



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:

This BCA amendment is submitted by the existing Requestor to request an eligibility determination for affordable housing tangible property tax credits.

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 a non-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: 241 West 28th Street		BCP SITE NUMBER: C231139	
NAME OF CURRENT APPLICANT(S): 241 West 28th Street Owner LLC			
INDEX NUMBER OF AGREEMENT: C231139-11-19 DATE OF ORIGINAL AGREEMENT: 12/9/19			
Section II. New Requestor Information (complete only if adding new requestor or name has changed)			
NAME			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
<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"> If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS. 			
NAME OF NEW REQUESTOR'S REPRESENTATIVE			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable)			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable)			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
<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? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>			
3. Describe Requestor's Relationship to Existing Applicant:			

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

OWNER'S NAME (if different from requestor)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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

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

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

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

PARTICIPANT

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

VOLUNTEER

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

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

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

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

Prior Owner Current Owner Potential /Future Purchaser Other _____

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

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

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

1. Property information on current agreement:

ADDRESS

CITY/TOWN

ZIP CODE

TAX BLOCK AND LOT (SBL)

TOTAL ACREAGE OF CURRENT SITE: _____

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

2. Check appropriate boxes below:

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

2a. PARCELS ADDED:

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

Total acreage to be added: _____

Reduction of property

2b. PARCELS REMOVED:

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

Total acreage to be removed: _____

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

2c. NEW SBL INFORMATION:

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

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

3. TOTAL REVISED SITE ACREAGE: _____

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

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

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: 241 West 28th Street	BCP SITE NUMBER: C231139
NAME OF CURRENT APPLICANT(S): 241 West 28th Street Owner LLC	
INDEX NUMBER OF AGREEMENT: C231139-11-19	
EFFECTIVE DATE OF ORIGINAL AGREEMENT: 12/9/19	

Declaration of Amendment:

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

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

Statement of Certification and Signatures: New Requestor(s) (if applicable)

(Individual)

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

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am (title _____) of (entity _____); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

_____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

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

(Individual)

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

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am Authorized Signatory (title) of 241 West 28th Street Owner LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. _____ 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: Susi Yu

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Please see the following page for submittal instructions.

NOTE: Applications submitted in fillable format will be rejected.

Status of Agreement:

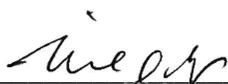
<input type="checkbox"/> PARTICIPANT A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input checked="" type="checkbox"/> VOLUNTEER A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement: 12/9/19

Signature by the Department:

DATED: 02/08/2021

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: 

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

SUBMITTAL INFORMATION:

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

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

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

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____ **LEAD OFFICE:** _____

PROJECT MANAGER: _____

Exhibit A

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REGULATORY AGREEMENT

AGREEMENT made as of October 15, 2020 by and among **241 WEST 28TH STREET OWNER LLC**, a Delaware limited liability company, with an address at c/o LL MAG, 142 W. 57th Street, New York, New York 10019 (“Applicant”), **249 W. 28TH STREET PROPERTIES, LLC**, a New York limited liability company (“Owner”), with an address at 110 Edison Place, Suite 300, Newark, NJ 07102 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, Owner is owner in fee simple of the premises located in the County of New York, City and State of New York, known as and by 241 West 28th Street, New York, New York, 10001, 245 W. 28th Street, New York, New York 10001, 251 W. 28th Street, New York, New York and 250 W. 29th Street, New York, New York, identified as Block 778, Lot 18, Block 778, Lot 16, Block 778, Lot 13 and Block 778 Lot 66 on the Tax Map of the City for the Borough of Manhattan (as improved pursuant to this Regulatory Agreement), (the “Premises”), more particularly described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Applicant is the tenant under that certain Ground Lease dated as of December 13, 2018 between Owner and Jay Street Associates, LLC, a New York limited liability company (“JSA”), together, as landlord, and Applicant, as tenant, as amended by the First Amendment to Ground Lease dated as of March 19, 2020 and as further amended by the Second Amendment to Ground Lease dated as of the date hereof (as such Ground Lease, First Amendment to Ground Lease and Second Amendment to Ground Lease may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, collectively referred to as the “Ground Lease”). JSA conveyed its entire interest in the Premises to Owner by Bargain and Sale Deed Without Covenant recorded on July 31, 2020 at CRFN 2020000217453 in the Office of the City Register of the City of New York; and

WHEREAS, Applicant intends to construct improvements on such 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 a Regulatory Agreement between the Department and Applicant for Floor Area Compensation under the Program (the “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, 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. Applicant will create, through new construction, Ninety-Six (96) Affordable Housing Units pursuant to the building plans submitted to and approved by the Department ("Building Plans"), located at the Premises (the "Building"). Attached hereto as part of Exhibit C, is a list identifying each Affordable Housing Unit.
3. The 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 Real Property Tax Law ("RPTL") §421-a. The parties also agree that Applicant shall complete the subject Affordable Housing Units application for tax exemption under 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 three (3) 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 and Owner's, as applicable, compliance with the requirements set forth in the Program. The Department acknowledges that, as of the date of this Agreement, Applicant and Owner, as applicable, have 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, or (c) for units rented to households with incomes, at Initial Occupancy, below the Low Income Limit, the last rent charged for such unit plus the percentage increase established by the Rent Guidelines Board or its successor entity at the time of such renewal or at any time during the lease.
 - (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 the same rights that they would be entitled pursuant to Rent Stabilization. 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 (n) of this Section (9):

- (a) submission of proof (1) 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, that 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.
- (c) funding of the Special Reserve Fund in accordance with Section 15 of this Agreement; and
- (d) 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
- (e) submission of certificates of insurance required by Section 12 of this Agreement with all premiums for the current year fully paid; and
- (f) 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 leasehold title insurance dated as of the date Applicant acquired title to the leasehold interest in the Premises 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 ("Policy") in substantially the form that appears as Exhibit E hereto, (b) such Policy evidences fee simple ownership in the Owner and estate of tenant under the Ground Lease in Applicant and (c) 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 date of leasehold 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

- (g) submission of an executed contract between the Department and the Administering Agent in accordance with Section 11 of this Agreement; and
- (h) 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
- (i) submission of proof that any required subordination and non-disturbance agreement ("Affordable Housing Subordination Agreement") was recorded immediately following execution thereof and that Applicant and Owner fully complied with the requirements of Section 19 of this Agreement; and
- (j) submission of (1) proof of registration of the Building 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 the 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, in accordance with the New York City Housing Maintenance Code; and
- (k) certification that the representations, warranties and statements made by the Applicant and Owner 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;
- (l) 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 temporary certificate of occupancy; the Department's issuance of the Completion Notice shall be based upon such DOB approved calculations;
- (m) where applicable, submission of proof of completion of all applications for tax exemptions and that Applicant has fully complied with Section 5 of this Agreement; and

- (n) 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 Housing Partnership Development Corporation, 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 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.
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) 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. 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) One Hundred Fifty-Three Thousand Two Hundred and Sixty-One Dollars (\$153,261.00) which represents \$2.25 per square foot of Affordable Housing as stated in the architect self-certification submitted to the Department on August 18, 2020 (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 Building 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.

If the Department authorizes any expenditures to be made from the Special Reserve Fund, Applicant shall replenish the Special Reserve Fund 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 Special Reserve Fund shall be made 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 Building. Applicant may choose to replenish such Special Reserve Fund 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 or Owner as applicable, shall repay, in full, all amounts withdrawn from and owed to the Special Reserve Fund.

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) day's 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 Affordable Housing Units 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 Affordable Housing Units pursuant to this Section 18, Applicant shall 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. (a) (i) Initial Debt: In accordance with Section 23-96(f) 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 the form attached hereto as Exhibit J and made a part hereof (the "Affordable Housing Subordination Agreement"). Immediately following execution of the Affordable Housing Subordination Agreement, the 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 Premises are located, and shall pay all required fees and taxes in connection therewith.

Attached hereto as Exhibit K is the development budget approved by the Department setting forth the sources and uses of financing for the construction of the Affordable Housing Units. 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").

(ii) 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 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, (A) Applicant has notified the Department of such debt; (B) 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, (C) if the debt service coverage ratio is less than 1.1 to 1.0, the Applicant has obtained the prior written consent of the Department, and (D) if such debt is a new indebtedness and/or a new mortgage, the lender enters into a subordination agreement with the Department that subordinates the loan to all of the terms and conditions of this Agreement, substantially in the form of the Affordable Housing Subordination Agreement attached hereto as Exhibit J 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.

(b) Debt of the Owner.

Owner shall be permitted to mortgage or otherwise encumber its fee interest in the Premises or this Agreement without the Department's prior consent, if (1) Owner 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 or pension fund, or other lender approved by the Department (3) if such debt is a new indebtedness and/or a new mortgage, the lender enters into a subordination and non-disturbance agreement with the Department substantially in the form annexed hereto as Exhibit L ("Ground Lessor Subordination Agreement"). If all of the conditions of the preceding sentence) are not met, then the Owner must obtain the prior written consent of the Department to any such debt or encumbrance; provided, however, that if the lender is other than a local, state or federal agency, savings bank, commercial bank, life insurance company, public real estate investment company or pension fund, then such lender and the Department shall enter into a subordination agreement, which shall provide substantially the same protections as set forth in the Ground Lessor Subordination Agreement. Immediately following execution of such Ground Lessor Subordination Agreement or other required subordination agreement, Owner shall cause such Ground Lessor Subordination Agreement or other required subordination agreement to be recorded against the Premises in the City Register's Office, and shall pay all required fees and taxes in connection

therewith. Notwithstanding the foregoing, in the event of the termination of the Ground Lease or any subsequent ground lease on the Premises where the Owner is required to undertake the responsibilities of the Applicant hereunder, then the Debt provisions applicable to the Applicant set forth in Section 19(a) above shall apply to such Owner and its respective successors and assigns for so long as no New Ground Lease (as defined in Section 32(d) below) is in existence.

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") its leasehold interest or 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 leasehold interest or 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 the leasehold or title to the Affordable 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 leasehold interest or Affordable Housing Units, 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. Applicant's request for HPD 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 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 H 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 Regulatory 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 as follows:

If to Applicant: **241 WEST 28TH STREET OWNER LLC**
c/o LL MAG
142 W. 57th Street
New York, New York 10019

with copies to: Mary Gilmartin
113 St. John's Place
Brooklyn, NY 11217

and

Holland & Knight
31 West 52nd Street
New York, New York 10022
Attn: Ken Lowenstein

If to Owner:

249 W 28th Street Properties, LLC
c/o Edison Parking Corporation
110 Edison Place, Suite 300,
Newark, NJ 07102
Attn: EVP Real Estate

with a copy to

249 W 28th Street Properties, LLC
c/o Edison Parking Corporation
110 Edison Place, Suite 300,
Newark, NJ 07102
Attn: General Counsel

and a copy to:

Joshua Stein PLLC
Box 8000
New York, NY 10150
Attn: Joshua Stein, Esq.
File No. 144-02

If to the Department:

Department of Housing Preservation and Development
100 Gold Street
New York, NY 10038
Attn: Assistant Commissioner for Housing Incentives

with a copy to:

Department of Housing Preservation and Development
100 Gold Street
New York, NY 10038
Attn: General Counsel

Notices must be hand delivered, sent 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 delivery if sent by hand delivery, U.S. mail or overnight delivery. 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, at any time, also subject to any other regulatory agreement or restrictive declaration, in each case regulating, among other things, the maximum incomes of tenants of, or the maximum rents that may be charged for, the Affordable Housing Units which Owner has executed or to which Owner has consented ("Other Regulatory Agreement") then (a) in the event of any conflict or ambiguity between the provisions of this Agreement and the Other Regulatory Agreement, the more restrictive of the applicable provisions of this Agreement and the Other 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 or Owner 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.

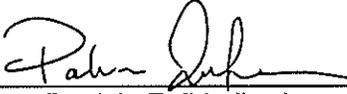
34. HPD's eRent Roll System. Applicant shall submit required rent rolls to the Department in such form and in such manner as directed by the Department, including, but not limited to, submission by electronic means using software designated by the Department.
35. Owner's/Ground Lessor's Consent and the Agreement.
- (a) The Ground Lease provides that Owner's and Applicant's respective interests in the Premises and any and all mortgages encumbering the Premises, whether now or in the future encumbering the Owner's or Applicant's interest in such Premises, shall be subject and subordinate to the terms of this Agreement during the term of this Agreement.
 - (b) The Owner, as fee owner and landlord of the Premises, consents to the execution and delivery of this Agreement by the Applicant and to all of the terms and conditions of this Agreement.
 - (c) If the Ground Lease or any New Ground Lease is terminated and does not enter into a New Ground Lease, Owner shall assume all of the ongoing obligations of the Applicant pursuant to this Agreement for the balance of the term of this Agreement or until a New Ground Lease is entered into.
 - (d) If the Ground Lease is terminated prior to the expiration of this Agreement and the Owner ground leases the Premises to a third party (the "New Ground Lease"), the New Ground Lease and any amendments thereto (and the rights of the lessee thereunder) shall also be subject to and subordinate to this Agreement and the tenant under the New Ground Lease shall be required to assume the ongoing obligations of the Applicant pursuant to this Agreement for the balance of the term of the New Ground Lease.
 - (e) In the event of any conflict between the terms of this Agreement and the Ground Lease, the terms of this Agreement shall govern.
 - (f) Notwithstanding any provision of this Agreement to the contrary and notwithstanding the Owner's execution of this Agreement, the Department agrees to look only to the Applicant for satisfaction of all obligations of the Applicant under this Agreement arising or accruing up to the date of any termination of the Ground Lease (including, without limitation, any indemnification provisions relating thereto or to such period), and the Owner and its successors and assigns shall in no event be liable for any thereof.
 - (g) Owner agrees that it will promptly execute and deliver to the Department such documents as the Department may request to effectuate the terms of this Agreement, including but not limited to, a subordination, non-disturbance and attornment agreement(s) subordinating the Owner's interest under the Ground Lease to this Agreement.
 - (h) The City of New York, including, but not limited to, the Department, shall have: (i) no obligation or liability under the Ground Lease and/or any Loan Documents, (ii) no duty or obligation to determine whether any act or omission of the Applicant (including, without limitation, any sale, transfer or other disposition of any interest in any Floor Area Compensation and/or the Affordable Housing Units by the Applicant or Owner is in compliance with the terms of the Ground Lease and/or any Loan Documents or to enforce the terms of the Ground Lease and/or any Loan Documents, and (iii) no duty or obligation to determine whether any exercise of any Mortgagee's rights under Section 18(c) is in compliance with the terms of the Ground Lease, the Loan Documents or any other

agreement between or among the Owner, the Applicant and/or any Mortgagee. In addition, neither Owner nor the Owner's successors and assignees, including but not limited to any Mortgagee, shall have any claim or cause of action against the City of New York, including, but not limited to, the Department, for any breach of the terms of the Ground Lease or any Loan Documents by the Applicant, and further, the Owner shall have no claim or cause of action against the City of New York, including, but not limited to, the Department, for any exercise by any Mortgagee of its rights under Section 18(c).

[No further text; signatures immediately follow]

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: 
Patricia Zafiriadis, Associate Commissioner for
Housing Incentives

241 WEST 28TH STREET OWNER LLC

By: _____ t
Name: MaryAnne Gilmartin
Title; Authorized Signatory

249 W 28TH STREET PROPERTIES LLC

By: _____ t
Name: _____
Title; _____

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

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

UNIFORM ACKNOWLEDGEMENTS

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

On this 14 day of October, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared **PATRICIA ZAFIRIADIS**, 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.



CRYSTAL KIARA SANTOS
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01SA6364686
Qualified in Queens County
Commission Expires September 18, 2021

NOTARY PUBLIC

STATE OF NEW YORK)
) SS:
COUNTY OF)

On this _____ day of October, 2020, 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 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.

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

By: _____
Patricia Zafiriadis, Associate Commissioner for
Housing Incentives

241 WEST 28TH STREET OWNER LLC,
a Delaware limited liability company

By: _____
Name: MaryAnne Gilmartin
Title: Authorized Signatory

249 W 28TH STREET PROPERTIES LLC

By: _____
Name: _____
Title: _____

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

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

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: _____
Patricia Zafiriadis, Associate Commissioner for
Housing Incentives

241 WEST 28TH STREET OWNER LLC,
a Delaware limited liability company

By: _____ t
Name: MaryAnne Gilmartin
Title: Authorized Signatory

249 W 28TH STREET PROPERTIES LLC

By: EDISON PARKING CORPORATION, its Manager

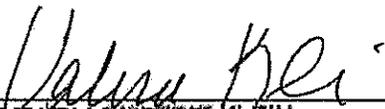
By: _____ t
Name: Jon Dario
Title: Executive Vice President

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

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

STATE OF NEW JERSEY)
COUNTY OF ESSEX) SS:

On this 14th day of October, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Jon Dario, 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 VALERIE KLEIN
NOTARY PUBLIC OF NEW JERSEY
Comm. # 50070271
My Commission Expires 10/18/2022

**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 Borough of Manhattan in the City and State of New York, designated as:

<u>Block</u>	<u>Lot</u>	<u>Address</u>
778	18	241 W. 28 th Street
778	16	245 W. 28 th Street
778	13	251 W./ 28 th Street
778	66	250 W. 29 th Street

County: New York

And further described as follows:

[See Attached Metes and Bounds Description.]

LEGAL DESCRIPTION

PARCEL 1 (Block 778 Lot 13):

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

BEGINNING at a point on the northerly side of 28th Street, opposite the easterly face of the easterly independent wall of the building known as 253-255 West 28th Street, which point is distant 154 feet 10 inches easterly from the corner formed by the intersection of the easterly side of 8th Avenue with the northerly side of 28th Street;

RUNNING THENCE easterly along the northerly side of 28th Street 49 feet 8 inches to a point opposite the westerly face of the westerly independent wall of the building known as 245-247 West 28th Street;

THENCE northerly along the westerly face of the said westerly wall last mentioned, and along a line in prolongation thereof, 159 feet and 7-¼ inches, more or less to the point of intersection in a line prolongation easterly of the northerly face of the northerly wall of the 2 story building standing on the premises hereby described;

THENCE westerly along said line in prolongation easterly of the northerly face of the said northerly wall and along the northerly face of the said northerly wall, and along a line in prolongation thereof westerly 49 feet and 4 inches more or less, to its intersection with a line drawn in prolongation of the easterly face of the said easterly wall of the building known as 253-255 West 28th Street;

THENCE southerly along the said line prolongation of the easterly face of the said easterly wall of said building 253 and 255 West 28th Street and along the said easterly face of said easterly wall last mentioned, 155 feet 4-½ inches to the point or place of BEGINNING.

PARCEL II (Block 778 Lot 16):

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

BEGINNING at a point on the southerly side of West 29th Street, distant 180 feet easterly from the corner formed by the intersection of the southerly side of West 29th Street with the easterly side of 8th Avenue;

RUNNING THENCE southerly parallel with 8th Avenue, 37 feet and 3-½ inches

THENCE RUNNING easterly on a line forming an angle of 83 degrees 53 minutes 40 seconds on its northerly side with the last-mentioned course 21 feet 8-¼ inches;

THENCE southerly on a line forming an angle of 91 degrees 3 minutes 40 seconds on its easterly side with the northerly side of West 28th Street 162 feet 6-½ inches to the northerly side of West

LEGAL DESCRIPTION

28th Street;

THENCE easterly along the northerly side of West 28th Street, 49 feet and 9 inches;

THENCE northerly on a line forming an angle of 88 degrees 56 minutes 20 seconds on its westerly side with the northerly side of West 28th Street, 167 feet 10-½ inches;

THENCE westerly on a line forming an angle of 84 degrees 57 minutes 20 seconds on its southerly side with the last-mentioned course, 1 foot 4-¼ inches;

THENCE northerly on a line forming an interior angle on its westerly side with the last-mentioned course, 96 degrees 5 minutes 20 seconds, 29 feet 9-½ inches to the southerly side of West 29th Street;

THENCE westerly along the southerly side of West 29th Street, 70 feet, more or less, to the point or place of BEGINNING.

PARCEL III (Block 778 Lot 66):

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

BEGINNING at a point on the southerly side of 29th Street, distant 155 feet easterly from the corner formed by the intersection of the easterly side of 8th Avenue with the southerly side of 29th Street;

RUNNING THENCE southerly parallel with 8th Avenue, 40 feet 1-½ inches, more or less to land formerly of Hammersley & Cudlip;

THENCE easterly in a diagonal line extending towards 29th Street along said Hammersley's land 25 feet 1-¾ inches to land formerly of Thomas Cramer;

THENCE northerly parallel with 8th Avenue, 37 feet 5-½ inches, more or less, to the southerly side of 29th Street; and

THENCE westerly along the southerly side of 29th Street, 25 feet to the point or place of BEGINNING.

PARCEL IV (Block 778 Lot 18):

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, County of New York and State of New York, and more particularly described as follows:

BEGINNING at a point on the northerly side of West 28th Street, distant 254 feet 4 inches

LEGAL DESCRIPTION

easterly from the corner formed by the intersection of the northerly side of West 28th Street and the easterly side of 8th Avenue;

RUNNING THENCE northerly along a line forming an interior angle of 91 degrees 03 minutes 40 seconds, a distance of 167 feet 9 inches;

THENCE westerly along a line forming an exterior angle of 84 degrees 55 minutes 30 seconds, a distance of 1 foot 2-3/4 inches;

THENCE northerly along a line forming an interior angle of 83 degrees 51 minutes 50 seconds, a distance of 29 feet 11-1/4 inches to the southerly side of West 29th Street;

THENCE easterly along the southerly side of West 29th Street, 50 feet;

THENCE southerly at right angles to the southerly side of West 29th Street, 24 feet 6- 3/4;

THENCE westerly along a line forming an exterior angle of 83 degrees 51 minutes 50 seconds, a distance of 10- 5/8 inches;

THENCE southerly 173 feet 1 inch to a point on the northerly side of West 28th Street, distance 49 feet 9 inches from the point of BEGINNING; and

THENCE westerly along the northerly side of West 28th Street, 49 feet 9 inches to the point or place of BEGINNING.

**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:** 241 West 28th Street Owner LLC, c/o MAG Partners LP (Ground Lessee)
Address: 473 Sixth Avenue, Suite 1, Brooklyn NY 11205
Fax: _____
Email: syu@llmag.com
Primary Contact (Name, Phone, Email):
Susi Yu, 917-816-8171, syu@llmag.com

- 2. Owner (if different):** 249 W.28th Street Properties LLC
Address: 100 Washington Street, Newark, NJ 07102
Fax: _____
Email: robertsc@edprop.com
Primary Contact (Name, Phone, Email):
Robbie Scharf, 973-849-2592, robertsc@edprop.com

- 3. Administering Agent:** Housing Partnership Development Corporation
Address: 253 West 35th Street, 3rd Floor, New York, New York 10001
Fax: _____
Email: smartin@housingpartnership.com
Primary Contact (Name, Phone, Email):
Sheila Martin, 646-217-3382, smartin@housingpartnership.com

- 4. General Contractor:** Urban Atelier Group
Address: 85 Fifth Avenue, 12th Floor, New York, NY 10003
Fax: _____
Email: adamico@uag.nyc
Primary Contact (Name, Phone, Email):
Andy D'Amico, 917-797-6797, adamico@uag.nyc

- 5. Architect:** Cook Fox Architects
Address: 250 West 57th Street, 17th Floor NYC 10107
Fax: _____
Email: bspecketer@cookfox.com
Primary Contact (Name, Phone, Email):
Brandon Specketer, 212-477-0287, bspecketer@cookfox.com

6. Attorney and Firm: Ken Lowenstein, Holland and Knight
Address: 31 West 52nd Street, 12th Floor, NYC 10019
Fax: _____
Email: kenneth.lowenstein@hklaw.com
Primary Contact (Name, Phone, Email):
Ken Lowenstein, 212-513-3438, kenneth.lowenstein@hklaw.com

7. Location of Affordable Housing Units
Street Address: 241 West 28th Street
Borough: Manhattan
Block(s)/Lot(s): 778/ 18,13,16 &66
Community Board: 5

8. Inclusionary Housing District of Affordable Housing Units
 R-10 Inclusionary:
Is project privately financed? (Yes/No) yes
 IH Designated Area (Insert ZR section reference, e.g., §23-154, §23-952, §98-23, §62-352, etc.): 43-621, 23-90
 Special District: _____
 Other (please explain): _____

9. Unit Count
Total units in project: 480 Total IH units in project: 96 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): 96
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:
None
Tax Exemption to be requested: Affordable NY

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

Electric Utility Systems:

- N/A – Not Used
- Individual unit heating systems utilizing electric resistance heated PTACs or heat pumps
- Individual unit hot water systems heated by electrically powered boilers
- Electric stoves

12. 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:

Authorized Signature of Applicant: _____



Print name: Susi Yu

Date: 10/8/2020

**EXHIBIT C
AFFORDABLE HOUSING UNITS**

Apartments			
Construction Floor	Marketing Floor	Apt #	# Bedrooms
14	15	H-N	0
13	14	H-N	0
12	12	H-N	0
11	11	H-N	0
10	10	H-N	0
9	9	H-N	0
8	8	H-N	0
7	7	H-N	0
6	6	H-N	0
5	5	H-N	0
4	4	H-N	0
3	3	H-N	0
2	2	H-N	0
14	15	P-N	0
13	14	P-N	0
12	12	P-N	0
11	11	P-N	0
10	10	P-N	0
9	9	P-N	0
8	8	P-N	0
7	7	P-N	0
6	6	P-N	0
5	5	P-N	0
4	4	P-N	0
3	3	P-N	0
15	16	N-S	0
14	15	N-S	0
13	14	N-S	0
12	12	N-S	0
11	11	N-S	0
10	10	N-S	0
9	9	N-S	0
8	8	N-S	0
7	7	N-S	0
6	6	N-S	0
5	5	N-S	0
4	4	N-S	0
3	3	N-S	0
2	2	N-S	0

Unit Summary	
# Bedrooms	# Units
Studios	39
1 Bedroom	49
2 Bedrooms	7
3 Bedrooms	1
Total	96

14	15	G-N	1
13	14	G-N	1
12	12	G-N	1
11	11	G-N	1
10	10	G-N	1
9	9	G-N	1
8	8	G-N	1
7	7	G-N	1
6	6	G-N	1
5	5	G-N	1
4	4	G-N	1
3	3	G-N	1
2	2	G-N	1
13	14	N-N	1
12	12	N-N	1
11	11	N-N	1
10	10	N-N	1
9	9	N-N	1
8	8	N-N	1
7	7	N-N	1
6	6	N-N	1
5	5	N-N	1
4	4	N-N	1
3	3	N-N	1
14	15	K-S	1
13	14	K-S	1
12	12	K-S	1
11	11	K-S	1
10	10	K-S	1
9	9	K-S	1
8	8	K-S	1
7	7	K-S	1
6	6	K-S	1
5	5	K-S	1
4	4	K-S	1
3	3	K-S	1
2	2	K-S	1
14	15	M-S	1
13	14	M-S	1
12	12	M-S	1
11	11	M-S	1
10	10	M-S	1
9	9	M-S	1
8	8	M-S	1
7	7	M-S	1
6	6	M-S	1

5	5	M-S	1
4	4	M-S	1
3	3	M-S	1
20	21	F-S	2
11	11	J-S	2
9	9	J-S	2
8	8	J-S	2
7	7	J-S	2
5	5	J-S	2
4	4	J-S	2
3	3	A-S	3

Super / Resident Manager Unit(s)

Construction Floor	Marketing Floor	Apt #	# Bdrms
3	3	J-S	2

**EXHIBIT D
SCHEDULE OF RENTS AND EXPENSES**

Inclusionary Housing Units -- Rents*			
	# Units	AMI Level	Legal Regulated Rent**
Studio	19	70%	\$1,329
1 Bedroom	25	70%	\$1,420
2 Bedroom	3	70%	\$1,699
3 Bedroom	1	70%	\$1,954

Sub Total **48**

Inclusionary Housing Units -- Rents*			
	# Units	AMI Level	Legal Regulated Rent***
Studio	20	80%	\$1,528
1 Bedroom	24	80%	\$1,634
2 Bedroom	4	80%	\$1,955

Sub Total **48**

TOTAL **96**

*Tenants are responsible for electricity

** The maximum Legal Regulated Rent is 30% of 70% of the Income Index as defined in the New York City Zoning Resolution, including applicable utility allowances.

*** 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.

480 Total Units

96 Inclusionary Housing Units

Operating Expenses*	Amount	Per Unit
Heating/Gas/Electric	\$18,333	38.19
Common Electric	\$20,833	43.40
Repairs and Maintenance Contracts/ Elevator	\$51,064	106.00
Professional Fees	\$17,408	36.00
Staff Salaries	\$101,974	212.00
Management Fees	\$49,108	102.31
Administrative Expenses	\$11,113	23.00
Water & Sewer	\$22,046	45.93
Fire and Liability Insurance	\$27,083	56.42
Replacement Reserve	\$10,000	20.00
Adminstering Agent	\$2,400	5.00
Real Estate Taxes	\$0	0.00
<i>(Assumes 421-a benefit)</i>		
Total Expenses	\$331,363	690.00

*The expenses reflect the overall 241 W 28th Street project underwriting dated August 19, 2020, which comprises 480 units, of which 96 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 as of this 15th day of October, 2020, between **Housing Partnership Development Corporation**, a New York not-for-profit corporation ("Administering Agent"), having an office at 253 West 35th Street, 3rd floor, New York, New York 10001, and the Department of Housing Preservation and Development ("Department"), having an office at 100 Gold Street, Ninth Floor, New York, NY 10038.

WHEREAS, **241 West 28th Street Owner LLC**, a Delaware limited liability company ("Applicant"), and **249 W. 28TH Street Properties, LLC**, a New York limited liability company ("Owner") have executed a Regulatory Agreement with the Department, to create Ninety-Six (96) Affordable Housing Units of located at the premises known as 241 W. 28th Street, 245 W. 28th Street, 251 W. 28th Street and 250 W. 29th Street in the County and State of New York (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.

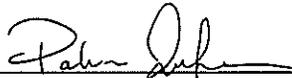
Notwithstanding any other remedy contained herein, the Department may commence an action against Administering Agent to require specific performance of Administering Agent's obligations herein. Department reserves the right to replace Administering Agent in the event that the Affordable Housing Units 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:  _____
Patricia Zafiriadis
Associate Commissioner for
Housing Incentives

Housing Partnership Development Corporation

By: _____
Name: _____
Title: _____

UNIFORM ACKNOWLEDGEMENTS

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

On this 14 day of October, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared **PATRICIA ZAFIRIADIS**, 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.

CRYSTAL KIARA SANTOS
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01SA6364686
Qualified in Queens County
Commission Expires September 18, 2021



NOTARY PUBLIC

STATE OF NEW YORK)
) SS:
COUNTY OF)

On this _____ day of October, 2020, 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 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.

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

By: _____
Patricia Zafiriadis
Assistant Commissioner for
Housing Incentives

Housing Partnership Development Corporation

By: Shelia Martin
Name: SHELIA MARTIN
Title: VICE PRESIDENT

UNIFORM ACKNOWLEDGEMENTS

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

On this ____ day of October, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared **PATRICIA ZAFIRIADIS**, 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.

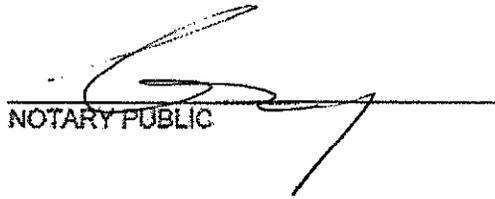
NOTARY PUBLIC

Elliot Eznick Falk
Lic. #02FA6309548
Notary Public, State of New York
Qualified in Bronx County
Comm. Exp. August 11, 2022

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

On this 7th day of October, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Shelia Martin, 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.

CRYSTAL KAY
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02KA6396967
Qualified in Kings County
Commission Expires August 26, 2023


NOTARY PUBLIC

**EXHIBIT G
AFFORDABLE HOUSING UNITS TRANSFEREE AGREEMENT**

_____, a _____ having an address at _____ ("Affordable Housing Units Transferee") to which ownership of the Affordable Housing Units as defined in the Affordable Housing Regulatory Agreement dated _____, 201__, ("Agreement") between _____ ("Applicant"), a _____, having an address at _____, and THE CITY OF NEW YORK ("City"), acting by and through its Department of Housing Preservation and Development (the "Department"), having an address at 100 Gold Street, New York, New York, 10038, has been transferred in accordance with Section 11 of such Agreement on _____, 201__, by execution hereof, specifically agrees to perform the obligations bestowed upon Affordable Housing Units Transferee in such Agreement. Furthermore, Applicant shall continue to perform the obligations bestowed upon Applicant after such transfer occurs. On and after such date of transfer of ownership of the Affordable Housing Units, all notices, approvals, requests, waivers, consents or other communications given or required to be given under such Agreement to Applicant and/or Department also shall be in writing and sent or transmitted to Affordable Housing Units Transferee as follows:

Attn: _____
Facsimile() _____

with a copy to:

Attn: _____
Facsimile() _____

[APPLICANT]
By: _____
 [Name]
 [Title]

TRANSFEEE]

[AFFORDABLE HOUSING UNITS
By: _____
 [Name]
 [Title]

UNIFORM ACKNOWLEDGEMENTS

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

On this _____ day of _____, 2020, 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 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

STATE OF NEW YORK)
) SS:
COUNTY OF)

On this _____ day of _____, 2020, 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 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

**EXHIBIT H
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 I
INVESTIGATION CLAUSE**

- (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 SUBORDINATION AGREEMENT (for Applicant's Lender)

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

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:

SUBORDINATION AND NON-DISTURBANCE AGREEMENT

by and between
THE CITY OF NEW YORK

-and-

The property affected by this written instrument lies within the:

Block Lot Address

County:
Address:

RECORD AND RETURN TO:

[LENDER'S COUNSEL]

EXHIBIT K
[NEXT PAGE: DEVELOPMENT BUDGET]

480 Total Units
 96 Inclusionary Housing Units

Sources and Uses*

<u>Construction and Permanent Sources</u>	<u>Amount</u>	<u>Per Unit</u>
Equity	\$93,197,000	\$194,160
Construction Loan	\$172,737,000	\$359,869
Total Sources	\$265,934,000	\$554,029
<u>Uses</u>	<u>Amount</u>	<u>Per Unit</u>
Purchase Price	\$20,811,000	\$43,356
Closing Costs	\$2,050,000	\$4,271
Hard Costs	\$185,811,000	\$387,106
Soft Costs	\$57,262,000	\$119,296
Total Uses	\$265,934,000	\$554,029

*The expenses reflect the overall 241 W 28th St project underwriting dated August 19, 2020 , which comprises 480 units, of which 96 are Inclusionary Housing units.

EXHIBIT L
FORM OF SUBORDINATION AGREEMENT (for Owner's Lender)

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");

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 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 (Inclusionary Housing), inclusive of the New York City Zoning Resolution (the "Resolution") and the Guidelines for Affordable Housing Plans (the "Guidelines") (the Guidelines and the Resolution are collectively referred to as the "Program");

WHEREAS, the Regulatory Agreement provides that fee mortgagee shall subordinate their shall subordinate their loan to all of the terms and conditions of the Regulatory Agreement;

WHEREAS, 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

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 of 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 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
5. 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.
6. 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.

7. 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.
8. 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: Director, Inclusionary Housing Program
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 Bank, 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.

9. 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.

10. 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: _____
[add name]
Assistant Commissioner

[LENDER]

By: _____
Print Name
Print Title

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 Address

County:

SUBORDINATION AGREEMENT

by and between

THE CITY OF NEW YORK

-and-

The property affected by this written instrument lies within the:

Block

Lot

Address

County:

RECORD AND RETURN TO:

[LENDER'S COUNSEL]

REGULATORY AGREEMENT

BETWEEN

THE CITY OF NEW YORK

and

241 WEST 28TH STREET OWNER LLC

and

249 W. 28TH STREET PROPERTIES, LLC

The property affected by this written instrument lies within the:

<u>Block</u>	<u>Lot</u>	<u>Address</u>
778	18	241 W. 28 th Street
778	16	245 W. 28 th Street
778	13	251 W. 28 th Street
778	66	250 W. 29 th Street

County: New York

RECORD AND RETURN TO:
[insert attorney's name]
Department of Housing Preservation
and Development
Office of Legal Affairs
100 Gold Street, Room [insert Rm. No.]
New York, NY 10038
