



Department of  
Environmental  
Conservation

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

### PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

☒ Amendment to [check one or more boxes below]

- ☒ Add
- ☐ Substitute
- ☐ Remove
- ☐ Change in Name

applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site? ☐ Yes ☒ No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

☒ Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

☐ Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

☒ **Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

☐ Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

Requestor wishes to add the following affiliated entities to the BCA so they may receive benefits of the BCP and to facilitate financing of this affordable housing project: CJ Plaza Two LLC, BRP JAMSTA Two TC Owner LLC and BRP JAMSTA TC Owner LLC.

On 11/04/2016, the original Lot 83 was split into Lots 91 and 95 so BCP site description needs to be amended.

Requestor is including regulatory agreement to obtain determination that the BCP site is eligible for the affordable housing tangible property credit component.

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

**Section II. Existing Application Information**

BCP SITE NAME: The Crossing at Jamaica Station

BCP SITE NUMBER: C241183

NAME OF CURRENT APPLICANT(S): CJ Plaza One LLC

INDEX NUMBER OF EXISTING AGREEMENT: C241183-04-16

DATE OF EXISTING AGREEMENT: 05/12/16

**Section III. New Requestor Information (If no change to Current Applicant, skip to Section V)**

NAME CJ Plaza Two LLC, BRP JAMSTA Two TC Owner LLC, BRP JAMSTA TC Owner LLC

ADDRESS c/o BRP Development Corp., 767 Third Avenue, 33rd floor

CITY/TOWN New York, New York

ZIP CODE 10017

PHONE 212-488-1739

FAX

E-MAIL acohen@brpcompanies.com

Is the requestor authorized to conduct business in New York State (NYS)?



Yes



No

- If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

NAME OF NEW REQUESTOR'S REPRESENTATIVE Andrew Cohen

ADDRESS c/o BRP Development Corp., 767 Third Avenue, 33rd floor,

CITY/TOWN New York, New York

ZIP CODE 10017

PHONE 212-488-1739

FAX

E-MAIL acohen@brpcompanies.com

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) Neoma Chefalo, AKRF

ADDRESS 440 Park Avenue South, 7th Floor

CITY/TOWN New York, New York

ZIP CODE 10016

PHONE 646-388-9854

FAX

E-MAIL nchefalo@akrf.com

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Lawrence Schnapf, Schnapf LLC

ADDRESS 55 E.87th Street #8B

CITY/TOWN New York, New York

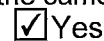
ZIP CODE 10128

PHONE 212-876-3189

FAX

E-MAIL Larry@schnapflaw.com

Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached?



Yes



No

Describe Requestor's Relationship to Existing Applicant:

BRP JAMSTA Two TC Owner LLC and BRP JAMSTA TC Owner LLC are affiliated entities of the current Requestor.

**Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)**

OWNER'S NAME (if different from requestor)		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL
OPERATOR'S NAME (if different from requestor or owner)		
ADDRESS		
CITY/TOWN		ZIP CODE
PHONE	FAX	E-MAIL

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

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

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

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

☐ PARTICIPANT

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

☒ VOLUNTEER

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

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

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

Requestor's Relationship to Property (check one):

☐ Prior Owner ☐ Current Owner ☐ Potential /Future Purchaser ☒ Other investor

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

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

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

ADDRESS 147-22 Archer Street

CITY/TOWN Queens, New York

ZIP CODE 11435

TAX BLOCK AND LOT (TBL) (in existing agreement )

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
147-22 Archer Street			9998	83	

Check appropriate boxes below:



Changes to metes and bounds description or TBL correction



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

Approximate acreage added: 0

ADDITIONAL PARCELS:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
147-40 Archer Avenue			9998	91	0.91
148-10 Archer Avenue			9998	95	0.42



Reduction of property

Approximate acreage removed: 0

PARCELS REMOVED:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
147-22 Archer Street			9998	83	1.33

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

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

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

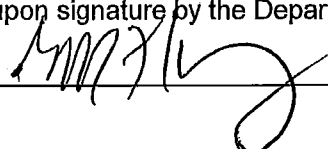
## PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

<b>Existing Agreement Information</b>	
BCP SITE NAME: The Crossing at Jamaica Station	BCP SITE NUMBER: C241183
NAME OF CURRENT APPLICANT(S): CJ PLAZA ONE LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C241183-04-16	
EFFECTIVE DATE OF EXISTING AGREEMENT: May 12, 2016	

### Declaration of Amendment:

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

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

<b>Statement of Certification and Signatures: New Requestor(s) (if applicable)</b>
<b>(Individual)</b>
I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: _____ Signature: _____
Print Name: _____
<b>(Entity)</b>
I hereby affirm that I am (title <u>Managing Member</u> ) of (entity <u>CJ Plaza Two LLC</u> ); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.
<u>Geoffroi Flournoy's</u> signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: <u>9/14/17</u> Signature: 
Print Name: <u>Geoffroi Flournoy</u>

## PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: The Crossing at Jamaica Station	BCP SITE NUMBER: C241183
NAME OF CURRENT APPLICANT(S): CJ PLAZA ONE LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C241183-04-16	
EFFECTIVE DATE OF EXISTING AGREEMENT: May 12, 2016	

### Declaration of Amendment:

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

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

Statement of Certification and Signatures: New Requestor(s) (If Applicable)
(Individual)
I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: _____ Signature: _____
Print Name: _____
(Entity)
I hereby affirm that I am (title <u>Managing Member</u> ) of (entity <u>BERKMAN TIGER LLC</u> ); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.
<u>Geoffroi Flournoy's</u> signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: <u>5/14/17</u> Signature: <u>[Signature]</u>
Print Name: <u>Geoffroi Flournoy</u>



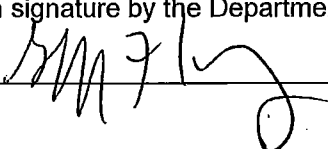
## PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

<b>Existing Agreement Information</b>	
BCP SITE NAME: The Crossing at Jamaica Station	BCP SITE NUMBER: C241183
NAME OF CURRENT APPLICANT(S): CJ PLAZA ONE LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C241183-04-16	
EFFECTIVE DATE OF EXISTING AGREEMENT: May 12, 2016	

### Declaration of Amendment:

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

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

<b>Statement of Certification and Signatures: New Requestor(s) (if applicable)</b>
(Individual)
I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: _____ Signature: _____
Print Name: _____
(Entity)
I hereby affirm that I am (title <u>Managing Member</u> ) of (entity <u>CJP Plaza One LLC owner LLC</u> ); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.
<u>Geoffroi Flournoy's</u> signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.
Date: <u>5/14/17</u> Signature: 
Print Name: <u>Geoffroi Flournoy</u>

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

(Individual)

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

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

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

(Entity)

I hereby affirm that I am Managing Member (title) of CJ Plaza One 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. Geoffroi Flourmoy's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 5/14/17 Signature: 

Print Name: Geoffroi Flourmoy

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

Status of Agreement:

☐

PARTICIPANT

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

☒

VOLUNTEER

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

Effective Date of the Original Agreement: MAY 12, 2016

Signature by the Department:

DATED: June 9, 2017

AMENDMENT #1 to T/R Riser

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By: 

Robert W. Schick, P.E., Director  
Division of Environmental Remediation

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

**Site Name:** The Crossing at Jamaica Station

**Site Number:** C241183

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

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

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

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


3- For sites statewide, where applicable:

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

*Jun 9, 2017*

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

By:



Robert W. Schick, P.E., Director  
Division of Environmental Remediation

**SUBMITTAL INFORMATION:**

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

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

---

**FOR DEPARTMENT USE ONLY**

**BCP SITE T&A CODE:**\_\_\_\_\_ **LEAD OFFICE:**\_\_\_\_\_

**PROJECT MANAGER:**\_\_\_\_\_

## BROWNFIELD CLEANUP PROGRAM (BCP)

### INSTRUCTIONS FOR COMPLETING A BCP AMENDMENT APPLICATION

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

#### SECTION II

#### NEW REQUESTOR INFORMATION

##### Requestor Name

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

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's Corporation & Business Entity Database. A print-out of entity information from the database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

##### Requestor Address, etc.

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

##### Representative Name, Address, etc.

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

##### Consultant Name, Address, etc.

Provide information for the requestor's consultant.

##### Attorney Name, Address, etc.

Provide information for the requestor's attorney.

#### SECTION III CURRENT PROPERTY OWNER/OPERATOR INFORMATION - only include if new owner/operator or new existing owner/operator information is provided, and highlight new information in form.

##### Owner Name, Address, etc.

Provide information for the new owner of the property. List all new parties holding an interest in the property.

##### Operator Name, Address, etc.

Provide information for the new operator (if different from the new requestor or owner).

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

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

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

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

##### Property Address

Provide a street address, city/town, and zip code. For properties with multiple addresses, provide information for all.

##### Tax Parcel Information

Provide the tax parcel/section/block/lot information. If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, and/or acceptable site map to this application. Tax map information may be obtained from the tax assessor's office for all tax parcels that are included in the property boundaries. Attach a county tax map with identifier numbers, along with any figures needed to show the location and boundaries of the property. Include a USGS 7.5 minute quad map on which the property appears.

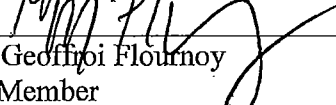
**COMPANY RESOLUTION  
OF  
CJ Plaza One LLC**

The undersigned, being the sole member of CJ Plaza One LLC (the "Company"), on behalf of the Company, adopts the following resolution by unanimous written consent:

**RESOLVED**, that the Company authorizes Andrew Cohen to execute documents as may be required by the New York State Department of Environmental Conservation documents in connection with the property known as 147-22 Archer Avenue, Queens, New York 11435 (the "Premises") to implement the requirements of the NYSDEC Brownfield Cleanup Program including but not limited to executing the Brownfield Cleanup Agreement and to be bound thereby in accordance with the terms of the BCP.

IN WITNESS WHEREOF, the undersigned have caused this Consent to be signed as of May 5, 2017.

GS BRP Urban Venture LLC  
a Delaware limited liability company

By:   
Name: Geoffroi Flournoy  
Title: Member

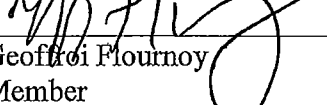
**COMPANY RESOLUTION  
OF  
CJ Plaza Two LLC**

The undersigned, being the sole member of CJ Plaza Two LLC (the "Company"), on behalf of the Company, adopts the following resolution by unanimous written consent:

**RESOLVED**, that the Company authorizes Geoffroi Flournoy to execute documents as may be required by the New York State Department of Environmental Conservation documents in connection with the property known as 147-22 Archer Avenue, Queens, New York 11435 (the "Premises") to implement the requirements of the NYSDEC Brownfield Cleanup Program including but not limited to executing the Brownfield Cleanup Agreement and to be bound thereby in accordance with the terms of the BCP.

IN WITNESS WHEREOF, the undersigned have caused this Consent to be signed as of May 5, 2017.

Jamsta Two JV LLC  
a Delaware limited liability company

By:   
Name: Geoffroi Flournoy  
Title: Member



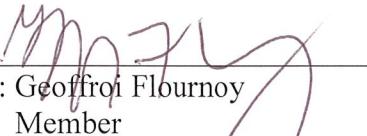
**COMPANY RESOLUTION  
OF  
BRP Jamsta TC Owner LLC**

The undersigned, being the managing member of BRP Jamsta TC Owner LLC (the "Company"), on behalf of the Company, adopts the following resolution by unanimous written consent:

**RESOLVED**, that the Company authorizes Geoffroi Flournoy to execute documents as may be required by the New York State Department of Environmental Conservation documents in connection with the property known as 147-22 Archer Avenue, Queens, New York 11435 (the "Premises") to implement the requirements of the NYSDEC Brownfield Cleanup Program including but not limited to executing the Brownfield Cleanup Agreement and to be bound thereby in accordance with the terms of the BCP.

IN WITNESS WHEREOF, the undersigned have caused this Consent to be signed as of May 18, 2017.

Jamsta TC Managing Member LLC  
a Delaware limited liability company

By:   
Name: Geoffroi Flournoy  
Title: Member

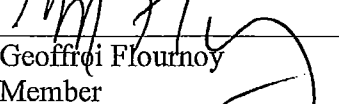
**COMPANY RESOLUTION  
OF  
BRP Jamsta Two TC Owner LLC**

The undersigned, being the managing member of BRP Jamsta Two TC Owner LLC (the "Company"), on behalf of the Company, adopts the following resolution by unanimous written consent:

**RESOLVED**, that the Company authorizes Geoffroi Flournoy to execute documents as may be required by the New York State Department of Environmental Conservation documents in connection with the property known as 147-22 Archer Avenue, Queens, New York 11435 (the "Premises") to implement the requirements of the NYSDEC Brownfield Cleanup Program including but not limited to executing the Brownfield Cleanup Agreement and to be bound thereby in accordance with the terms of the BCP.

IN WITNESS WHEREOF, the undersigned have caused this Consent to be signed as of May 5, 2017.

Jamsta Two JV LLC  
a New York limited liability company

By:   
Name: Geoffroi Flournoy  
Title: Member

**APPLICATION FOR MERGERS OR APPORTIONMENTS**

**Instructions:** Please complete this application and submit in person to: Department of Finance, Division of Land Records - Tax Map Office, 66 John Street, 13th floor, New York, NY 10038. Please read the Instructions for further details before completing this form. Print clearly.

**SECTION A: PROPERTY INFORMATION**

Borough: Queens Block: 9998 Present Lot(s): 83,86,87,88,89,90,91,93,94, 95 & 101

☒ Merger ☒ Apportionment Number of Lots Requested 2

DO NOT WRITE IN THIS SPACE - FOR OFFICE USE ONLY

New Lot Number: 91495

New Lot(s): ☐ Residential Building Gross Sq/Ft: \_\_\_\_\_ ☐ Commercial Building Gross Sq/Ft: \_\_\_\_\_ ☒ Mix (Residential & Commercial) Building Gross Sq/Ft: 751,090 SF

1. Property Owner's Name: JAMAICA HOTEL DEVELOPMENT COMPANY, LLC

2. Property Address: 90-04 161st Street Jamaica NY 11432

**SECTION B: APPLICANT INFORMATION**

1. Architect/Engineer/Applicant's Name: Kaplan Daniel

2. Address: 22 West 19th Street New York NY 10011

3. Telephone Number: 212-627-1700 4. Email Address: dkaplan@fxfowle.com

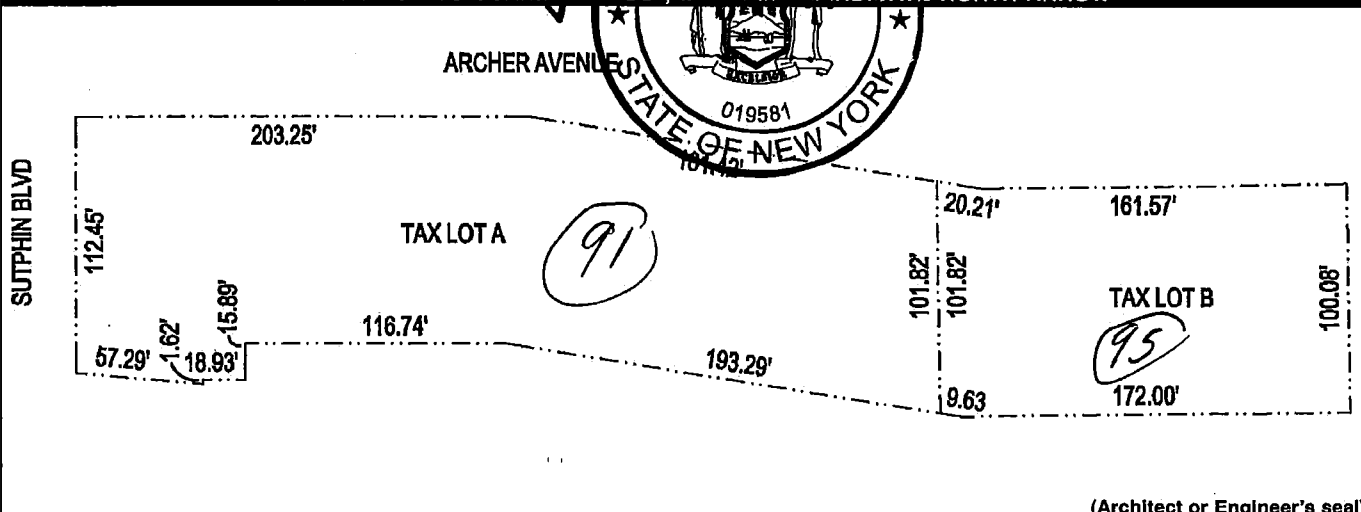
**SECTION C: CERTIFICATION**

The applicant hereby certifies that, in making this application for merge/apportionment, s/he is the owner, or acting under the direction of the owner.

Signature of Architect/ Engineer/Applicant: \_\_\_\_\_ Date: 01 / 26 / 2015

TAX MAP CHANGE WILL NOT BE MADE UNTIL PRESENTATION OF REQUIRED DOCUMENTS (see reverse for the required documents)

DRAW SKETCH TO SCALE "1" = 50', IF POSSIBLE INDICATE NORTH ARROW



(Architect or Engineer's seal)

Lot(s) issued: \_\_\_\_\_ Customer Service Representative: [Signature] Date: 2/13/15 New Lot(s): \_\_\_\_\_ Lot(s) Affected: 91495 Lot(s) Dropped: 83,86-90

Please note: Map changes will not be made until presentation of all required documents is reviewed and approved by the Cartographer.

Map Updated: \_\_\_\_\_ Tax Map Cartographer: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

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**REGULATORY AGREEMENT**

among

**CJ PLAZA ONE LLC,**

**BRP JAMSTA TC OWNER LLC,**

**HP JAMSTA HOUSING DEVELOPMENT FUND COMPANY, INC.,**

**NEW YORK CITY HOUSING DEVELOPMENT CORPORATION**

and

**THE CITY OF NEW YORK, ACTING BY AND THROUGH ITS DEPARTMENT OF  
HOUSING PRESERVATION AND DEVELOPMENT**

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December 22, 2016

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BLOCK: 9998

LOT: 91

COUNTY: Queens

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**RECORD AND RETURN TO:**

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

**REGULATORY AGREEMENT** (as may be amended, this "Agreement"), entered into as of December 22, 2016, among **CJ PLAZA ONE LLC** (the "Non-LIHTC Borrower"), a New York limited liability company, with an address at c/o BRP Development Corp., 767 Third Avenue, 33rd Floor, New York, NY 10017, **BRP JAMSTA TC OWNER LLC**, a New York limited liability company, with an address at c/o BRP Development Corp., 767 Third Avenue, 33rd Floor, New York, NY 10017 (the "LIHTC Borrower" and together with the Non-LIHTC Borrower, the "Beneficial Owner"), **HP JAMSTA HOUSING DEVELOPMENT FUND COMPANY, INC.**, (the "Legal Owner", and together with the Beneficial Owner, jointly and severally, the "Sponsor"), a New York not-for-profit corporation with an address at c/o Housing Partnership Development Corporation, 242 West 36<sup>th</sup> Street, 3<sup>rd</sup> Floor, New York, New York 10018, **NEW YORK CITY HOUSING DEVELOPMENT CORPORATION** ("HDC"), a New York public benefit corporation with its address at 110 William Street, New York, NY 10038, and **THE CITY OF NEW YORK** (the "City"), acting by and through its **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT** ("HPD"), with its address at 100 Gold Street, New York, NY 10038.

### **PRELIMINARY STATEMENT**

**WHEREAS**, HDC and HPD have agreed to provide a portion of the acquisition, construction and permanent financing for a rental housing development and related facilities, to be constructed on the premises identified in Schedule A (the "Premises"), as further described in Schedule B (the "Project");

**WHEREAS**, as of the date of this Agreement, the Non-LIHTC Borrower and the Legal Owner have entered into a Declaration of Interest and Nominee Agreement (the "Nominee Agreement"), pursuant to which the Non-LIHTC Borrower is the beneficial owner of the Premises and the Legal Owner retains the record fee title to the Premises;

**WHEREAS**, at the Construction Loan Closing, the Tax Code Units (as defined below; capitalized terms used but not defined in this preliminary statement are defined in Section 1.01) shall be master leased by the Non-LIHTC Borrower to the LIHTC Borrower pursuant to a Agreement of Lease, acknowledged and accepted by the Legal Owner, dated as of the date of this Agreement (the "Master Lease");

**WHEREAS**, the Sponsor intends to create a condominium on the Premises, pursuant to which the Premises will contain one structure with four condominium units: one residential unit for the Tax Code Units (the "Tax Code Units Condo Unit" or the "Tax Code Units Project"), one residential unit for the Non-Tax Code Income-Restricted Units, one unit for the commercial space, and one unit for the parking facility; the Tax Code Units Condo Unit is expected to receive Tax Credits and comprise the "building" for purposes of Section 42 of the Tax Code; however, the Project shall include both residential condominium units, as provided in Schedule B, and the condominium units containing the commercial space and the parking facility.

**WHEREAS**, upon the creation of a condominium on the Premises, the Non-LIHTC Borrower intends to convey beneficial ownership of the Tax Code Units Condo Unit to the LIHTC Borrower, the Master Lease will be terminated, and the LIHTC Borrower and the Legal Owner intend to enter into a separate Nominee Agreement pursuant to which the LIHTC Borrower will be the beneficial owner of the Tax Code Units Condo Unit and the Legal Owner will be the record fee title owner of the Tax Code Units Condo Unit; at the same time, the existing Nominee Agreement will by its terms provide that the Non-LIHTC Borrower will be the beneficial owner of the condominium units other than the Tax Code Units Condo Unit and the Legal Owner will be the record fee title owner of such condominium units;

**WHEREAS**, the Tax Code Units Project is expected to receive Tax Credits and comprise the "building" for purposes of Section 42 of the Tax Code; however, the Project shall include all condominium units, as provided in Schedule B;

**WHEREAS**, HDC has agreed to make, pursuant to the HDC Commitment: (i) a first mortgage loan to the Beneficial Owner in the aggregate principal amount of \$191,000,000 (the "HDC Construction Loan"), which upon the Permanent Conversion will be partially prepaid and will become a permanent mortgage loan in the aggregate principal amount of \$158,000,000 (the "HDC Permanent Loan" and together with the HDC Construction Loan, the "HDC Loan"); (ii) a second-position mortgage loan to the Beneficial Owner in the aggregate principal amount of \$25,755,395 (the "HDC Additional Loan"); (iii) a third-position mortgage loan to the Beneficial Owner in the aggregate principal amount of \$37,111,232 (the "HDC City Capital Loan"); (iv) a fourth-position mortgage loan to the Beneficial Owner in the aggregate principal amount of \$3,404,404 (the "HDC MS Settlement Loan"); and (v) a fifth-position mortgage loan to the Beneficial Owner in the aggregate principal amount of \$1,950,891 (the "HDC GS Settlement Loan" and together with the HDC Loan, the HDC Additional Loan, the HDC City Capital Loan and the HDC MS Settlement Loan, the "HDC Financing"); the HDC Financing will be evidenced by notes made by the Beneficial Owner and dated as of the date of this Agreement (collectively, and as may be amended, the "HDC Mortgage Note") and secured by mortgages made by the Sponsor and dated as of the date of this Agreement (collectively, and as may be amended, the "HDC Mortgage");

**WHEREAS**, the Beneficial Owner has requested that Goldman Sachs Bank USA (the "Construction Credit Provider") extend a stand-by letter of credit (the "Construction Credit Instrument") for the benefit of HDC to further secure the Beneficial Owner's obligation to HDC under the HDC Construction Loan; the Construction Credit Provider will service the HDC Financing while the Construction Credit Instrument is in place, pursuant to a Servicing and Release Agreement dated as of the date of this Agreement among the Beneficial Owner, the Construction Credit Provider, HPD and HDC (as may be amended, the "Servicing and Release Agreement");

**WHEREAS**, the Federal Home Loan Mortgage Corporation (together with its successors and assigns, the "Permanent Credit Provider", and together with the Construction Credit Provider, the "Credit Provider") has agreed to provide one or more credit enhancement instruments, letters of credit or alternate security instruments acceptable to HDC and provided to secure the HDC Permanent Loan (the "Permanent Credit Instrument"), and the Permanent Credit Provider and HDC have agreed that RICHMAC Funding LLC will service the HDC Permanent Loan pursuant to the terms and conditions of an Assignment and Intercreditor Agreement by and among HDC and the Permanent Credit Provider and acknowledged, accepted and agreed to by the Beneficial Owner, Trustee and RICHMAC Funding LLC, as servicer (the "Assignment and Agreement");

**WHEREAS**, the Beneficial Owner on behalf of the LIHTC Borrower has applied to receive an allocation of Tax Credits from HPD by reason of the issuance of the Obligations by HDC, and an extended low income housing commitment is required pursuant to the Tax Code; the Tax Credits equity investor in the LIHTC Borrower will be a wholly owned affiliate of Goldman Sachs, GSG LIHTC Investor LLC (the "Tax Credit Investor");

**WHEREAS**, the Sponsor expects to receive a sixth-position mortgage loan from the New York State Housing Finance Agency to the Beneficial Owner in the aggregate principal amount of \$5,000,000 (the "HFA Loan") evidenced by a note made by the Beneficial Owner and dated as of the date of this Agreement (collectively, and as may be amended, the "HFA Mortgage Note") and secured by a mortgage made by the Sponsor and dated as of the date of this Agreement

(collectively, and as may be amended, the "HFA Mortgage");

**WHEREAS**, the Sponsor expects to receive Real Property Tax Benefits;

**WHEREAS**, HDC requires that the Project and the Sponsor comply with marketing, occupancy and operating requirements as a condition to the provision of the HDC Financing, in order to fulfill HDC's statutory purpose of providing housing for people and families for whom the ordinary operations of private enterprise cannot provide an adequate supply of safe, sanitary and affordable housing;

**WHEREAS**, HPD requires that the Project and the Sponsor comply with marketing, occupancy and operating requirements as a condition to the allocation of the Tax Credits;

**WHEREAS**, in order for the Project to have the benefit of the HDC Financing and the Tax Credits, HDC and HPD require that the Sponsor (i) agree to operate the Project in accordance with this Agreement and (ii) agree that the restrictions in this Agreement shall run with the Premises and bind all of the successors and assigns of the Sponsor, for so long as set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, the parties agree as follows:

## **ARTICLE I. DEFINITIONS**

**SECTION 1.01** Definitions. In this Agreement, the following terms shall have the meanings set forth below:

"Actual Rent" shall have the meaning set forth in Section 5.03.

"Agreement" shall have the meaning set forth in the preamble.

"AMI" shall mean the area median income for the New York metropolitan area, as determined by HUD from time to time, for a family of four, as adjusted for family size. All percentage of AMI numbers provided in this Agreement shall be calculated as the appropriate percentage adjustment to the income levels, as determined by HUD from time to time, for 50% of AMI families (also known as "very low income" families), as adjusted for family size. For example, 60% of AMI is equal to 120% of the 50% of AMI figure published by HUD; 100% of AMI is equal to 200% of the 50% of AMI figure. HDC and HPD may determine, however, in their sole discretion and from time to time, that another applicable AMI figure is published by HUD and should be used to calculate a particular percentage of AMI number. For the purposes of determining rents for Income-Restricted Units, incomes shall be adjusted for family size as follows: Units with no bedrooms shall be treated as being occupied by a one-person family, and units with one or more bedrooms shall be treated as being occupied by 1.5 people per bedroom, regardless of the actual number of people occupying the unit.

"Annual Income" shall mean (i) when referring to the income of one tenant, the current gross income of such tenant and (ii) when referring to the income of a Household, the current gross income of all individuals in the Household, calculated in each instance in a manner consistent with the determination of low income families under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, under such program as was in effect immediately before such termination).

"Applicable AMI Limit" shall mean for any Tax Code Unit, the percentage of AMI specified as the income restriction for occupancy of the unit, as set forth in Section 4.02, such that, by way of

example, the Applicable AMI Limit for a 60% of AMI Unit is 60% of AMI, and for any Non-Tax Code Income-Restricted Unit, the percentage of AMI specified for the initial rents as set forth in Schedule B, such that, by way of example, the Applicable AMI Limit for a 145% of AMI Unit (the income restriction for occupancy) is 130% of AMI (the initial rent level).

"Assignment and Agreement" shall have the meaning set forth in the WHEREAS clauses.

"Beneficial Owner" shall have the meaning set forth in the preamble.

"Bond Counsel" shall mean an attorney or firm of attorneys of nationally recognized standing in the law of municipal, state and public agency financing, as selected by HDC.

"City" shall have the meaning set forth in the preamble.

"Compliance Period" shall have the meaning set forth in Section 6.02.

"Construction Credit Instrument" shall have the meaning set forth in the WHEREAS clauses.

"Construction Credit Provider" shall have the meaning set forth in the WHEREAS clauses.

"Construction Loan Closing" shall mean the closing of the HDC Construction Loan, the HDC Additional Loan, the HDC City Capital Loan, the HDC MS Settlement Loan and the HDC GS Settlement Loan, which shall occur simultaneously.

"Credit Provider" shall have the meaning set forth in the WHEREAS clauses.

"Default Rate" shall mean the U.S. prime rate of interest as reported from day to day in The Wall Street Journal, plus 4% per annum, or, if such prime rate is no longer available, the base rate or prime rate of interest of any "Money Center" bank designated by HDC or HPD, in each case in its sole discretion, plus 4% per annum.

"Eligible Tenant" shall mean a tenant who meets the income restrictions and other requirements set forth in this Agreement and the Tax Code, as applicable.

"Event of Default" shall have the meaning set forth in Section 10.01.

"Extended Use Period" shall have the meaning set forth in Section 6.02.

"FMR" shall mean the fair market rent as determined by HUD for the New York metropolitan area and in effect as of the date of the relevant rent determination.

"HDC" shall have the meaning set forth in the preamble.

"HDC Act" shall mean the New York City Housing Development Corporation Act, Article XII of the New York Private Housing Finance Law, as may be amended, and any rules, regulations, policies or procedures promulgated under the statute.

"HDC Additional Loan" shall have the meaning set forth in the WHEREAS clauses.

"HDC City Capital Loan" shall have the meaning set forth in the WHEREAS clauses.

"HDC Commitment" shall mean the Construction and Permanent Financing Commitment and Agreement with respect to the HDC Financing, among the Beneficial Owner, the Legal Owner, HDC and the guarantors of certain obligations of the Beneficial Owner, as may be amended.

"HDC Construction Loan" shall have the meaning set forth in the WHEREAS clauses.

"HDC GS Settlement Loan" shall have the meaning set forth in the WHEREAS clauses.

"HDC MS Settlement Loan" shall have the meaning set forth in the WHEREAS clauses.

"HDC Financing" shall have the meaning set forth in the WHEREAS clauses.



“HDC Mortgage” shall have the meaning set forth in the WHEREAS clauses.

“HDC Mortgage Note” shall have the meaning set forth in the WHEREAS clauses.

“HDC Permanent Loan” shall have the meaning set forth in the WHEREAS clauses.

“Household” shall mean all of the occupants of a unit whether or not legally related.

“HPD” shall have the meaning set forth in the preamble.

“HUD” shall mean the U.S. Department of Housing and Urban Development (and any successor agency).

“Income-Restricted Unit” shall mean a Tax Code Unit or a Non-Tax Code Income-Restricted Unit.

“Legal Owner” shall have the meaning set forth in the preamble.

“Legal Rent” shall have the meaning set forth in Section 5.02.

“Loan Agreement” shall mean the Building Loan Agreement, and the Project Loan Agreement, if any, among HDC, the Beneficial Owner and the Legal Owner, dated as of the date of this Agreement and as may be amended.

“Loan Documents” shall mean, collectively, the HDC Mortgage, the HDC Mortgage Note and all other documents delivered in connection with the HDC Financing, including the Reimbursement Agreement.

“Management Agreement” shall have the meaning set forth in Section 7.01.

“Managing Agent” shall have the meaning set forth in Section 7.01.

“Master Lease” shall have the meaning set forth in the WHEREAS clauses.

“Nominee Agreement” shall have the meaning set forth in the WHEREAS clauses.

“Non-Tax Code Income-Restricted Unit” shall mean any unit that is not a Tax Code Unit, but that is required to be leased pursuant to this Agreement to a tenant who qualifies as an Eligible Tenant with an Annual Income prior to initial occupancy that is at or below an income level or levels specified in Section 4.02. This category includes any units designated in Section 4.02 as having income restrictions for occupancy at any level above 60% of AMI.

“Obligations” shall mean that portion of the obligations, including both tax-exempt and taxable obligations, issued by HDC to fund the HDC Loan in whole or in part pursuant to the Resolution.

“Occupancy Restriction Period” shall have the meaning set forth in Section 2.01.

“Permanent Conversion” shall mean the conversion of the HDC Construction Loan to the HDC Permanent Loan and the conversion of the HPD Construction Loan to the HPD Permanent Loan, both of which shall occur simultaneously.

“Permanent Credit Instrument” shall have the meaning set forth in the WHEREAS clauses.

“Permanent Credit Provider” shall have the meaning set forth in the WHEREAS clauses.

“Permitted Mortgages” shall mean the HDC Mortgage, the Reimbursement Security Documents, the HFA Mortgage and any other mortgage affecting the Premises incurred with the prior written consent of HDC and HPD.

“Premises” shall have the meaning set forth in the WHEREAS clauses.

“Project” shall have the meaning set forth in the WHEREAS clauses.

"Real Property Tax Benefits" shall mean the exemption from or abatement of real property tax with regard to the Project pursuant to Article XI of the New York Private Housing Finance Law, as may be amended.

"Reimbursement Agreement" shall mean the Reimbursement Agreement between the Permanent Credit Provider and the Sponsor.

"Reimbursement Security Documents" shall have the meaning set forth in the Assignment and Agreement.

"Rent Stabilization" shall mean Title 26, Chapter 4 of the New York City Administrative Code (and any successor statute) and the rules and regulations promulgated under the statute.

"Resolution" shall mean HDC's Multi-Family Housing Revenue Bonds Bond Resolution adopted on July 27, 1993, as amended or supplemented.

"Section 8" shall mean a federal rental subsidy pursuant to the Section 8 housing choice voucher program, the Section 8 rental certificate program, the Section 8 project-based rental assistance program, or any successor programs under the United States Housing Act of 1937, as amended.

"Section 8 Rent" shall mean the maximum rent for a unit that is eligible to be subsidized under the applicable Section 8 program. For example, in the case of any unit occupied by a tenant with a Section 8 voucher, the unit will be deemed a Section 8 Unit and the Section 8 Rent shall be the voucher payment standard as authorized by the government agency issuing the voucher.

"Section 8 Unit" shall mean a unit occupied by a tenant receiving a Section 8 voucher or certificate or a unit subject to the Section 8 project-based rental assistance program.

"Servicing and Release Agreement" shall have the meaning set forth in the WHEREAS clauses.

"Sponsor" shall have the meaning set forth in the preamble.

"State" shall mean the State of New York.

"Student Unit" shall mean a unit where all of the occupants of the unit are students, as defined in Section 152(f)(2) of the Tax Code, subject to the exceptions given in Section 42(i)(3)(D) of the Tax Code.

"Superintendent Unit" shall mean a unit occupied by a resident superintendent or porter of the Project.

"Tax Code" shall mean the Internal Revenue Code of 1986, as may be amended, and any rules or regulations promulgated under the statute.

"Tax Code Unit" shall mean any unit that is occupied by a tenant who qualified under this Agreement as an Eligible Tenant pursuant to Sections 42 and 142 of the Tax Code, as applicable, prior to initial occupancy. This category includes any units designated in Section 4.02 as having income restrictions for occupancy at any level at or below 60% of AMI. No Student Unit or Superintendent Unit shall qualify as a Tax Code Unit.

"Tax Code Units Condo Unit" shall have the meaning set forth in the WHEREAS clauses.

"Tax Code Unit Percentage" shall mean the percentage of units (excluding any Superintendent Unit) in the Tax Code Units Project that are Tax Code Units.

"Tax Code Units Project" shall have the meaning set forth in the WHEREAS clauses.

"Tax Credit Investor" shall have the meaning set forth in the WHEREAS clauses.

“Tax Credits” shall mean the low income housing tax credits available to the LIHTC Borrower due to the inclusion of Tax Code Units in the Project pursuant to Sections 42 and 142 of the Tax Code and any related rules and regulations.

“Unit” or “unit” shall mean a residential apartment located in the Project.

**SECTION 1.02**      References to this Agreement. References in this Agreement to specific articles, sections, schedules, etc. refer to provisions in this Agreement unless otherwise noted.

**SECTION 1.03**      Headings. Headings are for reference only and shall not control the interpretation of this Agreement.

**SECTION 1.04**      Preliminary Statement. The recitals in the preliminary statement are a part of the agreement of the parties and are incorporated in this Agreement for all purposes.

## **ARTICLE II. TERM OF RESTRICTIONS**

**SECTION 2.01**      Occupancy Restriction Period.

(A) The Project and the Sponsor shall be subject to the requirements of this Agreement during the Occupancy Restriction Period (as defined in this section), except as may be specifically provided otherwise in this Agreement. The “Occupancy Restriction Period” shall mean a period lasting in perpetuity from the date that is the later of (i) the date that 10% of the units are first occupied after completion of construction of the Project and (ii) the date of issuance of the Obligations. Notwithstanding that the Occupancy Restriction Period is intended to last in perpetuity, the following provisions are included in this Agreement to satisfy requirements of the Tax Code and other financing requirements. This Agreement contains these and other provisions referring to the end of the Occupancy Restriction Period and the period after the Occupancy Restriction Period ends. Any such provisions are included out of caution only and shall not apply barring unforeseen amendment of this Agreement, change in law or court order. In no event shall the Occupancy Restriction Period end prior to the latest of the following dates:

- (a) the date that is 15 years after the date on which 50% of the units are first occupied;
- (b) the first day on which no Obligation or other tax-exempt private activity obligation with respect to the Project is outstanding;
- (c) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates;
- (d) the date of the end of the Extended Use Period (see Section 6.02);
- (e) the date on which the Real Property Tax Benefits expire;
- (f) the date on which the HDC Mortgage and any other mortgage held by HDC with respect to the Project have been satisfied;
- (g) 60 years from the date of the Permanent Conversion;
- (h) the date on which the inclusionary housing regulatory agreement between the Sponsor and HPD terminates or expires.

(B) Notwithstanding the foregoing subsection (A), with respect to the Non-Permanently Affordable 130% of AMI Units, the 145% of AMI Units and the 165% of AMI Units (as each is defined in Section 4.02 below and delineated in Schedule B hereto), the Occupancy Restriction Period is intended to end earlier than for the Tax Code Units and the Permanently Affordable 130% of AMI Units (as defined in Section 4.02 below and delineated in Schedule B hereto) and shall end on the latest of the following dates:

- (i) the date that is 15 years after the date on which 50% of the units are first occupied;
- (ii) the first day on which no Obligation or other tax-exempt private activity obligation with respect to the Project is outstanding;
- (iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates;
- (iv) the date of the end of the Extended Use Period (see Section 6.02);
- (v) the date on which the Real Property Tax Benefits expire;
- (vi) the date on which the HDC Mortgage and any other mortgage held by HDC with respect to the Project have been satisfied;
- (vii) 40 years from the date of the Permanent Conversion.

**SECTION 2.02** Post-Occupancy Restriction Period. Any provisions of this Agreement (i) necessary to preserve the exclusion from gross income for purposes of federal income taxation of interest on the tax-exempt Obligations and (ii) governing the rental of units after the Occupancy Restriction Period ends, and the enforcement of such provisions, shall remain in effect for as long as may be necessary to preserve and enforce such provisions.

**SECTION 2.03** Unforeseen Events. This Agreement shall cease to apply in the event, to the extent and for the duration of any involuntary non-compliance caused by fire, seizure, requisition, condemnation, change in federal law or any action of a federal agency after the date of issuance of the Obligations that prevents HDC and HPD from enforcing some or all of this Agreement, or any similar event, if in any such event (i) the Obligations used to provide the Project are retired within a reasonable period, or (ii) the amounts received as a result of the unforeseen event, subject to the rebate requirement of Section 148 of the Tax Code, are used to provide a project that meets the requirements of Section 142(d) of the Tax Code.

**SECTION 2.04** Termination; Release.

- (a) Consent of HDC and HPD Required. This Agreement shall not be terminated without the prior written consent of HDC and HPD, except as provided otherwise in this section.
- (b) Foreclosure. In the event of a foreclosure or deed in lieu of foreclosure of the HDC Mortgage, or a comparable conversion of the Project, this Agreement shall terminate only (i) upon written request of the owner of the HDC Mortgage, and (ii) if, within a reasonable period, the Obligations are retired (it being agreed that HDC shall cause the Obligations to be retired within a reasonable period pursuant to the terms of the Resolution) and the HDC Additional Loan and HDC City Capital Loan is paid in full. However, if the Sponsor or a related person obtains an ownership interest in the Project after any such foreclosure, deed in lieu of foreclosure or comparable conversion, but during the Occupancy Restriction

Period, this Agreement shall be reinstated in full force and effect.

- (c) Release. At the request of the Sponsor, HDC and HPD shall provide the Sponsor with a release of this Agreement in recordable form upon termination of this Agreement.
- (d) Conversion to Co-Op or Condo. After the Occupancy Restriction Period ends, the Sponsor may convert the Project to cooperative or condominium ownership of individual units. Such a conversion shall not be made pursuant to an eviction plan, as defined by Section 352-eeee of the New York General Business Law, as may be amended.

### ARTICLE III. GENERAL COMPLIANCE

**SECTION 3.01** Compliance with Laws and Regulations. The Sponsor shall do all things necessary to ensure the following:

- (a) HDC and HPD Financing. The Sponsor shall comply, and shall cause the Project to comply, with (i) this Agreement, (ii) the Loan Documents, (iii) the HDC Act and (iv) any rules adopted by HDC or HPD relating to the HDC Financing or the operation of the Project as may be necessary to enforce this Agreement. Any violation of the requirements of the Loan Documents may be declared an Event of Default under this Agreement.
- (b) Tax-Exempt Obligations. The Sponsor shall comply, and shall cause the Project to comply, with the applicable provisions of the Tax Code and this Agreement in order to preserve the exclusion from gross income for purposes of federal income taxation of interest on the Obligations.
- (c) Tax Credits. The Sponsor shall comply, and shall cause the Project to comply, with (i) the provisions of the Tax Code governing the Tax Credits, (ii) the extended low income housing commitment provisions of this Agreement (Article VI) and (iii) HDC's monitoring procedures with respect to the Tax Credits.
- (d) Real Property Tax Benefits; Other Agreements and Permits. The Sponsor shall do all things necessary: (i) to maintain the Real Property Tax Benefits, (ii) to maintain any permits or agreements with government agencies, including HDC and HPD, in good standing and (iii) to comply with the requirements of such agencies. Any violation of the requirements of the Real Property Tax Benefits, or any permits or agreements with or requirements of any government agencies, may be declared an Event of Default under this Agreement.

**SECTION 3.02** More Restrictive Provisions Control. If this Agreement conflicts with any other applicable agreement, law, regulation or permit, or if any provision of this Agreement conflicts with any other provision of this Agreement, the more restrictive provision (as determined by HDC and HPD) shall control.

### ARTICLE IV. PROJECT OCCUPANCY

**SECTION 4.01** General Compliance. The Sponsor agrees that the occupancy requirements for the Project shall comply with (i) the HDC Act and the rules and regulations of

HDC and HPD, including any requirements pertaining to Eligible Tenants or Income-Restricted Units, (ii) all provisions of the Tax Code that may or shall affect (1) the exclusion from gross income for purposes of federal income taxation of interest on the Obligations, if applicable or (2) the Tax Credits, (iii) any applicable requirements of Section 8 and (iv) any other provisions of federal, state or local law or regulation that may be applicable, including the Loan Documents (so long as they remain in effect).

**SECTION 4.02**      Distribution of Units. The Sponsor shall lease the units (excluding any Superintendent Unit) to Eligible Tenants as provided in this section. In calculating the number of units in each category below, no unit may be counted multiple times unless specifically stated otherwise.

- (a)      Tax Code Units. In accordance with the distribution set forth in Schedule B, 90 units shall be Tax Code Units.
  - (i) The Sponsor shall lease no fewer than 90 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 60% of AMI ("60% of AMI Units").
- (b)      Non-Tax Code Income-Restricted Units. In accordance with the distribution set forth in Schedule B, 448 units shall be Non-Tax Code Income-Restricted Units.
  - (i) The Sponsor shall lease no fewer than 15 Non-Tax Code Income-Restricted Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 130% of AMI ("Permanently Affordable 130% of AMI Units").
  - (ii) The Sponsor shall lease no fewer than 85 Non-Tax Code Income-Restricted Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 130% of AMI ("Non-Permanently Affordable 130% of AMI Units").
  - (iii) The Sponsor shall lease no fewer than 49 Non-Tax Code Income-Restricted Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 145% of AMI ("145% of AMI Units").
  - (iv) The Sponsor shall lease no fewer than 299 Non-Tax Code Income-Restricted Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 165% of AMI ("165% of AMI Units").
- (c)      Disability Set-Asides. The Sponsor shall ensure that a minimum of 5% of the units, or one unit, whichever is greater, is accessible and set aside for Households with a person with a mobility disability. The Sponsor shall ensure that an additional minimum of 2% of the units, or one unit, whichever is greater, is accessible and set aside for Households with a person with a hearing or vision disability.

**SECTION 4.03**      Changes to Distribution of Units. Except by reason of an involuntary change caused by unforeseen events such as fire, seizure, requisition or condemnation:

- (a)      Changes Violating Certifications. The Sponsor shall make no changes in the amount of residential and non-residential space or in the number of units, which in the opinion of 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 Obligations; and

- (b) Tax Code Unit Percentage. The Sponsor shall not reduce the Tax Code Unit Percentage in the Tax Code Units Project below 100% unless the Sponsor receives the prior written consent of HDC and HPD, which may be granted in the sole discretion of HDC and HPD.

**SECTION 4.04**      General Requirements for Units.

- (a) Rental to the General Public; Non-Transient Units. Each unit (excluding any Superintendent Unit) shall be rented or made available for rental on a continuous basis to the general public, subject to any preferences required under this Agreement. None of the units shall be used on a transient basis or as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park.
- (b) Primary Residence. Units may only be occupied as a primary residence, as defined by Rent Stabilization, pursuant to a one- or two-year lease and by natural people or families who are otherwise eligible to occupy the unit pursuant to this Agreement. The Sponsor shall only offer a vacant unit for occupancy by natural people or families intending to occupy the unit as their primary residence pursuant to a one- or two-year lease, and shall not cause or permit the sublease or assignment of any unit for transient occupancy, for occupancy by any Household that is not eligible, or to any corporation or other entity.
- (c) Condition of Units. The units shall be suitable for occupancy and similarly constructed and shall contain living, sleeping, eating, cooking and sanitation facilities for a single person or family.
- (d) Integration of Tax Code Units. The Sponsor shall not segregate or physically isolate Tax Code Units from any other units in the Project, and Tax Code Units shall be reasonably dispersed throughout the Project.

**SECTION 4.05**      Marketing Guidelines. The Sponsor shall comply with the procedures and requirements of HDC and HPD pertaining to the marketing and rent-up of all Income-Restricted Units, including the use of HDC's forms for verifying Annual Income and Household size. HDC and HPD reserve the right to require that all Income-Restricted Units that become vacant at a future date are marketed pursuant to marketing guidelines provided by HDC or HPD.

**SECTION 4.06**      Qualification of Eligible Tenants. The Sponsor shall comply with the procedures and requirements of HDC and HPD and any applicable provisions of the Tax Code pertaining to the initial and ongoing qualification of Eligible Tenants.

- (a) Applicant Certifications. Prior to the initial rental of any Income-Restricted Unit or the rental of any Income-Restricted Unit after vacancy, the Sponsor shall determine whether each applicant for the unit qualifies as an Eligible Tenant. The Sponsor shall obtain a certification of Annual Income and Household size from each applicant, along with the documentation necessary to verify the certification. The Sponsor shall verify each certification in a manner consistent with the verification of Annual Income under Section 8. If an applicant is receiving assistance under Section 8, the verification requirement is satisfied if the public housing agency providing the assistance gives the Sponsor a statement indicating that the applicant qualifies as an Eligible Tenant. The Sponsor may consult with HDC and HPD to obtain guidance on the applicant certification process.

- (b) Agency Review Prior to Initial Rental. Prior to the initial rental of any Income-Restricted Unit or the rental of any Income-Restricted Unit after vacancy, the Sponsor shall furnish to HDC (and to HPD, if requested by HPD in writing) the certification of Annual Income and Household size provided by the applicant selected for the unit, along with verification documentation as may be required by HDC, HPD or under the Tax Code in order to review the qualifications of the applicant. No lease for any Income-Restricted Unit shall be executed until the Sponsor has received approval from HDC (and HPD, if applicable).
- (c) Annual Tenant Certifications (Tax Code Units). On an annual basis, the Sponsor shall certify to HDC as to the Household size and student status of each tenant residing in a Tax Code Unit based on certifications obtained from such tenants.
- (d) Annual Agency Reviews (Tax Code Units). The Sponsor shall furnish to HDC (and to HPD, if requested by HPD in writing), on an annual basis or more frequently if required in writing by HDC or HPD in order to ensure compliance with this Agreement, a certification by the Sponsor documenting the annual tenant certifications provided in accordance with paragraph (c) above, along with verification documentation (if requested by HDC or HPD). The Sponsor shall also furnish any reports or other documents that HDC or HPD reasonably determine are necessary to establish compliance with this Agreement and the Tax Code.
- (e) Tenant's Failure to Certify; Fraud. If a tenant residing in an Income-Restricted Unit fails to provide the Sponsor with certifications and documentation as required within 60 days of the Sponsor's request, or if such a tenant provides false or fraudulent materials at any time, then the Sponsor may, or at the request of HDC or HPD shall, refuse to offer a lease renewal and/or commence legal action to terminate the lease of the tenant.

**SECTION 4.07**      Changes in Tenant Income. An Eligible Tenant shall be entitled to remain in occupancy and to obtain a lease renewal to the extent provided under Rent Stabilization even if the tenant's Annual Income, after initial occupancy, exceeds the maximum for initial eligibility. No Eligible Tenant may be evicted or have his or her tenancy terminated except for good cause.

**SECTION 4.08**      Next Available Unit Rules.

- (a) Non-Deep Rent Skewing Project. The Sponsor has elected not to deep rent skew the Tax Code Units Project. The Sponsor shall lease the next available vacant unit of comparable or smaller size in the Tax Code Units Project to a tenant whose Annual Income does not exceed the Applicable AMI Limit required by the Tax Code.

## **ARTICLE V. RENTS AND LEASES**

**SECTION 5.01**      Compliance with Rent Stabilization.

- (a) All Units Subject to Rent Stabilization. All units shall be subject to Rent Stabilization and shall remain subject to Rent Stabilization after the Occupancy Restriction Period ends. The Sponsor shall follow all procedures and guidelines of New York State Homes & Community Renewal ("HCR") (or any successor agency enforcing Rent Stabilization) and all relevant requirements of Rent



Stabilization. However, pursuant to a special agreement on rent regulation with the New York State Division of Housing and Community Renewal (a predecessor of HCR), HCR will not regulate the Project in a manner that is inconsistent with the Tax Code or with this Agreement. Where there may be inconsistencies, the more restrictive provisions of the Tax Code and this Agreement shall prevail.

- (b) No Exemptions from Rent Stabilization. The Sponsor shall not claim any exemption or exclusion from Rent Stabilization to which the Sponsor might be entitled with respect to any unit. This includes any exemption or exclusion from the rent limits, lease renewal requirements, registration requirements or other provisions of Rent Stabilization due to (i) the vacancy of a unit where the rent exceeds a prescribed maximum amount, (ii) the fact that the tenant's income or rent exceeds prescribed maximum amounts, (iii) the nature of the tenant or (iv) any other factor. This section shall continue to apply to Income-Restricted Units after the Occupancy Restriction Period ends until any such unit becomes vacant (except for any vacancy resulting from a breach of the warranty of habitability, harassment, constructive eviction or any similar action caused by the Sponsor).
- (c) Permitted Increases under Rent Stabilization.
  - (i) In General. Where this Agreement allows rent increases under Rent Stabilization for Income-Restricted Units (subject to the other restrictions on increases contained in this Agreement), such language shall permit only those increases that are based on the percentage increases for one- and two-year lease renewals approved annually by the New York City Rent Guidelines Board (or any successor). Subject to the exceptions given in this paragraph (c), rents shall not be increased or registered at a greater amount for any other reason typically allowed under Rent Stabilization, including vacancy lease increases, major capital improvement ("MCI") increases or individual apartment improvement ("IAI") increases. This prohibition applies to both Legal Rents (the registered legal regulated rents) and Actual Rents (which are to be registered as preferential rents). To be clear, this section shall not apply after the Occupancy Restriction Period ends.
  - (ii) Exception for Certain Vacancy Lease Increases. Upon vacancy of an Income-Restricted Unit, if the Legal Rent is less than 30% of the Applicable AMI Limit (adjusted for a monthly rent), then the Sponsor may increase the Legal Rent by the lesser of (1) the vacancy lease increase permitted by Rent Stabilization and (2) the amount required to increase the Legal Rent up to 30% of the Applicable AMI Limit (adjusted for a monthly rent).
  - (iii) Exception for MCI and IAI Increases After Year 30. During the period commencing on the 30th anniversary of the date of the Permanent Conversion, the Sponsor may apply to HCR (or any successor agency enforcing Rent Stabilization) for MCI or IAI increases. If HCR (or any successor agency enforcing Rent Stabilization) approves the Sponsor's application, then upon lease renewal or vacancy of an Income-Restricted Unit, the Sponsor may increase (1) the Legal Rent by the amount of the MCI or IAI increase so approved by HCR (or any successor agency enforcing Rent Stabilization) and (2) the Actual Rent by the lesser of (A) such MCI or IAI increase and (B) an amount that increases the Actual Rent to 30% of the Applicable AMI Limit (adjusted for a monthly rent)

- (d) Contractual Rent Regulation. If Destabilization (as defined in this paragraph) occurs during the Occupancy Restriction Period, then all units that have undergone Destabilization shall be subject to Contractual Rent Regulation (as defined in this paragraph). If some units remain subject to Rent Stabilization while other units have undergone Destabilization, Contractual Rent Regulation will only apply to the units that have undergone Destabilization. For purposes of this paragraph:
- (i) "Destabilization" shall mean any set of facts that causes Rent Stabilization to no longer apply to the units, whether by expiration, legislative repeal, judicial invalidation or any other reason.
  - (ii) "Contractual Rent Regulation" shall mean the following after Destabilization: (1) The Sponsor shall be required to offer new and renewal leases on the same terms and conditions as had been required by Rent Stabilization at the time of Destabilization (subject however to the provisions in subparagraphs (2) and (3) below) as if the unit were still subject to and not excluded or exempted from any provision of Rent Stabilization, including, but not limited to, any exemption or exclusion regarding rent limits, renewal lease requirements, or any other provision due to (w) the vacancy of a unit where the rent exceeds a prescribed maximum amount, (x) the fact that tenant income or unit rent exceeds prescribed maximum amounts, (y) the nature of the tenant or (z) any other factor. (2) The "Legal Rent," as such term is used in this Agreement, shall be limited by percentage increases calculated based on a method or index established by HPD for determining the maximum increase to Legal Rent upon lease renewal or vacancy. Such method or index shall be based on inflation or on factors substantially equivalent to the factors considered in calculating such increases under Rent Stabilization at the time of Destabilization, and shall incorporate a method for determining and implementing increases to Legal Rent by reason of major capital improvements performed by the Sponsor, to the extent that such increases, if any, are not prohibited under this Agreement. HPD will publish such methodology in the City Record and will provide a copy of the methodology to the Sponsor upon request. (3) Wherever this Agreement limits increases in rent by increases as permitted by Rent Stabilization (or language of similar import), such increases shall be limited by the percentage increases established by HPD as described in subparagraph (2) above.

**SECTION 5.02**      Registration in Accordance with Rent Stabilization. The Sponsor shall register the rents for each unit in accordance with Rent Stabilization as follows:

- (a) Legal Rents. The initial legal regulated rent for each unit shall be the amount set forth in Schedule B. This amount may increase upon lease renewal or vacancy in accordance with Rent Stabilization (as limited by Section 5.01). This amount, as adjusted from time to time as permitted, shall be the "Legal Rent".
- (b) Registered Preferential Rents. If the Actual Rent (as defined in the following section) for a unit is less than the Legal Rent for the unit, then the Actual Rent shall be registered as a preferential rent.
- (c) Registration of Rents. A sample registration form is attached as Schedule C. The Sponsor shall provide a copy of the initial registration form for all units to HDC (and to HPD, if requested in writing by HPD) prior to the Permanent Conversion.

- (d) Annual or Biannual Re-Registration. After initial registration, on an annual or biannual basis as applicable for each unit, and in accordance with Rent Stabilization, the Sponsor shall re-register the Legal Rent then in effect as the legal regulated rent and the Actual Rent in effect as a preferential rent.

**SECTION 5.03** Actual Rents. The Sponsor shall lease each Income-Restricted Unit for a monthly rent that does not exceed the maximum amount permitted below (such amount shall be the "Actual Rent"). The Actual Rent shall be the rent that appears on the lease and that may be collected by the Sponsor (i.e., it shall include the rent paid by the tenant and any rental subsidy, but not the applicable utility allowance). Certain limits given below may in practice equal the same amount.

- (a) Tax Code Units.

- (i) Initial Rents. The initial Actual Rent for a Tax Code Unit that is not a Section 8 Unit shall not exceed the least of:

- 1) the Legal Rent (as set forth in Schedule B);
- 2) the initial Actual Rent set forth in Schedule B; and
- 3) 30% of the Applicable AMI Limit (adjusted for a monthly rent).

If the unit is a Section 8 Unit, the initial Actual Rent shall not exceed the least of:

- 1) the Legal Rent (as set forth in Schedule B);
- 2) the Section 8 Rent; and
- 3) 90% of FMR.

- (ii) Lease Renewal. Upon lease renewal for a Tax Code Unit that is not a Section 8 Unit, the new Actual Rent shall not exceed the least of:

- 1) the Legal Rent;
- 2) the prior Actual Rent increased as permitted by Rent Stabilization (as limited by Section 5.01); and
- 3) 30% of the Applicable AMI Limit (adjusted for a monthly rent).

If the unit is a Section 8 Unit, the Actual Rent upon lease renewal shall not exceed the least of:

- 1) the Legal Rent;
- 2) the Section 8 Rent; and
- 3) 90% of FMR.

- (iii) Vacancy. Upon vacancy of a Tax Code Unit that is not a Section 8 Unit, the Actual Rent for the new Eligible Tenant shall not exceed the lesser of:

- 1) the Legal Rent; and
- 2) 30% of the Applicable AMI Limit (adjusted for a monthly rent).

If the unit is a Section 8 Unit, the Actual Rent upon vacancy shall not exceed the least of:

- 1) the Legal Rent;
  - 2) the Section 8 Rent; and
  - 3) 90% of FMR.
- (iv) Tax Code Maximums. In no event shall any tenant of a Tax Code Unit, including those Section 8 Units that are also Tax Code Units, pay a rent that is greater than the amount permitted by the Tax Code or, for tenants of Section 8 Units, a tenant rent share that is greater than the amount required by Section 8 and allowed by the Tax Code, nor shall the Sponsor charge an Actual Rent or increase the Actual Rent for any Tax Code Unit except as permitted by the Tax Code.
- (b) Non-Tax Code Income-Restricted Units.
- (i) Initial Rents. The initial Actual Rent for a Non-Tax Code Income-Restricted Unit shall not exceed the lesser of:
- 1) the Legal Rent (as set forth in Schedule B); and
  - 2) the initial Actual Rent set forth in Schedule B.
- (ii) Lease Renewal. Upon lease renewal for a Non-Tax Code Income-Restricted Unit, the Sponsor may only increase the Actual Rent to the least of:
- 1) the Legal Rent;
  - 2) the prior Actual Rent increased as permitted by Rent Stabilization (as limited by Section 5.01); and
  - 3) 30% of the Applicable AMI Limit (adjusted for a monthly rent).
- (iii) Vacancy. Upon vacancy of a Non-Tax Code Income-Restricted Unit, the Actual Rent for the new Eligible Tenant shall not exceed the lesser of:
- 1) the Legal Rent; and
  - 2) an amount that is the greater of (x) the Actual Rent that would have been permitted upon lease renewal for the prior tenant and (y) 30% of the Applicable AMI Limit (adjusted for a monthly rent).
- (iv) 2% Floor. Notwithstanding the provisions of paragraph (b) above, upon lease renewal or vacancy of any Non-Tax Code Income-Restricted Unit, if the percentage increase that is allowed under Rent Stabilization is 2% or greater, but an Actual Rent at 30% of the Applicable AMI Limit (adjusted for a monthly rent) would restrict the rent increase to a percentage increase that is less than 2%, then the Sponsor may increase the tenant's Actual Rent by 2%.
- (c) 30% Limits Apply to Gross Rents. All provisions in this Agreement limiting a rent to 30% of the Applicable AMI Limit shall mean that the sum of the rent and the applicable utility allowance (i.e., the gross rent) shall not exceed 30% of the Applicable AMI Limit.

**SECTION 5.04**      Additional Requirements for Section 8 Units.

- (a) Tenant's Loss of Section 8. If a Section 8 tenant is occupying a Tax Code Unit and the tenant loses his or her Section 8 at any time, then the Sponsor shall immediately revise the tenant's Actual Rent to an amount that does not exceed

the maximum amount that may be collected under the Tax Code.

- (b) Vacancy; No New Section 8. Upon vacancy of a Tax Code Unit that had been occupied by a tenant with Section 8, if the next tenant identified for the unit does not have Section 8, but he or she is an Eligible Tenant for a Tax Code Unit, then the Sponsor shall set the Actual Rent for the new tenant in accordance with Section 5.03, and to an amount that does not exceed the maximum amount that may be collected under the Tax Code. The Sponsor shall register this revised Actual Rent as the new preferential rent for the unit.

**SECTION 5.05**      Post-Occupancy Restriction Period.

- (a) Rents for Income-Restricted Units at 80% of AMI and Below. After the Occupancy Restriction Period ends, but not less than 150 days prior to the end of each lease with an Eligible Tenant who occupies an Income-Restricted Unit having an income restriction for occupancy at 80% of AMI or below (including Tax Code Units), the Sponsor shall request that the tenant submit to the Sponsor a certification of Annual Income and Household size and verification documentation. Lease renewals for these tenants shall be offered as follows:
  - (i) Continuing Eligible Tenants. A tenant with a verified Annual Income and Household size that continues to qualify the tenant as an Eligible Tenant for the unit, as applicable, as of the date of the certification shall be entitled to a lease renewal and shall pay the Actual Rent that would be in effect for the succeeding lease renewal term. Thereafter, the tenant shall be entitled to continued lease renewals, and the rent shall be increased as permitted pursuant to Rent Stabilization for so long as the tenant continues to legally reside in the unit. The tenant shall not be required to provide further certifications of Annual Income and Household size pursuant to this Agreement.
  - (ii) Non-Qualifying Tenants. A tenant with a verified Annual Income and Household size that fails to qualify the tenant as an Eligible Tenant for the unit, as applicable, as of the date of the certification shall be entitled to a lease renewal, but the tenant's rent shall be revised to an amount that is the greater of (a) 30% of the tenant's Annual Income (adjusted for a monthly rent) or (b) the Actual Rent that would be in effect for the succeeding lease renewal term (the "Revised Rent"). The Revised Rent shall not exceed the Legal Rent, however. If the Revised Rent is less than the Legal Rent, the Revised Rent shall be registered with the agency administering Rent Stabilization as the new preferential rent for the unit. Thereafter, the tenant shall be entitled to continued lease renewals, and the rent shall be increased as permitted pursuant to Rent Stabilization for so long as the tenant continues to legally reside in the unit. The tenant shall not be required to provide further certifications of Annual Income and Household size pursuant to this Agreement.
  - (iii) Tenant's Failure to Certify; Fraud. In addition to any rights granted to the Sponsor under Section 4.06(e) of this Agreement, if a tenant fails to supply the requested certification and documentation within 60 days of the Sponsor's request, or if a tenant provides false or fraudulent materials, the Sponsor may, at its option, (1) refuse to provide a lease renewal to the tenant or (2) provide such tenant a lease renewal at such rent as the Sponsor may legally establish.
- (b) Rents for Income-Restricted Units Above 80% of AMI. When the Occupancy

Restriction Period ends, in place tenants residing in any Income-Restricted Units having an income restriction for occupancy above 80% of AMI shall remain subject to Rent Stabilization and shall be entitled to continued lease renewals at rents not to exceed their Actual Rent then in effect, as may be adjusted pursuant to Rent Stabilization. Upon the vacancy of any such unit after the Occupancy Restriction Period ends, the unit will be subject to Rent Stabilization as further described in Section 5.01.

**SECTION 5.06**      Lease Requirements.

- (a) Subordination. In renting units to tenants, the Sponsor shall use a lease expressly subordinate to this Agreement and to the Permitted Mortgages. The lease and any riders shall comply with New York law and shall otherwise be satisfactory to HDC and HPD. To the extent legally permissible, this Agreement shall take precedence and shall control over any other requirements.
- (b) HDC Lease Riders. In renting Income-Restricted Units to tenants, and to the extent legally permissible, the Sponsor shall use a lease rider provided by HDC that sets forth the applicable occupancy and rental requirements of this Agreement (the "HDC Rider"). The HDC Rider shall, among other things, (i) require the tenant to meet HDC's and HPD's eligibility standards in accordance with this Agreement, (ii) prohibit or restrict sublets and (iii) permit the Sponsor to terminate or refuse to renew the tenant's lease if the tenant fails to provide the Sponsor with certifications and documentation as required within 60 days of the Sponsor's request, or if the tenant provides false or fraudulent materials. No lease or other rider for an Income-Restricted Unit shall contain any provision that conflicts with the terms of this Agreement or the HDC Rider (and no such provision shall be enforceable).
- (c) Subleases. The Sponsor shall not consent to any sublease or assignment of lease by a tenant of an Income-Restricted Unit except as may be expressly required by law (and, in such event, only upon at least 30 days' prior written notice to HDC and HPD).

**ARTICLE VI. EXTENDED LOW INCOME HOUSING COMMITMENT**

**SECTION 6.01**      Extended Low Income Housing Commitment. This Agreement serves as the "extended low income housing commitment" required under Section 42(h)(6) of the Tax Code. Accordingly, the provisions of this Agreement will be interpreted in accordance with the requirements of the Tax Code, and to the extent that Section 42 of the Tax Code provides additional or stricter requirements or restrictions than this Agreement, the requirements or restrictions of Section 42 of the Tax Code will control and will become additional requirements or restrictions under this Agreement. When recorded against the Premises, this Agreement shall be a restrictive covenant with respect to the Premises as required under Section 42(h)(6)(B)(vi) of the Tax Code.

**SECTION 6.02**      Compliance Term for Tax Credits. The Project must be in compliance with all provisions of Section 42 of the Tax Code, any and all related regulations, the provisions of this extended low income housing commitment, and HDC's monitoring procedures with respect to the Tax Credits, in each case during the term of the Compliance Period and the Extended Use Period (and otherwise as provided in this Agreement). For purposes of this

Agreement:

- (a) "Compliance Period" shall mean the period commencing upon the Compliance Period Commencement Date and ending on the Compliance Period Termination Date.
- (b) "Compliance Period Commencement Date" shall mean the date that is the first day of the first taxable year of the Credit Period.
- (c) "Compliance Period Termination Date" shall mean the date that is 15 years after the Compliance Period Commencement Date.
- (d) "Credit Period" shall mean the period of 10 taxable years beginning with (i) the taxable year in which the building is placed in service, or (ii) at the election of the Sponsor, the succeeding taxable year, but only if the Tax Code Units Project is a qualified low income housing project under Sections 42(g) and 142(d) of the Tax Code.
- (e) "Extended Use Period" shall mean the period commencing upon the Compliance Period Commencement Date and terminating on the date that is 30 years after the Compliance Period Commencement Date, unless the Project is acquired by foreclosure (or instrument in lieu of foreclosure), in which case the Extended Use Period shall terminate at the request of the party acquiring the Project after such foreclosure, unless the Secretary of the Treasury determines that the acquisition is part of an arrangement with the Sponsor, a purpose of which is to terminate the Extended Use Period.

**SECTION 6.03**      Waiver of Right to Petition HPD. The Sponsor agrees for itself, and its successors and assigns, that the Project shall continue to be subject to the provisions of this Agreement throughout the Extended Use Period and that it has waived any right to request that HPD find a person to acquire the Sponsor's interest in the low income portion of the Project after the 14<sup>th</sup> year of the Compliance Period.

**SECTION 6.04**      Applicable Fraction. The Applicable Fraction (as defined in this section) for the Tax Code Units Project for each taxable year in the Extended Use Period shall be not less than 100%, excluding any Superintendent Unit. "Applicable Fraction" shall have the meaning set forth in Section 42(c)(1)(B) of the Tax Code.

**SECTION 6.05**      Condition of Units. Each Tax Code Unit shall be Suitable for Occupancy and shall be used on other than a Transient Basis (each as defined in this section). "Suitable for Occupancy" shall mean habitable and suitable for occupancy in accordance with all applicable federal, state and local laws, rules and regulations, including but not limited to local health, safety and building codes. "Transient Basis" shall mean a unit with occupants who have not entered into a lease for their initial occupancy or who have entered into a lease that has an initial term of less than six months or such other period of occupancy as may be required under rules and regulations promulgated under Section 42 of the Tax Code; provided, however, (i) a unit shall be considered to be used on other than a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building (1) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of Section 103 of the Stewart B. McKinney Homeless Assistance Act in effect on December 19, 1989) to independent living within 24 months and (2) in which a governmental entity or qualified non-profit organization (as defined in Section 42(h)(5)(C) of the Tax Code) provides such individuals with temporary housing and supportive services designed to assist such individuals

in locating and retaining permanent housing, and (ii) a single-room occupancy unit shall not be treated as being used on a transient basis merely because it is rented on a month-to-month basis.

**SECTION 6.06**      No Eviction or Increase in Gross Rent. No existing tenant of any unit may be evicted, other than for good cause, nor shall any increase in the gross rent with respect to such unit be permitted except as may otherwise be permitted by this Agreement. The foregoing shall continue to apply to tenants of Tax Code Units for a three-year period following the end of the Extended Use Period (and Section 2.01 shall apply as well).

**SECTION 6.07**      Section 8 Status. The Sponsor shall not refuse to lease to a holder of a Section 8 voucher or certificate because of the status of the prospective tenant as such a holder.

**SECTION 6.08**      Enforcement by Certain Individuals. Any individual who meets the income limitation applicable to the Premises under the Tax Code (whether former, present or prospective occupants of the Premises) shall have the right to enforce in any state court the requirements and prohibitions of Section 42(h)(6)(B)(i) of the Tax Code. The Sponsor acknowledges that such individuals are intended third-party beneficiaries of the provisions of this section.

**SECTION 6.09**      No Retaliation. The Sponsor shall not retaliate against any tenant who notifies HDC or HPD of alleged violations of this Agreement.

**SECTION 6.10**      Transfers. No portion of a building (as defined in the Tax Code) in the Project shall be disposed of to any person unless all of the building is disposed of to such person. Transfers shall also be subject to Section 8.01.

## **ARTICLE VII. MANAGEMENT**

**SECTION 7.01**      Approval of Managing Agent and Management Agreement. The managing agent and any sub-agent (collectively, the "Managing Agent"), and the arrangements for management of the Project, including the management agreement or management plan (collectively, the "Management Agreement"), shall require the prior written approval of HDC (and HPD, if requested by HPD in writing). In particular, the Sponsor shall obtain HDC's (and HPD's, if applicable) written approval of the Managing Agent and the Management Agreement prior to both the Construction Loan Closing and, notwithstanding any prior approval, the Permanent Conversion. Any changes to the Managing Agent or changes to the Management Agreement, other than renewals of its term, shall require the prior written approval of HDC (and HPD, if requested by HPD in writing). All approvals of the Managing Agent and the Management Agreement shall not be unreasonably withheld. HDC approves BRP Management Group LLC as the Managing Agent for purposes of the Construction Loan Closing.

**SECTION 7.02**      Requirements for Management Agreement. The Management Agreement shall be acceptable to HDC (and HPD, if applicable) in all respects and shall provide (i) that it is subject to termination by the Sponsor on not more than 30 days' notice, without cause and without penalty, and (ii) that the Managing Agent shall carry fidelity insurance for the benefit of the Sponsor in the amount of no less than three months' gross rent for the Project.

**SECTION 7.03**      Removal of Managing Agent. At any time, HDC or HPD may determine,



in either case in its sole discretion, that the Managing Agent is no longer acceptable (among other reasons, because the Project is not being operated in compliance with this Agreement or because the Managing Agent is not operating another HDC- or HPD-supervised project in proper compliance). If so, HDC or HPD may provide a written demand to the Sponsor to terminate the Management Agreement. HDC or HPD may also provide a period for the Sponsor to cure any non-compliance, in the sole discretion of HDC or HPD as applicable. Upon receipt of a demand to terminate the Management Agreement, the Sponsor shall do so immediately, and the existing management services shall be fully discontinued within a period of not more than 30 days from the Sponsor's receipt of HDC's or HPD's demand. In addition, the Sponsor shall make timely arrangements to have the continuing management of the Project approved in writing by HDC (and by HPD, if requested by HPD in writing) and shall submit such arrangements to HDC (and HPD, if applicable) for prior review.

**SECTION 7.04**      Permanent Credit Provider Consent. If the Permanent Credit Instrument is in effect, HDC's approval of the Managing Agent and Management Agreement (and the approval of HPD, if applicable) shall be subject to the Permanent Credit Provider's prior review and consent, which shall not be unreasonably withheld. HDC, HPD and the Sponsor acknowledge that the Assignment and Agreement and/or other agreements between the Permanent Credit Provider and the Sponsor give the Permanent Credit Provider certain rights and obligations regarding the management of the Project (including the obligation to consult with HDC prior to granting consent to a new Managing Agent or Management Agreement).

## **ARTICLE VIII. OWNERSHIP**

### **SECTION 8.01**      Transfers of Project by Sponsor.

- (a)      In General. The Sponsor covenants that it shall not sell, lease, sublease, convey, transfer or otherwise dispose of all or any portion of the Project (each, a "Transfer") without the prior written consent of HDC and HPD, which shall not be unreasonably withheld. As a condition to a Transfer of all or substantially all of the Project, the transferee shall be required to assume all of the Sponsor's obligations under this Agreement from the date of such Transfer and to execute any document that HDC or HPD shall reasonably require in connection with the assumption.
- (b)      Residential Leases. This covenant shall not require HDC's or HPD's consent for the Sponsor to enter into leases with residential tenants or users of the Project, if such leases (i) are consistent with this Agreement and (ii) do not contain an option to acquire all or any portion of the Project while this Agreement is in effect.
- (c)      Other Consents. Nothing contained in this Agreement shall affect any provision of the Loan Documents that requires the Sponsor to obtain the consent of the holder of the HDC Mortgage (which may be HDC) or any other person as a condition to a Transfer.
- (d)      Foreclosure. This covenant shall not require HDC's or HPD's consent to a Transfer in connection with the foreclosure or deed in lieu of foreclosure of the HDC Mortgage or a comparable conversion of the Project. Any subsequent Transfer, however, shall require the prior written consent of HDC and HPD.
- (e)      Transfers Directed by Permanent Credit Provider. This covenant shall not require HDC's or HPD's consent to a Transfer if the Permanent Credit Provider certifies to

HDC and HPD (i) that an event of default has been declared under the Reimbursement Security Documents or the Loan Documents, and (ii) that the Transfer is the best reasonable alternative available to the Permanent Credit Provider to eliminate the condition that caused the event of default.

**SECTION 8.02**      Non-Residential Lease Approval. The Sponsor shall obtain the prior written approval of HDC and HPD for all non-residential leases, subleases or occupancy agreements affecting any portion of the Project. An amendment of a non-residential lease, sublease or occupancy agreement that changes the permitted use or that otherwise alters a material term of the agreement shall also require the prior written consent of HDC and HPD. No portion of the Project shall consist of a store, a principal business of which is the sale of alcoholic beverages for consumption off-premises. HDC approves the Master Lease dated the date of this Agreement.

**SECTION 8.03**      Interests in Beneficial Owner. Except as may be expressly permitted by this article, the Beneficial Owner covenants that it shall not permit any change to its ownership at any tier, including admissions, withdrawals and acquisitions of additional interests, without the prior written consent of HDC and HPD. This paragraph shall not apply to (i) the Permanent Credit Provider if it owns the Project or any portion of the Project at any time or (ii) to an entity that has acquired the Project or a portion thereof from the Permanent Credit Provider or its designee, or has acquired the Project or a portion thereof at a foreclosure sale held by the Permanent Credit Provider or its designee; provided, however, that any changes to the structure of the entity that owns the Project or a portion thereof, as described in (ii) above, subsequent to such entity's acquisition of the Project or a portion thereof, shall be subject to the provisions of this paragraph.

**SECTION 8.04**      Interests in Tax Credit Investor. Notwithstanding the requirements of Section 8.03, and provided that the Tax Credit Investor is a passive investor in the Beneficial Owner, transfers of (i) passive investment interests in the Tax Credit Investor and (ii) the Tax Credit Investor's passive investment interest in the Beneficial Owner are permitted with written notice to HDC and HPD, so long as the manager, managing member or general partner of the Tax Credit Investor, or any transferee of the Tax Credit Investor's interest in the Beneficial Owner, is an affiliate of, and is and remains controlled by or under common control with, Goldman Sachs Group, Inc. Any interest in the Beneficial Owner of a special member or limited partner may be transferred only together with a permitted transfer of the Tax Credit Investor's interest in the Beneficial Owner or of the interest of the manager, managing member or general partner of the Tax Credit 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.

**SECTION 8.05**      Interests in Legal Owner. The Legal Owner covenants that it shall not permit any change to its ownership at any tier, including admissions, withdrawals and acquisitions of additional interests, without the prior written consent of HDC and HPD. This paragraph shall not apply to the Permanent Credit Provider if it owns the Project or any portion of the Project at any time.

**SECTION 8.06**      Previously Approved Entities; Estate Planning. Interests in the Beneficial Owner or the Legal Owner (in either case, at any tier) may be transferred to entities that have been previously approved in writing by HDC and HPD. Prior to any such transfer, prompt notice must be given to HDC and HPD, and the transferee must comply with the applicable HDC and HPD disclosure procedures. Interests in the Beneficial Owner may be transferred to immediate family members of any natural person with an indirect interest in the Beneficial Owner or trusts

for the benefit of such immediate family members for estate planning purposes, but prior to any such transfer, the transferee must comply with the applicable HDC and HPD disclosure procedures.

**SECTION 8.07**      Death or Incapacity. A direct or indirect transfer of an ownership interest to an executor, administrator or conservator of a deceased or incapacitated individual shall require written notice to, but not the consent or approval of, HDC and HPD. A subsequent transfer by such executor, administrator or conservator shall be subject to this article, however.

**SECTION 8.08**      No Other Liens or Financing. While the HDC Mortgage is outstanding, the Sponsor covenants that it shall not incur any additional debt secured by all or part of the Project, or any other subordinate financing, except for (i) the Permitted Mortgages and (ii) as may have been expressly approved by HDC, HPD and the Permanent Credit Provider in writing. Except as expressly permitted in this Agreement, assignments, transfers, encumbrances, granting of participation interests, hypothecations, or pledges of interests (or proceeds of such interests) of any of the direct or indirect ownership interests in the Sponsor shall not be permitted without the prior written consent of HDC, HPD and the Permanent Credit Provider

**SECTION 8.09**      No Purchase of Obligations. Neither the Sponsor nor any "related person" to the Sponsor, as defined in Section 144(a)(3) of the Tax Code, shall purchase Obligations (other than Pledged Bonds or Bank Bonds (each as defined in the Resolution)) in an amount related to the amount of the HDC Loan funded by the Obligations.

**SECTION 8.10**      No Distributions Upon Default. Upon written notice from HDC or HPD to Sponsor of (i) an Event of Default under this Agreement, or (ii) a material uncured default under any other Loan Document, the Sponsor covenants that it shall not make 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 cure of the Event of Default or default has been determined by HDC or HPD, as applicable.

**SECTION 8.11**      Transfers by GS Investor. HDC and HPD consent to the following:

- (a) Any transfers of (i) interests in GS BRP Urban Venture GS Member LLC ("GS Investor"), (ii) the GS Investor's investment interest in the Sponsor to an entity wholly owned or controlled directly or indirectly by The Goldman Sachs Group, Inc. and (iii) the GS Investor's investment interest in the Sponsor to an Institutional Investor (as defined below) (GS Investor is a non-managing member of GS BRP Urban Venture LLC (with 82.67% interest), which is the sole member of the Non-LIHTC Borrower);
- (b) The removal by GS Investor of BRP Urban Fund I GP, LLC as the non-member manager of GS BRP Urban Venture LLC, in accordance with the terms of that certain Operating Agreement of GS BRP Urban Venture LLC (the "Operating Agreement"); provided that the replacement manager is either (i) GS Investor or (ii) a Permitted Entity; and
- (c) The purchase by GS Investor of the membership interest of BRP Urban Fund I GP, LLC in GS BRP Urban Venture LLC in accordance with the terms of the Operating Agreement, upon written notice to HDC and HPD; provided that (i) GS Investor becomes the sole member of GS BRP Urban Venture LLC, (ii) GS Investor replaces BRP Urban Fund I GP, LLC with a Permitted Entity or (iii) GS Investor sells the membership interest of BRP Urban Fund I GP, LLC to a

Permitted Entity.

(d) For purposes of this Agreement:

- (i) “Institutional Investor” shall mean any person or entity controlled by a person or persons who (a) has individual or combined net assets of not less than \$200,000,000, (b) has liquid assets (including, without limitation, unfunded capital commitments) of at least \$15,000,000 and (c) is subject to the jurisdiction of the courts of the State.
- (ii) “Permitted Entity” shall mean, following the submission of all required disclosure statements and related documents to HDC and HPD, any person or entity that HDC and HPD shall have approved in writing on an expedited basis pursuant to HDC and HPD’s sponsor review procedures considering the same types of information and performing the same types of inquiries regarding the integrity and competence of the proposed transferee and its principals or officers as HDC and HPD customarily employ under their sponsor review procedures.

## ARTICLE IX. RECORDS AND REPORTING

**SECTION 9.01**      Requests for Information. The Sponsor shall promptly furnish any reports, records, documents or information reasonably requested by HDC or HPD, in a form satisfactory to HDC or HPD, as the case may be, with respect to the construction, marketing, occupancy, maintenance or operation of the Project.

**SECTION 9.02**      Financial Statements. Audited financial statements for the Project shall be prepared at least annually in accordance with generally accepted accounting principles. Financial statements may be modified in accordance with government auditing standards as set forth by the Comptroller General of the United States, to the extent and in a manner approved by HDC in its sole discretion (and by HPD in its sole discretion, if requested by HPD in writing).

**SECTION 9.03**      Retention of Records. The Sponsor shall maintain and keep current all books, documents, plans and records concerning the Project (the “Records”). The Sponsor shall retain (i) those Records pertaining to the rental or occupancy of each Tax Code Unit, and the rent roll for all units, for a minimum of six years after the end of the Occupancy Restriction Period and (ii) all other Records for a minimum of six years after the end of the fiscal or calendar year for which the Record was produced. Upon reasonable notice, HDC and HPD may, during normal business hours, (x) audit and examine the Records and (y) inspect the buildings, grounds, equipment and offices of the Project. The Sponsor shall use its best efforts to facilitate inspections.

**SECTION 9.04**      Annual Tax-Exempt Obligations Certification. The Sponsor 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 the Secretary of the Treasury shall prescribe, an annual certification (IRS Form 8703, as may be amended) as to whether the Project continues to comply with the requirements of Section 142(d)(7) of the Tax Code. Any failure to submit this certification shall not affect the exclusion from gross income for purposes of federal income taxation of interest on the Obligations, if applicable, but shall subject the Sponsor and/or such operator to a penalty pursuant to Section 6652(j) of the Tax Code.

**SECTION 9.05**      Annual Tax Credits Certification. On an annual basis, the Sponsor shall submit to HDC as HPD's designee (i) a certified rent roll for the Premises and (ii) a written certification that the Tax Code Units are owned and operated in compliance with the Tax Code.

**SECTION 9.06**      Notice of Material Non-Compliance. The Sponsor covenants to notify HDC and HPD promptly if the Sponsor discovers any material non-compliance with any restriction or covenant in this Agreement, including any occurrence or event that adversely affects (i) the exclusion from gross income for purposes of federal income taxation of interest on the Obligations, if applicable or (ii) the Tax Credits.

**SECTION 9.07**      Building Benchmarking. Upon the issuance of a temporary certificate of occupancy for any space in the Project by the City's Department of Buildings, the Sponsor shall contract, at the Sponsor or Beneficial Owner's expense, with a qualified benchmarking software provider on the HDC-approved list (the "Qualified Software Provider") to collect monthly and annual data on the heating, electric and water usage at the Premises (the "Utility Performance Information") in accordance with HPD's building benchmarking protocol. Not later than May 1 of each year during the Occupancy Restriction Period, the Qualified Software Provider retained by the Sponsor shall input the Utility Performance Information 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 by HDC and HPD ("Portfolio Manager"). The Sponsor agrees and acknowledges that (i) the Utility Performance Information will be made available to HDC and HPD through an account located on Portfolio Manager, and (ii) HDC and HPD may receive the Utility Performance Information directly from the Qualified Software Provider. HDC and HPD reserve the right to require the Sponsor to replace the Qualified Software Provider if the provider is no longer on the HDC-approved list. During the Occupancy Restriction Period, the Sponsor shall at all times abide by the requirements of this section and the HPD building benchmarking protocol, as may be amended.

## **ARTICLE X. ENFORCEMENT**

**SECTION 10.01**      Events of Default; Remedies.

- (a) In the event of a breach of any of the covenants or agreements contained in this Agreement, either HDC or HPD may, by written notice to all parties, declare an "Event of Default". If the Construction Credit Instrument has not been released, notice of an Event of Default shall be given to the Construction Credit Provider as well. For so long as the Permanent Credit Instrument is in effect, notice of an Event of Default shall be given to the Permanent Credit Provider as well. Upon the occurrence of an Event of Default, HDC and HPD shall have the right to take one or more of the following actions:
  - (i) Institute and prosecute any proceeding for an injunction or for specific performance of the Sponsor's obligations under this Agreement.
  - (ii) Extend the term of this Agreement by the period of non-compliance upon the recording of an appropriate document, executed solely by HDC and HPD, against the Premises. The period of non-compliance shall be presumed to be the period running from the date of this Agreement to the date that HDC or HPD declares an Event of Default, which presumption may be rebutted by the Sponsor.

- (iii) Upon written notice of HDC or HPD, prohibit the Sponsor and/or any of its principals from doing business with HDC or HPD, as the case may be, for a period of not less than three years from the date of violation. This prohibition shall not extend to any as-of-right benefits.
  - (iv) Cure the violation and charge the Sponsor for any costs or expenses incurred to remedy the violation plus interest at the Default Rate from the date of demand until paid.
  - (v) Rent any un-leased or vacant unit in order to comply with this Agreement (in such event, HDC and HPD shall use reasonable efforts to obtain the highest rent permitted by this Agreement).
  - (vi) Prohibit the occupancy of any unoccupied unit in order to comply with this Agreement.
  - (vii) Prohibit distributions to partners, members or shareholders, as applicable, of the Sponsor and/or take any action to seek restitution to the Project's account for any distributions made in violation of this Agreement, if the distribution was made after notice was given pursuant to Section 8.10.
  - (viii) declare an event of default under any Loan Document and pursue any applicable remedies, including commencing a foreclosure of the HDC Mortgage, subject to the Assignment and Agreement, if the Permanent Credit Instrument is in effect.
  - (ix) Require the removal of any partner, member or shareholder, as applicable, responsible for the violation.
  - (x) Seek appointment of HDC, HPD or a receiver to take possession of and operate the Project, collect all rents, and pay all necessary costs of the Project in accordance with the terms of this Agreement and any other Loan Documents, including the Assignment and Agreement (if the Permanent Credit Instrument is in effect), until the Sponsor has cured the violation and given satisfactory evidence that it can operate the Project in compliance with this Agreement.
  - (xi) Seek any other relief that may be appropriate or desirable at law or in equity.
- (b) In the event of a threatened breach of any of the covenants or agreements contained in this Agreement, HDC and HPD shall have the right to the remedy described in paragraph (a)(i) above.

**SECTION 10.02**      Cure Period; Waiver. Either HDC or HPD, with the prior written consent of the other agency, but otherwise in the sole discretion of HDC or HPD, may by written notice to all parties to this Agreement, (i) give the Sponsor a period of up to 30 days to cure an Event of Default (provided the Event of Default can be cured without affecting the rights of any bona fide tenants who have executed leases with the Sponsor) or (ii) waive an Event of Default. If the Construction Credit Instrument has not been released, written notice of any cure period or waiver shall also be given to the Construction Credit Provider. For so long as the Permanent Credit Instrument is in place, written notice of any cure period or waiver shall also be given to the Permanent Credit Provider. HDC and HPD agree that any cure of any Event of Default made or tendered by one or more of the Sponsor's members, partners or shareholders, as applicable, shall be deemed to be a cure by the Sponsor and shall be accepted or rejected on the same basis as if made or tendered by the Sponsor.

**SECTION 10.03**      Reporting of Non-Compliance to IRS. The Sponsor acknowledges that actions taken or authorized to be taken by HDC or HPD following an Event of Default are in addition to HDC's obligations under the Tax Code to report acts of non-compliance to the Internal Revenue Service pursuant to HDC's monitoring procedures with respect to the Tax Credits.

**SECTION 10.04**      Indemnity. The Sponsor agrees to pay all reasonable costs and expenses of HDC and HPD (including fees of attorneys and experts), in addition to any other loss, claim, damage or liability that may be incurred by HDC or HPD or awarded by any court, arising out of any proceeding or action that is brought or taken in connection with this Agreement (including those brought or taken by HDC, HPD or the Sponsor). The Sponsor shall pay any such amount regardless of whether a legal action is finally decided by a court. The Sponsor shall not be obligated to pay any costs or expenses of HDC or HPD that are attributable to any action or proceeding brought by HDC or HPD in bad faith. If the Sponsor fails to pay any amount due under this section within 10 days of demand by HDC or HPD, the unpaid amount shall bear interest at the Default Rate from the date of demand until paid.

**SECTION 10.05**      Non-Recourse Liability; Carve-Out. Except as provided in this section, in enforcing this Agreement, neither HDC nor HPD will seek a money judgment against the Sponsor or any related officer, director, member, partner or shareholder. HDC and HPD may seek a money judgment against the Beneficial Owner and its members, partners or shareholders, as applicable, in order to enforce the obligations or liabilities of the Beneficial Owner and its present or future members, partners or shareholders pursuant to Section 10.01(a)(iv) (concerning the Sponsor's responsibility for the costs and expenses of HDC or HPD in curing any violations of this Agreement, and any interest on such amounts), Section 10.01(a)(vii) (concerning the prohibition on distributions after default) or Section 10.04 (concerning the Sponsor's indemnification of HDC and HPD). HDC and HPD may also seek a money judgment against the Beneficial Owner and its members, partners or shareholders to the extent of any deficiency, loss, damage or non-compliance with this Agreement resulting from (i) fraud, (ii) misappropriation or diversion of funds or other property or (iii) intentional damage to the Project inflicted by the Beneficial Owner or any of its members, partners, shareholders, agents or employees. HDC and HPD agree that they will seek to collect any money judgment obtained against the Beneficial Owner's members, partners or shareholders only from (a) their capital contributions actually paid in at the time HDC or HPD seeks a judgment, or to be paid in pursuant to the Beneficial Owner's organizational documents, and (b) any distributions to such members, partners or shareholders made in violation of the HDC Act or this Agreement. The provisions of this section shall not affect the validity or enforceability of any provision of the HDC Mortgage or any guaranty or indemnity agreement made in connection with the issuance of the Obligations, the HDC Commitment or the funding of the HDC Financing.

**SECTION 10.06**      Cumulative Rights and Remedies. All rights and remedies of HDC and HPD shall be cumulative and may be exercised singularly or concurrently, at HDC's or HPD's option. The exercise or enforcement of any one right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other right or remedy. The enumeration of rights and remedies in this Agreement shall not preclude the exercise or enforcement by HDC or HPD of any other rights or remedies available to HDC or HPD.

**SECTION 10.07**      Cross-Default under Mortgages. The HDC Mortgage shall each provide that an Event of Default under this Agreement shall also be a default under the mortgages. So long as this Agreement is in effect, any mortgage on the Project funded by HDC shall provide

that an Event of Default under this Agreement shall be a default under the mortgage and that HDC, or the holder of the mortgage if not HDC, may prosecute a foreclosure in accordance with the mortgage, subject to any other written agreements that may have been made by HDC and any other holder of the mortgage.

**SECTION 10.08**      Prior Owner Liability. The Sponsor (including any subsequent owner of the Project) shall be liable for (i) the breach of any obligation or any Event of Default under this Agreement caused by any prior owner and (ii) any related payment or indemnification obligation. During any period in which the Credit Provider or its designee owns the Project, however, or if any subsequent owner acquires the Project from the Credit Provider or its designee, neither the Credit Provider, its designee, nor the subsequent owner shall be liable for the breach or Event of Default of a prior owner, or any related payment or indemnification obligation. In such a case, the owner of the Project at the time of the breach or Event of Default shall remain liable for any and all related damages. Any party seeking to collect damages from the liable prior owner in such a case shall, to that extent, have no recourse to the Project and no right to levy against or otherwise collect on any judgment from the Project. The liable prior owner shall bear no liability under this Agreement, however, for any damages caused by any subsequent breach or Event of Default occurring after the entity no longer owned the Project.

**SECTION 10.09**      Enforcement by Construction Credit Provider. Except as expressly provided in the Servicing and Release Agreement, the Construction Credit Provider shall not be obligated or have any right to enforce this Agreement.

**SECTION 10.10**      Enforcement by Permanent Credit Provider. Except as expressly provided in the Assignment and Agreement, the Permanent Credit Provider shall not be obligated or have any right to enforce this Agreement.

## ARTICLE XI. MISCELLANEOUS

### **SECTION 11.01**      Fees.

- (a)      Tax Credits Monitoring Fee. Pursuant to the Tax Code, HDC is entitled to a reasonable fee for monitoring the Project's compliance with respect to the Tax Credits. During the Compliance Period, the Beneficial Owner shall pay to HDC an annual 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 (the "Building Fee"); and (ii) 0.75% of the maximum annual tax credit rent for the Tax Code Units, subject to an annual cap of \$12,500, if there are 150 or fewer Tax Code Units in the Project, or \$17,500, if there are more than 150 Tax Code Units in the Project (such fee, the "Unit Fee", and together with the Building Fee, the "Tax Credits Monitoring Fee"). If the HDC Loan is paid in full prior to the end of the 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 Tax Credits Monitoring Fee at the time of the prepayment for each year remaining in the Compliance Period. After such a payment, no additional Tax Credits 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 the HDC Loan, 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 (in either case, taking the sum of all of the units identified across the multiple Projects in Schedule B), 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 shall be in addition to the monitoring fee required by paragraph (b) above. The compliance escrow shall be applied ratably by HDC 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.

**SECTION 11.02** Equal Opportunity. The Sponsor 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.

**SECTION 11.03** Waivers. No delay or failure to act or give notice shall waive any provision of this Agreement or preclude the enforcement of any rights or remedies of HDC or HPD. All waivers must be in writing and must be signed by the waiving parties. No waiver shall apply to any instance other than the specific instance in connection with which it is delivered.

**SECTION 11.04** Amendments. This Agreement shall not be amended or otherwise modified except by an instrument in recordable form signed by all of the parties. The Permanent Credit Provider must also consent in writing to any amendment, but its consent shall not be unreasonably withheld. This Agreement shall not be amended without first obtaining, if required by HDC in its sole discretion, an opinion of Bond Counsel that such amendment will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Obligations. The Sponsor shall agree to amend this Agreement if any amendments are required to obtain mortgage insurance for the HDC Mortgage. In addition, if after the execution of this Agreement, there are amendments to (i) the HDC Act, (ii) the Tax Code or (iii) Rent Stabilization, or any related rules or regulations, and if such amendments are applicable to the Project and inconsistent with this Agreement, as determined by HDC and HPD, then upon written request of HDC and HPD, this Agreement shall be amended to the extent necessary.

**SECTION 11.05** Severability. The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions of the Agreement.

**SECTION 11.06**      Action and Consents. Except where the granting of HDC's or HPD's consent or approval is expressly stated to be in HDC's or HPD's discretion (or words of similar import), HDC, HPD and the Sponsor shall use reasonable promptness, reasonable diligence, reasonable judgment and reasonable discretion in exercising any duty or right, providing any consent or approval, or making any determination required by this Agreement. HDC, HPD and the Sponsor shall use their reasonable efforts to effectuate the purposes of this Agreement.

**SECTION 11.07**      Successors and Assigns. All references in this Agreement to any party, entity or person shall be deemed to include the successors and assigns of the party, entity or person. Successors to HDC or HPD shall include any body, agency or instrumentality of the State or the City that succeeds to the powers, duties or functions of HDC or HPD, as the case may be.

**SECTION 11.08**      Covenants Run with the Land. This Agreement shall be recorded against the Premises. The parties agree that, during the term of this Agreement, all provisions shall run with the Premises and shall be enforceable by both HDC and HPD against the Sponsor and its successors, assigns, heirs, grantees and lessees. The parties declare their understanding and intent that the burden of the covenants set forth in this Agreement touch and concern the land in that the Sponsor's legal interest in the Project is rendered less valuable by them. The parties further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by people and families for whom the ordinary operations of private enterprise cannot provide an adequate supply of safe, sanitary and affordable housing, the intended beneficiaries of such covenants. During the term of this Agreement, the covenants of the Sponsor in this Agreement are enforceable by both HDC and HPD as contract beneficiaries whether or not the Sponsor is or remains indebted to HDC or HPD.

**SECTION 11.09**      Notices. Any notice, demand, direction, request or other instrument authorized or required to be given or filed under this Agreement shall be deemed to have been sufficiently given or filed if and when sent (i) by certified mail, return receipt requested, (ii) by fax or other electronic means with notice of receipt or (iii) by hand delivery. All notices sent by mail or hand delivery shall be sent to the addresses given above or to any other address of any party that it has notified the other parties of in writing. Notices to HDC or HPD shall be sent to the attention of the General Counsel. Notices required to be given to the Construction Credit Provider shall be sent to Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019, Attention: Aviva Yakren, Esq. Notices required to be given to the Permanent Credit Provider shall be sent to Federal Home Loan Mortgage Corporation, 8100 Jones Branch Drive, MS B4P, McLean, Virginia 22102, Attn: Multifamily Operations – Loan Accounting and Federal Home Loan Mortgage Corporation, 8200 Jones Branch Drive, MS 210, McLean, Virginia 22102, Attention: Managing Associate General Counsel – Multifamily Legal Division Attention. HDC and HPD shall make an effort to send copies of all notices that are sent to the Beneficial Owner to the Beneficial Owner's counsel at Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, NY 10022, Attention: Martin Siroka, Esq, the HDFC at Housing Partnership Development Corporation, 242 West 36<sup>th</sup> Street, 3<sup>rd</sup> Floor, New York, New York 10018, Attention: Abby Paterson and to the Investor at Goldman Sachs Bank USA, 200 West Street, New York, NY 10282, Attention: Andrea Gift and Sherry Wang. Failure to send any such copy, however, shall not affect the effectiveness of the notice.

**SECTION 11.10**      Governing Law; Jurisdiction; Service of Process. The parties unconditionally and irrevocably agree that this Agreement 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. The parties unconditionally and irrevocably accept the jurisdiction of any state or federal court sitting in the State and New York County or the county in which the Project or any portion of the Project is located, waive any objection to the bringing of an action, suit or other legal proceeding in such jurisdiction, and consent to venue in any such court. The parties agree that service of process may be by hand or certified mail, return receipt requested or otherwise as permitted by law. The Beneficial Owner and the Legal Owner each irrevocably consent to the service of any and all process in any such action, suit or proceeding to its then-current address or such other address permitted by law as may be agreed to in writing by HDC and HPD. HDC's designated agent for service of process shall be its General Counsel at its offices. HPD's designated agent for service of process shall be its General Counsel at its offices.

**SECTION 11.11**      Loan Agreement. The Beneficial Owner shall pay all amounts due to HDC pursuant to the Loan Agreement. If the Beneficial Owner does not pay any such amounts, HDC may declare an Event of Default under this Agreement.

**SECTION 11.12**      Counterparts. This Agreement may be executed in counterparts, and all counterparts shall collectively constitute a single instrument. An executed signature page to one counterpart may be attached to another counterpart that is identical (except for additional signature pages) without impairing the legal effect of the signatures. Any counterpart containing the signatures of each of the parties shall be sufficient proof of this Agreement.

**SECTION 11.13**      Investigations. The Sponsor shall be bound by the provisions of the investigations clause attached as Schedule D.

**SECTION 11.14**      Further Assurances. The Sponsor shall, at the Sponsor's expense, promptly execute and deliver any further documents, and take any further action, as may be reasonably requested by HDC or HPD to ensure that the Project complies with all applicable provisions of the Tax Code and this Agreement.

**SECTION 11.15**      Concerning the Legal Owner.

- (a)      Nominee Agreement. The Legal Owner and the Beneficial Owner each represent that they have delivered to HDC and HPD a true copy of the Nominee Agreement, and each agrees that it shall observe the terms of the Nominee Agreement. The Legal Owner and the Beneficial Owner agree that the Nominee Agreement shall not be amended, nor shall a new Nominee Agreement affect the Premises, without the prior written consent of HDC and HPD, which shall not be unreasonably withheld. Any notice of a default or event of default required under the Nominee Agreement shall simultaneously be provided to HDC and HPD, and any default that remains uncured beyond the applicable cure period shall constitute a breach under this Agreement and shall be subject to the enforcement procedures of this Agreement.
- (b)      Right to Enter and Cure. Notwithstanding anything contained in the Nominee Agreement to the contrary, the Nominee Agreement shall be deemed to provide (if it does not already provide) that if there is an event of default under any City, State or federal loan document, including but not limited to any mortgage, regulatory agreement or financing commitment, the Legal Owner shall have the right to enter the Premises to cure the default as agent for and on behalf of the Beneficial Owner, unless the Beneficial Owner is acting diligently to cure the

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

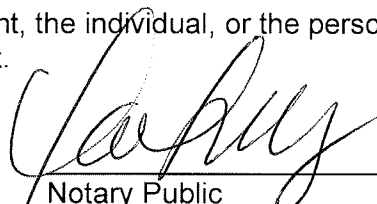
CJ PLAZA ONE LLC,

By:

  
Name: Geoffroi Flourney  
Title: Authorized Signatory

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

On the 21 day of December, 2016, before me, the undersigned, a notary public in and for said state, personally appeared Geoffroi Flourney, 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:

TARA STUCKEY  
Notary Public-State of New York  
No. 01ST6080866  
New York County EXP 9/23/2018

BRP JAMSTA TC OWNER LLC

By:

Name: Geoffroi Flournoy  
Title: Authorized Signatory

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

On the 21 day of December, 2016, before me, the undersigned, a notary public in and for said state, personally appeared Geoffroi Flournoy, 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.

TARA STUCKEY  
Notary Public-State of New York  
No. 01ST6080866 Notary Public  
New York County EXP 9/23/2018 Commission expires:

HP JAMSTA HOUSING DEVELOPMENT  
FUND COMPANY, INC

By:

Name: Daniel Marks Cohen  
Title: VICE PRESIDENT

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

On the 21 day of Dec, 2016, before me, the undersigned, a notary public in and for said state, personally appeared Daniel Marks Cohen, 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.

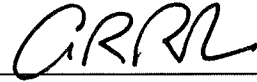
TARA STUCKEY  
Notary Public-State of New York  
No. 01ST6080866  
New York County EXP 9/23/2018

Notary Public  
Commission expires:



NEW YORK CITY HOUSING  
DEVELOPMENT CORPORATION

By:



Anthony R. Richardson  
Senior Vice President

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

On the 21 day of December, 2016, before me, the undersigned, a notary public in and for said state, personally appeared **Anthony R. Richardson**, 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:

TARA STUCKEY  
Notary Public-State of New York  
No. 01ST6080866  
New York County EXP 9/23/2018

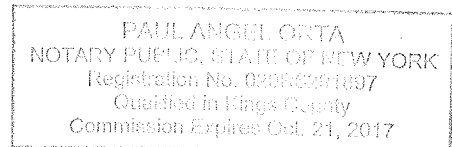
THE CITY OF NEW YORK, acting by and  
through its DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT

By: Sara Dabbs  
Name: Sara Dabbs  
Title: Executive Director,

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

On the 29<sup>th</sup> day of December, 2016, before me, the undersigned, a notary public in and for said state, personally appeared **Sara Dabbs**, 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.

[Signature]  
Notary Public  
Commission expires:



APPROVED AS TO FORM BY STANDARD  
TYPE OF CLASS FOR USE UNTIL JUNE 30, 2017

By: /s/ Howard Friedman  
Acting Corporation Counsel



## **SCHEDULE A**

### **LEGAL DESCRIPTION OF PREMISES**

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

BEGINNING at the corner formed by the intersection of the easterly side of Sutphin Boulevard and the southerly side of Archer Avenue;

RUNNING THENCE easterly along the southerly side of Archer Avenue 203.25 feet to a point;

THENCE continuing southeasterly along the southerly side of Archer Avenue 181.42 feet to a point;

THENCE southerly on a line parallel with Sutphin Boulevard 101.82 feet to a point along land now or formerly of The Long Island Railroad Co.;

THENCE westerly on a line parallel with Archer Avenue, 193.29 feet to a point;

THENCE westerly on a line parallel with Archer Avenue 116.74 feet to a point;

THENCE southerly on a line forming an angle of 90 degrees with the last mentioned course, 15.89 feet to a point;

THENCE westerly parallel with Archer Avenue, 18.93 feet to a point;

THENCE southerly on a line forming an angle of 90 degrees with the last mentioned course 1.62 feet to a point;

THENCE westerly, 57.29 feet to a point on the easterly side of Sutphin Boulevard, said point being distant 112.45 feet southerly from the intersection of the easterly side of Sutphin Boulevard with the southerly side of Archer Avenue;

THENCE northerly along the westerly side of Sutphin Boulevard, 112.45 feet to the point or place of BEGINNING.

## SCHEDULE B

### DISTRIBUTION OF UNITS AND INITIAL RENTS

Project: **The Crossing at Jamaica Station – High Rise**  
147-18 Archer Avenue  
Queens, NY  
Block 9998, Lot 91

The Project shall contain 539 units in total (including 1 Superintendent Unit).

#### Tax Code Units

##### 60% of AMI Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	14	\$913 (60% of AMI)	\$865 (57% of AMI)
1-Bedroom	37	\$980 (60% of AMI)	\$929 (57% of AMI)
2-Bedroom	35	\$1,183 (60% of AMI)	\$1,121 (57% of AMI)
3-Bedroom	4	\$1,359 (60% of AMI)	\$1,289 (57% of AMI)
TOTAL	90		

#### Non-Tax Code Income-Restricted Units

##### Permanently Affordable 130% of AMI Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	2	\$1,661 (125% of AMI)	\$1,661 (125% of AMI)
1-Bedroom	6	\$2,085 (125% of AMI)	\$2,085 (125% of AMI)
2-Bedroom	6	\$2,509 (125% of AMI)	\$2,509 (125% of AMI)
3-Bedroom	1	\$2,891 (125% of AMI)	\$2,891 (125% of AMI)
TOTAL	15		

##### Non-Permanently Affordable 130% of AMI Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	13	\$1,661 (125% of AMI)	\$1,661 (125% of AMI)
1-Bedroom	35	\$2,085 (125% of AMI)	\$2,085 (125% of AMI)
2-Bedroom	33	\$2,509 (125% of AMI)	\$2,509 (125% of AMI)
3-Bedroom	4	\$2,891 (125% of AMI)	\$2,891 (125% of AMI)
TOTAL	85		

**SCHEDULE B (continued)**145% of AMI Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	8	\$1,729 (130% of AMI)	\$1,729 (130% of AMI)
1-Bedroom	20	\$2,170 (130% of AMI)	\$2,170 (130% of AMI)
2-Bedroom	19	\$2,611 (130% of AMI)	\$2,611 (130% of AMI)
3-Bedroom	2	\$3,009 (130% of AMI)	\$3,009 (130% of AMI)
TOTAL	49		

165% of AMI Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	61	\$2,205 (165% of AMI)	\$1,800
1-Bedroom	104	\$2,765 (165% of AMI)	\$2,300
2-Bedroom	123	\$3,325 (165% of AMI)	\$2,900
3-Bedroom	11	\$3,833 (165% of AMI)	\$3,250
TOTAL	299		

**Legal Rents for Tax Code Units Initially Occupied by Tenants with Section 8 Vouchers or Certificates**

At the initial rent-up of the Project, the Sponsor shall determine the Tax Code Units, if any, that will be occupied by Section 8 tenants with vouchers or certificates. For any such Tax Code Unit, the initial Legal Rent shall not exceed the amount given in this section.

	<u>Legal Rent (initial)</u>
Studio	\$[•] (90% of FMR)
1-Bedroom	\$[•] (90% of FMR)
2-Bedroom	\$[•] (90% of FMR)
3-Bedroom	\$[•] (90% of FMR)

TOTAL

**Rent Increases at Initial Rent-Up**

In certain circumstances, Legal Rents and Actual Rents specified in this Schedule B may be increased at initial rent-up with the prior written consent of HDC and HPD (and at the sole discretion of HDC and HPD). In the case of any increase, the parties shall amend this Agreement at the Permanent Conversion to document Schedule B as modified.

The Actual Rents for the 165% of AMI Units specified in this Schedule B shall be increased at initial rent-up with the prior written consent of HDC and HPD if increased rents are demonstrated by a market study prepared or commissioned by the Borrower (and acceptable to HDC and HPD in their sole discretion). In the case of any increase, the parties shall amend this Agreement at the Permanent Conversion to document Schedule B as modified.

# SCHEDULE C

## RENT REGISTRATION FORM



State of New York • Division of Housing and Community Renewal Processing Services Unit, Hampton Plaza,  
38-40 State Street, Albany, NY 12207 Visit DHCR website at: [www.dhcr.state.ny.us](http://www.dhcr.state.ny.us)  
**INITIAL APARTMENT REGISTRATION**

NOTE: All information entered on this form must be valid for the date this apartment became subject to Rent Stabilization (this is the date entered in Item 1)

1. Date apartment became subject to Rent Stabilization ____/____/____ Month Day Year		2. Date of this Initial Registration ____/____/____ Month Day Year	
3. Building ID Number <input type="checkbox"/> MDR <input type="checkbox"/> ETPA <input type="checkbox"/> Hotel		14. Legal Regulated Rent on Date in Item 1 \$ _____ per <input type="checkbox"/> Month <input type="checkbox"/> Week	
4. Street Address		15a. Actual Rent Paid on Date in Item 1 (enter only if different than Legal Regulated Rent in item 14 above) \$ _____ per <input type="checkbox"/> Month <input type="checkbox"/> Week	
5. City, Town or Village NY		15b. Reason for difference: <input type="checkbox"/> Appliance Surcharge <input type="checkbox"/> DHCR Rent Reduction Order <input type="checkbox"/> Preferential Rent <input type="checkbox"/> Section 8 <input type="checkbox"/> SCRIE/DRIE <input type="checkbox"/> Other (specify): _____	
6. Zip Code		16a. Reason for Initial Apartment Registration (check one) <input type="checkbox"/> New Construction <input type="checkbox"/> Major Rehab <input type="checkbox"/> Late Registration <input type="checkbox"/> Apartment Vacant at time of previous Initial Registration <input type="checkbox"/> Apartment Previously under Mitchell-Lama <input type="checkbox"/> Apartment Previously Rent Controlled \$ _____ Rent \$ _____ MCR \$ _____ MBR Date Rent Controlled tenant vacated ____/____/____ Month Day Year	
7. County		16b. Initial Apartment Registration Status <input type="checkbox"/> Rent Control <input type="checkbox"/> Vacant but Previously Rent Stabilized <input type="checkbox"/> Stabilized/ETPA <input type="checkbox"/> 421-a Market Rate Unit <input type="checkbox"/> 421-a Income Restricted Unit _____ % Area Median Income This 421-a Income Restricted Unit is reserved for individuals or families whose incomes at the time of initial occupancy do not exceed the above % of the area median incomes, as adjusted for family size. <input type="checkbox"/> Exempt (if exempt box is checked, one reason MUST be selected below): <input type="checkbox"/> Commercial/Professional <input type="checkbox"/> Owner Occupied/Employees <input type="checkbox"/> Not Prime Residence/ Not for Profit <input type="checkbox"/> Coop/Condo Occupied by Owner or Non-Protected Tenant Expiration of: <input type="checkbox"/> Section 11-243 <input type="checkbox"/> Section 421-a <input type="checkbox"/> Section 608 or 11-244 (J51)	
8. Apartment Number		17. Owner/Managing Agent (check one) <input type="checkbox"/> Owner <input type="checkbox"/> Managing Agent <input type="checkbox"/> Coop/Condo Owner	
9. Total # of Rooms in Apt.		18. Tenant Name(s) LAST FIRST M.I.	
11. Lease Dates in effect on Date in Item 1 above Began on ____/____/____ Expires on ____/____/____ Month Day Year Month Day Year			
12. Equipment and services included in rent (check as many as apply) <input type="checkbox"/> Stove <input type="checkbox"/> Refrigerator <input type="checkbox"/> Dishwasher <input type="checkbox"/> Blinds/Shades <input type="checkbox"/> Furniture <input type="checkbox"/> Maid Service <input type="checkbox"/> Linen Service <input type="checkbox"/> Room A/C (No. of units) _____ <input type="checkbox"/> Other (specify): _____			
13. Equipment and services for which a separate charge is collected by owner (check as many as apply) <input type="checkbox"/> Electricity/AC <input type="checkbox"/> Maid Service <input type="checkbox"/> Linen Service <input type="checkbox"/> Furniture <input type="checkbox"/> Master TV Antenna <input type="checkbox"/> Recreational Facilities <input type="checkbox"/> Garage/Parking \$ _____ per month each car Separate Lease: From ____/____/____ To ____/____/____ Month Day Year Month Day Year <input type="checkbox"/> Other (specify): _____			

17. Owner/Managing Agent (check one) <input type="checkbox"/> Owner <input type="checkbox"/> Managing Agent <input type="checkbox"/> Coop/Condo Owner		NOTE: If unit is coop/condo, enter information for unit owner. In all other cases, enter information for building owner or building managing agent.
LAST NAME	FIRST NAME M.I.	
Street Address		
City, Town or Village		Apartment/Room Number
State		Zip Code

PARA INFORMACION EN ESPANOL, VEA RESPALDO DE ESTA FORMA.  
RR-16(j) 12/07

IMPORTANT TENANT INFORMATION ON OTHER SIDE OF FORM  
Copy 1 - DHCR Copy 2 - OWNER Copy 3 - TENANT (save for your records)

## SCHEDULE D

### INVESTIGATIONS CLAUSE

a. The parties to this Agreement agree to 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.

b. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of 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 thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State; or

c. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of 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 governing the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

d. The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

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

f. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

1. The disqualification for a period not to exceed five years from the date of an adverse determination of any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

2. The cancellation or termination of any and all 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;

monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

g. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Sections (g)(1) and (g)(2). He or she may also consider, if relevant and appropriate, the criteria established in Sections (g)(3) and (g)(4) in addition to any other information which may be relevant and appropriate:

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

2. The relationship of the person who 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.

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section (f) above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section (d) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

h. 1. The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

2. The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

3. The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

4. The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

i. In addition to and notwithstanding any other provision of this agreement the commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three days written notice in the event contractor fails to promptly report in writing to the Commissioner of Investigation of the City any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the contractor, or affecting the performance of this contract.

## Schedule F HIRENYC RIDER

### **Introduction**

This Rider sets forth the requirements of the HireNYC Program ("HireNYC") and certain other requirements imposed by law. The provisions of this Rider apply to the Sponsor, the Contractor, and all subcontractors for the Project having contracts of \$500,000 or more (each a "Covered Party"). A copy of this Rider shall be included in the Construction Contract and all such subcontracts.

In general, Covered Parties are required to

- (a) enroll with the HireNYC program by clicking on the "HPD Portal" link found at [nyc.gov/hirenyc](http://nyc.gov/hirenyc),
- (b) disclose all new entry to mid-level job opportunities (as defined below) created by the Project and located in New York City ("Covered Jobs"), and
- (c) evaluate or interview qualified candidates from HireNYC for Covered Jobs. Entry to mid-level jobs shall mean jobs requiring no more than an associate degree, as provided by the New York State Department of Labor (Note: See Column F at <https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls>).

### **A. Enrollment**

Each Covered Party must enroll with the NYC Department of Small Business Services ("SBS") by clicking on the "HPD Portal" link found at [nyc.gov/hirenyc](http://nyc.gov/hirenyc) (the linked page on the SBS website being the "HireNYC Portal"). The Sponsor and Contractor shall each enroll within thirty (30) days after the Construction Closing. Subcontractors must be enrolled by the earlier of (i) fifteen (15) days after the full execution of its subcontract or (ii) the start of work under such subcontract.

The Sponsor or Contractor shall engage with SBS to create a work plan for the Project detailing the planned subcontracting engagements and any expected hiring needs. The work plan should include information such as projected start dates for subcontractors, the anticipated date of commencement of the hiring process for any positions to be filled, and contact information for all Covered Parties.

The Sponsor and Contractor may designate a project coordinator to act as the main contact for the Covered Parties with regard to the matters contained in this Rider. The role of the project coordinator will be to manage the administrative enrollment requirements of subcontractors and to facilitate communication between the Covered Parties and SBS.

### **B. Recruitment Requirements**

Once enrolled in HireNYC, the Covered Parties shall provide updated information to SBS regarding Covered Jobs as they become known. The Covered Parties or project coordinator must request candidates through the HireNYC Portal to fill any Covered Jobs no less than three weeks prior to the intended first day of employment for each new position, or as otherwise negotiated with SBS, whose consent will not be unreasonably withheld, and must also provide updates information through the HireNYC Portal as set forth below. If an employee is needed in an unexpected situation to keep the Project on schedule, the Covered Party must notify SBS of this need and if

SBS is not able to refer a candidate within three (3) business days, the Covered Party may proceed without further consideration.

After enrollment and submission of relevant information by Covered Parties or the project coordinator through the HireNYC Portal, SBS will work directly with the hiring manager for each Covered Party to develop a recruitment strategy for Covered Jobs. HireNYC will screen applicants based on employer requirements and refer qualified applicants to the appropriate Covered Party for evaluation or interviews. The Covered Parties must evaluate or interview referred applicants whom it believes are qualified. These requirements do not limit the Covered Party's ability to work with community partners who may also refer candidates for job opportunities, to assess the qualifications of prospective workers, or to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require a Covered Party to employ any particular worker or to limit consideration to the prospective employees referred by HireNYC.

In addition, this Rider shall not apply to positions that a Covered Party intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York or to positions covered by Collective Bargaining Agreements or Project Labor Agreements. Covered Parties shall not be required to report such openings with HireNYC. However, Covered Parties shall enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

### **C. Reporting Requirements**

After completing an evaluation or interview of a candidate referred by HireNYC, the Covered Party or project coordinator must provide feedback via the HireNYC Portal to indicate which candidates were evaluated or interviewed and hired, if any. For any individual hired through HireNYC, the Covered Party or project coordinator shall provide the expected start date, wage, and hours expected to work. The Covered Party or project coordinator shall provide such information on a monthly basis through the HireNYC Portal for any candidates referred by HireNYC that are evaluated, interviewed and/or hired in a particular month.

In the event a Covered Party does not have any Covered Jobs in any given year, the Covered Party or project coordinator shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

Covered Parties or the project coordinator shall report to the City all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule. In addition, Covered Parties shall comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

### **D. Audit Compliance**

Covered Parties shall permit the New York City Department of Housing Preservation and Development ("HPD") to inspect any and all records concerning or relating to job openings or the hiring of individuals for Covered Jobs. Covered Parties shall retain all such records for one (1) year from the date of contract completion and shall permit an inspection by HPD within seven (7) business days of the request.

### **E. Other Hiring Requirements**

Covered Parties shall comply with all federal, state, and/or local hiring requirements as may be set forth elsewhere in this Agreement or other project documents.



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**REGULATORY AGREEMENT**

among

**CJ PLAZA TWO LLC,**

**BRP JAMSTA TWO TC OWNER LLC,**

**JAMSTA II HOUSING DEVELOPMENT FUND CORPORATION,**

**NEW YORK CITY HOUSING DEVELOPMENT CORPORATION**

and

**THE CITY OF NEW YORK, ACTING BY AND THROUGH ITS DEPARTMENT OF  
HOUSING PRESERVATION AND DEVELOPMENT**

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December 22, 2016

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ADDRESS: 148-10 Archer Avenue

BLOCK: 9998

LOT: Lot 95

COUNTY: Queens

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**RECORD AND RETURN TO:**

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

**REGULATORY AGREEMENT** (as may be amended, this "Agreement"), entered into as of December 22, 2016, among **CJ PLAZA TWO LLC** (the "Non-LIHTC Borrower"), a New York limited liability company with an address at c/o BRP Development Corp., 767 Third Avenue, 33<sup>rd</sup> Floor, New York, NY 10017; **BRP JAMSTA TWO TC OWNER LLC** (the "LIHTC Borrower" and together with the Non-LIHTC Borrower, the "Beneficial Owner"), a New York limited liability company with an address at c/o BRP Development Corp., 767 Third Avenue, 33<sup>rd</sup> Floor, New York, NY 10017; **JAMSTA II HOUSING DEVELOPMENT FUND CORPORATION** (the "Legal Owner", and together with the Beneficial Owner, jointly and severally, the "Sponsor"), a New York not-for-profit corporation with an address at c/o Settlement Housing Fund, Inc., 247 West 37<sup>th</sup> Street, 4<sup>th</sup> Floor, New York, NY 10018; **NEW YORK CITY HOUSING DEVELOPMENT CORPORATION** ("HDC"), a New York public benefit corporation with its address at 110 William Street, New York, NY 10038; and **THE CITY OF NEW YORK** (the "City"), acting by and through its **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT** ("HPD"), with its address at 100 Gold Street, New York, NY 10038.

### **PRELIMINARY STATEMENT**

**WHEREAS**, HDC and HPD have agreed to provide a portion of the acquisition, construction and permanent financing for a rental housing development and related facilities, to be constructed on the premises identified in Schedule A (the "Premises"), as further described in Schedule B (the "Project");

**WHEREAS**, as of the date of this Agreement, the Non-LIHTC Borrower and the Legal Owner have entered into a Declaration of Interest and Nominee Agreement (the "Nominee Agreement"), pursuant to which the Non-LIHTC Borrower is the beneficial owner of the Premises and the Legal Owner retains the record fee title to the Premises;

**WHEREAS**, at the Construction Loan Closing, the Tax Code Units (as defined below; capitalized terms used but not defined in this preliminary statement are defined in Section 1.01) and the Community Facility Condo Unit shall be master leased by the Non-LIHTC Borrower to the LIHTC Borrower pursuant to an Agreement of Lease acknowledged and agreed to by the Legal Owner dated as of the date of this Agreement (the "Master Lease");

**WHEREAS**, prior to the date that the building in the Project is "placed in service" for purposes of Section 42 of the Tax Code, the Project shall be subjected to a condominium declaration and by-laws establishing a condominium containing three condominium units: (i) one residential unit containing the Tax Code Units (the "Tax Code Units Condo Unit"), (ii) one residential unit containing the Non-Tax Code Income-Restricted Units (the "Moderate Income Condo Unit") and (iii) one condominium unit containing approximately 18,538 square feet of community facility space (the "Community Facility Condo Unit"); and all condominium units shall include their share of the common elements of the condominium;

**WHEREAS**, upon the creation of a condominium on the Premises, the Non-LIHTC Borrower intends to convey beneficial ownership of the Tax Code Units Condo Unit and the Community Facility Condo Unit to the LIHTC Borrower, the Master Lease will be terminated, and the LIHTC Borrower and the Legal Owner intend to enter into a separate Declaration of Interest and Nominee Agreement (the "Second Nominee Agreement") pursuant to which the LIHTC Borrower will be the beneficial owner of the Tax Code Units Condo Unit and the Community Facility Condo Unit, and the Legal Owner will be the record fee title owner of the Tax Code Units Condo Unit and the Community Facility Condo Unit; the existing Nominee Agreement will by its terms provide that the Non-LIHTC Borrower will thereafter be the beneficial owner of only Moderate Income Condo Unit and the Legal Owner will remain the record fee title owner of the

Moderate Income Condo Unit; and at the same time, the Community Facility Condo Unit shall be leased to the Non-LIHTC Borrower pursuant to a Master Lease acknowledged and agreed to by the Legal Owner (the "CF Master Lease");

**WHEREAS**, the Tax Code Units Condo Unit and Community Facility Condo Unit are expected to receive Tax Credits and comprise the "building" for purposes of Section 42 of the Tax Code, however, the Project shall include all condominium units, including both residential space condominium units as provided in Schedule B;

**WHEREAS**, HDC has agreed to make, pursuant to the HDC Commitment: (i) a first mortgage loan to the Beneficial Owner in the aggregate principal amount of \$35,720,000 (the "HDC Construction Loan"), which upon the Permanent Conversion will be partially prepaid and will become a permanent mortgage loan in the aggregate principal amount of \$17,565,000 (the "HDC Permanent Loan" and together with the HDC Construction Loan, the "HDC Loan"); (ii) a second-position mortgage loan to the Beneficial Owner in the aggregate principal amount of \$8,450,000 (the "HDC Second Loan"); (iii) a third-position mortgage loan to the Beneficial Owner in the aggregate principal amount of \$18,074,364 (the "HDC City Capital Loan"); and (iv) a fourth-position mortgage loan to the Beneficial Owner in the aggregate principal amount of \$2,199,609 (the "GS Grant Loan," and together with the HDC Loan, the HDC Second Loan, and the HDC City Capital Loan, the "HDC Financing"); the HDC Financing will be evidenced by notes made by the Beneficial Owner and dated as of the date of this Agreement (collectively, and as may be amended, the "HDC Mortgage Note") and secured by mortgages made by the Sponsor and dated as of the date of this Agreement (collectively, and as may be amended, the "HDC Mortgage");

**WHEREAS**, the Beneficial Owner has requested that JP Morgan Chase Bank, N.A. (the "Credit Provider") extend a stand-by letter of credit (the "Credit Instrument") for the benefit of HDC to further secure the Beneficial Owner's obligation to HDC under the HDC Construction Loan; the Credit Provider will service the HDC Financing and the HPD Construction Loan while the Credit Instrument is in place, pursuant to a Servicing and Release Agreement dated as of the date of this Agreement among the Beneficial Owner, the Credit Provider, HPD and HDC (as may be amended, the "Servicing and Release Agreement");

**WHEREAS**, the Beneficial Owner has applied to receive an allocation of Tax Credits from HPD by reason of the issuance of the Obligations by HDC, and an extended low income housing commitment is required pursuant to the Tax Code; GSG LIHTC Investor, LLC (the "Tax Credit Investor") is the equity investor in JAMSTA Two JV LLC, a Delaware limited liability company which controls the Beneficial Owner, owns 100% of the interests in the Non-LIHTC Owner, and directly or indirectly owns 100% of the interests in the LIHTC Owner;

**WHEREAS**, the Sponsor expects to receive Real Property Tax Benefits;

**WHEREAS**, HDC requires that the Project and the Sponsor comply with marketing, occupancy and operating requirements as a condition to the provision of the HDC Financing, in order to fulfill HDC's statutory purpose of providing housing for people and families for whom the ordinary operations of private enterprise cannot provide an adequate supply of safe, sanitary and affordable housing;

**WHEREAS**, HPD requires that the Project and the Sponsor comply with marketing, occupancy and operating requirements as a condition to the allocation of the Tax Credits;

**WHEREAS**, in order for the Project to have the benefit of the HDC Financing and the Tax Credits, HDC and HPD require that the Sponsor (i) agree to operate the Project in accordance with this Agreement and (ii) agree that the restrictions in this Agreement shall run with the

Premises and bind all of the successors and assigns of the Sponsor, for so long as set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, the parties agree as follows:

## ARTICLE I. DEFINITIONS

**SECTION 1.01**      Definitions. In this Agreement, the following terms shall have the meanings set forth below:

"Actual Rent" shall have the meaning set forth in Section 5.03.

"Agreement" shall have the meaning set forth in the preamble.

"AMI" shall mean the area median income for the New York metropolitan area, as determined by HUD from time to time, for a family of four, as adjusted for family size. All percentage of AMI numbers provided in this Agreement shall be calculated as the appropriate percentage adjustment to the income levels, as determined by HUD from time to time, for 50% of AMI families (also known as "very low income" families), as adjusted for family size. For example, 60% of AMI is equal to 120% of the 50% of AMI figure published by HUD; 100% of AMI is equal to 200% of the 50% of AMI figure. HDC and HPD may determine, however, in their sole discretion and from time to time, that another applicable AMI figure is published by HUD and should be used to calculate a particular percentage of AMI number. For the purposes of determining rents for Income-Restricted Units, incomes shall be adjusted for family size as follows: Units with no bedrooms shall be treated as being occupied by a one-person family, and units with one or more bedrooms shall be treated as being occupied by 1.5 people per bedroom, regardless of the actual number of people occupying the unit.

"Annual Income" shall mean (i) when referring to the income of one tenant, the current gross income of such tenant and (ii) when referring to the income of a Household, the current gross income of all individuals in the Household, calculated in each instance in a manner consistent with the determination of low income families under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, under such program as was in effect immediately before such termination).

"Applicable AMI Limit" shall mean for any Tax Code Unit, the percentage of AMI specified as the income restriction for occupancy of the unit, as set forth in Section 4.02, such that, by way of example, the Applicable AMI Limit for a 60% of AMI Unit is 60% of AMI, and for any Non-Tax Code Income-Restricted Unit, the percentage of AMI specified for the initial rents as set forth in Schedule B, such that, by way of example, the Applicable AMI Limit for a Permanently Affordable 125% of AMI Unit (the income restriction for occupancy) is 100% of AMI (the initial rent level).

"Beneficial Owner" shall have the meaning set forth in the preamble.

"Bond Counsel" shall mean an attorney or firm of attorneys of nationally recognized standing in the law of municipal, state and public agency financing, as selected by HDC.

"CF Master Lease" shall have the meaning set forth in the WHEREAS clauses.

"City" shall have the meaning set forth in the preamble.

"Community Facility Condo Unit" shall have the meaning set forth in the WHEREAS clauses.

"Compliance Period" shall have the meaning set forth in Section 6.02.

"Construction Loan Closing" shall mean the closing of the HDC Construction Loan, the HDC Second Loan, the HDC City Capital Loan and the GS Grant Loan, which shall occur simultaneously.

"Credit Instrument" shall have the meaning set forth in the WHEREAS clauses.

"Credit Provider" shall have the meaning set forth in the WHEREAS clauses.

"Default Rate" shall mean the U.S. prime rate of interest as reported from day to day in The Wall Street Journal, plus 4% per annum, or, if such prime rate is no longer available, the base rate or prime rate of interest of any "Money Center" bank designated by HDC or HPD, in each case in its sole discretion, plus 4% per annum.

"Eligible Tenant" shall mean a tenant who meets the income restrictions and other requirements set forth in this Agreement and the Tax Code, as applicable.

"Event of Default" shall have the meaning set forth in Section 10.01.

"Extended Use Period" shall have the meaning set forth in Section 6.02.

"FMR" shall mean the fair market rent as determined by HUD for the New York metropolitan area and in effect as of the date of the relevant rent determination.

"GS Grant Loan" shall have the meaning set forth in the WHEREAS clauses.

"HDC" shall have the meaning set forth in the preamble.

"HDC Act" shall mean the New York City Housing Development Corporation Act, Article XII of the New York Private Housing Finance Law, as may be amended, and any rules, regulations, policies or procedures promulgated under the statute.

"HDC City Capital Loan" shall have the meaning set forth in the WHEREAS clauses.

"HDC Commitment" shall mean the Construction and Permanent Financing Commitment and Agreement with respect to the HDC Financing, among the Beneficial Owner, the Legal Owner, HDC and the guarantors of certain obligations of the Beneficial Owner, as may be amended.

"HDC Construction Loan" shall have the meaning set forth in the WHEREAS clauses.

"HDC Financing" shall have the meaning set forth in the WHEREAS clauses.

"HDC Loan" shall have the meaning set forth in the WHEREAS clauses.

"HDC Mortgage" shall have the meaning set forth in the WHEREAS clauses.

"HDC Mortgage Note" shall have the meaning set forth in the WHEREAS clauses.

"HDC Permanent Loan" shall have the meaning set forth in the WHEREAS clauses.

"HDC Second Loan" shall have the meaning set forth in the WHEREAS clauses.

"Household" shall mean all of the occupants of a unit whether or not legally related.

"HPD" shall have the meaning set forth in the preamble.

"HUD" shall mean the U.S. Department of Housing and Urban Development (and any successor agency).

"Income-Restricted Unit" shall mean a Tax Code Unit or a Non-Tax Code Income-Restricted Unit.

"Legal Owner" shall have the meaning set forth in the preamble.

"Legal Rent" shall have the meaning set forth in Section 5.02.

"LIHTC Borrower" shall have the meaning set forth in the preamble.

"Loan Agreement" shall mean the Building Loan Agreement, and the Project Loan Agreement, if any, among HDC, the Beneficial Owner and the Legal Owner, dated as of the date of this Agreement and as may be amended.

"Loan Documents" shall mean, collectively, (i) the HDC Mortgage, the HDC Mortgage Note and all other documents delivered in connection with the HDC Financing.

"Management Agreement" shall have the meaning set forth in Section 7.01.

"Managing Agent" shall have the meaning set forth in Section 7.01.

"Moderate Income Condo Unit" shall have the meaning set forth in the WHEREAS clauses.

"Non-LIHTC Borrower" shall have the meaning set forth in the preamble.

"Nominee Agreement" shall have the meaning set forth in the WHEREAS clauses.

"Non-Permanently Affordable 125% of AMI Units" shall have the meaning set forth in Section 4.02.

"Non-Tax Code Income-Restricted Unit" shall mean any unit that is not a Tax Code Unit, but that is required to be leased pursuant to this Agreement to a tenant who qualifies as an Eligible Tenant with an Annual Income prior to initial occupancy that is at or below an income level or levels specified in Section 4.02. This category includes any units designated in Section 4.02 as having income restrictions for occupancy at any level above 60% of AMI.

"Obligations" shall mean that portion of the obligations issued by HDC to fund the HDC Loan in whole or in part pursuant to the Resolution.

"Occupancy Restriction Period" shall have the meaning set forth in Section 2.01.

"Permanent Conversion" shall mean the conversion of the HDC Construction Loan to the HDC Permanent Loan.

"Permanently Affordable 125% of AMI Units" shall have the meaning set forth in Section 4.02.

"Permitted Mortgages" shall mean the HDC Mortgage and any other mortgage affecting the Premises incurred with the prior written consent of HDC and HPD.

"Premises" shall have the meaning set forth in the WHEREAS clauses.

"Project" shall have the meaning set forth in the WHEREAS clauses.

"Real Property Tax Benefits" shall mean the exemption from or abatement of real property tax with regard to the Project pursuant to Article XI of the New York Private Housing Finance Law, as may be amended.

"Rent Stabilization" shall mean Title 26, Chapter 4 of the New York City Administrative Code (and any successor statute) and the rules and regulations promulgated under the statute.

"Resolution" shall mean HDC's Multi-Family Housing Revenue Bonds Bond Resolution adopted on July 27, 1993, as amended or supplemented.

"Second Nominee Agreement" shall have the meaning set forth in the WHEREAS clauses.

"Section 8" shall mean a federal rental subsidy pursuant to the Section 8 housing choice

voucher program, the Section 8 rental certificate program, the Section 8 project-based rental assistance program, or any successor programs under the United States Housing Act of 1937, as amended.

"Section 8 Rent" shall mean the maximum rent for a unit that is eligible to be subsidized under the applicable Section 8 program. For example, in the case of any unit occupied by a tenant with a Section 8 voucher, the unit will be deemed a Section 8 Unit and the Section 8 Rent shall be the voucher payment standard as authorized by the government agency issuing the voucher.

"Section 8 Unit" shall mean a unit occupied by a tenant receiving a Section 8 voucher or certificate or a unit subject to the Section 8 project-based rental assistance program.

"Servicing and Release Agreement" shall have the meaning set forth in the WHEREAS clauses.

"Sponsor" shall have the meaning set forth in the preamble.

"State" shall mean the State of New York.

"Student Unit" shall mean a unit where all of the occupants of the unit are students, as defined in Section 152(f)(2) of the Tax Code, subject to the exceptions given in Section 42(i)(3)(D) of the Tax Code.

"Superintendent Unit" shall mean a unit occupied by a resident superintendent or porter of the Project.

"Tax Code" shall mean the Internal Revenue Code of 1986, as may be amended, and any rules or regulations promulgated under the statute.

"Tax Code Unit" shall mean any unit that is occupied by a tenant who qualified under this Agreement as an Eligible Tenant pursuant to Sections 42 and 142 of the Tax Code, as applicable, prior to initial occupancy. This category includes any units designated in Section 4.02 as having income restrictions for occupancy at any level at or below 60% of AMI. No Student Unit or Superintendent Unit shall qualify as a Tax Code Unit.

"Tax Code Units Condo Unit" shall have the meaning set forth in the WHEREAS clauses.

"Tax Code Unit Percentage" shall mean the percentage of units (excluding any Superintendent Unit) that are Tax Code Units.

"Tax Credit Investor" shall have the meaning set forth in the WHEREAS clauses.

"Tax Credits" shall mean the low income housing tax credits available to the Sponsor due to the inclusion of Tax Code Units in the Project pursuant to Sections 42 and 142 of the Tax Code and any related rules and regulations.

"Unit" or "unit" shall mean a residential apartment located in the Project.

**SECTION 1.02**      References to this Agreement. References in this Agreement to specific articles, sections, schedules, etc. refer to provisions in this Agreement unless otherwise noted.

**SECTION 1.03**      Headings. Headings are for reference only and shall not control the interpretation of this Agreement.

**SECTION 1.04**      Preliminary Statement. The recitals in the preliminary statement are a part of the agreement of the parties and are incorporated in this Agreement for all purposes.

## **ARTICLE II. TERM OF RESTRICTIONS**

## **SECTION 2.01**      Occupancy Restriction Period.

(A) The Project and the Sponsor shall be subject to the requirements of this Agreement during the Occupancy Restriction Period (as defined in this section), except as may be specifically provided otherwise in this Agreement. The "Occupancy Restriction Period" shall mean a period lasting in perpetuity from the date that is the later of (i) the date that 10% of the units are first occupied after completion of construction of the Project and (ii) the date of issuance of the Obligations. Notwithstanding that the Occupancy Restriction Period is intended to last in perpetuity, the following provisions are included in this Agreement to satisfy requirements of the Tax Code and other financing requirements. This Agreement contains these and other provisions referring to the end of the Occupancy Restriction Period and the period after the Occupancy Restriction Period ends. Any such provisions are included out of caution only and shall not apply barring unforeseen amendment of this Agreement, change in law or court order. In no event shall the Occupancy Restriction Period end prior to the latest of the following dates:

- (a) the date that is 15 years after the date on which 50% of the units are first occupied;
- (b) the first day on which no Obligation or other tax-exempt private activity obligation with respect to the Project is outstanding;
- (c) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates;
- (d) the date of the end of the Extended Use Period (see Section 6.02);
- (e) the date on which the Real Property Tax Benefits expire;
- (f) the date on which the HDC Mortgage and any other mortgage held by HDC or HPD with respect to the Project have been satisfied;
- (g) 60 years from the date of the Permanent Conversion;
- (h) the date on which the inclusionary housing regulatory agreement between the Sponsor and HPD terminates or expires.

(B) Notwithstanding the foregoing subsection (A), with respect to the Non-Permanently Affordable 125% of AMI Units (as delineated in Schedule B hereto), the Occupancy Restriction Period is intended to end earlier than for the Tax Code Units and the Permanently Affordable 125% of AMI Units (as delineated in Schedule B hereto) and shall end on the latest of the following dates:

- (i) the date that is 15 years after the date on which 50% of the units are first occupied;
- (ii) the first day on which no Obligation or other tax-exempt private activity obligation with respect to the Project is outstanding;
- (iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates;
- (iv) the date of the end of the Extended Use Period (see Section 6.02);
- (v) the date on which the Real Property Tax Benefits expire;
- (vi) the date on which the HDC Mortgage and any other mortgage held by HDC or HPD with respect to the Project have been satisfied;



- (vii) 40 years from the date of the Permanent Conversion.

**SECTION 2.02** Post-Occupancy Restriction Period. Any provisions of this Agreement (i) necessary to preserve the exclusion from gross income for purposes of federal income taxation of interest on the Obligations and (ii) governing the rental of units after the Occupancy Restriction Period ends, and the enforcement of such provisions, shall remain in effect for as long as may be necessary to preserve and enforce such provisions.

**SECTION 2.03** Unforeseen Events. This Agreement shall cease to apply in the event, to the extent and for the duration of any involuntary non-compliance caused by fire, seizure, requisition, condemnation, change in federal law or any action of a federal agency after the date of issuance of the Obligations that prevents HDC and HPD from enforcing some or all of this Agreement, or any similar event, if in any such event (i) the Obligations used to provide the Project are retired within a reasonable period, or (ii) the amounts received as a result of the unforeseen event, subject to the rebate requirement of Section 148 of the Tax Code, are used to provide a project that meets the requirements of Section 142(d) of the Tax Code.

**SECTION 2.04** Termination; Release.

- (a) Consent of HDC and HPD Required. This Agreement shall not be terminated without the prior written consent of HDC and HPD, except as provided otherwise in this section.
- (b) Foreclosure. In the event of a foreclosure or deed in lieu of foreclosure of the HDC Mortgage, or a comparable conversion of the Project, this Agreement shall terminate only (i) upon written request of the owner of the HDC Mortgage, and (ii) if, within a reasonable period, the Obligations are retired (it being agreed that HDC shall cause the Obligations to be retired within a reasonable period pursuant to the terms of the Resolution) and the HDC Second Loan, the HDC City Capital Loan and the GS Grant Loan are paid in full. However, if the Sponsor or a related person obtains an ownership interest in the Project after any such foreclosure, deed in lieu of foreclosure or comparable conversion, but during the Occupancy Restriction Period, this Agreement shall be reinstated in full force and effect.
- (c) Release. At the request of the Sponsor, HDC and HPD shall provide the Sponsor with a release of this Agreement in recordable form upon termination of this Agreement.
- (d) Conversion to Co-Op or Condo. After the Occupancy Restriction Period ends, the Sponsor may convert the Project to cooperative or condominium ownership of individual units. Such a conversion shall not be made pursuant to an eviction plan, as defined by Section 352-eeee of the New York General Business Law, as may be amended.

### ARTICLE III. GENERAL COMPLIANCE

**SECTION 3.01** Compliance with Laws and Regulations. The Sponsor shall do all things necessary to ensure the following:

- (a) HDC and HPD Financing. The Sponsor shall comply, and shall cause the Project to comply, with (i) this Agreement, (ii) the Loan Documents, (iii) the HDC Act and

- (iv) any rules adopted by HDC or HPD relating to the HDC Financing or the operation of the Project as may be necessary to enforce this Agreement. Any violation of the requirements of the Loan Documents may be declared an Event of Default under this Agreement.
- (b) Tax-Exempt Obligations. The Sponsor shall comply, and shall cause the Project to comply, with the applicable provisions of the Tax Code and this Agreement in order to preserve the exclusion from gross income for purposes of federal income taxation of interest on the Obligations.
- (c) Tax Credits. The Sponsor shall comply, and shall cause the Project to comply, with (i) the provisions of the Tax Code governing the Tax Credits, (ii) the extended low income housing commitment provisions of this Agreement (Article VI) and (iii) HDC's monitoring procedures with respect to the Tax Credits.
- (d) Real Property Tax Benefits; Other Agreements and Permits. The Sponsor shall do all things necessary: (i) to maintain the Real Property Tax Benefits, (ii) to maintain any permits or agreements with government agencies, including HDC and HPD, in good standing and (iii) to comply with the requirements of such agencies. Any violation of the requirements of the Real Property Tax Benefits, or any permits or agreements with or requirements of any government agencies, may be declared an Event of Default under this Agreement.

**SECTION 3.02** More Restrictive Provisions Control. If this Agreement conflicts with any other applicable agreement, law, regulation or permit, or if any provision of this Agreement conflicts with any other provision of this Agreement, the more restrictive provision (as determined by HDC and HPD) shall control.

#### ARTICLE IV. PROJECT OCCUPANCY

**SECTION 4.01** General Compliance. The Sponsor agrees that the occupancy requirements for the Project shall comply with (i) the HDC Act and the rules and regulations of HDC and HPD, including any requirements pertaining to Eligible Tenants or Income-Restricted Units, (ii) all provisions of the Tax Code that may or shall affect (1) the exclusion from gross income for purposes of federal income taxation of interest on the Obligations or (2) the Tax Credits, (iii) any applicable requirements of Section 8 and (iv) any other provisions of federal, state or local law or regulation that may be applicable, including the Loan Documents (so long as they remain in effect).

**SECTION 4.02** Distribution of Units. The Sponsor shall lease the units (excluding any Superintendent Unit) to Eligible Tenants as provided in this section. In calculating the number of units in each category below, no unit may be counted multiple times unless specifically stated otherwise.

- (a) Tax Code Units. In accordance with the distribution set forth in Schedule B, 104 units shall be Tax Code Units.
  - (i) The Sponsor shall lease no fewer than 26 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 40% of AMI ("40% of AMI Units").
  - (ii) The Sponsor shall lease no fewer than 78 Tax Code Units solely to Eligible

Tenants whose Annual Income upon initial occupancy does not exceed 60% of AMI ("60% of AMI Units").

- (b) Non-Tax Code Income-Restricted Units. In accordance with the distribution set forth in Schedule B, 25 units shall be Non-Tax Code Income-Restricted Units.
  - (i) The Sponsor shall lease no fewer than 15 Non-Tax Code Income-Restricted Units (as specified on Schedule B) solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 125% of AMI ("Permanently Affordable 125% of AMI Units")
  - (ii) The Sponsor shall lease the remaining 10 Non-Tax Code Income-Restricted Units (as specified on Schedule B) solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 125% of AMI ("Non-Permanently Affordable 125% of AMI Units").
- (c) Disability Set-Asides. The Sponsor shall ensure that a minimum of 5% of the units, or one unit, whichever is greater, is accessible and set aside for Households with a person with a mobility disability. The Sponsor shall ensure that an additional minimum of 2% of the units, or one unit, whichever is greater, is accessible and set aside for Households with a person with a hearing or vision disability.

**SECTION 4.03** Changes to Distribution of Units. Except by reason of an involuntary change caused by unforeseen events such as fire, seizure, requisition or condemnation:

- (a) Changes Violating Certifications. The Sponsor shall make no changes in the amount of residential and non-residential space or in the number of units, which in the opinion of 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 Obligations; and
- (b) Tax Code Unit Percentage. The Sponsor shall not reduce the Tax Code Unit Percentage for the Project below 80%, unless the Sponsor receives the prior written consent of HDC and HPD, which may be granted in the sole discretion of HDC and HPD.

**SECTION 4.04** General Requirements for Units.

- (a) Rental to the General Public; Non-Transient Units. Each unit (excluding any Superintendent Unit) shall be rented or made available for rental on a continuous basis to the general public, subject to any preferences required under this Agreement. None of the units shall be used on a transient basis or as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park.
- (b) Primary Residence. Units may only be occupied as a primary residence, as defined by Rent Stabilization, pursuant to a one- or two-year lease and by natural people or families who are otherwise eligible to occupy the unit pursuant to this Agreement. The Sponsor shall only offer a vacant unit for occupancy by natural people or families intending to occupy the unit as their primary residence pursuant to a one- or two-year lease, and shall not cause or permit the sublease or assignment of any unit for transient occupancy, for occupancy by any Household

that is not eligible, or to any corporation or other entity.

- (c) Condition of Units. The units shall be suitable for occupancy and similarly constructed and shall contain living, sleeping, eating, cooking and sanitation facilities for a single person or family.
- (d) Integration of Tax Code Units. The Sponsor shall not segregate or physically isolate Tax Code Units from any other units in the Project, and Tax Code Units shall be reasonably dispersed throughout the Project.

**SECTION 4.05** Marketing Guidelines. The Sponsor shall comply with the procedures and requirements of HDC and HPD pertaining to the marketing and rent-up of all Income-Restricted Units, including the use of HDC's forms for verifying Annual Income and Household size. HDC and HPD reserve the right to require that all Income-Restricted Units that become vacant at a future date are marketed pursuant to marketing guidelines provided by HDC or HPD.

**SECTION 4.06** Qualification of Eligible Tenants. The Sponsor shall comply with the procedures and requirements of HDC and HPD and any applicable provisions of the Tax Code pertaining to the initial and ongoing qualification of Eligible Tenants.

- (a) Applicant Certifications. Prior to the initial rental of any Income-Restricted Unit or the rental of any Income-Restricted Unit after vacancy, the Sponsor shall determine whether each applicant for the unit qualifies as an Eligible Tenant. The Sponsor shall obtain a certification of Annual Income and Household size from each applicant, along with the documentation necessary to verify the certification. The Sponsor shall verify each certification in a manner consistent with the verification of Annual Income under Section 8. If an applicant is receiving assistance under Section 8, the verification requirement is satisfied if the public housing agency providing the assistance gives the Sponsor a statement indicating that the applicant qualifies as an Eligible Tenant. The Sponsor may consult with HDC and HPD to obtain guidance on the applicant certification process.
- (b) Agency Review Prior to Initial Rental. Prior to the initial rental of any Income-Restricted Unit or the rental of any Income-Restricted Unit after vacancy, the Sponsor shall furnish to HDC (and to HPD, if requested by HPD in writing) the certification of Annual Income and Household size provided by the applicant selected for the unit, along with verification documentation as may be required by HDC, HPD or under the Tax Code in order to review the qualifications of the applicant. No lease for any Income-Restricted Unit shall be executed until the Sponsor has received approval from HDC (and HPD, if applicable).
- (c) Annual Tenant Certifications (Tax Code Units). On an annual basis, the Sponsor shall certify to HDC as to the Household size and student status of each tenant residing in a Tax Code Unit based on certifications obtained from such tenants.
- (d) Annual Agency Reviews (Tax Code Units). The Sponsor shall furnish to HDC (and to HPD, if requested by HPD in writing), on an annual basis or more frequently if required in writing by HDC or HPD in order to ensure compliance with this Agreement, a certification by the Sponsor documenting the annual tenant certifications provided in accordance with paragraph (c) above, along with verification documentation (if requested by HDC or HPD). The Sponsor shall also furnish any reports or other documents that HDC or HPD reasonably determine are necessary to establish compliance with this Agreement and the Tax Code.

- (e) Tenant's Failure to Certify; Fraud. If a tenant residing in an Income-Restricted Unit fails to provide the Sponsor with certifications and documentation as required within 60 days of the Sponsor's request, or if such a tenant provides false or fraudulent materials at any time, then the Sponsor may, or at the request of HDC or HPD shall, refuse to offer a lease renewal and/or commence legal action to terminate the lease of the tenant.

**SECTION 4.07** Changes in Tenant Income. An Eligible Tenant shall be entitled to remain in occupancy and to obtain a lease renewal to the extent provided under Rent Stabilization even if the tenant's Annual Income, after initial occupancy, exceeds the maximum for initial eligibility. No Eligible Tenant may be evicted or have his or her tenancy terminated except for good cause.

**SECTION 4.08** Next Available Unit Rules.

- (a) Non-Deep Rent Skewing Project. The Sponsor has elected not to deep rent skew the Project. Accordingly, if the Annual Income of a tenant in a Tax Code Unit exceeds 140% of the Applicable AMI Limit, then the Sponsor shall lease the next available vacant unit of comparable or smaller size that is not a Tax Code Unit to a tenant whose Annual Income does not exceed the Applicable AMI Limit required by the Tax Code. However, for a non-deep rent skewing Project with respect to which credit is allowed under Section 42 of the Tax Code, the Sponsor shall lease the next available vacant unit of comparable or smaller size that is not a Tax Code Unit in the same building (within the meaning of Section 42 of the Tax Code) to a tenant whose Annual Income does not exceed the Applicable AMI Limit required by the Tax Code.
- (b) Tenant's Failure to Certify; Fraud. If the Sponsor fails to commence legal action to terminate the lease of a tenant described in Section 4.06(e) in a prompt manner or does not diligently pursue the legal action to the satisfaction of HDC and HPD, then the Sponsor shall lease the next available vacant unit of comparable or smaller size to a tenant who qualifies as an Eligible Tenant for a Tax Code Unit prior to renting any other unit of comparable or smaller size.

**ARTICLE V. RENTS AND LEASES**

**SECTION 5.01** Compliance with Rent Stabilization.

- (a) All Units Subject to Rent Stabilization. All units shall be subject to Rent Stabilization and shall remain subject to Rent Stabilization after the Occupancy Restriction Period ends. The Sponsor shall follow all procedures and guidelines of New York State Homes & Community Renewal ("HCR") (or any successor agency enforcing Rent Stabilization) and all relevant requirements of Rent Stabilization. However, pursuant to a special agreement on rent regulation with the New York State Division of Housing and Community Renewal (a predecessor of HCR), HCR will not regulate the Project in a manner that is inconsistent with the Tax Code or with this Agreement. Where there may be inconsistencies, the more restrictive provisions of the Tax Code and this Agreement shall prevail.
- (b) No Exemptions from Rent Stabilization. The Sponsor shall not claim any exemption or exclusion from Rent Stabilization to which the Sponsor might be entitled with respect to any unit. This includes any exemption or exclusion from

the rent limits, lease renewal requirements, registration requirements or other provisions of Rent Stabilization due to (i) the vacancy of a unit where the rent exceeds a prescribed maximum amount, (ii) the fact that the tenant's income or rent exceeds prescribed maximum amounts, (iii) the nature of the tenant or (iv) any other factor. This section shall continue to apply to Income-Restricted Units after the Occupancy Restriction Period ends until any such unit becomes vacant (except for any vacancy resulting from a breach of the warranty of habitability, harassment, constructive eviction or any similar action caused by the Sponsor).

(c) Permitted Increases under Rent Stabilization.

(i) In General. Where this Agreement allows rent increases under Rent Stabilization for Income-Restricted Units (subject to the other restrictions on increases contained in this Agreement), such language shall permit only those increases that are based on the percentage increases for one- and two-year lease renewals approved annually by the New York City Rent Guidelines Board (or any successor). Subject to the exceptions given in this paragraph (c), rents shall not be increased or registered at a greater amount for any other reason typically allowed under Rent Stabilization, including vacancy lease increases, major capital improvement ("MCI") increases or individual apartment improvement ("IAI") increases. This prohibition applies to both Legal Rents (the registered legal regulated rents) and Actual Rents (which are to be registered as preferential rents). To be clear, this section shall not apply after the Occupancy Restriction Period ends.

(ii) Exception for Certain Vacancy Lease Increases. Upon vacancy of an Income-Restricted Unit, if the Legal Rent is less than 30% of the Applicable AMI Limit (adjusted for a monthly rent), then the Sponsor may increase the Legal Rent by the lesser of (1) the vacancy lease increase permitted by Rent Stabilization and (2) the amount required to increase the Legal Rent up to 30% of the Applicable AMI Limit (adjusted for a monthly rent).

(iii) Exception for MCI and IAI Increases After Year 30. During the period commencing on the 30th anniversary of the date of the Permanent Conversion, the Sponsor may apply to HCR (or any successor agency enforcing Rent Stabilization) for MCI or IAI increases. If HCR (or any successor agency enforcing Rent Stabilization) approves the Sponsor's application, then upon lease renewal or vacancy of an Income-Restricted Unit, the Sponsor may increase (1) the Legal Rent by the amount of the MCI or IAI increase so approved by HCR (or any successor agency enforcing Rent Stabilization) and (2) the Actual Rent by the lesser of (A) such MCI or IAI increase and (B) an amount that increases the Actual Rent to 30% of the Applicable AMI Limit (adjusted for a monthly rent).

(d) Contractual Rent Regulation. If Destabilization (as defined in this paragraph) occurs during the Occupancy Restriction Period, then all units that have undergone Destabilization shall be subject to Contractual Rent Regulation (as defined in this paragraph). If some units remain subject to Rent Stabilization while other units have undergone Destabilization, Contractual Rent Regulation will only apply to the units that have undergone Destabilization. For purposes of this paragraph:

(i) "Destabilization" shall mean any set of facts that causes Rent Stabilization to no

longer apply to the units, whether by expiration, legislative repeal, judicial invalidation or any other reason.

- (ii) “Contractual Rent Regulation” shall mean the following after Destabilization: (1) The Sponsor shall be required to offer new and renewal leases on the same terms and conditions as had been required by Rent Stabilization at the time of Destabilization (subject however to the provisions in subparagraphs (2) and (3) below) as if the unit were still subject to and not excluded or exempted from any provision of Rent Stabilization, including, but not limited to, any exemption or exclusion regarding rent limits, renewal lease requirements, or any other provision due to (w) the vacancy of a unit where the rent exceeds a prescribed maximum amount, (x) the fact that tenant income or unit rent exceeds prescribed maximum amounts, (y) the nature of the tenant or (z) any other factor. (2) The “Legal Rent,” as such term is used in this Agreement, shall be limited by percentage increases calculated based on a method or index established by HPD for determining the maximum increase to Legal Rent upon lease renewal or vacancy. Such method or index shall be based on inflation or on factors substantially equivalent to the factors considered in calculating such increases under Rent Stabilization at the time of Destabilization, and shall incorporate a method for determining and implementing increases to Legal Rent by reason of major capital improvements performed by the Sponsor, to the extent that such increases, if any, are not prohibited under this Agreement. HPD will publish such methodology in the City Record and will provide a copy of the methodology to the Sponsor upon request. (3) Wherever this Agreement limits increases in rent by increases as permitted by Rent Stabilization (or language of similar import), such increases shall be limited by the percentage increases established by HPD as described in subparagraph (2) above.

**SECTION 5.02**      Registration in Accordance with Rent Stabilization. The Sponsor shall register the rents for each unit in accordance with Rent Stabilization as follows:

- (a) Legal Rents. The initial legal regulated rent for each unit shall be the amount set forth in Schedule B. This amount may increase upon lease renewal or vacancy in accordance with Rent Stabilization (as limited by Section 5.01). This amount, as adjusted from time to time as permitted, shall be the “Legal Rent”.
- (b) Registered Preferential Rents. If the Actual Rent (as defined in the following section) for a unit is less than the Legal Rent for the unit, then the Actual Rent shall be registered as a preferential rent.
- (c) Registration of Rents. A sample registration form is attached as Schedule C. The Sponsor shall provide a copy of the initial registration form for all units to HDC (and to HPD, if requested in writing by HPD) prior to the Permanent Conversion.
- (d) Annual or Biannual Re-Registration. After initial registration, on an annual or biannual basis as applicable for each unit, and in accordance with Rent Stabilization, the Sponsor shall re-register the Legal Rent then in effect as the legal regulated rent and the Actual Rent in effect as a preferential rent.

**SECTION 5.03**      Actual Rents. The Sponsor shall lease each Income-Restricted Unit for a monthly rent that does not exceed the maximum amount permitted below (such amount shall be the “Actual Rent”). The Actual Rent shall be the rent that appears on the lease and that may be collected by the Sponsor (i.e., it shall include the rent paid by the tenant and any rental subsidy,

increase the Actual Rent for any Tax Code Unit except as permitted by the Tax Code.

(b) **Non-Tax Code Income-Restricted Units.**

(i) Initial Rents. The initial Actual Rent for a Non-Tax Code Income-Restricted Unit shall not exceed the lesser of:

- 1) the Legal Rent (as set forth in Schedule B); and
- 2) the initial Actual Rent set forth in Schedule B.

(ii) Lease Renewal. Upon lease renewal for a Non-Tax Code Income-Restricted Unit, the Sponsor may only increase the Actual Rent to the least of:

- 1) the Legal Rent;
- 2) the prior Actual Rent increased as permitted by Rent Stabilization (as limited by Section 5.01); and
- 3) 30% of the Applicable AMI Limit (adjusted for a monthly rent).

(iii) Vacancy. Upon vacancy of a Non-Tax Code Income-Restricted Unit, the Actual Rent for the new Eligible Tenant shall not exceed the lesser of:

- 1) the Legal Rent; and
- 2) an amount that is the greater of (x) the Actual Rent that would have been permitted upon lease renewal for the prior tenant and (y) 30% of the Applicable AMI Limit (adjusted for a monthly rent).

(iv) 2% Floor. Notwithstanding the provisions of paragraph (b) above, upon lease renewal or vacancy of any Non-Tax Code Income-Restricted Unit, if the percentage increase that is allowed under Rent Stabilization is 2% or greater, but an Actual Rent at 30% of the Applicable AMI Limit (adjusted for a monthly rent) would restrict the rent increase to a percentage increase that is less than 2%, then the Sponsor may increase the tenant's Actual Rent by 2%.

(c) 30% Limits Apply to Gross Rents. All provisions in this Agreement limiting a rent to 30% of the Applicable AMI Limit shall mean that the sum of the rent and the applicable utility allowance (i.e., the gross rent) shall not exceed 30% of the Applicable AMI Limit.

**SECTION 5.04** Additional Requirements for Section 8 Units.

(a) Tenant's Loss of Section 8. If a Section 8 tenant is occupying a Tax Code Unit and the tenant loses his or her Section 8 at any time, then the Sponsor shall immediately revise the tenant's Actual Rent to an amount that does not exceed the maximum amount that may be collected under the Tax Code.

(b) Vacancy; No New Section 8. Upon vacancy of a Tax Code Unit that had been occupied by a tenant with Section 8, if the next tenant identified for the unit does not have Section 8, but he or she is an Eligible Tenant for a Tax Code Unit, then the Sponsor shall set the Actual Rent for the new tenant in accordance with Section 5.03, and to an amount that does not exceed the maximum amount that may be collected under the Tax Code. The Sponsor shall register this revised Actual Rent as the new preferential rent for the unit.



**SECTION 5.05** Post-Occupancy Restriction Period.

- (a) Rents for Income-Restricted Units at 80% of AMI and Below. After the Occupancy Restriction Period ends, but not less than 150 days prior to the end of each lease with an Eligible Tenant who occupies an Income-Restricted Unit having an income restriction for occupancy at 80% of AMI or below (including Tax Code Units), the Sponsor shall request that the tenant submit to the Sponsor a certification of Annual Income and Household size and verification documentation. Lease renewals for these tenants shall be offered as follows:
- (i) Continuing Eligible Tenants. A tenant with a verified Annual Income and Household size that continues to qualify the tenant as an Eligible Tenant for the unit, as applicable, as of the date of the certification shall be entitled to a lease renewal and shall pay the Actual Rent that would be in effect for the succeeding lease renewal term. Thereafter, the tenant shall be entitled to continued lease renewals, and the rent shall be increased as permitted pursuant to Rent Stabilization for so long as the tenant continues to legally reside in the unit. The tenant shall not be required to provide further certifications of Annual Income and Household size pursuant to this Agreement.
  - (ii) Non-Qualifying Tenants. A tenant with a verified Annual Income and Household size that fails to qualify the tenant as an Eligible Tenant for the unit, as applicable, as of the date of the certification shall be entitled to a lease renewal, but the tenant's rent shall be revised to an amount that is the greater of (a) 30% of the tenant's Annual Income (adjusted for a monthly rent) or (b) the Actual Rent that would be in effect for the succeeding lease renewal term (the "Revised Rent"). The Revised Rent shall not exceed the Legal Rent, however. If the Revised Rent is less than the Legal Rent, the Revised Rent shall be registered with the agency administering Rent Stabilization as the new preferential rent for the unit. Thereafter, the tenant shall be entitled to continued lease renewals, and the rent shall be increased as permitted pursuant to Rent Stabilization for so long as the tenant continues to legally reside in the unit. The tenant shall not be required to provide further certifications of Annual Income and Household size pursuant to this Agreement.
  - (iii) Tenant's Failure to Certify; Fraud. In addition to any rights granted to the Sponsor under Section 4.06(e) of this Agreement, if a tenant fails to supply the requested certification and documentation within 60 days of the Sponsor's request, or if a tenant provides false or fraudulent materials, the Sponsor may, at its option, (1) refuse to provide a lease renewal to the tenant or (2) provide such tenant a lease renewal at such rent as the Sponsor may legally establish.
- (b) Rents for Income-Restricted Units Above 80% of AMI. After the Occupancy Restriction Period ends, tenants residing in any Income-Restricted Units having an income restriction for occupancy above 80% of AMI shall remain subject to Rent Stabilization and shall be entitled to continued lease renewals at rents not to exceed their Actual Rent then in effect, as may be adjusted pursuant to Rent Stabilization. Upon the vacancy of any such unit after the Occupancy Restriction Period ends, the unit will be subject to Rent Stabilization as further described in Section 5.01.

**SECTION 5.06** Lease Requirements.

- (a) Subordination. In renting units to tenants, the Sponsor shall use a lease expressly subordinate to this Agreement and to the Permitted Mortgages. The lease and any riders shall comply with New York law and shall otherwise be satisfactory to HDC and HPD. To the extent legally permissible, this Agreement shall take precedence and shall control over any other requirements.
- (b) HDC Lease Riders. In renting Income-Restricted Units to tenants, and to the extent legally permissible, the Sponsor shall use a lease rider provided by HDC that sets forth the applicable occupancy and rental requirements of this Agreement (the "HDC Rider"). The HDC Rider shall, among other things, (i) require the tenant to meet HDC's and HPD's eligibility standards in accordance with this Agreement, (ii) prohibit or restrict sublets and (iii) permit the Sponsor to terminate or refuse to renew the tenant's lease if the tenant fails to provide the Sponsor with certifications and documentation as required within 60 days of the Sponsor's request, or if the tenant provides false or fraudulent materials. No lease or other rider for an Income-Restricted Unit shall contain any provision that conflicts with the terms of this Agreement or the HDC Rider (and no such provision shall be enforceable).
- (c) Subleases. The Sponsor shall not consent to any sublease or assignment of lease by a tenant of an Income-Restricted Unit except as may be expressly required by law (and, in such event, only upon at least 30 days' prior written notice to HDC and HPD).

## ARTICLE VI. EXTENDED LOW INCOME HOUSING COMMITMENT

**SECTION 6.01** Extended Low Income Housing Commitment. This Agreement serves as the "extended low income housing commitment" required under Section 42(h)(6) of the Tax Code. Accordingly, the provisions of this Agreement will be interpreted in accordance with the requirements of the Tax Code, and to the extent that Section 42 of the Tax Code provides additional or stricter requirements or restrictions than this Agreement, the requirements or restrictions of Section 42 of the Tax Code will control and will become additional requirements or restrictions under this Agreement. When recorded against the Premises, this Agreement shall be a restrictive covenant with respect to the Premises as required under Section 42(h)(6)(B)(vi) of the Tax Code.

**SECTION 6.02** Compliance Term for Tax Credits. The Project must be in compliance with all provisions of Section 42 of the Tax Code, any and all related regulations, the provisions of this extended low income housing commitment, and HDC's monitoring procedures with respect to the Tax Credits, in each case during the term of the Compliance Period and the Extended Use Period (and otherwise as provided in this Agreement). For purposes of this Agreement:

- (a) "Compliance Period" shall mean the period commencing upon the Compliance Period Commencement Date and ending on the Compliance Period Termination Date.
- (b) "Compliance Period Commencement Date" shall mean the date that is the first day of the first taxable year of the Credit Period.
- (c) "Compliance Period Termination Date" shall mean the date that is 15 years after the Compliance Period Commencement Date.

- (d) "Credit Period" shall mean the period of 10 taxable years beginning with (i) the taxable year in which the building is placed in service, or (ii) at the election of the Sponsor, the succeeding taxable year, but only if the Project is a qualified low income housing project under Sections 42(g) and 142(d) of the Tax Code.
- (e) "Extended Use Period" shall mean the period commencing upon the Compliance Period Commencement Date and terminating on the date that is 30 years after the Compliance Period Commencement Date, unless the Project is acquired by foreclosure (or instrument in lieu of foreclosure), in which case the Extended Use Period shall terminate at the request of the party acquiring the Project after such foreclosure, unless the Secretary of the Treasury determines that the acquisition is part of an arrangement with the Sponsor, a purpose of which is to terminate the Extended Use Period.

**SECTION 6.03**      Waiver of Right to Petition HPD. The Sponsor agrees for itself, and its successors and assigns, that the Project shall continue to be subject to the provisions of this Agreement throughout the Extended Use Period and that it has waived any right to request that HPD find a person to acquire the Sponsor's interest in the low income portion of the Project after the 14<sup>th</sup> year of the Compliance Period.

**SECTION 6.04**      Applicable Fraction. The Applicable Fraction (as defined in this section) for the building (as defined in the Tax Code) in the Project for each taxable year in the Extended Use Period shall be not less than 100%, excluding any Superintendent Unit. "Applicable Fraction" shall have the meaning set forth in Section 42(c)(1)(B) of the Tax Code.

**SECTION 6.05**      Condition of Units. Each Tax Code Unit shall be Suitable for Occupancy and shall be used on other than a Transient Basis (each as defined in this section). "Suitable for Occupancy" shall mean habitable and suitable for occupancy in accordance with all applicable federal, state and local laws, rules and regulations, including but not limited to local health, safety and building codes. "Transient Basis" shall mean a unit with occupants who have not entered into a lease for their initial occupancy or who have entered into a lease that has an initial term of less than six months or such other period of occupancy as may be required under rules and regulations promulgated under Section 42 of the Tax Code; provided, however, (i) a unit shall be considered to be used on other than a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building (1) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of Section 103 of the Stewart B. McKinney Homeless Assistance Act in effect on December 19, 1989) to independent living within 24 months and (2) in which a governmental entity or qualified non-profit organization (as defined in Section 42(h)(5)(C) of the Tax Code) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing, and (ii) a single-room occupancy unit shall not be treated as being used on a transient basis merely because it is rented on a month-to-month basis.

**SECTION 6.06**      No Eviction or Increase in Gross Rent. No existing tenant of any unit may be evicted, other than for good cause, nor shall any increase in the gross rent with respect to such unit be permitted except as may otherwise be permitted by this Agreement. The foregoing shall continue to apply to tenants of Tax Code Units for a three-year period following the end of the Extended Use Period (and Section 2.02 shall apply as well).

**SECTION 6.07**      Section 8 Status. The Sponsor shall not refuse to lease to a holder of a

Section 8 voucher or certificate because of the status of the prospective tenant as such a holder.

**SECTION 6.08**      Enforcement by Certain Individuals. Any individual who meets the income limitation applicable to the Premises under the Tax Code (whether former, present or prospective occupants of the Premises) shall have the right to enforce in any state court the requirements and prohibitions of Section 42(h)(6)(B)(i) of the Tax Code. The Sponsor acknowledges that such individuals are intended third-party beneficiaries of the provisions of this section.

**SECTION 6.09**      No Retaliation. The Sponsor shall not retaliate against any tenant who notifies HDC or HPD of alleged violations of this Agreement.

**SECTION 6.10**      Transfers. No portion of a building (as defined in the Tax Code) in the Project shall be disposed of to any person unless all of the building is disposed of to such person. Transfers shall also be subject to Section 8.01.

## ARTICLE VII. MANAGEMENT

**SECTION 7.01**      Approval of Managing Agent and Management Agreement. The managing agent and any sub-agent (collectively, the "Managing Agent"), and the arrangements for management of the Project, including the management agreement or management plan (collectively, the "Management Agreement"), shall require the prior written approval of HDC (and HPD, if requested by HPD in writing). In particular, the Sponsor shall obtain HDC's (and HPD's, if applicable) written approval of the Managing Agent and the Management Agreement prior to both the Construction Loan Closing and, notwithstanding any prior approval, the Permanent Conversion. Any changes to the Managing Agent or changes to the Management Agreement, other than renewals of its term, shall require the prior written approval of HDC (and HPD, if requested by HPD in writing). All approvals of the Managing Agent and the Management Agreement shall not be unreasonably withheld. HDC approves BRP Management Group LLC as the Managing Agent for purposes of the Construction Loan Closing.

**SECTION 7.02**      Requirements for Management Agreement. The Management Agreement shall be acceptable to HDC (and HPD, if applicable) in all respects and shall provide (i) that it is subject to termination by the Sponsor on not more than 30 days' notice, without cause and without penalty, and (ii) that the Managing Agent shall carry fidelity insurance for the benefit of the Sponsor in the amount of no less than three months' gross rent for the Project.

**SECTION 7.03**      Removal of Managing Agent. At any time, HDC or HPD may determine, in either case in its sole discretion, that the Managing Agent is no longer acceptable (among other reasons, because the Project is not being operated in compliance with this Agreement or because the Managing Agent is not operating another HDC- or HPD-supervised project in proper compliance). If so, HDC or HPD may provide a written demand to the Sponsor to terminate the Management Agreement. HDC or HPD may also provide a period for the Sponsor to cure any non-compliance, in the sole discretion of HDC or HPD as applicable. Upon receipt of a demand to terminate the Management Agreement, the Sponsor shall do so immediately, and the existing management services shall be fully discontinued within a period of not more than 30 days from the Sponsor's receipt of HDC's or HPD's demand. In addition, the Sponsor shall make timely arrangements to have the continuing management of the Project approved in writing by HDC (and by HPD, if requested by HPD in writing) and shall submit such

arrangements to HDC (and HPD, if applicable) for prior review.

## **ARTICLE VIII. OWNERSHIP**

### **SECTION 8.01** Transfers of Project by Sponsor.

- (a) In General. The Sponsor covenants that it shall not sell, lease, sublease, convey, transfer or otherwise dispose of all or any portion of the Project (each, a "Transfer") without the prior written consent of HDC and HPD, which shall not be unreasonably withheld. As a condition to a Transfer of all or substantially all of the Project, the transferee shall be required to assume all of the Sponsor's obligations under this Agreement from the date of such Transfer and to execute any document that HDC or HPD shall reasonably require in connection with the assumption.
- (b) Residential Leases. This covenant shall not require HDC's or HPD's consent for the Sponsor to enter into leases with residential tenants or users of the Project, if such leases (i) are consistent with this Agreement and (ii) do not contain an option to acquire all or any portion of the Project while this Agreement is in effect.
- (c) Other Consents. Nothing contained in this Agreement shall affect any provision of the Loan Documents that requires the Sponsor to obtain the consent of the holder of the HDC Mortgage (which may be HDC or HPD) or any other person as a condition to a Transfer.
- (d) Foreclosure. This covenant shall not require HDC's or HPD's consent to a Transfer in connection with the foreclosure or deed in lieu of foreclosure of the HDC Mortgage or a comparable conversion of the Project. Any subsequent Transfer, however, shall require the prior written consent of HDC and HPD.

**SECTION 8.02** Non-Residential Lease Approval. The Sponsor shall obtain the prior written approval of HDC and HPD for all non-residential leases, subleases or occupancy agreements affecting any portion of the Project. An amendment of a non-residential lease, sublease or occupancy agreement that changes the permitted use or that otherwise alters a material term of the agreement shall also require the prior written consent of HDC and HPD. No portion of the Project shall consist of a store, a principal business of which is the sale of alcoholic beverages for consumption off-premises.

**SECTION 8.03** Interests in Beneficial Owner. Except as may be expressly permitted by this article, the Beneficial Owner covenants that it shall not permit any change to its ownership at any tier, including admissions, withdrawals and acquisitions of additional interests, without the prior written consent of HDC and HPD.

**SECTION 8.04** Interests in Tax Credit Investor. Notwithstanding the requirements of Section 8.03, and provided that the Tax Credit Investor is a passive investor in the Beneficial Owner or member thereof, transfers of (i) passive investment interests in the Tax Credit Investor and (ii) the Tax Credit Investor's passive investment interest in the Beneficial Owner or member thereof are permitted with written notice to HDC and HPD, so long as the manager, managing member or general partner of the Tax Credit Investor, or any transferee of the Tax Credit Investor's interest in the Beneficial Owner or member thereof, is an affiliate of, and is and remains controlled by or under common control with, The Goldman Sachs Group, Inc. Any

interest in the Beneficial Owner or member thereof of a special member or limited partner may be transferred only together with a permitted transfer of the interest of the manager, managing member or general partner of the Tax Credit 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.

**SECTION 8.05**      Interests in Legal Owner. The Legal Owner covenants that it shall not permit any change to its ownership at any tier, including admissions, withdrawals and acquisitions of additional interests, without the prior written consent of HDC and HPD.

**SECTION 8.06**      Previously Approved Entities; Estate Planning. Interests in the Beneficial Owner or the Legal Owner (in either case, at any tier) may be transferred to entities that have been previously approved in writing by HDC and HPD. Prior to any such transfer, prompt notice must be given to HDC and HPD, and the transferee must comply with the applicable HDC and HPD disclosure procedures. Interests in the Beneficial Owner may be transferred to immediate family members of any natural person with an indirect interest in the Beneficial Owner or trusts for the benefit of such immediate family members for estate planning purposes, but prior to any such transfer, the transferee must comply with the applicable HDC and HPD disclosure procedures.

**SECTION 8.07**      Death or Incapacity. A direct or indirect transfer of an ownership interest to an executor, administrator or conservator of a deceased or incapacitated individual shall require written notice to, but not the consent or approval of, HDC and HPD. A subsequent transfer by such executor, administrator or conservator shall be subject to this article, however.

**SECTION 8.08**      No Other Liens or Financing. While the HDC Mortgage is outstanding, the Sponsor covenants that it shall not incur any additional debt secured by all or part of the Project, or any other subordinate financing, except for (i) the Permitted Mortgages and (ii) as may have been expressly approved by HDC and HPD in writing. Except as expressly permitted in this Agreement, assignments, transfers, encumbrances, granting of participation interests, hypothecations, or pledges of interests (or proceeds of such interests) of any of the direct or indirect ownership interests in the Sponsor shall not be permitted without the prior written consent of HDC and HPD.

**SECTION 8.09**      No Purchase of Obligations. Neither the Sponsor nor any "related person" to the Sponsor, as defined in Section 144(a)(3) of the Tax Code, shall purchase Obligations (other than Pledged Bonds or Bank Bonds (each as defined in the Resolution)) in an amount related to the amount of the HDC Loan funded by the Obligations.

**SECTION 8.10**      No Distributions Upon Default. Upon written notice from HDC or HPD to Sponsor of (i) an Event of Default under this Agreement, or (ii) a material uncured default under any other Loan Document, the Sponsor covenants that it shall not make 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 cure of the Event of Default or default has been determined by HDC or HPD, as applicable.

## **ARTICLE IX. RECORDS AND REPORTING**

**SECTION 9.01**      Requests for Information. The Sponsor shall promptly furnish any reports, records, documents or information reasonably requested by HDC or HPD, in a form

satisfactory to HDC or HPD, as the case may be, with respect to the construction, marketing, occupancy, maintenance or operation of the Project.

**SECTION 9.02**      Financial Statements. Audited financial statements for the Project shall be prepared at least annually in accordance with generally accepted accounting principles. Financial statements may be modified in accordance with government auditing standards as set forth by the Comptroller General of the United States, to the extent and in a manner approved by HDC in its sole discretion (and by HPD in its sole discretion, if requested by HPD in writing).

**SECTION 9.03**      Retention of Records. The Sponsor shall maintain and keep current all books, documents, plans and records concerning the Project (the "Records"). The Sponsor shall retain (i) those Records pertaining to the rental or occupancy of each Tax Code Unit, and the rent roll for all units, for a minimum of six years after the end of the Occupancy Restriction Period and (ii) all other Records for a minimum of six years after the end of the fiscal or calendar year for which the Record was produced. Upon reasonable notice, HDC and HPD may, during normal business hours, (x) audit and examine the Records and (y) inspect the buildings, grounds, equipment and offices of the Project. The Sponsor shall use its best efforts to facilitate inspections.

**SECTION 9.04**      Annual Tax-Exempt Obligations Certification. The Sponsor 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 the Secretary of the Treasury shall prescribe, an annual certification (IRS Form 8703, as may be amended) as to whether the Project continues to comply with the requirements of Section 142(d)(7) of the Tax Code. Any failure to submit this certification shall not affect the exclusion from gross income for purposes of federal income taxation of interest on the Obligations but shall subject the Sponsor and/or such operator to a penalty pursuant to Section 6652(j) of the Tax Code.

**SECTION 9.05**      Annual Tax Credits Certification. On an annual basis, the Sponsor shall submit to HDC as HPD's designee (i) a certified rent roll for the Premises and (ii) a written certification that the Tax Code Units are owned and operated in compliance with the Tax Code.

**SECTION 9.06**      Notice of Material Non-Compliance. The Sponsor covenants to notify HDC and HPD promptly if the Sponsor discovers any material non-compliance with any restriction or covenant in this Agreement, including any occurrence or event that adversely affects (i) the exclusion from gross income for purposes of federal income taxation of interest on the Obligations or (ii) the Tax Credits.

## **ARTICLE X. ENFORCEMENT**

**SECTION 10.01**      Events of Default; Remedies.

- (a) In the event of a breach of any of the covenants or agreements contained in this Agreement, either HDC or HPD may, by written notice to all parties, declare an "Event of Default". If the Credit Instrument has not been released, notice of an Event of Default shall be given to the Credit Provider as well. Upon the occurrence of an Event of Default, HDC and HPD shall have the right to take one or more of the following actions:

- (i) Institute and prosecute any proceeding for an injunction or for specific

performance of the Sponsor's obligations under this Agreement.

- (ii) Extend the term of this Agreement by the period of non-compliance upon the recording of an appropriate document, executed solely by HDC and HPD, against the Premises. The period of non-compliance shall be presumed to be the period running from the date of this Agreement to the date that HDC or HPD declares an Event of Default, which presumption may be rebutted by the Sponsor.
  - (iii) Upon written notice of HDC or HPD, prohibit the Sponsor and/or any of its principals from doing business with HDC or HPD, as the case may be, for a period of not less than three years from the date of violation. This prohibition shall not extend to any as-of-right benefits.
  - (iv) Cure the violation and charge the Sponsor for any costs or expenses incurred to remedy the violation plus interest at the Default Rate from the date of demand until paid.
  - (v) Rent any un-leased or vacant unit in order to comply with this Agreement (in such event, HDC and HPD shall use reasonable efforts to obtain the highest rent permitted by this Agreement).
  - (vi) Prohibit the occupancy of any unoccupied unit in order to comply with this Agreement.
  - (vii) Prohibit distributions to partners, members or shareholders, as applicable, of the Sponsor and/or take any action to seek restitution to the Project's account for any distributions made in violation of this Agreement, if the distribution was made after notice was given pursuant to Section 8.10.
  - (viii) Declare an event of default under any Loan Document and pursue any applicable remedies, including commencing a foreclosure of the HDC Mortgage.
  - (ix) Require the removal of any partner, member or shareholder, as applicable, responsible for the violation.
  - (x) Seek appointment of HDC, HPD or a receiver to take possession of and operate the Project, collect all rents, and pay all necessary costs of the Project in accordance with the terms of this Agreement and any other Loan Documents, until the Sponsor has cured the violation and given satisfactory evidence that it can operate the Project in compliance with this Agreement.
  - (xi) Seek any other relief that may be appropriate or desirable at law or in equity.
- (b) In the event of a threatened breach of any of the covenants or agreements contained in this Agreement, HDC and HPD shall have the right to the remedy described in paragraph (a)(i) above.

**SECTION 10.02**      Cure Period; Waiver. Either HDC or HPD, with the prior written consent of the other agency, but otherwise in the sole discretion of HDC or HPD, may by written notice to all parties to this Agreement, (i) give the Sponsor a period of up to 30 days to cure an Event of Default (provided the Event of Default can be cured without affecting the rights of any bona fide tenants who have executed leases with the Sponsor) or (ii) waive an Event of Default. If the Credit Instrument has not been released, written notice of any cure period or waiver shall also be given to the Credit Provider. HDC and HPD agree that any cure of any Event of Default



made or tendered by one or more of the Sponsor's members, partners or shareholders, as applicable, shall be deemed to be a cure by the Sponsor and shall be accepted or rejected on the same basis as if made or tendered by the Sponsor.

**SECTION 10.03**      Reporting of Non-Compliance to IRS. The Sponsor acknowledges that actions taken or authorized to be taken by HDC or HPD following an Event of Default are in addition to HDC's obligations under the Tax Code to report acts of non-compliance to the Internal Revenue Service pursuant to HDC's monitoring procedures with respect to the Tax Credits.

**SECTION 10.04**      Indemnity. The Sponsor agrees to pay all reasonable costs and expenses of HDC and HPD (including fees of attorneys and experts), in addition to any other loss, claim, damage or liability that may be incurred by HDC or HPD or awarded by any court, arising out of any proceeding or action that is brought or taken in connection with this Agreement (including those brought or taken by HDC, HPD or the Sponsor). The Sponsor shall pay any such amount regardless of whether a legal action is finally decided by a court. The Sponsor shall not be obligated to pay any costs or expenses of HDC or HPD that are attributable to any action or proceeding brought by HDC or HPD in bad faith. If the Sponsor fails to pay any amount due under this section within 10 days of demand by HDC or HPD, the unpaid amount shall bear interest at the Default Rate from the date of demand until paid.

**SECTION 10.05**      Non-Recourse Liability; Carve-Out. Except as provided in this section, in enforcing this Agreement, neither HDC nor HPD will seek a money judgment against the Sponsor or any related officer, director, member, partner or shareholder. HDC and HPD may seek a money judgment against the Beneficial Owner and its members, partners or shareholders, as applicable, in order to enforce the obligations or liabilities of the Beneficial Owner and its present or future members, partners or shareholders pursuant to Section 10.01(a)(iv) (concerning the Sponsor's responsibility for the costs and expenses of HDC or HPD in curing any violations of this Agreement, and any interest on such amounts), Section 10.01(a)(vii) (concerning the prohibition on distributions after default) or Section 10.04 (concerning the Sponsor's indemnification of HDC and HPD). HDC and HPD may also seek a money judgment against the Beneficial Owner and its members, partners or shareholders to the extent of any deficiency, loss, damage or non-compliance with this Agreement resulting from (i) fraud, (ii) misappropriation or diversion of funds or other property or (iii) intentional damage to the Project inflicted by the Beneficial Owner or any of its members, partners, shareholders, agents or employees. HDC and HPD agree that they will seek to collect any money judgment obtained against the Beneficial Owner's members, partners or shareholders only from (a) their capital contributions actually paid in at the time HDC or HPD seeks a judgment, or to be paid in pursuant to the Beneficial Owner's organizational documents, and (b) any distributions to such members, partners or shareholders made in violation of the HDC Act or this Agreement. The provisions of this section shall not affect the validity or enforceability of any provision of the HDC Mortgage or any guaranty or indemnity agreement made in connection with the issuance of the Obligations, the HDC Commitment or the funding of the HDC Financing.

**SECTION 10.06**      Cumulative Rights and Remedies. All rights and remedies of HDC and HPD shall be cumulative and may be exercised singularly or concurrently, at HDC's or HPD's option. The exercise or enforcement of any one right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other right or remedy. The enumeration of rights and remedies in this Agreement shall not preclude the exercise or enforcement by HDC or HPD of any other rights or remedies available to HDC or HPD.

**SECTION 10.07** Cross-Default under Mortgages. The HDC Mortgage shall each provide that an Event of Default under this Agreement shall also be a default under the mortgages. So long as this Agreement is in effect, any mortgage on the Project funded by HDC or HPD shall provide that an Event of Default under this Agreement shall be a default under the mortgage and that HDC or HPD, as applicable, or the holder of the mortgage if not HDC or HPD, may prosecute a foreclosure in accordance with the mortgage, subject to any other written agreements that may have been made by HDC or HPD and any other holder of the mortgage.

**SECTION 10.08** Prior Owner Liability. The Sponsor (including any subsequent owner of the Project) shall be liable for (i) the breach of any obligation or any Event of Default under this Agreement caused by any prior owner and (ii) any related payment or indemnification obligation. During any period in which the Credit Provider or its designee owns the Project, however, or if any subsequent owner acquires the Project from the Credit Provider or its designee, neither the Credit Provider, its designee, nor the subsequent owner shall be liable for the breach or Event of Default of a prior owner, or any related payment or indemnification obligation. In such a case, the owner of the Project at the time of the breach or Event of Default shall remain liable for any and all related damages. Any party seeking to collect damages from the liable prior owner in such a case shall, to that extent, have no recourse to the Project and no right to levy against or otherwise collect on any judgment from the Project. The liable prior owner shall bear no liability under this Agreement, however, for any damages caused by any subsequent breach or Event of Default occurring after the entity no longer owned the Project.

**SECTION 10.09** Enforcement by Credit Provider. Except as expressly provided in the Servicing and Release Agreement, the Credit Provider shall not be obligated or have any right to enforce this Agreement.

## ARTICLE XI. MISCELLANEOUS

### **SECTION 11.01** Fees.

- (a) Tax Credits Monitoring Fee. Pursuant to the Tax Code, HDC is entitled to a reasonable fee for monitoring the Project's compliance with respect to the Tax Credits. During the Compliance Period, the Beneficial Owner shall pay to HDC an annual 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 (the "Building Fee"); and (ii) 0.75% of the maximum annual tax credit rent for the Tax Code Units, subject to an annual cap of \$12,500, if there are 150 or fewer Tax Code Units in the Project, or \$17,500, if there are more than 150 Tax Code Units in the Project (such fee, the "Unit Fee", and together with the Building Fee, the "Tax Credits Monitoring Fee"). If the HDC Loan is paid in full prior to the end of the 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 Tax Credits Monitoring Fee at the time of the prepayment for each year remaining in the Compliance Period. After such a payment, no additional Tax Credits 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 the HDC Loan, 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 (in either case, taking the sum of all of the units identified across the multiple Projects in Schedule B) , 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 shall be in addition to the monitoring fee required by paragraph (b) above. The compliance escrow shall be applied ratably by HDC 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.

**SECTION 11.02** Equal Opportunity. The Sponsor 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.

**SECTION 11.03** Waivers. No delay or failure to act or give notice shall waive any provision of this Agreement or preclude the enforcement of any rights or remedies of HDC or HPD. All waivers must be in writing and must be signed by the waiving parties. No waiver shall apply to any instance other than the specific instance in connection with which it is delivered.

**SECTION 11.04** Amendments. This Agreement shall not be amended or otherwise modified except by an instrument in recordable form signed by all of the parties. This Agreement shall not be amended without first obtaining, if required by HDC in its sole discretion, an opinion of Bond Counsel that such amendment will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Obligations. The Sponsor shall agree to amend this Agreement if any amendments are required to obtain mortgage insurance for the HDC Mortgage. In addition, if after the execution of this Agreement, there are amendments to (i) the HDC Act, (ii) the Tax Code or (iii) Rent Stabilization, or any related rules or regulations, and if such amendments are applicable to the Project and inconsistent with this Agreement, as determined by HDC and HPD, then upon written request of HDC and HPD, this Agreement shall be amended to the extent necessary.

**SECTION 11.05** Severability. The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions of the Agreement.

**SECTION 11.06** Action and Consents. Except where the granting of HDC's or HPD's consent or approval is expressly stated to be in HDC's or HPD's discretion (or words of similar import), HDC, HPD and the Sponsor shall use reasonable promptness, reasonable diligence, reasonable judgment and reasonable discretion in exercising any duty or right, providing any consent or approval, or making any determination required by this Agreement. HDC, HPD and

the Sponsor shall use their reasonable efforts to effectuate the purposes of this Agreement.

**SECTION 11.07**      Successors and Assigns. All references in this Agreement to any party, entity or person shall be deemed to include the successors and assigns of the party, entity or person. Successors to HDC or HPD shall include any body, agency or instrumentality of the State or the City that succeeds to the powers, duties or functions of HDC or HPD, as the case may be.

**SECTION 11.08**      Covenants Run with the Land. This Agreement shall be recorded against the Premises. The parties agree that, during the term of this Agreement, all provisions shall run with the Premises and shall be enforceable by both HDC and HPD against the Sponsor and its successors, assigns, heirs, grantees and lessees. The parties declare their understanding and intent that the burden of the covenants set forth in this Agreement touch and concern the land in that the Sponsor's legal interest in the Project is rendered less valuable by them. The parties further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by people and families for whom the ordinary operations of private enterprise cannot provide an adequate supply of safe, sanitary and affordable housing, the intended beneficiaries of such covenants. During the term of this Agreement, the covenants of the Sponsor in this Agreement are enforceable by both HDC and HPD as contract beneficiaries whether or not the Sponsor is or remains indebted to HDC or HPD.

**SECTION 11.09**      Notices. Any notice, demand, direction, request or other instrument authorized or required to be given or filed under this Agreement shall be deemed to have been sufficiently given or filed if and when sent (i) by certified mail, return receipt requested, (ii) by fax or other electronic means with notice of receipt or (iii) by hand delivery. All notices sent by mail or hand delivery shall be sent to the addresses given above or to any other address of any party that it has notified the other parties of in writing. Notices to HDC or HPD shall be sent to the attention of the General Counsel. Notices required to be given to the Credit Provider shall be sent to Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019, Attention: Aviva Yakren, Esq. HDC and HPD shall make an effort to send copies of all notices that are sent to the Beneficial Owner to the Beneficial Owner's counsel at Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, NY 10022, Attention: Martin Siroka, Esq. and to the Tax Credit Investor at c/o Goldman Sachs Group, Inc., 200 West Street, New York, NY 10282, Attention: Urban Investment Group Portfolio Manager and to the Tax Credit Investor at c/o Goldman Sachs Group, Inc., 200 West Street, New York, NY 10282, Attention: Yarojin Robinson and to Jones Day, 100 High Street, Boston, MA 02110, Attention: John D. Kelley, Esq. Failure to send any such copy, however, shall not affect the effectiveness of the notice.

**SECTION 11.10**      Governing Law; Jurisdiction; Service of Process. The parties unconditionally and irrevocably agree that this Agreement 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. The parties unconditionally and irrevocably accept the jurisdiction of any state or federal court sitting in the State and New York County or the county in which the Project or any portion of the Project is located, waive any objection to the bringing of an action, suit or other legal proceeding in such jurisdiction, and consent to venue in any such court. The parties agree that service of process may be by hand or certified mail, return receipt requested or otherwise as permitted by law. The Beneficial Owner and the Legal Owner each irrevocably consent to the service of any and all process in any such action, suit or proceeding to its then-current address or such other address permitted by law as may be agreed to in writing by HDC and

HPD. HDC's designated agent for service of process shall be its General Counsel at its offices. HPD's designated agent for service of process shall be its General Counsel at its offices.

**SECTION 11.11**      Loan Agreement. The Beneficial Owner shall pay all amounts due to HDC pursuant to the Loan Agreement. If the Beneficial Owner does not pay any such amounts, HDC may declare an Event of Default under this Agreement.

**SECTION 11.12**      Counterparts. This Agreement may be executed in counterparts, and all counterparts shall collectively constitute a single instrument. An executed signature page to one counterpart may be attached to another counterpart that is identical (except for additional signature pages) without impairing the legal effect of the signatures. Any counterpart containing the signatures of each of the parties shall be sufficient proof of this Agreement.

**SECTION 11.13**      Investigations. The Sponsor shall be bound by the provisions of the investigations clause attached as Schedule D.

**SECTION 11.14**      Further Assurances. The Sponsor shall, at the Sponsor's expense, promptly execute and deliver any further documents, and take any further action, as may be reasonably requested by HDC or HPD to ensure that the Project complies with all applicable provisions of the Tax Code and this Agreement.

**SECTION 11.15**      Concerning the Legal Owner.

- (a)      Nominee Agreement. The Legal Owner and the Beneficial Owner each represent that they have delivered to HDC and HPD a true copy of the Nominee Agreement and they will deliver to HDC and HPD promptly after execution a true copy of the Second Nominee Agreement, and each agrees that it shall observe the terms of the Nominee Agreement and the Second Nominee Agreement, applicable. The Legal Owner and the Beneficial Owner agree that the Nominee Agreement and/or the Second Nominee Agreement shall not be amended without the prior written consent of HDC and HPD, which shall not be unreasonably withheld. Any notice of a default or event of default required under the Nominee Agreement or the Second Nominee Agreement shall simultaneously be provided to HDC and HPD, and any default that remains uncured beyond the applicable cure period shall constitute a breach under this Agreement and shall be subject to the enforcement procedures of this Agreement.
- (b)      Right to Enter and Cure. Notwithstanding anything contained in the Nominee Agreement to the contrary, the Nominee Agreement shall be deemed to provide (if it does not already provide) that if there is an event of default under any City, State or federal loan document, including but not limited to any mortgage, regulatory agreement or financing commitment, the Legal Owner shall have the right to enter the Premises to cure the default as agent for and on behalf of the Beneficial Owner, unless the Beneficial Owner is acting diligently to cure the default.
- (c)      Must Remain in Project for Term of Mortgages. The Legal Owner (including any successor or permitted assign) shall remain in the Project's ownership structure for the entire term of the HDC Mortgage.

**SECTION 11.16**      HireNYC. The Sponsor shall comply, and shall cause the Project's general contractor and all applicable subcontractors to comply, with the requirements of

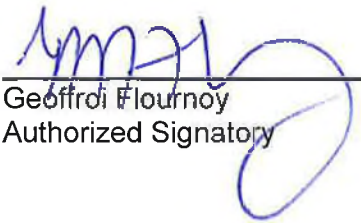
HireNYC as more particularly set forth in the HireNYC Rider attached as Schedule E and made a part of this Agreement, as may be modified by the City from time to time.

[Signatures follow]

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

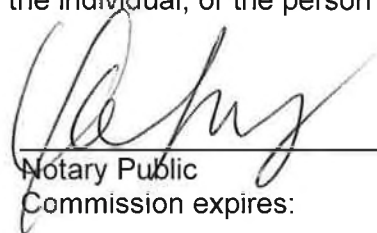
**CJ PLAZA TWO LLC,**  
a New York limited liability company

By:

  
\_\_\_\_\_  
Geoffroi Flourney  
Authorized Signatory

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


On the 21 day of December, 2016, before me, the undersigned, a notary public in and for said state, personally appeared **Geoffroi Flourney**, 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:

TARA STUCKEY  
Notary Public-State of New York  
No. 01ST6080866  
New York County EXP 9/23/2018


**BRP JAMSTA Two TC Owner LLC**  
a New York limited liability company

By:

  
\_\_\_\_\_  
Geoffroi Flournoy  
Authorized Signatory

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

On the 21 day of December, 2016, before me, the undersigned, a notary public in and for said state, personally appeared **Geoffroi Flournoy**, 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:

TARA STUCKEY  
Notary Public-State of New York  
No. 01ST6080866  
New York County EXP 9/23/2018



JAMSTA II HOUSING DEVELOPMENT  
FUND CORPORATION

By:

Name: Lee Warshavsky

Title: Secretary and Treasurer

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

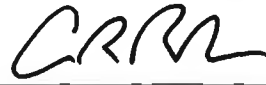
On the 21 day of December, 2016, before me, the undersigned, a notary public in and for said state, personally appeared **Lee Warshavsky**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public  
Commission expires:

TARA STUCKEY  
Notary Public-State of New York  
No. 01ST6080866  
New York County EXP 9/23/2018

NEW YORK CITY HOUSING  
DEVELOPMENT CORPORATION

By:



Anthony R. Richardson  
Senior Vice President

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

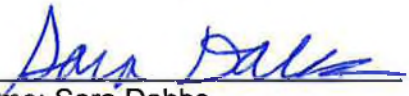
On the 21 day of December, 2016, before me, the undersigned, a notary public in and for said state, personally appeared **Anthony R. Richardson**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged 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:

TARA STUCKEY  
Notary Public-State of New York  
No. 01ST6080866  
New York County EXP 9/23/2018


THE CITY OF NEW YORK, acting by and  
through its DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT

By:

  
Name: Sara Dabbs  
Title: Executive Director,  
Multifamily New Construction

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

On the 21<sup>st</sup> day of December, 2016, before me, the undersigned, a notary public in and for said state, personally appeared **Sara Dabbs**, 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:

PAUL ANGEL ORTA  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02080291697  
Qualified in Kings County  
Commission Expires Oct. 21, 2017

APPROVED AS TO FORM BY STANDARD  
TYPE OF CLASS FOR USE UNTIL JUNE 30, 2017:

By: /s/ Amrita Barth  
Acting Corporation Counsel

## **SCHEDULE A**

### **LEGAL DESCRIPTION OF PREMISES**

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

BEGINNING at a point on the southerly side of Archer Avenue, said point being distant 384.67 feet East of the intersection of the easterly side of Sutphin Boulevard with the southerly side of Archer Avenue;

RUNNING THENCE easterly along the southerly side of Archer Avenue, 20.21 feet to a point;

THENCE easterly continuing along the southerly side of Archer Avenue, 161.57 feet to a point;

THENCE southerly at right angles with Archer Avenue, 100.08 feet (per Survey)- 100 feet per Deed) to a point;

THENCE westerly parallel with Archer Avenue 172.00 feet to a point;

THENCE westerly parallel with Archer Avenue, 9.63 feet to a point;

THENCE northerly parallel with Sutphin Boulevard, 101.82 feet to the point or place of BEGINNING.

## SCHEDULE B

### DISTRIBUTION OF UNITS AND INITIAL RENTS

Project: **The Crossing at Jamaica Station – Mid-Rise**  
147-34 Archer Avenue  
Block 9998, Lot 95  
Queens, New York 11435

The Project shall contain 130 units in total (including 1 Superintendent Unit).

#### Tax Code Units

##### 40% of AMI Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	2	\$596 (40% of AMI)	\$548 (37% of AMI)
1-Bedroom	9	\$640 (40% of AMI)	\$589 (37% of AMI)
2-Bedroom	14	\$775 (40% of AMI)	\$713 (37% of AMI)
3-Bedroom	1	\$888 (40% of AMI)	\$817 (37% of AMI)
TOTAL	26		

##### 60% of AMI Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	8	\$913 (60% of AMI)	\$865 (57% of AMI)
1-Bedroom	28	\$980 (60% of AMI)	\$929 (57% of AMI)
2-Bedroom	34	\$1,183 (60% of AMI)	\$1,121 (57% of AMI)
3-Bedroom	8	\$1,359 (60% of AMI)	\$1,289 (57% of AMI)
TOTAL	78		

#### Non-Tax Code Income-Restricted Units

##### Permanently Affordable 125% of AMI Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	1	\$1,321 (100% of AMI)	\$1,321 (100% of AMI)
1-Bedroom	5	\$1,660 (100% of AMI)	\$1,660 (100% of AMI)
2-Bedroom	7	\$1,999 (100% of AMI)	\$1,999 (100% of AMI)
3-Bedroom	2	\$2,302 (100% of AMI)	\$2,302 (100% of AMI)
TOTAL	15		

**SCHEDULE B (continued)****Non-Permanently Affordable 125% of AMI Units**

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	1	\$1,321 (100% of AMI)	\$1,321 (100% of AMI)
1-Bedroom	4	\$1,660 (100% of AMI)	\$1,660 (100% of AMI)
2-Bedroom	4	\$1,999 (100% of AMI)	\$1,999 (100% of AMI)
3-Bedroom	1	\$2,302 (100% of AMI)	\$2,302 (100% of AMI)
TOTAL	10		

**Legal Rents for Units Initially Occupied by Tenants with Section 8 Vouchers or Certificates**

At the initial rent-up of the Project, the Sponsor shall determine the units, if any, that will be occupied by Section 8 tenants with vouchers or certificates. For any such unit, the initial Legal Rent shall not exceed the amount given in this section.

The parties shall amend this Agreement at the Permanent Conversion to complete this section by documenting the number of units, if any, in each category below and specifying the units.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>
Studio	TBD	\$[•] (90% of FMR)
1-Bedroom	TBD	\$[•] (90% of FMR)
2-Bedroom	TBD	\$[•] (90% of FMR)
3-Bedroom	TBD	\$[•] (90% of FMR)
TOTAL	TBD	

**Rent Increases at Initial Rent-Up**

In certain circumstances, Legal Rents and Actual Rents specified in this Schedule B may be increased at initial rent-up with the prior written consent of HDC and HPD (and at the sole discretion of HDC and HPD). In the case of any increase, the parties shall amend this Agreement at the Permanent Conversion to document Schedule B as modified.

## SCHEDULE C

### RENT REGISTRATION FORM



State of New York • Division of Housing and Community Renewal Processing Services Unit, Hampton Plaza,  
38-40 State Street, Albany, NY 12207 Visit DHCR website at: [www.dhcr.state.ny.us](http://www.dhcr.state.ny.us)

#### INITIAL APARTMENT REGISTRATION

NOTE: All information entered on this form must be valid for the date this apartment became subject to Rent Stabilization (this is the date entered in Item 1)

1. Date apartment became subject to Rent Stabilization ____/____/____ Month Day Year		2. Date of this Initial Registration ____/____/____ Month Day Year		14. Legal Regulated Rent on Date in Item 1 \$ _____ per <input type="checkbox"/> Month <input type="checkbox"/> Week	
3. Building ID Number <input type="checkbox"/> MDR <input type="checkbox"/> ETPA <input type="checkbox"/> Hotel		15a. Actual Rent Paid on Date in Item 1 (enter only if different than Legal Regulated Rent in item 14 above) \$ _____ per <input type="checkbox"/> Month <input type="checkbox"/> Week			
4. Street Address _____				15b. Reason for difference: <input type="checkbox"/> Appliance Surcharge <input type="checkbox"/> DHCR Rent Reduction Order <input type="checkbox"/> Preferential Rent <input type="checkbox"/> Section 8 <input type="checkbox"/> SCRIE/DRIE <input type="checkbox"/> Other (specify): _____	
5. City, Town or Village NY		6. Zip Code _____		16a. Reason for Initial Apartment Registration (check one) <input type="checkbox"/> New Construction <input type="checkbox"/> Major Rehab <input type="checkbox"/> Late Registration <input type="checkbox"/> Apartment Vacant at time of previous Initial Registration <input type="checkbox"/> Apartment Previously under Mitchell-Lama <input type="checkbox"/> Apartment Previously Rent Controlled \$ _____ Rent \$ _____ MCR \$ _____ MBR Date Rent Controlled tenant vacated ____/____/____ <input type="checkbox"/> Other (specify): _____	
7. County		8. Apartment Number		9. Total # of Rooms in Apt. _____	
10. Tenant Name(s) LAST _____ FIRST _____ MI _____					
11. Lease Dates in effect on Date in Item 1 above Began on ____/____/____ Expires on ____/____/____ Month Day Year Month Day Year					
12. Equipment and services included in rent (check as many as apply) <input type="checkbox"/> Stove <input type="checkbox"/> Refrigerator <input type="checkbox"/> Dishwasher <input type="checkbox"/> Blinds/Shades <input type="checkbox"/> Furniture <input type="checkbox"/> Maid Service <input type="checkbox"/> Linen Service <input type="checkbox"/> Room A/C (No. of units) _____ <input type="checkbox"/> Other (specify): _____					
13. Equipment and services for which a separate charge is collected by owner (check as many as apply) <input type="checkbox"/> Electricity/AC <input type="checkbox"/> Maid Service <input type="checkbox"/> Linen Service <input type="checkbox"/> Furniture <input type="checkbox"/> Master TV Antenna <input type="checkbox"/> Recreational Facilities <input type="checkbox"/> Garage/Parking \$ _____ per month each car Separate Lease: From ____/____/____ To ____/____/____ Month Day Year Month Day Year <input type="checkbox"/> Other (specify): _____					
16b. Initial Apartment Registration Status <input type="checkbox"/> Rent Control <input type="checkbox"/> Vacant but Previously Rent Stabilized <input type="checkbox"/> Stabilized-ETPA <input type="checkbox"/> 421-a Market Rate Unit <input type="checkbox"/> 421-a Income Restricted Unit _____ % Area Median Income This 421-a Income Restricted Unit is reserved for individuals or families whose incomes at the time of initial occupancy do not exceed the above % of the area median income, as adjusted for family size. <input type="checkbox"/> Exempt (if exempt box is checked, one reason MUST be selected below): <input type="checkbox"/> Commercial/Professional <input type="checkbox"/> Owner Occupied/Employee <input type="checkbox"/> Not Prime Residence/ Not for Profit <input type="checkbox"/> Coop/Condo Occupied by Owner or Non-Protected Tenant Expiration of: <input type="checkbox"/> Section 11-243 <input type="checkbox"/> Section 421-a <input type="checkbox"/> Section 603 or 11-244 (J51)					

17. Owner/Managing Agent (check one) <input type="checkbox"/> Owner <input type="checkbox"/> Managing Agent <input type="checkbox"/> Coop/Condo Owner		NOTE: If unit is coop/condo, enter information for unit owner. In all other cases, enter information for building owner or building managing agent.
LAST NAME FIRST NAME MI.		
Street Address Apartment/Room Number		
City, Town or Village State Zip Code		

PARA INFORMACION EN ESPAÑOL, VEA RESPALDO DE ESTA FORMA. IMPORTANT TENANT INFORMATION ON OTHER SIDE OF FORM  
BR-1(g) 12/07 Copy 1 - DHCR Copy 2 - OWNER Copy 3 - TENANT (save for your records)

## **SCHEDULE D**

### **INVESTIGATIONS CLAUSE**

a. The parties to this Agreement agree to 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.

b. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of 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 thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State; or

c. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of 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 governing the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

d. The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

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

f. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

1. The disqualification for a period not to exceed five years from the date of an adverse determination of any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

2. The cancellation or termination of any and all 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;



monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

g. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Sections (g)(1) and (g)(2). He or she may also consider, if relevant and appropriate, the criteria established in Sections (g)(3) and (g)(4) in addition to any other information which may be relevant and appropriate:

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

2. The relationship of the person who 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.

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section (f) above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section (d) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

h. 1. The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

2. The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

3. The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

4. The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

i. In addition to and notwithstanding any other provision of this agreement the commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three days written notice in the event contractor fails to promptly report in writing to the Commissioner of Investigation of the City any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the contractor, or affecting the performance of this contract.

## **SCHEDULE E**

### **HireNYC**

The following HireNYC Rider applies to the Owner, the general contractor, and all subcontractors for the project with contracts of \$500,000 or more and shall be included in the construction contract with the general contractor and all such subcontracts. All references to "Covered Party(ies)" shall be deemed to apply to the Owner, the general contractor, and all such subcontractors responsible for job posting during the project, as described below.

### **HIRING AND EMPLOYMENT RIDER**

#### **Introduction**

This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by law. In general, the HireNYC process under this Rider requires Covered Parties to enroll with the HireNYC portal for the City of New York (the "City") found within the Department of Small Business Services' ("SBS") website, to disclose all new entry to mid-level job opportunities (as defined below) that are created by the project and located in New York City, ("Covered Jobs") and to evaluate or interview qualified candidates from HireNYC for Covered Jobs. Entry to mid-level jobs shall mean jobs requiring no more than an associate degree, as provided by the New York State Department of Labor (see Column F of <https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls>).

#### **A. Enrollment**

Each Covered Party must be enrolled with the HireNYC system, found at [nyc.gov/hirenyc](https://nyc.gov/hirenyc). The Owner and general contractor shall each enroll within thirty (30) days after the date of construction closing. Subcontractors must be enrolled by the earlier of (i) fifteen (15) days after the full execution of its subcontract or (ii) the start of work under such subcontract

The Owner or general contractor shall engage with SBS to create a project work plan that details the planned subcontracting engagements and any expected hiring needs. The work plan should include information such as projected start dates for subcontractors, the anticipated schedule of initiating the hiring process for any positions they might hire for, and contact information for all Covered Parties.

The Owner and general contractor may designate a project coordinator to act as the main contact for the Covered Parties with regard to the matters contained in this Rider. The role of the project coordinator will be to manage the administrative enrollment requirements of subcontractors

and to facilitate communication between the Covered Parties and SBS.

## **B. Recruitment Requirements**

Once enrolled in HireNYC, the Covered Parties shall update the HireNYC portal with a list of all Covered Jobs as they become known. The Covered Parties or project coordinator must request candidates through the HireNYC portal to fill any Covered Jobs no less than three weeks prior to the intended first day of employment for each new position, or as otherwise negotiated with SBS, whose consent will not be unreasonably withheld, and must also update the HireNYC portal as set forth below. If an employee is needed in an unexpected situation to keep a project on schedule, the Covered Party must notify SBS of this need and if SBS is not able to refer a candidate within three (3) business days, the Covered Party may proceed without further consideration.

After enrollment and submission of relevant information through the HireNYC portal by Covered Parties or the project coordinator, SBS will work directly with the hiring manager for each Covered Party to develop a recruitment strategy for Covered Jobs. HireNYC will screen applicants based on employer requirements and refer qualified applicants to the appropriate Covered Party for evaluation or interviews. The Covered Parties must evaluate or interview referred applicants whom it believes are qualified. These requirements do not limit the Covered Party's ability to work with community partners who may also refer candidates for job opportunities, to assess the qualifications of prospective workers, or to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require a Covered Party to employ any particular worker or to limit consideration to the prospective employees referred by HireNYC.

In addition, this Rider shall not apply to positions that a Covered Party intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York or to positions covered by Collective Bargaining Agreements or Project Labor Agreements. Covered Parties shall not be required to report such openings with HireNYC. However, Covered Parties shall enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

## **C. Reporting Requirements**

After completing an evaluation or interview of a candidate referred by HireNYC, the Covered Party or project coordinator must provide feedback via the portal to indicate which candidates were evaluated or interviewed and hired, if any. For any individual hired through HireNYC, the Covered Party or project coordinator shall provide the expected start date, wage, and hours expected to work. The Covered Party or project coordinator shall provide such information on a monthly basis through the HireNYC portal for any candidates referred by HireNYC that are evaluated, interviewed and/or hired in a particular month.

In the event a Covered Party does not have any Covered Jobs in any given year, the Covered

Party or project coordinator shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

Covered Parties or the project coordinator shall report to the City all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule. In addition, Covered Parties shall comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

#### **D. Audit Compliance**

Covered Parties shall permit the New York City Department of Housing Preservation and Development ("HPD") to inspect any and all records concerning or relating to job openings or the hiring of individuals for Covered Jobs. Covered Parties shall retain all such records for one (1) year from the date of contract completion and shall permit an inspection by HPD within seven (7) business days of the request.

#### **E. Other Hiring Requirements**

Covered Parties shall comply with all federal, state, and/or local hiring requirements as may be set forth elsewhere in this Agreement or other project documents.