



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:

1. To add two (2) new Volunteers to the BCA: "AMP Property Owner L.P." and "West 96th Street Venture L.P." Both of these new Requestors are affiliates of and within the same organizational family as the Existing Applicant, "266 West 96th Street Associates LLC." Please see Attachment A for the required corporate documentation and Volunteer Statements.

2. To request a tangible property tax credit eligibility determination. Please see Attachment B for the affordable housing Regulatory Agreements between the HDFC/Legal Owner, AMP Property Owner L.P./Beneficial Owner, and NYC Department of Housing Preservation and Development ("HPD"), executed on December 16, 2021.

**\*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: 266-270 West 96th Street		BCP SITE NUMBER: C231133
NAME OF CURRENT APPLICANT(S): 266 West 96th Street Associates LLC		
INDEX NUMBER OF AGREEMENT: C231133-06-2019 DATE OF ORIGINAL AGREEMENT: 8/20/2019		
Section II. New Requestor Information (complete only if adding new requestor or name has changed)		
NAME AMP Property Owner L.P.		
ADDRESS c/o Fetner Management LLC, 675 Third Avenue, Suite 2800		
CITY/TOWN New York, NY 10017		ZIP CODE 10017
PHONE 212-257-6868	FAX	E-MAIL hal@fetner.com
<p>1. Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <ul style="list-style-type: none"> <li>If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation &amp; Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.</li> </ul> <p style="text-align: right;"><b>See Attachment A</b></p>		
NAME OF NEW REQUESTOR'S REPRESENTATIVE Ian M. Christ		
ADDRESS 675 Third Avenue, Suite 2800		
CITY/TOWN New York, NY 10017		ZIP CODE 10017
PHONE 212-257-6868	FAX	E-MAIL ian.christ@pgim.com
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) <small>Mimi Raygorodetsky - Langan Engineering, Environmental, Surveying, Landscape Architecture and Geology, D.P.C.</small>		
ADDRESS 360 West 31st Street, 8th Floor		
CITY/TOWN New York, NY		ZIP CODE 10001
PHONE 212-479-5441	FAX 212-479-5444	E-MAIL mraygorodetsky@langan.com
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Michael Bogin - Sive, Paget & Riesel P.C.		
ADDRESS 560 Lexington Avenue, 15th Floor		
CITY/TOWN New York, NY		ZIP CODE 10022
PHONE 646-378-7210	FAX 212-421-2035	E-MAIL mbogin@sprlaw.com
<p>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? <b>See Attachment A</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>3. Describe Requestor's Relationship to Existing Applicant:</p> <p>New Requestor "AMP Property Owner L.P." is an affiliate of the Existing Applicant and is within the same organizational family.</p>		

Section I. Current Agreement Information		
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NAME OF CURRENT APPLICANT(S): 266 West 96th Street Associates LLC		
INDEX NUMBER OF AGREEMENT: C231133-06-2019 DATE OF ORIGINAL AGREEMENT: 8/20/2019		
Section II. New Requestor Information (complete only if adding new requestor or name has changed)		
NAME West 96th Street Venture L.P.		
ADDRESS c/o Fetner Management LLC, 675 Third Avenue, Suite 2800		
CITY/TOWN New York, NY 10017		ZIP CODE 10017
PHONE 212-257-6868	FAX	E-MAIL hal@fetner.com
1. Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <ul style="list-style-type: none"> <li>If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation &amp; Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.</li> </ul> <div style="text-align: right; border: 1px solid red; padding: 2px; display: inline-block;">See Attachment A</div>		
NAME OF NEW REQUESTOR'S REPRESENTATIVE Ian M. Christ		
ADDRESS 675 Third Avenue, Suite 2800		
CITY/TOWN New York, NY 10017		ZIP CODE 10017
PHONE (212) 257-6868	FAX	E-MAIL ian.christ@pgim.com
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CITY/TOWN New York, NY		ZIP CODE 10001
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NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Michael Bogin - Sive, Paget & Riesel P.C.		
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PHONE 646-378-7210	FAX 212-421-2035	E-MAIL mbogin@sprlaw.com
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? <div style="border: 1px solid red; padding: 2px; display: inline-block;">See Attachment A</div> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
3. Describe Requestor's Relationship to Existing Applicant:  New Requestor "West 96th Street Venture L.P." is an affiliate of the Existing Applicant and is within the same organizational family.		

**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.

[See Attachment A](#)

**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 See text box below

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.**

AMP Property Owner L.P. is the current legal owner.

West 96th Street Venture L.P. is the sole member of the general partner of AMP Property Owner L.P., the current legal owner.

**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
<b>Please answer questions below and provide documentation necessary to support answers.</b>	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see <a href="#">DEC's website</a> for more information.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>From ECL 27-1405(31):</b>	
"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:	<b>See Attachment B for executed NYCHPD Regulatory Agreements</b>
(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.	

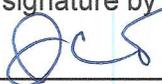
**PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT**

<b>Existing Agreement Information</b>	
BCP SITE NAME: 266-270 West 96th Street	BCP SITE NUMBER: C231133
NAME OF CURRENT APPLICANT(S): 266 West 96th Street Associates LLC	
INDEX NUMBER OF AGREEMENT: C231133-06-2019	
EFFECTIVE DATE OF ORIGINAL AGREEMENT: 8/20/2019	

**Declaration of Amendment:**

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

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

<b>Statement of Certification and Signatures: New Requestor(s) (if applicable)</b>
(Individual)  I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.  Date: _____ Signature: _____  Print Name: _____
(Entity)  I hereby affirm that I am (title <u>Authorized Signatory</u> ) of (entity <u>AMP Property Owner L.P.</u> ); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law. <u>Ian M. Christ's</u> signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.  Date: <u>5/24/2022</u> Signature:   Print Name: <u>Ian M. Christ / Authorized Signatory</u>

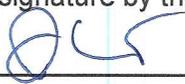
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**Declaration of Amendment:**

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

<b>Statement of Certification and Signatures: New Requestor(s) (if applicable)</b>
(Individual)  I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.  Date: _____ Signature: _____  Print Name: _____
(Entity)  I hereby affirm that I am (title <u>Authorized Signatory</u> ) of (entity <u>West 96th Street Venture L.P.</u> ); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law. <u>Ian M. Christ's</u> signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.  Date: <u>5/24/2022</u> Signature:   Print Name: <u>Ian M. Christ / Authorized Signatory</u>

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

(Individual)

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

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

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

(Entity)

I hereby affirm that I am Authorized Signatory (title) of 266 West 96th Street Associates LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. Hal Fetner's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 5-24-2024 Signature: \_\_\_\_\_

Print Name: Hal Fetner / Authorized Signatory

**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"/> <b>PARTICIPANT</b> A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input checked="" type="checkbox"/> <b>VOLUNTEER</b> A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement: 8/20/2019

Signature by the Department:

DATED: 7/10/2022

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: *Andrew Juglielmi*

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

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

**Site Name: 266-270 West 96<sup>th</sup> Street**

**Site Number: C231133**

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 7/10/2022

Andrew O. Guglielmi, Director  
Division of Environmental Remediation

Date

**Attachment B:**  
**NYCHPD Affordable Housing**  
**Regulatory Agreements**

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# Affordable Housing Regulatory Agreement

between:

**AMP Property Owner L.P.**

**270 West 96<sup>th</sup> Street Housing Development Fund Corporation**

and

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

December 16, 2021

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Borough:	Manhattan	Record and return to:
Block:	1243	New York City Department of Housing Preservation and Development
Lot:	57, 59, and 60 (Collectively, Tentative Lot 57)	Office of Legal Affairs 100 Gold Street, Room 5-U9 New York, NY 10038

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**AFFORDABLE HOUSING REGULATORY AGREEMENT** (“**Agreement**”) entered into as of December 16, 2021, between:

**AMP Property Owner L.P.**, a Delaware limited partnership having an address at c/o Fetner Properties, 675 Third Avenue, Suite 2800, New York, NY 10017 (“**Beneficial Owner**”);

**270 West 96<sup>th</sup> Street Housing Development Fund Corporation**, a New York not-for-profit corporation having an address at 247 West 37<sup>th</sup> Street, 4<sup>th</sup> Floor, New York, NY 10018 (“**Legal Owner**”, and together with the Beneficial Owner, “**Owner**”);

**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. HPD has conveyed Lot 57 (“**Lot 57**”), a portion of the Property, to the Legal Owner pursuant to Section 576-a(2) of the Private Housing Finance Law for the purpose of developing the Project, and the Legal Owner has conveyed Lot 57 to the Beneficial Owner.
- D. 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 any fee or leasehold interest the Legal Owner hold or will hold in the Property shall be solely as nominee for the Beneficial Owner.
- E. The Owner intends to create a condominium on the Property, to consist of the following condominium units: One residential space condominium unit containing the Income-Restricted Units (the “**Income-Restricted Units Condo Unit**”), one residential space condominium unit containing the market rate Units and one community facility space condominium unit. After the condominium is created, the Beneficial Owner intends to convey nominal record title in the Income-Restricted Units Condo Unit to the Legal Owner, and Beneficial Owner shall retain beneficial ownership of the Income-Restricted Units Condo Unit.
- F. HPD is providing financing to the Owner for the construction of the Income-Restricted Units Condo Unit pursuant to Article 22 of the Private Housing Finance Law (“**HPD Financing**”).

- G. The Owner expects that the Project will receive real property tax benefits pursuant to Section 421-a of the Real Property Tax Law (“**Real Property Tax Benefits**”).
- H. 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.
- I. 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.

**“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.

**"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).

**"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).

**"HPD Financing"** has the meaning set forth in the Recitals.

**"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-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).

**"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).

**"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.

**“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 HPD 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).

**“Shelter Allowance”** means the monthly portion of any public assistance program approved in writing by the Agency and intended for housing expenses, as adjusted for Household size. Shelter Allowance is not Rental Assistance under this Agreement.

**“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.
- (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.
- (c) **Project-Wide Requirements.** Except as may be specifically provided in this Agreement, if the Restriction Period ends on different dates for different Units (or does not end, in the case of any Unit that is permanently affordable under this Agreement), any requirement of this Agreement that is not explicitly tied to a specific Unit or class of Units applies until the latest date on which the Restriction Period ends for any Unit (or in perpetuity, if applicable). These requirements include, but are not limited to, those with respect to program compliance, non-residential uses, project operations, reserves, ownership and financing, and compliance monitoring.

#### 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).

*[Continues on next page]*

## 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 Rental Assistance.

The Owner shall comply, and shall cause the Project to comply, with all applicable requirements of any Rental Assistance to the Project, as administered by the government agency providing the Rental Assistance, including, but not limited to, all related Laws and any related agreements and restrictive covenants.

#### 3.05 [Intentionally Omitted.]

#### 3.06 HPD 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 HPD is providing the HPD Financing, and any other Laws related to the HPD 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 HPD in connection with the HPD 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) **[Intentionally Omitted.]**
- (d) **[Intentionally Omitted.]**
- (e) **[Intentionally Omitted.]**
- (f) **[Intentionally Omitted.]**
- (g) **[Intentionally Omitted.]**
- (h) **Required Statutory Covenants (Article 22 Loan).** HPD is providing all or a portion of the HPD Financing under the authority of Article 22 of the Private Housing Finance Law.
  - (i) **Occupancy.** Section 1152(6) of the Private Housing Finance Law requires the Owner to agree to rent each Unit in the Income-Restricted Units Condo Unit only to persons and families of low income (as defined in the Private Housing Finance Law).
  - (ii) **Limit on Profits.** Section 1152(7) of the Private Housing Finance Law requires the Owner to agree to limit annual profits on the Income-Restricted Units Condo Unit to an amount set by HPD for as long as such loan is outstanding. The Owner shall use excess profits to establish reserves for the Project (as may be set forth in more detail in Exhibit B as a cash flow sweep or similar), provide capital improvements to the Project, or reduce the principal amount of HPD's loan, as determined by HPD.
  - (iii) **Findings.** As required by Section 1152(11) of the Private Housing Finance Law, HPD has determined that: (1) the construction of the Income-Restricted Units Condo Unit does not directly displace current low and moderate income residents of the Property; (2) the Income-Restricted Units Condo Unit leverages private and other public investment, if any, so as to reduce the amount of assistance provided pursuant to Article 22 of the Private Housing Finance Law to the minimal amount which is necessary for construction of the Income-Restricted Units Condo Unit; (3) the Income-Restricted Units Condo Unit will be built by a private developer/builder who has agreed to limit its profit in accordance with a formula satisfactory to HPD; (4) the Income-Restricted Units Condo Unit will provide assistance to an area which is blighted or deteriorated or has a blighting influence on the surrounding area, or is in danger of becoming a slum or a blighted area because of neighborhood conditions indicating an inability or unwillingness of the private sector to cause the type of construction for which a loan is to be provided; and (5) the Income-Restricted Units Condominium Unit will make housing affordable to

persons who cannot presently afford the housing available based upon the ordinary unaided operation of private enterprise.

*[Continues on next page]*

## 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.
- (i) **Existing Tenants.** Notwithstanding subsection (a) above, the Owner shall continue to lease each Income-Restricted Unit that is occupied by a Tenant on the date of this Agreement to the Tenant in occupancy, subject to Section 4.10, regardless of the Household's Annual Income or assets upon initial occupancy or as of the date of this Agreement. Upon the vacancy of any such Unit, the Owner shall lease the Unit in accordance with subsection (a) above.
- (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 [Intentionally Omitted.]**

**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.
- (a) **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; or (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.
- (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.
- (e) **Threshold for Consent.** Notwithstanding Section 4.16(a), the Agency's consent is not required for any lease, sublease, license, or occupancy agreement that: (i) affects less than 5,000 square feet of non-residential space in the Project; (ii) is otherwise consistent with this Agreement, including, but not limited to, this Section 4.16; (iii) does not contain an option to acquire all or any portion of the Project; and (iv) does not primarily concern telecommunications equipment or solar or other energy-related equipment.

*[Continues on next page]*

**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).

**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 (i) Superintendent Unit, or (ii) any Unit that is not an Income-Restricted Unit and that is occupied at the time of registration with a rent charged or paid at or above the applicable deregulation threshold, in accordance with the requirements of the Real Property Tax Benefits.
- (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.

(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 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 and the City, 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 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.
- (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.** The Owner's property insurance must not exclude losses due to terrorism. 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.
- (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) **[Intentionally Omitted.]**
- (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 (i) an A.M. Best rating of not less than "A-" / "Class VII", (ii) a Standard & Poor's rating of not less than "A", (iii) a Moody's rating of not less than "A3", or (iv) a Fitch rating of not less than "A-".
- (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 and its 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) **[Intentionally Omitted.]**
- (d) **Broadband Access.** The Owner shall make available to each Income-Restricted 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 Income-Restricted 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 D 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 [Intentionally Omitted.]**

**6.21 Living Wage Executive Order.**

The Owner shall comply with the Living Wage Law Contract Provisions annexed to this Agreement as Exhibit E and made a part of this Agreement.

*[Continues on next page]*

## 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).
- (e) **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.
- (c) **Control of Senior Lender.** If a senior lender or provider of credit enhancement on the senior loan to the Project that has been approved in writing by the Agency (including but not limited to any senior lender or provider of credit enhancement who takes possession of the Property following a foreclosure, deed-in-lieu of foreclosure, or comparable conversion of the Project) requires exclusive control over withdrawals from the Replacement Reserve, then for so long as the senior lender or credit enhancer's requirements remain in effect, the Agency's consent is not required for any withdrawal of funds from the Replacement Reserve. The Owner shall continue to fund the Replacement Reserve at not less than the amount required by this Agreement, however.

#### 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.

- (d) **Requirements of Senior Lender.** If a senior lender or provider of credit enhancement on the senior loan to the Project that has been approved in writing by the Agency (including but not limited to any senior lender or provider of credit enhancement who takes possession of the Property following a foreclosure, deed-in-lieu of foreclosure, or comparable conversion of the Project) requires exclusive control over the Replacement Reserve, then for so long as the senior lender or credit enhancer's requirements remain in effect, the Agency's right to demand control over the Replacement Reserve under Section 7.04(a) does not apply.

#### **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), the Agency may require the Owner to replenish the amount withdrawn from the account. If the Owner withdraws funds from the Replacement Reserve, the Agency may require the Owner to replenish the amount withdrawn from the account if the Agency determines that replenishment is necessary to maintain the Agency's then-existing replacement reserve standard for a project containing buildings or improvements similar to the Project in type, size, use, value, and condition. 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.

*[Continues on next page]*

## 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.
  - (i) **Passive Investors.** The Agency's consent is not required for any Change in Ownership of the Owner that concerns solely an individual or entity (i) that has no present or contingent control over management or operations of the Owner or the Project, as determined by the Agency, and (ii) the only role of which, as determined by the Agency, is to make a monetary investment.
- (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) **[Intentionally Omitted.]**
- (f) **[Intentionally Omitted.]**
- (g) **[Intentionally Omitted.]**
- (h) **[Intentionally Omitted.]**
- (i) **[Intentionally Omitted.]**
- (j) **Institutional Investor.** The Agency shall consent to the following Changes in Ownership of the Owner: (i) transfers of (1) interests in IVP West 96<sup>th</sup> Street Member LLC, IVP West 96<sup>th</sup> Street GP LLC, Peakhill 96<sup>th</sup> Street GP, LLC or Peakhill 96<sup>th</sup> Street Holding, LP (each, an "**Institutional Investor**"); (2) any Institutional Investor's ownership interest in the Owner to an entity wholly owned or controlled, directly or indirectly, by the parent of the Institutional Investor; and (3) any Institutional Investor's ownership interest in the Owner to any entity controlled by an individual or entity that (x) has individual or combined net assets of not less than \$200 million, (y) has liquid assets (including, without limitation, unfunded capital commitments) of at least \$15 million, and (z) is subject to the jurisdiction of the courts of the State; (ii) the removal by the Institutional Investor of the direct or indirect manager of the Beneficial Owner, so long as the replacement manager is either an entity wholly owned or controlled, directly or indirectly, by the parent of the Institutional Investor or an individual or entity that the Agency has approved in writing; and (iii) the purchase by the Institutional Investor of the direct or indirect ownership interest of the manager's investor entity in the manager of the Beneficial Owner, upon written notice to the Agency, so long as (1) the Institutional Investor becomes the sole member of the manager of the Beneficial Owner, (2) the Institutional Investor replaces the manager's investor entity with an individual or entity that the Agency has approved in writing, or (3) the Institutional Investor sells the membership interest of the manager's investor entity to such an individual or entity.

### 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 1.2; 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.

- (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.

#### **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.

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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. If such a conflict arises with any Law or applicable order that does not exist as of the date the party is making this statement, the foregoing statement will remain true as long as the party discloses the conflict to the Agency in writing promptly after the Law or applicable order takes effect and the party provides a detailed explanation of the matter and any corrective actions taken or to be taken.

**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.

*[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 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 include any body, agency, or instrumentality of the City or the State that succeeds to the powers, duties, or functions of HPD.

#### 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.

#### 12.04 Agency Approvals.

- (a) **Sole Discretion.** Except as otherwise specified in this Agreement, any determination, consent, or approval by the City pursuant to this Agreement is in the sole discretion of the City.
- (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.

#### **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 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, without additional compensation, any assistance that the City may reasonably require if (a) an action is brought against the City 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, 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 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 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 in writing.
- (ii) With respect to any action between the City 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 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 in a court located other than in New York City, upon request of the City, 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 and its 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 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.

*[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.

**AMP PROPERTY OWNER L.P.**  
a Delaware limited partnership

By:   
Name: Harold A. Fetner  
Title: Authorized Signatory

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

On the 16 day of ~~November~~ <sup>December</sup>, 2021, before me, the undersigned, a notary public in and for said state, personally appeared Harold A. Fetner, 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: 10/13/25

**EVELYN LITARDO**  
Notary Public-State of New York  
No. 01LI6212378  
Qualified in Orange County  
Commission Expires October 13, 2021<sup>5</sup>

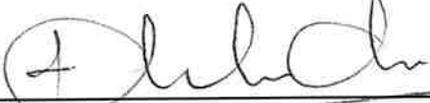
**270 WEST 96TH STREET HOUSING  
DEVELOPMENT FUND CORPORATION,**  
a New York not-for-profit corporation

By: \_\_\_\_\_

*Lee Warshavsky*  
Name: Lee Warshavsky  
Title: Secretary and Treasurer

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

On the 3rd day of November, 2021, before me, the undersigned, a notary public in and for said state, personally appeared Lee Warshavsky, 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:

KOFI E. APPRAM  
Notary Public, State of New York  
Registration No. 01AP5061789  
Qualified in Bronx County  
Commission Expires June 17, 2022

THE CITY OF NEW YORK

By: DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT

By:   
Name: Brendan McBride  
Title: Associate Commissioner

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

On the 16<sup>th</sup> day of December, 2021, before me, the undersigned, a notary public in and for said state, personally appeared BRENDAN MCBRIDE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

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

WON J PARK  
Notary Public, State of New York  
No. 02PA6354578  
Qualified in Kings County  
Commission Expires February 13, 2025

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: Manhattan

Block: 1243

Lots: 57, 59, and 60 (collectively, Tentative Lot 57)

Address: 266-270 West 96<sup>th</sup> Street

**EXHIBIT B**  
**PROJECT DETAILS**

**Project**

<b>Name</b>	<b>270 West 96<sup>th</sup> Street</b>	
<b>Address</b>	266 – 270 West 96 <sup>th</sup> Street New York, New York 10025	
<b>Borough, Block, and Lot</b>	Manhattan Block 1243, Lots 57, 59, & 60 (Collectively, Tentative Lot 57)	
<b>Building Identification Number</b>	<b>1033711</b>	
<b>Sponsor</b>	<b>Fetner Properties, Inc.</b>	
<b>Number of Units (excluding Superintendent Units)</b>	<b>170</b>	
	<b>Studio</b>	80
	<b>1-Bedroom</b>	36
	<b>2-Bedroom</b>	47
	<b>3-Bedroom</b>	7
<b>Superintendent Units</b>	1 two-bedroom Unit	
<b>Summary of Occupancy Restrictions</b>  (See individual tables that follow in Exhibit B for apartment-size distributions, rent limits, and other restrictions.)	3 40% of AMI Units (Homeless) (Our Space) (VIH Units) (421-a Units) (Perm. Affordable) 8 40% of AMI Units (Homeless) (Our Space) (421-a Units) (Perm. Affordable) 1 70% of AMI Units (VIH Units) (421-a Units) (Perm. Affordable) 7 70% of AMI Units (421-a Units) (Perm. Affordable) 1 80% of AMI Units (VIH Units) (Perm. Affordable) 9 80% of AMI Units (VIH Units) (421-a Units) (Perm. Affordable) 3 80% of AMI Units (421-a Units) (Perm. Affordable) 22 130% AMI Units (421-a Units) (Perm. Affordable) 13 130% AMI Units (Perm. Affordable)	
<b>Non-Residential Space</b>	Approximately 9,366 gross square feet of community facility space	

<p><b>Initial Managing Agent</b></p> <p>(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.)</p>	<p>Fetner Management LLC</p>
<p><b>Management Fee Limit</b></p>	<p>3% of the Project's net rent collection, which includes all amounts actually collected with respect to the Units as rent, rental subsidies, or other payments</p>

**Restriction Period**

<p><b>Agency Program Termination Date</b></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 for the Income-Restricted Units to last in perpetuity.</p>
--	--

**40% of AMI Units (Homeless) (Our Space) (VIH Units) (421-a Units) (Permanently Affordable)**

<b>Income Limit</b>	40% of AMI		
<b>Maximum Program Rent</b>	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)		
<b>Other Restrictions</b>	Homeless Units (Our Space Program), Voluntary Inclusionary Housing, 421-a (16) Affordable Housing New York Program, Permanently Affordable		
<b>Unit Size</b>	<b>Number of Units</b>	<b>Initial Legal Rent</b>	<b>Initial Actual Rent</b>
<b>Studio</b>	0	\$971 (70% of 2021 AMI)	\$329 (27% of 2021 AMI) (and upon vacancy, the least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$215), or (iii) if received by the Tenant, Shelter Allowance)
<b>1-Bedroom</b>	0	\$1,495 (70% of 2021 AMI)	\$532 (27% of 2021 AMI) (and upon vacancy, the least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$283), or (iii) if received by the Tenant, Shelter Allowance)
<b>2-Bedroom</b>	3	\$1,786 (70% of 2021 AMI)	\$631 (27% of 2021 AMI) (and upon vacancy, the least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$425), or (iii) if received by the Tenant, Shelter Allowance)
<b>3-Bedroom</b>	0	\$2,056 (70% of 2021 AMI)	\$722 (27% of 2021 AMI) (and upon vacancy, the least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$512), or (iii) if received by the Tenant, Shelter Allowance)
<b>Total</b>	3		

**40% of AMI Units (Homeless) (Our Space) (421-a Units) (Permanently Affordable)**

<b>Income Limit</b>		30% of AMI	
<b>Maximum Program Rent</b>		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)	
<b>Other Restrictions</b>		Homeless Units (Our Space Program), 421-a (16) Affordable Housing New York Program, Permanently Affordable	
<b>Unit Size</b>	<b>Number of Units</b>	<b>Initial Legal Rent</b>	<b>Initial Actual Rent</b>
<b>Studio</b>	6	\$971 (70% of 2021 AMI)	\$329 (27% of 2021 AMI) (and upon vacancy, the least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$215), or (iii) if received by the Tenant, Shelter Allowance)
<b>1-Bedroom</b>	2	\$1,495 (70% of 2021 AMI)	\$532 (27% of 2021 AMI) (and upon vacancy, the least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$283), or (iii) if received by the Tenant, Shelter Allowance)
<b>2-Bedroom</b>	0	\$1,786 (70% of 2021 AMI)	\$631 (27% of 2021 AMI) (and upon vacancy, the least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$425), or (iii) if received by the Tenant, Shelter Allowance)
<b>3-Bedroom</b>	0	\$2,056 (70% of 2021 AMI)	\$722 (27% of 2021 AMI) (and upon vacancy, the least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$512), or (iii) if received by the Tenant, Shelter Allowance)
<b>Total</b>	8		

**70% of AMI Units (VIH Units) (421-a Units) (Permanently Affordable)**

<b>Income Limit</b>		70% of AMI	
<b>Maximum Program Rent</b>		70% of AMI	
<b>Other Restrictions</b>		Voluntary Inclusionary Housing, 421-a (16) Affordable Housing New York Program, Permanently Affordable	
<b>Unit Size</b>	<b>Number of Units</b>	<b>Initial Legal Rent</b>	<b>Initial Actual Rent</b>
Studio	0	\$971 (70% of 2021 AMI)	\$926 (67% of 2021 AMI)
1-Bedroom	1	\$1,495 (70% of 2021 AMI)	\$1,427 (67% of 2021 AMI)
2-Bedroom	0	\$1,786 (70% of 2021 AMI)	\$1,705 (67% of 2021 AMI)
3-Bedroom	0	\$2,056 (70% of 2021 AMI)	\$1,963 (67% of 2021 AMI)
<b>Total</b>	1		

**70% of AMI Units (421-a Units) (Permanently Affordable)**

<b>Income Limit</b>		70% of AMI	
<b>Maximum Program Rent</b>		70% of AMI	
<b>Other Restrictions</b>		421-a (16) Affordable Housing New York Program, Permanently Affordable	
<b>Unit Size</b>	<b>Number of Units</b>	<b>Initial Legal Rent</b>	<b>Initial Actual Rent</b>
Studio	6	\$971 (70% of 2021 AMI)	\$926 (67% of 2021 AMI)
1-Bedroom	0	\$1,495 (70% of 2021 AMI)	\$1,427 (67% of 2021 AMI)
2-Bedroom	1	\$1,786 (70% of 2021 AMI)	\$1,705 (67% of 2021 AMI)
3-Bedroom	0	\$2,056 (70% of 2021 AMI)	\$1,963 (67% of 2021 AMI)
<b>Total</b>	7		

**80% of AMI Units (VIH Units) (Permanently Affordable)**

<b>Income Limit</b>		80% of AMI	
<b>Maximum Program Rent</b>		80% of AMI	
<b>Other Restrictions</b>		Voluntary Inclusionary Housing, Permanently Affordable	
<b>Unit Size</b>	<b>Number of Units</b>	<b>Initial Legal Rent</b>	<b>Initial Actual Rent</b>
Studio	0	\$1,121 (80% of 2021 AMI)	\$1,076 (77% of 2021 AMI)
1-Bedroom	0	\$1,719 (80% of 2021 AMI)	\$1,651 (77% of 2021 AMI)
2-Bedroom	1	\$2,055 (80% of 2021 AMI)	\$1,974 (77% of 2021 AMI)
3-Bedroom	0	\$2,367 (80% of 2021 AMI)	\$2,273 (77% of 2021 AMI)
<b>Total</b>	1		

**80% of AMI Units (VIH Units) (421-a Units) (Permanently Affordable)**

<b>Income Limit</b>		80% of AMI	
<b>Maximum Program Rent</b>		80% of AMI	
<b>Other Restrictions</b>		Voluntary Inclusionary Housing, 421-a (16) Affordable Housing New York Program, Permanently Affordable	
<b>Unit Size</b>	<b>Number of Units</b>	<b>Initial Legal Rent</b>	<b>Initial Actual Rent</b>
Studio	0	\$1,121 (80% of 2021 AMI)	\$1,076 (77% of 2021 AMI)
1-Bedroom	1	\$1,719 (80% of 2021 AMI)	\$1,651 (77% of 2021 AMI)
2-Bedroom	6	\$2,055 (80% of 2021 AMI)	\$1,974 (77% of 2021 AMI)
3-Bedroom	2	\$2,367 (80% of 2021 AMI)	\$2,273 (77% of 2021 AMI)
<b>Total</b>	9		

**80% of AMI Units (421-a Units) (Permanently Affordable)**

<b>Income Limit</b>		80% of AMI	
<b>Maximum Program Rent</b>		80% of AMI	
<b>Other Restrictions</b>		421-a (16) Affordable Housing New York Program, Permanently Affordable	
<b>Unit Size</b>	<b>Number of Units</b>	<b>Initial Legal Rent</b>	<b>Initial Actual Rent</b>
Studio	3	\$1,419 (100% of 2021 AMI)	\$1,076 (77% of 2021 AMI)
1-Bedroom	0	\$2,166 (100% of 2021 AMI)	\$1,651 (77% of 2021 AMI)
2-Bedroom	0	\$2,592 (100% of 2021 AMI)	\$1,974 (77% of 2021 AMI)
3-Bedroom	0	\$2,987 (100% of 2021 AMI)	\$2,273 (77% of 2021 AMI)
<b>Total</b>	3		

**130% of AMI Units (421-a Units) (Permanently Affordable)**

<b>Income Limit</b>		130% of AMI	
<b>Maximum Program Rent</b>		120% of AMI	
<b>Other Restrictions</b>		421-a (16) Affordable Housing New York Program, Permanently Affordable	
<b>Unit Size</b>	<b>Number of Units</b>	<b>Initial Legal Rent</b>	<b>Initial Actual Rent</b>
Studio	10	\$1,867 (130% of 2021 AMI)	\$1,718 (120% of 2021 AMI)
1-Bedroom	7	\$2,838 (130% of 2021 AMI)	\$2,614 (120% of 2021 AMI)
2-Bedroom	5	\$3,397 (130% of 2021 AMI)	\$3,129 (120% of 2021 AMI)
3-Bedroom	0	\$3,918 (130% of 2021 AMI)	\$3,608 (120% of 2021 AMI)
<b>Total</b>	22		

**130% of AMI Units (Permanently Affordable)**

<b>Income Limit</b>		130% of AMI	
<b>Maximum Program Rent</b>		120% of AMI	
<b>Other Restrictions</b>		Permanently Affordable	
<b>Unit Size</b>	<b>Number of Units</b>	<b>Initial Legal Rent</b>	<b>Initial Actual Rent</b>
<b>Studio</b>	10	\$1,867 (130% of 2021 AMI)	\$1,718 (120% of 2021 AMI)
<b>1-Bedroom</b>	3	\$2,838 (130% of 2021 AMI)	\$2,614 (120% of 2021 AMI)
<b>2-Bedroom</b>	0	\$3,397 (130% of 2021 AMI)	\$3,129 (120% of 2021 AMI)
<b>3-Bedroom</b>	0	\$3,918 (130% of 2021 AMI)	\$3,608 (120% of 2021 AMI)
<b>Total</b>	13		

**Market Rate Units**

<b>Income Limit</b>		N/A	
<b>Maximum Program Rent</b>		Rent for the Market Rate Units shall be set by the Owner	
<b>Other Restrictions</b>		None	
<b>Unit Size</b>	<b>Number of Units</b>	<b>Initial Legal Rent</b>	<b>Initial Actual Rent</b>
<b>Studio</b>	45	N/A	N/A
<b>1-Bedroom</b>	22	N/A	N/A
<b>2-Bedroom</b>	31	N/A	N/A
<b>3-Bedroom</b>	5	N/A	N/A
<b>Total</b>	103		

**Other Rent Matters**

<b>Utility Allowances</b>	Tenant pays electricity with electric stove for studio units.  Tenant pays electric only for 1-Bedroom, 2-Bedroom, and 3-Bedroom units.
<b>Maximum Rental Assistance Rent</b>	N/A

**Amenities/Furniture**

<p><b>Amenities</b></p>	<ol style="list-style-type: none"><li>1. For purposes of this Agreement, Amenities shall mean any feature of the Project contained in the Income-Restricted Units Condo Unit or the condominium unit containing all the market-rate Units that (a) is not inside an individual residential unit and (b) is available for use by the residents of the Project.</li><li>2. All residents of the Income-Restricted Units Condo Unit shall be able to use the following Amenities without cost, fee or charge.<ol style="list-style-type: none"><li>a. Roof Lounge on [3rd] floor;</li><li>b. Roof Terrace on [23rd] floor;</li><li>c. The indoor lounge areas;</li><li>d. The gym; and</li><li>e. any children's play room</li></ol></li><li>3. To the extent the Amenities are updated and re-programmed for different purposes, spaces containing the Amenities will remain available to the residents of the Income-Restricted Units without cost, fee, or charge.</li></ol>
<p><b>Micro Unit Furniture</b></p>	<ol style="list-style-type: none"><li>1. For purposes of this Agreement, Micro Unit Furniture shall mean any furnishing customized to meet the size of some of the studio units.</li><li>2. Micro Units shall be furnished upon the election of the tenant.</li><li>3. All residents of studio units in the Income-Restricted Units Condo Unit that have Micro Unit Furniture shall be able to use the Micro-Unit Furniture without cost, fee or charge.</li></ol>

**Reserves**

<p><b>Replacement Reserve Contributions</b></p>	<p>\$250 per unit divided by 12 months (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><b>Social Services Reserve</b></p>	<p>The Owner may deduct from this deposit any amount previously advanced to the Owner prior to the Permanent 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 to social services plan exceeding \$97,500 and amounts advanced to furnish Homeless Units exceeding \$15,000.</p> <p>Within ninety (90) days of the first anniversary of the Permanent Conversion, and annually thereafter, the Owner shall deposit into the Social Service 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 \$338 for a studio, \$532 for a 1-bedroom, \$631 for a 2-bedroom, and \$722 for a 3-bedroom (as such amounts may be increased annually by 2%).</p> <p>If the Social Service Reserve balance exceeds \$15,000 per Homeless Unit, the Owner shall use such excess to repay the subordinate HPD Financing or establish an additional Project reserve, 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><b>Servicer of Reserves</b></p>	<p>After conversion to permanent financing, an institution acceptable to HPD.</p>

**Permitted Future Financings and Changes in Ownership**

<p><b>Permitted Future Financings</b></p>	<p>The Agency consents to the following future financings:</p> <p>Notwithstanding Section 8.03(e)(ii) ) or any provision of the Agency’s Commitment with respect to the HPD Financing, the Agency shall consent to any proposed financing, 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 (or a similar entity created by a governmental authority); Freddie Mac (or a similar entity created by a governmental authority); 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 1.20 for the first ten (10) years and will equal or exceed 1.15 thereafter; 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.</p>
<p><b>Permitted Changes in Ownership</b></p>	<p>Notwithstanding Section 8.02(b) or Section 8.02(j) (and to the extent of any conflict between Section 8.02(b) and/or Section 8.02(j) and this Exhibit B, this Exhibit B shall control), the notice requirements in Section 8.02(b) and Agency consent requirements in Section 8.02(j) do not apply to any Change in Ownership that is permitted pursuant to Section 8.02(j)(i)(1) or Section 8.02(j)(i)(2) and the parent of the Institutional Investor continues to control Institutional Investor.</p>

<b>Subordination</b>	Where a financing is permitted by this Agreement and the Agency has not declared a Default that has not been cured: (a) the Agency shall subordinate any Agency mortgage encumbering the Property to such permitted financing pursuant to the Agency's then-standard form of subordination of mortgage; and (b) only with respect to (i) the initial senior permanent financing of the Project and (ii) any refinancing of any senior permanent financing occurring not later than 30 years from the date of the Permanent Conversion, the Agency shall subordinate this Agreement to such permitted financing pursuant to the Agency's then-standard form of subordination of regulatory agreement.
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## 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**  
**ENVIRONMENTAL REQUIREMENTS**

*[Follows]*

November 30, 2021

## **STATEMENT OF FINDINGS**

**Project Identification:**

CEQR No. 18HPD103M  
ULURP Nos. 200140PPM

**Lead Agency / Responsible Entity:**

City of New York - Department of Housing  
Preservation & Development (HPD)  
100 Gold Street  
New York, NY 10038

SEQRA Classification: Unlisted

This Statement of Findings has been prepared in accordance with the environmental review requirements of Article 8 of the New York State Environmental Conservation Law, the State Environmental Quality Review Act (SEQRA), the implementing regulations as set forth in 6 NYCRR Part 617, and the New York City Rules of Procedure for City Environmental Quality Review (CEQR) and Executive Order 91, as amended. This Statement of Findings has been prepared to demonstrate that 1) the procedural requirements have been met; 2) the “266 West 96<sup>th</sup> Street” project (the “Approved Project”) was selected from among reasonable alternatives; and 3) the potential for adverse environmental effects as disclosed in the Final Environmental Impact Statement (FEIS) and during the review process will be avoided or minimized to the maximum extent practicable by the incorporation of mitigation measures and other project components.

Under CEQR, the City of New York - Department of Housing Preservation & Development (HPD) is the lead agency responsible for conducting the environmental review that determines whether the action would have significant impacts on public health and the environment.

An Environmental Assessment Statement (EAS) was completed on March 14, 2019. A Positive Declaration, issued on May 1, 2019, established that the proposal may have a significant adverse impact on the environment for selected CEQR technical areas, thus warranting the preparation of a targeted Environmental Impact Statement (EIS). A Draft Scope of Work for a targeted DEIS was issued on May 1, 2019. A public scoping meeting was held on Thursday, June 6, 2019 at Anshe Chesed, 251 West 100<sup>th</sup> Street, New York, NY to accept oral and written comments. Written comments on the scope of work were accepted through June 17, 2019. The Final Scope of Work was issued on October 7, 2019.

A Notice of Completion for the targeted Draft Environmental Impact Statement (DEIS) was issued on October 16, 2019, and a public hearing on the DEIS was held at NYC City Planning Commission, Hearing Room, Lower Concourse, 120 Broadway, New York, NY on January 8, 2020 in conjunction with the City Planning Commission’s (CPC) hearing pursuant to the Uniform Land Use Review Procedure (ULURP). A continuation of this hearing was held on February 5, 2020 located at NYC City Planning Commission, Hearing Room, Lower Concourse, 120 Broadway, New York, NY. Comments on the DEIS were accepted by HPD until February 18, 2020. The targeted FEIS was certified as complete, and a Notice of Completion was issued on March 5, 2020. The CPC voted to approve the ULURP application on March 16, 2020, and the actions were adopted by the City Council on September 14, 2016.

After considering the FEIS for no less than 10 days after issuance of the Notice of Completion, HPD has adopted this Statement of Findings.



## PROJECT DESCRIPTION

The New York City Department of Housing Preservation and Development (HPD), on behalf of Fetner Properties LLC (the “Project Sponsor”), sought approval of two discretionary actions (the “Proposed Actions”) affecting Block 1243, Lot 57 (“Disposition Site”) and Lots 59 and 60 (“Privately Owned Sites,” referred to collectively with the Disposition Site as the “Directly Affected Area”) in the Borough of Manhattan, Community District 7. The Proposed Actions included (i) the disposition of Lot 57 to a developer to be selected by HPD pursuant to Article XI of the Private Housing Finance Law and (ii) the approval of HPD funding, that was anticipated through HPD’s Mixed-Middle Income (M2) program.

The Proposed Actions facilitated the construction of a 23-story (235-foot-tall), approximately 150,890 gross square foot (gsf) building containing residential and community facility uses (the “Proposed Project”) on Block 1243, Lots 57, 59, and 60. The Proposed Project was defined as approximately 140,036 gsf of mixed-income residential area including 171 dwelling units, of which approximately 40 percent (68 dwelling units) would be allocated as permanently affordable for residents with incomes ranging from 50 to 130 percent of Area Median Income (AMI) and approximately 10,854 gsf of community facility space. The existing buildings on the site, one of which is city-owned, would be demolished to allow for the construction of the new development. The city-owned building is a vacant decommissioned Metropolitan Transportation Authority (MTA) electrical substation that no longer services the subway and is now abandoned and in disrepair.

## APPROVED PROJECT

The Proposed Actions would facilitate the construction of a 23-story (235-foot-tall), approximately 150,890-gsf building containing residential and community facility uses. The Proposed Project includes (i) approximately 140,036 gsf of residential use (171 dwelling units) and (ii) approximately 10,854 gsf of community facility use. The Proposed Project includes 80 micro studio units (ranging from approximately 290 to 425 sf) and 91 traditional dwelling units; 68 (approximately 40 percent) of the 171 dwelling units would be designated as permanently affordable.<sup>1</sup> Of the 80 micro studio units, 35 would be permanently affordable and 45 would be market-rate. The Salvation Army currently owns and occupies Block 1243, Lot 59. Pursuant to an agreement with an affiliate of the Project Sponsor, the Salvation Army would acquire a portion of the community facility floor area that would be developed as part of the Proposed Project. To present the most conservative assessment, the Proposed Project contemplated in this environmental review is larger than the development proposed in the Land Use Application.

Development of the Proposed Project would occur in a single phase. Demolition of the existing buildings within the Directly Affected Area is anticipated to begin after the Proposed Actions have been approved and construction is anticipated to begin upon the granting of building permits. The Proposed Project is anticipated to be complete and operational by 2022.

## DESCRIPTION OF THE APPROVED ACTIONS

- Disposition of Lot 57 to a developer to be selected by HPD pursuant to Article XI of the Private Housing Finance Law.<sup>2</sup>
- The approval of HPD funding, currently anticipated through HPD’s Mixed-Middle Income (M2) program.

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<sup>1</sup> The affordable dwelling units would be affordable for households earning up to 50 percent, 70 percent, 80 percent, and 130 percent of AMI.

<sup>2</sup> The disposition of Lot 57 is a City Planning Commission (CPC) approval, whereas the approval of funding is being sought through HPD.



### *Disposition Site History*

Previously, the Division of Real Property (DRP) (a predecessor of the New York City Department of Citywide Administrative Services), sought approval for the disposition of Lot 57 (December 20, 1989 disposition application). On June 11, 1990, the City Planning Commission approved the site for disposition subject to the following restrictions:

1. DRP will inform all concerned agencies, including the Office of Management and Budget (OMB), of the proposed disposition of the site, and convene a meeting to discuss any possible use of space in any new development on the site for social service purposes;
2. If any agency expresses an interest in utilizing space in any new development on this site for a public use, and funding for such a use is available, the feasibility of such a use should be fully explored by DRP; and
3. Upon DRP review of any such interest, a summary be drafted and circulated to all concerned agencies including the City Planning Commission.

On July 19, 1990 the New York City Board of Estimate approved the application and further resolved that:

If Block 1243, Lot 57, 59, and 60 are combined with other sites on the same City block to allow for a new development that occupies all such sites, then 4,000 square feet of floor area in the new development be devoted to not-for-profit or social service uses (the “Combined Lot Restriction”). In addition, if Block 1243, Lots 57, 59, and 60 are merged into one zoning lot, then floor area devoted to community facility space equal to the amount of floor area currently occupied by the NAACP shall be provided in the new development. This floor area shall be in addition to the Combined Lot Restriction.

This ULURP application would supersede these disposition restrictions and allow for the development of a mixed-use building with market-rate and affordable housing units, as well as community facility use.

### **ANALYSIS FRAMEWORK**

The incremental difference between the No-Action Condition and With-Action Condition provides the basis by which the potential environmental impacts of the Proposed Actions are evaluated. The development in the With-Action Condition would result in (i) a net increase of 65,085 gsf of residential space, representing an increase of 76 dwelling units, including an increase of 49 permanently affordable dwelling units, and (ii) a net increase of approximately 10,854 gsf of community facility space. The development in the With-Action Condition would result in an overall net increase of 75,939 gsf of new development.

Based on standard employee space utilization rates in the CEQR Technical Manual, the With-Action Condition would result in approximately 43 workers, which would represent a net increase of 39 workers compared to the No-Action Condition. Based on the maximum height permitted in the R10A zoning district, the height of the development on the Privately-Owned Sites (Lots 59 and 60) in the No-Action Condition and With-Action Condition would remain the same at 235 feet. However, because no new development would occur on Lot 57 in the No-Action Condition, there would be an incremental building height increase of approximately 185 feet on Lot 57 in the With-Action Condition.

### **PROBABLE IMPACTS OF THE PROPOSED ACTIONS**

The Proposed Actions have the potential to result in significant adverse impacts in the following technical areas: historic and cultural resources. These impacts and measures proposed to mitigate them are discussed below. Based on the information and conclusions presented in the EAS, HPD determined that the Proposed Project would not have the potential to result in a significant adverse impact to land use, zoning, and public policy; socioeconomic conditions; community facilities and services; open space; urban design; and visual



resources; natural resources; hazardous materials; water and sewer infrastructure; solid waste and sanitation services; energy; transportation; air quality; greenhouse gas emissions and climate change; noise; public health; and construction. The EAS dated March 14, 2019 is incorporated herein by reference. All other CEQR technical areas have been analyzed through the EIS and are summarized below.

### ***LAND USE, ZONING, AND PUBLIC POLICY***

No significant adverse impacts on land use, zoning, or public policy are anticipated in the study area as a result of the development in the With-Action Condition. The Proposed Project would be built pursuant to the existing R10A district regulations and no changes to or waivers from the existing R10A zoning are proposed as part of the Proposed Actions.

The Proposed Actions would facilitate the construction of a primarily residential building, including approximately 40 percent affordable housing, in the Directly Affected Area with ground-floor community facility uses fronting West 96<sup>th</sup> Street. Land uses within the Study Area are characterized primarily by multi-family elevator residences, commercial uses, and mixed residential/commercial uses. Accordingly, the development facilitated by the Proposed Actions would be consistent with these uses. Additionally, the Proposed Actions would neither (i) directly displace any current land uses that would result in an adverse impact on the surrounding uses nor (ii) generate new land uses that would be incompatible with current land uses in the Study Area.

Public policies applicable in the Directly Affected Area include *One New York: The Plan for a Strong and Just City (OneNYC)* and *Housing New York: A Five-Borough, Five-Year Plan (Housing New York)*. The Proposed Project would provide Manhattan Community District 7 with new mixed-income, including permanently affordable housing, pursuant to the underlying zoning and on and underutilized property. The development in the With-Action Condition would support initiatives identified in both *OneNYC* and *Housing New York* and strengthen the residential and mixed-use character of the surrounding neighborhood.

### ***HISTORIC AND CULTURAL RESOURCES***

Demolition of the vacant decommissioned MTA electrical substation that currently occupies Lot 57 would result in a significant adverse impact on an architectural resource, and the project sponsor has determined that there are no reasonable or practicable options that would avoid the adverse impact while achieving the goals and objectives of the Proposed Project. Therefore, measures to partially mitigate the significant adverse impact have been identified.

As there are four historic buildings located within the Riverside-West End Historic District Extension II located adjacent to (and within 90 feet of) the Directly Affected Area, a Construction Protection Plan (CPP) would be prepared in consultation with LPC and implemented prior to demolition and the start of construction activities in the Directly Affected Area. The Proposed Project would not result in any indirect impacts on architectural resources in the study area. The Proposed Project would not obstruct or screen views to architectural resources in the Study Area, adversely impact their setting or relationship with the streetscape, or introduce incompatible visual elements to a resource's setting. With the preparation and implementation of the CPP, the Proposed Actions would not result in any significant adverse impacts on architectural resources in the Study Area.

### ***SHADOWS***

The shadow study area includes 26 potentially sunlight-sensitive resources that may be affected by incremental shadows from the development in the With-Action Condition. Because of the presence of these resources, a detailed shadow analysis was conducted.



Based on the detailed shadow analysis, the Proposed Actions would result in incremental shadow coverage on seven potential sunlight-sensitive resources. Due to the intervening existing buildings, no buildings in the Riverside-West End Historic District and only five of the 14 buildings in the Riverside-West End Historic District Extension II would receive incremental shadows from the Proposed Project on any of the four analysis days. Additionally, no incremental shadows would be cast on the Broadway Malls or Riverside Park due to intervening existing buildings.

The incremental project-generated shadows would not substantially reduce or eliminate direct sunlight on any of the seven sunlight-sensitive resources, and thus would not result in significant adverse impacts.

### ***HAZARDOUS MATERIALS***

The Phase I Environmental Site Assessment and Subsurface Investigation indicated the presence of hazardous materials on all three lots (Lots 57, 59, and 60) comprising the Directly Affected Area. Accordingly, as part of the Proposed Actions, all three lots in the Directly Affected Area would include E-designations requiring further assessment and/or remedial action. Additionally, the Applicant was accepted into the Brownfield Cleanup Program (BCP). As part of the BCP, the Applicant is required to investigate and remediate the Directly Affected Area to the satisfaction of the New York State Department of Environmental Conservation. As part of this process, the Applicant will produce a Citizen Participation Plan, Remedial Investigation Work Plan (RIWP), and a Final Engineering Report. The investigation and remedial processes required by the BCP will satisfy the requirements of the E-designations applied to the Directly Affected Area. With the completion of these processes, the Proposed Actions would not result in significant adverse impacts related to hazardous materials.

### ***NEIGHBORHOOD CHARACTER***

Based on a preliminary assessment, the Proposed Actions would not result in significant adverse impacts to neighborhood character. The Proposed Actions would not result in any significant adverse impacts to land use, zoning, and public policy, socioeconomic conditions, shadows, urban design and visual resources, noise, or transportation. The potential significant adverse impacts on historic and cultural resources would not affect any defining feature of neighborhood character because the Proposed Project would not obstruct or screen views to architectural resources in the Study Area that contribute substantially to neighborhood character, adversely impact their setting or relationship with the streetscape, or introduce incompatible visual elements to a resource's setting. Ultimately, the Proposed actions would facilitate a development that is consistent with the Upper West Side neighborhood both in terms of use and scale. Based on the results of the preliminary assessment, there is no potential for the Proposed Actions to result in any significant adverse impacts to neighborhood character, and therefore, detailed analysis is not warranted.

### **MITIGATION**

The technical analysis determined that there would be a significant adverse environmental impact related to historic and cultural resources. No other significant adverse environmental impacts were identified.

### ***HISTORIC AND CULTURAL RESOURCES***

The Disposition Site contains former Substation No. 14, a decommissioned electrical substation. The building was constructed as part of Contract 1 of the Interborough Rapid Transit (IRT) subway system, the City's first subway that opened in 1904, and identified by LPC as appearing eligible for NYCL exterior designation and S/NR listing.

Demolition of the former substation would constitute a significant adverse impact. To partially mitigate the significant adverse impact that would result from the demolition of the vacant decommissioned MTA



electrical substation, the project sponsor would prepare Historic American Buildings Survey (HABS) Level II documentation in accordance with the standards set forth by the National Park Services (NPS). This recordation package would include a historical narrative and architectural description of the former substation, black and white archival photography of the exterior and interior of the substation, and any available historic photographs and drawings of the substation. A scope of work for the HABS recordation would be prepared and submitted to LPC for review and approval, with archival-quality copies of the completed HABS report provided to LPC and to an appropriate local repository.

## **CERTIFICATION AND FINDINGS**

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

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

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

*Matthew Juliana*

Matthew Juliana, AICP – Director, Environmental Planning  
City of New York - Department of Housing Preservation & Development



## EXHIBIT E

### LIVING WAGE LAW CONTRACT PROVISIONS

Section 6-134 of title 6 of the Administrative Code of the City of New York (“Section 6-134”) and the Mayor’s Executive Order No. 7 dated September 30, 2014 (the “EO No. 7”) regulate the wages of employees employed by Covered Employers (as such term as is defined under Section 6-134) and Additional Covered Employers (as such term is defined under EO No. 7) (Covered Employers and Additional Covered Employers, other than those entities exempted under Section 6-134 as modified by EO No. 7, shall collectively be referred to herein as “Covered Employers”). Therefore, in accordance with Section 6-134 and EO No. 67, the Covered Employers agrees:

A. The Covered Employer shall comply with the requirements of Section 6-134 and EO No. 7 and any rules promulgated thereunder (collectively, the “LW Laws”), including but not limited to, the payment of no less than a Living Wage (as defined in EO No. 7).

B. This Schedule G shall remain in full force and effect for the term of the Financial Assistance (as such term is defined in Section 6-134) from The City of New York (the “City”) or a City economic development entity (as such term is defined under Section 6-134 and EO No. 7), or ten (10) years, whichever period is longer.

C. (1) The Covered Employer shall ensure that any (i) tenant, subtenant, leaseholder or subleaseholder of the Covered Employer that occupies property improved or developed with Financial Assistance, (ii) concessionaire that operates on the property improved or developed with Financial Assistance, and (iii) any person or entity that contracts or subcontracts with the Covered Employer to perform work for a period of more than 90 days on the premises of the property improved or developed

with Financial Assistance, including temporary services or staffing agencies, food service contractors and other on-site service contractors, but (iv) excluding those persons or entities excluded from the definition of “Additional Covered Employer” in EO No. 7 (all such persons or entities shall be collectively referred to herein as “covered occupants”) pays employees no less than a Living Wage, and otherwise complies with the requirements of the LW Laws. The Covered Employer shall include in any contract or agreement with the covered occupant the attached covered occupants’ rider (“Rider”) to this Section, and take such additional steps as are reasonably necessary to ensure covered occupants are in compliance with the LW Laws, including inspecting the books and records of the covered occupant and confirming delivery of all required notices.

(2) If a covered occupant fails to comply with the LW Laws, the Covered Employer may be subject to imposition of a Compliance Fee as provided for in Paragraph H below.

D. The Covered Employer shall not retaliate, discharge, demote, suspend or take any adverse employment action in the terms and conditions of employment against any employee for reporting or asserting a violation of this Agreement or of the LW Laws, for seeking or communicating information regarding rights conferred by the LW Laws, for exercising any rights protected under LW Laws, or for participating in any investigatory, administrative or court proceeding related thereto. The foregoing protections shall also apply to any employee or his or her representative who in good faith alleges a violation of the LW Laws, or who seeks or communicates information regarding rights conferred by the LW Laws in circumstances where he or she in good faith believes it applies. The Covered Employer acknowledges and agrees that taking adverse employment action against an employee or his or her representative within sixty (60) days of the employee

engaging in any of the aforementioned activities shall raise a rebuttable presumption of the Covered Employer having done so in retaliation for those activities.

E. The Covered Employer shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects or assignments that are subject to the requirements of Section 6-134, the wages paid and benefits provided for such hours worked, and the delivery of required employee notices. The Covered Employer shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of six (6) years after the later of completion of this Agreement or the project is completed. The Covered Employer acknowledges and agrees that failure to so retain such payroll records shall create a rebuttable presumption that the Covered Employer did not pay its employees the wages and benefits required under Section 6-134 and EO No. 7. Upon request, the Covered Employer shall provide a certified original payroll record to the City.

F. The Covered Employer shall maintain a current list of all its covered occupants and provide that list to the City upon request.

G. No later than the day on which an employee begins work at a site subject to the requirements of Section 6-134 and/or EO No. 7, the Covered Employer shall post in a prominent and accessible place at every such work site and provide each employee with a copy of a written notice, in a form provided by the City, detailing the wages, benefits, and other protections to which covered employees are entitled under Section 6-134 and EO No. 7, providing the name, address and phone number of the Comptroller, and advising employees that if they have been paid less than the Living Wage they may notify the Comptroller and request an investigation. The Covered

Employer shall promptly replace any posted notice that is damaged, defaced, illegible or removed for any reason. Such notices shall be provided in English, Spanish and any other language deemed appropriate in the area of the project site. The Covered Employer shall provide the aforementioned written notices to its covered occupants, and require each covered occupant to comply with this Paragraph G in the same manner as the Covered Employer.

H. The Covered Employer agrees that failure to comply with any of the requirements of the LW Laws shall constitute a material breach by the Covered Employer of the terms of this Agreement. The Covered Employer acknowledges and agrees that the City shall have the right, subject to any cure provisions provided for under Section 6-134, to pursue any rights or remedies available under this Agreement, Section 6-134 and EO No. 7 or under applicable law, including (i) termination of this Agreement, (ii) recovering from the Covered Employer the financial assistance disbursed or provided to the Covered Employer, including requiring repayment of any taxes abated or deferred, (iii) withholding of any payment due from the City to the financial assistance recipient in order to safeguard the rights of employees in a manner consistent with the withholding procedures established by subdivision 2 of section 235 of the New York Labor Law, and (iv) imposing any of the remedies provided for in subsection (g)(2) and (7) of Section 6-134, including payment of wages and benefits, interest, civil penalties and sums withheld at the commencement of an investigation, and directing reinstatement and/or filing and disclosure. No provision in this Agreement is intended to limit any right of any employee to seek legal and/or equitable relief from a court of competent jurisdiction as provided for in subsection (g) of Section 6-134.

In addition, if the Covered Employer fails to perform in accordance with any of the requirements of Section 6-134 and EO No. 7 and fails to cure such failure, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or any part thereof, and may charge (including any administrative charge established by the ), the Covered Employer for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and Applicable law.

For purposes of Section C of this Agreement, in the event that a covered occupant fails to pay a Living Wage or otherwise comply with Section 6-134 and/or EO No. 7, the City may provide written notice of its intent to impose a Compliance Fee (defined below) on the Covered Employer unless, within 60 days of delivery of the notice, the Covered Employer provides sufficient evidence to the City of the Covered Employer's diligent efforts to enforce the requirement that covered occupants comply with the LW Laws. For purposes of this subsection H, diligent efforts shall mean that (i) the Covered Employer has attached the Rider or included similar living wage language in any contract or agreement with a covered occupant; (ii) the Covered Employer has provided each covered occupant with written notices as set forth in subsection G herein; (iii) the Covered Employer shall obtain and maintain all certifications from the covered occupants certifying that is has paid its employees a Living Wage; (iv) The Covered Employer shall obtain an Employee Certification log in the form attached as Exhibit B; (v) The Covered Employer shall retain such documentation as is reasonably necessary to prove that it used diligent efforts to enforce the requirement that the covered

occupant comply with the LW Laws, which may consist of signed copies of the notices, default letters, email receipts and/or logs; and (vi) the Covered Employer diligently pursues such action to remove the covered occupant and/or otherwise cure the violation.

In the event that the Covered Employer fails to timely deliver such evidence, the City or City development agency shall be entitled to collect liquidated damages in the amount of \$500 per instance (the "Compliance Fee") from the Covered Employer.

I. On August 1<sup>st</sup> of each year during the Term of this Agreement, the Covered Employer shall submit to the City an annual certification (in the form attached hereto and made a part hereof as Exhibit A), in a form provided by the City, executed under penalty of perjury, stating that all of its employees are paid no less than the Living Wage and are otherwise treated in accordance with the LW Laws, providing the names, addresses and telephone numbers of such employees and affirming the obligation of the Covered Employer to assist the City to remedy any non-compliance by the Covered Employer. All such statements shall be certified by the chief executive or chief financial officer of the Covered Employer, or the designee of any such person.

J. The Covered Employer shall pay to the City all fees, costs expenses, (including, without limitation, attorneys' fees and disbursements) incurred in connection with the enforcement of the terms of this Section by the City, or any investigation related thereto, within thirty (30) days after demand therefor.

K. The Covered Employer shall cooperate with the Comptroller, Department of Consumer Affairs ("DCA"), the City in connection with their monitoring, investigation, inspection and enforcement efforts related to compliance with the LW Laws, and

provide the Comptroller, the City with any and all records and information reasonably requested by such entities in connection with such efforts. In connection with any such activities, the Covered Employer shall permit the Comptroller, the City to observe work being performed at the job site, interview employees during and after work hours and examine the books and records related to the payrolls being investigated and the delivery of required notices. If the Covered Employer fails to comply with this subsection K, such failure to comply shall be deemed a default under this contract or agreement and the Covered Employer shall be subject to any and all remedies set forth in this Section. The Covered Employer acknowledges and agrees that the Comptroller, DCA, the City are each intended to be third party beneficiaries of the terms and provisions of this section.

L. Training provided by DCA in connection with LW Laws.

M. The provisions of this Section shall survive the expiration of the Restriction Period and/or the termination of this Agreement.

## COVERED OCCUPANTS' RIDER

All agreements between Covered Employer and covered occupants (as defined above) shall include the following provisions:

The Covered Occupant hereby agrees to:

1. comply with the requirements of Section 6-134 and EO No. 7, including but not limited to, the payment of no less than a living wage to each of its employees (as such term is defined under Section 6-134).
2. pay all employees a living wage for the term of the financial assistance (as such term is defined under Section 6-134) or ten (10) years, whichever period is longer.
3. maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects or assignments that are subject to the requirements of Section 6-134 and EO No. 7, and the wages paid and benefits provided for such hours worked. The Covered Occupant shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of six (6) years after the later of completion of this Agreement or the project is completed. The Covered Occupant acknowledges and agrees that failure to so retain such payroll records shall create a rebuttable presumption that the Covered Occupant did not pay its employees the wages and benefits required under Section 6-134 and EO No. 7. Upon request, the Covered Occupant shall provide a certified original payroll record to Landlord, the City and/or City economic development entity within ten (10) Business Days.

4. cooperate with the Comptroller, Department of Consumer Affairs (“DCA”) and the City in connection with their monitoring, investigation, inspection and enforcement efforts related to compliance with the LW Laws, and provide the Comptroller and the City or City economic development entity with any and all records and information reasonably requested by such entities in connection with such efforts. In connection with any such activities, the Covered Occupant shall permit the Comptroller and the City to observe work being performed at the job site, interview employees during and after work hours and examine the books and records related to the payrolls being investigated and the delivery of required notices. The Covered Occupant acknowledges and agrees that the Comptroller, DCA, and the City are each intended to be third party beneficiaries of the terms and provisions of this Section.
5. post in prominent and accessible place at every such work site and provide each employee with a copy of a written notice, in a form provided by the (applicable Covered Employer), detailing the wages, benefit, and other protections to which covered employees are entitled under Section 6-134 and EO No. 7, providing the name, address and phone number of the Comptroller, and advising employees that if they have been paid less than the Living Wage they may notify the Comptroller and request an investigation. The Covered Occupant shall promptly replace any posted notice that is damaged, defaced, illegible for removed for any reason. Such notices shall be provided in English, Spanish and any other language deemed appropriate in the area of the project site.

6. not retaliate, discharge, demote, suspend or take any adverse employment action in terms and conditions of employment against any employee for reporting or asserting a violation of this Agreement or of the LW Laws, for seeking or communicating information regarding rights conferred by the LW Laws, for exercising any rights protected under LW Laws, or for participating in any investigatory, administrative or court proceeding related thereto. The foregoing protections shall also apply to any employee or his or her representative who in good faith alleges a violation of the LW Laws, or who seeks or communicates information regarding rights conferred by the LW Laws in circumstances where he or she in good faith believes it applies. The Covered Occupant acknowledges and agrees that taking adverse employment action against an employee or his or her representative within sixty (60) days of the employee engaging in any of the aforementioned activities shall raise a rebuttable presumption of the Covered Occupant having done so in retaliation for these activities.
7. provide a written list of all other Covered Occupants at the project site to Covered Employer within ten (10) business days of Covered Occupants receipt of a request therefor.
8. be subject to any rights or remedies against the Covered Employer and available under this Agreement, Section 6-134 and EO No. 7 or under applicable law for Covered Occupant's failure to comply with the requirements set forth in this Agreement, Section 6-134 and EO No. 7.

9. pay to the City all fees, costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred in connection with the enforcement of the terms herein, Section 6-134 and EO No. 7 within thirty (30) days after demand therefor.
10. The provisions set forth herein shall survive the expiration of the Restriction Period and/or the termination of this Agreement.

**EXHIBIT A**

**CERTIFICATION**

Reference is hereby made to that certain \_\_\_\_\_ dated as of \_\_\_\_\_ (“Project Agreement”), by and between \_\_\_\_\_ (“Certifying Entity”) and \_\_\_\_\_ (“Agency”).

Pursuant to New York City Administrative Code Section 6-134, also known as the Fair Wages for New Yorkers Act (the “Act”), the undersigned certifies under the penalties of perjury, that the following information is true:

- 1 I am the chief executive officer or the chief financial officer of the Certifying Entity, or the designee of either of them.
- 2 The undersigned, on behalf of \_\_\_\_\_ (“Certifying Entity”) agrees to comply with the requirements of Section 6-134 of the Administrative Code of the City of New York, and with all applicable federal, state and local laws.
- 3 [Certifying Entity, as of the \_\_\_\_\_ day of \_\_\_\_\_, qualifies for the exemption pursuant to the Act and Executive Order No. 7 because (state reason for exemption)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ]

- 4 All of the “employees” of the Certifying Entity at the project site are paid no less than a “living wage” (as such terms are defined in the Act).

- 5 The Certifying Entity has notified all other “covered employers” operating at the project site that they must pay their “employees” not less than a “living wage” and must comply with all other requirements of the Act (as such terms are defined in the Act).
- 6 The Certifying Entity hereby affirms its obligation to assist the Comptroller and the City of New York to investigate, monitor and enforce and remedy non-compliance of all “covered employers” (as such term is defined in the Act) with the Act.
- 7 The Certifying Entity provides the following information. Attach additional sheets if necessary.

Full Name of Certifying Entity \_\_\_\_\_  
\_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
\_\_\_\_\_  
Telephone Number \_\_\_\_\_  
\_\_\_\_\_

The names, addresses and telephone numbers of all “covered employers” at the project site (whether or not such “covered employers” are exempt) are:

Company’s Name: \_\_\_\_\_  
\_\_\_\_\_

Company’s Address: \_\_\_\_\_  
\_\_\_\_\_

Company’s Phone Number: \_\_\_\_\_  
\_\_\_\_\_

Other Covered Employer’s Name: \_\_\_\_\_  
\_\_\_\_\_

Other Covered Employer’s Address: \_\_\_\_\_  
\_\_\_\_\_

Other Covered Employers Phone Number: \_\_\_\_\_  
\_\_\_\_\_

Other Covered Employer’s Name \_\_\_\_\_  
\_\_\_\_\_

Other Covered Employer’s Address: \_\_\_\_\_  
\_\_\_\_\_

Other Covered Employer’s Phone Number \_\_\_\_\_  
\_\_\_\_\_

Other Covered Employer’s Name \_\_\_\_\_  
\_\_\_\_\_

Other Covered Employer’s Address: \_\_\_\_\_  
\_\_\_\_\_

Other Covered Employer's Phone Number \_\_\_\_\_  
\_\_\_\_\_

Other Covered Employer's Name \_\_\_\_\_  
\_\_\_\_\_

Other Covered Employer's Address: \_\_\_\_\_  
\_\_\_\_\_

Other Covered Employer's Phone Number \_\_\_\_\_  
\_\_\_\_\_

**[SIGNATURE TO FOLLOW]**

IN WITNESS WHEREOF, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, I hereby certify under penalty of perjury that the foregoing statements and information are true and correct.

[NAME OF CERTIFYING ENTITY]

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**EXHIBIT B**

**EMPLOYEE LOG CERTIFICATION**

I, \_\_\_\_\_, hereby certify under penalty of perjury, that the following information is true and correct:

1. I am an employee of \_\_\_\_\_(the "Company")
2. My position is \_\_\_\_\_.
3. The Company provided me with a written notice explaining my rights as an employee and the Company's obligation under the Fair Wages for New Yorkers Act, constituting New York City Administrative Code Section 6-134, as expanded by the Executive Order No. 7, dated September 30, 2014 (the "Act").
4. The Company pays me no less than a living wage pursuant to the Act.

By: \_\_\_\_\_

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

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

## REGULATORY AGREEMENT

**AGREEMENT** made as of December 16, 2021, by and among **270 WEST 96<sup>TH</sup> STREET HOUSING DEVELOPMENT FUND CORPORATION**, a New York not-for-profit corporation, having its office at c/o Settlement Housing Fund, Inc., 247 West 37<sup>th</sup> street, 4<sup>th</sup> Floor, New York, New York 10018, (the “Legal Owner”) and **AMP PROPERTY OWNER L.P.**, a Delaware limited partnership having its office at c/o Fetner Properties, Inc., 675 Third Avenue, Suite 2800, New York, New York 10017 (“Beneficial Owner,” and together with Legal Owner, collectively, “Applicant”), and the **CITY OF NEW YORK** (the “City”), a municipal corporation acting by and through its **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT** (“Department”), having an office at 100 Gold Street, Ninth Floor, New York, NY 10038.

**WHEREAS**, Legal Owner is the holder of nominal legal title of the premises located in the County of New York, City and State of New York, identified as Block 1243, Lots 57, 59, and 60 (collectively, the “Premises”) on the Tax Map of the City (as improved pursuant to this Agreement), more particularly described in Exhibit A attached hereto and made a part hereof; and

**WHEREAS**, Beneficial Owner holds title to the beneficial and equitable interest in the Premises pursuant to that certain Declaration of Interest and Nominee Agreement (“Nominee Agreement”) between Legal Owner and Beneficial Owner, dated as of the date hereof; and

**WHEREAS**, Applicant intends to construct improvements on the Premises, which improvements will constitute Affordable Housing within the meaning of Section 23-911 of the New York City Zoning Resolution (the “Resolution”) and the Inclusionary Housing Program Guidelines (the “Guidelines”) (the Guidelines and Resolution are collectively referred to as the “Program”); and

**WHEREAS**, the Department has been duly authorized to administer the Program, including the execution of this Regulatory Agreement between the Department and Applicant for Floor Area Compensation under the Program (this “Agreement”); and

**WHEREAS**, Applicant has filed with the Department an Affordable Housing Plan pursuant to Section 23-961(d) of the Resolution, attached hereto and made a part hereof as Exhibit B (the “Plan”), and the Department has evaluated and approved the Plan as such terms and requirements of the Plan are reflected in this Agreement; and

**WHEREAS**, Applicant intends to provide Low Income Floor Area (as defined in Section 23-911 of the Resolution (the “Affordable Housing Units”) to be affordable to and occupied by families having incomes less than or equal to the Low Income Limit in order to enable one or more new multiple dwellings (the “Compensated Development(s)”), to be eligible under the Program for Floor Area Compensation pursuant to Section 23-932 (R10) or Section 23-154 (Inclusionary Housing designated areas) of the Resolution; and

**WHEREAS**, Applicant intends to file a declaration of condominium (together with the by-laws and other schedules attached thereto, as same may be amended from time to time, the “Declaration”), which shall establish the building to be constructed on the Premises (the “Building”) as a condominium project; and

**WHEREAS**, the Declaration will establish three (3) separate condominium units (the "Condominium Units") to be constructed on the Premises: (i) a condominium unit which will contain sixty-seven (67) residential rental apartments affordable to Low Income Households (as defined by the Program (as hereinafter defined)), fourteen (14) of which shall be Affordable Housing Units (as defined by the Program) subject to the terms of this Agreement (the "Affordable Condo Unit"); (ii) a condominium unit which will contain 104 residential rental apartments, inclusive of one (1) superintendent's unit (the "Market Condo Unit"); and (iii) a condominium unit which will contain community facility space (the "Community Facility Unit") (collectively, all of the foregoing units are referred to as the "Condominium"); and

**WHEREAS**, the parties hereto wish to enter into this Agreement to set forth the rights and obligations hereunder;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, it is hereby agreed as follows:

1. Capitalized terms not specifically defined herein shall have the meaning set forth in the Program.
2. (i) Applicant will create, through new construction fourteen (14) Affordable Housing Units pursuant to the building plans submitted to and approved by the Department ("Building Plans"), located in the Affordable Condo Unit at the Premises. Attached hereto as part of Exhibit C, is a list identifying each Affordable Housing Unit.  
  
(ii) The Declaration shall provide that the owner of the Market Condo Unit (including Applicant and its successors or assigns) ("Market Condo Owner") shall pay all carrying charges and any other carrying costs, including, without limitation, debt service payments and other mortgage payments associated with ownership and operation of the Affordable Condo Unit exceeding the "net rental income" generated by the Affordable Condo Unit (said excess, the "Carrying Cost Differential"). As used in this paragraph, the term "net rental income" means rental income generated by the Affordable Condo Unit less operating expenses of the Affordable Condo Unit. Payment of such Carrying Cost Differential may be made in the form of a loan to the owner of the Affordable Condo Unit provided, however, any such loan may not encumber the Affordable Condo Unit or give rise to a lien against the Affordable Condo Unit or any interest or portion therein. Notwithstanding the foregoing, the Market Condo Owner may enforce any such loan against the owner of the Affordable Condo Unit to the extent advances have been made under said loan; provided, however, that such enforcement shall not be undertaken without the prior written consent of HPD, which consent shall not be unreasonably withheld where enforcement of the loan is being undertaken to facilitate acquisition by Market Condo Unit of all or some of the interest in the Affordable Unit and where such enforcement will not give rise to a lien or other encumbrance against the Affordable Condo Unit.  
  
(iii) Prior to submission to the Attorney General and recording of the Declaration, Applicant shall submit the Declaration to the Department for its review and approval including, but not limited to, the provisions concerning carrying charges. The Declaration shall thereafter not be modified with respect to provisions concerning or affecting the Affordable Condo Unit without the prior written consent of the Department.

3. The fourteen (14) Affordable Housing Units are to be occupied by Low Income Households, as defined in the Resolution, which will permit Floor Area Compensation in conformance with the Resolution.
4. The authority pursuant to the Resolution to create additional Floor Area in Compensated Development(s), granted in accordance with this Agreement, may be used on-site on the Premises only by Applicant or by whomever Applicant directs the Department, in writing, to receive such authority, subject to the geographic and zoning limitations set forth in the Resolution and subject to the requirements of the Program.
5. The parties hereto agree that the site of the subject Affordable Housing Units is eligible for the construction of Low Income Floor Area pursuant to the Program and the requirements of Sections 23-90 (Inclusionary Housing), inclusive of the Resolution and based on an opinion of counsel, the site meets the requirements of RPTL §421-a. The parties also agree that Applicant shall complete the subject Affordable Housing Units application for tax exemption under the RPTL §421-a, unless the Department has waived, in writing, the necessity for such exemption. The parties hereto further agree that (a) Applicant shall not permit the Building Plans to be professionally certified to the City of New York Department of Buildings (“DOB”) and (b) Applicant shall submit such Building Plans to a DOB plan examiner for review, and (c) applicable zoning calculations also shall be approved by a DOB plan examiner, and (d) construction of Affordable Housing Units, as described in the request, is in accordance with the Program requirements and with the Building Plans, with respect to the Affordable Housing Units, (which Program requirements and Building Plans are collectively defined as “Construction Requirements”). The Construction Requirements that relate to the Program requirements or Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall not be altered without the Department’s written approval.

Applicant shall complete the construction of the Affordable Housing Units within four (4) years from the date of this Agreement (“Completion Deadline”). The construction of the Affordable Housing Units shall be deemed complete upon the Department's issuance, for presentation to the DOB, of a Completion Notice in accordance with Section 9 of this Agreement (“Completion”).

6. This Agreement is subject to the Applicant’s compliance with the requirements set forth in the Program. The Department acknowledges that, as of the date of this Agreement, Applicant has satisfied applicable requirements set forth in Sections 23-90 (Inclusionary Housing), inclusive of the Resolution.
7. Affordable Housing Units created pursuant to this Agreement will be occupied solely by tenants who are Low Income Households at the time of such tenant's Initial Occupancy of such housing and shall be operated as Affordable Housing for Low Income Households for the life of the increased Floor Area of the Compensated Development(s). Such obligation shall run with the tax lot(s) within the zoning lot containing such Affordable Housing Units.
8. (i) The rents charged by Applicant for the Affordable Housing Units upon Rent-up of such units shall (a) not exceed the rents set forth in the schedule attached hereto as Exhibit D, which have been established by the Department pursuant to Sections 23-961(b) of the Resolution, (b) be registered with the New York State Division of Housing and Community Renewal or any successor agency (“DHCR”) and (c) thereafter shall be

subject to Rent Stabilization for the term of this Agreement and upon termination of this Agreement in accordance with this Section 8(v). Applicant shall register all Affordable Housing Units with DHCR upon the earlier to occur of: (A) the occupancy of the last remaining unit, or (B) one year from Completion Deadline (hereinafter, the "DHCR Registration Deadline").

(ii) Rents for existing tenants of the Affordable Housing Units upon renewal of leases for such units or at any time during the term of the lease shall be the lesser of (a) the rent allowed by Rent Stabilization, or (b) the Maximum Monthly Rent for Low Income Households.

(iii) Upon rental of an Affordable Housing Unit that becomes vacant after Initial Occupancy, to a new tenant, the rent shall be the lesser of the rent allowed by Rent Stabilization or the Maximum Monthly Rent for Low Income Households.

(iv) Notwithstanding anything to the contrary contained herein, Applicant shall not utilize any exemption or exclusion from any requirement of Rent Stabilization to which Applicant might otherwise be or become entitled with respect to one or more Affordable Housing Units, including, but not limited to, any exemption or exclusion from the rent limits, renewal lease requirements, registration requirements, or other provisions of Rent Stabilization due to (i) the vacancy of a unit where the rent exceeds a prescribed maximum amount, (ii) the fact that tenant income and/or a unit's rent exceeds prescribed maximum amounts, (iii) the nature of the tenant, or (iv) any other factor.

(v) In the event that the Affordable Housing Units are not located in the Compensated Development and the increased Floor Area of the Compensated Development generated by such Affordable Housing Units ceases to exist, the Affordable Housing Units shall continue to remain subject to Rent Stabilization so long as the existing tenants in occupancy remain tenants pursuant to the provisions of Rent Stabilization.

(vi) Applicant shall grant all tenants of the Affordable Housing Units the same rights that they would be entitled pursuant to Rent Stabilization. In addition, Applicant shall register the Affordable Housing Units with DHCR pursuant to Rent Stabilization, and such units shall be subject to Rent Stabilization without regard to whether such Affordable Housing Units are statutorily subject to Rent Stabilization. Applicant shall ensure that these rights are stated in each lease for an Affordable Housing Unit. If any court declares that Rent Stabilization is statutorily inapplicable to an Affordable Housing Unit, such unit shall remain in Rent Stabilization in accordance with this Agreement and the lease for such Affordable Housing Unit for the remainder of the Regulatory Period.

9. Issuance of the Completion Notice For Generating Sites That Are Also Compensated Developments

Applicant agrees not to request or accept a Certificate of Occupancy ("C of O") or a Temporary Certificate of Occupancy ("T C of O") for any portion of the Compensated Development that utilizes Floor Area Compensation until the Department issues a Completion Notice to such Compensated Development.

The Department shall issue a Completion Notice upon Applicant's compliance with the following requirements (a) through (o) of this Section (9):

- (a) submission of proof that each Affordable Housing Unit that is not located in the portion of the Compensated Development that utilizes Floor Area Compensation, has received a C of O or a T C of O, and (2) where applicable each Affordable Housing Unit that is located in the portion of the Compensated Development that utilizes Floor Area Compensation has received certification from DOB that such Affordable Housing Unit is eligible to receive its C of O or T C of O upon the Department's issuance of a Completion Notice; and
- (b) at the discretion of the Department, performance by the Department of a site inspection which establishes to the satisfaction of the Department that (i) the Affordable Housing Units meet the requirements of Sections 23-96(b), (c) and (d) of the Resolution and (ii) the Building meets the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and
- (c) [Intentionally Omitted]; and
- (d) funding of the Special Reserve Fund in accordance with Section 15 of this Agreement; and
- (e) submission of proof, satisfactory to the Department, that the Affordable Housing Units are being rented in accordance with Sections 8, 21 and 22 of this Agreement and that Applicant has entered into leases with tenants for at least 10% of the Affordable Housing Units in accordance with the Program, pursuant to which the tenants may begin occupancy upon the issuance of a C of O or T C of O; and
- (f) submission of certificates of insurance required by Section 12 of this Agreement with all premiums for the current year fully paid; and
- (g) submission on or after the date that DOB either certifies to the Department that DOB is prepared to issue the C of O or the T C of O for all of the Affordable Housing Units or that DOB has issued the C of O or the T C of O for all of the Affordable Housing Units, as the case may be, of (i) a policy of fee title insurance dated as of the date the Applicant acquired title to the Building, where such policy (a) has been issued by a title company in good standing licensed to issue title insurance in New York State and contains the Standard New York Endorsement (Owner's Policy) in substantially the form that appears as Exhibit E hereto, (b) such policy evidences fee simple ownership in the Applicant and the absence of liens and other encumbrances on the Premises other than those approved by the Department, (ii) proof of payment of premiums therefore, and (iii) title continuations run by the title company from the date of the fee title policy to the date of submission of such title policy together with a letter from the title company confirming the absence of liens and encumbrances on the Premises other than those previously approved by the Department and mechanics liens which have been bonded; and
- (h) submission of an executed contract between the Department and the Administering Agent in accordance with Section 11 of this Agreement; and

- (i) submission of a Memorandum of Regulatory Agreement, where applicable, and the Agreement stamped as recorded separately in the Office of the City Register in accordance with Section 24 and Section 29 respectively, of this Agreement; and
  - (j) submission of proof that any required subordination and non-disturbance agreement (“Affordable Housing Subordination Agreement”) was recorded immediately following execution thereof and that Applicant fully complied with the requirements of Section 19 of this Agreement; and
  - (k) submission of, (1) proof of registration of the building on the Premises that contains the Affordable Housing Units and all occupied Affordable Housing Units with the DHCR, and, if the Building is not fully occupied, an affidavit stating that Applicant shall register all remaining units as they become occupied; (2) proof that such building is entirely free of violations of record issued by any City or State agency pursuant to the Multiple Dwelling Law, the Building Code, the Housing Maintenance Code and the Program and (3) submission of an affidavit stating that Applicant shall complete multiple dwelling registration of the building on the Premises, that contains the Affordable Housing, in accordance with the New York City Housing Maintenance Code; and
  - (l) certification that the representations, warranties and statements made by the Applicant that are contained in this Agreement and in any other documents executed in connection with this Agreement remain true and correct as of the date on which the foregoing conditions have been satisfied; and
  - (m) submission of proof that the Building Plans were reviewed by a DOB plan examiner and submission of a zoning sheet approved by DOB after the issuance of a T C of O; the Department's issuance of the Completion Notice shall be based upon such DOB approved calculations; and
  - (n) where applicable, submission of proof of completion of all applications for tax exemptions and/or abatements and that Applicant has fully complied with Section 5 of this Agreement; and
  - (o) compliance with the terms of this Agreement and the Program.
10. Warranties. Applicant shall obtain and retain commercially reasonable warranties of the work on the Affordable Housing Units from the general contractor and all subcontractors performing such work and, at the Department's request, shall submit such warranties for inspection.
11. Renting Affordable Housing Units. Applicant has contracted with Settlement Housing Fund, Inc., a not-for profit organization qualified by the Department to participate in the Program, to act as Administering Agent for the Affordable Housing Units (“Administering Agent”). The Administering Agent shall ensure that Affordable Housing Units are rented at Rent-up and each subsequent vacancy, in compliance with the Plan and all of the requirements of the Program. Within (60) sixty days of the DHCR Registration Deadline, the Administering Agent shall submit an affidavit to the Department attesting that the Monthly Rent registered and charged for each Affordable Housing Unit, complied with the Monthly Rent requirements for such unit, at Initial Occupancy. Each year after

DHCR Registration Deadline, in the month of March, the Administering Agent shall submit an affidavit to the Department attesting that each lease or sublease of an Affordable Housing Unit or renewal thereof, during the preceding year, complied with the applicable Monthly Rent requirements of the Program. A contract between the Administering Agent and the Department (“Administering Agent Agreement”) is attached and made a part hereof as Exhibit F. The Department reserves the right to replace the Administering Agent in the event that the Affordable Housing Units are not rented at Rent-up and upon each subsequent vacancy thereafter in compliance with the Program. Applicant may not terminate its agreement with the Administering Agent without simultaneously entering into a new Administering Agent Agreement approved in writing by the Department.

Nothing stated herein limits or modifies in any way whatsoever the requirement contained in Section 7 herein that the Affordable Housing Units be operated as such for the life of the increased floor area of the Compensated Development(s).

12. Insurance.

(a) Insurance.

- (i) Applicant shall obtain and maintain in force all-risk casualty insurance, including broad form extended coverage that, in the event of a casualty to the Building containing the Affordable Housing Units, will pay an amount of insurance equal to full replacement value of the Building containing the Affordable Housing Units.
- (ii) Applicant shall obtain and maintain in force commercial general liability insurance and other insurance of commercially reasonable types and amounts with respect to the Building containing the Affordable Housing Units.

(b) Casualty.

- (i) In the event of a casualty, Applicant and/or the Administering Agent shall promptly notify the Department thereof. The Department agrees that, subject to the terms and conditions set forth in this Section 12, the proceeds of the insurance on the Premises may be utilized as determined by the lender or lenders participating in the financing of the Building (the “Financiers”) in accordance with the documents governing such Financiers’ loan(s), copies of which have been provided to the Department (the “Loan Documents”). Applicant shall promptly inform the Department of the disposition of such insurance proceeds.
- (ii) (A) In the event of a partial casualty, to the extent that any additional Floor Area created pursuant to this Agreement continues to exist or is reconstructed after such casualty, the Affordable Housing Units shall be reconstructed so as to maintain in the Building the same ratio of Affordable Housing to the additional Floor Area as existed prior to such casualty, notwithstanding the availability of, or priority of payment of, insurance proceeds, and the terms of this Agreement shall remain in full force and effect.

(B) If the Applicant and Financiers determine that due to the nature of the casualty and the condition of the remaining structure, it is not practicable to include the Affordable Housing Units as originally configured in the replacement building, the Affordable Housing Units may be reconstructed in a location other than the Premises in accordance with the requirements of this Agreement and the Program.

- (iii) In the event of a total casualty, where all additional Floor Area created pursuant to this Agreement ceases to exist and the Applicant elects not to utilize the additional Floor Area in the restored building, if any, then all proceeds shall be applied in accordance with the Loan Documents.
- (iv) Applicant agrees that if the Building containing the Affordable Housing Units is reconstructed as provided in Section 12(b)(ii), then: (A) at such time as the restored portion of the Building or any new building is ready for occupancy, the Affordable Housing Units on each restored floor shall be made available for occupancy and re-rented concurrently with the market rate units on the same floor; (B) Applicant shall restore, repair, replace rebuild, alter or otherwise improve the Affordable Housing Units in accordance with this Agreement and the Program in effect as of the date hereof; (C) such construction shall be free of all violations under the New York City Building Code, the New York State Multiple Dwelling Law and the New York City Housing Maintenance Code and (D) Applicant shall, upon request of the Department, amend this Agreement to reflect any changes to the number, configuration or location of the Affordable Housing Units in any replacement building or off site location for the Affordable Housing Units made in accordance with this Section 12.
- (v) The Department acknowledges and agrees that Applicant has the right to require the Financiers under any current or future Mortgage to use the insurance proceeds for the rebuilding of the Premises (with certain protective procedures).

13. Construction Monitoring. The Department may monitor the construction of the Affordable Housing Units in any reasonable manner, including inspection of the Premises. Upon request (a) Applicant shall give the Department notice of planning and construction progress meetings by telephone or in writing and (b) the Department may (i) participate in planning and construction progress meetings, (ii) review construction contracts, plans, specifications and materials samples and (iii) review proposed changes to the foregoing. Applicant shall give to the Department (x) following the Department's request for any documents or materials pursuant to the preceding sentence, notice of proposed changes to such documents or materials, and (y) notice of any casualty to or other material event concerning the work on the Affordable Housing Units.

14. Disclosure of Financial Arrangements. Upon the request of the Department, Applicant shall fully disclose the financial terms and arrangements relating to the Affordable Housing Units and sale or use by Applicant of the Completion Notice. In the event that the Department obtains information pursuant to this Section 14, the Department shall thereafter disclose such information to third parties only as required by law, except that

such data may be used and disclosed without attribution to Applicant as part of an analysis of the Program.

15. Special Reserve Fund.

- (a) Simultaneous with or prior to the issuance of a Completion Notice, Applicant will fund a special operating reserve fund (the "Special Reserve Fund") in the amount of either: (1) Thirty Six Thousand, One Hundred Eighty Four dollars and Fifty Cents (\$36,184.50) which represents \$2.25 per square foot of Affordable Housing as stated in the architect self-certification submitted to the Department on December 13, 2021 (the "Architect Certification") or (2) if, in accordance with Section 9 (l), the DOB approves zoning calculations that differ from the Architect Certification, then \$2.25 per square foot of Affordable Housing as stated in such DOB approved zoning calculations, which shall be placed in a blocked reserve account to be administered by the Department or its designee. The Special Reserve Fund and the interest accrued thereon shall belong to the Premises and the owner of such Premises and shall be used solely for the benefit of the Affordable Housing Units. The Special Reserve Fund is separate from the Building reserve fund built into the rent roll that will accumulate over time. The proceeds of the Special Reserve Fund shall be available to pay for unanticipated increases in the cost of operating and maintaining the Affordable Housing Units (including, but not limited to, escalating real estate taxes), or for capital repairs or improvements, the cost of which cannot be covered by the Building's capital reserve fund. Expenditures from the Special Reserve Fund shall be made solely at the discretion of the Department and may be made by the Department on behalf of Applicant.
- (b) On the last day of the Restriction Period (as such term is defined in the HPD Regulatory Agreement), the Applicant shall deposit into the Special Reserve Fund an additional amount equal to \$1.10 per square foot of the Affordable Housing plus interest, compounded from the date of the issuance of the Completion Notice until the date that is the last day of the Restriction Period (as such term is defined in the HPD Regulatory Agreement), at a rate equal to the rate at which the initial deposit to the Special Reserve Fund earned interest.
- (c) In the event that the HPD Regulatory Agreement shall terminate (the "HPD Regulatory Termination"), the Applicant shall deposit into the Special Reserve Fund an additional amount equal to \$1.10 per square foot of the Affordable Housing plus interest, compounded from the date of the issuance of the Completion Notice until the date that the HPD Regulatory Termination occurs at a rate equal to the rate at which the initial deposit to the Special Reserve Fund earned interest.
- (d) [Intentionally Omitted.]
- (e) If the Department authorizes any expenditures to be made from the Project Reserve, Applicant shall replenish the Project Reserve in the amount of the total sum of all such authorized expenditures by applying the excess of collected rents over actual operating expenses until all such repayments have been made. Such repayments into the Project Reserve shall be made after the Special Reserve Fund has been replenished in accordance with the preceding paragraphs of this Section, but prior to the payment of any unpaid developer,

syndication or partnership fees. In addition, such repayments shall be supported by the most recent financial statements, an independent auditor's report and a rent roll for the Premises. Applicant may choose to replenish such Project Reserve on a calendar year basis or on a fiscal year basis. In addition, upon sale, transfer, or other disposition of the Affordable Housing Units or any interest therein, Applicant shall repay, in full, all amounts withdrawn from and owed to the Project Reserve.

16. Inspection.

- (a) The Department shall have full authority to inspect the Affordable Housing Units without prior notice during business hours and Applicant and the Administering Agent shall cooperate fully with the Department in any such inspection. The Department shall have authority to inspect the Affordable Housing Units other than during business hours on three (3) days prior notice.
- (b) The Department shall have full authority to inspect the books and records of Applicant and the Administering Agent without prior notice during business hours and Applicant and the Administering Agent shall cooperate fully with the Department in any such inspection. Applicant and the Administering Agent shall furnish copies of all books and records with respect to the Affordable Housing Units, to the Department, without cost to the Department, upon five (5) days' prior written request.

17. Operating Accounts. Applicant shall provide the Department with the names and locations of all bank accounts established with respect to the management and operation of the Affordable Housing Units by Applicant (the "Operating Accounts"). All such accounts shall confer plenary authority on the Department to freeze such accounts, which authority the Department shall exercise subject to Section 18 of this Agreement. Furthermore, Applicant shall provide the Department with annual operating statements for the Affordable Housing Units.

18. Remedies of the Department.

- (a) If Applicant violates any of the terms of this Agreement, or if any of the representations and warranties by Applicant set forth in Section 9(k) of this Agreement are determined to be false, then the Department may declare a default under this Agreement.
- (b) Upon declaration of a default under this Agreement, the Department shall give Applicant and the Administering Agent, as applicable, notice thereof by facsimile, hand delivery or reputable overnight courier and a reasonable opportunity to cure (if such default can be cured). If at the end of the cure period (if any) the default has not been cured, then the Department shall provide Applicant and the Administering Agent, as applicable, notice thereof and shall provide Applicant and the Administering Agent an opportunity to be heard on not less than three (3) days prior written notice. Following such hearing, upon the existence of an uncured default under this Agreement, the Department may (i) assume responsibility for management of the Affordable Housing Units directly or through a third party designated by it, (ii) freeze the Operating Accounts, (iii) seek specific performance of this Agreement or an injunction against its violation, (iv) have a

receiver of its choice appointed during the pendency of any litigation, (v) seek monetary damages against Applicant, and/or (vi) terminate this Agreement with respect to any portion of the Affordable Housing for which a Completion Notice pursuant to Section 9 has not been issued. In the event that the Department exercises its rights under clause (ii) of this Section 18(b) and provided that there are sufficient funds in the Operating Accounts then the Department shall use the funds in such Operating Accounts to make payments due under the loan documents for previously approved mortgage loans of the Applicant and to pay for reasonable and customary operating expenses for the Affordable Housing Units.

- (c) If an Affordable Housing Subordination Agreement has been entered into by a lender ("Financier") in accordance with Section 19 of this Agreement, the Department shall terminate this Agreement at any time prior to the issuance of the Completion Notice at the request of such Financier, or its successors or assigns, if such Financier, its successors or assigns, commences foreclosure proceedings or receives a deed in lieu of foreclosure with respect to the mortgage loan that is the subject of such Affordable Housing Subordination Agreement. If the Department terminates this Agreement pursuant to this Section 18(c): (1) all benefits granted pursuant to this Agreement to any project will be revoked and (2) this Agreement shall become null and void. The Department shall provide written confirmation of termination in recordable form upon the written request of Applicant and/or Financier.
- (d) The remedies set forth in Section 18(b) shall be cumulative with any other remedies available to the Department at law or in equity and exercise of one or more remedies set forth in Section 18(b) shall not limit the Department in the exercise of one or more other remedies set forth therein or otherwise available to the Department at law or in equity.
- (e) The Department may exercise the remedies set forth in Section 18(b) without the notice, opportunity to cure or hearing provided therein if the Department determines that exigent circumstances require immediate action to protect the Premises or the tenants thereof. The Department will provide notice and a hearing as provided in Section 18(b) promptly following exercise of its remedies as set forth therein.
- (f) If the Department elects to assume responsibility for management of the Premises pursuant to this Section 18, Applicant shall and shall cause the Administering Agent to immediately deliver possession of the Affordable Housing Units and all books and records kept in connection therewith to the Department or the person designated by the Department and shall cooperate fully in effectuating the smooth transfer of management and control of the Affordable Housing Units, including execution of written instruments and provision of notice to third parties.
- (g) Applicant hereby grants the Department and its designees an irrevocable license to enter and remain on the Affordable Housing Units for the purpose of managing such Affordable Housing Units as provided in this Section 18.

19. Debt Restrictions.

- (a) Initial Debt: In accordance with Section 23-93 of the Resolution, Applicant shall not mortgage or otherwise encumber the Affordable Housing Units or this Agreement without the prior written consent of the Department. Furthermore, in the event that the Department consents to a mortgage loan, the lender must enter into an Affordable Housing Subordination Agreement with the Department in form and substance satisfactory to the Department, that subordinates the loan to all of the terms and conditions of this Agreement, substantially in the form annexed hereto as Exhibit J (the "Affordable Housing Subordination Agreement"). Immediately following execution of the Affordable Housing Subordination Agreement, Applicant shall cause such Agreement to be recorded against the Affordable Housing Units in the Office of the City Register for the county in which the Affordable Housing Units are located, and shall pay all required fees and taxes in connection therewith.

Attached hereto as Exhibit H is the development budget approved by the Department setting forth the sources and uses of financing for the construction of the Affordable Housing. Provided the lender holding a mortgage that secures such debt enters into the Affordable Housing Subordination Agreement in form and substance satisfactory to the Department and the Department receives proof of recordation of such Agreement immediately following execution thereof, the Department approves such debt ("Initial Debt").

- (b) Subsequent Debt: Notwithstanding anything to the contrary contained herein, on or after the date of issuance of the Completion Notice in accordance with Section 9 of this Agreement, or, if more than one Completion Notice is issued, on or after the date of issuance of the final Completion Notice Applicant shall not mortgage or otherwise encumber the Affordable Housing Units or this Agreement with debt other than any Initial Debt approved by the Department and any modifications of same unless, (1) Applicant has notified the Department of such debt; (2) the lender is a local, state, or federal agency, savings bank, commercial bank, life insurance company, public real estate investment company, pension fund, Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), or other lender approved by the Department, (3) if the debt service coverage ratio is less than 1.1, Applicant has obtained the prior written consent of the Department, and (4) if such debt is a new indebtedness and/or a new mortgage, the lender enters into a Affordable Housing Subordination Agreement with the Department which Applicant shall cause to be recorded against the Affordable Housing Units immediately following execution thereof in the Office of the City Register for the county in which the Premises are located.
20. Plan Certification. Following the execution of this Agreement, the Department will, upon the request of Applicant, certify that the Plan has been submitted and approved, and is in compliance with the Program.
21. Marketing of Affordable Housing Units. The Administering Agent shall be required to market the Affordable Housing Units in accordance with the Program. Furthermore, each lease for an Affordable Housing Unit shall provide that such lease may be terminated and such tenant may be evicted if such tenant falsely or fraudulently certifies income or household composition to the Administering Agent.

22. Initial Occupancy Certification. Within sixty (60) days following the DHCR Registration Deadline, the Administering Agent shall submit to the Department an affidavit attesting that each Household occupying an Affordable Housing Unit complied, at Initial Occupancy, with the annual income eligibility requirements of the Program and that the Monthly Rent registered and charged for each Affordable Housing Unit, complied with the Monthly Rent requirements for such unit, at Initial Occupancy. In accordance with C.F.R. 5.609 or any successor regulations, "Annual Income" shall mean the anticipated total income from all sources to be received by the household head and spouse and by each additional member of the household, including all net income derived from assets, for the twelve (12) month period following the initial determination of income. The Administering Agent also shall retain all records and documents relating to income determination for a minimum of three (3) years after the date a tenant commences occupancy in an Affordable Housing Unit.
  
23. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assignees. Applicant shall not sell, transfer or otherwise dispose of ("Transfer") the Affordable Housing Units without prior approval from the Department; provided, however, that no such approval shall be required in connection with the Transfer of the Affordable Housing Units in connection with a foreclosure, deed in lieu of foreclosure or other method whereby a lender (or any parent, affiliate or subsidiary of such lender, as may be applicable) acquires title to the Affordable Housing Units and no such approval shall be required for any Transfer from a lender (or any parent, affiliate or subsidiary of such lender, as may be applicable). Any transferee described in this proviso shall be referred to as, a "Lender Transferee". Before any Transfer of the Affordable Housing Units, the Applicant shall require the subsequent purchaser or transferee ("Transferee") to assume in writing, Applicant's obligations and duties under this Agreement, pursuant to an Assignment and Assumption Agreement in form and substance satisfactory to the Department. Owner's request for the Department's approval of a Transfer shall include evidence that after any such transfer, the Affordable Housing Units are financially feasible without any City subsidy or discretionary tax exemption. Any such Assignment and Assumption Agreement shall be in recordable form, and Applicant shall provide the Department with an executed copy of such Assignment and Assumption Agreement and proof of recordation thereof. Notwithstanding anything to the contrary contained herein, promptly after a Transfer to a Lender Transferee, such Lender Transferee shall engage an Administering Agent for the Affordable Housing Units that has been approved by the Department.
  
24. Condominium Conversion. Nothing in this Agreement shall prohibit the Applicant from subdividing the Building on the Premises into condominium units (the "Condominium Units"), so long as (a) the Department approves any condominium documents, including, but not limited to, the condominium declaration and by-laws, necessary to effectuate such subdivision of the Building, (b) the Condominium Units meet the requirements of Section 339-m of the Real Property Law, (c) the Department determines that the Affordable Housing Units will be operated pursuant to the requirements set forth in the Agreement and the Program, and (d) the Memorandum of Regulatory Agreement in the form attached hereto as Exhibit G has been recorded against the Affordable Housing Unit prior to receipt of a Completion Notice in accordance with Section 9 of this Agreement.

25. Investigation Clause. Applicant and Administering Agent shall be bound by and comply with the provisions of the Investigation Clause annexed hereto as Exhibit I.
26. Modifications.
- (a) No provision of this Agreement may be extended, modified, waived or terminated orally, but only by an instrument in writing signed by the party against whom enforcement is sought.
- (b) Applicant and/or the Administering Agent, as applicable, shall comply with all modifications to Program reporting requirements as set forth in the Guidelines, of which the Applicant shall be deemed to have constructive notice, concerning: (i) the type of documents to be retained; (ii) the length of time for which such documents must be retained; and (iii) the form and method of submitting such documents to the Department.
27. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall be deemed one and the same instrument.
28. Notices. All notices, approvals, requests, waivers, consents or other communications given or required to be given under this Agreement shall be in writing and sent or transmitted as follows:

If to Applicant:

AMP Property Owner L.P.  
c/o Fetner Properties, Inc.  
675 Third Avenue, Suite 2800  
New York, New York 10017  
Attention: Hal Fetner

with a copy to:

Katten Muchin Rosenman, LLP  
2900 K Street, N.W.  
North Tower – Suite 200  
Washington, D.C. 20007  
Attention: Kenneth G. Lore, Esq.

AMP Property Owner L.P.  
c/o PGIM Real Estate Investment Value Partners Fund  
7 Giralda Farms  
Madison, NJ 07940  
Attention: Ola Hixon

Goodwin Proctor LLP  
100 Northern Avenue  
Boston, MA 02210  
Attention: Alexandra Lewis, Esq

270 West 96th Street Housing Development Fund  
Corporation  
c/o Settlement Housing Fund, Inc.

247 West 37th Street, 4th Floor  
New York, New York 10018  
Attn: Lee Warshavsky

If to the Department: Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038  
Attn: Assistant Commissioner for Inclusionary Housing  
Facsimile (212) 863-5899

with a copy to: Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038  
Attn: General Counsel  
Facsimile (212) 863-8375

Notices must be hand delivered, transmitted via facsimile or sent by certified or registered U.S. mail, return receipt requested or overnight delivery by a reputable national carrier. Notice shall be deemed to have been given upon (i) delivery if sent by hand delivery or U.S. mail, and (ii) confirmed receipt, if sent by facsimile, to both the addressee and the person entitled to receive a copy thereof. Each party named above may designate a change of address by written notice to all of the other parties

29. Recordation.

- (a) Applicant shall cause this Agreement to be recorded against the Premises prior to commencement of construction, in the Office of the City Register for the County in which the Premises are located and shall pay all required fees and taxes in connection therewith.
- (b) If the conversion of the Building to Condominium Units, including without limitation the filing of the Declaration and other actions required to complete such conversion of the Building have not occurred prior to the time when this Agreement is required to be recorded against the Premises, or any other document required hereunder to be recorded against the Premises, then, notwithstanding anything contained herein to the contrary, this Agreement and such other documents shall be recorded against the entire Premises. In such event, at the time of condominium conversion, provided that the Memorandum of Regulatory Agreement referred to in Section 24 is recorded simultaneously therewith, the Department will release the Condominium Units other than the Condominium Unit containing the Affordable Housing.

30. More Restrictive Provisions Govern. If the Affordable Housing Units are also subject to that certain Affordable Housing Regulatory Agreement between the City and the Applicant (the "HPD Regulatory Agreement"), then (a) in the event of any conflict or ambiguity between the provisions of this Agreement and the HPD Regulatory Agreement, the more restrictive of the applicable provisions of the Agreement and the HPD Regulatory Agreement shall govern and (b) nothing herein, including but not limited to, Sections 7, 8 and 11 hereunder, shall limit, reduce or affect in any way the duration of any restrictions imposed on the operation or occupancy of the Affordable Housing Units by this Agreement.

31. Choice of Law. The covenants, provisions and terms of this Agreement and the rights and obligations of the parties hereunder shall be governed by the construed and interpreted in accordance with the laws of the State of New York, and shall be binding upon and inure to the benefit of Applicant, Owner, the Administering Agent and the Department, and their respective successors, transferees, and assigns.
32. Termination.
  - (a) The Department reserves the right to terminate this Agreement with notice, in accordance with Section 28, to Applicant if Applicant does not complete the Affordable Housing Units by the Completion Deadline.
  - (b) Applicant may terminate this Agreement with notice, in accordance with Section 28, to the Department, at any time prior to the date that the initial advertisement for the Affordable Housing Units is published on the New York City Housing Connect lottery system (or any successor program administered by the Department to market vacant Affordable Housing Units).
33. Primary Residence. Affordable Housing Units may only be occupied as a primary residence, as defined in Rent Stabilization, by natural persons or families pursuant to a one or two year lease who have met the applicable income requirements for Low Income Households at the time of such tenant's initial occupancy of such unit. Applicant shall only offer a vacant dwelling unit for occupancy by persons or families intending to occupy such unit as their primary residence pursuant to a one or two year lease and shall not cause or permit the sublease or assignment of any dwelling unit for transient occupancy, for occupancy by any household that is not income eligible, or to any corporation or other entity.
34. HPD's eRent Roll System. Applicant shall submit required rent rolls to the Department in such form and in such manner as directed by the Department, including, but not limited to, submission by electronic means using software designated by the Department.

[No further text; signatures immediately follow]

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

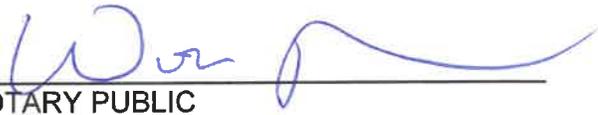
THE CITY OF NEW YORK

BY: DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT

By:   
\_\_\_\_\_  
Tricia Dietz  
Assistant Commissioner, Inclusionary Housing

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

On this 16<sup>th</sup> day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared TRICIA DIETZ, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in her capacity, and that by her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

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

Won J Park  
Notary Public, State of New York  
No. 02PA6354576  
Qualified in Kings County  
Commission Expires February 13, 2025

APPROVED AS TO  
FORM BY STANDARD  
TYPE OF CLASS FOR USE  
UNTIL December 31, 2021

/s/ Laurel Zabel  
Name: Laurel Zabel  
Acting Corporation Counsel

270 WEST 96TH STREET HOUSING  
DEVELOPMENT FUND CORPORATION,  
a New York not-for-profit corporation

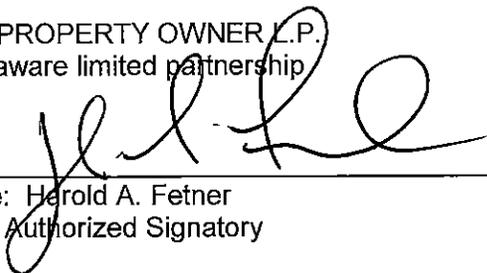
By: *Lee Warshavsky*  
Name: Lee Warshavsky  
Title: Secretary and Treasurer

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

On this 23<sup>rd</sup> day of November, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Lee Warshavsky, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

*Kofi E. Appram*  
NOTARY PUBLIC  
KOFI E. APPRAM  
Notary Public, State of New York  
Registration No. 01AP6081789  
Qualified in Bronx County  
Commission Expires June 17, 2022

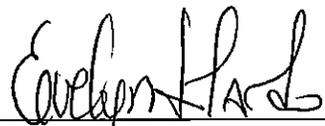
AMP PROPERTY OWNER L.P.  
a Delaware limited partnership

By:   
Name: Harold A. Fetner  
Title: Authorized Signatory

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

On this 16 day of ~~November~~ <sup>December</sup>, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Harold A. Fetner, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

EVELYN LITARDO  
Notary Public-State of New York  
No. 01L16212378  
Qualified in Orange County  
Commission Expires October 13, 2021<sup>5</sup>

  
NOTARY PUBLIC

**EXHIBIT A  
PROPERTY DESCRIPTION**

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

<u>Block(s)</u>	<u>Lot(s)</u>
1243	57, 59, 60 (collectively, Tentative Lot 57)

Address(es)  
266 West 96<sup>th</sup> Street, 270 West 96<sup>th</sup> Street

County: New York

**EXHIBIT B**  
**AFFORDABLE HOUSING PLAN**

**THE CITY OF NEW YORK**  
**DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**  
**OFFICE OF DEVELOPMENT**  
100 GOLD STREET, ROOM 5G, NEW YORK, NEW YORK 10038  
Inclusionary@hpd.nyc.gov

**AFFORDABLE HOUSING PLAN APPLICATION PURSUANT TO  
THE VOLUNTARY INCLUSIONARY HOUSING PROGRAM**

*Please indicate "Not Applicable" or "NA" where appropriate. Do not leave any lines blank.*

**1.Applicant:** AMP Property Owner L.P.

Address: 7 Giralda Farms, Madison, New Jersey 07940

Fax: 212 289 7498

Email: Hal@fetner.com

Primary Contact (Name, Phone, Email):

Hal Fetner, 212 427 9700, Hal@fetner.com

**2.Owner (if different):** 270 WEST 96TH STREET HOUSING DEVELOPMENT FUND CORPORATION

Address: 247 West 37th street, 4th Floor, New York, New York 10018

Fax: (212) 757-0571

Email: asewell@shfinc.org

Primary Contact (Name, Phone, Email):

Alexa Sewell, 212 265 6530, asewell@shfinc.org

**3.Administering Agent:** Settlement Housing Fund

Address: 247 West 37th Street, 4th Floor, New York, New York 10018

Fax: 212 757 0571

Email: asewell@shfinc.org

Primary Contact (Name, Phone, Email):

Alexa Sewell, 212 265 6530, asewell@shfinc.org

**4.General Contractor:** Urban Atelier Group, UAG

Address: 85 Fifth Avenue, New York, New York 10003

Fax: 646 892 6299

Email: jpalace@uag.nyc

Primary Contact (Name, Phone, Email):

James Palace, 646 539 1213, jpalace@uag.nyc

**5.Architect:** SLCE Architects

Address: 1359 Broadway, 14th Floor, New York, New York, 10018

Fax: 212 979 8387

Email: lrusso@slcearch.com

Primary Contact (Name, Phone, Email):

Tom Furman, 212 979 8400, Tfurman@slcearch.com

**6. Attorney and Firm:** Carol Rosenthal, Fried Frank LLP

Address: One New York Plaza, New York, New York 10004

Fax: \_\_\_\_\_

Email: carol.rosenthal@friedfrank.com

Primary Contact (Name, Phone, Email):

Carol Rosenthal, 212 859 8495, carol.rosenthal@friedfrank.com

**7. Location of Affordable Housing Units**

Street Address: 270 West 96th Street

Borough: Manhattan

Block(s)/Lot(s): Block 1243, Lots 57, 59, and 60

Community Board: 7

**8. Inclusionary Housing District of Affordable Housing Units**

R-10 Inclusionary:

*Is project privately financed? (Yes/No)* public-private

IH Designated Area (Insert ZR section reference, e.g., §23-154, §23-952, §98-23, §62-352, etc.): \_\_\_\_\_

Special District: \_\_\_\_\_

Other (please explain): \_\_\_\_\_

**9. Unit Count**

Total units in project: 171 Total IH units in project: 14 Super's units: 1

For projects with more than one building:

1. Address for first building: \_\_\_\_\_

Total units in first building: \_\_\_\_\_ Total IH units in first building: \_\_\_\_\_ Super's units: \_\_\_\_\_

2. Address for second building: \_\_\_\_\_

Total units in second building: \_\_\_\_\_ Total IH units in second building: \_\_\_\_\_ Super's units: \_\_\_\_\_

*For additional buildings, please add additional pages as needed.*

Income Distribution of Affordable Housing Units:

Number of low-income units (equal to or less than 80% AMI): 14

Number of moderate-income units (equal to or less than 125% AMI): \_\_\_\_\_

Number of middle-income units (equal to or less than 175% AMI): \_\_\_\_\_

**10. If publicly financed, list all sources of governmental assistance, including tax credits, bond**

financing, and land disposition programs:

HPD Subsidy, (Second Mortgage)

Tax Exemption to be requested: Affordable New York Program

## 11.Type of Project (check all that apply)

Construction type:

- New Construction
- Preservation
- Substantial Rehabilitation

Location of Floor Area Compensation:

- On-site
- Off-site
- On-site and Off-site

Inclusionary Units:

- Rental
- Homeownership

Non-Inclusionary Units:

- Rental
- Homeownership
- Not Applicable

## 12.Tenant-Paid Utilities:

Check all tenant-paid utilities that will apply, or check N/A if owner-paid

Apartment Electricity

- Electricity
- N/A: Apartment electric is paid by owner

Cooking

- Gas Stove
- Electric Stove
- N/A: Cooking is paid by owner

Heating

- Gas Heating
- Electric Heat: Cold Climate Air Source Heat Pump (ccASHP)\*
- Electric Heat: other (e.g. Electric Resistance Heating, Electric PTACs, Electric Furnace)
- N/A: Heating is paid by owner

(VRF units - tenants not responsible for electricity costs related to heating)

\*Product must be listed on the NEEP Cold Climate Air Source Heat Pump (ccASHP) Product List:

<https://ashp.neep.org/#!/>

Hot Water

- Gas Hot Water Heater
- Electric Hot Water Heating: Heat Pump Water Heaters (HPWHs)
- Electric Hot Water Heating: Other (e.g. resistance-type Hot Water Heater)
- N/A: Hot water heating is paid by owner

13.If the project will contain a condominium or cooperative structure, please describe the structure and the use of each unit. If not, please indicate N/A:

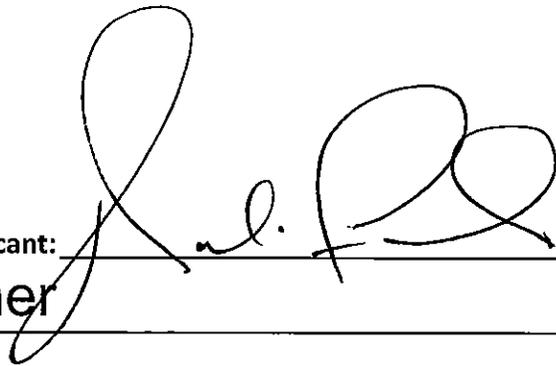
This project will have three condominium units: (1) Market-rate residential, (2) Affordable residential, (3) Community facility

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Authorized Signature of Applicant:



Print name: **Hal Fetner**

Date: 12/13/2021

**EXHIBIT C**  
**AFFORDABLE HOUSING UNITS**

Inclusionary Housing Units			
Construction Floor	Marketing Floor	Apt #	# Bedrooms
8	8	801	2
8	8	802	2
9	9	901	2
9	9	902	2
10	10	1001	2
10	10	1002	2
11	11	1101	2
11	11	1105	1
12	12	1201	2
12	12	1202	2
13	14	1302	2
13	14	1305	1
17	18	1702	3
18	19	1802	3

Unit Summary	
# Bedrooms	# Units
Studios	0
1 Bedroom	2
2 Bedrooms	10
3 Bedrooms	2
<b>Total</b>	<b>14</b>

Super/Resident Manager Unit(s)			
Construction Floor	Marketing Floor	Apt #	# Bedrooms
2	2	4	2

**EXHIBIT D  
SCHEDULE OF RENTS AND EXPENSES**

Inclusionary Housing Units -- Rents <sup>1</sup>				
	# Units	AMI Level	Initial Actual Rent <sup>2</sup> (27% AMI)	Legal Regulated Rent <sup>3</sup> (70% of AMI)
2 Bedroom	3	40%	\$631	\$1,786
<b>Total</b>	<b>3</b>			

	# Units	AMI Level	Initial Actual Rent <sup>2</sup> (67% AMI)	Legal Regulated Rent <sup>3</sup> (80% of AMI)
1 Bedroom	1	70%	\$1,427	\$1,719
<b>Total</b>	<b>1</b>			

	# Units	AMI Level	Initial Actual Rent <sup>2</sup> (77% AMI)	Legal Regulated Rent <sup>3</sup> (80% of AMI)
1 Bedroom	1	80%	\$1,651	\$1,719
2 Bedroom	7		\$1,974	\$2,055
3 Bedroom	2		\$2,273	\$2,367
<b>Total</b>	<b>10</b>			

<sup>1</sup>Tenant responsible for electricity only.

<sup>2</sup>Initial Actual Rents may increase or decrease as determined by HPD; however, Initial Actual Rents shall not exceed the Maximum Legal Regulated Rent.

<sup>3</sup>The Maximum Legal Regulated Rent is 30% of 80% of the Income Index as defined in the New York City Zoning Resolution, including applicable utility allowances.

171 Total Units

14 Inclusionary Housing Units

<b>Operating Expenses*</b>	<b>Amount</b>	<b>Per Unit</b>
Rental	\$99,140	\$580
Leasing Commissions	\$47,500	\$278
Administrative	\$100,555	\$588
Utilities	\$215,863	\$1,262
Repairs & Maintenance	\$169,804	\$993
Salaries	\$850,741	\$4,975
Insurance	\$130,001	\$760
Management Fee	\$225,000	\$1,316
Real Estate Taxes	\$423,108	\$2,474
<i>(Assumes 421-a benefit)</i>		
<b>Total Expenses</b>	<b>\$2,261,711</b>	<b>\$13,226</b>

\*The expenses reflect the overall 270 West 96th Street project underwriting dated 12.14.21, which comprises 171 units, of which 14 are Inclusionary Housing units.

**EXHIBIT E  
STANDARD NEW YORK ENDORSEMENT  
(OWNER'S POLICY)**

1. The following is added to the insuring provisions on the face page of this policy:

“\_\_\_. Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy.”

2. Exclusion Number 5 is deleted, and the following is substituted:

5. Any lien on the Title for real estate taxes, assessments, water charges or sewer rents imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as Shown in Schedule A.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

IN WITNESS WHEREOF, \_\_\_\_\_ Insurance Company of New York has caused this Endorsement to be signed and sealed on its date of issue set forth herein.

DATED:

COUNTERSIGNED \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_ Insurance Company

BY: \_\_\_\_\_

**EXHIBIT F**  
**ADMINISTERING AGENT AGREEMENT**  
**INCLUSIONARY HOUSING PROGRAM**

## **Administering Agent Agreement Inclusionary Housing Program**

AGREEMENT made this 16th day of December, 2021, between Settlement Housing Fund, Inc., (“Administering Agent”), having an office at 247 West 27<sup>th</sup> Street, 4<sup>th</sup> Floor, New York, New York 10018, and the Department of Housing Preservation and Development (“Department”), having an office at 100 Gold Street, Ninth Floor, New York, NY 10038.

WHEREAS, 270 West 96<sup>th</sup> Street Housing Development Fund Corporation and AMP Property Owner L.P., (collectively, “Owner”) have executed a Regulatory Agreement with the Department to create fourteen (14) Affordable Housing Units located at 266 West 96<sup>th</sup> Street and 270 West 96<sup>th</sup> Street, Manhattan (the “Affordable Housing Units”) in accordance with Section 23-90 (Inclusionary Housing), inclusive of the Zoning Resolution (“Resolution”) and with the Inclusionary Housing Guidelines (“Guidelines”); and

WHEREAS, Administering Agent has agreed to ensure that the Affordable Housing Units are rented in compliance with the Agreement at Rent-up and each subsequent vacancy and has signed an agreement with the Applicant to that effect; and

WHEREAS, Administering Agent has been qualified to act as an Administering Agent by the Department;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is hereby agreed that Administering Agent will assume the ongoing responsibility for insuring that each Affordable Housing Unit is rented and upon vacancy re-rented in compliance with the Regulatory Agreement. In addition, the Administering Agent shall (1) maintain records setting forth the facts that form the basis of any affidavit submitted to the Department; (2) maintain such records as the Department may require at the Administering Agent's office or other location approved by the Department; and (3) make all records and facts of the operation of the Administering Agent available for the Department's inspection.

Notwithstanding any other remedy contained herein, the Department may commence an action against Administering Agent to require specific performance of Administering Agent's obligations herein. Department reserves the right to replace Administering Agent in the event that the Affordable Housing Units are not rented at Rent-up and each subsequent vacancy thereafter in compliance with the Program.

This Administering Agent Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall be deemed one and the same instrument.

[NO FURTHER TEXT APPEARS ON THIS PAGE]

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

**Department of Housing Preservation and Development of the City of New York**

BY:   
Tricia Dietz  
Assistant Commissioner,  
Inclusionary Housing

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

On this 16th day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared TRICIA DIETZ, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

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

Won J Park  
Notary Public, State of New York  
No. 02PA6354576  
Qualified in Kings County  
Commission Expires February 13, 2025

**SETTLEMENT HOUSING FUND, INC.**

BY: \_\_\_\_\_  
Name: Lee Warshavsky  
Title: Secretary and Treasurer

STATE OF NEW YORK )  
                                  ) SS:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared LEE WARSHAVSKY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

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

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

**SETTLEMENT HOUSING FUND**

BY:   
Garraud Etienne, Chief Operating Officer

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

On this 13<sup>rd</sup> day of November, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Garraud Etienne, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
NOTARY PUBLIC  
KOFI E. APPRAM  
Notary Public, State of New York  
Registration No. 01AP6061789  
Qualified in Bronx County  
Commission Expires June 17, 2022

**EXHIBIT G  
MEMORANDUM OF REGULATORY AGREEMENT**

**THIS MEMORANDUM OF REGULATORY AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 201[*#*], by [owner], [description of legal entity (e.g., a New York limited liability company formed pursuant to the laws of the State of New York)], (“Applicant”), having an office at [address].

WITNESSETH THAT:

1. The Applicant is owner in fee simple of the premises located in the County of \_\_\_\_\_, City and State of New York, known as and by the street address [*address*], identified as Block [*#*], Lot [*#*] on the Tax Map of the City (the “Premises”), more particularly described in Exhibit A attached hereto and made a part hereof;
2. The Applicant has covenanted and agreed for and on behalf of itself, its successors, assigns, heirs, grantees and lessees, which covenants shall be covenants running with the land to provide Affordable Housing on the Premises in accordance with the Regulatory Agreement (“Regulatory Agreement”), dated as of [*insert date*] among [*insert name(s) of non-HPD parties*] and the City of New York, a municipal corporation acting through its Department of Housing Preservation and Development (“HPD”) and recorded in the Office of the City Register for New York County on [*insert date*] as CFRN [*insert CFRN number*], the provisions of which are by this reference made a part hereof and Section 23-90 (Inclusionary Housing), inclusive of the Resolution.
3. The Regulatory Agreement and the covenants therein, shall run with the land that constitutes the Premises in accordance with the terms therein.
4. This Memorandum of Regulatory Agreement is intended to provide constructive notice of the existence and terms of the Regulatory Agreement and in no way modifies or amends the Regulatory Agreement. If any provisions of this Memorandum of Regulatory Agreement conflict with the Regulatory Agreement, the terms of the Regulatory Agreement shall prevail. The Applicant at its sole cost and expense shall cause this Memorandum of Regulatory Agreement to be recorded against each tax lot within the zoning lot containing the Affordable Housing whether or not such tax lot existed at the time the Regulatory Agreement was recorded.

NO FURTHER TEXT

IN WITNESS WHEREOF, this Memorandum of Regulatory Agreement has been executed as of the date first set forth above.



**EXHIBIT H**  
**[NEXT PAGE: DEVELOPMENT BUDGET]**

171 Total Units

14 Inclusionary Housing Units

**Sources and Uses\***

<u>Construction and Permanent Sources</u>	<u>Amount</u>	<u>Per Unit</u>
Construction Loan	\$79,750,000	\$466,374
HPD Subsidy	\$8,710,000	\$50,936
Equity	\$36,790,000	\$215,146
<b>Total Sources</b>	<b>\$125,250,000</b>	<b>\$732,456</b>

<u>Uses</u>	<u>Amount</u>	<u>Per Unit</u>
Acquisition	\$33,725,404	\$197,225
Hard Costs	\$66,949,192	\$391,516
Soft Costs	\$14,100,995	\$82,462
Financing & Other	\$10,474,409	\$61,254
<b>Total Uses</b>	<b>\$125,250,000</b>	<b>\$732,456</b>

\*The expenses reflect the overall 270 West 96th Street project underwriting dated 12.14.2021, which comprises 171 units, of which 14 are Inclusionary Housing units.

**EXHIBIT I**  
**INVESTIGATION CLAUSE**

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- (a) The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (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, contracts, lease, permit, or license that is the subject of the investigation, audit or inquiry.
- (b) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witness and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;
- (c) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witness 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 thereof or any local development corporation within the City, then;
- (d) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- (e) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph (g) below without the City incurring any penalty or damages for delay or otherwise.
- (f) The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:
  - (1) The disqualification for a period not to exceed five (5) 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

- (2) The cancellation or termination of any and all such existing City contracts, leases, permit, 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; moneys lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.
- (g) The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate:
- (1) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
  - (2) The relationship of the person who refuses to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
  - (3) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
  - (4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (f) above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in (d) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

- (h)
  - (1) The term “license” or “permit” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
  - (2) The term “person” as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
  - (3) The term “entity” as used herein shall be defined as any firm, partnership, corporation, association, or person that receives moneys, benefits, licenses, leases, or permits from or through the city or otherwise transacts business with the City.
  - (4) The term “member” as used herein shall be defined as any person in association with another person or entity as a partner, officer, principal or employee.
- (i) In addition to and notwithstanding any other provisions of this Agreement the Commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three (3) days written notice in the event the contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

**EXHIBIT J**  
**FORM OF SNDA**

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**THIS SUBORDINATION AND NON-DISTURBANCE AGREEMENT** ("Agreement"), made as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by **[LENDER]**, a [national banking association], having an office at \_\_\_\_\_, ("Mortgagee" or "Lender"), in favor of **THE CITY OF NEW YORK**, (the "City") a municipal corporation acting by and through its **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**, having an office at 100 Gold Street, New York, New York 10038 ("HPD").

**WHEREAS**, Mortgagee holds a certain mortgage or mortgages dated of even date herewith, as follows: (a) [*Construction Loan Mortgage, Assignment of Leases and Rents and Security Agreement, dated of even date herewith*], in the principal amount of \$ \_\_\_\_\_; (b) [*describe all subordinate mortgages, if any*], in the principal amount of \$ \_\_\_\_\_ and each made by **[Borrower]**, a [*describe type of entity*] ("Applicant" or "Borrower") [and describe owner if different than applicant ("Owner")] in favor of Lender to secure, among other things, the aggregate principal sum of \_\_\_\_\_ DOLLARS AND \_\_\_\_\_ CENTS (\$ \_\_\_\_\_) or so much thereof as may be advanced pursuant thereto, and interest, (the "Mortgage(s)") covering the premises described in **Schedule A** annexed hereto and incorporated herein ("Premises");

*[Where applicant and owner are different add the appropriate choice:*

**WHEREAS**, *Owner is the owner of the legal interest and Applicant is owner of the beneficial interest, pursuant to the [Declaration of Interest and Nominee Agreement], dated as of \_\_\_\_\_, between Owner and Applicant, in the Premises, [add recording information if appropriate];*

OR

**WHEREAS**, *Owner, as lessor, and Applicant, as lessee, have entered into that certain [Ground Lease] of the Premises for a term of \_\_\_\_\_ years, dated as of \_\_\_\_\_, and recorded in the office of the City Register for the County of \_\_\_\_\_ on \_\_\_\_\_ as CFRN \_\_\_\_\_, as the same may have been or may be further amended or modified as hereinafter provided ("Ground Lease"); and]*

**WHEREAS**, HPD, [Owner] and Applicant have entered into a certain Regulatory Agreement ("Regulatory Agreement") dated of even date herewith, which Regulatory Agreement is intended to be recorded against the Premises immediately following execution and delivery thereof;

**WHEREAS**, the Regulatory Agreement was entered into under the Inclusionary Housing Program, which is governed by Sections 23-90 [and 62-352 (GW) or 93-25 (Hudson Yards) or (or 98-261 (West Chelsea))] of the New York City Zoning Resolution (the "Resolution") and the Inclusionary Housing Program Guidelines (the "Guidelines") (the Guidelines and the Resolution are collectively referred to as the "Program");

**WHEREAS**, the Regulatory Agreement provides that [*Applicant shall not*] or [*neither Applicant nor Owner shall*] mortgage or otherwise encumber [*its interest in*] the Premises or the Regulatory Agreement without the prior written consent of HPD and that, if HPD consents to a mortgage loan, the lender must subordinate the loan to all of the terms and conditions of the Regulatory Agreement;

**WHEREAS**, Applicant [*and/or Owner*] has entered into the Mortgage and other instruments evidencing or securing obligations of the Premises to Mortgagee (collectively, "Other Loan

Documents"; the Mortgage and the Other Loan Documents are referred to collectively as the "Loan Documents"); and

**WHEREAS**, HPD has consented to the Loan Documents on the condition that Mortgagee subordinate the Loan Documents to all the terms and conditions of the Regulatory Agreement in the manner hereinafter described.

**NOW THEREFORE**, for good and valuable consideration, the receipt whereof is hereby acknowledged, Mortgagee hereby represents to and agrees with HPD, notwithstanding any contrary term, provision, agreement, covenant, warranty, and/or representation contained or implied in any Loan Documents or any other document executed in connection with the Premises, that:

1. The Loan Documents are and shall continue to be subject and subordinate to the terms, covenants, agreements, and conditions of the Regulatory Agreement.
2. As used in this Agreement (a) the term "Mortgage" shall refer to the Mortgage and any amendments, replacements, substitutions, extensions, modifications, or renewals thereof, and (b) the term "Mortgagee" shall include the Mortgagee's successors and assigns.
3. As used in this Agreement, the phrase "subject and subordinate" means that:
  - (a) to the extent there are any inconsistencies between the provisions of the Regulatory Agreement and any provisions of the Loan Documents, the provisions of the Regulatory Agreement shall take priority over the inconsistent provisions of the Loan Documents, except as provided herein; and
  - (b) if Mortgagee or if any person or entity becomes the owner of the Premises (including, if the Premises is defined as a leasehold interest as well as a fee interest, the owner of such leasehold interest) by foreclosure, conveyance in lieu of foreclosure, or otherwise ("New Owner"), (i) the Regulatory Agreement shall continue in full force and effect and the Mortgagee and New Owner shall have no right to disturb the rights of HPD under the Regulatory Agreement, (ii) HPD shall not be named as a defendant in any action or proceeding to foreclose the Mortgage or otherwise enforce the Mortgagee's or New Owner's rights thereunder, except as set forth below, and (iii) the Premises shall be subject to the Regulatory Agreement in accordance with the provisions thereof; provided, however, that Mortgagee and New Owner shall not be liable for any act or omission of Applicant or bound by any subsequent amendment of or modification to the Regulatory Agreement without its written consent. Subject to the foregoing, nothing contained herein shall prevent the Mortgagee or New Owner from naming HPD in any foreclosure or other action or proceeding initiated by the Mortgagee or New Owner pursuant to the Mortgage to the extent necessary under applicable law in order for the Mortgagee or New Owner to avail itself of and complete the foreclosure or other remedy.
4. Upon a declaration of default under the Regulatory Agreement, HPD shall give Mortgagee notice thereof by facsimile, hand delivery or reputable overnight courier and a reasonable opportunity to cure (if such default can be cured), provided, however, that Mortgagee shall have no obligation to cure any such default. If Mortgagee cures the default during such cure period (if any) or has commenced to cure the specified default within such period and

is diligently pursuing completion of such cure, or has commenced the exercise of remedies under the Loan Documents within such period, HPD shall not exercise any of the remedies under Section 18(b) of the Regulatory Agreement by reason of such default. Nothing herein shall limit HPD's right to consent to a replacement manager pursuant to Paragraph 6 herein.

5. If HPD freezes the Operating Account(s) pursuant to Paragraph 18(b) of the Regulatory Agreement, HPD will allow Mortgagee to use funds therein to make payments due under the Loan Documents, provided that there are sufficient funds in the Operating Account(s) to pay for reasonable and customary operating expenses for the Premises. Mortgagee hereby acknowledges that it has no interest in or rights to any funds held in the Special Reserve Fund Accounts pursuant to the Regulatory Agreement.
6. Notwithstanding anything contained in the Regulatory Agreement or the Loan Documents, neither HPD nor Mortgagee may assume responsibility for management of the Premises or designate a third party to manage the Premises without the consent of the other. If, in the exercise of its remedies under the Regulatory Agreement, HPD notifies Mortgagee of its intention to install a replacement manager of the Premises, then Mortgagee's consent to such manager shall not be unreasonably withheld or delayed. If, in the exercise of its remedies under the Loan Documents, Mortgagee notifies HPD of its intention to install a replacement manager of the Premises, then HPD's consent to such manager shall not be unreasonably withheld or delayed.
7. Upon a casualty to a building on the Premises,
  - (a) where the repair or reconstruction cost is more than thirty-five percent (35%) of the replacement value of a building on the Premises, Mortgagee shall have the right to determine whether insurance proceeds are applied for the reconstruction or repair of the Premises or towards repayment of the Mortgage, and
  - (b) where the repair or reconstruction cost is less than or equal to thirty-five percent (35%) of the replacement value of the Premises, HPD shall have the right to determine how insurance proceeds shall be applied. HPD shall make such determination within sixty (60) days after HPD is notified of the occurrence of the casualty. If HPD determines in such case not to apply the insurance proceeds for the reconstruction or repair of the Premises, the insurance proceeds shall be retained by Mortgagee to the extent of sums then due under the Mortgage.

This paragraph supersedes any contrary provisions in the Regulatory Agreement or Loan Documents.

8. No failure to exercise and no delay in exercising, on the part of HPD, of any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege operate as a waiver of any other right, power or privilege under this Agreement.
9. The covenants, provisions and terms of this Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and interpreted in accordance with the laws of the State of New York, and shall be binding upon and inure to the benefit of Mortgagee, HPD, and their respective successors, transferees, and assigns.

- 10. Neither this Agreement nor any provision hereof (including this paragraph) may be changed, modified, amended, waived, supplemented, discharged, abandoned, or terminated orally except by an instrument in writing signed by the party against whom enforcement of the change, modification, amendment, waiver, discharge, abandonment, or termination is sought.
- 11. Notices. All notices, approvals, requests, waivers, consents or other communications given or required to be given under this Agreement shall be in writing and sent or transmitted as follows:

If to HPD, in duplicate, to: Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038  
Attn: Associate Commissioner, Housing Incentives  
Facsimile (212) 863-5899

and: Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038  
Attn: General Counsel  
Facsimile (212) 863-8375

If to Mortgagee, in duplicate, to:

Notices must be hand delivered, transmitted via facsimile, or by overnight delivery (e.g., FEDEX) or sent by certified or registered U.S. mail, return receipt requested. Notice shall be deemed to have been given upon (i) delivery if sent by hand delivery, U.S. mail or overnight delivery, and (ii) confirmed receipt, if sent by facsimile, to both the addressee and the person entitled to receive a copy thereof. Each party named above may designate a change of address by written notice to all of the other parties.

12. Recordation. This Agreement shall be recorded against the Premises immediately after the execution hereof, in the Office of the City Register for the County in which the Premises are located and the Applicant [and/or Owner] shall pay all required fees and taxes in connection therewith.

13. Counterparts. This Subordination Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one agreement.

**[No further text - signatures on the next page]**

IN WITNESS WHEREOF, the City of New York, acting by and through its Department of Housing Preservation and Development has caused this Subordination Agreement to be signed by its duly authorized commissioner, and Lender has caused this Subordination Agreement to be duly signed by a duly authorized officer, as of the day and year first above written.

**THE CITY OF NEW YORK**  
Acting by and through its **DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT**

By: \_\_\_\_\_  
Patricia Zafiriadis  
Associate Commissioner, Housing Incentives

**[LENDER]**

By: \_\_\_\_\_  
Print Name  
Print Title

APPROVED AS TO FORM BY  
STANDARD TYPE OF CLASS  
UNTIL: \_\_\_\_\_

By: \_\_\_\_\_  
Acting Corporation Counsel

**ACKNOWLEDGEMENTS**

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

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

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

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**SCHEDULE 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 Borough of \_\_\_\_\_, in the City and State of New York, designated as:

Block

Lot

County:

Address:

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**SUBORDINATION AND NON-DISTURBANCE AGREEMENT**

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by and between

**THE CITY OF NEW YORK**

-and-

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The property affected by this written instrument lies within the:

Block      Lot      Address

County:  
Address:

**RECORD AND RETURN TO:**

[LENDER'S COUNSEL]

REGULATORY AGREEMENT

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BETWEEN

THE CITY OF NEW YORK

AND

270 WEST 96<sup>TH</sup> STREET HOUSING DEVELOPMENT FUND CORPORATION

AND

AMP PROPERTY OWNER L.P.

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Block(s)      Lot(s)  
1243            57, 59, 60 (collectively, Tentative Lot 57)

Address(es)  
266 West 96th Street, 270 West 96th Street

County:      New York

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RECORD AND RETURN TO:  
Department of Housing Preservation  
and Development  
Office of Legal Affairs  
100 Gold Street, Room 5-U9  
New York, NY 10038

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