pledge or grant of a security interest, by operation of law or otherwise, in or of an interest in the Company or of rights under this Agreement, excluding, however, any grant of such a security interest in favor of the Company.

## ARTICLE TWO Organization

### 2.1 **Formation.**

2.1.1 The Members agree to and do continue this limited liability company (the "**Company**"), pursuant to the provisions of the Act and this Agreement. The Members hereby ratify the execution and filing of the Articles of Organization of the Company, as filed with the Secretary of State on October 5, 2015.

2.1.2 The Manager shall not permit the Company to engage in any business outside the State of New York unless and until the Company has complied with the requirements necessary to qualify the Company as a foreign limited liability company in the jurisdiction in which the Company shall conduct business.

2.2 **Name.** The name of the Company is "1675 JV Associates LLC".

2.3 **Purposes.** The purposes for which the Company is formed are as follows: to serve as the managing member of 1675 Associates LLC and to directly or indirectly acquire, finance, own, maintain, improve, construct, operate, develop, rehabilitate, manage, lease and if appropriate or desirable, sell or otherwise dispose of the Project and/or any portions or interests in the ownership thereof; to engage in any and all manner of business incidental to the foregoing activities; and subject to the unanimous consent of the Members and any requirements of any Lender, to engage in any lawful act or activity for which limited liability companies may be organized pursuant to the laws of the State of New York. The Company shall have the power to do any and all acts and things

necessary, appropriate, proper, advisable, incidental to or convenient for furtherance and accomplishment of its purposes.

2.4 **Principal Office.** The location of the principal office of the Company shall be c/o Phipps Houses, 902 Broadway, 13<sup>th</sup> Floor, New York, New York 10010 or such other locations as the Manager may, from time to time, designate.

2.5 **Duration.** The term of the Company shall commence on the date that the Articles of Organization are filed by the Secretary of State and shall continue in full force and effect in perpetuity unless earlier terminated in accordance with the provisions of this Agreement or the Act.

2.6 **Members and Membership Interests.**

2.6.1 The members of the Company and their percentage membership interests (individually the "**Membership Interest**" or collectively the "**Membership Interests**") are listed on Schedule A attached hereto ("Members"). A Member's Membership Interest or Membership Interests is his, her or its interest in the Company's assets, liabilities, capital, Net Cash Flow, Net Income or Net Loss, subject to the provisions of this Agreement and the Act. The Membership Interest or Membership Interests shall be personal property for all purposes.

2.6.2 Additional Members may be admitted into the Company as provided for in this Agreement. Unless named in this Agreement, or unless admitted to the Company as a Substitute Member as provided herein, no Person shall be considered a Member, and the Company need deal only with the Members so named and so admitted. The Company shall not be required to deal with any other Person by reason of an assignment by a Member or by reason of the dissolution, death or bankruptcy of a Member, except as otherwise provided in this Agreement.

2.6.3 No Member shall be entitled to any fees, commissions or other compensation from the Company for any services rendered to or performed for the Company, except as provided in this Agreement.

2.6.4 Except as otherwise specifically provided in this Agreement to the contrary, no Members shall have the right to take part in the control of the Company business or to sign for or to bind the Company, such power being vested in the Manager. Except as otherwise explicitly provided in this Agreement or as required by the Act (which requirement is not permitted by the Act to be waived by this Agreement), the Members shall not be entitled to vote on any matter. It is the intention of the Members that, except as otherwise provided in this Agreement, to the fullest extent permissible under the Act, all matters shall be determined and all action taken by the Manager, rather than the Members. A meeting of the Members may be called at any time by the Manager or any Member. If called, meetings of Members shall be held at the Company's principal place of business or such other location selected by the Manager. Not less than five days or more than 30 days before each meeting, the Manager shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the time, place and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting the Member signs a waiver of notice which is filed with the records of Members' meetings,

or is present at the meeting in person or by proxy. At a meeting of Members, the presence in person or by proxy of Members holding not less than a majority of the Membership Interests shall constitute a quorum. A Member may vote either in person or by written proxy signed by the Member or by its duly authorized attorney in fact. Members may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can speak to and hear each other. Such participation shall constitute presence in person at the meeting.

2.6.5 Any of the parties' members, principals, affiliates, subsidiaries, directors, officers, shareholders, employees, or any other related entity shall be entitled to engage in and/or possess any interest in other businesses and investment ventures or transactions, of any nature or description, independently or with others, whether existing as of the date hereof or hereafter coming into existence, and whether or not directly or indirectly competitive with the business of the Company and no party shall be obligated to present any investment or business opportunity to the Company, even if such opportunity involves a business similar to the Company's. The parties further acknowledge that neither they nor the Company, as such, shall have any rights in or to any such independent ventures or the income or profits derived therefrom, by reason or any such party's respective participation in the Company.

## 2.7 **Management.**

2.7.1.1 The business, operations and affairs of the Company shall be managed by one manager (the "**Manager**"). The Members hereby elect Phipps as the Manager. The Manager shall serve until its resignation, removal or dissolution. Managers do not need to be Members. Subject to any required consents of the Project Lenders and the Investor Member, the Member, which is not the Manager of the Company or an Affiliate of the Manager of the Company (the "**Non-Managing Member**"), shall have the right to remove and replace the Manager in the event that such Manager (a) is found by a court of final jurisdiction to have committed an act of fraud or willful misconduct with respect to the Company and/or the Project, (b) is found by a court of final jurisdiction to have been in material breach of this Agreement for thirty (30) days after written notice thereof has been received by the Manager; provided, however, that if such breach is of the type that cannot reasonably be cured within thirty (30) days, the Non-Managing Member shall not have the right to remove the Manager under this Section 2.7.1 so long as such Manager is diligently pursuing a cure of such breach, (c) is dissolved, (d) willfully and knowingly violates any law, regulation or order applicable to the Company which has a material adverse financial impact on the Company or (e) causes the Company to do any of (a)-(d) above (each, an "Act of Default").

2.7.1.2 The Manager shall have the power to delegate their authority to qualified Persons, and the delegation of any such managerial authority shall be evidenced by a Certificate of Incumbency naming the individual or individuals so authorized and specifying the extent and limitation of the authority so delegated. Any such delegation of authority may be rescinded at any time by the Manager.

2.7.1.3 Subject to the terms of Section 2.7.4 and except as otherwise expressly set forth herein, the Manager shall be solely responsible for the management and control of the

Company's business and shall vote on all matters. The Manager shall possess all rights and powers permitted by law and all rights and powers which may be necessary, incidental or convenient for the operation and management of the Company. Except as may be otherwise herein expressly provided, all decisions of the Company shall be made by the Manager. The Manager shall continuously consult with the Members regarding the entitlement and up-zoning of the Project Site, with the goal of maximizing buildable square footage.

#### 2.7.1.4 Construction Matters.

(i) The Manager shall identify at least two qualified general contractors unaffiliated with any Member to negotiate with or bid on the Construction of the Project. Based on such bids, the Members shall jointly decide on the General Contractor and the Manager shall cause the Borrower to enter into a general contract with the General Contractor (hereinafter the "**General Contract**") for the complete "turnkey" performance of the Construction of the Project, pursuant to a guaranteed maximum price contract ("Fixed GC Price") inclusive of 100% payment and performance bonds or letter of credit approved by the Lender and all general conditions, project-specific insurances, overhead and profit.

(ii) Phipps or its Affiliate shall be appointed "Owners Representative" for a fee equal to no more than \$75,000 for the term of the construction of the Project (the "**Owner's Representative Fee**"). The Owners Representative Fee shall be added to the amount of the Distributions paid to Phipps and shall be paid to Phipps from the first available equity contributions of the Investor Member, but in no event prior to substantial completion of the Project. Prior to commencement of construction Phipps shall identify its specific employees that will carry out the function of Owners Representative and will make such employees available to meet with and consult with Acacia as reasonably requested by Acacia. The Owners Representative shall represent the interests of the Company and Borrower in the administration of the General Contract and not the interests of any one Member.

2.7.1.5 Financial Structuring. The Manager shall use its commercially reasonable efforts to arrange for the financing of the Project on terms most favorable to the Project and shall obtain Acacia's consent for the selection of said financing, which consent, after giving effect to all terms and conditions of the financing, including but not limited to pricing and guarantee or other collateral provisions, will not be unreasonably withheld, conditioned or delayed. It is contemplated that the financing will consist of (i) construction/permanent loans from New York City Housing Development Corporation ("HDC") and New York City Department of Housing Preservation and Development ("HPD"), with credit enhancement on HDC's first priority loan during the construction period being provided by an institutional lender, (ii) an equity investment by the Investor Member in connection with the federal low income housing tax credits and state low income housing tax credits, (iii) additional subsidy such as Reso A funds allocated by the Bronx Borough President and local City Council Member, (iv) a deferred developer fee loan made by the Company to the Borrower and (v) additional developer equity to be generated through participation in BCP (as defined herein) (collectively, the "Project Financing"). Any gaps in the Project Financing ("Financing Shortfalls") shall be funded equally by all Members. The Members hereby approve (i) as Project Lenders, any one or more of: HDC, HPD, New York State Housing Finance Agency, and New York Division of



Housing and Community Renewal; (ii) as credit enhancement providers for any tax exempt bond issuance, any one or more of: Citibank, Wells Fargo, JPMorgan Chase Bank, Capital One Bank, TD Bank, Bank of America; (iii) as Investor Member, any one or more of: Affiliates of Citibank, Wells Fargo, JPMorgan Chase Bank, Capital One Bank, TD Bank, Bank of America, NEF, Enterprise, Richman, Hudson Housing Capital, Redstone, and Raymond James.

2.7.1.6 The Project may generate brownfield tax credits through the participation in the New York State Department of Environmental Conservation Brownfield Cleanup Program (“BCP”). A Real Estate Investment Trust (the “REIT”) may be formed by Phipps and Acacia, each as 50% shareholders. During the remediation of the Project Site and prior to completion of construction, the REIT will own 99.99% of the Borrower as a non-managing member. After construction, the REIT will withdraw as non-managing member of the Borrower and/or transfer their interest in the Borrower to the Investor Member and the Investor Member shall enter as a 99.99% non-managing member of Borrower. Any equity required to be provided to Borrower in connection with the BCP shall be provided 50% by Phipps and 50% by Acacia.

2.7.2 All guaranties required in connection with the Project Financing (collectively, the “Guarantees”) shall be provided by Phipps and/or its Affiliates but in no event shall Phipps and/or its Affiliates be obligated to contribute more than \$2,000,000.00 in connection with the Guarantees, Financing Shortfalls or otherwise in connection with the development or operation of the Project (but not including Capital Contributions made by Phipps). In the event Phipps is removed or replaced as Manager in accordance with Section 2.7.1.1 or otherwise, simultaneously therewith and as a condition precedent to such removal or replacement, the replacement Manager or its Affiliates shall enter into substitute guaranty agreements with the Lenders and Investor Member whereby the replacement Manager guaranties all obligations that do not relate to the action or inaction of Phipps or General Contractor prior to the date of replacement on a primary basis and Phipps is released from liability in connection therewith. Acacia and/or its Affiliates or principals will not be required to provide any Guarantees other than one or more non-recourse carve-out guaranties in connection with fraudulent or other standard non-recourse carve-out acts or omissions of Acacia, its principals, employees, directors, officers or agents for which Acacia shall be solely liable and for which Acacia shall indemnify Phipps and its Affiliates. All costs incurred in connection with the Guarantees (other than those arising from any act or omission giving rise to liability under any non-recourse carve-out guaranty) shall be paid through the Borrower and be considered a Developer Loan to the Borrower and will be repaid in accordance with Section 3.3 herein.

2.7.3 The Manager may appoint such officers of the Company as it deems advisable. The officers of the Company, if so appointed, shall be employees of Phipps and shall be responsible for the day-to-day business, operations and affairs of the Company, shall have such powers as are usually exercised by comparable designated officers of a New York corporation and shall have the authority to bind the Company through the exercise of such powers subject to, and to the extent consistent with, the terms hereof. The officers of the Company shall (i) be appointed and be subject to removal by the Company and (ii) operate as an autonomous management group, accountable only to the Company.

2.7.4.1 Notwithstanding anything to the contrary in this Agreement, the following shall be “Major Decisions” and the Manager shall not undertake any of the following actions without the unanimous consent of the Members then entitled to vote on such matters:

- (a) Amend this Agreement;
- (b) Deviate from any of the purposes of the Company as set forth in Section 2.3;
- (c) Sell, exchange, refinance, mortgage, pledge, grant a security interest in, assign or otherwise transfer all or substantially all of the assets of the Company, which shall be deemed to include the Project, provided, however, that the unanimous consent of the Members shall not be required in connection with the Project Financing approved pursuant to Section 2.7.1.5 or the refinancing thereof;
- (d) Pay fees, commissions or other compensation to a Member or Manager or Affiliate thereof, except as otherwise provided in this Agreement, the Loan Documents, the Management Agreement, the Development Agreement, or in the General Contract;
- (e) Dissolve or wind up the Company, or cause the same, except as provided in Section 8.1;
- (f) Admit any other Members to the Company except as provided herein;
- (g) Transfer a Membership Interest, except as otherwise provided in this Agreement;
- (h) Resign or otherwise withdraw as a Member from the Company, except as otherwise provided in this Agreement;
- (i) Merge, combine, or consolidate the Company with any other Person;
- (j) Confess a judgment against the Company, in excess of \$1,000,000;
- (k) Cause the Company to file or acquiesce in an action in bankruptcy, insolvency or receivership;
- (l) Cause the Company to take any action or refrain from taking any action that would result in any material adverse tax consequences to the Company or any Member(s);
- (m) Select the General Contractor, subject to Section 2.7.1.4 hereof;
- (n) Select any environmental and/or sustainability consultants other than those set forth in Section 2.7.7 hereof
- (o) Select the Investor Member and/or the Lenders other than those set forth in Section 2.7.1.5;
- (p) Approve the final Project Financing;

- (q) Adopt the Approved Scope of Work, provided however, that any changes to the Approved Scope of Work from and after Phipps or its Affiliate entering into any of the Guarantees may be made by the Manager without the requirement of any consent of the Members;
- (r) Appoint any officers of the Company as contemplated by Section 2.7.3 hereof;
- (s) Make any calls for Additional Capital Contributions during the Predevelopment Period for Predevelopment Expenses which are (i) not included in the Predevelopment Budget or which exceed by more than ten percent (10%) the line item set forth in the Predevelopment Budget and (ii) in excess of \$50,000;
- (t) After closing of the Construction Loan, make any calls for Additional Capital Contributions for the payment of costs for which Phipps is obligated under any of the Guarantees.

2.7.4.2 No Member shall unreasonably withhold, condition, or delay its consent to a Major Decision proposed by the Manager. As to each proposal for a Major Decision, the Manager shall submit such proposal in writing to the Members, which request for consent shall be accompanied by such back-up and explanatory materials as the Manager shall reasonably determine that the Members require in order to evaluate such proposal. If a Member reasonably requires additional information to evaluate the Manager's request, such Member shall request such additional information from the Manager within ten (10) Business Days following the Manager's request for consent, and the Manager shall promptly deliver such additional information. A Member shall be deemed to have approved a Major Decision if it shall fail to disapprove in writing a Major Decision within ten (10) Business Days following the later of (i) the receipt of such proposal or (ii) the receipt of all requisite additional back-up and explanatory materials that the Manager shall be required to deliver under this Section 2.7.4.2. Notwithstanding the foregoing, (x) as to any approvals required of a Member during the course of construction of the Project, the timetable for consent may be shortened by the Manager (it being understood that Manager shall provide as much advance notice as reasonably possible) with notice to Members (given (A) as part of the request for such consent, where such shortening is necessary to comply with a deadline imposed by a third party, and (B) in no event later than three (3) Business Days prior to the deadline for such consent) as may be reasonably required to prevent the requirement for such consent from causing undue delay in the orderly process of Project construction, but in no event to a period shorter than five (5) Business Days or, if such shortening is necessary to comply with a non-extendable deadline imposed by a third party, three (3) Business Days and (y) no prior consent shall be required for the Manager to take such action as is reasonably urgent and necessary in the case of an emergency, provided that Manager shall notify the Members as soon as practicable of the emergency and the actions so taken. Any Member's disapproval of a proposed Major Decision must be delivered in writing to the Manager within the timeframe set forth in this Section 2.7.4.2 and shall include such back-up and explanatory materials necessary for the Manager to evaluate the reasonableness of such disapproval and to enable the Manager to respond to such disapproval in a prompt and meaningful manner and, at the Manager's discretion, to revise the proposal for the Major Decision so to address the basis for such disapproval. Any revised request for a Major Decision delivered by the Manager shall be subject to the notice and time requirements applicable to the original request as set forth above in this Section 2.7.4.2.

2.7.5 Except as provided in this Agreement, the Manager shall not be entitled to any fee or salary for the performance of its duties and obligations hereunder unless agreed to by all of the Members. The Manager shall be entitled to and shall be reimbursed by the Company for all reasonable out-of-pocket expenses (exclusive of normal overhead expenses, such as, without limitation, office rent, office staff and personnel, telephone, meals, automobile transportation) incurred by the Manager on behalf of the Company.

2.7.6 All decisions made for and on behalf of the Company by the Manager in accordance with this Agreement shall be binding upon the Company. No Person dealing with the Manager shall be required to determine its authority to enter into any undertaking on behalf of the Company, nor to determine any fact or circumstance bearing on the existence of such authority; provided, however, that nothing herein contained shall extinguish, limit or condition the liability of the Manager to the Members to discharge its obligations in accordance with this Agreement and the Act. Subject to the terms of Section 2.7.4 hereof, the Manager can execute, on behalf of the Company, contracts, agreements, instruments, leases, notes or bonds, mortgages on Company assets securing indebtedness and any and all other documents incidental thereto provided there is the requisite consent as provided in this Agreement to take such action.

2.7.7 The Members agree that the Company shall retain or cause Borrower to retain Dattner Architects, DPC as the architect for the construction of the Project. The Manager shall select the remaining engineering consultants such as environmental and sustainability consultants after consultation with and consent of the Members, provided however, that the consent of the Members shall not be required for the Company to retain any of the following Project consultants: (i) EAS – Philip Habib & Associates; (ii) sustainability – Bright Power or Steven Winter Associates; (iii) geotech – Haley & Aldrich; (iv) hazmat (Phase II and Phase I update, if needed) – C. A. Rich Consultants or AKRF; (v) structural engineer - Rodney D. Gibble Consulting Engineers; (vi) MEP - Rodkin Cardinale; landscape architects - Weintraub Diaz; or (vii) DOB expediting - JM Zoning or Metropolis Group. The Members further agree that the Company may retain or cause Borrower to retain Hirschen Singer & Epstein LLP as Project counsel; Chicago Title Insurance Company as Project title company; and BDO as Project accountant. The Members' approval of the aforementioned consultants and professionals shall not be construed to require the Members' consent for any matter not set forth in Section 2.7.4 or otherwise expressly required by the terms of this Agreement.

#### 2.7.8 **Project Management**

(a) Subject to the consent of the Lenders and Investor Member, the Manager shall cause the Company on behalf of the Borrower to enter into a management agreement with Phipps Houses Services, Inc. ("PHSI") for the leasing and operation of the Project and all required LHHC compliance and certifications for the Project for a fee equal to no more than eight percent (8%) of gross rents at the Project or such lesser amount permitted by the Project Lenders and otherwise on commercially reasonable arms-length terms (hereinafter the "**Management Agreement**"). PSHI shall also be reimbursed for actual costs for the initial residential rent-up of the Project at a fee allowed by Lenders and Investor Member but in no event to exceed \$2,500 per unit.

(b) PHSI shall also serve as the non-residential leasing agent for all non-residential space in the Project and PHSI shall receive an industry standard commission for such service, subject to the consent of Lenders and Investor Member.

(c) All branding of the Project shall include both Phipps and Acacia names.

2.7.9 Intentionally Deleted.

2.7.10 Acquisition and Pre-Development

(a) The real property located at 1675 Westchester Avenue, Bronx, New York and designated as Block 3780 Lot 1 on the Tax Map of the City of New York, Bronx County ("**Site 1**") is currently owned or controlled by Acacia. Simultaneously with the execution and delivery of this Agreement: (i) Phipps shall contribute to the Company the sum of \$1,754,582.52 (representing 50% of the acquisition and carrying costs funded by Acacia prior to the date hereof, excluding payments of principal made on Acacia's acquisition mortgage, as set forth on Exhibit D hereto, provided however, that prior to such funding by Phipps, Acacia shall deliver evidence reasonable acceptable to Phipps substantiating the costs set forth on Exhibit D) which shall be deemed Phipps' Initial Capital Contribution and which contribution shall immediately be distributed to Acacia in consideration of the contribution of Site 1 to the Company and (ii) Acacia shall contribute fee title, free and clear of all mortgages, liens, encumbrances and title defects, to Site 1 to the Company, which shall be deemed an Initial Capital Contribution from Acacia in the amount of \$1,774,931. The Members agree and acknowledge that the Company shall endeavor to secure from the Project Financing at closing of the Construction Loan a sum up to \$3,509,165.04 (the "Acquisition Financing") for the conveyance of Site 1 to the Borrower. Any such Acquisition Financing secured shall be distributed to the Members as follows: 50% to reimburse Acacia for its deemed Initial Capital Contribution and 50% to Phipps for its Initial Capital Contribution.

(b) The real property located at 1679 Westchester Avenue, Bronx, New York and designated as Block 3780 Lot 51 ("**Site 2**") is currently owned by an unaffiliated third party. The Manager shall make commercially reasonable efforts for the Company to acquire Site 2 for an amount not to exceed \$1,000,000.00. The acquisition of such site will be funded by Capital Contributions made by the Members pursuant to Section 3.1 hereof. If the Company is unsuccessful in acquiring Site 2, the Company shall continue to exist and the Project will be limited to development on Site 1.

(c) Pre-development Expenses. It is anticipated that the predevelopment period from the date hereof prior to closing of the Construction Loan shall be approximately eighteen (18) to thirty (30) months ("**Predevelopment Period**"). The Members shall fund all third-party costs and expenses, including but not limited to costs of design professionals, environmental review and consulting, surveys, geotechnical investigation, tax exemption applications and property taxes, equally during such Predevelopment Period ("**Predevelopment Expenses**"). It is anticipated that the Predevelopment Expenses will be reimbursed to Members at the Construction Loan closing. Any Predevelopment Expenses that do not get reimbursed to Members at Construction Loan closing shall be considered an Additional Capital Contribution by the non-reimbursed Member and the Member's

respective Membership Interest shall increase accordingly. In the event that a Member does not contribute equally to pay the Predevelopment Expenses, the amount not paid shall be considered an Unpaid Contribution (as defined herein) and shall be governed by Section 3.1.6 below.

## ARTICLE THREE

### Capital; Capital Accounts; Loans

#### 3.1 Capital Contributions.

3.1.1 Each Member has made the initial Capital Contributions (the "**Initial Contributions**") as set forth opposite its name on Schedule A hereto. In addition, in the event that, subject to Section 2.7.4 hereof, the Manager determines that additional funds are required by the Company or Borrower, ("**Additional Capital Contributions**"), then each Member shall contribute such funds to the Company as specified in a notice given to each Member setting forth the amount and timing of such Additional Capital Contribution. Such Additional Capital Contributions shall be made in cash by the Members pro rata in accordance with their respective Membership Interest, provided, however, that the Manager shall not require Additional Capital Contributions to fund obligations incurred by the Manager or its Affiliates pursuant to the Guarantees (except in connection with Financing Shortfalls). Initial Contributions and Additional Capital Contributions are hereinafter referred to collectively from time to time as "**Capital Contributions**". Unless the Manager determines otherwise, all Additional Capital Contributions shall be paid to the Company within ten (10) days after notice of such Additional Capital Contribution is given to each Member.

3.1.2 Each Member's Membership Interest as of a particular date shall equal a fraction (expressed as a percentage) (i) the numerator of which shall equal the Capital Contributions made by such Member as of such date, and (ii) the denominator of which shall equal the Capital Contributions made by all of the Members as of such date; provided that for purposes of determining the foregoing, (w) any installments of Capital Contributions made by a Member before the date such installments are due and payable shall be deemed to have been made on the due date of such installment, and (x) any Member that is a transferee of a Member shall be deemed to have made that portion of the transferor Member's Capital Contributions as is reflected by the portion of the Membership Interest so transferred.

3.1.3 Except as provided in Section 3.1.1, no Member shall be required to make any other contribution of capital to the Company, in cash or any other property.

3.1.4 No Member shall be entitled to withdraw any part of its Capital Contribution from the Company or to receive any distribution from the Company, except as expressly provided in this Agreement. No Member shall be entitled to demand or receive any property from the Company other than cash as expressly provided herein.

3.1.5 No Member shall be paid interest on any Capital Contribution.

3.1.6 If any Member fails to make any or all of his or her share of any Additional

Capital Contributions when due (the "Unpaid Contributions") as required herein ("Defaulting Member") then:

3.1.6.1 Any Member may send to such Defaulting Member a written notice stating that the payment of the Additional Capital Contribution is due ("Default Notice"). If the Defaulting Member fails to pay the required Additional Capital Contribution in full within fifteen (15) days following the date that the Default Notice is mailed by the Member which is not the Defaulting Member, then in such event, with respect to each Additional Capital Contribution not made by a Defaulting Member, the then existing Membership Interest of the non-Defaulting Member shall be adjusted upwards to an amount, expressed as a percentage, equal to "A" divided by "B", where "A" equals the then aggregate contributions of the non-Defaulting Member (including any amounts advanced by the non-Defaulting Member on account of the request which created the default), plus one and a half (1.5) times the amount of the Additional Capital Contribution then made by such non-Defaulting Member, and where "B" is the total aggregate capital contributions of all the Members (including any amounts advanced by the non-Defaulting Member on account of the account of the request which created the default). The Membership Interest of the Defaulting Member shall be reduced by the amount by which the Membership Interest of the non-Defaulting Member is increased in accordance with the foregoing formula. The Defaulting Member's Initial Capital Contribution, and any remaining profit (if any) to which it may be entitled, shall be distributed to the Defaulting Member only if, as and when all of the Initial Capital Contributions and Additional Capital Contribution(s), if applicable have been repaid by the Company to the other Members.

3.2 Capital Accounts. An individual capital account (the "Capital Account") shall be maintained for each Member in accordance with the following provisions:

3.2.1 Each Member's initial Capital Account balance is as set forth on Schedule A hereto. Following the date hereof, each Member's Capital Account shall be credited with (1) the amount of additional contributions made by such Member to the Company, and (2) the amount of such Member's allocable share of Net Income and any items of Company income and gain that are specially allocated to such Member pursuant to Article Six hereof.

3.2.2 Each Member's Capital Account shall be charged with (1) the amount of cash distributed to such Member by the Company (other than cash distributed in repayment of any loan by such Member to the Company or as payment of interest thereon); (2) the amount of such Member's allocable share of Net Loss and any items of Company loss and deduction that are specially allocated to such Member pursuant to Article Six hereof; (3) the Gross Asset Value of any property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code); and (4) the amount of any expenditures described in Code Section 705(a)(2)(B) allocated to such Member.

3.2.3 In the event of (1) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution, (2) the distribution by the Company to a Member of more than a de minimis amount of the assets of the Company as consideration for an interest in the Company, (3) the liquidation of the Company for

federal income tax purposes pursuant to Regulation §1.704-1(b)(2)(ii)(g), or (4) in connection with an election under Sections 734(b) or 743(b) of the Code, but only as provided in Regulation §1.704-1(b)(2)(iv)(m), the Gross Asset Values of the Company's assets shall be adjusted (limited, in the case of the events described in clauses (1) and (2), to adjustments which the Managers mutually determine are necessary or appropriate to reflect the relative economic interests of the Members) to equal their then fair market values (as mutually determined by the Managers), and the Capital Accounts of each Member shall be credited or charged with such Member's share (as determined under Article 6 hereof) of the Net Income or Net Loss resulting from such revaluation of Company assets.

3.2.4 In the event that any Membership Interest in the Company is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

3.2.5 The foregoing provisions and the other provisions of the Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulation §1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulation.

3.3 Developer Loans. In the event that Phipps must make payments in connection with any of the obligations covered by the Guarantees, such payments shall be considered a "Developer Loan". To the extent permitted by Investor Member, such Developer Loans shall be treated as loans to the Borrower and repaid from net cash flow of Borrower or capital proceeds of Borrower, prior to payment of any distributions from Borrower to the Company, and shall to the extent permitted by Investor Member, accrue interest at 9% per annum compounded quarterly. If not so permitted by Investor Member, such Developer Loans shall be treated as loans to the Company, and shall (i) bear interest at 9%, compounded quarterly; (ii) provide for payment of accrued interest, if any, and mandatory prepayment of principal from Net Cash Flow prior to payment of distributions to Members (including distributions of Developer Fee); and (iii) be evidenced by a note of the Company, provided that failure of the Company to execute and deliver such note shall not affect the Company's obligation to repay any such loan.

## ARTICLE FOUR

### Liability of Members

4.1 Members Not Liable for Company Losses. Except as expressly provided under the Act, the Members shall have no personal liability for the losses, debts, claims, expenses or encumbrances of or against the Company or its property.

4.2 Liability of Members and Managers to other Members and the Company. Neither the Members nor the Managers shall be liable, responsible, or accountable in damages or otherwise to the Company or any of its Members for any failure to take any action or the taking of any action within the scope of authority conferred on them by this Agreement made in good faith. The Manager shall not be liable to the Members because any taxing authorities disallow or adjust any deductions or credits in the Company's income tax returns or for the return of all or any portion of the capital contributions of the Members. A Member and a Manager shall be liable, responsible and



accountable in damages to the Company and the Members for any acts performed by such Member or Manager arising out of or resulting from the fraud, criminal action, gross negligence, willful misconduct or bad faith of such Member or Manager. Nothing in this paragraph shall be deemed to make the Members or the Manager liable, responsible or accountable to persons other than the Company or the Members.

4.3 Right to Indemnification. Subject to the limitations and conditions provided for in this Article and the Act, each Person (an "Indemnified Person") who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative ("Proceeding(s)"), or any appeal in such a Proceeding, by reason of the fact that he or she was or is a Member, a Manager or an officer, of the Company or he or she was or is the legal representative of, or a member, manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of, a Member or Manager, or arising out of any actions taken by any of them in such capacity, shall be indemnified by the Company against judgments and penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable costs and expenses (including, without limitation, attorneys' fees) actually incurred by such Indemnified Person in connection with such Proceeding if such Indemnified Person acted in good faith and in a manner he, she, or it reasonably believed to be in, or not opposed to, the best interests of the Company and, with respect to any criminal Proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Indemnified Person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceedings, that the Indemnified Person had reasonable cause to believe such conduct was unlawful.

4.4 Derivative Claims. Subject to the limitations and conditions provided for in this Article and the Act, the Company shall and does hereby indemnify any Person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that such Person is or was a Member, Manager or an officer, of the Company, the legal representative of a Member, Manager or officer, or a member, manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of a Member or Manager, or arising out of any actions taken by any of them in such capacity, against costs and expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection with the defense or settlement of such action or suit, if such Person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Company, provided that no indemnification shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of his or her duties to the Company unless, and only to the extent that, the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

4.5 Success on Merits. To the extent that a Person has been successful, on the merits or otherwise, in the defense of any Proceeding referred to in Paragraphs 4.3 or 4.4 or in defense of any claim, issue or matter therein, such Person shall be indemnified against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such Person in connection therewith.

4.6 Determinations. Any indemnification under this Article (unless ordered by a court) shall be made by the Company only as authorized in the specific case, upon a determination that indemnification is proper in the circumstances because such Person has met the applicable standard of conduct set forth therein. Such determination shall be made (i) by the holders of a majority of the Membership Interests who were not parties to such Proceedings, or (ii) if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested Members so directs, by the Company's independent legal counsel in a written opinion.

4.7 Survival. Indemnification under this Article shall continue as to a Person who has ceased to serve in the capacity that initially entitled such Person to indemnity hereunder. The rights granted pursuant to this Article shall be deemed contract rights, and no amendment, modification or repeal of this Article shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal.

4.8 Advance Payment. The right to indemnification conferred by this Article shall include the right to be paid or reimbursed by the Company for the reasonable expenses incurred in advance of the final disposition of the Proceeding and without any determination as to the Person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred in advance of the final disposition of a Proceeding shall be made only upon delivery to the Company of a written affirmation by such Person of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article and a written undertaking, by or on behalf of such Person, to repay all amounts so advanced if it shall ultimately be determined that such Person is not entitled to be indemnified under this Article or otherwise ("Uncovered Payments"). In the event that such Person fails to repay the Uncovered Payments within thirty days of demand for such repayment, then all distributions to the Member affiliated with such Person shall be applied to the repayment of the Uncovered Payments until such Uncovered Payments have been repaid in full.

4.9 Nonexclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred by this Article shall not be exclusive of any other right which a Person may have or hereafter acquire under any law (common or statutory), any provision of the Articles of Organization or this Agreement, any vote of the Members or otherwise.

4.10 Insurance. The Company may purchase and maintain insurance, at its expense, to protect itself and any Indemnified Person against any expense, liability or loss, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under this Article.

4.11 Savings Clause. If this Article or any portion thereof shall be invalidated on any

ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Indemnified Person as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any Proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

## ARTICLE FIVE

### Distributions

#### 5.1 Distributions Generally.

5.1.1 Except as otherwise provided in this Section 5.1, the time and amount of any distributions of funds of the Company shall be determined by the Consent of the Members provided, however, that distributions shall be made no less frequently than annually within 45-60 days following the end of each fiscal year of the Company and, further provided, that Developer Fee payments received by the Company in connection with the Project shall be disbursed within thirty (30) days of receipt. As a point of clarification, the Members agree that Net Cash Flow available for distribution to the Members shall be paid as follows:

- (a) first to pay the Owner's Representative Fee to Phipps in accordance with Section 2.7.1.4(ii);
- (b) second, to repay any outstanding Developer Loans including any accrued interest, until repaid in full;
- (c) third, to the Members in accordance with their respective Membership Interests.

5.1.2 The Company shall retain funds necessary to cover its reasonable business needs, which shall include reserves against possible losses and the payment and making provision for the payment, when due, of obligations of the Company, including obligations owed to Members (which shall be repaid prior to any other distributions) and may retain funds for any other Company purposes. The amounts of all such reserves and the purposes for which all such reserves are made shall be determined, subject to the loan documents entered into by the Company or Borrower, upon the Consent of the Members.

## ARTICLE SIX

### Allocations

6.1 Allocations of Net Income and Net Losses. After making the allocations (if any) required by Section 6.2 hereof, Net Income and Net Loss shall be allocated as follows:

- (a) Net Income shall be allocated among the Members in accordance with their respective Membership Interests.

(b) Net Loss shall be allocated among the Members in accordance with their respective Membership Interests.

## 6.2 Regulatory Allocations.

6.2.1 Notwithstanding any other provision of this Agreement, Net Loss (or items of deduction as computed for book purposes) shall not be allocated to a Member to the extent that the Member has or would have, as a result of such allocation, an Adjusted Capital Account Deficit. As used herein, a Member's "**Adjusted Capital Account Deficit**" shall mean and refer to such Member's Capital Account, increased by any amounts which such Member is obligated to restore pursuant to the terms of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulation §1.704-2(g)(1) and §1.704-2(i)(5), and reduced by any adjustments, allocations or distributions described in Regulation §1.704-1(b)(2)(ii)(d)(4), (5) or (6). Any Net Loss (or items of deduction as computed for book purposes) which otherwise would be allocated to a Member, but which cannot be allocated to such Member because of the application of the immediately preceding sentence, shall instead be allocated to the other Members, in accordance with their respective Membership Interests, subject to the limitation imposed by the immediately preceding sentence.

6.2.2 In order to comply with the "qualified income offset" requirement of the Regulations under Code Section 704(b), and notwithstanding any other provision of this Agreement to the contrary, except Section 6.2.3, in the event a Member for any reason (whether or not expected) has an Adjusted Capital Account Deficit, items of Net Income (consisting of a pro rata portion of the items thereof) shall be allocated to such Member in an amount and manner sufficient to eliminate as quickly as possible the Adjusted Capital Account Deficit.

6.2.3 In order to comply with the "minimum gain chargeback" requirements of Regulation § 1.704-2(f)(1) and § 1.704-2(i)(4), and notwithstanding any other provision of this Agreement to the contrary, in the event there is a net decrease in a Member's share of Company minimum gain (as defined in Regulation § 1.704-2(d)(1)) and/or Member nonrecourse debt minimum gain (as defined in Regulation § 1.704-2(i)(2)) during a Company taxable year, such Member shall be allocated items of income and gain for that year (and if necessary, for other years) as required by and in accordance with Regulation § 1.704-2(f)(1) and § 1.704-2(i)(4) before any other allocation is made.

6.2.4 Notwithstanding any other provision of this Agreement, all items of deduction and loss that, pursuant to Regulation §1.704-2(i), are attributable to a nonrecourse debt for which a Member (or a Person related to such Member under Treasury Regulation §1.752-4(b)) bears the economic risk of loss (within the meaning of Regulation §1.752-2), shall be allocated to such Member as required by Regulation §1.704-2(c).

## 6.3 Other Allocation Rules.

6.3.1 Each separate item of income, deduction, gain and loss of the Company shall

be allocated among the Members in the same proportion as the portion of the total Net Income or Net Loss for the period which is credited or charged to the Capital Account of each Member bears to the total Net Income or Net Loss for such period.

6.3.2 If the Membership Interests of the Members change during a year, then, unless otherwise determined by Consent of the Members, Net Income or Net Loss for such year shall be allocated among the Members for the periods before and after the date on which the change in Membership Interests (hereinafter called an "Ownership Change") became effective, based on an interim closing of the books. This Section 6.3.2 shall apply both for purposes of computing a Member's Capital Account and for allocation purposes.

6.3.3 Income, gain, loss and deductions of the Company shall, solely for income tax purposes, be allocated among the Members in accordance with Section 704(c) of the Code, so as to take account of any difference between the adjusted basis of the assets of the Company for Federal income tax purposes and their respective Gross Asset Values, and otherwise shall be allocated in the same manner as the related book items were allocated under Sections 6.1 and 6.2 hereof. Except as otherwise determined by the Manager, upon the Consent of the Members, any allocations required by Section 704(c) of the Code shall be effectuated using the traditional method described in Treasury Regulation §1.704-3(b)(1).

## ARTICLE SEVEN

### Transfers of Membership Interests; Admission of Additional Members

7.1 Transfers of Membership Interests. Except as specifically provided in this Agreement, no Member shall have the right to Transfer or otherwise dispose of all or any portion of its Membership Interest in the Company, without the unanimous consent of the Members (which consent may be granted or withheld in their sole and absolute discretion), provided, however, that upon the death of a Member, such Member's Distributive Rights may be transferred to his estate or beneficiaries, but such transferee(s) shall acquire no other rights hereunder unless admitted as Members in accordance with the provisions of Section 7.3 hereof. A Member may transfer its interests in the Company to Affiliates of such Member upon prior written notice to the other Members.

7.2 Substitute Members. Anything to the contrary contained in this Agreement notwithstanding, the assignee of a Membership Interest shall have the right to become a substituted member in the Company only if (1) such assignee is already a Member or the consent referred to in Section 7.1 has been obtained, (2) the assignor so provides in an instrument of assignment, (3) the assignee agrees in writing to be bound by the terms of this Agreement and the Articles of Organization in the form of joinder attached hereto as Exhibit B, and (4) the assignee pays the reasonable costs incurred by the Company in preparing and recording any necessary amendments to this Agreement and the Articles of Organization, unless waived by the Manager(s).

7.3 Buy-Sell Terms.

(a) *Offer by the Invoking Member.* Any Member (hereinafter referred to as the “Invoking Member”) that desires to invoke these buy-sell provisions (the “Buy-Sell Terms”) may do so by complying with the following procedures. The Invoking Member shall deliver to all other Members (hereinafter referred to as the “Offeree Members”) written notice that the Invoking Member is invoking the provisions of the Buy-Sell Terms (the “Notice”). The Notice shall set forth an amount representing the total value of all the Membership Interests in the Company (the “Stated Value”). The Notice shall constitute an offer by the Invoking Member, in the alternative, either (x) to purchase the entire Membership Interest of the Offeree Members in the Company for a price equal to the amount of cash proceeds distributable to the Offeree Members under the terms of this Agreement as if the Project were then sold to a third party for the Stated Value and remained in place without payment of any fee or charge (except a fee or charge expressly stated to be payable under the Construction financing in connection with such sale), or (y) to sell such Invoking Member’s entire Membership Interest in the Company to the Offeree Members for a price equal to the amount of cash proceeds distributable to the Invoking Member under the terms of this Agreement as if the Project were then sold to a third party for the Stated Value.

(b) *Offeree Members’ Options.* Upon receipt of the Notice, the Offeree Members together, or individually, may elect (i) to purchase the Invoking Member’s entire Membership Interest in the Company at the price at which the Invoking Member shall be deemed to have offered to sell such Membership Interest or (ii) to sell no less than their entire, aggregate Membership Interest in the Company at the price at which the Invoking Member shall be deemed to have offered to purchase such aggregate Membership Interest of such Offeree Members. The Offeree Members shall give notice of their election hereunder to the Invoking Member within thirty (30) days after such Offeree Members’ receipt of the Notice; provided, however, that in the event the Offeree Members shall fail to give the Invoking Member notice of their election within such 30-day period, such Offeree Members shall be conclusively deemed to have elected to sell their entire Membership Interest in the Company to the Invoking Member upon the terms of such offer.

(c) *Certain Procedures for Closing.* The closing of a purchase and sale under the Buy-Sell Terms as between the Members shall be held at a mutually convenient location in the City of New York on a mutually acceptable date not more than forty-five (45) days after the date upon which the Offeree Members shall have elected, or shall be deemed to have elected, to sell their Membership Interest or to purchase the Membership Interest of the Invoking Member. At such closing, the purchasing Members shall pay the entire purchase price of the Membership Interest in the Company being purchased to the selling Members in cash or by certified check or bank treasurer’s check, and the selling Members shall pay all taxes and execute all documents that may be necessary or desirable in the reasonable opinion of counsel for the purchasing Members to effect the transfer of the entire Membership Interest in the Company being sold to the purchasing Members free and clear of all liens and encumbrances whatsoever. In the event the Members who shall sell Membership Interest in the Company pursuant to Section 7.3(b) above (whether or not to another Member) then has any outstanding debts to or from the Company or to or from a Member, such debts shall first be netted, and all proceeds of the purchase price due such selling Member under the Buy-Sell Terms for such Membership Interest in the Company shall be paid to the Company or to the creditor Member for and on behalf of such selling Members until all outstanding debts of such selling Members to the Company, including accrued interest, shall have been paid and discharged in full. Simultaneously

with the closing on the Membership Interests, the selling Member shall cause the HDFC directors and officers appointed by it or its Affiliate to tender their resignations, and the certificate of incorporation and by-laws of the HDFC shall be amended to remove the selling member's Affiliate as a member of the HDFC.

(d) *Notice of Buy-Sell Prevails.* After the giving of the Notice, no Member may invoke its rights to otherwise transfer its Membership Interest under the terms of this Agreement (except to Permitted Transferees) until the earlier of a rescission of such Notice or the closing of the sale of Membership Interest under Section 7.3(c) above.

(e) *Consent.* The transfer of Membership Interest under the terms of this Section 7.3 shall be subject to the consent of (i) the Lenders as and to the extent required under their respective Loan Documents, (ii) the Investor Member as and to the extent required under the amended and restated operating agreement of the Borrower and (iii) city or state agencies under any regulatory documents binding the Borrower and the Company.

## ARTICLE EIGHT

### Dissolution, Liquidation and Termination

#### 8.1 Dissolution.

8.1.1 The Company shall dissolve upon, but not before, the first to occur of the following:

- (a) By the unanimous vote of the Members;
- (b) The disposition of substantially all of the assets of the Company (including, without limitation, all of the Company's interest in the Project) in a single transaction other than a sale-leaseback or an installment sale transaction;
- (c) The dissolution, bankruptcy, death, resignation, expulsion or incompetency of any Member unless the holders of a majority in interest of the remaining Membership Interests consent to continue the business of the Company; and
- (d) Any other event, which, under the Act, would cause the dissolution of a limited liability company unless the holders of a majority in interest of the remaining Membership Interests consent to continue the business of the Company.

8.1.2 Upon dissolution of the Company, the Company shall promptly commence to wind up its affairs and the Manager shall proceed with reasonable promptness to liquidate the business of the Company.

8.1.3 During the period of the winding up of the affairs of the Company, the rights

and obligations of the Members shall continue.

8.2 Liquidation. The Company shall terminate after its affairs have been wound up and its assets fully distributed in liquidation as follows:

(a) first, to the payment of the debts and liabilities of the Company (other than loans made by a Member or an Affiliate of a Member to the Company pursuant to Section 3.3) and the expenses of liquidation;

(b) next, to the setting up of any reserves which the Manager may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company provided that any reserves not necessary to satisfy such liabilities or obligations are distributed as soon as practicable;

(c) thereafter, in accordance with Section 5.1.1.

8.3 Cancellation of Certificate of the Company. Upon the completion of the liquidation of Company's property, the Manager shall cause the cancellation of the Articles of Organization and all qualifications of the Company as a foreign limited liability company in jurisdictions other than the State of New York.

8.4 Termination by Either Member. If the closing of the Construction Loan has not occurred within thirty-six (36) months of the date hereto, either party will have the right to terminate this Agreement upon thirty (30) days' notice to the other Member. Upon such termination Acacia shall repay Phipps' total Capital Contributions in full (including all land and Predevelopment Expenses) and Site 1 (and Site 2, if applicable) shall be transferred to Acacia. If the Construction Loan Closing is delayed due to matters beyond the Members' control including but not to limited tax exempt bond volume cap limitations or government entitlement and permitting delays, the thirty-six (36) month period before a Member may terminate this Agreement shall be extended by the same amount of time of such delay.

## ARTICLE NINE

### Company Property

9.1 Company Property. The Company's property shall consist of all Company assets and all Company funds. Title to the property and assets of the Company may be taken and held only in the name of the Company or in such other name or names as shall be determined by the Manager. All property now or hereafter owned by the Company shall be deemed owned by the Company as an entity and no Member, individually, shall have any ownership of such property. Title to the assets and properties, real and personal, now or hereafter owned by or leased to the Company, shall be held in the name of the Company or in such other name or names as the Manager shall determine; provided, however, that if title is held other than in the name of the Company, the Person or Persons who hold title shall certify by instrument duly executed and acknowledged, in form for recording or filing, that title is held as nominee and/or trustee for the benefit of the Company pursuant to the terms of this Agreement and an executed copy of such instrument shall be delivered to each Member.



9.2 Prohibition Against Partition. Each Member hereby permanently waives and relinquishes any and all rights he or she may have to cause all or any part of the property of the Company to be partitioned, it being the intention of the Members to prohibit any Member from bringing a suit for partition against the other Members, or any one of them.

## ARTICLE TEN

### Records and Accounting; Fiscal Affairs

10.1 Fiscal Year. The fiscal year of the Company shall be the calendar year.

10.2 Bank Accounts. All funds of the Company shall be deposited in such bank or savings and loan account or accounts as shall be designated by the Manager. Withdrawals from any such bank account shall be made upon such signatures as the Manager as the Manager may designate and shall be made only for the purposes of the Company.

10.3 Books and Records. The Manager shall maintain full and accurate books of the Company, in accordance with the Company's accounting policies consistently applied, at the principal place of business of the Company, showing all receipts and expenditures, assets and liabilities, Net Income or Net Loss, and all other records necessary for recording the Company's business and affairs, including those sufficient to record the allocations and distributions provided for in this Agreement. The books and records shall, upon reasonable prior notice to the Company, be open for inspection and copying by any Member or his or her duly authorized representatives during regular business hours at such principal place of business. Any expense for any inspection or examination shall be borne by the Member causing such inspection or review to be conducted. Any information obtained by a Member with respect to the affairs of the Company shall, except as may be required by law, be kept strictly confidential.

10.4 Tax Status. Each of the Members hereby recognizes that the Company will be treated as a partnership for Federal, state and local income tax purposes and will be subject to all provisions of Subchapter K of Chapter 1 of Subtitle A of the Code.

10.5 Tax Returns; Elections:

10.5.1 The Tax Matter Members shall cause all income tax and information returns for the Company to be prepared by the Company's accountant and shall cause such tax returns to be timely filed with the appropriate authorities. All decisions regarding tax elections shall be made by the Manager with the consent of the Tax Matters Member. Copies of such tax and information returns shall be kept at the principal office of the Company or at such other place as the Tax Matters Member shall determine and shall be available for inspection by the Members or their representatives during normal business hours. The Manager shall furnish each Member within one hundred twenty (120) days after the end of each fiscal year with such information as may be necessary to enable each Member to file his or its Federal income tax return and any required state income tax return. The Manager shall cause the Company to pay, out of available cash flow and other assets of the

Company, any taxes payable by the Company.

10.5.2 The Company may, but is not required to, make an election for federal income tax purposes to the extent permitted by applicable law and regulations, as follows:

(1) in case of a transfer of all or part of any Member's Membership Interest, the Company may elect in a timely manner pursuant to Section 754 of the Code and pursuant to corresponding provisions of applicable state and local tax laws to adjust the bases of the assets of the Company pursuant to Sections 734 and 743 of the Code; and

(2) all other elections required or permitted to be made by the Company shall be made in such a manner as the Manager, upon Consent of the Members, in consultation with the Company's attorneys or the Company's accountant, determine to be most favorable to the Members.

10.5.3 Each Member agrees to report, on his own income tax returns each year, each item of income, gain, loss, deduction and credit as reported by the Company to such Member on the Schedule K-1 (or other similar tax report) issued by the Company to such Member for such year. Except as otherwise required by law, no Member shall take any tax reporting position that is inconsistent in any respect with any tax reporting positions taken by the Company or any entity in which the Company owns any equity interest, and, in the event of a breach by such Member of the provisions of this Section 10.5.3, shall be liable to the Company and the Members for any costs, liabilities and damages (including, without limitation, consequential damages) incurred by any of them on account of such breach.

10.6 Tax Matters Member. Pursuant to Section 6231(a)(7)(A) of the Code (and any comparable provision of applicable state and local tax laws), the Manager will be designated as the "Tax Matters Member" of the Company for all purposes of the Code and for the corresponding provision of any state or local statute. All of the Members hereby consent to such designation and agree to take any such further action as may be required by regulations or otherwise to effectuate and maintain such designations. The Manager shall make the books and records of the Company available to Acacia for inspection and photocopying upon the reasonable advance request of Acacia.

10.7 Company's Accountants. The Company shall retain BDO as its independent certified public accountant or such other accountants as shall be designated by the Consent of the Members.

10.8 Financial Reporting. Within 30 days after the end of each fiscal quarter and/or upon two (2) weeks written notice from a Member, the Manager shall provide the Members with (i) a statement of income and expenses for the Company's operation of the Project on a year-to-date basis as of the end of each fiscal quarter, (ii) a balance sheet showing all assets and liabilities of Company relating to the Project as of the end of such fiscal year, and (iii) during lease-up and operation, a rent schedule for the Project showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid and the amount of the security deposit held for each tenant.

## ARTICLE ELEVEN

### Miscellaneous

11.1 Notice. All notices, requests, demands and other communications hereunder shall be made in writing and shall be deemed to have been given if delivered by hand, registered or certified mail with return receipt, or nationally recognized overnight delivery service to the Members at the addresses set forth in the preamble. Any address may be changed by notice given to the Members, as aforesaid, by the party whose address for notice is to be changed.

11.2 Severability. The invalidity or unenforceability of any provision in this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

11.3 Interpretation. This Agreement shall be interpreted and construed in accordance with the laws of the State of New York. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the Person or Persons referred to may require. The captions of sections of this Agreement have been inserted as a matter of convenience only and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

11.4 Entire Agreement. The parties hereto agree that all understandings and agreements heretofore made between them are merged in this Agreement, which alone fully and completely expresses their agreement with respect to the subject matter hereof. There are no promises, agreements, conditions, understandings, warranties, or representations, oral or written, express or implied, among the parties hereto, other than as set forth in this Agreement, and the Articles of Organization. All prior agreements among the parties are superseded by this Agreement, which integrates all promises, agreements, conditions, and understandings among the parties with respect to the Company and its property.

11.5 Termination, Revocation, Waiver, Modification or Amendment. No termination, revocation, waiver, modification or amendment of this Agreement shall be binding unless consented to in writing and executed by all the Members.

11.6 Counterparts; Effective Date. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. The signatures of any party to a counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart. This Agreement is dated and shall be effective among the parties as of the date first above written.

11.7 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors, permitted assigns, heirs, executors, administrators and legal representatives.

11.8 Further Assurances. Each of the parties hereto agrees to execute, acknowledge,

deliver, file, record and publish such further certificates, instruments, agreements and other documents, and to take all such further action as may be required by law or deemed by the Members to be necessary or useful in furtherance of the Company's purposes and the objectives and intentions underlying this Agreement and not inconsistent with the terms hereof.

11.9 Waiver. No consent or waiver, express or implied, by any Member or Manager to or of any breach or default by any other Member or Manager in the performance by any other Member or Manager of his or her obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other Member or Manager of the same or any other obligation of such Member hereunder. Failure on the part of a Member or Manager to complain of any act or failure to act of any other Member or Manager or to declare such other Member or Manager in default, irrespective of how long such failure continues, shall not constitute a waiver by such Member or Manager of his or her rights hereunder.

11.10 Additional Remedies. The rights and remedies of any Member or Manager hereunder shall not be mutually exclusive. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy, but nothing herein contained is intended to, nor shall it limit or affect, any other rights in equity or any rights at law or by statute or otherwise of any party aggrieved as against the other for breach or threatened breach of any provision hereof, it being the intention of this paragraph to make clear the agreement of the parties hereto that their respective rights and obligations hereunder shall be enforceable in equity as well as at law or otherwise.

11.11 No Reliance by Third Parties. The provisions of this Agreement are not for the benefit of any creditor or other Person other than a Member to whom any losses, debts, claims, expenses or encumbrances are owed by, or who otherwise has any claim against, the Company or any Member, and no creditor or other Person shall obtain any rights under this paragraph or by reason of this paragraph, or shall be able to make any claim in respect of any debts, liabilities, or obligations against the Company or any Member.

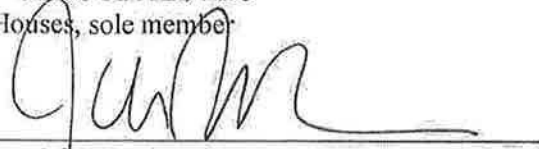
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

PHIPPS 1675 ASSOCIATES LLC

By: Phipps Houses, sole member

By:



Name: Adam Weinstein

Title: President

THE PROMESA HOUSING DEVELOPMENT FUND CORPORATION

By:

Name:

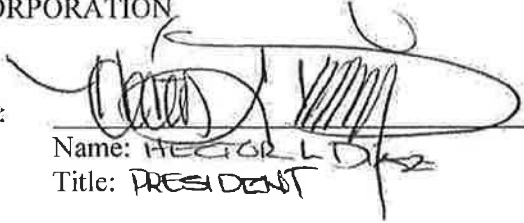
Title:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

PHIPPS 1675 ASSOCIATES LLC  
By: Phipps Houses, sole member

By: \_\_\_\_\_  
Name: Adam Weinstein  
Title: President

THE PROMESSEA HOUSING DEVELOPMENT FUND  
CORPORATION

By:  \_\_\_\_\_  
Name: HECTOR L DIAZ  
Title: PRESIDENT

SCHEDULE A

1675 JV ASSOCIATES LLC

MEMBERSHIP INTERESTS

<u>Members</u>	<u>Membership Interest</u>	<u>Initial Capital Account</u>
PHIPPS 1675 ASSOCIATES LLC	50%	\$50.00
THE PROMESA HOUSING DEVELOPMENT FUND CORPORATION	50%	\$50.00

EXHIBIT A  
Project Ownership Structure



# EXHIBIT A Project Ownership Structure

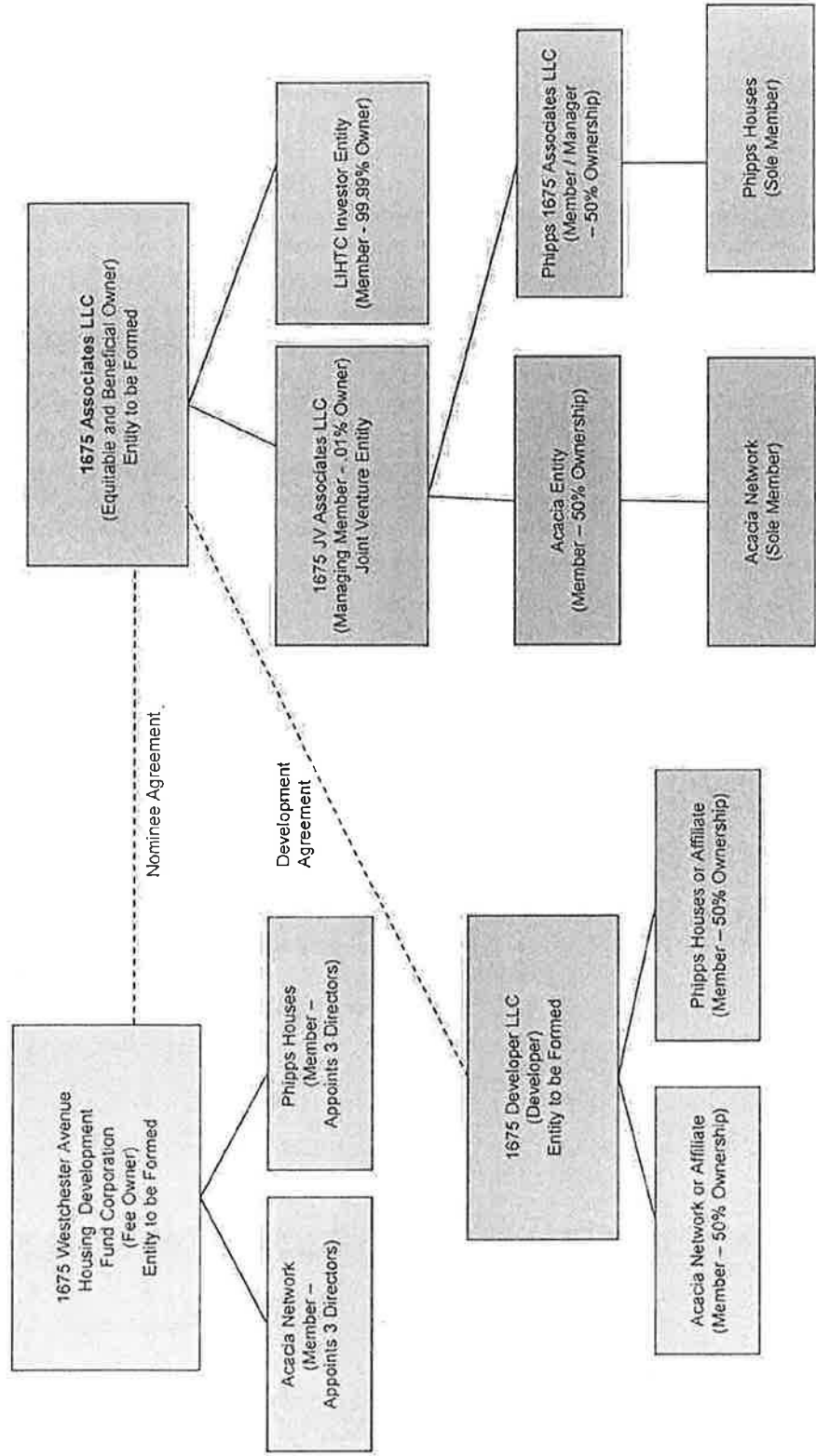


EXHIBIT B

Form of Joinder Agreement

The undersigned, a proposed transferee (the "Transferee") of the Membership Interest of \_\_\_\_\_ (the "Membership Interest"), in \_\_\_\_\_ a New York Limited Liability Company (the "Company"), from \_\_\_\_\_ (the "Transferor"), hereby agrees to be bound by all of the provisions of the Articles of Organization of \_\_\_\_\_ and the Operating Agreement effective as of the \_\_\_ day of \_\_\_\_\_, 20\_, between *[name and address of Member]*, *[name and address of Member]*, *[name and address of Member]*, *[name and address of Member]* and *[name and address of Member]* which is applicable to the Transferor at the time of transfer of the Membership Interest.

Dated as of \_\_\_\_\_, 20\_.

\_\_\_\_\_  
[Transferee]

EXHIBIT C  
Predevelopment Budget

EXHIBIT C

Predevelopment Budget

Item	Amount	Notes
Carrying Costs - Post-JV Execution		assumes JV acquisition of property on 4/30/2016, carrying costs through 12/31/2017
- Real Estate Taxes	\$85,600.00	real estate taxes at current level (non-exempted) from 5/1/2016-12/31/2017; JV will apply for 420-a to fully exempt real estate taxes
- Other	\$50,000.00	insurance, site security and other unanticipated expenses
Architectural/Engineering	\$579,600.00	40% of arch. fee due prior to constr. fin. closing as per Datner agreement
Architecture - Reimbursables - as per agmt	\$15,000.00	50% of reimbursable cap projected to be incurred prior to closing
Soil Borings	\$65,000.00	
DOB Fees	\$47,111.00	may be deferred until after constr. fin. closing
Bank Engineer	\$5,000.00	bank typically requires payment of plan and cost review prior to closing
Appraisal	\$10,000.00	bank typically requires payment prior to closing
Other Bank Admin / Underwriting Fee / Deposit	\$10,000.00	bank typically requires admin fee and/or deposit for third party expense prior to closing
Environmental Phase I & III/CEQR	\$125,000.00	double-check
Survey	\$15,000.00	
Sustainability Consultant & Civil Engineer, if applicable	\$66,000.00	75% of total fee typically incurred prior to closing
Partnership Mgmt./Organizational	\$15,000.00	expenses to establish JV entity and any other entities required prior to closing
HFD Tax Credit Allocation Fee	\$46,430.00	50% of allocation fee due prior to constr. fin. closing
<b>Total</b>	<b>\$1,144,741.00</b>	
50% Allocation to Each Partner	\$572,370.50	

EXHIBIT D

Acacia Site 1 Acquisition and Carrying Costs

EXHIBIT D

Acacia Site 1 Acquisition and Carrying Costs

Item	Amount	Notes
Acquisition Price	\$3,200,000.00	Acacia to provide invoices prior to JV execution and property transfer documenting all acquisition and carrying costs
Acquisition Closing Costs		
- Closing Cost	\$116,660.00	
- Mortgage Interest	\$12,133.55	
- Real Estate Cost / Municipal	\$9,580.00	
- Real Estate Taxes	\$1,400.37	
<b>Subtotal - Acquisition</b>	<b>\$3,339,773.92</b>	
Carrying Costs - Pre-JV Execution		
- Miscellaneous	\$ 5,002.00	estimated through 4/30/2015 insurance and fencing
- Real Estate Taxes	\$0.00	included in mortg int & escrows
- Mortgage Interest & Escrows as of 12/31/2015	\$134,026.95	(paid by mortgage lender escrows)
- Mortg Int & Escrows - estimate 1/1-4/30/2016	\$40,482.90	
<b>Total</b>	<b>\$3,519,285.77</b>	
50% Allocation to Each Partner	\$1,759,642.88	

**1675 JV ASSOCIATES LLC**

**FIRST AMENDMENT  
TO  
AMENDED AND RESTATED OPERATING AGREEMENT**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED OPERATING AGREEMENT (this "**Agreement**") dated as of August 11, 2017 by and between The Promesa Housing Development Fund Corporation ("Acacia"), a New York not-for-profit corporation, with an address at c/o Office of Legal Affairs, 300 East 175<sup>th</sup> Street, Bronx, New York 10457 and Phipps 1675 Associates LLC ("**Phipps**") and together with Acacia, the "**Members**"), a New York limited liability company with an address at c/o Phipps Houses, 902 Broadway, 13<sup>th</sup> Floor, New York, New York 10010.

**W I T N E S S E T H:**

WHEREAS, 1675 JV Associates LLC (the "**Company**") was organized pursuant to Articles of Organization filed with the Secretary of the State of the State of New York on October 5, 2015;

WHEREAS, Phipps entered into that certain Operating Agreement of the Company dated as of October 5, 2015, which was amended and restated pursuant to that certain Amended and Restated Operating Agreement of the Company dated as of May 18, 2016 (the "**Operating Agreement**", and capitalized words used but not herein defined shall have the meanings given to them in the Operating Agreement); and

WHEREAS, the parties now desire to amend the Agreement as more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the covenants and conditions herein contained, and for other good valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Section 2.7.10(b) is hereby amended and restated in the entirety as follows:

(b) An affiliate of the Manager, 1679 Associates LLC, a New York limited liability company ("1679 Purchaser"), has entered into that certain contract of sale dated August 11, 2017 with Urban Facilities Corp. for the purchase and sale of that certain real property located at 1679 Westchester Avenue, Bronx, New York and designated as Block 3780 Lot 51 on the Tax Map of the City of New York, Bronx County ("Site 2") for a purchase price of \$1,800,000.00. 1679 Purchaser shall be reimbursed for all actual costs and expenses connected to the acquisition of Site 2 by the Company which expenses shall be considered a Predevelopment Expense and funded by Capital Contributions made by the Members pursuant to Section 3.1 hereof. Site 2 shall be included in the development of the Project and upon the closing of the Construction Loan, the Manager will cause the 1679 Purchaser to transfer Site 2 to the Borrower for \$1.00.

2. Except as specifically modified herein, all terms and conditions of the Operating Agreement remain unmodified and in full force and effect.

3. If any term, covenant or condition of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

4. This Agreement shall be construed according to and governed by the laws of the State of New York, excluding any conflict of laws rules.

5. This Agreement may be executed in multiple counterparts, and each such counterpart shall be considered an original, but all of which together shall constitute one and the same instrument. The exchange of signature pages by facsimile or Portable Document Format ("PDF") transmission shall constitute effective delivery of such signature pages. Signatures of the parties transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

[Signature Pages Follows]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.


**PHIPPS 1675 ASSOCIATES LLC**

By: Phipps Houses, sole member

By: 

Name: MICHAEL WADMAN  
Title: AUTHORIZED REPRESENTATIVE

**THE PROMESA HOUSING DEVELOPMENT FUND CORPORATION**

By: 

Name: RALPH DECLET  
Title: Vice President

**OPERATING AGREEMENT**

**OF**

**1675 WESTCHESTER AVENUE LIHTC ASSOCIATES LLC**

**As of October 4, 2018**

**1675 WESTCHESTER AVENUE LIHTC ASSOCIATES LLC**  
**Operating Agreement**

Article I.	Formation and Name: Office; Purpose; Term.....	1
	1.1. Organization.....	1
	1.2. Name of the Company .....	1
	1.3. Purpose .....	1
	1.4. Term .....	1
	1.5. Registered Agent.....	1
	1.6. Members .....	1
Article II.	Members; Capital; Capital Account.....	2
	2.1. Initial Capital Contribution .....	2
	2.2. Additional Capital Contributions .....	2
	2.3. No Interest on Capital Contribution.....	2
	2.4. Return of Capital Contributions.....	2
	2.5. Form of Return of Capital.....	2
	2.6. Loans .....	2
Article III.	Profit, Loss, and Distributions .....	2
	3.1. Distributions of Cash Flow .....	2
Article IV.	Management: Rights, Powers, and Duties .....	2
	4.3. Management.....	2
	4.4. Liability and Indemnification.....	3
Article V.	Transfers of Interest .....	3
	5.1. Transfers .....	3
Article VI.	Admission of Additional Members.....	3
	6.1. Admission of Additional Members.....	3
Article VII.	Capital Accounts .....	4
	7.1. Maintenance of Capital Accounts.....	4
	7.2. Initial Capital Account .....	4
	7.3. Increases in Capital Account.....	4
	7.4. Reductions in Capital Account .....	4
	7.5. Allocations of Profits and Losses.....	4
	7.6. Special Allocations Attributable to Nonrecourse Debt.....	4
	7.7. Miscellaneous Allocation Rules .....	5
	7.8. Tax Allocations.....	5

Article VIII.	Books and Records; Accounting and Tax Accounting .....	6
	8.1. Books and Records: Right to Inspect .....	6
	8.2. Tax Return; Tax Matters Partner .....	6
	8.3. Federal Income Tax Elections.....	6
	8.4. Partnership Status.....	6
	8.5. Commingling .....	6
	8.6. Taxes Withheld or Paid on Behalf of Member or Assignee .....	6
Article IX.	Dissolution, Liquidation, and Termination	
	of the Company .....	7
	9.1. Events of Dissolution.....	7
Article X.	General Provisions .....	10
	10.1. Applicable Law .....	10
	10.2. Article and Section Titles .....	10
	10.3. Separability of Provisions .....	10

# 1675 WESTCHESTER AVENUE LIHTC ASSOCIATES LLC

## OPERATING AGREEMENT

This Operating Agreement (this "Agreement") is adopted, executed, and agreed to as of this 4<sup>th</sup> day of October 2018 by 1675 Westchester Avenue Associates LLC, a New York limited liability company with an address at 902 Broadway, 13<sup>th</sup> Floor, New York, New York 10010 and Phipps Houses Holdings LLC, a New York limited liability company having an address at 902 Broadway, 13<sup>th</sup> Floor, New York, New York 10010 (collectively, the "Members" and each a "Member").

### Article I

#### Formation and Name; Office; Purpose; Term

1.1. Organization. The Members are organizing a limited liability company pursuant to the New York Limited Liability Company Law, as amended from time to time (the "Law"), and pursuant to the provisions of this Agreement and, for that purpose, has caused the Articles of Organization filed with the New York State Department of State on October 4, 2018.

1.2. Name of the Company. The name of the limited liability company shall be 1675 Westchester Avenue LIHTC Associates LLC (the "Company"). The Company may do business under that name and under any other name or names upon which the Manager decides. If the Company does business under a name other than that set forth in its Articles of Organization, then the Company shall file a certificate as required by the Law.

1.3. Purpose. The Company is organized for the purpose leasing, owning or managing real estate, any lawful purpose permitted by the Law, and to do any and all things necessary, convenient, or incidental to those purposes.

1.4. Term. The Company shall have a perpetual existence, unless its existence is sooner terminated pursuant to Article 9 of this Agreement.

1.5. Registered Agent. The Company shall not have a registered agent.

1.5. Members. The names, present mailing addresses, and percentage of membership interest of each Member are as follows:

Name	Address	Membership Interest
1675 Westchester Avenue Associates LLC	902 Broadway, 13 <sup>th</sup> Floor, New York, New York 10010	99.5%
Phipps Houses Holdings LLC	902 Broadway, 13 <sup>th</sup> Floor, New York, New York 10010	0.5%

**Article II**  
**Members; Capital; Capital Account**

2.1. Initial Capital Contribution. Upon the execution of this Agreement, the Members are contributing to the Company cash in the amount of \$10.00.

2.2. No Additional Capital Contributions. The Members shall not be required to contribute any additional capital contributions to the Company. The Members shall not have any personal liability for any debt, obligation or liability of the Company.

2.3. No Interest on Capital Contributions. The Member shall not be paid interest on its Capital Contribution.

2.4. Return of Capital Contributions. Except as otherwise provided in this Agreement, the Members shall not have the right to receive any return of their capital contributions.

2.5. Form of Return of Capital. If a Member is entitled to receive a return of its capital contribution, the Company may distribute cash, notes, property, or a combination thereof to the Member in return of the capital contribution.

2.6. Loans. The Members may, at any time, make or cause a loan to be made to the company in any amount and on those terms as determined by the Manager.

**Article III**  
**Profit, Loss, and Distributions**

3.1. Distributions of Cash Flow. Cash Flow for the Company shall be distributed to the Members at such times and in such amounts as determined by the Manager. Such distributions shall be allocated to the Member in the same proportion as its then capital account balance.

**Article IV**  
**Management: Rights, Powers, and Duties**

4.3. Management.

4.3.1. The Company shall be managed by 1675 Westchester Avenue Associates LLC (the "Manager"). The Manager shall have the full and exclusive right and power to act for and bind the Company.

4.3.2. The Manager may cause the Company to employ and retain such other persons as may be necessary or appropriate for the conduct of the Company's business, on such terms as the Manager shall determine, including persons who may be designated as officers. The officers of the Company, if any, shall have the titles, powers and duties delegated to them by the Manager. Any number of titles may be held by the same officer.

4.3.3. The Manager shall have the power and authority to delegate his or her right and power to manage and control the business and affairs of the Company to one or more other persons (including one or more committees, managers and agents, employees and/or affiliates of a manager), including delegation by management agreement or other arrangement.

#### 4.4. Liability and Indemnification.

4.4.1 Except as otherwise provided by law, no Member, trustee, manager, officer, or agent, or successors or descendants shall be liable, responsible or accountable in any way for damages or otherwise to the Company or to any of the Members for any act or failure to act pursuant to this Agreement or otherwise unless there is a judicial determination that (i) such person acted in bad faith, (ii) the conduct of such person constituted intentional misconduct or a knowing violation of law, (iii) such person gained a financial benefit to which he or she was not legally entitled.

4.4.2. The Company shall indemnify, defend and hold harmless the Members, Manager, trustees, managers, officers or agents and any delegate of the Members, successors or descendants (severally, (the "Indemnitee" and collectively, the "Indemnitees"), from and against any claims, losses, liabilities, damages, fines, penalties, costs and expenses (including, without limitation, reasonable fees and disbursements of counsel and other professionals) arising out of or in connection with any act or failure to act by an Indemnitee pursuant to this Agreement, or the business and affairs of the Company, to the fullest extent permitted by law; provided, however, that an Indemnitee shall not be entitled to indemnification hereunder if there is a judicial determination that (a) such Indemnitee's actions or omissions to act were made in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or (b) such Indemnitee personally gained a financial benefit to which the Indemnitee was not legally entitled.

### **Article V**

#### **Transfers of Interest**

5.1. Transfers. No Member may transfer in whole or in part his interest in the Company, without the prior written consent of the Manager except as described in Section 5.2 below.

5.2. Assignment of Membership Interest of Phipps Houses Holdings LLC. Upon the transfer of the equitable and beneficial interest in that to be constructed certain condominium unit consisting of residential apartment units for low-income households located at 1675-1679 Westchester Avenue, Bronx, New York from the Manager to the Company, Phipps Houses Holdings LLC shall, without requirements for any notice or formal instrument of assignment, be deemed to have withdrawn from the Company and assigned, conveyed, transferred and delivered all of its rights, title and interest in and to its membership interest in the Company to the Manager. In furtherance of the foregoing, Phipps Houses Holdings LLC shall execute and deliver any confirmatory instruments as Manager shall request to evidence such withdrawal and assignment.

**Article VI**  
**Admission of Additional Members**

6.1. Admission of Additional Members. The Members may not admit additional members to the Company without the prior written consent of the Manager.

**Article VII**  
**Capital Accounts**

Each Member's Capital Account shall be maintained in accordance with the following provisions:

7.1. Maintenance of Capital Accounts. A separate Capital Account shall be maintained on the books of the Company for each Member in accordance with Treasury Regulation Section 1.704-1 (b) (2) (iv).

7.2. Initial Capital Account. Each Member's Capital Account shall initially equal the cash such Member contributes to the capital of the Company upon such Member's admission to the Company.

7.3. Increases in Capital Account. Each Member's Capital Account shall be increased by (a) the amount of any additional cash or the fair market value of property (net of liabilities secured by such contributed property that the Company is deemed to assume or take subject to under Code Section 752) subsequently contributed by such Member to the capital of the Company, after taking into consideration the provisions of Article 2, (b) the amount of any Net Profits or items thereof allocated to such Member pursuant to Section 7.5, and (c) the amount of any income or gain specially allocated to such Member pursuant to Section 7.6.

7.4. Reductions in Capital Account. Each Member's Capital Account shall be reduced by (a) the amount of all cash distributions made to such Member to the extent provided in Articles 2 and 3 hereof, (b) the fair market value of any property (net of liabilities secured by such distributed property that the Member is considered to assume or take subject to under Code Section 752) distributed by the Company to such Member, (such fair market value to be agreed upon between the Company and the recipient Member) (c) the amount of any Net Losses or items thereof allocated to such Member pursuant to Section 7.5, and (d) the amount of any loss or deductions specially allocated to such Member pursuant to Section 7.6.

7.5. Allocations of Profits and Losses. Net Profits or Net Losses for any Fiscal Year (determined after giving effect to the special allocations required by Section 7.6) shall be allocated among the Members in a manner which the Manager reasonably deems necessary or appropriate to cause the allocations to have "substantial economic effect" or to be in accordance with the Members' respective "interests" in the Company, as such quoted terms are defined in applicable Treasury Regulations under Code Section 704(b).



7.6. Special Allocations Attributable to Nonrecourse Debt. The following special allocations shall be made in the following order and priority, before giving effect to the allocations of Net Profits or Net Losses:

7.6.1. Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Treasury Regulations, notwithstanding any other provision of this Article 7, if there is a net decrease in Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Minimum Gain, determined in accordance with Section 1.704-2(g) of the Treasury Regulations. This Section 7.6.1 is intended to comply with the Minimum Gain Chargeback requirement in Section 1.704-2(f) of the Treasury Regulations and shall be interpreted consistently therewith.

7.6.2. Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Treasury Regulations, notwithstanding any other provision of this Article 7, if there is a net decrease in Nonrecourse Debt Minimum Gain attributable to a Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Nonrecourse Debt Minimum Gain attributable to such Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Treasury Regulations, shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net Nonrecourse Debt Minimum Gain attributable to such Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations. This Section 7.6.2 is intended to comply with the Nonrecourse Debt Minimum Gain Chargeback requirement in Section 1.704-2(i)(4) of the Treasury Regulations and shall be interpreted consistently therewith.

7.6.3. Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be allocated in accordance with the Members' respective Percentage Interests as in effect during such Fiscal Year.

7.6.4. Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Nonrecourse Debt to which such Nonrecourse Deductions are attributable in accordance with Section 1.704-2(i)(1) of the Treasury Regulations.

#### 7.7. Miscellaneous Allocation Rules.

7.7.1. In the event that, on other than the first day of any Fiscal Year, there is a Disposition of a Membership Interest, then Net Profits, Net Losses, and other items of income, gain, loss and deduction for such Fiscal Year shall be allocated between the transferor and the transferee in accordance with Code Section 706, using any convention permitted by law and selected by the Manager.

7.7.2. Except as otherwise required by this Article 7, each item of the Company's income, gain, loss and deduction which is reflected in the calculation of Net Profits or Net Losses for any

Fiscal Year shall be allocated among the Members in the same proportion as they share Net Profits or Net Losses for such Fiscal Year.

7.7.3. Any elections or decisions relating to allocations under this Article 7 (to the extent not otherwise provided by this Article 7) shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement, consistent with applicable Treasury Regulations.

7.7.4. Capitalized terms used in this Article 7 which are not defined elsewhere in this Agreement shall have the meanings set forth in the Treasury Regulations under Code Section 704.

7.8. Tax Allocations. For federal income tax purposes, except as otherwise provided in this Section 7.8 or by applicable tax law, all items entering into the calculation of Taxable Income or Tax Loss for any Fiscal Year shall be allocated among the Members in the same manner that the corresponding item is allocated under Sections 7.5 through 7.7 for that year. It is recognized that the amount of any item of income, gain, loss, deduction and credit for federal income tax purposes for any Fiscal Year may differ from the amount of the corresponding item which enters into the computation of Net Profits or Net Losses (or items thereof) for such year.

### **Article VIII**

#### **Books and Records; Accounting and Tax Accounting**

8.1. Books and Records: Right to Inspect. The Company shall keep adequate books and records reflecting all financial activities of the Company. The books and records will be based on the cash method of accounting in accordance with the Code. Such books and records may be inspected and audited by any Member or such Member's duly authorized representative at such Member's sole cost and expense, at any time during business hours, at the principal office of the Company on reasonable prior written request.

8.2. Tax Return; Company Representative. The Manager shall cause the Company to file timely a Federal income tax information return and all other tax returns required to be filed by the Company for each taxable year or part thereof. Within three months after the end of each taxable year of the Company, the Manager shall cause each Member to be furnished with information necessary for preparing such Member's income tax return, unless an extension for the furnishing of such information is required by the Manager. The Manager shall serve as the Company Representative (the "Company Representative") under Subchapter 63C of the Code, as amended by the Bipartisan Budget Act of 2015, P.L. 114-74 ("New Subchapter 63C") so long as it qualifies as Company Representative thereunder or until it resigns or is removed by Consent. The Company Representative shall have all of the powers and authority of a Company Representative under New Subchapter 63C and shall represent the Company in all dealings with the Internal Revenue Service. The Company Representative shall provide to the Members prompt notice of any communication to or from, or agreements with, any federal, state, or local tax authority regarding any Company tax return or other Company tax matter, including a summary of the provisions thereof.

8.2.1 Notwithstanding anything herein to the contrary, the Company Representative shall be governed by the following requirements in the performance of its duties as Company Representative hereunder:

- (a) Unless the Members Consent otherwise, for each taxable year for which New Subchapter 63C is effective, and to the extent permitted by law, the Company Representative shall duly and timely elect to have New Subchapter 63C not apply to the Company and shall notify each Member of such election.
- (b) Unless the Members Consent otherwise, the Company Representative shall not elect under Code Section 6226 to require each Person who was a Member during the taxable year of the Company that was audited (the "Reviewed Year") to personally bear any tax, interest and penalty resulting from adjustments based on such audit.
- (c) The Company Representative shall duly and timely make any election and take such other actions as may be prescribed in any written direction from the Members to the Company Representative concerning any of the matters described in the foregoing clauses (a) through (b).
- (d) If the Internal Revenue Service makes an adjustment to the Company's income, losses, deductions or credits or the Company makes any such adjustment for a year for which a federal income tax return had been previously filed, the adjustment, to the maximum extent permitted by law, shall be allocated, on the books and records of the Company, to the Members (including former Members whose interest have not been fully liquidated) in proportion to their respective Membership Interests (including the interests of their respective predecessors) in the Company for the year to which the adjustment related and, if the Company pays the tax liability associated with the adjustment, such payment shall be allocated, to the maximum extent permitted by law, to such Members in accordance with the way that the corresponding income or reduction in tax credits was allocated.
- (e) In the event that, under applicable Treasury Regulations or other applicable law or the Internal Revenue Service guidance, the Company is not permitted to elect to have the adjustment reported and borne by the Members or the Members directs the Company Representative not to make such election, each Member agrees to make an additional Capital Contribution to the Company, within fifteen (15) Business Days of notice from the Company Representative, of the Member's respective share of the payment due to the Internal Revenue Service as a result of the Adjustment. Each Member's respective Capital Contribution to be made pursuant hereto shall be the amount relative to their respective Membership Interests in the Company.
- (f) The Company Representative shall cooperate with the Members in good faith to amend this Agreement if, after promulgation of Treasury Regulations or other guidance or rules issued by the Internal Revenue Service implementing New Subchapter 63C, the Members determine that an amendment to this Agreement is

necessary or beneficial in order to maintain the intent of the Members with respect to (A) the obligations and limitations of the Person who is acting as the Company Representative and (B) any other issues raised by such Regulations.

8.2.2 Notwithstanding anything to the contrary contained herein, the Company Representative, in its capacity as the Company Representative, shall not take any of the following actions without first obtaining Consent (regardless of if the Company has been dissolved or the Member has withdrawn from the Company, voluntarily or involuntarily, if the result of such actions would adversely affect the Members). The Members shall have thirty (30) days to respond (“Response Time”) to any request from the Company Representative in connection with any of the following actions. In the event a member fails to respond, and only if they fail to respond, within the Response Time, the member’s lack of response shall be deemed Consent to the action of the Company Representative.

- (a) Extend the statute of limitations for assessing or computing any tax liability against the Company (or the amount or character of any Company tax item);
- (b) Settle any audit with the Internal Revenue Service concerning the adjustment or readjustment of any Company tax item;
- (c) File a request for an administrative adjustment with the Internal Revenue Service at any time or file a petition for judicial review with respect to any Internal Revenue Service adjustment;
- (d) Initiate or settle any judicial review or action concerning the amount or character of any Company tax item;
- (e) Intervene in any action brought by any other Member for judicial review of a final adjustment of any Company tax item; or
- (f) Take any other action which would have the effect of finally resolving a tax matter affecting the rights of the Company and its Members or otherwise have a material adverse effect on any tax matters affecting the Company and its Members.

8.2.3 The Company Representative shall keep the Members advised of any dispute the Company may have with any federal, state or local taxing authority and shall afford the Members the right to participate directly in negotiations with any such taxing authority in an effort to resolve any such dispute.

8.3. Federal Income Tax Elections. The Manager is authorized to cause the Company to make such elections for Federal income tax purposes as it deems advisable, and shall, in the event of a transfer of all or part of the Percentage Interest of any Member, make an election pursuant to Section 754 of the Code to adjust the basis of the assets of the Company.

8.4. Partnership Status. It is the intention of the Members that the Company shall be taxed as a “partnership” for federal, state and local income tax purposes. The Members shall take all

reasonable actions, including the amendment of this Agreement and the execution of other documents, as may be required in order for the Company to qualify as a partnership for these purposes. Upon the withdrawal of Samaritan Gerard GP, Inc. and assignment of its membership interests to the Manager, pursuant to Section 5.2, the Company shall be treated as a disregarded entity for federal tax income purposes.

8.5. **Commingling.** Under no circumstances shall the Company's assets be commingled with the assets of Manager or any other party.

8.6. **Taxes Withheld or Paid on Behalf of Member or Assignee.**

8.6.1. In the event that, under the Code or any other federal, state, local or foreign law, rule or regulation which is currently in effect or which may be promulgated hereafter ("Applicable Law"), the Company is required to deduct and withhold any amount from an actual distribution to a Member or the assignee of a Member ("Assignee"), the amount so deducted and withheld from such distribution shall, for all purposes of this Agreement, be treated as a distribution to such Member or Assignee of the same type as the distribution giving rise to the obligation.

8.6.2. In the event that Applicable Law requires the Company (or any third party acting on behalf of or with respect to the Company) to pay or withhold any amount on behalf of or with respect to a Member or Assignee (other than any amount required to be deducted and withheld from actual distributions in accordance with Section 8.6.1), then the payment or withholding of any such amount shall be considered a loan ("Company Tax Loan") by the Company to such Member or Assignee (the "Borrowing Member"). For the avoidance of doubt, it is acknowledged and agreed that any amount with respect to a Member or Assignee which is paid out of the proceeds of a Disposition of any Company asset in accordance with applicable New York Tax Law (or any similar provision under the laws of other jurisdictions), whether directly by the transferee of such asset or out of any escrow established in connection with such Disposition, shall be subject to the provisions of this Section 8.6.2.

8.6.2.1. The Borrowing Member shall repay to the Company any such Company Tax Loan within thirty (30) days after the Manager delivers a written demand therefor, together with interest at a floating rate equal to the "applicable federal rate" as in effect from time to time under Code Section 1274 with respect to debt instruments having a term of not over three years.

8.6.2.2. In addition to any other rights of the Company to enforce its entitlement to receive payment of the Company Tax Loan, plus any accrued interest thereon, the Company shall offset the unpaid balance of such Company Tax Loan against distributions to which the Borrowing Member otherwise would be entitled under this Agreement, and the amount so offset shall be deemed for all purposes of this Agreement to be a distribution to the Borrowing Member followed by a repayment of such Company Tax Loan, in whole or in part, as the case may be.

8.6.3. Without limiting the application of Section 8.6.2, the Manager may request from each Member or Assignee a certification, affidavit or other evidence that such Person (i) is not a foreign person for purposes of Code Sections 1445 and 1446, (ii) is not a nonresident of a particular state or

local jurisdiction for purposes of such jurisdiction's tax laws or (iii) is otherwise exempt from the tax withholding or payment requirements imposed by a particular state or local jurisdiction. In the event that such Member or Assignee does not provide such certification, affidavit or other evidence satisfactory in form and substance to the Manager, the Manager may assume, for purposes of tax withholding or payments, that such Person is (x) a foreign person, (y) a nonresident of the applicable state or local tax jurisdiction or (z) otherwise not exempt from a particular jurisdiction's tax withholding or payment requirements, as the case may be.

## **Article IX Dissolution, Liquidation, and Termination of the Company**

9.1 Events of Dissolution. The Company shall be dissolved upon the happening of any of the following events:

9.1.1. upon the approval of the Manager;

9.1.2. upon the entry of a decree of judicial dissolution under the Law.

Notwithstanding the foregoing, the Company shall not be dissolved while obligations incurred in furtherance of its purposes remain outstanding, unless, with the consent of the obligees, the obligations are transferred or assigned to an entity with equal or greater financial capacity.

Upon dissolution of the Company, the assets will be distributed to the Members or their designees.

## **Article X General Provisions**

10.1. Applicable Law. All questions concerning the construction, validity, and interpretation of this Agreement and the performance of obligations imposed by this Agreement shall be governed by the internal law of the State of New York and not the law of conflicts of the State of New York.

10.2. Article and Section Titles. The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

10.3. Separability of Provisions. Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

[Signature Page to Follow]

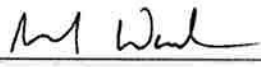
IN WITNESS WHEREOF, the Members have executed, or caused this Agreement to be executed as of the date set forth hereinabove.

MEMBERS:

1675 WESTCHESTER AVENUE  
ASSOCIATES LLC


By: 1675 JV Associates LLC, its sole member

By: Phipps 1675 Associates LLC, its managing member

By:   
Name: Michael Wadman  
Title: Authorized Representative

Phipps Houses Holdings LLC

By: Homes for New Yorkers, Inc., its sole member

By:   
Name: Michael Wadman  
Title: Vice President

**ATTACHMENT C**  
**ENTITIES ACCESS AGREEMENTS**



1675 Westchester Avenue HDFC  
902 Broadway, 13<sup>th</sup> Floor  
New York, NY 10010  
(646) 361-9399

September 17, 2020


1675 Westchester Avenue LIHTC Associates LLC  
902 Broadway, 13<sup>th</sup> Floor  
New York, NY 10010

RE: Property access to perform all obligations under the New York State  
Brownfield Cleanup Program

To Whom It May Concern,

1675 Westchester Avenue HDFC currently owns the property located at 1230 Metcalf Avenue, Bronx, NY. ("the Property"). 1675 Westchester Avenue HDFC hereby authorizes 1675 Westchester Avenue LIHTC Associates LLC to access the Property to perform any and all obligations under the New York State Brownfield Cleanup Program ("BCP"). 1675 Westchester Avenue HDFC understands that 1675 Westchester Avenue LIHTC Associates LLC will also need to provide access to the New York State Department of Environmental Conservation, the New York State Department of Health, and AKRF, Inc. to perform requisite inspections, sampling, and all requirements under the BCP.

Sincerely,



Michael Wadman  
Vice President  
1675 Westchester Avenue HDFC

1675 Westchester Avenue HDFC  
902 Broadway, 13<sup>th</sup> Floor  
New York, NY 10010  
(646) 361-9399

September 17, 2020

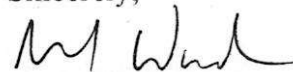
1675 Westchester Avenue Associates LLC  
902 Broadway, 13<sup>th</sup> Floor  
New York, NY 10010

RE: Property access to perform all obligations under the New York State  
Brownfield Cleanup Program

To Whom It May Concern,

1675 Westchester Avenue HDFC currently owns the property located at 1230 Metcalf Avenue, Bronx, NY. ("the Property"). 1675 Westchester Avenue HDFC hereby authorizes 1675 Westchester Avenue Associates LLC to access the Property to perform any and all obligations under the New York State Brownfield Cleanup Program ("BCP"). 1675 Westchester Avenue HDFC understands that 1675 Westchester Avenue Associates LLC will also need to provide access to the New York State Department of Environmental Conservation, the New York State Department of Health, and AKRF, Inc. to perform requisite inspections, sampling, and all requirements under the BCP.

Sincerely,



Michael Wadman  
Vice President  
1675 Westchester Avenue HDFC

**ATTACHMENT D**  
**PROPERTY DEED**

**NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER**

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



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**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 6**

**Document ID: 2018021500626001**

Document Date: 02-13-2018

Preparation Date: 02-23-2018

Document Type: DEED

Document Page Count: 5

**PRESENTER:**

CHICAGO TITLE INSURANCE CO. (PICK-UP)  
711 THIRD AVE, 5TH FLOOR  
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212-880-1200  
CTINYRECORDING@CTT.COM

**RETURN TO:**

HIRSCHEN SINGER & EPSTEIN LLP  
ATTENTION: OLIVER CHASE ESQ  
902 BROADWAY 13TH FLOOR  
NEW YORK, NY 10010

**PROPERTY DATA**

Borough	Block	Lot	Unit	Address
BRONX	3780	1	Entire Lot	1675 WESTCHESTER AVENUE
<b>Property Type: COMMERCIAL REAL ESTATE</b>				

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or DocumentID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**GRANTOR/SELLER:**

1675 JV ASSOCIATES LLC  
902 BROADWAY, 13TH FLOOR  
NEW YORK, NY 10010

**GRANTEE/BUYER:**

1675 WESTCHESTER AVENUE HOUSING  
DEVELOPMENT  
FUND CORPORATION, 902 BROADWAY FL 13  
NEW YORK, NY 10010-6033

**FEES AND TAXES**

**Mortgage :**

Mortgage Amount: \$ 0.00

Taxable Mortgage Amount: \$ 0.00

Exemption:

TAXES: County (Basic): \$ 0.00

City (Additional): \$ 0.00

Spec (Additional): \$ 0.00

TASF: \$ 0.00

MTA: \$ 0.00

NYCTA: \$ 0.00

Additional MRT: \$ 0.00

**TOTAL: \$ 0.00**

Recording Fee: \$ 62.00

Affidavit Fee: \$ 0.00

**Filing Fee:**

\$ 250.00

NYC Real Property Transfer Tax:

\$ 0.00

NYS Real Estate Transfer Tax:

\$ 0.00

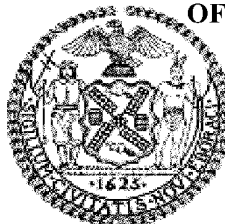
**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE**

**CITY OF NEW YORK**

Recorded/Filed 02-28-2018 16:37

City Register File No.(CRFN):

**2018000070905**



*Annette McMill*

**City Register Official Signature**

CT 18-80025-BX.

**FULL COVENANT AND WARRANTY DEED**

SPP

**THIS INDENTURE**, made this 13th day of February, 2018.

**BETWEEN**

**1675 JV ASSOCIATES LLC**, a New York limited liability company with an office at 902 Broadway, 13<sup>th</sup> Floor, New York, New York 10010, (hereinafter referred to as "**Grantor**"),

and

**1675 WESTCHESTER AVENUE HOUSING DEVELOPMENT FUND CORPORATION**, a New York not-for-profit corporation with an office at 902 Broadway, 13<sup>th</sup> Floor, New York, New York 10010 (hereinafter referred to as "**Grantee**")

**WITNESSETH**, that the Grantor, in consideration of One Dollar (\$1) and other valuable consideration paid by the Grantee does hereby grant and release to Grantee, the heirs or successors and assigns of Grantee forever

**ALL** that certain plot, piece of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Bronx, County of Bronx, and State of New York, known and designated on the Tax Map of the City of New York for Bronx County as Block 3780, Lot 1, bounded and described as set forth in Schedule "A", annexed hereto and made a part hereof.

**SUBJECT** to all easements, rights of way and restrictions of record.

**TOGETHER** with all right, title and interest, if any, of Grantor in and to any streets and roads abutting the above described premises to the center lines thereof; **TOGETHER** with the appurtenances and all the estate and rights of Grantor in and to said premises; **TO HAVE AND TO HOLD** the Premises herein granted to Grantee, the heirs or successors and assigns of Grantee forever.

**AND** the Grantor, in compliance with Section 13 of the Lien Law, covenants that the Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the same for any other purpose.

**AND** the Grantor covenants, as follows:

**FIRST** that said Grantor is seized of said Premises in fee simple and has good right to convey the same;

**SECOND**, that the Grantee shall quietly enjoy the said Premises;

(10)

**THIRD**, that the said Premises are free from encumbrances, except as set forth in the Certificate for Title Insurance issued by Chicago Title Insurance Company (No.: CT15-00728-BX);

**FOURTH**, that the Grantor will execute or procure any further necessary assurance of the title to said Premises; and

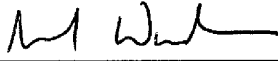
**FIFTH**, that the Grantor will forever warrant the title to said Premises.

The word "party" shall be construed as if it read "parties", whenever the sense of this indenture so requires.

**IN WITNESS WHEREOF**, the Grantor has duly executed this deed the day and year first above written.

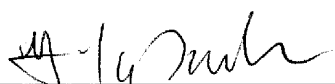
GRANTOR:

1675 JV ASSOCIATES LLC

By:   
Name: Michael Wadman  
Title: Authorized Signatory

STATE OF NEW YORK    )  
  ) SS.:  
COUNTY OF NEW YORK )

On this 15<sup>th</sup> day of February, 2018, before me, the undersigned, personally appeared MICHAEL WADMAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
Notary Public

**FATMATA K. JALLOH**  
Notary Public, State of New York  
Registration #01JA6332614  
Qualified in Westchester County  
Commission Expires Nov. 2, 2019

**Schedule A**

**LEGAL DESCRIPTION**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Bronx, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Westchester Avenue and the easterly side of Metcalf Avenue;

THENCE northerly along the easterly side of Metcalf Avenue, 237.52 feet;

THENCE easterly at right angles to the easterly side of Metcalf Avenue, 100 feet;

THENCE southerly at right angles to the last mentioned course, 100 feet;

THENCE easterly at right angles to the last mentioned course, 53.43 feet;

THENCE southerly at right angles to the last mentioned course, 108.48 feet to a point on the northerly side of Westchester Avenue;

THENCE westerly along the northerly side of Westchester Avenue, 156.15 feet to the point or place of BEGINNING



**FULL COVENANT AND WARRANTY DEED**

**1675 JV ASSOCIATES LLC**

**TO**

**1675 WESTCHESTER AVENUE HOUSING DEVELOPMENT FUND  
CORPORATION**

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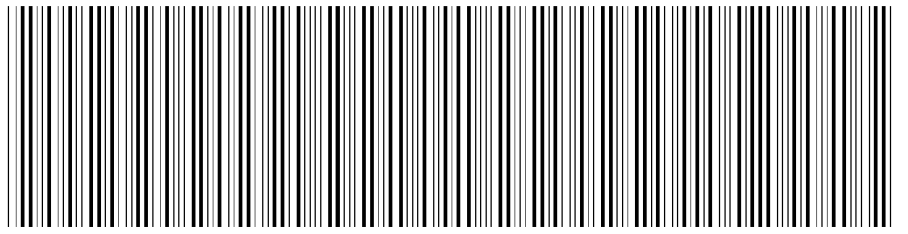
1675 Westchester Avenue  
Bronx, New York  
Block 3780 Lot 1

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Record and Return to:

Hirschen Singer & Epstein LLP  
902 Broadway, 13<sup>th</sup> Floor  
New York, New York 10010  
Attn: Oliver G. Chase, Esq.

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2018021500626001001S43E6

**SUPPORTING DOCUMENT COVER PAGE**

**PAGE 1 OF 1**

**Document ID: 2018021500626001**  
Document Type: DEED

Document Date: 02-13-2018

Preparation Date: 02-23-2018

**ASSOCIATED TAX FORM ID:** 2018020700267

**SUPPORTING DOCUMENTS SUBMITTED:**

Page Count

DEP CUSTOMER REGISTRATION FORM FOR WATER AND SEWER BILLING  
RP - 5217 REAL PROPERTY TRANSFER REPORT

1  
1



1A

The City of New York  
Department of Environmental Protection  
Bureau of Customer Services  
59-17 Junction Boulevard  
Flushing, NY 11373-5108

## Customer Registration Form for Water and Sewer Billing

### Property and Owner Information:

- (1) Property receiving service: BOROUGH: BRONX BLOCK: 3780 LOT: 1
- (2) Property Address: 1675 WESTCHESTER AVENUE, BRONX, NY 10472
- (3) Owner's Name: 1675 WESTCHESTER AVENUE HOUSING DEVELOPMENT  
Additional Name:

### Affirmation:



Your water & sewer bills will be sent to the property address shown above.

### Customer Billing Information:

#### Please Note:

- A. Water and sewer charges are the legal responsibility of the owner of a property receiving water and/or sewer service. The owner's responsibility to pay such charges is not affected by any lease, license or other arrangement, or any assignment of responsibility for payment of such charges. Water and sewer charges constitute a lien on the property until paid. In addition to legal action against the owner, a failure to pay such charges when due may result in foreclosure of the lien by the City of New York, the property being placed in a lien sale by the City or Service Termination.
- B. Original bills for water and/or sewer service will be mailed to the owner, at the property address or to an alternate mailing address. DEP will provide a duplicate copy of bills to one other party (such as a managing agent), however, any failure or delay by DEP in providing duplicate copies of bills shall in no way relieve the owner from his/her liability to pay all outstanding water and sewer charges. Contact DEP at (718) 595-7000 during business hours or visit [www.nyc.gov/dep](http://www.nyc.gov/dep) to provide us with the other party's information.

### Owner's Approval:

The undersigned certifies that he/she/it is the owner of the property receiving service referenced above; that he/she/it has read and understands Paragraphs A & B under the section captioned "Customer Billing Information"; and that the information supplied by the undersigned on this form is true and complete to the best of his/her/its knowledge.

Print Name of Owner:

Signature:  Date (mm/dd/yyyy)

Name and Title of Person Signing for Owner, if applicable:

FOR CITY USE ONLY

C1. County Code  C2. Date Deed Recorded  /  /   
 Month Day Year

C3. Book OR C4. Page

C5. CRFN



**REAL PROPERTY TRANSFER REPORT**  
 STATE OF NEW YORK  
 STATE BOARD OF REAL PROPERTY SERVICES  
**RP - 5217NYC**

**PROPERTY INFORMATION**

1. Property Location  1675 WESTCHESTER AVENUE BRONX 10472  
STREET NUMBER STREET NAME BOROUGH ZIP CODE

2. Buyer Name  1675 WESTCHESTER AVENUE HOUSING DEVELOPMENT  
LAST NAME / COMPANY FIRST NAME

LAST NAME / COMPANY FIRST NAME

3. Tax Billing Address Indicate where future Tax Bills are to be sent if other than buyer address (at bottom of form)  
     
LAST NAME / COMPANY FIRST NAME

STREET NUMBER AND STREET NAME CITY OR TOWN STATE ZIP CODE

4. Indicate the number of Assessment Roll parcels transferred on the deed  1 # of Parcels OR  Part of a Parcel

4A. Planning Board Approval - N/A for NYC  
 4B. Agricultural District Notice - N/A for NYC

5. Deed Property Size  FRONT FEET X  DEPTH OR  ACRES

Check the boxes below as they apply:  
 6. Ownership Type is Condominium   
 7. New Construction on Vacant Land

8. Seller Name  1675 JV ASSOCIATES LLC  
LAST NAME / COMPANY FIRST NAME

LAST NAME / COMPANY FIRST NAME

9. Check the box below which most accurately describes the use of the property at the time of sale:

A  One Family Residential C  Residential Vacant Land E  Commercial G  Entertainment / Amusement I  Industrial  
 B  2 or 3 Family Residential D  Non-Residential Vacant Land F  Apartment H  Community Service J  Public Service

**SALE INFORMATION**

10. Sale Contract Date  2 / 13 / 2018  
Month Day Year

11. Date of Sale / Transfer  2 / 13 / 2018  
Month Day Year

12. Full Sale Price \$  0

( Full Sale Price is the total amount paid for the property including personal property. This payment may be in the form of cash, other property or goods, or the assumption of mortgages or other obligations.) Please round to the nearest whole dollar amount.

13. Indicate the value of personal property included in the sale

14. Check one or more of these conditions as applicable to transfer:

A  Sale Between Relatives or Former Relatives  
 B  Sale Between Related Companies or Partners in Business  
 C  One of the Buyers is also a Seller  
 D  Buyer or Seller is Government Agency or Lending Institution  
 E  Deed Type not Warranty or Bargain and Sale (Specify Below)  
 F  Sale of Fractional or Less than Fee Interest ( Specify Below )  
 G  Significant Change in Property Between Taxable Status and Sale Dates  
 H  Sale of Business is Included in Sale Price  
 I  Other Unusual Factors Affecting Sale Price ( Specify Below )  
 J  None

**ASSESSMENT INFORMATION - Data should reflect the latest Final Assessment Roll and Tax Bill**


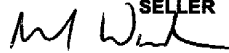
15. Building Class  I, 5 16. Total Assessed Value (of all parcels in transfer)  6 5 5 6 5 0

17. Borough, Block and Lot / Roll Identifier(s) ( If more than three, attach sheet with additional identifier(s) )

BRONX 3780 1

**CERTIFICATION**

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

 <b>BUYER</b>			<b>BUYER'S ATTORNEY</b>		
BUYER SIGNATURE		DATE	LAST NAME		FIRST NAME
FUND CORPORATION 902 BROADWAY FL 13					
STREET NUMBER	STREET NAME (AFTER SALE)		AREA CODE	TELEPHONE NUMBER	
NEW YORK					
CITY OR TOWN	STATE	ZIP CODE	SELLER SIGNATURE		DATE
	NY	10010-6033	 <b>SELLER</b>		

Buyer: 1675 Westchester Avenue  
Housing Development Fund  
Corporation  
By: Michael Wadman  
Authorized Signatory

1675 JV Associates LLC  
By Michael Wadman  
Authorized Signatory

**ATTACHMENT E**  
**METES AND BOUNDS AND PROPERTY SURVEY**

**SCHEDULE "A" PROPERTY DESCRIPTION**

**ENVIRONMENTAL EASEMENT**

**Metes & Bounds Description**

ALL that certain plot piece or parcel of land situate lying and being in the Borough and County of the Bronx, City and State of New York bounded and described as follows:

BEGINNING at a corner formed by the intersection of the northerly side of Westchester Avenue (100 feet wide) with the westerly side of Fteley Avenue (60 feet wide);

RUNNING THENCE westerly along the northerly side of Westchester Avenue, 203.55 feet to the easterly side of Metcalf Avenue (85 feet wide);

RUNNING THENCE northerly along the easterly side of Metcalf Avenue, 237.52 feet to a point;

RUNNING THENCE easterly at right angles to the easterly side of Metcalf Avenue, 100 feet to a point;

RUNNING THENCE southerly at right angles to the last mentioned course, 100 feet to a point;

RUNNING THENCE easterly at right angles to the last mentioned course, 100 feet to the westerly side of Fteley Avenue;

RUNNING THENCE southerly along the westerly side of Fteley Avenue, 99.66 feet to the corner the point or place BEGINNING.

The above described parcel has an area of 33.718 square feet or 0.77406 Acre.

TITLE NO: CT18-00149-BX

SURVEY NO. 65630-3  
 4/24/2023  
 6563000123

# ALTA/NSPS LAND TITLE SURVEY



BRONX RIVER PARKWAY

METCALF AVENUE

VICINITY MAP  
 NOT TO SCALE

### LEGAL DESCRIPTION

All the within this plan is and all other lands hereunto be in the Borough and County of the Bronx, City and State of New York bounded and described as follows: To wit, the subdivision of the parcel of land in the Westchester Avenue (100' location) into the several lots of Fteley Avenue (60 feet wide); and the subdivision of the parcel of land in the Westchester Avenue (100' location) into the several lots of Metcalf Avenue (100 feet wide) as shown on the plan of the City of New York, recorded as Volume 100 of the City of New York, at 100 feet to a corner.

### SCHEDULE 'B' ITEMS

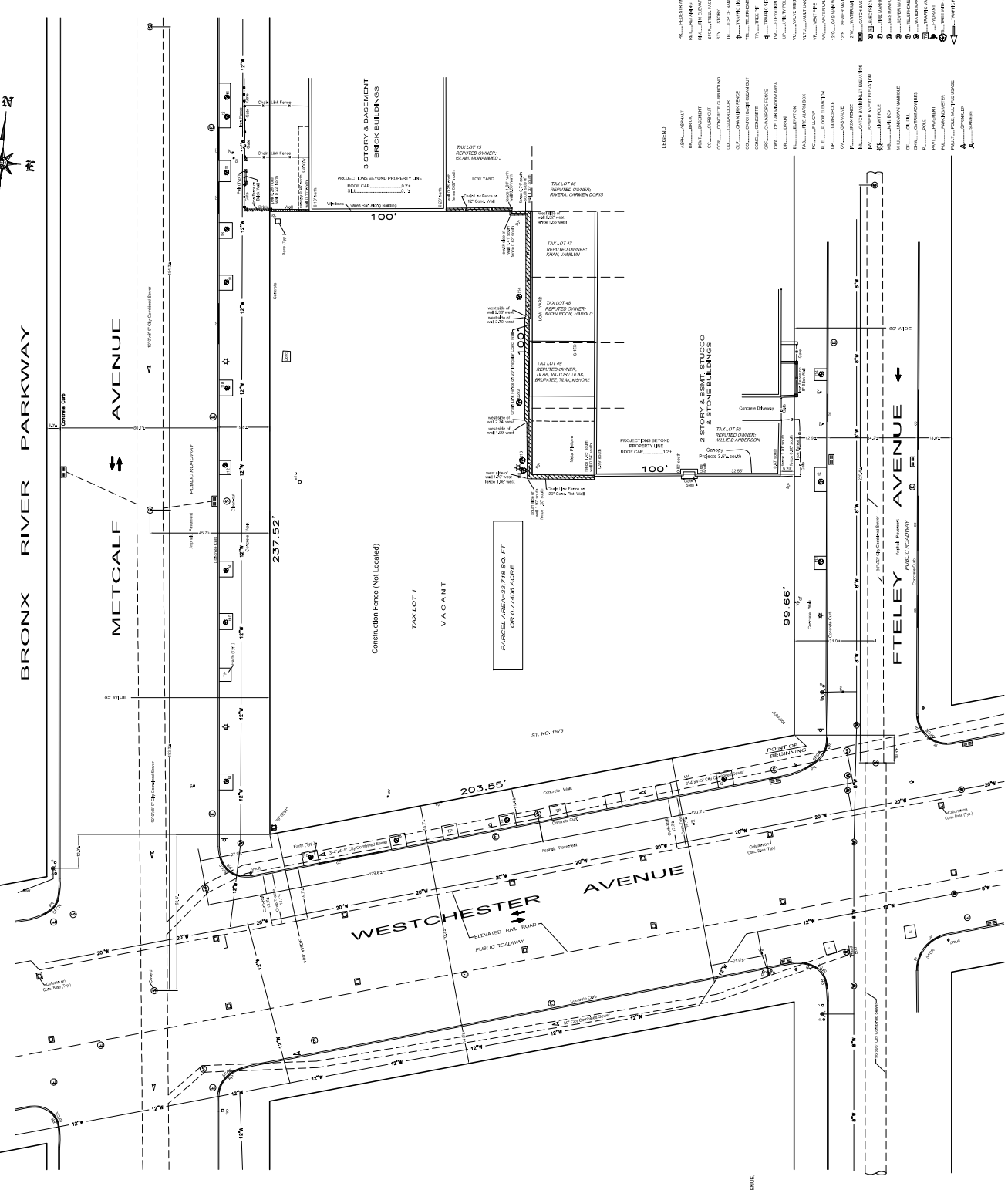
There are no items shown on this plan which are items of Schedule 'B' as defined in the City of New York, Chapter 24, § 24-05. There are no items shown on this plan which are items of Schedule 'B' as defined in the City of New York, Chapter 24, § 24-05.

### NOTES:

1. THE PARCEL SHOWN ON THIS PLAN IS SUBJECT TO THE EASEMENTS SHOWN AS NOTED ON THE PLAN.
2. THERE ARE NO PARKING SPACES ON THE PREMISES.
3. THE PREMISES IS SERVED BY GAS, WATER, ELECTRICITY, TELEPHONE AND CABLE TELEVISION.
4. THE PREMISES HAS ACCESS TO WESTCHESTER AVENUE, FTELEY AVENUE AND METCALF AVENUE.
5. THERE IS EVIDENCE OF CONDOMINIUM OR CO-OP OWNERSHIP.
6. THERE IS NO EVIDENCE OF A FLOOD HAZARD ON THE PREMISES.
7. NO EVIDENCE OF GEMETRES OR BRASS GROUND PINS.
8. THE PROPERTY DESCRIBED HEREON IS THE SAME PROPERTY DESCRIBED IN VOLUME 100 OF THE CITY OF NEW YORK, AT 100 FEET TO A CORNER, WITH AN OFFSET TO THE LINE OF DASHED LINE.
9. THE ADDRESS OF THE SUBJECT PROPERTIES IS WESTCHESTER AVENUE, BRONX, NY.

**FLOOD HAZARD NOTE:**  
 THE PARCEL SHOWN ON THIS PLAN IS SUBJECT TO THE EASEMENTS SHOWN AS NOTED ON THE PLAN. THE PARCEL IS NOT SUBJECT TO A FLOOD HAZARD AS SHOWN ON THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) FLOOD HAZARD ZONE MAP (FIRM) NUMBER 10001C0285G, EFFECTIVE DATE IS 08/12/2017.

**PRELIMINARY FLOOD HAZARD NOTE:**  
 THIS SURVEY WAS CONDUCTED AND THE PARCEL SHOWN ON THIS PLAN IS SUBJECT TO A FLOOD HAZARD AS SHOWN ON THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) FLOOD HAZARD ZONE MAP (FIRM) NUMBER 10001C0285G, EFFECTIVE DATE IS 08/12/2017.

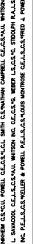


DRAWN BY: KOP

CITY OF NEW YORK  
 COUNTY OF THE BRONX  
 TAX BLOCK 3780  
 TAX LOT 1

**MONTROSE SURVEYING CO., LLP.**  
 CITY & LAND SURVEYORS  
 110 25 WEDDINGTON AVE. • BRONX, NY 10460-3400 • (718) 648-0600

REV	DATE	DESCRIPTION
01	04-12-14	ALTA/NSPS LAND TITLE SURVEY



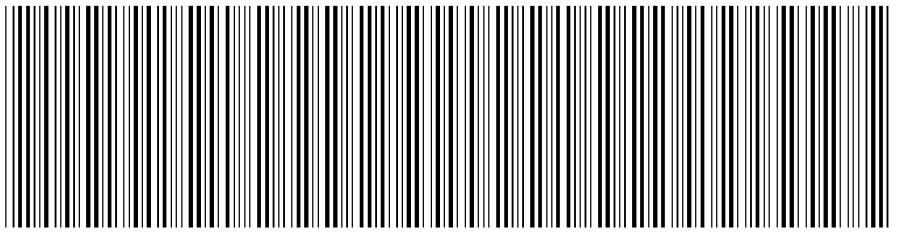
SCALE: 1" = 16'



**ATTACHMENT F**  
**REGULATORY AGREEMENT SHOWING PROOF OF AFFORDABILITY**

**NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER**

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



2019050700188006003ECA8C

**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 63**

**Document ID: 2019050700188006**

Document Date: 04-26-2019

Preparation Date: 05-07-2019

Document Type: SUNDRY AGREEMENT

Document Page Count: 61

**PRESENTER:**

CHICAGO TITLE INSURANCE CO. (PICK-UP)  
711 THIRD AVE, 5TH FLOOR  
CT18-00149-BX (CES)  
NEW YORK, NY 10017  
212-880-1200  
CTINYRECORDING@CTT.COM

**RETURN TO:**

NEW YORK CITY HOUSING DEVELOPMENT CORPORATION, ATTN: GENERAL COUNSEL  
110 WILLIAM STREET  
NEW YORK, NY 10038

**PROPERTY DATA**

Borough	Block	Lot	Unit	Address
BRONX	3780	1	Entire Lot	1240 METCALF AVENUE

**Property Type:** NON-RESIDENTIAL VACANT LAND

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or DocumentID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**PARTY 1:**

1675 WESTCHESTER AVENUE ASSOCIATES LLC  
C/O PHIPPS HOUSES, 902 BROADWAY, 13TH FLOOR  
NEW YORK, NY 10010

**PARTY 2:**

NEW YORK CITY HOUSING DEVELOPMENT CORPORATION  
110 WILLIAM STREET  
NEW YORK, NY 10038

Additional Parties Listed on Continuation Page

**FEES AND TAXES**

**Mortgage :**

Mortgage Amount: \$ 0.00

Taxable Mortgage Amount: \$ 0.00

Exemption:

TAXES: County (Basic): \$ 0.00

City (Additional): \$ 0.00

Spec (Additional): \$ 0.00

TASF: \$ 0.00

MTA: \$ 0.00

NYCTA: \$ 0.00

Additional MRT: \$ 0.00

TOTAL: \$ 0.00

Recording Fee: \$ 342.00

Affidavit Fee: \$ 0.00

Filing Fee:

\$ 0.00

NYC Real Property Transfer Tax:

\$ 0.00

NYS Real Estate Transfer Tax:

\$ 0.00

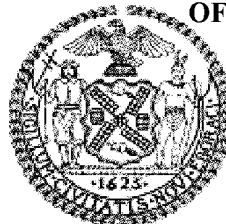
**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE**

**CITY OF NEW YORK**

Recorded/Filed 05-08-2019 10:57

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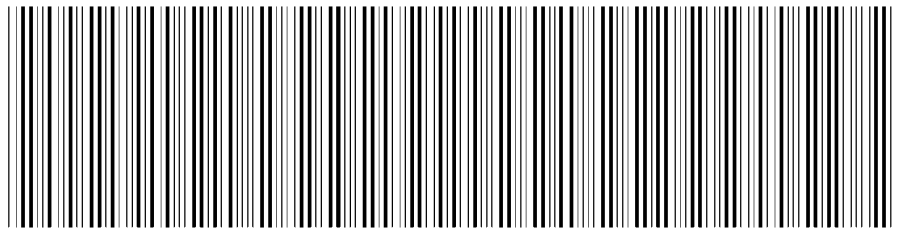
2019000146106



*Annette McMill*

City Register Official Signature

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



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**RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)**

**PAGE 2 OF 63**

**Document ID: 2019050700188006**

Document Date: 04-26-2019

Preparation Date: 05-07-2019

Document Type: SUNDRY AGREEMENT

**PARTIES**

**PARTY 1:**

1675 WESTCHESTER AVENUE LIHTC  
ASSOCIATES LLC, C/O PHIPPS HOUSES, 902  
BROADWAY, 13TH FLOOR  
NEW YORK, NY 10010

**PARTY 1:**

1675 WESTCHESTER AVENUE HOUSING  
DEVELOPMENT FUND CORPORATION, C/O PHIPPS  
HOUSES, 902 BROADWAY, 13TH FLOOR  
NEW YORK, NY 10010

**PARTIES**

**PARTY 2:**

CITY OF NEW YORK (THE), ACTING BY AND  
THROUGH ITS DEPARTMENT OF HPD, 100 GOLD  
STREET  
NEW YORK, NY 10038

---

**REGULATORY AGREEMENT**

among

**1675 WESTCHESTER AVENUE ASSOCIATES LLC,**

**1675 WESTCHESTER AVENUE LIHTC ASSOCIATES LLC,**

**1675 WESTCHESTER AVENUE HOUSING DEVELOPMENT FUND CORPORATION,**

**NEW YORK CITY HOUSING DEVELOPMENT CORPORATION**

and

**THE CITY OF NEW YORK, ACTING BY AND THROUGH ITS DEPARTMENT OF  
HOUSING PRESERVATION AND DEVELOPMENT**

---

April 26, 2019

---

BLOCK: 3780

LOT: 1

COUNTY: Bronx

---

**RECORD AND RETURN TO:**

New York City Housing Development Corporation  
110 William Street  
New York, NY 10038  
Attention: General Counsel

**REGULATORY AGREEMENT** (as may be amended, this "Agreement"), entered into as of April 26, 2019, among **1675 WESTCHESTER AVENUE ASSOCIATES LLC** (the "Non-Tax Code Borrower"), a New York limited liability company with an address at c/o Phipps Houses, 902 Broadway, 13<sup>th</sup> Floor, New York, NY 10010, **1675 WESTCHESTER AVENUE LIHTC ASSOCIATES LLC** (the "Tax Code Borrower" and together with the Non-Tax Code Borrower, jointly and severally, the "Beneficial Owner"), a New York limited liability company with an address at c/o Phipps Houses, 902 Broadway, 13<sup>th</sup> Floor, New York, NY 10010, **1675 WESTCHESTER AVENUE HOUSING DEVELOPMENT FUND CORPORATION** (the "Legal Owner", and together with the Beneficial Owner, jointly and severally, the "Sponsor"), a New York not-for-profit corporation with an address at c/o Phipps Houses, 902 Broadway, 13<sup>th</sup> Floor, New York, NY 10010, **NEW YORK CITY HOUSING DEVELOPMENT CORPORATION** ("HDC"), a New York public benefit corporation with its address at 110 William Street, New York, NY 10038, and **THE CITY OF NEW YORK** (the "City"), acting by and through its **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT** ("HPD"), with its address at 100 Gold Street, New York, NY 10038.

### **PRELIMINARY STATEMENT**

**WHEREAS**, HDC and HPD have agreed to provide a portion of the construction and permanent financing for a rental housing development and related facilities, to be constructed on the premises identified in Schedule A (the "Premises"), as further described in Schedule B (the "Project");

**WHEREAS**, as of the date of this Agreement, the Beneficial Owner and the Legal Owner have entered into a Declaration of Interest and Nominee Agreement (the "Nominee Agreement"), pursuant to which the Beneficial Owner is the beneficial owner of the Premises and the Legal Owner retains the record fee title to the Premises;

**WHEREAS**, as of the date of this Agreement, the Non-Tax Code Borrower has master leased the Tax Code Units and the CF Condo Unit (as defined below; capitalized terms used but not defined in this preliminary statement are defined in Section 1.01) to the Tax Code Borrower pursuant to a master lease (the "Master Lease");

**WHEREAS**, the Sponsor intends to create a commercial condominium on the Premises, pursuant to which the Premises will contain one structure with five condominium units: one residential space condominium unit comprised of 99 Tax Code Units with income restrictions for occupancy at or below 60% of AMI ("LIHTC Condo 1") and 50 Tax Code Units with income restrictions for occupancy at 70% of AMI ("LIHTC Condo 2" and together with LIHTC Condo 1, the "Tax Code Units Condo Units"), one residential space condominium unit for the Non-Tax Code Income-Restricted Units, one community facility space condominium (the "CF Condo Unit") and one commercial space condominium unit (the "Retail Condo Unit"); the Tax Code Units Condo Units and CF Condo Unit are expected to receive Tax Credits and comprise the "building" for purposes of Section 42 of the Tax Code; however, the Project shall include both residential space condominium units, as provided in Schedule B;

**WHEREAS**, pursuant to the Nominee Agreement, upon the creation of a condominium on the Premises, the Non-Tax Code Borrower intends to convey beneficial ownership of the Tax Code Units Condo Units to the Tax Code Borrower, the Master Lease will be terminated, and the Tax Code Borrower will be the beneficial owner of the Tax Code Units Condo Units and the CF Condo Unit; the Non-Tax Code Borrower will be the beneficial owner of the condominium unit containing the Non-Tax Code Income-Restricted Units and the Retail Condo Unit, and the Legal Owner will continue to be the record fee title owner of all condominium units.

**WHEREAS**, HDC has agreed to make, pursuant to the HDC Commitment: (i) a first mortgage loan to the Beneficial Owner in the aggregate principal amount of \$46,570,000 (the "HDC Construction Loan"), which upon the Permanent Conversion will be partially prepaid and will become a permanent mortgage loan in the aggregate principal amount of \$24,030,000 (the "HDC Permanent Loan" and together with the HDC Construction Loan, the "HDC Loan", (ii) a subordinate mortgage loan to the Beneficial Owner in the aggregate principal amount of \$15,000,000 (the "HDC Additional Loan"), (iii) a third-position mortgage loan to the Beneficial Owner in the aggregate principal amount of \$37,795,529, to be funded by a grant of City Capital funds from HPD to HDC pursuant to a Grant Agreement between HPD and HDC, dated as of the date of this Agreement (the "HDC City Capital Loan") and (iv) a fourth-position mortgage loan to the Beneficial Owner in the aggregate principal amount of \$1,000,000, to be funded by a grant of Reso A funds from HPD to HDC pursuant to a Grant Agreement between HPD and HDC, dated as of the date of this Agreement (the "HDC Reso A Loan" and together with the HDC Loan, the HDC Additional Loan and the HDC City Capital Loan, the "HDC Financing"); the HDC Financing will be evidenced by notes made by the Beneficial Owner and dated as of the date of this Agreement (collectively, and as may be amended, the "HDC Mortgage Note") and secured by mortgages made by the Sponsor and dated as of the date of this Agreement (collectively, and as may be amended, the "HDC Mortgage");

**WHEREAS**, the Beneficial Owner has requested that Bank of America, N.A. (the "Credit Provider") extend a stand-by letter of credit (the "Credit Instrument") for the benefit of HDC to further secure the Beneficial Owner's obligation to HDC under the HDC Construction Loan; the Credit Provider will service the HDC Financing while the Credit Instrument is in place, pursuant to a Servicing and Release Agreement dated as of the date of this Agreement among the Beneficial Owner, the Credit Provider and HDC (as may be amended, the "Servicing and Release Agreement");

**WHEREAS**, the Beneficial Owner has applied to receive an allocation of Tax Credits from HPD by reason of the issuance of the Obligations by HDC, and an extended low income housing commitment is required pursuant to the Tax Code; the Tax Credits equity investor in the Beneficial Owner will be Bank of America, N.A. (the "Tax Credit Investor");

**WHEREAS**, the Sponsor expects to receive Real Property Tax Benefits;

**WHEREAS**, HDC requires that the Project and the Sponsor comply with marketing, occupancy and operating requirements as a condition to the provision of the HDC Financing, in order to fulfill HDC's statutory purpose of providing housing for people and families for whom the ordinary operations of private enterprise cannot provide an adequate supply of safe, sanitary and affordable housing;

**WHEREAS**, HPD requires that the Project and the Sponsor comply with marketing, occupancy and operating requirements as a condition to the making of the HDC City Capital Loan and the HDC Reso A Loan and the allocation of the Tax Credits;

**WHEREAS**, in order for the Project to have the benefit of the HDC Financing and the Tax Credits, HDC and HPD require that the Sponsor (i) agree to operate the Project in accordance with this Agreement and (ii) agree that the restrictions in this Agreement shall run with the Premises and bind all of the successors and assigns of the Sponsor, for so long as set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, the parties agree as follows:

## ARTICLE I. DEFINITIONS

**SECTION 1.01** Definitions. In this Agreement, the following terms shall have the meanings set forth below:

"Actual Rent" shall have the meaning set forth in Section 5.03.

"Agreement" shall have the meaning set forth in the preamble.

"AMI" shall mean the area median income for the New York metropolitan area, as determined by HUD from time to time, for a family of four, as adjusted for family size. All percentage of AMI numbers provided in this Agreement shall be calculated as the appropriate percentage adjustment to the income levels, as determined by HUD from time to time, for 50% of AMI families (also known as "very low income" families), as adjusted for family size. For example, 60% of AMI is equal to 120% of the 50% of AMI figure published by HUD, and 100% of AMI is equal to 200% of the 50% of AMI figure. If HUD publishes the income levels for a percentage of AMI number other than 50% of AMI, then HDC and HPD may determine, in their sole discretion, to use the HUD-published numbers for that income level rather than the calculation described above. For the purposes of determining rents for Income-Restricted Units, incomes shall be adjusted for family size as follows: Units with no bedrooms shall be treated as being occupied by a one-person family, and units with one or more bedrooms shall be treated as being occupied by 1.5 people per bedroom, regardless of the actual number of people occupying the unit.

"Annual Income" shall mean the current gross income of the Household, calculated in a manner consistent with the determination of low income families under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, under such program as was in effect immediately before such termination).

"Applicable AMI Limit" shall mean for any Tax Code Unit, the percentage of AMI specified as the income restriction for occupancy of the unit, as set forth in Section 4.02, such that, by way of example, the Applicable AMI Limit for a 50% of AMI Unit is 50% of AMI and for any Non-Tax Code Income-Restricted Unit, the percentage of AMI specified for the initial rents as set forth in Schedule B, such that, by way of example, the Applicable AMI Limit for a 110% of AMI Unit (the income restriction for occupancy) is 90% of AMI (the initial rent level).

"Beneficial Owner" shall have the meaning set forth in the preamble.

"Bond Counsel" shall mean an attorney or firm of attorneys of nationally recognized standing in the law of municipal, state and public agency financing, as selected by HDC.

"City" shall have the meaning set forth in the preamble.

"Compliance Period" shall have the meaning set forth in Section 6.02.

"Construction Loan Closing" shall mean the closing of the HDC Financing.

"Credit Instrument" shall have the meaning set forth in the WHEREAS clauses.

"Credit Provider" shall have the meaning set forth in the WHEREAS clauses.

"Default Rate" shall mean the U.S. prime rate of interest as reported from day to day in The Wall Street Journal, plus 4% per annum, or, if such prime rate is no longer available, the base rate or prime rate of interest of any "Money Center" bank designated by HDC or HPD, in each case in its sole discretion, plus 4% per annum.

"Eligible Tenant" shall mean a tenant who meets the income restrictions and other requirements

set forth in this Agreement and the Tax Code, as applicable.

"Event of Default" shall have the meaning set forth in Section 10.01.

"Extended Use Period" shall have the meaning set forth in Section 6.02.

"FMR" shall mean the fair market rent as determined by HUD for the New York metropolitan area and in effect as of the date of the relevant rent determination.

"HDC" shall have the meaning set forth in the preamble.

"HDC Act" shall mean the New York City Housing Development Corporation Act, Article XII of the New York Private Housing Finance Law, as may be amended, and any rules, regulations, policies or procedures promulgated under the statute.

"HDC Additional Loan" shall have the meaning set forth in the WHEREAS clauses.

"HDC City Capital Loan" shall have the meaning set forth in the WHEREAS clauses.

"HDC Commitment" shall mean the Construction and Permanent Financing Commitment and Agreement with respect to the HDC Financing, among the Beneficial Owner, the Legal Owner, HDC and the guarantors of certain obligations of the Beneficial Owner, as may be amended.

"HDC Construction Loan" shall have the meaning set forth in the WHEREAS clauses.

"HDC Financing" shall have the meaning set forth in the WHEREAS clauses.

"HDC Loan" shall have the meaning set forth in the WHEREAS clauses.

"HDC Mortgage" shall have the meaning set forth in the WHEREAS clauses.

"HDC Mortgage Note" shall have the meaning set forth in the WHEREAS clauses.

"HDC Permanent Loan" shall have the meaning set forth in the WHEREAS clauses.

"HDC Reso A Loan" shall have the meaning set forth in the WHEREAS clauses.

"Homeless Unit" shall have the meaning set forth in Section 4.02.

"Household" shall mean all of the occupants of a unit whether or not legally related.

"HPD" shall have the meaning set forth in the preamble.

"HUD" shall mean the U.S. Department of Housing and Urban Development (and any successor agency).

"Income-Restricted Unit" shall mean a Tax Code Unit or a Non-Tax Code Income-Restricted Unit.

"Legal Owner" shall have the meaning set forth in the preamble.

"Legal Rent" shall have the meaning set forth in Section 5.02.

"Loan Agreement" shall mean the Building Loan Agreement, and the Project Loan Agreement, if any, among HDC, the Beneficial Owner and the Legal Owner, dated as of the date of this Agreement and as may be amended.

"Loan Documents" shall mean, collectively, the HDC Mortgage, the HDC Mortgage Note and all other documents delivered in connection with the HDC Financing.

"Management Agreement" shall have the meaning set forth in Section 7.01.

"Managing Agent" shall have the meaning set forth in Section 7.01.



"Master Lease" shall have the meaning set forth in the WHEREAS clauses.

"Minimum Set-Aside Requirement" shall mean the minimum set-aside requirements of Section 142 of the Tax Code and with respect to this Project, the Sponsor has elected 25% of the Units at 60% of AMI or below.

"Nominee Agreement" shall have the meaning set forth in the WHEREAS clauses.

"Non-Permanently Affordable Unit" shall mean any unit that is not a Permanently Affordable Unit.

"Non-Tax Code Income-Restricted Unit" shall mean any unit that is not a Tax Code Unit, but that is required to be leased pursuant to this Agreement to a tenant who qualifies as an Eligible Tenant with an Annual Income prior to initial occupancy that is at or below an income level or levels specified in Section 4.02. This category includes any units designated in Section 4.02 as having income restrictions for occupancy at any level above 70% of AMI.

"Obligations" shall mean that portion of the obligations issued by HDC to fund both the HDC Loan and the HDC Additional Loan, in whole or in part, pursuant to the Resolution.

"Occupancy Restriction Period" shall have the meaning set forth in Section 2.01.

"Permanent Conversion" shall mean the conversion of the HDC Financing to the permanent phase.

"Permanently Affordable Unit" shall have the meaning set forth in Section 4.02.

"Permitted Mortgages" shall mean the HDC Mortgage and any other mortgage affecting the Premises incurred with the prior written consent of HDC and HPD including those mortgages set forth on the title policy dated as of the date hereof insuring the Mortgage.

"Premises" shall have the meaning set forth in the WHEREAS clauses.

"Project" shall have the meaning set forth in the WHEREAS clauses.

"Public Assistance" shall mean Temporary Assistance for Needy Families, Family Assistance or Safety Net Assistance, each as administered by the New York City Human Resources Administration (or any successor agency), or any other public assistance program approved by HPD and HDC.

"Real Property Tax Benefits" shall mean the exemption from or abatement of real property tax with regard to the Project pursuant to Article XI of the New York Private Housing Finance Law, as may be amended.

"Rent Stabilization" shall mean Title 26, Chapter 4 of the New York City Administrative Code (and any successor statute) and the rules and regulations promulgated under the statute.

"Rental Assistance" shall mean rental subsidies provided through Section 8, the Living in Communities rental assistance program administered by the New York City Human Resources Administration (or any successor agency), or any similar rental subsidy program approved by HDC and HPD in their sole discretion. For purposes of this Agreement, Rental Assistance shall not include any Shelter Allowance payments.

"Rental Assistance Rent" shall mean the maximum rent for a unit that is eligible to be subsidized under the applicable Rental Assistance program. For example, in the case of any unit occupied by a tenant with a Rental Assistance voucher, the unit will be deemed a Rental Assistance Unit and the Rental Assistance Rent shall be the voucher payment standard as authorized by the government agency issuing the voucher.

"Rental Assistance Unit" shall mean a unit receiving a form of Rental Assistance.

"Resolution" shall mean HDC's Multi-Family Housing Revenue Bonds Bond Resolution adopted on July 27, 1993, as amended or supplemented.

"Section 8" shall mean a federal rental subsidy pursuant to the Section 8 housing choice voucher program, the Section 8 rental certificate program, the Section 8 project-based rental assistance program, or any successor programs under the United States Housing Act of 1937, as amended.

"Servicing and Release Agreement" shall have the meaning set forth in the WHEREAS clauses.

"Shelter Allowance" shall mean the monthly portion of Public Assistance intended and used for housing expenses, as adjusted for household size.

"Social Services Contract" shall have the meaning set forth in Section 4.09.

"Social Services Plan" shall have the meaning set forth in Section 4.09.

"Social Services Reserve" shall have the meaning set forth in Section 4.10.

"Sponsor" shall have the meaning set forth in the preamble.

"State" shall mean the State of New York.

"Student Unit" shall mean a unit where all of the occupants of the unit are students, as defined in Section 152(f)(2) of the Tax Code, subject to the exceptions given in Section 42(i)(3)(D) of the Tax Code.

"Superintendent Unit" shall mean a unit occupied by a resident superintendent or porter of the Project.

"Tax Code" shall mean the Internal Revenue Code of 1986, as may be amended, and any rules or regulations promulgated under the statute.

"Tax Code Unit" shall mean any unit that is occupied by a tenant who qualified under this Agreement as an Eligible Tenant pursuant to Sections 42 or 142 of the Tax Code, as applicable, prior to initial occupancy. No Student Unit or Superintendent Unit shall qualify as a Tax Code Unit.

"Tax Code Unit Percentage" shall mean the percentage of units (excluding any Superintendent Unit) that are Tax Code Units that are not 70% of AMI Units.

"Tax Code Units Condo Units" shall have the meaning set forth in the WHEREAS clauses.

"Tax Credit Investor" shall have the meaning set forth in the WHEREAS clauses.

"Tax Credits" shall mean the low income housing tax credits available to the Sponsor due to the inclusion of Tax Code Units in the Project pursuant to Sections 42 and 142 of the Tax Code and any related rules and regulations.

"Unit" or "unit" shall mean a residential apartment located in the Project.

**SECTION 1.02**      References to this Agreement. References in this Agreement to specific articles, sections, schedules, etc. refer to provisions in this Agreement unless otherwise noted.

**SECTION 1.03**      Headings. Headings are for reference only and shall not control the interpretation of this Agreement.

**SECTION 1.04**      Preliminary Statement; Schedules. The recitals in the preliminary statement and all schedules to this Agreement are a part of the agreement of the parties and are incorporated in this Agreement for all purposes.

## ARTICLE II. TERM OF RESTRICTIONS

**SECTION 2.01**      Occupancy Restriction Period. The Project and the Sponsor shall be subject to the requirements of this Agreement during the Occupancy Restriction Period (as defined in this section), except as may be specifically provided otherwise in this Agreement. The "Occupancy Restriction Period" shall mean a period lasting in perpetuity. Notwithstanding that the Occupancy Restriction Period is intended to last in perpetuity, the following provisions are included in this Agreement to satisfy requirements of the Tax Code and other financing requirements. This Agreement contains these and other provisions referring to the end of the Occupancy Restriction Period and the period after the Occupancy Restriction Period ends. Any such provisions are included out of caution only and shall not apply barring unforeseen amendment of this Agreement, change in law or court order. In no event shall the Occupancy Restriction Period end prior to the latest of the following dates:

- (a) the date that is 15 years after the date on which 50% of the units are first occupied;
- (b) the first day on which no Obligation or other tax-exempt private activity obligation with respect to the Project is outstanding;
- (c) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates;
- (d) the date of the end of the Extended Use Period (see Section 6.02);
- (e) the date on which the Real Property Tax Benefits expire;
- (f) the date on which the HDC Mortgage and any other mortgage held by HDC or HPD with respect to the Project have been satisfied;
- (g) 60 years from the date of the Permanent Conversion.
- (h) 40 years from the date hereof.

Notwithstanding the foregoing, with respect to the Non-Permanently Affordable Units (as defined in Section 4.02 below and delineated in Schedule B), the Occupancy Restriction Period is intended to end earlier and shall end on the latest of the following dates:

- (i) the date that is 15 years after the date on which 50% of the units are first occupied;
- (ii) the first day on which no Obligation or other tax-exempt private activity obligation with respect to the Project is outstanding;
- (iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates;
- (iv) the date of the end of the Extended Use Period (see Section 6.02);
- (v) the date on which the Real Property Tax Benefits expire;
- (vi) the date on which the HDC Mortgage and any other mortgage held by HDC or HPD with respect to the Project have been satisfied;

(vii) 35 years from the date of the Permanent Conversion.

(viii) 40 years from the date hereof.

**SECTION 2.02** Post-Occupancy Restriction Period. Any provisions of this Agreement (i) necessary to preserve the exclusion from gross income for purposes of federal income taxation of interest on the Obligations and (ii) governing the rental of units after the Occupancy Restriction Period ends, and the enforcement of such provisions, shall remain in effect for as long as may be necessary to preserve and enforce such provisions.

**SECTION 2.03** Unforeseen Events. This Agreement shall cease to apply in the event, to the extent and for the duration of any involuntary non-compliance caused by fire, seizure, requisition, condemnation, change in federal law or any action of a federal agency after the date of issuance of the Obligations that prevents HDC and HPD from enforcing some or all of this Agreement, or any similar event, if in any such event (i) the Obligations used to provide the Project are retired within a reasonable period, or (ii) the amounts received as a result of the unforeseen event, subject to the rebate requirement of Section 148 of the Tax Code, are used to provide a project that meets the requirements of Section 142(d) of the Tax Code.

**SECTION 2.04** Termination; Release.

- (a) Consent of HDC and HPD Required. This Agreement shall not be terminated without the prior written consent of HDC and HPD, except as provided otherwise in this section.
- (b) Foreclosure. In the event of a foreclosure or deed in lieu of foreclosure of the HDC Mortgage, this Agreement shall terminate only (i) upon written request of the owner of the HDC Mortgage, and (ii) if, within a reasonable period, the Obligations are retired (it being agreed that HDC shall cause the Obligations to be retired within a reasonable period pursuant to the terms of the Resolution) and the HDC Additional Loan, HDC Reso A Loan and the HDC City Capital Loan are paid in full. However, if the Sponsor or a related person obtains an ownership interest in the Project after any such foreclosure or deed in lieu of foreclosure, but during the Occupancy Restriction Period, this Agreement shall be reinstated in full force and effect.
- (c) Release. At the request of the Sponsor, HDC and HPD shall provide the Sponsor with a release of this Agreement in recordable form upon termination of this Agreement.
- (d) Conversion to Co-Op or Condo. After the Occupancy Restriction Period ends, the Sponsor may convert the Project to cooperative or condominium ownership of individual units. Such a conversion shall not be made pursuant to an eviction plan, as defined by Section 352-eeee of the New York General Business Law, as may be amended.

### ARTICLE III. GENERAL COMPLIANCE

**SECTION 3.01** Compliance with Laws and Regulations. The Sponsor shall do all things necessary to ensure the following:

- (a) HDC Financing. The Sponsor shall comply, and shall cause the Project to comply, with (i) this Agreement, (ii) the Loan Documents, (iii) the HDC Act and (iv) any rules adopted by HDC or HPD relating to the HDC Financing or the operation of the Project as may be necessary to enforce this Agreement. Any violation of the requirements of the Loan Documents may be declared an Event of Default under this Agreement.
- (b) Tax-Exempt Obligations. The Sponsor shall comply, and shall cause the Project to comply, with the applicable provisions of the Tax Code and this Agreement in order to preserve the exclusion from gross income for purposes of federal income taxation of interest on the Obligations.
- (c) Tax Credits. The Sponsor shall comply, and shall cause the Project to comply, with (i) the provisions of the Tax Code governing the Tax Credits, (ii) the extended low income housing commitment provisions of this Agreement (Article VI) and (iii) HDC's monitoring procedures with respect to the Tax Credits.
- (d) Real Property Tax Benefits; Other Agreements and Permits. The City Council of The City of New York, by resolution dated October 17, 2017, No. 1690 (the "Council Resolution"), a copy of which is attached as Schedule D, has approved the Real Property Tax Benefits to the Premises pursuant to Section 577 of the New York Private Housing Finance Law. The Sponsor shall do all things necessary: (i) to maintain the Real Property Tax Benefits, (ii) to maintain any permits or agreements with government agencies, including HDC and HPD, in good standing and (iii) to comply with the requirements of such agencies. Any violation of the requirements of the Real Property Tax Benefits, or any permits or agreements with or requirements of any government agencies, may be declared an Event of Default under this Agreement.

**SECTION 3.02** More Restrictive Provisions Control. If this Agreement conflicts with any other applicable agreement, law, regulation or permit, or if any provision of this Agreement conflicts with any other provision of this Agreement, the more restrictive provision (as determined by HDC and HPD) shall control.

#### **ARTICLE IV. PROJECT OCCUPANCY**

**SECTION 4.01** General Compliance. The Sponsor agrees that the occupancy requirements for the Project shall comply with (i) the HDC Act and the rules and regulations of HDC and HPD, including any requirements pertaining to Eligible Tenants or Income-Restricted Units, (ii) all provisions of the Tax Code that may or shall affect (1) the exclusion from gross income for purposes of federal income taxation of interest on the Obligations or (2) the Tax Credits, (iii) any applicable requirements of Rental Assistance and (iv) any other provisions of federal, state or local law or regulation that may be applicable, including the Loan Documents (so long as they remain in effect).

**SECTION 4.02** Distribution of Units. The Sponsor shall lease the units (excluding any Superintendent Unit) to Eligible Tenants as provided in this section. In calculating the number of units in each category below, no unit may be counted multiple times unless specifically stated otherwise.

- (a) Tax Code Units. In accordance with the distribution set forth in Schedule B, 149 units shall be Tax Code Units provided that the Sponsor complies with the Income Averaging Requirement as set forth in Section 42(g)(2)(D)(iii) of the Tax Code. In furtherance thereof, HDC shall further require as described herein that the units be allocated as follows:
  - (i) The Sponsor shall lease no fewer than 25 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 30% of AMI ("30% of AMI Units").
  - (ii) The Sponsor shall lease no fewer than 25 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 40% of AMI ("40% of AMI Units").
  - (iii) The Sponsor shall lease no fewer than 49 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 50% of AMI ("50% of AMI Units").
  - (iv) The Sponsor shall lease no fewer than 50 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 70% of AMI ("70% of AMI Units").
- (b) Non-Tax Code Income-Restricted Units. In accordance with the distribution set forth in Schedule B, 99 units shall be Non-Tax Code Income-Restricted Units.
  - (i) The Sponsor shall lease no fewer than 62 Non-Tax Code Income-Restricted Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 90% of AMI ("90% of AMI Units").
  - (ii) The Sponsor shall lease no fewer than 37 Non-Tax Code Income-Restricted Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 110% of AMI ("110% of AMI Units").
- (c) Disability Set-Asides. The Sponsor shall ensure that a minimum of 5% of the units, or one unit, whichever is greater, is accessible and set aside for Households with a person with a mobility disability. The Sponsor shall ensure that an additional minimum of 2% of the units, or one unit, whichever is greater, is accessible and set aside for Households with a person with a hearing or vision disability.
- (d) Homeless Units. The Sponsor shall lease no fewer than 25 of the 40% of AMI Units solely to tenants who are referred by the New York City Department of Homeless Services, HPD or an alternate referral source acceptable to HPD and HDC ("Homeless Units"). The distribution of Homeless Units shall be as set forth in Schedule B. This distribution may be adjusted at initial rent-up with the prior written consent of HDC and HPD. This requirement will terminate on the last day of the Occupancy Restriction Period as calculated with respect to the Non-Permanently Affordable Units.
- (e) MIH Units. No fewer than sixty-one (61) of the Units as delineated in Schedule B shall be permanently affordable in accordance with that certain Mandatory Inclusionary Housing Restrictive Declaration that is to be recorded against the Premises (the "MIH Units").
- (f) Permanently Affordable Units. No fewer than thirty-eight (38) of the Income-Restricted Units as delineated in Schedule B (not including the MIH Units) shall

be permanently affordable pursuant to this Agreement (the "Permanently Affordable Units").

- (g) Reserved.
- (h) Reserved.

**SECTION 4.03** Changes to Distribution of Units. Except by reason of an involuntary change caused by unforeseen events such as fire, seizure, requisition or condemnation:

- (a) Changes Violating Certifications. The Sponsor shall make no changes in the amount of residential and non-residential space or in the number of units, which in the opinion of Bond Counsel, would cause a violation of the certifications presented to HDC with respect to such space or units and adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Obligations; and
- (b) Tax Code Unit Percentage. The Sponsor shall not reduce the Tax Code Unit Percentage for the Project below 39.92%, unless the Sponsor receives the prior written consent of HDC and HPD, which may be granted in the sole discretion of HDC and HPD.

**SECTION 4.04** General Requirements for Units.

- (a) Rental to the General Public; Non-Transient Units. Each unit (excluding any Superintendent Unit) shall be rented or made available for rental on a continuous basis to the general public, subject to any preferences required under this Agreement. None of the units shall be used on a transient basis or as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park.
- (b) Primary Residence. Units may only be occupied as a primary residence, as defined by Rent Stabilization, pursuant to a one- or two-year lease and by natural people or families who are otherwise eligible to occupy the unit pursuant to this Agreement. The Sponsor shall only offer a vacant unit for occupancy by natural people or families intending to occupy the unit as their primary residence pursuant to a one- or two-year lease, and shall not cause or permit the sublease or assignment of any unit for transient occupancy, for occupancy by any Household that is not eligible, or to any corporation or other entity.
- (c) Condition of Units. The units shall be suitable for occupancy and similarly constructed and shall contain living, sleeping, eating, cooking and sanitation facilities for a single person or family. The Homeless Units must be furnished in a manner that is satisfactory to HPD.
- (d) Integration of Tax Code Units. The Sponsor shall not segregate or physically isolate Tax Code Units from any other units in the Project, and Tax Code Units shall be reasonably dispersed throughout the Project.

**SECTION 4.05** Marketing Guidelines. The Sponsor shall comply with the procedures and requirements of HDC and HPD pertaining to the marketing and rent-up of all Income-Restricted Units, including the use of HDC's forms for verifying Annual Income and Household size. HDC and HPD reserve the right to require that all Income-Restricted Units that become vacant at a future date are marketed pursuant to marketing guidelines provided by HDC or HPD.

**SECTION 4.06**      Qualification of Eligible Tenants. The Sponsor shall comply with the procedures and requirements of HDC and HPD and any applicable provisions of the Tax Code pertaining to the initial and ongoing qualification of Eligible Tenants.

- (a) Applicant Certifications. Prior to the initial rental of any Income-Restricted Unit or the rental of any Income-Restricted Unit after vacancy, the Sponsor shall determine whether each applicant for the unit qualifies as an Eligible Tenant. The Sponsor shall obtain a certification of Annual Income and Household size from each applicant, along with the documentation necessary to verify the certification. The Sponsor shall verify each certification in a manner consistent with the verification of Annual Income under Section 8. If an applicant is receiving assistance under Section 8, the verification requirement is satisfied if the public housing agency providing the assistance gives the Sponsor a statement indicating that the applicant qualifies as an Eligible Tenant. The Sponsor may consult with HDC and HPD to obtain guidance on the applicant certification process.
- (b) Agency Review Prior to Initial Rental. Prior to the initial rental of any Income-Restricted Unit or the rental of any Income-Restricted Unit after vacancy, the Sponsor shall furnish to HDC (and to HPD, if requested by HPD in writing) the certification of Annual Income and Household size provided by the applicant selected for the unit, along with verification documentation as may be required by HDC, HPD or under the Tax Code in order to review the qualifications of the applicant. No lease for any Income-Restricted Unit shall be executed until the Sponsor has received approval from HDC (and HPD, if applicable).
- (c) Annual Tenant Certifications (Tax Code Units). Upon the establishment of the Tax Code Units Condo Units as "buildings" as defined in Section 42 of the Tax Code, the Sponsor shall certify to HDC as to the Household size and student status of each tenant residing in a Tax Code Unit based on certifications obtained from such tenants. Otherwise, on an annual basis, the Sponsor shall (i) obtain a certification of Annual Income, Household size and student status from each tenant residing in a Tax Code Unit that is not a 70% of AMI Unit, along with verification documentation, and (ii) determine whether each such tenant continues to qualify as an Eligible Tenant. The Sponsor shall verify each certification as provided in paragraph (a) above.
- (d) Annual Agency Reviews (Tax Code Units). The Sponsor shall furnish to HDC (and to HPD, if requested by HPD in writing), on an annual basis or more frequently if required in writing by HDC or HPD in order to ensure compliance with this Agreement, a certification by the Sponsor documenting the annual tenant certifications provided in accordance with paragraph (c) above, along with verification documentation (if requested by HDC or HPD). The Sponsor shall also furnish any reports or other documents that HDC or HPD reasonably determine are necessary to establish compliance with this Agreement and the Tax Code.
- (e) Tenant's Failure to Certify; Fraud. If a tenant residing in an Income-Restricted Unit fails to provide the Sponsor with certifications and documentation as required within 60 days of the Sponsor's request, or if such a tenant provides false or fraudulent materials at any time, then the Sponsor may, or at the request of HDC or HPD shall, refuse to offer a lease renewal and/or commence legal action to terminate the lease of the tenant.



**SECTION 4.07**      Changes in Tenant Income. An Eligible Tenant shall be entitled to remain in occupancy and to obtain a lease renewal to the extent provided under Rent Stabilization even if the tenant's Annual Income, after initial occupancy, exceeds the maximum for initial eligibility. No Eligible Tenant may be evicted or have his or her tenancy terminated except for good cause.

**SECTION 4.08**      Next Available Unit Rules.

- (a)      Non-Deep Rent Skewing Project. The Sponsor has not elected to "deep rent skew" the Project. Upon the establishment of each of LIHTC Condo 1 and LIHTC Condo 2 as a "building" as defined in Section 42 of the Tax Code, if the Annual Income of a tenant in either LIHTC Condo 1 or LIHTC Condo 2 exceeds the amount permitted by the Tax Code, then the Sponsor shall lease the next available vacant unit of comparable or smaller size in the same condo unit to a tenant whose Annual Income does not exceed the income restriction for occupancy designated for such unit prior to becoming vacant. If LIHTC Condo 1 and LIHTC Condo 2 are not established as separate buildings under the Tax Code (i) for purposes of Section 142 of the Tax Code, if the Annual Income of a tenant in a Tax Code Unit that is not a 70% of AMI Unit exceeds 140% of 60% of AMI, then if required to maintain compliance with the Minimum Set Aside and any other applicable provisions of the Tax Code in order to preserve the exclusion from gross income for purposes of federal income taxation of interest on the Obligations, Sponsor shall lease the next available vacant unit in the Project of comparable or smaller size with an income restriction for occupancy designated for such unit prior to becoming vacant that is above 60% of AMI only to a tenant whose income does not exceed 60% of AMI and (ii) for purposes of Section 42 of the Tax Code, if the Annual Income of a tenant in a Tax Code Unit exceeds 140% of 60% of AMI (for any Tax Code Unit with an income restriction for occupancy designated at or below 60% of AMI), or 70% of AMI, as applicable, then the Sponsor shall lease the next available vacant unit of comparable or smaller size in the Project to a tenant whose Annual Income does not exceed the income restriction for occupancy designated for such unit prior to becoming vacant, or, for any Non-Tax Code Income-Restricted Unit, to a tenant whose Annual Income does not exceed the income restriction for occupancy which would have to be designated with respect to such unit in order to meet the Income Averaging Requirement a set forth in Section 42(g)(c) of the Code.
- (b)      Tenant's Failure to Certify; Fraud. If the Sponsor fails to commence legal action to terminate the lease of a tenant described in Section 4.06(e) and residing in a Tax Code Unit in a prompt manner, or does not diligently pursue the legal action to the satisfaction of HDC and HPD, then the Sponsor shall lease the next available vacant unit of comparable or smaller size to a tenant who qualifies as an Eligible Tenant for a Tax Code Unit (with an income restriction for occupancy at the same level as the unit occupied by the tenant described in Section 4.06(e), if such level is below the income restriction for occupancy that would otherwise apply to the next available unit) prior to renting any other unit of comparable or smaller size.

**SECTION 4.09**      Social Services for Homeless Units.

- (a)      Social Services Plan. Prior to the initial rent-up of the units, the Sponsor shall submit to HPD (and to HDC, if requested by HDC in writing) a plan detailing the

services to be provided to tenants of Homeless Units and the provider of such services (the "Social Services Plan"). The Sponsor shall obtain the written approval of HPD for the Social Services Plan (and the written approval of HDC, if HDC has requested to review the plan) prior to the initial rent-up of the units.

- (b) Implementation of Plan. After the Social Services Plan is approved by HPD (and HDC, if applicable), the Sponsor shall enter into a contract, subject to approval by HPD (and by HDC, if HDC has requested to review the contract), with the approved provider documenting the Social Services Plan (the "Social Services Contract") and shall cause the provider to implement the approved Social Services Plan on a continuous basis. Any amendments to the Social Services Plan or to the Social Services Contract shall require the prior written consent of HPD (and HDC, if requested by HDC in writing).

**SECTION 4.10**      Reserves for Homeless Units.

- (a) Social Services Reserve.

- (i) At or prior to the Permanent Conversion, the Sponsor shall deposit with HDC a social services reserve in the amount of \$187,500, to be administered by HDC (the "Social Services Reserve"). The Sponsor may deduct from this deposit any amount previously advanced to the Sponsor by the Credit Provider, as servicer of the HDC Loan, prior to the Permanent Conversion and under the social services reserve line item in the Project's budget in order to implement the Social Services Plan and to furnish Homeless Units. Amounts advanced prior to the Permanent Conversion to implement the Social Services Plan shall not exceed \$187,500, and amounts advanced to furnish Homeless Units shall not exceed \$73,000, which amount shall be equally distributed among all Homeless Units based on the number of rooms. Proposed furnishings are subject to the prior approval of HPD.
- (ii) Within ninety (90) days of the first anniversary of the Permanent Conversion, and annually thereafter at the end of each fiscal year of the Project, Sponsor shall deposit into the Social Service Reserve 80% of the difference between (x) rent collected from the Homeless Units and (y) the amount of rent that would have been collected from the Homeless Units were the rent equal to 30% of 30% of AMI for such year.
- (iii) The Sponsor may withdraw funds from the Social Services Reserve (x) to implement the approved Social Services Plan and Social Services Contract, (y) to fill any operating shortfalls in the Project caused by Sponsor's inability to collect the rent underwritten for the Homeless Units due to loss of Rental Assistance by a tenant in Homeless Unit, subject to HPD and HDC approval in their sole discretion (if such approval right is requested), and (z) for any other purpose, subject to HPD and HDC approval in their sole discretion.
- (iv) The requirement to fund the Social Services Reserve shall terminate on the last day of the Occupancy Restriction Period as calculated for Non-Permanently Affordable Units. At the end of the Occupancy Restriction Period, any remaining funds in the Social Services Reserve and the Operating Reserve (as defined in the HDC Mortgage) must stay with the Project.

- (b) Reserved.

## ARTICLE V. RENTS AND LEASES

### SECTION 5.01 Compliance with Rent Stabilization.

- (a) All Units Subject to Rent Stabilization. All units shall be subject to Rent Stabilization and shall remain subject to Rent Stabilization after the Occupancy Restriction Period ends. The Sponsor shall follow all procedures and guidelines of New York State Homes & Community Renewal ("HCR") (or any successor agency enforcing Rent Stabilization) and all relevant requirements of Rent Stabilization. However, pursuant to a special agreement on rent regulation with the New York State Division of Housing and Community Renewal (a predecessor of HCR), HCR will not regulate the Project in a manner that is inconsistent with the Tax Code or with this Agreement. Where there may be inconsistencies, the more restrictive provisions of the Tax Code and this Agreement shall prevail.
- (b) No Exemptions from Rent Stabilization. The Sponsor shall not claim any exemption or exclusion from Rent Stabilization to which the Sponsor might be entitled with respect to any unit. This includes any exemption or exclusion from the rent limits, lease renewal requirements, registration requirements or other provisions of Rent Stabilization due to (i) the vacancy of a unit where the rent exceeds a prescribed maximum amount, (ii) the fact that the tenant's income or rent exceeds prescribed maximum amounts, (iii) the nature of the tenant or (iv) any other factor. This section shall continue to apply to Income-Restricted Units after the Occupancy Restriction Period ends until any such unit becomes vacant (except for any vacancy resulting from a breach of the warranty of habitability, harassment, constructive eviction or any similar action caused by the Sponsor).
- (c) Permitted Increases under Rent Stabilization.
  - (i) In General. Where this Agreement allows rent increases under Rent Stabilization for Income-Restricted Units (subject to the other restrictions on increases contained in this Agreement), such language shall permit only those increases that are based on the percentage increases for one- and two-year lease renewals approved annually by the New York City Rent Guidelines Board (or any successor). Subject to the exceptions given in this paragraph (c), rents shall not be increased or registered at a greater amount for any other reason typically allowed under Rent Stabilization, including vacancy lease increases, major capital improvement ("MCI") increases or individual apartment improvement ("IAI") increases. This prohibition applies to both Legal Rents (the registered legal regulated rents) and Actual Rents (which are to be registered as preferential rents). To be clear, this section shall not apply after the Occupancy Restriction Period ends.
  - (ii) Exception for Certain Vacancy Lease Increases. Upon vacancy of an Income-Restricted Unit, if the Legal Rent is less than 30% of the Applicable AMI Limit (adjusted for a monthly rent), then the Sponsor may increase the Legal Rent by the lesser of (1) the vacancy lease increase permitted by Rent Stabilization and (2) the amount required to increase the Legal Rent up to 30% of the Applicable AMI Limit (adjusted for a monthly rent).
- (d) Contractual Rent Regulation. If Destabilization (as defined in this paragraph) occurs during the Occupancy Restriction Period, then all units that have undergone Destabilization shall be subject to Contractual Rent Regulation (as

defined in this paragraph). If some units remain subject to Rent Stabilization while other units have undergone Destabilization, Contractual Rent Regulation will only apply to the units that have undergone Destabilization. For purposes of this paragraph:

- (i) "Destabilization" shall mean any set of facts that causes Rent Stabilization to no longer apply to the units, whether by expiration, legislative repeal, judicial invalidation or any other reason.
- (ii) "Contractual Rent Regulation" shall mean the following after Destabilization: (1) The Sponsor shall be required to offer new and renewal leases on the same terms and conditions as had been required by Rent Stabilization at the time of Destabilization (subject however to the provisions in subparagraphs (2) and (3) below) as if the unit were still subject to and not excluded or exempted from any provision of Rent Stabilization, including, but not limited to, any exemption or exclusion regarding rent limits, renewal lease requirements, or any other provision due to (w) the vacancy of a unit where the rent exceeds a prescribed maximum amount, (x) the fact that tenant income or unit rent exceeds prescribed maximum amounts, (y) the nature of the tenant or (z) any other factor. (2) The "Legal Rent," as such term is used in this Agreement, shall be limited by percentage increases calculated based on a method or index established by HPD for determining the maximum increase to Legal Rent upon lease renewal or vacancy. Such method or index shall be based on inflation or on factors substantially equivalent to the factors considered in calculating such increases under Rent Stabilization at the time of Destabilization, and shall incorporate a method for determining and implementing increases to Legal Rent by reason of major capital improvements performed by the Sponsor, to the extent that such increases, if any, are not prohibited under this Agreement. HPD will publish such methodology in the City Record and will provide a copy of the methodology to the Sponsor upon request. (3) Wherever this Agreement limits increases in rent by increases as permitted by Rent Stabilization (or language of similar import), such increases shall be limited by the percentage increases established by HPD as described in subparagraph (2) above.

**SECTION 5.02**      Registration in Accordance with Rent Stabilization. The Sponsor shall register the rents for each unit in accordance with Rent Stabilization as follows:

- (a) Legal Rents. The initial legal regulated rent for each unit shall be the amount set forth in Schedule B. This amount may increase upon lease renewal or vacancy in accordance with Rent Stabilization (as limited by Section 5.01). This amount, as adjusted from time to time as permitted, shall be the "Legal Rent".
- (b) Registered Preferential Rents. If the Actual Rent (as defined in the following section) for a unit is less than the Legal Rent for the unit, then the Actual Rent shall be registered as a preferential rent.
- (c) Registration of Rents. The Sponsor shall provide a copy of the initial registration form for all units to HDC (and to HPD, if requested in writing by HPD) prior to the Permanent Conversion.
- (d) Annual Rent Registration. After initial registration, on an annual basis and in accordance with Rent Stabilization, the Sponsor shall register the Legal Rent then

in effect as the legal regulated rent and the Actual Rent in effect as a preferential rent.

**SECTION 5.03** Actual Rents. The Sponsor shall lease each Income-Restricted Unit for a monthly rent that does not exceed the maximum amount permitted below (such amount shall be the "Actual Rent"). The Actual Rent shall be the rent that appears on the lease and that may be collected by the Sponsor (i.e., it shall include the rent paid by the tenant and any rental subsidy, but not the applicable utility allowance). Certain limits given below may in practice equal the same amount.

(a) Tax Code Units.

(i) Initial Rents. The initial Actual Rent for a Tax Code Unit that is not a Rental Assistance Unit shall not exceed the least of:

- 1) the Legal Rent (as set forth in Schedule B);
- 2) the initial Actual Rent set forth in Schedule B; and
- 3) 30% of the Applicable AMI Limit (adjusted for a monthly rent).

If the unit is a Rental Assistance Unit, the initial Actual Rent shall not exceed the least of:

- 1) the Legal Rent (as set forth in Schedule B);
- 2) the Rental Assistance Rent; and
- 3) for Rental Assistance Units that are not Homeless Units, 90% of FMR, or for Rental Assistance Units that are Homeless Units, 100% of FMR.

If the unit is a Homeless Unit that is not a Rental Assistance Unit, the initial Actual Rent shall not exceed the least of:

- 1) the Legal Rent (as set forth in Schedule B);
- 2) 30% of 40% of AMI (adjusted for a monthly rent);
- 3) 30% of the household's Annual Income (adjusted for a monthly rent, but in no event less than the amounts set forth on Schedule B-2 as adjusted for the number of bedrooms) and
- 4) if the tenant receives Shelter Allowance, the Shelter Allowance

(ii) Lease Renewal. Upon lease renewal for a Tax Code Unit that is not a Rental Assistance Unit, the new Actual Rent shall not exceed the least of:

- 1) the Legal Rent;
- 2) the prior Actual Rent increased as permitted by Rent Stabilization (as limited by Section 5.01); and
- 3) 30% of the Applicable AMI Limit (adjusted for a monthly rent).

If the unit is a Rental Assistance Unit, the Actual Rent upon lease renewal shall not exceed the least of:

- 1) the Legal Rent;
- 2) the Rental Assistance Rent; and

- 3) for Rental Assistance Units that are not Homeless Units, 90% of FMR, or for Rental Assistance Units that are Homeless Units, 100% of FMR.

If the unit is a Homeless Unit that is not a Rental Assistance Unit, the Actual Rent upon lease renewal shall not exceed the least of:

- 1) the Legal Rent (as set forth in Schedule B);
- 2) the prior Actual Rent increased as permitted by Rent Stabilization (as limited by Section 5.01); and
- 3) 30% of 40% of AMI (adjusted for a monthly rent).

- (iii) Vacancy. Upon vacancy of a Tax Code Unit that is not a Rental Assistance Unit, the Actual Rent for the new Eligible Tenant shall not exceed the lesser of:

- 1) the Legal Rent; and
- 2) 30% of the Applicable AMI Limit (adjusted for a monthly rent).

If the unit is a Rental Assistance Unit, the Actual Rent upon vacancy shall not exceed the least of:

- 1) the Legal Rent;
- 2) the Rental Assistance Rent; and
- 3) for Rental Assistance Units that are not Homeless Units, 90% of FMR, or for Rental Assistance Units that are Homeless Units, 100% of FMR.

If the unit is a Homeless Unit that is not a Rental Assistance Unit, the Actual Rent for the new Eligible Tenant shall not exceed the least of:

- 1) the Legal Rent;
- 2) 30% of 40% of AMI (adjusted for a monthly rent);
- 3) 30% of the household's Annual Income (adjusted for monthly rent, but in no event less than the amounts set forth on Schedule B-2 as adjusted for the number of bedrooms; and
- 4) if the tenant receives Shelter Allowance, the Shelter Allowance.

- (iv) Tax Code Maximums. In no event shall any tenant of a Tax Code Unit, including those Rental Assistance Units that are also Tax Code Units, pay a rent that is greater than the amount permitted by the Tax Code or, for tenants of Rental Assistance Units, a tenant rent share that is greater than the amount required by the Rental Assistance program and allowed by the Tax Code, nor shall the Sponsor charge an Actual Rent or increase the Actual Rent for any Tax Code Unit except as permitted by the Tax Code.

(v) Reserved.

(vi) Reserved.

- (b) Non-Tax Code Income-Restricted Units.

- (i) Initial Rents. The initial Actual Rent for a Non-Tax Code Income-Restricted Unit shall not exceed the lesser of:

- 1) the Legal Rent (as set forth in Schedule B); and
  - 2) the initial Actual Rent set forth in Schedule B.
- (ii) Lease Renewal. Upon lease renewal for a Non-Tax Code Income-Restricted Unit, the Sponsor may only increase the Actual Rent to the least of:
- 1) the Legal Rent;
  - 2) the prior Actual Rent increased as permitted by Rent Stabilization (as limited by Section 5.01); and
  - 3) 30% of the Applicable AMI Limit (adjusted for a monthly rent).
- (iii) Vacancy. Upon vacancy of a Non-Tax Code Income-Restricted Unit, the Actual Rent for the new Eligible Tenant shall not exceed the lesser of:
- 1) the Legal Rent; and
  - 2) an amount that is the greater of (x) the Actual Rent that would have been permitted upon lease renewal for the prior tenant and (y) 30% of the Applicable AMI Limit (adjusted for a monthly rent).
- (c) 30% Limits Apply to Gross Rents. All provisions in this Agreement limiting a rent to 30% of the Applicable AMI Limit shall mean that the sum of the rent and the applicable utility allowance (i.e., the gross rent) shall not exceed 30% of the Applicable AMI Limit.
- (d) Homeless Units. Actual Rents for Homeless Units shall be subject to the provisions of paragraph (a) above, except as provided in Section 5.04.
- (e) Reserved.
- (f) Reserved.

**SECTION 5.04**      Additional Requirements for Rental Assistance Units.

- (a) Tenant's Loss of Rental Assistance.
- (i) If a Rental Assistance tenant is occupying a Tax Code Unit that is not a Homeless Unit and the tenant loses Rental Assistance at any time, then the Sponsor shall immediately revise the tenant's Actual Rent to an amount that does not exceed the maximum amount that may be collected under the Tax Code and this Agreement.
  - (ii) If a Rental Assistance tenant is occupying a Homeless Unit and the tenant loses Rental Assistance at any time, and the tenant receives Shelter Allowance, then the Sponsor shall immediately revise the tenant's Actual Rent to an amount equal to such Shelter Allowance. If such tenant does not receive Shelter Allowance, then the Sponsor shall immediately revise the tenant's Actual Rent to an amount that does not exceed the lesser of (x) 30% of the household's Annual Income (adjusted for a monthly rent) (but in no event less than the amounts set forth on Schedule B-2 (adjusted for the number of bedrooms)) and (y) 30% of 40% of AMI (adjusted for a monthly rent).
- (b) Vacancy; No New Rental Assistance. Upon vacancy of a Tax Code Unit that had been occupied by a tenant with Rental Assistance, if the next tenant identified for the unit does not have Rental Assistance, but the tenant is an Eligible Tenant for

a Tax Code Unit, then the Sponsor shall set the Actual Rent for the new tenant in accordance with Section 5.03, and to an amount that does not exceed the maximum amount that may be collected under the Tax Code. The Sponsor shall register this revised Actual Rent as the new preferential rent for the unit.

- (c) Reserved.

**SECTION 5.05**      Post-Occupancy Restriction Period.

- (a) Rents for Income-Restricted Units at 80% of AMI and Below. After the Occupancy Restriction Period ends, but not less than 150 days prior to the end of each lease with an Eligible Tenant who occupies an Income-Restricted Unit having an income restriction for occupancy at 80% of AMI or below (including Tax Code Units), the Sponsor shall request that the tenant submit to the Sponsor a certification of Annual Income and Household size and verification documentation. Lease renewals for these tenants shall be offered as follows:
- (i) Continuing Eligible Tenants. A tenant with a verified Annual Income and Household size that continues to qualify the tenant as an Eligible Tenant for the unit, as applicable, as of the date of the certification shall be entitled to a lease renewal and shall pay the Actual Rent that would be in effect for the succeeding lease renewal term. Thereafter, the tenant shall be entitled to continued lease renewals, and the rent shall be increased as permitted pursuant to Rent Stabilization for so long as the tenant continues to legally reside in the unit. The tenant shall not be required to provide further certifications of Annual Income and Household size pursuant to this Agreement.
  - (ii) Non-Qualifying Tenants. A tenant with a verified Annual Income and Household size that fails to qualify the tenant as an Eligible Tenant for the unit, as applicable, as of the date of the certification shall be entitled to a lease renewal, but the tenant's rent shall be revised to an amount that is the greater of (a) 30% of the tenant's Annual Income (adjusted for a monthly rent) or (b) the Actual Rent that would be in effect for the succeeding lease renewal term (the "Revised Rent"). The Revised Rent shall not exceed the Legal Rent, however. If the Revised Rent is less than the Legal Rent, the Revised Rent shall be registered with the agency administering Rent Stabilization as the new preferential rent for the unit. Thereafter, the tenant shall be entitled to continued lease renewals, and the rent shall be increased as permitted pursuant to Rent Stabilization for so long as the tenant continues to legally reside in the unit. The tenant shall not be required to provide further certifications of Annual Income and Household size pursuant to this Agreement.
  - (iii) Tenant's Failure to Certify; Fraud. In addition to any rights granted to the Sponsor under Section 4.06(e) of this Agreement, if a tenant fails to supply the requested certification and documentation within 60 days of the Sponsor's request, or if a tenant provides false or fraudulent materials, the Sponsor may, at its option, (1) refuse to provide a lease renewal to the tenant or (2) provide such tenant a lease renewal at such rent as the Sponsor may legally establish.
- (b) Rents for Income-Restricted Units Above 80% of AMI. When the Occupancy Restriction Period ends, in-place tenants residing in any Income-Restricted Units having an income restriction for occupancy above 80% of AMI shall remain subject to Rent Stabilization and shall be entitled to continued lease renewals at



rents not to exceed their Actual Rent then in effect, as may be adjusted pursuant to Rent Stabilization. Upon the vacancy of any such unit after the Occupancy Restriction Period ends, the unit will be subject to Rent Stabilization as further described in Section 5.01.

- (c) Reserved.

**SECTION 5.06**      Lease Requirements.

- (a) Subordination. In renting units to tenants, the Sponsor shall use a lease expressly subordinate to this Agreement and to the Permitted Mortgages. The lease and any riders shall comply with New York law and shall otherwise be satisfactory to HDC and HPD. To the extent legally permissible, this Agreement shall take precedence and shall control over any other requirements.
- (b) HDC Lease Riders. In renting Income-Restricted Units to tenants, and to the extent legally permissible, the Sponsor shall use a lease rider provided by HDC that sets forth the applicable occupancy and rental requirements of this Agreement (the "HDC Rider"). The HDC Rider shall, among other things, (i) require the tenant to meet HDC's and HPD's eligibility standards in accordance with this Agreement, (ii) prohibit or restrict sublets and (iii) permit the Sponsor to terminate or refuse to renew the tenant's lease if the tenant fails to provide the Sponsor with certifications and documentation as required within 60 days of the Sponsor's request, or if the tenant provides false or fraudulent materials. No lease or other rider for an Income-Restricted Unit shall contain any provision that conflicts with the terms of this Agreement or the HDC Rider (and no such provision shall be enforceable).
- (c) Subleases; Assignments. The Sponsor shall not consent to any sublease or assignment of lease by a tenant of an Income-Restricted Unit except as may be expressly required by law (and, in such event, only upon at least 30 days' prior written notice to HDC and HPD).

**ARTICLE VI. EXTENDED LOW INCOME HOUSING COMMITMENT**

**SECTION 6.01**      Extended Low Income Housing Commitment. This Agreement serves as the "extended low income housing commitment" required under Section 42(h)(6) of the Tax Code. Accordingly, the provisions of this Agreement will be interpreted in accordance with the requirements of the Tax Code, and to the extent that Section 42 of the Tax Code provides additional or stricter requirements or restrictions than this Agreement, the requirements or restrictions of Section 42 of the Tax Code will control and will become additional requirements or restrictions under this Agreement. When recorded against the Premises, this Agreement shall be a restrictive covenant with respect to the Premises as required under Section 42(h)(6)(B)(vi) of the Tax Code.

**SECTION 6.02**      Compliance Term for Tax Credits. The Project must be in compliance with all provisions of Section 42 of the Tax Code, any and all related regulations, the provisions of this extended low income housing commitment, and HDC's monitoring procedures with respect to the Tax Credits, in each case during the term of the Compliance Period and the Extended Use Period (and otherwise as provided in this Agreement). For purposes of this Agreement:

- (a) "Compliance Period" shall mean the period commencing upon the Compliance Period Commencement Date and ending on the Compliance Period Termination Date.
- (b) "Compliance Period Commencement Date" shall mean the date that is the first day of the first taxable year of the Credit Period.
- (c) "Compliance Period Termination Date" shall mean the date that is 15 years after the Compliance Period Commencement Date.
- (d) "Credit Period" shall mean the period of 10 taxable years beginning with (i) the taxable year in which the building is placed in service, or (ii) at the election of the Sponsor, the succeeding taxable year, but only if the Project is a qualified low income housing project under Sections 42(g) and 142(d) of the Tax Code.
- (e) "Extended Use Period" shall mean the period commencing upon the Compliance Period Commencement Date and terminating on the date that is 40 years after the Compliance Period Commencement Date, unless the Project is acquired by foreclosure (or instrument in lieu of foreclosure), in which case the Extended Use Period shall terminate at the request of the party acquiring the Project after such foreclosure, unless the Secretary of the Treasury determines that the acquisition is part of an arrangement with the Sponsor, a purpose of which is to terminate the Extended Use Period.

**SECTION 6.03** Waiver of Right to Petition HPD. The Sponsor agrees for itself, and its successors and assigns, that the Project shall continue to be subject to the provisions of this Agreement throughout the Extended Use Period and that it has waived any right to request that HPD find a person to acquire the Sponsor's interest in the low income portion of the Project after the 14<sup>th</sup> year of the Compliance Period.

**SECTION 6.04** Applicable Fraction. Upon the establishment of the Tax Code Units Condo Units as "buildings" as defined in Section 42 of the Tax Code, the Applicable Fraction (as defined in this section) for the Tax Code Units Condo Units for each taxable year in the Extended Use Period shall be not less than 100%, excluding any Superintendent Unit. "Applicable Fraction" shall have the meaning set forth in Section 42(c)(1)(B) of the Tax Code.

**SECTION 6.05** Condition of Units. Each Tax Code Unit shall be Suitable for Occupancy and shall be used on other than a Transient Basis (each as defined in this section). "Suitable for Occupancy" shall mean habitable and suitable for occupancy in accordance with all applicable federal, state and local laws, rules and regulations, including but not limited to local health, safety and building codes. "Transient Basis" shall mean a unit with occupants who have not entered into a lease for their initial occupancy or who have entered into a lease that has an initial term of less than six months or such other period of occupancy as may be required under rules and regulations promulgated under Section 42 of the Tax Code; provided, however, (i) a unit shall be considered to be used on other than a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building (1) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of Section 103 of the Stewart B. McKinney Homeless Assistance Act in effect on December 19, 1989) to independent living within 24 months and (2) in which a governmental entity or qualified non-profit organization (as defined in Section 42(h)(5)(C) of the Tax Code) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing, and (ii) a single-room occupancy unit shall not be

treated as being used on a transient basis merely because it is rented on a month-to-month basis.

**SECTION 6.06**      No Eviction or Increase in Gross Rent. No existing tenant of any unit may be evicted, other than for good cause, nor shall any increase in the gross rent with respect to such unit be permitted except as may otherwise be permitted by this Agreement. The foregoing shall continue to apply to tenants of Tax Code Units for a three-year period following the end of the Extended Use Period (and Section 2.02 shall apply as well).

**SECTION 6.07**      Rental Assistance Status. The Sponsor shall not refuse to lease to a holder of a Rental Assistance voucher or certificate because of the status of the prospective tenant as such a holder.

**SECTION 6.08**      Enforcement by Certain Individuals. Any individual who meets the income limitation applicable to the Premises under the Tax Code (whether former, present or prospective occupants of the Premises) shall have the right to enforce in any state court the requirements and prohibitions of Section 42(h)(6)(B)(i) of the Tax Code. The Sponsor acknowledges that such individuals are intended third-party beneficiaries of the provisions of this section.

**SECTION 6.09**      No Retaliation. The Sponsor shall not retaliate against any tenant who notifies HDC or HPD of alleged violations of this Agreement.

**SECTION 6.10**      Transfers. No portion of a building (as defined in the Tax Code) in the Project shall be disposed of to any person unless all of the building is disposed of to such person. Transfers shall also be subject to Section 8.01.

## ARTICLE VII. MANAGEMENT

**SECTION 7.01**      Approval of Managing Agent and Management Agreement. The managing agent and any sub-agent (collectively, the "Managing Agent"), and the arrangements for management of the Project, including all management agreements or management plans (collectively, the "Management Agreement"), shall require the prior written approval of HDC (and HPD, if requested by HPD in writing). In particular, the Sponsor shall obtain HDC's (and HPD's, if applicable) written approval of the Managing Agent and the Management Agreement prior to both the Construction Loan Closing and, notwithstanding any prior approval, the Permanent Conversion. Any changes to the Managing Agent or changes to the Management Agreement, other than renewals of its term, shall require the prior written approval of HDC (and HPD, if requested by HPD in writing). All approvals of the Managing Agent and the Management Agreement shall not be unreasonably withheld. HDC approves Phipps Houses Services, Inc. as the Managing Agent for purposes of the Construction Loan Closing.

**SECTION 7.02**      Requirements for Management Agreement. The Management Agreement shall be acceptable to HDC (and HPD, if applicable) in all respects and shall provide (i) that it is subject to termination by the Sponsor on not more than 30 days' notice, without cause and without penalty, and (ii) that the Managing Agent shall carry fidelity insurance for the benefit of the Sponsor in the amount of no less than three months' gross rent for the Project.

**SECTION 7.03**      Removal of Managing Agent. At any time, HDC or HPD may determine, in either case in its sole discretion, that the Managing Agent is no longer acceptable (among

other reasons, because the Project is not being operated in compliance with this Agreement or because the Managing Agent is not operating another HDC- or HPD-supervised project in proper compliance). If so, HDC or HPD may provide a written demand to the Sponsor to terminate the Management Agreement. HDC or HPD may also provide a period for the Sponsor to cure any non-compliance, in the sole discretion of HDC or HPD as applicable. Upon receipt of a demand to terminate the Management Agreement, the Sponsor shall do so immediately, and the existing management services shall be fully discontinued within a period of not more than 30 days from the Sponsor's receipt of HDC's or HPD's demand. In addition, the Sponsor shall make timely arrangements to have the continuing management of the Project approved in writing by HDC (and by HPD, if requested by HPD in writing) and shall submit such arrangements to HDC (and HPD, if applicable) for prior review.

**SECTION 7.04**      Reserved.

## ARTICLE VIII. OWNERSHIP

**SECTION 8.01**      Transfers of Project by Sponsor.

- (a) In General. The Sponsor covenants that it shall not sell, lease, sublease, convey, transfer or otherwise dispose of all or any portion of the Project (each, a "Transfer") without the prior written consent of HDC and HPD, which shall not be unreasonably withheld except for: (i) transfers of non-voting preferred stock in 1675 Westchester Avenue Inc. to REIT investors provided that Phipps 1675 Associates LLC, a New York limited liability company and The Promesa Housing Development fund Corporation, a New York not-for-profit corporation, collectively retain all control in 1675 Westchester Avenue Inc. through their ownership of 100% of the common stock therein; (ii) the transfer of investor member interest in Non-Tax Code Borrower from 1675 Westchester Avenue Inc. to Bank of America, N.A. on condition that HDC and HPD shall have received written notice of (i) and (ii) hereof; (iii) the automatic transfer of 0.05% of the Tax Code Borrower from Phipps Houses Holdings LLC to the Non-Tax Code Borrower pursuant to the Operating Agreement of the Tax Code Borrower; and (iv) transfers of shares of 1675 Westchester Avenue Inc. between The Promesa Housing Development Fund Corporation and Phipps 1675 Associates LLC for so long as Phipps 1675 Associates LLC remains a shareholder of at least 50% of the interest in 1675 Westchester Avenue Inc.. As a condition to a Transfer of all or substantially all of the Project, the transferee shall be required to assume all of the Sponsor's obligations under this Agreement from the date of such Transfer and to execute any document that HDC or HPD shall reasonably require in connection with the assumption.
- (b) Residential Leases. This covenant shall not require HDC's or HPD's consent for the Sponsor to enter into leases with residential tenants or users of the Project, if such leases (i) are consistent with this Agreement and (ii) do not contain an option to acquire all or any portion of the Project while this Agreement is in effect.
- (c) Other Consents. Nothing contained in this Agreement shall affect any provision of the Loan Documents that requires the Sponsor to obtain the consent of the holder of the HDC Mortgage (which may be HDC) or any other person as a condition to a Transfer.

- (d) Foreclosure. This covenant shall not require HDC's or HPD's consent to a Transfer in connection with the foreclosure or deed in lieu of foreclosure of the HDC Mortgage or a comparable conversion of the Project. Any subsequent Transfer, however, shall require the prior written consent of HDC and HPD.
- (e) Reserved.

**SECTION 8.02** Non-Residential Lease Approval. The Sponsor shall obtain the prior written approval of HDC and HPD for all non-residential leases, subleases or occupancy agreements affecting any portion of the Project. An amendment of a non-residential lease, sublease or occupancy agreement that changes the permitted use or that otherwise alters a material term of the agreement shall also require the prior written consent of HDC and HPD. No portion of the Project shall consist of a store, a principal business of which is the sale of alcoholic beverages for consumption off-premises. Prior to the date hereof, HDC and HPD have approved the Master Lease.

**SECTION 8.03** Interests in Beneficial Owner. Except as may be expressly permitted by this article, the Beneficial Owner covenants that it shall not permit any change to its ownership at any tier, including admissions, withdrawals and acquisitions of additional interests, without the prior written consent of HDC and HPD.

**SECTION 8.04** Interests in Tax Credit Investor. Notwithstanding the requirements of Section 8.03, and provided that the Tax Credit Investor is a passive investor in the Beneficial Owner, transfers of (i) passive investment interests in the Tax Credit Investor and (ii) the Tax Credit Investor's passive investment interest in the Beneficial Owner are permitted with written notice to HDC and HPD, so long as the manager, managing member or general partner of the Tax Credit Investor, or any transferee of the Tax Credit Investor's interest in the Beneficial Owner, is an affiliate of, and is and remains controlled by or under common control with, Bank of America, N.A. Any interest in the Beneficial Owner of a special member or limited partner may be transferred only together with a permitted transfer of the Tax Credit Investor's interest in the Beneficial Owner or of the interest of the manager, managing member or general partner of the Tax Credit Investor, and only to the same transferee or to a party that is an affiliate of, and is and remains controlled by or under common control with the transferee.

**SECTION 8.05** Interests in Legal Owner. The Legal Owner covenants that it shall not permit any change to its ownership at any tier, including admissions, withdrawals and acquisitions of additional interests, without the prior written consent of HDC and HPD.

**SECTION 8.06** Previously Approved Entities. Interests in the Beneficial Owner or the Legal Owner (in either case, at any tier) may be transferred to entities that have been previously approved in writing by HDC and HPD. Prior to any such transfer, prompt notice must be given to HDC and HPD, and the transferee must comply with the applicable HDC and HPD disclosure procedures.

**SECTION 8.07** Death or Incapacity. A direct or indirect transfer of an ownership interest to an executor, administrator or conservator of a deceased or incapacitated individual shall require written notice to, but not the consent or approval of, HDC and HPD. A subsequent transfer by such executor, administrator or conservator shall be subject to this article, however.

**SECTION 8.08** No Other Liens or Financing. While the HDC Mortgage is outstanding, the Sponsor covenants that it shall not incur any additional debt secured by all or part of the

Project, or any other subordinate financing, except for (i) the Permitted Mortgages and (ii) as may have been expressly approved by HDC and HPD in writing. Except as expressly permitted in this Agreement, assignments, transfers, encumbrances, granting of participation interests, hypothecations, or pledges of interests (or proceeds of such interests) of any of the direct or indirect ownership interests in the Sponsor shall not be permitted without the prior written consent of HDC and HPD.

**SECTION 8.09**      No Purchase of Obligations. Neither the Sponsor nor any "related person" to the Sponsor, as defined in Section 144(a)(3) of the Tax Code, shall purchase Obligations (other than Pledged Bonds or Bank Bonds (each as defined in the Resolution)) in an amount related to the amount of the HDC Loan or the HDC Additional Loan funded by the Obligations.

**SECTION 8.10**      No Distributions Upon Default. Upon written notice from HDC or HPD to Sponsor of (i) an Event of Default under this Agreement, or (ii) a material uncured default under any other Loan Document, the Sponsor covenants that it shall not make any distribution of any assets of, or any income of any kind from, the Project to its partners, members or shareholders, as applicable, until the cure of the Event of Default or default has been determined by HDC or HPD, as applicable.

**SECTION 8.11**      Reserved.

## ARTICLE IX. RECORDS AND REPORTING

**SECTION 9.01**      Requests for Information. The Sponsor shall promptly furnish any reports, records, documents or information reasonably requested by HDC or HPD, in a form satisfactory to HDC or HPD, as the case may be, with respect to the construction, marketing, occupancy, maintenance or operation of the Project.

**SECTION 9.02**      Financial Statements. Audited financial statements for the Project shall be prepared at least annually in accordance with generally accepted accounting principles. Financial statements may be modified in accordance with government auditing standards as set forth by the Comptroller General of the United States, to the extent and in a manner approved by HDC in its sole discretion (and by HPD in its sole discretion, if requested by HPD in writing).

**SECTION 9.03**      Retention of Records. The Sponsor shall maintain and keep current all books, documents, plans and records concerning the Project (the "Records"). The Sponsor shall retain (i) those Records pertaining to the rental or occupancy of each Tax Code Unit, and the rent roll for all units, for a minimum of six years after the end of the Occupancy Restriction Period and (ii) all other Records for a minimum of six years after the end of the fiscal or calendar year for which the Record was produced. Upon reasonable notice, HDC and HPD may, during normal business hours, (x) audit and examine the Records and (y) inspect the buildings, grounds, equipment and offices of the Project. The Sponsor shall use its best efforts to facilitate inspections.

**SECTION 9.04**      Annual Tax-Exempt Obligations Certification. The Sponsor shall submit (or shall cause the operator of the Project to submit) to the Secretary of the Treasury, at such time and in such manner as the Secretary of the Treasury shall prescribe, an annual certification (IRS Form 8703, as may be amended) as to whether the Project continues to comply with the requirements of Section 142(d)(7) of the Tax Code. Any failure to submit this certification shall

not affect the exclusion from gross income for purposes of federal income taxation of interest on the Obligations but shall subject the Sponsor and/or such operator to a penalty pursuant to Section 6652(j) of the Tax Code.

**SECTION 9.05**      Annual Tax Credits Certification. On an annual basis, the Sponsor shall submit to HDC as HPD's designee (i) a certified rent roll for the Premises and (ii) a written certification that the Tax Code Units are owned and operated in compliance with the Tax Code.

**SECTION 9.06**      Notice of Material Non-Compliance. The Sponsor covenants to notify HDC and HPD promptly if the Sponsor discovers any material non-compliance with any restriction or covenant in this Agreement, including any occurrence or event that adversely affects (i) the exclusion from gross income for purposes of federal income taxation of interest on the Obligations or (ii) the Tax Credits.

**SECTION 9.07**      Building Benchmarking. Upon the issuance of a temporary certificate of occupancy for any space in the Project by the City's Department of Buildings, the Sponsor shall contract, at the Beneficial Owner's expense, with a qualified benchmarking software provider on the HDC-approved list (the "Qualified Software Provider") to collect monthly and annual data on the heating, electric and water usage at the Premises (the "Utility Performance Information") in accordance with HPD's building benchmarking protocol. Not later than May 1 of each year during the Occupancy Restriction Period, the Qualified Software Provider retained by the Sponsor shall input the Utility Performance Information for the immediately preceding year into the U.S. Environmental Protection Agency's ENERGY STAR Portfolio Manager system, or such other system as may be designated by HDC and HPD ("Portfolio Manager"). The Sponsor agrees and acknowledges that (i) the Utility Performance Information will be made available to HDC and HPD through an account located on Portfolio Manager, and (ii) HDC and HPD may receive the Utility Performance Information directly from the Qualified Software Provider. HDC and HPD reserve the right to require the Sponsor to replace the Qualified Software Provider if the provider is no longer on the HDC-approved list. During the Occupancy Restriction Period, the Sponsor shall at all times abide by the requirements of this section and the HPD building benchmarking protocol, as may be amended.

## ARTICLE X. ENFORCEMENT

**SECTION 10.01**      Events of Default; Remedies.

- (a) In the event of a breach of any of the covenants or agreements contained in this Agreement, either HDC or HPD may, by written notice to all parties, declare an "Event of Default". If the Credit Instrument has not been released, notice of an Event of Default shall be given to the Credit Provider as well. Upon the occurrence of an Event of Default, HDC and HPD shall have the right to take one or more of the following actions:
- (i) Institute and prosecute any proceeding for an injunction or for specific performance of the Sponsor's obligations under this Agreement.
  - (ii) Extend the term of this Agreement by the period of non-compliance upon the recording of an appropriate document, executed solely by HDC and HPD, against the Premises. The period of non-compliance shall be presumed to be the period running from the date of this Agreement to the date that HDC or HPD

declares an Event of Default, which presumption may be rebutted by the Sponsor.

- (iii) Upon written notice of HDC or HPD, prohibit the Sponsor and/or any of its principals from doing business with HDC or HPD, as the case may be, for a period of not less than three years from the date of violation. This prohibition shall not extend to any as-of-right benefits.
  - (iv) Cure the violation and charge the Sponsor for any costs or expenses incurred to remedy the violation plus interest at the Default Rate from the date of demand until paid.
  - (v) Rent any un-leased or vacant unit in order to comply with this Agreement (in such event, HDC and HPD shall use reasonable efforts to obtain the highest rent permitted by this Agreement).
  - (vi) Prohibit the occupancy of any unoccupied unit in order to comply with this Agreement.
  - (vii) Prohibit distributions to partners, members or shareholders, as applicable, of the Sponsor and/or take any action to seek restitution to the Project's account for any distributions made in violation of this Agreement, if the distribution was made after notice was given pursuant to Section 8.10.
  - (viii) Declare an event of default under any Loan Document and pursue any applicable remedies, including commencing a foreclosure of the HDC Mortgage.
  - (ix) Require the removal of any partner, member or shareholder, as applicable, responsible for the violation.
  - (x) Seek appointment of HDC, HPD or a receiver to take possession of and operate the Project, collect all rents, and pay all necessary costs of the Project in accordance with the terms of this Agreement and any other Loan Documents, until the Sponsor has cured the violation and given satisfactory evidence that it can operate the Project in compliance with this Agreement.
  - (xi) Seek any other relief that may be appropriate or desirable at law or in equity.
- (b) In the event of a threatened breach of any of the covenants or agreements contained in this Agreement, HDC and HPD shall have the right to the remedy described in paragraph (a)(i) above.

**SECTION 10.02** Cure Period; Waiver. Either HDC or HPD, with the prior written consent of the other agency, but otherwise in the sole discretion of HDC or HPD, may by written notice to all parties to this Agreement, (i) give the Sponsor a period of up to 30 days to cure an Event of Default (provided the Event of Default can be cured without affecting the rights of any bona fide tenants who have executed leases with the Sponsor) or (ii) waive an Event of Default. If the Credit Instrument has not been released, written notice of any cure period or waiver shall also be given to the Credit Provider. HDC and HPD agree that any cure of any Event of Default made or tendered by one or more of the Sponsor's members, partners or shareholders, as applicable, shall be deemed to be a cure by the Sponsor and shall be accepted or rejected on the same basis as if made or tendered by the Sponsor.

**SECTION 10.03** Reporting of Non-Compliance to IRS. The Sponsor acknowledges that actions taken or authorized to be taken by HDC or HPD following an Event of Default are in



addition to HDC's obligations under the Tax Code to report acts of non-compliance to the Internal Revenue Service pursuant to HDC's monitoring procedures with respect to the Tax Credits.

**SECTION 10.04** Indemnity. The Sponsor agrees to pay all reasonable costs and expenses of HDC and HPD (including fees of attorneys and experts), in addition to any other loss, claim, damage or liability that may be incurred by HDC or HPD or awarded by any court, arising out of any proceeding or action that is brought or taken in connection with this Agreement (including those brought or taken by HDC, HPD or the Sponsor). The Sponsor shall pay any such amount regardless of whether a legal action is finally decided by a court. The Sponsor shall not be obligated to pay any costs or expenses of HDC or HPD that are attributable to any action or proceeding brought by HDC or HPD in bad faith. If the Sponsor fails to pay any amount due under this section within 10 days of demand by HDC or HPD, the unpaid amount shall bear interest at the Default Rate from the date of demand until paid.

**SECTION 10.05** Non-Recourse Liability; Carve-Out. Except as provided in this section, in enforcing this Agreement, neither HDC nor HPD will seek a money judgment against the Sponsor or any related officer, director, member, partner or shareholder. HDC and HPD may seek a money judgment against the Beneficial Owner and its members, partners or shareholders, as applicable, in order to enforce the obligations or liabilities of the Beneficial Owner and its present or future members, partners or shareholders pursuant to Section 10.01(a)(iv) (concerning the Sponsor's responsibility for the costs and expenses of HDC or HPD in curing any violations of this Agreement, and any interest on such amounts), Section 10.01(a)(vii) (concerning the prohibition on distributions after default) or Section 10.04 (concerning the Sponsor's indemnification of HDC and HPD). HDC and HPD may also seek a money judgment against the Beneficial Owner and its members, partners or shareholders to the extent of any deficiency, loss, damage or non-compliance with this Agreement resulting from (i) fraud, (ii) misappropriation or diversion of funds or other property or (iii) intentional damage to the Project inflicted by the Beneficial Owner or any of its members, partners, shareholders, agents or employees. HDC and HPD agree that they will seek to collect any money judgment obtained against the Beneficial Owner's members, partners or shareholders only from (a) their capital contributions actually paid in at the time HDC or HPD seeks a judgment, or to be paid in pursuant to the Beneficial Owner's organizational documents, and (b) any distributions to such members, partners or shareholders made in violation of the HDC Act or this Agreement. The provisions of this section shall not affect the validity or enforceability of any provision of the HDC Mortgage or any guaranty or indemnity agreement made in connection with the issuance of the Obligations, the HDC Commitment or the funding of the HDC Financing.

**SECTION 10.06** Cumulative Rights and Remedies. All rights and remedies of HDC and HPD shall be cumulative and may be exercised singularly or concurrently, at HDC's or HPD's option. The exercise or enforcement of any one right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other right or remedy. The enumeration of rights and remedies in this Agreement shall not preclude the exercise or enforcement by HDC or HPD of any other rights or remedies available to HDC or HPD.

**SECTION 10.07** Cross-Default under Mortgages. The HDC Mortgage shall provide that an Event of Default under this Agreement shall also be a default under such mortgages. So long as this Agreement is in effect, any mortgage on the Project funded by HDC or HPD shall provide that an Event of Default under this Agreement shall be a default under the mortgage and that HDC or HPD, as applicable, or the holder of the mortgage if not HDC or HPD, may prosecute a

foreclosure in accordance with the mortgage, subject to any other written agreements that may have been made by HDC or HPD and any other holder of the mortgage.

**SECTION 10.08** Prior Owner Liability. The Sponsor (including any subsequent owner of the Project) shall be liable for (i) the breach of any obligation or any Event of Default under this Agreement caused by any prior owner and (ii) any related payment or indemnification obligation. During any period in which the Credit Provider or its designee owns the Project, however, or if any subsequent owner acquires the Project from the Credit Provider or its designee, neither the Credit Provider, its designee, nor the subsequent owner shall be liable for the breach or Event of Default of a prior owner, or any related payment or indemnification obligation. In such a case, the owner of the Project at the time of the breach or Event of Default shall remain liable for any and all related damages. Any party seeking to collect damages from the liable prior owner in such a case shall, to that extent, have no recourse to the Project and no right to levy against or otherwise collect on any judgment from the Project. The liable prior owner shall bear no liability under this Agreement, however, for any damages caused by any subsequent breach or Event of Default occurring after the entity no longer owned the Project.

**SECTION 10.09** Enforcement by Credit Provider. Except as expressly provided in the Servicing and Release Agreement, the Credit Provider shall not be obligated or have any right to enforce this Agreement.

## ARTICLE XI. MISCELLANEOUS

### **SECTION 11.01** Fees.

- (a) Tax Credits Monitoring Fee. Pursuant to the Tax Code, HDC is entitled to a reasonable fee for monitoring the Project's compliance with respect to the Tax Credits. During the Compliance Period, the Beneficial Owner shall pay to HDC an annual monitoring fee that is equal to the sum of (i) an annual fee of \$100 per building in the Project, not subject to an annual cap (the "Building Fee"); and (ii) 0.75% of the maximum annual tax credit rent for the Tax Code Units, subject to an annual cap of \$12,500, if there are 150 or fewer Tax Code Units in the Project, or \$17,500, if there are more than 150 Tax Code Units in the Project (such fee, the "Unit Fee", and together with the Building Fee, the "Tax Credits Monitoring Fee"). If the HDC Loan is paid in full prior to the end of the Compliance Period, the Beneficial Owner shall pay to HDC an amount that is equal to the present value (based on the Daily Treasury Yield Curve Rates, as published by the U.S. Department of the Treasury) of the Tax Credits Monitoring Fee at the time of the prepayment for each year remaining in the Compliance Period. After such a payment, no additional Tax Credits Monitoring Fee shall be due.
- (b) HDC Monitoring Fee (Prepayment in Full). To compensate HDC for continued monitoring of the Project after a prepayment in full of the HDC Loan, upon such a prepayment, the Beneficial Owner shall pay to HDC an amount that is equal to the greater of (i) the present value (based on the Daily Treasury Yield Curve Rates, as published by the U.S. Department of the Treasury) of HDC's annual 0.20% servicing fee on the outstanding balance of the HDC Loan at the time of the prepayment, or (ii) \$50 per unit per year, in either case for each year remaining in the Occupancy Restriction Period.

- (c) Compliance Escrow. If the Project is not in compliance with this Agreement on the date that the Beneficial Owner gives notice of a prepayment to HDC, then unless the Beneficial Owner withdraws the notice until the Project is in compliance, the Beneficial Owner shall enter into a compliance escrow agreement with HDC and deposit an amount that is equal to the greater of (i) \$25 per unit per year for the remainder of the Occupancy Restriction Period or (ii) \$10,000. This compliance escrow shall be in addition to the monitoring fee required by paragraph (b) above. The compliance escrow shall be applied ratably by HDC to monitor compliance with this Agreement. Once the Project is restored to compliance, any balance of the compliance escrow will be refunded to the Beneficial Owner, without interest.

**SECTION 11.02** Equal Opportunity. The Sponsor shall use reasonable efforts to ensure that businesses owned by women and by members of traditionally disadvantaged minority groups are afforded equal opportunity to participate in any development and construction contracts entered into in connection with the Project.

**SECTION 11.03** Waivers. No delay or failure to act or give notice shall waive any provision of this Agreement or preclude the enforcement of any rights or remedies of HDC or HPD. All waivers must be in writing and must be signed by the waiving parties. No waiver shall apply to any instance other than the specific instance in connection with which it is delivered.

**SECTION 11.04** Amendments. This Agreement shall not be amended or otherwise modified except by an instrument in recordable form signed by all of the parties. This Agreement shall not be amended without first obtaining, if required by HDC in its sole discretion, an opinion of Bond Counsel that such amendment will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Obligations. The Sponsor shall agree to amend this Agreement if any amendments are required to obtain mortgage insurance for the HDC Mortgage. In addition, if after the execution of this Agreement, there are amendments to (i) the HDC Act, (ii) the Tax Code or (iii) Rent Stabilization, or any related rules or regulations, and if such amendments are applicable to the Project and inconsistent with this Agreement, as determined by HDC and HPD, then upon written request of HDC and HPD, this Agreement shall be amended to the extent necessary.

**SECTION 11.05** Severability. The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions of the Agreement.

**SECTION 11.06** Action and Consents. Except where the granting of HDC's or HPD's consent or approval is expressly stated to be in HDC's or HPD's discretion (or words of similar import), HDC, HPD and the Sponsor shall use reasonable promptness, reasonable diligence, reasonable judgment and reasonable discretion in exercising any duty or right, providing any consent or approval, or making any determination required by this Agreement. HDC, HPD and the Sponsor shall use their reasonable efforts to effectuate the purposes of this Agreement.

**SECTION 11.07** Successors and Assigns. All references in this Agreement to any party, entity or person shall be deemed to include the successors and assigns of the party, entity or person. Successors to HDC or HPD shall include any body, agency or instrumentality of the State or the City that succeeds to the powers, duties or functions of HDC or HPD, as the case may be.

**SECTION 11.08** Covenants Run with the Land. This Agreement shall be recorded against the Premises. The parties agree that, during the term of this Agreement, all provisions shall run with the Premises and shall be enforceable by both HDC and HPD against the Sponsor and its successors, assigns, heirs, grantees and lessees. The parties declare their understanding and intent that the burden of the covenants set forth in this Agreement touch and concern the land in that the Sponsor's legal interest in the Project is rendered less valuable by them. The parties further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by people and families for whom the ordinary operations of private enterprise cannot provide an adequate supply of safe, sanitary and affordable housing, the intended beneficiaries of such covenants. During the term of this Agreement, the covenants of the Sponsor in this Agreement are enforceable by both HDC and HPD as contract beneficiaries whether or not the Sponsor is or remains indebted to HDC or HPD.

**SECTION 11.09** Notices. Any notice, demand, direction, request or other instrument authorized or required to be given or filed under this Agreement shall be deemed to have been sufficiently given or filed if and when sent (i) by certified mail, return receipt requested, (ii) by fax or other electronic means with notice of receipt or (iii) by hand delivery. All notices sent by mail or hand delivery shall be sent to the addresses given above or to any other address of any party that it has notified the other parties of in writing. Notices to HDC or HPD shall be sent to the attention of the General Counsel. Notices required to be given to the Credit Provider shall be sent to Bank of America, N.A, One Bryant Park, 35<sup>th</sup> Floor New York, New York 10036, Attention: Tracy Sullivan with a copy to Sidley Austin LLP, 787 Seventh Avenue, New York New York 10019, Attention: Aviva Yakren, Esq. HDC and HPD shall make an effort to send copies of all notices that are sent to the Beneficial Owner to the Beneficial Owner's counsel at Hirschen Singer & Epstein LLP, 902 Broadway, 13<sup>th</sup> Floor, New York, New York 10010, Attention: Oliver G. Chase, Esq. and to the Tax Credit Investor at Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116, Attention: Sara Heskett, Esq. Failure to send any copy, however, shall not affect the effectiveness of the notice.

**SECTION 11.10** Governing Law; Jurisdiction; Service of Process. The parties unconditionally and irrevocably agree that this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws principles. The parties unconditionally and irrevocably accept the jurisdiction of any state or federal court sitting in the State and New York County or the county in which the Project or any portion of the Project is located, waive any objection to the bringing of an action, suit or other legal proceeding in such jurisdiction, and consent to venue in any such court. The parties agree that service of process may be by hand or certified mail, return receipt requested or otherwise as permitted by law. The Beneficial Owner and the Legal Owner each irrevocably consent to the service of any and all process in any such action, suit or proceeding to its then-current address or such other address permitted by law as may be agreed to in writing by HDC and HPD. HDC's designated agent for service of process shall be its General Counsel at its offices. HPD's designated agent for service of process shall be its General Counsel at its offices.

**SECTION 11.11** Loan Agreement. The Beneficial Owner shall pay all amounts due to HDC pursuant to the Loan Agreement. If the Beneficial Owner does not pay any such amounts, HDC may declare an Event of Default under this Agreement.

**SECTION 11.12** Counterparts. This Agreement may be executed in counterparts, and all counterparts shall collectively constitute a single instrument. An executed signature page to one counterpart may be attached to another counterpart that is identical (except for additional

signature pages) without impairing the legal effect of the signatures. Any counterpart containing the signatures of each of the parties shall be sufficient proof of this Agreement.

**SECTION 11.13** Investigations. The Sponsor shall be bound by the provisions of the investigations clause attached as Schedule C.

**SECTION 11.14** Further Assurances. The Sponsor shall, at the Sponsor's expense, promptly execute and deliver any further documents, and take any further action, as may be reasonably requested by HDC or HPD to ensure that the Project complies with all applicable provisions of the Tax Code and this Agreement.

**SECTION 11.15** Concerning the Legal Owner.

- (a) Nominee Agreement. The Legal Owner and the Beneficial Owner each represent that they have delivered to HDC and HPD a true copy of the Nominee Agreement, and each agrees that it shall observe the terms of the Nominee Agreement. The Legal Owner and the Beneficial Owner agree that the Nominee Agreement shall not be amended, nor shall a new Nominee Agreement affect the Premises, without the prior written consent of HDC and HPD, which shall not be unreasonably withheld. Any notice of a default or event of default required under the Nominee Agreement shall simultaneously be provided to HDC and HPD, and any default that remains uncured beyond the applicable cure period shall constitute a breach under this Agreement and shall be subject to the enforcement procedures of this Agreement.
- (b) Right to Enter and Cure. Notwithstanding anything contained in the Nominee Agreement to the contrary, the Nominee Agreement shall be deemed to provide (if it does not already provide) that if there is an event of default under any City, State or federal loan document, including but not limited to any mortgage, regulatory agreement or financing commitment, the Legal Owner shall have the right to enter the Premises to cure the default as agent for and on behalf of the Beneficial Owner, unless the Beneficial Owner is acting diligently to cure the default.
- (c) Must Remain in Project for Term of Mortgages. The Legal Owner (including any successor or permitted assign) shall remain in the Project's ownership structure for the entire term of the HDC Mortgage.

**SECTION 11.16** Reserved.

**SECTION 11.17** Reserved.

**SECTION 11.18** Reserved.

**SECTION 11.19** HireNYC. The Sponsor shall comply, and shall cause the Project's general contractor and all applicable subcontractors to comply, with the requirements of HireNYC as more particularly set forth in the HireNYC Rider attached as Schedule E, as may be modified by the City from time to time.

**SECTION 11.20** Environmental Requirements. The Sponsor shall comply the requirements contained in the HPD Negative Declaration attached as Schedule F.

**SECTION 11.21**      Reserved.

**SECTION 11.22**      Reserved.

[Signatures follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**1675 WESTCHESTER AVENUE ASSOCIATES LLC**

By: 1675 JV Associates LLC, its managing member

By: Phipps 1675 Associates LLC, its managing member

By: Phipps Houses, its sole member

By: Michael Wadman  
Michael Wadman  
Vice President

**1675 WESTCHESTER AVENUE LIHTC ASSOCIATES LLC**

By: 1675 Westchester Avenue Associates LLC, its manager

By: 1675 JV Associates LLC, its managing member

By: Phipps 1675 Associates LLC, its managing member

By: Phipps Houses, its sole member

By: Michael Wadman  
Michael Wadman  
Vice President


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

On the 25<sup>th</sup> day of April, 2019, before me, the undersigned, a notary public in and for said state, personally appeared **MICHAEL WADMAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Lynn P. Anderson  
Notary Public  
Commission expires:


LYNN P. ANDERSON  
Notary Public, State of New York  
No. 01AN5015264  
Qualified in Queens County  
Commission Expires July 19, 2021

1675 WESTCHESTER AVENUE HOUSING  
DEVELOPMENT FUND CORPORATION

By:   
Michael Wadman  
Vice President

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

On the 25<sup>th</sup> day of April, 2019, before me, the undersigned, a notary public in and for said state, personally appeared **MICHAEL WADMAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
Notary Public  
Commission expires:

LYNN P. ANDERSON  
Notary Public, State of New York  
No. 01AN5015264  
Qualified in: Queens County  
Commission Expires July 19, 2021



**NEW YORK CITY HOUSING  
DEVELOPMENT CORPORATION**

By:                     ARRL                      
Anthony R. Richardson  
Executive Vice President

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

On the 25<sup>th</sup> day of April, 2019, before me, the undersigned, a notary public in and for said state, personally appeared **ANTHONY R. RICHARDSON**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

                    Lynn P. Anderson                      
Notary Public  
Commission expires:

**LYNN P. ANDERSON**  
Notary Public, State of New York  
No. 01AN5015264  
Qualified in Queens County  
Commission Expires July 19, 2021

THE CITY OF NEW YORK, acting by and through its DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

By:

  
Name: Jeremy Hoffman  
Title: Assistant Commissioner

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

On the 25<sup>th</sup> day of April, 2019, before me, the undersigned, a notary public in and for said state, personally appeared **JEREMY HOFFMAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
Commission expires:

**WON J PARK**  
Notary Public, State of New York  
No. 02PA6354578  
Qualified in Kings County  
Commission Expires February 13, 2021

APPROVED AS TO FORM BY STANDARD  
TYPE OF CLASS FOR USE UNTIL April 30, 2019:

By: /s/ Amrita Barth  
Acting Corporation Counsel

**SCHEDULE A**

**LEGAL DESCRIPTION OF PREMISES**

[Follows]

**CHICAGO TITLE INSURANCE COMPANY**

Title No. CT18-00149-BX

**SCHEDULE A DESCRIPTION**

ALL that certain plot piece or parcel of land situate lying and being in the Borough and County of the Bronx, City and State of New York bounded and described as follows:

BEGINNING at a corner formed by the intersection of the northerly side of Westchester Avenue (100 feet wide) with the westerly side of Fteley Avenue (60 feet wide);

RUNNING THENCE westerly along the northerly side of Westchester Avenue, 203.55 feet to the easterly side of Metcalf Avenue (85 feet wide);

RUNNING THENCE northerly along the easterly side of Metcalf Avenue, 237.52 feet to a point;

RUNNING THENCE easterly at right angles to the easterly side of Metcalf Avenue, 100 feet to a point;

RUNNING THENCE southerly at right angles to the last mentioned course, 100 feet to a point;

RUNNING THENCE easterly at right angles to the last mentioned course, 100 feet to the westerly side of Fteley Avenue;

RUNNING THENCE southerly along the westerly side of Fteley Avenue, 99.66 feet to the corner the point or place BEGINNING.

## SCHEDULE B

### DISTRIBUTION OF UNITS AND INITIAL RENTS

Project: 1675 Westchester  
1240 Metcalf Avenue  
Bronx], NY  
Block 3780, Lot 1

The Project shall contain 249 units in total (including 1 Superintendent Unit).

Note: The applicable utility allowance is deducted from the Legal Rents and Actual Rents set forth in this Schedule B (i.e., they are "net" rents), except in the case of the Legal Rents for units occupied initially by tenants with Rental Assistance vouchers or certificates, which are based on the FMR percentages given with no deduction for the utility allowance.

#### Tax Code Units

##### 30% of AMI Units (Permanently Affordable Units)

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	0	\$401 (30% of AMI)	\$354 (27% of AMI)
1-Bedroom	3	\$515 (30% of AMI)	\$456 (27% of AMI)
2-Bedroom	1	\$628 (30% of AMI)	\$557 (27% of AMI)
3-Bedroom	0	\$718 (30% of AMI)	\$637 (27% of AMI)
TOTAL	4		

##### 30% of AMI Units (MIH Units)

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	2	\$401 (30% of AMI)	\$354 (27% of AMI)
1-Bedroom	9	\$515 (30% of AMI)	\$456 (27% of AMI)
2-Bedroom	8	\$628 (30% of AMI)	\$557 (27% of AMI)
3-Bedroom	2	\$718 (30% of AMI)	\$637 (27% of AMI)
TOTAL	21		

##### 40% of AMI Units (Homeless, Permanently Affordable Units)\*

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	2	\$1,559 (100% of FMR)	\$354 (27% of AMI)
1-Bedroom	11	\$1,599 (100% of FMR)	\$456 (27% of AMI)
2-Bedroom	9	\$1,831 (100% of FMR)	\$557 (27% of AMI)
3-Bedroom	3	\$2,324 (100% of FMR)	\$637 (27% of AMI)
TOTAL	25		

**SCHEDULE B (continued)**

\* This distribution may be adjusted at initial rent-up with the prior written consent of HDC and HPD.

50% of AMI Units (Non-Permanently Affordable Units)

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	2	\$714 (50% of AMI)	\$667 (47% of AMI)
1-Bedroom	9	\$906 (50% of AMI)	\$848 (47% of AMI)
2-Bedroom	9	\$1,097 (50% of AMI)	\$1,027 (47% of AMI)
3-Bedroom	0	\$1,261 (50% of AMI)	\$1,179 (47% of AMI)
<b>TOTAL</b>	<b>20</b>		

50% of AMI Units (Permanently Affordable Units)

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	2	\$714 (50% of AMI)	\$667 (47% of AMI)
1-Bedroom	2	\$906 (50% of AMI)	\$848 (47% of AMI)
2-Bedroom	2	\$1,097 (50% of AMI)	\$1,027 (47% of AMI)
3-Bedroom	3	\$1,261 (50% of AMI)	\$1,179 (47% of AMI)
<b>TOTAL</b>	<b>9</b>		

50% of AMI Units (MIH Units)

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	2	\$714 (50% of AMI)	\$667 (47% of AMI)
1-Bedroom	9	\$906 (50% of AMI)	\$848 (47% of AMI)
2-Bedroom	7	\$1,097 (50% of AMI)	\$1,027 (47% of AMI)
3-Bedroom	2	\$1,261 (50% of AMI)	\$1,179 (47% of AMI)
<b>TOTAL</b>	<b>20</b>		

70% of AMI Units (Non-Permanently Affordable Units)

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	6	\$1,027 (70% of AMI)	\$980 (67% of AMI)
1-Bedroom	20	\$1,298 (70% of AMI)	\$1,239 (67% of AMI)
2-Bedroom	19	\$1,567 (70% of AMI)	\$1,496 (67% of AMI)
3-Bedroom	5	\$1,803 (70% of AMI)	\$1,722 (67% of AMI)
<b>TOTAL</b>	<b>50</b>		

SCHEDULE B (continued)

**Non-Tax Code Income-Restricted Units**

**90% of AMI Units (Non-Permanently Affordable Units)**

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	5	\$1,184 (80% of AMI)	\$1,184 (80% of AMI)
1-Bedroom	20	\$1,494 (80% of AMI)	\$1,494 (80% of AMI)
2-Bedroom	13	\$1,802 (80% of AMI)	\$1,802 (80% of AMI)
3-Bedroom	4	\$2,075 (80% of AMI)	\$2,075 (80% of AMI)
<b>TOTAL</b>	<b>42</b>		

**90% of AMI Units (MIH Units)**

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	1	\$1,340 (90% of AMI)	\$1,184 (80% of AMI)
1-Bedroom	7	\$1,689 (90% of AMI)	\$1,494 (80% of AMI)
2-Bedroom	10	\$2,036 (90% of AMI)	\$1,802 (80% of AMI)
3-Bedroom	2	\$2,346 (90% of AMI)	\$2,075 (80% of AMI)
<b>TOTAL</b>	<b>20</b>		

**110% of AMI Units (Non-Permanently Affordable Units)**

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	5	\$1,340 (90% of AMI)	\$1,340 (90% of AMI)
1-Bedroom	15	\$1,689 (90% of AMI)	\$1,689 (90% of AMI)
2-Bedroom	14	\$2,036 (90% of AMI)	\$2,036 (90% of AMI)
3-Bedroom	3	\$2,346 (90% of AMI)	\$2,346 (90% of AMI)
<b>TOTAL</b>	<b>37</b>		

**Legal Rents for Tax Code Units Initially Occupied by Tenants with Rental Assistance Vouchers or Certificates**

At the initial rent-up of the Project, the Sponsor shall determine the Tax Code Units, if any, that will be occupied by Rental Assistance tenants with vouchers or certificates. For any such Tax Code Unit, the initial Legal Rent shall not exceed the amount given in this section

	<u>Legal Rent (initial)</u>
Studio	\$1,404 (90% of FMR)
1-Bedroom	\$1,440 (90% of FMR)
2-Bedroom	\$1,648 (90% of FMR)
3-Bedroom	\$2,092 (90% of FMR)

**SCHEDULE B (continued)**

Studio (Homeless Unit)	\$1,559 (100% of FMR)
1-Bedroom (Homeless Unit)	\$1,599 (100% of FMR)
2-Bedroom (Homeless Unit)	\$1,831 (100% of FMR)
3-Bedroom (Homeless Unit)	\$2,324 (100% of FMR)]

**Rent Increases at Initial Rent-Up**

In certain circumstances, Legal Rents and Actual Rents specified in this Schedule B may be increased at initial rent-up with the prior written consent of HDC and HPD (and at the sole discretion of HDC and HPD). In the case of any increase, the parties shall amend this Agreement at the Permanent Conversion to document Schedule B as modified.



**SCHEDULE B (continued)**

**SCHEDULE B-2**

Unit Size	Amount
Studio	\$215
1-Bedroom	\$283
2-Bedroom	\$425
3-Bedroom	\$512

## SCHEDULE C

### INVESTIGATIONS CLAUSE

a. The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

b. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State; or

c. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony governing the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

d. The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

e. If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section (g) below without the City incurring any penalty or damages for delay or otherwise.

f. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

1. The disqualification for a period not to exceed five years from the date of an adverse determination of any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

2. The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination;

monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

g. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Sections (g)(1) and (g)(2). He or she may also consider, if relevant and appropriate, the criteria established in Sections (g)(3) and (g)(4) in addition to any other information which may be relevant and appropriate:

1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section (f) above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section (d) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

h. 1. The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

2. The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

3. The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

4. The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

i. In addition to and notwithstanding any other provision of this agreement the commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three days written notice in the event contractor fails to promptly report in writing to the Commissioner of Investigation of the City any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the contractor, or affecting the performance of this contract.

**SCHEDULE D**  
**COUNCIL RESOLUTION**

[Follows]

**THE COUNCIL OF THE CITY OF NEW YORK  
RESOLUTION NO. 1690**

**Resolution approving a tax exemption pursuant to Article XI of the Private Housing Finance Law for property located at Block 3780, Lots 1 and 51, Borough of the Bronx, (PRECONSIDERED L.U. No. 783; Non-ULURP No. 20185071 HAX).**

**By Council Members Greenfield and Salamanca**

WHEREAS, the New York City Department of Housing Preservation and Development ("HPD") submitted to the Council on October \_\_, 2017 its request dated October \_\_, 2017 that the Council approve an exemption from real property taxes pursuant to Section 577 of the Private Housing Finance Law (the "Tax Exemption Request") for property located at Block 3780, Lots 1 and 51, Community District No. 9, Borough of the Bronx, Council District No. 18 (the "Exemption Area");

WHEREAS, upon due notice, the Council held a public hearing on the Project on October 10, 2017;

WHEREAS, the Council has considered the land use and financial implications and other policy issues relating to the Tax Exemption Request;

**RESOLVED:**

Pursuant to Section 577 of the Private Housing Finance Law, the Council approves an exemption of the Exemption Area from real property taxes as follows:

1. For the purposes hereof, the following terms shall have the following meanings:
  - a. "Community Facility Space" shall mean those portions of the Exemption Area which the Regulatory Agreement requires to be devoted solely to community facility uses.
  - b. "Company" shall mean 1675 Associates, LLC.
  - c. "Effective Date" shall mean the later of (i) the date of conveyance of the Exemption Area to the HDFC, or (ii) the date that HPD and the Owner enter into the Regulatory Agreement.
  - d. "Exemption" shall mean the exemption from real property taxation provided hereunder.

**Page 2 of 3**  
**20185071 HAX**  
**Res. No.1690 (PRECONSIDERED L.U. No. 783)**

- e. "Exemption Area" shall mean the real property located in the Borough of the Bronx, City and State of New York, identified as Block 3780, Lots 1 and 51 on the Tax Map of the City of New York.
  - f. "Expiration Date" shall mean the earlier to occur of (i) a date which is forty (40) years from the Effective Date, (ii) the date of the expiration or termination of the Regulatory Agreement, or (iii) the date upon which the Exemption Area ceases to be owned by either a housing development fund company or an entity wholly controlled by a housing development fund company.
  - g. "HDFC" shall mean 1675 Westchester Avenue Housing Development Fund Corporation or a housing development fund company that acquires the Exemption Area with the prior written consent of HPD.
  - h. "HPD" shall mean the Department of Housing Preservation and Development of the City of New York.
  - i. "Owner" shall mean, collectively, the HDFC and the Company.
  - j. "Regulatory Agreement" shall mean the regulatory agreement between HPD and the Owner establishing certain controls upon the operation of the Exemption Area during the term of the Exemption.
2. All of the value of the property in the Exemption Area, including both the land and any improvements (excluding those portions, if any, devoted to business or commercial use other than the Community Facility Space), shall be exempt from real property taxation, other than assessments for local improvements, for a period commencing upon the Effective Date and terminating upon the Expiration Date.
3. Notwithstanding any provision hereof to the contrary:
- a. The Exemption shall terminate if HPD determines at any time that (i) the Exemption Area is not being operated in accordance with the requirements of Article XI of the Private Housing Finance Law, (ii) the Exemption Area is not being operated in accordance with the requirements of the Regulatory Agreement, (iii) the Exemption Area is not being operated in accordance with the requirements of any other agreement with, or for the benefit of, the City of New York, (iv) any interest in the Exemption Area is conveyed or transferred to a new owner without the prior written approval of HPD, or (v) the construction or demolition of any private or multiple dwelling on the Exemption Area has commenced without the prior written consent of HPD. HPD shall deliver written notice of any such determination to Owner and all mortgagees of record, which

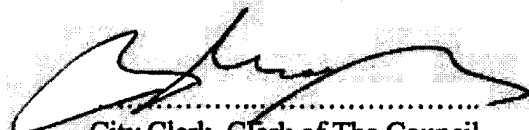
notice shall provide for an opportunity to cure of not less than sixty (60) days. If the noncompliance specified in such notice is not cured within the time period specified therein, the Exemption shall prospectively terminate.

- b. The Exemption shall apply to all land in the Exemption Area, but shall only apply to a building on the Exemption Area that has a permanent certificate of occupancy or a temporary certificate of occupancy for all of the residential areas on or before five years from the Effective Date.
  - c. Nothing herein shall entitle the HDFC, the Owner, or any past owner to a refund of any real property taxes which accrued and were paid with respect to the Exemption Area prior to the Effective Date.
4. In consideration of the Exemption, the owner of the Exemption Area, for so long as the Exemption shall remain in effect, shall waive the benefits of any additional or concurrent exemption from or abatement of real property taxation which may be authorized under any existing or future local, state or federal law, rule or regulation.

Adopted.

Office of the City Clerk, }  
The City of New York, } ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on October 17, 2017, on file in this office.

  
.....  
City Clerk, Clerk of The Council

## SCHEDULE E

### HIRENYC RIDER

#### Introduction

This Rider sets forth the requirements of the HireNYC Program ("HireNYC") and certain other requirements imposed by law. The provisions of this Rider apply to the Sponsor, the Contractor, and all subcontractors for the Project having contracts of \$500,000 or more (each a "Covered Party"). A copy of this Rider shall be included in the Construction Contract and all such subcontracts.

In general, Covered Parties are required to

- (a) enroll with the HireNYC program by clicking on the "HPD Portal" link found at [nyc.gov/hirenyc](http://nyc.gov/hirenyc),
- (b) disclose all new entry to mid-level job opportunities (as defined below) created by the Project and located in New York City ("Covered Jobs"), and
- (c) evaluate or interview qualified candidates from HireNYC for Covered Jobs. Entry to mid-level jobs shall mean jobs requiring no more than an associate degree, as provided by the New York State Department of Labor (Note: See Column F at <https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls>).

#### A. Enrollment

Each Covered Party must enroll with the NYC Department of Small Business Services ("SBS") by clicking on the "HPD Portal" link found at [nyc.gov/hirenyc](http://nyc.gov/hirenyc) (the linked page on the SBS website being the "HireNYC Portal"). The Sponsor and Contractor shall each enroll within thirty (30) days after the Construction Closing. Subcontractors must be enrolled by the earlier of (i) fifteen (15) days after the full execution of its subcontract or (ii) the start of work under such subcontract.

The Sponsor or Contractor shall engage with SBS to create a work plan for the Project detailing the planned subcontracting engagements and any expected hiring needs. The work plan should include information such as projected start dates for subcontractors, the anticipated date of commencement of the hiring process for any positions to be filled, and contact information for all Covered Parties.

The Sponsor and Contractor may designate a project coordinator to act as the main contact for the Covered Parties with regard to the matters contained in this Rider. The role of the project coordinator will be to manage the administrative enrollment requirements of subcontractors and to facilitate communication between the Covered Parties and SBS.

#### B. Recruitment Requirements

Once enrolled in HireNYC, the Covered Parties shall provide updated information to SBS regarding Covered Jobs as they become known. The Covered Parties or project coordinator must request candidates through the HireNYC Portal to fill any Covered Jobs no less than three weeks prior to the intended first day of employment for each new position, or as otherwise negotiated with SBS, whose consent will not be unreasonably withheld, and must also provide updates information through the HireNYC Portal as set forth below. If an employee is needed in an unexpected situation to keep the Project on schedule, the Covered Party must notify SBS of this need and if



SBS is not able to refer a candidate within three (3) business days, the Covered Party may proceed without further consideration.

After enrollment and submission of relevant information by Covered Parties or the project coordinator through the HireNYC Portal, SBS will work directly with the hiring manager for each Covered Party to develop a recruitment strategy for Covered Jobs. HireNYC will screen applicants based on employer requirements and refer qualified applicants to the appropriate Covered Party for evaluation or interviews. The Covered Parties must evaluate or interview referred applicants whom it believes are qualified. These requirements do not limit the Covered Party's ability to work with community partners who may also refer candidates for job opportunities, to assess the qualifications of prospective workers, or to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require a Covered Party to employ any particular worker or to limit consideration to the prospective employees referred by HireNYC.

In addition, this Rider shall not apply to positions that a Covered Party intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York or to positions covered by Collective Bargaining Agreements or Project Labor Agreements. Covered Parties shall not be required to report such openings with HireNYC. However, Covered Parties shall enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

#### **C. Reporting Requirements**

After completing an evaluation or interview of a candidate referred by HireNYC, the Covered Party or project coordinator must provide feedback via the HireNYC Portal to indicate which candidates were evaluated or interviewed and hired, if any. For any individual hired through HireNYC, the Covered Party or project coordinator shall provide the expected start date, wage, and hours expected to work. The Covered Party or project coordinator shall provide such information on a monthly basis through the HireNYC Portal for any candidates referred by HireNYC that are evaluated, interviewed and/or hired in a particular month.

In the event a Covered Party does not have any Covered Jobs in any given year, the Covered Party or project coordinator shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

Covered Parties or the project coordinator shall report to the City all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule. In addition, Covered Parties shall comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

#### **D. Audit Compliance**

Covered Parties shall permit the New York City Department of Housing Preservation and Development ("HPD") to inspect any and all records concerning or relating to job openings or the hiring of individuals for Covered Jobs. Covered Parties shall retain all such records for one (1) year from the date of contract completion and shall permit an inspection by HPD within seven (7) business days of the request.

#### **E. Other Hiring Requirements**

Covered Parties shall comply with all federal, state, and/or local hiring requirements as may be set forth elsewhere in this Agreement or other project documents.

**SCHEDULE F**

**HPD NEGATIVE DECLARATION**

[Follows]



CITY PLANNING COMMISSION  
CITY OF NEW YORK

OFFICE OF THE CHAIRMAN

**NEGATIVE DECLARATION**

**Project Identification**

CEQR No. 17DCP154X

ULURP Nos. 170377ZMX, 170378ZR

SEQRA Classification: Unlisted

**Lead Agency**

City Planning Commission

120 Broadway, 31<sup>st</sup> Floor

New York, NY 10217

Contact: Robert Dobruskin

(212) 720-3423

**Name, Description and Location of Proposal:**

**1675 Westchester Avenue Rezoning**

The Applicant, 1675 JV Associates, LLC, is seeking two discretionary actions in connection with a proposed development located at 1675 Westchester Avenue (Block 3780, Lot 1 "Projected Development Site 1") in the Bronx River neighborhood of Bronx Community District 9: a zoning map amendment from R6 to R8A and R6 to R8A/C2-4 affecting the southern portion of Bronx Block 3780, Lots 1, 51 and part of Lot 50 (the "Proposed Rezoning Area"); and a zoning text amendment to Appendix F of the New York City Zoning Resolution (ZR) to establish a Mandatory Inclusionary Housing (MIH) area coterminous with the Proposed Rezoning Area. The Proposed Rezoning Area affects an approximately 30,514 sf portion of Block 3780 (approximately 25,790 sf of Lot 1 approximately 4,724 sf of Lot 51, and approximately 14 sf of Lot 50), and is located on the north side of Westchester Avenue between Metcalf and Fteley Avenues. The proposed actions would facilitate a proposal by the Applicant to construct a 13-story, approximately 203,000 gross square foot (gsf) mixed-use building on Projected Development Site 1, containing 188,585 gsf of residential uses (220 dwelling units (DUs), proposed to be 100% affordable pursuant to MIH), 6,845 gsf of community facility space, and 7,570 gsf of local retail. As no parking would be required pursuant to New York City Zoning Resolution (ZR) Section 25-251 "Modification of Requirements for Income-Restricted Housing Units," none would be provided.

In addition to the proposed actions before the CPC, the Applicant is seeking discretionary financing for the proposed development from the City's Housing Development Corporation (HDC), and subsidies from both HDC and the NYC Department of Housing Preservation and Development (HPD). A coordinated environmental review is being conducted, with HDC and HPD acting as involved agencies.

Marisa Lago, Chair

120 Broadway, 31<sup>st</sup> Floor, New York, N.Y. 10271

(212) 720-3200 FAX (212) 720-3219

<http://www.nyc.gov/planning>

The Applicant-controlled site (Projected Development Site 1) is currently occupied by a vacant one-story, approximately 12,275 gsf building at the southeastern corner of the development site, that formerly served as a health center (Use Group (UG) 4 community facility use), which closed in 2012. The remainder of the site contains a former surface parking lot accessible from a curb cut on Metcalf Avenue. Lot 51, which is part of the Proposed Rezoning Area but is not controlled by the Applicant, contains a single-story, approximately 3,525 gsf legally non-conforming commercial retail building at a built floor area ratio (FAR) of 0.72.

R6 districts are non-contextual, medium density residential districts that permit residential uses at an FAR range of 0.78 to 2.43 for Height Factor buildings, or up to 3.0 for Quality Housing buildings located on a wide street outside the Manhattan Core. Community facility uses are also permitted at an FAR of 4.8. The maximum building height permitted is governed by the sky exposure plane for Height Factor buildings; and up to 70 feet, with a base height of 40-60 feet for Quality Housing buildings fronting a wide street outside the Manhattan Core. Off-street parking is required for 70% of all DUs for a Height Factor building, and 50% of all DUs for a Quality Housing building.

R8A districts are high density contextual residential districts that permit residential uses at an FAR of 6.02, or 7.2 when mapped as a Mandatory Inclusionary Housing area. When mapped with a C-4 commercial overlay, Use Groups 1 through 9 and 14 are permitted, with a maximum FAR of 2.0 for commercial uses and 6.5 for community facility uses. In R8A districts within an MIH area, a maximum building height of 145 feet is permitted for residential or mixed-use buildings containing affordable housing and a qualifying ground floor of at least 13 feet. Accessory off-street parking spaces must be provided for 50 percent of market-rate dwelling units. No parking spaces are required for income-restricted dwelling units (80% below Area Median Income (AMI)) for areas within the Transit Zone, per ZR Section 25-251.

For the purpose of presenting a conservative analysis, an Environmental Assessment Statement (EAS) prepared by the Applicant analyzes a Reasonable Worst Case Development Scenario (RWCDs) With-Action scenario that assumes the same building program described above (approximately 220 affordable DUs, approximately 7,570 gsf of local retail, and approximately 6,845 gsf of community facility space, assumed to be Use Group 4 medical office/ambulatory care), but with a building height of 145', on Projected Development Site 1 (Block 3780, Lot 1). Per ZR Section 77-22, "Special Provisions for Zoning Lots Divided by District Boundaries – Floor Area Ratio", for zoning lots that contain two different residence districts, the maximum FAR is determined by multiplying by the percentage of the zoning lot in either district by that district's maximum FAR. The sum of the products equals the adjusted maximum FAR applicable to the entire zoning lot. As an approximately 3,082 sf portion of Lot 1 would continue to be zoned R6, which has a maximum 3.0 FAR for residential uses built pursuant to Quality Housing regulations along a wide street, the proposed FAR for Projected Development Site 1 represents the maximum adjusted FAR of 6.75. Additionally, the RWCDs With-Action scenario assumes that Block 3780, Lot 51 (Projected Development Site 2) would be developed with a mixed-use residential and commercial retail building, containing approximately 34 DUs (7 of which would be affordable, pursuant to MIH), and 3,831 gsf of local retail at the ground floor, at an FAR of 7.2. No parking

would be required, pursuant to ZR Sections 25-251 and 25-242 "Waiver of requirements for small zoning lots in high bulk districts."

Absent the proposed actions, it is anticipated that development would occur within the Proposed Rezoning Area in accordance with the existing R6 zoning district. It is anticipated that Projected Development Site 1 would be developed with up to a 7-story, approximately 110,316 gsf, mixed-use residential and community facility building at an FAR of 3.50. The building would be constructed pursuant to the Quality Housing Program, and would contain approximately 95,277 gsf of residential uses (94 market-rate DUs), and approximately 15,039 gsf of Use Group 4 ambulatory care/medical office community facility space on the ground floor. Forty-seven accessory parking spaces would be provided, per the Quality Housing requirement that parking be provided for 50% of the market rate DUs. Projected Development Site 2 would be developed with a 7-story, approximately 15,930 gsf residential building at 3.0 FAR, containing 16 market-rate DUs, pursuant to Quality Housing regulations. The residential parking space requirement would be waived pursuant to ZR Section 25-211(c) "Accessory Off-Street Parking and Loading Regulations - Application of requirements to conversions and certain enlargements," as Lot 51 comprises less than 5,000 sf.

The analysis year for the proposed project is 2020.

In order to preclude significant adverse impacts related to hazardous materials, air quality and noise, the Proposed Actions include the assignment of an (E) designation (E-425).

The (E) designation related to hazardous materials, air quality and noise would apply to the following sites:

Block 3780, Lots 1 and 51

The (E) designation text related to hazardous materials is as follows:

**Task 1-Sampling Protocol**

**The applicant submits to OER, for review and approval, a Phase I of the site along with a soil, groundwater and soil vapor testing protocol, including a description of methods and a site map with all sampling locations clearly and precisely represented. If site sampling is necessary, no sampling should begin until written approval of a protocol is received from OER. The number and location of samples should be selected to adequately characterize the site, specific sources of suspected contamination (i.e., petroleum based contamination and non-petroleum based contamination), and the remainder of the site's condition. The characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of sampling data. Guidelines and criteria for selecting sampling locations and collecting samples are provided by OER upon request.**

## **Task 2-Remediation Determination and Protocol**

A written report with findings and a summary of the data must be submitted to OER after completion of the testing phase and laboratory analysis for review and approval. After receiving such results, a determination is made by OER if the results indicate that remediation is necessary. If OER determines that no remediation is necessary, written notice shall be given by OER.

If remediation is indicated from test results, a proposed remediation plan must be submitted to OER for review and approval. The applicant must complete such remediation as determined necessary by OER. The applicant should then provide proper documentation that the work has been satisfactorily completed.

A construction-related health and safety plan should be submitted to OER and would be implemented during excavation and construction activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil, groundwater and/or soil vapor. This plan would be submitted to OER prior to implementation.

The (E) designation text related to air quality is as follows:

**Block 3780, Lot 1: Any new residential, commercial and/or community facility development on Block 3780 Lot 1 must use natural gas for HVAC systems and ensure that the heating, ventilating, air conditioning stack is located at 159 feet above grade and at least 68 feet from Metcalf Avenue and 27 feet from Westchester Avenue to avoid any potential significant adverse air quality impacts.**

**Block 3780, Lot 51: Any new residential, commercial and/or community facility development on Block 3780 Lot 51 must use natural gas for HVAC systems and ensure that the heating, ventilating, air conditioning stack is located at 159 feet above grade and at least 26 feet from Fteley Avenue and 56 feet from Westchester Avenue to avoid any potential significant adverse air quality impacts.**

The (E) designation text related to noise is as follows:

**Block 3780, Lot 1: To ensure an acceptable interior noise environment, future residential, commercial and/or community facility uses on Block 3780, Lot 1 must provide a closed window condition with a minimum 38 dBA window/wall attenuation on all southern façades facing Westchester Avenue and western and eastern facades within 100 feet from Westchester Avenue and 31 dBA of attenuation on all other facades to maintain an interior noise level of 45 dBA. To maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, air conditioning. The minimum required composite building façade attenuation for future commercial uses would be 5 dBA lower than that for residential and community facility uses.**

**Block 3780, Lot 51: To ensure an acceptable interior noise environment, future residential, commercial and/or community facility uses on Block 3780, Lot 51 must provide a closed window condition with a minimum 38 dBA window/wall attenuation on all southern façades facing Westchester Avenue and western and eastern facades within 100 feet from Westchester Avenue and 31 dBA of attenuation on all other facades to maintain an interior noise level of 45 dBA. To maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, air conditioning. The minimum required composite building façade attenuation for future commercial uses would be 5 dBA lower than that for residential and community facility uses.**

With the measures specified above, the Proposed Actions would not result in any significant adverse impacts related to hazardous materials, air quality or noise.

**Statement of No Significant Effect:**

The Environmental Assessment and Review Division of the Department of City Planning, on behalf of the City Planning Commission, has completed its technical review of the Environmental Assessment Statement, dated May 19, 2017, prepared in connection with the ULURP Application (Nos. 170377ZMX, 170378ZRX). The City Planning Commission has determined that the Proposed Actions will have no significant effect on the quality of the environment.

**Supporting Statement:**

The above determination is based on an environmental assessment which finds that:

1. The (E) designation for hazardous materials, air quality and noise (E-425) would ensure that the Proposed Actions would not result in significant adverse impacts.
2. No other significant effects on the environment which would require an Environmental Impact Statement are foreseeable.

This Negative Declaration has been prepared in accordance with Article 8 of the Environmental Conservation Law 6NYCRR part 617.

Please contact Annabelle Meunier of the Department of City Planning at (212) 720-3426 if you have any questions regarding this application.



Date: May 19, 2017

Olga Abinader, Deputy Director  
Environmental Assessment and Review Division  
Department of City Planning

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Date: May 22, 2017

Marisa Lago, Chair  
City Planning Commission

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