



Department of
Environmental
Conservation

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

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

1. Check the appropriate box(es) below based on the nature of the amendment modification requested:

Amendment to modify the existing BCA: [check one or more boxes below]

- Add applicant(s)
- Substitute applicant(s)
- Remove applicant(s)
- Change in Name of applicant(s)

Amendment to reflect a transfer of title to all or part of the brownfield site

1a. A copy of the recorded deed must be provided. Is this attached? Yes No

1b. Change in ownership Additional owner (such as a beneficial owner)

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)

2. Required: Please provide a brief narrative on the nature of the amendment:

The purpose of this BCA Application to Amend is to amend the BCA to state that this BCP site is eligible for tangible property tax credit based upon a redevelopment for 100% affordable housing.

Please see Attachment A for the executed Affordable Housing Regulatory Agreement by and between H1H2 Owner LLC, H1H2 GPL Owner LLC & HP H1H2 Housing Development Fund Company, Inc. (the "HDFC"), collectively as Owners, and the New York City Housing Development Corporation ("NYCHDC") & the City of New York acting by and through its Department of Housing Preservation and Development ("NYCHPD"), dated as of June 24, 2021. This Affordable Housing Regulatory Agreement 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 -- see, e.g., Section 4.01, Section 5.01, and Exhibit B of the Affordable Housing Regulatory Agreement.

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

Submission of a full BCP application will be required should this application be determined to be a major amendment. If the amendment involves more than an insignificant change in acreage, applicants are encouraged to consult with the DEC project team prior to submitting this application.

Section I. Current Agreement Information			
BCP SITE NAME: 45 Commercial Street		BCP SITE NUMBER: C224304	
NAME OF CURRENT APPLICANT(S): [Please see continuation sheet on the following page]			
INDEX NUMBER OF AGREEMENT: C224304-03-20		DATE OF ORIGINAL AGREEMENT: 4/17/2020	
Section II. New Requestor Information (complete only if adding new requestor or name has changed)			
NAME			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
1. Is the requestor authorized to conduct business in New York State (NYS)? <input type="checkbox"/> Yes <input type="checkbox"/> No <ul style="list-style-type: none"> 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	
2. Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? <input type="checkbox"/> Yes <input type="checkbox"/> No			
3. Describe Requestor's Relationship to Existing Applicant:			

BCA Application To Amend No. 2 – 45 Commercial Street (C224304)

Section I. Current Agreement Information (*continuation sheet*)

Name of Current Applicant(s):

- GPL Development LLC
- H Owner LLC
- Greenpoint Landing Developers LLC
- Greenpoint Landing Associates, L.L.C.
- Greenpoint Storage Terminal LLC
- H1H2 Owner LLC
- H1H2 GPL Owner LLC
- H1H2 Retail LLC

Section III. Current Property Owner/Operator Information (only include if new owner/operator)
Owner below is: Existing Applicant New Applicant Non-Applicant

OWNER'S NAME (if different from requestor)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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

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

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

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

PARTICIPANT

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

VOLUNTEER

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

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

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

12. Requestor's Relationship to Property (check one):

Prior Owner Current Owner Potential /Future Purchaser Other _____

13. 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)

1. Property information on current agreement:

ADDRESS

CITY/TOWN

ZIP CODE

TAX BLOCK AND LOT (SBL)

TOTAL ACREAGE OF CURRENT SITE: _____

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

2. Check appropriate boxes below:

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

2a. PARCELS ADDED:

Acreage
Added by
Parcel

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

Total acreage to be added: _____

Reduction of property

2b. PARCELS REMOVED:

Acreage
Removed
by Parcel

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

Total acreage to be removed: _____

Change to SBL (e.g. merge, subdivision, address change)

2c. NEW SBL INFORMATION:

Parcel Address	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.

3. TOTAL REVISED SITE ACREAGE: _____

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
Please answer questions below and provide documentation necessary to support answers.	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
From ECL 27-1405(31):	
"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.	
3. Is the project an affordable housing project as defined below?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
From 6 NYCRR 375- 3.2(a) as of August 12, 2016:	
(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.	
(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.	
(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.	
(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.	

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: 45 Commercial Street	BCP SITE NUMBER: C224304
NAME OF CURRENT APPLICANT(S): [Please see continuation sheet on the following page]	
INDEX NUMBER OF AGREEMENT: C224304-03-20	
EFFECTIVE DATE OF ORIGINAL AGREEMENT: 4/17/2020	

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)
(Individual) I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department. Date: _____ Signature: _____ Print Name: _____
(Entity) I hereby affirm that I am (title _____) 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. Date: _____ Signature: _____ Print Name: _____

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 Authorized Signatory (title) of GPL Development 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. Anne Carson Blair's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 9/14/22 Signature: 

Print Name: Anne Carson Blair

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Please see the following page for submittal instructions.

NOTE: Applications submitted in fillable format will be rejected.

Status of Agreement:

<input type="checkbox"/> 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.	<input checked="" type="checkbox"/> 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.
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Effective Date of the Original Agreement: 4/17/2020

Signature by the Department:

DATED: 10/24/2022

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: 

Andrew Guglielmi, Director
Division of Environmental Remediation

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

(Individual)

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

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am Authorized Signatory (title) of H Owner 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. Anne Carson Blair's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 9/14/22 Signature: *Anne Carson Blair*

Print Name: Anne Carson Blair

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Please see the following page for submittal instructions.

NOTE: Applications submitted in fillable format will be rejected.

Status of Agreement:

PARTICIPANT

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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: 4/17/2020

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

Susan Edwards, P.E., Acting Director
Division of Environmental Remediation

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

(Individual)

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

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am Authorized Signatory (title) of Greenpoint Landing Developers 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. Anne Carson Blair's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 9/14/22 Signature: *Anne Carson Blair*

Print Name: Anne Carson Blair

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Please see the following page for submittal instructions.

NOTE: Applications submitted in fillable format will be rejected.

Status of Agreement:

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Effective Date of the Original Agreement: 4/17/2020

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:

Susan Edwards, P.E., Acting Director
Division of Environmental Remediation

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

(Individual)

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

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am Authorized Signatory (title) of Greenpoint Landing Associates, L.L.C. (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. Anne Carson Blair's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 9/14/22 Signature: *Anne Carson Blair*

Print Name: Anne Carson Blair

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Please see the following page for submittal instructions.

NOTE: Applications submitted in fillable format will be rejected.

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: 4/17/2020

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

Susan Edwards, P.E., Acting Director
Division of Environmental Remediation

Site Code: C224304

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 Authorized Signatory (title) of Greenpoint Storage Terminal 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. Anne Carson Blair's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 9/14/22 Signature: *ACB*

Print Name: Anne Carson Blair

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Please see the following page for submittal instructions.

NOTE: Applications submitted in fillable format will be rejected.

Status of Agreement:

<input type="checkbox"/> 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.	<input checked="" type="checkbox"/> 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.
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Effective Date of the Original Agreement: 4/17/2020

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:

Susan Edwards, P.E., Acting Director
Division of Environmental Remediation

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

(Individual)

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

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am Authorized Signatory (title) of H1H2 Owner 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. Anne Carson Blair's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 9/14/22 Signature: *Anne Carson Blair*

Print Name: Anne Carson Blair

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Please see the following page for submittal instructions.

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Effective Date of the Original Agreement: 4/17/2020

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

Susan Edwards, P.E., Acting Director
Division of Environmental Remediation

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

(Individual)

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

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am Authorized Signatory (title) of H1H2 GPL Owner 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. Anne Carson Blair's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 9/14/22 Signature: Anne Carson Blair

Print Name: Anne Carson Blair

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Effective Date of the Original Agreement: 4/17/2020

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:

Susan Edwards, P.E., Acting Director
Division of Environmental Remediation

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

(Individual)

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

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am Authorized Signatory (title) of H1H2 Retail 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. Anne Carson Blair's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 9/14/22 Signature: *Anne Carson Blair*

Print Name: Anne Carson Blair

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Effective Date of the Original Agreement: 4/17/2020

Signature by the Department:

DATED:

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:

Susan Edwards, P.E., Acting Director
Division of Environmental Remediation

SUBMITTAL REQUIREMENTS:

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in final, non-fillable 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

- **NOTE: Applications submitted in fillable format will be rejected.**

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____ **LEAD OFFICE:** DER, Albany _____

PROJECT MANAGER: Ruth Curley _____

BROWNFIELD CLEANUP PROGRAM (BCP) INSTRUCTIONS FOR COMPLETING A BCP AMENDMENT APPLICATION

This form must be used to add a party, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement. NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.

COVER PAGE

Please select all options that apply. Provide a brief narrative of the nature of the amendment requested. At the bottom of the page, please enter the site code. This field will auto-populate in the bottom left corner of the subsequent pages.

SECTION I CURRENT AGREEMENT INFORMATION

Provide the site name, site code and current requestor exactly as it appears on the existing agreement. Provide the agreement index number and the date of the initial BCA, regardless of any executed amendments.

SECTION II NEW REQUESTOR INFORMATION

Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information. If an LLC, the members/owners' names need to be provided on a separate attachment). The requestor is the person or entity seeking DEC review and approval of the remedial program.

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 Corporation & Business Entity Database. A print-out of entity information from the database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

Requestor Address, etc.

Provide the requestor's mailing address, telephone number; fax number and e-mail address. Representative Name, Address, etc.

Provide information for the requestor's authorized representative. This is the person to whom all correspondence, notices, etc will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative unless another contact name and address is provided with the application.

Consultant Name, Address, etc.

Provide information for the requestor's consultant. Attorney Name, Address, etc.
Provide information for the requestor's attorney.

Please provide 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.

SECTION III CURRENT PROPERTY OWNER/OPERATOR INFORMATION

Only include if a transfer of title has taken place resulting in a change in ownership and/or operation of the site. Provide the relationship of the owner to the site by selecting one of the check-box options.

Owner Name, Address, etc.

Provide information for the new owner of the property. List all new parties holding an interest in the property. Attach separate pages as needed.

Operator Name, Address, etc.

Provide information for the new operator, if applicable.

SECTION IV NEW REQUESTOR ELIGIBILITY INFORMATION

As a separate attachment, provide complete and detailed information in response to any eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that such information be summarized. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

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.

If the 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. A purchase contract does not suffice as proof of access.

SECTION V PROPERTY DESCRIPTION AND DESCRIPTION OF CHANGES / ADDITIONS / REDUCTIONS (IF APPLICABLE)

NOTE: DEC requires a standard application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.

1. Property Information on Existing Agreement

Provide the site address and tax parcel information exactly as it appears on the current agreement (or as it has been modified in previous amendments).

2a. Addition of Property

Provide the tax parcel information and acreage for each parcel to be added. Provide the total acreage to be added below the far-right column.

2b. Reduction of Property

Provide the tax parcel information and acreage for each parcel to be removed. Provide the total acreage to be removed below the far-right column.

2c. Change to SBL or metes and bounds description

Provide the new tax parcel information and attach a metes and bounds description.

All requested changes to this section should be accompanied by a revised survey or other acceptable map depicting the proposed new site boundary. Additionally, provide a county tax map with the site boundary outlined, as well as a USGS 7.5-minute quadrangle map with the site location clearly identified.

SUPPLEMENT TO THE APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT – QUESTIONS FOR SITES SEEKING TANGIBLE PROPERTY CREDITS IN NEW YORK CITY ONLY

This page should only be completed if:

a. The site is located in the five boroughs comprising New York City

AND

b. The site does not currently have an eligibility determination for tangible property credits.

PART II

The information in the top section of page 7 should auto-populate with the information provided on page 2. If a new requestor is applying to enter the program, provide the required information and signature at the bottom of page 7 and the required information and signature on page 8.

If no new requestor is applying to the program but any other change has been made, provide the required information and signature on page 8.

Attachment A:

**Affordable Housing Regulatory Agreement by
and between 45 Commercial Street Site
Owners and NYCHDC & NYCHPD**

Affordable Housing Regulatory Agreement

between:

H1H2 OWNER LLC

H1H2 GPL OWNER LLC

HP H1H2 HOUSING DEVELOPMENT FUND COMPANY, INC.

and

New York City Housing Development Corporation

**The City of New York, acting by and through its
Department of Housing Preservation and Development**

June 24, 2021

Borough: Kings

Block: 2472

Lot: 70

Record and return to:

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

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AFFORDABLE HOUSING REGULATORY AGREEMENT (“**Agreement**”) entered into as of **June 24, 2021**, between:

H1H2 GPL OWNER LLC, a New York limited liability company having an address at 535 Madison Avenue, New York, New York 10022 (“**LIHTC OWNER**”);

H1H2 OWNER LLC, a Delaware limited liability company having an address at 535 Madison Avenue, New York 10022 (“**Non-LIHTC Owner**”, and together with the LIHTC Owner, “**Beneficial Owner**”);

HP H1H2 HOUSING DEVELOPMENT FUND COMPANY, INC., a New York not-for-profit corporation having an address at c/o NYC Housing Partnership Housing Development Fund Company, Inc. 253 W.35th Street, 3rd Floor, New York, New York 10001 (“**Legal Owner**”, and together with the Beneficial Owner, “**Owner**”);

New York City Housing Development Corporation, a New York public benefit corporation having its principal office at 110 William Street, New York, New York 10038; and

The City of New York, a New York municipal corporation having its principal office at City Hall, New York, NY 10007, acting by and through its **Department of Housing Preservation and Development**, having its principal office at 100 Gold Street, New York, NY 10038.

RECITALS

- A. Capitalized terms have the meanings given in Section 1.01.
- B. The Owner intends to own and operate the housing project described in Exhibit B (“**Project**”) on the real property identified in Exhibit A (“**Property**”). Exhibit A and Exhibit B are annexed to this Agreement and made a part of this Agreement.
- C. The Beneficial Owner has entered into a Declaration of Interest and Nominee Agreement with the Legal Owner (together with any other nominee agreement with respect to the Property, “**Nominee Agreement**”), pursuant to which the Beneficial Owner is the beneficial and equitable owner of the Property and the Legal Owner retains the nominal record title to the Property.
- D. The Owner intends to create six condominium units on Premises, (i) one condominium unit shall contain 191 Tax Code Units plus one unit for the building superintendent (the “LIHTC Condo Unit 1”); (ii) one condominium unit shall contain 71 Tax Code Units to be rented to households with incomes at or below 80% of AMI (the “ LIHTC Condo Unit 2” and together with LIHTC Condo Unit 1, the “LIHTC Condo Units”), (iii) one condominium unit containing 71 Moderate Income Units to be rented to households with incomes at or below 110% of AMI (the “Moderate Income Condo Unit 1”) (iv) one condominium unit for the 40 Moderate Income Units to be rented to households with incomes at or below 80% of AMI (the “Moderate Income Condo Unit 2” and together with Moderate Income Condo Unit 1, the “Non-Tax Code Units”); (v) a commercial condominium unit containing approximately 4,421 square feet of commercial space (the “Retail Condo Unit 1”) and (vi) a commercial condominium unit containing approximately 3,215 square feet of

commercial space (the “Retail Condo Unit 2” and together with Retail Unit 1, the “Commercial Condo Units”); the LIHTC Condo Units are expected to receive Tax Credits and will comprise a “building” for purposes of Section 42 of the Tax Code; however, the Project shall include all four residential condominium units, as provided in Exhibit B.

- E. Following the creation of a condominium on the Premises, as provided for in the Nominee Agreement, the Beneficial Owner will own beneficial interest in the condominium, subject to the leasehold interest of the LIHTC Owner to the LIHTC Condo Units, pursuant to the LIHTC Master Lease and the LIHTC Owner and the Legal Owner may enter into a separate confirmatory Nominee Agreement pursuant to which the LIHTC Owner will be the beneficial owner of the LIHTC Condo Units, the Legal Owner will be the record fee title owner of the LIHTC Condo Units and Moderate Income Condo Unit 1; at the same time, the Non-LIHTC Owner and the Legal Owner may enter into a separate confirmatory Nominee Agreement to provide that the Non-LIHTC Owner will be the beneficial owner of the Moderate Income Condo Unit 1, Moderate Income Condo Unit 2 and the Commercial Condo Units and the Legal Owner will be the record fee title owner of Moderate income Condo Unit 2 and the Commercial Condo Units.

- F. HDC is providing financing to the Owner pursuant to Article 12 of the Private Housing Finance Law (“**HDC Financing**”). HPD has granted funds to HDC pursuant to Section 661 of the Private Housing Finance Law to provide funds for a portion of the HDC Financing.

- G. The Owner expects that the Project will receive real property tax benefits pursuant to Section 420-c of the Real Property Tax Law, as well as a 25 year partial tax abatement from real estate taxes for the Commercial Condo Units under the Industrial and Commercial Abatement Program (“ICAP”) (collectively, “**Real Property Tax Benefits**”).

- H. The Project has been allocated federal low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code (“**LIHTC**”).

- I. The Owner intends to participate in the voluntary Inclusionary Housing program under the Zoning Resolution. The Owner is subject to a separate Regulatory Agreement concerning the Inclusionary Housing program.

- J. The Agency requires that the Owner and the Project comply with this Agreement as a condition to participation in the Agency’s affordable housing program.

In consideration of the foregoing, and for other good and valuable consideration, the parties to this Agreement agree as follows:

[Continues on next page]

ARTICLE 1
DEFINITIONS

1.01 Certain Definitions.

“Actual Rent” has the meaning set forth in Section 5.01(b).

“Agency” means HPD and HDC individually and not jointly.

“Agreement” has the meaning set forth in the preamble to this Agreement.

“AMI” means two times the Section 8 income limit for “very low-income families” (families with incomes that do not exceed 50% of median family income), as determined by HUD for the New York, NY HUD Metropolitan Fair Market Rent Area (or any successor area covering New York City), and adjusted for family size. If HUD stops publishing the Section 8 income limit for very low-income families, the Agency shall establish an alternative method for determining AMI. If HUD publishes an income limit for a different percentage of median family income, the Agency or Law may require the Owner to use the HUD-published income limit, as adjusted for family size, to determine rent or income limits at a corresponding percentage of AMI under this Agreement, instead of an adjustment to the Section 8 income limit for very low-income families. Unless otherwise noted, AMI refers to the amount in effect on the date of the applicable determination.

“Annual Income” means current annual gross income, calculated in accordance with the method for determining income eligibility specified in the Marketing Handbook or as otherwise may be required by Law.

“Beneficial Owner” has the meaning set forth in the preamble to this Agreement.

“Change in Ownership” has the meaning set forth in Section 8.02(a).

“City” means The City of New York.

“Default” has the meaning set forth in Section 10.01(b).

“Default Rate” means an interest rate that is the lower of (a) the highest interest rate permitted by Law, or (b) 16% per annum.

“Destabilization” has the meaning set forth in Section 5.02(e).

“DHCR” means the State’s Division of Housing and Community Renewal, or any successor administering Rent Stabilization.

“Eligible Household” means, with respect to any Unit, a prospective or existing Tenant who meets the income, asset, and other requirements of this Agreement and the Marketing Handbook to occupy the Unit.

"Equipment" means all fixtures, fittings, appliances, apparatus, equipment, machinery, furniture, and other personal property (other than that which is owned by Tenants or any non-residential tenants of the Property) now or in the future attached to, located upon, or used in the operation of the Property, and all replacements, additions, proceeds, products, and accessions of or to the foregoing.

"Extended Use Period" has the meaning set forth in Exhibit B.

"FMR" means the fair market rent published by HUD for the New York, NY HUD Metropolitan Fair Market Rent Area (or any successor area covering the Property) and in effect on the date of the applicable rent determination.

"HDC" means the New York City Housing Development Corporation (or any successor).

"HDC Financing" has the meaning set forth in the Recitals.

"HDC Obligations" means that portion of the bonds or other obligations issued by HDC to fund all or part of the HDC Financing and any bonds or other obligations that may be subsequently issued by HDC to refund such bonds or other obligations.

"Homeless Units" has the meaning set forth in Section 4.01(c).

"Household" means all individuals who occupy, or will occupy, a Unit.

"HPD" means the City, acting by and through its Department of Housing Preservation and Development (or any successor).

"HUD" means the U.S. Department of Housing and Urban Development (or any successor).

"Improvements" means all buildings, structures, sidewalks, parking lots, and other physical improvements currently existing or at any time in the future constructed, installed, or placed upon the land in any part of the Property.

"Income-Based Rent" means the greater of (1) 30% of the Annual Income of the Tenant, divided by 12, rounded down to the nearest whole dollar, and then minus the applicable utility allowance, or (2) any Shelter Allowance.

"Income-Restricted Unit" means any Unit that the Owner is required to lease upon initial occupancy to an Eligible Household whose Annual Income does not exceed an income limit for the Unit that is required by this Agreement.

"Institutional Lender" has the meaning set forth in Section 8.03(e).

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, and any regulations, rules, and procedures issued pursuant to such code.

"Law" means any applicable federal, state, or local law, code, ordinance, regulation, rule, ruling, or requirement in effect, including, but not limited to, executive orders, court

orders, and City Council resolutions, regardless of whether it was applicable or in effect on the date of this Agreement or became applicable or effective after such date.

“Legal Owner” has the meaning set forth in the preamble to this Agreement.

“Legal Rent” has the meaning set forth in Section 5.01(b).

“LIHTC” has the meaning set forth in the Recitals.

“LIHTC Building” means any “building” (within the meaning of Section 42 of the Internal Revenue Code) containing Units that are designated as low-income units pursuant to Section 42 of the Internal Revenue Code.

“LIHTC Master Lease” means that certain Master Lease between H1H2 Owner LLC and H1H2 GPL Owner LLC with respect to the LIHTC Condo Units.

“LIHTC Owner” has the meaning set forth in the preamble to this Agreement.

“Management Agreement” has the meaning set forth in Section 6.07.

“Managing Agent” has the meaning set forth in Section 6.07.

“Marketing Handbook” means the Agency’s Marketing Handbook, as amended, or any successor document designated in writing by the Agency.

“Maximum Program Rent” has the meaning set forth in Section 5.01(b).

“MCI Increase” has the meaning set forth in Section 5.02(c)(i).

“Nominee Agreement” has the meaning set forth in the Recitals.

“Non-LIHTC Owner” has the meaning set forth in the preamble to this Agreement.

“Operating Reserve” has the meaning set forth in Section 7.02.

“Owner” has the meaning set forth in the preamble to this Agreement.

“Permanent Loan Conversion” means the date of the conversion of the HDC Financing from the construction phase to the permanent phase.

“Permitted Mortgage” has the meaning set forth in Section 8.03(d).

“Prohibited Person” means any individual or entity that is or has been subject to, or that has a principal that is or has been subject to, one or more of the following: (a) conviction, civil judgment, pending litigation, or active investigation for harassment, arson, fraud, bribery, grand larceny, any felony or crime of dishonesty, or any material violation of environmental or building safety Laws, (b) suspension or debarment by any government entity, (c) a finding of material tax arrears, tax foreclosure, or enforcement

proceedings, or the sale of tax liens, or (d) negative findings by the City's Department of Investigation.

"Project" has the meaning set forth in the Recitals.

"Property" has the meaning set forth in the Recitals.

"Property Transfer" has the meaning set forth in Section 8.01.

"Real Property Tax Benefits" has the meaning set forth in the Recitals.

"Records" has the meaning set forth in Section 6.04.

"Renewal Lease Adjustment" has the meaning set forth in Section 5.01(b).

"Rent Stabilization" means, collectively, the Rent Stabilization Law of 1969, the Emergency Tenant Protection Act of 1974, and the Rent Stabilization Code, all as amended, together with any successor Laws addressing substantially the same matters.

"Rental Assistance" means Section 8, similar rental subsidies provided by the City, or any other rental subsidy program approved in writing by the Agency.

"Rental Assistance Rent" has the meaning set forth in Section 5.01(b).

"Rental Assistance Unit" has the meaning set forth in Section 5.01(b).

"Replacement Reserve" has the meaning set forth in Section 7.01.

"Restriction Period" has the meaning set forth in Section 2.01(a).

"Section 8" means rental subsidies provided under Section 8 of the United States Housing Act of 1937, as amended (or any successor federal rental subsidy program).

"State" means the State of New York.

"Superintendent Unit" means a Unit that is occupied by a resident superintendent or porter of the Project.

"Tenant" means, collectively, (a) one or more individuals occupying or entitled to occupy a Unit who is either a party to a lease or rental agreement for such Unit or is a statutory tenant pursuant to the Emergency Housing Rent Control Law, the City Rent and Rehabilitation Law, or Article 7-C of the Multiple Dwelling Law, and (b) the entire Household of such individuals.

"Unit" means a dwelling unit within the Project.

[Continues on next page]

ARTICLE 2

TERM OF RESTRICTIONS

2.01 Restriction Period.

- (a) **Length of Period.** The Owner shall comply, and shall cause the Project to comply, with this Agreement during the period that begins on the date of this Agreement and ends on the latest of the following dates ("**Restriction Period**"):
- (i) The date identified as the Agency Program Termination Date in Exhibit B.
 - (ii) The date on which (1) the Property and the Project are not subject to any mortgage or lien held by or on behalf of the City or HDC, and (2) the Owner does not owe any indebtedness to the City or HDC with respect to the Project.
 - (iii) The date on which the Real Property Tax Benefits expire by their stated term and not due to any early voluntary or involuntary termination, revocation, or suspension.
 - (iv) The date on which the Extended Use Period ends.
 - (v) The latest of (1) the date that is 15 years after the date on which 50% of the Units are first occupied, (2) the date on which no tax-exempt private activity bond or similar obligation with respect to the Project is outstanding, and (3) the date on which any assistance provided with respect to the Project under Section 8 terminates.
- (b) **Permanent Affordability.** This Agreement restricts all or a portion of the Units in perpetuity as permanently affordable Units (as set forth in Exhibit B, and not including any Units that are covered separately by an Inclusionary Housing regulatory agreement or restrictive declaration unless such Units are also designated as permanently affordable Units under this Agreement). If a court of competent jurisdiction, after the exhaustion of any appeals, orders that a perpetual term of this Agreement is unenforceable, then the Agency Program Termination Date for any Unit that is permanently affordable under this Agreement will mean the date that is 80 years from the date of this Agreement. The foregoing sentence and all provisions in this Agreement referring to the end of the Restriction Period do not apply to any such permanently affordable Units unless a court issues such an order.

2.02 After the Restriction Period.

- (a) **Termination.** This Agreement terminates when the Restriction Period ends for all Units, except as provided in Section 2.02(b). No party other than the Agency may terminate this Agreement prior to the end of the Restriction Period without the prior written consent of the Agency.
- (b) **Surviving Provisions.** After the termination of this Agreement, or after the Restriction Period ends for any Unit prior to the termination of this Agreement, the Owner shall continue to comply, and shall cause the Project to comply, with the provisions of this Agreement that are specifically identified in this Agreement as applying after the Restriction Period, or as surviving the termination of this Agreement (or words of similar meaning). All such provisions survive the termination of this Agreement. The Agency may continue to enforce this Agreement after its termination with respect to (i) any surviving provision of this Agreement and (ii) any matter that occurred before the termination of this Agreement. In addition, the termination of this Agreement will not affect the Agency's ability to enforce any Law that the Agency would be able to enforce in the absence of this Agreement.
- (c) **Release.** After the termination of this Agreement, and upon the request of the Owner, the Agency shall provide the Owner with a release of this Agreement in recordable form. The Agency may refer to its surviving rights under this Agreement in any such release, but neither the release of this Agreement nor the failure to describe the survival of rights under this Agreement in any such release will limit the Agency's exercise of these rights as provided in Section 2.02(b).

2.03 Subordination to Financing.

If the holder of a mortgage securing HDC's senior loan to the Project completes a foreclosure of the mortgage or receives a deed to the Property in lieu of foreclosure, the Agency shall terminate this Agreement at the request of the holder of the mortgage if: (a) the HDC Financing is paid in full, and (b) within a reasonable period, the HDC Obligations are retired. HDC shall cause the HDC Obligations to be retired within a reasonable period pursuant to the resolution or indenture governing the HDC Obligations. If the Owner or a related entity or individual obtains an ownership interest in the Project after any such termination of this Agreement, but during the period that would have comprised the Restriction Period, this Agreement will be reinstated in full effect.

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ARTICLE 3

GENERAL REQUIREMENTS

3.01 Compliance with Law; Agreements.

The Owner shall comply, and shall cause the Project to comply, with the Law. The Owner shall also comply, and shall cause the Project to comply, with (a) any other agreement entered into by the Owner with the Agency or any other government agency with respect to the Project, (b) any restrictive covenant, entered into by the Owner for the benefit of the Agency or any other government agency with respect to the Project, or (c) any permit issued by the Agency or any other government agency with respect to the Project.

3.02 More Restrictive Provisions Control.

If this Agreement conflicts with any Law or with any other agreement, restrictive covenant, or permit with, entered into for the benefit of, or issued by a government agency with respect to the Project, or if any provision of this Agreement conflicts with any other provision of this Agreement, the more restrictive provision, as determined by the Agency, controls.

3.03 Real Property Tax Benefits.

The Owner shall comply, and shall cause the Project to comply, with all applicable requirements of the Real Property Tax Benefits, including, but not limited to, the Law under which the Real Property Tax Benefits have been, or will be, granted, all related Laws, and any related agreements and restrictive covenants.

3.04 Intentionally Omitted.

3.05 HDC Financing.

- (a) **Statutory Authority.** The Owner shall comply, and shall cause the Project to comply, with all applicable requirements of the statutory authority under which HDC is providing the HDC Financing, including, but not limited to, the New York City Housing Development Corporation Act, Article 12 of the Private Housing Finance Law, any rules, regulations, policies or procedures promulgated under the statute, and any other Laws related to the HDC Financing.
- (b) **Loan Documents.** The Owner shall also comply, and shall cause the Project to comply, with all documents evidencing, securing, or otherwise signed and delivered by the Owner to HDC in connection with the HDC Financing, including, but not limited to, commitment letters, notes, and mortgages. This covenant does not independently obligate any party under a note or other agreement, however, if the party has not signed the agreement.

- (c) **FHA Risk-Sharing Program.** All or a portion of the HDC Financing is expected to be insured by the Federal Housing Administration, an organizational unit within HUD, under the FHA Risk-Sharing Program, which is governed by Section 542(c) of the Housing and Community Development Act of 1992, as amended, and the regulations promulgated under the statute at 24 CFR part 266. For so long as any portion of the HDC Financing is insured under the FHA Risk-Sharing Program, the Owner and the Project shall comply with all requirements of the FHA Risk-Sharing Program, including each of the following:
- (i) **HDC Financing Payments and Reserves.** The Beneficial Owner shall make all payments due under the FHA-insured HDC mortgage and the related note, including any required payments into a building reserve.
 - (ii) **Affordable Housing.** The Owner shall maintain the Project as affordable housing, as defined in 24 CFR part 266.5, and continue to use the Units for their original purposes.
 - (iii) **Physical Condition Standards.** The Owner shall maintain the Project in accordance with the physical condition standards set forth in 24 CFR part 5, subpart G. HDC (or HUD where applicable) will perform annual physical inspections of the Project in accordance with these standards and the procedures and standards prescribed by HUD's Real Estate Assessment Center (REAC). Failure to maintain the Project in accordance with these standards is a violation of this Agreement and 24 CFR part 266.507. In addition, the Project must comply with the lead-based paint requirements in 24 CFR part 35 and 24 CFR part 200.820, paragraphs (a)-(d).
 - (iv) **Books and Records; Financial Statements.** The Owner shall maintain complete books and records established solely for the Project; make the books and records available for HUD or General Accounting Office review with appropriate notification; permit HUD officials or employees to inspect the Project upon request; and submit to HDC the annual audited financial statement after the end of the Project's fiscal year.
 - (v) **Single Asset Mortgagor.** Each individual or entity that is a party to this Agreement and that is included in the definition of Owner shall operate as a single-asset mortgagor.
 - (vi) **Affirmative Fair Housing Marketing Plan.** The Owner shall have and comply with an Affirmative Fair Housing Marketing Plan that complies with the provisions set forth in 24 CFR part 200, Subpart M and 24 CFR part 108.
 - (vii) **Equal Employment Opportunity.** The Owner shall comply with the equal employment opportunity requirements of Executive Order 11246, as implemented by 41 CFR part 60.

- (viii) **Nondiscrimination in Housing and Employment.** The Owner shall practice nondiscrimination in housing and employment, including by: (1) not using tenant selection procedures that discriminate against families with children, except in the case of a project that constitutes “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act (42 U.S.C. 3607(b)(2)); (2) not discriminating against any family because of the sex of the head of household; and (3) complying with the Fair Housing Act (42 U.S.C. 3601-3619), as implemented by 24 CFR part 100; Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101-12213), as implemented by 28 CFR part 35; Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135; the Equal Credit Opportunity Act (15 U.S.C. 1691-1691f), as implemented 12 CFR part 202; Executive Order 11063, as amended by Executive Order 12259, and implemented by 24 CFR part 107; Executive Order 11246, as implemented by 41 CFR part 60; other applicable federal Laws issued pursuant to these authorities; and applicable State and local fair housing and equal opportunity Laws; in addition, so long as the Owner receives federal financial assistance, the Owner shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), as implemented by 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107), as implemented by 24 CFR part 146; and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by 24 CFR part 8.

3.06 Intentionally Omitted.

3.07 Low-Income Housing Tax Credits.

- (a) **Extended Low-Income Housing Commitment.** The Owner shall comply, and shall cause the Project to comply, with all applicable requirements of the Internal Revenue Code governing the LIHTC, any other Laws related to the LIHTC, and the Agency's LIHTC monitoring procedures. This Agreement serves as the “extended low-income housing commitment” required by Section 42(h)(6) of the Internal Revenue Code. If the Law requires additional or more restrictive terms, such terms are made a part of this Agreement and the Owner shall comply with such terms.
- (b) **Applicable Fraction.** The Owner shall ensure that the Applicable Fraction (as defined in Section 42(c)(1)(B) of the Internal Revenue Code) for each LIHTC Building for each taxable year in the Extended Use Period is not less than the Applicable Fraction specified in Exhibit B.

- (c) **No Evictions Except for Good Cause.** The Owner shall not evict or terminate the tenancy (other than for good cause) of any existing Tenant of any Unit that is designated as a low-income unit pursuant to Section 42 of the Internal Revenue Code.
- (d) **Increases in Gross Rent.** The Owner shall not increase the gross rent (as defined in the Internal Revenue Code) with respect to a Unit that is designated as a low-income unit pursuant to Section 42 of the Internal Revenue Code, except as may be otherwise permitted under the Internal Revenue Code.
- (e) **Effect of Early End to Extended Use Period.** The Owner shall comply with Section 3.07(c) and Section 3.07(d) both during the Extended Use Period and for a three-year period following any termination of the Extended Use Period (including, but not limited to, any early termination of this Agreement) pursuant to Section 42(h)(6)(E)(i) of the Internal Revenue Code.
- (f) **Enforcement by Individuals.** Any individual who meets the income limitation applicable to the LIHTC Building (whether prospective, present, or former occupants of the building) has the right to enforce in any State court the requirement and prohibitions of Section 42(h)(6)(B)(i) of the Internal Revenue Code. Such individuals are intended third-party beneficiaries of this Section 3.07.
- (g) **Transfers.** The Owner shall not dispose to any person of any portion of the LIHTC Building to which this Agreement applies unless all of the LIHTC Building to which this Agreement applies is disposed of to such person.
- (h) **Section 8 Status.** The Owner shall not refuse to lease to a holder of a voucher or certificate under Section 8 because of the status of the prospective Tenant as such a holder.
- (i) **Waiver of Right to Petition for a Qualified Contract.** The Owner waives any right to request that the Agency find a person to acquire the Owner's interest in the low-income portion (as defined in Section 42 of the Internal Revenue Code) of the LIHTC Building after the 14th year of the compliance period (as defined in Section 42(i)(1) of the Internal Revenue Code).
- (j) **Condition and Use of Units.** The Owner shall ensure that each Unit that is designated as a low-income unit pursuant to Section 42 of the Internal Revenue Code is suitable for occupancy and used other than on a transient basis (in each case as defined pursuant to the Internal Revenue Code).
- (k) **Annual Certifications.**
 - (i) **Tenant Certifications.** The Owner shall annually (i) obtain a certification of Annual Income, Household size, and student status from each Tenant residing in a Unit that is designated as a low-income unit pursuant to Section 42 of the Internal Revenue Code, along with supporting documentation, (ii) verify the Tenant's Annual Income in accordance with

the Law, and (iii) determine whether the Tenant continues to qualify as an Eligible Household.

- (ii) **LIHTC Building.** Notwithstanding Section 3.07(k)(i), if a LIHTC Building contains only Units that are designated as low-income units pursuant to Section 42 of the Internal Revenue Code (excluding any Superintendent Unit), then on an annual basis, the Owner shall obtain a certification of Household size and student status from each Tenant residing in the LIHTC Building, along with supporting documentation, but the Owner is not required to obtain a certification of Annual Income from the Tenant for LIHTC purposes.
- (iii) **Owner Certification.** The Owner shall furnish to the Agency annually, or more frequently if required in writing by the Agency and if necessary to ensure compliance with this Agreement, a certification by the Owner that the Units that are designated as low-income units pursuant to Section 42 of the Internal Revenue Code are owned and operated in compliance with the Law and documenting the annual tenant certifications provided in accordance with this Section 3.07(k), along with any supporting documentation requested by the Agency. The Owner shall provide this certification as part of the annual submission to the Agency that is required by Section 9.01.
- (l) **Reporting of Non-Compliance to IRS.** Actions taken or authorized to be taken by the Agency after a Default are in addition to the Agency's obligations under the Internal Revenue Code to report acts of non-compliance to the IRS pursuant to the Agency's LIHTC monitoring procedures.
- (m) **Retention of LIHTC Records.** The Owner shall retain all Records relating to the rental or occupancy of each Unit that is designated as a low-income unit pursuant to Section 42 of the Internal Revenue Code for a minimum of six years after the end of the Extended Use Period.

3.08 Tax-Exempt Bonds or Obligations.

- (a) **Tax Exemption Requirements.** The Owner shall comply, and shall cause the Project to comply, with the applicable provisions of this Agreement, the Internal Revenue Code, and any other Laws in order to preserve the exclusion from gross income for purposes of federal income taxation of interest on the HDC Obligations.
- (b) **Changes to Project.** The Owner shall make no change in the amount of residential and non-residential space or in the number of Units, which in the opinion of HDC's 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 HDC Obligations

- (c) **Minimum Set-Aside.** The Owner shall not reduce the percentage of Units in the Project that meet the affordability requirements of Section 142 of the Internal Revenue Code below the amount required by the minimum set-aside test that the Owner has elected to meet with respect to the Project, unless the Owner receives the prior written consent of HDC.
- (d) **Annual Certification.** The Owner 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 required by the Secretary of the Treasury, an annual certification (IRS Form 8703) as to whether the Project continues to comply with the requirements of Section 142(d)(7) of the Internal Revenue Code. Any failure to submit this certification will not affect the exclusion from gross income for purposes of federal income taxation of interest on the HDC Obligations but will subject the Owner and such operator to a penalty pursuant to Section 6652(j) of the Internal Revenue Code.
- (e) **Purchase of HDC Obligations.** Neither the Owner (including, but not limited to, any person with a direct or indirect ownership interest in the Owner as a LIHTC investor or otherwise) nor any "related person" to the Owner, as defined in Section 144(a)(3) of the Internal Revenue Code, shall purchase HDC Obligations (other than "pledged bonds" or "bank bonds", each as defined in the resolution governing the HDC Obligations)) in an amount related to the amount of the HDC Financing funded by the HDC Obligations.
- (f) **Annual Tenant Certifications.** The Owner shall annually (i) obtain a certification of Annual Income, Household size, and student status from each Tenant residing in a Unit that is designated with affordability restrictions as part of the qualified residential rental project under Section 142 of the Internal Revenue Code, along with supporting documentation, (ii) verify the Tenant's Annual Income in accordance with the Law, and (iii) determine whether the Tenant continues to qualify as an Eligible Household. The Owner shall furnish to the Agency annually, or more frequently if required in writing by the Agency, a certification by the Owner documenting the annual tenant certifications provided in accordance with this Section 3.08(f), along with any supporting documentation requested by the Agency. The Owner shall provide this certification as part of the annual submission to the Agency that is required by Section 9.01.
 - (i) **LIHTC Building.** Notwithstanding subsection (f) above, if a LIHTC Building contains only Units that are designated with affordability restrictions as part of the qualified residential rental project under Section 142 of the Internal Revenue Code (excluding any Superintendent Unit), then on an annual basis, the Owner shall obtain a certification of Household size and student status from each Tenant residing in the LIHTC Building, along with supporting documentation, but the Owner is not required to obtain a certification of Annual Income from the Tenant for purposes of the HDC Obligations.

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ARTICLE 4
PROJECT OCCUPANCY

4.01 Occupancy Restrictions.

- (a) **Income Limits.** The Owner shall lease each Income-Restricted Unit to an Eligible Household whose Annual Income upon initial occupancy does not exceed the income limit for the Unit that is required by Exhibit B. The Owner shall distribute the Income-Restricted Units by apartment size as set forth in Exhibit B. The Owner shall designate each Income-Restricted Unit by income limit and provide a certified schedule of unit designations to the Agency upon request. If this Agreement requires tiers of income limits, no Income-Restricted Unit may count for more than one tier.

- (b) **Accessibility Set-Asides.**
 - (i) **Mobility Disabilities.** The Owner shall ensure that not less than 5% of the Units, or one Unit, whichever is greater, is accessible to and set aside for Households that include an individual with a mobility disability, unless HPD determines that the Project may be exempted from this requirement under the Law. The Owner shall designate each such Unit and provide a certified schedule of unit designations to the Agency upon request.

 - (ii) **Hearing and Vision Disabilities.** The Owner shall ensure that not less than an additional 2% of the Units, or one Unit, whichever is greater, is accessible to and set aside for Households that include an individual with a hearing or vision disability, unless HPD determines that the Project may be exempted from this requirement under the Law. The Owner shall designate each such Unit and provide a certified schedule of unit designations to the Agency upon request.

(c) **Homeless Housing.**

- (i) **Referral Requirement.** The Owner shall lease no fewer than the number of Income-Restricted Units set forth in Exhibit B as "**Homeless Units**" to Eligible Households: (1) who are referred by HPD or an alternate referral source approved by HPD, and (2) who prior to initial occupancy of a Unit lived in emergency shelter facilities operated by or on behalf of the City or who are otherwise in need of emergency shelter as determined by the City. If required by the Agency, the Owner shall (x) distribute the Homeless Units by apartment size as set forth in Exhibit B, and (y) designate the Homeless Units and provide a certified schedule of unit designations to the Agency upon request. In addition, the Owner shall enter into a lease meeting the requirements of this Agreement with each Tenant residing in a Homeless Unit and shall include each such Tenant on the Project's rent roll.
- (ii) **Statutory Minimum (Title 28, Ch. 26 of the Ad. Code).** Notwithstanding anything to the contrary in this Agreement, Section 26-2802 of the Administrative Code requires the Owner to lease not less than 15% of the Income-Restricted Units as Homeless Units.

4.02 Changes to Project.

The Owner shall not change the amount of residential and non-residential space in the Project (except for de minimis changes during construction) or the number or distribution of Units without the prior written consent of the Agency, except in the case of an involuntary change caused by unforeseen events such as fire or other casualty, seizure, requisition, or condemnation. The Owner shall notify the Agency promptly of any such involuntary change.

4.03 Integration of Units.

The Owner shall not segregate or physically isolate the Income-Restricted Units from any other Units in the Project. The Owner shall reasonably disperse Income-Restricted Units at each income limit throughout the Project. The Agency reserves the right to require the Owner to obtain the Agency's prior written consent for any distribution, designation, or "stacking" plan for the Project.

4.04 Primary Residence.

- (a) **In General.** The Owner shall offer each vacant Income-Restricted Unit for occupancy, and shall ensure that each Income-Restricted Unit is actually occupied, only (i) as a primary residence, as defined by Rent Stabilization, (ii)

pursuant to a one- or two-year lease, and (iii) by one or more individuals who are otherwise eligible to occupy the Unit pursuant to this Agreement.

- (b) **No Transient Uses.** The Owner shall not cause or permit the lease, sublease, assignment, use, or occupancy of any Unit or the Project (i) on a transient basis or (ii) as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park.
- (c) **Leasing to Entities.** The Owner shall not cause or permit the lease, sublease, assignment, use, or occupancy of any Income-Restricted Unit to or by a corporation, partnership, limited liability company, or other entity, unless it is approved in writing by the Agency and not prohibited by Law.
- (d) **Surrender of Other Housing.** The Owner shall not knowingly cause or permit the lease, sublease, or assignment of any Income-Restricted Unit to any Household that includes any individual who is an occupant of another home, dwelling unit, rooming unit, or other housing accommodation, unless the individual simultaneously surrenders possession of, and all legal right to, the other home, dwelling unit, rooming unit, or other housing accommodation.

4.05 Lease-Up and Marketing.

- (a) **Rental to the General Public.** The Owner shall rent or make available for rental each Unit (excluding any Superintendent Unit) on a continuous basis and to the general public, subject to the requirements of this Agreement.
- (b) **Timely Rental of Units.** The Owner shall rent vacant Income-Restricted Units as soon as possible and shall not hold any Income-Restricted Unit off the market for a period that is longer than reasonably necessary to perform needed repairs, unless otherwise approved in writing by the Agency. The Owner shall notify the Agency if any Income-Restricted Unit has been vacant for four months or more.
- (c) **Marketing.** The Owner shall comply with the Marketing Handbook and all related Laws in the marketing and lease-up of each Income-Restricted Unit, including the re-rental of any Income-Restricted Unit that becomes vacant at a future date.

4.06 Qualification of Eligible Households.

- (a) **Determination of Eligibility.** Prior to the rental of any vacant Income-Restricted Unit, the Owner shall determine whether the prospective Tenant of the Unit is an Eligible Household. The Owner shall comply with all related procedures and standards set forth in the Marketing Handbook, including, but not limited to, by submitting the required Tenant eligibility documentation to the Agency for review and approval prior to any lease signing.
- (b) **Tenant's Failure to Certify; Fraud.** If a Tenant of an Income-Restricted Unit fails to provide the Owner with a certification or document that is required by this

Agreement within 60 days of the Owner's request, or if any such Tenant provides false or fraudulent materials at any time (including, but not limited to, as part of the Tenant's initial application for the Unit), the Owner may, or at the written request of the Agency shall, to the extent permitted by Law, refuse to offer a renewal lease to the Tenant and commence legal action to evict the Tenant. If the Owner does not promptly commence legal action to evict the Tenant, or does not diligently pursue the legal action to the satisfaction of the Agency, then for so long as either remains the case, the Owner shall lease the next available vacant Unit of comparable or smaller size to an Eligible Household whose Annual Income upon initial occupancy does not exceed the income limit for the Unit that is occupied by the non-complying Tenant (or the income limit that would otherwise apply to the vacant Unit, if lower), prior to renting any other Unit of comparable or smaller size.

4.07 Leases of Units.

- (a) **Form of Lease.** In renting Units to Tenants, the Owner shall use a form of lease that is consistent with this Agreement and satisfactory to the Agency. The Owner shall ensure that its leases of Units, including, but not limited to, the riders to such leases, comply with the Law.
- (b) **Subordination.** The Owner shall ensure that all leases of Units are expressly subordinate to this Agreement and to any Permitted Mortgage. The Owner shall not include in any lease of a Unit, or in any rider to such a lease, any provision that conflicts with this Agreement, nor shall the Owner enforce any such provision that may be included in such a lease or rider. To the extent permitted by Law, this Agreement controls if it conflicts with any other requirement of, or applicable to, the Owner's leases of Units.
- (c) **Agency Lease Rider.** If required by the Agency in writing, and to the extent permitted by Law, the Owner shall include one or more lease riders provided or approved by the Agency in each lease of an Income-Restricted Unit.

4.08 Subleases and Assignments.

- (a) **Subleasing Requirements.** The Agency may require the Owner to prohibit the sublease of any Income-Restricted Unit in accordance with Law. If the Agency permits subleasing with respect to any Income-Restricted Unit, prior to consenting to any such sublease, the Owner shall notify the Agency of the proposed sublease at least 30 days before the effective date of the sublease and shall qualify the proposed subtenant as an Eligible Household for the Unit pursuant to Section 4.06. The Owner shall not cause or permit the sublease of any Unit to or by any Household that is not eligible to occupy the Unit pursuant to this Agreement. The Owner shall ensure that no subtenant is required to pay a rent that exceeds the maximum amount that may be charged under the Law and this Agreement.

- (b) **No Assignments.** The Owner shall not consent to the assignment of any lease of an Income-Restricted Unit.

4.09 Right to Renewal Lease.

The Owner shall offer each Tenant in occupancy of an Income-Restricted Unit a renewal lease in accordance with, and subject to, the requirements of Rent Stabilization. The Owner shall not refuse to permit any such Tenant to remain in occupancy of the Unit because the Tenant's Annual Income, after initial occupancy of the Unit, exceeds the maximum permitted for initial occupancy of the Unit.

4.10 Evictions.

The Owner shall not seek to evict or terminate the tenancy of any Tenant of an Income-Restricted Unit for any reason that is not permitted by Rent Stabilization. The Owner shall comply with all Laws regarding the eviction or termination of a tenancy of any Tenant, including, but not limited to, any applicable requirements of Rent Stabilization.

4.11 Successors to Tenants.

Notwithstanding anything to the contrary in this Agreement, including, but not limited to, the definition of "Tenant", this Agreement does not require the Owner to provide a new lease to any successor to the tenancy of a Unit, unless doing so is required by Law.

4.12 Rental Assistance Status.

The Owner shall not refuse to lease a Unit to a recipient of Rental Assistance (including, but not limited to, a holder of a Rental Assistance voucher or certificate) because of the Rental Assistance.

4.13 Non-Discrimination.

- (a) **Compliance with Law.** The Owner and any lessees of all or part of the Property, or any Improvements, shall comply with all Laws prohibiting discrimination or segregation by reason of any of the following classes, whether actual or perceived: age; race; creed; religion; gender; gender identity; gender expression; sex; color; national origin; ancestry; sexual orientation; disability; marital status; partnership status; familial status; immigration status; citizenship status; lawful source of income (including, but not limited to, income derived from Social Security, or any form of federal, state, or local public government assistance or housing assistance, including, but not limited to, Rental Assistance); lawful occupation; uniformed service; the actual, potential, or future residence of children with such person or persons; status as a victim of domestic violence, stalking, or sex offenses; the presence of an emotional support animal; or any other class protected from discrimination in housing accommodations by Law in the sale, lease, or occupancy of the Property or any Improvements.

- (b) **Sale, Lease, and Occupancy Agreements.** The Owner and any lessees of all or part of the Property, or any Improvements, shall not effect or sign any agreement, lease, conveyance, or other instrument whereby the sale, lease, or occupancy of all or part of the Property, or any Improvements, is restricted upon the basis of any class described in Section 4.13(a).
- (c) **Survival.** The Owner and any lessees of all or part of the Property, or any Improvements, shall comply with Sections 4.13(a) and (b) both during and after the Restriction Period.

4.14 Conversion to Co-Op or Condo.

During the Restriction Period, the Owner shall not convert the Project to cooperative or condominium ownership of Units unless otherwise agreed to in writing by the Agency. The foregoing prohibition does not apply to any commercial condominium regime that is contemplated by this Agreement. After the Restriction Period, if the Owner converts the Project to cooperative or condominium ownership of Units, the Owner shall do so pursuant to a non-eviction plan with respect to Units and in compliance with all related Laws.

4.15 Next Available Unit Rule.

If the Annual Income of a Tenant of a Unit that is designated as a low-income unit pursuant to Section 42 of the Internal Revenue Code exceeds 140% of the income limit that applies to the Unit for purposes of the next available unit rule (i.e., the income limit of the Owner's minimum set-aside election under Section 42(g)(1)(A) or (B) of the Internal Revenue Code or, if the Owner has elected to meet the average income test of Section 42(g)(1)(C) of the Internal Revenue Code, the income limit that is required by Section 42(g)(2)(D)(iii) of the Internal Revenue Code), the Owner shall lease the next available vacant Unit in the LIHTC Unit 1 or LIHTC Unit 2 that is of comparable or smaller size and that is not a designated low-income unit pursuant to Section 42 of the Internal Revenue Code (if any) to a Tenant whose Annual Income does not exceed the income limit for the Unit that is required by the Internal Revenue Code (and subject to the rent restrictions that are required under the Internal Revenue Code and this Agreement), until the LIHTC Building's Applicable Fraction (as defined in Section 42(c)(1)(B) of the Internal Revenue Code) is at least equal to the Applicable Fraction that is required by Section 3.07(b).

4.16 Non-Residential Space.

- (a) **Agency Consent.** The Owner shall obtain the prior written consent of the Agency for any lease, sublease, license, or occupancy agreement affecting any non-residential portion of the Project. The Owner shall also obtain the prior written consent of the Agency for any amendment of such an agreement, if the amendment changes the permitted use or otherwise alters a material term.
- (b) **Non-Residential Leasing Guidelines.** Without limiting the conditions that the Agency may impose to provide a consent under Section 4.16(a), the Owner shall ensure that any lease, sublease, license, or occupancy agreement affecting any non-residential portion of the Project that is presented to the Agency for consent complies with any non-residential leasing guidelines that have been issued by the Agency.
- (c) **Prohibited Uses.** The Owner shall not permit the Property or the Project to be used for (i) any use that would violate the applicable zoning or certificate of occupancy; (ii) any use that the Agency reasonably determines may create a nuisance or hazard to the Tenants or a deleterious effect on their quiet enjoyment of their Units, the common areas of the Property, and the areas adjacent to the Property; or (iii) a store with a principal business of selling alcoholic beverages for consumption off-premises.
- (d) **Arm's-Length Leases.** The Owner shall not lease any non-residential space in the Project to an affiliate or principal of the Owner, or lease or otherwise permit occupancy of any such space at less than the prevailing market rent in the Project's neighborhood for a term of 10 years or more (including renewal

options), unless in each case the Owner has obtained the prior written consent of the Agency.

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ARTICLE 5
RESIDENTIAL RENTS

5.01 Rents Charged to Tenants.

(a) **In General.**

- (i) **Rent Limits.** The Owner shall lease each Income-Restricted Unit for a monthly rent that does not exceed the amount permitted by this Section 5.01 for the Unit. The Owner may lease an Income-Restricted Unit for less than the permitted amount if doing so does not endanger the financial viability of the Project.
- (ii) **Determining Rents.** This Agreement incorporates multiple limits on the rent for each Income-Restricted Unit, including (1) the legal regulated rent under Rent Stabilization, (2) a programmatic rent limit (usually based on a percentage of AMI and required by one or more subsidy programs), and (3) if applicable, a rent that is allowed by a Rental Assistance program. In entering into a lease of an Income-Restricted Unit, the Owner shall offer a rent that complies with each of the applicable limits, as reconciled in accordance with the rules given in this Agreement and any requirements of Law. Some of these rent limits may in practice equal the same amount at one or more points in time.

(b) **Certain Definitions.** In this Agreement:

- (i) **“Actual Rent”** means, with respect to any Unit, the monthly rent that the Owner may collect pursuant to its lease of the Unit and includes the rent required to be paid by the Tenant and any Rental Assistance, but not any applicable utility allowance.
- (ii) **“Legal Rent”** means, with respect to any Unit, the legal regulated rent for the Unit under Rent Stabilization, as may be adjusted pursuant to Rent Stabilization and Section 5.02(c).
- (iii) **“Maximum Program Rent”**, with respect to any Unit, has the meaning set forth in Exhibit B for the Unit. The Owner shall calculate the monthly rent limit for any percentage of AMI that is set forth as a Maximum Program Rent (or any other rent limit) on Exhibit B as 30% of the percentage of AMI, divided by 12, rounded down to the nearest whole dollar, and then minus the applicable utility allowance. To adjust AMI for family size in rent calculations, the Owner shall deem Units with no bedrooms to be occupied by one individual, and Units with one or more bedrooms to be occupied by 1.5 individuals per bedroom, regardless of the actual number of occupants.

- (iv) **“Renewal Lease Adjustment”** means the applicable rent adjustment pursuant to Rent Stabilization that has been approved by the New York City Rent Guidelines Board (or any successor) for a renewal lease of a dwelling unit.
 - (v) **“Rental Assistance Rent”** means, with respect to any Unit, the maximum monthly assistance payment for the Unit under the applicable Rental Assistance program before deducting any payment by the Tenant (i.e., the payment standard authorized by the government agency issuing a voucher (or similar right to subsidy), or the contract rent that is approved by the government agency administering a Rental Assistance Contract, as applicable), but in any case not to exceed the Maximum Rental Assistance Rent, if any, that is set forth in Exhibit B for the Unit.
 - (vi) **“Rental Assistance Unit”** means an Income-Restricted Unit that receives, or that is occupied by a Tenant who receives, Rental Assistance.
- (c) **Initial Rents.**
- (i) **General Rule.** Upon the initial lease after the date of this Agreement of an Income-Restricted Unit, the Owner shall lease the Unit for an Actual Rent that does not exceed the least of:
 - (1) the initial Legal Rent set forth in Exhibit B,
 - (2) the initial Actual Rent set forth in Exhibit B, and
 - (3) the Maximum Program Rent.
 - (ii) **Rental Assistance.** Notwithstanding subsection (i) above, and unless otherwise prohibited by Law, upon the initial lease after the date of this Agreement of an Income-Restricted Unit that is also a Rental Assistance Unit, the Owner may lease the Unit for an Actual Rent that does not exceed the least of:
 - (1) the initial Legal Rent set forth in Exhibit B,
 - (2) for any Unit that is covered by a Rental Assistance Contract, the initial Actual Rent set forth in Exhibit B, and
 - (3) the Rental Assistance Rent.

(d) **Renewal Leases.**

(i) **General Rule.** Upon the renewal of a lease of an Income-Restricted Unit, the Owner shall lease the Unit for an Actual Rent that does not exceed the least of:

- (1) the Legal Rent,
- (2) the Actual Rent in effect for the prior lease term adjusted by the Renewal Lease Adjustment, and
- (3) the Maximum Program Rent.

(ii) **Rental Assistance.** Notwithstanding subsection (i) above, and unless otherwise prohibited by Law (including, but not limited to, any applicable restriction on adjustments to preferential rents under Rent Stabilization), upon the renewal of a lease of an Income-Restricted Unit that is also a Rental Assistance Unit, the Owner may lease the Unit for an Actual Rent that does not exceed the lesser of:

- (1) the Legal Rent, and
- (2) the Rental Assistance Rent.

(e) **Vacancy Leases.**

(i) **General Rule.** Upon the vacancy of an Income-Restricted Unit, the Owner shall lease the Unit for an Actual Rent that does not exceed the lesser of:

- (1) the Legal Rent, and
- (2) the Maximum Program Rent.

(ii) **Rental Assistance.** Notwithstanding subsection (i) above, and unless otherwise prohibited by Law, upon the vacancy of an Income-Restricted Unit that will become or remain a Rental Assistance Unit, the Owner may lease the Unit for an Actual Rent that does not exceed the lesser of:

- (1) the Legal Rent, and
- (2) the Rental Assistance Rent.

- (f) **Additional Rental Assistance Requirements.**
- (i) **Tenant Rent Share Generally.** The Owner shall not charge or collect from the Tenant of any Rental Assistance Unit any tenant rent share or other portion of the rent that is required to be paid by the Tenant under the applicable Rental Assistance program exceeding (1) the amount that the Tenant is required to pay under the applicable Rental Assistance program, and (2) the amount that is allowed by Law (including, but not limited to, any Laws with respect to applicable subsidy programs).
 - (ii) **Tenant Rent Share Limited to Maximum Program Rent.** The Owner shall not charge or collect from the Tenant of any Rental Assistance Unit any tenant rent share or other portion of the rent that is required to be paid by the Tenant under the applicable Rental Assistance program that is greater than the Maximum Program Rent.

5.02 Rent Stabilization.

- (a) **Units Subject to Rent Stabilization.** All Income-Restricted Units are subject to Rent Stabilization both during and after the Restriction Period. The Owner shall register and operate the Project and all such Units in accordance with, and shall otherwise comply with, Rent Stabilization, including, but not limited to, all procedures and guidelines of DHCR. This Agreement imposes additional restrictions limiting certain rights that the Owner may otherwise have under Rent Stabilization both during and, where specified, after the Restriction Period.
- (b) **No Exemptions.** Except as may be specifically set forth in this Agreement, the Owner shall not claim any exemption or exclusion from Rent Stabilization to which the Owner might be entitled with respect to any Unit that is subject to Rent Stabilization. This prohibition includes, but is not limited to, any exemption or exclusion from the rent limits, renewal lease requirements, registration requirements, or any other provision of Rent Stabilization due to the vacancy of a Unit where the rent exceeds a certain amount, the fact that the Tenant's income and rent exceed certain amounts, the nature of the Tenant or the Owner, or any other factor. This provision continues to apply to Income-Restricted Units after the Restriction Period until any such Unit becomes vacant (unless the vacancy results from a breach of the warranty of habitability, harassment, constructive eviction, or any similar action caused by the Owner). The Owner may claim any exemption that is permitted under Rent Stabilization for a Superintendent Unit.
- (c) **Permitted Rent Adjustments.**
 - (i) **Renewal Lease Adjustments Only.** Except for Renewal Lease Adjustments and any other exceptions set forth in this Section 5.02(c), the Owner shall not increase the Legal Rent or the Actual Rent for an

Income-Restricted Unit for any other reason that may be allowed under Rent Stabilization, including, but not limited to, a vacancy lease increase, a major capital improvement increase (“**MCI Increase**”), or an individual apartment improvement increase. This provision continues to apply to Income-Restricted Units after the Restriction Period until any such Unit becomes vacant (unless the vacancy results from a breach of the warranty of habitability, harassment, constructive eviction, or any similar action caused by the Owner).

- (ii) **Exception for Rental Assistance Units.** Upon the renewal of a lease of an Income-Restricted Unit that is and will remain a Rental Assistance Unit, the Owner may increase the Actual Rent for the Unit as may be allowed under Rent Stabilization but not to exceed the amount allowed by Section 5.01(d)(ii).
- (iii) **Exception for Certain Vacancy Lease Increases.** Upon the vacancy of an Income-Restricted Unit, if the Legal Rent is less than the Maximum Program Rent, the Owner may claim any vacancy lease increase permitted under Rent Stabilization (which may be none), but not in any amount that increases the Legal Rent to more than the Maximum Program Rent.
- (iv) **Exception for Certain MCI Increases.** Beginning on the 30th anniversary of the date of this Agreement, and so long as (1) the Property and the Project are not subject to any mortgage or lien held by or on behalf of the City or the Agency, and (2) the Owner does not owe any indebtedness to the City or the Agency, and the Owner may apply to DHCR for MCI Increases with respect to work that is performed after such date. Except as may be approved in writing by the Agency, the Owner shall not apply for any MCI Increase in connection with work that is funded or reimbursed from Agency loan proceeds or any reserve account required by this Agreement. If DHCR approves an MCI Increase, then upon the next renewal or vacancy lease of an Income-Restricted Unit, the Owner may increase the Legal Rent and the Actual Rent for the Unit by the lesser of (A) the approved MCI Increase and (B) an amount that increases the rent to the Maximum Program Rent.

(d) **Registration.**

- (i) **Initial Registrations.** The Owner shall complete the initial building registrations of the Project and the initial apartment registration for each occupied Unit that is subject to Rent Stabilization, all in accordance with Rent Stabilization, no later than 60 days following: (1) the Project’s receipt of a temporary or final certificate of occupancy, or (2) the date of this Agreement, if the Project does not require a new certificate of occupancy. If a Unit is subject to Rent Stabilization and is vacant at the time the Owner completes the initial building registrations of the Project, the Owner shall complete the initial apartment registration of the Unit no

later than 60 days following the lease-up of the Unit. The Owner shall provide the Agency with satisfactory proof of all initial registrations promptly upon request.

- (ii) **Annual Registrations.** On an annual basis in accordance with Rent Stabilization, the Owner shall complete the annual rent registrations for each Unit that is subject to Rent Stabilization. The Owner shall provide the Agency with satisfactory proof of all annual rent registrations promptly upon request.
 - (iii) **Registered Rents.** For each Unit that is subject to Rent Stabilization, the Owner shall register: (1) on any initial apartment registration, the initial Legal Rent for the Unit set forth in Exhibit B, and (2) on any annual rent registration, the Legal Rent then in effect for the Unit. If at the time of any registration of a Unit in accordance with Rent Stabilization, the Actual Rent for the Unit is less than the Legal Rent, the Owner shall register the Actual Rent then in effect as a preferential rent under Rent Stabilization (or shall register the Actual Rent as the Legal Rent if required by Law).
- (e) **Destabilization; Contractual Rent Regulation.**
- (i) **Renewal and Vacancy Leases.** If any Unit that is subject to Rent Stabilization undergoes any set of facts that causes Rent Stabilization to no longer apply to the Unit during the Restriction Period, whether by expiration, legislative repeal, judicial invalidation, or any other reason ("**Destabilization**"), then the Owner shall offer renewal and vacancy leases for the Unit on the same terms as had been required by Rent Stabilization at the time of Destabilization (subject to subsections (ii) and (iii) below), as if the Unit were still subject to and not exempted or excluded from any provision of Rent Stabilization (including, but not limited to, the exemptions or exclusions identified in Section 5.02(b)).
 - (ii) **Legal Rent Index.** After Destabilization, HPD shall establish an index for determining adjustments to the Legal Rent upon the renewal of a lease or vacancy of a Unit. HPD shall base this index on inflation or on factors substantially equivalent to the factors considered in calculating adjustments to rents under Rent Stabilization at the time of Destabilization. HPD shall incorporate into the index, or separately establish, a method for determining and implementing MCI Increases, to the extent they are not prohibited under this Agreement. HPD shall publish the index in *The City Record* and shall provide a copy to the Owner upon request.
 - (iii) **Rent Adjustments.** After Destabilization, where this Agreement permits or requires rent adjustments pursuant to Rent Stabilization (or similar language), the Owner shall adjust the applicable rent pursuant to the method established by HPD and described in subsection (ii) above.

5.03 Loss of Rental Assistance.

If (a) a Tenant receiving tenant-based or project-based Rental Assistance is occupying an Income-Restricted Unit, (b) the Actual Rent for the Tenant's Unit exceeds the amount that may be collected for a non-Rental Assistance Unit under Section 5.01, and (c) the Tenant loses the Rental Assistance at any time, then upon the loss of Rental Assistance, the Unit is no longer a Rental Assistance Unit and the Owner shall immediately revise the Tenant's Actual Rent 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 5.01(d). The Owner shall not charge or collect from any such Tenant any amount that exceeds the amount permitted by this Section 5.03.

5.04 After the Restriction Period.

- (a) **Renewals for In-Place Tenants.** After the Restriction Period, upon each renewal of a lease of an Income-Restricted Unit to a Tenant who began occupancy before the end of the Restriction Period, the Owner shall lease the Unit for an Actual Rent that does not exceed the lesser of (i) the Legal Rent and (ii) the Actual Rent in effect for the prior lease term adjusted by the Renewal Lease Adjustment.
- (b) **Upon Vacancy.** Upon the vacancy after the Restriction Period of any Unit that is subject to Rent Stabilization, the Owner shall continue to comply with Rent Stabilization with respect to the Unit as described in Section 5.02.
- (c) **Reduction of Legal Rents.** Upon the first lease (renewal or vacancy) of a Unit after the end of the Restriction Period, if the Legal Rent for the Unit is higher than the Maximum Program Rent that had applied to the Unit during the Restriction Period, the Owner shall reduce the Legal Rent in the lease to an amount that does not exceed such Maximum Program Rent (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 to the rent allowed by Rent Stabilization. The Owner shall register this reduced Legal Rent as the new Legal Rent for the Unit under Rent Stabilization on the first registration date following the effective date of the lease. If, at such time, this Agreement requires the Owner to offer an Actual Rent for the Unit that is lower than the reduced Legal Rent, the Owner shall register any such Actual Rent as a preferential rent under Rent Stabilization (or shall register the Actual Rent as the Legal Rent if required by Law). If a Unit remains a Rental Assistance Unit at the end of the Restriction Period, this provision applies only upon the first lease of the Unit after the end of the Restriction Period in connection with which the Unit is no longer a Rental Assistance Unit.

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ARTICLE 6
PROJECT OPERATIONS

6.01 Standard of Care.

The Owner shall operate the Project in accordance with the Law and with generally accepted management practices for a reasonably prudent owner of property located in New York City containing buildings or improvements similar to the Project in type, size, use, and value. If a management practice that is required by this Agreement differs from any such generally accepted management practice, the Owner shall comply with the management practice that is required by this Agreement.

6.02 Maintenance of Project.

- (a) **Condition of Units.** The Owner shall ensure that each Unit is suitable for occupancy, is similarly constructed, and contains living, sleeping, eating, cooking, and sanitation facilities for an individual or family.
- (b) **Maintenance.** The Owner shall (i) maintain the Project in a proper, safe, sanitary, and healthful condition in compliance with all Laws, (ii) make all necessary repairs and replacements, and (iii) neither cause nor permit waste of the Improvements, the Equipment, or any other part of the Project.
- (c) **Correction of Violations.** The Owner shall cure all violations of the Housing Maintenance Code, Building Code, and other Laws regarding the occupancy, use, or physical condition of the Project, and the services provided to Tenants, within the period set by Law.
- (d) **Alterations.** The Owner shall not cause or permit any Improvement to be structurally altered, removed, or demolished without the prior written consent of the Agency. The Owner shall not cause or permit any Equipment to be removed at any time without the prior written consent of the Agency, unless the Equipment is actually replaced by an article that is substantially equal in value and suitability for the proper use of the Property or the Equipment is obsolete and not required for the proper use of the Property as contemplated by this Agreement. Any such replacement that is owned by the Owner must be owned free and clear of all security interests, liens, and encumbrances (except for any Permitted Mortgage).
- (e) **Restoration after Casualty.** The Owner shall promptly restore, in quality that is at least substantially equal to the original work, any part of the Property that may be damaged or destroyed by a casualty (including, but not limited to, any casualty for which insurance was not obtained or obtainable).
 - (i) **Availability of Insurance Proceeds.** If a casualty is covered by insurance that is required by this Agreement, the Owner's obligation to restore the Property following the casualty is contingent upon any loss payee under the insurance policy (who is permitted to be a loss payee by

this Agreement) providing the insurance proceeds to the Owner, or any portion of the proceeds that is sufficient to complete the restoration, whichever is less. If a loss payee provides insurance proceeds to the Owner, the Owner shall restore following a casualty even if the proceeds are not sufficient to complete the work.

- (ii) **Application of Proceeds to Indebtedness.** The Owner is not required to restore following a casualty if (1) a loss payee permitted under this Agreement does not allow the insurance proceeds to be used in such a manner, and (2) the insurance proceeds are sufficient to pay in full or material part, and are in fact used to pay in full or material part, the indebtedness due to the loss payee.

6.03 Taxes and Municipal Charges.

The Owner shall pay or cause to be paid all municipal charges with respect to the Project in a timely manner, including, but not limited to, taxes, water charges, sewer rents, and vault charges and license fees for the use of vaults, chutes, and similar areas adjoining the Property. The Owner shall pay or cause to be paid all such charges prior to the date that any fine, penalty, interest, or cost may be added to the charge or imposed by Law for nonpayment.

6.04 Records; Retention.

The Owner shall maintain complete, accurate, and current Records. “**Records**” means any physical or electronic books, records, files, accounts, reports, materials, documents, or information of or relating to the Owner or the Project, or the management, operations, assets, liabilities, or activities of the Owner or the Project, including, but not limited to, any required reports or other items specified in this Agreement and any journals, ledgers, account statements, checkbooks, vouchers, contracts, correspondence, stock books, or minute books. The Owner shall retain all Records for not less than six years following the end of the year in which the Record was produced, or for any longer period that may be required by Law. In addition, if any litigation, claim, or audit concerning this Agreement has begun before the end of such period, the Owner shall retain all Records until the completion of the litigation, claim, or audit.

6.05 Contracting.

- (a) **Service and Maintenance Contracts.** The Owner shall enter into any service and maintenance contracts with respect to the Project only with qualified vendors and at commercially reasonable and customary fees.
- (b) **Equal Opportunity.** The Owner 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.

6.06 HPD Building Registration.

The Owner shall register the Property with HPD pursuant to Article 2 of Subchapter 4 of the Housing Maintenance Code.

6.07 Property Management.

- (a) **Managing Agent.** The Owner shall obtain the prior written consent of the Agency before retaining, terminating, or making any changes to any managing agent of all or any portion of the Project, or any sub-agent (collectively and individually, "**Managing Agent**").
- (b) **Management Agreement.** The Owner shall obtain the prior written consent of the Agency before entering into, terminating, or making any changes (other than exercising a renewal option in an Agency-approved agreement) to any agreement between the Owner and a Managing Agent with respect to the Project ("**Management Agreement**"). The Owner shall ensure that the Management Agreement satisfies the following requirements: (i) the Owner must be able to terminate the Management Agreement without cause and without penalty upon not more than 30 days' notice; (ii) the term of the Management Agreement must be for not less than one year, unless approved in writing by the Agency; (iii) the management fee must not exceed the amount set forth in Exhibit B; and (iv) the Managing Agent must procure and maintain a fidelity bond or insurance for the benefit of the Owner in accordance with subsection (c) below.
- (c) **Fidelity Bond.** The Owner shall ensure that the Managing Agent maintains a blanket position fidelity bond or insurance covering all employees and officers of the Managing Agent performing work related to the Project. The fidelity bond or insurance must have a limit of not less than three months' gross rent for the Project, unless otherwise approved in writing by the Agency, and must be issued by an insurer meeting the requirements of Section 6.08(n). The Owner shall furnish evidence of the fidelity bond or insurance to the Agency upon request.
- (d) **Removal of Managing Agent.** If the Agency provides a written demand to the Owner to replace a Managing Agent, the Owner shall immediately give notice of termination under the Management Agreement, and shall fully end any services provided by the Managing Agent on or before the date that is 30 days after the Owner's receipt of the Agency's demand. If the Owner cannot with due diligence fully end any service provided by the Managing Agent during such 30-day period, the Agency may grant an extension of such period as long as the Owner is diligently pursuing the termination to the satisfaction of the Agency. In addition, the Owner shall promptly arrange for new management of the Project and obtain the required approvals of the Agency. The Agency may demand that the Owner replace the Managing Agent for any reason and without penalty, including, without limitation, because the Project is not being operated in compliance with this Agreement or because the Managing Agent is not operating other housing in compliance with the Law or applicable agreements. The Agency may, but is not required to, provide a period for the Owner or the Managing Agent to cure any reasons for such a demand.

6.08 Insurance.

- (a) **Obligation to Insure.** The Owner shall maintain or cause to be maintained, for the benefit of itself, the City, and HDC, the insurance policies that are required by this Agreement. The Owner is solely responsible for paying, or causing to be paid, all premiums, deductibles, self-insured retentions, and other amounts due with respect to each insurance policy required by this Agreement, whether or not the City or HDC is an additional insured. The Owner shall comply, and shall ensure that the Project complies, with all such policies. The Owner shall not cause or permit any act or failure to act that would adversely affect any required insurance policies.

- (b) **Commercial General Liability (Owner).** The Owner shall maintain or cause to be maintained commercial general liability insurance with respect to the Project with a per-location limit of not less than \$1 million per occurrence and \$2 million in the aggregate. This insurance must cover the Owner as named insured and all additional insureds against claims for property damage, bodily injury, and death occurring on, in, or about the Property, or arising out of the operation of the Project.
 - (i) **Scope of Coverage.** The Owner's liability insurance must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01 and must be issued on an occurrence rather than a claims-made basis. This insurance must also include: (1) contractual liability coverage, with defense provided in addition to policy limits for indemnities of the named insured; (2) independent contractors liability coverage; (3) broad-form property damage liability coverage; (4) a waiver of subrogation against all additional insureds; (5) a separation of insureds provision; and (6) personal and advertising injury liability coverage. During any period of substantial construction at the Project, the insurance must include owners and contractors protective liability coverage, including products and completed operations coverage to apply for two years following the completion of the work.

 - (ii) **Prohibited Exclusions.** The Owner's liability insurance must not exclude coverage relating to the emission of asbestos, lead, mold, or pollutants, and must not be subject to any other exclusion, except as required by Law or approved in writing by the Agency.

- (iii) **Umbrella or Excess Coverage.** In addition to the base limit required by Section 6.08(b), on and after the Permanent Loan Conversion, the Owner shall maintain or cause to be maintained umbrella or excess commercial general liability insurance with respect to the Project with a limit of not less than the amount that is determined as follows: if the Project contains 100 or fewer Units, \$10 million; or if the Project contains more than 100 Units, \$10 million plus \$45,000 per Unit for each Unit over 100.
- (c) **Commercial Property.** The Owner shall maintain or cause to be maintained commercial property insurance written on the special causes of loss form and protecting the Owner as named insured and all additional insureds from risks to the Improvements and the Equipment, with a limit that is not less than the full insurable value of such property on an agreed-value basis. This insurance must include replacement cost and waiver of subrogation endorsements in favor of the additional insureds. The amount of the coverage must be sufficient to prevent the application of any co-insurance clause.

 - (i) **Builder's Risk.** During any period of substantial construction at the Project, the Agency may require the Owner to maintain, or to cause its construction contractor to maintain, builder's risk insurance on a completed value, non-reporting form. During any such period, the Owner shall maintain this insurance, or cause it to be maintained, in addition to or, with the written consent of the Agency, in lieu of any other commercial property insurance. The insurance must cover losses on or damage to construction work and the storage and transport of materials, equipment, and supplies of any kind to be used in or incidental to the construction of the Project. The insurance must include a soft costs endorsement for actual losses sustained, with no monthly limit. Any builder's risk policy must permit the insured to occupy the Property prior to completion.
 - (ii) **Boiler and Machinery.** The Owner's property insurance must include boiler and machinery coverage in an amount satisfactory to the Agency and covering all boilers, machinery, air conditioning systems, pressure vessels, and similar equipment commonly covered under a broad-form boiler and machinery policy.
 - (iii) **Business Income.** The Owner's property insurance must include business income insurance in an amount sufficient to pay the total anticipated rental income for the Project for one year, or any longer period if required in writing by the Agency, for actual losses sustained with no monthly limit. This coverage is not required prior to completion of the initial construction of the Project.
 - (iv) **Prohibited Exclusions.** If the aggregate principal amount of the HDC Financing is \$40 million or more at any time during the permanent phase of the Project's financing, the Owner's property insurance must include terrorism insurance in an amount that satisfies State requirements. The

Owner shall obtain the prior written consent of the Agency for any other exclusion of coverage from the Owner's property insurance policy.

- (d) **Flood.** If any portion of the Project is located in a federal "special flood hazard area", the Owner shall maintain or cause to be maintained flood insurance covering the Owner as named insured and all additional insureds for each building in the Project and its contents in an amount equal to the lesser of (i) the maximum amount available per building under the national flood insurance program and (ii) the full replacement cost of the Improvements and the Equipment. If flood insurance is required, the Agency strongly recommends private flood insurance in addition to, or in place of, the federal coverage, but it is not required.
- (e) **Commercial Automobile Liability.** If vehicles are used in connection with the Project, the Owner shall maintain or cause to be maintained commercial automobile liability insurance with respect to the Project, with bodily injury and property damage limits of not less than \$2 million per occurrence, combined single limit. This insurance must cover the Owner as named insured and all additional insureds against liability arising out of the ownership, maintenance, or use of any owned, non-owned, or hired vehicles. The coverage must be at least as broad as the most recently issued ISO Form CA 00 01. The insurance must also include a waiver of subrogation against all parties named as additional insured. If any vehicles transport hazardous materials, the insurance must include pollution liability broadened coverage for covered autos (ISO Form CA 99 48) and proof of MCS-90.
- (f) **Commercial General Liability and Commercial Automobile Liability (Construction Contractor).** During any period of substantial construction at the Project, the Owner shall cause its construction contractor to maintain commercial general liability insurance and commercial automobile liability insurance satisfactory to the Agency. The contractor's insurance must include owners and contractors protective liability coverage, including products and completed operations coverage to apply for two years following the completion of the work. Any such policy must name the Owner as an additional insured.
- (g) **Workers' Compensation and Disability Benefits.** If the Owner has employees, the Owner shall maintain or cause to be maintained workers' compensation and disability benefits insurance as required by Law. In addition, the Owner shall ensure that its contractors (including any construction contractor and Managing Agent) maintain such coverage as applicable.
- (h) **Employer's Liability.** If the Owner has employees, the Owner shall maintain or cause to be maintained employer's liability insurance with a limit of not less than \$500,000 per occurrence, annual aggregate, combined single limit for bodily injury, personal injury, or property damage. This insurance must cover the Owner as named insured and all additional insureds if an employee is not eligible for, or is able to reject, statutory workers' compensation benefits, and the employee or other authorized person elects to sue for an injury or death deemed to have been sustained in the performance of duties on the Project. The

insurance must also include a waiver of subrogation against all parties named as additional insured. In addition, the Owner shall ensure that its contractors (including any construction contractor and Managing Agent) maintain such coverage as applicable.

- (i) **Other Insurance.** The Owner shall maintain or cause to be maintained insurance against other risks, in any amount that the Agency may reasonably require, if such insurance is then commonly carried by reasonably prudent owners of property located in New York City containing buildings or improvements similar to the Project in type, size, use, and value.
- (j) **Deductibles.** All deductibles must not exceed the amount that would be carried by a reasonably prudent owner of property located in New York City containing buildings or improvements similar to the Project in type, size, use, and value.
 - (i) **Maximum Liability Policy Deductibles.** On and after the Permanent Loan Conversion, the Owner shall ensure that all commercial general liability deductibles with respect to the Project do not exceed: \$25,000 for up to \$3 million of coverage; and \$50,000 for more than \$3 million in coverage, in each case per occurrence.
- (k) **City as Additional Insured.**
 - (i) **Liability Policies.** The Owner shall ensure that each liability insurance policy required by this Agreement names "The City of New York, together with its officials and employees, and each of their successors and assigns, as their interests may appear" as an additional insured, with coverage at least as broad as the most recently issued ISO Forms CG 20 10 and CG 20 26.
 - (ii) **Property Policies.** The Owner shall ensure that each property insurance policy required by this Agreement (including any flood or builder's risk policy) contains a standard mortgagee, loss payee, or additional insured clause, as applicable, naming "The City of New York, together with its officials and employees, and each of their successors and assigns, as their interests may appear" as an additional insured, and as a loss payee. If required by a senior lender to the Project that has been approved in writing by the Agency, the Owner may name the senior lender or its servicing agent as the sole loss payee.
 - (iii) **Contractor Policies.** If the Owner requires any contractor to maintain insurance and requires the contractor to list the Owner as an additional insured, the Owner shall ensure that the policy also lists "The City of New York, together with its officials and employees, and each of their successors and assigns, as their interests may appear" as an additional insured as described in this subsection (k).

- (l) **HDC as Additional Insured.**
- (i) **Liability Policies.** The Owner shall ensure that each liability insurance policy required by this Agreement names "New York City Housing Development Corporation, its successors and assigns, as their interests may appear" as an additional insured, with coverage at least as broad as the most recently issued ISO Forms CG 20 10 and CG 20 26.
 - (ii) **Property Policies.** The Owner shall ensure that each property insurance policy required by this Agreement (including any flood or builder's risk policy) contains standard mortgagee and loss payee clauses naming "New York City Housing Development Corporation, its successors and assigns, as their interests may appear" as a mortgagee, and as the sole loss payee.
- (m) **Evidence of Insurance.** Upon the Agency's request, the Owner shall provide the Agency with the following evidence of each insurance policy required by this Agreement: (i) a certificate of insurance satisfactory to the Agency accompanied by a completed certification of insurance broker or agent; (ii) any additional insured endorsements; and (iii) proof of payment of the policy's premium. With respect to workers' compensation and disability benefits insurance, the Owner shall provide the Agency with evidence of coverage or an exemption in a form acceptable to the New York State Workers' Compensation Board. ACORD forms are not acceptable proof of such insurance. Upon the Agency's request, the Owner shall provide the Agency with a copy of any insurance policy, including all declarations and endorsements, certified by an authorized representative of the issuing insurance carrier. The Agency's acceptance of a certificate or a policy does not excuse the Owner from maintaining or causing to be maintained the insurance required by this Agreement or from any liability arising from its failure to do so.
- (n) **Standard for Insurers.** The Owner shall obtain each insurance policy required by this Agreement from an insurer of recognized competence who is acceptable to the Agency and who is licensed to issue policies in New York State. Each insurer must also have an A.M. Best rating of not less than "A" / "Class XV".
- (o) **General Requirements for Policies.** The Owner shall ensure that each insurance policy required by this Agreement is satisfactory to the Agency and provides that: (i) the insurance is primary and non-contributory; (ii) the policy may not be cancelled, terminated, modified, or amended by the insurer or its authorized agent on less than 30 days' prior written notice to the Agency (or 10 days' for non-payment of premium); (iii) notice of any claim to the insurer by either the Agency or the Owner is sufficient notice under the policy; (iv) notice of any claim by the Agency is sufficient if given to the insurer or its authorized agent not more than 60 days after the later of the date that notice of the claim is delivered to the Owner, or the date that a notice of claim regarding such claim is filed with the Comptroller of the City; (v) no act or omission of the Owner will invalidate the policy as to the additional insureds, and no act or omission of the additional insureds will invalidate the policy as to the Owner; (vi) the insurer shall

defend the additional insureds under any and all circumstances relating to or arising out of this Agreement; (vii) the insurer may not refuse to defend on the grounds of negligence, negligence per se, or contributory negligence; and (viii) the presence of employees or agents of the additional insureds on the Property will not invalidate the policy as far as the additional insureds are concerned.

- (p) **Monetary Limits.** The minimum monetary limits that are required by the Agency for any insurance policy required by this Agreement are the greater of (i) the minimum limits set forth in this Agreement and (ii) the limits that are actually provided to the Owner as named insured under the insurance policy. The Agency may increase the monetary limits for insurance policies required by this Agreement on one or more occasions to reflect the insurance coverage that would be carried by a reasonably prudent owner of property located in New York City containing buildings or improvements similar to the Project in type, size, use, and value.
- (q) **Notice of Events.** Whenever notice of an event is required under an insurance policy required by this Agreement, the Owner shall provide the insurer with timely notice of the event on behalf of all additional insureds, even where the Owner may not be covered for the loss. The notice from the Owner to the insurer must state that the notice is being given on behalf of the additional insureds, and shall contain, to the extent known, (i) the policy number, (ii) the name of the named insured, (iii) the date and location of the event, (iv) the identity of the individuals or things injured, damaged, or lost, (v) the title of the claim or suit, if applicable, and (vi) the address, block, and lot of the Property. The Owner shall simultaneously send a copy of such notice to the Agency. If the Owner fails to comply with these requirements, the Owner shall indemnify the additional insureds that are required by this Agreement for all losses, judgments, settlements, and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice.
- (r) **No Release.** Maintaining insurance as required by this Agreement does not relieve the Owner of any other obligation under this Agreement or any other agreement by which the Owner is bound or preclude the Agency from exercising any rights under the Law, this Agreement, or any other agreement.
- (s) **Release of Claims.** The Owner waives all rights against the City, HDC, and each of their officials and employees, with respect to any losses that are or would be covered under an insurance policy required by this Agreement (whether or not the policy is actually procured or claims are paid under the policy) or any other insurance applicable to the operations of the Owner or its contractors.
- (t) **Right to Obtain Insurance.** After written notice to the Owner and not less than 10 business days to cure, the Agency may arrange to obtain any insurance that is required by this Agreement if the Owner fails to do so. The Owner shall reimburse the Agency upon demand for any amounts paid by the Agency or any agent to obtain such insurance, with interest at the Default Rate from the date of payment to the date of reimbursement by the Owner. Any arrangement to obtain insurance by the Agency will not waive a violation of this Agreement by the

Owner or any rights of the Agency under the Law, this Agreement, or any other agreement.

- (u) **Financing Requirements.** The Owner shall comply with any insurance requirements that may be imposed in connection with the financing of the Project, including, but not limited to, any greater monetary coverage limits that may be contained in any related mortgage or financing agreement.

6.09 Utilities.

- (a) **Building Benchmarking.** The Owner shall comply with the requirements of HPD's building benchmarking protocol. Upon the issuance of a temporary certificate of occupancy for any space in the Project, or as of the date of this Agreement if the Project already has a certificate of occupancy, the Owner shall contract, at the Owner's expense, with a qualified benchmarking software provider on the HDC-approved list to collect utility performance information with respect to the Project, including monthly and annual data on heating, electric, and water usage, in accordance with HPD's building benchmarking protocol. HPD may require the Owner to replace the qualified benchmarking software provider if the provider is no longer on the HDC-approved list.
- (b) **Utility Performance Reporting.** No later than May 1 of each year, the Owner shall ensure that the qualified software provider retained by the Owner inputs the utility performance information for the Project 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 in writing by the Agency. The Owner shall ensure that the utility performance information is made available to the Agency through an account located on such system. The Agency may also receive the utility performance information directly from the qualified benchmarking software provider, and the Owner consents to the sharing of such information with the Agency.
- (c) **Broadband Access.** The Owner shall make available to each Unit wireless broadband internet service and, upon request by a Tenant, wired broadband internet service with a wired connection point in the living room of such Tenant's Unit, each at no cost to the Tenant. The Owner shall comply with HPD guidelines regarding the level of broadband internet service and its operation and maintenance, including but not limited to fees, service speed, enhancements and repairs. If requested by the Agency, the Owner shall enter into a broadband access lease rider, in a form approved by the Agency, with each Tenant.

6.10 Mechanics and Tax Liens.

The Owner shall keep the Project and the Property free from any liens, charges, and encumbrances (except as otherwise permitted by this Agreement), including, but not limited to, mechanics and tax liens. If any such liens are filed against the Project or the Property, the Owner shall deliver a copy of the lien to the Agency no later than 30 days after filing, shall cause the lien to be discharged by payment, bonding, or otherwise to

the satisfaction of the Agency, and shall promptly deliver proof of such discharge to the Agency.

6.11 Loans by Owner.

The Owner shall not make loans for any purpose (whether secured or unsecured and whether repayable or forgivable) without the prior written consent of the Agency.

6.12 Reasonable Accommodations.

The Owner shall comply with all obligations under the Law to provide reasonable accommodations to individuals with disabilities.

6.13 Equal Access to Amenities.

The Owner shall ensure that all common areas and amenities at the Project are open to all Tenants on an equal basis, except as may be required by Law.

6.14 Distribution of Information.

The Owner shall post in a prominent location at the Project, or otherwise ensure that all Tenants receive, any information that may be required to be posted at the Project or distributed to Tenants by the Agency or by Law.

6.15 Operation of Homeless Units.

- (a) **Approval of Social Services.** Prior to the initial marketing of the Homeless Units, the Owner shall submit to HPD (i) a social services plan detailing the services and furnishings to be provided to Tenants of Homeless Units, a budget, and the provider of such services; or (ii) if required in writing by HPD, a social services contract with an approved provider or a commitment to enter into such a contract. The Owner shall not begin the initial lease-up of the Homeless Units until HPD has approved the social services plan or contract in writing. Evidence satisfactory to the Agency of a services award from an Agency-approved source will satisfy the foregoing requirement.
- (b) **Provision of Social Services.** The Owner shall ensure that all social services required by subsection (a) above are provided on a continuous basis with respect to the Project, subject to the availability of funding for such services. The Owner shall obtain the prior written consent of HPD before terminating or making any changes to an approved social services plan, or before terminating or making any changes (other than exercising any renewal options) to a contract with an approved provider with respect to the Project. The Owner shall provide HPD with notice of any default or material change with respect to a social services contract no later than 30 days after the date on which the Owner obtains evidence in writing that any such default or material change has occurred or may occur.
- (c) **Furnishings.** Prior to the initial rental of any Homeless Unit, the Owner shall furnish the Homeless Unit in a manner that is satisfactory to HPD or, if the

funding for the furnishings is provided by another government agency, ensure that the Homeless Unit is furnished in a manner that is satisfactory to the government agency providing the funding for the furnishings.

6.16 Intentionally Omitted.

6.17 Intentionally Omitted.

6.18 Environmental Requirements.

The Owner shall comply, and shall ensure that the Project complies, with the environmental mitigation requirements annexed to this Agreement as Exhibit E and made a part of this Agreement.

6.19 Building Service Prevailing Wage.

The Owner is subject to Section 6-130 of the Administrative Code, which requires the Owner to pay a prevailing wage to building service employees at the Project in accordance with a schedule of wage and benefit rates published annually by the Comptroller of the City. The Owner shall comply with Section 6-130 of the Administrative Code and shall provide the City with all information that may be required, or that the City may reasonably request, in connection with the administration or enforcement of this law. The Owner shall not claim any exemption or exclusion from the prevailing wage requirements of Section 6-130 of the Administrative Code to which the Owner might be entitled without the Agency's prior written consent.

6.20 Building Service Prevailing Wage.

- (a) **Prevailing Wage Requirement.** The Owner shall pay a prevailing wage, as defined in Section 6-130(a) of the Administrative Code, or shall ensure that such a prevailing wage is paid, to any building service employee, as defined in Section 6-130(a) of the Administrative Code ("**Building Service Employee**") who is employed in the Project, regardless of whether the Owner is the direct employer of such Building Service Employee. The Owner shall not discriminate or retaliate against any Building Service Employee who makes a claim for wages due as provided by this prevailing wage requirement.
- (b) **Administrative Requirements.** The Owner shall comply with the certification, record-keeping, and notice-posting requirements of Sections 6-130(c)(2), (3), and (4) of the Administrative Code.
- (c) **Enforcement.** The Mayor of the City or the Mayor's designee may enforce subsections (a) and (b) above pursuant to Sections 6-130(d)(2), (4), (6), and (8) of the Administrative Code. The parties to this Agreement incorporate these provisions of law, with respect to the role of the Mayor or the Mayor's 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, the Mayor's designee, or the Office of Administrative Trials and Hearings (or any successor) in accordance with the referenced provisions of the Administrative Code. Further, either the Mayor (or the Mayor's 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 Section 6-130(d)(6) of the Administrative Code. In addition, the Comptroller of the City has the authority to investigate prevailing wage violation complaints in accordance with Section 6-130(d)(3) of the Administrative Code, 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 6.20 and has the right to enforce its prevailing wage requirement, but only if the enforcement provisions of Sections 6-130(d)(2), (4), (6), and (8) of the Administrative Code are determined by a court of competent jurisdiction to be inapplicable to a violation of the prevailing wage requirement.

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ARTICLE 7

RESERVES

7.01 Replacement Reserve.

- (a) **Creation and Funding.** If required by Exhibit B, the Owner shall establish a replacement reserve account for the Project ("**Replacement Reserve**"), into which the Owner shall deposit funds as required by Exhibit B. The Owner shall segregate the Replacement Reserve from other funds of the Owner. Any interest earned on the Replacement Reserve must be added to the Replacement Reserve (net of taxes on such interest).
- (b) **Withdrawals.** The Owner must obtain the written consent of the Agency prior to any withdrawal from the Replacement Reserve. The Owner may request a withdrawal from the Replacement Reserve to pay for the cost of replacements and capital improvements to the Project and for extraordinary increases in maintenance and operating expenses beyond the control of the Owner, or otherwise as approved in writing by the Agency. In connection with a request for a withdrawal from the Replacement Reserve, the Owner shall provide any supporting documentation that may be required by the Agency, including, but not limited to, construction plans and bids from contractors.

7.02 Operating Reserve.

- (a) **Creation and Funding.** If required by Exhibit B, the Owner shall establish an operating reserve account for the Project ("**Operating Reserve**"), into which the Owner shall deposit funds as required by Exhibit B. The Owner shall segregate the Operating Reserve from other funds of the Owner. Any interest earned on the Operating Reserve must be added to the Operating Reserve (net of taxes on such interest).
- (b) **Withdrawals.** The Owner must obtain the written consent of the Agency prior to any withdrawal from the Operating Reserve. The Owner may request a withdrawal from the Operating Reserve to cover Project operating account deficits, or otherwise as approved in writing by the Agency. In connection with any request for a withdrawal from the Operating Reserve, the Owner shall provide any supporting documentation that may be required by the Agency, including, but not limited to, operating statements, documentation of unforeseeable circumstances, and bank statements.

7.03 Other Reserves.

- (a) **Creation and Funding.** The Owner shall establish any other reserve account for the Project that is identified in Exhibit B, into which the Owner shall deposit funds as may be required by Exhibit B. The Owner shall segregate each such reserve from other funds of the Owner. Any interest earned on such a reserve must be added to the reserve (net of taxes on such interest).
- (b) **Withdrawals.** The Owner must obtain the written consent of the Agency prior to any withdrawal from any other reserve required by Exhibit B, unless Exhibit B specifically allows withdrawals from the reserve without the Agency's consent. The Owner may request a withdrawal from any such reserve for the purposes identified in Exhibit B, or otherwise as approved in writing by the Agency. In connection with any request for a withdrawal from any such reserve, the Owner shall provide any supporting documentation that may be required by the Agency.

7.04 Servicing of Reserves.

- (a) **Controlled Accounts.** Upon demand by the Agency, the Owner shall establish any reserve account that is required by this Agreement with the Agency or with an Agency-designated servicer in an account governed by a servicing agreement, deposit account control agreement, or similar agreement restricting withdrawals from the account without the authorization of the Agency, in each case on a form acceptable to the Agency. The Owner shall take such further actions as may be reasonably necessary to establish Agency control over the reserve account, including, but not limited to, the execution of a security agreement granting a security interest in the account to the Agency, if the Agency does not already have such an interest.
- (b) **Disclaimer.** The Owner shall make no claim against the Agency for any loss that arises out of a breach by a servicer of a servicing or other agreement with respect to a reserve account that is required by this Agreement, unless the breach is attributable to the gross negligence or willful misconduct of the Agency. Neither the Agency nor any servicer will have any liability for a loss of all or any portion of the funds in a reserve account by reason of the insolvency or failure of the institution with which the funds are held. Neither the Agency nor any servicer will be liable with respect to any action taken or omitted to be taken by it in good faith in the performance or enforcement of servicing duties with respect to a reserve account. The Agency and any servicer will be entitled to assume the genuineness of all signatures or other approvals believed by it in good faith to be genuine in complying with directions with respect to any reserve account.
- (c) **Fees.** For any reserve account that is established with the Agency or with an Agency-designated servicer, the Agency may withdraw (or permit the servicer to withdraw) funds from the account, at any time and on one or more occasions, to pay the reasonable account-related fees of the Agency or the servicer of the account, so long as the amount withdrawn each year does not exceed 1% of the average monthly balance of the account for the year. In addition, the Owner shall pay all bank fees and investment breakage fees that are due to third parties

and incurred by the Agency or a servicer in connection with servicing any such account.

7.05 Replenishment of Reserves.

If the Owner withdraws funds from a reserve account that is required by this Agreement (excluding withdrawals from the Replacement Reserve, unless replenishment of the Replacement Reserve is required by any Agency financing documents), the Agency may require the Owner to replenish the account, in the amount withdrawn, using the Project's available cash flow or other funds of the Owner. The Owner shall make any such replenishment over the period that the Agency may reasonably require. The Agency shall not require the Owner to replenish the account at a rate that is faster than 1/12th of the amount to be replenished per month, however.

7.06 Reserves Remain with Project.

The Owner shall ensure that all reserve accounts that are required by this Agreement remain with the Project during the Restriction Period. Upon a Property Transfer of all or substantially all of the Project, or a Change in Ownership with respect to the Owner, the Owner shall not cause or permit the transfer of any funds in any such reserve account to, or the retention of any funds in any such reserve account by, any entity or individual that is not, after consummation of the Property Transfer or Change in Ownership, the Owner.

7.07 Disposition of Reserves.

Upon the end of the Restriction Period, the Owner shall use the entire outstanding balance in the reserve accounts that are required by this Agreement in the following order of priority, unless reordered or waived by the Agency in writing (to the extent permitted by Law): first, to pay any outstanding taxes, charges, or other amounts owed to the Agency or the City, other than any Agency financing for the Project; second, to pay all accrued unpaid interest on, and the unpaid principal balance of, any Agency financing for the Project, in that order; third, to perform necessary capital and maintenance work at the Project, as may be required by the Agency; fourth, to pay into a new replacement, operating, or other reserve for the Project, as may be required by the Agency; fifth, to repay loans, if any, made by the Owner or an affiliate of the Owner that were made for the purpose of funding Project operating account deficits or for any other Project purposes; and sixth, to be disbursed to the Owner for use in any manner consistent with its purposes and contractual obligations.

7.08 HDC Financing Requirements.

If HDC determines in writing that any provision of this Article 7 conflicts with a requirement of the HDC Financing, the conflicting requirement will not apply while the HDC Financing remains outstanding, or until HDC determines that the conflict has ended.

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ARTICLE 8

OWNERSHIP AND FINANCING

8.01 Property Transfers.

- (a) **Agency Consent Required.** Except as provided in this Section 8.01 the Owner shall not cause or permit any Property Transfer without the prior written consent of the Agency. "**Property Transfer**" means any sale, lease, sublease, license, conveyance, transfer, assignment, gift, encumbrance, or other disposition of, or the granting of an easement or profit with respect to, all or any portion of the Project or the Property or any estate in the Project or the Property. A Property Transfer may involve, without limitation, the transfer of a nominee legal ownership interest, beneficial ownership interest, or remainder or other future interest in the Property. Any Property Transfer requiring the Agency's consent that occurs without the Agency's written consent will be void. The Agency shall not unreasonably withhold its consent to a Property Transfer. The Owner shall obtain the Agency's consent to every Property Transfer where required by this Section 8.01, regardless of whether the Agency has consented to any prior Property Transfer.
- (b) **Conditions to Transfer.** Without limiting the conditions that the Agency may impose prior to providing a consent to any Property Transfer of all or substantially all of the Property, the Owner must ensure the following prior to any such Property Transfer:
- (i) **Assumption of this Agreement.** The transferee must assume the Owner's obligations under this Agreement, beginning on the date of the Property Transfer, in an agreement satisfactory to the Agency. The Owner shall ensure that any assumption agreement is recorded against the Property promptly following the related Property Transfer and shall pay all related fees and taxes.
 - (ii) **Estoppel.** The transferee must certify that the statements of fact in Article 11 remain true as of the date of the Property Transfer, except to the extent that any such statement refers to an earlier date (or, if a statement is not true as of the date of the Property Transfer, providing a detailed explanation of the matter).
 - (iii) **Reserves.** The transferee must provide satisfactory evidence that it will own any reserve accounts required by this Agreement in accordance with Section 7.06.
 - (iv) **Further Assurances.** The transferee must provide such further assurances and documents as the Agency may reasonably require in connection with the Property Transfer, including, but not limited to, an assumption of any Agency financing or other obligations of the Owner with respect to the Project.

- (c) **Exceptions to Consent Requirement.** The Agency's consent is not required for any leases of Units to Tenants, on the condition that the leases are consistent with this Agreement and do not contain an option to acquire all or any portion of the Project. In addition, the Agency's consent is not required for any non-residential lease, sublease, license, or occupancy agreement that is permitted by Section 4.16. The Agency consents to any Property Transfer approved in Exhibit B.
- (d) **Property Transfer Upon Foreclosure.** The Agency's consent is not required for any Property Transfer that occurs in connection with the foreclosure of a Permitted Mortgage or the delivery of a deed in lieu of foreclosure of a Permitted Mortgage. This exception is limited solely to the Property Transfer that occurs in connection with the foreclosure sale or deed in lieu of foreclosure of a Permitted Mortgage and does not apply to any subsequent Property Transfer.

8.02 Changes in Ownership.

- (a) **Agency Consent Required.** Except as provided in this Section 8.02, the Owner shall not cause or permit any Change in Ownership of the Owner (including, individually, any individual or entity that is a party to this Agreement and is included in the definition of Owner) without the prior written consent of the Agency. "**Change in Ownership**" means, with respect to any entity, any transfer of any direct or indirect ownership interest in the entity at any tier, including, but not limited to, sales or other transfers of ownership interests, admissions of new owners, substitutions of owners, withdrawals of owners (except by death), acquisitions of additional ownership interests, and changes to the membership interests in a not-for-profit corporation (but not changes to the directors of a not-for-profit corporation unless specifically provided in this Agreement). The Agency shall not unreasonably withhold its consent to a Change in Ownership.
- (b) **Notice of All Changes.** If a Change in Ownership is permitted without Agency consent under this Section 8.02, the Owner shall give the Agency notice of the Change in Ownership promptly after it occurs and shall certify in writing that the Change in Ownership is in compliance with this Agreement. The foregoing does not apply to any Change in Ownership that concerns solely the ownership interest of a shareholder in a publicly traded company.
- (c) **Death or Incapacity.** The Agency's consent is not required for any Change in Ownership of the Owner that concerns solely a transfer to an executor, administrator, or guardian of a deceased or incapacitated individual. Any subsequent Change in Ownership with respect to the interest of an executor, administrator, or guardian requires the Agency's consent.
- (d) **Transfers Among Existing Owners.** The Agency's consent is not required for any Change in Ownership of the Owner that concerns solely a transfer of a direct

or indirect ownership interest in the Owner to any existing owner of a direct or indirect ownership interest in the Owner that has previously received the Agency's approval in writing, as long as the transfer does not (i) result in a change to the present or contingent control over management or operations of the Owner or the Project, as determined by the Agency, or (ii) result in a change in the direct or indirect ownership interests of the Owner that would require the transferee to comply with the Agency's sponsor review procedures.

- (e) **LIHTC Investor.** The Agency's consent is not required for any Change in Ownership of the Owner that concerns solely a transfer of (i) a passive ownership interest in the LIHTC investor in the Beneficial Owner or (ii) such LIHTC investor's passive ownership interest in the Beneficial Owner, so long as (x) the LIHTC investor is a passive investor in the Beneficial Owner, and (y) the manager of the LIHTC investor, or any transferee of the LIHTC investor's passive ownership interest in the Beneficial Owner, is an affiliate of, and is and remains controlled by or under common control with, the LIHTC syndicator or investor parent entity identified in Exhibit B. In addition, any ownership interest in the Beneficial Owner of a special member or special limited partner may be transferred only together with a permitted transfer of the LIHTC investor's ownership interest in the Beneficial Owner, or of the interest of the manager of the LIHTC 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.
- (f) **Estate Planning.** The Agency shall consent to a Change in Ownership of the Owner that concerns solely a transfer of a direct or indirect ownership interest in the Owner for estate planning purposes to a trust on the following conditions: (i) the trust must have no present or contingent control over management or operations of the Owner or the Project and the only role of the trust must be to make or hold a monetary investment, each as determined by the Agency, (ii) the trust must exist for the benefit of an immediate family member of an individual with a direct or indirect ownership interest in the Owner, (iii) the Owner must obtain the Agency's prior written consent for each trustee and any beneficiary who is 18 years of age or older; and (iv) the Owner must obtain the Agency's prior written consent for any beneficiary who is younger than 18 years of age promptly following the date that the beneficiary reaches 18 years of age. If the Agency does not approve any such beneficiary, the Owner shall cause the trust to transfer its direct or indirect ownership interest in the Owner in accordance with this Section 8.02.
- (g) **Housing Committee.** One or more of the entities that comprises the Owner, or a parent of such an entity, is a not-for-profit corporation that has created a housing committee to exercise the powers and duties of its board of directors with respect to the Project. Until the Permanent Loan Conversion, (i) the Owner shall not cause or permit any director to be added to the housing committee without the prior written consent of the Agency, (ii) the Owner shall notify the Agency if any existing director resigns from or is otherwise removed from the housing committee, and (iii) the Owner shall not cause or permit the housing

committee to be disbanded or eliminated without the prior written consent of the Agency.

8.03 Financing.

- (a) **Agency Consent Required.** Except as provided in this Section 8.03, the Owner shall not incur, assume, or permit to exist any financing with respect to or encumbering all or any portion of the Project or the Property, or any direct or indirect ownership interest in the Owner, including but not limited to any mezzanine debt or preferred equity financing, without the prior written consent of the Agency, nor shall the Owner extend or renew any such existing financing on materially different terms without the prior written consent of the Agency.
- (b) **Mortgages and Other Encumbrances.** Except as provided in this Section 8.03, the Owner shall not permit any mortgage, lien, pledge, assignment, transfer, encumbrance, grant of a participation interest in, or hypothecation of or on all or any portion of the Project or the Property, or of or on any direct or indirect ownership interest in the Owner (or the income, proceeds, or other economic benefits of any such ownership interest) without the prior written consent of the Agency. Any mortgage or other encumbrance that encumbers all or any portion of the Project or the Property without the Agency's written consent will be void.
- (c) **Exceptions to Consent Requirement.** The Agency's consent is not required for (i) any financing with respect to or encumbering solely any indirect ownership interest in the Owner, and any encumbrance of an indirect ownership interest in the Owner that secures solely such financing, where the exercise of any rights or remedies by the holder of such debt would not in any circumstance cause (1) a change in present or contingent control over management or operations of the Owner or the Project, or (2) a transfer of a direct or indirect ownership interest in the Owner in violation of this Agreement; or (ii) any financing that is provided to the Owner by its members or partners, as applicable, pursuant to the Owner's organizational documents, and any encumbrance of a direct or indirect ownership interest in the Owner that secures solely such financing.
- (d) **Permitted Mortgages.** The Agency consents to any mortgage or other encumbrance that is (i) recorded against the Property before the date of this Agreement or (ii) signed and delivered on or after the date of this Agreement with the prior written consent of the Agency (including but not limited to any mortgage signed and delivered to secure any Agency financing with respect to the Project), and the financing secured by any such mortgage or other encumbrance ("**Permitted Mortgage**").
- (e) **Approval of Future Financing.**
 - (i) **Notice to Agency.** The Owner shall provide the Agency with written notice of any proposed financing that requires the consent of the Agency not less than 60 days before the anticipated closing of the financing. The Owner shall provide the Agency with (1) a commitment or term sheet from

the proposed lender, (2) the Project's financial statements for the previous 12 months, as certified by the Owner and showing the Project's net operating income for the period, (3) reasonably detailed projections of the Project's net operating income and debt service for the following 12 months assuming the Owner obtains the proposed financing, (4) a current appraisal of the Project prepared by an independent real estate appraiser not affiliated with the Owner, and (5) such further information as the Agency may reasonably request in connection with the proposed financing.

- (ii) **Standard for Consent Where No Agency Financing.** If the Property and the Project are not subject to any mortgage or lien held by or on behalf of the City or HDC, and the Owner does not owe any mortgage indebtedness to the City or HDC with respect to the Project, the Agency shall consent to any proposed financing with respect to or encumbering all or any portion of the Project or the Property, or any direct or indirect ownership interest in the Owner, and any related mortgage or other encumbrance, if the Agency confirms that (1) the proposed financing will be provided by HDC; the Community Preservation Corporation (or its affiliate); a City, State, or federal agency; Fannie Mae; Freddie Mac; a financial institution (including, but not limited to, a savings bank, commercial bank, life insurance company, public real estate investment company, or pension fund) with assets in excess of \$500 million and whose loans are subject to regulation by a State or federal agency; or another lender acceptable to the Agency ("**Institutional Lender**"); (2) after incurring the proposed financing, the debt service coverage ratio for the Project, taking into account all of the financing affecting the Project, will equal or exceed 1.5; and (3) after incurring the proposed financing, the loan-to-value ratio for the Project, taking into account all of the financing affecting the Project, will not exceed 80%. If the proposed financing does not satisfy these requirements, the Agency may consent to the financing but is not required to do so.

8.04 Zoning; Development Rights.

The Owner shall not, without the prior written consent of the Agency, seek, initiate, join in, or consent to any zoning change, restrictive covenant, or other public or private action or agreement limiting, expanding, changing, or defining the permitted uses of the Property or any part of the Property, or the permitted size, shape, or configuration of any structure developed or to be developed on the Property or any part of the Property. This includes, but is not limited to, any zoning lot merger, zoning lot subdivision, zoning lot development agreement, special permit, large-scale residential development, large-scale general development, large-scale community facility development, rezoning, or zoning text amendment.

8.05 Nominee Legal Owner.

- (a) **Nominee Agreement.** Neither the Legal Owner nor the Beneficial Owner shall amend the Nominee Agreement, assign the Nominee Agreement, or enter into a

new Nominee Agreement without the prior written consent of the Agency. The Legal Owner and the Beneficial Owner shall comply with the Nominee Agreement and shall copy the Agency on any notice of default under the Nominee Agreement. A default under the Nominee Agreement that remains uncured beyond any applicable cure period is a breach of this Agreement. If this Agreement conflicts with the Nominee Agreement, this Agreement controls.

- (b) **Right to Cure.** If there is a default under any City, State, or federal loan or regulatory document, including, but not limited to, any mortgage, regulatory agreement, or financing commitment, then notwithstanding any provision of the Nominee Agreement or any other agreement to the contrary, the Beneficial Owner shall permit the Legal Owner to enter the Project and take such other actions with respect to the Project as may be necessary to cure the default, unless the Beneficial Owner is acting diligently to cure the default.

8.06 Condominium.

- (a) **Agency Approval of Condominium Documents.** The Owner shall obtain the prior written consent of the Agency for any condominium declaration that covers all or any portion of the Project and for all related documents, including, but not limited to, the by-laws of the condominium. The Owner shall submit all such condominium documents to the Agency for review and approval prior to their signing and recording. After approval of any such condominium document by the Agency, the Owner shall not cause or permit the amendment of the document without the prior written consent of the Agency. Any such condominium document, including any amendment, that is entered into without the Agency's written consent will be void.
- (b) **Requirements for Condominium Documents.** The Owner shall ensure that any condominium documents covering all or any portion of the Project provide for the following to the satisfaction of the Agency: (i) limits on the payment of common charges by any condominium unit containing Income-Restricted Units, (ii) control of the condominium's board of managers by the condominium units subject to this Agreement, (iii) maintenance of insurance by the condominium and the appointment of an Agency-approved insurance trustee, (iv) Agency approval of the use of casualty and condemnation proceeds, (v) restrictions on transfers and the use of condominium units that are not subject to this Agreement, (vi) Agency approval of structural or other material work, (vii) Agency access to the condominium's records, (viii) Agency approval of amendments to the condominium documents, and (ix) the delivery of notices of default and other material reports under the condominium documents to the Agency. The Agency may impose additional requirements in connection with its approval of any such documents.
- (c) **Subordination; Memorandum of Regulatory Agreement.** Any condominium declaration that covers all or any portion of the Project is subordinate to this Agreement. Promptly following the establishment of a condominium, the Owner shall record a memorandum of this Agreement in accordance with Section 12.01(b).

- (d) **Transfers of Released Condominium Units.** The Owner shall not cause or permit, and shall ensure that any condominium documents that cover all or any portion of the Project do not permit, (i) a Property Transfer of any condominium unit that is a part of the same condominium that the Project is a part of, but that has been released from this Agreement, or (ii) a Change in Ownership of the owner of such a condominium unit, without the prior written consent of the Agency. Any such Property Transfer requiring the Agency's consent that occurs without the Agency's written consent will be void. The Agency shall consent to any such Property Transfer or Change in Ownership that is not to or for the benefit of a Prohibited Person. In addition, the Agency's consent is not required for: (i) any Property Transfer that concerns solely a non-residential lease, sublease, license, or occupancy agreement to an end user of the space in the ordinary course of business, or (ii) any Change in Ownership that concerns solely an individual or entity (1) that has no present or contingent control over management or operations of the owner of such condominium unit or the Project, as determined by the Agency, and (2) the only role of which, as determined by the Agency, is to make a monetary investment.
- (e) **Obligations of Released Condominium Units.** The Agency shall not release a condominium unit from this Agreement unless a memorandum of this Agreement is recorded against the condominium unit's tax lot in accordance with Section 12.01(b) prior to the release of the condominium unit. After any release of a condominium unit from this Agreement, the owner of the condominium unit shall remain obligated to comply with this Section 8.06, Section 4.16(c) (relating to prohibited uses on the Property), and any provision of this Agreement that is related to administering or enforcing such obligations. These provisions of this Agreement will continue to bind the owner of any such condominium unit and run with the land with respect to the condominium unit.

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ARTICLE 9

COMPLIANCE MONITORING

9.01 Annual Submissions.

On an annual basis, effective upon the Project's receipt of a temporary or final certificate of occupancy, or as of the date of this Agreement, if the Project does not require a new certificate of occupancy, and no later than the date given for each item below (or such other date as the Agency may direct in writing), the Owner shall submit the following items to the Agency.

The Owner shall submit the items required under this Section 9.01 to HDC only, unless HPD requests otherwise in writing.

- (a) **Certificate of Compliance.** No later than April 1 of each year, a certificate signed by a principal or authorized officer of the Owner and certifying the following: (i) each Tenant of an Income-Restricted Unit who began occupancy during the prior year was an Eligible Household; (ii) each Tenant's Actual Rent does not exceed the amount permitted by Law and this Agreement; (iii) the Owner's statements of fact in Article 11 remain true as of the date of the certificate, except to the extent that any such statement refers to an earlier date (or, if a statement is not true as of the date of the certificate, providing a detailed explanation of the matter); and (iv) the Owner is not in material violation of this Agreement, nor to the knowledge of the Owner, has any event occurred that, with the giving of notice or passing of time, would make the Owner in material violation of this Agreement (or, if a material violation or any such event has occurred, providing a detailed explanation of the matter and any corrective actions taken or to be taken).
- (b) **Rent Roll.** No later than April 1 of each year, a certified rent roll for the Project that is satisfactory to the Agency and that specifies all information that the Agency or the Law may require with respect to each Unit. The Owner shall submit each such rent roll using an online system designated by the Agency or otherwise as directed by the Agency in writing.
- (c) **Financial Statements.** No later than April 1 of each year, annual financial statements with respect to the Owner and the Project. These financial statements must be satisfactory to the Agency and must include a balance sheet, a statement of income and expenses, a statement of cash flows, and all accompanying notes, schedules, findings, and other materials. The Owner shall provide single entity financial statements with respect to the Owner and the Project unless otherwise approved in writing by the Agency. The Owner shall cause the financial statements to be prepared on a calendar-year basis and in accordance with generally accepted accounting principles. The Owner shall further cause the financial statements to be audited by an independent auditor, unless otherwise approved in writing by the Agency.

- (d) **Statement of Reserves.** No later than April 1 of each year, a certified statement of the Project's reserve accounts that is satisfactory to the Agency. This statement must include the name of the bank or other financial institution that holds each reserve account, the current balance in each reserve account, each contribution and withdrawal from the reserve account during the prior year, supporting documentation for any calculations that are required to determine contribution amounts (including, but not limited to, calculations of amounts to be contributed from net cash flow, if required by Exhibit B), current bank statements, and any other reserve account information that the Agency may reasonably request.
- (e) **Proof of Insurance.** If requested in writing by the Agency, no later than April 1 of each year, satisfactory evidence of each insurance policy required by Section 6.08, as further described in Section 6.08(m).
- (f) **Utility Performance.** No later than May 1 of each year, the utility performance information for the Project as required by Section 6.09(b).
- (g) **Other Submissions.** Any other Records or certification that may be required to be submitted to the Agency by Law, no later than the date that is required by Law.
- (h) **LIHTC Certification.** No later than March 1 of each year, the certification required by Section 3.07(k).
- (i) **Tax-Exempt Obligation Certification.** No later than April 1 of each year, the certification required by Section 3.08(d).
- (j) **Tax-Exempt Obligation Certification.** No later than April 1 of each year, the certification required by Section 3.08(f).

9.02 Late Fees.

If the Owner is late in submitting any item that is required by Section 9.01, the Agency may charge the Owner a late fee of \$250 per item to cover the administrative costs associated with a late submission. The Agency may increase this amount to account for inflation by adding 3%, compounding annually, on each anniversary of the date of this Agreement. Prior to assessing any such fee, the Agency shall notify the Owner that the submission is late and shall provide the Owner with not less than 10 business days to cure.

9.03 Testimony and Documents.

Upon 10 days' written notice from the Agency, and at a time and place specified by the Agency, the Owner, including any of its members, partners, principals, officers, directors, employees, and agents, (a) shall submit to an oral examination under oath by authorized representatives of the Agency regarding any matter related to the Project; and (b) shall

produce for examination, review, or audit by the Agency any Records that the Agency may request, in form and manner satisfactory to the Agency.

9.04 Access to Property.

The Owner shall provide all representatives of the Agency or the City with access to the Property at such times and for such purposes as the Agency or the City deems necessary to implement this Agreement. The Agency may, without limitation, (a) enter the Property (including, but not limited to, all Improvements, Equipment, grounds, and offices) at any time to conduct unannounced site visits or to enforce its right to cure a Default pursuant to Section 10.02(d), and (b) examine any Records during business hours at the offices of the Owner or any of its agents, including but not limited to, the Managing Agent.

9.05 Reports of Non-Compliance.

The Owner shall notify the Agency promptly if the Owner discovers any material non-compliance with this Agreement.

9.06 Reports of Legal Actions.

If any legal action or proceeding is initiated by or against the Owner in connection with or relating to the Project, the Property, this Agreement, or any other document related to the Project, other than landlord-tenant matters and other customary matters that arise in the ordinary course of business, the Owner shall report the initiation of the legal action or proceeding to the Agency in writing no later than 10 days after the Owner initiates or receives notice of the action or proceeding.

9.07 Interaction with Authorities.

The Owner shall notify the Agency of any interaction with City, State, or federal agencies or entities regarding the Property or the Project, other than the timely payment of taxes or fees, or other customary matters that arise in the ordinary course of business. If the Owner fails to give the Agency notice of any such interaction, the Owner waives any defense or claim that the Owner might otherwise have based upon the City's knowledge of the matters addressed in the interaction.

9.08 Disclosure of Ownership.

The Owner shall furnish to the Agency, no later than five business days after any written request by the Agency, the names of the officers, directors, shareholders, members, or partners of the Owner and any entity that owns a direct or indirect interest at any tier in any party to this Agreement (except for any shareholders in a publicly traded company). The Owner shall provide any information that the Agency may reasonably request with respect to these individuals and entities.

9.09 Additional Information.

The Owner shall promptly submit to the Agency such other information as the Agency shall reasonably request on one or more occasions regarding the Project or the Owner.

9.10 HDC Monitoring Fees.

- (a) **LIHTC Monitoring Fee.** Pursuant to the Internal Revenue Code, HDC is entitled to a reasonable fee for monitoring the Project's LIHTC compliance. During the LIHTC compliance period, the Beneficial Owner shall pay to HDC an annual LIHTC 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; and (ii) 0.75% of the maximum annual tax credit rent for the Units that are designated as low-income units pursuant to Section 42 of the Internal Revenue Code, subject to an annual cap of \$12,500, if there are 150 or fewer such Units in the Project, or \$17,500, if there are more than 150 such Units in the Project. If the HDC Financing is paid in full prior to the end of the LIHTC 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 LIHTC monitoring fee at the time of the prepayment for each year remaining in the LIHTC compliance period. After such a payment, no additional LIHTC 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 HDC's senior loan to the Project, 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 is in addition to the monitoring fee required by Section 9.10(b). HDC will apply this compliance escrow ratably 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.

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ARTICLE 10
ENFORCEMENT

10.01 Defaults.

- (a) **Notice; Opportunity to Cure.** After any violation of this Agreement, the Agency may give notice of the violation to the Owner. If the Agency gives notice of a violation to the Owner, the Agency shall provide the Owner with a period of not less than 30 days to cure the violation, unless the Agency reasonably determines that (i) the violation cannot be cured; (ii) the violation resulted from the Owner's gross negligence or willful misconduct; or (iii) exigent circumstances require immediate action to protect the Project or any Tenant.
- (b) **Declaration of Default.** If a violation of this Agreement is continuing after notice to the Owner and the expiration of any cure period given in accordance with subsection (a) above (or, in the case of a violation that cannot with due diligence be cured by the Owner during a given cure period, if the Owner has failed to proceed promptly to cure the violation to the satisfaction of the Agency within such period or is not diligently pursuing the cure), the Agency may declare a default under this Agreement ("**Default**") by written notice to all parties to this Agreement.
- (c) **Copies of Notices.** The Agency shall send a copy of any notice of violation or Default to the holder of any Permitted Mortgage, at the address for notices given in the Permitted Mortgage as recorded against the Property, and to any other individual or entity to whom the Agency has agreed to provide such notices in Exhibit B. The failure to send any such copy, however, will not affect the effectiveness of the notice.
- (d) **Cures by Investors.** The Agency shall deem any cure of a violation of this Agreement or Default by one or more of the Owner's members, partners, or shareholders, as applicable, to be made by the Owner. The Agency shall accept or reject such cure on the same basis as it would if the cure had been made by the Owner.

10.02 Remedies.

After declaring a Default, the Agency may take one or more of the following actions:

- (a) **Specific Performance.** Seek a temporary or permanent injunction or an order for specific performance of this Agreement. The Agency may also seek this remedy if it determines that a violation of this Agreement is threatened.
- (b) **Extension of Restriction Period.** Record a document against the Property, executed solely by the Agency, to extend the Restriction Period by the period of non-compliance. The Agency may presume that the period of non-compliance is

the period running from the date of this Agreement until the date that the Agency declares a Default. The Owner may rebut this presumption.

- (c) **Prohibition on Doing Business.** Upon written notice from the Agency, prohibit the party responsible for the violation and any of its principals from doing business with the Agency, except for applying for any as-of-right statutory benefit, for such period as the Agency may determine.
- (d) **Cure by Agency.** Cure the violation and charge the party responsible for the violation for any fees and other expenses incurred to remedy the violation, plus interest at the Default Rate from the date of demand until paid. This remedy includes, but is not limited to, (i) the right to lease any un-leased or vacant Unit in compliance with this Agreement (in such event, the Agency shall use reasonable efforts to obtain the highest rent permitted by this Agreement); and (ii) the right to prohibit the occupancy of any unoccupied Unit in order to ensure compliance with this Agreement.
- (e) **Prohibition on Distributions.** Prohibit distributions to partners, members, or shareholders, as applicable, of the Owner until the Default is cured and take any action to seek restitution to the Project's account for any distributions made in violation of this Agreement.
- (f) **Cross-Default.** Declare a default under (i) any mortgage affecting the Project and held by the Agency, or (ii) any other agreement with the Agency or the City that is binding upon the Owner and that concerns the Project, and pursue any available remedies, including, but not limited to, a foreclosure of any mortgage affecting the Project and held by the Agency.
- (g) **Removal of Responsible Parties.** Require the removal of any officer, director, principal, partner, member, or shareholder, as applicable, that is responsible for the Default.
- (h) **Appointment of a Receiver.** Seek appointment of the Agency or a receiver to take possession of and operate the Project, collect all rents, and pay all necessary costs until the Default is cured and the Owner has given satisfactory evidence that it can operate the Project in compliance with this Agreement.
- (i) **Real Property Tax Benefits.** Pursue the suspension or revocation of any Real Property Tax Benefits in accordance with Law.
- (j) **Other Remedies.** Seek any other relief that may be appropriate or desirable at law or in equity.

10.03 All Rights Cumulative.

All rights and remedies of the Agency under (a) this Agreement, (b) any other document related to the Project, (c) the Law, or (d) any other source of authority, are cumulative and may be exercised alone or concurrently, at the Agency's option. The exercise or enforcement of any one right or remedy by the Agency is not a condition to or a bar of

the exercise or enforcement of any other right or remedy. The listing of rights and remedies of the Agency in this Agreement does not preclude the Agency's exercise or enforcement of any other right or remedy available to the Agency that is not listed in this Agreement.

10.04 Waivers of Agreement.

Any waiver of a provision of this Agreement must be in writing and must be signed by the waiving party. No other action or inaction by the Agency or the City at any time may be construed as a waiver of, or preclude the enforcement of, any rights or remedies of the Agency or the City. No waiver applies to any matter other than the specific matter in connection with which it is delivered, and which is stated in the waiver. No waiver may be construed as an amendment or modification of this Agreement.

10.05 No Distributions Upon Default.

Upon written notice from the Agency to the Owner of a Default, or of a material uncured default under any other agreement with the Agency or the City that is binding upon the Owner and that concerns the Project, the Owner shall not make or permit 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 Agency has determined that the Default or default has been cured.

10.06 Prior Owner Defaults.

The Owner shall cure any Default or other violation of this Agreement caused by any prior owner and shall satisfy any related payment or indemnification obligation.

10.07 No Retaliation.

The Owner shall not retaliate against any existing or prospective Tenant, or any other user of the Project, who notifies the Agency of any alleged violation of this Agreement.

10.08 Waiver of Opposition.

To the extent permitted by Law, each party to this Agreement other than the Agency waives any rights that it may have, at law or in equity, to modify, set aside, extinguish, enjoin enforcement of, or seek relief from all or any part of this Agreement.

10.09 Third-Party Beneficiaries.

Except as otherwise stated in this Agreement, there are no third-party beneficiaries of this Agreement and this Agreement is enforceable solely by the parties to this Agreement. The parties to this Agreement may modify or terminate this Agreement in accordance with the requirements of this Agreement without the consent of any intended third-party beneficiary, unless this Agreement specifically provides otherwise.

10.10 Tenant Right to Enforce.

Each Tenant of an Income-Restricted Unit may enforce in any State court the requirement of this Agreement that the Owner lease the Unit for a monthly rent that does not exceed the Actual Rent required by Section 5.01. Any such Tenant is a third-party beneficiary of this Agreement solely for such purpose.

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ARTICLE 11

STATEMENTS OF FACT

11.01 In General.

Each party to this Agreement other than the Agency makes the statements of fact in this Article 11 as to itself and affirms that all of its statements of fact in this Agreement are and will remain accurate as stated. Each such party understands that the Agency is relying on the accuracy of the statements of fact in this Agreement even though the Agency may perform other due diligence, and that this accuracy is a material inducement to the Agency's agreement to allow the Owner and the Project to participate in the Agency's affordable housing program. All statements of fact made by any such party survive the signing of this Agreement. The Agency may pursue claims for misrepresentation and breach of warranty, in addition to any other available remedy, if statements of fact in this Agreement are inaccurate.

11.02 Organization.

The party is duly organized and validly existing, and is qualified to do business in New York State, with all necessary authority to carry out the transactions contemplated by this Agreement. The party has provided the Agency with true copies of its organizational documents that are in effect. There are no agreements with respect to ownership interests in the party, voting control of such interests, or any other right to such interests other than the documents that have been delivered to the Agency.

11.03 Not-for-Profit Corporations.

If the party or any parent of the party is a not-for-profit corporation, the party and any parent have complied with all Laws related to the organization and ongoing existence of a not-for-profit corporation. Any director or officer of the party or any parent of the party who resigned in anticipation of the party's participation in the Project has not re-assumed a role with the party without the Agency's prior written consent. If the party or any parent of the party has created a housing committee to exercise the powers and duties of its board of directors with respect to the Project, all applicable organizational documents comply with the Agency's requirements regarding the establishment and authority of the housing committee.

11.04 Due Authorization.

The party has duly authorized and signed this Agreement.

11.05 Valid and Binding Obligation.

This Agreement is a valid and binding obligation of the party, enforceable in accordance with its terms, except as may be limited by insolvency Laws or principles of equity.

11.06 No Conflicts.

The entry into and performance of this Agreement and the consummation of the transactions contemplated by this Agreement do not, and will not (a) conflict with any Law or applicable order, (b) conflict with the party's organizational documents, or (c) constitute a breach or default under any material agreement of the party.

11.07 Obtaining of Approvals.

The party has obtained all approvals necessary to enter into this Agreement, record this Agreement against the Property, and consummate the transactions contemplated by this Agreement, including, but not limited to, any required approvals of lenders or other government agencies. This includes, but is not limited to, all necessary approvals from the Department of Buildings and any environmental agency with jurisdiction, where applicable. All such approvals are in force and have not been revoked, suspended, forfeited, or modified in a materially adverse manner, nor to the party's knowledge, has any such action been threatened. This statement excludes any approvals that are customarily received after the date the party is making this statement.

11.08 Litigation.

Except as previously disclosed to the Agency in writing, or as promptly disclosed to the Agency in writing after the date the party is making this statement, no litigation, proceeding, or investigation is pending or, to the party's knowledge, threatened (a) that would have a material adverse effect on the party's ability to perform its obligations under this Agreement or (b) that was initiated by any governmental authority and that the party is a subject of (or to the party's knowledge, that any entity or individual that owns a direct or indirect interest in the party at any tier, or any individual that is a principal, officer, or director of the party or any such direct or indirect owner of the party is a subject of).

11.09 Bankruptcy.

The party is not subject to an order with respect to the party in any case under bankruptcy or insolvency Laws. The party is not subject to a voluntary or involuntary bankruptcy or insolvency proceeding. The party has not made an assignment for the benefit of creditors. The party has not sought the appointment of a trustee or receiver with respect to all or substantially all of the party's assets. The party has not admitted in writing an inability to pay debts as they become due. No event of attachment or judicial seizure of all or substantially all of the party's assets has occurred. No event has occurred that, with the passing of time, would make the party insolvent or make any of the foregoing statements untrue. The party has adequate capital for the reasonably foreseeable obligations of a business of its size and character and given its contemplated operations.

11.10 Accuracy of Information.

All information that the party has provided or caused to be provided to the Agency regarding the party or the Project remains complete and correct in all material respects

(and with respect to any financial statements or other reports expressly made as of a particular date, such financial statements or reports remain complete and correct in all material respects as of such date), except as disclosed in writing to the Agency. This includes, but is not limited to, (a) all information contained in sponsor review disclosure statements and related documents that have been submitted to the Agency, and (b) all information with respect to existing and projected financial matters, property information, architectural and engineering matters, building conditions, insurance, and ownership matters (including, but not limited to, information with respect to the party, any entity or individual that owns a direct or indirect interest in the party at any tier, or any individual that is a principal, officer, or director of the party or any such direct or indirect owner of the party). The party has not failed to disclose any material information with respect to the Owner or the Project to the Agency. No information that the party has provided to the Agency contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

11.11 Rent Roll.

If the Project has existing Tenants or non-residential tenants, the Owner has provided the Agency with a complete and correct rent roll for the Project meeting the requirements of Section 9.01.

11.12 Title to Property.

The party owns its interest in the Property free and clear of any encumbrances, except for (a) any matters that are set forth as exceptions to a title policy that has been delivered to the Agency, (b) any Permitted Mortgage, and (c) any minor defects in title that do not interfere with the party's ability to perform its obligations under this Agreement. The party has not received notice of any pending or contemplated condemnation affecting the Property or any sale or disposition in lieu of condemnation, and is not and could not be obligated under any right of first refusal, option, or other contractual right to sell, transfer, or otherwise dispose of the Property or any interest in the Property, except in each case as previously disclosed to the Agency in writing or as promptly disclosed to the Agency in writing after the date the party is making this statement.

11.13 Flood Zone Status.

Except as previously disclosed to the Agency in a survey or other written certification acceptable to the Agency, no portion of the Property is in an area that has been identified by the federal government as a "special flood hazard area".

11.14 Utilities and Public Streets.

The Property is served by all utilities that are required for, and has all access to public streets that are required by, its present and any contemplated uses.

11.15 Property Condition.

Except as previously disclosed to the Agency in writing, or as promptly disclosed to the Agency in writing after the date the party is making this statement, the Property, including, but not limited to, all Improvements, is (a) free from damage caused by fire or other casualty, (b) in good condition in all material respects, and (c) to the knowledge of the party after due inquiry, has no structural or other material defects or damages, whether latent or otherwise.

11.16 Taxes.

The party has filed or caused to be filed all federal, state, and local tax returns required to have been filed by the party, and has paid or caused to be paid all taxes due by the party, except for (a) any taxes that are being contested in good faith by appropriate proceedings and for which the party has set aside adequate reserves and (b) any taxes that would be covered by a pending exemption or abatement application that the party has a reasonable expectation will be granted. This includes, but is not limited to, real property transfer taxes and mortgage recording taxes. The party knows of no basis for any additional assessment of taxes or related liabilities for prior years.

11.17 Insurance.

The party maintains or has caused to be maintained the insurance that is required by this Agreement and any additional insurance that is carried by reasonably prudent owners of property located in New York City containing buildings or improvements similar to the Project in type, size, use, and value. The party has provided the Agency with a complete description of all insurance maintained by or on behalf of the party with respect to the Project. All such insurance is in full effect, and all premiums that are required to be paid have been paid.

11.18 Reserves.

The party has created and fully funded all reserve accounts that are required to be created and funded by the party under this Agreement and at the time the party is making this statement. With respect to each such reserve account, the party has provided the Agency with the name of the financial institution that holds the account and with any other account information that the Agency has requested in writing.

11.19 Zoning and Building Codes.

Except for violations of record and any other matters that have been previously disclosed to the Agency in writing, the Property and the Project, and their present and any contemplated uses, are in full compliance with all Laws regarding zoning and land use matters, Building Code matters, Housing Maintenance Code matters, accessibility matters, and similar requirements.

11.20 Environmental Laws.

Except with respect to matters that have been previously disclosed to the Agency in an environmental site assessment or other report delivered to the Agency, or that, individually or in the aggregate, could not be expected to result in a material adverse effect on the Project, the Owner, any Tenant, or any other tenant or user of the Project, (a) the Property and its present and any contemplated uses are in full compliance with all Laws regarding environmental matters, including, but not limited to, hazardous or toxic substances; and (b) the party does not know of any basis for liability with respect to any environmental Law, and has not (i) failed to comply with any applicable environmental Law or to obtain, maintain, or comply with any permit, license, or other approval required under any environmental Law, (ii) become subject to any liability under any environmental Law, or (iii) received notice of any claim with respect to any environmental Law.

11.21 Financing.

The party has disclosed to the Agency all financing with respect to or encumbering all or any portion of the Project or the Property, or any direct or indirect ownership interest in the Owner, including but not limited to any mezzanine debt or preferred equity financing, except for any financing that would not require the Agency's consent under Section 8.03(c). The party has disclosed to the Agency any present or anticipated mortgage, lien, pledge, assignment, transfer, encumbrance, grant of a participation interest in, or hypothecation of or on all or any portion of the Project or the Property, or of or on any direct or indirect ownership interest in the Owner (or the income, proceeds, or other economic benefits of any such ownership interest), except for any such mortgage or other encumbrance that would not require the Agency's consent under Section 8.03(c).

11.22 Law and Agreements.

The party has complied in all material respects with all Laws, and except for violations of record or as previously disclosed to the Agency in writing, the party has not received any written notice of its violation of any Laws. To the party's knowledge, the party is not in default of any order of any court or government authority. This Agreement and any other agreement between the party and the Agency is in force, and the party is not in default of this Agreement or any such other agreement, nor to the knowledge of the party, has any event occurred that, with the giving of notice or passing of time, would make the party in default of this Agreement or any such other agreement.

11.23 Agency and City Personnel.

To the party's knowledge, no official, employee, agent, or representative of the Agency or the City (a) has participated in any decision relating to the Project or any agreement arising out of or through this Agreement or any other document related to the Project that affects such person's personal interest or the interest of any entity or association in which the person is directly or indirectly interested, or which otherwise violates the provisions of Chapter 68 of the City Charter; (b) has received any payment or other consideration (other than from the Agency or the City) for the making of this Agreement

or any other document or decision related to the Project; or (c) has any interest, directly or indirectly, in the Project, the Property, or the proceeds of either.

11.24 Owner Personnel.

No individual or entity having any interest or role in the party or in any entity that owns a direct or indirect interest in the party at any tier, or that is employed, retained, or contracted by the party or any such direct or indirect owner of the party, (a) is or has been employed, retained, or contracted by the Agency or the City in connection with any matter pertaining to the Project, or (b) has or will have any interest in or activity with the party or any such direct or indirect owner of the party that constitutes a conflict of interest pursuant to the provisions of Chapter 68 of the City Charter.

11.25 Lobbying.

The party, each entity or individual that owns a direct or indirect interest in the party at any tier, and any individual that is a principal, officer, or director of the party or any such direct or indirect owner of the party, are in compliance with Article 1-A of the Legislative Law.

11.26 Sponsor Loans.

Any loan that is made to the Owner by an affiliate of the Owner, including but not limited to any deferred developer fee loan, is subordinate to all Agency financing with respect to the Project. The lender of any such loan has agreed to refrain from enforcing any remedies under the loan documents without the prior written consent of the Agency.

11.27 Sponsor Loans (LIHTC Basis).

With respect to any loan that is made to the Owner by an affiliate of the Owner, including but not limited to any deferred developer fee loan, and that is included in the eligible basis of the Project for LIHTC purposes, (a) the applicable note is negotiable, repayable, and if not secured by a mortgage affecting the Project, recourse to the Owner, (b) the Owner intends to repay the loan in accordance with the applicable note and any other loan documents, (c) there are no formal or informal understandings or arrangements with the lender that the loan will be forgiven, and (d) the Owner will not request that the lender forgive the loan in the future.

[Continues on next page]

ARTICLE 12

MISCELLANEOUS

12.01 Recording.

- (a) **Recording of Agreement.** The Owner shall record this Agreement against the Property in the land records for the county in which the Property is located immediately following the date of this Agreement. The Owner shall pay all required fees and taxes in connection with the recording of this Agreement and any memorandum, amendment, or other modification of this Agreement, without any exemption or deduction that might otherwise be available solely because the Agency is a party.
- (b) **Recording of Memorandum.** Promptly following an apportionment (by condominium or otherwise), merger, or other event creating or assigning a tax lot to be occupied by all or any portion of the Project, the Owner shall record a memorandum of this Agreement against each tax lot that is occupied by all or any portion of the Project (unless this Agreement is already recorded against the tax lot) in the land records for the county in which the Property is located. The Owner shall use a memorandum in the form of Exhibit C, which is annexed to this Agreement and made a part of this Agreement, or another form satisfactory to the Agency. The memorandum must specifically identify the recording information for this Agreement and any amendments or other modifications of this Agreement that occurred prior to the date of the memorandum. The Owner shall provide the Agency with proof that the memorandum has been recorded against the appropriate tax lots promptly following the apportionment, merger, or other event.

12.02 Successors.

All provisions of this Agreement are covenants that run with the land, which inure to the benefit of the City and HDC, and which bind and are enforceable against, to the fullest extent permitted by Law, any other party to this Agreement and each such other party's successors, assigns, heirs, grantees, and lessees. All references in this Agreement to a party, entity, or individual include the successors and permitted assigns of such party, entity, or individual. Successors to HPD and HDC include any body, agency, or instrumentality of the City or the State that succeeds to the powers, duties, or functions of either HPD or HDC, respectively.

12.03 Notices.

- (a) **Method.** Each notice given or required to be given under this Agreement must be in writing and (i) sent by certified or priority mail, postage prepaid, (ii) delivered in person or by a nationally recognized overnight courier, with receipt acknowledged, or (iii) sent by electronic means with notice of receipt from an authorized officer, official, or principal of the party.

- (b) **Addresses.** Each notice given to a party to this Agreement by mail or personal delivery must be sent to the address for the party that is stated in the preamble to this Agreement, unless the party has given notice of a change in address. Each notice given to a party by electronic means must be sent to an authorized officer, official, or principal of the party. Any party to this Agreement that changes its address shall notify each other party to this Agreement in the manner for delivering notices that is provided in this section.
- (c) **Effectiveness.** Each notice delivered by certified or priority mail will be deemed to have been given upon the third business day following the date upon which the notice is deposited in the U.S. mail, postage prepaid. Each notice delivered in person or by a nationally recognized overnight courier, with receipt acknowledged, will be deemed given upon actual delivery, as evidenced by a signed receipt. Notwithstanding the foregoing, any notice of a change in address will only be deemed to have been given when actually received by the other party.
- (d) **Copies.** The Agency will send a copy of any notice that is given to a party to the party's counsel or investor, if an address for one is provided in Exhibit B. The Agency's failure to send any copy of a notice to a non-party individual or entity to whom the Agency has agreed in writing to provide such copies will not affect the effectiveness of the notice under this Agreement.
- (e) **Waiver of Notices Not Expressly Stated.** No party to this Agreement is entitled to any notice from the Agency with respect to this Agreement unless this Agreement expressly provides for the giving of notice by the Agency to the party. Each party to this Agreement other than the Agency waives any right to receive any notice from the Agency with respect to any matter for which this Agreement does not expressly provide for the giving of notice by the Agency to the party.
- (f) **Notices to HPD.** Any notice given to HPD must be sent to the attention of the Deputy Commissioner for Asset and Property Management, with copies to the Deputy Commissioner for Development and the General Counsel.
- (g) **Notices to HDC.** Any notice given to HDC must be sent to the attention of the Senior Vice President for Portfolio Management, with copies to the Senior Vice President for Development and the General Counsel.

12.04 Agency Approvals.

- (a) **Sole Discretion.** Except as otherwise specified in this Agreement, any determination, consent, or approval by the City or HDC pursuant to this Agreement is in the sole discretion of the City or HDC, as applicable.
- (b) **HPD Authorized Officials.** Except as otherwise specifically provided in this Agreement, any approval by HPD pursuant to this Agreement must be made in writing (which may be sent by electronic means) by (i) HPD's Commissioner or a Deputy Commissioner, Associate Commissioner, or Assistant Commissioner in HPD's Office of Asset and Property Management or Office of Development or

their respective successor offices, or (ii) an HPD employee designated in writing by one of these HPD officials to grant the approval.

- (c) **HDC Authorized Officials.** Except as otherwise specifically provided in this Agreement, any approval by HDC pursuant to this Agreement must be made in writing (which may be sent by electronic means) by (i) HDC's President, Executive Vice President, or Senior Vice President, or (ii) an HDC employee designated in writing by one of these HDC officials to grant the approval.

12.05 Amendments.

No amendment or other modification to this Agreement is valid unless it is in recordable form and signed by all parties to this Agreement. The Owner shall record any such amendment against each tax lot that is occupied by all or any portion of the Project, in the land records for the county in which the Property is located and immediately following the date of the amendment. The parties to any amendment other than the Agency shall include in the amendment a certification that the statements of fact in Article 11 remain true as of the date of the amendment, except to the extent any such statements specifically refer to an earlier date (or, if a statement is not true as of the date of the amendment, providing a detailed explanation of the matter), and that the statements of fact in Sections 11.02-11.07 are also true as they relate to the signing and delivery of the amendment.

12.06 Severability.

If any provision of this Agreement is found to be void, voidable, or otherwise unenforceable, the provision will be deemed severed from this Agreement and of no further effect, and the remaining provisions of this Agreement will continue in effect to accomplish the intent of this Agreement to the fullest extent possible.

12.07 Claims Against Officials.

No party to this Agreement shall make any claim whatsoever against any official, agent, or employee of the City or HDC for, or on account of, anything done or omitted to be done in connection with this Agreement or any other document related to the Project.

12.08 Cooperation.

The Owner shall diligently render to the City and HDC, without additional compensation, any assistance that the City or HDC may reasonably require if (a) an action is brought against the City or HDC that relates in any way to the Project, the Property, this Agreement, or any other document related to the Project, and (b) neither the City nor HDC, on one hand, and the Owner, on the other hand, are adverse parties in the action.

12.09 Forum Selection.

- (a) **Choice of Law.** This Agreement and all other documents related to the Project are deemed to be executed in New York City and New York State, regardless of

the domicile of the Owner, and are governed by and should be construed in accordance with the laws of the State.

- (b) **Consent to Jurisdiction and Venue.** Any claim asserted by or against the City or HDC and arising under this Agreement or related to the Project or any other document concerning the Project must be heard and determined either in a federal court located in New York City or in a State court located in New York County. To realize this intent of the parties, the parties agree as follows:
- (i) If the City or HDC initiates any action against a party to this Agreement in federal court or State court, service of process may be made on the Owner either in person, wherever the Owner may be found, or by registered mail addressed to the Owner at its notice address under this Agreement, or to such other address as the Owner may provide to the City or HDC in writing.
 - (ii) With respect to any action between the City or HDC and the Owner in State court, the Owner expressly waives and relinquishes any rights it might otherwise have (1) to move to dismiss on grounds of forum non conveniens, (2) to remove to federal court, and (3) to move for a change of venue to a State court outside New York County.
 - (iii) With respect to any action between the City or HDC and the Owner in federal court, the Owner expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a federal court outside New York City.
 - (iv) If the Owner commences any action against the City or HDC in a court located other than in New York City, upon request of the City or HDC, the Owner shall either consent to a transfer of the action to a court of competent jurisdiction located in New York City or, if the court where the action is initially brought will not or cannot transfer the action, the Owner shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a federal court located in New York City or in a State court located in New York County.

12.10 Indemnity.

To the fullest extent permitted by Law, the Owner shall absolutely and unconditionally defend, indemnify, and hold harmless the City, HDC, and each of their officials, employees, and agents from and against any and all claims, losses, damages, costs, or liabilities that arise out of or by reason of this Agreement, the Project, or the Property (including, but not limited to, in any proceeding or action brought or taken by the City, HDC, or the Owner). The Owner shall pay all reasonable fees and other expenses of the indemnified parties in connection with any such matter, including, but not limited to, the fees of attorneys and experts. The Owner shall pay any such amount regardless of whether a legal action is finally decided by a court. The Owner shall not be obligated to indemnify an indemnified party under this Section 12.10 to the extent that a claim, loss,

damage, cost, or liability arises from the negligence or intentional tortious act of the indemnified party. This Section 12.10 applies during and after the Restriction Period.

12.11 Provisions Required by Law.

Any provision required by Law to be inserted into this Agreement is deemed to be incorporated into this Agreement. This Agreement is to be read and enforced as though each such provision is included in this Agreement. If, through mistake, change in Law, or otherwise, any such provision is not inserted, or is incorrectly inserted into this Agreement, then, upon the written request of any party, all parties shall deem this Agreement to have been amended to make such insertion or correction so as to comply strictly with the Law.

12.12 Further Assurances.

The Owner shall, at the Owner's expense, promptly execute and deliver any further documents, and take any further action, as may be reasonably requested by the Agency to ensure that the Owner and the Project comply with this Agreement.

12.13 Duplicate Originals.

This Agreement may be executed in counterparts, and together the counterparts constitute a single instrument. An executed signature page to one counterpart may be attached to another identical counterpart (excepting the signature pages) without impairing the legal effect of the signatures. Any counterpart containing the signatures of all parties to this Agreement is sufficient proof of this Agreement.

12.14 Interpretation.

- (a) **Incorporation of Recitals and Exhibits.** The recitals and all exhibits annexed to this Agreement are made a part of this Agreement for all purposes.
- (b) **As Amended.** Any reference in this Agreement to an agreement (including, but not limited to, this Agreement), document, law, regulation, requirement, or similar text means the text as may be amended, supplemented, replaced, or otherwise modified from time to time, unless the context expressly requires otherwise.
- (c) **Agreement References.** References in this Agreement to articles, sections, exhibits, or similar refer to provisions in this Agreement unless stated otherwise.
- (d) **Headings.** The titles or headings of the articles and sections of this Agreement are for reference only and are to be disregarded in construing or interpreting the provisions of this Agreement.

12.15 Joint and Several Obligations.

Each provision of this Agreement that applies in any way to the Owner (including, but not limited to, any obligation of the Owner or any waiver of rights by the Owner) applies in full measure, individually, to each party to this Agreement that is included in the

definition of "Owner". Each representation, warranty, or other statement of fact made by the Owner, any such party to this Agreement, any entity or individual that owns a direct or indirect interest in the party at any tier, any individual that is a principal, officer, or director of the party or any such direct or indirect owner, or any of their respective agents or representatives, either in this Agreement or in connection with the Project, is the responsibility of every party to this Agreement included in the definition of "Owner".

12.16 No Merger.

Every provision contained in any other document related to the Owner or the Project survives this Agreement and remains in effect, and no such provision is merged with this Agreement, even though this Agreement may recite any such provision.

12.17 Other Consents.

The Owner shall obtain all consents that may be required for any matter (including, but not limited to, Property Transfers, Changes in Ownership, financing, and zoning and development rights matters), under any other agreement that is applicable to the Property, including but not limited to any financing documents. The requirements of this Agreement are in addition to, and do not supersede, any other agreement between the Owner and the Agency and applicable to the Project or the Property that may require the Owner to obtain consent prior to any such event.

12.18 Relationship of Parties.

Nothing in this Agreement creates any association, partnership, joint venture, or relationship of principal and agent or master and servant between the Agency, on the one hand, and any other parties to this Agreement (or any affiliates), on the other hand, or provides any non-Agency party with the express or implied right to create any such duty or obligation on behalf of the Agency.

12.19 Asset Management by HDC.

Each provision of this Agreement that applies in any way to the Agency inures to the benefit of, and may be enforced in full measure by, HDC and HPD individually. Where this Agreement requires a consent from the Agency, or any similar matter, the determination will be made solely by HDC, unless (a) HPD's intention to make the determination in addition to HDC is expressly stated in this Agreement, or (b) HPD has given prior written notice to the Owner of its intention to make the determination in addition to HDC.

[Continues on next page]

ARTICLE 13
INVESTIGATIONS

13.01 Definitions.

- (a) The terms "**license**" and "**permit**," as used in this Article 13, mean a license, permit, franchise, or concession not granted as a matter of right.
- (b) The term "**person**," as used in this Article 13, means any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal, or employee.
- (c) The term "**entity**," as used in this Article 13, means any firm, partnership, corporation, association, or person that receives money, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.
- (d) The term "**member**," as used in this Article 13, means any person associated with another person or entity as a partner, director, officer, principal, or employee.

13.02. Cooperation.

The parties to this Agreement shall 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.

13.03. Refusal to Testify.

If (a) any person who has been advised that a statement made by the person, and any information from such statement, will not be used against the person 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 of the City or the State, 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 (b) any person refuses to testify for a reason other than the assertion of a 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

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 of the City or State or any local development corporation within the City, then, 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.

13.04. Adjournments.

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, without the City incurring any penalty or damages for delay or otherwise.

13.05. Penalties.

The penalties that may attach after a final determination by the commissioner or agency head may include, but are not permitted to exceed:

- (a) **Disqualification.** The disqualification for a period not to exceed five years from the date of an adverse determination for 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
- (b) **Cancellation.** The cancellation or termination of any and all such 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; the City shall pay any money lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination.

13.06. Factors.

The commissioner or agency head shall consider and address in reaching a determination and in assessing an appropriate penalty the factors in Sections 13.06(a) and 13.06(b). The commissioner or agency head may also consider, if relevant and appropriate, the criteria established in Sections 13.06(c) and 13.06(d) in addition to any other information which may be relevant and appropriate.

- (a) **Good Faith Efforts.** 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.

- (b) **Relationship to the Entity.** 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.
- (c) **Nexus.** The nexus of the testimony sought to the subject and its contracts, leases, permits, or licenses with the City.
- (d) **Effect of a Penalty.** 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 13.05, 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 13.03 gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity shall present evidence at the hearing demonstrating the potential adverse impact a penalty would have on such person or entity.

13.07. Warranties and Enforcement.

- (a) **City Employees.** The parties to this Agreement represent and warrant that to the best of their knowledge, (i) no officer, agent, employee, or representative of the City has received any payment or other consideration for the making of this Agreement or in connection with the performance of this Agreement, and (ii) no officer, agent, employee, or representative of the City has any interest, directly or indirectly, in this Agreement or the proceeds of this Agreement. The parties to this Agreement shall not hereafter make or pay any consideration as aforesaid and shall cooperate fully with the Commissioner of Investigation of the City and shall promptly report in writing 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 that may be related to the procurement or obtaining of this Agreement by the parties or affecting the performance of this Agreement.
- (b) **Enforcement.** In the event of a violation of Section 13.07(a), the Commissioner of HPD may convene a hearing pursuant to Section 13.03 and, upon such hearing, make a determination, in accordance with the considerations set forth in Section 13.06, as to whether or not a violation has occurred. The penalties imposed may include but are not permitted to exceed the penalties set forth in Section 13.05(a).

[Signatures follow]

The parties are signing this Agreement as of the date stated in the preamble to this Agreement.

H1H2 OWNER LLC, a New York limited liability company

By: H1H2 Manager LLC, its managing member

By: H1H2 MM LLC, its manager

By: 
Name: Marian Klein
Title: Authorized Signatory

H1H2 GPL OWNER LLC, a Delaware limited liability company


By: H1H2 Manager LLC, its managing member

By: H1H2 MM LLC, its manager

By: 
Name: Marian Klein
Title: Authorized Signatory

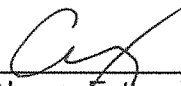
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 15th day of June, 2021, before me, the undersigned, a notary public in and for said state, personally appeared MARIAN KLEIN, 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:

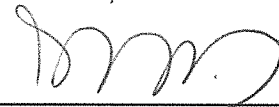
LEE BABCOCK
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01BA6392698
Qualified in Bronx County
Commission Expires June 3, 2023

HP H1 H2 HOUSING DEVELOPMENT FUND
COMPANY, INC.

By: 
Name: Esther Toporovsky
Title: Vice President

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

On the 15th day of June, 2021, before me, the undersigned, a notary public in and for said state, personally appeared **ESTHER TOPOROVSKY**, 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: 4/19/2022

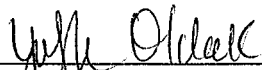
MILEIKA BETHANCOURT
Notary Public, State of New York
No. 01BE6220876
Qualified in Kings County
Commission Expires April 19, 2022

**NEW YORK CITY HOUSING
DEVELOPMENT CORPORATION**

By: 
Name: Ruth Moreira
Title: Senior Vice President

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

On the 17th day of June, 2021, 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:

Yaffa Oldak
Notary Public-State of New York
No. 01OL6112307
Qualified in Kings County
Commission Expires June 28, 2024

THE CITY OF NEW YORK

By: DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT

By: 
Name: Lauren Connors
Title: Assistant Commissioner

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

On the ____ day of June, 2021, before me, the undersigned, a notary public in and for said state, personally appeared **LAUREN CONNORS**, 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:

APPROVED AS TO FORM
BY STANDARD TYPE OF CLASS
FOR USE UNTIL November 18, 2022:

By: /s/ Isabel Galis-Menendez
Acting Corporation Counsel

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:

Borough: **Kings**

Block: **2472**

Lot: **70**

Address: **35 Commercial Street**

EXHIBIT B
PROJECT DETAILS

Project

Name	Greenpoint Landing H1H2	
Address	35 Commercial Street Brooklyn, New York	
Borough, Block, and Lot	Kings Block 2472, Lot 70	
Building Identification Number	3428687	
Sponsor	H1H2 Owner LLC	
Number of Units (excluding Superintendent Units)	373	
	Studio	93
	1-Bedroom	93
	2-Bedroom	187
	3-Bedroom	0
Superintendent Units	1 two-bedroom Unit	
Summary of Occupancy Restrictions (See individual tables that follow in Exhibit B for apartment-size distributions, rent limits, and other restrictions.)	57- 40% of AMI Units (Homeless Our Space) (Permanently Affordable) 66 - 30% of AMI Units (Permanently Affordable) 68- 50% of AMI Units (Permanently Affordable) 71- 80% of AMI Units (Permanently Affordable) 40- 80% of AMI Units (Permanently Affordable) (Non-LIHTC) 71- 110% of AMI Units (Permanently Affordable) 262 LIHTC Units	
Non-Residential Space	Approximately 7,636 square feet of commercial space	
Initial Managing Agent (Acknowledged by the Agency as of the date of this Agreement only. Any change to the Managing Agent requires Agency consent per Section 6.07. The Agency may also require a replacement per Section 6.07.)	Wavecrest Management Group LLC	

Management Fee Limit	6% of the Project's net residential rent collection, which includes all amounts actually collected with respect to the Units as rent, rental subsidies, or other payment.
LIHTC Syndicator or Investor Parent Entity	Investor entity: Wells Fargo Affordable Housing Community Development Corporation Investor Parent Entity: Wells Fargo Bank. National Association
Applicable Fraction	100%
Minimum Set-Aside (HDC Obligations)	25% at 60% of AMI

Restriction Period

<p>Agency Program Termination Date</p> <p>(This Agreement may remain in effect beyond this date; see Section 2.01.)</p>	<p>No termination date. The parties intend for the Restriction Period to last in perpetuity.</p>
<p>Extended Use Period</p> <p>(This Agreement may remain in effect beyond this date; see Section 2.01.)</p>	<p>60 years from the beginning of the compliance period (as defined in Section 42(i)(1) of the Internal Revenue Code), or any earlier date on which the Extended Use Period terminates upon a foreclosure or deed in lieu of foreclosure pursuant to Section 42 of the Internal Revenue Code</p>

30% of AMI Units(Permanently Affordable)

Income Limit	30% of AMI		
Maximum Program Rent	30% of AMI		
Other Restrictions	Permanently Affordable		
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	17	\$1,717 (100% of 2021 AMI)	\$410 (27% of 2021 AMI)
1-Bedroom	17	\$2,155 (100% of 2021 AMI)	\$521 (27% of 2021 AMI)
2-Bedroom	32	\$2,576 (100% of 2021 AMI)	\$615 (27% of 2021 AMI)
Total	66		

50% of AMI Units (Permanently Affordable)

Income Limit		50% of AMI	
Maximum Program Rent		50% of AMI	
Other Restrictions		Permanently Affordable	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	18	\$1,717 (100% of 2021 AMI)	\$768 (47% of 2021 AMI)
1-Bedroom	18	\$2,155 (100% of 2021 AMI)	\$969 (47% of 2021 AMI)
2-Bedroom	32	\$2,576 (100% of 2021 AMI)	\$1,152 (47% of 2021 AMI)
Total	68		

80% of AMI Units (Permanently Affordable)

Income Limit		80% of AMI	
Maximum Program Rent		80% of AMI	
Other Restrictions		(Permanently Affordable)	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	2	\$1,717 (100% of 2021 AMI)	\$1,305 (77% of 2021 AMI)
1-Bedroom	1	\$2,155 (100% of 2021 AMI)	\$1,640 (77% of 2021 AMI)
2-Bedroom	7	\$2,576 (100% of 2021 AMI)	\$1958 (77% of 2021 AMI)
Total	10		

80% of AMI Units (Voluntary Inclusionary Housing) (Permanently Affordable)

Income Limit		80% of AMI	
Maximum Program Rent		80% of AMI	
Other Restrictions		Voluntary Inclusionary Housing, Permanently Affordable	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	25	\$1,599 (80% of 2021 AMI)	\$1,305 (77% of 2021 AMI)
1-Bedroom	25	\$1,708 (80% of 2021 AMI)	\$1,640 (77% of 2021 AMI)
2-Bedroom	51	\$2,039 (80% of 2021 AMI)	\$1,958 (77% of 2021 AMI)
Total	101		

110% of AMI Units (Permanently Affordable)

Income Limit		110% of AMI	
Maximum Program Rent		90% of AMI	
Other Restrictions		Permanently Affordable	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	17	\$1,896 (110% of 2021 AMI)	\$1,538 (90% of 2021 AMI)
1-Bedroom	18	\$2,379 (110% of 2021 AMI)	\$1,931 (90% of 2021 AMI)
2-Bedroom	36	\$2,844 (110% of 2021 AMI)	\$2,307 (90% of 2021 AMI)
Total	71		

40% of AMI Units (Homeless Units) (Our Space) (Permanently Affordable)

Income Limit		40% of AMI	
Maximum Program Rent		30% of AMI (and upon vacancy, the least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than the amount given below as the floor for the Income-Based Rent in the Initial Actual Rent for each apartment size), or (iii) if received by the Tenant, Shelter Allowance)	
Other Restrictions		Homeless Units (Our Space Program)(Permanently Affordable)	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	14	\$1,717 (100% of 2021 AMI)	Least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$215), or (iii) if received by the Tenant, the Shelter Allowance
1-Bedroom	14	\$2,155 (100% of 2021 AMI)	Least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$283), or (iii) if received by the Tenant, the Shelter Allowance
2-Bedroom	29	\$2,576 (100% of 2021 AMI)	Least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$425), or (iii) if received by the Tenant, the Shelter Allowance
Total	57		

Other Rent Matters

Utility Allowances	Tenant pays electric only, with an electric stove
Maximum Rental Assistance Rent	N/A

Reserves

<p>Replacement Reserve Contributions</p>	<p>\$300 per unit divided by 12 monthly (the then-applicable monthly contribution will be increased each year by 3%), beginning on the first day of the first month following the Permanent Loan Conversion.</p>
<p>Initial Operating Reserve Contribution</p>	<p>\$1,715,906 at the Permanent Loan Conversion.</p>
<p>Operating Reserve Contributions</p>	<p>Following the repayment of the deferred developer fee and not later than the sixteenth (16th) anniversary of the permanent loan closing date, an additional 10% of the annual net cash flow from the Project shall be transferred into the Operating Reserve every year.</p>

<p>Social Services Reserve</p>	<p>\$584,500 at the Permanent Loan Conversion.</p> <p>The Owner may deduct from this deposit any amount previously advanced to the Owner prior to the Permanent Loan Conversion and under the social services reserve line item in the Project's development budget in order to implement an Agency-approved social services plan and to furnish the Homeless Units. The Owner shall not take any deduction, however, for amounts advanced to implement the social services plan exceeding \$427,500 and amounts advanced to furnish Homeless Units exceeding \$157,000.</p> <p>Within 90 days of the first anniversary of the Permanent Conversion, and annually thereafter, the Owner shall deposit into the Social Services Reserve the amount by which the rent collected from the Homeless Units exceeds the amount of rent that would have been collected were monthly rents set at \$215 for a studio, \$283 for a 1-bedroom, \$425 for a 2-bedroom and \$512 for a 3-bedroom (as such amounts may be increased annually by 2%). If the Social Services Reserve balance exceeds \$15,000 per Homeless Unit, the Owner shall use such excess to repay the subordinate HPD Financing or HDC Financing or to establish a reserve for the Project, as directed by the Agency. The reserve statements required by Section 9.01(d) must include a certification of the calculations for determining the deposit required by this paragraph.</p> <p>The Owner may request a withdrawal from the Social Services Reserve to pay for the cost of implementing an Agency-approved social services plan, or otherwise as approved in writing by the Agency.</p>
<p>Servicer of Reserves</p>	<p>New York City Housing Development Corporation</p>

Permitted Transfers and Mortgages

<p>Permitted Property Transfers and Changes in Ownership</p>	<p>The Agency consents to the following Property Transfers or Changes in Ownership: Commercial Master Sublease Agreement dated as of the date of this Agreement, between Beneficial Owner and H1H2 Retail LLC for the lease of approximately 7,636 square feet of commercial space in the Project.</p>
<p>Permitted Mortgages</p>	<p>The Agency consents to the following Permitted Mortgages: Those certain mortgages delivered by Owner to New York City Housing Development Corporation in the aggregate amount of \$88,923,079 dated as of the date hereof.</p>

Copies of Notices

<p>Address for Counsel to Beneficial Owner</p>	<p>Hirschen Singer & Epstein LLP, 902 Broadway, 13th Floor, New York, NY 10010 Attention: Russell A. Kivler, Esq.</p>
<p>Address for LIHTC Investor</p>	<p>Wells Fargo Affordable Housing Community Development Corporation, c/o MAC D1053-170, 301 South College Street, Charlotte, NC 28288 Attention: Director of Tax Credit Asset Management.</p>
<p>Address for Counsel to LIHTC Investor</p>	<p>Sidley Austin LLP, One South Dearborn, Chicago, IL 60603, Attn: Philip Spahn, Esq.</p>
<p>Address for Letter of Credit Provider</p>	<p>Wells Fargo Bank, National Association Community Lending and Investment 30 Hudson Yards, 61st Floor New York, NY 10001 Attention: Katelyn Meehan</p>
<p>Address for Counsel to Letter of Credit Provider</p>	<p>Sidley Austin LLP, 787 Seventh Avenue, New York, NY 10019 Attention: Adam Verstandig, Esq.</p>

EXHIBIT C

FORM OF MEMORANDUM OF REGULATORY AGREEMENT

This **MEMORANDUM OF REGULATORY AGREEMENT** is made as of _____, 20____, by: _____ (“**Owner**”), a _____ having an address at _____.

1. The Owner is owner of the premises located in _____ County, City and State of New York, known as and by the street address _____, and identified as Block _____, Lot _____ on the Tax Map of the City of New York (“**Property**”), as more particularly described in Exhibit A attached to this Memorandum and made a part hereof.
2. The Owner has agreed for and on behalf of itself, its successors, assigns, heirs, grantees, and lessees to comply with the Affordable Housing Regulatory Agreement (“**Regulatory Agreement**”) dated as of _____, 20____, by and between the Owner, [the City of New York, acting through its Department of Housing Preservation and Development (“**HPD**”),] [the New York City Housing Development Corporation (“**HDC**”),] and any other parties to the Regulatory Agreement.
3. The Regulatory Agreement was recorded in the land records on _____, 20____, at _____.
4. The Regulatory Agreement runs with the land that constitutes the Property in accordance with the terms of the Regulatory Agreement.
5. The provisions of the Regulatory Agreement are incorporated by reference into this Memorandum. This Memorandum is intended to provide constructive notice of the Regulatory Agreement and in no way modifies or amends the Regulatory Agreement. If this Memorandum conflicts with the Regulatory Agreement, the terms of the Regulatory Agreement control.

This Memorandum has been signed as of the date first set forth above.

[Attach signature pages and Exhibit A to completed Memorandum.]

EXHIBIT D
CITY COUNCIL RESOLUTION

[Follows]

**THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 2068**

Resolution approving the decision of the City Planning Commission on an application submitted by the Department of Housing Preservation and Development, ULURP No. C 140019 HAK, approving the designation of property located at 16 Dupont Street (Block 2494, Lot 6) and 219 West Street (Block 2472, p/o Lot 32), Borough of Brooklyn, as an Urban Development Action Area, approving the project for the area as an Urban Development Action Area Project, and approving the disposition of such property to a developer selected by the Department of Housing Preservation and Development (L.U. No. 971; C 140019 HAK).

By Council Members Comrie and Levin

WHEREAS, the City Planning Commission filed with the Council on November 8, 2013 its decision dated November 6, 2013 (the "Decision"), on the application submitted by the New York City Department of Housing Preservation and Development pursuant to Section 197-c of the New York City Charter and Article 16 of the General Municipal Law of New York State regarding:

- a) the designation of property located at 16 Dupont Street (Block 2494, Lot 6) and 219 West Street (Block 2472, p/o Lot 32), as an Urban Development Action Area; and
- b) an Urban Development Action Area Project for such area; and

pursuant to Section 197-c of the New York City Charter for the disposition of such property to a developer selected by the Department of Housing Preservation and Development to facilitate development of a mixed-use development including affordable housing and open space, Community District 1, Borough of Brooklyn (ULURP No. C 140019 HAK) (the "Application");

WHEREAS, the Application is related to applications N 140028 ZRK (L.U. No. 972), a Zoning Text Amendment to facilitate the development of affordable housing, open space, and a public school; N 140022 ZAK (L.U. No. 973), an Authorization by the City Planning Commission pursuant to 62-822(a) of the Zoning Resolution to modify location and dimension requirements of Section 62-50 for visual corridors and waterfront public access areas, and in conjunction therewith the rear yard requirements of Section 62-332 on Zoning Lot 5b-1; N 140020 ZAK (L.U. No. 974), an Authorization by the City Planning Commission pursuant to 62-822(a) of the Zoning Resolution to modify location, area and dimension requirements of Section 62-50 for visual corridors and waterfront public access areas; and Application No. 20145125 SCK (L.U. No. 990) a new, approximately 640-Seat primary/intermediate school facility to be located at the southwest corner of Franklin and Dupont Streets (Block 2494, Lot 1 in portion) in the Williamsburg section of Brooklyn;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d(b)(1) of the City Charter;

WHEREAS, the Application and Decision are subject to review and action by the Council pursuant to Article 16 of the General Municipal Law of New York State;

WHEREAS, the New York City Department of Housing Preservation and Development ("HPD") submitted to the Council its recommendations regarding the Application on December 6, 2013 and December 10, 2013;

WHEREAS, upon due notice, the Council held a public hearing on the Application and Decision on December 5, 2013;

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

WHEREAS, the Council has considered the relevant environmental issues and the revised negative declaration (CEQR No. 14DCP004K) issued on November 6, 2013 (the "Revised Negative Declaration").

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment as set forth in the Revised Negative Declaration.

The Council finds that the present status of the Disposition Area tends to impair or arrest the sound growth and development of the City of New York and that a designation of the Project as an urban development action area project is consistent with the policy and purposes stated in Section 691 of the General Municipal Law.

The Council approves the designation of the Disposition Area as an urban development action area pursuant to Section 693 of the General Municipal Law.

The Council approves the Project as an urban development action area project pursuant to Section 694 of the General Municipal Law.

The Council approves the disposition of such property to a developer selected by the Department of Housing Preservation and Development.

The Project shall be developed in a manner consistent with the project summary dated December 9, 2013, submitted by HPD, a copy of which is attached hereto.

Pursuant to Section 197-d of the New York City Charter, based on the environmental determination and the consideration described in this report, C 140019 HAK and incorporated by reference herein, the Council approves the Decision of the City Planning Commission, subject to the following conditions:

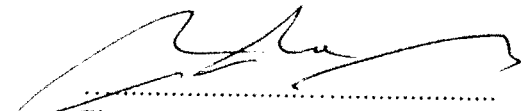
1. That HPD require, as a condition of sale of City-owned land that is the subject of this action, that development of the 431 units of affordable housing herein referred to as the “Points of Agreement units” or “POA units,” or the appropriate phase of the POA units, and any and all development taking place directly on the City-owned land to be disposed of pursuant to this approval (Block 2494, Lot 6 and Block 2472, p/o Lot 32) comply with urban design guidelines attached as Attachment A to the City Planning Commission Report (C 140019 HAK).
2. That HPD require, as a condition of sale of the City-owned land that is the subject of this action, or the appropriate phase of such sale, that restrictive declarations, acceptable to Counsel to the City Planning Commission, be recorded by the developer against the sites of any buildings containing POA units, or a portion of the POA units associated with the a phase of the sale, ensuring, that upon construction of a certain number of the POA units, child care funding is provided by the developer to ACS for publicly provided child care vouchers. The terms for provision of child care funding required pursuant to the restrictive declarations are set forth in Attachment B attached to the City Planning Commission Report (C 140019 HAK) and will ensure that the development reflects the child care PCRE described in the Environmental Assessment Statement (14DCP004K) for this and the related actions.
3. That HPD require, as a condition of sale of the City-owned land that is the subject of this action that restrictive declarations, acceptable to Counsel to the City Planning Commission, be recorded by the developer against the sites of the buildings containing POA units (or the appropriate phase of the POA units) and the school, and that HPD impose deed restrictions or restrictive declarations on the City-owned properties to be conveyed, ensuring that proper construction techniques are employed for the construction of the school, the buildings containing the POA units, and any development taking place on the City-owned site to be disposed. Such construction techniques are set forth in Attachment C attached to the City Planning Commission Report (C 140019 HAK) and will ensure that the development reflects the construction PCRE described in the Environmental Assessment Statement (14DCP004K) for this and the related actions.

4. That HPD require, as a condition of sale of the City-owned land that is the subject of this action, or the appropriate phase of such sale, the provision of funding for transit improvements to ensure that the development reflects the transit PCRE described in the Environmental Assessment Statement (14DCP004K) for this and the related actions.
5. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign or legal representative of such party to observe any of the restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the disposition approval hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said disposition approval. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission or of any agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission to disapprove any application for modification, cancellation or amendment of the authorization.

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 December 10, 2013, on file in this office.


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

CITY COUNCIL
LAND USE DIVISION
2013 DEC 10 AM 9:50

- 1. PROGRAM: Negotiated Sale
- 2. PROJECT: Greenpoint Landing
- 3. LOCATION:
 - a. BOROUGH: Brooklyn
 - b. COMMUNITY DISTRICT: 1
 - c. COUNCIL DISTRICT: 33
 - d. DISPOSITION AREA:

BLOCK	LOT(S)	ADDRESS(ES)
2472	p/o 32	219 West Street
2494	6	16 Dupont Street

4. BASIS OF DISPOSITION PRICE:

Summary:

The Disposition Area will be sold in three phases. As consideration, Sponsor must (i) pay cash, (ii) for Phase I, deliver a land debt note and mortgage for the appraised value of Phase I, (iii) for Phases II and III, deliver a note and mortgage that secures Sponsor's obligation to perform certain infrastructure work on and in the vicinity of the Disposition Area (including street construction work, bulkhead repair and stabilization, environmental remediation and stabilization, and subsurface excavation) ("Supplemental Work"), and (iv) for all three phases, close on a construction loan for one of three projects to be constructed on land owned by Sponsor in the vicinity of the Disposition Area for the provision of affordable housing ("Affordable Housing Project(s)").

Phase I:

Block 2472, p/o Lot 32 and the portion of the associated development rights required to construct the first Affordable Housing Project:

Nominal price. Sponsor must also deliver a note and mortgage ("Land Debt") that will encumber such Affordable Housing Project, in an amount based on the appraised value of Phase I. For a period of thirty (30) years following completion of the first Affordable Housing Project, the Land Debt will be repayable out of resale or refinancing profits. The remaining balance, if any, may be forgiven in The 30th year.

Sponsor must also close on a construction loan for the Affordable Housing Project located on Block 2494, p/o Lot 100 that, when completed, will provide approximately 98 units of affordable housing.

Phase II:

Additional development rights associated with Block 2472, p/o Lot 32

Appraised value. Sponsor will pay the purchase price by delivering cash plus a note and mortgage that will encumber Phase II. The note and mortgage will be in the amount of the costs to be incurred for the Supplemental Work associated with Phase II and will be deemed repaid as Supplemental Work is done. The balance, if any, will be due and payable within a maximum of 13 years following the sale of Phase I.

Sponsor must also close on a construction loan for the Affordable Housing Project located on Block 2472, p/o Lot 100 that, when completed, will provide approximately 166 units of affordable housing.

Phase III:

Remaining development rights associated with Block 2472, p/o Lot 32, and Block 2494, Lot 6 and associated development rights.

Appraised value. Sponsor will pay the purchase price by delivering cash plus a note and mortgage that will encumber Phase III. The note and Mortgage will be in the amount of the costs to be incurred for the Supplemental Work associated with Phase III and will be deemed repaid as Supplemental Work is done. The balance, if any, will be due and payable within a maximum of 13 years following the sale of Phase I.

Sponsor must also close on a construction loan for the Affordable Housing Project located on Block 2472, p/o Lot 100 that, when completed, will provide approximately 166 units of affordable housing.

5. **TYPE OF PROJECT:** New Construction
6. **APPROXIMATE NUMBER OF BUILDINGS:** Disposition Area: as of right.
Affordable Housing Projects: 3
7. **APPROXIMATE NUMBER OF UNITS:** Disposition Area: as of right.
Affordable Housing Projects: 431
8. **HOUSING TYPE:** Disposition Area: Rental and/or Ownership.
Affordable Housing Projects: Rental
9. **ESTIMATE OF INITIAL RENTS AND/OR SALES PRICES** Disposition Area: Rents and/or Sales Prices will be established in compliance with the requirements of lenders, at market levels.
Affordable Housing Projects: Rents shall be affordable to households earning up to 120% of the Area Median Income (AMI).
10. **INCOME TARGETS** Disposition Area: None.

Affordable Housing Projects: Rental units will be affordable to households earning up to 120% of AMI.

11. PROPOSED FACILITIES:

None

12. PROPOSED CODES/ORDINANCES:

None

13. ENVIRONMENTAL STATUS:

Negative Declaration

14. PROPOSED TIME SCHEDULE:

Disposition Area: Approximately 6 years from closing to completion of construction.
Affordable Housing Projects: Approximately 2 years from closing of each Affordable Housing Project to construction completion of each project.

**THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 2069**

Resolution approving the decision of the City Planning Commission on Application No. N 140028 ZRK, for an amendment of the Zoning Resolution of the City of New York, concerning Section 11-13 (Public Parks), Section 62-35 (Special Bulk Regulations in Certain Areas Within Community District 1, Brooklyn), and 62-931 (Waterfront Access Plan BK-1: Greenpoint-Williamsburg) relating to the development of parkland and schools in Community District 1, Borough of Brooklyn (L.U. No. 972).

By Council Members Comrie and Weprin

WHEREAS, the City Planning Commission filed with the Council on November 28, 2013 its decision dated November 6, 2013 (the "Decision"), pursuant to Section 201 of the New York City Charter, regarding an application submitted by the Department of City Planning, for an amendment of the text of the Zoning Resolution of the City of New York, concerning Section 11-13 (Public Parks), Section 62-35 (Special Bulk Regulations in Certain Areas Within Community District 1, Brooklyn), and 62-931 (Waterfront Access Plan BK-1: Greenpoint-Williamsburg) relating to the development of parkland and schools (Application No. N 140028 ZRK), Community District 1, Borough of Brooklyn (the "Application");

WHEREAS, the Application is related to Applications N 140019 HAK (L.U. No. 971), an Urban Development Action Area Project designation, approval, and disposition to facilitate the development of affordable housing and public open space; N 140022 ZAK (L.U. No. 973), an Authorization by the City Planning Commission pursuant to 62-822(a) of the Zoning Resolution to modify location and dimension requirements of Section 62-50 for visual corridors and waterfront public access areas, and in conjunction therewith the rear yard requirements of Section 62-332 on Zoning Lot 5b-1; N 140020 ZAK (L.U. No. 974), an Authorization by the City Planning Commission pursuant to 62-822(a) of the Zoning Resolution to modify location, area and dimension requirements of Section 62-50 for visual corridors and waterfront public access areas; and Application No. 20145125 SCK (L.U. No. 990), a new, approximately 640-Seat primary/intermediate school facility to be located at the southwest corner of Franklin and Dupont Streets (Block 2494, Lot 1 in portion) in the Williamsburg section of Brooklyn;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d(b)(1) of the City Charter;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on December 5, 2013;

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

WHEREAS, the Council has considered the relevant environmental issues and the revised negative declaration, issued on November 6, 2013 (CEQR No. 14DCP004K).

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment as set forth in the Revised Negative Declaration.

Pursuant to Sections 197-d and 200 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, N 140028 ZRK, incorporated by reference herein, the Council approves the Decision.

The Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter in underline is new, to be added;
Matter in ~~strikeout~~ is old, to be deleted;
Matter within # # is defined in Section 12-10;
* * * indicates where unchanged text appears in the Zoning Resolution

Article 1

Chapter 1

Title, Establishment of Controls and Interpretation of Regulations

* * *

11-10

**ESTABLISHMENT AND SCOPE OF CONTROLS, ESTABLISHMENT OF DISTRICTS,
AND INCORPORATION OF MAPS**

* * *

11-13

Public Parks

District designations indicated on #zoning maps# do not apply to #public parks#, except as set forth in Section 105-91 (Special District Designation on Public Parks) and in paragraph (c) of Section 62-351 (Special floor area regulations). In the event that a #public park# or portion thereof is sold, transferred, exchanged, or in any other manner relinquished from the control of the Commissioner of Parks and Recreation, no building permit shall be issued, nor shall any #use# be permitted on such former #public park# or portion thereof, until a zoning amendment designating a zoning district therefore has been adopted by the City Planning Commission and has become effective after submission to the City Council in accordance with the provisions of Section 71-10 (PROCEDURE FOR AMENDMENTS).

* * *

Article IV

Chapter 2

Special Regulations Applying in the Waterfront Area

* * *

62-35

Special Bulk Regulations in Certain Areas Within Community District 1, Brooklyn

On #waterfront blocks# in #Inclusionary Housing designated areas# in Community District 1, Borough of Brooklyn, the special #bulk# regulations of this Chapter are further modified as set forth in this Section, inclusive.

62-351

Special floor area regulations

* * *

(c) Special regulations for Parcel 5e within Waterfront Access Plan BK-1

On Parcel 5e within Waterfront Access Plan BK-1, in the event that a property is #developed# as a #public park#, such property shall continue to be considered part of a #zoning lot# for the purposes of generating #residential floor area# based on the #residential floor area ratio# applicable to the property prior to its #development# as a #public park#. In no event shall the #floor area# generated by the property #developed# as a #public park# be utilized within the #public park#, but may be utilized pursuant to Section 62-353 (Special floor area, lot coverage and residential density distribution regulations). Floor space within any structure constructed pursuant to an agreement with the Department of Parks and Recreation within such #public park# shall be exempt from the definition of #floor area#.

(d) Special regulations for Parcel 5d within Waterfront Access Plan BK-1

On Parcel 5d within Waterfront Access Plan BK-1, up to 120,000 square feet of floor space within a public #school#, constructed in whole or in part pursuant to agreement with the New York City School Construction Authority and subject to the jurisdiction of the New York City Department of Education, shall be exempt from the definition of #floor area# and from #lot coverage# requirements for the purposes of calculating the permitted #floor area ratio# and #lot coverage# for #community facility uses# and the maximum #floor area ratio# and total permitted #lot coverage# of the #zoning lot#.

* * *

62-354

Special height and setback regulations

Within Waterfront Access Plan BK-1, the provisions of Section 62-341 (Developments on land and platforms) are modified, as follows:

* * *

- (j) On Parcel 5d, the provisions of paragraphs (c)(1) and (c)(2) shall be modified for public #schools# constructed in whole or in part pursuant to an agreement with the New York City

School Construction Authority and subject to the jurisdiction of the New York City Department of Education, as follows:

- (1) the maximum base height provisions of paragraph (c)(1) shall not apply; and
- (2) the maximum #building# height provisions of paragraph (c)(2) shall be modified to permit a maximum #building# height of 100 feet or six #stories#, whichever is less.

62-355

Special yard regulations

On Parcel 5d within Waterfront Access Plan BK-1, the #yard# provisions of Section 24-36 (Minimum Required Rear Yards) shall not apply to public #schools# constructed in whole or in part pursuant to an agreement with the New York City School Construction Authority and subject to the jurisdiction of the New York City Department of Education.

* * *

62-90

WATERFRONT ACCESS PLANS

* * *

62-93

Borough of Brooklyn

* * *

62-931

Waterfront Access Plan BK-1: Greenpoint-Williamsburg

Maps BK-1a through BK-1c in paragraph (f) of this Section show the boundaries of the area comprising the Greenpoint-Williamsburg Waterfront Access Plan and the location of certain features mandated or permitted by the Plan. The plan area has been divided into parcels consisting of tax blocks and lots and other lands as established on May 11, 2005, as follows:

* * *

- Parcel 5a: Block 2472, Lot 100
- Parcel 5b: Block 2472, Lot 32, south of the prolongation of the northern #street line# of DuPont Street
Block 2494, Lot 6
- Parcel 5c: Block 2472, Lot 2
~~Block 2494, Lot 1~~
Block 2502, Lot 1
Block 2510, Lot 1
Block 2520, Lot 57
- Parcel 5d: Block 2494, Lot 1
- Parcel 5e: Block 2472, Lot 32, north of the prolongation of the northern #street line# of DuPont Street
- Parcel 6: Block 2472, Lot 75

* * *

(d) Special public access provisions by parcel

The provisions of Sections 62-52 (Applicability of Waterfront Public Access Area Requirements) and 62-60 (DESIGN REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AREAS) are modified at the following designated locations which are shown on Map BK-1b in paragraph (f) of this Section:

- (1) Parcels 1 and 2

* * *

- (4) Parcel 5b

The portion of Block 2472, Lot 32, located within Parcel 5b shall constitute a #zoning lot# for the purpose of applying all #waterfront public access area# and #visual corridor# provisions of Sections 62-50 through 62-90, inclusive.

(4)(5) Parcel 5c

(ii) #Supplemental public access area#

Two #supplemental public access areas# shall be provided on Parcel 5c. A #supplemental public access area# shall be bounded by the southern boundary of the required Green Street #upland connection#, the #shore public walkway#, the southern boundary of Parcel 5c and the northern prolongation of the eastern boundary of the #shore public walkway# required in Parcel 7. The remaining required #supplemental public access area# shall be provided either on the #pier# or distributed evenly as a widening of the #shore public walkway# located between the Eagle Street and Green Street #upland connections#. If any #supplemental public access area# is located on the #pier#, one shade tree shall be required for each 1,000 square feet of #supplemental public access area#, but in no event shall more than four shade trees be required. A shading element may be substituted for the required shade trees at a rate of 450 square feet of shade element per tree.

The total #lot area# utilized in the calculation of required #supplemental public access area# for Parcel 5c, pursuant to Section 62-57, shall include the #lot area# within Parcel 5d.

(6) Parcel 5e

The portion of Block 2472, Lot 32, located within Parcel 5e shall constitute a #zoning lot# for the purpose of applying all #waterfront public access area# and #visual corridor# provisions of Sections 62-50 through 62-90, inclusive.

(5)(7) Parcel 7

* * *

(6)(8) Parcels 9, 10 and 11

* * *

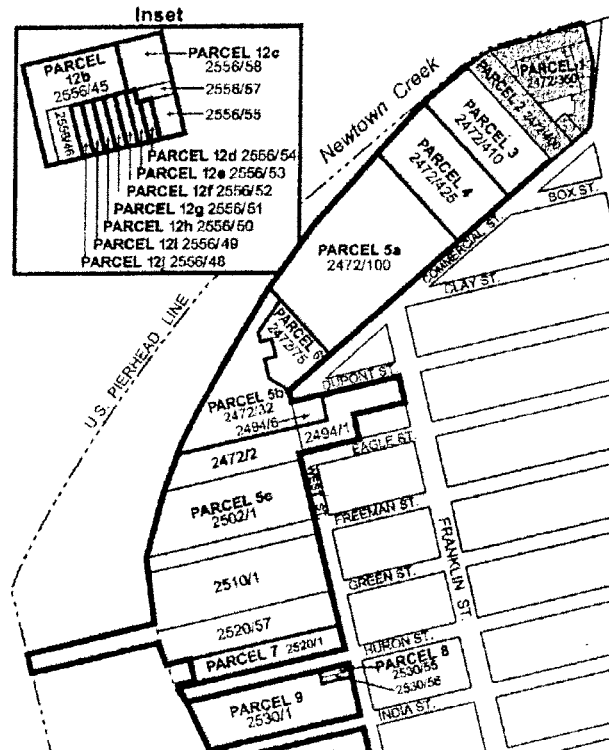
(7)(9) Parcel 13

* * *

- (8)(10) Parcel 14
* * *
- (9)(11) Parcel 15
* * *
- (10)(12) Parcels 19, 20, 21 and 22
* * *
- (11)(13) Parcel 25
* * *
- (12)(14) Parcel 26
* * *
- (13)(15) Parcel 27
* * *

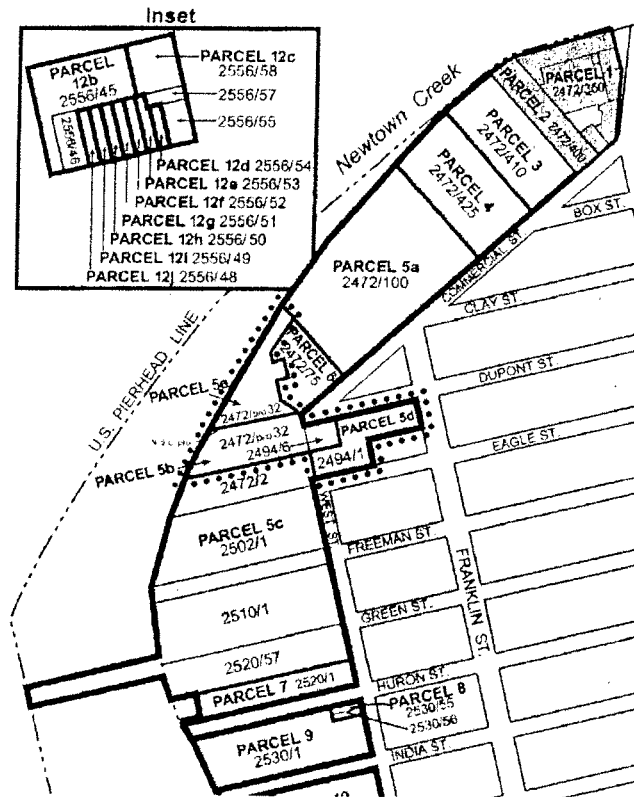
NOTE: Maps BK-1a to BK-1c to be amended to show Parcels 5d and 5e

Map BK-1a: PARCEL DESIGNATION



EXISTING (TO BE DELETED)

MAP BK-1a: PARCEL DESIGNATION



[Area being changed is outlined in dotted line]

PROPOSED

[Maps BK-1b and BK-1c to be changed consistent with changes to Map BK-1a shown above]


* * *

Page 10 of 10
N 140028 ZRK
Res. No. 2069 (L.U. No. 972)

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 December 10, 2013, on file in this office.



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

**THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 2070**

Resolution approving the decision of the City Planning Commission for the grant of an authorization pursuant to Section 62-822(a) of the Zoning Resolution to modify the location and minimum dimensions requirements of Section 62-50 (GENERAL REQUIREMENTS FOR VISUAL CORRIDORS AND WATERFRONT PUBLIC ACCESS AREAS), and in conjunction therewith the requirements of Section 62-332 (Rear yards and waterfront yards), in connection with a proposed mixed-use development on property located at 219 West Street (Zoning Lot 5b-1, Block 2472, p/o of Lot 32), in R6/C2-4 and R8 Districts, within the Greenpoint-Williamsburg Waterfront Access Plan (Parcel 5b), Borough of Brooklyn (Non-ULURP No. N 140022 ZAK; L.U. No. 973).

By Council Members Comrie and Weprin

WHEREAS, the City Planning Commission filed with the Council on November 8, 2013 its decision dated November 6, 2013 (the "Decision"), on the application submitted by Greenpoint Landing Associates LLC for the grant of an authorization pursuant to Section 62-822(a) of the Zoning Resolution to modify the location requirements and minimum dimensions requirements of Section 62-50 (GENERAL REQUIREMENTS FOR VISUAL CORRIDORS AND WATERFRONT PUBLIC ACCESS AREAS), and in conjunction therewith the requirements of Section 62-332 (Rear yards and waterfront yards), in connection with a proposed mixed-use development on property located at 219 West Street (Zoning Lot 5b-1, Block 2472, p/o of Lot 32), in R6/C2-4 and R8 Districts, within the Greenpoint-Williamsburg Waterfront Access Plan (Parcel 5b), Community District 1, Borough of Brooklyn (Non-ULURP No. N 140022 ZAK) (the "Application");

WHEREAS, the application is related to Applications C 140019 HAK (L.U. No. 971), an Urban Development Action Area Project designation, approval, and disposition to facilitate the development of affordable housing and public open space; N 140028 ZRK (L.U. No. 972), a Zoning Text Amendment to facilitate the development of affordable housing, open space, and a public school; N 140020 ZAK (L.U. No. 974), an Authorization by the City Planning Commission pursuant to 62-822(a) of the Zoning Resolution to modify location, area and dimension requirements of Section 62-50 for visual corridors and waterfront public access areas, and in conjunction therewith the rear yard requirements of Section 62-332 for Zoning Lot 5a; and Application No. 20145125 SCK (L.U. No. 990), a new, approximately 640-Seat primary/intermediate school facility to be located at the southwest corner of Franklin and Dupont Streets (Block 2494, Lot 1 in portion) in the Williamsburg section of Brooklyn;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 62-822(a) of the Zoning Resolution of the City of New York;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on December 5, 2013;

WHEREAS, the City Planning Commission has made the findings required pursuant to Section 62-822(a)(1) of the Zoning Resolution of the City of New York;

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

WHEREAS, the Council has considered the relevant environmental issues and the revised negative declaration (CEQR No. 14DCP004K), issued on November 6, 2013 (the “Revised Negative Declaration”);

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment as set forth in the Revised Negative Declaration.

Pursuant to Section 62-822(a) of the Zoning Resolution of the City of New York and on the basis of the Decision and Application, and based on the environmental determination and consideration described in this report, N 140022 ZAK, incorporated by reference herein, the Council approves the Decision, subject to the following conditions:

1. The development that is the subject of this application (N 140022 ZAK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications, and zoning computations indicated on the following plans, prepared by Handel Architects LLP and James Corner Field Operations, and filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-001	ULURP Master Plan	07-15-2013
G-050.00	Survey	08-29-2013
L-001.00	WPAA Diagram	07-08-2013
L-101.00	Zoning Calculations Chart 1	07-08-2013

Page 3 of 5
N 140022 ZAK
Res. No. 2070 (L.U. No. 973)

L-102.00	Zoning Calculations Chart 2	07-08-2013
L-103.00	Zoning Calculations Chart 3	07-08-2013
L-104.00	Zoning Calculations Chart 4	07-08-2013
L-110.00	WPAA Layout Plan	07-08-2013
L-120.00	Material Plan	07-08-2013
L-130.00	Seating Plan	07-08-2013
L-131.00	Seating Schedule	07-08-2013
L-140.00	Furnishing Plan (and Signage)	07-08-2013
L-150.00	Planting Plan (Trees)	07-08-2013
L-151.00	Planting Plan (Grasses, Perennials,Vines)	07-08-2013
L-160.00	Lighting Plan	07-08-2013
L-165.00	Lighting Plan Photometrics	07-08-2013
L-170.00	Grading Plan	07-08-2013
L-210.00	Site Details – Paving & Edging	07-08-2013
L-211.00	Site Details – Paving & Edging	07-08-2013
L-220.00	Site Details – Steps and Walls	07-08-2013
L-230.00	Site Details – Guardrails & Handrails	07-08-2013
L-240.00	Site Details – Furnishing	07-08-2013
L-241.00	Site Details – Furnishing 4	07-08-2013
L-242.00	Site Details – Furnishing	07-08-2013
L-250.00	Site Details – Lighting	07-08-2013
L-260.00	Site Details – Planting	07-08-2013
L-270.00	Site Details – Signage	07-08-2013
L-271.00	Site Details – Signage	07-08-2013

L-300.00	Site Sections/Section through Dupont St.	07-08-2013
	V.C.	
L-301.00	Site Sections 4	07-08-2013
L-302.00	Site Sections 4	07-08-2013

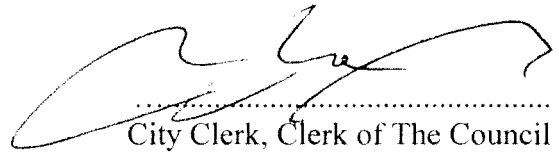
2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application.
 3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
 4. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached as Exhibit A to the report on the related application for a UDAAP approval (C140019 HAK) with such administrative changes as are acceptable to Counsel to the City Planning Commission, has been executed and recorded in the Office of the Register, Kings County. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.
 5. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign or legal representative of such party to observe any of the restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the authorization hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said authorization. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission or of any agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the authorization.
 6. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this authorization.
-

Page 5 of 5
N 140022 ZAK
Res. No. 2070 (L.U. No. 973)

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 December 10, 2013, on file in this office.



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

**THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 2071**

Resolution approving the decision of the City Planning Commission for the grant of an authorization pursuant to Section 62-822(a) of the Zoning Resolution to modify the location, area and minimum dimensions requirements of Sections 62-50 (GENERAL REQUIREMENTS FOR VISUAL CORRIDORS AND WATERFRONT PUBLIC ACCESS AREAS), and in conjunction therewith the requirements of Section 62-332 (Rear Yards and Waterfront Yards), and Section 62-931 (Waterfront Access Plan BK-1: Greenpoint-Williamsburg), in connection with a proposed mixed-use development on property located at 37 Commercial Street (Zoning Lot 5a, Block 2742, Lot 100), in R6/C2-4 and R8 Districts, within the Greenpoint-Williamsburg Waterfront Access Plan (Parcel 5a), Borough of Brooklyn (Non-ULURP No. N 140020 ZAK; L.U. No. 974).

By Council Members Comrie and Weprin

WHEREAS, the City Planning Commission filed with the Council on November 8, 2013 its decision dated November 6, 2013 (the "Decision"), on the application submitted by Greenpoint Landing Associates, LLC for the grant of an authorization pursuant to Section 62-822(a) of the Zoning Resolution to modify the location, area and minimum dimensions requirements of Sections 62-50 (GENERAL REQUIREMENTS FOR VISUAL CORRIDORS AND WATERFRONT PUBLIC ACCESS AREAS), and in conjunction therewith the requirements of Section 62-332 (Rear Yards and Waterfront Yards), and Section 62-931 (Waterfront Access Plan BK-1: Greenpoint-Williamsburg), in connection with a proposed mixed-use development on property located at 37 Commercial Street (Zoning Lot 5a, Block 2742, Lot 100), in R6/C2-4 and R8 Districts, within the Greenpoint-Williamsburg Waterfront Access Plan (Parcel 5a), Community District 1, Borough of Brooklyn (Non-ULURP No. N 140020 ZAK) (the "Application");

WHEREAS, the application is related to Applications C 140019 HAK (L.U. No. 971), an Urban Development Action Area Project designation, approval, and disposition to facilitate the development of affordable housing and public open space; N 140028 ZRK (L.U. 972), a Zoning Text Amendment to facilitate the development of affordable housing, open space, and a public school; N 140022 ZAK (L.U. 973), an Authorization by the City Planning Commission pursuant to 62-822(a) of the Zoning Resolution to modify location and dimension requirements of Section 62-50 for visual corridors and waterfront public access areas, and in conjunction therewith the rear yard requirements of Section 62-332 on Zoning Lot 5b-1; and Application No. 20145125 SCK (L.U. No. 990), a new, approximately 640-Seat primary/intermediate school facility to be located at the southwest corner of Franklin and Dupont Streets (Block 2494, Lot 1 in portion) in the Williamsburg section of Brooklyn;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 62-822(a) of the Zoning Resolution of the City of New York;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on December 5, 2013;

WHEREAS, the City Planning Commission has made the findings required pursuant to Section 62-822(a)(1) of the Zoning Resolution of the City of New York;

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

WHEREAS, the Council has considered the relevant environmental issues and the revised negative declaration (CEQR No. 14DCP004K), issued on November 6, 2013 (the "Revised Negative Declaration");

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment as set forth in the Revised Negative Declaration.

Pursuant to Section 62-822(a) of the Zoning Resolution of the City of New York and on the basis of the Decision and Application, and based on the environmental determination and consideration described in this report, N 140020 ZAK, incorporated by reference herein, the Council approves the Decision, subject to the following conditions:

1. The development that is the subject of this application (N 140020 ZAK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications, and zoning computations indicated on the following approved plans, prepared by Handel Architects LLP and James Corner Field Operations, and filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-001	ULURP Master Plan	07-15-2013
G-050.00	Survey	07-08-2013
L-001.00	WPAA Diagram	07-08-2013
L-101.00	Zoning Calculations Chart 1	07-08-2013
L-102.00	Zoning Calculations Chart 2	07-08-2013

L-103.00	Zoning Calculations Chart 3	07-19-2013
L-104.00	Zoning Calculations Chart 4	07-08-2013
L-110.00	WPAA Layout Plan	07-08-2013
L-120.00	Material Plan	07-08-2013
L-130.00	Seating Plan	07-08-2013
L-131.00	Seating Schedule	07-08-2013
L-140.00	Furnishing and Signage Plan	07-08-2013
L-150.00	Planting Plan (Trees)	07-08-2013
L-151.00	Planting Plan (Grasses + Perenials + Vines)	07-08-2013
L-160.00	Lighting Plan	07-19-2013
L-165.00	Lighting Plan Photometrics	07-08-2013
L-170.00	Grading Plan	07-08-2013
L-180.00	WPAA Layout Enlargement Plan	07-08-2013
L-210.00	Site Details - Paving & Edging	07-08-2013
L-211.00	Site Details – Paving & Edging	07-08-2013
L-220.00	Site Details - Steps and Walls	07-08-2013
L-230.00	Site Details – Guardrails and Handrails	07-08-2013
L-231.00	Site Details - Fence + Gate	07-08-2013
L-240.00	Site Details – Furnishing	07-08-2013
L-241.00	Site Details – Furnishing	07-08-2013
L-242.00	Site Details – Furnishing	07-08-2013
L-243.00	Site Details – Furnishing	07-08-2013
L-244.00	Site Details – Furnishing	07-08-2013
L-250.00	Site Details – Lighting	07-08-2013
L-260.00	Site Details – Planting	07-08-2013

L-270.00	Site Details – Signage	07-08-2013
L-271.00	Site Details – Signage	07-08-2013
L-300.00	Site Sections- Section through Franklin Street V.C.	07-08-2013
L-301.00	Site Sections 1	07-08-2013
L-302.00	Site Sections 2	07-08-2013
L-303.00	Site Section 3	07-08-2013

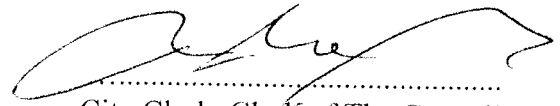
2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached as Exhibit A to the report on the related application for UDAAP approval (C 140019 HAK), with such administrative changes as are acceptable to Counsel to the City Planning Commission, has been executed and recorded in the Office of the Register, King County. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.
5. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign or legal representative of such party to observe any of the restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the authorization hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said authorization. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission or of any agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the authorization hereby granted.

6. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this authorization.

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 December 10, 2013, on file in this office.



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

EXHIBIT E



OFFICE OF ENVIRONMENTAL REMEDIATION

100 Gold Street – 2nd Floor
New York, New York 10038

Mark P. McIntyre, Esq.
Director

Tel: (212) 788-8841

NOTICE TO PROCEED
DOB Job Number NB 321589704

April 13, 2021

Re: 35 Commercial Street, Greenpoint Landing Parcels H1 and H2
Brooklyn Block 2472, Lot 70
Hazardous Materials, Air Quality, and Noise “E” Designation
E-317: Greenpoint Landing - CEQR 14DCP004K - 12/10/2013
E-138: Greenpoint - Williamsburg Rezoning - CEQR 04DCP003K HazMat - 5/11/2005
OER Project Number 21EHAN008K

Dear Brooklyn Borough Commissioner:

The New York City Office of Environmental Remediation (OER) hereby issues a Notice to Proceed for the above-referenced Department of Buildings Job Number. This correspondence is provided pursuant to OER’s responsibilities as established in Chapter 24 of Title 15 of the Rules of the City of New York and Section 11-15 of the Zoning Resolution of the City of New York. The Applicant has filed a Hazardous Materials remedial action work plan dated March 22, 2021 and prepared by Langan Engineering, Environmental, Surveying, Landscape Architecture, and Geology D.P.C. and submitted to the NYSDEC under the State Brownfield Cleanup Program. NYSDEC issued a Decision Document approving the remedial action work plan on April 13, 2021. Applicant has also submitted a Noise remedial action plan, and Air Quality remedial action plan that are acceptable to this Office and has prepared a Construction Health and Safety Plan for implementation on this project. OER’s Decision Document that defines the remedial actions required for this project has been prepared and filed and is available on request.

At the conclusion of remedial activities required under this action, the Zoning Resolution and §24-07 of the Rules of the City of New York requires that OER issue a Notice of Satisfaction signifying that all remedial action requirements established for this project have been satisfied prior to issuance of the Certificate of Occupancy or Temporary Certificate of Occupancy by Department of Buildings.

If you have any questions or comments, please feel free to contact Taylor Hard at 212-788-7426.

Sincerely,

Zach Schreiber, Ph.D.
Assistant Director

cc: Guy Morton, Park Tower Group - gmorton@parktowergroup.com
Erica Barrows, Handel Architects - ebarrows@handelarchitects.com
Gary Handel, Handel Architects LLP - ghandel@handelarchitects.com
Josephine Zurica, Dagher Engineering, PLLC - jzurica@dagherengineering.com

Greg Wyka, Langan - gwyka@langan.com
Julia Leung, Langan - JLeung@Langan.com
Woo Kim, Langan - wkim@langan.com
Mark McIntyre, Shaminder Chawla, Maurizio Bertini, Sarah Pong
Taylor Hard, PMA-OER

COPY - NOT FOR DOB FILING



OFFICE OF ENVIRONMENTAL REMEDIATION

100 Gold Street – 2nd Floor
New York, New York 10038

Mark P. McIntyre, Esq.
Director

Tel: (212) 788-8841

DECISION DOCUMENT
E-Designation Remedial Action Work Plan Approval

April 13, 2021

Re: 35 Commercial Street, Greenpoint Landing Parcels H1 and H2
Brooklyn Block 2472, Lot 70
Hazardous Materials, Air Quality, and Noise “E” Designation
E-317: Greenpoint Landing - CEQR 14DCP004K - 12/10/2013
E-138: Greenpoint - Williamsburg Rezoning - CEQR 04DCP003K HazMat - 5/11/2005
OER Project Number 21EHAN008K

The New York City Office of Environmental Remediation (OER) has completed its review of the Remedial Action Plan for Air Quality and Noise dated September 9, 2020 for the above-referenced project. We have also received a Hazardous Materials remedial action work plan dated March 22, 2021 and prepared by Langan Engineering, Environmental, Surveying, Landscape Architecture, and Geology D.P.C. and submitted to the NYSDEC under the State Brownfield Cleanup Program. NYSDEC issued a Decision Document approving the remedial action work plan on April 13, 2021.

These Plans and NYSDEC Decision Document were submitted to OER under the E-Designation Program.

Project Description

The applicant is proposing to build a new 22-story mixed-use residential and commercial building with a footprint of about 32,000 square feet. Commercial uses include two retail spaces (about 7,900 square feet). The development will also include a courtyard accessible from Commercial Street, an inner courtyard surrounded by the new building and adjoining Building H3, and an outdoor, hardscaped terrace for residents and a sloped landscaped area on the eastern side of the site adjacent to the Box Street Park along the Lot boundary. Building H1-H2 will include 101 inclusionary, and 273 affordable housing units with a gross building area of approximately 344,500 square feet. The ground floor will contain six housing units, residential amenity space (tenant recreation space, fitness room, children’s room and laundry room), bike storage, building systems, a leasing office, staff back-of-house space, lobby/guest lounge, and retail space. The second through twenty-second floors contain housing units. Residential units will be on Floors 1 through 22. The roof and bulkhead above will be used for building mechanical/plumbing systems and elevator machine room. The seventh-floor roof contains ballast solar panels and the 23rd floor roof contains green roof trays.

Statement of Purpose and Basis

This document presents the remedial action for the E-Designation Program project known as “35 Commercial Street” pursuant to the Zoning Resolution and §24 - 07 of the Rules of the City of New York.

Description of Selected Remedy for Hazardous Materials

The subject site (Block 2472, Lot 70) is enrolled in the NYSDEC Brownfield Cleanup Program (NYS BCP Site No. C224304). In an effort to satisfy the Hazardous Materials “E” requirements for this project, the applicant has submitted a NYSDEC approved RAWP, dated March 22, 2021, and NYSDEC issued Decision Document, dated April 13, 2021, to our office.

The BCP Volunteer intends to pursue a Track 4 Site-Specific remedy. The remedy will include excavation to 2 feet across the entire site with additional excavations to 4 to 9 feet below grade for hotspot removal including hazardous lead. The Track 4 remedy will include a sub-slab depressurization system (SSDS) beneath the building to mitigate soil vapor. The remedy requires a Site Management Plan for operation and maintenance of the SSDS.

Description of Selected Remedy for Air Quality

The elements of the remedial action selected for Air Quality for the 35 Commercial Street site are as follows:

To satisfy the requirements of the E-designation, natural gas will be utilized at the site for domestic hot water, rooftop units for energy recovery, emergency power generation, clothes dryers and residential gas stoves. The remaining mechanical systems, including space heating, ventilation, and air conditioning (HVAC systems), will be powered by electricity.

Domestic hot water will be provided using four Intellihot® 1501, gas-fired, condensing water heaters. One rooftop unit (RTU-2) will be gas-fired. The other rooftop unit (RTU-1), at the 7th floor rooftop, will be electric. Natural gas will be used to power the building’s generator. The generator, Generac® Model SG200, will provide the building with emergency and standby power. This equipment will be tested once a month for 30 minutes, and will only be operated in the event of an emergency and is not considered a source of continuous emissions.

To satisfy the requirements of the E-Designation, one exhaust stack, serving the four domestic water heaters, will be located on the tower roof at a height of 231 feet above grade (or 244 feet NAVD88), and one exhaust stack, serving one rooftop unit (RTU-2), will be located on the tower roof at a height of 215 feet above grade (or 228 feet NAVD88).

Description of Selected Remedy for Noise

The elements of the remedial action selected for Noise for the 35 Commercial Street site are as follows:

To meet the requirements of the E-Designation, the following window/wall attenuations will be achieved at the locations described below:

1. 28 dB(A) in residential spaces;
2. 23 dB(A) in the commercial spaces based on an allowed reduction of 5 dBA from the attenuation requirement outlined in the E-Designation;

The following windows will be installed:

Façade Floor Range	OITC Rating	OITC Certification	Manufacturer and Model	Glazing
<u>North Façade</u> Residential Units (Floors 1 - 22)	Fixed – 29 Operable - 30	ASTM E-90 Lab Test Report Fixed -Test Ref # I6988.01-113-11-R0 Option I6988.01A Operable -Test Ref # I6990.01-113-11-R1 Option I6990.01C	Intus Supera	1 -inch IGU Guardian SNX 62/27 5/32-inch annealed exterior, 19/32-inch argon 1/4-inch annealed interior
<u>East Façade</u> Residential Units (Floors 1 - 22)	Fixed – 29 Operable - 30	ASTM E-90 Lab Test Report Fixed -Test Ref # I6988.01-113-11-R0 Option I6988.01A Operable -Test Ref # I6990.01-113-11-R1 Option I6990.01C	Intus Supera	1 -inch IGU Guardian SNX 62/27 5/32-inch annealed exterior, 19/32-inch argon 1/4-inch annealed interior

Façade Floor Range	OITC Rating	OITC Certification	Manufacturer and Model	Glazing
<u>South Façade</u> Residential Units (Floors 1 - 22)	Fixed – 29 Operable - 30	ASTM E-90 Lab Test Report Fixed -Test Ref # I6988.01- 113-11-R0 Option I6988.01A Operable -Test Ref # I6990.01-113-11-R1 Option I6990.01C	Intus Supera	1 -inch IGU Guardian SNX 62/27 5/32-inch annealed exterior, 19/32-inch argon 1/4-inch annealed interior
<u>West Façade</u> Residential Units (Floors 1 - 22)	Fixed – 29 Operable - 30	ASTM E-90 Lab Test Report Fixed -Test Ref # I6988.01- 113-11-R0 Option I6988.01A Operable -Test Ref # I6990.01-113-11-R1 Option I6990.01C	Intus Supera	1 -inch IGU Guardian SNX 62/27 5/32-inch annealed exterior, 19/32-inch argon 1/4-inch annealed interior
Non-Residential Units East & West Façade, North & South Courtyard Floor 1	30	ASTM E-90 Lab Test Report Test Ref # 63088.01-113-11	Kawneer 1600 S1 Series Curtain Wall	1 -inch IGU Guardian SNX 62/27 1/4-inch laminated glass 1/2-inch airspace 1/4-inch laminated glass
Commercial Spaces East, South & West Façade Floor 1	30	ASTM E-90 Lab Test Report Test Ref # 63088.01-113-11	Kawneer 1600 S1 Series Curtain Wall	1 -inch IGU Guardian SNX 62/27 1/4-inch laminated glass 1/2-inch airspace 1/4-inch laminated glass

The applicant commits to demonstrating that the selected manufacturer's window products achieve the minimum OITC requirement outlined in the table above. If the selected manufacturer does not have ASTM E90 test on file for the specific window assemblies to be installed, a mockup will be laboratory tested as per ASTM E90 to demonstrate compliance with the minimum OITC requirement.

To satisfy the requirements of the E-Designation, Alternate Means of Ventilation will be installed to maintain a closed window condition. AMV for this project will be achieved by:

- Trickle Vents:** Residential apartment units will receive fresh air through trickle vents installed in the operable window frames. The Intus Trickle Vent SM 1000 will be used in all residential apartments on Floors 1 through 22. Fresh air will be provided to all bedrooms and living rooms through the trickle vents. Residential heating and cooling will be provided by electric wall-mounted evaporators, Mitsubishi® model PKFY.
- Central System:** Amenity spaces will receive fresh air through energy recovery ventilators that supply fresh air to ceiling mounted VRF evaporator units. Louvers will provide outside air connections to the units and serve as the alternate means of ventilation for amenity spaces. Energy recovery ventilators will be electric Renewaire® model EV. Heating and cooling will be provided by electric VRF evaporators, Mitsubishi® model PEFY.
- Compliance with Mechanical Code:** The development will provide outside air to commercial spaces and common areas such as lobbies and corridors in accordance with the NYC Mechanical Code. No further AMV documentation is needed for commercial space and common areas such as lobbies and corridors.

The remedies for Hazardous Materials, Air Quality, Noise E Designations described above conforms to the promulgated standards and criteria that are directly applicable, or that are relevant and appropriate and takes into consideration OER guidance, as appropriate.

April 13, 2021



Date

Taylor Hard
Project Manager

April 15, 2021



Date

Zach Schreiber, Ph.D.
Assistant Director

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Rider to BCA Amendment # 3 to Document a Tangible Property Tax Credit Determination

Site Name: 45 Commercial Street
Site Number: C224304

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

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

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

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

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

3- For sites statewide, where applicable:

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

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

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

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

By: Andrew Guglielmi 10/24/2022

Andrew O. Guglielmi, Director
Division of Environmental Remediation

Date