



Department of  
Environmental  
Conservation

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

**Please refer to the attached instructions for guidance on completing this application.**

Submission of a full BCP application will be required should this application be determined to be a major amendment. If the amendment seeks to add or subtract more than an insignificant acreage of property to the BCA, applicants are encouraged to consult with the DEC project team prior to submitting this application.

**PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION**

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

<input type="checkbox"/>	Amendment to modify the existing BCA (check one or more boxes below):
	<input type="checkbox"/> Add applicant(s) <input type="checkbox"/> Substitute applicant(s) <input type="checkbox"/> Remove applicant(s) <input type="checkbox"/> Change in name of applicant(s)
<input type="checkbox"/>	Amendment to reflect a transfer of title to all or part of the brownfield site:
	a. A copy of the recorded deed must be provided. Is this attached? Yes <input type="radio"/> No <input type="radio"/> b. <input type="checkbox"/> Change in ownership <input type="checkbox"/> Additional owner (such as a beneficial owner) c. Pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been submitted prior to a transfer of ownership. If this has not yet been submitted, include the form with this application. Is this form attached? Yes <input type="radio"/> No <input type="radio"/> Submitted on: _____

<input type="checkbox"/>	Amendment to modify description of the property(ies) listed in the existing BCA
<input type="checkbox"/>	Amendment to expand or reduce property boundaries of the property(ies) listed in the existing BCA
<input checked="" type="checkbox"/>	Sites in Bronx, Kings, New York, Queens or Richmond Counties ONLY: amendment to request determination that the site is eligible for tangible property credit component of the brownfield redevelopment tax credit.
<input type="checkbox"/>	Other (explain in detail below)

2. REQUIRED: Please provide a brief narrative describing the specific requests included in this amendment: The purpose of this BCA Amendment application is to state that this 421-a affordable housing project located in New York County is eligible for TPC based on the Applicant's Affidavit and supporting documents appended hereto as Exhibit A.

**SECTION I: CURRENT AGREEMENT INFORMATION***This section must be completed in full. Attach additional pages as necessary.*

BCP SITE NAME: 1487 1st Avenue Redevelopment Site	BCP SITE CODE: C231152
NAME OF CURRENT APPLICANT(S): CP VII 78th Street Owner, LLC	
INDEX NUMBER OF AGREEMENT: C231152-06-22	DATE OF ORIGINAL AGREEMENT: 07/27/2022

**SECTION II: NEW REQUESTOR INFORMATION***Complete this section only if adding new requestor(s) or the name of an existing requestor has changed.*

NAME:	
ADDRESS:	
CITY/TOWN: ZIP CODE:	
PHONE:	EMAIL:
REQUESTOR CONTACT:	
ADDRESS:	
CITY/TOWN: ZIP CODE:	
PHONE:	EMAIL:
REQUESTOR'S CONSULTANT:	CONTACT:
ADDRESS:	
CITY/TOWN: ZIP CODE:	
PHONE:	EMAIL:
REQUESTOR'S ATTORNEY:	CONTACT:
ADDRESS:	
CITY/TOWN: ZIP CODE:	
PHONE:	EMAIL:
1. Is the requestor authorized to conduct business in New York State? <input type="radio"/> <input checked="" type="radio"/>	
2. If the requestor is a corporation, LLC, LLP, or other entity requiring authorization from the NYS Department of State (NYSDOS) to conduct business in NYS, the requestor's name must appear exactly as given above in the NYSDOS Corporation & Business Entity Database. A print-out of entity information from the NYSDOS database must be submitted with this application. Is this print-out attached? <input type="radio"/> <input checked="" type="radio"/>	
3. Requestor must submit proof that the party signing this application and amendment has the authority to bind the requestor. This would be documentation showing the authority to bind the requestor in the form of corporate organizational papers, a Corporate Resolution or an Operating Agreement or Resolution for an LLC. Is this proof attached? <input type="radio"/> <input checked="" type="radio"/>	
4. If the requestor is an LLC, the names of the members/owners must be provided. Is this information attached? <input type="radio"/> <input checked="" type="radio"/> <b>N/A</b>	
5. Describe the new requestor's relationship to all existing applicants:	

**SECTION III: CURRENT PROPERTY OWNER/OPERATOR INFORMATION***Complete this section only if a transfer of ownership has taken place. Attach additional pages if necessary.*Owner listed below is:  Existing Applicant  New Applicant  Non-Applicant

OWNER'S NAME: \_\_\_\_\_ CONTACT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/TOWN: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

PHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

OPERATOR: \_\_\_\_\_ CONTACT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/TOWN: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

PHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

**SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION***Complete this section only if adding new requestor(s). Attach additional pages if necessary.*

If answering "yes" to any of the following questions, please provide additional information as an attachment. Please refer to ECL § 27-1407 for details.

	<b>Y</b>	<b>N</b>
1. Are any enforcement actions pending against the requestor regarding this site?	<input type="radio"/>	<input type="radio"/>
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site?	<input type="radio"/>	<input type="radio"/>
3. Is the requestor subject to an outstanding claim by the Spill Fund for the site? Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.	<input type="radio"/>	<input type="radio"/>
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 or regulation of the state or federal government? If so, provide additional information as an attachment.	<input type="radio"/>	<input type="radio"/>
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as site name, address, DEC site number, reason for denial, and any other relevant information.	<input type="radio"/>	<input type="radio"/>
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?	<input type="radio"/>	<input type="radio"/>
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?	<input type="radio"/>	<input type="radio"/>
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?	<input type="radio"/>	<input type="radio"/>

<b>SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION (continued)</b>		<b>Y</b>	<b>N</b>
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?	<input type="radio"/> <input type="radio"/>		
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?	<input type="radio"/> <input type="radio"/>		
11. Are there any unregistered bulk storage tanks on-site which require registration?	<input type="radio"/> <input type="radio"/>		
<b>12. 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:</b>			
<input type="checkbox"/> <b>PARTICIPANT</b>  A requestor who either (1) was the owner of the site at the time of the disposal of contamination or (2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of contamination.	<input type="checkbox"/> <b>VOLUNTEER</b>  A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of a 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 they have 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.  <b>If a requestor's liability arises solely as a result of ownership, operation of or involvement with the site, they must submit a statement describing why they should be considered a volunteer – be specific as to the appropriate care taken.</b>		
13. If the requestor is a volunteer, is a statement describing why the requestor should be considered a volunteer attached?	<input type="checkbox"/> <b>N/A</b>	<input type="checkbox"/> <b>Y</b>	<input type="checkbox"/> <b>N</b>
14. Requestor's relationship to the property (check all that apply):			
<input type="checkbox"/> Prior Owner	<input type="checkbox"/> Current Owner	<input type="checkbox"/> Potential/Future Purchaser	<input type="checkbox"/> Other: _____
15. If the requestor is not the current site owner, proof of site access sufficient to complete the remediation must be submitted. Proof must show that the requestor will have access to the property before being added to the BCA and throughout the BCP project, including the ability to place an easement on the site. Is this proof attached?	<input type="checkbox"/> <b>N/A</b>	<input type="checkbox"/> <b>Y</b>	<input type="checkbox"/> <b>N</b>

**SECTION V: PROPERTY DESCRIPTION AND REQUESTED CHANGES**

Complete this section only if property is being added to or removed from the site, a lot merger or other change to site SBL(s) has occurred, or if modifying the site address for any reason.

1. Property information on current agreement (as modified by any previous amendments, if applicable):

ADDRESS:

CITY/TOWN

ZIP CODE:

CURRENT PROPERTY INFORMATION		TOTAL ACREAGE OF CURRENT SITE:		
PARCEL ADDRESS		SECTION	BLOCK	LOT

2. Requested change (check appropriate boxes below):

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

PARCELS ADDED:

PARCEL ADDRESS	SECTION	BLOCK	LOT	ACREAGE

TOTAL ACREAGE TO BE ADDED: \_\_\_\_\_

b. Reduction of property

PARCELS REMOVED:

PARCEL ADDRESS	SECTION	BLOCK	LOT	ACREAGE

TOTAL ACREAGE TO BE REMOVED: \_\_\_\_\_

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

NEW PROPERTY INFORMATION:

PARCEL ADDRESS	SECTION	BLOCK	LOT	ACREAGE

3. TOTAL REVISED SITE ACREAGE: \_\_\_\_\_

4. For all changes requested in this section, documentation must be provided. Required attachments are listed in the application instructions. Is the required documentation attached?

<input type="radio"/> Y	<input type="radio"/> N
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**APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT SUPPLEMENT  
QUESTIONS FOR SITE SEEKING TANGIBLE PROPERTY CREDITS IN NEW YORK CITY ONLY**

Complete this section only if the site is located within the five counties comprising New York City and the requestor is seeking a determination of eligibility for tangible property credits. Provide supporting documentation as required. Refer to the application instructions for additional information.

	<b>Y</b>	<b>N</b>
1. Is the site located in Bronx, Kings, New York, Queens or Richmond County?	<input checked="" type="radio"/>	<input type="radio"/>
2. Is the requestor seeking a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit?	<input checked="" type="radio"/>	<input type="radio"/>
3. 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="radio"/>	<input checked="" type="radio"/>
4. Is the property upside down as defined below?	<input type="radio"/>	<input checked="" type="radio"/>
<p><b>From ECL 27-1405(31):</b></p> <p>“Upside down” shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>		
5. Is the project an affordable housing project as defined below?	<input checked="" type="radio"/>	<input type="radio"/>
<p><b>From 6 NYCRR 375-3.2(a) as of August 12, 2016:</b></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’ household’s 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 homeowners 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>		

APPLICATION SUPPLEMENT FOR NYC SITES (continued)	Y	N
6. Is the project a planned renewable energy facility site as defined below?	<input type="radio"/>	<input checked="" type="radio"/>
<b>From ECL 27-1405(33) as of April 9, 2022:</b>		
"Renewable energy facility site" shall mean real property (a) this is used for a renewable energy system, as defined in section sixty-six-p of the public service law; or (b) any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission, sub-transmission, or distribution system.		
<b>From Public Service Law Article 4 Section 66-p as of April 23, 2021:</b>		
(b) "renewable energy systems" means systems that generate electricity or thermal energy through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.		
7. Is the site located within a disadvantaged community, within a designated Brownfield Opportunity Area, and meets the conformance determinations pursuant to subdivision ten of section nine-hundred-seventy-r of the general municipal law?	<input type="radio"/>	<input checked="" type="radio"/>
<b>From ECL 75-0111 as of April 9, 2022:</b>		
(5) "Disadvantaged communities" means communities that bear the burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households, as identified pursuant to section 75-0111 of this article.		

**PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT****EXISTING AGREEMENT INFORMATION**

BCP SITE NAME: 1487 1st Avenue Redevelopment Site	BCP SITE CODE: C231152
NAME OF CURRENT APPLICANT(S): CP VII 78th Street Owner, LLC	
INDEX NUMBER OF AGREEMENT: C231152-06-22	DATE OF ORIGINAL AGREEMENT 07/27/2022

**Declaration of Amendment:**

By the requestor(s) and/or applicant(s) signature(s) 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 obligations held under the Agreement or those same laws.

**STATEMENT OF CERTIFICATION AND SIGNATURES: NEW REQUESTOR**

*Complete the appropriate section (individual or entity) below only if this Amendment adds a new requestor. Attach additional pages as needed.*

(Individual)

I hereby affirm that the 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 complete and sign the appropriate section (individual or entity) below. Attach additional pages as needed.

(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 Executive Vice President (title) of CP VII 78th 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. Matthew Feldman's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 10/31/22

Signature: 

Print Name: Matthew Feldman / CP VII 78th Street Owner, LLC

**PLEASE SEE THE FOLLOWING PAGE FOR SUBMITTAL INSTRUCTIONS**

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

Status of Agreement:

**PARTICIPANT**

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

**VOLUNTEER**

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

Effective Date of the Original Agreement: 07/27/2022

Signature by the Department:

DATED: 11-21-2023

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

  
Janet E. Brown, Assistant Director  
Division of Environmental Remediation

## INSTRUCTIONS FOR COMPLETING AN APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

This form must be used to add or remove a party, reflect a change in property ownership to all or part of the site, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement.

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

### COVER PAGE

Please select all options that apply. Provide a brief narrative of the nature of the amendment requested.

### SECTION I: CURRENT AGREEMENT INFORMATION

*This section must be completed in its entirety. The information entered here will auto-populate throughout the application and amendment.*

Provide the site name, site code and name(s) of current requestor(s) exactly as this information appears on the existing agreement. This should reflect any changes made by previous amendments to the site name or parties on the BCA. Provide the agreement index number and the date of the initial BCA.

### SECTION II: NEW REQUESTOR INFORMATION

*This section is to be completed only if a new requestor is being added to the BCA, or if the name of the existing requestor has changed with the NYSDOS.*

#### Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information.) The requestor is the person or entity seeking DEC review and approval of the remedial program.

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's Corporation & Business Entity Database.

#### Requestor, Consultant and Attorney Contact Information

Provide the contact name, mailing address, telephone number and e-mail address for each of the following contacts:

**Requestor's Representative:** This is the person to whom all correspondence, notices, etc., will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative unless another contact name and address is provided with the application.

**Requestor's Consultant:** Include the name of the consulting firm and the contact person.

**Requestor's Attorney:** Include the name of the law firm and the contact person.

#### *Required Attachments for Section II:*

1. **NYSDOS Information:** A print-out of entity information from the NYSDOS database to document that the applicant is authorized to do business in NYS. The requestor's name must appear throughout the application exactly as it does in the database.
2. **LLC Organization:** If the requestor is an LLC, provide a list of the names of the members/owners of the LLC.
3. **Authority to Bind:** Proof must be included that shows that the party signing this application and amendment is authorized to do so on behalf of the requestor. This documentation may be in the form of corporate organizational papers, a Corporate Resolution or Operating Agreement or Resolution.

### **SECTION III: CURRENT PROPERTY OWNER/OPERATOR INFORMATION**

*Complete this section only if a transfer of ownership has taken place for all or part of the site property. Attach additional pages for each new owner if applicable.*

Provide the relationship of the owner to the site by selecting one of the check-box options.

#### Owner Name, Address, etc.

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

#### Operator Name, Address, etc.

Provide information for the new operator, if applicable.

*NOTE: Pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been submitted prior to a transfer of ownership. If this form was not previously submitted, it must be included with this application. See <http://www.dec.ny.gov/chemical/76250.html> for additional information.*

#### *Required Attachments for Section III:*

1. *Copy of deed as proof of ownership.*
2. *Ownership/Nominee Agreement, if applicable.*
3. *Change of Use form, if not previously submitted to the Department.*

### **SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION**

*For additional information regarding requestor eligibility, please refer to ECL §27-1407.*

Provide a response to each question listed. If any question is answered in the affirmative, provide an attachment with detailed relevant information. It is permissible to reference specific sections of existing property reports; however, such information must be summarized in an attachment. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

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

If the requestor is not the current site owner, proof of site access sufficient to complete the remediation must be submitted. Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site. A purchase contract does not suffice as proof of access.

#### *Required Attachments for Section IV:*

1. *Detailed information regarding any questions answered in the affirmation, if applicable.*
2. *Statement describing why the requestor should be considered a volunteer, if applicable.*
3. *Site access agreement, as described above, if applicable.*

## SECTION V: PROPERTY DESCRIPTION AND REQUESTED CHANGES

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

### Property Information on Existing Agreement

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

### Addition of Property

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

### Reduction of Property

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

### Change to address, SBL or metes and bounds description

Provide the new address and tax parcel information.

### Total Revised Site Acreage

Provide the new total site acreage after addition or removal of property. If no change to site boundary, this should match the acreage provided above, under Property Information on Existing Agreement.

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

### *Required Attachments for Section V:*

1. *For all additions and removal of property:*
  - a. *Site map clearly identifying the existing site boundary and proposed new site boundary*
  - b. *County tax map with the new site boundary clearly identified*
  - c. *USGS 7.5-minute quadrangle map with the site location clearly identified*
2. *For address changes, lot mergers, subdivisions and any other change to the property description:*
  - a. *County tax map with the site boundary and all SBL information clearly identified*
  - b. *USGS 7.5-minute quadrangle map with the site location clearly identified*
  - c. *Approved application for lot merger or apportionment, or the equivalent thereof, as proof from the municipality of the SBL change(s)*

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

*Complete this section only if the site is located within the five counties comprising New York City and the requestor is seeking a determination of eligibility for tangible property credits.*

Provide responses to each question. If any question is answered in the affirmative, provide required documentation as applicable.

### **Required Attachments for NYC Site Supplement:**

1. *For sites located all or partially in an En-zone: provide a map with the site boundary clearly identified and the En-zone overlay showing that all or a portion of the site is located within an En-zone. This map must also indicate the census tract number in which the site is located. See [DEC's website](#) for additional information.*
2. *For affordable housing projects: provide the affordable housing regulatory agreement and any additional relevant information.*
3. *For renewable energy site projects: for (a) planned renewable energy facilities generating/storing less than twenty-five (25) megawatts, provide a local land use approval; or, for (b) planned renewable energy facilities generating/storing twenty-five (25) megawatts or greater, provide the permit issued by the NYS Office of Renewable Energy Siting.*
4. *For sites located within a disadvantaged community and a conforming Brownfield Opportunity Area: provide a map with the site boundary clearly identified and the disadvantaged community overlay showing that the site is located within a disadvantaged community.*

## **PART II: BROWNFIELD CLEANUP PROGRAM AMENDMENT**

The information in the “EXISTING AGREEMENT INFORMATION” section should auto-populate with the information provided on page 2.

If a new requestor is applying to enter the program, provide the required information and signature at the bottom of page 8 and the required information and signature on page 9.

If no new requestor is applying to the program but any other change has been made, provide the required information and signature on page 9.

# **Exhibit A to BCA Amendment No. 1:**

## **Applicant's Affidavit**

**APPLICANT'S AFFIDAVIT**

STATE OF NEW YORK }  
COUNTY OF NEW YORK } SS:

MATTHEW FELDMAN, being duly sworn, deposes and says:

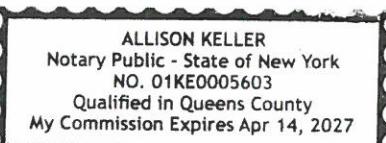
1. I am the Executive Vice President of CP VII 78th Street Owner, LLC (the “Company”), a New York limited liability company, with authority to bind the Company as an Authorized Signatory of the Company.
2. The Company is the fee owner of certain real property located at 1487 1st Avenue, New York, New York, identified as Block 1452, Lot 27 on the New York City Department of Finance Tax Map of the Borough of Manhattan (the “Site”).
3. The Company acquired fee title to the Site by that certain deed dated as of January 6, 2022, and recorded with the City Register of the City of New York as City Register File No. 202200029939.
4. The Site is subject to a Brownfield Site Cleanup Agreement, Index No. C231152-06-22, with the New York State Department of Environmental Conservation (“NYSDEC”) effective July 27, 2022 (the “BCA”), pursuant to which the Company is the sole Volunteer party as described in the BCA.
5. The Site is being developed and will be operated as an affordable housing project under the Affordable Housing New York program described in subdivision 16 of section 421-a of the New York Real Property Tax Law (the “421-a Program”).
6. The Site's development as affordable housing will include (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 (“AMI”) based on the occupants’ household annual gross income, as is required by the ECL 27-1405(29) statutory definition of “affordable housing project.”
7. Appended hereto as Attachment 1 is an Affidavit by the affordable housing project’s architect of record, David West of Hill West Architects, which affirms that the affordable housing project under construction at the Site has a “Commencement Date” of April 29, 2022 pursuant to the 421-a Program by installing an initial foundation element that was completed on that date.
8. Appended hereto as Attachment 2 is an Opinion of Counsel of Rosenberg & Estis, P.C., which concludes that the redevelopment of the Site should be eligible for the 421-a Program based on the planned construction of at least 45 affordable rental housing units (i.e., at least 30% of total dwelling units) which will be restricted based on a percentage of AMI and on other information and attachments recited in the Opinion Letter (including the Architect’s Affidavit appended as Attachment 1 hereto).

9. Appended hereto as Attachment 3 are reproduced excerpts from the Building Loan Mortgage and Security Agreement between the Company, as mortgagor, and the Northwestern Mutual Life Insurance Company, as mortgagee, providing that the Site will be subject to and comply with the requirements of the 421-a Program.
10. Accordingly, the Site is eligible for the tangible property credit component ("TPC") of the brownfield redevelopment tax credit ("BRTC") as an affordable housing project.
11. I have reviewed this statement and each Attachment hereto, and it is true and correct to the best of my knowledge.

  
Matthew Feldman  
Executive Vice President  
CP VII 78th Street Owner, LLC

Sworn to before me this  
31 day of Oct, 2023

  
Notary Public



## **Attachment 1 to Exhibit A:**

### **Architect's Affidavit**

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## AFFIDAVIT

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

I, David West, being duly sworn, depose and say:

1. I make the following statement in connection with the Application for Certification of Eligibility for Tax Exemption Pursuant to New York State Real Property Tax Law §421-a (16) for the following project (hereinafter, the “Project”):

1487 1<sup>st</sup> Avenue  
NEW YORK, NY 10075  
BLOCK 1452, LOTS 27, 28, 29, 30

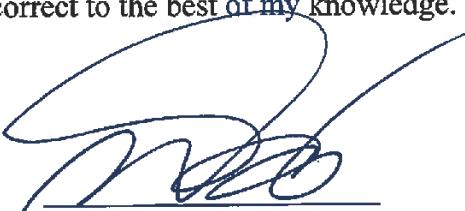
2. I am a registered architect at Hill West Architects, the architect of record for the Project, and licensed to practice by and in good standing with New York State. As such, I am fully familiar with the facts and circumstances discussed herein.
3. I am over 18 years of age and I maintain an office at 11 Broadway, NY, NY 10004.
4. On 04/27/2022, PERMIT TYPE Foundation, Permit Number M00711790-I1-F0 (Exhibit 1) was validly issued by the New York City Department of Buildings (“DOB”) pursuant to plans approved by DOB on 04/06/2022, which allowed the excavation and construction of initial footings and foundations for the Project to lawfully begin in good faith.
5. Pursuant to DOB Permit Number M00711790-I1-F0, the installation of the Project’s initial pile cap began on 04/29/2022, as evidenced by the attached Cast in Place Concrete Special Inspection Report including site plan diagram and photo (Exhibit 2).
6. The above referenced Pile cap and caisson as shown on the report of the site by McNamara Salvia of New York, P.C, NYC DOB Special Inspection Agency #004970 dated 04/29/2022 (Exhibit 2), is the first load-bearing foundation element for the Project and has been integrated into the foundation for the new multiple dwelling and is identified on the attached copy of drawing number FO-100 (Exhibit 3), which was filed in conjunction with DOB New Building Permit Number M00648391.
7. Pursuant to RPTL §421-a (16)’s definition of “Commencement Date” (“Commencement Date’ shall mean, with respect to any eligible multiple dwelling, the date upon which excavation and construction of initial footings and foundations lawfully begins in good faith or, for an eligible conversion, the date upon which the actual construction of the conversion, alteration or improvement of the pre-existing building or structure lawfully begins in good faith” and consistent with method 4 of HPD’s FAQ Document dated 4-28-22 (Exhibit 4), the Project’s Commencement Date was 04/29/2022.

8. I have reviewed this statement and it is true and correct to the best of my knowledge.

TIFFANY M. RENELLE  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RE6383708  
Qualified in Kings County  
My Commission Expires 11-26-2022

Signed before me this 5  
day of May, 2022

  
Notary Public



[Sign and Seal below]



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**EXHIBIT 1**



**Buildings**



# Work Permit Department Of Buildings

Permit Number: M00711790-I1-FO

Issued: 04/27/2022

Permit Classification: FOUNDATION

Expires: 05/01/2022

Address: MANHATTAN 1487 1 AVENUE

Issued To: STEPHEN MARTINELLI

Work on Floor(s): OPEN SPACE

Business: CARMEL CONSTRUCTION EAST

Total number of dwelling units at location: 0

License No: GC-622296

Number of dwelling units occupied during construction: 0

CS: DANIEL DAWSON

Description: FILING FOR FOUNDATION WORK FOR INSTALLATION OF CAISSON AND PILE CAP IN CONJUNCTION WITH NEW BUILDING

For detailed information regarding this permit, please log on to DOB NOW at [www.nyc.gov/buildings](http://www.nyc.gov/buildings).  
Call 311 with any questions or complaints.

Borough Commissioner:

Commissioner of Buildings:

  
Giralt  
Acting Commissioner of Buildings

Tampering with or knowingly making a false entry in or falsely altering this permit is a crime that is punishable by a fine, imprisonment or both.

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**EXHIBIT 2**

## CAST-IN-PLACE CONCRETE SPECIAL INSPECTION REPORT

Page 1 OF 1

Owner:	CP VII 78 <sup>th</sup> street owner, LLC	Project Number:	2021453	Date:	04/29/2022
Project:	1487 1 <sup>st</sup> Avenue	Concrete Producer:	Gotham ready mix	Floor:	Foundation
GC:	Carmel Partners	Concrete Contractor:	RNC	Location:	Pile cap
Arrival:	11:00 AM	Departure:	3:00 PM	Report #:	01
Weather:	Clear	Air Temperature:	60° F		

<b>Concrete Placement:</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Required Concrete Strength (f <sub>c</sub> ):	7000 PSI
	<input checked="" type="checkbox"/> Formwork Preparation		<input type="checkbox"/> Embedded Items Installation	<input type="checkbox"/> Cage Stability
	<input checked="" type="checkbox"/> Conc. Vibrated Properly		<input type="checkbox"/> Pump Placement	<input checked="" type="checkbox"/> Bucket Placement
	<input checked="" type="checkbox"/> Construction Joints Properly Placed		Start placement:	2:00 PM
			Finish Placement:	3:00 PM

<b>Reinforcement Erection:</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Steel Grade: 60ksi, 75ksi	<input type="checkbox"/> Epoxy-Coated Bars	<input type="checkbox"/> Wire Mesh
--------------------------------	---	-----------------------------	---------------------------	--	------------------------------------

<b>Testing Laboratory:</b>	<input checked="" type="checkbox"/> On Site	Name of Laboratory:	20/20 Inspections.		
		Technician Name & I.D#:	Jonathan Castellanos ACI # 01635297		
		Test Performed on Site:	<input checked="" type="checkbox"/> Slump	<input checked="" type="checkbox"/> Temp	<input checked="" type="checkbox"/> Air Entrained
			<input checked="" type="checkbox"/> Unit Weight		
			Other:		

<b>Identification of the equipment used:</b>	Thermometer ID:	TH7	Calibration due Date:	12/03/2022
	Measuring Tape ID:	MT7	Calibration due Date:	12/03/2022

**Reference Drawings and/or Sketches (including Date):** FO-001, FO-100, FO-200, FO-201, FO-202, FO-203, FO-204, FO-210, dated 04/11/2022.

### Description of Inspection Performed:

**A. Rebar installation was approved and 7000 PSI concrete placement was observed at the following structural elements:**

- Pile cap PC-1A base of Buttress 24. See Figure 1 and Picture 1.

**Note:** See 20/20 field report for concrete test results.

Inspection completed & approved

Inspection completed NOT conformance  See Page \_\_\_\_\_

I certify, to the best of my knowledge, the work inspected was in accordance with the DOB approved plans and specifications

**Inspector Name:** Ricardo Espana CCSI

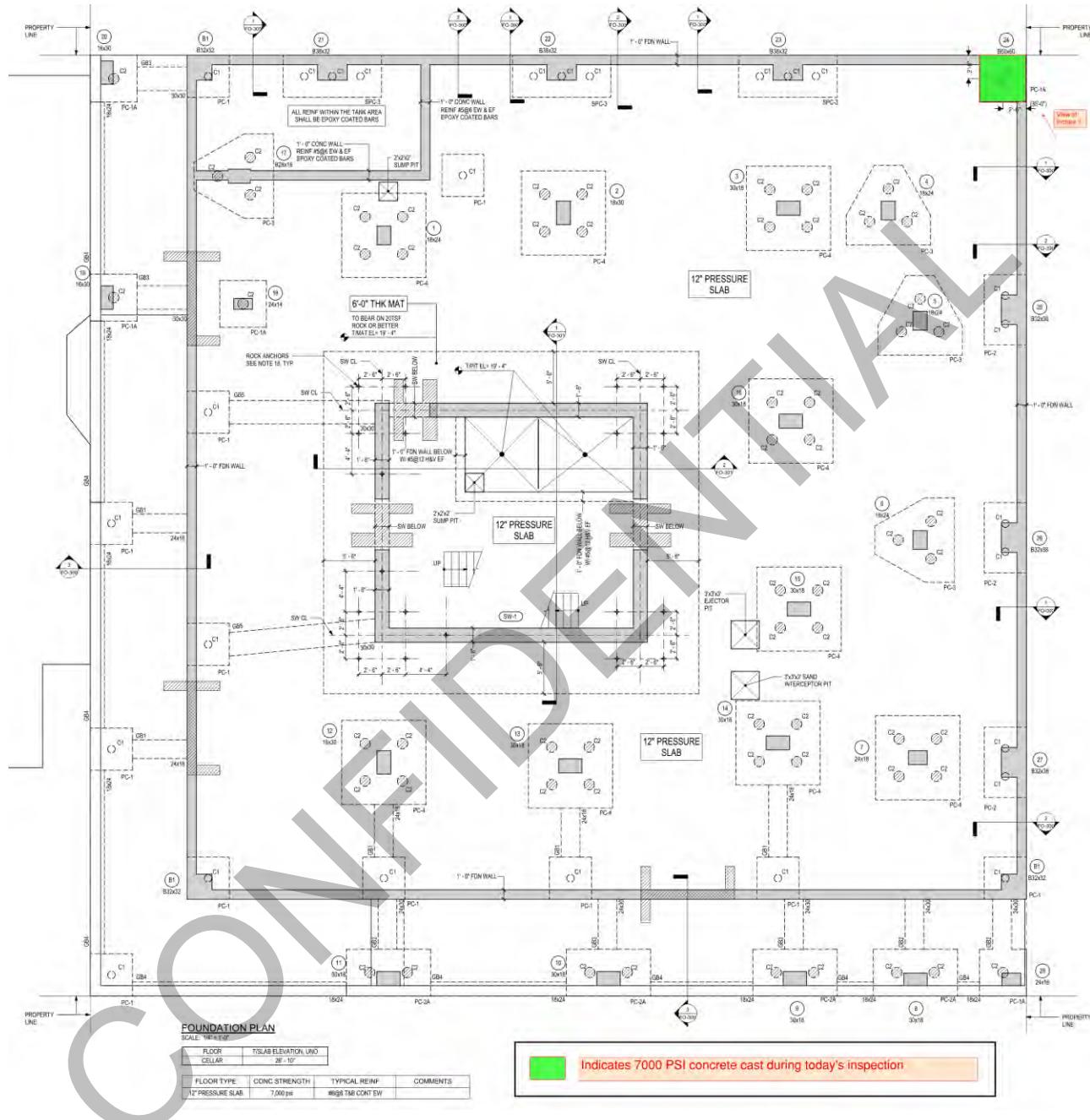
**Inspector Signature:** 

**Field Supervisor Full Name:** Vladimir Seijas P.E.

**Field Supervisor Signature:** 

**IMPORTANT NOTICE:** This special inspection report is intended only for the use of the person or organization to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you have received this report in error, please notify the sender immediately by email or telephone. Thank you."

**Figure 1.**



**IMPORTANT NOTICE:** This special inspection report is intended only for the use of the person or organization to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you have received this report in error, please notify the sender immediately by email or telephone. Thank you."

Picture 1.



Picture 1 shows 7000 PSI concrete cast at Pile cap PC-1A base of Buttress 24.

**IMPORTANT NOTICE:** This special inspection report is intended only for the use of the person or organization to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you have received this report in error, please notify the sender immediately by email or telephone. Thank you."

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**EXHIBIT 3**

# 1487 FIRST AVENUE

NEW YORK, NY 10075

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Structural Sheet List -FO	
Sheet Number	Sheet Name
FO-000	COVER SHEET ALT
FO-001	GENERAL NOTES ALT
FO-100	FOUNDATION PLAN ALT
FO-200	CAISSON & ROCK ANCHOR DETAILS ALT
FO-210	REINF DEVELOPMENT LENGTH/LAP SPLICE SCHEDULE ALT

KEY PLAN

NOTES:

1 03.25.22 DOB SUBMISSION

Number: Date: Revision:

Project: 1487 First Avenue  
NEW YORK, NY 10075

Owner: CP VII 78TH  
STREET OWNER, LLC  
805 Third Avenue, 20th Floor  
New York, NY 10022

Architect: HILL | WEST  
ARCHITECTS  
11 BROADWAY  
17TH FLOOR  
NEW YORK, NY 10004  
T. 212 213 9007

Expeditor: Jam Consultants  
104 W 28th St #9  
New York, NY 10001  
(212) 627-1050

Structural Engineer: McNamara Salvia  
498 West 45th Street, 10th Floor  
New York, NY 10036  
(212) 248-9900

MEP Engineer: Cosentini Associates  
498 Seventh Avenue  
New York, NY 10018  
(212) 615-3600

Geotechnical/SoE Engineer: Langan Engineering  
300 Kimball Drive, 4th Floor  
Paramus, NJ 07054  
(973) 560-4900

M00711790-I1

DOB STAMPS & SIGNATURES:

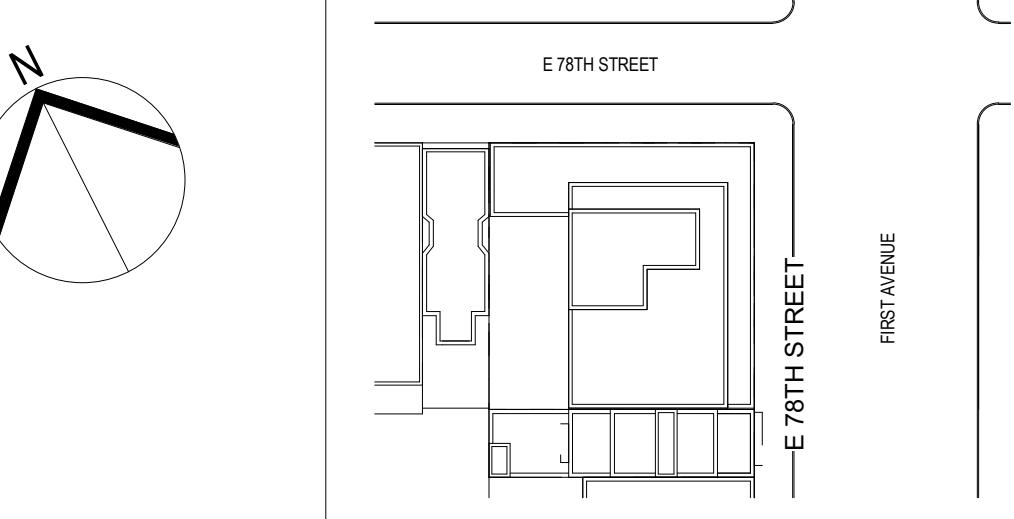
NYC  
Buildings  
ACCEPTED  
Date: 04/06/2022

DWG TITLE: COVER SHEET ALT

SEAL & SIGNATURE: DATE: 03/25/2022  
PROJECT #: 2021453.00  
SCALE: 0227 TO 1  
DWG NO. FO-000.00  
DOB JOB:

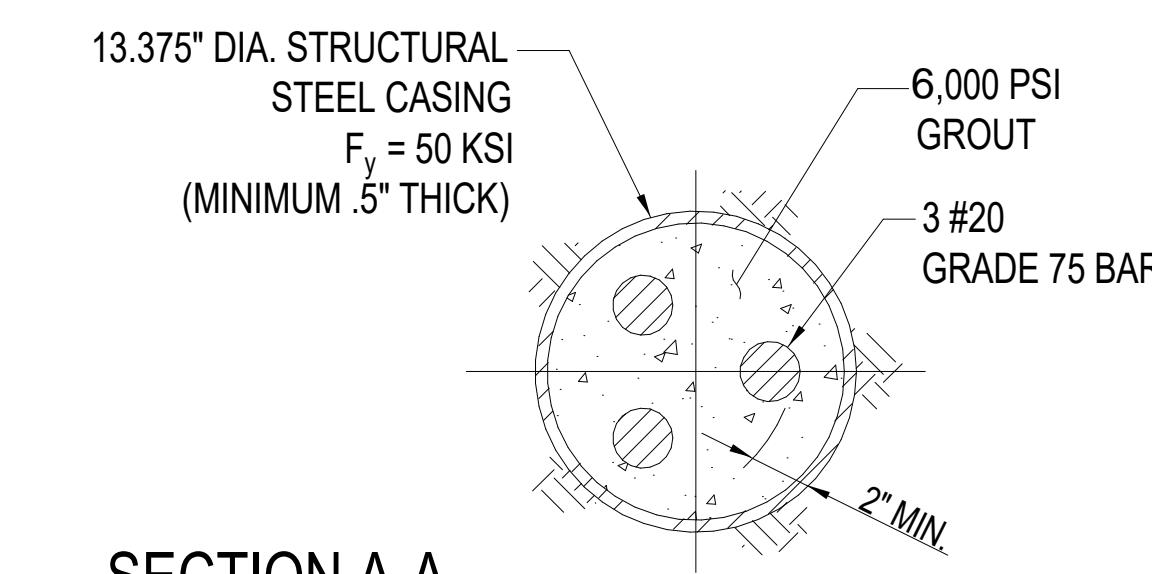
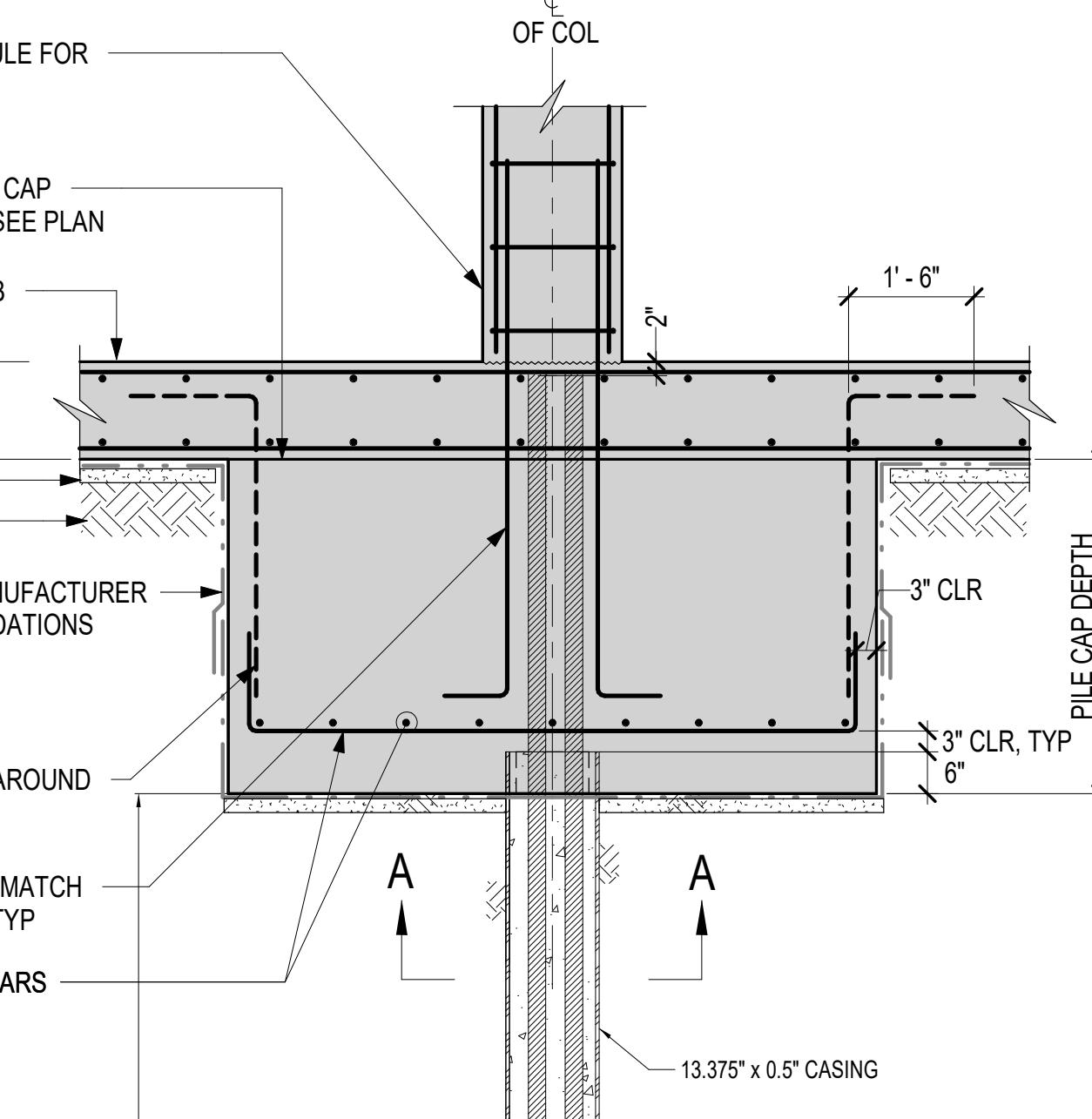




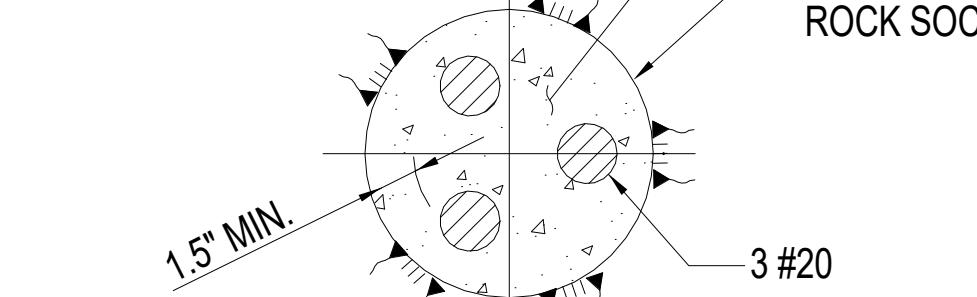
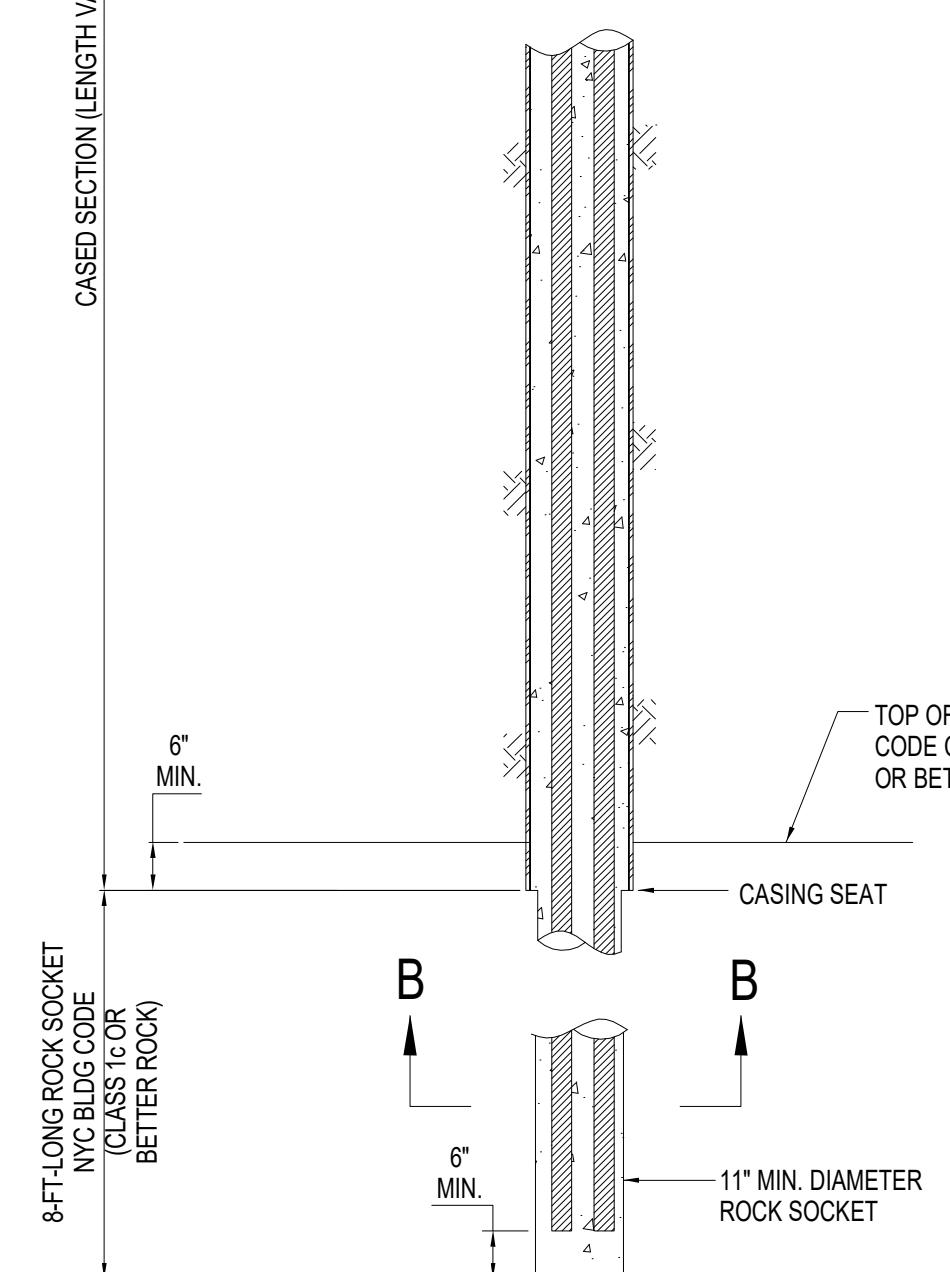


KEY PLAN

NOTES:



SECTION A-A



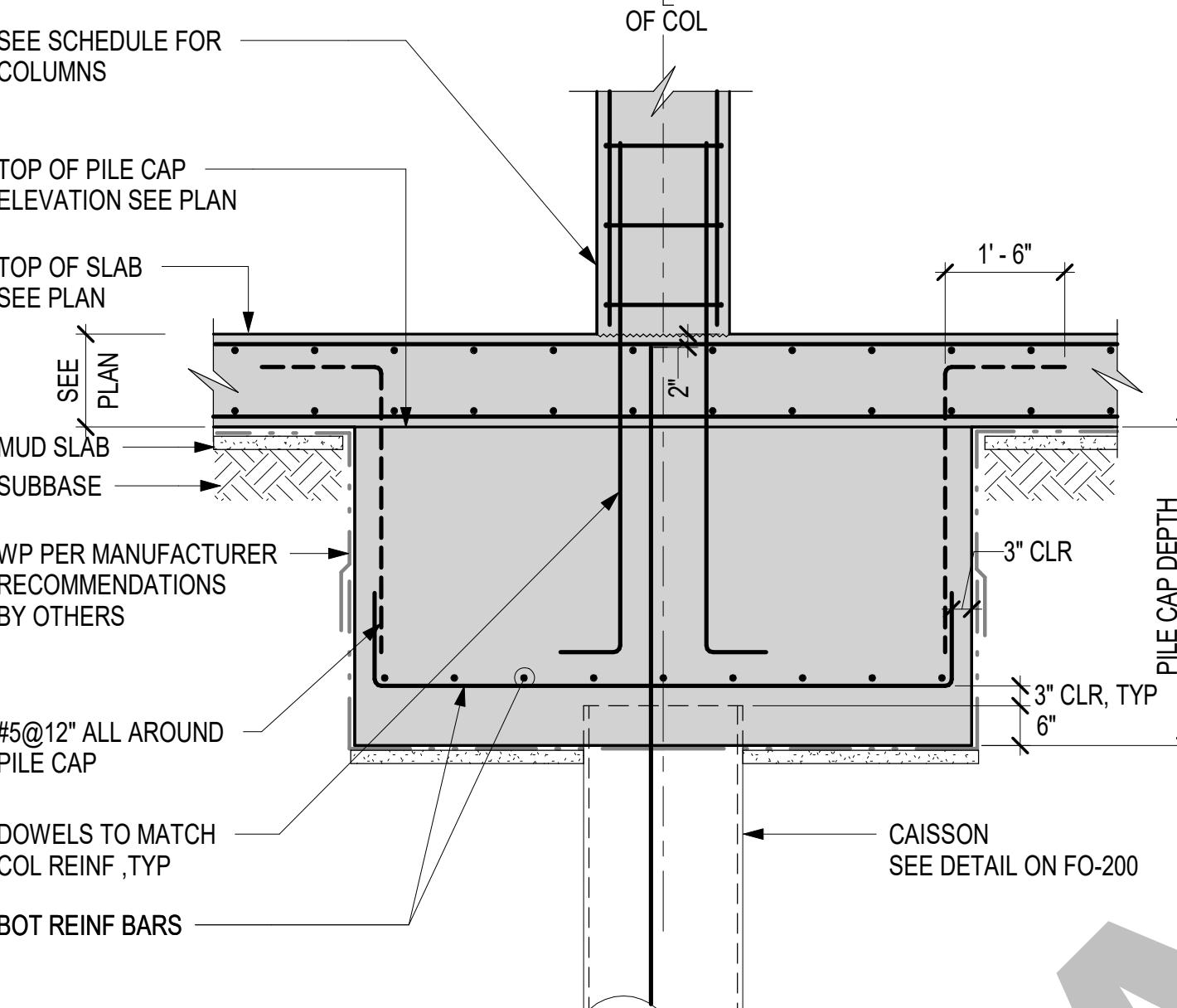
SECTION B-B

1 CAISSON DETAIL (C2) - 300 TON COMPRESSION CAPACITY ALT

NOTES:

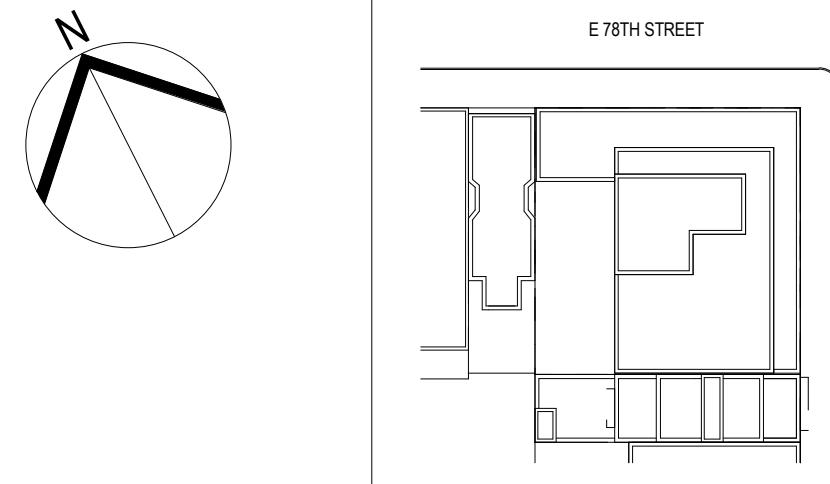
- GENERAL:
  - DRILLED CAISONS ARE DESIGNED FOR AXIAL COMPRESSION, UPLIFT, AND LATERAL LOADS.
  - ALL DRILLED CAISONS SHALL BE INSTALLED AT THE LOCATIONS SHOWN ON THE CONTRACT DRAWINGS.
  - REJECTED DRILLED CAISON SHELLS SHALL BE FILLED WITH CONCRETE.
  - DRILLED CAISON CONSTRUCTION SHALL BE PERFORMED IN ACCORDANCE WITH THE PROJECT SPECIFICATION FOR DRILLED CAISONS.
  - LATERAL CAPACITIES HIGHER THAN 1 TON MUST BE SUBSTANTIATED BY PERFORMANCE OF FIELD LOAD TESTS IN ACCORDANCE WITH NYC BLDG CODE.
- STEEL:
  - ALL DRILLED CAISON CASINGS SHALL CONSIST OF A MINIMUM OUTER DIAMETER AS SPECIFIED IN CAISON SCHEDULE AND DETAILS. 50 KSI YIELD STRENGTH STRUCTURAL STEEL CASING.
  - ALL DRILLED CAISONS SHALL BE REINFORCED WITH MINIMUM GRADE 75 STEEL BARS.
  - DRILLED CAISON REINFORCEMENT EXTENDING INTO THE CAISON CAP SHALL BE IN ACCORDANCE WITH STRUCTURAL DRAWINGS.
  - CENTRALIZERS/SPACERS SHALL BE PLACED ON REINFORCEMENT TO CENTER THE STEEL WITHIN THE CAISON AT A MAXIMUM SPACING OF 10 FT C.C.
- GROUT:
  - GROUT SHALL BE PLACED SO THAT THE CASING AND SOCKET ARE COMPLETELY FILLED IN A MANNER THAT WILL PRECLUDE SEPARATION OF THE INGREDIENTS.
  - GROUT SHALL HAVE A MINIMUM UNCONFINED COMPRESSIVE STRENGTH OF 6,000 PSI AT 28 DAYS.
- INSTALLATION:
  - SET UP DRILL RIG ON PROPER LOCATION AND PLUMB MAST.
  - ADVANCE CASING TO TOP OF CLASS 1c OR BETTER ROCK. SEAT CASING 6 INCHES INTO ROCK.
  - DRILL ROCK SOCKET WITH DOWN-HOLE HAMMER. FOLLOW UP WITH ADDITIONAL RODS UNTIL CORRECT TIP ELEVATION IS REACHED.
  - FLUSH HOLE WITH CLEAN WATER.
  - VIDEO INSPECT DRILLED CAISON AND VERIFY SOCKET IS IN SOUND ROCK.
  - INSTALL REINFORCEMENT AS REQUIRED.
  - PLACE GROUT USING A TREMIE PIPE.

DRILLED CAISON SCHEDULE							
CAISSON TYPE	CASING OUTSIDE DIAMETER (IN)	MINIMUM ROCK SOCKET DIAMETER (IN)	MINIMUM ROCK SOCKET LENGTH (FT)	STEEL REINFORCEMENT (GRADE 75 MIN.)	COMPRESSION CAPACITY (TONS)	UPLIFT CAPACITY (TONS)	LATERAL CAPACITY (TONS)
C2	13.375	11	8	3 - #20 BARS	300	0	1



SECTION A-A





### KEY PLAN

NOTES:

TENSION DEVELOPMENT LENGTH (Ld) AND TENSION LAP SPLICE LENGTH (Lap Class B OR 1.3Ld) FOR GRADE 60 DEFORMED REINFORCING BARS (inches)																				
(UNLESS NOTED OTHERWISE)																				
fc = 4000 PSI, NORMAL WEIGHT CONCRETE																				
BAR SIZE	LENGTH TYPE	CONCRETE COVER ≥ 0.75 in	CONCRETE COVER ≥ 1.0 in	CONCRETE COVER ≥ 1.25 in	CONCRETE COVER ≥ 1.50 in	CONCRETE COVER ≥ 2.00 in	CONCRETE COVER ≥ 3.00 in	CLEAR BAR SPACING ≥ 1.50 in	CLEAR BAR SPACING ≥ 2.0 in	CLEAR BAR SPACING ≥ 2.50 in	CLEAR BAR SPACING ≥ 3.0 in	CLEAR BAR SPACING ≥ 4.0 in	CLEAR BAR SPACING ≥ 6.0 in	UNCOATED	UNCOATED	UNCOATED	UNCOATED	UNCOATED	UNCOATED	
		TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	
#3	Lu	12	12	15	13	12	12	14	12	12	12	14	12	12	12	12	12	12	12	12
	B	15	12	19	17	15	12	19	18	14	15	12	18	14	15	12	18	14	12	12
#4	Lu	19	15	25	22	15	12	20	18	15	12	18	14	15	12	18	14	12	12	12
	B	25	19	32	28	20	15	26	23	20	15	24	18	20	15	24	18	12	12	12
#5	Lu	28	21	36	32	17	29	26	19	15	25	22	19	15	23	18	15	23	18	12
	B	36	28	47	41	29	23	38	34	19	32	28	25	19	29	23	25	19	23	12
#6	Lu	37	29	49	43	31	24	40	35	26	20	34	30	23	18	30	26	23	18	27
	B	49	37	63	56	40	31	52	46	34	26	44	39	29	23	38	34	29	23	35
#7	Lu	60	46	78	69	50	38	65	57	42	33	55	49	37	29	48	43	33	30	30
	B	78	60	102	90	65	50	84	74	55	42	72	63	48	37	63	55	43	33	51
#8	Lu	74	57	97	86	62	48	81	72	53	41	70	61	47	36	61	54	37	29	45
	B	97	74	126	111	81	62	105	93	69	53	90	80	61	47	83	63	56	45	45
#9	Lu	90	69	118	104	76	58	99	87	65	50	85	75	58	44	75	66	46	36	61
	B	117	90	153	135	98	76	128	113	85	65	111	98	75	58	97	86	60	46	73
#10	Lu	108	83	141	125	92	71	120	106	80	61	104	92	70	54	92	81	57	44	75
	B	141	108	184	162	119	92	156	137	103	80	135	119	91	70	119	105	74	97	85
#11	Lu	127	98	166	146	108	83	142	125	95	73	124	109	84	65	110	97	88	53	41
	B	165	127	215	190	141	108	184	162	123	95	160	142	109	84	142	126	89	68	116

TENSION DEVELOPMENT LENGTH (Ld) AND TENSION LAP SPLICE LENGTH (Lap Class B OR 1.3Ld) FOR GRADE 60 DEFORMED REINFORCING BARS (inches)																				
(UNLESS NOTED OTHERWISE)																				
fc = 7000 PSI, NORMAL WEIGHT CONCRETE																				
BAR SIZE	LENGTH TYPE	CONCRETE COVER ≥ 0.75 in	CONCRETE COVER ≥ 1.0 in	CONCRETE COVER ≥ 1.25 in	CONCRETE COVER ≥ 1.50 in	CONCRETE COVER ≥ 2.00 in	CONCRETE COVER ≥ 3.00 in	CLEAR BAR SPACING ≥ 1.50 in	CLEAR BAR SPACING ≥ 2.0 in	CLEAR BAR SPACING ≥ 2.50 in	CLEAR BAR SPACING ≥ 3.0 in	CLEAR BAR SPACING ≥ 4.0 in	CLEAR BAR SPACING ≥ 6.0 in	UNCOATED	UNCOATED	UNCOATED	UNCOATED	UNCOATED	UNCOATED	
		TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	TOP <sup>1</sup>	OTHER	
#3	Lu	12	12	15	13	12	12	14	12	12	12	14	12	12	12	12	12	12	12	12
	B	15	12	19	17	15	12	19	18	14	15	12	18	14	15	12	18	14	12	12
#4	Lu	19	15	25	22	15	12	20	18	15	12	18	14	15	12	18	14	12	12	12
	B	25	19	32	28	20	15	26	23	20	15	24	18	20	15	24	18	12	12	12
#5	Lu	28	21	36	32	17	29	26	19	15	25	22	19	15	23	18	15	23	18	12
	B	36	28	47	41	29	23	38	34	19	32	28	25	19	29	23	25	19	23	12
#6	Lu	37	29	49	43	31	24	40	35	26	20	34	30	23	18	30	26	23	18	27
	B	49	37	63	56	40	31	52	46	34	26	44	39	29	23	38	34	29	23	35
#7	Lu	60	46	78	69	50	38	65	57	42	33	55	49	37	29	48	43	33	30	30
	B	78	60	102	90	65	50	84	74	55	42	72	63	48	37	63	55	43	33	39
#8	Lu	74	57	97	86	62	48	81	72	53	41	70	61	47	36	61	54	37	29	45
	B	97	74	126	111	81	62	105	93	69	53	90	80	61	47	83	63	56	45	45
#9	Lu	90	69	118	104	76	58	99	87	65	50	85	75	58	44	75	66	46	36	61
	B	117	90	153	135	98	76	128	113	85	65	111	98	75	58	97	86	60	46	73
#10	Lu	108	83	141	125	92	71	120	106	80	61	104	92	70	54	92	81	57	44	75
	B	141	108	1																

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**EXHIBIT 4**

## **421-a(16) Commencement Date Guidance**

RPTL § 421-a(16)(a)(xxi) defines "Commencement Date" as follows:

(xxi) "Commencement date" shall mean, with respect to any eligible multiple dwelling, the date upon which excavation and construction of initial footings and foundations lawfully begins in good faith or, for an eligible conversion, the date upon which the actual construction of the conversion, alteration or improvement of the pre-existing building or structure lawfully begins in good faith.

In accordance with RPTL § 421-a(16)(a)(xxviii), Eligible Multiple Dwellings must commence construction on or before June 15, 2022 in order to be eligible for benefits pursuant to 421-a(16).

HPD will deem a project to have commenced on or before June 15, 2022, for purposes of RPTL § 421-a(16)(a)(xxviii) if one of the following documents which allows the project to perform required work is issued on or before that date:

1. An NB or an Alt. 1 (or Alt-CO) permit;
2. An FO permit with the same job number as the NB or Alt. 1(Alt-CO); or
3. An FO permit with a different job number as the NB or Alt. 1(Alt-CO) where the application records indicate it was filed "in conjunction" with the NB or Alt. 1(Alt-CO).
4. Any Alteration permit that states it is being issued in conjunction with an NB or Alt. 1 (Alt-CO) provided that: 1) the conjoined NB or Alt. 1(or Alt-CO) has been filed and subsequently approved by DOB; and 2) the alteration work can be demonstrated to HPD as being for the commencement of the excavation and construction of initial footings and foundations of the new multiple dwelling, or, for an eligible conversion, the commencement of the actual construction of the conversion, alteration or improvement of the pre-existing building or structure.



## **Attachment 2 to Exhibit A:**

Rosenberg & Estis, P.C.  
Opinion of Counsel

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## Attachment 2 Abstract:

Summary of relevant provisions highlighted in the Attachment:

- Section 1: "[T]he Project will contain approximately one hundred forty six (146) dwelling units, of which approximately fifteen (15), or **at least ten percent (10%) of the total number of dwelling units in the Project, will be affordable to, and restricted to occupancy by, households earning no more than seventy percent (70%) of Area Median Income ("AMI")** and approximately thirty (30), or **at least twenty percent (20%) of the total number of dwelling units in the Project, will be affordable to, and restricted to occupancy by, households earning no more than one hundred and thirty percent (130%) of AMI** (collectively, the "Affordable Housing Units") . . ." (Emphasis added.)
- Section 2(a)(ii): " Based on the foregoing representations of Developer and the Architect Affidavit, the Project will be an Eligible Multiple Dwelling in that: (i) it will consist of 146 dwelling units created through new construction and to be operated as rental housing; (ii) the Project's Commencement Date was April 29, 2022, which date is after December 31, 2015, and before June 15, 2022; and (iii) the Project's Completion Date will occur on or before June 15, 2026."
- Section 2(b): "[T]he Project will meet the requirements of Affordability Option B by (A) making at least ten percent (10%) of the Project's dwelling units affordable at or below 70% of AMI and (B) making at least twenty percent (20%) of the Project's dwelling units affordable at or below 130% of AMI."
- Section 6: "**[W]e believe that the Project should be eligible for New 421-a benefits, to wit, a Thirty-Five Year Benefit, as provided by the New 421-a Program.**" (Emphasis added.)

**Counsel's 421-a Real Estate  
Tax Benefits Opinion**

August 11, 2023

The Northwestern Mutual Life Insurance Company  
720 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
Attn: Real Estate Dept. - Investment Closing

**Re: Partial Tax Exemption Under RPTL Section 421-a (16)  
1487 First Avenue, New York, New York 10075  
Block 1452, Lot 27 (formerly lots 27-30)**

Dear Sir or Madam:

We have been requested by our client, CP VII 78th Street Owner, LLC, a New York limited liability company (the “**Developer**”), to prepare a letter (this “**Letter**”) with regard to the above-captioned property (the “**Site**”) and the new mixed-used building to be constructed thereon, which building will contain approximately one hundred forty-six (146) Class A residential dwelling units, residential accessory space, parking, and commercial space (collectively, the “**Project**”). This Letter is intended to address the Project’s eligibility to receive partial real estate tax exemption benefits (the “**New 421-a benefits**”, also known as “**Affordable New York Housing Program benefits**”) under the New 421-a Program (as defined herein).

To be eligible for New 421-a benefits, the Project must comply with each of the eligibility requirements set forth in: (i) subdivision 16 of section 421-a of the New York State Real Property Tax Law, set forth by Chapter 20 of the Laws of 2015 and as amended by Chapter 59 of the Laws of 2017 (the “**Statute**”); (ii) Chapters 50 and 51 of Title 28 of the Rules of the City of New York that may be applicable to the Project (the “**Rules**”); and (iii) New York City Administrative Code that may be applicable to the Project (the “**Local Law**”; the foregoing collectively, the “**New 421-a Program**”). The New York City Department of Housing Preservation and Development (“**HPD**”) has issued Rules for the New 421-a Program and may provide further guidance relating thereto. Additionally, HPD has confirmed Local Law is not applicable to projects applying for New 421-a benefits under the Statute, as the amendments contained within Chapter 59 of the Laws of 2017 have removed the authority for there to be Local Laws passed regarding the New 421-a Program.

**1. DESCRIPTION OF THE PROJECT**

Developer has represented to us that the Project will contain approximately one hundred forty six (146) dwelling units, of which approximately fifteen (15), or at least ten percent (10%) of the total number of dwelling units in the Project, will be affordable to, and restricted to

occupancy by, households earning no more than seventy percent (70%) of Area Median Income (“AMI”) and approximately thirty (30), or at least twenty percent (20%) of the total number of dwelling units in the Project, will be affordable to, and restricted to occupancy by, households earning no more than one hundred and thirty percent (130%) of AMI (collectively, the “**Affordable Housing Units**”) and the remaining approximately one hundred one (101) will be market rate units (the “**Market Units**”; the Affordable Housing Units and the Market Units, collectively, the “**Units**”).

We understand that the Units in the Project are intended for Developer to satisfy Affordability Option B (defined herein) of the New 421-a Program.

## **2. DISCUSSION OF ELIGIBILITY REQUIREMENTS**

### **(a) Eligible Site and Rental Project**

The Statute provides that, to qualify for New 421-a benefits, a new multiple dwelling or new multiple dwellings in an “Eligible Site” (defined below) must meet one of seven (7) affordability options (six (6) of which apply to Rental Projects - defined below) by providing a mix of onsite Affordable Housing Units.

**“Rental Project”** is defined by the Statute as “an Eligible Site in which all dwelling units included in any application are operated as rental housing.”

**“Eligible Site”** is defined by the Statute as “either: (A) a tax lot containing an eligible multiple dwelling; or (B) a zoning lot containing two or more eligible multiple dwellings that are part of a single application.”

**“Eligible Multiple Dwelling”** is defined by the Statute as “a multiple dwelling or homeownership project containing six or more dwelling units created through new construction or eligible conversion for which the commencement date is after December thirty-first, two thousand fifteen and on or before June fifteenth, two thousand twenty-two, and for which the completion date is on or before June fifteenth, two thousand twenty-six.<sup>1</sup>”

### **(i) New Multiple Dwelling or Eligible Conversion And Six Unit Minimum**

Section 421-a(16)(a)(xxviii) of the Statute provides New 421-a benefits for new Multiple Dwellings or Eligible Conversions containing not fewer than six dwelling units. The terms “dwelling” and “multiple dwelling” are defined by reference to the NYS Multiple Dwelling Law (“MDL”). Section 4 of the MDL defines “**Dwelling**” as “any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings.” Section 7 of the MDL defines “**Multiple Dwelling**” as “a dwelling which is either rented, leased, let or hired out, to be occupied, or is occupied, as the residence or home of three or more families living

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<sup>1</sup> The Commencement Date and Completion Date requirements are the only construction timing requirements imposed by the Statute.

independently of each other.” Developer has represented to us that the Project will consist of 146 dwelling units to be operated as rental housing.

(ii) Commencement Date and Completion Date

“**Commencement Date**” is defined by the Statute as “with respect to any eligible multiple dwelling, the date upon which excavation and construction of initial footings and foundations lawfully begins in good faith or, for an eligible conversion, the date upon which the actual construction of the conversion, alteration or improvement of the pre-existing building or structure lawfully begins in good faith.”

“**Completion Date**” is defined by the Statute as “with respect to any eligible multiple dwelling, the date upon which the local department of buildings issues the first temporary or permanent certificate of occupancy covering all residential areas of an eligible multiple dwelling.”

According to the attached affidavit (the “**Architect Affidavit**”; Exhibit A) from the Project’s architect (the “**Architect**”), the Commencement Date of the Project was April 29, 2022, and Developer has represented to us that the Completion Date of the Project will occur on or before June 15, 2026.

Based on the foregoing representations of Developer and the Architect Affidavit, the Project will be an Eligible Multiple Dwelling in that: (i) it will consist of 146 dwelling units created through new construction and to be operated as rental housing; (ii) the Project’s Commencement Date was April 29, 2022, which date is after December 31, 2015, and before June 15, 2022; and (iii) the Project’s Completion Date will occur on or before June 15, 2026.

Developer has also represented to us that the Project will be located on a single tax lot that will be included in an application for New 421-a benefits. Accordingly, if correct, the Site will constitute an Eligible Site under clause (A) of the definition of Eligible Site above, and the Project will constitute a Rental Project.

(b) Affordability Requirements and Affordability Option B

Affordability Option B is defined by Section 421-a(16)(a)(iii) of the Statute as follows:

“**Affordability option B**” shall mean that, within any eligible site, (A) not less than ten percent of the dwelling units are affordable housing seventy percent units, and (B) not less than an additional twenty percent of the dwelling units are affordable housing one hundred thirty percent units.

Developer has represented to us that the Project will meet the requirements of Affordability Option B by (A) making at least ten percent (10%) of the Project’s dwelling units affordable at or below 70% of AMI and (B) making at least twenty percent (20%) of the Project’s dwelling units affordable at or below 130% of AMI.

(c) Workbook

**“Workbook”** means the Affordable Housing New York - 421-a(16) - Units Workbook available on the Agency’s [HPD’s] website that is submitted by the applicant to the Agency and which must provide the requested information about all of the Affordable Housing Units and the Market Units, including, but not limited to, (i) the affordability option elected pursuant to the Act, (ii) the unit mix proposed to satisfy subparagraph (ii) of paragraph (g) of the Act<sup>2</sup> or, in accordance with such subparagraph, the claimed exemption from such unit mix requirements, and (iii) the unit distribution proposed to satisfy subparagraph (i) of paragraph (g) of the Act and Section 51-03 of this chapter<sup>3</sup>.

The Rules provide that for Rental Projects containing twenty (20) to ninety-nine (99) Affordable Housing Units (such as the Project), the Workbook must be filed with HPD no earlier than twelve (12) months before the Completion Date and no later than two (2) months after the Completion Date (the **“Workbook Filing Window”**).

Developer has represented to us that a complete Workbook satisfying the construction, affordability, rent, and income restriction requirements applicable under Affordability Option B will be filed with HPD for approval within the Workbook Filing Window.

(d) Affordable Housing Unit Rents and Utility Allowances

The Rules provide that (i) the rents for Affordable Housing Units in an Eligible Multiple Dwelling cannot exceed the rent for any Market Unit of comparable bedroom size (i.e., by bedroom type) in the same Eligible Site and (ii) that no deduction of the Utility Allowance from the rent shall be authorized for any Affordable Housing Unit in an Eligible Site unless the Utility Allowance shall be deducted from all of the Affordable Housing Units in such Eligible Site.

**“Utility Allowance”** means an allowance established by HPD for the payment of utilities where the tenant of an Affordable Housing Unit is required to pay all or a portion of the utility costs with respect to such unit in addition to any payments of rent.

Developer has represented to us that the rents and Utility Allowances for the Project’s Affordable Housing Units will comply with the foregoing requirements.

(e) Not Used as a Hotel

Section 421-a(16)(b) of the Statute and Section 51-05 of the Rules make any building or portion thereof used as a hotel ineligible for New 421-a benefits. **“Hotel”** is defined in Section 51-01 of the Rules as:

- (i) any Class B multiple dwelling, as such term is defined in the Multiple Dwelling Law,
- (ii) any structure or part thereof containing living or sleeping accommodations which is used or intended to be used for transient occupancy, (iii) any apartment hotel or transient

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<sup>2</sup> See Section 2.(g) of this Letter below.

<sup>3</sup> See Section 2.(h)-(i) of this Letter below.

hotel as defined in the Zoning Resolution, or (iv) any structure or part thereof which is used to provide short term rentals or owned or leased by an entity engaged in the business of providing short term rentals. For purposes of this definition, a lease, sublease, license or any other form of rental agreement for a period of less than one year shall be deemed to be a short term rental. Notwithstanding the foregoing, Market Units owned or leased by a not-for-profit corporation for the purpose of providing governmentally funded emergency housing shall not be considered a hotel for purposes of this chapter.

Developer has represented to us that no portion of the Project will be used as a Hotel or on a temporary, transient or short-term basis.

(f) Replacement Ratio

Section 421-a(16)(i) of the Statute provides that, if there were any dwelling units on the Site at any time within the three years prior to the Commencement Date, then the Eligible Multiple Dwelling(s) in the Project must contain at least one Affordable Housing Unit for each dwelling unit that was subsequently demolished, removed or reconfigured. Developer has represented to us, and New York City Department of Finance records (Exhibit B) indicate, that within the three years prior to the Commencement Date, the Site contained thirty-two (32) dwelling units that were subsequently demolished. Developer has also represented to us that the Project will contain in aggregate forty-five (45) Affordable Housing Units, which is greater than the 32 Affordable Housing Units that the Project must contain to satisfy the above-described replacement ratio.

(g) Unit Mix Requirement for Affordable Housing Units

Section 421-a(16)(g)(ii) of the Statute requires that either (x) the Affordable Housing Units have a unit mix “proportional” to the Market Units (the “**Proportionality Test**”) or (y) at least fifty percent (50%) of the Affordable Housing Units contain at least two bedrooms and no more than twenty-five percent (25%) of the Affordable Housing Units can be studios (the “**Two-bedroom Test**”; the Proportionality Test and the Two Bedroom Test together, the “**Unit Mix Tests**”). HPD has applied the Proportionality Test to mean that the percentage of Market Units and Affordable Housing Units of a particular unit type (i.e., number of bedrooms) can have a plus or minus 1% difference. Developer has represented to us that the unit mix of the Affordable Housing Units and Market Units in the Eligible Site will satisfy the Two-bedroom Test.

(h) Unit Distribution Requirements for Affordable Housing Units

Section 421-a(16)(g)(i) of the Statute prohibits isolating the Affordable Housing Units in an Eligible Multiple Dwelling to a specific floor or area, which, pursuant to Section 51-03 of the Rules, means that: (A) where a story contains one or more Affordable Housing Units, not less than thirty percent (30%) of the dwelling units on that story shall be Market Units (the “**Horizontal Distribution Requirement**”), provided that HPD may waive such a requirement where either (1) the Affordable Housing Units comprise more than fifty percent (50%) of the units in an Eligible Multiple Dwelling, or (2) there is only one dwelling unit on a story in an Eligible Multiple Dwelling; and (B) every Building Segment<sup>4</sup> in an Eligible Multiple Dwelling in a Rental Project

<sup>4</sup> “Building Segment” has the meaning set forth in Section 12-10 of the Zoning Resolution.

must contain one or more Affordable Housing Units and the same or similar proportion of Affordable Housing Units to Market Units in each Building Segment in such Rental Project (the “**Building Segment Requirement**”; the Horizontal Distribution Requirement and the Building Segment Requirement together, the “**Unit Distribution Requirements**”). HPD has indicated to us via email that dwelling units on more than one floor (e.g., duplex units) will count as a fraction of a unit on each floor -- a duplex unit counting as 0.5 units on each floor as applicable. HPD has also taken the position that floors in separate towers each count as a “story” for purposes of the Horizontal Distribution Requirement. For purposes of this Letter, we assume the foregoing policies to be binding on HPD. Developer has represented to us that the Project will comply with the Unit Distribution Requirements, in that (A) each story in the Project that will contain an Affordable Housing Unit will be comprised of not less than 30% Market Units and (B) the Project will not contain Building Segments.

(i) Common Entrances and Common Areas

Section 421-a(16)(g)(i) of the Statute also provides that all rental units in an Eligible Multiple Dwelling “shall share the same common entrances and common areas as market rate dwelling units in such eligible multiple dwelling.” “**Common Area**” is defined in Section 51-01 of the Rules as “any space within an Eligible Multiple Dwelling to which the residents of two or more rental units have access without paying a usage fee and that is not located in a rental dwelling unit, in a Commercial Space [defined below] or in a Service Area [defined below].” In addition, Section 51-03 (c) of the Rules provides that “All Common Areas in an Eligible Multiple Dwelling in a Rental Project shall be open and accessible to the residents of all of the rental dwelling units in such Eligible Multiple Dwelling, including the residents of any Affordable Housing Units”. These requirements are referred to as the “**Common Entrances and Common Areas Requirement**”.

“**Commercial Space**” is defined in Section 51-01 of the Rules as “any space within an Eligible Multiple Dwelling that is devoted to commercial, community facility, or other non-residential use.”

“**Service Area**” is defined in Section 51-01 of the Rules as “any space within an Eligible Multiple Dwelling that is utilized by the owner or manager of such Eligible Multiple Dwelling and their respective employees for purposes of building administration and to which resident tenants do not normally have access.”

Developer has represented to us that the Eligible Multiple Dwelling will comply with the Common Entrances and Common Areas Requirement with respect to the rental dwelling units it contains.

(j) Building Configuration Requirement and Residential Condominium Units

Section 51-03 of the Rules also provides that (i) HPD may disapprove any Building configuration that would frustrate the intent and purpose of the Common Entrances and Common Areas Requirement and the Unit Distribution Requirements by segregating Affordable Housing Units or limiting the ability of residents of Affordable Housing Units to access an Eligible Multiple Dwelling’s Common Areas (the “**Building Configuration Requirement**”). For the purposes of

the Common Entrances and Common Areas Requirement and the Unit Distribution Requirements, a Building comprised of two or more Residential Condominium Units constitutes one Eligible Multiple Dwelling. Developer has represented to us that the Project will comply with the Building Configuration Requirement, in that the Affordable Housing Units will not be segregated from the Market Units and the ability of residents of Affordable Housing Units to access the Project's Common Areas will not be limited.

(k) Affordability Compliance for Restriction Period

For Projects complying with Affordability Option B, Affordable Housing Units must be in compliance with the affordability requirements for the "**Restriction Period**" which is defined in Section 421-a(16)(a)(l) of the Statute as the thirty-five (35) year period beginning on the Completion Date. Section 51-02(d)(1) of the Rules requires that the fee owner and any ground lessee of the Eligible Multiple Dwelling must execute and have recorded against the real property containing the Eligible Multiple Dwelling a restrictive declaration in a form satisfactory to HPD, which identifies the Affordable Housing Units in the Eligible Multiple Dwelling and which provides that the applicant(s) will comply with all affordability requirements during the Restriction Period (the "**421-a Restrictive Declaration**"). Developer has represented to us that it (i) will enter into the 421-a Restrictive Declaration, (ii) that the 421-a Restrictive Declaration will be recorded against the Site, and (iii) that it will comply with the affordability and other requirements of the 421-a Restrictive Declaration during the Restriction Period.

The Rules require the applicant to enter into a Monitoring Contract with a Marketing Monitor approved by HPD.

"**Monitoring Contract**" is defined by Section 51-01 of the Rules as:

a contract between the applicant and the Marketing Monitor that is approved in form and substance by the Agency and that: (i) requires the fee owner to provide monthly rent rolls for all Affordable Housing Units to the Marketing Monitor and to notify the Marketing Monitor no more than seven business days after an Affordable Housing Unit becomes vacant; (ii) requires the Marketing Monitor to ensure that any Affordable Housing Unit which becomes vacant during the Restriction Period or Extended Restriction Period, as applicable, (a) is not held off the market for a period that is longer than is reasonably necessary to perform needed repairs, (b) is promptly marketed pursuant to such requirements as are established by the Agency, (c) is rented to a household that meets the applicable income and occupancy requirements for such Affordable Housing Unit and that has been approved by the Agency prior to execution of a lease, (d) is not offered to or rented by a corporation, partnership or other entity, and (e) is offered for occupancy pursuant to a rent stabilized lease for a term of one or two years, at the option of the tenant; and (iii) requires the Marketing Monitor to submit quarterly rent rolls for all Affordable Housing Units in the Eligible Multiple Dwelling to the Agency.

"**Marketing Monitor**" is defined by Section 51-01 of the Rules as:

an organization approved by the Agency and retained by the applicant for Affordable New York Housing Program Benefits to monitor compliance with the requirements, established

by the Act and this chapter, relating to the leasing, subleasing, and occupancy of Affordable Housing Units, including, but not limited to, ensuring that each Affordable Housing Unit is leased at a rent not exceeding the Permitted Rent and is occupied by a household approved by the Agency whose income at the time of initial occupancy of such Affordable Housing Unit is not more than the maximum percentage of the Area Median Income specified for such Affordable Housing Unit pursuant to the Act. Such Marketing Monitor may be an in-house department of the applicant, a subsidiary or affiliate of the applicant, or a third-party marketing, leasing, managing, or monitoring administering agent.

The Rules also require that a Notice of Intent to begin marketing the Affordable Housing Units (the “**Notice of Intent**”) through Housing Connect (HPD’s online lottery system for the marketing of Affordable Housing Units) must be filed with HPD and, after such filing, no changes to any information provided in the HPD-approved Workbook may be authorized.

Developer has represented to us that it will comply with the requirements pertaining to the Monitoring Contract and the Notice of Intent.

(l)      Rent Regulation Requirements

Section 421-a(16)(g)(iii) of the Statute requires that all Affordable Housing Units be registered as rent stabilized with the New York State Division of Homes and Community Renewal and: (1) remain affordable at their designated AMI level under Affordability Option B (i.e., at or below the respective AMI levels) for the Restriction Period; and (2) be subject to Rent Stabilization (as defined below) such that tenants holding a lease and in occupancy at the expiration of the Restriction Period shall continue to be protected by Rent Stabilization for the duration of their occupancy.

“**Rent Stabilization**” is defined in the Statute to mean:

collectively, the rent stabilization law of nineteen hundred sixty-nine, the rent stabilization code, and the emergency tenant protection act of nineteen seventy-four, all as in effect as of the effective date of the chapter of the laws of two thousand fifteen that added this subdivision or as amended thereafter, together with any successor statutes or regulations addressing substantially the same subject matter.

Section 421-a(16)(g)(viii) and (ix) of the Statute provide that all Affordable Housing Units cannot be rented on a temporary, transient or short-term basis and that initial and renewal leases for Affordable Housing Units must be for a term of one (1) or two (2) years, at the tenant’s option, and cannot be converted to cooperative or condominium ownership.

Section 421-a(16)(g)(vii) of the Statute provides that Affordable Housing Units cannot be rented to a corporation, partnership or other entity, or be unreasonably held off the market.

Section 421-a(16)(g)(xi) of the Statute provides, with respect to Market Units, that:

Notwithstanding any provision of this subdivision to the contrary, a market unit shall be subject to rent stabilization unless, in the absence of Affordable New York Housing

Program benefits, the owner would be entitled to remove such market unit from rent stabilization upon vacancy by reason of the monthly rent exceeding any limit established thereunder.

Developer has represented to us that it will comply with all of the above-described Rent Regulation Requirements.

(m) Limitation on Other Real Estate Tax Benefits

Section 421-a(16)(j) of the Statute provides that a multiple dwelling receiving New 421-a benefits shall not concurrently receive any exemption or abatement from real estate taxes under any other law. Developer has represented to us that it will comply with this requirement and that the Project will not receive exemption or abatement from real estate taxes under any other law.

(n) Prevailing Wage Requirement

Section 421-a(16)(h) of the Statute provides that any “Building Service Employee” (defined below) regularly employed, either directly by the applicant or its successors, or through a property management company or a contractor, at an Eligible Multiple Dwelling containing thirty (30) or more dwelling units be paid the appropriate wage (including fringe benefits) as determined by the NYC Comptroller during the Restriction Period.

The Statute defines “**Building Service Employee**” as any person who is regularly employed at, and performs work in connection with the care or maintenance of, an Eligible Site, including, but not limited to, a watchman, guard, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, elevator operator and starter, and window cleaner, but not including persons regularly scheduled to work fewer than eight hours per week at the Eligible Site.

Developer has represented to us that the Project will contain approximately 146 dwelling units and that the above-described Prevailing Wage Requirement will be met for Building Service Employees during the Restriction Period.

3. NEW 421-A APPLICATION PROCEDURE

Section 421-a(16)(o) of the Statute requires that applications for New 421-a benefits must be filed with HPD not later than one (1) year after the Completion Date of an Eligible Multiple Dwelling, and Section 421-a(16)(p) of the Statute imposes a non-refundable filing fee of \$3,000 per dwelling unit included in the application for New 421-a benefits.

Section 51-02(d) of the Rules provides that an application for New 421-a benefits for a Rental Project must include the following:

(a) Evidence that a 421-a Restrictive Declaration has been executed and recorded with the City Register by the fee owner and, if applicable, ground lessee of the building; the declaration must identify each affordable unit and its AMI level by bedroom type.

- (b) Satisfactory evidence that the Workbook was filed within the Workbook Filing Window.
- (c) Evidence that the Notice of Intent to market the Affordable Housing Units was filed with HPD.
- (d) Proof that prior to the Completion Date, HPD determined that the Eligible Multiple Dwellings in the Eligible Site will meet one of the Unit Mix Tests, as well as the Common Entrances and Common Areas Requirement, the Unit Distribution Requirements, and the Building Configuration Requirement.
- (e) An executed Monitoring Contract with an HPD approved Marketing Monitor for the Affordable Housing Units.
- (f) An affidavit from the project architect or engineer, licensed to practice and in good standing in the State of New York, which calculates the AFA (defined herein) of Ineligible Space (defined herein) in the Eligible Multiple Dwellings in the Eligible Site.

Developer has represented to us that it will comply with each of the above-listed application requirements and the application filing deadline.

#### 4. DURATION OF NEW 421-A BENEFITS

Section 421-a(16)(b) of the Statute relating to New 421-a benefits provides that a “Thirty-Five Year Benefit” is available for Rental Projects that meet all of the requirements of the Statute.

“**Thirty-Five Year Benefit**” is defined in Section 421-a(16)(a)(liii) of the Statute as:

(A) for the construction period, a one hundred percent exemption from real property taxation, other than assessments for local improvements; (B) for the first twenty-five years of the restriction period, a one hundred percent exemption from real property taxation, other than assessments for local improvements; and (C) for the final ten years of the restriction period, an exemption from real property taxation, other than assessments for local improvements, equal to the affordability percentage.

“**Construction Period**” is defined in Section 421-a(16)(a)(xxiii) as:

with respect to any eligible multiple dwelling, a period: (A) beginning on the later of the commencement date of such eligible multiple dwelling or three years before the completion date of such eligible multiple dwelling; and (B) ending on the day preceding the completion date of such eligible multiple dwelling.

Section 421-a(16)(d) of the Statute provides that, in addition to any other amounts payable, the owner of any Eligible Site receiving Affordable New York Housing Program benefits shall pay, in each tax year in which such benefits are in effect, real property taxes and assessments as follows: (i) with respect to each Eligible Multiple Dwelling constructed on an Eligible Site, real

property taxes on the assessed valuation of such land and any improvements thereon in effect during the tax year prior to the Commencement Date of such Eligible Multiple Dwelling, without regard to any exemption from or abatement of real property taxation in effect during such tax year, which real property taxes shall be calculated using the tax rate in effect at the time such taxes are due; and (ii) all assessments for local improvements.

The post-completion schedule for the Thirty-Five Year Benefit for the Project if complying with Affordability Option B is expected to be as follows:

Benefit Years	Percent of Exemption of Increases in Assessed Value (AV) Above the Prior AV
1-25	100% Exemption
26 - 35	Exemption Equal to Affordability % ( $45/146 = 30.82\%$ )
36 and subsequent years	0%

Once approved by HPD and implemented by DOF, Affordable New York Housing Program benefits run with the land. No HPD approval is required in order for a property receiving Affordable New York Housing Program benefits to be conveyed to another owner, though such new owner would have to comply with all program requirements, including entering into a Monitoring Contract with the HPD-approved Marketing Monitor.

5. REDUCTION OF BENEFIT FOR EXCESS COMMERCIAL, COMMUNITY FACILITY OR ACCESSORY USE SPACE

Section 421-a(16)(e) of the Statute provides for the tax exemption benefit granted by the Statute to be reduced if the floor area of the Eligible Site's commercial, community facility and accessory use space (the "**Ineligible Space**") exceeds twelve percent (12%) of the aggregate floor area ("AFA"). Developer has represented to us that the Ineligible Space in the as-built Project will be determined in accordance with the Statute and Rules. In addition, the attached draft AFA report prepared by the Architect dated August 7, 2023 (Exhibit C) indicates that the Project's Ineligible Space will comprise approximately 10.11% of the AFA.

6. LENDER'S RIGHTS IN EVENT OF DEVELOPER'S NONCOMPLIANCE WITH NEW 421-A PROGRAM

At your request and for informational purposes only, Schedule A attached hereto summarizes the procedures by which HPD may revoke New 421-a benefits and the notice and cure provisions applicable to a "Taxpayer" receiving such benefits. Taxpayer is defined in Section 39-01 of the Rules of the City of New York as:

(i) the individual or entity located at the address to which DOF sends tax bills for the applicable Property, (ii) any current holder of fee title to such Property whose interest is clearly recorded in the office of the City Register in the applicable borough, and (iii) *any current mortgagee of such Property whose mortgage interest in such Property is clearly recorded in the office of the City Register in the applicable borough* [emphasis added].

7. COUNSEL'S OPINION

Based solely upon the representations by Developer noted herein, the Architect Affidavit, and the Exhibits attached hereto, and subject to the assumptions and limitations stated herein, as well as in the attached documentation, we believe that the Project should be eligible for New 421-a benefits, to wit, a Thirty-Five Year Benefit, as provided by the New 421-a Program. We have not independently verified any of Developer's or the architect's representations noted herein or the representations or certifications referenced herein or in the attached Exhibits. The Project must satisfy all eligibility requirements under the New 421-a Program in order to be eligible for New 421-a benefits and, thus, we cannot be certain regarding eligibility until all documentation required to apply for a New 421-a Certificate of Eligibility has been provided to us and reviewed. This Letter relates only to the above-captioned Project and the specific facts, circumstances, and representations which Developer has provided to us in connection therewith.

8. LIMITATIONS

Nothing herein should be construed as a guaranty that the Project will qualify for New 421-a benefits, to wit, Thirty-Five Year Benefits pursuant to the New 421-a Program. No warranties are made that the laws, regulations and agency interpretations upon which this Letter is based will not be changed. In no event will we be liable to any party if the Project fails to qualify for such New 421-a benefits for any reason including, but not limited to, changes to the Statute, the Rules, Local Laws applicable to the Project, decisional law or New York State or City agency interpretations thereunder or HPD review of the Workbook or the application for New 421-a benefits as submitted. This Letter is intended for use by the addressee and its respective successors and assigns and may not be relied on by any other person or entity without our prior written consent.

Very truly yours,

ROSENBERG & ESTIS, P.C.

By:

## **Attachment 3 to Exhibit A:**

Excerpts from Building Loan Mortgage and Security  
Agreement

CONFIDENTIAL

The relevant 421-a Program-related provisions of the Building Loan Mortgage and Security Agreement are reproduced below:

- **Mortgagor Covenants related to Substantial Completion of the Improvements, Satisfaction of the 421a Requirement, and Project Final Completion** (pages 12-13 of Agreement):

**“Mortgagor covenants and agrees to cause: (i) Substantial Completion of the Improvements on or before the Substantial Completion of Improvements Deadline, and (ii) the satisfaction of the 421a Requirement on or before the date that is three (3) months from the Maturity Date (the “421a Requirement Deadline”). Mortgagor and Mortgagee further covenant and agree that Project Completion shall not be deemed to have occurred until such time as Substantial Completion of the Improvements has Occurred and the 421a Requirement has been satisfied.**

**Mortgagor further covenants and agrees that, if, upon the date that is the earlier of (each, a “Paydown Trigger”): (1) (a) the 421a Requirement Deadline or (b) the issuance of a final non-appealable determination that the Property does not qualify for 421a Exemption for any reason, or (2) if at any time during the term of the Loan from and after the implementation of the 421a Exemption, the 421a Exemption is suspended or revoked and not reinstated with the time permitted under applicable law, then Mortgagee may require Mortgagor to make a prepayment in respect of the principal balances of the Building Loan and the Project Loan in an aggregate amount (the “Paydown Amount”) determined by Mortgagee, in good faith . . . . Mortgagor shall, within ten (10) Business Days (as defined in the Note) after receipt of Mortgagee’s written notice, (x) make prepayments of the outstanding principal balances of the Building Loan and the Project in an aggregate amount of the Paydown Amount (provided that no prepayment fee or penalty, including, without limitation, the Prepayment Fee (as defined in the Note) shall be payable by Mortgagor in connection with any such prepayment), which prepayment shall be applied proportionately to the outstanding principal balances of the Building loan and the Project Loan, (y) post with Mortgagee cash collateral in the amount of the Paydown Amount with Mortgagee being unilaterally permitted to apply such cash collateral a mount to the outstanding Indebtedness upon the occurrence and during the continuance of an Event of Default or (z) deliver to Mortgagee a letter of credit in the amount of the Paydown Amount, with Mortgagee being unilaterally permitted to draw on the Letter of Credit and apply the proceeds thereof against the outstanding Indebtedness upon the occurrence and during the continuance of an Event of Default (subparagraphs (x) through (z) shall hereinafter be collectively referred to as the “421a Exemption Mortgagor Paydown Protections). . . .” (Emphasis added.)**

Summary of relevant definitions:

- “**421a Exemption**” (page 4 of Agreement) means “a 100% real estate tax exemption for a 25-year period for the increase in assessed valuation resulting from the construction of the Improvements under Section 421-a of the Real Property Tax Law of New York.”
- “**421a Requirement**” (page 4 of Agreement) means “that Mortgagee has confirmed that either: (a) Mortgagee has received customary evidence, reasonably acceptable to Mortgagee, that the Property has satisfied all requirements for the 421a Exemption, including, but not limited to, the issuance of a Certificate of Eligibility in respect of the 421a Exemption (the “421a Exemption Certificate of Eligibility”) by HPD, or (b) Mortgagee has satisfied any of the 421a Exemption Mortgagor Paydown Protections.”
- “**Project Final Completion**” (pages 9-10 of Agreement) means “(i) the lien-free (other than the Permitted Encumbrances) completion of the Residential Improvements . . . , and (ii) the receipt by Mortgagee of a temporary certificate of occupancy necessary for occupancy of all of the Residential Improvements and a temporary core and shell certificate of occupancy (or its equivalent) for the Retail Improvements (but for the completion of tenant improvements), an as-built survey, and a final set of drawings showing actual changes made during construction.”
- “**Project Substantial Completion**” (page 10 of Agreement) means “(i) the lien-free (other than the Permitted Encumbrances) substantial completion of the Residential Improvements . . . , (ii) the receipt by Mortgagee of a temporary certificate of occupancy necessary for occupancy of all the Residential Improvements and a temporary core and shell certificate of occupancy (or its equivalent) for the Retail Improvement (but for the completion of tenant improvements). . . (collectively satisfaction of the requirements set forth in subparagraphs (i) and (ii) shall mean ‘Substantial Completion of the Improvements’), and (iii) **achievement of the 421a Requirement.**” (Emphasis added.)
- “**Residential Improvements**” (page 11 of Agreement) means “collectively: (A) **146 total residential units, consisting of (i) 101 market rate residential units, and (ii) 45 below-market rate residential units, consisting of 15 below-market rate residential units at 70% of [Area Median Income, ‘AMI’] and 30 below-market rate residential units at 130% of AMI,** (B) approximately 8,300 square feet of interior and exterior amenity space . . . , and (c) landscaping, paved walkways, driveways and 40 vehicular parking spaces.” (Emphasis added.)
- “**Substantial Completion of Improvements Deadline**” (page 11 of Agreement)s means “June 15, 2026; provided, however, that the Substantial Completion of Improvements Deadline shall be extended on a day-for-day basis in connection with any extension by HPD of the completion deadline for the 421 Exemption, up to a total of one hundred eighty (180) days.”

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

**Site Name:** 1487 1st Avenue Redevelopment Site

**Site Number:** C231152

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

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

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

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

3- For sites statewide, where applicable:

- In accordance with ECL § 27-1407(1-a), based on data submitted with the application the Department has determined the Site is not eligible for tangible property tax credits because the contamination in ground water and/or soil vapor is solely emanating from property other than the Site.
- The remedial investigation or other data generated during the remedial program the Department has identified an on-site source of contamination, which now makes this site eligible for tangible property tax credits.
- The Department has determined that the Site or a portion of the Site has previously been remediated pursuant to Article 27, Title 9, 13 or 14] of the ECL, Article 12 of the Navigation Law or Article 56, Title 5 of the ECL. Therefore, in accordance with ECL § 27-1407(1-a), the Site is not eligible for tangible property tax credits.

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

By:



11-21-2023

Janet Brown, Assistant Director  
Division of Environmental Remediation

Date