



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

SUBMITTAL INSTRUCTIONS:

1. Compile the application package in the following manner:
 - a. one file in non-fillable PDF of the application form plus supplemental information, excluding any previous environmental reports and work plans, if applicable
 - b. if the application requires submittal of previous environmental reports to support the addition of new property, an affordable housing agreement to support the determination for tangible property credits in New York City, or other large files, please include each as a separate PDF.
2. Compress all files (PDFs) into one zipped/compressed folder
3. Submit the application to the Site Control Section either via email or ground mail, as described below.

Please select only ONE submittal method – do NOT submit both email and ground mail.

a. VIA EMAIL:

- Upload the compressed folder to the NYSDEC File Transfer Service (<http://fts.dec.state.ny.us/fts>) or another file-sharing service.
- Copy the download link into the body of an email with any other pertinent information or cover letter attached to the email.
- Subject line of the email: “*Amendment Application NEW - *Site Name* - *Site Code**”
- Email your submission to DESiteControl@dec.ny.gov – **do NOT copy Site Control staff.**

b. VIA GROUND MAIL:

- Save the application file(s) and cover letter to an external storage device (e.g., thumb drive, flash drive). Do NOT include paper copies of the application or attachments.
- Mail the external storage device to the following address:
Chief, Site Control Section
Division of Environmental Remediation
625 Broadway, 11th Floor
Albany, NY 12233-7020

SITE NAME:	Willels Point Development Phase 1 Housing Building 1 and 2
SITE CODE:	C241146



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 checked="" type="checkbox"/>	Amendment to reflect a transfer of title to all or part of the brownfield site:
	<p>a. A copy of the recorded deed must be provided. Is this attached? Yes <input checked="" type="radio"/> No <input type="radio"/> See Attachment C for lease documents</p> <p>b. <input type="checkbox"/> Change in ownership <input checked="" type="checkbox"/> Additional owner (such as a beneficial owner)</p> <p>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 checked="" type="radio"/> No <input type="radio"/> Submitted on: _____</p>
<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:

Please see Attachment A for the BCA Amendment Application narrative.

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

BCP SITE NAME: Willets Point Development Phase 1 Housing Building 1 and 2	BCP SITE CODE: C241146
NAME OF CURRENT APPLICANT(S): Queens Development Group, LLC, et al. (see continuation sheet)	
INDEX NUMBER OF AGREEMENT: C241146-10-13	DATE OF ORIGINAL AGREEMENT: 12/16/2013

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:		
		Y	N
1. Is the requestor authorized to conduct business in New York State?		<input type="radio"/>	<input 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 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 type="radio"/>
4. If the requestor is an LLC, the names of the members/owners must be provided. Is this information attached?		N/A <input type="radio"/>	<input type="radio"/>
5. Describe the new requestor's relationship to all existing applicants:			

Continuation Sheet

Referenced in Part I, Section I of the Current Agreement Information and Part II of the Existing Agreement Information

1. Queens Development Group, LLC
2. QDG Hotel Partners, LLC
3. QDG 126th Street Partners, LLC
4. QDG Parking Partners, LLC
5. QDG Retail Partners, LLC
6. Willets Point Phase I Owner, LLC
7. Willets Point Phase I LIHTC Owner, L.P.

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: Willets Point Phase I Owner, LLC (Beneficial Tenant) CONTACT: Aaron Lipman

ADDRESS: 30 HUDSON YARDS, 72ND FLOOR

CITY/TOWN: New York, New York

ZIP CODE: 10001

PHONE: (212) 801-1185

EMAIL: alipman@related.com

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.

	Y	N
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 or 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"/>

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: Willets Point Phase I Housing Development Fund Corporation (Legal Tenant)

CONTACT: Jacqueline Tom

ADDRESS: 247 West 37th Street, 4th Floor

CITY/TOWN: New York, NY

ZIP CODE: 10018

PHONE: 929-992-1607

EMAIL: JTom@shfinc.org

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.

	Y	N
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 or 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"/>

SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION (continued)		Y	N
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"/>
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:			
<input type="checkbox"/> PARTICIPANT A requestor who either (1) was the owner of the site at the time of the disposal of contamination or (2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of contamination.		<input type="checkbox"/> VOLUNTEER A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the 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. 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.	
13. If the requestor is a volunteer, is a statement describing why the requestor should be considered a volunteer attached?		N/A <input type="radio"/>	Y <input type="radio"/> N <input type="radio"/>
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?		N/A <input type="radio"/>	Y <input type="radio"/> N <input type="radio"/>

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

ACREAGE

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?

Y

☐

N

☐

**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.

	Y	N
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>From ECL 27-1405(31):</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 and affordable housing project as defined below?	<input checked="" type="radio"/>	<input type="radio"/>
<p>From 6 NYCRR 375-3.2(a) as of August 12, 2016:</p> <p>(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty-seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.</p> <p>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' 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
<p>6. Is the project a planned renewable energy facility site as defined below?</p> <p>From ECL 27-1405(33) as of April 9, 2022:</p> <p>"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.</p> <p>From Public Service Law Article 4 Section 66-p as of April 23, 2021:</p> <p>(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.</p>	<input type="radio"/>	<input checked="" type="radio"/>
<p>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?</p> <p>From ECL 75-0111 as of April 9, 2022:</p> <p>(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.</p>	<input type="radio"/>	<input checked="" type="radio"/>

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

BCP SITE NAME: Willets Point Development Phase 1 Housing Building 1 and 2

BCP SITE CODE: C241146

NAME OF CURRENT APPLICANT(S): Queens Development Group, LLC, et al. (see continuation sheet)

INDEX NUMBER OF AGREEMENT: C241146-10-13

DATE OF ORIGINAL AGREEMENT 12/16/2013

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: _____

Continuation Sheet

Referenced in Part I, Section I of the Current Agreement Information and Part II of the Existing Agreement Information

1. Queens Development Group, LLC
2. QDG Hotel Partners, LLC
3. QDG 126th Street Partners, LLC
4. QDG Parking Partners, LLC
5. QDG Retail Partners, LLC
6. Willets Point Phase I Owner, LLC
7. Willets Point Phase I LIHTC Owner, L.P.

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 Authorized Signatory (title) of Queens Development Group 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. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: Dec 8, 2023 Signature:  _____Print Name: Glenn Goldstein**PLEASE SEE THE FOLLOWING PAGE FOR SUBMITTAL INSTRUCTIONS****REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

<input type="checkbox"/> PARTICIPANT A requestor who either (1) was the owner of the site at the time of the disposal of contamination or (2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of contamination.	<input checked="" type="checkbox"/> VOLUNTEER A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement: 12/16/2013

Signature by the Department:

DATED: _____

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

Andrew O. Guglielmi, Director
Division of Environmental Remediation

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 Authorized Signatory (title) of Queens Development Group 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. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: Dec 8, 2023 Signature:  _____Print Name: Scott Wilpon**PLEASE SEE THE FOLLOWING PAGE FOR SUBMITTAL INSTRUCTIONS****REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

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

Effective Date of the Original Agreement: 12/16/2013

Signature by the Department:

DATED: _____

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

Andrew O. Guglielmi, Director
Division of Environmental Remediation

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 Authorized Signatory (title) of QDG Hotel Partners, 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. My _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: Dec 8, 2023 Signature:  _____Print Name: Glenn Goldstein**PLEASE SEE THE FOLLOWING PAGE FOR SUBMITTAL INSTRUCTIONS****REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

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

Effective Date of the Original Agreement: 12/16/2013

Signature by the Department:

DATED: _____

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

Andrew O. Guglielmi, Director
Division of Environmental Remediation

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 Authorized Signatory (title) of QDG Hotel Partners 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. My _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: Dec 8, 2023 Signature:  _____Print Name: Scott Wilpon**PLEASE SEE THE FOLLOWING PAGE FOR SUBMITTAL INSTRUCTIONS****REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

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Effective Date of the Original Agreement: 12/16/2013

Signature by the Department:

DATED: _____

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

Andrew O. Guglielmi, Director
Division of Environmental Remediation

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: _____

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I hereby affirm that I am Authorized Signatory (title) of QDG Parking Partners, 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. My _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: Dec 8, 2023 Signature:  _____Print Name: Glenn Goldstein**PLEASE SEE THE FOLLOWING PAGE FOR SUBMITTAL INSTRUCTIONS****REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

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ENVIRONMENTAL CONSERVATION

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Andrew O. Guglielmi, Director
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I hereby affirm that I am Authorized Signatory (title) of Willels Point Phase I 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. My _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

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☒ VOLUNTEER

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Date: _____ Signature: _____

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I hereby affirm that I am Authorized Signatory (title) of Willels Point Phase I LIHTC Owner, L.P. (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. My _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

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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 of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.

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

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.

Attachment A

Part I, Item 2 - Narrative

The purpose of this BCA Amendment Application is to:

1. demonstrate that this Site, located in Queens County, is eligible for tangible property credits as an affordable housing project; and
2. modify the BCA to reflect Willets Point Phase I Housing Development Fund Corporation (“Legal Tenant”) and existing Volunteer Willets Point Phase I Owner, LLC (“Beneficial Tenant”) as current owners due to their long-term leasehold interests in the Site.

Concerning the first item above, appended as Attachment B, please find a copy of the fully executed Affordable Housing Regulatory Agreement between Willets Point Phase I Housing Development Fund Corporation, Willets Point Phase I Owner, LLC, and Willets Point Phase I LIHTC Owner, L.P., New York City Housing Development Corporation, and the City of New York, acting by and through its Department of Housing Preservation and Development. This Regulatory Agreement (i) defines the percentage of affordable housing rental units, to be dedicated to (ii) tenants defined as a percentage of the Area Median Income. *See Attachment B, Exhibit B thereto, page B-2 (defining AMI percentages).*

Concerning the second item above, appended as Attachment C, please find a copy of the following: (i) Memorandum of Lease, between the City of New York and the New York City Land Development Corporation; (ii) Assignment and Assumption of Lease, between the New York City Land Development Corporation, Willets Point Phase I Housing Development Fund Corporation (as nominee for and on behalf of Willets Point Phase I Owner, LLC), and Willets Point Phase I Owner, LLC; and (iii) Declaration of Interest and Nominee Agreement, between Willets Point Phase I Housing Development Fund Corporation Willets Point Phase I Owner, LLC.

Attachment B

Affordable Housing Regulatory Agreement

Affordable Housing Regulatory Agreement

between:

Willets Point Phase I Owner, LLC

Willets Point Phase I LIHTC Owner, L.P.

Willets Point Phase I Housing Development Fund Corporation

and

New York City Housing Development Corporation

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

November 21, 2023

Borough:	Queens	Record and return to:
Block:	1833	New York City Housing Development Corporation
Lots:	120, 130, and 135	120 Broadway, 2 nd Floor New York, NY 10271

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EXHIBIT A	PROPERTY DESCRIPTION
EXHIBIT B	PROJECT DETAILS
EXHIBIT C	FORM OF MEMORANDUM OF REGULATORY AGREEMENT
EXHIBIT D	ENVIRONMENTAL REQUIREMENTS

AFFORDABLE HOUSING REGULATORY AGREEMENT ("Agreement") entered into as of November 21 2023, between:

Willets Point Phase I Owner, LLC, a New York limited liability company having an address at c/o Related Companies, L.P., 30 Hudson Yards, 72nd Floor, New York, New York 10001 ("**Non-LIHTC Owner**");

Willets Point Phase I LIHTC Owner, L.P., a New York limited partnership, having an address at c/o Related Companies, L.P., 30 Hudson Yards, 72nd Floor, New York, New York 10001 ("**LIHTC Owner**", and together with the Non-LIHTC Owner, "**Beneficial Owner**");

Willets Point Phase I Housing Development Fund Corporation, a New York not-for-profit corporation having an address at c/o Settlement Housing Fund, Inc. 247 West 37th Street, 4th Floor, New York, New York 10018 ("**Legal Owner**", and together with the Beneficial Owner, "**Owner**");

New York City Housing Development Corporation, a New York public benefit corporation having its principal office at 120 Broadway, 2nd Floor, New York, NY 10271; and

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

RECITALS

- A. Capitalized terms have the meanings given in Section 1.01.
- B. The Owner intends to own and operate the housing project described in Exhibit B ("**Project**") on the real property identified in Exhibit A ("**Property**"). Exhibit A and Exhibit B are annexed to this Agreement and made a part of this Agreement.
- C. The City of New York (the "**Ground Lessor**") has conveyed leasehold title to the Property to the New York Land Development Corporation pursuant to an agreement of lease dated as of the date of this Agreement ("**Ground Lease**"), which was assigned by New York City Land Development Corporation to the Legal Owner, a record lessee, and Non-LIHTC Owner, as beneficial lessee.
- D. The Non-LIHTC Owner has entered into a Declaration of Interest and Nominee Agreement with the Legal Owner (together with any other nominee agreement with respect to the Property, "**Nominee Agreement**"), pursuant to which the Non-LIHTC Owner is the beneficial and equitable owner of leasehold title to the Property and the Legal Owner retains the nominal record leasehold title to the Property and the Non-LIHTC Owner and Legal Owner entered into a long term master sublease (the "**LIHTC Master Sublease**"), pursuant to which upon certain conditions being satisfied as set forth in the LIHTC Master Sublease, the LIHTC Owner will be the lessee of the LIHTC Condo Units (as such term is defined below). LIHTC Owner's obligations hereunder shall commence upon it receiving possession of the LIHTC Condo Units.

- E. The Non-LIHTC Owner intends to create a leasehold condominium on the Property pursuant to which the Premises will contain two buildings ("**Building 1**" and "**Building 2**") with ten (10) condominium units: (i) a condominium unit in Building 1 containing 211 units to be rented to households with incomes at or below 60% AMI ("**LIHTC 60% Building 1 Condo Unit**"), (ii) a condominium unit in Building 1 containing 67 units to be rented to households with incomes at or below 80% AMI ("**LIHTC 80% Building 1 Condo Unit**" and together with the LIHTC 60% Building 1 Condo Unit, the "**LIHTC Building 1 Condo Units**"), (iii) a condominium unit in Building 2 containing 141 units to be rented to households with incomes at or below 60% AMI ("**LIHTC 60% Building 2 Condo Unit**"), (iv) a condominium unit in Building 2 containing 42 units to be rented to households with incomes at or below 80% AMI ("**LIHTC 80% Building 2 Condo Unit**" and together with the LIHTC 60% Building 2 Condo Unit, the "**LIHTC Building 2 Condo Units**", and together with the LIHTC Building 1 Condo Units, the "**LIHTC Condo Units**"), (v) a condominium unit in Building 1 containing 256 Moderate Income Units, inclusive of one (1) superintendent unit (the "**Building 1 Moderate Income Condo Unit**"), (vi) a condominium unit in Building 2 containing 164 Moderate Income Units, (the "**Building 2 Moderate Income Condo Unit**", and together with the Building 1 Moderate Income Condo Unit, the "**Moderate Income Condo Units**"), (vii) a condominium unit in Building 1 containing approximately 15,800 square feet of commercial retail space (the "**Building 1 Commercial Condo Unit**"), (viii) a condominium unit in Building 2 containing approximately 8,600 square feet of commercial retail space (the "**Building 2 Commercial Condo Unit**", and, together with the Building 1 Commercial Condo Unit, the "**Commercial Condo Units**"), (ix) a condominium unit containing approximately 2,200 square feet of community facility space (the "**CF Condo Unit**"), (x) a condominium unit consisting of a subsurface parking garage comprised of approximately 323 parking spaces located in Building 1 and Building 2 with an entrance through Building 1 (the "**Parking Condo Unit**" and together with the Moderate Income Condo Units, the Commercial Condo Units and the CF Condo Unit, the "**Non-LIHTC Condo Units**"); the LIHTC Condo Units are expected to receive Tax Credits and comprise four LIHTC Buildings in one "project" for purposes of Section 42 of the Tax Code, as provided in Schedule B.
- F. HDC is providing financing to the Owner pursuant to Article 12 of the Private Housing Finance Law ("**HDC Financing**"). HPD has granted funds to HDC pursuant to Section 661 of the Private Housing Finance Law to provide funds for a portion of the HDC Financing (the "**HDC Grant Loan**"). This portion of the HDC Financing must comply with the requirements that would be applicable to financing provided directly by HPD under Article 22 of the Private Housing Finance Law.
- G. The Project has been allocated federal low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code ("**LIHTC**").
- H. The Owner intends to restrict certain Units identified on Exhibit B as Enhanced Permanently Affordable Units to be permanently affordable at the income levels set forth in Exhibit B.
- I. The Agency requires that the Owner and the Project comply with this Agreement as a condition to participation in the Agency's affordable housing program.

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

ARTICLE 1

DEFINITIONS

1.01 Certain Definitions.

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

"Agency" means HPD and HDC individually and not jointly.

"Agreement" has the meaning set forth in the preamble to this Agreement.

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

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

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

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

"City" means The City of New York.

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

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

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

"DHCR" means the State's Division of Housing and Community Renewal, or any successor administering Rent Stabilization.

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

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

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

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

"Ground Lease" has the meaning set forth in the Recitals.

"Ground Lessor" has the meaning set forth in the Recitals.

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

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

"HDC Grant Loan" has the meaning set forth in the Recitals.

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

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

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

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

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

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

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

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

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

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

"Law" means any applicable federal, state, or local law, code, ordinance, regulation, rule, ruling, or requirement in effect, including, but not limited to, executive orders, court orders, and City Council resolutions, regardless of whether it was applicable or in effect on the date of this Agreement or became applicable or effective after such date.

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

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

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

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

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

"Management Agreement" has the meaning set forth in Section 6.07.

"Managing Agent" has the meaning set forth in Section 6.07.

"Marketing Handbook" means the Agency's Marketing Handbook, as amended, or any successor document designated in writing by the Agency.

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

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

"Nominee Agreement" has the meaning set forth in the Recitals.

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

"Operating Reserve" has the meaning set forth in Section 7.02.

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

"Permanent Loan Conversion" means the date of the conversion of the HDC Grant Loan from the construction phase to the permanent phase.

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

"Prohibited Person" means any individual or entity that is or has been subject to, or that has a principal that is or has been subject to, one or more of the following: (a) conviction, civil judgment, pending litigation, or active investigation for harassment, arson, fraud, bribery, grand larceny, any felony or crime of dishonesty, or any material violation of environmental or building safety Laws, (b) suspension or debarment by any government entity, (c) a finding of material tax arrears, tax foreclosure, or enforcement proceedings, or the sale of tax liens, or (d) negative findings by the City's Department of Investigation (or any successor).

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

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

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

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

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

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

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

"Rental Assistance Contract" means any contract providing project-based Rental Assistance to the Project.

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

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

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

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

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

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

"State" means the State of New York.

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

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

"Unit" means a dwelling unit within the Project.

[Continues on next page]

ARTICLE 2

TERM OF RESTRICTIONS

2.01 Restriction Period.

- (a) **Length of Period.** The Owner shall comply, and shall cause the Project to comply, with this Agreement during the period that begins on the date of this Agreement and ends on the latest of the following dates ("**Restriction Period**"):
 - (i) The date identified as the Agency Program Termination Date in Exhibit B.
 - (ii) The date on which (1) the Property and the Project are not subject to any mortgage or lien held by or on behalf of the City or HDC, and (2) the Owner does not owe any indebtedness to the City or HDC with respect to the Project.
 - (iii) Reserved.
 - (iv) The date on which the Extended Use Period ends.
 - (v) The latest of (1) the date that is 15 years after the date on which 50% of the Units are first occupied, (2) the date on which no tax-exempt private activity bond or similar obligation with respect to the Project is outstanding, and (3) the date on which any assistance provided with respect to the Project under Section 8 terminates.
- (b) **Permanent Affordability.** This Agreement restricts all or a portion of the Units in perpetuity as permanently affordable Units (as set forth in Exhibit B, and not including any Units that are covered separately by an Inclusionary Housing regulatory agreement or restrictive declaration unless such Units are also designated as permanently affordable Units under this Agreement). If a court of competent jurisdiction, after the exhaustion of any appeals, orders that a perpetual term of this Agreement is unenforceable, then the Agency Program Termination Date for any Unit that is permanently affordable under this Agreement will mean the date that is 80 years from the date of this Agreement. The foregoing sentence and all provisions in this Agreement referring to the end of the Restriction Period do not apply to any such permanently affordable Units unless a court issues such an order.
- (c) **Project-Wide Requirements.** Except as may be specifically provided in this Agreement, if the Restriction Period ends on different dates for different Units (or does not end, in the case of any Unit that is permanently affordable under this Agreement), any requirement of this Agreement that is not explicitly tied to a specific Unit or class of Units applies until the latest date on which the Restriction Period ends for any Unit (or in perpetuity, if applicable). These requirements include, but are not limited to, those with respect to program compliance, non-

residential uses, project operations, reserves, ownership and financing, and compliance monitoring.

2.02 After the Restriction Period.

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

2.03 Subordination to Financing.

If the holder of a mortgage securing HDC's senior loan to the Project completes a foreclosure of the mortgage, receives an assignment of lease in lieu of foreclosure, or enters into a new ground lease with the Ground Lessor in lieu of foreclosure, the Agency shall terminate this Agreement with respect to all Units except the Enhanced Permanently Affordable Units at the request of the holder of the mortgage if: (a) the HDC Financing is paid in full, and (b) within a reasonable period, the HDC Obligations are retired ("Foreclosure Termination"). HDC shall cause the HDC Obligations to be retired within a reasonable period pursuant to the resolution or indenture governing the HDC Obligations. If the Owner or a related entity or individual obtains an ownership interest in the Project after any such termination of this Agreement, but during the period that would have comprised the Restriction Period, this Agreement will be reinstated in full effect. Notwithstanding anything to the contrary in this Section 2.03, following any Foreclosure Termination, this Agreement shall remain in full force and effect with respect to the Enhanced Permanently Affordable Units. In furtherance of the foregoing, Owner shall not mortgage or otherwise encumber the Enhanced Permanently Affordable Units or this Agreement with debt other than any initial debt approved by the Agency unless

the lender enters into a subordination and non-disturbance agreement with the Agency in form and substance satisfactory to the Agency.

ARTICLE 3

GENERAL REQUIREMENTS

3.01 Compliance with Law; Agreements.

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

3.02 More Restrictive Provisions Control.

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

3.03 Reserved.

3.04 Rental Assistance.

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

- (a) **Notice of Defaults.** The Owner shall provide the Agency with notice of any default or material adverse change with respect to a Rental Assistance Contract that covers any of the Units (including, but not limited to, any termination or material reduction of Rental Assistance with respect to one or more Units, and any event that would allow the Owner to terminate a Rental Assistance Contract, or fail to extend or renew the contract, with respect to one or more Units pursuant to Section 3.04(b)) no later than 30 days after the date on which the Owner obtains evidence in writing that the default or material adverse change has occurred or is reasonably likely to occur.
- (b) **Obligation to Maintain Rental Assistance Contract.** The Owner shall keep in effect any Rental Assistance Contract that covers any of the Units, shall timely exercise any right to extend or renew any such contract, and shall not cause or

permit, by act or omission, the contract to be terminated with respect to one or more Units, unless one of the following conditions is satisfied, or the Owner has otherwise obtained the Agency's prior written consent:

- (i) **Replacement Rental Assistance.** The contract is immediately replaced by other Rental Assistance that is substantially equivalent in all material respects to the terminated contract, as reasonably determined by the Agency.
 - (ii) **No Fault Termination.** The contract terminates with respect to one or more Units through no fault of the Owner (including, but not limited to, any termination by the Owner that is permitted under the Rental Assistance program after a reduction in funding for the Rental Assistance Contract that is not caused by the Owner), and the Owner has been unable, after making commercially reasonable efforts, to replace the contract with other Rental Assistance that is substantially equivalent in all material respects to the terminated contract, as reasonably determined by the Agency.
- (c) **Mitigation of Loss of Rental Assistance.**
- (i) **Financial Projections.** No later than 10 business days after the date on which the Agency receives notice from the Owner of any termination or material reduction of a Rental Assistance Contract with respect to one or more Units, or any event that would allow the Owner to terminate a Rental Assistance Contract, or fail to extend or renew the contract, with respect to one or more Units pursuant to Section 3.04(b), the Owner shall provide the Agency with current financial statements and reasonably detailed financial projections for the Project, in addition to any other information that the Agency may reasonably request in writing in response to the Owner's notice.
 - (ii) **Mitigation Measures.** Upon receipt of a notice from the Owner pursuant to Section 3.04(c)(i), the Agency may assist the Owner to identify alternative forms of Rental Assistance and propose other measures to mitigate the loss of Rental Assistance. The Agency may also propose a plan to minimize the displacement of affected Tenants. If the Agency proposes any such measures or plan, and the proposal is commercially reasonable, the Owner shall use good faith efforts to assist the Agency in implementing the proposed measures or plan.

3.05 HDC Financing.

- (a) **Statutory Authority.** The Owner shall comply, and shall cause the Project to comply, with all applicable requirements of the statutory authority under which HDC is providing the HDC Financing, including, but not limited to, the New York City Housing Development Corporation Act, Article 12 of the Private Housing Finance Law, any rules, regulations, policies or procedures promulgated under the statute, and any other Laws related to the HDC Financing.

- (b) **Loan Documents.** The Owner shall also comply, and shall cause the Project to comply, with all documents evidencing, securing, or otherwise signed and delivered by the Owner to HDC in connection with the HDC Financing, including, but not limited to, commitment letters, notes, and mortgages. This covenant does not independently obligate any party under a note or other agreement, however, if the party has not signed the agreement.
- (c) **Required Statutory Covenants (Article 22 Loan).** HPD is providing all or a portion of the HDC Financing under the authority of Section 661 of the Private Housing Finance Law and Article 22 of the Private Housing Finance Law.
 - (i) **Occupancy.** Section 1152(6) of the Private Housing Finance Law requires the Owner to agree to rent each Unit only to persons and families of low income (as defined in the Private Housing Finance Law).
 - (ii) **Limit on Profits.** Section 1152(7) of the Private Housing Finance Law requires the Owner to agree to limit annual profits to an amount set by HPD for as long as such loan is outstanding. The Owner shall use excess profits to establish reserves for the Project (as may be set forth in more detail in Exhibit B as a cash flow sweep or similar), provide capital improvements to the Project, or reduce the principal amount of HPD's loan, as determined by HPD.
 - (iii) **Findings.** As required by Section 1152(11) of the Private Housing Finance Law, HPD has determined that: (1) the construction of the Project does not directly displace current low and moderate income residents of the Property; (2) the Project leverages private and other public investment, if any, so as to reduce the amount of assistance provided pursuant to Article 22 of the Private Housing Finance Law to the minimal amount which is necessary for construction of the Project; (3) the Project will be built by a private developer/builder who has agreed to limit its profit in accordance with a formula satisfactory to HPD; (4) the Project will provide assistance to an area which is blighted or deteriorated or has a blighting influence on the surrounding area, or is in danger of becoming a slum or a blighted area because of neighborhood conditions indicating an inability or unwillingness of the private sector to cause the type of construction for which a loan is to be provided; and (5) the Project will make housing affordable to persons who cannot presently afford the housing available based upon the ordinary unaided operation of private enterprise.

3.07 Low-Income Housing Tax Credits.

- (a) **Extended Low-Income Housing Commitment.** The Owner shall comply, and shall cause the Project to comply, with all applicable requirements of the Internal Revenue Code governing the LIHTC, any other Laws related to the LIHTC, and the Agency's LIHTC monitoring procedures. This Agreement serves as the

"extended low-income housing commitment" required by Section 42(h)(6) of the Internal Revenue Code. If the Law requires additional or more restrictive terms, such terms are made a part of this Agreement and the Owner shall comply with such terms.

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

Code is suitable for occupancy and used other than on a transient basis (in each case as defined pursuant to the Internal Revenue Code).

(k) **Annual Certifications.**

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

3.08 Tax-Exempt Bonds or Obligations.

- (a) **Tax Exemption Requirements.** The Owner shall comply, and shall cause the Project to comply, with the applicable provisions of this Agreement, the Internal Revenue Code, and any other Laws in order to preserve the exclusion from

gross income for purposes of federal income taxation of interest on the HDC Obligations.

- (b) **Changes to Project.** The Owner shall make no change in the amount of residential and non-residential space or in the number of Units, which in the opinion of HDC's bond counsel, would cause a violation of the certifications presented to HDC with respect to such space or Units and adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the HDC Obligations
- (c) **Minimum Set-Aside.** The Owner shall not reduce the percentage of Units in the Project that meet the affordability requirements of Section 142 of the Internal Revenue Code below the amount required by the minimum set-aside test that the Owner has elected to meet with respect to the Project, unless the Owner receives the prior written consent of HDC.
- (d) **Annual Certification.** The Owner shall submit, or shall cause the operator of the Project to submit, to the Secretary of the Treasury, at such time and in such manner as required by the Secretary of the Treasury, an annual certification (IRS Form 8703) as to whether the Project continues to comply with the requirements of Section 142(d)(7) of the Internal Revenue Code. Any failure to submit this certification will not affect the exclusion from gross income for purposes of federal income taxation of interest on the HDC Obligations but will subject the Owner and such operator to a penalty pursuant to Section 6652(j) of the Internal Revenue Code.
- (e) **Purchase of HDC Obligations.** Neither the Owner (including, but not limited to, any person with a direct or indirect ownership interest in the Owner as a LIHTC investor or otherwise) nor any "related person" to the Owner, as defined in Section 144(a)(3) of the Internal Revenue Code, shall purchase HDC Obligations (other than "pledged bonds" or "bank bonds", each as defined in the resolution governing the HDC Obligations)) in an amount related to the amount of the HDC Financing funded by the HDC Obligations.
- (f) **Annual Tenant Certifications.** The Owner shall annually (i) obtain a certification of Annual Income, Household size, and student status from each Tenant residing in a Unit that is designated with affordability restrictions as part of the qualified residential rental project under Section 142 of the Internal Revenue Code, along with supporting documentation, (ii) verify the Tenant's Annual Income in accordance with the Law, and (iii) determine whether the Tenant continues to qualify as an Eligible Household. The Owner shall furnish to the Agency annually, or more frequently if required in writing by the Agency, a certification by the Owner documenting the annual tenant certifications provided in accordance with this Section 3.08(f), along with any supporting documentation requested by the Agency. The Owner shall provide this certification as part of the annual submission to the Agency that is required by Section 9.01.
 - (i) **LIHTC Building.** Notwithstanding subsection (f) above, if a LIHTC Building contains only Units that are designated with affordability

restrictions as part of the qualified residential rental project under Section 142 of the Internal Revenue Code (excluding any Superintendent Unit), then on an annual basis, the Owner shall obtain a certification of Household size and student status from each Tenant residing in the LIHTC Building, along with supporting documentation, but the Owner is not required to obtain a certification of Annual Income from the Tenant for purposes of the HDC Obligations.

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ARTICLE 4

PROJECT OCCUPANCY

4.01 Occupancy Restrictions.

- (a) **Income Limits.** The Owner shall lease each Income-Restricted Unit to an Eligible Household whose Annual Income upon initial occupancy does not exceed the income limit for the Unit that is required by Exhibit B. The Owner shall distribute the Income-Restricted Units by apartment size as set forth in Exhibit B. The Owner shall designate each Income-Restricted Unit by income limit and provide a certified schedule of unit designations to the Agency upon request, except as may be provided in Exhibit B. If this Agreement requires tiers of income limits, no Income-Restricted Unit may count for more than one tier.
- (b) **Accessibility Set-Asides.**
 - (i) **Mobility Disabilities.** The Owner shall ensure that not less than 5% of the Units, or one Unit, whichever is greater, is accessible to and set aside for Households that include an individual with a mobility disability, to the extent applicable and unless the Project may be exempted from this requirement under the Law. The Owner shall designate each such Unit and provide a certified schedule of unit designations to the Agency upon request.
 - (ii) **Hearing and Vision Disabilities.** The Owner shall ensure that not less than an additional 2% of the Units, or one Unit, whichever is greater, is accessible to and set aside for Households that include an individual with a hearing or vision disability, to the extent applicable and unless the Project may be exempted from this requirement under the Law. The Owner shall designate each such Unit and provide a certified schedule of unit designations to the Agency upon request.
- (c) **Homeless Housing.**
 - (i) **Referral Requirement.** The Owner shall lease no fewer than the number of Income-Restricted Units set forth in Exhibit B as "**Homeless Units**" to Eligible Households: (1) who are referred by HPD or an alternate referral source approved by HPD, and (2) who prior to initial occupancy of a Unit lived in emergency shelter facilities operated by or on behalf of the City or who are otherwise in need of emergency shelter as determined by the City. If required by the Agency, the Owner shall (x) distribute the Homeless Units by apartment size as set forth in Exhibit B, and (y) designate the Homeless Units and provide a certified schedule of unit designations to the Agency upon request. In addition, the Owner shall enter into a lease meeting the requirements of this Agreement with each Tenant residing in a Homeless Unit and shall include each such Tenant on the Project's rent roll.

- (ii) **Statutory Minimum (Title 28, Ch. 26 of the Ad. Code).** Notwithstanding anything to the contrary in this Agreement, Section 26-2802 of the Administrative Code requires the Owner to lease not less than 15% of the Income-Restricted Units as Homeless Units.

4.02 Changes to Project.

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

4.03 Integration of Units.

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

4.04 Primary Residence.

- (a) **In General.** The Owner shall offer each vacant Income-Restricted Unit for occupancy, and shall ensure that each Income-Restricted Unit is actually occupied, only (i) as a primary residence, as defined by Rent Stabilization, (ii) pursuant to a one- or two-year lease, and (iii) by one or more individuals who are otherwise eligible to occupy the Unit pursuant to this Agreement.
- (b) **No Transient Uses.** The Owner shall not cause or permit the lease, sublease, assignment, use, or occupancy of any Unit or the Project (i) on a transient basis or (ii) as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park.
- (c) **Leasing to Entities.** The Owner shall not cause or permit the lease, sublease, assignment, use, or occupancy of any Income-Restricted Unit to or by a corporation, partnership, limited liability company, or other entity, unless it is approved in writing by the Agency and not prohibited by Law.
- (d) **Surrender of Other Housing.** The Owner shall not knowingly cause or permit the lease, sublease, or assignment of any Income-Restricted Unit to any Household that includes any individual who is an occupant of another home, dwelling unit, rooming unit, or other housing accommodation, unless the individual simultaneously surrenders possession of, and all legal right to, the other home, dwelling unit, rooming unit, or other housing accommodation.

4.05 Lease-Up and Marketing.

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

4.06 Qualification of Eligible Households.

- (a) **Determination of Eligibility.** Prior to the rental of any vacant Income-Restricted Unit, the Owner shall determine whether the prospective Tenant of the Unit is an Eligible Household. The Owner shall comply with all related procedures and standards set forth in the Marketing Handbook, including, but not limited to, by submitting the required Tenant eligibility documentation to the Agency for review and approval prior to any lease signing.
- (b) **Tenant's Failure to Certify; Fraud.** If a Tenant of an Income-Restricted Unit fails to provide the Owner with a certification or document that is required by this Agreement within 60 days of the Owner's request, or if any such Tenant provides false or fraudulent materials at any time (including, but not limited to, as part of the Tenant's initial application for the Unit), the Owner may, or at the written request of the Agency shall, to the extent permitted by Law, refuse to offer a renewal lease to the Tenant and commence legal action to evict the Tenant. If the Owner does not promptly commence legal action to evict the Tenant, or does not diligently pursue the legal action to the satisfaction of the Agency, then for so long as either remains the case, the Owner shall lease the next available vacant Unit of comparable or smaller size to an Eligible Household whose Annual Income upon initial occupancy does not exceed the income limit for the Unit that is occupied by the non-complying Tenant (or the income limit that would

otherwise apply to the vacant Unit, if lower), prior to renting any other Unit of comparable or smaller size.

4.07 Leases of Units.

- (a) **Form of Lease.** In renting Units to Tenants, the Owner shall use a form of lease that is consistent with this Agreement and satisfactory to the Agency. The Owner shall ensure that its leases of Units, including, but not limited to, the riders to such leases, comply with the Law.
- (b) **Subordination.** The Owner shall ensure that all leases of Units are expressly subordinate to this Agreement and to any Permitted Mortgage. The Owner shall not include in any lease of a Unit, or in any rider to such a lease, any provision that conflicts with this Agreement, nor shall the Owner enforce any such provision that may be included in such a lease or rider. To the extent permitted by Law, this Agreement controls if it conflicts with any other requirement of, or applicable to, the Owner's leases of Units.
- (c) **Agency Lease Rider.** If required by the Agency in writing, and to the extent permitted by Law, the Owner shall include one or more lease riders provided or approved by the Agency in each lease of an Income-Restricted Unit.
- (d) **Requirements of Rental Assistance Contract.** If the Agency determines in writing that this Section 4.07 conflicts with or is superseded by a requirement of a Rental Assistance Contract covering any Unit, the conflicting or superseded requirement will not apply to the Unit while it is covered by the Rental Assistance Contract.
- (e) **Rental Assistance and Legal Regulated Rents Rider.** The Owner shall ensure that all leases for Rental Assistance Units for which an Owner is permitted to charge and collect a rent that exceeds the Legal Rent for such Units subject to and in accordance with Section 610 of the PHFL and this Agreement contain the following language, or such successor language as DHCR may require, upon any issuance or renewal of such lease:

REGULATORY AGREEMENTS ISSUED AND APPROVED BY A STATE OR MUNICIPAL AGENCY OR OTHER STATUTORILY DESIGNATED PARTY MAY PROVIDE FOR ACTUAL RENTS THAT ARE HIGHER THAN LEGAL RENTS AND PREFERENTIAL RENTS, AS LONG AS A GOVERNMENT PROGRAM PROVIDES RENTAL ASSISTANCE FOR THE APARTMENT. THE TENANT SHARE IS GOVERNED BY THE AGENCY PROVIDING RENTAL ASSISTANCE AND THE REGULATORY AGREEMENT. THE ACTUAL RENT MUST ALSO BE SEPARATELY REGISTERED. IF THE RENTAL ASSISTANCE ENDS, THE LOWER LEGAL RENT OR PREFERENTIAL RENT PLUS ANY LAWFUL ADJUSTMENTS OR A LOWER RENT ESTABLISHED BY THE REGULATORY AGREEMENT MUST BE CHARGED. THIS REQUIREMENT IS STATED IN PLAIN LANGUAGE IN DHCR NOTICE RA-LR3, WHICH MUST BE ATTACHED TO ALL LEASES WHEN RENTS THAT ARE HIGHER THAN THE LEGAL OR PREFERENTIAL RENT FOR THE APARTMENT ARE BEING CHARGED.

NOTE THAT IF THE RENTAL ASSISTANCE DOES NOT END BUT IS REDUCED SUCH THAT THE RENTAL ASSISTANCE AND THE TENANT SHARE TOGETHER ARE EQUAL TO OR LESS THAN THE LEGAL RENT THEN THE ACTUAL RENT CANNOT BE MORE THAN THE RENTAL ASSISTANCE AND THE TENANT SHARE COMBINED.

4.08 Subleases and Assignments.

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

4.09 Right to Renewal Lease.

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

4.10 Evictions.

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

4.11 Successors to Tenants.

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

4.12 Rental Assistance Status.

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

4.13 Non-Discrimination.

- (a) **Compliance with Law.** The Owner and any lessees of all or part of the Property, or any Improvements, shall comply with all Laws prohibiting discrimination or segregation by reason of any of the following classes, whether actual or perceived: age; race; creed; religion; gender; gender identity; gender expression; sex; color; national origin; ancestry; sexual orientation; disability; marital status; partnership status; familial status; immigration status; citizenship status; lawful source of income (including, but not limited to, income derived from Social Security, or any form of federal, state, or local public government assistance or housing assistance, including, but not limited to, Rental Assistance); lawful occupation; uniformed service; the actual, potential, or future residence of children with such person or persons; status as a victim of domestic violence, stalking, or sex offenses; the presence of an emotional support animal; or any other class protected from discrimination in housing accommodations by Law in the sale, lease, or occupancy of the Property or any Improvements.
- (b) **Sale, Lease, and Occupancy Agreements.** The Owner and any lessees of all or part of the Property, or any Improvements, shall not effect or sign any agreement, lease, conveyance, or other instrument whereby the sale, lease, or occupancy of all or part of the Property, or any Improvements, is restricted upon the basis of any class described in Section 4.13(a).
- (c) **Survival.** The Owner and any lessees of all or part of the Property, or any Improvements, shall comply with Sections 4.13(a) and (b) both during and after the Restriction Period.

4.14 Conversion to Co-Op or Condo.

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

4.15 Next Available Unit Rule.

The Owner has elected to meet the average income test of Section 42(g)(1)(C) of the Internal Revenue Code, which makes the LIHTC Building subject to the next available unit rule of Section 42(g)(2)(D)(iii) of the Internal Revenue Code. The Project has also received tax-exempt bond financing and is subject to the next available unit rule of

Sections 142(d)(3)(B)-(C) of the Internal Revenue Code. Accordingly, if the Annual Income of a Tenant of a Unit that is designated as a low-income unit pursuant to Section 42 of the Internal Revenue Code exceeds 140% of the income limit that applies to the Unit for purposes of the next available unit rule (i.e., the income limit that is required by Section 42(g)(2)(D)(iii) of the Internal Revenue Code), the Owner shall lease the next available vacant Unit in the LIHTC Building that is of comparable or smaller size to a Tenant whose Annual Income does not exceed the income limit that is required by the Internal Revenue Code (and subject to the rent restrictions that are required under the Internal Revenue Code and this Agreement).

4.16 Non-Residential Space.

- (a) **Agency Consent.** The Owner shall obtain the prior written consent of the Agency for any lease, sublease, license, or occupancy agreement affecting any non-residential portion of the Project. The Owner shall also obtain the prior written consent of the Agency for any amendment of such an agreement, if the amendment changes the permitted use or otherwise alters a material term.
- (b) **Non-Residential Leasing Guidelines.** Without limiting the conditions that the Agency may impose to provide a consent under Section 4.16(a), the Owner shall ensure that any lease, sublease, license, or occupancy agreement affecting any non-residential portion of the Project that is presented to the Agency for consent complies with any non-residential leasing guidelines that have been issued by the Agency.
- (c) **Prohibited Uses.** The Owner shall not permit the Property or the Project to be used for (i) any use that would violate the applicable zoning or certificate of occupancy; (ii) any use that the Agency reasonably determines may create a nuisance or hazard to the Tenants or a deleterious effect on their quiet enjoyment of their Units, the common areas of the Property, and the areas adjacent to the Property; or (iii) a store with a principal business of selling alcoholic beverages for consumption off-premises.
- (d) **Arm's-Length Leases.** The Owner shall not lease any non-residential space in the Project to an affiliate or principal of the Owner, or lease or otherwise permit occupancy of any such space at less than the prevailing market rent in the Project's neighborhood for a term of 10 years or more (including renewal options), unless in each case the Owner has obtained the prior written consent of the Agency.
- (e) **Community Facility Use Restriction.** The Owner shall lease the community facility space in the Project solely for uses within Use Groups 3 and 4 of the Zoning Resolution.
- (f) **High Road Retail.** Capitalized terms used in this paragraph but not otherwise defined in this Agreement have the meanings given to them in the Mayor's Executive Order No. 19, dated July 14, 2016. Pursuant to Executive Order No. 19, the Owner shall comply with Executive Order No. 19 and shall include or cause to be included in any lease, sublease, license, or other occupancy

agreement covering space in the Project that will be operated as a Retail or Food Service Establishment, where such lease, sublease, license, or other occupancy agreement (i) is entered into with a tenant or other user that employs, or is anticipated to employ upon opening, 10 or more employees at the Project, and (ii) covers, or is anticipated to cover, in excess of 15,000 gross square feet of space in the Project, a "labor peace" clause such that the tenant or other user is required to enter into a Labor Peace Agreement with any Labor Organization that seeks to represent Covered Employees at the Project. The Agency must be identified as a third-party beneficiary of the labor peace clause.

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ARTICLE 5
RESIDENTIAL RENTS

5.01 Rents Charged to Tenants.

(a) In General.

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

(b) Certain Definitions. In this Agreement:

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

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

(d) **Renewal Leases.**

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

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

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

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

(e) **Vacancy Leases.**

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

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

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

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

(f) **Additional Rental Assistance Requirements.**

- (i) **Tenant Rent Share Generally.** The Owner shall not charge or collect from the Tenant of any Rental Assistance Unit any tenant rent share or other portion of the rent that is required to be paid by the Tenant under the applicable Rental Assistance program exceeding (1) the amount that the Tenant is required to pay under the applicable Rental Assistance program, and (2) the amount that is allowed by Law (including, but not limited to, any Laws with respect to applicable subsidy programs).
- (ii) **Tenant Rent Share Limited to Maximum Program Rent.** The Owner shall not charge or collect from the Tenant of any Rental Assistance Unit any tenant rent share or other portion of the rent that is required to be paid by the Tenant under the applicable Rental Assistance program that is greater than the Maximum Program Rent.
- (iii) **Rental Assistance Contract Rents.** The Owner shall provide to the Agency for review and approval the initial contract rents for all Units that are covered by any Rental Assistance Contract.

5.02 Rent Stabilization.

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

(c) **Permitted Rent Adjustments.**

- (i) **Renewal Lease Adjustments Only.** Except for Renewal Lease Adjustments and any other exceptions set forth in this Section 5.02(c), the Owner shall not increase the Legal Rent or the Actual Rent for an Income-Restricted Unit for any other reason that may be allowed under Rent Stabilization, including, but not limited to, a vacancy lease increase, a major capital improvement increase ("**MCI Increase**"), or an individual apartment improvement increase. This provision continues to apply to Income-Restricted Units after the Restriction Period until any such Unit becomes vacant (unless the vacancy results from a breach of the warranty of habitability, harassment, constructive eviction, or any similar action caused by the Owner).
- (ii) **Exception for Rental Assistance Units.** Upon the renewal of a lease of an Income-Restricted Unit that is and will remain a Rental Assistance Unit, the Owner may increase the Actual Rent for the Unit as may be allowed under Rent Stabilization but not to exceed the amount allowed by Section 5.01(d)(ii).
- (iii) **Exception for Certain Vacancy Lease Increases.** Upon the vacancy of an Income-Restricted Unit, if the Legal Rent is less than the Maximum Program Rent, the Owner may claim any vacancy lease increase permitted under Rent Stabilization (which may be none), but not in any amount that increases the Legal Rent to more than the Maximum Program Rent.
- (iv) **Exception for Certain Preservation Projects.** The Owner may apply to DHCR for MCI Increases as follows: Except as may be approved in writing by the Agency, the Owner shall not apply for any MCI Increase in connection with work that is funded or reimbursed from Agency loan proceeds or any reserve account required by this Agreement, or that is required by the Agency in connection with the Agency's assistance to the Project. The Owner may also apply to DHCR for individual apartment improvement increases.

(d) **Registration.**

- (i) **Initial Registrations.** The Owner shall complete the initial building registrations for any building in the Project and the initial apartment registration for each Unit that is subject to Rent Stabilization, all in accordance with Rent Stabilization, no later than 60 days following: (1) each building's receipt of a temporary or final certificate of occupancy, or (2) the date of this Agreement, if the building does not require a new certificate of occupancy. The Owner shall provide the Agency with satisfactory proof of all initial registrations promptly upon request.
- (ii) **Annual Registrations.** On an annual basis in accordance with Rent Stabilization, the Owner shall complete the annual rent registrations for

each Unit that is subject to Rent Stabilization. The Owner shall provide the Agency with satisfactory proof of all annual rent registrations promptly upon request.

(iii) **Registered Rents.**

(a) **General Rule.** For each Unit that is subject to Rent Stabilization, the Owner shall register: (1) on any initial apartment registration, the initial Legal Rent for the Unit set forth in Exhibit B, and (2) on any annual rent registration, the Legal Rent then in effect for the Unit. If at the time of any registration of a Unit in accordance with Rent Stabilization the Actual Rent for the Unit is less than the Legal Rent, the Owner shall register the Actual Rent then in effect as a preferential rent under Rent Stabilization (or shall register the Actual Rent as the Legal Rent if required by Law).

(b) **Rental Assistance.** If, at the time of any registration of a Unit that is also a Rental Assistance Unit in accordance with Rent Stabilization, the Legal Rent for the Unit is less than the Rental Assistance Rent, the Owner shall register the Legal Rent as the Legal Rent and shall separately register the Rental Assistance Rent in accordance with the applicable rules, regulations, procedures and guidelines promulgated by DHCR.

(e) **Destabilization; Contractual Rent Regulation.**

- (i) **Renewal and Vacancy Leases.** If any Unit that is subject to Rent Stabilization undergoes any set of facts that causes Rent Stabilization to no longer apply to the Unit during the Restriction Period, whether by expiration, legislative repeal, judicial invalidation, or any other reason ("**Destabilization**"), then the Owner shall offer renewal and vacancy leases for the Unit on the same terms as had been required by Rent Stabilization at the time of Destabilization (subject to subsections (ii) and (iii) below), as if the Unit were still subject to and not exempted or excluded from any provision of Rent Stabilization (including, but not limited to, the exemptions or exclusions identified in Section 5.02(b)).
- (ii) **Legal Rent Index.** After Destabilization, HPD shall establish an index for determining adjustments to the Legal Rent upon the renewal of a lease or vacancy of a Unit. HPD shall base this index on inflation or on factors substantially equivalent to the factors considered in calculating adjustments to rents under Rent Stabilization at the time of Destabilization. HPD shall incorporate into the index, or separately establish, a method for determining and implementing MCI Increases, to the extent they are not prohibited under this Agreement. HPD shall publish the index in *The City Record* and shall provide a copy to the Owner upon request.

- (iii) **Rent Adjustments.** After Destabilization, where this Agreement permits or requires rent adjustments pursuant to Rent Stabilization (or similar language), the Owner shall adjust the applicable rent pursuant to the method established by HPD and described in subsection (ii) above.

5.03 Loss of Rental Assistance.

- (a) **General Rule.** If (i) a Tenant receiving tenant-based or project-based Rental Assistance is occupying an Income-Restricted Unit, (ii) the Actual Rent for the Tenant's Unit exceeds the amount that may be collected for a non-Rental Assistance Unit under Section 5.01, and (iii) the Tenant loses the Rental Assistance at any time, then upon the loss of Rental Assistance, the Unit is no longer a Rental Assistance Unit and the Owner shall immediately revise the Tenant's Actual Rent to an amount that does not exceed the maximum amount that may be collected for the Unit as a non-Rental Assistance Unit under Section 5.01(d). The Owner shall not charge or collect from any such Tenant any amount that exceeds the amount permitted by this Section 5.03.
- (b) **Homeless Units with Project-Based Rental Assistance.**
 - (i) **Rent Concession.** During the first six months of any revised rent provided under Section 5.03(a) to a Tenant who is occupying a Homeless Unit that was covered by a Rental Assistance Contract prior to the loss of Rental Assistance, the Owner shall provide an additional rent concession to the Tenant such that the Tenant is required to pay an Actual Rent that is no more than the tenant rent share that the Tenant was required to pay immediately prior to the loss of Rental Assistance (if such amount is less than the Actual Rent that would otherwise be required by Section 5.03(a)). The Owner may choose not to charge or collect any rent during such period. In connection with any such rent concession, the Agency consents to the Owner withdrawing funds from the Operating Reserve as necessary to fund any related operating deficits at the Project.
 - (ii) **Non-Complying Tenants.** The Owner is not required to comply with subsection (i) above if the government agency administering the Rental Assistance has determined that the Tenant's loss of Rental Assistance was caused solely by a failure of the Tenant to comply with the requirements of the Rental Assistance program or the Law.
 - (iii) **Prior Agency Knowledge.** If, during any period prior to the date of the loss of Rental Assistance, Agency officials with appropriate responsibility have obtained evidence in writing, or reasonably should have been expected to obtain evidence in writing, that the City-funded project-based Rental Assistance to the Unit has been or would be terminated through no fault of the Owner, then the Agency shall reduce the period of the required rent concession described in subsection (i) above by the length of time that such officials had such evidence, or reasonably should have

been expected to have such evidence, prior to the loss of Rental Assistance, and shall impose no such requirement if such length of time is six months or longer.

5.04 After the Restriction Period.

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

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ARTICLE 6

PROJECT OPERATIONS

6.01 Standard of Care.

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

6.02 Maintenance of Project.

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

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

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

6.03 Taxes and Municipal Charges.

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

6.04 Records; Retention.

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

6.05 Contracting.

- (a) **Service and Maintenance Contracts.** The Owner shall enter into any service and maintenance contracts with respect to the Project only with qualified vendors and at commercially reasonable and customary fees.
- (b) **Equal Opportunity.** The Owner shall use reasonable efforts to ensure that businesses owned by women and by members of traditionally disadvantaged minority groups are afforded equal opportunity to participate in any development and construction contracts entered into in connection with the Project.

6.06 HPD Building Registration.

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

6.07 Property Management.

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

6.08 Insurance.

- (a) **Obligation to Insure.** The Owner shall maintain or cause to be maintained, for the benefit of itself, the City, and HDC, the insurance policies that are required by this Agreement. The Owner is solely responsible for paying, or causing to be paid, all premiums, deductibles, self-insured retentions, and other amounts due with respect to each insurance policy required by this Agreement, whether or not the City or HDC is an additional insured. The Owner shall comply, and shall ensure that the Project complies, with all such policies. The Owner shall not cause or permit any act or failure to act that would adversely affect any required insurance policies.
- (b) **Commercial General Liability (Owner).** The Owner shall maintain or cause to be maintained commercial general liability insurance with respect to the Project with a per-location limit of not less than \$1 million per occurrence and \$2 million in the aggregate. This insurance must cover the Owner as named insured and all additional insureds against claims for property damage, bodily injury, and death occurring on, in, or about the Property, or arising out of the operation of the Project.
 - (i) **Scope of Coverage.** The Owner's liability insurance must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01 and must be issued on an occurrence rather than a claims-made basis. This insurance must also include: (1) contractual liability coverage, with defense provided in addition to policy limits for indemnities of the named insured; (2) independent contractors liability coverage; (3) broad-form property damage liability coverage; (4) a waiver of subrogation against all additional insureds; (5) a separation of insureds provision; and (6) personal and advertising injury liability coverage. During any period of substantial construction at the Project, the insurance must include owners and contractors protective liability coverage, including products and completed operations coverage to apply for two years following the completion of the work.
 - (ii) **Prohibited Exclusions.** The Owner's liability insurance must not exclude coverage relating to the emission of asbestos, lead, mold, or pollutants, and must not be subject to any other exclusion, except as required by Law or approved in writing by the Agency.

- (iii) **Umbrella or Excess Coverage.** In addition to the base limit required by Section 6.08(b), on and after the Permanent Loan Conversion, the Owner shall maintain or cause to be maintained umbrella or excess commercial general liability insurance with respect to the Project with a limit of not less than the amount that is determined as follows: if the Project contains 100 or fewer Units, \$10 million; or if the Project contains more than 100 Units, \$10 million plus \$45,000 per Unit for each Unit over 100.
- (c) **Commercial Property.** The Owner shall maintain or cause to be maintained commercial property insurance written on the special causes of loss form and protecting the Owner as named insured and all additional insureds from risks to the Improvements and the Equipment, with a limit that is not less than the full insurable value of such property on an agreed-value basis. This insurance must include replacement cost and waiver of subrogation endorsements in favor of the additional insureds. The amount of the coverage must be sufficient to prevent the application of any co-insurance clause.
 - (i) **Builder's Risk.** During any period of substantial construction at the Project, the Agency may require the Owner to maintain, or to cause its construction contractor to maintain, builder's risk insurance on a completed value, non-reporting form. During any such period, the Owner shall maintain this insurance, or cause it to be maintained, in addition to or, with the written consent of the Agency, in lieu of any other commercial property insurance. The insurance must cover losses on or damage to construction work and the storage and transport of materials, equipment, and supplies of any kind to be used in or incidental to the construction of the Project. The insurance must include a soft costs endorsement for actual losses sustained, with no monthly limit. Any builder's risk policy must permit the insured to occupy the Property prior to completion.
 - (ii) **Boiler and Machinery.** The Owner's property insurance must include boiler and machinery coverage in an amount satisfactory to the Agency and covering all boilers, machinery, air conditioning systems, pressure vessels, and similar equipment commonly covered under a broad-form boiler and machinery policy.
 - (iii) **Business Income.** The Owner's property insurance must include business income insurance in an amount sufficient to pay the total anticipated rental income for the Project for one year, or any longer period if required in writing by the Agency, for actual losses sustained with no monthly limit. This coverage is not required prior to completion of the initial construction of the Project.

- (iv) **Prohibited Exclusions.** If the aggregate principal amount of the HDC Financing is \$40 million or more at any time during the permanent phase of the Project's financing, the Owner's property insurance must include terrorism insurance in an amount that satisfies State requirements. The Owner shall obtain the prior written consent of the Agency for any other exclusion of coverage from the Owner's property insurance policy.
- (d) **Flood.** If any portion of the Project is located in a federal "special flood hazard area", the Owner shall maintain or cause to be maintained flood insurance covering the Owner as named insured and all additional insureds for each building in the Project and its contents in an amount equal to the lesser of (i) the maximum amount available per building under the national flood insurance program and (ii) the full replacement cost of the Improvements and the Equipment. If flood insurance is required, the Agency strongly recommends private flood insurance in addition to, or in place of, the federal coverage, but it is not required.
- (e) **Commercial Automobile Liability.** If vehicles are used in connection with the Project, the Owner shall maintain or cause to be maintained commercial automobile liability insurance with respect to the Project, with bodily injury and property damage limits of not less than \$2 million per occurrence, combined single limit. This insurance must cover the Owner as named insured and all additional insureds against liability arising out of the ownership, maintenance, or use of any owned, non-owned, or hired vehicles. The coverage must be at least as broad as the most recently issued ISO Form CA 00 01. The insurance must also include a waiver of subrogation against all parties named as additional insured. If any vehicles transport hazardous materials, the insurance must include pollution liability broadened coverage for covered autos (ISO Form CA 99 48) and proof of MCS-90.
- (f) **Commercial General Liability and Commercial Automobile Liability (Construction Contractor).** During any period of substantial construction at the Project, the Owner shall cause its construction contractor to maintain commercial general liability insurance and commercial automobile liability insurance satisfactory to the Agency. The contractor's insurance must include owners and contractors protective liability coverage, including products and completed operations coverage to apply for two years following the completion of the work. Any such policy must name the Owner as an additional insured.
- (g) **Workers' Compensation and Disability Benefits.** If the Owner has employees, the Owner shall maintain or cause to be maintained workers' compensation and disability benefits insurance as required by Law. In addition, the Owner shall ensure that its contractors (including any construction contractor and Managing Agent) maintain such coverage as applicable.
- (h) **Employer's Liability.** If the Owner has employees, the Owner shall maintain or cause to be maintained employer's liability insurance with a limit of not less than \$500,000 per occurrence, annual aggregate, combined single limit for bodily injury, personal injury, or property damage. This insurance must cover the

Owner as named insured and all additional insureds if an employee is not eligible for, or is able to reject, statutory workers' compensation benefits, and the employee or other authorized person elects to sue for an injury or death deemed to have been sustained in the performance of duties on the Project. The insurance must also include a waiver of subrogation against all parties named as additional insured. In addition, the Owner shall ensure that its contractors (including any construction contractor and Managing Agent) maintain such coverage as applicable.

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

successors and assigns, as their interests may appear" as an additional insured as described in this subsection (k).

(l) **HDC as Additional Insured.**

- (i) **Liability Policies.** The Owner shall ensure that each liability insurance policy required by this Agreement names "New York City Housing Development Corporation, its successors and assigns, as their interests may appear" as an additional insured, with coverage at least as broad as the most recently issued ISO Forms CG 20 10 and CG 20 26.
- (ii) **Property Policies.** The Owner shall ensure that each property insurance policy required by this Agreement (including any flood or builder's risk policy) contains standard mortgagee and loss payee clauses naming "New York City Housing Development Corporation, its successors and assigns, as their interests may appear" as a mortgagee (for so long as HDC is a mortgagee), and on and after the Permanent Loan Conversion, as the sole loss payee (for so long as HDC is a mortgagee).

- (m) **Evidence of Insurance.** Upon the Agency's request, the Owner shall provide the Agency with the following evidence of each insurance policy required by this Agreement: (i) a certificate of insurance satisfactory to the Agency accompanied by a completed certification of insurance broker or agent; (ii) any additional insured endorsements; and (iii) proof of payment of the policy's premium. With respect to workers' compensation and disability benefits insurance, the Owner shall provide the Agency with evidence of coverage or an exemption in a form acceptable to the New York State Workers' Compensation Board. ACORD forms are not acceptable proof of such insurance. Upon the Agency's request, the Owner shall provide the Agency with a copy of any insurance policy, including all declarations and endorsements, certified by an authorized representative of the issuing insurance carrier. The Agency's acceptance of a certificate or a policy does not excuse the Owner from maintaining or causing to be maintained the insurance required by this Agreement or from any liability arising from its failure to do so.

- (n) **Standard for Insurers.** The Owner shall obtain each insurance policy required by this Agreement from an insurer of recognized competence who is acceptable to the Agency and who is licensed to issue policies in New York State. Each insurer must also have an A.M. Best rating of not less than "A" / "Class XV".

- (o) **General Requirements for Policies.** The Owner shall ensure that each insurance policy required by this Agreement is satisfactory to the Agency and provides that: (i) the insurance is primary and non-contributory; (ii) the policy may not be cancelled, terminated, modified, or amended by the insurer or its authorized agent on less than 30 days' prior written notice to the Agency (or 10 days' for non-payment of premium); (iii) notice of any claim to the insurer by either the Agency or the Owner is sufficient notice under the policy; (iv) notice of any claim by the Agency is sufficient if given to the insurer or its authorized agent not more than 60 days after the later of the date that notice of the claim is

delivered to the Owner, or the date that a notice of claim regarding such claim is filed with the Comptroller of the City; (v) no act or omission of the Owner will invalidate the policy as to the additional insureds, and no act or omission of the additional insureds will invalidate the policy as to the Owner; (vi) the insurer shall defend the additional insureds under any and all circumstances relating to or arising out of this Agreement; (vii) the insurer may not refuse to defend on the grounds of negligence, negligence per se, or contributory negligence; and (viii) the presence of employees or agents of the additional insureds on the Property will not invalidate the policy as far as the additional insureds are concerned.

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

reimburse the Agency upon demand for any amounts paid by the Agency or any agent to obtain such insurance, with interest at the Default Rate from the date of payment to the date of reimbursement by the Owner. Any arrangement to obtain insurance by the Agency will not waive a violation of this Agreement by the Owner or any rights of the Agency under the Law, this Agreement, or any other agreement.

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

6.09 Utilities.

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

6.10 Mechanics and Tax Liens.

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

6.11 Loans by Owner.

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

6.12 Reasonable Accommodations.

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

6.13 Equal Access to Amenities.

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

6.14 Distribution of Information.

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

6.15 Operation of Homeless Units.

- (a) **Approval of Social Services.** Prior to the initial marketing of the Homeless Units, the Owner shall submit to HPD (i) a social services plan detailing the services and furnishings to be provided to Tenants of Homeless Units, a budget, and the provider of such services; or (ii) if required in writing by HPD, a social services contract with an approved provider or a commitment to enter into such a contract. The Owner shall not begin the initial lease-up of the Homeless Units until HPD has approved the social services plan or contract in writing. Evidence satisfactory to the Agency of a services award from an Agency-approved source will satisfy the foregoing requirement.
- (b) **Provision of Social Services.** The Owner shall ensure that all social services required by subsection (a) above are provided on a continuous basis with respect to the Project subject to the availability of funding for such services. The Owner shall obtain the prior written consent of HPD before terminating or making any changes to an approved social services plan, or before terminating or making any changes (other than exercising any renewal options) to a contract with an

approved provider with respect to the Project. The Owner shall provide HPD with notice of any default or material change with respect to a social services contract no later than 30 days after the date on which the Owner obtains evidence in writing that any such default or material change has occurred or may occur.

- (c) **Furnishings.** Prior to the initial rental of any Homeless Unit, the Owner shall furnish the Homeless Unit in a manner that is satisfactory to HPD or, if the funding for the furnishings is provided by another government agency, ensure that the Homeless Unit is furnished in a manner that is satisfactory to the government agency providing the funding for the furnishings.

6.16 Reserved.

6.17 Reserved.

6.18 Environmental Requirements.

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

6.19 Building Service Prevailing Wage.

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

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ARTICLE 7

RESERVES

7.01 Replacement Reserve.

- (a) **Creation and Funding.** If required by Exhibit B, the Owner shall establish a replacement reserve account for the Project ("**Replacement Reserve**"), into which the Owner shall deposit funds as required by Exhibit B. The Owner shall segregate the Replacement Reserve from other funds of the Owner. Any interest earned on the Replacement Reserve must be added to the Replacement Reserve (net of taxes on such interest).
- (b) **Withdrawals.** The Owner must obtain the written consent of the Agency prior to any withdrawal from the Replacement Reserve. The Owner may request a withdrawal from the Replacement Reserve to pay for the cost of replacements and capital improvements to the Project and for extraordinary increases in maintenance and operating expenses beyond the control of the Owner, or otherwise as approved in writing by the Agency. In connection with a request for a withdrawal from the Replacement Reserve, the Owner shall provide any supporting documentation that may be required by the Agency, including, but not limited to, construction plans and bids from contractors.
- (c) **Control of Senior Lender.** If a senior lender or provider of credit enhancement on the senior loan to the Project that has been approved in writing by the Agency (including but not limited to any senior lender or provider of credit enhancement who takes possession of the Property following a foreclosure, deed-in-lieu of foreclosure, or comparable conversion of the Project) requires exclusive control over withdrawals from the Replacement Reserve, then for so long as the senior lender or credit enhancer's requirements remain in effect, the Agency's consent is not required for any withdrawal of funds from the Replacement Reserve. The Owner shall continue to fund the Replacement Reserve at not less than the amount required by this Agreement, however.

7.02 Operating Reserve.

- (a) **Creation and Funding.** If required by Exhibit B, the Owner shall establish an operating reserve account for the Project ("**Operating Reserve**"), into which the Owner shall deposit funds as required by Exhibit B. The Owner shall segregate the Operating Reserve from other funds of the Owner. Any interest earned on the Operating Reserve must be added to the Operating Reserve (net of taxes on such interest).
- (b) **Withdrawals.** The Owner must obtain the written consent of the Agency prior to any withdrawal from the Operating Reserve. The Owner may request a withdrawal from the Operating Reserve to cover Project operating account deficits, or otherwise as approved in writing by the Agency. In connection with any request for a withdrawal from the Operating Reserve, the Owner shall

provide any supporting documentation that may be required by the Agency, including, but not limited to, operating statements, documentation of unforeseeable circumstances, and bank statements.

7.03 Other Reserves.

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

7.04 Servicing of Reserves.

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

withdraw) funds from the account, at any time and on one or more occasions, to pay the reasonable account-related fees of the Agency or the servicer of the account, so long as the amount withdrawn each year does not exceed 1% of the average monthly balance of the account for the year. In addition, the Owner shall pay all bank fees and investment breakage fees that are due to third parties and incurred by the Agency or a servicer in connection with servicing any such account.

7.05 Replenishment of Reserves.

If the Owner withdraws funds from a reserve account that is required by this Agreement (excluding withdrawals from the Replacement Reserve), the Agency may require the Owner to replenish the amount withdrawn from the account. If the Owner withdraws funds from the Replacement Reserve, the Agency may require the Owner to replenish the amount withdrawn from the account if the Agency determines that replenishment is necessary to maintain the Agency's then-existing replacement reserve standard for a project containing buildings or improvements similar to the Project in type, size, use, value, and condition. The Owner shall make any such replenishment over the period that the Agency may reasonably require. The Agency shall not require the Owner to replenish the account at a rate that is faster than 1/12th of the amount to be replenished per month, however.

7.06 Reserves Remain with Project.

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

7.07 Disposition of Reserves.

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

7.08 HDC Financing Requirements.

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

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ARTICLE 8
OWNERSHIP AND FINANCING

8.01 Property Transfers.

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

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

8.02 Changes in Ownership.

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

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

- (e) **LIHTC Investor.** The Agency's consent is not required for any Change in Ownership of the Owner that concerns solely a transfer of (i) a passive ownership interest in the LIHTC investor in the Beneficial Owner or (ii) such LIHTC investor's passive ownership interest in the Beneficial Owner, so long as (x) the LIHTC investor is a passive investor in the Beneficial Owner, and (y) the manager of the LIHTC investor, or any transferee of the LIHTC investor's passive ownership interest in the Beneficial Owner, is an affiliate of, and is and remains controlled by or under common control with, the LIHTC syndicator or investor parent entity identified in Exhibit B. In addition, any ownership interest in the Beneficial Owner of a special member or special limited partner may be transferred only together with a permitted transfer of the LIHTC investor's ownership interest in the Beneficial Owner, or of the interest of the manager of the LIHTC investor, and only to the same transferee or to a party that is an affiliate of, and is and remains controlled by or under common control with the transferee.
- (f) **Estate Planning.** The Agency shall consent to a Change in Ownership of the Owner that concerns solely a transfer of a direct or indirect ownership interest in the Owner for estate planning purposes to a trust on the following conditions: (i) the trust must have no present or contingent control over management or operations of the Owner or the Project and the only role of the trust must be to make or hold a monetary investment, each as determined by the Agency, (ii) the trust must exist for the benefit of an immediate family member of an individual with a direct or indirect ownership interest in the Owner, (iii) the Owner must obtain the Agency's prior written consent for each trustee and any beneficiary who is 18 years of age or older; and (iv) the Owner must obtain the Agency's prior written consent for any beneficiary who is younger than 18 years of age promptly following the date that the beneficiary reaches 18 years of age. If the Agency does not approve any such beneficiary, the Owner shall cause the trust to transfer its direct or indirect ownership interest in the Owner in accordance with this Section 8.02.

8.03 Financing.

- (a) **Agency Consent Required.** Except as provided in this Section 8.03, the Owner shall not incur, assume, or permit to exist any financing with respect to or encumbering all or any portion of the Project or the Property, or any direct or indirect ownership interest in the Owner, including but not limited to any mezzanine debt or preferred equity financing, without the prior written consent of the Agency, nor shall the Owner extend or renew any such existing financing on materially different terms without the prior written consent of the Agency.

- (b) **Mortgages and Other Encumbrances.** Except as provided in this Section 8.03, the Owner shall not permit any mortgage, lien, pledge, assignment, transfer, encumbrance, grant of a participation interest in, or hypothecation of or on all or any portion of the Project or the Property, or of or on any direct or indirect ownership interest in the Owner (or the income, proceeds, or other economic benefits of any such ownership interest) without the prior written consent of the Agency. Any mortgage or other encumbrance that encumbers all or any portion of the Project or the Property without the Agency's written consent will be void.
- (c) **Exceptions to Consent Requirement.** The Agency's consent is not required for (i) any financing with respect to or encumbering solely any indirect ownership interest in the Owner, and any encumbrance of an indirect ownership interest in the Owner that secures solely such financing, where the exercise of any rights or remedies by the holder of such debt would not in any circumstance cause (1) a change in present or contingent control over management or operations of the Owner or the Project, or (2) a transfer of a direct or indirect ownership interest in the Owner in violation of this Agreement; or (ii) any financing that is provided to the Owner by its members or partners, as applicable, pursuant to the Owner's organizational documents, and any encumbrance of a direct or indirect ownership interest in the Owner that secures solely such financing.
- (d) **Permitted Mortgages.** The Agency consents to any mortgage or other encumbrance that is (i) recorded against the Property before the date of this Agreement or (ii) signed and delivered on or after the date of this Agreement with the prior written consent of the Agency (including but not limited to any mortgage signed and delivered to secure any Agency financing with respect to the Project), and the financing secured by any such mortgage or other encumbrance ("**Permitted Mortgage**"). Any subordination agreements or covenants provided by other lenders and concerning the Agency's financing must comply with the Agency's requirements. Any sponsor note or mortgage must include subordination and standstill language with respect to the Agency's financing, including any enforcement note and mortgage.
- (e) **Approval of Future Financing.**
 - (i) **Notice to Agency.** The Owner shall provide the Agency with written notice of any proposed financing that requires the consent of the Agency not less than 60 days before the anticipated closing of the financing. The Owner shall provide the Agency with (1) a commitment or term sheet from the proposed lender, (2) the Project's financial statements for the previous 12 months, as certified by the Owner and showing the Project's net operating income for the period, (3) reasonably detailed projections of the Project's net operating income and debt service for the following 12 months assuming the Owner obtains the proposed financing, (4) a current appraisal of the Project prepared by an independent real estate appraiser not affiliated with the Owner, and (5) such further information as the Agency may reasonably request in connection with the proposed financing.

- (ii) **Standard for Consent Where No Agency Financing.** If the Property and the Project are not subject to any mortgage or lien held by or on behalf of the City or HDC, and the Owner does not owe any mortgage indebtedness to the City or HDC with respect to the Project, the Agency shall consent to any proposed financing with respect to or encumbering all or any portion of the Project or the Property, or any direct or indirect ownership interest in the Owner, and any related mortgage or other encumbrance, if the Agency confirms that (1) the proposed financing will be provided by HDC; the Community Preservation Corporation (or its affiliate); a City, State, or federal agency; Fannie Mae; Freddie Mac; a financial institution (including, but not limited to, a savings bank, commercial bank, life insurance company, public real estate investment company, or pension fund) with assets in excess of \$500 million and whose loans are subject to regulation by a State or federal agency; or another lender acceptable to the Agency ("**Institutional Lender**"); (2) after incurring the proposed financing, the debt service coverage ratio for the Project, taking into account all of the financing affecting the Project, will equal or exceed 1.15; (3) after incurring the proposed financing, the loan-to-value ratio for the Project, taking into account all of the financing affecting the Project, will not exceed 80%; and (4) the Agency has not declared a Default that has not been cured. If the proposed financing does not satisfy these requirements, the Agency may consent to the financing but is not required to do so.

8.04 Zoning; Development Rights.

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

8.05 Legal Owner.

- (a) **Nominee Agreement.** Neither the Legal Owner nor the Non-LIHTC Owner shall amend the Nominee Agreement, assign the Nominee Agreement, or enter into a new Nominee Agreement without the prior written consent of the Agency. The Legal Owner and the Non-LIHTC Owner shall comply with the Nominee Agreement and shall copy the Agency on any notice of default under the Nominee Agreement. A default under the Nominee Agreement that remains uncured beyond any applicable cure period is a breach of this Agreement. If this Agreement conflicts with the Nominee Agreement, this Agreement controls.
- (b) **Right to Cure.** If there is a default under any City, State, or federal loan or regulatory document, including, but not limited to, any mortgage, regulatory

agreement, or financing commitment, then notwithstanding any provision of the Nominee Agreement or any other agreement to the contrary, the Non-LIHTC Owner shall permit the Legal Owner to enter the Project and take such other actions with respect to the Project as may be necessary to cure the default, unless the Non-LIHTC Owner is acting diligently to cure the default.

8.06 Condominium.

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

any such Property Transfer or Change in Ownership that is not to or for the benefit of a Prohibited Person. In addition, the Agency's consent is not required for: (i) any Property Transfer that concerns solely a non-residential lease, sublease, license, or occupancy agreement to an end user of the space in the ordinary course of business, or (ii) any Change in Ownership that concerns solely an individual or entity (1) that has no present or contingent control over management or operations of the owner of such condominium unit or the Project, as determined by the Agency, and (2) the only role of which, as determined by the Agency, is to make a monetary investment.

- (e) **Obligations of Released Condominium Units.** The Agency shall not release a condominium unit from this Agreement unless a memorandum of this Agreement is recorded against the condominium unit's tax lot in accordance with Section 12.01(b) prior to the release of the condominium unit. After any release of a condominium unit from this Agreement, the owner of the condominium unit shall remain obligated to comply with this Section 8.06, Section 4.16(c) (relating to prohibited uses on the Property), Section 4.16(g) (relating to "high road" retail), and any provision of this Agreement that is related to administering or enforcing such obligations. These provisions of this Agreement will continue to bind the owner of any such condominium unit and run with the land with respect to the condominium unit.

8.07 Ground Lease from City.

- (a) **Compliance with Ground Lease.** The Owner shall comply, and shall cause the Project to comply, with the Ground Lease.

[Continues on next page]

ARTICLE 9

COMPLIANCE MONITORING

9.01 Annual Submissions.

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

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

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

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

9.02 Late Fees.

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

9.03 Testimony and Documents.

Upon 10 days' written notice from the Agency, and at a time and place specified by the Agency, the Owner, including any of its members, partners, principals, officers, directors, employees, and agents, (a) shall submit to an oral examination under oath by authorized representatives of the Agency regarding any matter related to the Project; and (b) shall produce for examination, review, or audit by the Agency any Records that the Agency may request, in form and manner satisfactory to the Agency.

9.04 Access to Property.

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

9.05 Reports of Non-Compliance.

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

9.06 Reports of Legal Actions.

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

9.07 Interaction with Authorities.

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

9.08 Disclosure of Ownership.

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

The Owner shall provide any information that the Agency may reasonably request with respect to these individuals and entities.

9.09 Additional Information.

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

9.10 HDC Monitoring Fees.

- (a) **LIHTC Monitoring Fee.** Pursuant to the Internal Revenue Code, HDC is entitled to a reasonable fee for monitoring the Project's LIHTC compliance. During the LIHTC compliance period, the Beneficial Owner shall pay to HDC an annual LIHTC monitoring fee that is equal to the sum of (i) an annual fee of \$100 per building in the Project, not subject to an annual cap; and (ii) 0.75% of the maximum annual tax credit rent for the Units that are designated as low-income units pursuant to Section 42 of the Internal Revenue Code, subject to an annual cap of \$12,500, if there are 150 or fewer such Units in the Project, or \$17,500, if there are more than 150 such Units in the Project. If the HDC Financing is paid in full prior to the end of the LIHTC compliance period, the Beneficial Owner shall pay to HDC an amount that is equal to the present value (based on the Daily Treasury Yield Curve Rates, as published by the U.S. Department of the Treasury) of the LIHTC monitoring fee at the time of the prepayment for each year remaining in the LIHTC compliance period. After such a payment, no additional LIHTC monitoring fee shall be due.
- (b) **HDC Monitoring Fee (Prepayment in Full).** To compensate HDC for continued monitoring of the Project after a prepayment in full of HDC's senior loan to the Project, upon such a prepayment and on an annual basis thereafter, the Beneficial Owner shall pay to HDC an amount equal to \$50 per unit, subject to an annual cap of \$12,500, if there are 150 or fewer Units in the Project, or \$17,500, if there are more than 150 Units in the Project, such amount to be increased annually in accordance with any increase in the New York City Consumer Price Index. If the Beneficial Owner transfers its interest in the Project (subject to the requirements of this Agreement), HDC reserves the right, in its sole discretion, to charge a one-time monitoring fee or to revise the annual fee for continued monitoring.
- (c) **Compliance Escrow.** If the Project is not in compliance with this Agreement on the date that the Beneficial Owner gives notice of a prepayment to HDC, then unless the Beneficial Owner withdraws the notice until the Project is in compliance, the Beneficial Owner shall enter into a compliance escrow agreement with HDC and deposit \$20,000, such amount to be increased at the time in accordance with any increase in the New York City Consumer Price Index. This compliance escrow is in addition to the monitoring fee required by Section 9.10(b). HDC will apply this compliance escrow ratably to monitor compliance with this Agreement. Once the Project is restored to compliance, any balance of the compliance escrow will be refunded to the Beneficial Owner, without interest.

ARTICLE 10

ENFORCEMENT

10.01 Defaults.

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

10.02 Remedies.

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

- (a) **Specific Performance.** Seek a temporary or permanent injunction or an order for specific performance of this Agreement. The Agency may also seek this remedy if it determines that a violation of this Agreement is threatened.

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

10.03 All Rights Cumulative.

All rights and remedies of the Agency under (a) this Agreement, (b) any other document related to the Project, (c) the Law, or (d) any other source of authority, are cumulative

and may be exercised alone or concurrently, at the Agency's option. The exercise or enforcement of any one right or remedy by the Agency is not a condition to or a bar of the exercise or enforcement of any other right or remedy. The listing of rights and remedies of the Agency in this Agreement does not preclude the Agency's exercise or enforcement of any other right or remedy available to the Agency that is not listed in this Agreement.

10.04 Waivers of Agreement.

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

10.05 No Distributions Upon Default.

Upon written notice from the Agency to the Owner of a Default, or of a material uncured default under any other agreement with the Agency or the City that is binding upon the Owner and that concerns the Project, the Owner shall not make or permit any distribution of any assets of, or any income of any kind from, the Project to its partners, members, or shareholders, as applicable, until the Agency has determined that the Default or default has been cured.

10.06 Prior Owner Defaults.

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

10.07 No Retaliation.

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

10.08 Waiver of Opposition.

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

10.09 Third-Party Beneficiaries.

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

10.10 Tenant Right to Enforce.

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

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ARTICLE 11

STATEMENTS OF FACT

11.01 In General.

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

11.02 Organization.

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

11.03 Not-for-Profit Corporations.

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

11.04 Due Authorization.

The party has duly authorized and signed this Agreement.

11.05 Valid and Binding Obligation.

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

11.06 No Conflicts.

The entry into and performance of this Agreement and the consummation of the transactions contemplated by this Agreement do not, and will not, (a) conflict with any Law or applicable order, (b) conflict with the party's organizational documents, or (c) constitute a breach or default under any material agreement of the party. If such a conflict arises with any Law or applicable order that does not exist as of the date the party is making this statement, the foregoing statement will remain true as long as the party discloses the conflict to the Agency in writing promptly after the Law or applicable order takes effect and the party provides a detailed explanation of the matter and any corrective actions taken or to be taken.

11.07 Obtaining of Approvals.

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

11.08 Litigation.

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

11.09 Bankruptcy.

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

11.10 Accuracy of Information.

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

11.11 Rent Roll.

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

11.12 Title to Property.

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

contractual right to sell, transfer, or otherwise dispose of the Property or any interest in the Property, except in each case as previously disclosed to the Agency in writing or as promptly disclosed to the Agency in writing after the date the party is making this statement.

11.13 Flood Zone Status.

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

11.14 Utilities and Public Streets.

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

11.15 Property Condition.

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

11.16 Taxes.

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

11.17 Insurance.

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

11.18 Reserves.

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

11.19 Zoning and Building Codes.

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

11.20 Environmental Laws.

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

11.21 Financing.

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

11.22 Law and Agreements.

The party has complied in all material respects with all Laws, and except for violations of record or as disclosed to the Agency in writing, the party has not received any written

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

11.23 Agency and City Personnel.

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

11.24 Conflicts of Interest.

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

11.25 Lobbying.

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

11.26 Sponsor Loans.

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

11.27 Sponsor Loans (LIHTC Basis).

With respect to any loan that is made to the Owner by an affiliate of the Owner, including but not limited to any deferred developer fee loan, and that is included in the eligible basis of the Project for LIHTC purposes, (a) the applicable note is negotiable, repayable,

and if not secured by a mortgage affecting the Project, recourse to the Owner, (b) the Owner intends to repay the loan in accordance with the applicable note and any other loan documents, (c) there are no formal or informal understandings or arrangements with the lender that the loan will be forgiven, and (d) the Owner will not request that the lender forgive the loan in the future.

[Continues on next page]

ARTICLE 12

MISCELLANEOUS

12.01 Recording.

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

12.02 Successors.

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

12.03 Notices.

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

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

12.04 Agency Approvals.

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

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

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

12.05 Amendments.

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

12.06 Severability.

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

12.07 Claims Against Officials.

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

12.08 Cooperation.

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

12.09 Forum Selection.

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

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

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

12.10 Indemnity.

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

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

12.11 Provisions Required by Law.

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

12.12 Further Assurances.

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

12.13 Duplicate Originals.

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

12.14 Interpretation.

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

12.15 Joint and Several Obligations.

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

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

12.16 No Merger.

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

12.17 Other Consents.

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

12.18 Relationship of Parties.

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

12.19 Asset Management by HDC.

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

[Continues on next page]

ARTICLE 13

INVESTIGATIONS

13.01 Definitions.

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

13.02 Cooperation.

The parties to this Agreement shall cooperate fully and faithfully with any investigation, audit, or inquiry conducted by a State or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit, or inquiry.

13.03 Refusal to Testify.

If (a) any person who has been advised that a statement made by the person, and any information from such statement, will not be used against the person in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority of the City or the State, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State, or (b) any person refuses to testify for a reason other than the assertion of a privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony

concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision of the City or State or any local development corporation within the City, then, the commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five days' written notice, to the parties involved to determine if any penalties should attach for the failure of a person to testify.

13.04 Adjournments.

If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination, without the City incurring any penalty or damages for delay or otherwise.

13.05 Penalties.

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

- (a) **Disqualification.** The disqualification for a period not to exceed five years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit, or license with or from the City; and/or
- (b) **Cancellation.** The cancellation or termination of any and all such existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; the City shall pay any money lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination.

13.06 Factors.

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

- (a) **Good Faith Efforts.** The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including, but not limited to, the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees, or fiduciaries whose testimony is sought.

- (b) **Relationship to the Entity.** The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
- (c) **Nexus.** The nexus of the testimony sought to the subject and its contracts, leases, permits, or licenses with the City.
- (d) **Effect of a Penalty.** The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 13.05, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 13.03 gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity shall present evidence at the hearing demonstrating the potential adverse impact a penalty would have on such person or entity.


13.07 Warranties and Enforcement.

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

[Signatures follow]


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

Willets Point Phase I Owner, LLC, a New York limited liability company

By: 
Name: Frank Monterisi
Title: Authorized Signatory

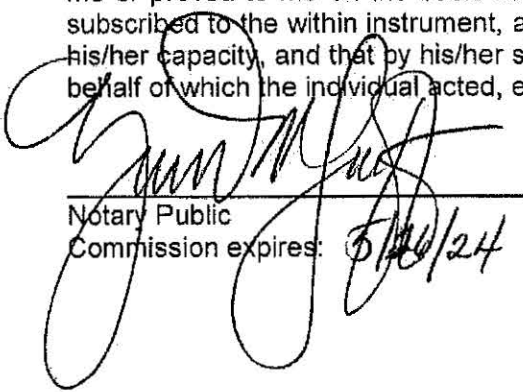
Willets Point Phase I LIHTC Owner L.P., a New York limited partnership

By: Willets Point Phase I LIHTC GP, LLC, its general partner

By: 
Name: Frank Monterisi
Title: Authorized Signatory

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

On the 20th day of November, 2023, before me, the undersigned, a notary public in and for said state, personally appeared Frank Monterisi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.


Notary Public

Commission expires: 5/16/24

YVETTE M GAUFF
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01GA6341905
Qualified in New York County
Commission Expires May 16, 2024

**Willets Point Phase I Housing Development
Fund Corporation**

By:

JT
Name: Jacqueline Tom
Title: Secretary/Treasurer

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

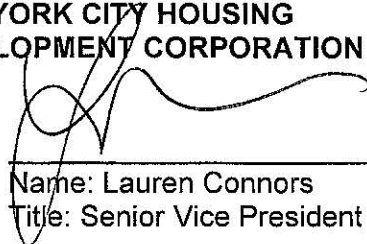
On the 20th day of November, 2023, before me, the undersigned, a notary public in and for said state, personally appeared Jacqueline Tom, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

GA
Notary Public
Commission expires:

GRACE ALSTER
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01AL6408363
Qualified in Nassau County
Commission Expires August 24, 2024


NEW YORK CITY HOUSING
DEVELOPMENT CORPORATION

By:


Name: Lauren Connors
Title: Senior Vice President


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

On the 17th day of November, 2023, before me, the undersigned, a notary public in and for said state, personally appeared **LAUREN CONNORS**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.


Notary Public
Commission expires:
Sylvia Martinez
Notary Public - State of New York
No. 01MA6116841
Qualified in Queens County
Commission Expires October 12, 2024

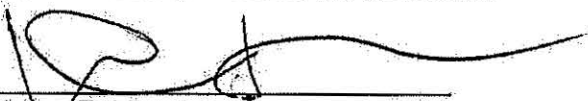
THE CITY OF NEW YORK

By: DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT

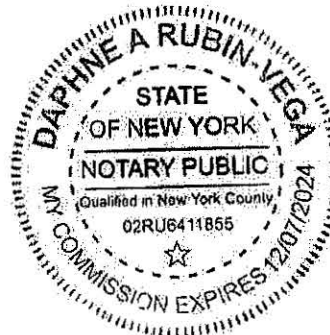
By: 
Name: Daniel Moran
Title: Assistant Commissioner

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

On the 16th day of November, 2023, before me, the undersigned, a notary public in and for said state, personally appeared **DANIEL MORAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.


Notary Public
Commission expires:

APPROVED AS TO FORM
BY STANDARD TYPE OF CLASS
FOR USE UNTIL FEBRUARY 24, 2025:



By: /s/ Matthew Bridge
Acting Corporation Counsel

EXHIBIT A

PROPERTY DESCRIPTION

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

Borough: **Queens**

Block: **1833**

Lots: **120, 130, and 135**

Address: **126-01 Roosevelt Avenue, 126-43 39th Avenue and 126-55 39th Avenue**

EXHIBIT B

PROJECT DETAILS

Project

Name	Willets Point – Buildings 1 and 2	
Agency Program	Mix & Match	
Address	126-01 Roosevelt Avenue, 126-43 39th Avenue & 126-55 39th Avenue Queens, NY, 11368	
Borough, Block, and Lot	Queens Block 1833, Lot 130, and Block 1833, Lot 135	
Building Identification Number	4624494 and 4624493 (Additional BIN Numbers expected to be assigned for each of the four LIHTC Buildings)	
Sponsor	The Related Companies, L.P. & Sterling Equities	
Real Property Tax Benefits	Payment in lieu of taxes (PILOT) pursuant to the Ground Lease	
Number of Units (excluding Superintendent Units)	880	
	Studio	236
	1-Bedroom	429
	2-Bedroom	139
	3-Bedroom	76
Superintendent Units	1 three-bedroom Unit	

Summary of Occupancy Restrictions (See individual tables that follow in Exhibit B for apartment-size distributions, rent limits, and other restrictions.)	60 30% of AMI Units (Enhanced Permanently Affordable Units) 34 40% of AMI Units 65 40% of AMI Units (Enhanced Permanently Affordable Units) 54 40% of AMI Units (Homeless Our Space) 12 40% of AMI Units (Homeless Our Space, Permanently Affordable) 56 60% of AMI Units (Homeless 15/15) 11 60% of AMI Units (Homeless 15/15, Permanently Affordable) 48 60% of AMI Units 12 60% of AMI Units (Permanently Affordable) 98 80% of AMI Units 11 80% of AMI Units (Permanently Affordable) 135 120% of AMI Units 139 120% of AMI Units (Enhanced Permanently Affordable Units) 65 120% of AMI Units (Permanently Affordable Units) 59 150% of AMI Units 21 150% of AMI Units (Permanently Affordable) 461 LIHTC Units
Non-Residential Space	Approximately 26,521 gross square feet of commercial and community facility space and 323 parking spaces
Initial Managing Agent (Acknowledged by the Agency as of the date of this Agreement only. Any change to the Managing Agent requires Agency consent per Section 6.07. The Agency may also require a replacement per Section 6.07.)	Related Management Company L.P.
Management Fee Limit	6.5% of the Project's net residential rent collection, which includes all amounts actually collected with respect to the Units as rent, rental subsidies, or other payments.
LIHTC Syndicator or Investor Parent Entity	Wells Fargo Community Investment Holdings, LLC
Applicable Fraction	100% It is expected that, once the condominium is recorded, each of the four LIHTC Buildings will have a 100% Applicable Fraction
Minimum Set-Aside (HDC Obligations)	25% at 60% of AMI (income averaging)

Restriction Period

Agency Program Termination Date (This Agreement may remain in effect beyond this date; see Section 2.01.)	60 years from the date of this Agreement With respect to the Permanently Affordable Units and Enhanced Permanently Affordable Units identified as such in this Exhibit B, no termination date. The parties intend for the Restriction Period for these Units to last in perpetuity. (The foregoing does not apply to any Units that are covered separately by an Inclusionary Housing regulatory agreement or restrictive declaration unless such Units are also designated as permanently affordable Units under this Agreement.)
Extended Use Period (This Agreement may remain in effect beyond this date; see Section 2.01.)	40 years from the beginning of the compliance period (as defined in Section 42(i)(1) of the Internal Revenue Code), or any earlier date on which the Extended Use Period terminates upon a foreclosure or deed in lieu of foreclosure pursuant to Section 42 of the Internal Revenue Code

Building 1 (126-43 39th Avenue)**30% of AMI Units (Enhanced Permanently Affordable Units)**

Income Limit		30% of AMI	
Maximum Program Rent		30% of AMI	
Other Restrictions		Enhanced Permanently Affordable, LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	8	\$2,034 (100% of 2023 AMI)	\$486 (27% of 2023 AMI)
1-Bedroom	20	\$2,550 (100% of 2023 AMI)	\$617 (27% of 2023 AMI)
2-Bedroom	6	\$3,048 (100% of 2023 AMI)	\$728 (27% of 2023 AMI)
3-Bedroom	3	\$3,510 (100% of 2023 AMI)	\$830 (27% of 2023 AMI)
Total	37		

40% of AMI Units

Income Limit		40% of AMI	
Maximum Program Rent		40% of AMI	
Other Restrictions		LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	5	\$2,034 (100% of 2023 AMI)	\$698 (37% of 2023 AMI)
1-Bedroom	15	\$2,550 (100% of 2023 AMI)	\$882 (37% of 2023 AMI)
2-Bedroom	0	\$3,048 (100% of 2023 AMI)	\$1,046 (37% of 2023 AMI)
3-Bedroom	0	\$3,510 (100% of 2023 AMI)	\$1,197 (37% of 2023 AMI)
Total	20		

40% of AMI Units (Enhanced Permanently Affordable Units)

Income Limit		40% of AMI	
Maximum Program Rent		40% of AMI	
Other Restrictions		Enhanced Permanently Affordable, LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	8	\$2,034 (100% of 2023 AMI)	\$698 (37% of 2023 AMI)
1-Bedroom	16	\$2,550 (100% of 2023 AMI)	\$882 (37% of 2023 AMI)
2-Bedroom	10	\$3,048 (100% of 2023 AMI)	\$1,046 (37% of 2023 AMI)
3-Bedroom	6	\$3,510 (100% of 2023 AMI)	\$1,197 (37% of 2023 AMI)
Total	40		

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

Income Limit		40% of AMI	
Maximum Program Rent		30% of AMI (and upon vacancy, the least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than the amount given below as the floor for the Income-Based Rent in the Initial Actual Rent for each apartment size), or (iii) if received by the Tenant, Shelter Allowance)	
Other Restrictions		Homeless Units (Our Space Program), LIHTC. For Units with City FHEPS tenant-based rental assistance, the Rental Assistance Rent is capped at 60% of AMI.	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	6	\$2,034 (100% of 2023 AMI)	Least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$215), or (iii) if received by the Tenant, the Shelter Allowance
1-Bedroom	19	\$2,550 (100% of 2023 AMI)	Least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$283), or (iii) if received by the Tenant, the Shelter Allowance
2-Bedroom	6	\$3,048 (100% of 2023 AMI)	Least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$425), or (iii) if received by the Tenant, the Shelter Allowance
3-Bedroom	3	\$3,510 (100% of 2023 AMI)	Least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$512), or (iii) if received by the Tenant, the Shelter Allowance
Total	34		

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

Income Limit		40% of AMI	
Maximum Program Rent		30% of AMI (and upon vacancy, the least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than the amount given below as the floor for the Income-Based Rent in the Initial Actual Rent for each apartment size), or (iii) if received by the Tenant, Shelter Allowance)	
Other Restrictions		Homeless Units (Our Space Program), Permanently Affordable, LIHTC. For Units with City FHEPS tenant-based rental assistance, the Rental Assistance Rent is capped at 60% of AMI.	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	2	\$2,034 (100% of 2023 AMI)	Least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$215), or (iii) if received by the Tenant, the Shelter Allowance
1-Bedroom	2	\$2,550 (100% of 2023 AMI)	Least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$283), or (iii) if received by the Tenant, the Shelter Allowance
2-Bedroom	1	\$3,048 (100% of 2023 AMI)	Least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$425), or (iii) if received by the Tenant, the Shelter Allowance
3-Bedroom	1	\$3,510 (100% of 2023 AMI)	Least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$512), or (iii) if received by the Tenant, the Shelter Allowance
Total	6		

40% of AMI Units (Homeless Units) (15/15)

Income Limit		60% of AMI	
Maximum Program Rent		60% of AMI	
Other Restrictions		Homeless Units (15/15 Rental Assistance Contract), LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	32	\$2,461 (120% of 2023 FMR)	\$1,467 (Rent. Assist. Contract)
1-Bedroom	0	\$2,506 (120% of 2023 FMR)	\$1,532 (Rent. Assist. Contract)
2-Bedroom	0	\$2,812 (120% of 2023 FMR)	\$1,751 (Rent. Assist. Contract)
3-Bedroom	0	\$3,532 (120% of 2023 FMR)	\$2,254 (Rent. Assist. Contract)
Total	32		

40% of AMI Units (Homeless Units) (15/15) (Permanently Affordable)

Income Limit		60% of AMI	
Maximum Program Rent		60% of AMI	
Other Restrictions		Homeless Units (15/15 Rental Assistance Contract), Permanently Affordable, LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	5	\$2,461 (120% of 2023 FMR)	\$1,467 (Rent. Assist. Contract)
1-Bedroom	0	\$2,506 (120% of 2023 FMR)	\$1,532 (Rent. Assist. Contract)
2-Bedroom	0	\$2,812 (120% of 2023 FMR)	\$1,751 (Rent. Assist. Contract)
3-Bedroom	0	\$3,532 (120% of 2023 FMR)	\$2,254 (Rent. Assist. Contract)
Total	5		

60% of AMI Units

Income Limit		60% of AMI	
Maximum Program Rent		60% of AMI	
Other Restrictions		LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	8	\$2,034 (100% of 2023 AMI)	\$1,122 (57% of 2023 AMI)
1-Bedroom	20	\$2,550 (100% of 2023 AMI)	\$1,411 (57% of 2023 AMI)
2-Bedroom	0	\$3,048 (100% of 2023 AMI)	\$1,682 (57% of 2023 AMI)
3-Bedroom	2	\$3,510 (100% of 2023 AMI)	\$1,931 (57% of 2023 AMI)
Total	30		

60% of AMI Units (Permanently Affordable)

Income Limit		60% of AMI	
Maximum Program Rent		60% of AMI	
Other Restrictions		Permanently Affordable, LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	0	\$2,034 (100% of 2023 AMI)	\$1,122 (57% of 2023 AMI)
1-Bedroom	0	\$2,550 (100% of 2023 AMI)	\$1,411 (57% of 2023 AMI)
2-Bedroom	5	\$3,048 (100% of 2023 AMI)	\$1,682 (57% of 2023 AMI)
3-Bedroom	2	\$3,510 (100% of 2023 AMI)	\$1,931 (57% of 2023 AMI)
Total	7		

80% of AMI Units

Income Limit		80% of AMI	
Maximum Program Rent		80% of AMI	
Other Restrictions		LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	14	\$2,034 (100% of 2023 AMI)	\$1,546 (77% of 2023 AMI)
1-Bedroom	35	\$2,550 (100% of 2023 AMI)	\$1,941 (77% of 2023 AMI)
2-Bedroom	7	\$3,048 (100% of 2023 AMI)	\$2,317 (77% of 2023 AMI)
3-Bedroom	3	\$3,510 (100% of 2023 AMI)	\$2,665 (77% of 2023 AMI)
Total	59		

80% of AMI Units (Permanently Affordable)

Income Limit		80% of AMI	
Maximum Program Rent		80% of AMI	
Other Restrictions		Permanently Affordable, LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	0	\$2,034 (100% of 2023 AMI)	\$1,546 (77% of 2023 AMI)
1-Bedroom	0	\$2,550 (100% of 2023 AMI)	\$1,941 (77% of 2023 AMI)
2-Bedroom	4	\$3,048 (100% of 2023 AMI)	\$2,317 (77% of 2023 AMI)
3-Bedroom	4	\$3,510 (100% of 2023 AMI)	\$2,665 (77% of 2023 AMI)
Total	8		

120% of AMI Units

Income Limit		120% of AMI	
Maximum Program Rent		100% of AMI	
Other Restrictions		N/A	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	19	\$2,458 (120% of 2023 AMI)	\$2,034 (100% of 2023 AMI)
1-Bedroom	61	\$3,080 (120% of 2023 AMI)	\$2,550 (100% of 2023 AMI)
2-Bedroom	0	\$3,684 (120% of 2023 AMI)	\$3,048 (100% of 2023 AMI)
3-Bedroom	0	\$4,244 (120% of 2023 AMI)	\$3,510 (100% of 2023 AMI)
Total	80		

120% of AMI Units (Enhanced Permanently Affordable Units)

Income Limit		120% of AMI	
Maximum Program Rent		100% of AMI	
Other Restrictions		Enhanced Permanently Affordable	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	19	\$2,458 (120% of 2023 AMI)	\$2,034 (100% of 2023 AMI)
1-Bedroom	49	\$3,080 (120% of 2023 AMI)	\$2,550 (100% of 2023 AMI)
2-Bedroom	10	\$3,684 (120% of 2023 AMI)	\$3,048 (100% of 2023 AMI)
3-Bedroom	6	\$4,244 (120% of 2023 AMI)	\$3,510 (100% of 2023 AMI)
Total	84		

120% of AMI Units (Permanently Affordable Units)

Income Limit		120% of AMI	
Maximum Program Rent		100% of AMI	
Other Restrictions		Permanently Affordable	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	15	\$2,458 (120% of 2023 AMI)	\$2,034 (100% of 2023 AMI)
1-Bedroom	23	\$3,080 (120% of 2023 AMI)	\$2,550 (100% of 2023 AMI)
2-Bedroom	0	\$3,684 (120% of 2023 AMI)	\$3,048 (100% of 2023 AMI)
3-Bedroom	0	\$4,244 (120% of 2023 AMI)	\$3,510 (100% of 2023 AMI)
Total	38		

150% of AMI Units

Income Limit		150% of AMI	
Maximum Program Rent		120% of AMI	
Other Restrictions		N/A	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	0	\$2,882 (140% of 2023 AMI)	\$2,458 (120% of 2023 AMI)
1-Bedroom	0	\$3,610 (140% of 2023 AMI)	\$3,080 (120% of 2023 AMI)
2-Bedroom	24	\$4,319 (140% of 2023 AMI)	\$3,684 (120% of 2023 AMI)
3-Bedroom	15	\$4,978 (140% of 2023 AMI)	\$4,244 (120% of 2023 AMI)
Total	39		

150% of AMI Units (Permanently Affordable)

Income Limit		150% of AMI	
Maximum Program Rent		120% of AMI	
Other Restrictions		Permanently Affordable	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	0	\$2,882 (140% of 2023 AMI)	\$2,458 (120% of 2023 AMI)
1-Bedroom	0	\$3,610 (140% of 2023 AMI)	\$3,080 (120% of 2023 AMI)
2-Bedroom	8	\$4,319 (140% of 2023 AMI)	\$3,684 (120% of 2023 AMI)
3-Bedroom	6	\$4,978 (140% of 2023 AMI)	\$4,244 (120% of 2023 AMI)
Total	14		

Building 2 (126-55 39th Avenue)**30% of AMI Units (Enhanced Permanently Affordable Units)**

Income Limit		30% of AMI	
Maximum Program Rent		30% of AMI	
Other Restrictions		Enhanced Permanently Affordable, LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	6	\$2,034 (100% of 2023 AMI)	\$486 (27% of 2023 AMI)
1-Bedroom	12	\$2,550 (100% of 2023 AMI)	\$617 (27% of 2023 AMI)
2-Bedroom	3	\$3,048 (100% of 2023 AMI)	\$728 (27% of 2023 AMI)
3-Bedroom	2	\$3,510 (100% of 2023 AMI)	\$830 (27% of 2023 AMI)
Total	23		

40% of AMI Units

Income Limit		40% of AMI	
Maximum Program Rent		40% of AMI	
Other Restrictions		LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	4	\$2,034 (100% of 2023 AMI)	\$698 (37% of 2023 AMI)
1-Bedroom	10	\$2,550 (100% of 2023 AMI)	\$882 (37% of 2023 AMI)
2-Bedroom	0	\$3,048 (100% of 2023 AMI)	\$1,046 (37% of 2023 AMI)
3-Bedroom	0	\$3,510 (100% of 2023 AMI)	\$1,197 (37% of 2023 AMI)
Total	14		

40% of AMI Units (Enhanced Permanently Affordable Units)

Income Limit		40% of AMI	
Maximum Program Rent		40% of AMI	
Other Restrictions		Enhanced Permanently Affordable, LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	8	\$2,034 (100% of 2023 AMI)	\$698 (37% of 2023 AMI)
1-Bedroom	9	\$2,550 (100% of 2023 AMI)	\$882 (37% of 2023 AMI)
2-Bedroom	5	\$3,048 (100% of 2023 AMI)	\$1,046 (37% of 2023 AMI)
3-Bedroom	3	\$3,510 (100% of 2023 AMI)	\$1,197 (37% of 2023 AMI)
Total	25		

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

Income Limit		40% of AMI
Maximum Program Rent		30% of AMI (and upon vacancy, the least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than the amount given below as the floor for the Income-Based Rent in the Initial Actual Rent for each apartment size), or (iii) if received by the Tenant, Shelter Allowance)
Other Restrictions		Homeless Units (Our Space Program), LIHTC. For Units with City FHEPS tenant-based rental assistance, the Rental Assistance Rent is capped at 60% of AMI.
Unit Size	Number of Units	Initial Legal Rent
Studio	6	\$2,034 (100% of 2023 AMI)
1-Bedroom	11	\$2,550 (100% of 2023 AMI)
2-Bedroom	2	\$3,048 (100% of 2023 AMI)
3-Bedroom	1	\$3,510 (100% of 2023 AMI)
Total	20	

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

Income Limit		40% of AMI	
Maximum Program Rent		30% of AMI (and upon vacancy, the least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than the amount given below as the floor for the Income-Based Rent in the Initial Actual Rent for each apartment size), or (iii) if received by the Tenant, Shelter Allowance)	
Other Restrictions		Homeless Units (Our Space Program), Permanently Affordable, LIHTC. For Units with City FHEPS tenant-based rental assistance, the Rental Assistance Rent is capped at 60% of AMI.	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	3	\$2,034 (100% of 2023 AMI)	Least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$215), or (iii) if received by the Tenant, the Shelter Allowance
1-Bedroom	1	\$2,550 (100% of 2023 AMI)	Least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$283), or (iii) if received by the Tenant, the Shelter Allowance
2-Bedroom	1	\$3,048 (100% of 2023 AMI)	Least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$425), or (iii) if received by the Tenant, the Shelter Allowance
3-Bedroom	1	\$3,510 (100% of 2023 AMI)	Least of (i) 30% of AMI, (ii) the Income-Based Rent (but not less than \$512), or (iii) if received by the Tenant, the Shelter Allowance
Total	6		

60% of AMI Units (Homeless Units) (15/15)

Income Limit		60% of AMI	
Maximum Program Rent		60% of AMI	
Other Restrictions		Homeless Units (15/15 Rental Assistance Contract), LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	0	\$2,461 (120% of 2023 FMR)	\$1,467 (Rent. Assist. Contract)
1-Bedroom	12	\$2,506 (120% of 2023 FMR)	\$1,532 (Rent. Assist. Contract)
2-Bedroom	12	\$2,812 (120% of 2023 FMR)	\$1,751 (Rent. Assist. Contract)
3-Bedroom	0	\$3,532 (120% of 2023 FMR)	\$2,254 (Rent. Assist. Contract)
Total	24		

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

Income Limit		60% of AMI	
Maximum Program Rent		60% of AMI	
Other Restrictions		Homeless Units (15/15 Rental Assistance Contract), Permanently Affordable, LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	0	\$2,461 (120% of 2023 FMR)	\$1,467 (Rent. Assist. Contract)
1-Bedroom	3	\$2,506 (120% of 2023 FMR)	\$1,532 (Rent. Assist. Contract)
2-Bedroom	3	\$2,812 (120% of 2023 FMR)	\$1,751 (Rent. Assist. Contract)
3-Bedroom	0	\$3,532 (120% of 2023 FMR)	\$2,254 (Rent. Assist. Contract)
Total	6		

60% of AMI Units

Income Limit		60% of AMI	
Maximum Program Rent		60% of AMI	
Other Restrictions		LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	6	\$2,034 (100% of 2023 AMI)	\$1,122 (57% of 2023 AMI)
1-Bedroom	11	\$2,550 (100% of 2023 AMI)	\$1,411 (57% of 2023 AMI)
2-Bedroom	0	\$3,048 (100% of 2023 AMI)	\$1,682 (57% of 2023 AMI)
3-Bedroom	1	\$3,510 (100% of 2023 AMI)	\$1,931 (57% of 2023 AMI)
Total	18		

60% of AMI Units (Permanently Affordable)

Income Limit		60% of AMI	
Maximum Program Rent		60% of AMI	
Other Restrictions		Permanently Affordable, LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	0	\$2,034 (100% of 2023 AMI)	\$1,122 (57% of 2023 AMI)
1-Bedroom	0	\$2,550 (100% of 2023 AMI)	\$1,411 (57% of 2023 AMI)
2-Bedroom	4	\$3,048 (100% of 2023 AMI)	\$1,682 (57% of 2023 AMI)
3-Bedroom	1	\$3,510 (100% of 2023 AMI)	\$1,931 (57% of 2023 AMI)
Total	5		

80% of AMI Units

Income Limit		80% of AMI	
Maximum Program Rent		80% of AMI	
Other Restrictions		LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	13	\$2,034 (100% of 2023 AMI)	\$1,546 (77% of 2023 AMI)
1-Bedroom	20	\$2,550 (100% of 2023 AMI)	\$1,941 (77% of 2023 AMI)
2-Bedroom	4	\$3,048 (100% of 2023 AMI)	\$2,317 (77% of 2023 AMI)
3-Bedroom	2	\$3,510 (100% of 2023 AMI)	\$2,665 (77% of 2023 AMI)
Total	39		

80% of AMI Units (Permanently Affordable)

Income Limit		80% of AMI	
Maximum Program Rent		80% of AMI	
Other Restrictions		Permanently Affordable, LIHTC	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	0	\$2,034 (100% of 2023 AMI)	\$1,546 (77% of 2023 AMI)
1-Bedroom	0	\$2,550 (100% of 2023 AMI)	\$1,941 (77% of 2023 AMI)
2-Bedroom	2	\$3,048 (100% of 2023 AMI)	\$2,317 (77% of 2023 AMI)
3-Bedroom	1	\$3,510 (100% of 2023 AMI)	\$2,665 (77% of 2023 AMI)
Total	3		

120% of AMI Units

Income Limit		120% of AMI	
Maximum Program Rent		100% of AMI	
Other Restrictions		N/A	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	19	\$2,458 (120% of 2023 AMI)	\$2,034 (100% of 2023 AMI)
1-Bedroom	36	\$3,080 (120% of 2023 AMI)	\$2,550 (100% of 2023 AMI)
2-Bedroom	0	\$3,684 (120% of 2023 AMI)	\$3,048 (100% of 2023 AMI)
3-Bedroom	0	\$4,244 (120% of 2023 AMI)	\$3,510 (100% of 2023 AMI)
Total	55		

120% of AMI Units (Enhanced Permanently Affordable Units)

Income Limit		120% of AMI	
Maximum Program Rent		100% of AMI	
Other Restrictions		Enhanced Permanently Affordable	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	17	\$2,458 (120% of 2023 AMI)	\$2,034 (100% of 2023 AMI)
1-Bedroom	30	\$3,080 (120% of 2023 AMI)	\$2,550 (100% of 2023 AMI)
2-Bedroom	5	\$3,684 (120% of 2023 AMI)	\$3,048 (100% of 2023 AMI)
3-Bedroom	3	\$4,244 (120% of 2023 AMI)	\$3,510 (100% of 2023 AMI)
Total	55		

120% of AMI Units (Permanently Affordable Units)

Income Limit		120% of AMI	
Maximum Program Rent		100% of AMI	
Other Restrictions		Permanently Affordable	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	13	\$2,458 (120% of 2023 AMI)	\$2,034 (100% of 2023 AMI)
1-Bedroom	14	\$3,080 (120% of 2023 AMI)	\$2,550 (100% of 2023 AMI)
2-Bedroom	0	\$3,684 (120% of 2023 AMI)	\$3,048 (100% of 2023 AMI)
3-Bedroom	0	\$4,244 (120% of 2023 AMI)	\$3,510 (100% of 2023 AMI)
Total	27		

150% of AMI Units

Income Limit		150% of AMI	
Maximum Program Rent		120% of AMI	
Other Restrictions		N/A	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	0	\$2,882 (140% of 2023 AMI)	\$2,458 (120% of 2023 AMI)
1-Bedroom	0	\$3,610 (140% of 2023 AMI)	\$3,080 (120% of 2023 AMI)
2-Bedroom	13	\$4,319 (140% of 2023 AMI)	\$3,684 (120% of 2023 AMI)
3-Bedroom	7	\$4,978 (140% of 2023 AMI)	\$4,244 (120% of 2023 AMI)
Total	20		

150% of AMI Units (Permanently Affordable)

Income Limit		150% of AMI	
Maximum Program Rent		120% of AMI	
Other Restrictions		Permanently Affordable	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	0	\$2,882 (140% of 2023 AMI)	\$2,458 (120% of 2023 AMI)
1-Bedroom	0	\$3,610 (140% of 2023 AMI)	\$3,080 (120% of 2023 AMI)
2-Bedroom	4	\$4,319 (140% of 2023 AMI)	\$3,684 (120% of 2023 AMI)
3-Bedroom	3	\$4,978 (140% of 2023 AMI)	\$4,244 (120% of 2023 AMI)
Total	7		

Other Rent Matters

Utility Allowances	Tenant pays electric only, with an electric stove
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Reserves

Replacement Reserve Contributions	Monthly payments of \$25,696, beginning on the first day of the first month following the Permanent Loan Conversion (increases in the monthly payment will be determined annually pursuant to the New York City Consumer Price Index).
Initial Operating Reserve Contribution	\$881,000 on the date of this Agreement
Social Services Reserve	<p>\$495,000 on the date of this Agreement the Owner shall deposit into the Social Services Reserve.</p> <p>The Owner may deduct from this deposit any amount previously advanced to the Owner prior to the Permanent Loan Conversion and under the social services reserve line item in the Project's development budget in order to implement an Agency-approved social services plan and to furnish the Homeless Units. The Owner shall not take</p>

	<p>any deduction, however, for amounts advanced to implement the social services plan exceeding \$495,000 and amounts advanced to furnish Homeless Units exceeding \$345,000.</p> <p>In accordance with Section 1152(7) of the Private Housing Financing Law and in satisfaction of the restrictions provided for in Section 3.05(c)(ii), within 90 days of the first anniversary of the Permanent Conversion, and annually thereafter, the Owner shall deposit into the Social Services Reserve the amount by which the rent collected from the Homeless Units exceeds the amount of rent that would have been collected were monthly rents set at \$215 for a studio, \$283 for a 1-bedroom, \$425 for a 2-bedroom and \$512 for a 3-bedroom (as such amounts may be increased annually by 2%). If the Social Services Reserve balance exceeds \$15,000 per Homeless Unit, the Owner shall use such excess to repay the subordinate HDC Grant Loan or HDC Financing, as directed by the Agency. The reserve statements required by Section 9.01(d) must include a certification of the calculations for determining the deposit required by this paragraph.</p> <p>The Owner may request a withdrawal from the Social Services Reserve to pay for the cost of implementing an Agency-approved social services plan, or otherwise as approved in writing by the Agency.</p>
	HDC

Permitted Transfers and Mortgages

Permitted Mortgages	<p>The Agency consents to the following Permitted Mortgages:</p> <p>Those certain mortgages delivered by Owner to HDC in the aggregate principal amount of \$439,147,880.00 each dated as of the date hereof.</p>
Future Financing	<p>Future financing that conforms to the requirements set forth in the Servicing and Release Agreement dated on or about the date hereof for a Permanent Financing will be deemed to satisfy the restrictions provided for in Section 8.03(e) and HDC shall agree to subordinate this Regulatory Agreement (other than in the case of the Enhanced Permanent Affordable Units) to such financing pursuant to a subordination agreement in form and substance satisfactory to HDC in HDC's reasonable discretion.</p>

Copies of Notices

Address for Counsel to Beneficial Owner	<p>David S. Boccio, Esq. Levitt Boccio, LLP 423 West 55th Street, 8th Floor New York, NY 10019 212-801-3763</p>
Address for LIHTC Investor	<p>Wells Fargo Community Investment Holdings, LLC 550 S. Tryon Street 23rd Floor, D1086-239 Charlotte, NC 28202-4200 Attn: Director of Tax Credit Asset Management</p>
Address for Counsel to LIHTC Investor	<p>Philip Spahn, Esq. Sidley Austin LLP 787 Seventh Avenue New York, NY 10019 212-839-5682</p>

<p>Address for Cash Collateral Provider</p> <p>(Copies to be delivered until the Permanent Loan Conversion)</p>	<p>Wells Fargo CRE Loan Center 100 North Main Street, 10th Floor MAC: D4001-105 Winston-Salem, North Carolina 27101 Attention: Disbursement Administrator</p> <p>Wells Fargo Bank, National Association Community Lending and Investment 30 Hudson Yards, 62nd Floor New York, New York 10001 Attention: Mark Lippi</p> <p>Wells Fargo Bank, National Association 550 S. Tryon Street, 23rd Floor D1086-239 Charlotte, North Carolina 28202-4200 Attention: Manager, Deal Management</p>
<p>Address for Counsel to Cash Collateral Provider</p> <p>(Copies to be delivered until the Permanent Loan Conversion)</p>	<p>Aviva Yakren, Esq. Sidley Austin LLP 787 Seventh Avenue New York, NY 10019 212-839-5682</p>

EXHIBIT C

FORM OF MEMORANDUM OF REGULATORY AGREEMENT

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

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

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

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

EXHIBIT D
ENVIRONMENTAL REQUIREMENTS

[Follows]

STATEMENT OF FINDINGS

Willets Point Development Plan
CEQR Number 07DME014Q

Made Pursuant to the New York State Environmental Quality Review Act and City Environmental
Quality Review
New York City Department of Housing Preservation & Development
October 27, 2023

INTRODUCTION

This Statement of Findings for the Willets Point Development Plan has been prepared in accordance with the environmental review requirements of Article 8 of the New York State Environmental Conservation Law, the State Environmental Quality Review Act (SEQRA), as set forth in Section 617.11 of its implementing regulations, and the New York City Environmental Quality Review (CEQR) process as set forth in New York City Mayoral Executive Order 91 of 1977, as amended, and in the Rules of Procedure for City Environmental Quality Review, found at Title 62, Chapter 5 of the Rules of the City of New York. This Statement of Findings has been prepared to 1) certify that the procedural requirements of SEQRA and CEQR have been met; 2) consider the relevant environmental impacts, facts, and conclusions disclosed in the Final Generic Environmental Impact Statement (FGEIS) for the Willets Point Development Plan and subsequent environmental review; 3) weigh and balance the relevant environmental impacts of the proposed action with social, economic, and other considerations; and 4) set forth a rationale for the decision of the lead agency, the Deputy Mayor for Housing and Economic Development (DME), and thereby adopted by the New York City Department of Housing Preservation and Development (HPD).

Pursuant to CEQR, DME is the lead agency responsible for conducting the environmental review that determines whether the proposed action—or any subsequent modifications to the proposed action—would have significant impacts on public health and the environment. For the Willets Point Development Plan, an FGEIS was certified as being complete, and a Notice of Completion was issued on September 12, 2008. Subsequent to the FGEIS, modifications were made to the project and analyzed in six technical memoranda (TM) as well as a supplemental EIS (FSEIS), as described below. After considering the FSEIS and subsequent environmental review, HPD has adopted this Statement of Findings.

DME has consulted with a number of City agencies in adopting these findings, including the New York City Department of City Planning (DCP), New York City Department of Transportation (DOT), New York City Department of Parks and Recreation (Parks), New York City Landmarks Preservation Commission (LPC), New York City Department of Environmental Protection (DEP), New York City School Construction Authority (SCA), New York City Department of Sanitation (DSNY), New York City Fire Department (FDNY), New York City Transit (NYCT), New York City Department of Health and Mental Hygiene (DOHMH), and the New York City Law Department (Law). These agencies provided particular assistance to DME in the review of those matters within the agency's area of expertise.

Lead Agency

Office of the Deputy Mayor for Housing and Economic Development
100 Gold Street – 2nd Floor New York, NY 10038 (212) 788-6801
Contact Person: Ingrid Young

SEQRA Classification

The Willets Point Development Project is classified as a Type I action pursuant to 6 NYCRR Part 617.4(b)(5)(v) and Part 617.4(b)(6).

SUMMARY OF PROJECT

The Special Willets Point District (the District) covers approximately 61 acres on the Willets Point peninsula, generally bounded to the east by the Van Wyck Expressway and an undeveloped parcel owned by MTA, to the south by Roosevelt Avenue, to the west by 126th Street, and to the north by Northern Boulevard.

The Willets Point Development Plan, with subsequent modifications as described below, was approved by the New York City Planning Commission (CPC) and New York City Council on September 24, 2008 and November 13, 2008, respectively, and is referred to herein as “the Approved Plan.” Under the Approved Plan, the District will be redeveloped with up to 8.94 million gross square feet of residential, retail, hotel, convention center, entertainment, commercial office, community facility, open space, and parking uses. The Approved Plan changed the underlying zoning of the District from an M3-1 district (and a small area zoned R3-2) to a C4-4 district, and created an Urban Renewal Plan (URP) and a zoning Special District (i.e., the Special Willets Point District). The Special Willets Point District includes urban design regulations, addressing such elements as the location of uses, building heights and setbacks, street hierarchies, streetscape design, and other site planning and design provisions.

DESCRIPTION OF THE PROPOSED ACTION

At this time, HPD is considering providing discretionary funding for Phase I of the development under the Mix and Match program (the “Proposed Action”) that is consistent with the Approved Plan. The Proposed Action would facilitate the development of two, 12-story mixed-use residential developments connected at the ground level with local retail and community facility uses and a subsurface parking garage (the “Proposed Project”), located on Block 1833, Lots 130 (Building 1), and 135 (Building 2) and open space on Lot 120 in the Willets Point neighborhood of Queens, Community District 7. Building 1 would contain 534 units including a superintendent’s unit and 15,764 gross square feet (“gsf”) of commercial space. Building 2 would contain 347 units, 8,558 gsf of commercial space and 2,210 gsf of community facility space. Additionally, there would be a triangular shaped publicly accessible open space and a pedestrian walkway connecting the buildings.

The Proposed Project’s potential to result in new or worse impacts not previously identified in prior environmental review was considered in TM 005, issued May 10, 2021. As described below, TM005 concluded there would be no new or worse impacts not previously identified and addressed in the FGEIS or subsequent environmental review. The Proposed Project would be developed within the scope of what was considered in TM005.

BACKGROUND

On September 12, 2008, the Office of the Deputy Mayor for Economic Development issued a Notice of Completion for the *Willets Point Development Plan Final Generic Environmental Impact Statement* (FGEIS). Subsequent to the issuance of the FGEIS, the CPC proposed several modifications to the Special Willets Point District zoning regulations. These modifications were described, and their potential for significant adverse environmental impacts examined, in a technical memorandum dated September 23, 2008 (TM001), which found that there were no additional impacts anticipated to result from the

modifications that had not been disclosed in the FGEIS. The CPC voted in favor of the Willets Point Development Plan with those modifications on September 24, 2008.

Following the CPC vote, new information became available related to: District business relocation; Phase II Environmental Site Investigations (ESIs) in the District; the amount of affordable housing to be provided in the District; and projected school and day care populations. This information was described, and its potential to result in significant adverse environmental impacts not previously identified was examined, in a Technical Memorandum dated November 12, 2008 (TM002). That Technical Memorandum concluded that none of the newly available information would lead to significant adverse environmental impacts that were not previously identified and addressed in the FGEIS. The New York City Council voted to approve the Willets Point Development Plan with the CPC modifications on November 13, 2008.

In 2009, the City considered the effect of the economic downturn on the Willets Point project. The City anticipated that economic conditions at that time would make it challenging for developers to finance the acquisition and remediation of the entire District at one time and prior to any development, as envisioned in the Approved Plan and described in the FGEIS. In a Technical Memorandum dated November 23, 2009 (TM003), an "Adjusted Plan" for Willets Point was analyzed. The Adjusted Plan assumed the same overall development program at full buildout in 2017 as the Staged Acquisition Alternative analyzed in the FGEIS (with revisions described in the prior technical memoranda), but anticipated a smaller development footprint during the first phase of development, with approximately 70 percent as much floor area in the initial phase compared to the Staged Acquisition Alternative. In the Adjusted Plan, remediation and development of the initial portion of the District would proceed first, by 2013, followed by remediation and development of the remaining portion of the District by 2017. TM003 concluded that there were no additional impacts anticipated to result from the Adjusted Plan that had not been disclosed in the FGEIS.

In a Technical Memorandum dated February 10, 2011 (TM004), the City considered an "Updated Plan" for Willets Point. The Updated Plan would have developed the District with the same gross floor area and mix of uses as the Approved Plan (with subsequent revisions described in the prior technical memoranda), and would have had the same controls on floor area ratios set forth in the provisions of the Special District zoning text that had been approved by CPC and the City Council. Similar to the Adjusted Plan analyzed in TM003 as well as the Staged Acquisition Alternative analyzed in the FGEIS, the Updated Plan anticipated a smaller development footprint and less overall development in the first phase. With the Updated Plan (as with the FGEIS Staged Acquisition Alternative and the Adjusted Plan), development activities would have proceeded incrementally, with the necessary remediation, grading, infrastructure improvements, and construction activities associated with the buildings in the southwestern portion of the District occurring first, and construction activities on the remainder of the District following. TM004 concluded that there were no additional impacts anticipated to result from the Updated Plan that had not been disclosed in the FGEIS.

The City subsequently revised and reissued a Request for Qualifications and Request for Proposals (RFPs) for the redevelopment of an initial 23-acre portion of the District, and in 2012, the Queens Development Group, LLC (QDG) was selected as the City's designated developer for that first phase of the Willets Point Development Plan. QDG's development plan included development of this initial 23-acre portion of land within the District (the District Portion), as well as land adjacent to CitiField stadium, outside the District (the Willets West Portion). In 2013, a Supplemental EIS (SEIS) was prepared to assess the potential effects of QDG's development, and approvals relating to this development were granted by the City Planning Commission and the City Council in 2013. The SEIS assumed that the District would be developed in three phases. Phase 1A comprised the remediation and development of a small portion of the District along 126th Street with a hotel and retail space, with the remainder of the 23-acre City-owned portion of the District to be used as an interim surface parking/recreational area.¹ Phase 1B comprised the development of the interim surface parking/recreational area created during Phase 1A with residential, retail, community facility, and

¹ Phase 1A also anticipated the development of Willets West on the parking lot west of CitiField.

public school uses, along with parking and more than six acres of new public open space.¹ In Phase 2, the remainder of the District was assumed to be built out substantially as described in the FGEIS.

Subsequently, in 2017, the Willets West Portion of the 2013 plan was invalidated by the New York State Court of Appeals due to the fact that the Willets West Portion was located on mapped parkland without proper authorization of parkland alienation to facilitate the plan. However, the court did not invalidate the analysis, methodology or conclusions of the SEIS that accompanied the 2013 approvals.

As detailed in a Technical Memorandum dated May 10, 2021 (TM005), the City modified the Approved Plan with a Phase 1 project in Willets Point. Similar to the Staged Acquisition Alternative analyzed in the FGEIS, the subsequent Adjusted and Updated Plans analyzed in TM003 and TM004, and the phased development of the District analyzed in the FSEIS, TM005 assumed the same gross floor area and mix of uses in the District as the Approved Plan with revisions described in the prior environmental review; however, a 6-acre portion at the southwest corner of the District would be developed first, by 2030, with the remainder of the District to be remediated and built out by 2039.

In TM005, the proposed program analyzed for the Phase I development included approximately 813,112 gsf of residential use (1,100 units), 24,666 gsf of retail, 3,397 sf of community facility use, a 650-seat K-8 public school, and approximately 1 acre of publicly-accessible open space. As the Proposed Project would include fewer residential units (881 units) than considered in TM005 (1,100 units), less commercial floor area (24,322 gsf) than considered in TM005 (24,666 gsf), and less community facility area (2,210 gsf) than considered in TM005 (3,397 gsf), the Proposed Project is within the scope of what was considered in TM005. TM005 concluded that there were no additional impacts anticipated to result from the Updated Plan that had not been disclosed in the FGEIS.

The Phase 1 development requires a CPC Chairperson certification that: all streets comply with Zoning Regulation (ZR) Section 124-31; all streets are constructed to grades acceptable to the New York City Department of Buildings (DOB) and the New York City Department of Transportation (DOT); all publicly-accessible open space complies with ZR Section 124-40; and the development pursuant to the certification does not preclude future phases of Special Willets Point District development from complying with these regulations. .

As detailed in a Technical Memorandum dated May 14, 2021 (TM006), HPD sought a discretionary Mayoral Approval Document (MAD) to facilitate the acquisition of select parcels that were once acquired by the City, transferred to the designated developer, and were re-acquired to implement the Approved Plan. TM006 concluded there would be no significant adverse impacts not previously identified in the FSEIS or subsequent environmental review.

It is anticipated that Phase 1 of the Willets Point Development Plan housing will begin construction starting in winter 2023 - 2024. Essential predevelopment and site prep activities, including remediation, have been completed and infrastructure that will serve the area is being installed at this time.

PROJECT PURPOSE AND NEED

The Approved Plan was designed to further a number of redevelopment goals for the Willets Point area. The Approved Plan evolved from the Downtown Flushing Development Framework, a land use and economic planning strategy developed between 2002 and 2004 by the Downtown Flushing Task Force. The Task Force outlined several redevelopment goals for the Willets Point District that were adopted for the Approved Plan. In addition, the Approved Plan aimed to achieve the following goals, which are consistent with the vision of the Downtown Flushing Development Framework:

¹ Phase 1B also anticipated the development of new structured parking facilities at the CitiField South Lot and Lot D, to replace the CitiField parking spaces displaced by the Willets West development and located within the District in Phase 1A.

- Provide a substantial number of new housing units to help meet the growing demand for housing in Queens and the City as a whole;
- Ensure that District housing would be affordable to a mix of incomes;
- Provide a world-class example of superior urban design, with a focus on green building and sustainable design practices; and
- Strengthen the role of Flushing and Corona as commercial centers in northern Queens, while helping to meet the demand for office space in Queens and the City as a whole.

The Proposed Action is necessary to further the goals of the Approved Plan and will create up to 881 units of low-to-moderate income housing. The Proposed Action would not change the program and anticipated work studied in prior environmental review. As detailed in TM006, published on May 14, 2021, it is assumed that the remainder of the District would be built out consistent with existing zoning for the area and substantially as anticipated and analyzed in the FGEIS and subsequent environmental reviews.

FACTS AND CONCLUSIONS RELIED UPON TO SUPPORT THE DECISION

The FGEIS analyzed the Approved Plan in detail and concluded that it would not result in significant adverse impacts in the following areas: land use, zoning, and public policy; socioeconomic conditions; open space; shadows; archaeological resources; urban design and visual resources; natural resources; hazardous materials; water and sewer infrastructure; solid waste and sanitation; energy; air quality; greenhouse gas emissions; noise; public health; or neighborhood character. The Approved Plan includes the development of a new public school that would alleviate the potential public school seat shortfall created by the Plan. In addition, a significant adverse impact to public libraries was identified at the full buildout of the District in the FSEIS. As discussed below, areas where potential significant impacts were identified include community facilities, historic resources, transportation and construction.

COMMUNITY FACILITIES AND SERVICES

The Proposed Action would be consistent with the scope of the Approved Plan. Therefore, the Approved Plan with the Proposed Action would not result in any significant adverse impacts to community facilities and services beyond those already identified in the FGEIS and subsequent environmental reviews.

HISTORIC RESOURCES

The Proposed Action would be consistent with the scope of the Approved Plan. Therefore, the Approved Plan with the Proposed Action would not have the potential to result in any significant adverse impacts related to historic resources not previously identified in the FGEIS or subsequent environmental reviews.

TRANSPORTATION

The Proposed Action would be consistent with the scope of the Approved Plan. Therefore, the Proposed Action would not have the potential to result in any significant adverse impacts related to traffic operations, mobility, public transportation facilities and train elements and flow, safety of all roadway users (pedestrians, cyclists, transit users and motorists), or parking, and/or goods movement not previously identified in the FGEIS or subsequent environmental reviews.

CONSTRUCTION

The Proposed Action would not result in any significant changes to the construction means and methods from the program studied in the FGEIS and subsequent environmental review. In terms of hazardous materials, prior to any excavation and construction activities at the Site, any impacted soil or groundwater would be properly addressed in accordance with applicable federal, state, and local regulatory requirements, and all active and closed-in-place petroleum tanks would be properly closed and removed. Therefore, the

Approved Plan with the Proposed Action would not have the potential to result in any significant adverse impacts related to construction.

CONCLUSION

The benefits of the Willets Point Development Plan outweigh the adverse environmental impacts, many of which can be mitigated by the measures identified in the FGEIS and subsequent environmental reviews. As discussed above, the Proposed Action would not result in any significant adverse environmental impacts that were not previously identified in the FGEIS. Accordingly, no supplemental environmental impact statement is required.

The balance of benefits and impacts, combined with the need for job creation and the far-reaching, City-wide economic development benefits of transforming a largely underutilized site with substandard conditions and substantial environmental degradation into a lively, mixed-use, sustainable community and regional destination, in addition to infrastructure improvements and new open space, provides a full and compelling rationale to proceed with the Project notwithstanding its environmental impacts. Like the Approved Plan, the Proposed Action represents a critical step in achieving these redevelopment goals for the Willets Point District through facilitating affordable housing, commercial, community facility, and open space uses on underutilized lots.

CERTIFICATION OF FINDINGS TO APPROVE/FUND/UNDERTAKE

Having considered the relevant environmental impacts, facts, and conclusions disclosed in the FGEIS and subsequent environmental review and weighed and balanced relevant environmental impacts with social, economic, and other essential considerations as required in 6 NYCRR 617.11, HPD as the agency pursuing the discretionary action of property acquisition in Willets Point certifies that:

- The requirements of 6 NYCRR Part 617 have been met and that, consistent with social, economic, and other essential considerations from among the reasonable alternatives available;
- The action is one which avoids or minimizes adverse environmental impacts to the maximum extent practicable, and,
- Adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures that were identified as practicable.

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



Anthony Howard, Director of Environmental Planning
City of New York – Department of Housing Preservation & Development

October 27, 2023

Date

Attachment C

Memorandum of Lease

Assignment and Assumption of Lease

Declaration of Interest and Nominee Agreement

MEMORANDUM OF LEASE

PURSUANT TO SECTION 291-c OF THE NEW YORK REAL PROPERTY LAW

THIS MEMORANDUM OF LEASE (this “Memorandum”) made as of November 21, 2023, by and between THE CITY OF NEW YORK, a municipal corporation of the State of New York (“Landlord”), having an address at City Hall, New York, New York 10007, and NEW YORK CITY LAND DEVELOPMENT CORPORATION, a local development corporation pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York (“Tenant”), having its offices at One Liberty Plaza, New York, New York 10006.

W I T N E S S E T H:

WHEREAS, Landlord and Tenant entered into an Agreement of Lease (the “Ground Lease”) dated as of the date hereof pursuant to which Landlord leased to Tenant certain real property (including all buildings, structures and/or improvements now or thereafter located thereat), designated as Block 1833, Lots 120, 130 and 135 on the Tax Map for the Borough of Queens, as more particularly described in Exhibit A attached hereto and incorporated herein (the “Premises”); and

WHEREAS, the parties desire to record this Memorandum to provide notice that Landlord has granted to Tenant certain right, title and interest in and to the Premises.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Demise and Term. Landlord has leased the Premises to Tenant for a term commencing on the date hereof and expiring at 11:59 p.m. on November 21, 2122, or on such earlier date upon which the Ground Lease may be terminated in accordance with the terms therein.

2. Memorandum Subject to Ground Lease. This Memorandum is intended solely to summarize certain of the provisions of the Ground Lease, for filing purposes only, in compliance with the provisions of Article 9 of the Real Property Law of the State of New York. This Memorandum is subject to all of the terms, conditions and provisions of the Ground Lease, and shall not be construed to vary or otherwise affect such terms, conditions and provisions or the rights and obligations of the parties thereto. In the event of any conflicts between the terms, conditions and provisions of the Ground Lease and this Memorandum, the terms, conditions and provisions of the Ground Lease shall govern and control.

3. Counterparts. This Memorandum may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same Memorandum.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first above written.

LANDLORD:

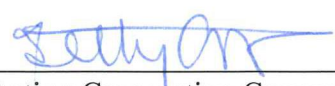
THE CITY OF NEW YORK

By: 

Name: Maria Torres-Springer

Title: Deputy Mayor for Housing,
Economic Development and
Workforce

Approved as to Form:



Acting Corporation Counsel
(WB/GE)

[Signature Page to Memorandum of Lease]

STATE OF NEW YORK)

) SS:

COUNTY OF *New York*)

On November 7, 2023, before me, the undersigned, personally appeared Maria Torres-Springer personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Carlos A. Guerra
Notary Public, State of New York

No. 01GU6292830

Qualified in New York County

Commission Expires 11/12/2025

Notary Public

[Signature Page to Memorandum of Lease]

TENANT:

NEW YORK CITY LAND DEVELOPMENT
CORPORATION

By: 

Name:

Title

Spencer Hobson

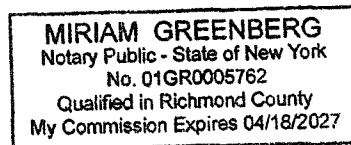
Executive Vice President/ Treasurer

[Signature Pages to Memorandum of Lease]

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

On November 15, 2023 before me, the undersigned, personally appeared Spencer Hobson personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Miriam Greenberg
Notary Public



[Signature Pages to Memorandum of Lease]

Exhibit A to Memorandum of Lease

Legal Description of the Land

Please see attached.

**WRITTEN DESCRIPTION
BLOCK 1833 LOT 120
IN THE BOROUGH AND COUNTY OF QUEENS,
CITY AND STATE OF NEW YORK**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EASTERLY SIDE OF 126TH STREET (KNOWN AS HEWITT AVENUE) (80 FEET WIDE) WITH THE NORTHERLY SIDE OF ROOSEVELT AVENUE (80 FEET WIDE), AND RUNNING, THENCE;

NORTHERLY, ALONG SAID EASTERLY SIDE OF 126TH STREET, A DISTANCE OF 26.79 FEET TO A POINT, THENCE;

NORTHEASTERLY, THROUGH THE BED OF FORMER WILLETS POINT BOULEVARD (80 FEET WIDE) (CLOSED AND DISCONTINUED), FORMING AN INTERIOR ANGLE OF 138°38'18" WITH THE PREVIOUS COURSE, A DISTANCE OF 637.15 FEET TO A POINT, THENCE;

EASTERLY, FORMING AN INTERIOR ANGLE OF 131°21'42" WITH THE PREVIOUS COURSE, A DISTANCE OF 39.97 FEET TO A POINT ON THE SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD (80 FEET WIDE) (CLOSED AND DISCONTINUED), THENCE;

SOUTHWESTERLY, ALONG SAID SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD, FORMING AN INTERIOR ANGLE OF 48°38'18" WITH THE PREVIOUS COURSE, A DISTANCE OF 459.84 FEET TO A POINT, THENCE;

SOUTHERLY, FORMING AN INTERIOR ANGLE OF 221°21'42" WITH THE PREVIOUS COURSE, A DISTANCE OF 137.37 FEET TO A POINT, THENCE;

EASTERLY, FORMING AN INTERIOR ANGLE OF 270°00'00" WITH THE PREVIOUS COURSE, A DISTANCE OF 182.83 FEET TO A POINT, THENCE;

SOUTHWESTERLY, FORMING AN INTERIOR ANGLE OF 48°38'18" WITH THE PREVIOUS COURSE, A DISTANCE OF 29.98 FEET TO A POINT ON SAID NORTHERLY SIDE OF ROOSEVELT AVENUE, THENCE;

WESTERLY, ALONG SAID NORTHERLY SIDE OF ROOSEVELT AVENUE, FORMING AN INTERIOR ANGLE OF 131°21'42" WITH THE PREVIOUS COURSE, A DISTANCE OF 320.16 FEET TO THE POINT OR PLACE OF BEGINNING.

ENCOMPASSING AN AREA OF 35,011 SQUARE FEET OR 0.804 ACRES, MORE OR LESS.

**WRITTEN DESCRIPTION
BLOCK 1833 LOT 130
IN THE BOROUGH AND COUNTY OF QUEENS,
CITY AND STATE OF NEW YORK**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHERLY SIDE OF ROOSEVELT AVENUE (80 FEET WIDE) AND THE EASTERLY SIDE OF 126TH STREET (KNOWN AS HEWITT AVENUE) (80 FEET WIDE) AND RUNNING THE FOLLOWING TWO COURSES TO THE POINT OF BEGINNING;

- A. EASTERLY, ALONG SAID NORTHERLY SIDE OF ROOSEVELT AVENUE, A DISTANCE OF 320.16 FEET TO A POINT, THENCE;
- B. NORTHEASTERLY, FORMING AN ANGLE ON THE NORTHWESTERLY SIDE OF $131^{\circ}21'42''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 29.98 FEET TO THE POINT OF BEGINNING AND RUNNING, THENCE;

WESTERLY, FORMING AN ANGLE ON THE SOUTHWESTERLY SIDE OF $48^{\circ}38'18''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 182.83 FEET TO A POINT, THENCE;

NORTHERLY, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 137.37 FEET TO A POINT ON THE SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD (80 FEET WIDE) (CLOSED AND DISCONTINUED), THENCE;

NORTHEASTERLY, ALONG SAID SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD, FORMING AN INTERIOR ANGLE OF $138^{\circ}38'18''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 226.00 FEET TO A POINT, THENCE;

SOUTHEASTERLY, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 228.00 FEET TO A POINT, THENCE;

SOUTHWESTERLY, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 208.28 FEET TO THE POINT OR PLACE OF BEGINNING.

ENCOMPASSING AN AREA OF 62,066 SQUARE FEET OR 1.425 ACRES, MORE OR LESS.

**WRITTEN DESCRIPTION
BLOCK 1833 LOT 135
IN THE BOROUGH AND COUNTY OF QUEENS,
CITY AND STATE OF NEW YORK**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHERLY SIDE OF ROOSEVELT AVENUE (80 FEET WIDE) AND THE EASTERLY SIDE OF 126TH STREET (KNOWN AS HEWITT AVENUE) (80 FEET WIDE) AND RUNNING THE FOLLOWING TWO COURSES TO THE POINT OF BEGINNING;

- A. EASTERLY, ALONG SAID NORTHERLY SIDE OF ROOSEVELT AVENUE, A DISTANCE OF 320.16 FEET TO A POINT, THENCE;
- B. NORTHEASTERLY, FORMING AN ANGLE ON THE NORTHWESTERLY SIDE OF $131^{\circ}21'42''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 238.26 FEET TO THE POINT OF BEGINNING AND RUNNING, THENCE;

NORTHWESTERLY, FORMING AN ANGLE ON THE WESTERLY SIDE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 228.00 FEET TO A POINT ON THE SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD (80 FEET WIDE) (CLOSED AND DISCONTINUED), THENCE;

NORTHEASTERLY, ALONG SAID SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 169.00 FEET TO A POINT, THENCE;

SOUTHEASTERLY, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 228.00 FEET TO A POINT, THENCE;

SOUTHWESTERLY, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 169.00 FEET TO THE POINT OR PLACE OF BEGINNING.

ENCOMPASSING AN AREA OF 38,532 SQUARE FEET OR 0.885 ACRES, MORE OR LESS.

MEMORANDUM OF LEASE

Borough: Queens
Block: 1833
Lots: 120, 130 and 135

RECORD AND RETURN TO:

Venable LLP
151 W. 42nd Street, 49th Floor
New York, NY 10036
Attention: Suzanne St. Pierre

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (this "Assignment") is made as of the 21st day of November, 2023 by and among NEW YORK CITY LANDDEVELOPMENT CORPORATION, a local development corporation organized pursuant to Section 1411 of the New York State Not-For-Profit Corporation Law ("Assignor"), having an address at One Liberty Plaza Street, New York, New York 10006; WILLETS POINT PHASE I HOUSING DEVELOPMENT FUND CORPORATION, a New York not-for-profit corporation formed pursuant to Article XI of the Private Housing Finance Law of the State of New York, having an address c/o Settlement Housing Fund, Inc., 247 West 37th Street, 4th Floor, New York, New York 10018, as nominee for the Non-LIHTC BT (as defined below) (the "Legal Tenant"); WILLETS POINT PHASE I OWNER, LLC, a New York limited liability company, having an address c/o The Related Companies, L.P., 30 Hudson Yards, 72nd Floor, New York, New York 10001 (the "Non-LIHTC BT"), and collectively with the Legal Tenant, the "Assignee"; and THE CITY OF NEW YORK, a municipal corporation of the State of New York, having an office in City Hall, New York, New York 10007 (the "City").

WHEREAS, the City is the owner of all of that certain property designated as Block 1833, Lots 120, 130 and 135 on the Tax Map of the County of Queens, City and State of New York (the "Premises"), as more particularly described on Exhibit A attached hereto and incorporated herein;

WHEREAS, Assignor entered into that certain Agreement of Lease, dated as of the date hereof but prior in time to this Assignment (the "Lease"), between the City, as landlord, and Assignor, as tenant, with respect to the Premises, a memorandum of which (the "Memorandum of Lease") will be recorded against the Premises in the Office of the City Register, Queens County;

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to assume from Assignor, all of Assignor's right, title, interest and obligations, as tenant, in and to the Lease in accordance with the terms herein (the "Leasehold Assignment"); and

WHEREAS, the City desires to consent to the Leasehold Assignment.

NOW, THEREFORE, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the meaning set forth in the Lease.

2. Assignment and Assumption of Lease. Assignor hereby assigns, transfers and sets over to Assignee, without recourse, all of Assignor's right, title, interest and obligations as tenant in and to the Lease. Assignee, for itself and its successors and assigns, hereby accepts the foregoing assignment, assumes all liabilities, covenants and obligations of Assignor as tenant under the Lease arising from and after the date hereof and agrees to observe and perform the obligations of "Tenant" under the Lease according to the terms, covenants and provisions of the Lease. Assignee hereby makes all of the representations and warranties as to itself as "Tenant" under the Lease, with the same force and effect as if Assignee had executed the Lease originally as tenant.

3. Intentionally Omitted.
4. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.
5. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws principles.
6. Recording. This Assignment is intended to be recorded in the Office of the City Register, Queens County immediately following the recordation of the Memorandum of Lease.
7. Modifications. This Assignment may not be changed, modified, discharged or terminated orally or in any other manner except by an agreement in writing signed by the parties hereto or their respective successors and permitted assigns.
8. Release. Assignee hereby releases (i) Assignor (including any successor organization) and (ii) Assignor's members, shareholders, officers, directors, employees and agents, from any and all liability (x) resulting from claims or causes of action arising under the Lease and the assignment thereof, and (y) in connection with the Premises. From and after the date of this Assignment, (a) Assignee and its successors and assigns shall be the "Tenant" under the Lease, and (b) Assignor is hereby entirely freed and released of all agreements, covenants and obligations of Tenant to be performed under the Lease.
9. Section 13 of the Lien Law. Assignor, in compliance with Section 13 of the Lien Law, covenants that Assignor will receive the consideration for this Assignment as a trust fund to be applied first for the purpose of paying the cost of the improvement before using any part of the total of the same for any other purpose.
10. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and assigns.
11. Unenforceability. Any provision of this Assignment which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment as of the day and year first above written.

ASSIGNOR:

NEW YORK CITY LAND DEVELOPMENT
CORPORATION

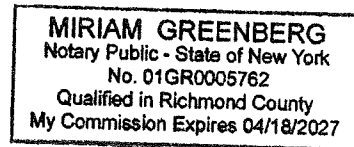
By: 
Name: _____
Title: **Spencer Hobson**
Executive Vice President/ Treasurer

[Signature Page to Assignment and Assumption of Lease]

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

On November 15, 2023 before me, the undersigned, personally appeared Spencer Gibson personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Miriam Greenberg
Notary Public




[Signature Page to Assignment and Assumption of Lease]

ASSIGNEE:

WILLETS POINT PHASE I HOUSING
DEVELOPMENT FUND CORPORATION

By:


Name: Jacqueline Tom
Title: Secretary/Treasurer

WILLETS POINT PHASE I OWNER, LLC

By:

Name: Frank Monterisi
Title: Authorized Person

[Signature Page to Assignment and Assumption of Lease]

COUNTY OF New York)

Cg. Hahn
Notary Public

GRACE ALSTER
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01AL6408363
Qualified in Nassau County
Commission Expires August 24, 2024

Notary Public

60837744

ASSIGNEE:

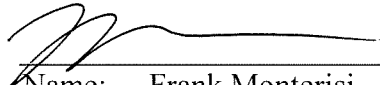
WILLETS POINT PHASE I HOUSING
DEVELOPMENT FUND CORPORATION

By:

Name: Jacqueline Tom
Title: Secretary/Treasurer

WILLETS POINT PHASE I OWNER, LLC

By:


Name: Frank Monterisi
Title: Authorized Person

[Signature Pages to Assignment and Assumption of Lease]

COUNTY OF _____)

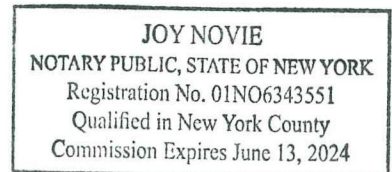
On _____, 2023, before me, the undersigned, personally appeared Jacqueline Tom personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

COUNTY OF NY)

On Nov. 17, 2023, before me, the undersigned, personally appeared Frank Monterisi personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public



[Signature Page to Assignment and Assumption of Lease]

Consented To:


THE CITY OF NEW YORK

By: 

Name: Maria Torres-Springer

Title: Deputy Mayor for Housing, Economic
Development and Workforce

Approved as to Form:



Acting Corporation Counsel
(WBI/GE)

[Signature Page to Assignment and Assumption of Lease]

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

On November 17, 2023, before me, the undersigned, personally appeared Maria Torres-Springer personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

Carlos A. Guerra
Notary Public, State of New York
No. 01GU6292830
Qualified in New York County
Commission Expires 11/12/2025

[Signature Page to Assignment and Assumption of Lease]

EXHIBIT A

LEGAL DESCRIPTION OF PARCEL

Please see attached.

**WRITTEN DESCRIPTION
BLOCK 1833 LOT 120
IN THE BOROUGH AND COUNTY OF QUEENS,
CITY AND STATE OF NEW YORK**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EASTERLY SIDE OF 126TH STREET (KNOWN AS HEWITT AVENUE) (80 FEET WIDE) WITH THE NORTHERLY SIDE OF ROOSEVELT AVENUE (80 FEET WIDE), AND RUNNING, THENCE;

NORTHERLY, ALONG SAID EASTERLY SIDE OF 126TH STREET, A DISTANCE OF 26.79 FEET TO A POINT, THENCE;

NORTHEASTERLY, THROUGH THE BED OF FORMER WILLETS POINT BOULEVARD (80 FEET WIDE) (CLOSED AND DISCONTINUED), FORMING AN INTERIOR ANGLE OF 138°38'18" WITH THE PREVIOUS COURSE, A DISTANCE OF 637.15 FEET TO A POINT, THENCE;

EASTERLY, FORMING AN INTERIOR ANGLE OF 131°21'42" WITH THE PREVIOUS COURSE, A DISTANCE OF 39.97 FEET TO A POINT ON THE SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD (80 FEET WIDE) (CLOSED AND DISCONTINUED), THENCE;

SOUTHWESTERLY, ALONG SAID SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD, FORMING AN INTERIOR ANGLE OF 48°38'18" WITH THE PREVIOUS COURSE, A DISTANCE OF 459.84 FEET TO A POINT, THENCE;

SOUTHERLY, FORMING AN INTERIOR ANGLE OF 221°21'42" WITH THE PREVIOUS COURSE, A DISTANCE OF 137.37 FEET TO A POINT, THENCE;

EASTERLY, FORMING AN INTERIOR ANGLE OF 270°00'00" WITH THE PREVIOUS COURSE, A DISTANCE OF 182.83 FEET TO A POINT, THENCE;

SOUTHWESTERLY, FORMING AN INTERIOR ANGLE OF 48°38'18" WITH THE PREVIOUS COURSE, A DISTANCE OF 29.98 FEET TO A POINT ON SAID NORTHERLY SIDE OF ROOSEVELT AVENUE, THENCE;

WESTERLY, ALONG SAID NORTHERLY SIDE OF ROOSEVELT AVENUE, FORMING AN INTERIOR ANGLE OF 131°21'42" WITH THE PREVIOUS COURSE, A DISTANCE OF 320.16 FEET TO THE POINT OR PLACE OF BEGINNING.

ENCOMPASSING AN AREA OF 35,011 SQUARE FEET OR 0.804 ACRES, MORE OR LESS.

**WRITTEN DESCRIPTION
BLOCK 1833 LOT 130
IN THE BOROUGH AND COUNTY OF QUEENS,
CITY AND STATE OF NEW YORK**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHERLY SIDE OF ROOSEVELT AVENUE (80 FEET WIDE) AND THE EASTERLY SIDE OF 126TH STREET (KNOWN AS HEWITT AVENUE) (80 FEET WIDE) AND RUNNING THE FOLLOWING TWO COURSES TO THE POINT OF BEGINNING;

- A. EASTERLY, ALONG SAID NORTHERLY SIDE OF ROOSEVELT AVENUE, A DISTANCE OF 320.16 FEET TO A POINT, THENCE;
- B. NORTHEASTERLY, FORMING AN ANGLE ON THE NORTHWESTERLY SIDE OF $131^{\circ}21'42''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 29.98 FEET TO THE POINT OF BEGINNING AND RUNNING, THENCE;

WESTERLY, FORMING AN ANGLE ON THE SOUTHWESTERLY SIDE OF $48^{\circ}38'18''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 182.83 FEET TO A POINT, THENCE;

NORTHERLY, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 137.37 FEET TO A POINT ON THE SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD (80 FEET WIDE) (CLOSED AND DISCONTINUED), THENCE;

NORTHEASTERLY, ALONG SAID SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD, FORMING AN INTERIOR ANGLE OF $138^{\circ}38'18''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 226.00 FEET TO A POINT, THENCE;

SOUTHEASTERLY, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 228.00 FEET TO A POINT, THENCE;

SOUTHWESTERLY, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 208.28 FEET TO THE POINT OR PLACE OF BEGINNING.

ENCOMPASSING AN AREA OF 62,066 SQUARE FEET OR 1.425 ACRES, MORE OR LESS.

**WRITTEN DESCRIPTION
BLOCK 1833 LOT 135
IN THE BOROUGH AND COUNTY OF QUEENS,
CITY AND STATE OF NEW YORK**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHERLY SIDE OF ROOSEVELT AVENUE (80 FEET WIDE) AND THE EASTERLY SIDE OF 126TH STREET (KNOWN AS HEWITT AVENUE) (80 FEET WIDE) AND RUNNING THE FOLLOWING TWO COURSES TO THE POINT OF BEGINNING;

- A. EASTERLY, ALONG SAID NORTHERLY SIDE OF ROOSEVELT AVENUE, A DISTANCE OF 320.16 FEET TO A POINT, THENCE;
- B. NORTHEASTERLY, FORMING AN ANGLE ON THE NORTHWESTERLY SIDE OF $131^{\circ}21'42''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 238.26 FEET TO THE POINT OF BEGINNING AND RUNNING, THENCE;

NORTHWESTERLY, FORMING AN ANGLE ON THE WESTERLY SIDE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 228.00 FEET TO A POINT ON THE SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD (80 FEET WIDE) (CLOSED AND DISCONTINUED), THENCE;

NORTHEASTERLY, ALONG SAID SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 169.00 FEET TO A POINT, THENCE;

SOUTHEASTERLY, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 228.00 FEET TO A POINT, THENCE;

SOUTHWESTERLY, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 169.00 FEET TO THE POINT OR PLACE OF BEGINNING.

ENCOMPASSING AN AREA OF 38,532 SQUARE FEET OR 0.885 ACRES, MORE OR LESS.

DECLARATION OF INTEREST AND NOMINEE AGREEMENT
(Willets Point Phase I)

THIS AGREEMENT is made this 21st day of November, 2023, by and between **WILLETS POINT PHASE I HOUSING DEVELOPMENT FUND CORPORATION**, a New York not-for-profit corporation organized pursuant to Article XI of the Private Housing Finance Law of the State of New York (“**Article XI**”) and Section 402 of the Not-for-Profit Corporation Law of the State of New York with an office at 247 West 37th Street, 4th Floor, New York, NY 10018 (the “**HDFC**” or “**Legal Tenant**”) and **WILLETS POINT PHASE I OWNER, LLC**, a New York limited liability company with an office at c/o Related Companies, 30 Hudson Yards, 72nd Floor, New York, New York 10001 (the “**Beneficial Tenant**”).

W I T N E S S E T H:

WHEREAS, the City of New York, a municipal corporation of the State of New York (the “**City**”) is the owner of those certain plots, pieces or parcels of real property, lying and being in the County of Queens, New York, Block 1833, Lots 130 and 135 (the “**Premises**”) and Block 1833 Lot 120 (the “**Open Space**” and together with the Premises, “**Property**”) on the Tax Map of the City of New York, Queens County, as more particularly described within a metes and bounds description on Exhibits A-1 and A-2, respectively, attached hereto and made a part hereof

WHEREAS, the City, as landlord, and the New York City Land Development Corporation, a local development corporation pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, as tenant, (“**NYCLDC**”) have entered into that certain Agreement of Lease, dated on or about the date hereof (the “**Ground Lease**”);

WHEREAS, as of the date hereof, NYCLDC, Legal Tenant and Beneficial Tenant have entered into that certain Assignment and Assumption of Lease, whereby NYCLDC has assigned its leasehold interest in the Property and the Ground Lease to the HDFC as nominee for and on behalf of the Beneficial Tenant;

WHEREAS, the Beneficial Tenant desires to construct, develop, own, operate and manage a project on the Property to consist of two mixed-use buildings (the building to be located on Block 1833, Lot 130 is referred to herein as “**Building 1**” and the building to be located Block 1833, Lot 135 if referred to herein as “**Building 2**” and collectively as the “**Buildings**”), and to file a condominium declaration (the “**Declaration**”) under Article 9-B of the New York Real Property Law to establish an eight (8) unit leasehold condominium (each, a “**Condominium Unit**” or “**Unit**”) to be comprised of (i) one (1) condominium unit of approximately 352 rental apartments, which are restricted to certain individuals or households with incomes at or below 60% area median income to be located in both Building 1 and Building 2 (“**LIHTC 60% Condo Unit**”), (ii) one (1) condominium unit of approximately 109 rental apartments, which are restricted to certain individuals or households with incomes at or below 80% area median income located in both Building 1 and Building 2 (“**LIHTC 80% Condo Unit**” and together with the LIHTC 60% Condo Unit, the “**LIHTC Condo Units**”), (iii) one (1) condominium unit of approximately 256 rental

apartments (inclusive of 1 superintendent unit) which are restricted to certain individuals or households with incomes at or below 120% area median income located in Building 1 (the “**Non-LIHTC Condo Resi Unit Building 1**”), (iv) one (1) condominium unit of approximately 164 rental apartments which are restricted to certain individuals or households with incomes at or below 120% area median income located in Building 2 (the “**Non-LIHTC Condo Resi Unit Building 2**” and together with the Non-LIHTC Condo Resi Unit Building 1, the “**Non-LIHTC Condo Resi Units**”), (v) one (1) condominium unit of approximately 15,800 square feet of commercial retail space located in Building 1 (the “**Commercial Condo Unit Building 1**”), (vi) one (1) condominium unit of approximately 8,600 square feet of commercial retail space located in Building 2 (the “**Commercial Condo Unit Building 2**” and together with the Commercial Condo Unit Building 1, the “**Commercial Condo Units**”), (vii) one (1) condominium unit of approximately 2,200 square feet of community facility space (the “**CF Condo Unit**”) and (viii) one (1) condominium unit consisting of a subsurface parking garage comprised of approximately 323 parking spaces located in Building 1 and Building 2 with an entrance through Building 1 (the “**Parking Condo Unit**” and together with the Non-LIHTC Condo Resi Units, the Commercial Condo Units and the CF Condo Unit, the “**Non-LIHTC Condo Units**”) (collectively, all of the foregoing condominium units, together with their appurtenant general common elements and limited common elements, are referred to as the “**Condominium**” and together with the Property, Buildings and other improvements, easements and development rights, the “**Project**”); and

WHEREAS, by this Agreement, the Legal Tenant transfers all beneficial and equitable leasehold interest in the Project to the Beneficial Tenant; and

WHEREAS, as of the date hereof, the Beneficial Tenant and Legal Tenant, as sub-landlord, and Willets Point Phase I LIHTC Owner, L.P., a New York limited partnership, as sub-tenant (“**LIHTC Sub-Tenant**”) will enter into a Master Sub-Lease (the “**Master Sub-Lease**”) with respect to the LIHTC Condo Units whereby upon the satisfaction of certain conditions, possession of the LIHTC Condo Units will transfer to the LIHTC Sub-Tenant, and the LIHTC Sub-Tenant shall hold sub-leasehold interest in the LIHTC Condo Units; and

WHEREAS, as of the date hereof, the Beneficial Tenant, the LIHTC Sub-Tenant and Legal Tenant shall enter into that certain Regulatory Agreement (“**Regulatory Agreement**”) by and among New York City Housing Development Corporation (“**HDC**”), Beneficial Tenant, Legal Tenant, LIHTC Sub-Tenant, and the City of New York, acting by and through its Department of Housing Preservation and Development (“**HPD**”); and

WHEREAS, the development of the Project will be financed by certain loans made or to be made to the Beneficial Tenant and certain loans may subsequently be made to the Beneficial Tenant from time to time thereafter to finance and/or refinance the Project (collectively, the “**Loans**”); and

WHEREAS, the parties desire to set forth their agreement and understanding concerning all the foregoing.

NOW, THEREFORE, in consideration of the sum of Ten and 00/100 Dollars (\$10.00), as well as other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. The HDFC's acquisition and holding of legal or record sub-leasehold interest in the Property were each and all effected and performed by the HDFC solely as a nominee of, and on behalf of the Beneficial Tenant. Although the HDFC will hold legal or record interest in the Project such interest shall only be as nominee legal or record owner on behalf of the Beneficial Tenant. Moreover, notwithstanding anything to the contrary in its certificate of incorporation, bylaws or other governing documents, the HDFC's sole purpose shall be to acquire and hold legal interest in the Project solely for the benefit of the Beneficial Tenant. As a result, the parties hereby acknowledge and agree that, subject to the terms of the Master Sub-Lease, the Beneficial Tenant possesses all equitable and beneficial leasehold interest in the Property, and will possess all equitable and Beneficial Tenant interest in the Buildings, such that the Beneficial Tenant, and not the HDFC shall have an:

(a) unconditional obligation to bear the economic risk of depreciation and diminution in value of the Project due to obsolescence or exhaustion, and shall bear the risk of loss if the Project is destroyed or damaged;

(b) unconditional right to receive all economic benefits associated with the Project (i.e., appreciation and increase in value), including, without limitation, the right to retain all of the (i) depreciation, (ii) cash flow, and (iii) net proceeds from any sale or refinancing of the Project;

(c) unconditional obligation to keep the Project in good condition and repair;

(d) unconditional and exclusive right to the possession of the Project;

(e) unconditional obligation to pay for and maintain property and liability insurance coverage on, and such reserves with respect to, the Project as may be required by the Beneficial Tenant and/or any mortgage lenders with respect to the Project which coverage shall include the mortgage lenders, the HDFC and Settlement Housing Fund, Inc. ("SHF") as additional/named insureds and certificate holders;

(f) unconditional obligation to pay all taxes levied on, and assessments made with respect to, the Project as well as the right to challenge such taxes and assessments and receive refunds;

(g) unconditional and exclusive right to receive rental and any other income or profits from the operation of the Project;

(h) unconditional obligation to pay for all of the capital investment in the Project;

(i) unconditional obligation to pay for all maintenance and operating costs in connection with the Project;

(j) unconditional and exclusive right to include all income earned from the operation of the Project and claim all deductions and credits generated with respect to the Project on its annual federal, state and local tax returns, including low income housing tax credits, if any;

(k) unconditional and exclusive right to develop the Project and to rent-up, lease, operate and manage the Project in accordance with this Agreement and any and all documents executed in connection with the financing, development, operation and management of the Project, as such documents may be amended from time to time (the “**Project Documents**”);

(l) unconditional and exclusive right to enter into, perform and modify contracts, including but not limited to housing assistance payments contracts authorized under Section 8 of the United States Housing Act of 1937, for the receipt of rental or other governmental subsidy payments; and

(m) unconditional obligation to bear the economic risk of loss under the Loans and shall be responsible for any obligation for the repayment of principal and interest imposed on the HDFC under any of the documents in connection with the Loans.

2. The HDFC hereby agrees at the direction of the Beneficial Tenant to execute any and all documents necessary to grant to the financial institution or institutions making Loans to the Beneficial Tenant, a mortgage or mortgages, and any similar security interests in the Project, as well as any documents reasonably required by the Beneficial Tenant to be executed by the HDFC in connection with the development, operation and management of the Project except for mortgage notes or loan notes, provided that the HDFC shall execute such documents for the sole purpose of encumbering its interest in the Project, and provided further that all such mortgages shall be non-recourse to the HDFC and SHF, as the sole member of the HDFC, and the only recourse for satisfaction of any obligations of the HDFC thereunder shall be to the HDFC’s interest in the Project.

3. The HDFC agrees that all proceeds of any insurance policies and condemnation proceeds received by it, which relate to its ownership of the Project shall be received in its capacity as nominee of the Beneficial Tenant and shall, subject to the requirements of mortgages encumbering the Project, the Master Sub-Lease and the Ground Lease, be immediately remitted to the Beneficial Tenant, including, but not limited to, liability, property, casualty and title insurance proceeds.

4. The HDFC has notified all interested third parties, and by its execution and delivery and the recordation of this Agreement further notifies such third parties, that pursuant to this Agreement the HDFC is acting solely as nominee of the Beneficial Tenant with respect to the Project. The HDFC shall provide the Beneficial Tenant with evidence of such notification reasonably satisfactory to the Beneficial Tenant. The HDFC shall also obtain any written acknowledgments which are necessary and advisable from all interested third parties with respect to the HDFC holding legal title to the Project as nominee of the Beneficial Tenant.

5. The Beneficial Tenant shall be the beneficial and equitable owner of the Project for all purposes (including Federal income tax purposes) and shall have all rights related thereto

including, but not limited to, management rights and the right to receive all proceeds from the Project, including from rents and other moneys from leases, mortgages, pledges, sales, or other dispositions of the Project. In addition thereto, it shall be in the sole and absolute discretion of the Beneficial Tenant to lease, assign, encumber, transfer or sell the Project or any portion thereof or interest therein or any right or indicia of ownership in connection therewith and any such assignment, encumbrance, transfer or sale shall not require any consent, approval or other action by HDFC; provided, however, that HDFC hereby agrees that it shall execute and deliver any such documentation, agreements, instruments or similar items as shall be requested by the Beneficial Tenant in connection with any such assignment, encumbrance, transfer or sale. The HDFC shall have no right to any of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit (if any) described in Section 42 of the Internal Revenue Code of 1986, as amended, and shall have no right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Project and shall have no right to any inclusionary housing rights or other development rights.

6. (a) The HDFC hereby irrevocably and unconditionally agrees, promptly upon the request of the Beneficial Tenant, in each instance, and at the Beneficial Tenant's expense, (i) to execute and deliver to the Beneficial Tenant or its designee an assignment of the Ground Lease ("**Assignment**") in proper recordable form transferring and conveying to the Beneficial Tenant all of the HDFC's right, title and interest in and to the Project and upon such delivery to the Beneficial Tenant or its designee of the Assignment, the HDFC will immediately cease all involvement with the Project, (ii) to execute and deliver all agreements, documents and instruments necessary or advisable to effect any benefits arising in connection with and issued by the City of New York and/or County of Queens, or the borough of Queens, as applicable pursuant to the applicable provisions of the New York Real Property Tax Law or other applicable law in connection with the Project, and (iii) to execute any documents required by any government agency which may confer benefits to the Project, as applicable. Notwithstanding anything to the contrary herein, the HDFC shall be under no obligation to execute and/or deliver any documents which violate the Project Documents, the Not-for-Profit Corporation Law of the State of New York, Article XI of the Private Housing Finance Law of the State of New York and/or the HDFC's Certificate of Incorporation and by-laws.

(b) The HDFC hereby unconditionally and unequivocally constitutes and appoints the Beneficial Tenant to be its lawful and true agent and attorney-in-fact coupled with an interest, with full power of substitution either separately or jointly to execute and/or record (i) the Assignment, and any other documents or instruments required to convey the leasehold interest in the Project on behalf of the HDFC, and (ii) any certificate sale documents, as applicable, in the name, place and stead of the HDFC with the same force and effect as if such Assignment and/or certificate sale documents was executed and recorded by the HDFC. The parties agree that the HDFC's failure to comply with the provisions of this Paragraph 6 shall cause irreparable harm to the Beneficial Tenant for which no adequate remedy at law will be available and, in addition to any other available remedies, the Beneficial Tenant shall be entitled to the right of specific performance in the event of a breach by the HDFC of the provisions of this Paragraph 6.

7. The HDFC agrees that the Beneficial Tenant shall have all management authority and control over the Project with respect to, but not by way of limitation, performance and enforcement of all leases and agreements with regard to the assignment, sale, transfer, conveyance, subletting, encumbrance or other disposition of the Project or any interest therein or otherwise, and any covenants concerning the Project.

8. The HDFC covenants and agrees to perform all acts reasonably requested by the Beneficial Tenant in regard to or arising from the ownership, management and operation of the Project, provided that the Beneficial Tenant reimburses the HDFC for all of its expenses in performing such acts.

9. The Beneficial Tenant and the HDFC each on behalf of themselves and their respective successors and assigns, hereby jointly and severally represent, warrant, acknowledge, covenant and agree as follows:

(a) So long as the HDFC shall hold legal interest to the Project, the Beneficial Tenant shall have complete and exclusive possession and control of the Project and the HDFC shall not have any right to possess or control the Project;

(b) The Beneficial Tenant is the “owner” and the HDFC is not in any respects an “owner,” as such term is defined in Section 2 of the New York Lien Law and for federal tax purposes, and the Beneficial Tenant is entitled to all tax benefits including depreciation and low income housing tax credits, if any, with respect to the Project;

(c) The HDFC is not, and shall not be, entitled to receive any proceeds of any of the Loans or equity investments made to the Beneficial Tenant and/or otherwise have any rights, title, interests or benefits from, of, to and/or under the Loans;

(d) Except pursuant to written agreement with the Beneficial Tenant, the HDFC shall not have any power, right and/or authority to transfer, encumber, sell, lien, and/or create or grant any rights and/or interests in or to the Project, and/or any part or parts thereof, and any transfer, sale, encumbrance, lien, right and/or interest purported to be undertaken, created, granted, permitted and/or resulting from any action or inaction of the HDFC in connection with the Project and/or any part or parts thereof shall be void, unenforceable and of no effect whatsoever and shall not be binding in any manner upon the Beneficial Tenant;

(e) Except pursuant to written direction of, or agreement with, the Beneficial Tenant, the HDFC shall not have any power, right and/or authority to employ, and/or agree to employ, any persons and/or entities in connection with and/or with respect to the Project, and/or any part or parts thereof and/or to purchase, and/or agree to purchase any goods, materials and/or services in connection with the Project or any part or parts thereof, and any such employment, purchase and/or agreement to employ or purchase purported to be made by the HDFC shall be void, unenforceable and of no force or effect and shall not be binding upon the Beneficial Tenant;

(f) The HDFC shall, at the Beneficial Tenant’s request and at the Beneficial Tenant’s sole cost and expense, join in and be a party to any legal action or proceeding commenced

against or relating to the Project, provided that such participation by the HDFC is necessary to protect or enforce the HDFC's and/or the Beneficial Tenant's respective interests in the Project;

(g) The HDFC shall have no rights, powers and/or authority over, with respect to and/or in connection with the Project or any part or parts thereof in any bankruptcy or other proceeding in which the Beneficial Tenant may hereafter be a party, and no shareholder, officer, trustee, receiver, administrator, legal representative, regulator or creditor of the HDFC shall have any right, power and/or authority over, with respect to and/or in connection with the Project or any part or parts thereof;

(h) No actions may be taken by the HDFC nor may the HDFC permit any other person to take any actions which relate to or will impact or affect the Project or any part or parts thereof or any interest therein, except with the prior written consent of the Beneficial Tenant, which may be withheld in its sole discretion. Further, any and all actions taken by the HDFC with respect to the Project or any part or parts thereof shall be taken solely in its capacity as nominee for the Beneficial Tenant and not for its own ends or purposes;

(i) The HDFC shall hold any policy of insurance with respect to the Project and/or any parts thereof that may be issued to it, and all claims and payments to be received thereunder, solely for the benefit of the Beneficial Tenant and will take such action under such policy or policies as the Beneficial Tenant may direct, but at the expense of the Beneficial Tenant. In the event there is an action in eminent domain, any award in respect thereof, including, without limitation, any settlement proceeds, shall be received by the HDFC as agent for the Beneficial Tenant, and all proceeds in respect thereof shall, subject to the requirements of mortgages encumbering the Project and the Ground Lease, be paid to the Beneficial Tenant directly by the governmental authority upon issuance of a letter of direction by the HDFC provided, however, that to the extent any insurance or condemnation proceeds are paid to the HDFC, the HDFC shall subject to the requirements of mortgages encumbering the Project and the Ground Lease, promptly remit such proceeds to the Beneficial Tenant;

(j) The HDFC may make no settlement in respect of casualty or any taking in the nature of eminent domain without the express written authorization of the Beneficial Tenant;

(k) The HDFC and the Beneficial Tenant each have full power and authority to enter into this Agreement and to comply with all of the terms, provisions and conditions contained in this Agreement;

(l) Neither the execution, delivery or recording of this Agreement, nor the fulfillment of or compliance with the terms, conditions or provisions of this Agreement, conflicts with, violates or results in a breach of the terms, conditions or provisions of any agreement, instrument, law, rule or regulation of which the HDFC and/or the Beneficial Tenant is now a party or by which either or both may be bound or affected or results in the creation of any lien, charge or encumbrance upon the Project and/or any part or parts thereof;

(m) The HDFC shall not, without the consent of the Beneficial Tenant and all financial institutions or governmental entities making loans to the Beneficial Tenant and holding

a mortgage on the Project, commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such law or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the HDFC of any substantial part of its property, or make any general assignment for the benefit of creditors, or take any action in furtherance of any of the foregoing;

(n) So long as the HDFC shall hold record interest in the Project, any and all notices, statements and communications received by the HDFC, as such holder with respect to the Project, shall be promptly delivered to the Beneficial Tenant;

(o) The HDFC will provide an estoppel certificate to such entities as reasonably requested by the Beneficial Tenant or entities engaged in transactions or activities with the Beneficial Tenant; and

(p) The HDFC shall maintain itself as a single purpose entity and shall not hold title to any property other than the Project.

10. Miscellaneous Provisions.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(b) If any provision of this Agreement shall be or become invalid under any provision of federal, state, or local law, such invalidity shall not affect the validity or enforceability of any other provision hereof.

(c) This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof, and no amendment, change or modification shall be effective unless in writing and signed by the parties hereto.

(d) No party may assign this Agreement, or its rights and/or obligations hereunder, without the express written consent of the other parties; provided, however, that the HDFC may assign its rights and/or obligations in accordance with Section 12 below.

(e) All notices required to be delivered hereunder shall be in writing and shall be sent by certified or registered mail, return-receipt requested, overnight delivery or hand delivery to the address of the parties set forth above. Notwithstanding the foregoing sentence, copies of all notices of default required to be provided under this Agreement shall be simultaneously sent to the City of New York, acting by and through its Department of Housing Preservation at the following address: 100 Gold Street, New York, New York 10038, Attention: General Counsel. Such notices shall be deemed to be effective on the date when they are mailed or personally delivered.

(f) The waiver of a breach of any provision of this Agreement by any party shall not operate or be construed as a waiver of any subsequent breach.

(g) Unless otherwise specified, notices or consents required to be given by any party to the others under this Agreement shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or overnight mail to the undersigned representative of the recipient at its address first stated above, or as changed pursuant to a notice served as prescribed by this Section.

(h) No party is authorized to act as agent for the other or to incur any liability or dispose of any assets in the name of or on behalf of the others unless provided expressly in this Agreement or specifically authorized in writing by the party which will be responsible for the obligation.

(i) Any third party may rely on this Agreement with respect to the rights and obligations of the Beneficial Tenant and the HDFC hereunder. Notwithstanding the foregoing, no party shall be deemed to be a third-party beneficiary hereunder.

(j) So long as the HDFC shall hold record interest in the Project, the Beneficial Tenant shall prepare and file the yearly Federal and State Tax Returns, the NYS CHAR410 Form, and the yearly NYS CHAR500 Forms on behalf of the HDFC, and provide such Tax Returns and CHAR Forms to the HDFC for execution, at no charge to the HDFC.

(k) Neither this Agreement, nor any terms, provisions, and/or conditions of this Agreement can be amended, modified, waived, terminated and/or revoked unless the same is set forth specifically in a writing executed by the parties hereto.

(l) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(m) This Agreement may be executed in one or more counterparts, and by different signatories hereto in separate counterparts, each of which when so executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

(n) The Beneficial Tenant and the HDFC hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or Federal court sitting in The City of New York and located in the County of Queens over any suit, action or proceeding arising out of or relating to this Agreement, and the Beneficial Tenant and the HDFC hereby agree and consent that, in addition to any methods of service of process provided for under applicable law, all of service of process in any such suit, action or proceeding in any New York State or Federal court sitting in the City of New York may be made by certified or registered mail, return receipt requested, directed to the Beneficial Tenant and the HDFC at the address indicated in the captioned agreement, and service so made shall become complete five (5) days after the same shall have been so mailed.

(o) Both the Beneficial Tenant and the HDFC hereby, knowingly, voluntarily, intentionally, expressly and unconditionally waive, in connection with any suit, action or proceeding, arising out of, under or in connection with this Agreement, any and every right either or both of them may have to **A TRIAL BY JURY**.

(p) HDFC shall not admit any new members or permit the withdrawal of any members of the HDFC without the prior written consent of the Beneficial Tenant.

(q) Notwithstanding anything contained herein to the contrary, if there is an event of default (beyond any applicable notice and cure period), under any Government Financing Document (as hereinafter defined) with, and as determined by, a supervisory housing agency such as the New York State Division of Housing and Community Renewal, the New York State Housing Finance Agency, HDC and/or HPD, the HDFC shall have the right to enter the Project to cure the default as agent for and on behalf of the Beneficial Tenant; provided that the Beneficial Tenant is not diligently acting to cure such default. For purposes of this provision, Government Financing Document shall mean all City of New York, State or Federal loan documents, including but not limited to mortgages, regulatory agreements and financing commitments.

(r) This Agreement shall become effective as of the date hereof and shall continue in full force and effect until terminated by mutual written agreement of the parties or otherwise terminated in accordance with the terms of this Agreement, or as required by New York State Law.

11. Indemnity

The Beneficial Tenant shall defend the HDFC and SHF, indemnify the HDFC and SHF and hold the HDFC and SHF (and their respective, agents, directors, officers and employees) harmless from and against, and pay, any liability, loss, damage and/or expense (including the reasonable attorneys' fees of counsel selected by the Beneficial Tenant with the reasonable approval of the HDFC and/or SHF) incurred by the HDFC and/or SHF in connection with the Project, this Agreement, any other agreement relating to the Project, except in the case of the HDFC's or SHF's gross negligence or willful misconduct. This Indemnity shall survive any expiration or termination of this Agreement.

12. Withdrawal by The HDFC

In the event that the HDFC determines that it no longer wishes to continue its role as nominee hereunder, the HDFC may arrange for a substitute New York not-for-profit corporation, organized pursuant to Article XI of the Private Housing Finance Law of the State of New York and Section 402 of the Not-for-Profit Corporation Law of the State of New York to take its place. Such a substitution would be contingent on the consent of the Beneficial Tenant, and all of the Project participants and applicable lenders, governmental agencies, tax credit investors and credit enhancers, if such consent is required under the Ground Lease, and as may be otherwise required under the documents executed by the Beneficial Tenant and/or the HDFC in connection with any of the Loans.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Declaration of Interest and Nominee Agreement as of the date and year first written above.

**WILLETS POINT PHASE I HOUSING
DEVELOPMENT FUND CORPORATION**, a New
York not-for-profit corporation

By: 
Name: Jacqueline Tom
Title: Secretary/Treasurer

BENEFICIAL TENANT

WILLETS POINT PHASE I OWNER, LLC, a New
York limited liability company

By: _____
Name: Frank Monterisi
Title: Authorized Person

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

On the 16th day of ^{November} , 2023, before me, the undersigned, a Notary Public in and or said State, personally appeared Jacqueline Tom, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instruments.



Notary Public
Commission Expires:

John Nathan Brenner
State of New York Notary Public
Qualified in New York County
01BR0016160
My Commission Expires 11/11/2027

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

On the day of , 2023, before me, the undersigned, a Notary Public in and or said State, personally appeared, Frank Monterisi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instruments.

Notary Public
Commission Expires:


IN WITNESS WHEREOF, the parties hereto have executed this Declaration of Interest and Nominee Agreement as of the date and year first written above.

**WILLETS POINT PHASE I HOUSING
DEVELOPMENT FUND CORPORATION**, a New
York not-for-profit corporation

By: _____
Name: Jacqueline Tom
Title: Secretary/Treasurer

BENEFICIAL TENANT

WILLETS POINT PHASE I OWNER, LLC, a New
York limited liability company

By:  _____
Name: Frank Monterisi
Title: Authorized Person


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

On the _____ day of _____, 2023, before me, the undersigned, a Notary Public in and or said State, personally appeared Jacqueline Tom, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instruments.

Notary Public
Commission Expires:

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

On the 17 day of Nov, 2023, before me, the undersigned, a Notary Public in and or said State, personally appeared, Frank Monterisi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instruments.



Notary Public
Commission Expires: 6/13/24

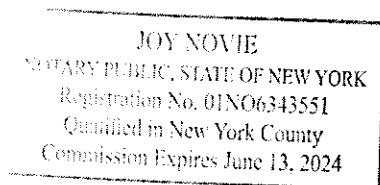


EXHIBIT A-1

(see attached legal description of Lots 130 and 135)

**WRITTEN DESCRIPTION
BLOCK 1833 PROPOSED LOT 130
IN THE BOROUGH AND COUNTY OF QUEENS,
CITY AND STATE OF NEW YORK**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHERLY SIDE OF ROOSEVELT AVENUE (80 FEET WIDE) AND THE EASTERLY SIDE OF 126TH STREET (KNOWN AS HEWITT AVENUE) (80 FEET WIDE) AND RUNNING THE FOLLOWING TWO COURSES TO THE POINT OF BEGINNING;

- A. EASTERLY, ALONG SAID NORTHERLY SIDE OF ROOSEVELT AVENUE, A DISTANCE OF 320.16 FEET TO A POINT, THENCE;
- B. NORTHEASTERLY, FORMING AN ANGLE ON THE NORTHWESTERLY SIDE OF $131^{\circ}21'42''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 29.98 FEET TO THE POINT OF BEGINNING AND RUNNING, THENCE;

WESTERLY, FORMING AN ANGLE ON THE SOUTHWESTERLY SIDE OF $48^{\circ}38'18''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 182.83 FEET TO A POINT, THENCE;

NORTHERLY, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 137.37 FEET TO A POINT ON THE SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD (80 FEET WIDE) (CLOSED AND DISCONTINUED), THENCE;

NORTHEASTERLY, ALONG SAID SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD, FORMING AN INTERIOR ANGLE OF $138^{\circ}38'18''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 226.00 FEET TO A POINT, THENCE;

SOUTHEASTERLY, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 228.00 FEET TO A POINT, THENCE;

SOUTHWESTERLY, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 208.28 FEET TO THE POINT OR PLACE OF BEGINNING.

ENCOMPASSING AN AREA OF 62,066 SQUARE FEET OR 1.425 ACRES, MORE OR LESS.

**WRITTEN DESCRIPTION
BLOCK 1833 PROPOSED LOT 135
IN THE BOROUGH AND COUNTY OF QUEENS,
CITY AND STATE OF NEW YORK**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHERLY SIDE OF ROOSEVELT AVENUE (80 FEET WIDE) AND THE EASTERLY SIDE OF 126TH STREET (KNOWN AS HEWITT AVENUE) (80 FEET WIDE) AND RUNNING THE FOLLOWING TWO COURSES TO THE POINT OF BEGINNING;

- A. EASTERLY, ALONG SAID NORTHERLY SIDE OF ROOSEVELT AVENUE, A DISTANCE OF 320.16 FEET TO A POINT, THENCE;
- B. NORTHEASTERLY, FORMING AN ANGLE ON THE NORTHWESTERLY SIDE OF $131^{\circ}21'42''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 238.26 FEET TO THE POINT OF BEGINNING AND RUNNING, THENCE;

NORTHWESTERLY, FORMING AN ANGLE ON THE WESTERLY SIDE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 228.00 FEET TO A POINT ON THE SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD (80 FEET WIDE) (CLOSED AND DISCONTINUED), THENCE;

NORTHEASTERLY, ALONG SAID SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 169.00 FEET TO A POINT, THENCE;

SOUTHEASTERLY, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 228.00 FEET TO A POINT, THENCE;

SOUTHWESTERLY, FORMING AN INTERIOR ANGLE OF $90^{\circ}00'00''$ WITH THE PREVIOUS COURSE, A DISTANCE OF 169.00 FEET TO THE POINT OR PLACE OF BEGINNING.

ENCOMPASSING AN AREA OF 38,532 SQUARE FEET OR 0.885 ACRES, MORE OR LESS.

EXHIBIT A-2

(see attached legal description of Lot 120)

**WRITTEN DESCRIPTION
BLOCK 1833 PROPOSED LOT 120
IN THE BOROUGH AND COUNTY OF QUEENS,
CITY AND STATE OF NEW YORK**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EASTERLY SIDE OF 126TH STREET (KNOWN AS HEWITT AVENUE) (80 FEET WIDE) WITH THE NORTHERLY SIDE OF ROOSEVELT AVENUE (80 FEET WIDE), AND RUNNING, THENCE;

NORTHERLY, ALONG SAID EASTERLY SIDE OF 126TH STREET, A DISTANCE OF 26.79 FEET TO A POINT, THENCE;

NORTHEASTERLY, THROUGH THE BED OF FORMER WILLETS POINT BOULEVARD (80 FEET WIDE) (CLOSED AND DISCONTINUED), FORMING AN INTERIOR ANGLE OF 138°38'18" WITH THE PREVIOUS COURSE, A DISTANCE OF 637.15 FEET TO A POINT, THENCE;

EASTERLY, FORMING AN INTERIOR ANGLE OF 131°21'42" WITH THE PREVIOUS COURSE, A DISTANCE OF 39.97 FEET TO A POINT ON THE SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD (80 FEET WIDE) (CLOSED AND DISCONTINUED), THENCE;

SOUTHWESTERLY, ALONG SAID SOUTHERLY SIDE OF FORMER WILLETS POINT BOULEVARD, FORMING AN INTERIOR ANGLE OF 48°38'18" WITH THE PREVIOUS COURSE, A DISTANCE OF 459.84 FEET TO A POINT, THENCE;

SOUTHERLY, FORMING AN INTERIOR ANGLE OF 221°21'42" WITH THE PREVIOUS COURSE, A DISTANCE OF 137.37 FEET TO A POINT, THENCE;

EASTERLY, FORMING AN INTERIOR ANGLE OF 270°00'00" WITH THE PREVIOUS COURSE, A DISTANCE OF 182.83 FEET TO A POINT, THENCE;

SOUTHWESTERLY, FORMING AN INTERIOR ANGLE OF 48°38'18" WITH THE PREVIOUS COURSE, A DISTANCE OF 29.98 FEET TO A POINT ON SAID NORTHERLY SIDE OF ROOSEVELT AVENUE, THENCE;

WESTERLY, ALONG SAID NORTHERLY SIDE OF ROOSEVELT AVENUE, FORMING AN INTERIOR ANGLE OF 131°21'42" WITH THE PREVIOUS COURSE, A DISTANCE OF 320.16 FEET TO THE POINT OR PLACE OF BEGINNING.

ENCOMPASSING AN AREA OF 35,011 SQUARE FEET OR 0.804 ACRES, MORE OR LESS.



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

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

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

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

I. Site Name: Willets Point Development Phase 1 Housing Building 1 and 2 **DEC Site ID No.** C241146

II. Contact Information of Person Submitting Notification:

Name: Christine Leas
Address1: 560 Lexington Avenue
Address2: 15th Floor
Phone: 646-378-7267 E-mail: CLeas@sprlaw.com

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

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

Proposed Date of Change (mm/dd/yyyy): 11/21/2023


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

Per the lease documents contained in Attachment C to the Application to Amend Brownfield Cleanup Agreement and Amendment, this change of use notifies the Department of the November 21, 2023 lease closing which resulted in a legal leasehold interest in the Site being vested in Willets Point Phase I Housing Development Fund Corporation ("Legal Tenant") and a beneficial leasehold interest being vested in existing Volunteer Willets Point Phase I Owner, LLC ("Beneficial Tenant"). Fee title remains with the City of New York.

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

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

Name:



(Signature)

12/07/2023

(Date)

Christine Leas

(Print Name)

Address1: 560 Lexington Avenue, 15th Floor

Address2: New York, New York 10022

Phone: 646-378-7267

E-mail: CLeas@sprlaw.com

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

☐ Prospective Owner ☐ Prospective Remedial Party ☐ Prospective Owner Representative

Name: _____

Address1: _____

Address2: _____

Phone: _____ E-mail: _____

Certifying Party Name: _____

Address1: _____

Address2: _____

Phone: _____ E-mail: _____

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

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

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

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

Name: _____
(Signature)

(Date)

(Print Name)

Address1: _____

Address2: _____

Phone: _____ E-mail: _____

Continuation Sheet

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative
Name: _____

Address1: _____

Address2: _____

Phone: _____ E-mail: _____

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative
Name: _____

Address1: _____

Address2: _____

Phone: _____ E-mail: _____

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative
Name: _____

Address1: _____

Address2: _____

Phone: _____ E-mail: _____

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative
Name: _____

Address1: _____

Address2: _____

Phone: _____ E-mail: _____

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative
Name: _____

Address1: _____

Address2: _____

Phone: _____ E-mail: _____

☐ Prospective Owner/Holder ☐ Prospective Remedial Party ☐ Prospective Owner Representative
Name: _____

Address1: _____

Address2: _____

Phone: _____ E-mail: _____



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

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

Section I

Description

Site Name

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

DEC Site ID No.

DEC site identification number.

Section II

Contact Information of Person Submitting Notification

Name

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

Address1

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

Address2

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

Phone

Phone number of the person submitting notification.

E-mail

E-mail address of the person submitting notification.

Section III

Type of Change and Date

Check Boxes

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

Proposed Date of Change

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

Section IV

Description

Description

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

Section V Certification Statement

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

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

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

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

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

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

Certifying Party

Name Name of Certifying Party.

Address1 Certifying Party's street address or P.O. Box number.

Address2 Certifying Party's city, state and zip code.

Phone Certifying Party's Phone number.

E-Mail Certifying Party's E-mail address.

Section VII Agreement to Notify DEC After Property Transfer/Sale

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

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

Name Current property owner must sign and date the form on the designated lines. Print owner's name on the line provided.

Address1 Current owner's street address.

Address2 Current owner's city, state and zip code.