



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]

- ☐ 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:

Title to the BCP site changed to Chestnut Commons Housing Development Fund Corporation, which is the new fee title owner. Volunteer Chestnut Commons Apartments LLC, which is still the beneficial owner of the BCP Site, will remain the sole volunteer in the Brownfield Cleanup Agreement.

In addition, a regulatory agreement has been executed with NYC Housing Development Corporation and the City of New York through the Department of Housing Preservation and Development. Therefore, Volunteer Chestnut Commons Apartments LLC is hereby entitled to the tangible property tax credits.

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

**Section I. Existing Agreement Information**

BCP SITE NAME: Chestnut Commons Atlantic Avenue Site BCP SITE NUMBER: C224276

NAME OF CURRENT APPLICANT(S): Chestnut Commons Apartments LLC

INDEX NUMBER OF EXISTING AGREEMENT: C224276-08- DATE OF EXISTING AGREEMENT: 9/14/18

**Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)**

NAME

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Is the requestor authorized to conduct business in New York State (NYS)?

☐

Yes

☐

No

- 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 & 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.

NAME OF NEW REQUESTOR'S REPRESENTATIVE

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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?

☐

Yes

☐

No

Describe Requestor's Relationship to Existing Applicant:

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**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) Chestnut Commons Housing Development Fund Corporation

ADDRESS 470 Vanderbilt Avenue, 9th Floor

CITY/TOWN Brooklyn, NY

ZIP CODE 11238

PHONE 718-246-8080 ext. 203

FAX 718-246-7938

E-MAIL ispeliotis@mutualhousingny.org

OPERATOR'S NAME (if different from requestor or owner) Chestnut Commons Apartments LLC

ADDRESS Urban Builders Collaborative LLC Attn: Matt Gross, 334-336 East 110th Street

CITY/TOWN New York, NY

ZIP CODE 10028

PHONE 212-996-6640; x131

FAX cell - 917-903-2401 fax - NA

E-MAIL mgross@lettire.com

**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 Beneficial Owner

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

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

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

ADDRESS

CITY/TOWN

ZIP CODE

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

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage



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

☐ Reduction of property

Approximate acreage removed: \_\_\_\_\_

PARCELS REMOVED:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

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 type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>From ECL 27-1405(31):</b></p> <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

Existing Agreement Information	
BCP SITE NAME: Chestnut Commons Atlantic Avenue Site	BCP SITE NUMBER: C224276
NAME OF CURRENT APPLICANT(S): Chestnut Commons Apartments LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C224276-08-29	
EFFECTIVE DATE OF EXISTING AGREEMENT: 9/14/18	

### 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.

Statement of Certification and Signatures: New Requestor(s) (if applicable)
<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 _____) of (entity _____); 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. _____ 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>

**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 Chestnut Commons Apartments 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. Ismene Speliotis' signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: July 7 2020 Signature: Ismene Speliotis

Print Name: Ismene Speliotis

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

Status of Agreement:

☐

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 contamination.

Effective Date of the Original Agreement:

9/19/2013

Signature by the Department:

DATED:

SEP 17 2020

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

Michael J. Ryan

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



## Rider to BCA Amendment # 2 to Document a Tangible Property Tax Credit Determination

Site Name: Chestnut Commons Apartments LLC

Site Number: C224276

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

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

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

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

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

3- For sites statewide, where applicable:

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

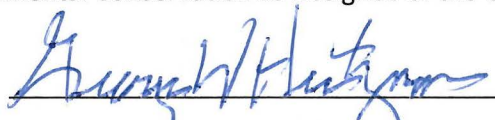
☐ The remedial investigation or other data generated during the remedial program the Department has identified an on-site source of contamination, which now makes this site eligible for tangible property tax credits.

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

SEP 17 2020

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

By:

  
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

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**FOR DEPARTMENT USE ONLY**

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

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



July 14, 2020

**VIA ELECTRONIC MAIL AND  
FEDERAL EXPRESS**

Kelly A. Lewandowski, P.E.  
Chief Site Control Section  
New York State Division of Environmental Conservation  
Site Control Section  
625 Broadway, 11<sup>th</sup> Floor  
Albany, NY 12233

**RE: Brownfield Cleanup Agreement Amendment  
Chestnut Commons Atlantic Avenue Site  
*Change of Owner and Tangible Tax Credits***

Dear Ms. Lewandowski:

Attach please find a BCA Amendment package since there was a change of ownership and an affordable housing regulatory agreement, which now justifies BCP Volunteer Chestnut Commons Apartments LLC's receipt of the tangible property tax credits for the affordable component of their building. We apologize in advance for not having informed the agency 60-days before the ownership transfer. However, as required by the BCA Amendment form, attached hereto is still a copy of the 60 day Notice in Exhibit A, the Deed in Exhibit B, the DOS Filing for the new owner entity in Exhibit C, the Site Access Agreement between the new owner entity and the Volunteer in Exhibit D, the Written Consent authorizing Ismene Speliotis to sign the BCA Amendment in Exhibit E, and the Regulatory Agreement in Exhibit F. Note that the new site owner is not being added to the BCA.

Please do not hesitate to contact me if you have any questions. Thank you.

Sincerely,

**KNAUF SHAW LLP**

LINDA R. SHAW

Encl.

cc: Ismene Speliotis &  
Matthew Gross

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**JUL 15 2020**

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NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION



**60-Day Advance Notification of Site Change of Use, Transfer of  
Certificate of Completion, and/or Ownership**

Required by 6NYCRR Part 375-1.11(d) and 375-1.9(f)

To be submitted at least 60 days prior to change of use to:

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

**I. Site Name:** Chestnut Commons Atlantic Avenue Site **DEC Site ID No.** C224276

**II. Contact Information of Person Submitting Notification:**

Name: Linda R. Shaw, Knauf Shaw LLP  
Address1: 1400 Crossroads Building  
Address2: 2 State Street, Rochester, NY 14614  
Phone: 585-414-3122 E-mail: lshaw@nyenvlaw.com

**III. Type of Change and Date:** Indicate the Type of Change(s) (check all that apply):

- ☒ Change in Ownership or Change in Remedial Party(ies)  
☐ Transfer of Certificate of Completion (CoC)  
☒ Other (e.g., any physical alteration or other change of use)

Proposed Date of Change (mm/dd/yyyy): Dec 20, 2019

**IV. Description:** Describe proposed change(s) indicated above and attach maps, drawings, and/or parcel information.

~~Title to the BCP site changed to Chestnut Commons Housing Development Fund Corporation, which is the new fee title owner. Volunteer Chestnut Commons Apartments LLC, which is still the beneficial owner of the BCP Site, will remain the sole volunteer in the Brownfield Cleanup Agreement.~~

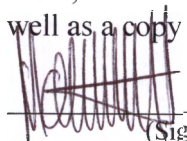
If "Other," the description must explain and advise the Department how such change may or may not affect the site's proposed, ongoing, or completed remedial program (attach additional sheets if needed).

~~In addition, a regulatory agreement has been executed with NYC Housing Development Corporation and the City of New York through the Department of Housing Preservation and Development. Therefore, Volunteer Chestnut Commons Apartments LLC is entitled to the tangible property tax credits. This has no effect on the ongoing remedial program.~~

- V. **Certification Statement:** Where the change of use results in a change in ownership or in responsibility for the proposed, ongoing, or completed remedial program for the site, the following certification must be completed (by owner or designated representative; see §375-1.11(d)(3)(i)):

I hereby certify that the prospective purchaser and/or remedial party has been provided a copy of any order, agreement, Site Management Plan, or State Assistance Contract regarding the Site's remedial program as well as a copy of all approved remedial work plans and reports.

Name:



(Signature)

6/30/2020

(Date)

Matthew Gross

(Print Name)

Address1: Chestnut Commons Apartments LLC

Address2: c/o Urban Builders Collaborative LLC, 334-336 East 110th Street, NY, NY 10028

Phone: 917-903-2401

E-mail: mgross@lettire.com

- VI. **Contact Information for New Owner, Remedial Party, or CoC Holder:** If the site will be sold or there will be a new remedial party, identify the prospective owner(s) or party(ies) along with contact information. If the site is subject to an Environmental Easement, Deed Restriction, or Site Management Plan requiring periodic certification of institutional controls/engineering controls (IC/ECs), indicate who will be the certifying party (attach additional sheets if needed).

☒ Prospective Owner ☐ Prospective Remedial Party ☒ Prospective Owner Representative

Name: Chestnut Commons Housing Development Fund Corporation

Address1: c/o MHANY Management Inc.

Address2: 470 Vanderbilt Avenue, 9th floor Brooklyn, NY 11238

Phone: 718-246-8080 ext. 203

E-mail: ispeliotis@mutualhousingny.org

Certifying Party Name: Ismene Speliotis, Executive Director

Address1: Chestnut Commons Housing Development Fund Corporation c/o MHANY Management Inc.

Address2: 470 Vanderbilt Avenue, 9th floor Brooklyn, NY 11238

Phone: 718-246-8080 ext. 203

E-mail: speliotis@mutualhousingny.org

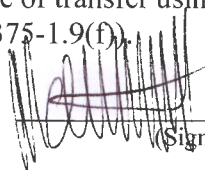
**VII. Agreement to Notify DEC after Transfer:** If Section VI applies, and all or part of the site will be sold, a letter to notify the DEC of the completion of the transfer must be provided. If the current owner is also the holder of the CoC for the site, the CoC should be transferred to the new owner using DEC's form found at <http://www.dec.ny.gov/chemical/54736.html>. This form has its own filing requirements (see 6NYCRR Part 375-1.9(f)).

Signing below indicates that these notices will be provided to the DEC within the specified time frames. If the sale of the site also includes the transfer of a CoC, the DEC agrees to accept the notice given in VII.3 below in satisfaction of the notice required by VII.1 below (which normally must be submitted within 15 days of the sale of the site).

Within 30 days of the sale of the site, I agree to submit to the DEC:

1. the name and contact information for the new owner(s) (see §375-1.11(d)(3)(ii));
2. the name and contact information for any owner representative; and
3. a notice of transfer using the DEC's form found at <http://www.dec.ny.gov/chemical/54736.html> (see §375-1.9(f)).

Name:



(Signature)

6/30/2020  
(Date)

Matthew Gross

(Print Name)

Address1: Chestnut Commons Apartments LLC

Address2: Urban Builders Collaborative LLC, 334-336 East 110th Street, NY, NY 10028

Phone: 917-903-2401

E-mail: [mgross@lettire.com](mailto:mgross@lettire.com)



### Continuation Sheet

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative  
Name: \_\_\_\_\_

Address1: \_\_\_\_\_

Address2: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative  
Name: \_\_\_\_\_

Address1: \_\_\_\_\_

Address2: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative  
Name: \_\_\_\_\_

Address1: \_\_\_\_\_

Address2: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative  
Name: \_\_\_\_\_

Address1: \_\_\_\_\_

Address2: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative  
Name: \_\_\_\_\_

Address1: \_\_\_\_\_

Address2: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative  
Name: \_\_\_\_\_

Address1: \_\_\_\_\_

Address2: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

# New York State Department of Environmental Conservation



## Instructions for Completing the 60-Day Advance Notification of Site Change of Use, Transfer of Certificate of Completion (CoC), and/or Ownership Form

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

### Section I

#### Description

Site Name

Official DEC site name.  
(see <http://www.dec.ny.gov/cfm/externalapps/derexternal/index.cfm?pageid=3>)

DEC Site ID No.

DEC site identification number.

### Section II

#### Contact Information of Person Submitting Notification

Name

Name of person submitting notification of site change of use, transfer of certificate of completion and/or ownership form.

Address1

Street address or P.O. box number of the person submitting notification.

Address2

City, state and zip code of the person submitting notification.

Phone

Phone number of the person submitting notification.

E-mail

E-mail address of the person submitting notification.

### Section III

#### Type of Change and Date

Check Boxes

Check the appropriate box(s) for the type(s) of change about which you are notifying the Department. Check all that apply.

Proposed Date of Change

Date on which the change in ownership or remedial party, transfer of CoC, or other change is expected to occur.

### Section IV

#### Description

Description

For each change checked in Section III, describe the proposed change.  
Provide all applicable maps, drawings, and/or parcel information.  
If "Other" is checked in Section III, explain how the change may affect the site's proposed, ongoing, or completed remedial program at the site.  
Please attach additional sheets, if needed.

## **Section V                      Certification Statement**

*This section must be filled out if the change of use results in a change of ownership or responsibility for the proposed, ongoing, or completed remedial program for the site. When completed, it provides DEC with a certification that the prospective purchaser has been provided a copy of any order, agreement, or State assistance contract as well as a copy of all approved remedial work plans and reports.*

Name	The owner of the site property or their designated representative must sign and date the certification statement. Print owner or designated representative's name on the line provided below the signature.
Address1	Owner or designated representative's street address or P.O. Box number.
Address2	Owner or designated representative's city, state and zip code.
Phone	Owner or designated representative's phone number.
E-Mail	Owner or designated representative's E-mail.

## **Section VI                      Contact Information for New Owner, Remedial Party, and CoC Holder (if a CoC was issued)**

*Fill out this section only if the site is to be sold or there will be a new remedial party. Check the appropriate box to indicate whether the information being provided is for a Prospective Owner, CoC Holder (if site was ever issued a COC), Prospective Remedial Party, or Prospective Owner Representative. Identify the prospective owner or party and include contact information. A Continuation Sheet is provided at the end of this form for additional owner/party information.*

Name	Name of Prospective Owner, Prospective Remedial Party or Prospective Owner Representative.
Address1	Street address or P.O. Box number for the Prospective Owner, Prospective Remedial Party, or Prospective Owner Representative.
Address2	City, state and zip code for the Prospective Owner, Prospective Remedial Party, or Prospective Owner Representative.
Phone	Phone number for the Prospective Owner, Prospective Remedial Party or Prospective Owner Representative.
E-Mail	E-mail address of the Prospective Owner, Prospective Remedial Party or Prospective Owner Representative.



***If the site is subject to an Environmental Easement, Deed Restriction, or Site Management Plan requiring periodic certification of institutional controls/engineering controls (IC/EC), indicate who will be the certifying party(ies). Attach additional sheets, if needed.***

Certifying Party Name	Name of Certifying Party.
Address1	Certifying Party's street address or P.O. Box number.
Address2	Certifying Party's city, state and zip code.
Phone	Certifying Party's Phone number.
E-Mail	Certifying Party's E-mail address.

## **Section VII      Agreement to Notify DEC After Property Transfer/Sale**

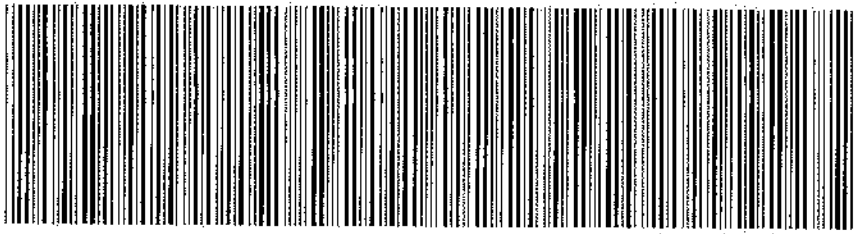
***This section must be filled out for all property transfers of all or part of the site. If the site also has a CoC, then the CoC shall be transferred using DEC's form found at <http://www.dec.ny.gov/chemical/54736.html>***

***Filling out and signing this section of the form indicates you will comply with the post transfer notifications within the required timeframes specified on the form. If a CoC has been issued for the site, the DEC will allow 30 days for the post transfer notification so that the "Notice of CoC Transfer Form" and proof of it's filing can be included. Normally the required post transfer notification must be submitted within 15 day (per 375-1.11(d)(3)(ii)) when no CoC is involved.***

Name	Current property owner must sign and date the form on the designated lines. Print owner's name on the line provided.
Address1	Current owner's street address.
Address2	Current owner's city, state and zip code.

**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 40**

**Document ID:** 2019122300264001

**Document Date:** 12-20-2019

**Preparation Date:** 12-23-2019

**Document Type:** DEED

**Document Page Count:** 39

**PRESENTER:**

BENCHMARK TITLE AGENCY BTA 76646  
222 BLOOMINGDALE ROAD  
SUITE 102  
WHITE PLAINS, NY 10605  
914-250-2400  
EVANBOMEL@BENCHMARKTA.COM BTA 76646

**RETURN TO:**

MICHI CABRERA, ESQ.  
DEPT OF HPD  
100 GOLD STREET  
NEW YORK, NY 10038

				PROPERTY DATA	
Borough	Block	Lot	Unit	Address	
BROOKLYN	4142	34	Entire Lot	N/A ATLANTIC AVENUE	
<b>Property Type:</b> NON-RESIDENTIAL VACANT LAND					

**CROSS REFERENCE DATA**

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

**PARTIES**

**GRANTOR/SELLER:**

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

**GRANTEE/BUYER:**

CHESTNUT COMMONS HOUSING DEVELOPMENT  
FUND CORPORAT  
C/O: MHANY, 1 METROTECH CTR  
BROOKLYN, NY 11201-3948

**FEES AND TAXES**

<b>Mortgage :</b>			<b>Filing Fee:</b>	
Mortgage Amount:	\$	0.00	\$	250.00
Taxable Mortgage Amount:	\$	0.00	<b>NYC Real Property Transfer Tax:</b>	
Exemption:			\$	0.00
<b>TAXES:</b> County (Basic):	\$	0.00	<b>NYS Real Estate Transfer Tax:</b>	
City (Additional):	\$	0.00	\$	0.00
Spec (Additional):	\$	0.00		
TASF:	\$	0.00		
MTA:	\$	0.00		
NYCTA:	\$	0.00		
Additional MRT:	\$	0.00		
<b>TOTAL:</b>	\$	0.00		
Recording Fee:	\$	232.00		
Affidavit Fee:	\$	0.00		

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

Recorded/Filed 12-31-2019 08:59

City Register File No. (CRFN):  
2019000426715



*Annette McMill*

City Register Official Signature

6/15/2019

**THIS DEED** ("Deed"), entered into as of the 20th day of December, 2019, by and between **THE CITY OF NEW YORK**, a municipal corporation formed pursuant to the laws of the State of New York, having its principal office at City Hall, New York, New York 10007 ("City"), acting by and through its **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**, having its principal office at 100 Gold Street, New York, New York 10038 ("HPD"), as Grantor, and **CHESTNUT COMMONS HOUSING DEVELOPMENT FUND CORPORATION**, a not-for-profit corporation formed pursuant to the laws of the State of New York and Article XI of the New York Private Housing Finance Law, having its principal office at c/o MHANY Management Inc., 470 Vanderbilt Avenue, 9th floor, Brooklyn, NY 11238 ("Sponsor"), as Grantee.

**WHEREAS**, the City is the owner of certain real property, consisting of all those plots, pieces, or parcels of real property situated, lying, and being in the City and State of New York, as more particularly described in Exhibit A annexed hereto and made a part hereof ("Land"), and all buildings and improvements situated on the Land ("Improvements"); and

**WHEREAS**, the Land and Improvements (collectively, "Disposition Area") are located in the Dinsmore-Chestnut Urban Renewal Area ("Area") and identified as Site A in the First Amended Dinsmore-Chestnut Urban Renewal Plan ("Plan"); and

**WHEREAS**, pursuant to the Plan, the City is undertaking for the redevelopment of the Disposition Area ("Project"), as such Project is more fully described in a certain Land Disposition Agreement ("LDA") and Regulatory Agreement ("Regulatory Agreement") between the City, the New York City Housing Development Corporation, Sponsor and Chestnut Commons Apartments LLC, of even date herewith; and

**WHEREAS**, HPD issued a request for proposals ("RFP") for the development of the Disposition Area that, among other things, governed the selection criteria for designating a sponsor for the Disposition Area; and

**WHEREAS**, HPD has selected Sponsor pursuant to the RFP and has designated Sponsor as a qualified and eligible sponsor of the Project pursuant to Section 507 of the General Municipal Law ("GML"); and

**WHEREAS**, Sponsor will obtain mortgage loan financing to develop the Project and, in connection with such financing, Sponsor and the lenders will execute one or more notes, mortgages, and related agreements or instruments (collectively, "Loan Documents");

**WHEREAS**, the Disposition Area is eligible to be conveyed pursuant to Article 15 of the GML;

**WHEREAS**, on April 20, 2016, by Resolution No. 1056, a copy of which is annexed hereto as Exhibit B and made a part hereof, the Council, having held a public hearing following notice of the date, time, place, and purpose of such hearing; and

**WHEREAS**, on June 17, 2019, by the document annexed hereto as Exhibit C and made a part hereof, the Mayor, having held a public hearing following notice of the date, time, place, and purpose of such hearing, (i) approved the designation of Sponsor as a qualified and eligible sponsor pursuant to Section 507 of the GML, (ii) approved the sale of the Disposition Area by the City to Sponsor pursuant to Section 507(2)(d) of the GML, and (iii) approved the LDA;



**WHEREAS**, Sponsor proposes to purchase the Disposition Area from the City upon the terms and conditions set forth in the LDA and to undertake the redevelopment of the Disposition Area in accordance therewith, which redevelopment shall accomplish the construction and development of the Project; and

**WHEREAS**, any capitalized terms not defined herein shall have the meanings ascribed to them in the LDA;

**NOW THEREFORE**, the City, in consideration of the sum of ONE DOLLAR (\$1.00) paid by Sponsor, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and release the Disposition Area unto Sponsor, its successors and assigns forever, subject only to the restrictions set forth or referred to herein.

**TO HAVE AND TO HOLD** the Disposition Area herein granted unto Sponsor, its successors and assigns forever, as follows:

1. Conveyance.

A. Title. The City hereby conveys to Sponsor, and Sponsor accepts from the City, all right, title, and interest of the City in and to the Disposition Area, subject to, without limitation, the trust fund provisions of Section 13 of the Lien Law and all terms, covenants, and conditions of this Deed, the LDA, and the Regulatory Agreement.

B. "As Is" Condition. Sponsor accepts the Disposition Area in its "as is" condition on the date ("Closing Date") of delivery of this Deed to Sponsor ("Closing"). The City has not made any representations or warranties regarding the condition of the Disposition Area and neither has nor had any obligation to undertake demolition, site clearance, or site preparation. The City neither represents nor warrants any facts regarding such condition, including, but not limited to, that it will be suitable for the Project. Sponsor represents and warrants that Sponsor has inspected the Disposition Area and is fully familiar with its condition.

2. Revesting.

A. Revesting.

1. Default. Until the issuance of a Certificate of Completion for the entire Project pursuant to Section 201.B of the LDA, the occurrence of any of the following shall constitute an event of default ("Default"):

- a. Failure to commence Construction on or before the Commencement Date;
- b. Failure to perform the Construction in accordance with the Approved Plans;
- c. Abandonment or substantial suspension of Construction before the Completion Date;

- d. Failure to both (i) complete ninety five percent (95%) of the value of Construction on or before the Completion Date in accordance with the Approved Plans, as such percentage and compliance are determined by HPD, and (ii) obtain a temporary or permanent Certificate of Occupancy on or before the Completion Date for all of the improvements on the Disposition Area; and
- e. Any Prohibited Transfer without the prior written consent of HPD; and
- f. Any default or event of default under a nominee agreement which remains uncured beyond the applicable cure period.

2. Cure.

- a. Upon the occurrence of any Default, HPD shall give written notice of such Default ("Default Notice") to Sponsor and to any Holder which has previously requested such Default Notice in writing.
- b. Sponsor and any Holder shall be permitted thirty (30) days from the date of any Default Notice ("Cure Period") to cure such Default to the satisfaction of HPD ("Cure").
- c. If HPD, in its sole discretion, determines in writing that the nature of the Default makes it impossible to complete a Cure within the Cure Period, the Default Notice shall state such determination and shall specify such longer period ("Extended Cure Period") to effectuate a Cure as HPD, in its sole discretion, shall determine; provided, however, that such Extended Cure Period shall end not later than ninety (90) days after the Completion Date. Sponsor or any Holder shall be permitted to commence the Cure of such Default and to thereafter diligently and continuously pursue the Cure of such Default during the Extended Cure Period until such Default shall be completely Cured.
- d. Any Default which is Cured within the Cure Period or, if applicable, any Extended Cure Period, shall be deemed to be a Cured Default ("Cured Default"). Any Default which is not Cured within the Cure Period or, if applicable, any Extended Cure Period, shall be deemed to be an uncured Default ("Uncured Default").
- e. If, after the issuance of a Default Notice, such Default is Cured within the Cure Period or, if applicable, any Extended Cure Period, HPD shall issue, within thirty (30) days after receipt of a written request therefor by Sponsor or any Holder, a written notice ("Cure Notice") (i) certifying that such Default is a Cured Default, (ii) certifying that such Cured Default will not result in an exercise of the City's rights pursuant to this Section 2, and (iii) reserving the right of the City to exercise its rights pursuant to this Section 2 for any other or future Default; provided, however, that the failure to

explicitly reserve any right in the Cure Notice shall not result in the waiver of any such right.

- f. In the event of any Uncured Default, the City may, at its sole option, exercise the City's rights pursuant to Section 2.A.3.

- 3. Revesting. If any Uncured Default shall occur prior to the issuance of a Certificate of Completion for the entire Project pursuant to Section 201.B of the LDA, the City may, subject to the laws of the State of New York, re-enter and take possession of the Disposition Area and terminate and re-vest in the City the estate conveyed to Sponsor, in which event all right, title, and interest of Sponsor in and to the Disposition Area shall revert to the City. Upon the issuance of a Certificate of Completion for the entire Project pursuant to Section 201.B of the LDA, the City's rights pursuant to this Section 2.A shall terminate. Upon the issuance of a Certificate of Completion for a portion of the Project pursuant to Section 201.B of the LDA, the City's right to re-vest that portion of the Project pursuant to this Section 2.A shall terminate.

4. Subordination.

- a. Notwithstanding the provisions of this Section 2.A, any re-vesting of title in the City pursuant to the terms of this Deed or the LDA shall be subject to and limited by, and shall not defeat, render invalid, or limit in any way (i) the lien of any mortgage ("Mortgage") held by a Holder which is authorized by the LDA, or (ii) any rights or interests provided in the LDA for the protection of the Holder of such Mortgage.
- b. Upon the request of Sponsor, the City shall deliver to the Holder at the Closing an instrument in recordable form, whereby the City's rights and interests and Sponsor's covenants under this Deed and the LDA (except for the provisions of Section 202 of the LDA and any provisions which would control by operation of law even in the absence of this Deed and the LDA) are subordinated to the lien of the Mortgage in the event that Sponsor ceases to hold title to the Disposition Area as a result of the Holder's exercise of a remedy for the Sponsor's default under the Loan Documents.
- c. If, after the issuance of any Default Notice, any Holder shall Cure the Default before the expiration of the Cure Period (or, if applicable, any Extended Cure Period), such Holder may add the cost of Curing such Default to the Mortgage debt and to the lien of its Mortgage.

- B. Assignment of Surplus Money. If title to the Disposition Area is re-vested in the City pursuant to this Section 2, and HPD thereafter determines to sell all or any portion of the Disposition Area, the proceeds thereof, if any, shall be retained by HPD. Sponsor hereby assigns to HPD any surplus money paid into a court as the result of any foreclosure of any lien on any portion of the Disposition Area

prior to the issuance of the Certificate of Completion for that portion. Sponsor shall execute an assignment of surplus money in recordable form if the City, in its sole discretion, determines that such a document is necessary in order to effectuate such assignment.

- C. Other Remedies. Notwithstanding any provisions of this Section 2 to the contrary, the remedies of the City pursuant to this Section 2 shall not be exclusive. With respect to any Default, the remedies of the City pursuant to this Section 2 shall be in addition to and concurrent with all other defenses, rights, and remedies which the City has, will have, or may have pursuant to this Deed, the LDA, the Regulatory Agreement, the Loan Documents, or any other agreement between Sponsor and the City (collectively, "Project Documents"), or under law, equity, or otherwise. With respect to any violation of any Project Document which is not a Default, the City shall retain each and every defense, right, and remedy which the City has, will have, or may have pursuant to this Deed or any other Project Document or under law, equity, or otherwise.
3. No Transfer. Prior to issuance of a Certificate of Completion for the entire Project by the City pursuant to Section 201.B of the LDA, there shall be no transfer of title to the Disposition Area or change of ownership interest in Sponsor except in accordance with Article III of the LDA.
4. Program Compliance And Non-Discrimination. Sponsor, by its acceptance and execution of this Deed, covenants and agrees, for and on behalf of itself, its successors and assigns, and every successor in interest to the Disposition Area, or any part thereof, to be bound by the following covenants, which shall be binding for the benefit of the City and enforceable by the City against Sponsor and its successors and assigns to the fullest extent permitted by law and equity:
- A. Sponsor, its successors and assigns shall devote the Disposition Area to the uses specified in, and shall otherwise comply with, the LDA, the Regulatory Agreement, and the other Project Documents.
- B. Sponsor, its successors and assigns, and any lessees of the Disposition Area or any improvements erected or to be erected thereon, or any part thereof, shall comply with all applicable federal, state, and local laws in effect from time to time prohibiting discrimination or segregation by reason of actual or perceived age, race, creed, religion, gender, gender identity or gender expression, sex, color, national origin, ancestry, sexual orientation, disability, marital status, status as a victim of domestic violence, stalking and sex offenses, partnership status, familial status, alienage status, citizenship status, lawful source of income (including income derived from social security, or any form of federal, state or local public government assistance or housing assistance including Section 8 vouchers), lawful occupation, military status, because children are, may be, or would be residing with such person or persons, or any other class protected from discrimination in housing accommodations by federal, state, or local law (collectively, "Prohibited Distinctions") in the sale, lease, or occupancy of the Disposition Area or any improvements erected or to be erected thereon, or any part thereof.



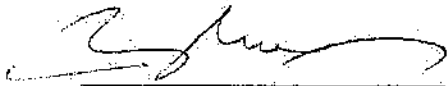
- C. Sponsor, its successors and assigns, and any lessees of the Disposition Area or any improvements erected or to be erected thereon, or any part thereof, shall not effect or execute any agreement, lease, conveyance, or other instrument whereby the sale, lease, or occupancy of the Disposition Area or any improvements erected or to be erected thereon, or any part thereof, is restricted upon the basis of any Prohibited Distinction.
- D. Sponsor, its successors and assigns, and any lessees of the Disposition Area or any improvements erected or to be erected thereon, or any part thereof, shall include the covenants of Section 4.B and Section 4.C in any agreement, lease, conveyance, or other instrument with respect to the sale, lease, or occupancy of the Disposition Area or any improvements erected or to be erected thereon, or any part thereof.
5. Sponsor's Certification. Sponsor hereby represents, warrants, and certifies that Sponsor is neither a former owner in fee nor the spouse of a former owner in fee of any property acquired by the City through real property tax or other lien enforcement proceedings, nor is Sponsor a business entity substantially controlled by such a former owner, nor is Sponsor a successor in interest to any such former owner. If such representation, warranty, and certification by Sponsor is false in whole or in part, this Deed and the LDA shall be voidable by the City.
6. No Merger. Notwithstanding the specific recital in this Deed of certain of the covenants and agreements which are provided for in the LDA, the Regulatory Agreement, or any other Project Document, each and every covenant, term, provision, and condition contained in the LDA, the Regulatory Agreement, or any other Project Document shall survive this Deed and shall remain in full force and effect, and no covenant, term, provision, or condition contained in the LDA, the Regulatory Agreement, or any other Project Document shall in any event or in any respect be merged with this Deed.
7. Covenants Running With Land. The agreements and covenants set forth in this Deed shall run with the land and shall be binding to the fullest extent permitted by law and equity. Such covenants shall inure to the benefit of the City and shall bind and be enforceable against Sponsor and its successors and assigns.
8. Severability. If any term or provision of this Deed shall be found to be void, voidable, or otherwise unenforceable, such term or provision shall be deemed severed from this Deed and shall have no further force or effect, and the remaining terms and provisions shall thereafter continue in full force and effect to accomplish the intent and purpose of this Deed to the fullest extent possible.
9. Waiver. To the extent permitted by law, Sponsor hereby waives any and all rights it may have, at law or equity, to challenge, modify, set aside, extinguish, enjoin enforcement of, or seek relief from any of the terms, conditions, covenants, restrictions, or agreements in this Deed.
10. Cross-Default. A default pursuant to the LDA, the Regulatory Agreement, or any other Project Document shall constitute a default pursuant to this Deed.

11. Urban Renewal Plan Compliance. Sponsor shall develop and operate the Disposition Area in accordance with the requirements of the Plan, a copy of which is annexed hereto as Exhibit D and made a part hereof. Notwithstanding any provision to the contrary in this Deed or any other Project Document, the requirements of this Section 11 shall survive until the later of (i) thirty (30) years from the date hereof, or (ii) the date upon which the Plan expires by its own terms.
12. Notices.
- A. Each notice, approval, consent, request, waiver, or communication given or required to be sent under this Deed ("Notice") shall be in writing and either (i) sent by regular or express mail, postage prepaid, or (ii) delivered in person or by nationally recognized overnight courier, with receipt acknowledged.
- B. Each Notice shall be addressed as follows:
1. When sent by the City to Sponsor, at the address first set forth above, with a copy to:
- Hirschen Singer & Epstein LLP  
902 Broadway, 13<sup>th</sup> Floor  
New York, New York 10010  
Attention: Richard C. Singer, Esq.
2. When sent by Sponsor to the City, to:
- Department of Housing Preservation and Development  
100 Gold Street, Room 9A-1  
New York, New York 10038  
Attention: Deputy Commissioner for Development
- C. Each party shall notify the other in the case of a change in address in the manner for delivering Notices provided in this Section 12, which changed address shall thereafter be the address to which Notices are sent.
- D. Each Notice delivered by regular or express mail shall be deemed to have been given upon the third (3rd) business day following the date upon which such Notice is deposited in the United States mail, postage prepaid. Each Notice delivered in person or by nationally recognized overnight courier, with receipt acknowledged, shall be deemed given upon actual delivery, as evidenced by a signed receipt. Notwithstanding the foregoing, any notice of a change in address shall only be deemed to have been given when actually received by the other party.
13. No Waiver. Waiver by either party of any breach of any provision of this Deed shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this Deed unless and until the same be agreed to in a writing executed and acknowledged by the parties hereto.

14. Provisions Required by Law Deemed Inserted. Each and every provision of law and governmental regulation required by law to be inserted in this Deed shall be deemed to be inserted herein and this Deed shall read and shall be enforced as though so included herein. If, through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then, upon the application of either party, this Deed shall be deemed to be amended to make such insertion or correction so as to comply strictly with the law.
15. Titles. Any titles of the several parts, Articles, Sections, and Subsections of this Deed are for convenience only and shall be disregarded in construing or interpreting any of its provisions.
16. Compliance With Laws. Sponsor shall comply with all applicable laws, ordinances, orders, rules, and regulations promulgated by any local, state, or federal authority having jurisdiction over the subject matter thereof, as the same may be amended from time to time.
17. Unused Development Rights. If, at any time after the Completion Date, the amount of floor area permitted on the Disposition Area pursuant to the New York City Zoning Resolution exceeds the amount of floor area in the improvements existing on the Disposition Area on the Completion Date ("Unused Development Rights"), such Unused Development Rights shall not be used, transferred, or encumbered without the prior written consent of HPD.
18. Consents And Approvals. Except as otherwise specifically provided in this Deed, any consent or approval by HPD pursuant to this Deed shall be made in writing by (i) HPD's Commissioner, HPD's Deputy Commissioner for Development, or by an Associate Commissioner or Assistant Commissioner in HPD's office of Development (each, an "Authorized Official"), or (ii) an HPD employee designated in writing by any Authorized Official to grant such consent or approval. In the case of any consent or approval by an HPD employee who is not an Authorized Signatory, Sponsor shall be required to verify that such HPD employee has a valid written delegation of authority from an Authorized Signatory that authorizes such HPD employee to give such consent or approval, and shall not act upon any purported consent or approval without first performing such verification.
19. Sole Discretion. Except as otherwise specified herein, any determination or approval by HPD pursuant to this Deed shall be in the sole discretion of HPD.

IN WITNESS WHEREOF, the City has caused this Deed to be executed by the Commissioner of HPD, and its corporate seal to be affixed hereto and duly attested by the City Clerk, and Sponsor has caused this Deed to be executed as of the day and year first above written.

ATTEST:



Michael McSweeney  
City Clerk

Seal of The City of New York

THE CITY OF NEW YORK

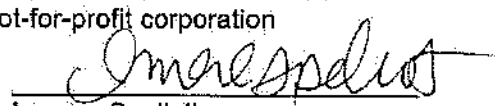
By: DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT

By:

  
Louise Carroll  
Commissioner

CHESTNUT COMMONS HOUSING  
DEVELOPMENT FUND CORPORATION  
a New York not-for-profit corporation

By:

  
Ismene Spiliotis  
Executive Director

APPROVED AS TO FORM  
BY STANDARD TYPE OF CLASS  
FOR USE UNTIL May 31, 2020

By: /s/ Lori Barrett-Peterson  
Acting Corporation Counsel



COMMISSIONER ACKNOWLEDGMENT

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

On the 18 day of December in the year 2019 before me, the undersigned, personally appeared **Louise Carroll**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
NOTARY PUBLIC

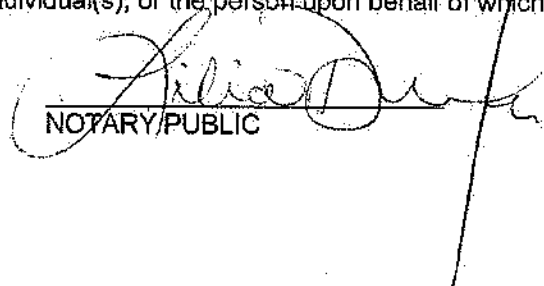
Loretta DeLorenzo  
Notary Public, State of New York  
Registration No. 01DE6331348  
Qualified in New York County  
Commission Expires October 6, 2023

CITY CLERK ACKNOWLEDGMENT

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

On the 19 day of December in the year 2019 before me,, the undersigned, personally appeared **Michael Mcsweeney**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

LILIA DWYER  
Commissioner of Deeds  
City of New York, No. 3-7073  
Certificate Filed in New York County  
Commission Expires Feb. 01, 2020

  
NOTARY PUBLIC

## SPONSOR ACKNOWLEDGMENT

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

On the 19 day of December in the year 2019 before me, the undersigned, personally appeared **Ismene Spiliotis**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
NOTARY PUBLIC

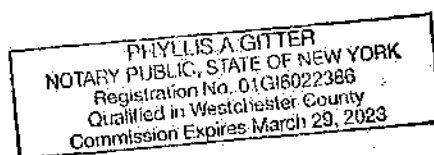


EXHIBIT A

Property Description

All those certain plots, pieces and parcels of land, with the buildings and improvements thereon erected, situate, lying and being in the City and State of New York, designated on the Tax Map of the City of New York as:

<u>Block(s)</u>	<u>Lot(s)</u>	<u>Address(es)</u>
4142	34 (formerly part of Lot 32)	110 Dinsmore Place
<u>County:</u>	Kings	

**EXHIBIT B**

**City Council Resolution**

**(next page)**



**THE COUNCIL OF THE CITY OF NEW YORK  
RESOLUTION NO. 1056**

**Resolution approving the decision of the City Planning Commission on ULURP No. C 160042 HDK, for the disposition of City-owned property comprising of Site A (Block 4142, Lot 32), within the Dinsmore-Chestnut Urban Renewal Area, Borough of Brooklyn (L.U. No. 343).**

**By Council Members Greenfield and Richards**

WHEREAS, the City Planning Commission filed with the Council on February 29, 2016 its decision dated February 24, 2016 (the "Decision") on the application submitted pursuant to Section 197-c of the New York City Charter by the New York City Department of Housing Preservation and Development for the disposition of City-owned property comprising Site A (Block 4142, Lot 32), within the Dinsmore-Chestnut Urban Renewal Area (ULURP No. C 160042 HDK), Community District 5, Borough of Brooklyn (the "Application");

WHEREAS, the Application is related to applications C 160035 ZMK (L.U. No. 341), an amendment to the Zoning Map to change R5, R6, C8-1, C8-2, M1-1 and M1-2 districts to R5B, R6B, R6A, R7A, R7D, R8A, C4-4D, C4-5D, M1-1/R6A, M1-1/R7D and M1-1/R8A districts, eliminate and establish new commercial overlays, establish a Special Mixed Use District, and establish Special Enhanced Commercial Districts; C 160037 HUK (L.U. No. 342), an amendment to the Dinsmore-Chestnut Urban Renewal Plan; and N 160050 ZRK (L.U. No. 344), an amendment to the Zoning Resolution to create a Mandatory Inclusionary Housing program that would require, through zoning actions, a share of new housing to be permanently affordable;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d(b)(3) of the City Charter;

WHEREAS, upon due notice, the Council held a public hearing on the Application and Decision on March 7, 2016;

WHEREAS, the Council has considered the land use implications and other policy issues relating to the Decision and Application;

WHEREAS, the Council has considered the relevant environmental issues and the Final Environmental Impact Statement ("FEIS"), for which a Notice of Completion was issued on February 12, 2016 (CEQR No. 15DCP102K), the CEQR Technical Memorandum dated February 24, 2016, and the CEQR Technical Memorandum dated April 15, 2016 (together the "CEQR Technical Memoranda");

**RESOLVED:**

Having considered the FEIS and the CEQR Technical Memoranda with respect to the Decision and Application, the Council finds that:

- (1) The FEIS meets the requirements of 6 N.Y.C.R.R. Part 617;
- (2) Consistent with social, economic, and other essential considerations, from among the reasonable alternatives available, the action is one which avoids or minimizes adverse environmental impacts to the maximum extent practicable; and
- (3) The adverse environmental impacts identified in the FEIS will be minimized or avoided to the maximum extent practicable by the placement of (E) designations for Hazardous Materials, Air Quality, and Noise, as well as through the provisions of Sections 81-624 and 81-691(a)(3) of the Zoning Resolution, which form part of the action; and
- (4) The Decision together with the FEIS constitutes the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to 6 N.Y.C.R.R. §617.11(d).

Pursuant to Section 197-d of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in this report, C 160042 HDK, incorporated by reference herein, the Council approves the Decision.

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 April 20, 2016, on file in this office.

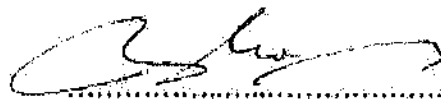
  
.....  
City Clerk, Clerk of The Council

EXHIBIT C

Mayoral Approval Document

(next page)

**THE MAYOR  
CITY OF NEW YORK**

**June 12, 2019**

**Cal. No. 4**

**WHEREAS**, The Department of Housing Preservation and Development ("HPD") of the City of New York ("City") submitted the First Amended Urban Renewal Plan ("Plan") for the redevelopment of the Dinsmore-Chestnut Urban Renewal Area ("Area") to the City Planning Commission ("Commission") for its approval in accordance with Section 197-c of the Charter and Article 15 of the General Municipal Law ("GML"); and

**WHEREAS**, the Commission, after a public hearing held on due notice, adopted a report certifying (i) that the Plan conforms with the comprehensive community plan for the development of the municipality as a whole and is consistent with local objectives, (ii) that the Area is appropriate for urban renewal; and (iii) the Commission's approval of the Plan; and

**WHEREAS**, the Council held a public hearing on due notice and (i) designated the Area as an urban renewal area pursuant to Section 504 of the GML, and (ii) approved the Plan, as amended, pursuant to Section 505 of the GML and Section 197-d of the Charter; and

**WHEREAS**, the Uniform Land Use Review Procedures required by Sections 197-c and 197-d of the Charter have been adhered to; and

**WHEREAS**, HPD has proposed the sale of certain City-owned real property in the Area located in the Borough of Brooklyn, City and State of New York, known as:

<u>Block</u>	<u>Lots</u>
4142	34, 32

on the Tax Map of the City ("Disposition Area"), which Disposition Area is identified as Site A in the Plan; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law, Part 617 of Volume 6 of the Codes, Rules and Regulations of the State of New York, Chapter 5 of Title 62 of the Rules of the City of New York, and Mayoral Executive Order No. 91 of August 24, 1977, as amended, the Department of City Planning has prepared an Environmental Impact Statement which has been duly considered by the Mayor; and

**WHEREAS**, HPD has designated Chestnut Commons Housing Development Fund Corporation ("Sponsor") as a qualified and eligible sponsor to develop the proposed project in the Project Area; and

**WHEREAS**, it is anticipated that the Project to be developed by Sponsor will contain approximately one building containing approximately 275 dwelling units and approximately 6,430 square feet of commercial space and approximately 34,787 square feet of community facility space; and

**WHEREAS**, a proposed agreement ("Land Disposition Agreement") between the City and Sponsor providing for the sale of a portion of the Disposition Area located on Block 4142, Lot 34 (the "Project Area") to Sponsor without public auction or sealed bids at the nominal price of One Dollar ("Disposition Price") and setting forth the terms and conditions for the redevelopment of the Disposition Area in accordance with the Plan has been submitted to the Mayor; and



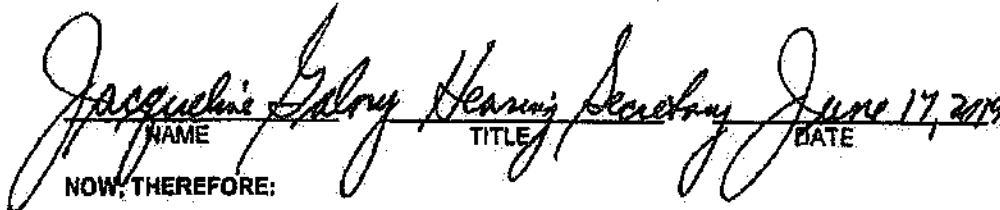
WHEREAS, the City will transfer to the Project Area excess development rights from an adjacent portion of the Disposition Area located on Block 4142, Lot 32 for no additional consideration; and

WHEREAS, the Mayor has duly reviewed and considered the disposition of the Disposition Area for redevelopment in accordance with the Plan; and

WHEREAS, public notice of a Mayoral hearing has been published in The City Record, as required by Section 1802(6)(f) of the Charter, and in a newspaper of general circulation in New York City, as required by Section 507(2)(d) of the GML; and

WHEREAS, as certified below, a duly noticed public hearing in the matter of the disposition, pursuant to Section 1802(6)(f) of the Charter, was held and closed by the Mayor on June 12, 2019 (Cal. No. 4). At such public hearing, no amendments were made and no testimony was offered. The relevant portion of the calendar is annexed hereto.

CERTIFICATION by the Mayor's Office Of Contract Services/Public Hearings Unit of the actions at and final disposition of the Real Property Public Hearing held on June 12, 2019 (Cal. No. 4).

  
NAME TITLE DATE  
June 17, 2019

NOW, THEREFORE:

1. The Mayor hereby approves the designation of Sponsor as a qualified and eligible sponsor.
2. The Mayor hereby authorizes and approves the sale of property located in the Disposition Area at the Disposition Price, by negotiated sale, without public auction or sealed bids, pursuant to Section 507(2)(d) of the GML.
3. The Mayor hereby approves the Land Disposition Agreement in substantially the form submitted and authorizes the subordination of the Land Disposition Agreement and the Regulatory Agreement described therein to the lien of mortgages securing loans financing the project.
4. The Mayor hereby authorizes any Deputy Mayor or the Commissioner of HPD to execute a Land Disposition Agreement in substantially the form submitted, when approved as to form by the Corporation Counsel, and directs the City Clerk or acting City Clerk to attest the same and to affix the seal of the City thereto.
5. The Mayor hereby authorizes the City, as more particularly described in the Land Disposition Agreement, to indemnify Sponsor and its successors or assigns, holders of mortgages securing loans financing the Project and their successors or assigns, and title companies against any claims of interest in the Disposition Area, or any portion thereof, by the holders of any mortgages of record against the Disposition Area, or any portion thereof, at the time the City acquired title.
6. The Mayor hereby authorizes any Deputy Mayor or the Commissioner of HPD to execute and deliver to Sponsor, or to an affiliate or successor of Sponsor controlled by the same principal(s) that controlled Sponsor, a zoning lot development agreement and deed of conveyance of title to the Project Area, when approved as to form by the Corporation Counsel, at the Disposition Price and upon the terms and conditions contained in the Land Disposition Agreement, zoning lot development agreement, and the deed, and directs the City Clerk or acting City Clerk to attest said deed and zoning lot disposition agreement and to affix the seal of the City thereto.

7. The Mayor hereby authorizes the Commissioner of HPD or an authorized designee to provide notification or other information to the Commissioner of the Division of Housing and Community Renewal ("DHCR") of the State of New York or such other governmental agency as may be required pursuant to regulations promulgated by DHCR pursuant to Section 518 of the GML.

Date: 6/19/ 2018

By: 

Daniel Symon, Director  
Mayor's Office Of Contract Services

EXHIBIT D

Urban Renewal Plan

(next page)



THE CITY OF NEW YORK  
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT  
OFFICE OF NEIGHBORHOOD STRATEGIES  
DIVISION OF PLANNING AND PREDEVELOPMENT

# DINSMORE- CHESTNUT

URBAN  
RENEWAL  
PROJECT

URBAN RENEWAL PLAN  
FIRST AMENDED

JULY 2000  
NOVEMBER 2016

**THE CITY OF NEW YORK  
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**

**FIRST AMENDED  
URBAN RENEWAL PLAN**

**DINSMORE - CHESTNUT  
URBAN RENEWAL AREA**

**Brooklyn  
Community District No. 5**

**November 2016**

## **HISTORY OF PRIOR APPROVALS**

### **Original**

City Planning Commission: January 31, 2001  
City Council: March 28, 2001 (Reso. No. 1818)  
Mayor: May 8, 2001 (Cal. No. 35)

### **First Amendment**

City Planning Commission: February 24, 2016  
City Council: April 20, 2016 (Reso. No. 1055)  
Mayor: November 3, 2016



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D: PROPOSED METHODS AND TECHNIQUES OF URBAN RENEWAL.....	8
E: RELATED ACTIONS.....	8
F: REDEVELOPER OBLIGATIONS.....	9
G: MODIFICATION OF PLAN.....	10
H: DURATION OF PLAN.....	11

### **EXHIBITS**

- A: PROPERTIES ACQUIRED AND TO BE ACQUIRED
- B: PROJECT BOUNDARY DESCRIPTION

### **MAPS**

- 1: PROJECT BOUNDARY MAP, DATED SEPTEMBER 2015
- 2: LAND USE MAP, DATED SEPTEMBER 2015

**A: URBAN RENEWAL AREA**

**1. LEGAL AUTHORITY**

The City of New York ("City") has designated the Dinsmore - Chestnut Urban Renewal Area ("Area") as an urban renewal area pursuant to §504 of Article 15 ("Urban Renewal Law") of the General Municipal Law. The Department of Housing Preservation and Development ("HPD") represents the City in carrying out the provisions of the Urban Renewal Law pursuant to §502(5) of the Urban Renewal Law and §1802(6)(e) of the Charter.

**2. AREA**

The property indicated on Map 1 and listed in Exhibit A ("Acquisition Parcel") has been or will be acquired by the City for redevelopment pursuant to this First Amended Dinsmore – Chestnut Urban Renewal Plan ("Plan"). This Acquisition Parcel comprises the entire Area and, as such, is the only property to be redeveloped pursuant to this Plan.

**3. BOUNDARY**

The Area is located in Community District No. 5 in the borough of Brooklyn and is generally bounded by (i) Dinsmore Place on the north, (ii) Chestnut Street on the east, (iii) Atlantic Avenue on the south, and (iv) Logan Street on the west. The perimeter described in Exhibit B and shown on Map 1 ("Project Boundary") encompasses the Acquisition Parcel which comprises the Area, but may also encompass other properties which are not part of the Area. The Acquisition Parcel, and not the Project Boundary, defines the Area.

**4. OTHER PROPERTIES**

Any properties located within the Project Boundary which are not listed in Exhibit A ("Exempt Parcels") will not be acquired by the City for redevelopment pursuant to this Plan. Notwithstanding the fact that they are located within the Project Boundary, Exempt Parcels are not part of the Area and are not subject to the controls of this Plan, even if they are or become City-owned.

**5. ELIGIBILITY**

The Area is eligible for designation as an urban renewal area pursuant to the Urban Renewal Law. The following insanitary and substandard conditions adversely affect the quality of life in the Area and its immediate vicinity:

- a. Abandoned, vacant, underutilized, substandard, and/or insanitary, lots.
- b. Poorly or improperly designed street patterns and intersections.
- c. Lack of suitable off street parking.

**B: URBAN RENEWAL PLAN**

**1. LEGAL AUTHORITY**

The City has established this Plan for the redevelopment of the Area pursuant to §505 of the Urban Renewal Law.

**2. STATEMENT OF COMPLIANCE**

In accordance with §502(7) of the Urban Renewal Law, this Plan states the following information:

a. Proposed Land Uses

See Section C.

b. Proposed Land Acquisition, Demolition, And Removal Of Structures

See Section D.

c. Proposed Acquisition Of Air Rights And Concomitant Easements Or Other Rights Of User Necessary For The Use And Development Of Such Air Rights

None.

d. Proposed Methods Or Techniques Of Urban Renewal

See Section D.

e. Proposed Public, Semi-Public, Private, Or Community Facilities Or Utilities

See Section C.

f. Proposed New Codes And Ordinances And Amendments To Existing Codes And Ordinances As Are Required Or Necessary To Effectuate The Plan

See Section E.

g. Proposed Program Of Code Enforcement

Properties will be required to comply with applicable United States ("Federal"), State of New York ("State"), and City laws, codes, ordinances, and regulations (collectively, "Laws").

h. Proposed Time Schedule For Effectuation Of Plan

<u>Project Activity</u>	<u>Estimated Commencement Date</u>	<u>Estimated Completion Date</u>
Land Acquisition	January 2001	January 2001
Relocation of Site Occupants	January 2001	January 2001
Demolition and Site Clearance	April 2001	May 2001
Site Preparation (Including Installation of Site Improvements)	May 2001	June 2001
Land Disposition	September 2015	Sept. 2017
Project Completion		May 2028

### 3. OBJECTIVES

This Plan seeks to:

- a. Redevelop the Area in a comprehensive manner, removing blight and maximizing appropriate land use.
- b. Remove impediments to land assemblage and orderly development.
- c. Strengthen the tax base of the City by encouraging development and employment opportunities in the Area.
- d. Provide new housing of high quality.
- e. Provide appropriate uses such as community facilities, retail shopping and open space opportunities.
- f. Provide a stable environment within the Area which will not be a blighting influence on surrounding neighborhoods.

### 4. DESIGN OBJECTIVES

It is the intent of this Plan that, to the extent deemed feasible by HPD, (i) the Area should be developed in a manner compatible with or beneficial to the surrounding community, (ii) the project should harmonize in scale, configuration, and materials to the prevailing neighborhood pattern, and (iii) in areas with exceptionally strong or uniform street character, the new construction should reinforce the existing urban pattern.

**C: CONTROLS ON REDEVELOPMENT**

**1. ZONING**

The controls of this Plan will be concurrent with, and will not preempt or supersede, the controls of the Zoning Resolution of the City, as amended ("Zoning Resolution"). The controls of the Zoning Resolution will apply to all Acquisition Parcels at all times to the extent permitted by Law. The controls of this Plan will commence to apply to any Acquisition Parcel upon acquisition by the City or at such later date as may be specified in this Plan. Thereafter, if there is any conflict between the controls imposed by the Zoning Resolution and the controls imposed by this Plan, the more restrictive of the two will govern.

**2. PROPOSED USES**

Map 2 indicates the permitted use of each Acquisition Parcel following disposition by the City to a redeveloper. Each use indicated in Map 2 will have the meaning set forth in this Section C.2.

**a. Residential, Commercial, and Manufacturing**

Residential, commercial, community facility, light manufacturing, and other uses will be permitted in accordance with the Zoning Resolution.

**3. SUPPLEMENTARY CONTROLS**

**a. Controls On Specific Sites**

None.

**b. Building Bulk**

Building bulk requirements will be as required by the Zoning Resolution.

**c. Parking**

Parking requirements will be as required by the Zoning Resolution. Parking areas will be screened with landscaping.

**d. Utilities**

- (1) Any existing overhead telecommunications, electrical, and cable network lines in the Area will be removed and relocated underground and all new or additional telecommunications, electrical, and cable network lines will be placed underground, unless HPD determines that such placement underground is either unnecessary or infeasible.

- (2) Sewers, water lines, street lighting, and electrical and gas services will be installed as required. Water supply, sanitary sewers, and storm sewers will be provided in accordance with the requirements of the City's Department of Environmental Protection.

**D: PROPOSED METHODS AND TECHNIQUES OF URBAN RENEWAL**

**1. ACQUISITION**

**a. Method Of Acquisition**

The Acquisition Parcel may be acquired by any means permitted by applicable Laws. Regardless of the method of acquisition, the Acquisition Parcel will be subject to the controls of, and developed in accordance with, this Plan.

**b. Properties Acquired or to be Acquired**

The Acquisition Parcel has been acquired by the City with City funds, without Federal assistance.

**2. RELOCATION**

There is a feasible method for the relocation of families and individuals displaced from the Area into decent, safe, and sanitary dwellings, which are or will be provided in the Area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities, at rents or prices within the financial means of such families or individuals, and reasonably accessible to their places of employment. HPD will relocate residential and commercial site occupants, if any, in compliance with all applicable Federal, State, and City Laws.

**3. DEMOLITION AND/OR REHABILITATION**

The structures on properties acquired in accordance with this Plan will either be demolished and cleared for new construction or retained for rehabilitation.

**4. LAND DISPOSITION**

Properties acquired will be disposed of for redevelopment in accordance with this Plan.

**E: RELATED ACTIONS**

**1. ZONING MAP AMENDMENTS**

The zoning of the Area will be as set forth in the Zoning Resolution. Zoning Map Amendments will be necessary in order to implement this Plan, but any proposed amendments set forth in this Section E.1 will have no force or effect until they are approved and become effective pursuant to the applicable provisions of the



Charter. The proposed Zoning Map Amendment is a rezoning of the Area from M1-1 to a mixed-use zoning district.

2. STREET MODIFICATIONS

It may be necessary to map, demap, or modify streets within and/or adjacent to the Area in order to implement this Plan, but any proposed street modifications set forth in this Section E.2 will have no force or effect until they are approved and become effective pursuant to the applicable provisions of the Charter. However, no street modifications are proposed at this time.

**F: REDEVELOPER OBLIGATIONS**

1. RECORDABLE AGREEMENTS

The instruments by which the City disposes of any Acquisition Parcel or part thereof to a redeveloper will be recorded in the Office of the City Register and will contain covenants running with the land which (i) incorporate this Plan by reference, (ii) require compliance with the terms and restrictions set forth in this Plan, and (iii) require compliance with Section F.4. An amendment to this Plan which becomes effective after the date of disposition of an Acquisition Parcel to a redeveloper will not apply to the real property comprising such Acquisition Parcel unless, following the effective date of such amendment, the City and the owner of such real property execute a written agreement, approved as to form by the Corporation Counsel, providing that such amendment shall thereafter apply to such real property.

2. LAND USE RESTRICTION

Each redeveloper will be required to devote the land solely to the uses specified as permitted uses in this Plan and to comply with all other terms and restrictions set forth in this Plan.

3. TIMELY PERFORMANCE

Each redeveloper will be required to expeditiously apply for all required governmental approvals and to begin and complete the redevelopment and construction of the improvements mandated by this Plan and agreed upon in the disposition instruments within a reasonable time.

4. NON-DISCRIMINATION

Each redeveloper, its successors and assigns of the land conveyed or any part thereof, and any lessee of the land conveyed or any part thereof (i) will not enter into any agreement, lease, conveyance, or other instrument which restricts the sale, lease, or occupancy of such land or any part thereof upon the basis of race, color, national origin, ancestry, alienage status, religion, creed, age, sex, marital status, sexual orientation, or disability, and (ii) will comply with all applicable Federal, State, and City laws in effect from time to time prohibiting discrimination or segregation by reason of race, color, national origin, ancestry, alienage status,

religion, creed, age, sex, marital status, sexual orientation, or disability in the sale, lease, or occupancy of the property.

5. DESIGN REVIEW

HPD may require any redeveloper to (i) submit site plans, landscape plans, architectural drawings, outline specifications, schedules of materials and finishes, and/or final working drawings, in sufficient detail to permit determination of compliance with the controls of this Plan, for HPD approval prior to commencement of construction, and (ii) submit any material change to such documents thereafter proposed for HPD approval prior to commencement of construction of such change.

6. RESTRICTION ON TRANSFER PRIOR TO COMPLETION

No redeveloper will be permitted to sell, lease, or otherwise transfer land at any time prior to completion of the redevelopment thereof without prior written consent of HPD, except as set forth in the disposition instruments.

7. COOPERATION WITH HPD

Each redeveloper will be required to expeditiously submit all documents required by HPD for the approval and processing of the redevelopment project.

8. COOPERATION WITH OTHER CITY AGENCIES

Each redeveloper will be required to cooperate fully with the appropriate City agencies in realizing the specific objectives of this Plan.

9. CERTIFICATE OF COMPLETION

Each redeveloper will be required to provide HPD with current revised drawings as required by HPD, including, but not limited to, descriptions reflecting substantial changes during construction. HPD will use these drawings and descriptions, together with materials submitted prior to commencement of construction, for final determination of compliance and issuance of a Certificate of Completion in accordance with the terms of the disposition instruments.

G: MODIFICATION OF PLAN

1. AMENDMENTS

The City may amend this Plan at any time pursuant to §505 of the Urban Renewal Law and §197-c and §197-d of the Charter and may amend the designation of the Area at any time pursuant to §504 of the Urban Renewal Law.

2. MINOR CHANGES

HPD, with the concurrence of the City Planning Commission ("CPC"), may authorize minor changes of the terms of these restrictions which conform with the intent and purpose of this Plan.

3. MERGERS AND SUBDIVISIONS

The development sites in the Area may be merged and/or subdivided where HPD determines in writing that (i) the site plan complies with the intent and provisions of this Plan, and (ii) the unused portion of the subdivided development site, if any, is marketable and developable in accordance with this Plan and with all applicable Federal, State, and City Laws. The merger and/or subdivision of a development site will not require review or approval by CPC, but HPD will file the Plan, as modified to indicate such merger and/or subdivision, with the Department of City Planning for information purposes.

H: DURATION OF PLAN

This Plan will remain in effect for a period of forty (40) years from the date of the original approval of this Plan, until May 8, 2041, except as provided in Section G.

**EXHIBIT A**  
**PROPERTIES ACQUIRED AND TO BE ACQUIRED**

<b><u>Site</u></b>	<b><u>Block</u></b>	<b><u>Lot</u></b>	<b><u>Land Use</u></b>
A	4142	32	Residential/Commercial/Manufacturing

All mapped and/or built streets within the Project Boundary

**EXHIBIT B**

**PROJECT BOUNDARY DESCRIPTION**

Lying within the Borough of Brooklyn, Kings County in the City of New York, New York.

BEGINNING at the intersection of the southerly line of Dinsmore Place with the easterly line of Logan Street;

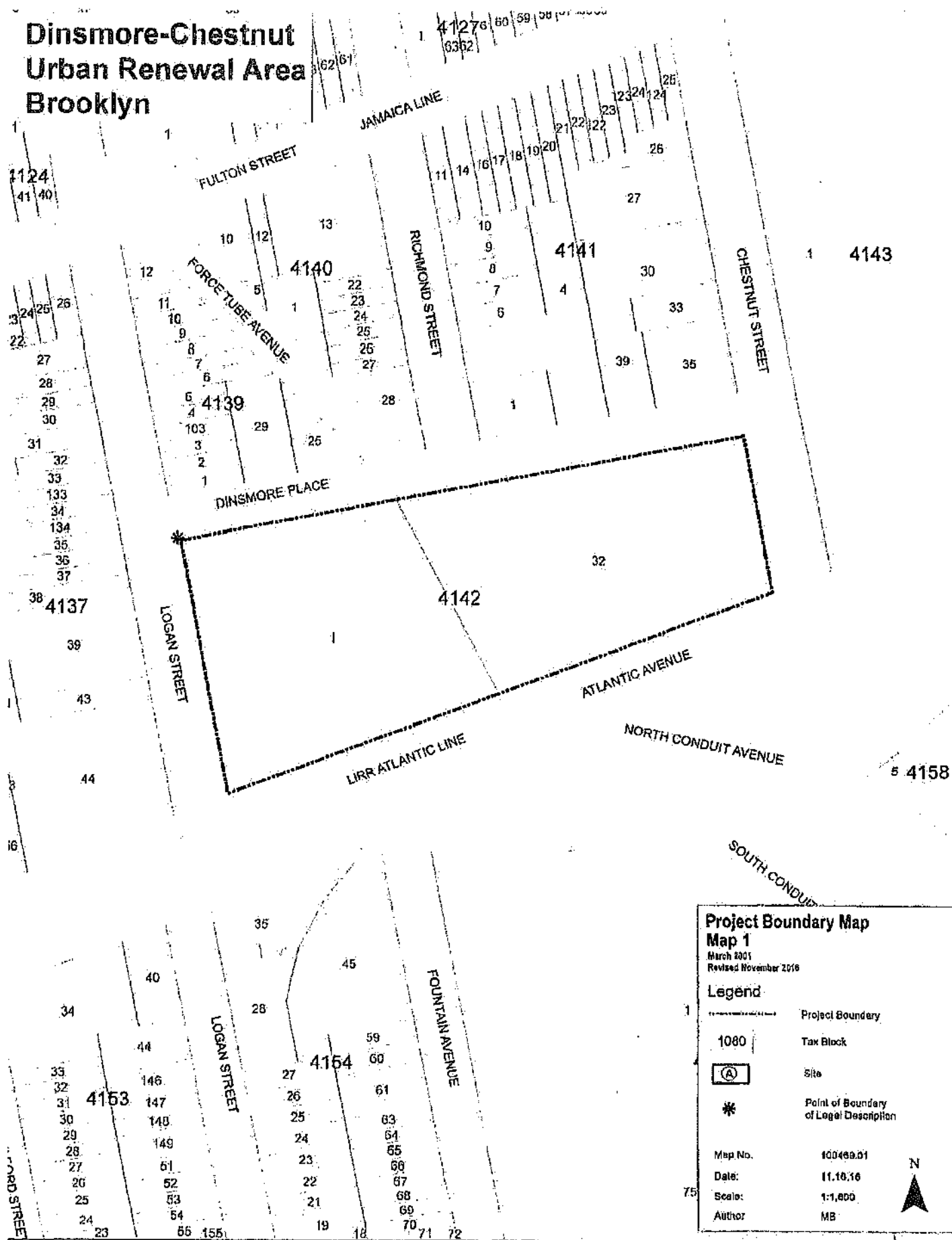
Thence easterly, along the southerly line of Dinsmore Place to its intersection with the westerly line of Chestnut Street;

Thence southerly, along the westerly line of Chestnut Street to its intersection with the northerly line of Atlantic Avenue;

Thence westerly, along the northerly line of Atlantic Avenue to its intersection with its easterly line of Logan Street;

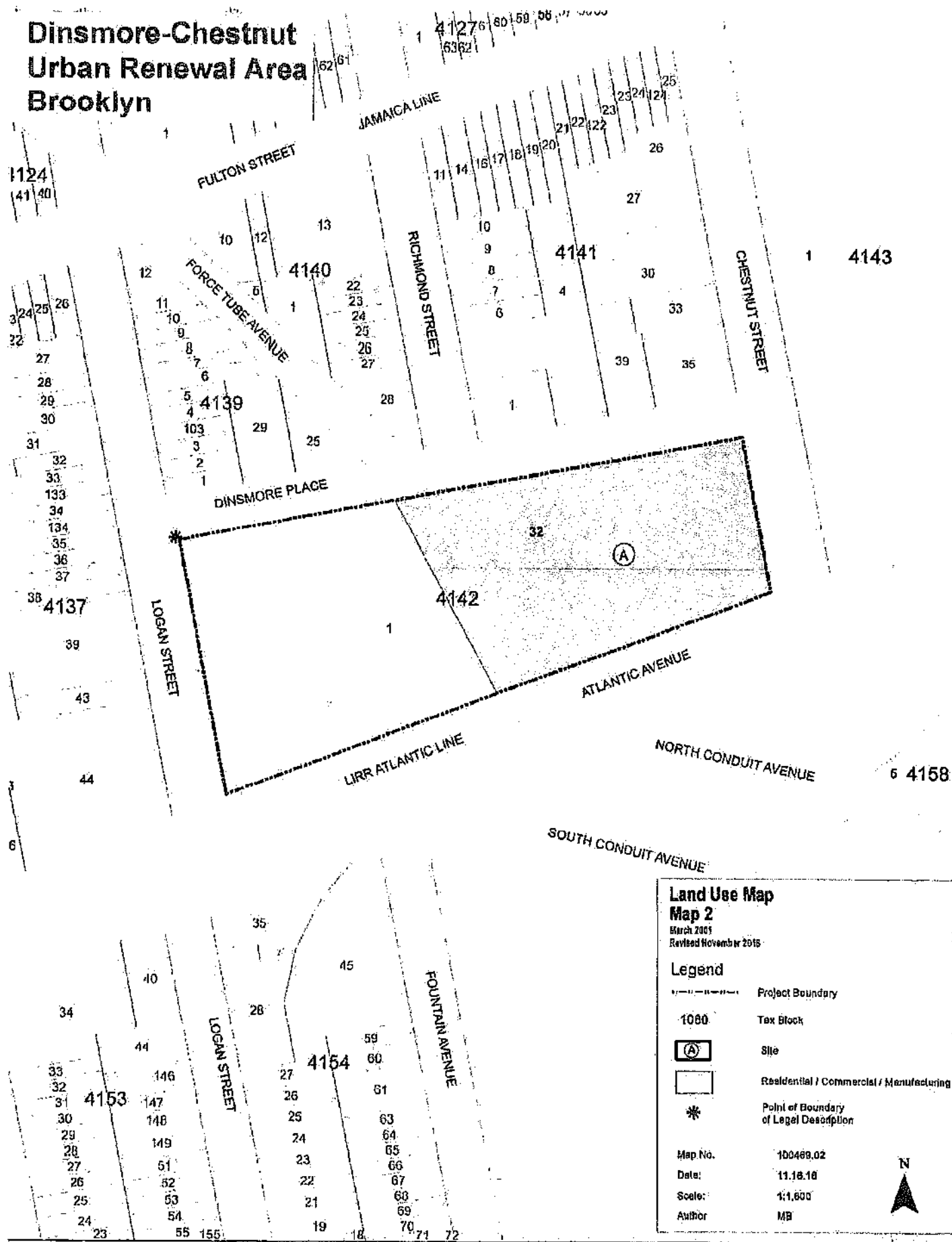
Thence northerly, along the easterly line of Logan Street to the point or place of beginning.

# Dinsmore-Chestnut Urban Renewal Area Brooklyn





# Dinsmore-Chestnut Urban Renewal Area Brooklyn



**FACT SHEET**

**DINSMORE – CHESTNUT URBAN RENEWAL PLAN  
FIRST AMENDMENT**

**September 2015**

**REASON FOR AMENDMENT:**

The Dinsmore – Chestnut Urban Renewal Plan is being amended to facilitate residential, commercial, manufacturing, and community facility development on the Dinsmore – Chestnut Urban Renewal Area bounded by Logan Street, Atlantic Avenue, Chestnut Street and Dinsmore Place. Contemplated land uses will be permitted in accordance with the proposed East New York Rezoning plan.

**SPECIFIC CHANGES:**

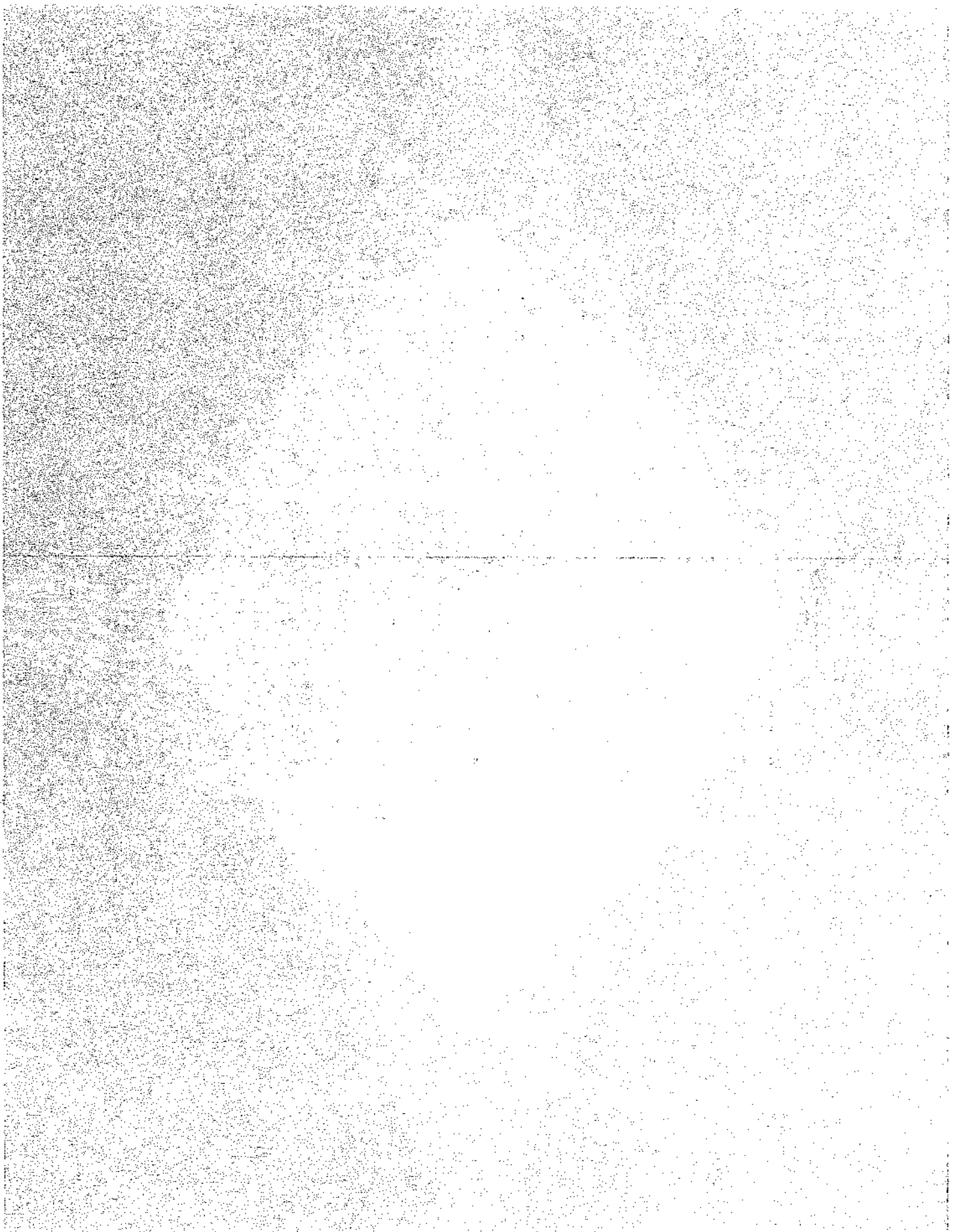
(1) Maps 1 and 2 and Exhibit A have been modified to reflect land use changes

- The permitted land use of Site A (Block 4142, Lot 32) has been changed from Manufacturing to Residential, Commercial and Manufacturing.

**SITE STATUS:**

Site A is currently vacant and is under City ownership. The site measures approximately 81,175 square feet, and fronts along Atlantic Avenue and is on the block bounded by Logan Street, Dinsmore Place and Chestnut Street.

**FOR INFORMATION ONLY – NOT PART OF URBAN RENEWAL PLAN, NOT PART OF  
ULURP APPLICATION**



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**DEED**

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**THE CITY OF NEW YORK**

**TO**

**CHESTNUT COMMONS HOUSING DEVELOPMENT FUND CORPORATION**

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<u>Block(s)</u>	<u>Lot(s)</u>	<u>Address(es)</u>
4142	34 (formerly part of Lot 32)	110 Dinsmore Place
<u>County:</u>	Kings	

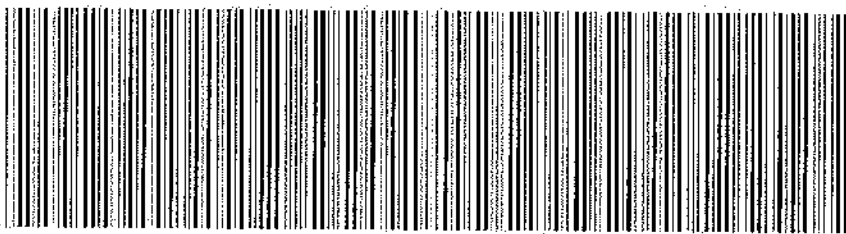
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**RECORD AND RETURN TO:**

Michi Cabrera, Esq.  
Department of Housing Preservation  
and Development  
Office of Legal Affairs  
100 Gold Street  
New York, New York 10038

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NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2019122300264001001S4A8E

**SUPPORTING DOCUMENT COVER PAGE**

**PAGE 1 OF 1**

**Document ID: 2019122300264001**

**Document Date: 12-20-2019**

**Preparation Date: 12-23-2019**

**Document Type: DEED**

**ASSOCIATED TAX FORM ID: 2019112600296**

**SUPPORTING DOCUMENTS SUBMITTED:**

**Page Count**

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

1  
2



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: BROOKLYN BLOCK: 4142 LOT: 34
- (2) Property Address: N/A ATLANTIC AVENUE, BROOKLYN, NY 11208
- (3) Owner's Name: CHESTNUT COMMONS HOUSING DEVELOPMENT FUND CORPORAT
- 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:

*Ernest Speliot*

Date (mm/dd/yyyy)

12/20/19

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

C1. County Code: \_\_\_\_\_ C2. Date Deed Recorded: \_\_\_\_\_  
Month / Day / Year  
C3. Book OR \_\_\_\_\_ C4. Page \_\_\_\_\_  
C5. CRFN \_\_\_\_\_



STATE OF NEW YORK  
STATE BOARD OF REAL PROPERTY SERVICES

RP - 5217NYC

1. Property Location	N/A	ATLANTIC AVENUE	BROOKLYN	11208
	STREET NUMBER	STREET NAME	BOROUGH	ZIP CODE

2. Buyer Name	CHESTNUT COMMONS HOUSING DEVELOPMENT FUND CORPORAT	
	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

**Check the boxes below as they apply:**

6. Ownership Type is Condominium

## 7. New Construction on Vacant Land

THE CITY OF NEW YORK, ACTING BY AND THROUGH HPD

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

10. Sale Contract Date. 12 / 20 / 2019  
Month Day Year

11. Date of Sale / Transfer 12 / 20 / 2019  
Month Day Year

12. Full Sale Price \$ 1,000.00

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

15. Building Class [V.1] 16. Total Assessed Value (of all parcels in transfer) 6 2 5 5 0 0

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

BROOKLYN 4142 34



**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 <i>Emere Opelot</i>		DATE <i>12/20/19</i>	
C/O: MHANY 1 METROTECH CTR			
STREET NUMBER BROOKLYN		STREET NAME (AFTER SALE)	
CITY OR TOWN		STATE NY	
ZIP CODE 11201-3948		AREA CODE TELEPHONE NUMBER	
		<b>SELLER</b>	
SELLER SIGNATURE <i>Attila Gabor</i>		DATE <i>12/19/19</i>	

2019112600296201

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through June 26, 2020.

---

Selected Entity Name: CHESTNUT COMMONS HOUSING DEVELOPMENT FUND CORPORATION  
Selected Entity Status Information

Current Entity Name: CHESTNUT COMMONS HOUSING DEVELOPMENT FUND CORPORATION

DOS ID #: 5525269

Initial DOS Filing Date: APRIL 01, 2019

County: KINGS

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)**

C/O MHANY MANAGEMENT INC.  
470 VANDERBILT AVE 9TH FL.  
BROOKLYN, NEW YORK, 11238

#### 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**

<b>Filing Date</b>	<b>Name Type</b>	<b>Entity Name</b>
APR 01, 2019	Actual	CHESTNUT COMMONS 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.

[Search Results](#) [New Search](#)

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# **CHESTNUT COMMONS APARTMENTS LLC**

c/o Urban Builders Collaborative LLC  
334-336 East 110th Street  
New York, New York 10028

Chestnut Commons Housing Development Fund Corporation  
Attn: Ismene Speliotis, Executive Director  
470 Vanderbilt Avenue, 9th Floor  
Brooklyn, New York 11238

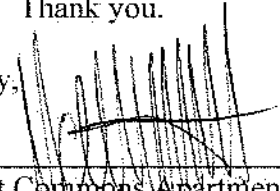
**Re: Site Access to Perform Ongoing Brownfield Cleanup Program Work  
110 Dinsmore Place (f/k/a 3269 Atlantic Avenue), Brooklyn, New York 11208  
Tax Parcel Block 4142, Lot 34**

Dear Ismene:

As you know, Chestnut Commons Apartments LLC has been participating in the Brownfield Cleanup Program ("BCP") with respect to the property located at 110 Dinsmore Place (f/k/a 3269 Atlantic Avenue), Brooklyn, New York 11208, Tax Parcel Block 4142, Lot 34 (the "BCP Site"). The BCP Site was sold to Chestnut Commons Housing Development Fund Corporation as part of the affordable housing financing requirements in December 2019, even though Chestnut Commons Apartments LLC remains the beneficial owner with full access rights. However, for purposes of the BCP, this letter access agreement is required to support an amendment to the Brownfield Cleanup Agreement ("BCA Amendment") acknowledging that the Site was sold and to secure the tangible property tax credits based on the December 2019 regulatory agreement executed with the relevant affordable housing agencies. As the official fee title owner of the BCP Site, we need you to execute this letter agreement to demonstrate to the New York State Department of Environmental Conservation ("NYSDEC") that Chestnut Commons Apartments LLC has had access, and will continue to have access to the BCP Site for the purpose of continuing to perform the environmental investigation and remediation work for acceptance into the BCP.


In addition, to the extent an environmental easement is required for the BCP Site after the remediation is complete because an unconditional Track 1 remediation was unable to be achieved, you are also herein giving us permission to place an environmental easement on the BCP Site to give the NYSDEC access to ensure the BCP Site is properly maintained pursuant to all program requirements, and that as the fee owner Chestnut Commons Housing Development Fund Corporation will execute such easement if required to do so. Thank you.

Sincerely,

  
\_\_\_\_\_  
Chestnut Commons Apartments LLC

By. Matthew Gross  
Authorized Signatory

As an authorized signatory of the site owner Chestnut Commons Housing Development Fund Corporation, I am authorized to grant this temporary license agreement and agree to allow Chestnut Commons Apartments LLC and its agents to enter the BCP Site to perform the BCP Investigation and/or remediation work required and will execute the easement if required.

  
Chestnut Commons Housing Development Fund Corporation

Ismene Speliotis, Executive Director  
Authorized Signatory

## WRITTEN CONSENT

The undersigned co-developer and beneficial owner authorized signatory for Volunteer Chestnut Commons Apartments LLC hereby confirms that Executive Director Ismene Speliotis of Chestnut Commons Housing Development Fund Corporation, a New York not-for-profit corporation (the "Company"), which is the fee title owner of the Chestnut Commons Atlantic Ave Site #C224276 located at 110 Dinsmore Place in Brooklyn, New York, is authorized to execute documents in the New York State Brownfield Cleanup Program (BCP), and hereby waives notice of a meeting and consents to and adopts the following resolutions:

**RESOLVED**, that the Company be, and it hereby is, authorized and directed to enter into, execute and deliver, all documents, agreements and instruments and to take any and all action necessary or desirable on behalf of, and for the benefit of, the Company, to implement, secure and/or consummate the entering into a Brownfield Cleanup Agreement (BCA), any amendments thereto and an environmental easement with the State of New York by the New York State Department of Environmental Conservation (NYSDEC); and

**RESOLVED**, that Ismene Speliotis, as the Executive Director of the Company, is authorized to execute on behalf of the Company, any and all instruments and documents and to take any and all actions as she deems necessary or desirable to evidence, implement, secure and/or consummate the transactions as described above, including but not limited to the execution of a BCA Amendment with the NYSDEC and any and all future documents required in the BCP, including the environmental easement; and


**RESOLVED**, that all actions heretofore taken and all documents heretofore executed and all present and future actions taken in connection with the above and/or these resolutions, be, and they hereby are, ratified, confirmed and approved.

Chestnut Commons Apartments LLC

By: Chestnut Commons Managers LLC, its  
managing member

By: Chestnut Commons MM LLC, its managing  
member

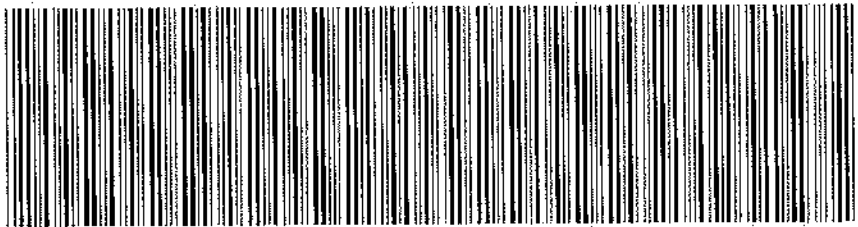
By: UBC Chestnut Commons LLC, its member

By:   
Name: Matthew Gross  
Title: Authorized Signatory

Date: 6/29/2020

**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 87**

**Document ID: 2020010200127002**

**Document Date: 12-20-2019**

**Preparation Date: 01-02-2020**

**Document Type: SUNDRY AGREEMENT**

**Document Page Count: 85**

**PRESENTER:**

BENCHMARK TITLE AGENCY (PICK UP BY GAIL S)  
222 BLOOMINGDALE ROAD  
SUITE 102  
WHITE PLAINS, NY 10605  
914-250-2400  
EVANBOMEL@BENCHMARKTA.COM BTA 76646

**RETURN TO:**

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

**PROPERTY DATA**

Borough	Block	Lot	Unit	Address
BROOKLYN	4142	34	Entire Lot	N/A ATLANTIC AVENUE
<b>Property Type: COMMERCIAL REAL ESTATE</b>				

**CROSS REFERENCE DATA**

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

**PARTIES**

**PARTY 1:**

CHESTNUT COMMONS APARTMENTS LLC  
C/O MHANY 470 VANDERBILT AVENUE, 9TH FLOOR  
BROOKLYN, NY 11238

**PARTY 2:**

THE CITY OF NEW YORK, THROUGH DEPT OF HPD  
100 GOLD 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: \$ 462.00

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 01-10-2020 09:20

City Register File No. (CRFN):

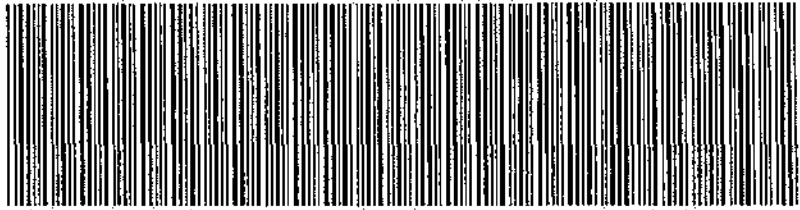
2020000010929



*Annette McMill*

**City Register Official Signature**

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2020010200127002001C98EC

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

**PAGE 2 OF 87**

**Document ID:** 2020010200127002

**Document Date:** 12-20-2019

**Preparation Date:** 01-02-2020

**Document Type:** SUNDRY AGREEMENT

**PARTIES**

**PARTY 1:**

CHESTNUT COMMONS HOUSING DEVELOPMENT  
FUND CORPORATION  
ION, C/O MHANY 470 VANDERBILT AVENUE 9TH  
FLOOR

**PARTY 1:**

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



BTA 76646

EXECUTION VERSION

---

**REGULATORY AGREEMENT**

among

**CHESTNUT COMMONS APARTMENTS LLC,**

**CHESTNUT COMMONS 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**

---

December 20, 2019

---

BLOCK: 4142

LOT: 34

COUNTY: KINGS

---

**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 December 20, 2019, among **CHESTNUT COMMONS APARTMENTS LLC** (the "**Beneficial Owner**"), a New York limited liability company with an address c/o MHANY Management Inc., 470 Vanderbilt Avenue, 9th floor, Brooklyn, NY 11238, **CHESTNUT COMMONS 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 organized pursuant to Article XI of the New York Private Housing Finance Law with an address c/o MHANY Management Inc., 470 Vanderbilt Avenue, 9th floor, Brooklyn, NY 11238, **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 acquisition, 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**, the City has conveyed fee title to the Premises to the Legal Owner, and the City and the Sponsor have entered into a Land Disposition Agreement dated as of the date of this Agreement, which is to be recorded against the Premises;

**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**, the Sponsor intends to create a commercial condominium on the Premises, pursuant to which the Premises will contain one structure with three condominium units: (1) a condominium unit containing the residential units to be rented to households with incomes at or below 60% AMI and approximately 34,787 gross square feet of community facility space ("**Tax Code Condo 1**"), (ii) a unit containing the residential units to be rented to households with incomes above 60% of AMI and below 80% AMI ("**Tax Code Condo 2**" and together with Tax Code Condo 1, the "**Tax Code Condo Units**" ), and (iii) condominium unit containing approximately 6,264 gross square feet of commercial space subject to the East New York Retail Preservation Pilot Program ("**ENYRPPP**") in accordance with the requirements set forth herein and to be leased as 3 separate commercial spaces (the "**Commercial Condo Unit**"); the Tax Code Condo Units are expected to receive Tax Credits and each will comprise a "building" for purposes of Section 42 of the Tax Code; however, the Project shall include all residential (including community facility) and commercial condominium units, as provided in Schedule B;

**WHEREAS**, upon the creation of a condominium on the Premises, pursuant to the Nominee Agreement the Beneficial Owner will be the beneficial owner of Tax Code Condo Unit 1 (including the community facility space) and Tax Code Condo Unit 2 (as hereinafter defined) and the Commercial Condominium Unit and the Legal Owner will be the record fee title owner of all condominium units;

**WHEREAS**, HDC has agreed to make, pursuant to the HDC Commitment (as defined below; capitalized terms used but not defined in this preliminary statement are defined in Section 1.01):

(i) a first mortgage loan to the Beneficial Owner in the aggregate principal amount of (\$70,890,000) (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 \$22,350,000 (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 \$31,588,555 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 "Grant Agreement"), of which \$26,004,618 shall be advanced during construction with the balance of \$5,583,937 to be funded at LOC Release, (the "HDC Third City Capital Loan"), and (iv) a fourth-position mortgage loan to the Beneficial Owner in the aggregate principal amount of \$2,500,000, to be funded pursuant to the Grant Agreement (the "HDC Fourth City Capital Loan"; and together with the HDC Third City Capital Loan, the "HDC City Capital Loan" and further, together with the HDC Loan and the HDC Additional 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 and 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., a national banking association and Banc of America CDC Special Holding Company, Inc. (collectively the "Tax Credit Investor");

**WHEREAS**, 55 of the Units shall benefit from a contract from HPD's NY 15/15 Housing Program for housing subsidy and the Beneficial Owner or its designee shall enter into one or more contract(s) for the delivery of rental subsidy and supportive services to eligible tenants pursuant thereto; and

**WHEREAS**, as of the date of this Agreement, the Beneficial Owner has master leased the portion of the Project that will become the Commercial Units Condo to Chestnut Common Retail Tenant LLC (the "Commercial Master Tenant") pursuant to a master lease (the "Commercial Master Lease"); which will sub lease the beneficial and equitable interest in the portion of the Project which will consist of a Commercial Units Condo (the "Retail Subleases") subject to requirements of the East New York Retail Preservation Pilot Program ("ENYRPPP") in accordance with the requirements set forth herein;

**WHEREAS**, as of the date of this Agreement the Beneficial Owner has master leased the Community Facility Space portion of Project which will become a part of Tax Credit Condo 1 to Chestnut Common CF Tenant LLC (the "Community Facility Master Tenant") which will sub lease its beneficial and equitable in the Community Facility Space to Cypress Hills Local Development Corporation, Inc., as tenant ("Community Facility Master Lease") which will utilize a portion of such Community Facility Space for its own use and will further sublease the balance

thereof ("Community Facility Subleases") ("Community Facility Master Lease" and, together with the Commercial Master Lease, collectively, the "Master Leases");

**WHEREAS**, the Sponsor expects to receive Real Property Tax Benefits on the Tax Code Condo Units and the Commercial Unit Condo;

**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 conveyance of the Premises to the Legal Owner, the making of the HDC City Capital 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 60% of AMI Unit is 60% of AMI

"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.

"Commercial Condo Unit" shall have the meaning set forth in the WHEREAS clauses

"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.

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

"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.

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

"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.

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

"Homeless Furnishing Fund" shall have the meaning set forth in 4.09.

"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.

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

"Legal Rent" shall have the meaning set forth in **Error! Reference source not found.**

"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 Leases" 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.

"NYC 15/15 Rental Assistance Program" shall mean the New York City Human Resource Administration's 15/15 Congregate Supportive Housing Program, as may be amended or renewed.

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

"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.

"Permitted Mortgages" shall mean the HDC Mortgage and any other mortgage affecting the Premises incurred with the prior written consent of HDC and HPD.

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

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

"RAC" shall mean the project-based rental assistance contract between HPD and the Beneficial Owner in connection with the NYC 15/15 Rental Assistance Program covering units in the Project, as may be amended or renewed.

"Real Property Tax Benefits" shall mean the exemption from or abatement of real property tax with regard to (i) the residential portion of the Project pursuant to Section 420-c of the New York

Real Property Tax Law, as may be amended for a period of not less than 60 years and (ii) the Commercial Condo Unit pursuant to the Industrial and Commercial Abatement Program ("ICAP").

"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 NYC 15/15 Rental Assistance Program, 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. In the case of any unit covered by the RAC, the unit shall be deemed a rental Assistance Unit and the Rental Assistance Rent shall be the RAC rent (i.e. the "Contract Rent" as defined in the RAC) approved by HPD. The project may have multiple types of Rental Assistance Rent as the same time.

"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.

"Social Services Furnishing Fund" 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 Condo 1" shall have the meaning set forth in the WHEREAS clauses.

"Tax Code Condo 2" shall have the meaning set forth in the WHEREAS clauses.

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

"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. This category includes any units designated in Section 4.02 as having

income restrictions for occupancy at any level at or below 80% of AMI. 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.

"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; and
- (g) 60 years from the date of the Permanent Conversion.



**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 mortgage securing the HDC Loan, this Agreement shall terminate only (i) upon written request of the owner of the mortgage securing the HDC Loan, 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 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 and HPD 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 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, including but not limited to ENYRPPP and ICAP with respect to the Commercial Condo Unit, 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 including ENYRPPP, 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, 274 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 Code. In furtherance thereof, HDC shall require as further described herein that the units be allocated as follows.

- (i) The Sponsor shall lease no fewer than 49 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 20% of AMI ("20% of AMI Units").
- (ii) The Sponsor shall lease no fewer than 60 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 55 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 55 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 60% of AMI ("60% of AMI Units").
  - (v) The Sponsor shall lease no fewer than 28 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 70% of AMI ("70% of AMI Units").
  - (vi) The Sponsor shall lease no fewer than 27 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 80% of AMI ("80% of AMI Units").
- (b) Intentionally Omitted.
- (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 55 of the 60% of AMI Tax Code 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.
- (e) Inclusionary Units. In accordance with the Mandatory Inclusionary Housing Restrictive Declaration and as delineated in Schedule B, 69 of the Tax Code Units shall be permanently affordable (the "Inclusionary Units").
- (f) Permanently Affordable Units. All 274 Units will be Permanently Affordable Units as set forth in Schedule B. For the avoidance of doubt, the 69 Inclusionary Units in the Project are affordable in perpetuity in accordance with the Mandatory Inclusionary Housing Restrictive Declaration and as Permanently Affordable Units as set forth herein.

**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 100%, 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 in Rent Stabilization, by natural persons or families pursuant to a one or two year lease who have met the applicable income requirements for Eligible Tenants at the time of such tenant's initial occupancy of such unit. Owner shall only offer a vacant dwelling unit for occupancy by persons or families intending to occupy such 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 dwelling unit for transient occupancy, for occupancy by any household that is not income 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 each of Tax Code Condo 1 and Tax Code Condo 2 as a "building" 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 or 80% of AMI Unit, along with verification documentation, (ii) obtain a certification of Household size and student status from each tenant residing in a Tax Code Unit that is a 70% of AMI or 80% of AMI, along with verification documentation, and (iii) 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 Tax Code Condo 1 and Tax Code Condo 2, each as a "building" as defined in Section 42 of the Tax Code, if the Annual Income of a tenant in either Tax Code Condo 1 or Tax Code 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 Condominium Unit to a tenant whose Annual Income does not exceed the income restriction for occupancy designated for such unit prior to becoming vacant. If Tax Code Unit 1 and Tax Code Unit 2 are not established as separate building 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 or 80% 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), 70% of AMI or 80% 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.

(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      Furnishing Fund for Homeless Units.**

The amount of \$140,000 has been allocated in the Project's budget to furnish the Homeless Units ("Homeless Furnishing Fund"). Prior to the rent up of the Project, Sponsor shall submit a plan for the proposed furnishings of the Homeless Units to HPD for prior written approval. Homeless Furnishing Funds shall be used to furnish the Homeless Units and equally distributed among all Homeless Units based on the number of rooms. At the end of the Restriction Period, any remaining unexpended Homeless Furnishing Funds, if any, shall be deposited into the Project Operating Reserve.

**SECTION 4.10      Intentionally Omitted.**

**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).

(iii) Intentionally Omitted.

(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.

(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.

(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.

(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) RAC Rents. The Sponsor shall provide to HDC and HPD for their review and approval a schedule of the initial Actual Rents for all units covered by the RAC. The Actual Rent for each unit shall be included on the rent schedule filed by the Sponsor with HPD pursuant to the RAC.

(vi) FMR Limits Do Not Apply to RAC Units. Notwithstanding the provisions above, the FMR limits given in this section for Rental Assistance

Units apply only to any unit occupied by a tenant with a Rental Assistance voucher or certificate, not to units covered by the RAC. In addition, these FMR limits shall not apply to any unit that was covered by the RAC at initial rent-up, if the RAC terminates with respect to the unit and a tenant with a Rental Assistance voucher or certificate occupies the unit. The Actual Rent for any such unit shall remain limited by the Rental Assistance Rent, however (e.g., the voucher payment standard in effect as authorized by the agency issuing the voucher).

(b) Intentionally Omitted.

- (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.

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

- (a) Tenant's Loss of Rental Assistance. If a tenant with tenant-based Rental Assistance is occupying a Tax Code Unit and the tenant loses Rental Assistance at any time, 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.
- (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 5.034, 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) Loss of Project-Based Rental Assistance.
- (i) Notice of Default or Material Change. No later than 30 days following any date on which the Sponsor obtains evidence in writing that a default or material change with respect to NYC 15/15 at the Project has occurred, or may occur, the Sponsor shall provide notice of the default or material change to HDC and HPD, financial statements and reasonably detailed financial projections for the Project, and any other information reasonably requested by HDC and HPD.
- (ii) Mitigation. Upon receipt of a notice from the Sponsor pursuant to Section 5.04(c)(i), HDC and HPD may assist the Sponsor to identify alternative forms of Rental Assistance and propose other measures to mitigate the loss of Rental Assistance. HDC and HPD may also propose a plan to minimize the displacement of affected tenants. If HDC and HPD propose any such measures or plan, and the proposal is commercially reasonable, the Sponsor shall use commercially reasonable efforts to assist HDC and HPD in implementing the proposed measures or plan.

(iii) Revised Rent. If a Homeless Unit is receiving NYC 15/15, and the unit loses such Rental Assistance at any time, the Sponsor shall immediately revise the rent for such unit to an amount that does not exceed the maximum amount that may be collected for the unit as a non-Rental Assistance Unit under Section 5.03 (or, if permitted by the tenant's existing lease, the Owner shall immediately revise the tenant's existing rent to such an Actual Rent).

(iv) Eviction Restrictions. The Sponsor shall not commence eviction proceedings or seek any other remedy against any tenant of a Homeless Unit for non-payment of rent with respect to the first six months (or any shorter period permitted by Section 5.04(c)(v)) of any revised rent offered by Sponsor in accordance with Section 5.04(c)(iii). In connection with any such restriction, HDC and HPD consent to the Sponsor withdrawing funds from the Project's operating reserve as necessary to fund any related operating deficits at the Project.

(v) Prior Agency Knowledge. If, during any period prior to the date of a notice sent from the Sponsor to HDC and HPD in accordance with Section 5.04(c)(i), HDC and HPD officials with appropriate responsibility have obtained evidence in writing, or reasonably should have been expected to obtain evidence in writing, that the NYC 15/15 Rental Assistance would be terminated through no fault of the Sponsor, then HDC and HPD shall shorten the period of any restriction with respect to evictions and other remedies required by Section 5.04(c)(iv) by the length of time that such HDC and HPD officials had such evidence, or reasonably should have been expected to have such evidence, prior to the Sponsor's notice, and shall impose no such restriction if such length of time is six months or longer.

(d) Reduction of Homeless Units Requirement.

(i) Request. In connection with a total or partial loss of NYC 15/15 Rental Assistance covering Homeless Units at the Project, the Sponsor may request a reduction in the number of such units that are required to be rented at initial rent-up or upon vacancy as Homeless Units under this Agreement. The Sponsor shall provide the information required by Section 5.04(c)(i) in connection with any such request.

(ii) Agency Determination. If, after receiving a request in accordance with Section 5.04(d)(i), HDC and HPD determine that the Sponsor, through no fault of its own and despite reasonable and customary efforts, is unable to obtain or maintain Rental Assistance for each Homeless Unit that is intended to be covered by project-based Rental Assistance as of the date of this Agreement, and the Project is otherwise unable to sustain such Homeless Units in full, HDC and HPD may issue a waiver and permit the Sponsor to rent any such unit that becomes vacant not as a Homeless Unit and to an Eligible Household whose Annual Income upon initial occupancy does not exceed the income limit for the unit set forth in Schedule B (unless the vacancy results from a breach of the warranty of habitability, harassment, constructive eviction, or any similar action caused by the Sponsor; and subject to any other occupancy requirements of this Agreement). HDC and HPD shall not unreasonably deny any such waiver requested by the Sponsor. HDC and HPD agree that it would be unreasonable to deny such a waiver if the Project cannot provide social or other services that are necessary to support the tenants that are to be referred to the Project.

- (iii) Reinstatement. After any waiver given in accordance with Section 5.04(d)(ii), HDC and HPD may reinstate in whole or in part the original number of Homeless Units if the Sponsor is able to obtain a new source of Rental Assistance for such Apartments.

**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.

**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 60 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 Condo Units each as a "building" as defined in Section 42 of the Tax Code, the Applicable Fraction (as defined in this section) for each of the Tax Code 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. If the Project is to be managed by the Sponsor or a related entity, then it must provide a management plan satisfactory to HDC (and HPD, if requested by HPD in writing). 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 MHANY Management, 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.

## 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. 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.

**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.

**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.

## 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 and on an annual basis thereafter, the Beneficial Owner shall pay to HDC an amount equal to \$50 per unit, subject to an annual cap of \$12,500, if there are 150 or fewer units in the Project, or \$17,500, if there are more than 150 units in the Project, such amount to be increased annually in accordance with any increase in the New York City Consumer Price Index. If the Beneficial Owner transfers its interest in the Project (subject to the requirements of this Agreement), HDC reserves the right, in its sole discretion, to charge a one-time monitoring fee or to revise the annual fee for continued monitoring.

(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 \$20,000, such amount to be increased at the time in accordance with any increase in the New York City Consumer Price Index. 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., NY1-100-34-05, One Bryant Park, 35th Floor, New York, New York 10036, Attention: Rashida Henry 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, 13th Floor, NY, NY 10010, Attention: Richard Singer, Esq. and to the Tax Credit Investor at Bank of America, N.A., MA1-225-02-02, 225 Franklin Street, Boston, MA 02110, Attention: Asset Manager for Chestnut Commons and Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116, Attention: Sara C. 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**     Prevailing Wage for Building Service Employees. The Project is located within a City-initiated rezoning area and shall comply with the following provisions:

(a) Prevailing Wage Requirement. Sponsor shall pay a prevailing wage, as defined in New York City Administrative Code Section 6-130(a)(13), or shall ensure that such a prevailing wage is paid, to any building service employee, as defined in New York City Administrative Code Section 6-130(a)(3) ("Building Service Employee") who is employed in the Project, regardless of whether Sponsor is the direct employer of such Building Service Employee. Sponsor shall not discriminate or retaliate against any Building



Service Employee who makes a claim that he or she is owed wages due as provided by this prevailing wage requirement.

(b) Administrative Requirements. Sponsor shall comply with the certification, record-keeping, and notice-posting requirements of New York City Administrative Code Sections 6 130(c)(2), (3), and (4).

(c) Enforcement. The Mayor of the City of New York or his or her designee may enforce this Section 11.19 pursuant to New York City Administrative Code Sections 6 130(d)(2), (4), (6), and (8). The parties to this Agreement incorporate these provisions of law, with respect to the role of the Mayor or his or her designee, into this Agreement by reference. This includes the right of any aggrieved current or former Building Service Employee to file an administrative complaint, and remedies that may be sought by the City for failure to comply with an order, determination, or disposition issued by the Mayor, his or her designee, or the Office of Administrative Trials and Hearings in accordance with the referenced provisions of the New York City Administrative Code. Further, either the Mayor (or his or her designee) or the affected employer may bring any action or special proceeding available under law to enforce, vacate, or modify the order, determination, or other disposition of the office, agency, or tribunal referenced in New York City Administrative Code Section 6 130(d)(6). In addition, the Comptroller of the City of New York has the authority to investigate prevailing wage violation complaints in accordance with New York City Administrative Code Section 6 130(d)(3), which is hereby incorporated by reference.

(d) Third-Party Beneficiaries. Any aggrieved current or former Building Service Employee is a third-party beneficiary of this Section 11.19 and has the right to enforce its prevailing wage requirement, but only if the enforcement provisions of New York City Administrative Code Sections 6 130(d)(2), (4), (6), and (8) are determined by a court of competent jurisdiction to be inapplicable to a violation of the prevailing wage requirement.

**SECTION 11.17** 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 F as may be modified by the City from time to time.

**SECTION 11.18** Environmental Requirements. The Sponsor shall comply the requirements contained in that certain Statement of Findings issued by HPD, dated December 6<sup>th</sup>, 2019, attached as Schedule G.

**SECTION 11.19** Condominium Documents. Following the date hereof, Sponsor intends to create the Condominium, pursuant to which the Premises will contain the 20%-60%Tax Code Units Condo Unit, the 60-80%Tax Code Units Condo Unit, and the Commercial Unit. Sponsor shall submit the form of the condominium declaration and the bylaws of the condominium (collectively, the "Condominium Documents") to HDC and HPD for review prior to execution and recording. After any initial approval of the Condominium Documents by HPD and HDC, Sponsor shall not permit the amendment of the Condominium Documents without the prior written consent of HPD and HDC. The Condominium Documents are to be subordinate to this Agreement.

**SECTION 11.20** ENYRPPP Provisions. The Project is located in the rezoned area of East New York. Sponsor shall comply with the following provisions:

(a) Covenant to Lease. The Sponsor shall lease not less than 20% of the ground floor commercial space in the Project, or 5,000 square feet of total commercial space in the Project,

whichever is less, solely to local community-serving retail tenants that are qualified and approved pursuant to an HPD-approved process. The Sponsor shall lease this restricted commercial space in accordance with this section 11.20.

(b) Marketing. The Sponsor shall submit a commercial marketing plan to HPD (or its designee) and obtain the written approval of the commercial marketing plan by HPD (or its designee) prior to the initial marketing of the restricted commercial space to prospective retail tenants. Upon the vacancy of all or any part of the restricted commercial space, the Sponsor shall use its best efforts to market the space to existing businesses in the East New York neighborhood of New York City.

(c) Qualification of Retail Tenants. The Sponsor shall identify eligible prospective tenants of the restricted commercial space and shall certify the eligibility of any prospective tenant to HPD (or its designee). The Sponsor shall cause each such prospective tenant to submit to HPD (or its designee) any documentation supporting its eligibility that HPD (or its designee) may reasonably request. HPD (or its designee) shall make reasonable efforts to approve or deny the Sponsor's prospective tenant submission, or provide a request for more information, no later than no later than forty-five (45) days after receipt of requested documentation required in this Agreement. An eligible tenant must meet the following requirements upon initial occupancy of the restricted commercial space: (i) the business must be validly organized as a for-profit entity, (ii) the business must have had an existing operation in New York City for a minimum of two years, (iii) the business must maintain an operation and physical location in New York City in accordance with applicable laws, (iv) the business must be qualified as a small business as defined by the U.S. Small Business Administration, (v) the business must not be affiliated with the Sponsor or any individual or entity with a direct or indirect ownership interest in the Sponsor, (vi) the business must not be a franchise business, (vii) the business must be up-to-date on all applicable taxes and other charges and hold a valid New York State Certificate of Authority, and (viii) the business must not operate more than one (1) alternate location under the same branding or "doing business as" name.

(d) Lease Terms. The Sponsor shall lease all or any part of the restricted commercial space, upon initial rental and after any vacancy, for an initial annual rent that does not exceed 70% of the then-current market base rent for the space under a triple net lease, based on a market study or appraisal provided by Sponsor, acceptable to HPD (or its designee).

The Sponsor shall lease the space or any part of the space for an initial term of at least five years, and shall limit any rent increases during the initial term to the greater of 2% or the then-effective rate of inflation per year, with the rate of inflation measured by the Consumer Price Index for All Urban Consumers for the New York City area, "All Items", as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or any successor index. Notwithstanding the foregoing, over any five-year period, the Owner shall not take any increase that is otherwise permitted by this Section 11.21(d) but that would increase the rent to an amount that exceeds 115% of the initial rent.

Upon any renewal of a lease of the space, the Sponsor shall limit any rent increase to the greater of 2% or the rate of inflation given in the preceding sentence above the prior year's rent, but in no event to exceed a 5% increase, unless HPD (or its designee) approves a greater increase based on an updated market study or appraisal. If an eligible prospective tenant of the space requests tenant improvements, the Sponsor may charge the value of the tenant improvements over the term of the lease, but the total value of the increased lease payments associated with the tenant improvements must not exceed 120% of the total value of the tenant improvements. The Owner shall not require any prospective or approved tenant of the restricted commercial space to pay for any market study or appraisal or seek reimbursement in

the form of additional rent or otherwise.

(e) Compliance. The Sponsor shall make commercially reasonable efforts to ensure that any tenant of the restricted commercial space complies with the terms of HPD's retail preservation program and cooperates with the Sponsor and HPD (or its designee) in connection with the administration of the program. The Sponsor shall include a covenant in any lease of the restricted commercial space requiring the tenant to cooperate with the Sponsor, its designee and/or and HPD (or its designee) in connection with the administration of the retail preservation program, including, but not limited, to any requests by HPD (or its designee) or the Sponsor for documentation that may be necessary to verify the tenant's eligibility for the space.

(f) Termination. This Section 11.21 terminates on the 60<sup>th</sup> Anniversary of the date hereof.

[Signatures follow]

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

**BENEFICIAL OWNER**

**CHESTNUT COMMONS APARTMENTS LLC, a New York limited liability company**

By: Chestnut Commons Managers LLC, its managing member

By: Chestnut Commons MM LLC, its managing member

By: *Ismene Speliotis*

Name: Ismene Speliotis  
Title: Authorized Signatory

**CHESTNUT COMMONS HOUSING DEVELOPMENT FUND CORPORATION**

By: *Ismene Speliotis*

Name: Ismene Speliotis  
Title: Executive Director

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

On the 19 day of December, 2019, before me, the undersigned, a notary public in and for said state, personally appeared **ISMENE SPELIOTIS**, 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.

*Phyllis A Gitter*  
Notary Public

Commission expires:

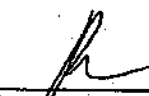
**SEAL**

PHYLLIS A GITTER  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01618022386  
Qualified in Westchester County  
Commission Expires March 29, 2023

[Signature Page to Regulatory Agreement]

NEW YORK CITY HOUSING  
DEVELOPMENT CORPORATION

By:

  
Ruth Moreira  
Senior Vice President

STATE OF NEW YORK )

COUNTY OF NEW YORK )

ss.:

On the 19 day of December, 2019, before me, the undersigned, a notary public in and for said state, personally appeared **RUTH MOREIRA**, 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:

Merlin E. Urban  
Notary Public, State of New York  
No. 02UR6110988  
Qualified in Kings County  
Commission Expires June 1, 2020

**SEAL**

[Signature Page to Regulatory Agreement]

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

By:

  
Name: Brendan McBride  
Title: Associate Commissioner

STATE OF NEW YORK )

COUNTY OF NEW YORK )

ss.:

On the 19 day of December, 2019, before me, the undersigned, a notary public in and for said state, personally appeared **BRENDAN MCBRIDE**, 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:

PHYLLIS A GITTER  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01G16022386  
Qualified in Westchester County  
Commission Expires March 29, 2023

APPROVED AS TO FORM BY STANDARD  
TYPE OF CLASS FOR USE UNTIL December 31, 2019:

SEAL

By: /s/ Amrita Barth  
Acting Corporation Counsel

[Signature Page to Regulatory Agreement]

**SCHEDULE A**

**LEGAL DESCRIPTION OF PREMISES**

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

**BEGINNING** at the corner formed by the intersection of the westerly side of Chestnut Street (66 feet wide) with the northerly side of Atlantic Avenue (irregular width);

**RUNNING THENCE** westerly along the northerly side of Atlantic Avenue 143.08 feet (143.18 feet U.S.) to a point at the division line with lands now or formerly of the NYC Department of Education (the division line between now or formerly Tax Lots 34 and 32);

**RUNNING THENCE** northerly along said division line and parallel to Chestnut Street (66 feet wide) 215.39 feet (215.55 feet U.S.) per survey (213.92 feet per tax map) to the southerly side of Dinsmore Place (50 feet wide);

**RUNNING THENCE** easterly along the southerly side of Dinsmore Place (50 feet wide) 141.00 feet (141.10 feet U.S.) to the westerly side of Chestnut Street (66 feet wide);

**RUNNING THENCE** southerly along the westerly side of Chestnut Street (66 feet wide) 191.09 feet (191.23 feet U.S.) per survey (189.62 feet per tax map) to the point or place of **BEGINNING**.

**TOGETHER WITH AND SUBJECT TO** terms and conditions set forth in **ZONING LOT DEVELOPMENT AGREEMENT** made by **THE CITY OF NEW YORK, CHESTNUT COMMONS HOUSING DEVELOPMENT FUND CORPORATION**, and **CHESTNUT COMMONS APARTMENTS LLC** to be recorded.

## SCHEDULE B

### DISTRIBUTION OF UNITS AND INITIAL RENTS

Project: **Chestnut Commons Apartments**  
**110 Dinsmore Place**  
**Brooklyn, New York**  
**Block 4142; Lot 34**

The Project shall contain 275 units in total (including 1 Superintendent Unit[s]).

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 Actual Rents for Rental Assistance Units ("RAC Units") participating in the NY 15/15 Program which are based on the contract rents given under the RAC with no deduction for the utility allowance.

#### 20% of AMI Units (Permanently Affordable Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 20% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	5	\$1,532 (100% of AMI)	\$5202 (17% of AMI)
1-Bedroom	12	\$1,926 (100% of AMI)	\$265 (17% of AMI)
2-Bedroom	20	\$2,323 (100% of AMI)	\$329 (17% of AMI)
3-Bedroom	12	\$2,676 (100% of AMI)	\$372 (17% of AMI)
TOTAL	49		

#### 40% of AMI Units (Permanently Affordable Units) (Non-MIH Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 40% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	2	\$1,532 (100% of AMI)	\$522 (37% of AMI)
1-Bedroom	12	\$1,926 (100% of AMI)	\$665 (37% of AMI)
2-Bedroom	18	\$2,323 (100% of AMI)	\$809 (37% of AMI)
3-Bedroom	6	\$2,676 (100% of AMI)	\$927 (37% of AMI)
TOTAL	38		



**SCHEDULE B (continued)****40% of AMI Units (Permanently Affordable Units) (MIH Units)**

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 40% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	2	\$571 (40% of AMI)	\$522 (37% of AMI)
1-Bedroom	7	\$725 (40% of AMI)	\$665 (37% of AMI)
2-Bedroom	6	\$882 (40% of AMI)	\$809 (37% of AMI)
3-Bedroom	7	\$1,011 (40% of AMI)	\$927 (37% of AMI)
<b>TOTAL</b>	<b>22</b>		

**50% of AMI Units (Permanently Affordable Units) (Non-MIH units)**

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 50% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	3	\$1,532 (100% of AMI)	\$683 (47% of AMI)
1-Bedroom	13	\$1,926 (100% of AMI)	\$865 (47% of AMI)
2-Bedroom	17	\$2,323 (100% of AMI)	\$1,050 (47% of AMI)
3-Bedroom	11	\$2,676 (100% of AMI)	\$1,205 (47% of AMI)
<b>TOTAL</b>	<b>44</b>		

**50% of AMI Units (Permanently Affordable Units) (MIH Units)**

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 50% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	1	\$731 (50% of AMI)	\$683 (47% of AMI)
1-Bedroom	3	\$925 (50% of AMI)	\$865 (47% of AMI)
2-Bedroom	6	\$1,122 (50% of AMI)	\$1,050 (47% of AMI)
3-Bedroom	1	\$1,288 (50% of AMI)	\$1,205 (47% of AMI)
<b>TOTAL</b>	<b>11</b>		

**60% of AMI Units (Permanently Affordable Units) (Homeless Units) (NY 15/15 Units) (Non-MIH Units)**

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 60% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	15	\$1,532 (100% of FMR)	\$1,365 (Rental Assistance Rent)

**SCHEDULE B (continued)**

1-Bedroom	1	\$1,926 (100% of FMR)	\$1,432 (Rental Assistance Rent)
2-Bedroom	0	\$2,323 (100% of FMR)	\$1,658 (Rental Assistance Rent)
3-Bedroom	3	\$2,676 (100% of FMR)	\$2,132 (Rental Assistance Rent)

**TOTAL** 19

60% of AMI Units (Permanently Affordable Units) (Homeless Units) (NY 15/15 Units) (MIH Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 60% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	10	\$1,532 (100% of AMI)	\$1,365 (Rental Assistance Rent)
1-Bedroom	7	\$1,926 (100% of AMI)	\$1,432 (Rental Assistance Rent)
2-Bedroom	13	\$2,323 (100% of AMI)	\$1,658 (Rental Assistance Rent)
3-Bedroom	6	\$2,676 (100% of AMI)	\$2,132 (Rental Assistance Rent)
<b>TOTAL</b>	<b>36</b>		

70% of AMI Units (Permanently Affordable Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 70% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	4	\$1,532 (100% of AMI)	\$1,003 (67% of AMI)
1-Bedroom	8	\$1,926 (100% of AMI)	\$1,265 (67% of AMI)
2-Bedroom	11	\$2,323 (100% of AMI)	\$1,530 (67% of AMI)
3-Bedroom	5	\$2,676 (100% of AMI)	\$1,760 (67% of AMI)
<b>TOTAL</b>	<b>28</b>		

80% of AMI Units (Permanently Affordable Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 80% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	5	\$1,532 (100% of AMI)	\$1,163 (77% of AMI)
1-Bedroom	7	\$1,926 (100% of AMI)	\$1,465 (77% of AMI)
2-Bedroom	9	\$2,323 (100% of AMI)	\$1,770 (77% of AMI)
3-Bedroom	6	\$2,676 (100% of AMI)	\$2,037 (77% of AMI)
<b>TOTAL</b>	<b>27</b>		

## **SCHEDULE B (continued)**

### **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.

### **Re-Registration Upon End of Occupancy Restriction Period.**

Notwithstanding anything to the contrary in this Agreement, upon the first lease (renewal or vacancy) of a unit after the end of the Occupancy Restriction Period, if the Legal Rent for the unit is higher than the Applicable AMI Limit that had applied to the unit during the Occupancy Restriction Period, the Sponsor shall re-register the Legal Rent for the unit under Rent Stabilization to an amount that does not exceed such Applicable AMI Limit (as determined at the time of the effectiveness of the renewal or vacancy lease) plus, with respect to any such renewal or vacancy lease, any other increases allowed by Rent Stabilization. The foregoing requirement shall not apply to a renewal lease for a Rental Assistance Unit. If, at such time, this Agreement requires the Sponsor to offer an Actual Rent for the unit that is lower than this newly established Legal Rent, the Sponsor shall register any such Actual Rent as a preferential rent under Rent Stabilization.

## 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 F**

### **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 G**

**HPD Statement of Findings**

[Follows]





**ERIC ENDERLIN**  
Commissioner  
**MOLLY PARK**  
Deputy Commissioner  
**RONA REODICA**  
Assistant Commissioner

Office of Development  
Building & Land Development  
Services  
100 Gold Street  
New York, N.Y. 10038

## **STATEMENT OF FINDINGS**

**Project Identification:** East New York Rezoning

**CEQR Number:** CEQR No. 15DCP102K

**SEQRA Classification:** Type I

**Location:** Approximately 190-block area of East New York, Cypress Hills and Ocean Hill neighborhoods of Brooklyn, Community Districts 5 and 16, respectively. The affected area within East New York and Cypress Hills is generally bounded by Sheffield Avenue to the west, Lincoln Avenue to the East, Fulton Street to the north and Pitkin Avenue to the south. The affected area within Ocean Hill is generally bounded by Eastern Parkway Extension to the west, Van Sinderen Avenue to the east, Broadway to the north and East New York Avenue to the south.

**Lead Agency:** City Planning Commission  
22 Reade Street, Room 1W  
New York, NY 1007

This Statement of Findings has been prepared in accordance with the environmental review requirements of Article 8 of the New York State Environmental Conservation Law, the State Environmental Quality Review Act (SEQRA), the implementing regulations as set forth in 6 NYCRR Part 617, and the New York City Rules of Procedure for City Environmental Quality Review (CEQR) and Executive Order 91 of 1977, as amended. This Statement of Findings has been prepared to demonstrate that 1) the procedural requirements have been met; 2) the East New York Rezoning (the "Project") was selected from among reasonable alternatives; and 3) the potential for adverse environmental effects as disclosed in the Final Environmental Impact Statement (the "FEIS") and during the review process will be avoided or minimized to the maximum extent practicable by the incorporation of mitigation measures and other project components.

Under CEQR, the Office of the New York City Department of City Planning (DCP) was the Lead Agency responsible for conducting the environmental review that determined whether the actions would have significant impacts on public health and the environment. The City of New York - Department of Housing Preservation and Development ("HPD") was an Involved Agency under CEQR.

A Notice of Completion on the Draft Environmental Impact Statement (the "DEIS") for the East New York Rezoning Project proposal was issued on September 18<sup>th</sup>, 2015, and a public hearing on the DEIS was held in the Courtroom Auditorium at Brooklyn Borough Hall, 209 Joralemon Street, Second Floor, Brooklyn, New York 11201 on Wednesday, January 6, 2016, in conjunction with the City Planning Commission's hearing pursuant to the Uniform Land Use Review Procedure (ULURP). The FEIS was certified as complete, and a Notice of Completion (NOC) was issued on February 12, 2016. On February 24, 2016, the City Planning Commission (CPC) voted to approve the ULURP application for the East New York Rezoning Project. The actions approved by the CPC are herein referred to as the "Approved Actions."

After considering the FEIS for no less than 10 days after issuance of the NOC, as well as the technical memoranda prepared to address modifications and other changes to the Project, HPD adopts this Statement of Findings.

## **PROJECT DESCRIPTION**

The New York City Department of City Planning (DCP), together with the Department of Housing Preservation and Development (HPD), is proposing a series of land use actions (collectively the "Proposed Actions") to implement recommendations of the East New York Community Plan (the "Plan"), which is the subject of an ongoing community process, to create opportunities for housing, including affordable housing, community facilities, including a new proposed public school facility, economic development and other services of an approximately 190-block area of East New York, Cypress Hills and Ocean Hill neighborhoods of Brooklyn, Community Districts 5 and 16, respectively. The affected area within East New York and Cypress Hills is generally bounded by Sheffield Avenue to the west, Lincoln Avenue to the east, Fulton Street to the north and Pitkin Avenue to the south. The affected area within Ocean Hill is generally bounded by Eastern Parkway Extension to the west, Van Sinderen Avenue to the east, Broadway to the north and East New York Avenue to the south. Within these areas, the Proposed Actions are anticipated to facilitate new residential, commercial, community facility, and manufacturing development. In total, the Proposed Actions are expected to result in a net increase of 6,312 dwelling units (including 3,447 affordable dwelling units); 859,431 square feet of retail/supermarket/restaurant and office space; 457,870 square feet of community facility space; and net decreases of 27,035 square feet of industrial space; 128,365 square feet of auto-related space, 97,551 square feet of hotel space, 73,170 square feet of warehouse/storage space, and 3,055 square feet of garage space. The increment in community facility space includes an anticipated new public school facility to be located on projected development site 66, which would provide approximately 1,000 seats.

The Proposed Actions are intended to facilitate implementation of recommendations of the East New York Community Plan, a coordinated neighborhood plan developed with community residents, elected officials, Community Boards 5 and 16, and stakeholders, in coordination with City and other public agencies, to identify needs and opportunities to support a shared long-term vision for the future of the neighborhood. The Proposed Actions, detailed further below under "Purpose and Need for the Proposed Actions," seek to facilitate recommendations that support the Plan's goals and objectives to create more affordable housing and more diverse commercial, promote economic development and opportunity for residents, foster safer streets, and generate new community resources.



The Proposed Actions, detailed further below under "Purpose and Need for the Proposed Actions," seek to facilitate recommendations that support the Plan's goals and objectives to create more affordable housing and more diverse commercial, promote economic development and opportunity for residents, foster safer streets, and generate new community resources.

The Proposed Actions reflect DCP's on-going engagement with Community Boards 5 and 16, local elected officials and community residents and stakeholders to achieve the following land use objectives:

- Create opportunities for new residential development with significant amounts of permanently affordable housing and preserve existing affordability to ensure that the neighborhood continues to serve diverse housing needs;
- Encourage mixed-use development on key corridors;
- Enhance and revitalize major thoroughfares through new economic development; and
- Protect neighborhood character of residential core and ensure predictable future development.

An overview of the study area, the purpose and need for the Proposed Actions and their specific components is discussed below.

#### **Project Area**

The Proposed Actions would affect two noncontiguous areas. The first (referred to here as "East New York") is an approximately 175 block area covering portions of East New York and Cypress Hills, generally bounded by Fulton Street in the north, Pitkin Avenue to the south, Sheffield Avenue to the west, and Conduit Boulevard and Lincoln Avenue to the east. This area is defined by a series of east-west corridors, with Atlantic Avenue dividing the area into northern and southern sections; major corridors and areas of the neighborhood are described below. The second area (referred to here as "Ocean Hill") is an approximately 15 block portion of the Ocean Hill neighborhood, generally bounded by Broadway to the north, East New York Avenue to the south, Eastern Parkway Extension to the west, and Van Sinderen Avenue to the east.

#### **DESCRIPTION OF THE PROPOSED ACTIONS**

The Proposed Actions are intended to facilitate the implementation of the objectives of the East New York Plan, which identified a shared long-term vision for the future of the neighborhood to create more affordable housing and more diverse commercial and retail uses, spur economic development, foster safer streets, and generate new community resources. To accomplish these goals, DCP is proposing zoning map and text amendments that would affect a total of approximately 190 blocks in two areas, in East New York and Ocean Hill, described in detail above.

Additionally, HPD is proposing an amendment to the Dinsmore-Chestnut Urban Renewal Plan to conform land use restrictions to zoning, to refresh the urban renewal plan's general provisions, and to allow disposition of the urban renewal sites in accordance with the urban renewal plan.



DCP is acting as lead agency on behalf of the CPC and is conducting a coordinated environmental review. HPD is the co-applicant for the Urban Renewal Plan amendment and, as the result, is serving as an involved agency under CEQR.

Each of these is a discretionary action subject to review under the Uniform Land Use Review Procedure (ULURP), Section 200 of the City Charter, and the City Environmental Quality Review (CEQR) process. These discretionary actions are described in more detailed below.

In addition, as noted above, as the proposed 1,000 seat school planned as part of the East New York Community Plan is intended to be a new public school facility, approval and site selection from the SCA would be required. The SCA approval and site selection is not subject to ULURP.

### **Proposed Zoning Districts**

The proposed rezoning would replace all or portions of existing M1-1, M1-2, M1-4, C8-1, C8-2, R5, and R6 districts with M1-4/R6A, M1-4/R7A, M1-4/R8A, M1-4/R7D, R5, R5B, R6B, R6A, R7A, R7D, R8A, C4-4D, C4-4L and C4-5D districts. The proposed rezoning would also replace or eliminate portions of existing C1-2, C1-3, C2-2, and C2-3 overlays mapped within the existing R5 and R6 districts with C2-4 overlays and establish new C2-4 overlays.

#### **Proposed R5** **(EXISTING C8-1 AND C8-2 DISTRICTS)**

Three R5 districts are proposed for six partial blocks along Atlantic Avenue between Euclid and Lincoln Avenues currently zoned C8-1 and between Cleveland and Linwood Streets currently zoned C8-2.

R5 district permits all housing types at a maximum FAR of 1.25. A minimum lot width of 40 feet is required for detached houses and a minimum lot width of 18 feet is required for other housing types. A minimum lot area of 3,800 square feet is required for detached houses, and a minimum lot area of 1,700 square feet is required for other housing types. The perimeter wall of all housing types may rise to 30 feet before sloping or being set back to a maximum building height of 40 feet. Front yards must be exactly 10 feet deep or a minimum of 18 feet. One parking space is required for each dwelling unit, or 85% if grouped.

#### **Proposed R5B** **(EXISTING R5, C8-1, C8-2, M1-1, AND M1-2 DISTRICTS)**

R5B is proposed in the core residential blocks between Fulton Street and Atlantic Avenue, between Atlantic Avenue and Liberty Avenue, between Liberty Avenue and Pitkin Avenue, and between Herkimer Street and Atlantic Avenue between Sherlock Place and Havens Place as follows:

- Between Fulton Street and Atlantic Avenue: 22 partial blocks between New Jersey Avenue and Richmond Street. These blocks are currently zoned C8-2, R5, R5/C2-3, and M1-1.
- Between Atlantic Avenue and Liberty Avenue: 3 partial blocks between Montauk Avenue and



- Fountain Avenue; 2 partial blocks between Crystal and Wells Streets; and 1 partial block between Euclid and Crescent Streets. These blocks are currently zoned M1-1 and R5.
- Between Liberty Avenue and Pitkin Avenue: 34 partial blocks between Pennsylvania Avenue and Shepherd Avenue that are currently zoned R5; 18 partial blocks between Berriman Street and Euclid Avenue that are currently zoned M1-1 and R5; and 3 partial blocks between Euclid Avenue and Crescent Street that are currently zoned R5.
- Between Sherlock Place and Havens Place: 3 partial blocks between Herkimer Street and Atlantic Avenue that are currently zoned M1-2.

R5B permits detached and semi-detached residential buildings, but is primarily a three-story rowhouse district. The maximum FAR is 1.35 with a maximum street wall height of 30 feet, above which the building is set back to a maximum height of 33 feet. The front yard must be at least five feet deep and it must be at least as deep as one adjacent front yard and no deeper than the other, but it need not exceed a depth of 20 feet. Attached rowhouses do not require side yards but there must be at least eight feet between the end buildings in a row and buildings on adjacent zoning lots. Curb cuts are prohibited on zoning lot frontages less than 40 feet. On-site parking spaces must be provided for 66 percent of the dwelling units although parking can be waived when only one space is required. Front yard parking is prohibited.

**Proposed R6B**  
**(EXISTING M1-1, M1-2, C8-2, AND R5 DISTRICTS)**

R6B is proposed in two areas:

- Along Herkimer Street between Sherlock Place and Havens Place (5 partial blocks currently zoned M1-2).
- • Between Atlantic Avenue and Liberty Avenue between New Jersey Avenue and Vermont Street (1 partial block currently zoned C8-2), between Wyona Street and Schenck Avenue (5 partial blocks currently zoned C8-2), between Barbey and Cleveland Streets (4 partial blocks currently zoned R5 and M1-1) and between Linwood Street and Montauk Avenue (5 partial blocks currently zoned R5 and M1-1).

R6B is a typical row house district that includes height limits and street wall lineup provisions to ensure that new buildings are consistent with the scale of the existing built context. R6B permits residential and community facility uses to a maximum FAR of 2.0 (2.2 residential FAR in areas designated as part of the Inclusionary Housing program). Building base heights must be between 30 and 40 feet, with a 50 foot maximum building height after the building set back to a depth of 10 feet on a wide street and 15 feet on a narrow. New development in the proposed R6B district would be required to line up with adjacent structures to maintain the continuous street wall character. New multifamily residences must provide one off-street parking space for 50% of dwelling units, which may be waived if 5 or fewer spaces would be required.

**Proposed R6A**  
**(EXISTING R5 AND M1-1 DISTRICTS)**

R6A is proposed in three areas:



- Along Fulton Street between Bradford Street and Euclid Avenue (40 partial blocks currently zoned R5/C2-3).
- Along Liberty Avenue between Barbey Street and North Conduit Avenue and between Liberty Avenue and Pitkin Avenue between Essex and Atkins Streets (35 full or partial blocks currently zoned R5 and M1-1)
- And along Sackman Street between Somers and Truxton Streets on one partial block currently zoned M1-1.

R6A districts allow residential and community facility uses up to 3.0 FAR (3.6 FAR in areas designated as part of the Inclusionary Housing program per Zoning Resolution Section 23-90). The building form requires a street wall between 40 and 60 feet, a setback above the maximum base height of 60 feet, and a maximum building height of 70 feet. Off-street parking is required for 50 percent of the dwelling units, but this requirement is waived if 5 or fewer spaces are required.

***Proposed R7A***  
***(EXISTING R5, C8-1, C8-2, M1-1, AND M1-4 DISTRICTS)***

R7A is proposed on approximately 65 full/partial blocks in five areas:

- Between Sheffield Avenue and midblock between Pennsylvania and New Jersey Avenues between Belmont Avenue and Atlantic Avenue (7 blocks currently zoned M1-1, C8-2 and R5).
- Along Pitkin Avenue between New Jersey Avenue to the west, and Doscher Street to the east; and between Pine Street and Crescent Street along Pitkin Avenue (47 partial blocks that are currently zoned R5).
- Between Liberty Avenue and Pitkin Avenue along Euclid Avenue (3 partial blocks that are currently zoned R5).
- Along Atlantic Avenue between Euclid Avenue and Lincoln Avenue (4 partial blocks currently zoned C8-1 and C8-2).
- Along East New York Avenue between Mother Gaston Boulevard and Pacific Street (4 partial blocks currently zoned M1-1 and M1-4).

R7A is a contextual district that allows for new medium-density residential development and community facilities. R7A districts allow for residential development up to 4.0 FAR (4.6 FAR in areas designated as part of the Inclusionary Housing program) and community facility uses up to 4.0 FAR. The building form requires a street wall of 40 to 65 feet, a setback above the maximum base height, and a maximum building height of 80 feet. New residences would be required to provide one off-street parking space for 50% of the dwelling units, with reduced requirements for affordable housing.

***Proposed R7D***  
***(EXISTING M1-1 DISTRICT)***

R7D is proposed on two blocks along Eastern Parkway Extension between Mother Gaston Boulevard and Sackman Street that are currently zoned M1-1.

R7D allows medium-density apartment buildings at a maximum FAR of 4.2 for community facility uses and 5.60 for residential uses in areas designated as part of the Inclusionary Housing program. New structures in R7D districts are required to line up with adjacent structures to maintain the streetwall.



Above a base height of 60 to 85 feet, the building must set back to a depth of 10 feet on a wide street and 15 feet on a narrow street before rising to its maximum height of 100 feet. In addition, where commercial overlays are mapped, active ground floor uses are required, and the related zoning text amendment would also require transparency on the ground floor (see below).

**Proposed R8A**  
**(EXISTING R5, C8-2, AND M1-1 DISTRICTS)**

R8A is proposed on 29 partial blocks for portions along Atlantic Avenue between Bradford Street and Montauk Avenue. These blocks are currently zoned R5, C8-2, and M1-1.

R8A districts permit residential and community facility uses at a maximum FAR of 6.02 (7.20 in areas designated as part of the Inclusionary Housing program) and 6.50, respectively. The building form requires a base height between 60 and 85 feet and a maximum building height of 120 feet. The off-street parking requirement is one space per 1000 square feet of commercial use and health care facilities and one off-street parking space for 40% of the dwelling units.

**Proposed C4-4L**  
**(EXISTING R5, C8-2, AND M1-1 DISTRICTS)**

C4-4L is proposed on 10 partial blocks along a section of Fulton Street between Sheffield Avenue and Bradford Street currently zoned C8-2 and R5 and two full or partial blocks in Ocean Hill along Broadway between Eastern Parkway and Van Sinderen Avenue currently zoned M1-1.

The proposed C4-4L is an existing zoning district created specifically for commercial corridors with elevated trains, similar to Fulton Street. The designation represents a contextual, regional commercial district that permits residential development at an R7A equivalent, as well as commercial and community facility. The proposed C4-4L district would allow for a wider range of uses and provide more building design along the elevated J/Z transit line.

C4-4L allows residential development up to 4.0 FAR (4.6 FAR in areas designated as part of the Inclusionary Housing program) and commercial and community facility uses up to 4.0 FAR. The proposed C4-4L district would allow two distinct building types depending on the location in relation to elevated train tracks:

- For lots not fronting on the elevated train, the proposed C4-4L district applies the height and setback regulations of a C4-4A district, requiring a street wall between 40 and 65 feet high and allowing a maximum building height of 80 feet.
- For lots fronting on the elevated train and within 125 feet of the streetline adjacent to the elevated train, buildings would be required to set back five feet from the streetline adjacent to the elevated train at the ground floor, and allowed to rise to a maximum height of 100 feet or ten stories, with a minimum base height of 30 feet and a maximum base height of 65 feet. Above the base height, buildings would be required to set back at least 15 feet. Certain corner lots and through lots, depending on size and configuration, would also be subject to more generous lot coverage maximums, and some through lots would be permitted to waive the required rear yard equivalent.

**Proposed C4-5D**



**(EXISTING M1-2 DISTRICT)**

A C4-5D district is proposed for all or parts of five blocks generally bounded by Fulton Street, Van Sinderen Avenue, Sackman Street and Pacific Street. These blocks are currently zoned M1-2.

C4-5D permits residential, commercial, and community facility buildings at a maximum FAR of 4.2 (5.6 FAR in areas designated as part of the Inclusionary Housing program). The building form requires a base height between 60 and 85 feet and a maximum building height of 100 feet. Active ground floor uses are required, and fifty percent of the building frontage on the ground floor between a height of 2 and 12 feet above curb level is required to be glazed with transparent materials that will enhance the pedestrian experience. The off-street parking requirement is one space per 1000 square feet of commercial use and one off-street parking space for 50% of the dwelling units.

**Proposed C4-4D**

**(EXISTING R5, C8-2, AND M1-1 DISTRICTS)**

C4-4D is proposed on 20 partial blocks along two sections of Atlantic Avenue, between Sheffield Avenue and Bradford Street; and between Montauk Avenue and Fountain Avenue; and two sections of either end of Pitkin Avenue in the study area, between Pennsylvania and New Jersey Avenues and between Doscher Street and Pine Street. These blocks are currently zoned R5, M1-1 and C8-2.

C4-4D is an R8A equivalent that permits residential development up to 6.02 FAR (7.20 FAR in areas designated as part of the Inclusionary Housing program), commercial uses up to 3.4 FAR, and community facilities up to 6.5 FAR. The building form requires a base height between 60 and 85 feet and a maximum building height of 120 feet. The off-street parking requirement is one space per 1000 square feet of commercial use and health care facilities and one off-street parking space for 40% of the dwelling units.

**Proposed M1-4/R6A**

**(EXISTING R5, C8-2, AND M1-1 DISTRICTS)**

An M1-4/R6A mixed use district is proposed for 18 partial blocks along Liberty Avenue between New Jersey Avenue and Barbey Street. These blocks are currently zoned R5, C8-2, and M1-1.

M1-4/R6A districts permit residential and community facility uses within Use Groups 1-4, and commercial and manufacturing uses within Use Groups 5-15 and 17 at a maximum FAR of 3.0 (3.6 with Inclusionary Housing) for residential, 3.0 for community facility, and 2.0 for commercial or manufacturing uses. For residential uses the building form requires a street wall of 40 to 60 feet, a setback above the street wall, 10 feet facing wide streets and 15 feet facing narrow streets, and a maximum building height of 70 feet. For industrial and commercial uses, the allowable FAR would remain at 2.0 resulting typically in two-story buildings.

**Proposed M1-4/R7A**

**(EXISTING M1-1 DISTRICT)**

An M1-4/R7A mixed use district is proposed for a partial block between Chestnut Street and Richmond





Street just south of Fulton Street that is currently zoned M1-1.

M1-4/R7A districts permit residential and community facility uses within Use Groups 1-4, and commercial and manufacturing uses within Use Groups 5-15 and 17 at a maximum FAR of 4.0 (4.6 with Inclusionary Housing) for residential, 4.0 for community facility, and 2.0 for commercial or manufacturing uses. For residential uses the building form requires a street wall of 40 to 65 feet, a setback above the street wall, 10 feet facing wide streets and 15 feet facing narrow streets, and a maximum building height of 80 feet. For industrial and commercial uses, the allowable FAR would remain at 2.0 resulting typically in two-story buildings.

***Proposed M1-4/R7D***  
***(EXISTING M1-2 DISTRICT)***

An M1-4/R7D mixed use district is proposed for two partial blocks along Fulton Street between Eastern Parkway Extension and Havens Place that are currently zoned M1-2.

M1-4/R7D districts permit residential and community facility uses within Use Groups 1-4, and commercial and manufacturing uses within Use Groups 5-15 and 17 at a maximum FAR of 5.0 (5.6 with Inclusionary Housing) for residential, 4.2 for community facility, and 2.0 for commercial or manufacturing uses. For residential uses, above a base height of 60 to 85 feet, the building must set back to a depth of 10 feet on a wide street and 15 feet on a narrow street before rising to its maximum height of 100 feet. For industrial and commercial uses, the allowable FAR would remain at 2.0 resulting typically in two-story buildings.

***Proposed M1-4/R8A***  
***(EXISTING M1-1 AND C8-2 DISTRICTS)***

The proposed M1-4/R8A mixed use district is proposed for two full blocks between Logan Avenue and Euclid Avenue along Atlantic Avenue (currently zoned M1-1) and two partial blocks along Atlantic Avenue between Barbey and Schenck Streets (currently zoned M1-1) and between Vermont and Wyona Streets (currently zoned C8-2).

The proposed M1-4/R8A district would allow residential and community facility uses within Use Groups 1-4, and commercial and manufacturing uses within Use Groups 5-15 and 17 at a maximum FAR of 6.02 (7.20 with Inclusionary Housing) for residential, 6.50 for community facility, and 2.0 for commercial or manufacturing uses. The proposed M1-4/R8A district requires new buildings to have a street wall height of 60 to 85 feet and a maximum building height of 120 feet. For industrial and commercial uses, the allowable FAR would remain at 2.0 resulting typically in two-story buildings.

***Proposed Commercial Overlays***

Existing C1 and C2 commercial overlays are mapped intermittently throughout the study area. C1 districts permit commercial Use Groups 5 and 6 while C2 districts permit Use Groups 5 through 9 and 14. C2-4 commercial overlays are proposed to be mapped over portions of the proposed R5, R6A, R7A, R7D and R8A districts as detailed below. The proposed rezoning would also replace or eliminate portions of existing C1-2, C1-3, C2-2, and C2-3 overlays with C2-4 overlays and establish new C2-4 overlays. The affected area is as follows:



- Proposed R5: Five partial blocks along Atlantic Avenue between Pine Street and Lincoln Avenue currently zoned C8-1 and one partial block between Cleveland and Linwood Streets currently zoned C8-2.
- Proposed R6A: 40 full/partial blocks on Fulton Avenue between Bradford Avenue and Euclid Avenue that are currently zoned R5/C2-3, and 35 full/partial blocks on Liberty Avenue between Barbey Street and Conduit Avenue that are currently zoned R5 and M1-1.
- Proposed R7A: Four partial blocks on Atlantic Avenue between Euclid Avenue and Lincoln Avenue that are current zoned C8-1 and C8-2; 7 partial blocks on Pennsylvania between Liberty Avenue and Belmont Avenue that are currently zoned R5 and C8-2; 49 partial blocks along Pitkin Avenue between New Jersey Avenue and Crescent Street currently zoned R5 and R6; 3 full/partial blocks along East New York Avenue between Pacific Street and Bergen Street and Liberty Avenue.
- Proposed R7D: One partial block between Eastern Parkway and Mother Gatson Boulevard that is currently zoned M1-1.
- Proposed R8A: 29 full/partial blocks on Atlantic Avenue between Bradford and Montauk that are current zoned R5/C2-3, C8-2, M1-1, and R5.

C2-4 commercial overlays allow for local retail uses and commercial development up to 2.0 FAR. In these areas, the C2-4 commercial overlays will support the development of mixed residential/commercial uses. This proposal would map commercial overlays to a depth of 100 feet to reflect the typical depth of existing lots along these corridors and to prevent commercial uses from encroaching on residential side streets. Existing commercial overlays mapped at a depth of 150 feet would be removed on Fulton Street, Pitkin Avenue, and Liberty Avenue.

The Proposed Actions include amendments to the text of the Zoning Resolution to apply a new mandatory Inclusionary Housing program (see below) to portions of the proposed rezoning area where zoning changes are promoting new housing. Additionally, the Proposed Actions include amendments to Zoning Resolution including the establishment of an Enhanced Commercial District and a Special Mixed Use District within the rezoning area.

#### **Mandatory Inclusionary Housing Program**

DCP is proposing a citywide zoning text amendment to authorize a Mandatory Inclusionary Housing (MIH) program. The East New York Rezoning will be the first mapping of an MIH area and is the subject of a separate but concurrent land use review and environmental review process to the citywide MIH zoning text amendment. Since affordable housing guarantees are key component of the East New York Plan, the East New York rezoning includes a related action for a zoning text amendment to create an MIH program applicable only to East New York. This will provide a guarantee of an MIH program in East New York in the event that the citywide MIH zoning text is either not approved or is approved after the East New York rezoning is implemented. The East New York MIH zoning text mirrors the citywide MIH zoning text. Any changes to the Mandatory Inclusionary Housing text amendment would be expected to be made applicable to the East New York Rezoning, and duly reflected in this environmental review. For a full description of the MIH proposal.

Specifically, DCP is proposing a zoning text amendment to apply a mandatory Inclusionary Housing



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Program (MIH) to portions of the rezoning area, including where zoning changes are promoting new housing. The MIH would apply within the following districts: M1-4/R6A, M1-4/R7A, M1-4/R7D, M1-4/R8A, R6B, R6A, R7A, R7D, R8A, C4-4D, C4-4L, and C4-5D districts within the rezoning area. This program would require permanently affordable housing within new residential developments, enlargements, and conversions from non-residential to residential use within the mapped "Mandatory Inclusionary Housing Areas" (MIHAs).

The program would require permanently affordable housing set-asides for all developments over 10 units or 12,500 zoning square feet within the MIH designated areas or, as an additional option for developments between 10 and 25 units, or 12,500 to 25,000 square feet, a payment into an Affordable Housing Fund. In cases of hardship, where these requirements would make development financially infeasible, developers may apply to the Board of Standards and Appeals (BSA) for a special permit to reduce or modify the requirements. Developments, enlargements or conversions that do not exceed either 10 units or 12,500 square feet of residential floor area will be exempt from the requirements of the program.

The proposed MIH program includes two primary options that pair set-aside percentages with different affordability levels to reach a range of low and moderate incomes while accounting for the financial feasibility tradeoff inherent between income levels and size of the affordable set-aside. For the East New York Rezoning, the designated MIH Areas will follow the requirements of option one, described below:

**Option One:** 25 percent of the residential floor area shall be provided as housing affordable to households at an average of 60 percent of the Income Index (AMI), with no unit targeted at a level exceeding 130% of AMI.

**Enhanced Commercial District**

DCP proposes a Zoning Text amendment to establish Enhanced Commercial Districts in the rezoning area along portions of Atlantic Avenue, Pitkin Avenue, Fulton Street and Pennsylvania Avenue. The Enhanced Commercial Districts would foster a safe and engaging pedestrian experience along these corridors by establishing regulations requiring non-residential ground floor use, requiring minimum levels of transparency on the ground floor, limiting curb cuts, and requiring setbacks along corridors with elevated trains.

**Special Mixed Use District**

The Special Mixed Use District (MX) is a special zoning district that is mapped in 13 locations throughout the City. It combines a light industrial (M1) district with a residential district, and permits a mix of selected light industrial, commercial, residential, and community facility uses under the applicable regulations. The MX district permits mixed-use buildings, and includes an expanded definition of "home occupations," permitting a broader variety of live-work accommodations than is allowed in standard zoning districts. The proposed MX districts is intended to retain existing light industrial businesses while encouraging the redevelopment of vacant and/or underutilized land and lofts with residential uses. The Proposed MX districts locations and regulations are described in more detail above under "Proposed Zoning."

**Proposed Amendment to Dinsmore-Chestnut Urban Renewal Plan**

Through its Urban Renewal Authority, HPD established the Dinsmore-Chestnut Urban Renewal Area



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URA) in 2001 pursuant to the Uniform Land Use Review Procedure and the New York State General Municipal Law. The Dinsmore-Chestnut URA is comprised of Site A (Block 4142, Lot 32) and is generally bounded by Dinsmore Place on the north, Chestnut Street on the east, Atlantic Avenue on the south, and Logan Street on the west. HPD proposes an amendment to the Dinsmore-Chestnut Urban Renewal Plan (URP) to change the land use designation on Site A to reflect the proposed zoning changes. Site A is currently designated for manufacturing use. Under the proposed action, the land use designation would be changed to allow residential, community facility, commercial and light manufacturing uses, and other uses permitted under the proposed zoning. In addition, the proposed amendment would update the URP's general provisions and language to conform to current standards.

**Disposition Approval**

HPD is also seeking approval for the disposition of City-owned property associated with Site A (Block 4142, Lot 32) of the Dinsmore-Chestnut URA. The requested approval would permit the construction of a mixed-use development that could include housing, community facility, commercial, light manufacturing and other uses allowed under the proposed zoning, and in accordance with the uses permitted in the amended Dinsmore-Chestnut URP.

**E-Designations**

The Proposed Actions include the placement of (E) designations (or other measures comparable to such a designation) for hazardous materials on all 186 projected and potential development sites. In addition, an (E) designation would be placed on 110 projected and potential development sites (including 48 projected and 62 potential development sites) to ensure that there would be no significant adverse air quality impacts. These designations would specify the various restrictions, such as type of fuel to be used, the use of low NOx burners, the distance that the vent stack on the building roof must be from its lot line(s), and/or the increase of the exhaust stack height. Furthermore, an (E) designation (or other measures comparable to such a designation) would be placed on 74 of the projected development sites and 94 of the potential development sites to ensure that there would be no significant adverse noise impacts. The (E) designation is a mechanism that ensures no significant adverse impacts would result from a proposed action because of steps that would be undertaken prior to the development of a rezoned site. For the City-owned parcel located within projected development site 66 (Block 4142, Lot 32), review of a Phase II testing protocol and development of any necessary remediation plan, as well as the requirement for façade attenuation and an alternate means of ventilation will be required through the Land Disposition Agreement (LDA) between HPD and a future selected developer with oversight provided by HPD and DEP. The (E) designation (or other measures comparable to such a designation) would ensure that these identified sites would not be developed unless necessary remedial measures are implemented.

**Potential Future Actions**

HPD may provide construction funding through any of its several financing programs intended to facilitate the development of new affordable housing and the preservation of existing affordable units for a range of incomes, including supportive housing and senior housing on privately-owned or City-owned land. HPD's financing programs would provide both for-profit and not-for-profit developers a wide range of opportunities to build or preserve rental and homeownership units within the Project Area. HPD works together with a variety of public and private partners to achieve the City's affordable housing goals. In addition to HPD financing, in conjunction with the issuance of tax-exempt bonds, the New York City Housing Development Corporation (HDC) may fund construction of new affordable multi-family apartment buildings and the rehabilitation of existing multi-family apartment buildings intended to



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upgrade existing developments and preserve affordability. Affordable housing developed and/or preserved within the Project Area may also utilize funding provided by New York State Homes and Community Renewal and HUD, which would be subject to separate future environmental reviews under SEQR and NEPA, respectively.

**Actions Not Subject to Uniform Land Use Review Procedure (ULURP)**

In addition to the Proposed Actions, as noted above, as the proposed 1,000-seat school planned as part of the East New York Community Plan is intended to be a new public school facility, approval and site selection from the SCA would be required. The SCA approval and site selection is not subject to ULURP.

**Other Actions That Would Affect the Project Area**

Independent of the Proposed Actions described above for East New York and Ocean Hill, DCP is proposing a zoning text amendment, known as Zoning for Quality and Affordability (ZQA), to eliminate unnecessary obstacles to the creation of housing. This text amendment is currently undergoing public review and when adopted will affect the proposed zoning districts. Since the zoning text amendment would affect districts described above, their effects on the project area have been analyzed as part of this environmental review in order to provide a conservative analysis.

**Building Envelope Controls**

The proposed ZQA zoning text amendments would modernize rules that shape buildings in the City through various updates and refinement to the Zoning Resolution of the City of New York, as follows:

- **General building envelope modifications:** In medium- and higher-density districts, the proposed ZQA zoning text amendment would allow additional flexibility to accommodate best practices for affordable construction and good design, while maintaining current maximum FARs.
- **Enhanced building envelope modifications for Inclusionary Housing, Affordable Independent Residences for Seniors, and Long-term Care Facilities:** Where zoning allows additional floor area for these developments, provide enough flexibility to fit all permitted floor area with good design.
- **Improved design flexibility:** Allow flexibility for the variation and texture that typify older buildings in many neighborhoods.
- **Modifications for constrained lots:** Most existing zoning controls are designed to work with flat, rectangular lots and do not work well on irregularly-shaped or sloped sites.

**Affordable Independent Residences for Seniors and Long-term Care Facilities**

The proposed ZQA zoning text amendment would promote affordable senior housing and long-term care facilities through various updates and refinements to the Zoning Resolution of the City of New York, as follows:

- **Modernize zoning definitions:** Accommodate today's housing models and recognize regulated housing and facility types by removing obsolete definitions and updating definitions for affordable independent residences for seniors and long-term care facilities.
- **Rationalize FARs:** Establish consistent FARs and corresponding building heights for affordable independent residences for seniors and long-term care facilities to facilitate more and better housing for seniors.
- **Remove the specific open space ratios for non-contextual districts and lot coverages for contextual districts:** Eliminate the existing special open space requirements that do not accommodate contemporary senior housing developments and apply the lot coverage and open space provisions of the underlying district.



- **Allow to accommodate different types of affordable senior housing:** Relax zoning density restrictions that often conflict with other government regulations and requirements of senior housing financing programs, causing unnecessary hardship to senior housing providers.
- **Provide a framework for mixing of Use Group 2 residences with certain Use Group 3 community facilities:** Specify how density in mixed community facility and residential buildings would be calculated and remove existing restrictions in R6 and R7-1 that limit the portion of mixed building that can include community facility uses. In a building that combines Use Groups 2 and 3, the Quality Housing floor area deductions would be computed based on the combined floor area.
- **Reduce administrative obstacles:** Eliminate certifications and Special Permits for nursing homes in certain districts.

#### **Parking Requirements**

The proposed ZQA zoning text amendment would eliminate off-street parking requirements for low-income and Inclusionary Housing units within areas that fall within a "Transit Zone" encompassing areas well served by transit and with low car ownership and auto commutation rates. This would include the area affected by the Proposed Actions. ZQA would also allow new buildings, through discretionary review, to reduce required parking to enable mixed-income development or existing affordable buildings with underutilized parking to reduce or eliminate requirements. No parking would be required for new affordable senior housing and existing affordable senior housing developments would be able to reduce or eliminate their parking.

### **ANALYTICAL FRAMEWORK**

#### **Reasonable Worst-Case Development Scenario (RWCDs)**

In order to assess the possible effects of the Proposed Actions, a RWCDs was developed for both the current (Future No-Action) and proposed zoning (Future With-Action) conditions for a 15-year period (build year 2030). The incremental difference between the Future No-Action and Future With-Action conditions will serve as the basis for the impact analyses of this Environmental Impact Statement (EIS). For area-wide rezonings not associated with a specific development, a ten-year period is typically the length of time over which developers would act on the area-wide zoning map changes such as those proposed. However, because current housing market conditions in the neighborhood are such that it may take longer for the full extent of development to occur under the Proposed Actions, a fifteen-year build year was selected for the time frame of the environmental analyses.

To determine the With-Action and No-Action conditions, standard methodologies have been used following the *CEQR Technical Manual* guidelines employing reasonable assumptions. These methodologies have been used to identify the amount and location of future development, as discussed below.

#### **Development Site Criteria**

In projecting the amount and location of new development, several factors have been considered in identifying likely development sites. These include known development proposals, past and current development trends, and the development site criteria described below. Generally, for area-wide rezonings that create a broad range of development opportunities, new development can be expected to



occur on selected, rather than all, sites within the rezoning area. The first step in establishing the development scenario was to identify those sites where new development could be reasonably expected to occur.

Development sites were initially identified based on the following criteria:

- Lots located in areas where a substantial increase in permitted FAR is proposed;
- Lots with a total size of 5,000 square feet (sf) or larger (may include potential assemblages totaling 5,000 sf, respectively, if assemblage seems probable);
- Underutilized lots (defined as vacant or lots constructed to less than or equal to half of the proposed FAR under the proposed zoning); and
- Lots located in areas where changes in use would be permitted.

Certain lots that meet these criteria were excluded from the scenario based on the following conditions because they are very unlikely to be redeveloped as a result of the proposed rezoning:

- Lots where construction activity is actively occurring or has recently been completed;
- Sites of schools (public and private), municipal libraries, government offices, large medical centers, and houses of worship. These facilities may meet the development site criteria, because they are built to less than half of the permitted floor area under current zoning and are on larger lots. However, these facilities have not been redeveloped or expanded despite the ability to do so, and it is extremely unlikely that the increment of additional FAR permitted under the proposed zoning would induce redevelopment or expansion of these structures. Additionally, for government-owned properties, development and/or sale of these lots may require discretionary actions from the pertinent government agency;
- Multi-unit buildings (existing individual buildings with six or more residential units are unlikely to be redeveloped because of the required relocation of tenants in rent-stabilized units);
- Certain large commercial structures such as multi-story office buildings and hotels. Although these sites may meet the criteria for being built to less than half of the proposed permitted floor area, some of them are unlikely to be redeveloped due to their current or potential profitability, the cost of demolition and redevelopment, and their location.
- Lots whose location or highly irregular shape would preclude or greatly limit future as-of-right development. Generally, development on highly irregular lots does not produce marketable floor space.
- Lots utilized for public transportation and/or public utilities.

These criteria have been developed to reflect observed development patterns within the rezoning area. In recent years, these areas have seen few entirely new developments constructed despite being neighborhood shopping streets that are well served by public transportation. Accordingly, certain sites that might be considered a soft site under the above criteria within these areas have been excluded or determined to be less likely to be developed if they meet one or more of the following criteria:

- Sites smaller than 7,500 sf occupied by existing residential development and/or;
- Sites with multiple commercial and residential tenants and/or;
- Sites occupied by active businesses within significant structures or buildings; and/or
- Sites occupied by unique services or prominent and successful neighborhood businesses.



**Definition of Projected and Potential Development Sites**

To produce a reasonable, conservative estimate of future growth, the development sites have been divided into two categories: projected development sites and potential development sites. The projected development sites are considered more likely to be developed within the 15-year analysis period for the Proposed Actions (i.e., by the 2030 analysis year), while potential sites are considered less likely to be developed over the same period. Potential development sites were identified based on the following criteria:

- Slightly irregularly-shaped lots or otherwise encumbered parcels that would make as-of-right development difficult.
- Lots with ten or more commercial tenants, which may be difficult to dislodge due to long-term leases.
- Active businesses, which may provide unique services or are prominent and successful neighborhood businesses or organizations unlikely to move.
- Sites divided between disparate zoning districts.

Based on the above criteria, a total of 186 development sites (81 projected and 105 potential) have been identified in the rezoning area. Table 1, below, provides a summary of the RWCDS for each analysis scenario.

The EIS will assess both density-related and site-specific potential impacts from development on all projected development site. Density-related impacts are dependent on the amount and type of development projected on a site and the resulting impacts on traffic, air quality, community facilities, and open space.

Site-specific impacts relate to individual site conditions and are not dependent on the density of projected development. Site-specific impacts include potential noise impacts from development, the effects on historic resources, and the possible presence of hazardous materials. Development is not anticipated on the potential development sites in the foreseeable future. Therefore, these sites have not been included in the density-related impact assessments. However, a number of potential development sites could be developed under the Proposed Action in lieu of one or more of the projected development sites in accommodating the development anticipated during the foreseeable future as the result of the Proposed Actions. The potential development sites are therefore addressed in the EIS for site-specific effects in order to ensure a conservative analysis.

**Development Scenario Parameters**

**DWELLING UNIT FACTOR**

The number of projected dwelling units in apartment buildings is determined by dividing the total amount of residential floor area by 1,000 and rounding to the nearest whole number.

**AFFORDABLE HOUSING ASSUMPTIONS**

Additionally, the number of affordable dwelling units assumed was estimated based on known development proposals, past and current development trends, the City, State, and Federal programs that support the construction of affordable housing, and the proposals in Housing New York, the Mayor's





ten-year housing plan, that aim to significantly increase the amount of affordable housing created and preserved in the five boroughs.

East New York has not experienced market-rate multifamily construction in recent years. For the immediate future, it is anticipated that new multifamily development will resemble recent multifamily development in the broader area, which has generally utilized public subsidy and been affordable to low-income households. Moreover, during the term of the Mayor's Housing Plan HPD will require that all projects it finances in East New York are 100% affordable. While it is possible that by the time of the analysis year (2030), changes in the housing market and government subsidies may result in non-subsidized multifamily development occurring, the proposed MIH program as discussed above will ensure that at least 25 percent of new housing is affordable. The actual amount of affordable housing facilitated by the East New York Rezoning will be determined by the interaction among housing subsidy programs, the local housing market, zoning requirements, and broader economic conditions; including a commitment by the City (through HPD) to subsidize 1,200 affordable dwelling units in the first two years of the East New York Community Plan. While it is possible that more than 50 percent of the housing units would be affordable, for environmental analysis purposes, it is estimated that about half of the overall projected dwelling units would be affordable to lower income households. The environmental review therefore assumes that 50 percent of all units created, in the aggregate, will be affordable to low-income households, with the remaining housing being unsubsidized and unregulated.

For analysis purposes, this aggregate number has been distributed evenly across all projected development sites, as it is not possible to determine with precision which sites would be developed first, and therefore be 100 percent affordable, and/or take advantage of subsidy programs. Therefore, the development scenario for each site reflects that 50% of the units are affordable. It should not be construed to mean that each development site would be required or is expected to produce 50 percent of the projected units as affordable units. As stated above, HPD will require that new buildings receiving City subsidies would be comprised entirely of rent-regulated affordable units.

#### **OTHER ACTIONS THAT WOULD AFFECT THE DEVELOPMENT PARAMETERS**

As noted above, a 1,000 seat school is being proposed as part of the East New York Community Plan. This would be a new public school facility requiring approval and site selection from the SCA. The new school is proposed to be located on Projected Development Site 66 (Block 4142, Lot 32). Since specific elements of the school are yet to be determined, certain assumptions as to the programming, orientation and building form, and other parameters are being made for purposes of the environmental review in order to provide a conservative analysis. Specifically, a mixed-use school and residential development will be analyzed to provide a conservative analysis despite the economic realities and construction difficulties of building residential on top of a school. As further information is made known, the appropriate analyses will be updated where warranted.

As discussed above, DCP has proposed a series of text amendments to eliminate unnecessary obstacles to the creation of housing, especially affordable housing. These text amendments are expected to be in public review concurrent with the Proposed Actions in the East New York study area and when adopted will affect the proposed zoning districts. Since these zoning changes would affect the districts described below their effects on the project area will be analyzed as part of this environmental review in order to provide a conservative analysis. These changes include increases to the maximum base and height regulations and parking regulations for affordable housing units, which would not be required. For the



For purposes of this environmental analysis, it is assumed that the changes to the maximum base and total height regulations would result in buildings with maximum base and total heights ranging up to six and eight stories, respectively, in R6A districts; seven to ten stories, respectively, in R7A districts; nine and 12 stories, respectively, in R7D districts; and ten and 14 stories, respectively, in R8A districts.

***The Future without the Proposed Actions (No-Action Condition)***

In the future without the Proposed Actions (No-Action), the identified projected development sites are assumed to either remain unchanged from existing conditions, or become occupied by uses that are as-of-right under existing zoning and reflect current trends if they are vacant, occupied by vacant buildings, or occupied by low intensity uses that are deemed likely to support more active uses. Table 1 shows the No-Action conditions for the projected development sites.

As shown in Table 1, below, it is anticipated that, in the future without the Proposed Actions, there would be a total of approximately 1,619,680 sf of built floor area on the 81 projected development sites. Under the RWCDS, the total No-Action development would comprise 550 market-rate residential units, 770,599 sf of commercial uses, 125,886 sf of industrial uses, 156,972 sf of community facility uses, and 1,484 accessory parking spaces. The No-Action estimated population would include approximately 1,646 residents and 2,230 workers on these projected development sites.

***The Future with the Proposed Actions (With-Action Condition)***

The Proposed Actions would allow for the development of new uses and higher densities at the projected and potential development sites. As shown in Table 1, under the RWCDS, the total development expected to occur on the 81 projected development sites under the With-Action condition would consist of approximately 9,079,938 sf of floor area, including 7,082,257 sf of residential floor area (7,042 DU), 1,283,989 sf of commercial uses, 98,851 sf of industrial uses, and 614,842 sf of community facility uses, as well as 2,554 accessory parking spaces. The projected incremental (net) change between the No-Action and With-Action conditions that would result from the Proposed Actions would be an increase of 6,516,033 sf of residential floor area (6,492 DU), 513,390 sf of commercial space, 457,870 sf of community facility space, and 1,070 accessory parking spaces, and a net decrease of 27,035 sf of industrial space. The total difference between the built square footage in the No-Action and With-Action conditions is approximately 7,460,257 sf.



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**TABLE 1**  
**2030 RWCDS No-Action and With Action Land Uses**

Land Use With- Action Condition	No- Action Condition	With- Action Condition	No-Action to With- Action Increment
<b>Residential</b>			
Market-Rate Residential	550 DU	3,504 DU	+2,954 DU
Affordable Residential	0 DU	3,538 DU	+3,538 DU
<b>Total Residential</b>	<b>566,224 sf</b> <b>(550 DU)</b>	<b>7,082,257 sf</b> <b>(7,042 DU)</b>	<b>+ 6,516,033 sf</b> <b>(6,492 DU)</b>
<b>Commercial</b>			
Local Retail	249,316 sf	930,752 sf	+ 681,436 sf
FRESH Supermarket	40,000 sf	60,000 sf	+ 20,000 sf
Restaurant	13,150 sf	64,550 sf	+ 51,400 sf
Auto-Related	128,365 sf	0 sf	- 128,365 sf
Hotel	167,551 sf	0 sf	- 167,551 sf
Office	95,992 sf	228,687 sf	+ 132,695 sf
Warehouse/Storage/Garage	76,225 sf	0 sf	-76,225 sf
<b>Total Commercial</b>	<b>770,599 sf</b>	<b>1,283,989 sf</b>	<b>+ 513,390 sf</b>
<b>Other Uses</b>			
Industrial	125,886 sf	98,851 sf	- 27,035
Community Facility	158,972 sf <sup>1</sup>	614,842 sf <sup>2</sup>	+ 457,870 sf
<b>Total Floor Area</b>	<b>1,619,680 sf</b>	<b>9,079,938 sf</b>	<b>+ 7,460,258 sf</b>
<b>Parking</b>			
Parking Spaces	1,484	2,554	+ 1,070
<b>Population<sup>3</sup></b>			
Residents	1,646	20,942	+ 19,296
Workers	2,230	5,975	+ 3,745

**Notes:**

<sup>1</sup> Includes 69,720 sf of houses of worship uses, 49,136 sf of medical office uses, 26,302 sf of day care center uses, and 9,812 sf of community center uses.

<sup>2</sup> Includes 77,593 sf of houses of worship uses, 141,119 sf of medical office uses, 163,000 sf of school uses, and 233,130 sf of community center uses.

<sup>3</sup> Assumes 2.99 persons per DU for residential units in Brooklyn Community District 5 and 2.75 persons per DU for residential units in Brooklyn Community District 16. Estimate of workers based on standard ratios used in prior EIS documents, including the East Midtown Rezoning FEIS, Atlantic Yards FEIS, Western Rail Yards FEIS, Brownsville Ascend Charter School EA, Caldeson Redevelopment FSEIS, 125th Street Corridor Rezoning FEIS, West 57th Street Rezoning FEIS, and others. Employee ratios used are as follows: one employee per 250 sf of office, three employees per 1,000 sf of retail/restaurant uses, one employee per 25 DU, one employee per 2.67 hotel rooms (and 400 sf per hotel room), one employee per 1,000 sf of auto-related and industrial uses, one employee per 15,000 sf of warehouse uses, one employee per 11.4 students in school uses, three employees per 1,000 sf of all other community facility uses, and one employee per 50 parking spaces.

Based on 2010 Census data, the average household size for residential units in Brooklyn Community District 5 is 2.99 and the average household size for residential units in Brooklyn Community District 16 is 2.75. Based on these ratios and standard ratios for estimating employment for commercial, community facility, and industrial uses, Table 1 also provides an estimate of the number of residents and workers on the 81 projected development sites in the No- Action and With-Action conditions. As indicated in the table, under the RWCDS, the Proposed Actions would result in a net increment of 19,296 residents and 3,745 workers.

A total of 105 sites were considered less likely to be developed within the foreseeable future and were thus considered potential development sites. As noted earlier, the potential sites are deemed less likely to be developed because they did not closely meet the criteria listed above. However, as discussed above, the analysis recognizes that a number of potential development sites could be developed under the Proposed Actions in lieu of one or more of the projected development sites in accommodating the



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development anticipated in the RWCDs. The potential development sites are therefore also analyzed in the EIS for site specific effects.

As such, the EIS will analyze the projected developments for all technical areas of concern and also evaluate the effects of the potential developments for site-specific effects such as archaeology, shadows, hazardous materials, stationary air quality, and noise.

## **PROJECT-RELATED ENVIRONMENTAL MEASURES**

### ***E-Designations***

As disclosed in East New York Rezoning Proposal FEIS, the (E) designation requirements related to hazardous materials would apply to all privately-held projected and potential development sites. For the City-owned parcel located within projected development site 66 (Block 4142, Lot 32), review of a Phase II testing protocol and development of any necessary remediation plan will be required through the Land Disposition Agreement (LDA) between HPD and a future selected developer with oversight provided by HPD and NYCDEP. The privately-owned parcel within projected development site 66 (Block 4142, Lot 32) would receive an (E) designation.

The (E) designation text related to hazardous materials is as follows:

#### **Task 1**

The applicant submits to OER, for review and approval, a Phase 1 of the site along with a soil and groundwater 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 sample sites should be selected to adequately characterize the site, the specific source 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**

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 the 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.



An OER-approved construction-related health and safety plan would be implemented during evacuation and construction and activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil and/or groundwater. This plan would be submitted to OER for review and approval prior to implementation.

All demolition or rehabilitation would be completed in accordance with applicable requirements for disturbance, handling and disposal of suspect lead-paint and asbestos containing materials. For all projected and potential development sites where no E-designation is recommended, in addition to the requirements for lead-based paint and asbestos, requirements (including those of NYSDEC) should petroleum tanks and/or spills be identified and for off-site disposal of soil/fill would need to be followed.

#### **Air Quality (E) Designations**

As disclosed in East New York Rezoning Proposal FEIS, (E) designations are proposed to avoid impacts on projected or potential development sites with respect to air quality (heating systems). To the extent permitted under ZR Section 11-15, the requirements of the (E) designation may be modified, or determined to be unnecessary, based on new information or technology, additional facts or updated standards that are relevant at the time the site is ultimately developed.

For the City owned parcel located within Projected Development Site 66 (Block 4142, Lot 32), the implementation of the restrictions would be required through the Land Disposition Agreement (LDA) between HPD and future developer with oversight provided through HPD and the NYCDEP. This agreement would require that any new residential and/or commercial development must exclusively use natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 160 feet above grade, to avoid any potential significant air quality impacts.

#### **Noise (E) Designations**

As disclosed in East New York Rezoning Proposal FEIS, the noise analysis determined that for all affected privately-held projected and potential development sites, environmental requirements would be necessary to ensure noise levels within the proposed development sites would comply with all applicable requirements. Therefore, building attenuation as well as the requirement for an alternate means of ventilation would be required for all affected privately-held projected and potential development sites. To the extent permitted under ZR Section 11-15, the requirements of the (E) designation may be modified, or determined to be unnecessary, based on new information or technology, additional facts or updated standards that are relevant at the time the site is ultimately developed.

For the City-owned parcel located within projected development site 66 (Block 4142, Lot 32), the requirement for attenuation as well as the requirement for an alternate means of ventilation will be required through a Land Disposition Agreement (LDA) between HPD and the future developer.

### **IDENTIFIED SIGNIFICANT ADVERSE IMPACTS AND MITIGATION**

The Proposed Actions as analyzed in the FEIS identified significant adverse impacts with respect to community facilities, open space, shadows, historic and cultural resources, transportation, air quality,



noise, and construction. To the extent practicable, mitigation has been proposed for these identified significant adverse impacts. However, in some instances no practicable mitigation was identified to fully mitigate significant adverse impacts, and there are no reasonable alternatives to the Proposed Actions that would meet their purpose and need, eliminate their impacts, and not cause other or similar significant adverse impacts. In other cases, mitigation has been proposed, but absent a commitment to implement the mitigation, the impacts may not be eliminated or would be less reduced in

#### **Community Facilities – Public Schools**

In the future with the Proposed Actions, the elementary and intermediate school enrollment of Sub-district 2 of Community School District (CSD) 19 is projected to exceed the projected capacity based on the conceptual construction schedule for the RWCDs in year 2024. CSD 19, Sub-district 2 elementary schools would increase from a No-Action utilization rate of 98.3 percent to 109.5 percent in the With-Action condition (an 11.2 percentage point increase). In terms of intermediate schools, CSD 19, Sub-district 2 intermediate schools would increase from a No-Action utilization rate of 103.2 percent to 114.6 percent in the With-Action condition (an 11.4 percentage point increase). As CSD 19, Sub-district 2 elementary and intermediate schools would operate over capacity in the future with the Proposed Actions with an increase of five percentage points or more in their collective utilization rates between the No-Action and With-Action conditions, significant adverse impacts to this sub-district would result.

Under the reasonable worst-case development scenario (RWCDs), 2,925 incremental DU would be developed within CSD 19, Sub-district 2 (compared to the No-Action condition). While the Proposed Actions would also result in 170 and 352 incremental DU in Sub-districts 1 and 2 of CSD 23 and 3,045 incremental DU in CSD 19, Sub-district 1, no significant adverse public school impacts would occur in these sub-districts in the 2030 With-Action condition. To avoid the identified significant adverse elementary school impact in Sub-district 2 of CSD 19, the number of incremental dwelling units that could be developed in the sub-district would have to be reduced to 1,308, generating 379 elementary school students, as compared to No-Action conditions. This would represent a decrease of 1,617 DU (55.3 percent) in CSD 19, Sub-district 2. An increase of 379 elementary school students within Sub-district 2 of CSD 19, would increase the No-Action utilization rates in the sub-district by less than five percentage points and would be below the *CEQR Technical Manual* threshold and, thus, not a significant adverse impact.

To avoid the identified significant adverse intermediate school impacts in Sub-district 2 of CSD 19, the number of incremental dwelling units that could be developed in the sub-district would have to be reduced to 1,279, generating 153 intermediate school students, as compared to No-Action conditions. This would represent a decrease of 1,646 DU (56.3 percent) in CSD 19, Sub-district 2. The 153 intermediate school students within CSD 19, Sub-district 2 would increase the No-Action utilization rate in the sub-districts by less than five percentage points and would similarly be below the *CEQR Technical Manual* threshold that would be considered a significant adverse impact.

The paragraph below indicates number of incremental dwelling units within CSD 19, Sub-district 2 that would result in a significant adverse impact requiring mitigation, as well as the number of additional elementary and intermediate school seats that would need to be provided in order to mitigate the identified significant adverse impacts. In accordance with *CEQR Technical Manual* impact criteria, the number of seats needed to mitigate the significant adverse impacts would either: (1) reduce the incremental increase in the sub-district's elementary or intermediate school capacity to less than five



percentage points over the No-Action condition; or (2) reduce the With-Action utilization rate to less than 100 percent.

Based on the RWCDs for the Proposed Actions, an additional 454 elementary school seats and 183 intermediate school seats would be needed in order to reduce the incremental utilization increase in CSD 19, Sub-district 2 elementary and intermediate school utilization rates to less than the five percentage point *CEQR Technical Manual* impact threshold. Measures utilized by the DOE to address increased school enrollments include:

- Restructuring or reprogramming existing school space under the Department of Education's control in order to make available more capacity in existing school buildings located within CSD 19, Sub-district 2;
- Relocating administrative functions to another site, thereby freeing up space for classrooms; and/or
- Creating additional capacity in the area by constructing a new school(s), building additional capacity at existing schools, or leasing additional school space constructed as part of projected development within CSD 19, Sub-district 2.

To mitigate the identified elementary and intermediate school impacts resulting from the Proposed Actions, enrollment in CSD 19, Sub-district 2 will be monitored. If a need for additional capacity is identified, DOE will evaluate the appropriate timing and mix of measures, identified above, to address increased school enrollment. In coordination with the New York City School Construction Authority (SCA), if additional school construction is warranted, and if funding is available, it will be identified in the Five-Year Capital Plan that covers the period in which the capacity need would occur (refer to the DOE's letter to the City Planning Commission Chairman dated February 5, 2016, provided in Appendix C, "Agency Correspondence").

In general, the Proposed Actions would allow for the development of community facility space, including new school facilities, within the project area. It should also be noted that any new school facility would be subject to its own site selection process and separate environmental review.

The Proposed Actions would not result in a significant adverse impact on CSD 19, Sub-district 1 elementary schools in the 2030 With-Action condition, as 682 elementary school seats would be introduced on projected development site 66 under the RWCDs. However, as the With-Action school is not expected to be completed until the 2020-2021 academic year, the elementary school utilization rate that would occur in 2020 (Q2) would constitute a significant adverse impact, but because the impact would last only until the school's anticipated 2020(Q3) completion, the impact is considered to be temporary, and no mitigation is warranted.

#### **Community Facilities - Child Care Services**

Under the RWCDs, the Proposed Actions would result in a significant adverse impact on publicly funded child care facilities. The RWCDs for the Proposed Actions are expected to introduce approximately 3,538 low- to moderate- income DU by 2030, which would generate approximately 630 children under the age of six eligible for publicly funded child care programs based on the *CEQR Technical Manual* child care multipliers. With the addition of these children, the combined utilization rate of child care facilities within the two-mile child care study area would increase to 103.4 percent, a 10.6 percentage point increase over



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the No-Action condition. As discussed in FEIS, this significant adverse impact to publicly-funded group child care facilities in the study area could occur in year 2020 based on the conceptual construction schedule.

To avoid the identified significant adverse child care center impact, the number of affordable DU that could be developed on the projected development sites would have to be reduced to 2,401, a 32 percent (1,137 DU) reduction in the number of affordable units anticipated under the RWCDs. The 2,401 affordable DU would generate 427 children under age six eligible for publicly funded child care and study area child care facilities would operate at capacity with no child care slot shortfall.

The minimum number of affordable DUs that would result in a significant adverse child care center impact is 2,402 affordable DU. The number of additional child care slots that would need to be provided in order to mitigate the identified significant adverse impacts is 203. In accordance with *CEQR Technical Manual* impact criteria, the number of slots needed to mitigate the significant adverse child care center impact would reduce the With-Action utilization rate to 100 percent. Based on the RWCDs for the Proposed Actions, an additional 203 child care slots would be needed. With 203 additional child care slots, study area child care facilities would operate at capacity, with no child care slot shortfall.

Since the publication of the DEIS, possible mitigation measures for this significant adverse impact on publicly funded child care centers were further explored in consultation with the ACS.

As noted in both the DEIS and this FEIS, in the discussion of the indirect effects on publicly funded child care centers, several factors could limit the number of children in need of publicly funded child care slots in ACS-contracted child care facilities. Private day care facilities and day care centers outside of the study area are not accounted for in this analysis. Some of the increased child care demand would likely be offset by parents who choose to take their children to day care centers outside of the study area (e.g., closer to parent's workplace). Additionally, the City's new universal Pre-Kindergarten program has greatly expanded the number of free Pre-K seats available for 4-5 year olds, which seats are not accounted for in this analysis. Families might choose to enroll their children in Pre-K rather than in day care, reducing the demand for child care seats.

As residential development occurs, new capacity will be needed to meet the increased demand for child care slots. Enhanced Commercial Districts are being established along major corridors in East New York, and the NYC Department of Housing Preservation and Development (HPD) is expected to subsidize the development of a significant number of new mixed-use buildings in these districts. These districts require non-residential ground floor uses in any new development, thus expanding the amount of available commercial and community facility space in the neighborhood. These spaces could be occupied by retail or community facility uses such as day cares. HPD will work with the Department of Small Business Services (SBS) and other agencies to understand local needs for day care and other community facilities and make appropriate referrals to developers receiving City subsidy. To support local capacity to meet the need for additional day care slots while providing economic opportunity for area residents, SBS will sponsor programs in East New York tailored to the needs of day care operators to help them establish and grow their businesses.





Finally, ACS will monitor the demand and need for additional publicly funded day care services in the area and identify the appropriate measures to meet demand for additional slots.

While the above measures would offset or serve to at least partially mitigate the identified impact, in the event that the projected demand for child care slots cannot be met, an unavoidable significant adverse impact would result.

### **Open Space**

Given the anticipated decrease in the total, active, and passive open space ratios in the residential study area and the fact that open space ratios in the study area would remain below the City guideline ratios, the Proposed Actions would result in a significant adverse indirect impact to the total, passive, and active open space resources in the residential study area. This significant adverse impact to open space in the residential study area could occur in year 2022 based on the conceptual construction schedule.

The Proposed Actions are expected to introduce 19,296 residents to the ½-mile residential study area under the RWCDS. To avoid the identified significant adverse residential study area open space impact, the number of residents that could be introduced on the projected development sites would have to be reduced to less than 10,748 (or less than approximately 3,614 residential units). This would represent an approximately 44.3 percent reduction in the number of residential units anticipated under the RWCDS. Alternately, in order to avoid a significant adverse open space impact, the Proposed Actions would have to provide approximately 4.93 acres of additional open space (including a minimum of 2.29 acres of passive open space and a minimum of 2.52 acres of active open space) to the study area.

The *CEQR Technical Manual* lists potential mitigation measures for open space impacts. These measures include, but are not limited to, creating new open space within the study area; funding for improvements, renovation, or maintenance at existing local parks; or improving existing open spaces to increase their utility or capacity to meet identified open space needs in the area, such as through the provision of additional active open space facilities. Except for the creation of new open space, the other measures noted herein would only partially mitigate a significant adverse open space impact. These potential mitigation measures were explored in coordination with the lead agency, DCP, and DPR and between the DEIS and FEIS.

In order to mitigate the significant adverse impact on open space in the residential study area, several improvements to study area open space resources would be implemented. In addition, the schoolyards at two area schools – P.S. 677 East New York Elementary School of Excellence (housed in the former PS 72 building), and PS 345 Patrolman Robert Bolden – would be made open to the public under the City's Schoolyards to Playground program. Finally, the new school to be built in the rezoning area in connection with the Proposed Actions (projected to occur on Site 66) would include a publicly accessible playground. The goal of these mitigation measures, which are described in more detail below, is to increase the amount of publicly accessible open space in the rezoning area and to add and/or enhance park components that would address the need for increased fitness and recreation opportunities for current and future residents.

Improvements to open space resources in the study area could allow local parks to better serve the existing and future population. As identified in the Open Space analysis, planned improvements to City Line Park, Sperandeo Brothers Playground and Highland Park will enhance the usability of these



resources. The handball and basketball courts and Sperandeo Brothers playground will be repaired. Highland Park Lower Playground, which is within the 1/4 mile study area, will be improved with a reconstruction of the western half of lower playground area, which could include seating areas, efficient circulation, welcoming entrances, improved landscaping/increased planted areas and improvement of safety for children and playground patrons. At City Line Park, an existing deteriorated asphalt surfaced athletic field will be converted into an active recreational area. While the full project scope will be determined at future meetings open to the public, this project could include the addition of a synthetic turf field, a perimeter rubberized surface track, adult fitness equipment, seating areas and expanded landscape plantings. In addition, the design shall provide for an improved pedestrian connection from the project area to the existing comfort station located on Fountain Avenue. These planned improvements will expand the recreational opportunities at existing parks. The scope of potential improvements to other residential study area open resources would be contingent upon available funds and the deficiencies or needs of the specific open space and could serve to further mitigate the identified passive and active open space impact.

In addition, as noted above, the existing schoolyard playgrounds at P.S. 345 Patrolman Robert Bolden, located at 111 Berriman Street, directly south of projected development site 46—Arlington Village, and P.S. 677 East New York Elementary School of Excellence (formerly P.S. 72), located at 605 Shepherd Avenue less than a quarter-mile south of the project area, will be opened to the public during non-school weekday and weekend hours through the Schoolyard to Playground program operated by DOE and DPR. In total, this measure would add an additional 1.5 acres of publicly accessible open space to the primary study area. The goal of this mitigation measure is to increase the amount of publicly accessible open space in the rezoning area and to close a significant 'walk gap' in the rezoning area, by increasing the percentage of existing and future residents within walking distance to a park.

The Proposed Actions include the construction of a new school on projected development site 66, the City-owned Dinsmore-Chestnut site. This school site would include at-grade open space accessible to the public. This would provide new open space to the community, in close proximity to an area where significant residential development is projected, on site 66 as well as adjacent site 67. This would add an additional 25 acres of publicly accessible open space to the rezoning area. The measures described above, which would substantially increase the usability of and enhance open space resources for the additional population introduced by the Proposed Actions, would partially mitigate the significant adverse impact to active and passive open space resources in the residential study area. As a consequence, the Proposed Actions' significant adverse open space impact would not be completely eliminated and, as a result, an unavoidable significant adverse open space impact would occur.

#### **Shadows**

The Proposed Actions would result in a significant shadows impact (and shadow-related historic resource impact) on the NYCL-eligible and S/NR-eligible Holy Trinity Russian Orthodox Church. Under RWCDs With-Action conditions, incremental shadows on sunlight-sensitive features of the Holy Trinity Russian Orthodox Church would occur on all four representative analysis days, with durations ranging from 36 minutes to two hours and 50 minutes; on the March 21, May 6, and June 21 analysis days, shadow coverage would be limited to the lower levels of the church's western and southern façades. On these days, incremental shadows would cover a maximum of two stained glass windows at any one time. On the December 21 analysis day, incremental shadows would reach sunlight-sensitive features on both the clerestory and lower level of the church's western and southern façades. On December 21,

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incremental shadows would cover parts of anywhere from one to eight stained glass windows. As project-generated incremental shadows would reach a maximum of eight of the church's twenty-two stained glass windows at any one time, incremental shadows would not result in the complete elimination of direct sunlight on all sunlight-sensitive features of this historic resource. However, as these incremental shadows may have the potential to affect the public's enjoyment of this feature, albeit for a brief duration of approximately 36 minutes on March 21, 45 minutes on May 6, 49 total minutes on June 21, and two hours and 50 minutes on December 21, this is being considered a significant adverse shadow impact. It should be noted that the sites that would cast incremental shadows on this historic resource are potential, rather than a projected, development sites. As described in the FEIS, potential development sites are considered less likely to be developed than projected development sites. Consequently, the likelihood of this impact occurring is less than if it were to result from development on a projected development site.

DCP, in consultation with the LPC explored between the DEIS and FEIS whether measures to mitigate the identified shadow impact were feasible. It has been determined that there are no feasible or practicable mitigation measures that can be implemented to mitigate this impact, and the Proposed Actions' significant adverse shadows impact on the Holy Trinity Russian Orthodox Church therefore remains unmitigated.

#### **Historic and Cultural Resources**

The Proposed Actions could result in significant adverse historic resources impacts to one resource that is eligible for S/NR-listing and NYCL-designation. Projected development site 37, which is expected to be developed under RWCDs With-Action conditions, contains the S/NR- and NYCL eligible Empire State Dairy Building. As the maximum permitted With-Action FAR on site 37 could be constructed without the demolition or enlargement of the Empire State Dairy Building, the structure is not projected to be demolished, either partially or entirely, or substantially altered under the RWCDs. However, the Proposed Actions do not include any measures that would prevent the demolition or alteration of the Empire State Dairy Building.

In the event that the structure was designated as a landmark by the LPC, the significant adverse impact would be fully mitigated. However, as the designation process is subject to LPC approval, and not CPC approval, it cannot be assumed or predicted with any certainty. The possibility of potential designation of this resource was explored, in consultation with the LPC, between the DEIS and FEIS. Specifically, LPC has been in contact with the property owner(s) of the S/NR- and NYCL-eligible Empire State Dairy Building with the intent of potentially designating the property as a NYCL. However, as this process is ongoing, designation of the building by LPC is not certain at this time. Absent LPC's designation of the Empire State Dairy Building, the implementation of measures such as photographically documenting the eligible structure in accordance with the standards of the Historic American Buildings Survey (HABS) could partially mitigate the identified significant adverse direct impact to this historic architectural resource. However, a mechanism to require such measures is not available. Accordingly, this impact would not be completely eliminated, and, if the Empire State Dairy Building is not designated as a landmark, an unavoidable significant adverse impact on this historic resource would occur.

#### **Transportation - Traffic**

The Proposed Actions would result in significant adverse traffic impacts at 47 study area intersections during one or more analyzed peak hours; specifically 59 lane groups at 41 intersections during the weekday AM peak hour, 40 lane groups at 25 intersections during the midday peak hour, 67 lane groups



at 39 intersections during the PM peak hour, and 38 lane groups at 26 intersections during the Saturday midday peak hour.

Most of these impacts could be mitigated through the implementation of traffic engineering improvements, including:

- Installation of a new traffic signal at the intersection of Fulton and Chestnut Streets;
- Modification of traffic signal phasing and/or timing;
- Elimination of on-street parking within 100 feet of intersections to add a limited travel lane, known as "daylighting";
- Channelization and lane designation changes to make more efficient use of available street widths;
- Conversion of Dinsmore Place from two-way to one-way operation; and
- Street widening to provide an additional travel lane at an intersection approach.

Implementation of the recommended traffic engineering improvements is subject to review and approval by DOT. If, prior to implementation, DOT determines that an identified mitigation measure is infeasible, an alternative and equivalent mitigation measure will be identified. In the absence of the application of mitigation measures, the impacts would remain unmitigated.

The With-Action RWCDs includes the development of a 1,000-seat PS/IS school on projected development site 66 bounded by Atlantic Avenue on the south, Dinsmore Place on the north, Chestnut Street on the east, and Logan Street on the west. It is anticipated that pickup and drop-off activity by both autos and school buses would primarily occur along the south side of Dinsmore Place between Richmond and Chestnut Streets, and that new pedestrian trips by students, parents, and staff would be most concentrated along sidewalks and crosswalks at intersections along Dinsmore Place and Fulton Street at Logan, Richmond, and Chestnut Streets. As noted above, conversion of Dinsmore Place from two-way to one-way eastbound operation is recommended as part of the Proposed Actions' traffic mitigation plan. Signalization of the Logan Street/Dinsmore Place intersection is also proposed as a pedestrian safety improvement and is reflected in the analysis of Action-With-Mitigation conditions. New crosswalks would be installed on the Logan Street approaches to Dinsmore Place in conjunction with this signal installation. For analysis purposes a signal timing was developed for the proposed traffic signal based on the timings at upstream and downstream intersections, required pedestrian crossing times, and the need to accommodate future peak period traffic volumes.

According to *CEQR Technical Manual* criteria, an impact is considered fully mitigated when the resulting LOS degradation under the Action-with-Mitigation condition compared to the No-Action condition is no longer deemed significant following the impact criteria. Significant adverse impacts would be fully mitigated at all but 18 lane groups at 11 intersections during the weekday AM peak hour, 13 lane groups at four intersections during the midday peak hour, 21 lane groups at 11 intersections during the PM peak hour, and ten lane groups at five intersections during the Saturday midday peak hour. In total, impacts to one or more approach movements would remain unmitigated in one or more peak hours at 16 intersections. Consequentially, these impacts would constitute unavoidable significant adverse traffic impacts as a result of the Proposed Action.

#### ***Effects of Pedestrian Mitigation on Traffic Conditions***



Proposed pedestrian mitigation measures (discussed later in this document) are not expected to affect traffic conditions at any analyzed intersection in any peak hour.

**Proposed Schedule for Traffic Mitigation Measures**

Subject to the approval of DOT, the mitigation measures discussed below would be implemented to mitigate the significant adverse traffic impacts resulting from full build-out of the Proposed Actions in 2030. As the development of the Proposed Actions would be expected to occur over an approximately 15-year period, it is possible that some of the significant adverse traffic impacts could occur prior to full build-out in 2030. Based on the anticipated construction schedule shown in FEIS, incremental vehicle trips associated with traffic generated by projected development sites could potentially result in significant adverse traffic impacts beginning in the 2nd quarter of 2018 with the completion of the first phase of projected development site 67. This level of development would result in a net increase of 206 dwelling units, 16,072 gsf of office space, and 36,480 gsf of community facility (medical office) space along with a net reduction of 66,584 gsf of retail space, and would generate more than the CEQR Technical Manual analysis threshold of 50 peak hour vehicle trip ends in all peak periods. At this earlier point in time, implementation of some or all of the mitigation measures developed for full build-out of the Proposed Actions in 2030 would be considered at impacted intersections in proximity to projected development site 67, including the conversion of Dinsmore Place from two-way to one-way eastbound operation between Logan and Chestnut Streets, and additional measures at four intersections along the Logan Street corridor at Atlantic and Liberty Avenues, Dinsmore Place, and Fulton Street, as well as the intersections of Fulton Street with Chestnut Street and with Euclid Avenue.

**Transportation - Transit Bus**

The Proposed Actions would add approximately 18 trips through the maximum load point on the westbound Q8 service in the PM peak hour, resulting in a capacity shortfall of 17 spaces. Therefore, westbound Q8 service would be significantly adversely impacted in the PM peak hour based on CEQR Technical Manual criteria. These significant adverse impacts to Q8 bus service could be fully mitigated by the addition of one standard bus in the westbound direction in the PM peak hour. The general policy of NYCT is to provide additional bus service where demand warrants, taking into account financial and operational constraints.

**Transportation - Pedestrians**

The results of the analyses of pedestrian conditions show that demand from the Proposed Action would significantly adversely impact a total of two sidewalks, one crosswalk and one corner area in one or more peak hours under the With - Action condition.

A significant adverse pedestrian impact is considered mitigated if measures implemented return the anticipated conditions to an acceptable level, following the same impact criteria used in determining impacts. Standard mitigation for projected significant adverse pedestrian impacts can include providing additional signal green time or new signal phases; widening crosswalks; relocating or removing street furniture; providing curb extensions, neck-downs or lane reductions to reduce pedestrian crossing distance; and sidewalk widening. Discussed below are recommended mitigation measures to address the Proposed Actions' significant adverse pedestrian impacts. The mitigation measures generally consist of sidewalk and crosswalk widening and minor signal timing changes. If, prior to implementation, DOT determines that an identified mitigation measure is infeasible, an alternative and equivalent mitigation measure will be identified.



#### **Sidewalks**

Of the 79 sidewalks analyzed, two are expected to be significantly adversely impacted—the north sidewalk on Atlantic Avenue between Logan and Chestnut streets in the weekday midday peak hour and the east sidewalk on Van Siclen Avenue between Pitkin and Glenmore Avenues in the PM. As discussed below, with implementation of the proposed mitigation measures, both of these sidewalks would operate at an acceptable LOS C in the impacted peak hours, and all significant adverse sidewalk impacts would be fully mitigated.

#### **NORTH SIDEWALK ON ATLANTIC AVENUE BETWEEN LOGAN AND CHESTNUT STREETS**

The existing sidewalk along the north side of Atlantic Avenue between Logan and Chestnut streets is a relatively narrow five feet in width (three feet of effective width) between an existing fence and a planted strip along the curb. Widening this sidewalk by 0.5-foot would fully mitigate this significant impact. It is anticipated that this sidewalk widening would occur in conjunction with the development of adjacent projected development site 66 without the need to alter the existing curb line.

#### **EAST SIDEWALK ON VAN SICLEN AVENUE BETWEEN PITKIN AND GLENMORE AVENUES**

The PM peak hour impact to the east sidewalk on Van Siclen Avenue between Pitkin and Glenmore avenues would occur at the most constrained point on the sidewalk where a tree pit is located at curbside opposite from an enclosure around a basement entrance for an adjacent building. Removal of this tree pit would fully mitigate the Proposed Actions' significant adverse impact to this sidewalk in the PM peak hour.

#### **Crosswalks**

One of the 67 analyzed crosswalks would be significantly adversely impacted by the Proposed Actions in the weekday midday peak hour—the west crosswalk on Atlantic Avenue at Euclid Avenue. As part of the proposed traffic mitigation plan, three seconds of green time would be shifted from the eastbound/westbound traffic signal phase to the northbound/southbound phase at this intersection. This signal timing change would also fully mitigate the significant adverse crosswalk impact at this intersection.

#### **Corner Areas**

One of the 58 analyzed corner areas would be significantly adversely impacted by the Proposed Actions—the northeast corner at Liberty Avenue at Berriman Street in the weekday AM peak hour. The sidewalks adjacent to this corner area are each 7.5-feet in width between the curb and lawn areas surrounding the existing buildings on the block. Widening either one of these sidewalks by 0.5 feet (i.e., from 7.5 feet to eight feet in width) would fully mitigate this significant corner area impact. (It is anticipated that any sidewalk widening would occur in conjunction with the development of adjacent projected development site 46 without the need to alter the existing curb lines.) With implementation of this mitigation, the northeast corner area at Liberty Avenue/Berriman Street would operate at an acceptable LOS C in the AM peak hour under Action-with-Mitigation conditions, and the Proposed Actions' significant adverse impact would be fully mitigated.

#### **Effects of Traffic Mitigation on Pedestrian Conditions**

Proposed traffic mitigation measures (discussed previously) would potentially affect pedestrian conditions at a total of 37 analyzed crosswalks and 28 analyzed corner areas at ten intersections in one or more peak



hours. All of the affected crosswalks and corner areas would continue to operate at LOS C or better in all peak hours, and there would be no new significant adverse impacts to any of these sidewalks or crosswalks in any analyzed peak hour as a result of the proposed traffic mitigation.

***Proposed Schedule for Pedestrian Mitigation Measures***

Subject to DOT approval, the mitigation measures described above would be implemented to mitigate the significant adverse pedestrian impacts resulting from full build-out of the Proposed Actions in 2030. As the development of the Proposed Actions would be expected to occur over an approximately 15-year period, it is possible that some of the significant adverse impacts to sidewalks, crosswalks and corner areas could occur prior to full build-out in 2030. Based on the anticipated construction schedule shown in the FEIS, incremental pedestrian trips generated by projected development could potentially result in significant adverse pedestrian impacts beginning in the 3rd quarter of 2018 with the completion of the first two phases of site 67. This level of development would result in a net increase of 475 dwelling units, 44,816 gsf of office space, 10,000 gsf of restaurant space, and 92,720 gsf of community facility (community center and medical office) space, along with a 26,592 gsf reduction in retail space, and would potentially generate more than the *CEQR Technical Manual* analysis threshold of 200 peak hour pedestrian trips in one or more peak periods on nearby sidewalks or crosswalks that have been identified as significantly adversely impacted. These impacted pedestrian elements would include the north sidewalk on Atlantic Avenue between Logan and Chestnut Streets, and the west crosswalk on Atlantic Avenue at Euclid Avenue. At this earlier point in time, implementation of the mitigation measures developed for full build-out of the Proposed Actions in 2030 would be considered to address the potential significant adverse pedestrian impacts at these locations.

**Transportation - Parking**

***Effects of Traffic Mitigation on Parking Conditions***

The Proposed Actions are not expected to result in significant adverse on-street parking impacts during the weekday midday peak period for commercial and retail parking demand, nor during the overnight period for residential demand. As discussed above, the proposed traffic mitigation plan would, however, incorporate a number of modifications to curbside parking regulations. Additional restrictions would be implemented at approximately 12 locations within ¼-mile of the overall rezoning area, and five locations within a ¼-mile subarea around sites 46, 66 and 67. Within the overall parking study area, mitigation-related parking restrictions would result in the displacement of approximately 72 on-street parking spaces during the weekday midday period and 55 spaces overnight. Accounting for these displaced spaces, a total of approximately 2,618 and 6,681 on street parking spaces would remain available during the weekday midday and overnight periods, respectively, within ¼-mile of the rezoning area. The proposed traffic mitigation measures would therefore not result in new significant adverse impacts to on-street parking conditions within ¼-mile of the rezoning area.

Within the ¼-mile subarea around projected development sites 46, 66 and 67, curbside parking restrictions associated with traffic mitigation measures would result in the displacement of approximately 29 on-street parking spaces during the weekday midday period and 20 spaces overnight. The displacement of 29 parking spaces in the weekday midday would increase the on street parking shortfall during this period from 68 spaces in the With-Action condition to 97 spaces in the Action-with-Mitigation condition. During the overnight period, there would be a surplus of approximately 1,197 on-street parking spaces in the Action-with-Mitigation condition compared to a surplus of 1,217 spaces in the With-Action condition. Although approximately 29 more vehicles destined for locations in proximity to sites 46, 66



and 67 would potentially have to travel a greater distance to find available parking in the weekday midday, the 97-space shortfall in on-street parking under Action-with-Mitigation conditions would not be considered a significant adverse impact based on *CEQR Technical Manual* criteria. The proposed traffic mitigation measures would therefore not result in new significant adverse impacts to on-street parking conditions within the ¼-mile parking sub-area around projected development sites 46, 66 and 67.

#### **Air Quality**

The FEIS presents the maximum predicted carbon monoxide (CO) and particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>) concentrations related to traffic generated by the Proposed Actions, and concludes that the Proposed Actions would not result in significant adverse air quality impacts, with the exception of the intersection of Atlantic Avenue and Logan Street, which is predicted to exceed the annual *de minimis* criterion of 0.1 µg/m<sup>3</sup>. Therefore, air quality mitigation is required at this location.

Traffic mitigation measures were developed to reduce congestion and increase speeds along Logan Street in the affected area. The results of this modeling analysis (performed in accordance with methodologies described in the FEIS) indicate that annual incremental concentrations of PM<sub>2.5</sub> would be significantly lower than the With-Action condition, and would not exceed the *de minimis* criteria for PM<sub>2.5</sub>. No unmitigated significant adverse air quality impacts would remain upon incorporation of the mitigation measures.

#### **Noise**

The FEIS concludes that the Proposed Actions would result in a significant adverse noise impact on Richmond Street between Fulton Street and Dinsmore Place, with predicted noise level increases of 4.9 dBA at this location. Traffic mitigation measures were developed to reduce congestion and increase speeds along Logan Street. The traffic mitigation measures would tend to result in lower levels of traffic noise, and consequently, using the methodology described in the FEIS, a mobile source noise analysis was conducted for receptor site 10 with the proposed traffic mitigation measures in place to determine whether the predicted significant adverse impact at this location would be removed or lessened in magnitude with the traffic mitigation measures. At all other receptor sites where significant adverse noise impacts were not predicted to occur in the With-Action condition, noise levels in the With-Action with Traffic Mitigation condition would be expected to experience noise levels equal to or less than those predicted and additional analyses were not conducted.

#### **With-Action with Traffic Mitigation Noise Levels**

Noise levels increases due to traffic mitigation measures are expected to result in smaller noise level increases to the Proposed Actions during all analyzed time periods. The maximum increase in  $L_{eq(1)}$  noise levels for the With-Action with Traffic Mitigation condition compared to the No-Action condition for receptor site 10 would be 3.9 dBA during the AM peak hour, which constitutes a significant adverse impact, although with a smaller magnitude than that predicted to occur in the With-Action condition. According to field observations, all of the residences at this location appear to have double-glazed windows, and most of the residences appear to have through-wall air conditioners or window air conditioners (i.e., an alternate means of ventilation). With respect to upgrades at the residential units with double-glazed windows and an alternate means of ventilation, there are no further practical or feasible mitigation measures that would fully or partially mitigate the significant adverse noise impact at these locations. Window air conditioners potentially could be installed at residential units with double-glazed windows and no alternate means of ventilation to provide an alternate means of ventilation, which





would partially mitigate the significant adverse noise impact at these locations. With respect to upgrades at the residential units, there are no further practical or feasible mitigation measures that would fully mitigate the significant adverse noise impact at these locations.

**Construction - Historic and Cultural Resources**

Development under the Proposed Actions—specifically, on projected development sites 7, 13, 35, 38, 39, 49, and 74 and potential development sites A3, A7, A8, A14, A18, A25, A40, A41, A50, A65, A70, A82, A86, A87, A95, and A102—could result in inadvertent construction-related damage to 12 NYCL- and/or S/NR-eligible historic resources, as they are located within 90 feet of one or more of the aforementioned projected and potential development sites. These 12 eligible resources include Prince Hall Temple (S/NR- and NYCL-eligible), the Magistrates Court (S/NR- and NYCL-eligible), the Empire State Dairy Building (S/NR- and NYCL-eligible), St. Michael's Roman Catholic Church (S/NR- and NYCL-eligible), Firehouse Engine 236 (S/NR-eligible), Our Lady of Loreto Roman Catholic Church (S/NR- and NYCL-eligible), 1431 Herkimer Street (S/NR- and NYCL-eligible), Grace Baptist Church (S/NR- and NYCL-eligible), New Lots Town Hall (S/NR-eligible), William H. Maxwell School (S/NR-eligible), the Ninth Tabernacle (S/NR-eligible), and the Church of the Blessed Sacrament (S/NR- and NYCL-eligible).

Development under the Proposed Actions could result in construction-related impacts to these 12 non-designated resources. The New York City Building Code, under section C26-112.4, provides some measures of protection for all properties against accidental damage from adjacent construction by requiring that all buildings, lots, and service facilities adjacent to foundation and earthwork areas be protected and supported. For designated NYCL and S/NR- listed historic buildings located within 90 feet of a proposed construction site, additional protective measures under the DOB's TPPN #10/88 supplement the procedures of C26-112.4 by requiring a monitoring program to reduce the likelihood of construction damage and detect at an early stage the beginnings of damage so that construction procedures can be changed. For the 12 non-designated resources that are within 90 feet of one or more of the projected and/or potential development sites, development under the Proposed Actions could potentially result in construction-related impacts to the resources, and the protective measures under TPPN #10/88 would only apply if the resources become designated.

In order to make TPPN #10/88 or similar measures applicable to historic resources in the absence of site-specific approval, a mechanism would have to be developed to ensure implementation and compliance, since it is not known and cannot be assumed that owners of these properties would voluntarily implement this mitigation. DCP, as lead agency, explored the viability of this and other mitigation measure between the DEIS and FEIS and determined that there were no feasible and practical mitigation measures to fully mitigate the identified significant adverse construction related impact on historic resources.

**Construction - Noise**

The FEIS concludes that the Proposed Actions would have the potential to result in significant adverse construction noise impacts at several locations throughout the rezoning area.

For projected development site 46 and projected development sites 66 and 67, construction noise was analyzed for a representative two year time period, including both peak and off-peak construction periods. The noise analysis results show that predicted noise levels would exceed the noise impact threshold



criteria during two or more years on one or more floors at 31 of the 241 analyzed receptor locations due to construction of projected development sites 66 and 67 and projected development site 46. Affected locations include residential, institutional and open space areas adjacent to the projected development sites.

For all smaller individual projected development sites, construction noise was analyzed, including both peak and off-peak construction periods for each year of the conceptual construction schedule. The noise analysis results show that the predicted noise levels could exceed the *CEQR Technical Manual* impact criteria at several receptors throughout the rezoning area.

There are no practical or feasible mitigation measures that would fully mitigate the significant adverse construction noise impacts at these locations.

## **CERTIFICATION AND FINDINGS**

Having considered the relevant environmental impacts, facts, and conclusions disclosed in the FEIS and having weighed and balanced relevant environmental impacts with social, environmental, public health, economic, and other essential considerations as required in 6 NYCRR 617.11, HPD, as an Involved Agency, certifies that:

1. The requirements of 6 NYCRR Part 617 have been met;
2. Consistent with social, environmental, economic, and other essential considerations from among the reasonable alternatives thereto, the action avoids or minimizes adverse environmental impacts to the maximum extent practicable; and
3. Consistent with social, environmental, economic, and other essential considerations, the significant adverse environmental impacts disclosed in the FEIS will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the action those mitigation measures that were identified as practicable.

For these reasons, HPD has determined to undertake activities related to the Approved Actions, including construction financing. The FEIS and these Findings constitute HPD's written statement of facts and the environmental, social, economic and other factors and standards that form the basis of this decision, pursuant to Section 617.11(d) of the SEQRA regulations.

**NYC**

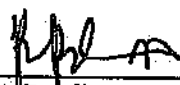


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Director of Planning  
Selected Development and Planning

Date: December 6, 2019

  
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