

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

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

1. Check the appropriate box(es) below based on the nature of the amendment modification requested:
Amendment to modify the existing BCA: [check one or more boxes below]
 ✓ Add applicant(s) ☐ Substitute applicant(s) ☐ Remove applicant(s) ☐ Change in Name of applicant(s)
Amendment to reflect a transfer of title to all or part of the brownfield site
1a. A copy of the recorded deed must be provided. Is this attached? ☑ Yes ☐ No1b. ☐ Change in ownership ☑ Additional owner (such as a beneficial owner)
If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See http://www.dec.ny.gov/chemical/76250.html
Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [Complete Sections I and V below and Part II]
Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [Complete Section I and V below and Part II]
Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY: Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.
Other (explain in detail below)
2. Required: Please provide a brief narrative on the nature of the amendment:
The limited purposes of the requested amendment are to: (a) add the applicable HDFC as an Applicant and Owner (Nominal) of Block 15843, Lots 1001, 1002, 1003, and 1004; and (b) provide the Regulatory Agreements to complete the request made in the original Application for a determination of eligibility for qualified tangible property credits.

February 2022

^{*}Please refer to the attached instructions for guidance on filling out this application*

^{*}Submission of a full BCP application will be required should this application be determined to be a major amendment. If the amendment involves more than an insignificant change in acreage, applicants are encouraged to consult with the DEC project team prior to submitting this application.*

Section I. Current Agreement In	formation	
BCP SITE NAME: Former Penir	nsula Hospital Site	BCP SITE NUMBER: C241200
NAME OF CURRENT APPLICAN	T(S):EC A1 Limited Pa	artnership, EC A1 Commercial LLC, et al. (see attached list)
INDEX NUMBER OF AGREEMEN	_{IT:} C241200-08-	DATE OF ORIGINAL AGREEMENT: 12/05/2017
Section II. New Requestor Inform	mation (complete on	ly if adding new requestor or name has changed)
NAME EC A1 Housing Deve	elopment Fund C	Corporation
ADDRESS c/o The Arker Companies, 1044 Northern Blvd.		
CITY/TOWN Roslyn		ZIP CODE 11576
PHONE (516) 277-9300	FAX	E-MAIL DMoritz@arkercompanies.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	Daniel Moritz
ADDRESS c/o The Arker Co	mpanies, 1044	Northern Blvd.
CITY/TOWN Roslyn		ZIP CODE 11576
PHONE (516) 277-9300	FAX	E-MAIL DMoritz@arkercompanies.com
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) Stephanie O. Davis, PG / FPM Group		
ADDRESS 640 Johnson Ave	enue, Suite 101	
CITY/TOWN Bohemia ZIP CODE 11716		
PHONE (631) 737-6200	FAX	E-MAIL s.davis@fpm-group.com
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Jon Schuyler Brooks / Abramson Brooks LLP		
ADDRESS 1051 Port Washington Blvd. #322		
CITY/TOWN Port Washington ZIP CODE 11050		
PHONE (516) 455-0215	FAX	E-MAIL jbrooks@abramsonbrooks.com
2. Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached?		
3. Describe Requestor's Relationship to Existing Applicant:		
Requestor is the owner of Block 15843, Lots 1001, 1002, 1003, and 1004, and a party to the Nominee Agreement.		

Section III. Current Property Ov Owner below is: Existing A	vner/Operator Information (only inclu Applicant	de if new owner/o	perator)
OWNER'S NAME (if different from requestor) EC A1 Housing Development Fund Corporation			Corporation
ADDRESS c/o The Arker Com	panies, 1044 Northern Blvd.		
CITY/TOWN Roslyn		ZIP CO	DE 11576
PHONE (516) 277-9300	FAX	E-MAIL DMoritz@ark	kercompanies.com
OPERATOR'S NAME (if differen	t from requestor or owner)		
ADDRESS			
CITY/TOWN		ZIP CC	DDE
PHONE	FAX	E-MAIL	
Section IV. Eligibility Information	on for New Requestor (Please refer to	ECL § 27-1407 for	r more detail)
If answering "yes" to any of the fo	llowing questions, please provide an ex	planation as an atta	achment.
1. Are any enforcement actions	pending against the requestor regarding	g this site?	∐Yes ☑ No
2. Is the requestor presently sub- relating to contamination at the	ject to an existing order for the investigate site?	ation, removal or re	mediation ∐Yes ☑ No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? ☐Yes ☑ No Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.			
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment. ☐ Yes ✓ No			
	peen denied entry to the BCP? If so, inc dress, Department assigned site numbe		
	in a civil proceeding to have committed ring, treating, disposing or transporting o		ntionally tortious ☐Yes ☑ No
disposing or transporting of co	cted of a criminal offense i) involving the intaminants; or ii) that involves a violent nistration (as that term is used in Article state?	felony, fraud, briber	ry, perjury, theft,
jurisdiction of the Department,	alsified statements or concealed materia or submitted a false statement or made ent or application submitted to the Depa	e use of or made a f	
	or entity of the type set forth in ECL 27- r failure to act could be the basis for de		
	tion in any remedial program under DE0 antially comply with an agreement or ord		ated by DEC or ☐Yes ☑ No
11 Are there any unregistered by	ılk storage tanks on-site which require re	egistration?	□Yes 🗸 No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS ACCORDANCE WITH ECL §27-1405 (1) BY CHECKIN	
PARTICIPANT A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	VOLUNTEER A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.
	NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.
	If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.
12. Requestor's Relationship to Property (check one):	
☐ Prior Owner ☑ Current Owner ☐ Potential /Futur	e Purchaser Other
13. If requestor is not the current site owner, proof of smust be submitted . Proof must show that the reques BCA and throughout the BCP project, including the abit attached? Yes No Note: a purchase contract does not suffice as proof	tor will have access to the property before signing the lity to place an easement on the site Is this proof

Section V. Property description and description of changes/ac	dditions/re	ductions (if applicab	le)
Property information on current agreement:				
ADDRESS				
CITY/TOWN		ZIP (CODE	
TAX BLOCK AND LOT (SBL)	OTAL ACREA	AGE OF CL	IRRENT SIT	E:
Parcel Address	Section No.	Block No.	Lot No.	Acreage
2. Check appropriate boxes below:				
Addition of property (may require additional citizen participation the expansion – see attached instructions)	tion depend	ling on the	nature of	
2a. PARCELS ADDED:				Acreage Added by
Parcel Address	Section No.	Block No.	Lot No.	Parcel
	То	tal acreage	to be added	J:
Reduction of property				
2b. PARCELS REMOVED:				Acreage Removed
Parcel Address	Section No.	Block No.	Lot No.	by Parcel
Change to SBL (e.g. merge, subdivision, address change)	Total ac	reage to be	removed: _	
2c. NEW SBL INFORMATION:	,			
Parcel Address	Section No	o. Block No	. Lot No.	Acreage
If requesting to modify a metes and bounds description or requesting please attach a revised metes and bounds description, survey, or				
,				
3. TOTAL REVISED SITE ACREAGE:				

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

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	✓ Yes No	
Requestor seeks a determination that the site is eligible for the tangible property credit co brownfield redevelopment tax credit.	mponent of the ✓ Yes No	
Please answer questions below and provide documentation necessary to support ans	swers.	
 Is at least 50% of the site area located within an environmental zone pursuant to Tax Please see <u>DEC's website</u> for more information. 	(Law 21(6)? ☐ Yes ☑ No	
2. Is the property upside down as defined below?	☐Yes ✓ No	
From ECL 27-1405(31):		
"Upside down" shall mean a property where the projected and incurred cost of the invest remediation which is protective for the anticipated use of the property equals or exceeds set of its independent appraised value, as of the date of submission of the application for partic brownfield cleanup program, developed under the hypothetical condition that the property contaminated.	eventy-five percent ipation in the	
3. Is the project an affordable housing project as defined below?	✓ Yes No	
From 6 NYCRR 375- 3.2(a) as of August 12, 2016:		
(a) "Affordable housing project" means, for purposes of this part, title fourteen of artic seven of the environmental conservation law and section twenty-one of the tax law or that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.	nly, a project	
(1) Affordable residential rental projects under this subdivision must be subject to a state, or local government housing agency's affordable housing program, or a local g regulatory agreement or legally binding restriction, which defines (i) a percentage of t rental units in the affordable housing project to be dedicated to (ii) tenants at a define percentage of the area median income based on the occupants' households annual g	overnment's the residential ed maximum	
(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.		
(3) "Area median income" means, for purposes of this subdivision, the area median for the primary metropolitan statistical area, or for the county if located outside a metro 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.	ropolitan	

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information BCP SITE NAME: Former Peninsula Hospital Site BCP SITE NUMBER: C241200 NAME OF CURRENT APPLICANT(S): EC A1 Limited Partnership, EC A1 Commercial LLC, et al. (see attached list) INDEX NUMBER OF AGREEMENT: C241200-08-17 EFFECTIVE DATE OF ORIGINAL AGREEMENT: 12/05/2017

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 Authorized Signatory) of (entity ECALLP, the attorney-in-fact for ECALHDEC); 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. My
Print Name: Daniel Moritz

Statement of Certification and Signature applicant must sign)	es: Existing Applicant(s) (an authorized representative of each
(Individual)	
Section I above and that I am aware of this	wnfield Cleanup Agreement and/or Application referenced in a Application for an Amendment to that Agreement and/or set the requisite approval for the amendment to the BCA gnature by the Department.
Date:Signature:	
Print Name:	
(Entity)	
Application for an Amendment to that Agre	(title) of(entity) which is a party to the olication referenced in Section I above and that I am aware of this ement and/or Application. My signature of the amendment to the BCA Application, which will be effective
Date: 12/28/2022 Signature:/	Tank I ()
Print Name: Daniel Moritz	
REMAINDER OF THIS AMENDMENT WIL	L BE COMPLETED SOLELY BY THE DEPARTMENT
Please see the following page for submittal NOTE: Applications submitted in fillable Status of Agreement:	instructions. format will be rejected.
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:	12/05/2017
Signature by the Department:	NEW YORK STATE DEPARTMENT OF

DATED: 12/29/2022

ENVIRONMENTAL CONSERVATION

By: Andrew Guglislmi

Susan Edwards, P.E., Acting Director Andrew Guglielmi

Division of Environmental Remediation

Statement of Certification and Signatur applicant must sign)	es: Existing Applicant(s) (an authorized representative of each
(Individual)	
Section I above and that I am aware of this	wnfield Cleanup Agreement and/or Application referenced in s Application for an Amendment to that Agreement and/or es the requisite approval for the amendment to the BCA gnature by the Department.
Date:Signature:	
Print Name:	
(Entity)	
Brownfield Cleanup Agreement and/or Application for an Amendment to that Agreement	(title) of EC A1 Commercial LLC (entity) which is a party to the plication referenced in Section I above and that I am aware of this seement and/or Application. My signature of the amendment to the BCA Application, which will be effective
Print Name: Daniel Moritz	
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Effective Date of the Original Agreement	: 12/05/2017
Signature by the Department:	
DATED: 12/29/2022	NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: Andrew Guglielmi

Susan Edwards, P.E., Acting Director Andrew Guglielmi

Division of Environmental Remediation

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 an Authorized Signatory (title) of Peninsula Rockaway L.P. (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department. Date: 12/28/2022 Signature: Print Name: Daniel Moritz
REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT
Please see the following page for submittal instructions. IOTE: Applications submitted in fillable format will be rejected. 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 disposal of contamination.
ffective Date of the Original Agreement: 12/05/2017

DATED: 12/29/2022

NEW YORK STATE DEPARTMENT OF **ENVIRONMENTAL CONSERVATION**

Andrew Guglislmi

Andrew Guglielmi

Division of Environmental Remediation

Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)		
(Individual)		
I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.		
Date:Signature:		
Print Name:		
(Entity)		
I hereby affirm that I am authorized signatory(title) of <u>EC Parcel, LLC</u> (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. <u>Paul A. Galiano</u> signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.		
Date:Signature:Signature:		
Print Name: Paul A. Galiano		
Please see the following page for submittal instructions. NOTE: Applications submitted in fillable format will be rejected. Status of Agreement:		
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Effective Date of the Original Agreement: 12/05/2017		
Signature by the Department: NEW YORK STATE DEPARTMENT OF DATED: 12/29/2022 ENVIRONMENTAL CONSERVATION		

By: Andrew Guglislmi

Suean Edwarde, P.E., Acting Director Andrew Guglielmi

Division of Environmental Remediation

Statement of Certification and Signature applicant must sign)	es: Existing Applicant(s) (an authorized representative of each
(Individual)	
Section I above and that I am aware of this	wnfield Cleanup Agreement and/or Application referenced in a Application for an Amendment to that Agreement and/or es the requisite approval for the amendment to the BCA gnature by the Department.
Date:Signature:	
Print Name:	
(Entity)	
Brownfield Cleanup Agreement and/or App Application for an Amendment to that Agree	C(title) of EC A2 Parcel, LLC (entity) which is a party to the olication referenced in Section I above and that I am aware of this element and/or Application. Paul A. Galiano signature r the amendment to the BCA Application, which will be effective
	L BE COMPLETED SOLELY BY THE DEPARTMENT
Please see the following page for submittal NOTE: Applications submitted in fillable Status of Agreement:	instructions. e format will be rejected.
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Effective Date of the Original Agreement	: 12/05/2017
Signature by the Department: DATED: 12/29/2022	NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
	By: Andrew Guglielmi

Suean Edwarde, P.E., Aeting Director
Division of Environmental Remediation Andrew Guglielmi Site Code: C241200

Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)						
(Individual)						
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)						
Brownfield Cleanup Agreement and/or App Application for an Amendment to that Agre						
Print Name: Paul A. Galiano						
Please see the following page for submittal NOTE: Applications submitted in fillable Status of Agreement:	instructions. format will be rejected.					
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Effective Date of the Original Agreement	: 12/05/2017					
Signature by the Department:	NEW YORK OTATE DEDARTMENT OF					
DATED: 12/29/2022	NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION					
	By: Andrew Qualislmi					

Suean Edwards, P.E., Asting Director Andrew Guglielmi Division of Environmental Remediation

Statement of Certification and Signature applicant must sign)	es: Existing Applicant(s) (an authorized representative of each					
(Individual)						
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Date:Signature:						
Print Name:						
(Entity)						
I hereby affirm that I am authorized signator (title) of EC B2 Parcel, 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. Paul A. Galiano signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department. Date: December 29, 2022 Signature: Print Name: Paul A. Galiano						
REMAINDER OF THIS AMENDMENT WIL	L BE COMPLETED SOLELY BY THE DEPARTMENT					
Please see the following page for submittal NOTE: Applications submitted in fillable Status of Agreement:	instructions. format will be rejected.					
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Effective Date of the Original Agreement:	: 12/05/2017					
Signature by the Department: DATED: 12/29/2022	NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION					

Cuean Edwards, P.E., Acting Director Andrew Guglielmi Division of Environmental Remediation

By: Andrew Guglislmi

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:	Date:Signature:						
Print Name:							
(Entity)							
Brownfield Cleanup Agreement and/or App Application for an Amendment to that Agree							
Print Name: Paul A. Galiano							
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Effective Date of the Original Agreement	: 12/05/2017						
Signature by the Department:							
DATED: 12/29/2022	NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION						
	By: Andrew Guglislmi						

Suean Edwarde, P.E., Acting Director Andrew Guglielmi Division of Environmental Remediation

Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)							
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Date:Signature:	Date:Signature:						
Print Name:							
(Entity)							
Brownfield Cleanup Agreement and/or App Application for an Amendment to that Agre below constitutes the requisite approval for upon signature by the Department.	I hereby affirm that I am_authorized signatory(title) of EC C2 Parcel, 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 ApplicationPaul A. Galiano signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.						
Date: December 29, 2022 Signature:							
Print Name: Paul A. Galiano							
REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT Please see the following page for submittal instructions. NOTE: Applications submitted in fillable format will be rejected. Status of Agreement:							
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Effective Date of the Original Agreement: 12/05/2017							
Signature by the Department:	NEW YORK STATE DEDARTMENT OF						
DATED: _{12/29/2022}	NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION						
	By: Andrew Andrews						

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

Statement of Certification and Signature applicant must sign)	es: Existing Applicant(s) (an authorized representative of each				
(Individual)					
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Date:Signature:					
Print Name:					
(Entity)					
Brownfield Cleanup Agreement and/or App Application for an Amendment to that Agre					
Print Name: Paul A. Galiano					
	L BE COMPLETED SOLELY BY THE DEPARTMENT				
Please see the following page for submittal NOTE: Applications submitted in fillable Status of Agreement:	instructions.				
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	: 12/05/2017				
Signature by the Department:	NEW VODE CTATE DEDADTMENT OF				
DATED: 12/29/2022	NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION				

Suean Edwarde, P.E., Aeting Director Andrew Guglielmi

Division of Environmental Remediation

By: Andrew Guglislmi

8

Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)				
(Individual)				
hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.				
Date:Signature:				
Print Name:				
(Entity)				
I hereby affirm that I am authorized signatory(title) of EC D2 Parcel, 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. Paul A. Galiano signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department. Date: December 29, 2022 Signature:				
Print Name: Paul A. Galiano				
Please see the following page for submittal instructions. NOTE: Applications submitted in fillable format will be rejected. 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.				
Effective Date of the Original Agreement: 12/05/2017				
Signature by the Department: NEW YORK STATE DEPARTMENT OF DATED: 12/29/2022 ENVIRONMENTAL CONSERVATION				

Susan Edwards, P.E., Asting Director Andrew Guglielmi Division of Environmental Remediation

Andrew Guglislmi

Division of Environmental Remediation

Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)					
(Individual)					
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)					
hereby affirm that I am authorized signatory(title) of EC E1 Parcel, 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. Paul A. Galiano signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department. Date: December 29, 2022 Signature: Print Name: Paul A. Galiano					
Please see the following page for submittal instructions. NOTE: Applications submitted in fillable format will be rejected. 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 disposal of contamination.					
Effective Date of the Original Agreement: 12/05/2017					
Signature by the Department: NEW YORK STATE DEPARTMENT OF DATED: 12/29/2022 ENVIRONMENTAL CONSERVATION					

Suean Edwarde, P.E., Acting Director Andrew Guglielmi Division of Environmental Remediation

Site Code: C241200

Andrew Guglislmi

	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 <u>authorized signatory</u> (title) of <u>EC E2 Parcel, LLC</u> (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. <u>Paul A. Galiano</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>December 29, 2022</u> Signature:					
	Print Name: Paul A. Galiano REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT					
	Please see the following page for submittal instructions. NOTE: Applications submitted in fillable format will be rejected. Status of Agreement:					
	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 contamination.					
	Effective Date of the Original Agreement: 12/05/2017					
	Signature by the Department:					
	DATED: 12/29/2022 NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION					

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

By: Andrew Guglislmi

SUBMITTAL REQUIREMENTS:

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

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

NOTE: Applications submitted in fillable format will be rejected.

FOR DEPARTMENT USE ONLY	
BCP SITE T&A CODE:	LEAD OFFICE:
PROJECT MANAGER:	

Rider to BCA Amendment # 4 to Document a Tangible Property Tax Credit Determination

Site Name: Former Peninsula Hospital Site

Site Number: C241200 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(I). The project is an affordable housing project, as defined by 375-3.2(a). 2- The Site is located in a City having a population of one million or more and the Applicant: Has not requested a determination that the Site is eligible for tangible property tax credits. It is therefore presumed that the Site is not eligible for tangible property tax credits. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category. Requested a determination that the Site is eligible for tangible property tax credits and pursuant to ECL § 27-1407(1-a), the Department has determined that the Site is not eligible for tangible property tax credits because the Applicant has not submitted documentation sufficient to demonstrate that at least one of the following conditions exists: at least half of the site area is located in an environmental zone as defined in section twenty-one of the tax law, the property is upside down, the property is underutilized, or the project is an affordable housing project. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category. 3- For sites statewide, where applicable: In accordance with ECL § 27-1407(1-a), based on data submitted with the application the Department has determined the Site is not eligible for tangible property tax credits because the contamination in ground water and/or soil vapor is solely emanating from property other than the Site. The remedial investigation or other data generated during the remedial program the Department has identified an on-site source of contamination, which now makes this site eligible for tangible property tax credits. The Department has determined that the Site or a portion of the Site has previously been remediated pursuant to Article 27, Title 9, 13 or 14] of the ECL, Article 12 of the Navigation Law or Article 56, Title 5 of the ECL. Therefore, in accordance with ECL § 27-1407(1-a), the Site is not eligible for tangible property tax credits. THIS RIDER TO AN AMENDMENT TO THE BCA ESTABLISHING ELIGIBILTY FOR TANGIBLE PROPERTY TAX CREDITS IS HEREBY APPROVED, Acting by and Through the Department of Environmental Conservation as Designee of the Commissioner, Andrew Guglielmi 12/29/2022 By: Date Andrew O. Guglielmi, Director

Division of Environmental Remediation

DEED

THIS INDENTURE, made as of the 16th day of December, 2021, by PENINSULA ROCKAWAY HOUSING DEVELOPMENT FUND CORP., a New York not-for-profit corporation, having an address at c/o The Arker Companies, 1044 Northern Boulevard, 2nd Floor, Roslyn, New York 11576 (hereinafter referred to as "Grantor"), to EC A1 HOUSING DEVELOPMENT FUND CORPORATION, a New York not-for-profit corporation, having an address at c/o Block Institute Inc., 376 Bay 44th Street, Brooklyn, New York 11214 (hereinafter referred to as "Grantee").

WITNESSETH, that Grantor, in consideration of Ten Dollars (\$10.00), lawful money of the United States, paid by Grantee, does hereby grant and release unto Grantee, the heirs or successors and assigns of Grantee forever:

ALL that certain plot, piece, or parcel of land with the building and improvements thereon erected, situate, lying and being, more particularly described on <u>Exhibit A</u> attached hereto and made a part hereof (the "<u>Premises</u>");

TOGETHER WITH all right, title and interest, if any, of Grantor in and to any streets and roads abutting the Premises to the center lines thereof;

TOGETHER WITH the appurtenances and all the estate and rights of Grantor in and to the Premises.

TO HAVE AND TO HOLD the Premises unto Grantee, the heirs or successors and assigns of Grantee forever.

AND Grantor, in compliance with Section 13 of the Lien Law, covenants that Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvements at the Premises and will apply the same first to the payment of the cost of the improvements before using any part of the total of the same for any other purpose.

[end of page]

IN WITNESS WHEREOF, Grantor has duly executed this deed the day and year first above written.

GRANTOR:

PENINSULA ROCKAWAY HOUSING DEVELORMENT FUND CORP.

By:

Name: Daniel Moritz

Title: Authorized Signatory

STATE OF NEW YORK

) ss.:

COUNTY OF NASSAU

On the day of December in the year 2021 before me, the undersigned, personally appeared **Daniel Moritz**, 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 or entity upon behalf of which the individual acted, executed the instrument.

Signature and Office of individual taking

acknowledgment

CAROL GIULIANI
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01Gl4803300
Qualified in Nassau County

My Commission Expires July 31, 20

Bargain and Sale Deed

Without Covenant Against Grantor's Acts

BLOCK: 15843

LOT: 15

COUNTY: Queens

STREET ADDRESS: 51-23 Beach Channel Drive

PENINSULA ROCKAWAY HOUSING DEVELOPMENT FUND CORP.

TO

EC A1 HOUSING DEVELOPMENT **FUND CORPORATION**

RETURN BY MAIL TO:

Seiden & Schein, P.C. 570 Lexington Avenue, 14th floor New York, New York 10022

Attn: Alvin Schein, Esq. and David Shamshovich, Esq.

Exhibit A

Block: 15843 Lot: 15

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

Beginning at the corner formed by the intersection of the southerly side of Beach Channel Drive with the easterly side of Beach 53rd Street;

Running thence North 84 degrees 42 minutes 48 seconds East, along the southerly side of Beach Channel Drive, a distance of 225.02 feet to a point;

Thence South 04 degrees 22 minutes 44 seconds East a distance of 305.18 feet to a point;

Thence South 85 degrees 35 minutes 46 seconds West a distance of 224.98 feet to the easterly side of Beach 53rd Street;

Thence North 04 degrees 22 minutes 56 seconds West, along the easterly side of Beach 53rd Street, a distance of 301.71 feet to the corner formed by the intersection of the southerly side of Beach Channel Drive with the easterly side of Beach 53rd Street, the point or place of Beginning.

Together with the benefits of that certain Off-Site Accessory Parking Restrictive Declaration dated as of July 15th, 2021 recorded in the Office of the New York City Register, Queens County on October 12, 2021 as CRFN #2021000398478.

BCA AMENDMENT REQUEST BCP SITE NO. C241200

LIST OF ALL CURRENT APPLICANTS

EC A1	Lin	nited	Par	tners	hin
	-111	muu	1 aı	uicio	шр

EC A1 Commercial LLC

EC Parcel, LLC

EC A2 Parcel, LLC

EC B1 Parcel, LLC

EC B2 Parcel, LLC

EC C1 Parcel, LLC

EC C2 Parcel, LLC

EC D1 Parcel, LLC

EC D2 Parcel, LLC

EC E1 Parcel, LLC

EC E2 Parcel, LLC and

Peninsula Rockaway Limited Partnership

Department of State Division of Corporations

Entity Information

Return to Results	Return to Search

Entity Details ENTITY NAME: EC A1 HOUSING DEVELOPMENT FUND DOS ID: 6339343 **CORPORATION FOREIGN LEGAL NAME: FICTITIOUS NAME: ENTITY TYPE: DOMESTIC NOT-FOR-PROFIT CORPORATION DURATION DATE/LATEST DATE OF DISSOLUTION:** (HOUSING DEVELOPMENT FUND COMPANY) (ARTICLE XI) SECTIONOF LAW: NOT-FOR-PROFIT CORPORATION (HOUSING ENTITY STATUS: ACTIVE DEVELOPMENT FUND COMPANY) (ARTICLE XI) - 402 NOT-FOR-PROFIT CORPORATION LAW AND 573 PRIVATE HOUSING FINANCE LAW - PRIVATE HOUSING FINANCE LAW **DATE OF INITIAL DOS FILING: 12/01/2021 REASON FOR STATUS: EFFECTIVE DATE INITIAL FILING: 12/01/2021 INACTIVE DATE: FOREIGN FORMATION DATE: STATEMENT STATUS: NOT REQUIRED NEXT STATEMENT DUE DATE: COUNTY: KINGS** JURISDICTION: NEW YORK, UNITED STATES **NFP CATEGORY: CHARITABLE ENTITY DISPLAY** Service of Process Name and Address Name: C/O BLOCK INSTITUTE, INC. Address: 376 BAY 44TH STREET, BROOKLYN, NY, UNITED STATES, 11214 Chief Executive Officer's Name and Address Name: Address: Principal Executive Office Address Address: Registered Agent Name and Address Name: Address: Entity Primary Location Name and Address Name:

Address:				
Farmcorpflag				
Is The Entity A Farm Corporation: NO				
Stock Information				
Share Value	Number Of Shares	Value Per Share		

DEED

THIS INDENTURE, made as of the 16th day of December, 2021, by PENINSULA ROCKAWAY HOUSING DEVELOPMENT FUND CORP., a New York not-for-profit corporation, having an address at c/o The Arker Companies, 1044 Northern Boulevard, 2nd Floor, Roslyn, New York 11576 (hereinafter referred to as "Grantor"), to EC A1 HOUSING DEVELOPMENT FUND CORPORATION, a New York not-for-profit corporation, having an address at c/o Block Institute Inc., 376 Bay 44th Street, Brooklyn, New York 11214 (hereinafter referred to as "Grantee").

WITNESSETH, that Grantor, in consideration of Ten Dollars (\$10.00), lawful money of the United States, paid by Grantee, does hereby grant and release unto Grantee, the heirs or successors and assigns of Grantee forever:

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[end of page]

IN WITNESS WHEREOF, Grantor has duly executed this deed the day and year first above written.

GRANTOR:

PENINSULA ROCKAWAY HOUSING DEVELORMENT FUND CORP.

By:

Name: Daniel Moritz

Title: Authorized Signatory

STATE OF NEW YORK

) ss.:

COUNTY OF NASSAU

On the day of December in the year 2021 before me, the undersigned, personally appeared **Daniel Moritz**, 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 or entity upon behalf of which the individual acted, executed the instrument.

Signature and Office of individual taking

acknowledgment

CAROL GIULIANI
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01Gl4803300
Qualified in Nassau County

My Commission Expires July 31, 20

Bargain and Sale Deed

Without Covenant Against Grantor's Acts

BLOCK: 15843

LOT: 15

COUNTY: Queens

STREET ADDRESS: 51-23 Beach Channel Drive

PENINSULA ROCKAWAY HOUSING DEVELOPMENT FUND CORP.

TO

EC A1 HOUSING DEVELOPMENT **FUND CORPORATION**

RETURN BY MAIL TO:

Seiden & Schein, P.C. 570 Lexington Avenue, 14th floor New York, New York 10022

Attn: Alvin Schein, Esq. and David Shamshovich, Esq.

Exhibit A

Block: 15843 Lot: 15

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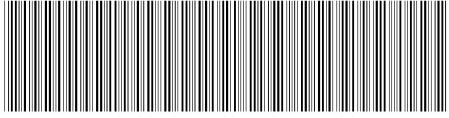
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Together with the benefits of that certain Off-Site Accessory Parking Restrictive Declaration dated as of July 15th, 2021 recorded in the Office of the New York City Register, Queens County on October 12, 2021 as CRFN #2021000398478.

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



2022061000425013001EA320

RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 18

Document ID: 2022061000425013 Document Date: 05-16-2022 Preparation Date: 06-10-2022

Document Type: AGREEMENT Document Page Count: 17

PRESENTER:

KENSINGTON VANGUARD NATIONAL LAND SERVICES

39 W37TH STREET

TITLE NO. 5104545-S-NY-CR-KV

NEW YORK, NY 10018

212-532-8686

Borough

RETURN TO:

SEIDEN & SCHEIN, P.C.

570 LEXINGTON AVENUE, 14TH FLOOR ATTN: DAVID SHAMSHOVICH, ESQ.

NEW YORK, NY 10022

Block Lot PROPERTY DATA Unit Address

QUEENS 15843 1004 Entire Lot RESI 5123 BEACH CHANNEL DRIVE

Property Type: OTHER

CROSS REFERENCE DATA

CRFN: 2022000040276

PARTIES
PARTY 1: PARTIES

EC A1 HOUSING DEVELOPMENT FUND CORPORATION

C/O: BLOCK INSTITUTE, INC., 376 BAY 44TH STREET

BROOKLYN, NY 11214

PARTY 2:

EC A1 LIMITED PARTNERSHIP

C/O THE ARKER COMPANIES, 1044 NORTHERN

BOULEVARD, 2ND FLOOR

ROSLYN, NY 11576

FEES AND TAXES

Mortgage :			
Mortgage Amount:		\$	0.00
Taxable Mortgage Amount:		\$	0.00
Exemption:			
TAXES:	County (Basic):	\$	0.00
	City (Additional):	\$	0.00
	Spec (Additional):	\$	0.00
	TASF:	\$	0.00
	MTA:	\$	0.00
	NYCTA:	\$	0.00
	Additional MRT:	\$	0.00
	TOTAL:	\$	0.00
Recording Fee:		\$	122.00
Affidavit Fee:		\$	0.00
		-	The state of the s

Filing Fee:

NYC Real Property Transfer Tax:
\$ 0.00

NYS Real Estate Transfer Tax:

\$ 0.00

RECORDED OR FILED IN THE OFFICE

FIG. OF THE CITY REGISTER OF THE

CITY OF NEW YORK

Recorded/Filed 06-22-2022 10:04 City Register File No.(CRFN):

2022000246515

0.00

7 7 7 7 City Register Official Signature

Kensin granvangword
Title 50045455.NYCR.KV

AMENDED AND RESTATED DECLARATION OF INTEREST AND NOMINEE AGREEMENT

May 16, 2022

Between

EC A1 HOUSING DEVELOPMENT FUND CORPORATION

and

EC A1 LIMITED PARTNERSHIP

Please record and return to:

Property:

Seiden & Schein, P.C. 570 Lexington Avenue, 14th Floor New York, New York 10022 Attn: David Shamshovich, Esq.

County of Queens Block: 15843, Lot: 1004 Part of lot f/k/a Lot 15

AMENDED AND RESTATED DECLARATION OF INTEREST AND NOMINEE AGREEMENT

THIS AMENDED AND RESTATED DECLARATION OF INTEREST AND NOMINEE AGREEMENT (this "Agreement") is made as of this 16th day of May, 2022, by and between EC A1 HOUSING DEVELOPMENT FUND CORPORATION, a New York not-for-profit corporation, organized pursuant to Article XI of the Private Housing Finance Law of the State of New York ("Article XI") and Section 402 of the Not-for- Profit Corporation Law of the State of New York ("Section 402"), having an office at c/o Block Institute Inc., 376 Bay 44th Street, Brooklyn, New York 11214 (the "HDFC"), and EC A1 LIMITED PARTNERSHIP, a New York limited partnership, having an office at c/o The Arker Companies, 1044 Northern Boulevard, 2nd Floor, Roslyn, New York 11576 (the "Partnership" and together with the HDFC referred to herein collectively as the "Parties").

WITNESSETH:

WHEREAS, pursuant to that certain deed, dated December 16, 2021, and recorded in the Office of the City Register of the City of New York (the "City Register") on January 27, 2022, under CRFN 2022000040275, the HDFC acquired fee title to that certain parcel of real property in the Borough and County of Queens, City and State of New York, now known by the street address 5123 Beach Channel Drive a/k/a 51-23 Beach Channel Drive, Far Rockaway, New York 11691, and shown on the tax map of the City of New York as Block: 15843, Lot: 15 (n/k/a Lots: 1001, 1002, 1003 and 1004) (the "Original Property"); and

WHEREAS, pursuant to that certain Declaration of Interest and Nominee Agreement, entered into between the HDFC and the Partnership, dated December 16, 2021, and recorded on January 27, 2022 in the City Register, under CRFN 2022000040276, (the "Original Nominee Agreement"), the HDFC held fee interest to the Original Property, solely as a nominee, legal and record title holder on behalf of the Partnership, and the Partnership held all of the equitable and beneficial interest to the Original Property; and

WHEREAS, pursuant to that certain Declaration of Condominium, dated April 5, 2022, and recorded on May 12, 2022, in the City Register, under CRFN 2022000197452, the Original Property was subdivided into four separate condominium units, as follows: (a) one (1) condominium unit designated as the Commercial Parking Unit (Block: 15843, Lot: 1001), (b) one (1) condominium unit designated as the Commercial Unit 1 (Block: 15843, Lot: 1002), (c) one (1) condominium unit designated as the Commercial Unit 2 (Block: 15843, Lot: 1003), and (d) one (1) condominium unit designated as the Residential Unit (Block: 15843, Lot: 1004), as more particularly described on Schedule A attached hereto and made a part hereof, (the "Residential Unit" or the "Property"); and

WHEREAS, the HDFC and the Partnership desire to enter into this Agreement to amend and restate the Original Nominee Agreement to reflect the transfer by the Partnership of the beneficial interests in Lots 1001, 1002 and 1003 and that, as a result, HDFC, solely as nominee, legal and record title holder on behalf of the Partnership, shall hold such nominal ownership

interest in and to the Property (i.e., Lot 1004 only), for the future development thereon of a residential affordable housing rental project (the "Project"); and

WHEREAS, the Partnership and the HDFC desire that the HDFC hold the nominal, legal and record title to the Property solely as nominee on behalf of the Partnership, with the Partnership retaining all of the equitable and beneficial ownership of the fee interest in the Property and the Project; and

WHEREAS, the HDFC is authorized to own and hold nominal, legal and record title to the Property on behalf of and as nominee of the Partnership, and the Partnership shall possess the entire equitable and beneficial ownership interest in and to Property and the Project; and

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

- NOW, THEREFORE, in consideration of the sum of ten and 00/100 dollars (\$10.00), as well as other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:
- 1. <u>HDFC's Rights and Obligations</u>. The HDFC is holding the nominal, legal and record fee title to (i) the Property, solely as a nominee for, and on behalf of, the Partnership. The Partnership holds all equitable and beneficial ownership interest in the Property and the Project, such that the Partnership, and not the HDFC, shall have an:
- (a) unconditional obligation to bear the economic risk of depreciation and diminution in value of the Property and the Project, as applicable, due to obsolescence or exhaustion, and shall bear risk of loss if the Project is destroyed or damaged;
- (b) unconditional right to receive all economic benefits associated with the Property and the Project (i.e., appreciation and increase in value), including the right to retain all of the net proceeds from any sale or refinancing of the Property and the Project;
- (c) unconditional obligation to keep the Property and the Project in good condition and repair;
- (d) unconditional and exclusive right to the possession of the Property and the Project;
- (e) unconditional obligation to maintain insurance coverage on, and such reserves with respect to, the Property and the Project, as may be required by the general partner of the Partnership, and/or any mortgage lenders with respect to the Property and the Project;
- (f) unconditional obligation to pay all taxes levied on, and assessments made with respect to the Property and the Project, as well as the right to challenge such taxes and assessments and receive refunds;

- (g) unconditional and exclusive right to receive rental and any other income or profits from the operation of the Property and the Project;
- (h) unconditional obligation to pay for all of the capital investment in the Property and the Project;
- (i) unconditional obligation to pay for all maintenance and operating costs in connection with the Property and the Project;
- (j) unconditional and exclusive right to receive all income earned from the operation of the Property and the Project, and claim all deductions and low-income housing tax credits generated with respect to the Property and the Project, on its annual federal, state and local tax returns;
- (k) unconditional right to develop supportive housing units in Project, and to operate, manage and lease the Property and the Project, in accordance with this Agreement and any and all documents executed in connection with the financing, development, operation and management of the Property and the Project, as such documents may be amended from time to time; and
- (I) unconditional and exclusive right to enter into easement agreements and to grant any and all easements in connection with the development and operation of the Property and the Project.
- 2. <u>Mortgages on the Property</u>. The HDFC hereby agrees, at the direction of the Partnership, to execute any and all documents (the "<u>Loan Documents</u>") necessary to grant to the financial institution or institutions making loans (the "<u>Loans</u>") to the Partnership to finance the development of the Project, as applicable, a mortgage or mortgages and any similar security interests on the Property, provided that such Loans are non-recourse to the HDFC.
- 3. <u>Development and Operation of the Property</u>. The HDFC agrees to execute any and all documents (collectively, the "<u>Development/Operation Documents</u>") required to be executed by the HDFC in connection with the development, operation and management of the Property and the Project, as determined by the Partnership.
- 4. <u>Partnership Consent</u>. The HDFC shall act solely as an agent on behalf of the Partnership, as principal, in all acts with respect to the Property and the Project. The HDFC shall not do any act with respect to the Property or the Project, without the prior written consent of the Partnership, which consent may be withheld in the sole and absolute sole discretion of the Partnership. The HDFC and the Partnership covenant and agree to operate the Property and the Project pursuant to the applicable Loan Documents and the applicable Development/Operation Documents.
- 5. <u>Tax Exemption Benefits</u>. The Partnership shall make application on behalf of the HDFC to qualify the Property, or any portion thereof, for real estate tax exemption benefits pursuant to Article XI, Title 2, Section 420-c of the New York Real Property Tax Law or Section 1086329.1

421-a of the New York Real Property Tax Law, or any other tax exemption benefit program that may apply (the "<u>Tax Exemption Benefits</u>"), and the HDFC shall cooperate in executing any necessary documents required to make application for and to obtain the Tax Exemption Benefits and providing any documents, to the extent necessary, to qualify for the Tax Exemption Benefits. The HDFC shall use commercially reasonable efforts to operate the Project within the guidelines of the applicable Tax Exemption Benefits program so that the Property shall qualify for the Tax Exemption Benefits thereunder.

- 6. <u>Insurance/Condemnation Proceeds</u>. The HDFC agrees that all benefits accruing in connection with the Project, including all proceeds of any insurance policies and condemnation proceeds, if any, received by it, which relate to the Project shall be received in its capacity as nominee of the Partnership in connection with the Property, and shall be immediately delivered to the Partnership, including, but not limited to, liability, property, casualty, and title insurance proceeds. The Partnership shall be deemed an insured for purposes of the owner's policy of title insurance for the Property.
- 7. <u>HDFC's Sole Purpose</u>. Notwithstanding anything to the contrary contained in its articles of incorporation, by-laws or other governing documents, the HDFC's sole purpose shall be to hold legal title to (i) the Property and the Project solely for the benefit of the Partnership, and (ii) the Commercial Units solely for the benefit of EC A1 Commercial LLC, to the extent there is a conflict between the terms of this Agreement and the terms of such governing documents of the HDFC, the terms of this Agreement shall govern.
- 8. Notification to Third Parties. Upon the request of the Partnership, the HDFC shall notify all third parties that pursuant to this Agreement, the HDFC is acting solely as nominee of the Partnership in connection with the Property, with evidence of such notification reasonably satisfactory to the Partnership. The HDFC shall also obtain any written acknowledgments which are necessary and advisable from all interested parties with respect to the HDFC holding title to the Property and the Project as nominee of the Partnership.
- 9. Conveyance of the Property. The HDFC hereby irrevocably and unconditionally agrees, promptly upon the request of the Partnership, to execute and deliver to the Partnership a deed in proper recordable form transferring and conveying to the Partnership all of the HDFC's right, title and interest in and to the Property and the Project. The HDFC hereby unconditionally and unequivocally constitutes and appoints the Partnership to be its lawful and true agent and attorney-in-fact coupled with an interest, with full power of substitution to execute and record any such quitclaim deed and any other documents or instruments required to convey the Property and the Project on behalf of the HDFC, in the name, place and stead of the HDFC with the same force and effect as if such deed was executed and recorded by the HDFC. The Parties agree that the HDFC's failure to comply with the provisions of this Paragraph 9 shall cause irreparable harm to the Partnership for which no adequate remedy at law will be available and, in addition to any other available remedies, the Partnership shall be entitled to the right of specific performance in the event of a breach by the HDFC of the provisions of this Paragraph 9.

- 10. <u>Representations, Warranties and Covenants</u>. The Partnership and the HDFC, on behalf of themselves and their respective successors and assigns, hereby jointly and severally represent, warrant, acknowledge, covenant, and agree as follows:
- (a) so long as the HDFC shall hold legal title to the Property and the Project, the Partnership shall have complete and exclusive possession and control of the Property and the Project, and the HDFC shall not have any right to possess or control the Property and the Project;
- (b) the Partnership is the "owner" and the HDFC is not in any respects an "owner," as such term is defined in Section 2 of the New York Lien Law and for federal tax purposes, with respect to the Property;
- (c) the HDFC is not, and shall not be, entitled to receive any proceeds of any of the Loans to the Partnership and/or otherwise have any rights, title, interests, or benefits from, of, to and/or under any of the Loans to the Partnership, low-income housing tax credits, or any grants or funds received in connection with the Project;
- (d) the HDFC shall not do or suffer to be done, any act or omission with the Project, or the record title thereto, and shall not have any power, right and/or authority to encumber, lien, and/or create or grant any rights and/or interests in or to the Property or the Project, and/or any part or parts thereof, and shall not do anything that would violate the provisions of Article XI, and any encumbrance, lien, right and/or interest purported to be created, granted, permitted and/or resulting from any action of the HDFC in connection with the Property or the Project and/or any part or parts thereof shall be void, unenforceable and of no effect whatsoever and shall not be binding in any manner upon the Partnership;
- (e) the HDFC shall not have any power, right and/or authority to employ, and/or agree to employ, any persons and/or entities in connection with and/or with respect to the Property or the Project, and/or any part or parts thereof and/or to purchase, and/or agree to purchase any goods, materials and/or services in connection with any of the Property or the Project and/or any part or parts thereof, and any such employment, purchase and/or agreement to employ or purchase purported to be made by the HDFC shall be void, unenforceable and of no force or effect and shall not be binding upon the Partnership;
- (f) the HDFC shall, at the request of the Partnership, join in and be a party to any legal action or proceeding commenced against or relating to the Property or the Project;
- bankruptcy, insolvency or other similar law now or hereafter in effect, or shall not consent to the entry of an order for relief in an involuntary case under any such law or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the HDFC or the Partnership of any substantial part of its property, or if the HDFC or the Partnership shall make any general assignment for the benefit of creditors, or if the HDFC or the Partnership shall fail generally to pay its debts as such debts become due, or if the HDFC or the Partnership shall take any action in furtherance of any of the foregoing;

- (h) so long as the HDFC shall hold record fee title to the Property and the Project, the HDFC shall have no rights, powers and/or authority over, with respect to and/or in connection with the Project and/or any part or parts thereof in any bankruptcy or other proceeding in which the Partnership may hereafter be a party, and no shareholder, officer, trustee, receiver, administrator, legal representative, regulatory or creditor of the HDFC shall have any right, power and/or authority over, with respect to and/or in connection with the Property and the Project and/or any part or parts thereof;
- (i) so long as the HDFC shall hold record fee title to the Property and the Project, the HDFC shall comply with all directions which may be given to it by the Partnership with respect to the Project, provided, however, that the HDFC shall not be required to take any action as provided in this Agreement unless furnished with sufficient funds by the Partnership in connection therewith:
- (j) so long as the HDFC shall hold record fee title to the Property and the Project, any and all notices, statements and communications received by the HDFC, as holder of record fee title with respect to the Property and the Project, shall be promptly delivered to the Partnership;
- (k) The Partnership and the HDFC agree to comply with the terms, conditions and restrictions of the applicable Loan Documents and the Development/Operation Documents and of any affordable regulatory agreement affecting the Property that may apply; and
- (l) The HDFC shall hold legal or record title to the Property solely as nominee for the Partnership throughout the term of the applicable Loan Documents.
- 11. Power of Attorney. It shall be the sole and absolute discretion of the Partnership to assign, encumber, transfer or sell the Property or the Project or any portion thereof or interest therein or any right or indicia of ownership in connection therewith, and any such assignment, encumbrance, transfer or sale shall not require any consent, approval, or other action by the HDFC. The HDFC hereby unconditionally and unequivocally constitutes and appoints the Partnership, in connection with the Property and the Project, to be its lawful and true agent and attorney-in-fact coupled with an interest, with full power of substitution, execute and, to the extent required, record (i) any such deed and any other documents or instruments required to convey the Property any portion thereof on behalf of the HDFC; (ii) any development agreement with the Partnership or the developer of the Property or the Project; (iii) any and all leases with respect to the Property; (iv) any and all documents required to qualify the Project, or any portion thereof, as applicable, for the Tax Exemption Benefits; (v) any and all Loan Documents with respect to the Property; (vi) any and all Development/Operation Documents with respect to the Property; (vii) all documents and instruments relating to any application of sales tax exemption or application for low income housing credits; and (vii) any other document or instrument with respect to the Property or the Project, any and all such documents referenced in clause (i) through (vii) above in the name, place and stead of the HDFC with the same force and effect as if such documents were executed and, to the extent required, by the HDFC. The Parties agree that the HDFC's failure to comply with this Paragraph 11 shall cause irreparable harm to the Partnership, as applicable, for which no adequate remedy at law will be available and, in addition to any other available remedies to which the 1086329.1

Partnership may be entitled. The Partnership shall also be entitled to the right of specific performance in the event of a breach by the HDFC of the provisions of this Paragraph 11.

12. Indemnification.

- The Partnership shall protect, defend, indemnify, and hold the HDFC harmless from and against any and all liabilities, obligations, claims, causes of actions, judgments, damages, penalties, costs and expenses (including, without limitation, reasonable out-of-pocket attorneys' fees and expenses) whether incurred in disputes, both litigated and non-litigated, with third parties arising out of or in any way relating to (i) accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (ii) use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iii) failure on the part of the Partnership to perform or comply with any of the terms of the Loan Documents or the Regulatory Agreement or any applicable law, rule or regulation applicable to the Property or the Project; (iv) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (v) defect in the construction of the Property or the Project; (vi) the enforcement of any obligation under any policy of insurance or indemnity provision provided in the Loan Documents applicable to the Property or the Project; or (vii) the payment of New York City or State real property transfer taxes or New York State sales tax (the items set forth in subparagraphs (i) through (vii) hereinafter collectively referred to as the "Partnership Claims"), except for those Partnership Claims arising out of or resulting from the misconduct or the negligent acts or omissions of the HDFC in breach of this Agreement. In the event of a Partnership Claim, the Partnership and/or the Partnership's insurer shall have the right to select its own counsel.
- The Partnership shall, to the fullest extent permitted by law, protect, defend, indemnify and save HDFC harmless from all liabilities, obligations, judgments, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable out-ofpocket attorneys' fees and expenses, whether incurred in litigation with the Partnership or with any third party) (collectively, the "Partnership Environmental Claims") imposed upon or incurred by or asserted against HDFC by reason of (i) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release or threatened release of any Hazardous Materials (as hereinafter defined) on, from or affecting the Property, (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or relating to such Hazardous Materials, (iii) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials or (iv) any violation of laws, orders, rules or regulations, requirements or demands of governmental authorities, or any policies or requirements of the HDFC that are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney or consultant fees, investigation and laboratory fees, court costs and litigation expenses, except for those Partnership Environmental Claims arising out of or resulting from the misconduct or the negligence or the acts or omissions of the HDFC, which shall be the obligation of the HDFC or which are the obligation of the HDFC pursuant to any lease or other agreement between the HDFC and the Partnership. The Partnership's obligations and liabilities under this Paragraph shall survive (x) completion of the Project and (y) any foreclosure involving the Property, or any part thereof, or HDFC's delivery of a deed in lieu of foreclosure.

(c) "Hazardous Materials" as used herein means, including, by example, but without limitation, any explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances (or related or similar materials), asbestos or any material containing asbestos, lead paint or any other hazardous substance or material as defined by any Federal, state or local environmental law, ordinance, rule or regulation, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.) and the rules and regulations promulgated pursuant thereto.

13. Miscellaneous Provisions.

- (a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.
- (b) If any provision of this Agreement shall be or become invalid under any provision of federal, state, or local law, such invalidity shall not affect the validity or enforceability of any other provision hereof.
- (c) This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof, and no amendment, change or modification shall be effective unless in writing and signed by the parties hereto.
- (d) No party may assign this Agreement, or its rights and/or obligations hereunder, without the express written consent of the other parties.
- (e) The waiver of a breach of any provision of this Agreement by any party shall not operate or be construed as a waiver of any subsequent breach.
- (f) Unless otherwise specified, notices or consents required to be given by any party to the others under this Agreement shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or overnight mail to the undersigned representative of the recipient at its address first stated above, or as changed pursuant to a notice served as prescribed by this Section. Such notices shall be deemed to be effective on the date when they are mailed or personally delivered.

A copy of any notice to the Partnership shall also be delivered to:

Seiden & Schein, P.C. 570 Lexington Avenue, 14th floor New York, New York 10022 Attn: Alvin Schein, Esq. and David Shamshovich, Esq.

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

1086329.1

- (h) The Partnership and the HDFC hereby irrevocably submit to the jurisdiction of any New York State or Federal court sitting in the City of New York, County of New York over any suit, action or proceeding arising out of or relating to this Agreement.
- (i) The Partnership and the HDFC hereby, knowingly, voluntarily, intentionally, expressly, and unconditionally waive, in connection with any suit, action or proceeding, arising out of, under or in connection with this Agreement, any and every right either or both of them may have to a trial by jury.
- (j) Any third party may rely on this Agreement with respect to the rights and obligations of the Partnership and the HDFC hereunder.
- (k) This Agreement may be executed in one or more counterparts, and by different signatories hereto in separate counterparts each of which when so executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.
- (I) Nothing in this Agreement shall confer any rights upon any person other than the Partnership and the HDFC and their permitted successors and assigns.
- (m) This Agreement shall become effective as of the date hereof and shall continue in full force and effect until terminated by written agreement between the Parties.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Third Amended and Restated Declaration of Interest and Nominee Agreement as of the date and year first written above.

EC A1 HOUSING DEVELOPMENT FUND CORPORATION,

By:
Name: Scott Barkin
Title: Authorized Signatory

a New York not-for-profit corporation

EC A1 LIMITED PARTNERSHIP,

a New York limited partnership

By: EC A1 GP LLC, Its General Partner

By: EC A1 Partners LLC, Its Managing Member

By: Edgemere A1 Investors LLC, Its managing member

By: Name: Daniel Moritz
Title: Authorized Signatory

IN WITNESS WHEREOF, the Parties have executed this Third Amended and Restated Declaration of Interest and Nominee Agreement as of the date and year first written above.

EC A1 HOUSING DEVELOPMENT FUND CORPORATION,

a New York not-for-profit corporation

Ву	
	Name: Scott Barkin
	Title: Authorized Signatory

EC A1 LIMITED PARTNERSHIP,

a New York limited partnership

By: EC A1 GP LLC, Its General Partner

By: EC A1 Partners LLC, Its Managing Member

By: Edgemere A1 Investors LLC, its managing member

By: Name: Daniel Moritz

Title: Authorized Signatory

ACKNOWLEDGMENTS

STATE OF NEW YORK)
county of)
On the day of May in the year 2022 before me, the undersigned, a Notary Public in and for said State personally appeared <u>Daniel Moritz</u> , personally known to be 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.
Notary Public
STATE OF NEW YORK)
COUNTY OF) Kry 5
On the 16 day of May in the year 2022 before me, the undersigned, a Notary Public in and for said State personally appeared Scott Barkin, personally known to be 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.
STATE STATE STATE Notary Public OISI6127802 ON EXPIRES ON EXPIRES NOTARY PUBLIC OISI6127802

ACKNOWLEDGMENTS

STATE OF NEW YORK)		
COUNTY OF) Massau	ss.:	
and for said State personally app on the basis of satisfactory evider instrument and acknowledged to	eared <u>Daniel Monce</u> to be the indime that he execute	ritz, personally known to be or proved to me vidual whose name is subscribed to the within ated the same in his capacity, and that by his e person upon behalf of which the individual
		Light Benedite Public ELIZABETH BENEDETTO
		NOTARY PUBLIC-STATE OF NEW YORK
STATE OF NEW YORK)		No. 01BE6354585
COUNTY OF)	ss.:	Qualified in Nassau County My Commission Expires 02-13-2025
and for said State personally appet the basis of satisfactory evidence instrument and acknowledged to	e to be the indivi me that he execu	before me, the undersigned, a Notary Public in in, personally known to be or proved to me on dual whose name is subscribed to the within ated the same in his capacity, and that by his experson upon behalf of which the individual
	Notar	y Public

Schedule A

(Legal Description)

The Condominium Units (hereinafter called the "Units") in the building (hereinafter called the "Building") known as the Edgemere Commons A1 Condominium and by the Street Address 5123 Beach Channel Drive, Borough and County of Queens, City and State of New York, said Unit being designated and described as Residential Unit in the certain Declaration, dated April 5, 2022, made pursuant to Article 9-B of the Real Property Law of the State of New York (hereinafter called the "Condominium Act") establishing condominium ownership of the Building and the land (hereinafter called the "Land") upon which the building is situate (which Land is more particularly described below and by this reference made a part hereof), which declaration was recorded in the Office of the Register of the City of New York (the "City Register's Office") on May 12, 2022 as CRFN2022000197452 (which declaration, and any amendments thereto, are hereinafter collectively called the "Declaration").

The Units also designated as Tax Lots 1004 in Block 15843 on the Tax Map of the Real Property
Assessment Bureau of the City of New York of the Borough and County of Queens and on the Floor Plans
of the Building filed with the Real Property Assessment Bureau of the City of New York as Condominium
Plan No.1318 and also filed in the City Register's Office on May 12, 2022 as Map No. CRFN
2022000197453

TOGETHER with an undivided 79.1531% interest, in the Common Elements (as such term is defined in the Declaration)

The Land:

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

BEGINNING at the corner formed by the intersection of the southerly side of Beach Channel Drive with the easterly side of Beach 53rd Street;

RUNNING THENCE North 84 degrees 42 minutes 48 seconds East, along the southerly side of Beach Channel Drive, a distance of 225.02 feet to a point;

THENCE South 04 degrees 22 minutes 44 seconds East, a distance of 305.18 feet to a point;

THENCE South 85 degrees 35 minutes 46 seconds West, a distance of 224.98 feet to the easterly side of Beach 53rd Street;

THENCE North 04 degrees 22 minutes 56 seconds West, along the easterly side of Beach 53rd Street, a distance of 301.71 feet to the corner formed by the intersection of the southerly side of Beach Channel Drive with the easterly side of Beach 53rd Street, the point or place of BEGINNING

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



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RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 47

Document ID: 2022012000298011 Document Date: 12-16-2021 Preparation Date: 01-20-2022

Document Type: AGREEMENT Document Page Count: 45

PRESENTER:

212-532-8686

KENSINGTON VANGUARD NATIONAL LAND SERVICES 39 W37TH STREET TITLE NO. 598196-S-NY-CP-KV NEW YORK, NY 10018

RETURN TO:

JOAN BOCINA, ESQ. NEW YORK STATE HOUSING FINANCE AGENCY 641 LEXINGTON AVENUE NEW YORK, NY 10022

PROPERTY DATA
Borough Block Lot Unit Address

OUEENS 15843 15 Entire Lot 5123 BEACH CHANNEL DRIVE

Property Type: NON-RESIDENTIAL VACANT LAND

CROSS REFERENCE DATA								
CRFN	or	DocumentID	or	_Year	Reel	Page	or	File Number

PARTY 1:

EC A1 LIMITED PARTNERSHIP C/O THE ARKER COMPANIES, 1044 NORTH BOULEVARD, 2ND FLOOR ROSLYN, NY 11576

PARTIES

PARTY 2: NEW YORK STATE HOUSING FINANCE AGENCY 641 LEXINGTON AVENUE NEW YORK, NY 10022

☑ Additional Parties Listed on Continuation Page

	1 1 1 1	
Mortgage :		
Mortgage Amount:	\$ 0.00	
Taxable Mortgage Amount:	\$ 0.00	
Exemption:		
TAXES: County (Basic):	\$ 0.00	
City (Additional):	\$ 0.00	
Spec (Additional):	\$ 0.00	
TASF:	\$ 0.00	
MTA:	\$ 0.00	
NYCTA:	\$ 0.00	
Additional MRT:	\$ 0.00	
TOTAL:	\$ 0.00	
Recording Fee:	\$ EXEMPT	
Affidavit Fee:	\$ 0.00	

FEES AND TAXES

RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE

CITY OF NEW YORK
Recorded/Filed 01-27-

Recorded/Filed 01-27-2022 08:43 City Register File No.(CRFN):

2022000040279

City Register Official Signature

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER



2022012000298011002C26CE

RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)

PAGE 2 OF 47

Document ID: 2022012000298011Document Type: AGREEMENT

Document Date: 12-16-2021

Preparation Date: 01-20-2022

PARTIES

PARTY 1:

EC A1 HOUSING DEVELOPMENT FUND CORPORATION C/O: BLOCK INSTITUTE, INC., 376 BAY 44TH STREET BROOKLYN, NY 11214

REGULATORY AGREEMENT

by and among

NEW YORK STATE HOUSING FINANCE AGENCY,

EC A1 LIMITED PARTNERSHIP

and

EC A1 HOUSING DEVELOPMENT FUND CORPORATION

for the

EDGEMERE COMMONS A1 APARTMENTS PROJECT

Regulatory Agreement for HFA Multi Family Housing Affordable Housing Revenue Bond Program State of New York Mortgage Agency Mortgage Insurance New York State Low Income Housing Tax Credits and Low Income Housing Tax Credits

Record and Return to:

Joan Bocina, Esq. New York State Housing Finance Agency 641 Lexington Avenue New York, New York 10022

Premises:

51-23 Beach Channel Drive

County:

Queens 15843

Block:

Lot:

15

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APPENDICES AND EXHIBITS

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Schedule A	_	LCYM	Desc	ribuon	or me	Fremuses

Legal Description of the PremisesUnit Distribution and Maximum Permitted Gross Monthly Rents Exhibit A

Exhibit B - Project Services and Amenities Form This Regulatory Agreement ("Agreement"), entered into as of December 16, 2021, by and among EC A1 LIMITED PARTNERSHIP, a New York limited liability company with an address at c/o The Arker Companies, 1044 Northern Boulevard, 2nd Floor, Roslyn, NY 11576 (the "Beneficial Owner"), EC A1 HOUSING DEVELOPMENT FUND CORPORATION, a housing development fund company organized pursuant to Article XI of the Private Housing Finance Law of the State of New York ("PHFL"), with an place of business c/o Block Institute, Inc., 376 Bay 44th Street, Brooklyn, New York 11214 (the "Nominal Owner" and together with the Beneficial Owner, the "Owners"), and the NEW YORK STATE HOUSING FINANCE AGENCY ("Agency"), a corporate governmental agency established pursuant to Article III of the PHFL, constituting a public benefit corporation, having its principal place of business at 641 Lexington Avenue, New York, New York 10022.

WITNESSETH:

WHEREAS, the Nominal Owner is the holder of the fee interest and the Beneficial Owner is the owner of all of the beneficial and equitable interest in certain real property located in the Brownsville neighborhood of Queens County, New York as more fully described in <u>Schedule A</u> attached hereto and made a part hereof (the "Premises"); and

WHEREAS, the Beneficial Owner will construct on the Premises a 17-story mixed-use building containing 194 apartment units (including one one-bedroom superintendent's unit), approximately 23,000 square feet of ground-floor retail space 47 indoor parking spaces for tenants and surface parking with an additional 53 spaces, all being known as the "Edgemere Commons A1" (the "Development"); and

WHEREAS, the Owners intend to convert the Premises to a condominium expected to contain the following condominium units: (i) one or more condominium unit(s) containing all 194 residential apartment units, the residential parking, and common areas appurtenant thereto (collectively, the "Project"), (ii) one or more condominium unit(s) containing approximately 23,000 square feet of ground floor retail space and additional public parking (collectively, the "Commercial Space"), all in accordance with a declaration of condominium (together with the by-laws and other schedules attached thereto, as same may be amended from time to time, the "Condominium Declaration") which shall be acceptable to the Agency; and

WHEREAS, all of the Project's 193 revenue generating residential units (the "Low Income Units") shall be set aside for tenants whose household income is at or below 80% of the Area Median Income for the NY HUD Metro FMR Area ("AMI"), further restricted as follows: (i) 25 units will be set aside for tenants whose household income is at or below 80% of the AMI (the "80% AMI Units"); (ii) 101 units shall be reserved for tenants with household income at or below 60% of AMI; (iii) 29 units shall be reserved for tenants with household income at or below 50% of AMI; and (iv) 38 units shall be reserved for tenants with household income at or below 30% of AMI; and

WHEREAS, in addition, 59 Low Income Units shall be reserved for occupancy by tenants eligible for the receipt of supportive services (the "Supportive Units") from qualified providers of such services (with their successors and/or assigns, the "Service Provider(s)") in accordance with one or more contract(s) for the provision of such services (the "Support Agreements") initially as follows: (1) with respect to 29 of such units, an agreement with the New York State Office for People With Developmental Disabilities ("OPWDD") pursuant to OPWDD's Independent Supportive Housing program, and (2) with respect to 30 of such units, an agreement with the New York State Office of Mental Health pursuant to the Empire State Supportive Housing Initiative; and

WHEREAS, the Owner shall enter into an agreement with each Service Provider for the delivery of rental subsidy and supportive services to the tenants in the Supportive Units (the "Services Contract"); and

WHEREAS, pursuant to a Construction Loan and Project Loan Agreement (the "Loan Agreement") dated as of the date hereof, the Project is to be financed in part by a mortgage loan from the Agency (the "First Mortgage Loan"), which will be evidenced by a promissory note (the "Note") and secured by a Mortgage, Assignment of Leases and Rents and Security Agreement (the "First Mortgage") granted by the Owners in favor of the Agency, which will be recorded in the land records of the Office of the City Register, Queens County (the "Register's Office"); and

WHEREAS, the Agency has used a portion of the proceeds from its Affordable Housing Revenue Bonds 2021 Series J (the "Bonds") to fund the First Mortgage Loan; and

WHEREAS, during the period of rehabilitation and/or construction of the Project, the First Mortgage Loan will be secured, *inter alia*, by a direct pay letter of credit (the "LOC") issued by Wells Fargo Bank, National Association ("LOC Bank"), and the Agency will enter into a Servicing and Release Agreement, dated as of the date hereof, with the LOC Bank and the Beneficial Owner; and

WHEREAS, the State of New York Mortgage Agency ("SONYMA") has issued its commitment (the "SONYMA Commitment") to provide a mortgage insurance policy for the First Mortgage Loan (the "SONYMA Mortgage Insurance Policy"), which shall become effective pursuant to the terms set forth in the SONYMA Commitment; and

WHEREAS, simultaneously herewith, the Agency shall fund one or more subordinate subsidy loan ("HCR Subsidy Loan") from funds available to the Agency from its Supportive Housing Opportunity Program, which HCR Subsidy Loan will be evidenced by a promissory note and secured by a mortgage and security agreement, as may be amended, modified or supplemented (the "HCR Subsidy Mortgage") the lien of which shall be subordinate to the First Mortgage; and

WHEREAS, simultaneously herewith, the Beneficial Owner will obtain additional subordinate financing for the Project in the form of subordinate loans from various sources,

including the one or more loans from the New York City Department of Housing Preservation and Development ("HPD") which shall be secured by a mortgage and the lien of which shall be subordinate to the First Mortgage; and

WHEREAS, in connection with the subordinate loan funded by HPD (the "HPD Loan"), the Owners have entered into regulatory agreement (the "HPD Regulatory Agreement") with the City of New York, dated as of the date hereof, which impose certain income and occupancy restrictions, and other regulatory requirements, on certain of the units in the Project; and

WHEREAS, the Premises are located in a Mandatory Inclusionary Housing area within the meaning of Section 23-911 of the New York City Zoning Resolution of the City of New York and the Inclusionary Housing Program Guidelines promulgated with respect thereto, in connection with which the Premises are subject to a Mandatory Inclusionary Housing Restrictive Declaration (the "MIH Restrictive Declaration") to be recorded in the Register's Office; and

WHEREAS, the Project is expected to benefit from a full real estate tax exemption under the New York City 420(c) Tax Incentive Program; and

WHEREAS, the Agency has found and determined that the Project is to be occupied by persons or families of low or moderate income pursuant to the restrictions set forth in this Agreement; and

WHEREAS, the Agency is a credit administering agency under §42 of the Code, and the Agency has approved the allocation to the Beneficial Owner of low-income housing tax credits ("LIHTC") pursuant to §42(h)(4) of the Code; and

WHEREAS, in connection with the allocation of LIHTCs to the Project, the Owner intends to elect the income averaging set aside in accordance with Section 42 of the Code, and agrees to comply with the requirements with respect thereto as set forth in Section 42(g)(2)(D)(iii) of the Code (the "IA Requirements"), provided that at all times no less than 40% of the revenue units in the Project shall continue to be restricted to occupancy by tenants whose household income are at or below 60% of AMI in accordance with §142(d)(1)(B) of the Code (the "40/60 Test"); and

WHEREAS, the Agency requires, as a condition of the issuance of the Bonds, financing of the First Mortgage Loan and the allocation to the Project of LIHTC, that the Owners agree to the restrictions running with the land and binding on all of their respective successors, assigns, heirs, grantees or lessees for the term of this Agreement as set forth herein, and the Mortgage, and that the Owners consent to be regulated by the Agency as set forth herein, to: (i) preserve the tax-exempt status of the Bonds; (ii) meet the requirements of §44.29-a of the PHFL; (iii) meet the requirements of §42 of the Code with regard to LIHTC; and (iv) to ensure that other public benefit requirements are met.

NOW THEREFORE, the parties do hereby agree as follows:

- 1.0 **DEFINITIONS** Except as otherwise defined herein, all capitalized words and phrases herein shall have the meanings assigned to such terms in the First Mortgage and the Code. For general rules of interpretation, see Section 7.1. In addition, the following words and phrases as used in this Agreement shall have the following meanings:
 - "40/60 Test" shall have the meaning assigned in the recitals to this Agreement.
 - "80% AMI Units" shall have the meaning assigned in the recitals to this Agreement.
 - "Agency" shall mean the New York State Housing Finance Agency.
 - "Agreement" shall mean this Regulatory Agreement.
 - "Area Median Income" or "AMI" shall mean the area median gross income for the county or metropolitan statistical area in which the Project is located, as determined from time to time by the Secretary of the United States Department of Housing and Urban Development ("HUD") as applicable pursuant to the Code; references to 60% of AMI shall mean amounts established by HUD constituting 120% of the Very Low Income Limit for HUD's Section 8 programs. As used herein, AMI shall be deemed to be adjusted for family size in accordance with applicable income limits as published by HUD from time to time.
 - "Beneficial Owner" shall mean EC A1, Limited Partnership, its successors and assigns.
 - "Beneficial Owner's Tax Certification" shall have the meaning assigned in Section 5.8(c).
 - "Bonds" shall have the meaning assigned in the recitals to this Agreement.
 - "Code" shall mean the Internal Revenue Code of 1986, as amended, the Treasury Regulations and published administrative positions of the Internal Revenue Service set forth in Revenue Procedures, Revenue Rulings, and other Internal Revenue Service publications with binding authority applicable thereunder.
 - "Compliance Period" shall have the meaning assigned in Section 3.1.
 - "Conversion Date" shall have the meaning assigned in Section 3.1.
 - "Credit Period" shall have the meaning assigned in Section 3.1.
 - "Early Termination" shall have the meaning assigned in Section 3.2(b).
 - "Eligible Basis" shall have the meaning assigned in Section 6.2(a)(7).
 - "ELIHC" shall have the meaning assigned in Section 3.2(a).
 - "Event of Default" shall have the meaning assigned in Section 2.1.
 - "Extended Use Period" shall have the meaning assigned in Section 3.2(b).

- "Federal Section 8" shall have the meaning assigned in Section 3.1.
- "First Mortgage" and "First Mortgage Loan" shall have the meanings assigned in the recitals to this Agreement.
- "General Partner" shall mean EC A1 GP LLC, a New York limited liability company, its successors and assigns.
- "General Public" shall have the meaning given in §1.42-9 of the Treasury Regulations, as clarified by §42(g) of the Code.
- "Governmental Entity" shall have the meaning assigned in Section 5.6(b).
- "Guidelines" shall mean the Agency's Fair Housing and Tenant Selection Guidelines, as the same may be amended from time to time.
- "HCR Subsidy Loan" and "HCR Subsidy Mortgage" shall have the meanings assigned in the recitals to this Agreement.
- "HPD" and "HPD Regulatory Agreement" shall have the meanings assigned in the recitals to this Agreement.
- "IA Requirements" shall have the meaning assigned in the recitals to this Agreement.
- "Individuals of Low Income" shall mean individuals and families: (i) whose income is 60% or less of Area Median Income for purposes of §142(d) (2) (B) and §142(d) (3) of the Code and §1.103-8 (b) (8) (v) of the Tax Regulations (except that "60 percent" shall be substituted for "80 percent" therein), provided that with respect to the 80% AMI Units, such income may not be greater than 80% of AMI, all of which shall be and in accordance with the IA Requirements; and (ii) who are individuals of low income within the meaning of the New York State Housing Finance Agency Act, Article III of the PHFL.
- "Investor" shall mean Wells Fargo Affordable Housing Community Development Corporation, its successors and assigns.
- "Investor Sponsor" shall have the meaning assigned in Section 5.5(c).
- "LIHTC" shall have the meaning assigned in the recitals to this Agreement.
- "Loan Agreement" shall have the meaning assigned in the recitals to this Agreement.
- "LOC" and "LOC Bank" shall have the meanings assigned in the recitals to this Agreement.
- "Low Income Units" shall have the meaning assigned n the recitals to this Agreement.
- "MIH Restrictive Declaration" shall have the meaning assigned in the recitals to this Agreement.

- "Nominal Owner" shall mean EC A1 Housing Development Fund Corporation, its successors and assigns.
- "Note" shall have the meaning assigned in the recitals to this Agreement.
- "Partnership Agreement" shall mean the Amended and Restated Agreement of Limited Partnership of the Beneficial Owner, dated as of the date hereof, as the same may be amended from time to time.
- "Owners" shall mean, together, the Nominal Owner and the Beneficial Owner
- "PHFL" shall have the meaning assigned in the recitals to this Agreement.
- "Premises" shall have the meaning assigned in the recitals to this Agreement.
- Principal(s)" shall mean Alex Arker, Daniel Moritz, David Schwartz, and Martin Nussbaum
- "Prohibited Person" shall have the meaning assigned in Section 5.6(a).
- "Project" shall have the meanings assigned in the recitals to this Agreement.
- "Qualified Project Period" shall have the meaning assigned in Section 3.1.
- "Regulations" shall have the meaning assigned in the recitals to this Agreement.
- "Replacement Reserve Account" shall have the meaning assigned in Section 5.3(a).
- "Replacements" shall have the meaning assigned in Section 5.3(b).
- "Services Contract" and "Service Provider" shall have the meanings assigned in the recitals to this Agreement.
- "SONYMA", "SONYMA Commitment", and "SONYMA Mortgage Insurance Policy" shall each have the meanings assigned in the recitals to this Agreement.
- "Statute" shall have the meaning assigned in the recitals to this Agreement.
- "Support Agreement" shall have the meaning assigned in the recitals to this Agreement.
- "Supportive Units" shall have the meaning assigned in the recitals to this Agreement.
- "Transfer Fee" shall have the meaning assigned in Section 5.5(d).

2.0 ENFORCEMENT

2.1 Incorporation in First Mortgage and Termination of Agreement - (a) This Agreement and the restrictions hereunder are hereby incorporated by reference into the First Mortgage, whenever the First Mortgage Loan is made in whole or part, so that an Event of Default (as defined herein) hereunder, after expiration of any applicable notice and cure periods, shall constitute an "Event of Default" under the First Mortgage. For purposes of this Agreement, an

Event of Default shall be deemed to have occurred if the Owners shall fail to observe any requirement or perform any obligation imposed on the Owners by this Agreement, and the Owners fail to cure such default within thirty (30) days after the Owners and the LOC Bank (for so long as the LOC is outstanding) receive written notice of such default from the Agency, unless such default shall not be a willful default and can be cured but cannot by its nature be cured within such thirty (30) day period, in which case an Event of Default shall not be deemed to have occurred so long as the Owners commence such cure as soon as reasonably possible and proceed with due diligence to cure such default; provided, however, that in any case an Event of Default shall be deemed to have occurred (i) when and if interest on the Bonds shall be includable in gross income for federal income tax purposes or (ii) thirty (30) days before the Agency shall be required to commence foreclosure of the First Mortgage in order to prevent interest on the Bonds from becoming includable in gross income for such purposes.

Except as limited in Section 3.2 hereof in regard to LIHTC, in the event of foreclosure or deed-in-lieu of foreclosure with respect to the First Mortgage Loan, this Agreement and the restrictions hereunder shall terminate provided the Bonds are redeemed at the first available call date and further provided that the HCR Subsidy Loan has been paid in full. However, if the obligor on the First Mortgage Loan or a related person (within the meaning of §144(a)(3) of the Code) thereafter obtains, during the term of this Agreement (as determined by Section 3.1), an ownership interest in the Project for tax purposes, this Agreement shall be revived in full force and effect to the extent of the restrictions hereunder which affect the exclusion from federal income taxation of interest on the Bonds. In addition, this Agreement and the restrictions hereunder shall, in the Agency's sole discretion, cease to apply partially or entirely in the event of involuntary noncompliance caused by unforeseen events such as fire, seizure, requisition, condemnation, change in federal law, or action of a federal agency after the date of issue, which prevents the Agency from enforcing any restriction hereunder, provided the Bonds are retired at the first available call date following such event.

2.2 Recording and Lien Provisions - The benefits and burdens of this Agreement shall run with the land and bind the respective interests of the Beneficial Owner and the Nominal Owner in the Project and the Premises. The Beneficial Owner, at its cost and expense, shall cause this Agreement to be duly recorded, filed, re-recorded, and refiled in such places as to the Premises, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law in order to establish, preserve and protect the ability of the Agency to enforce this Agreement. At the request of the Beneficial Owner or the Nominal Owner, the Agency shall provide an instrument executed in recordable form at such time as the term of this Agreement has expired and the obligations of the Owners have been satisfied, releasing the Owners and the land from this Agreement.

2.3 Remedies - The injury to the Agency arising from non-compliance with any of the terms of this Agreement would be great, and the effect of misrepresentations of fact and any violations by Beneficial Owner or the Nominal Owner of warranties and covenants under this Agreement would be irreparable, and the amount of consequential damage would be difficult to ascertain and may not be compensable by money alone. Therefore, upon the occurrence of an Event of Default, the misrepresentation of fact, or violation of any warranty or covenant under this Agreement by Beneficial Owner or the Nominal Owner, after expiration of applicable notice and cure periods, if any, the Agency, at its option, may apply to any state or federal court, for specific performance of this Agreement, for an injunction against any Event of Default, noncompliance with or misrepresentation under this Agreement, or for such other relief as may be appropriate in addition to its right to foreclose or require foreclosure of the First Mortgage, entirely or partially, pursuant to the terms of the First Mortgage. Noncompliance with any of the terms of this Agreement may jeopardize the tax-exempt status of the Bonds. The Agency is obligated to notify the Internal Revenue Service of non-compliance with this Agreement that results in noncompliance under the Code with respect to the LIHTC.

For purposes of this Agreement, the date of non-compliance or misrepresentation shall be the date such non-compliance or misrepresentation was first discovered by the Beneficial Owner, the Nominal Owner or the Agency, or would have been first discovered by the Beneficial Owner or the Nominal Owner by the exercise of reasonable diligence

- 2.4 Indemnification The Beneficial Owner shall indemnify and hold the Agency harmless from and against any and all claims, demands, liability, loss, cost or expense (including but not limited to documented attorney fees and other costs of litigation) which may be incurred by the Agency arising out of or in any way related to the Beneficial Owner's breach of any of its obligations under this Agreement or any action taken by the Agency (other than willful misconduct, fraud, or gross negligence on the part of the Agency) to enforce or exercise its rights under this Agreement as a result of such breach. The obligations under this Section shall survive the termination or expiration of this Agreement as necessary to effectuate its provisions. This indemnity is not a guarantee of any portion of the First Mortgage Loan.
- (b) Any subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior owner (including the Beneficial Owner) under this Agreement, including but not limited to any payment of any indemnification obligation. Notwithstanding the prior sentence, neither the LOC Bank or SONYMA, or their respective nominees, successors and/or assigns in the event of foreclosure or deed-in-lieu of foreclosure of the Mortgage nor any purchaser of the Project in connection therewith, shall be liable or obligated for the breach or default of any obligation of any prior owner (including the Beneficial Owner) under this Agreement, however, the owner of the respective Project at the time the default or breach

occurred shall remain liable for any and all damages occasioned thereby even after such entity ceases to hold an ownership interest in the Project.

3.0 TERM

- 3.1 Term of Agreement The term of this Agreement shall commence on the execution and delivery hereof and shall extend through a period ("Qualified Project Period") terminating on the latest of the following:
 - (i) the date which is 15 years after the date on which 50% of the residential units in the Project are first occupied;
 - (ii) the first date on which no Bonds (and no other private activity bonds relating to the Project) are outstanding;
 - (iii) if applicable, the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 ("Federal Section 8") terminates;
 - (iv) the date on which the First Mortgage Loan is no longer outstanding;
 - (v) the date on which the HCR Subsidy Loan, as may be modified, supplemented and/or extended, is no longer outstanding;
 - (vi) the end of a period (the "Compliance Period") consisting of 15 taxable years of the Beneficial Owner commencing with the first taxable year of the credit period ("Credit Period") as defined in §42(f)(1) of the Code with respect to any building in the Project;
 - (vii) the expiration or earlier termination of the Extended Use Period, as defined in Section 3.2 (b), below, or
 - (viii) thirty (30) years from the date on which the SONYMA Mortgage Insurance Policy becomes effective (the "Conversion Date").

Additionally, as provided in Section 3.2 hereof, certain provisions of this Agreement shall continue in effect beyond the end of the Qualified Project Period. The Owners acknowledge that the Qualified Project Period and other periods required by this Agreement may represent a longer period than that which would otherwise be required by the Code to ensure the tax-exempt status of the Bonds or the allowance of LIHTC or any property tax exemption.

3.2 Special Rules for Tax Credits - (a) This Section 3.2, together with such other provisions of this Agreement as are necessary to give effect to and enforce the provisions hereof, constitute an "extended low income housing commitment" ("ELIHC") in accordance with the requirements of §42(h)(6)(B) of the Code, arising from an election by the Beneficial Owner to accept the benefits of LIHTC and the Agency financing in relation to the Project. Failure to comply with the provisions of the ELIHC shall be an Event of Default under this Agreement and thereby

the First Mortgage, and the Agency or its successors may exercise any of the remedies available hereunder or thereunder. Furthermore, the Agency may seek specific performance of the ELIHC by the Beneficial Owner or any successor in interest thereto, without declaring an Event of Default pursuant to the First Mortgage and without waiving any remedies under the Mortgage, by filing an action in any court of competent jurisdiction in the State of New York. Any existing, past or prospective tenant of the Project who qualifies, qualified or would qualify as a low income occupant pursuant to §42(g) of the Code is hereby expressly agreed to be a beneficiary of this ELIHC and may apply to any court of competent jurisdiction in the State of New York for specific performance of any provisions of the ELIHC, notwithstanding any action that may or may not be taken by the Agency.

- (b) The ELIHC shall begin on the first day of the Compliance Period and remain in effect until 15 years after the end of the Compliance Period ("Extended Use Period") except that the Extended Use Period will terminate earlier ("Early Termination") on the date of foreclosure of the First Mortgage or deed-in-lieu of foreclosure (unless such events are part of an arrangement with the Beneficial Owner to cause an early termination as determined by the Internal Revenue Service). The Extended Use Period will not be subject to Early Termination pursuant to §42(h)(6)(E)(i)(II) of the Code.
- (c) Notwithstanding anything herein to the contrary, the terms of this Agreement necessary to effectuate the terms and conditions of this Section 3.2 shall continue through the expiration of this Agreement or Early Termination.
 - (d) During the Extended Use Period:
 - (1) except as provided in Section 4.2 of this Agreement, all of the Low Income Units, (i.e., 193 units) shall be occupied or available for occupancy by qualified families or individuals earning not more than 80% of the AMI, subject to the IA Requirements and 59 of the Low-Income Units shall be leased as Supportive Units. In addition, the Project shall at all times be in compliance with the 40/60 Test;
 - the Rents (as qualified in Section 4.3, below) payable for the Low Income Units, as adjusted by utility allowances and any rental subsidies approved by the Agency in accordance with the Code, shall not be more than 30% of the applicable AMI for such Low-Income Unit, each adjusted for family size as follows: (i) for studio or efficiency apartments having no separate bedrooms, the designated family size shall be a 1-person family; and (ii) for apartments containing at least one bedroom, the designated family size shall be equal to 1.5 times the number of bedrooms.

- (3) no portion of any building in the Project shall be disposed of to any person unless all of such building is disposed of to such person;
- (4) the Beneficial Owner shall not refuse to lease to a holder of a voucher or certificate of eligibility under the Federal Section 8 program because of the status of the prospective tenant as such a holder;
- (5) during the Extended Use Period and for the three (3) year period following an Early Termination:
 - (A) no existing tenant (i.e., the tenant occupying the respective Low Income Unit during the Extended Use Period, or upon the occurrence of an Early Termination of the Extended Use Period) may be removed whether by eviction, expiration of lease, or for any reason other than good cause; and
 - (B) no rents for any Low Income Unit occupied by such existing tenant may be increased, except as permitted under §42 of the Code; and
- (6) the "applicable fraction" (as defined in §42(c)(1) of the Code) for each building in the Project shall be 100% or such other amount determined upon completion of the Project and approved by the Agency provided that in no event shall the applicable fraction for any building in the Project be less than 100%.

4.0 TENANTS AND LEASES

- 4.1 Rental Restrictions Once available for occupancy each unit (other than any unit approved by the Agency for occupancy by a superintendent) must be rented or available for rental on a continuous basis to members of the General Public and occupied by individuals or families as their residence. No portion of the Project and none of the units in the Project will, at any time during the term of this Agreement, be used on a transient basis, for example, as a trailer park or trailer court or a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium or rest home. Use on a transient basis shall mean the rental of units for an initial lease term of less than 12 months.
- 4.2 Low Income Occupancy Requirements (a) Continuously during the term of this Agreement all of the Low Income Units shall be occupied and, once having been so occupied, held available for occupancy by Individuals of Low Income. In addition, at all times, the Project shall be occupied in compliance with the IA Requirements and the 40/60 Test, and 59 Low Income Units shall be leased as Supportive Units. Unit distribution shall be as further set forth in Exhibit A attached hereto.

In accordance with Treasury Regulation §1.103-8(b) (8) and for LIHTC purposes, in accordance with Treasury Regulation §1.42-5 (b) (1) (vii) and Internal Revenue Notice 88-80, families of low income shall be determined in a manner consistent with determinations of "lower income families" under Federal Section 8 (or if such program is terminated, under such program as was in effect immediately before such termination). In accordance with procedures established by the Agency, the Beneficial Owner shall take reasonable steps to verify the low income status of all families or individuals who occupy any Low Income Unit.

- (b) Each Low Income Unit shall continue to be treated as such, notwithstanding any increase in the income of the occupant of such Low Income Unit except as provided in the next sentence. Any Low Income Unit in which the aggregate income of the occupants as of the most recent annual recertification (as described in the Code) exceeds 140% of the applicable income limit (e.g., 140% of 60% for a unit restricted to tenant with household income not exceeding 60% AMI) shall not be treated as a Low Income Unit if after such determination but before the next determination, any residential unit of comparable or smaller size in the same building is occupied by a new resident whose income exceeds the applicable income limit. Occupancy of a unit shall refer to the date that the tenant has possession of the unit and the right to occupy such unit pursuant to a fully executed lease.
- (c) In addition, the Supportive Units will be reserved for occupancy by tenants who are eligible to receive supportive services from the Service Provider pursuant to a Support Agreement. In the event that, for a period of 90 days or more, (i) any Supportive Unit is vacant due to the failure of the Service Provider to refer an eligible tenant and the Service Provider is not paying rent with respect to such vacant unit, or (ii) the Service Provider fails to make any required rent subsidy payment with respect to a Supportive Unit in accordance with the Services Contract, or (iii) any funding with respect to the provision of the applicable support services and/or rent subsidy, as applicable under the Support Agreement, is no longer available, then such unit shall no longer be a Supportive Unit (but shall continue to be a Low-Income Unit) and the number of Supportive Units hereunder shall be applicably reduced. Notwithstanding the foregoing, a Supportive Unit may be reinstated if required by and in accordance with the terms of, the applicable Support Agreement and/or Services Contract. Nothing in this Section 4.2(c) shall be construed to permit displacement or termination of any existing tenancy other than for good cause pursuant to the terms of any applicable lease.
- 4.3 Low Income Unit Rents, Fees and Charges (a) The annual rents for each Low Income Unit shall not exceed 30% of the applicable AMI band for such unit as set forth in Exhibit A, adjusted for the presumed number of individuals occupying the unit as follows: for studio or efficiency apartments having no separate bedrooms, the designated family size shall be a 1-person family; and for units having one or more separate bedrooms, 1.5 individuals for each separate bedroom.

"Rent" for purposes of this Section 4.3 and Section 3.2(d)(2): (A) does not include (i) any payment under Federal Section 8 or any comparable rental assistance program, or (ii) any fee for supportive services and/or rental assistance provided on behalf of supportive housing tenants paid to the Owner, and (B) does include: (i) any utility allowance determined by the Secretary of Housing and Urban Development as may be adjusted by the Agency, or (ii) the cost of any utilities that would be covered by such utility allowance, as determined by the Agency, if the units were receiving Federal Section 8 assistance.

- Pursuant to the Code, the rents for Low Income Units shall be based on the applicable AMI and may be adjusted upward for inflation annually pursuant to the calculations of AMI made by HUD in accordance with the Code, but in no case shall the rents for Low Income Units be adjusted downward. For example, if the AMI calculations in effect on the date hereof were to form the basis for setting maximum permitted rents, then such maximum rents would be as set forth at Exhibit A. Further, the maximum rents will be reduced by a utility allowance, if applicable, which may be revised annually. The Beneficial Owner shall review the utility allowance annually pursuant to the provisions of Treasury Regulation §1.42-10(c)(2). Accordingly, each January the Beneficial Owner shall submit to the Agency documentation satisfactory to the Agency of any utility estimates, usage, cost projections and proposed utility allowance with respect to units in the building for the upcoming year. Based thereon, in accordance with the Code, the Agency shall approve the proposed utility allowance or determine the appropriate utility allowance applicable to the units in the building for such period. The Beneficial Owner's failure to provide such information on a timely, annual basis, to the satisfaction of the Agency, may result in the Agency delaying or denying a change in Low Income Unit rents, and may constitute noncompliance with applicable requirements of the Code.
- (c) The Beneficial Owner shall not impose fees and charges upon the tenants of Low Income Units without the prior written consent of the Agency, except for the following: (1) a late payment charge not to exceed \$25.00 if rent is paid after the tenth (10th) day that the rent of such tenant is due; and (2) a bounced check or similar "insufficient funds" fee not to exceed the actual fee charged by the financial institution processing such rental payments.
- 4.4 Lease Provisions for Low Income Units Owner shall enter into a lease directly with the eligible occupant of each Low Income Unit, which leases shall be for terms of at least one year and shall be expressly subordinate to the First Mortgage. In a separate rider acceptable to the Agency, the lease shall state that: (i) the lease shall be terminated and the tenant may be evicted for failure to qualify pursuant to the income standards for that unit if a tenant has falsely certified household income or household composition; (ii) false certification constitutes material noncompliance under the lease; (iii) tenants shall be obligated to provide income certification, and any additional recertifications of income as the Agency and/or the Beneficial Owner shall require; (iv) in the event the unit is not receiving a Federal Section 8 subsidy, the Beneficial Owner's right

to increase rent for an existing tenant over the amounts provided in Section 4.3(b) hereof upon the conclusion of the Qualified Project Period shall be conditioned upon the Beneficial Owner meeting the requirements of §42 of the Code as referenced in Section 3.2 hereof and the Beneficial Owner furnishing such tenant with a notice at least six months prior to such increase in a form acceptable to the Agency, and that if such notice is not given, such tenant shall be entitled to lease renewals at the rents provided for in Section 4.3(b) until such notice has been given and six months has elapsed; (v) subletting and the tenant's assignment of the lease shall be prohibited; and (vi) the Agency and its representatives or agents shall have the right to inspect such unit for the purpose of fulfilling the Agency's responsibilities under the Code. The form of lease to be utilized by the Beneficial Owner for each Low Income Unit shall be subject to the Agency's prior written approval. Failure to utilize an approved form of lease for such units shall subject the Beneficial Owner to a penalty equal to one month's rent for each affected unit.

- 4.5 Fair Housing Marketing Guidelines The Beneficial Owner shall, no less than 240 days prior to the first occupancy of the Low Income Units, submit to the Agency for its approval a marketing and tenant selection plan that is in compliance with the Agency's affirmative fair housing marketing guidelines. Such marketing plan shall specifically describe the method of marketing to and selection of tenants for the Low Income Units. No marketing or selection of tenants for any of the Low Income Units shall be commenced prior to the approval of the Agency of the marketing and tenant selection plan. The Beneficial Owner will notify the Agency in writing of the date on which it intends to commence marketing and shall have such pre-occupancy meetings with the Agency as the Agency shall require. In addition, prior to the initial marketing of any units in the Project, the Beneficial Owner shall submit to the Agency for its records a copy of any proposed advertisement or other form of marketing of such units.
- 4.6. Rent Stabilization Law With respect to Rent Stabilization, the terms and provisions of the HPD Regulatory Agreement shall govern and control.

5.0 OPERATING RULES

5.1 Project Restrictions – The Project shall constitute a qualified multi-family residential rental project within the meaning of §142(d) of the Code and will be used for such purposes during the term of this Agreement. The Beneficial Owner warrants that the Project will be completed with due diligence substantially in accordance with building plans and specifications approved by the Agency for the Project and change orders approved by the Agency, to the extent approval of such change orders is required. The Project consists of a building or structure or several proximate buildings or structures which are located on a single tract of land or contiguous tracts of land with or without facilities directly related and essential thereto. The term "tract" means any parcels of land which are contiguous except for the interposition of a road, street, stream or similar property. Parcels are contiguous if their boundaries meet at one or more points. Pursuant

to the plans and specifications and any change orders, all of the residential units in the Project have been or will be similarly constructed or rehabilitated, as applicable. The Beneficial Owner (or a party related to the Beneficial Owner) shall not occupy a residential unit in a building or structure unless such building or structure contains more than four units. All of the residential units in the Project shall contain within the residential unit complete living, sleeping, eating, cooking and sanitation facilities, all of which are separate and distinct from other residential units. In addition, the Project shall contain such other services and amenities as described in Exhibit B, attached hereto. All facilities used in connection with the Project are: (i) located on the Premises, (ii) solely for the benefit of tenants of the Project, and (iii) of a character and size commensurate with the needs of such tenants. Beneficial Owner shall use its best efforts to ensure that handicapped or disabled individuals in the Project are afforded equal access to such facilities.

5.2 Low Income Unit Requirements - To ensure that the Low Income Units are occupied by households of an appropriate number of individuals, the Beneficial Owner shall comply with the following standard for occupancy upon initial rental or re-rental of such units, or such smaller number if so required by local zoning or building department authorities or other governmental regulatory restriction In addition, the Low Income Units shall be allocated as follows:

Unit Size	# of Persons	Low Income Units
Studio	1-2	45
One Bedroom	1-2	87
Two Bedroom	2-4	55
Threee Bedroom	3-6	7

5.3 Replacement Reserve Account — (a) The Beneficial Owner shall establish a replacement reserve account that shall be held and controlled by the Agency, to be known as the "Replacement Reserve Account". Commencing at the earlier of (i) the first day of the month following the month in which 90% occupancy is achieved, (ii) the Conversion Date, or (iii) the date on which the first amortization payment on the First Mortgage Loan becomes due, and on the first day of each month thereafter for so long as this Agreement is in effect, the Beneficial Owner shall deposit in the Replacement Reserve Account the amount of \$4,850 per month (i.e., \$300 per unit per year). Said amounts may be reduced (not below zero) by the amounts required to be deposited by the Owner into any replacement reserve account required to be maintained by any agreement with the LOC Bank. All interest earned on funds in the Replacement Reserve Account shall remain on deposit in the Replacement Reserve Account. The Agency shall not be responsible for any losses resulting from the investment of the Replacement Reserve Account or obtaining any specific level or percentage of earnings on such investment.

(b) The amount of monthly payments to the Replacement Reserve Account shall remain constant, until and unless revised in the reasonable discretion of the Agency based on (i) the results of the physical needs assessment report as described in subsection (c) below, (ii) the Project's history of repairs, (iii) the existing physical condition of the Project or (iv) other factors deemed reasonably relevant by the Agency. Upon Beneficial Owner's written request, in accordance with the Agency's requirements, the Agency shall disburse to the Beneficial Owner within a reasonable period of time, in a manner reasonably determined by the Agency, such amounts from the Replacement Reserve Account as may be necessary to reimburse or pay the Beneficial Owner for the actual approved cost of repairing and/or replacing building systems, equipment and other items of a capital nature, including, without limitation, the repair or refurbishing of common areas, required for the proper operation and marketing of the Project, or to remedy a situation deemed to be of an emergency nature ("Replacements"). No such disbursements shall be made, however, prior to the fifth (5th) anniversary of the date that deposits begin to be made by the Beneficial Owner into the Replacement Reserve Account. The Agency may require Beneficial Owner to reimburse into the Replacement Reserve Account the amount of any such disbursement, over a reasonable period of time to be determined by the Agency.

In no event shall the Agency approve or make any payment of funds from the Replacement Reserve Account unless such work and or materials have been performed or installed, as applicable and same has been approved by the Agency, which approval shall not be unreasonably withheld. If at any time the funds deposited in the Replacement Reserve Account are or will be insufficient to maintain the Replacement Reserve Account at a satisfactory level, as reasonably determined by the Agency, the Beneficial Owner, upon notification, shall at such times as may be designated by the Agency, deposit into the Replacement Reserve Account an amount determined by the Agency as reasonably necessary to restore the account to a sufficient level. The interest earned in the Replacement Reserve Account, and will not be used to offset any required payments by the Beneficial Owner into the Replacement Reserve Account.

In no event shall the Agency be obligated to approve the disbursement of funds from the Replacement Reserve Account if an Event of Default has occurred (as said term is defined in the Mortgage and as referred to herein) and is continuing under this Agreement or the First Mortgage, or if an act, event or condition shall have occurred and then be existing as of that date, which solely with notice or lapse of time, would constitute an Event of Default under this Agreement or the First Mortgage. Notwithstanding the above, if an Event of Default has occurred and is continuing, for so long as the LOC is outstanding, the LOC Bank may request the Agency in writing to release funds from the Replacement Reserve Account for Replacements and thereupon such funds shall be disbursed.

- (c) No earlier than the first day of the first month following the tenth anniversary of the date of the First Mortgage and on each tenth anniversary thereafter during the term of the First Mortgage Loan, the Beneficial Owner shall engage a licensed independent engineer or architect, acceptable to the Agency, to perform a physical needs assessment of the Project. The physical needs assessment shall be performed at the expense of the Beneficial Owner, which expense shall be reimbursable from the Replacement Reserve Account. At the discretion of the Agency, after review of the physical needs assessment report, the Beneficial Owner's required monthly payment to the Replacement Reserve Account may be adjusted within 90 days following the Agency's receipt of the physical needs assessment report so that the amount in the Replacement Reserve Account will, in the Agency's reasonable determination, be sufficient to pay for required Replacements as identified in said assessment. The Agency agrees that it shall exercise reasonable judgment as a prudent lender in determining such increases for required Replacements.
- (d) Upon expiration of the Compliance Period, the remaining balance of any operating reserve for the Project as may be required pursuant to the Partnership Agreement in excess of an amount equal to the aggregate total of: (i) an amount equal to three (3) months of operating expenses of the Project (based on the amount of operating expenses reported in the most recent audited financial statement for the Project), and (ii) an amount equal to three (3) months' debt service for the First Mortgage Loan and the HCR Subsidy Loan, shall be immediately deposited into the Replacement Reserve Account and administered in accordance with this Section 5.3. The Owner shall continue to maintain the balance in an operating reserve account.
- (e) After payment in full of all sums secured by the First Mortgage and the expiration of this Agreement, the Agency shall disburse to the Beneficial Owner all amounts remaining in the Replacement Reserve Account.
- 5.4 Project Management (a) The Beneficial Owner shall not employ or otherwise use or retain a managing agent for the Project other than Progressive Management of NY without the Agency's prior approval of such managing agent and the terms of its retention including compensation, which approval shall not be unreasonably withheld. Any renewal or termination of the managing agent's employment shall be subject to the Agency's approval, which approval shall not be unreasonably withheld or delayed. If the Beneficial Owner shall also retain a leasing/rental agent, other than the managing agent, such leasing/rental agent shall be subject to the Agency's approval, and may not be replaced without the Agency's prior approval, which approval shall not be unreasonably withheld or delayed. If the Beneficial Owner retains a managing agent without having first received approval of the Agency, the Beneficial Owner will be subject to a monetary penalty equal to the lesser of (i) the amount of the monthly management fee paid to the unapproved agent, or (ii) \$20,000, which amount shall be assessed initially and for each month such agent is in place without Agency approval.

- The Agency reserves the right to review the performance of the managing agent. If (b) the Agency notifies the Beneficial Owner of reasons for which it is not satisfied with the management of the Project, including but not limited to the failure to maintain the property or books and records of the Project, the Beneficial Owner shall cure such condition, or cause the managing agent to cure such condition, in a period of time not to exceed 30 days, provided that said time period may be extended for a reasonable period of time if Beneficial Owner is diligently and expeditiously seeking to cure such condition so long as such condition is curable in the Agency's reasonable judgment, or if such condition is not curable, Beneficial Owner shall engage a managing agent subject to approval by the Agency. The Beneficial Owner shall not thereafter employ or otherwise use or retain any managing agent for the property or any part thereof, without having first obtained the Agency's written approval of such managing agent and the agreement setting forth all the terms of such employment or retainer including compensation. management agreement shall contain a provision that it is subject to termination upon written request by the Agency in accordance with the provisions hereof. The Beneficial Owner shall submit to the Agency such information as the Agency reasonably requires in order to review the background and qualifications of the new managing agent, including proof of a valid New York State real estate broker's license, and corporate/individual/principal financial statements in a form acceptable to the Agency. If the Beneficial Owner has not engaged a replacement managing agent acceptable to the Agency within 30 days after written notice provided by HFA to the Beneficial Owner in accordance with the provisions of this Section 5.4(b), or if there has been noncompliance hereunder which remains uncured for more than 30 days after notice provided by the Agency to the Beneficial Owner, the Agency may act as the managing agent or unilaterally appoint a managing agent. In this case, the Beneficial Owner shall be obligated to pay a management fee to the Agency or the Agency-appointed entity, respectively, in the amount equal to the fee paid including accrued incentive payments, if any, to the preceding managing agent.
- (c) Notwithstanding the provisions of Section 5.4(b) above, in the event that there is a need to replace the managing agent due to premature termination or otherwise, which requires immediate temporary replacement of the managing agent before approval can be obtained from the Agency, Beneficial Owner may employ a replacement managing agent, provided that the agreement for such employment is terminable upon receipt by Beneficial Owner of written notice that said managing agent is not acceptable to the Agency.
- (d) The Agency reserves the right to review the performance of the leasing agent and may require the removal and replacement of such agent in a manner similar to the provisions set forth in subsections (b) and (c), above, except that the Agency shall not act in the capacity of leasing agent.

- 5.5 Change of Principals and Transfer Restrictions (a) As used in this Section 5.5, the term "transfer" shall include any sale, transfer, assignment or other conveyance, provided, however, that the meaning of the term "transfer" shall not include a mortgaging of the Property.
- (b) In addition to the restrictions on conveyance of the Project and the Premises set forth in the First Mortgage, neither the Beneficial Owner nor the Nominal Owner shall transfer the Premises, the Project, or any part of either, without the prior written consent of the Agency which consent shall not be unreasonably withheld or delayed. Any transfer or attempted transfer of the Project or any part thereof made without such consent of the Agency shall be null and void ab initio.
- (c) No consent of the Agency shall be required for the transfer of any direct or indirect ownership interest in the Beneficial Owner or the General Partner, provided that after giving effect to such transfer: (i) there shall not be a change of any direct or indirect control of either the Beneficial Owner, the General Partner, or any Principal which is not an individual; (ii) there shall not be a change of (x) more than 10%, in the aggregate, of the respective direct or indirect ownership interests in the Beneficial Owner or of the General Partner, or (y) more than 50% of any Principal which is not an individual; (iii) one or more of the Principals will directly or indirectly retain an ownership interest in the Beneficial Owner, and (iv) one or more of the Principals shall retain the day to day management and control of the Beneficial Owner and the Project. The consent of the Agency shall be required (however, no Transfer Fee shall apply with respect to such consent) for the removal of the General Partner in accordance with the provisions of the Partnership Agreement, however, no consent shall be required if in connection with such removal the General Partner's interest is transferred to an entity controlled by the Wells Fargo Bank, National Association (the "Investor Sponsor") provided that such entity has significant experience in the ownership and operation of comparable multi-family properties, and provided further that any subsequent replacement of the General Partner shall be subject to the Agency's consent and any applicable fees hereunder.
- (d) Notwithstanding any of the foregoing provisions of this Section 5.5(c), the following direct or indirect transfers of interests in the Beneficial Owner or the General Partner shall be permitted without the prior written consent of the Agency, provided that one or more of the Principals, directly or indirectly, maintains all operational, managerial and financial control of the Beneficial Owner and the Project, and, in each case, the Beneficial Owner shall give the Agency prompt written notice thereof:
 - (1) any transfer to an entity wholly owned and controlled by a Principal;
 - (2) a transfer by the Investor to (A) a nationally recognized entity regularly engaged in the syndication of LIHTC, if (i) such transfer is in connection with the syndication of the Project's LIHTC; and (ii) such entity is not a Prohibited Person as such term

is defined in Section 5.6 below, and (iii) such entity does not have the immediate or conditional right to exercise operational, managerial and financial control of the Owner and the Project; or (B) to an affiliate of the Investor Sponsor which is an entity primarily engaged in the investment in and/or syndication of LIHTC, provided that such entity is not a Prohibited Person, and the terms of the Partnership Agreement shall remain in effect; or

- transfers by operation of law or, in the case of any Principal who is a natural person, transfers resulting from the death or incapacity of such person.
- (e) Each of the Beneficial Owner and the Nominal Owner represents and warrants that as of the date of this Agreement (i) it intends to own the Project for a long-term holding period commencing on the date hereof and extending through a period ending on the date which is a minimum of ten (10) years after the date when at least 50% of the units in the Project have received a temporary certificate of occupancy and at least one unit is actually occupied ("Long Term Holding Period"), and (ii) the Beneficial Owner has no present intent to transfer direct or indirect ownership or control of the Project. In connection with its consent to any transfer, as required by this Section 5.5, the Agency will charge the Beneficial Owner a fee of one-half of one percent (0.5%) of the then outstanding principal amount of the First Mortgage Loan ("Transfer Fee"); provided, however, that if the proposed transfer occurs during the Long Term Holding Period, then in lieu of a Transfer Fee the Agency will charge an assumption fee ("Assumption Fee") based on the then outstanding principal amount of the First Mortgage Loan through the end of the period referenced below as follows:

Up to and including Year 1	7.0%
Year 2	6.0%
Year 3	5.0%
Year 4	4.0%
Year 5	3.0%
Year 6	2.0%
Year 7	2.0%
Year 8	2.0%
Year 9	1.0%
Year 10	1.0%

(f) In the event that a transfer that requires the Agency's consent has occurred without the prior consent of the Agency, then, in addition to the applicable Assumption Fee or Transfer Fee, the Beneficial Owner will be subject to a penalty of the greater of (i) an additional one percent (1.0%) of the then outstanding principal balance of the Mortgage Loan, or (ii) \$10,000. The Agency agrees that it will not charge the Beneficial Owner the Transfer Fee or Assumption Fee in connection with any transfers that do not require the Agency's consent under Section 5.5(c) above,

however, the Agency reserves the right to charge Beneficial Owner for any reasonable related outof-pocket expenses and such other fees as the Agency, in its reasonable discretion, may deem appropriate for such transfers.

- (g) The Beneficial Owner shall, within five days after request of the Agency, furnish to the Agency the names of the officers, directors, members, partners and shareholders of Beneficial Owner or the Nominal Owner, together with such additional information as the Agency shall request with respect to such persons.
- (h) Notwithstanding any of the provisions of this Section 5.5, in no event shall any conveyance of any portion of the Project or the addition or substitution of any constituent of the Beneficial Owner, or of any other person or entity directly or indirectly holding an ownership interest in the Beneficial Owner, be permitted if such conveyance or addition or substitution shall cause the Beneficial Owner to become a Prohibited Person.
- (i) Notwithstanding any other provision of this Section 5.5, at any time when both the First Mortgage no longer encumbers any interest in the Project and none of the Bonds are outstanding, the Agency's consent shall not be required (and no Assumption Fee or Transfer Fee shall be charged by the Agency) with respect to any conveyance of any interest in the Project, or for any change in the ownership or control of any entity holding any interest in the Premises or the Project; provided that such conveyance or change does not cause the Premises or the Project to be owned by a Prohibited Person.
- (j) The terms and conditions of this Agreement shall remain outstanding and enforceable against any new owner of the Project.
- (k) The Beneficial Owner shall notify the Agency in writing, within 30 days after the occurrence thereof, of: (A) any transfer of any direct ownership interest in Beneficial Owner or the General Partner; or (B) any change in the Partnership Agreement of the Beneficial Owner.

5.6 Prohibited Persons - A "Prohibited Person" shall mean:

- (a) any individual who has ever been convicted of a felony or any other crime involving moral turpitude, or is an Organized Crime Figure, as defined in Section 5.6(e) hereof, or is reputed to have substantial business or other affiliations with an Organized Crime Figure;
- (b) any individual or entity against whom any action or proceeding is pending to enforce rights of any municipal, city, state or federal government, or any agency, department, public authority, public benefit corporation or local development corporation thereof ("Governmental Entity") arising out of a contractual obligation to any such Governmental Entity;
- (c) any individual or entity with respect to whom any notice of monetary default which remains uncured has been given by any Governmental Entity;

- (d) any individual who is an officer, director, or otherwise exercises managerial discretion or has an ownership interest in excess of 25% in:
- (i) the owner of any one or more dwelling(s) subject to New York State Multiple Residence Law, which dwelling, while under the ownership of the owner in which the individual is an officer, director, or otherwise exercises managerial discretion, has been declared a nuisance by the responsible department, and such nuisance has not been removed by the owner in the time specified in the notice or order declaring the dwelling a nuisance (as such terms are defined and used in New York State Multiple Residence Law);
- (ii) the owner of any one or more dwelling(s) subject to New York State Multiple Residence Law, with respect to which dwelling or combination of dwellings, on three distinct occasions, a tenant or tenants have withheld rent pursuant to a rent impairing violation having been noted in the official records of the responsible department, which violation the owner in which the individual is or was an officer, director, or otherwise exercises managerial discretion has failed to remove prior to that amount of time after which such failure permits a resident of such dwelling to legally withhold rent from the owner, and either no action to recover rent or possession has been brought by the owner, or the resident has prevailed in such action (as such terms are defined and used in New York State Multiple Residence Law);
- (iii) the owner of any one or more dwelling(s) subject to New York State Multiple Dwelling Law, which dwelling, while under the ownership of the owner in which the individual is an officer, director, or otherwise exercises managerial discretion, has been declared a nuisance by the responsible department, and such nuisance has not been removed by the owner in the time specified in the notice or order declaring the dwelling a nuisance or fines and/or penalties have not been paid with respect thereto (as such terms are defined and used in New York State Multiple Dwelling Law); or
- (iv) the owner of any one or more dwelling(s) subject to New York State Multiple Dwelling Law, with respect to which dwelling or combination of dwellings, on three distinct occasions, a tenant or tenants have withheld rent pursuant to a rent impairing violation having been noted in the official records of the responsible department, which violation the owner in which the individual is or was an officer, director, or otherwise exercises managerial discretion has failed to remove prior to that amount of time after which such failure permits a resident of such dwelling to legally withhold rent from the owner, and either no action to recover rent or possession has been brought by the owner, or the resident has prevailed in such action (as such terms are defined and used in New York State Multiple Dwelling Law).
- (v) any entity which has ever been, or whose principals have ever been, suspended, debarred, disqualified, found non-responsible, had its and/or their prequalification

revoked or otherwise has been declared ineligible to do business with any Governmental Entity or which could be deemed non-responsible under New York law.

- (e) An individual shall be deemed to be an "Organized Crime Figure" if he or she is alleged as such in writing by a private investigation agency and such allegation has been confirmed by any state or federal prosecutorial, investigative or regulatory agency or authority.
- 5.7 Changes to Structure of Beneficial Owner Entity The Beneficial Owner may not materially modify, amend or otherwise materially change the terms of its organizational documents without the prior written approval of the Agency, which approval shall not be unreasonably withheld, except that the approval of the Agency shall not be required if such modification or amendment is for the purpose of substituting or admitting a member or partner, as applicable, of the Beneficial Owner in accordance with Sections 5.5 and 5.9 hereof. In any event, the Beneficial Owner shall provide the Agency with such documents with revisions indicated, within 30 days of the execution thereof.
- 5.8 General Tax Covenants; Use of Mortgage Proceeds; Other Restrictions The Beneficial Owner and the Nominal Owner each covenants that it will not take any action, or fail to take any action, or make any use of the Project or the proceeds of the Bonds (including investment earnings), in a way which would adversely affect the exclusion of interest on the Bonds from federal income taxation under the Code. The Beneficial Owner further covenants and agrees that:
- (a) No portion of the First Mortgage Loan shall be used to provide any facilities other than the multi-family housing units and the portion of the Project that is functionally related and subordinate to such units.
- (b) All certifications, representations and warranties made in the tax certification executed by the Beneficial Owner ("Beneficial Owner's Tax Certification"), in connection herewith, as the same may have been amended and approved by the Agency, together with all supplements thereto and all disbursement certifications, except as so amended and approved by the Agency, are and will be true and correct. All such certifications, representations and warranties are hereby incorporated and repeated herein with full force and effect. Specifically and not by way of limitation, the Beneficial Owner warrants the accuracy of the schedules of costs included therein. The Beneficial Owner and the Nominal Owner each agree to execute and deliver such amendments and supplements to this Agreement as are necessary to preserve the tax exempt status of interest on the Bonds.
- (c) The Beneficial Owner and the Nominal Owner each covenants that it will comply with any use or occupancy requirement of any governmental entity providing any subsidy, tax abatement or regulatory approval for the Project, to the extent such requirements do not

irreconcilably conflict with the requirements of this Agreement, the First Mortgage or any rule, regulation or policy of any state or federal entity.

- (d) In no event shall the Beneficial Owner, the Nominal Owner or any Principal become the registered or beneficial owner of any of the Bonds.
- 5.9 SONYMA to Restriction on Transfer In addition to any other condition, requirement or restriction contained in this Agreement, except as may be permitted pursuant to Section 5.5, above, the Beneficial Owner shall not convey, or further encumber, all or any part of the Project or the Beneficial Owner's interest in the Project, or obtain additional secondary financing (other than as contemplated by the First Mortgage), or transfer, assign or convey any of its membership, stock or partnership interests, as the case may be, without the prior written consent of SONYMA.

6.0 REPORTING

- 6.1 Information and Project Reports (a) The Beneficial Owner shall submit to the Secretary of the Treasury, at such time and in such manner as the Secretary shall prescribe, annual certifications as to whether the Project continues to meet the requirements of §142(d) of the Code. The Beneficial Owner is on notice that the Code provides that failure to comply will subject the Beneficial Owner to penalty as provided in §6652(j) of the Code.
- (b) The Beneficial Owner covenants and agrees to submit to the Agency annually, or more frequently if required in writing by the Agency, reports detailing such facts as the Agency determines are sufficient to establish compliance with the restrictions contained hereunder, including but not limited to monthly occupancy reports and annual certifications, in a form reasonably acceptable to the Agency, regarding tenant income qualification. The Beneficial Owner covenants and agrees to secure and maintain on file for inspection and copying by the Agency for at least six (6) years after the later of (i) the due date (including any extensions) for any filings required to be made by the Beneficial Owner with the Internal Revenue Service or its successor agency for that year or (ii) the end of the Qualified Project Period, such information, reports and certifications as the Agency may from time to time require in writing. The Beneficial Owner further covenants and agrees to notify the Agency promptly if the Beneficial Owner discovers non-compliance with any restriction or covenant hereunder. The Agency agrees to notify the Beneficial Owner if the Agency discovers non-compliance with any restriction or covenant hereunder but the Agency's failure to do so shall not affect the Beneficial Owner's obligations hereunder.
- (c) The Beneficial Owner shall promptly furnish a copy of each lease and Low Income Rider entered into for each Low Income Unit with a copy of each annual tenant income certification.

- (d) Prior to issuance of the Internal Revenue Service Form 8609 with respect any building in the Project, the Beneficial Owner shall file with the Agency a certificate of actual cost, which shall be accompanied by a certification of an independent certified public accountant reasonably acceptable to the Agency. The independent certified public accountant shall certify, in a format reasonably satisfactory to the Agency, that the amounts claimed as costs are necessary and reasonable, and ordinarily within the scope of the Project. The Agency reserves the right to reject the certificate of actual cost if it is inconsistent with the required format or is otherwise unsatisfactory to the Agency. Additionally, upon completion of the Project, the Beneficial Owner shall also certify to the Agency, based upon a review of its books and records by such certified public accountant, that the First Mortgage Loan proceeds have been spent in accordance with the Beneficial Owner's Tax Certification, as modified and approved by the Agency.
- (e) From the date of the first rental of any unit in the Project and monthly throughout the term hereof, the Beneficial Owner shall submit to the Agency certifications (including a copy of the certification for any Federal Section 8 eligible tenant) and reports of the Beneficial Owner's compliance with the requirements of this Agreement in such detail as may be required by the Agency.
- (f) The Beneficial Owner shall notify the Agency of the date of the following within ten days of the date thereof: (i) the issuance of any certificate of occupancy including any temporary certificate of occupancy; (ii) the rental of 50% of the units in the Project; and (iii) the rental of 80% of the units in the Project.
- (g) The Beneficial Owner shall submit to the Agency within 90 days of the end of any other fiscal year, three copies of the Project's annual audited financial statements which submission may be made in electronic format acceptable to the Agency. The financial statements must (i) include a balance sheet, a statement of operations, income, and expenses, a statement of cash flows, and all related notes; (ii) be prepared in accordance with generally accepted accounting principles ("GAAP"); (iii) be presented in a two-year comparative format; and (iv) be accompanied by an opinion of an independent certified public accountant acceptable to the Agency stating that the financial statements were audited in accordance with GAAP. The Agency may require that the financial statements be prepared in a specific format which, where practical, will be provided to the Beneficial Owner in advance, and may require that certain subjects be included in the notes to the financial statements. The Agency may require interim period financial statements, certified by an officer of the Beneficial Owner, which shall be submitted within 60 days of the date of request, unless prior to the expiration of the applicable period, Beneficial Owner has requested an additional thirty (30) day extension, which request shall not be unreasonably denied by the Agency.
- (h) Commencing with the first month a unit has been occupied and thereafter during the term of this Agreement, the Beneficial Owner shall submit to the Agency, on or before the 20th

day of each month, (i) a cash flow statement and a schedule of accounts payable for the preceding month certified by an authorized representative of the Beneficial Owner. Such cash flow statement must also be prepared on a monthly basis as well as a cumulative basis (for all months which preceded it in the current fiscal year) for both budgeted and actual results and presented in a format reasonably acceptable to the Agency, and (ii) occupancy reports containing such information as reasonably required by the Agency. In addition, the Beneficial Owner shall submit to the Agency an annual occupancy report no later than March 1 of each year.

- (h) Commencing with the first month a unit has been occupied and thereafter during the term of this Agreement the Beneficial Owner shall submit to the applicable oversight agency/ies any required documentation related to the monitoring of the Supportive Units. Any confidential patient data must be submitted in a secure format.
- <u>6.2</u> <u>Monitoring and Recordkeeping Requirements</u> (a) The Beneficial Owner shall keep records for each building in the Project showing for each year in the Qualified Project Period (except where otherwise indicated):
 - (1) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
 - (2) The percentage of residential rental units in the building that are Low Income Units;
 - (3) The rent charged for each residential rental unit in the building (including any utility allowance);
 - (4) The Low Income Unit vacancies in the building and information that shows when and to whom the next available originally designated Low Income Units were rented;
 - (5) The annual income certification of each tenant unless and until the Agency in its sole discretion waives the requirement to collect and preserve income certifications on an annual basis;
 - (6) Documentation to support the income certification made by each tenant of a Low Income Unit (for example, a copy of the tenant's federal income tax return, Form W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation), in accordance with Treasury Regulation §1.42-5(b)(1)(vii);
 - (7) The eligible basis as defined in §42(d) of the Code ("Eligible Basis") and the qualified basis as defined in §42(c) of the Code of the building at the end of the first year of the Credit Period;

- (8) The character and use of the non-residential portion of the building included in the building's Eligible Basis (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the Project); and
- (9) Such other information as the Agency may reasonably request from time to time.
- (b) The Beneficial Owner shall retain the foregoing records for each building in the Project for at least six years after the due date (with extensions) for filing the Beneficial Owner's tax return for that year, except that the records for the first year of the Credit Period shall be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period.
- (c) The Beneficial Owner shall certify in a sworn statement to the Agency, on the last business day of December of each year through and including the end of the Qualified Project Period, that, for the preceding 12 month period:
 - (1) The Project met the requirements of the 20-50 test under §42(g)(1)(A) of the Code or the 40/60 Test under §42(g)(1)(B) of the Code and has complied with the IA Requirements;
 - (2) There was no change in the "applicable fraction", as defined in §42(c)(1)(B) of the Code, of any building in the Project, or that there was a change, and a description of the change;
 - (3) The Beneficial Owner has received an annual income certification from each tenant of the Low Income Units (unless the Agency in its sole discretion waives the requirement to collect and preserve income certifications on an annual basis) and documentation to support that certification, or a substitute permitted under Treasury Regulation §1.42-5(c)(1)(iii);
 - (4) Each Low Income Unit in the Project was rent-restricted under §42(g) (2) of the Code;
 - (5) All units in the Project were for use by the General Public, except for any superintendent's units, and are used on a non-transient basis, and there has been no finding of discrimination (as defined in Treasury Regulation §1.42-5(c)(1)(v)) with respect to the Project or, if there is or has been such finding, a copy of any such finding has been forwarded to the Agency. The Beneficial Owner shall retain an original or a copy of such finding, if applicable, for review by the Agency during the inspection of the Project;
 - (6) Each building in the Project was suitable for occupancy, taking into account local health, safety and building codes applicable to the Project; or, if there have been

any violations of such health, safety or building code, a copy of any notice or summons related thereto has been forwarded to the Agency with a description of the violation and a remedial action plan of the Beneficial Owner. The Beneficial Owner shall further indicate whether the violation has been corrected as of the time of certification or Beneficial Owner's estimate of the time frame necessary for correction. The Beneficial Owner shall forward a copy of the violation to the Agency and retain the original violation report for review by the Agency during the inspection of the Project. Such reports must be retained until the completion of the Agency's inspection of the Project following the correction of the violation;

- (7) There was no change in the Eligible Basis of any building in the Project or, if there was a change, the nature of the change;
- (8) All tenant facilities included in the Eligible Basis of any building in the Project were provided on a comparable basis without charge to all tenants in the building;
- (9) If a Low Income Unit became vacant during the year, reasonable attempts were or are being made to rent that unit to tenants having the applicable qualifying income before any units in the affected Project were or will be rented to tenants not having a qualifying income. In addition, if a Supportive Unit became vacant during the year, reasonable attempts were or are being made to rent such unit to a qualifying tenant in accordance with the Services Contract:
- (10) An extended low-income housing commitment as defined in §42(h)(6)(B) of the Code was in effect with respect to the Project, which included the requirement under Code §42(h)(6)(B)(iv) that the Beneficial Owner cannot refuse to lease a unit in the Project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s;
- (11) Each building in the Project complies with the requirements of the Code applicable to the Bonds;
- (12) The Project has been and is in compliance with the Agency's Guidelines; the Beneficial Owner's marketing and tenant selection plan applicable to the Project, as filed with the Agency for its records, complies with the applicable rules as defined in the Agency's Guidelines; and there has been no finding of discrimination under any of such applicable rules, nor any complaint, investigation, administrative inquiry, or other action under such applicable rules, or, if there has been any such finding, complaint, investigation, administrative inquiry, or other action, Owner shall provide a listing and an explanation thereof;

- (13) There were no findings of discrimination under the Fair Housing Act or, if there have been such findings, an explanation thereof;
- (14) The Beneficial Owner has complied with all requirements of the LIHTC program, as the same may be amended or supplemented, and with any additional reporting requirements which the Agency may have imposed in order to monitor compliance therewith;
- (15) Such other matters as the Agency may reasonably request from time to time.
- (d) Each year, during the term of this Agreement, the Beneficial Owner shall retain and make available for inspection and review by the Agency a copy of the annual income certification (unless the Agency in its sole discretion waives the requirement to collect and preserve income certifications on an annual basis) from each tenant and a copy of the documentation the Beneficial Owner has received to support that certification and such other information as the Agency deems necessary to comply with the monitoring requirements of §42 of the Code.
- (e) The Agency shall have the right to perform audits of the Project through the end of the Qualified Project Period. For this purpose, an audit includes an inspection of any building in the Project, an inspection of any unit in the Project and a review of the records described in Section 6.2(a) above. The costs and expenses of any audit or inspection performed by Agency personnel shall be borne by the Agency. The Beneficial Owner shall be solely responsible for any costs incurred by Beneficial Owner or Beneficial Owner's consultants in connection with any such audit or inspection. However, in the event the Agency determines in its sole discretion that it is necessary to engage a third party to conduct such audit or inspection as a result of Beneficial Owner's failure to perform its obligations hereunder, then such expenses shall be borne by Beneficial Owner.

The Beneficial Owner shall use reasonable efforts to assist the Agency with obtaining access to any unit in the Project, shall accompany Agency representatives with such inspections, and shall include a provision in the lease rider to the effect that the tenant shall give the Agency, its representatives or its agents the right to enter and physically inspect such unit. If the Agency cannot obtain access to a sufficient number of Low Income Units required to fulfill its obligations under the Code, notwithstanding the good faith efforts of the Beneficial Owner to assist the Agency in obtaining such access, the Agency will be obligated to report such lack of access to the Internal Revenue Service as an incident of non-compliance with LIHTC regulations.

(f) The Agency shall provide prompt written notice to the Beneficial Owner if the Agency does not receive the certification described in Section 6.2(c) or discovers on audit, inspection or review (or in some other manner) that the Project is not in compliance with the provisions of §42 of the Code. Additionally, the Agency shall file Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service no later than 45 days after

the end of the correction period (which period shall commence on the date that the Agency notifies the Beneficial Owner of noncompliance pursuant to the preceding sentence and shall extend for 60 days thereafter, unless the Agency determines that there is good cause for granting an extension of the correction period, in which case the period may be extended by the Agency for up to six months).

- (g) The Agency shall retain records of noncompliance or failure to certify for six years after the Agency's filing of the respective Form 8823. The Agency shall retain the certifications described in subsection 6.1(c) for three years from the end of the calendar year the Agency receives such certifications.
- (h) It is expressly understood by the Beneficial Owner that the Agency's monitoring of the Beneficial Owner's compliance with the requirements of §42 of the Code does not and will not make the Agency liable in any manner whatsoever for any noncompliance with such requirements.
- Late Filing Penalties Unless otherwise specified herein, all reports, certifications or information required under this Article 6 shall be submitted to the Agency by the 20th day of the month following the month to which they relate, and shall be in a format reasonably acceptable to the Agency. The Agency shall notify the Beneficial Owner in the event it has not received any report required hereunder within fifteen (15) days of the date due (as such due date may be extended upon approval of the Agency). If Beneficial Owner fails to submit such delinquent report within five (5) business days after the date of such notice, the Beneficial Owner will be subject to a late filing fee equal to the lesser of (i) five percent (5%) of the then current monthly mortgage debt service obligation, or (ii) \$5,000, which amount will be assessed initially and for each succeeding month until such report is submitted. Notwithstanding the above, and with respect only to annual audited financial statements required pursuant to Section 6.1(f) above which have been granted a 30 day filing extension, failure to file such reports upon the expiration of such 30 day period (as such period may be further extended at the sole discretion of the Agency) will immediately, and without any notice required from the Agency, subject the Beneficial Owner to a late filing penalty equal to the lesser of (i) five percent (5%) of the then current monthly mortgage debt service obligation, or (ii) \$20,000, which amount will be assessed initially and for each succeeding month until such report is submitted.
- 6.4 Benchmarking Requirement Beneficial Owner, at its own expense, shall contract with a benchmarking software provider capable of collecting automated energy usage data directly from utility companies, which shall include monthly and annual data on the heating, electric and water usage of the Project, and such additional information as may be reasonably required by the Agency, and report such information into the United States Environmental Protection Agency ENERGY STAR Portfolio Manager or other system as designated by the Agency, at such times and in such manner as may be required by the Agency. The Agency shall provide to the Beneficial Owner written instructions regarding implementation of this obligation, which instructions may

be modified by the Agency from time to time in any manner which the Agency determines, in its sole discretion, as may be necessary in order to comply with applicable reporting requirements.

7.0 GENERAL PROVISIONS

- 7.1 Interpretation and Section Headings In this Agreement: (a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms as used in this Agreement refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of this Agreement.
- (b) Unless the context otherwise requires, words of the masculine gender mean and include correlative words of the feminine and neuter genders, and words defined in the singular have the same meaning when used in the plural and vice versa.
- (c) Words importing persons include firms, associations, partnerships, trusts, corporations, limited liability companies and other legal entities including public bodies, as well as natural persons.
- (d) Any headings preceding the texts of any section, paragraph or subparagraph of this Agreement and table of contents appended to the copies hereof shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.
- (e) All certifications, documents and instructions, including those regarding approvals, consents and acceptances, required to be given or made by any person or party hereunder shall be made in writing.
- 7.2 Parties Bound This Agreement shall be binding upon the Beneficial Owner, the Nominal Owner and the Agency and any of their respective successors and assigns. Prior to any sale, transfer or other disposition of all or any portion of the Project, the Beneficial Owner and the Nominal Owner shall require the subsequent purchaser or transferee to assume in writing the Beneficial Owner's and Nominal Owner's obligations and duties under this Agreement and shall provide the Agency with a copy of such assumption. Such obligations and duties shall extend to the provisions that all partners, members and/or principals of the new owner shall also be bound hereby. Any sale, transfer or other disposition of any portion of the Project without such written assumption is null and void and not effective to result in the sale, transfer or other disposition of such portion of the Project or to relieve the Beneficial Owner or the Nominal Owner of obligations under this Agreement. The Beneficial Owner and the Nominal Owner acknowledge that to the extent controlled by the Beneficial Owner or the Nominal Owner or any of the purchasers, transferees, partners and/or members or principals of the new owner, it is intended that each person who is "related" to any party bound by this Agreement shall also be bound by this Agreement.

- 7.3 Compliance with Equal Opportunity Laws and Regulations The Beneficial Owner and the Nominal Owner shall comply with all applicable state and federal laws and regulations regarding affirmative action, equal opportunity in employment and fair housing laws.
- 7.4 Governing Law This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with and governed by the laws of the State of New York. In the event of conflict between the provisions of this Agreement and federal laws, regulations and requirements, the latter shall prevail.
- 7.5 Notices All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or by Federal Express, United Parcel Service or equivalent package delivery service, or mailed by certified or registered mail, return receipt requested, to the parties hereto at the following addresses, or to such other place as the Agency or the Beneficial Owner from time to time designate in writing:

If to the Agency: New York State Housing Finance Agency

641 Lexington Avenue New York, New York 10022

Attention: Senior Vice President, , Asset Management, and

Attention: Senior Vice President and Counsel

If to the Beneficial

Owner: EC A1 Limited Partnership

c/o The Arker Companies 1044 Northern Blvd., 2nd Floor Roslyn, New York 11576

Attn: Daniel Moritz

with a copy to: Cannon Heyman & Weiss, LLP

726 Exchange Street, Suite 500

Buffalo, NY 14210

Attention: Stephen L. Yonaty, Esq.

If to Nominal

Owner: EC A1 Housing Development Fund Corporation

c/o Block Institute, Inc. 376 Bay 44th Street

Brooklyn, New York 11214 Attention: Scott Barkin

with a copy to: Hirschen Singer & Epstein LLP

902 Broadway, 13th Floor New York, New York 10010 Attention: Russell A. Kivler, Esq. If to LOC Bank: Wells Fargo CRE Loan Center

100 North Main Street, 10th Floor

MAC: D4001-105

Winston-Salem, North Carolina 27101 Attention: Disbursement Administrator

with a copy to:

Wells Fargo Bank, National Association Community Lending and Investment 30 Hudson Yards, 62nd Floor New York, New York 10001 Attention: Jeffrey Nixon

with a copy to:

Wells Fargo Bank, National Association

550 S. Tryon Street, 23rd Floor

D1086-239

Charlotte, North Carolina 28202-4200 Attention: Manager, Deal Management

with a copy to:

Holland & Knight LLP 31 West 52nd Street

New York, New York 10019 Attention: Kathleen M. Furey, Esq.

If to Investor: Wells Fargo Affordable Housing Community Development Corporation

550 S. Tryon Street 23rd Floor, D1086-239 Charlotte, NC 28202-4200

Attention: Director of Tax Credit Asset Management

with a copy to: Sidley Austin LLP

One South Dearborn Street

Chicago, IL 60603

Attention: Philip C. Spahn, Esq.

7.6 Waiver - No omission by the Agency or act of the Agency other than a writing signed by it waiving a breach by the Beneficial Owner shall constitute a waiver thereof. No such waiver of any breach shall be deemed a waiver of any other or subsequent breach or affect or alter this Agreement, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

- 7.7 Severability All rights, powers and remedies provided herein may be exercised only to the extent that exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable or not entitled to be recorded, registered, or filed under applicable law. If any provision shall be held to be invalid, illegal or unenforceable, only such provision or part thereof shall be affected by such holding and the validity of other provisions of this Agreement and of the balance of any provision held to be invalid, illegal or unenforceable in part only, shall in no way be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision or part thereof had not been contained therein.
- 7.8 Counterparts This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be a duplicate original. All such counterparts shall constitute but one and the same instrument.
- 7.9 HFA Sign Subject to compliance with local laws and codes, during construction or rehabilitation (as applicable) of the Project and for a period of up to six (6) months thereafter, Beneficial Owner shall at its own expense provide, erect, maintain and insure a sign in a design format and of a size, materials and appearance required by the Agency, in a location at the Project acceptable to the Agency, and stating that the Project has been financed by the Agency. If the Beneficial Owner uses a sign provided by the Agency, Beneficial Owner shall reimburse the Agency for the cost of the sign, including the cost of transporting the sign to the site of the Project.
- 7.10 Modification and Waiver This Agreement and the provisions herein may not be waived, amended, modified or rescinded unless such waiver, amendment, modification or rescission is in writing, and signed by the Beneficial Owner and the Agency.
- 7.11 Servicing/Monitoring Fee (a) The Beneficial Owner shall pay to the Agency, in equal monthly installments in arrears, an annual servicing fee (the "HFA Servicing Fee") of 0.25% per annum on the outstanding principal amount of the First Mortgage Loan payable in equal monthly installments until the first day on which the First Mortgage is no longer outstanding, as calculated in accordance with the Note.
- (b) Commencing on the first date on which the First Mortgage Loan is no longer outstanding until such time as this Agreement has expired or been terminated in accordance with its terms, the Beneficial Owner shall pay to the Agency an annual monitoring fee in the amount of the greater of: (i) 1% of the total rent revenue due from the Low Income Units (whether or not collected); or (ii) \$10,000 per annum which fee shall be payable in equal monthly installments ("Monitoring Fee").
- 7.12 Approval of Commercial Leases Affecting the Mortgaged Property The Beneficial Owner shall submit to the Agency for its prior written approval, which shall not be unreasonably withheld, the identity of any prospective commercial tenant and the proposed usage

of the space. If there is no response by the Agency within ten (10) business days after receipt of the Owner's request for the Agency's approval of the identity of any prospective commercial tenant and the proposed usage of the space, such request shall be deemed approved.

- 7.13 Green Building Guidelines The Project shall comply with the Agency's Green Building Guidelines.
- 7.14 Cure by Investor The Agency agrees to provide copies of all notices related to this Agreement to the Investor. The Investor shall have the same right to cure any default under this Agreement as the Beneficial Owner or the Nominal Owner and any cure so made by the Investor pursuant to this paragraph will be recognized by the Agency on the same basis as if made or tendered by the Beneficial Owner or the Nominal Owner.
- 7.15 Compliance with HPD Restrictions The Owners shall at all times comply in all material respects with the terms of the HPD Regulatory Agreement and the MIH Restrictive Declaration for so long as each shall respectively be in effect. In the event that HPD commences the exercise of any remedies under either the HPD Regulatory Agreement or the MIH Restrictive Declaration following any required notice, hearing and cure period as provided in such agreement, the Agency, at its option, shall have the right to declare an Event of Default under this Agreement.
- 7.16 Special Requirements Regarding Supportive Units. The Support Agreement shall be in effect on or prior to the date on which the SONYMA Mortgage Insurance Policy becomes effective, and shall remain in effect, by extension, renewal, or replacement, as applicable, such that at all times during the term this Agreement the Beneficial Owner or the General Partner shall be party to a contract with the Service Provider, or any successor thereto, for the provision of supportive services and/or rent subsidy, as applicable, for the benefit of the tenants in the Supportive Units, unless otherwise agreed to in writing by the Agency. The Services Contract may be incorporated into the terms of the Operating Agreement of the General Partner. Owner shall send written notice to the Agency no less than thirty (30) days prior to the expiration of the initial and each subsequent term of the Services Contract, along with evidence of renewal or replacement thereof. In addition, Owner shall send a copy of any notice of default sent to the Service Provider, or received from the Service Provider, pursuant to the Services Contract.
- 7.17 Release of the Commercial Condominium Unit(s). Provided that no Default or Event of Default exists under this Agreement, the Note or the First Mortgage, and upon Beneficial Owner's compliance with Sections 8.27 and 8.28 of the First Mortgage, upon a request of the Beneficial Owner received not less than five (5) days prior to the release contemplated by this Section 7.16, the Agency shall release the Commercial Space from this Agreement.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective duly authorized representatives, as of the day and year first written above.

AGENCY:

Approved	by	Counsel
to the Age	nes	ı

NEW YORK STATE HOUSING FINANCE AGENCY

By:

dan S. Bocina, Esq.

Sr. Associate Counsel

Julie M. Behrens

Vice President Multi-Family Finance

STATE OF NEW YORK

) ss.:

COUNTY OF NEW YORK)

On the day of December in the year 2021, before me, the undersigned, a notary public in and for said state, personally appeared Julie M. Behrens, 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 executed the same in his capacities, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

Commission expires:

MARYANN VITACCO
Notary Public, State of New York
Reg. No. 01VI6129481
Qualified in Richmond County
Commission Expires June 27, 2025

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective duly authorized representatives, as of the day and year first written above.

BENEFICIAL OWNER:

EC A1 LIMITED PARTNERSHIP, a New York limited partnership

By: EC A1 GP LLC,

its general partner

By: EC A1 Partners LLC,

its managing member

By: Edgemere A1 Investors LLC

its managing member

By: Daniel Moritz

Title: Authorized Person

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

On the day of December in the year 2021, before me, the undersigned, a notary public in and for said state, personally appeared **Daniel Moritz**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names 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.

ILSOO KIM

Notary Public, State of New York

Reg. No. 01Kl6264350

Qualified in Nassau County

My Commission Expires 96/25/202

Notary Public

Commission Expires

ILSOO KIM
Notary Public, State of New York
Reg. No. 01KI6264350
Qualified in Nassau County
My Commission Expires 06/25/2024

SIGNTURE AND ACKNOWLEDGEMENT PAGES
Regulatory Agreement
Edgemere Commons A1

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective duly authorized representatives, as of the day and year first written above.

NOMINAL OWNER:

EC A1 HOUSING DEVELOPMENT FUND CORPORATION, a New York not-for-profit corporation

Title: Authorized Signatory

STATE OF NEW YORK)

COUNTY OF Krug)

On the γ day of December in the year 2021, before me, the undersigned, a notary public in and for said state, personally appeared **Scott Barkin**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names 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 7 (3)

SCHEDULE A

LEGAL DESCRIPTION OF PREMISES

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

BEGINNING at the corner formed by the intersection of the southerly side of Beach Channel Drive with the easterly side of Beach 53rd Street;

RUNNING THENCE North 84 degrees 42 minutes 48 seconds East, along the southerly side of Beach Channel Drive, a distance of 225.02 feet to a point;

THENCE South 04 degrees 22 minutes 44 seconds East, a distance of 305.18 feet to a point;

THENCE South 85 degrees 35 minutes 46 seconds West, a distance of 224.98 feet to the easterly side of Beach 53rd Street;

THENCE North 04 degrees 22 minutes 56 seconds West, along the easterly side of Beach 53rd Street, a distance of 301.71 feet to the corner formed by the intersection of the southerly side of Beach Channel Drive with the easterly side of Beach 53rd Street, the point or place of BEGINNING.

Together with the benefits of that certain Off-Site Accessory Parking Restrictive Declaration dated as of July 15th, 2021 recorded in the Office of the New York City Register, Queens County on October 12, 2021 as CRFN #2021000398478.

Together with the benefits of that certain Zoning Lot Development Agreement made by Peninsula Rockaway Housing Development Fund Corp. to EC A1 Limited Partnership dated December 16, 2021 and to be recorded in the Office of the City Register of the City of New York, Queens County.

Together with the benefits of the that certain Construction License Agreement made by and between Peninsula Rockaway Housing Development Fund Corp. and EC A1 Limited Partnership and E.C. Parcel, L.L.C. dated December 16, 2021 and to be recorded in the Office of the City Register of the City of New York, Queens County.

Together with the benefits of the that certain Cooperation Agreement made by and between Rockaway Peninsula Limited Partnership and EC A1 Limited Partnership and E.C. Parcel, L.L.C. dated December 16, 2021 and a Memorandum of BCP Cooperation Agreement to be recorded in the Office of the City Register of the City of New York, Queens County.

EXHIBIT A
UNIT DISTRIBUTION AND MAXIMUM PERMITTED GROSS MONTHLY RENTS*

Unit	Studio		One Bedroom		Two Bedrooms		Three Bedrooms		
Type	Max Rent	# of Units	Max Rent	# of Units	Max Rent	# of Units	Max Rent	# of Units	TOTALS
30% of AMI	N/A	- 1	\$671	16	\$805	20	\$930	2	38
50% of AMI	\$1,045	15	\$1,119	10	\$1,342	4		, , , , , , , , , , , , , , , , , , , ,	29
60% of AMI	\$1,254	30	\$1,342	49	\$1,610	19	\$1,861	3	101
80% of AMI	N/A		\$1,790	12	\$2,147	11	\$2,481	2	25
		45		87		54		7	193

^{*} Representing Rents in effect as of the date hereof; see Section 4.3(b) for additional details

EXHIBIT B PROJECT SERVICES AND AMENITIES FORM

See attached

SERVICES AND AMENITIES FORM Project: **Edgemere Commons A1** 1) The project includes commercial space, either financed by the Agency or included in the total development cost of the project: ____Yes There will be ____1 __ units reserved for resident managers, superintendents and/or 2) employees: Residential or Unit# Unit Type Revenue- or (If Known) Commercial Use Non-Revenue-Generating 2 bedroom Residential Non-revenue generating 416 3) The following services and amenities are available for a fee which is NOT included in the monthly base rent for all tenants (both affordable and market rate): Parking spaces: All spaces Indoor parking or garages only Additional space(s) after one Other: Storage space Recreational facilities Individual utilities: ✓ Electric Heat Gas A/C Water Cable service Laundry facilities: Washer/Dryer hook-up Washer/Dryer in unit ✓ Laundry room Structural or architectural features: Bay windows Den in apartment Vaulted ceilings Balconies Fireplaces Other: Other services and/or amenities for which a fee will be charged: If applicable, the service package for senior/congregate/assisted projects includes: Owner, hereby certify that the Certification: I, Daniel Moritz information contained herein is accurate and correct

Signed: Title:

Member

12/2/2021

Dated:

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER



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SUPPORTING DOCUMENT COVER PAGE

PAGE 1 OF 1

Document ID: 2022012000298011 Document Date: 12-16-2021

Preparation Date: 01-20-2022

Document Type: AGREEMENT

SUPPORTING DOCUMENTS SUBMITTED:

Page Count

RECORDING FEE EXEMPTION DOCUMENTATION

3

In the Matter of the Mortgage and Related Documents
Executed by

EC A1 LIMITED PARTNERSHIP

and

EC A1 HOUSING DEVELOPMENT FUND
CORPORATION

to

NEW YORK STATE HOUSING FINANCE
AGENCY

STATE OF NEW YORK
) ss.:

AFFIDAVIT IN SUPPORT OF EXEMPTION FROM MORTGAGE RECORDING TAX AND CLERK'S FEES

COUNTY OF NEW YORK)

BOMOPREGHA A. JULIUS, being duly sworn, deposes and says that:

- 1. I am an Assistant Counsel of the New York State Housing Finance Agency (the "Agency") and am duly authorized to make this affidavit on behalf of the Agency.
- 2. The Agency is a corporate governmental agency constituting a public benefit corporation of the State of New York, created by Article III of the Private Housing Finance Law (the "PHFL"), constituting Chapter 44-B of the Consolidated Laws of the State of New York, as amended (the "Act").
- 3. The Agency is empowered by the Act to make mortgage loans to the owners of certain projects with respect to which the Agency finds that portions are to be occupied by persons or families of low income.
- 4. In connection with a housing project known as Edgemere Commons A1 (the "Project"), the Agency made a mortgage loan (the "Loan") to EC A1 Limited Partnership, a New York limited company ("Beneficial Mortgagor") and EC A1 Housing Development Fund Corporation ("Nominal Mortgagor" and, together with Beneficial Mortgagor, "Mortgagor") in the aggregate principal amount of \$59,950,000, which Loan is secured by a Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of December 16, 2021 (the "Mortgage"), from Mortgagor covering the leasehold

- interest in certain property located in Queens County, State of New York (the "Premises"), as more fully described in the Mortgage, which is intended to be recorded in the Queens County Clerk's Office (the "County Clerk's Office").
- 5. In connection with the making of the Loan, the Agency and Mortgagor entered into a Regulatory Agreement (the "Regulatory Agreement"), dated as of December 16, 2021, which contains restrictions that run with the land concerning the use of the Project situated on the Premises and which is intended to be recorded in the County Clerk's Office.
- 6. In connection with the making of the Loan, the Agency and Beneficial Mortgagor entered into a Building and Project Loan Agreement (the "Loan Agreement"), dated as of December 16, 2021, which Loan Agreement is intended to be filed in the County Clerk's Office.
- 7. In connection with the making of the Loan, a Notice of Lending, dated as of December 16, 2021, is intended to be filed in the County Clerk's Office (the "Notice of Lending").
- 8. In connection with the Project, the Agency made a subsidy mortgage loan (the "Subsidy Loan") to the Mortgagor in the aggregate principal amount of \$5,000,000, which Subsidy Loan is secured by a Subsidy Mortgage, dated as of December 16, 2021 (the "Subsidy Mortgage"), from Mortgagor covering the leasehold interest in the Premises, as more fully described in the Subsidy Mortgage, which is intended to be recorded in the County Clerk's Office.
- 9. The Agency also entered into a Subordination Agreement, dated as of December 16, 2021 (the "Subordination Agreement"), which Subordination Agreement is intended to be filed in the County Clerk's office.
- 10. Pursuant to Section 53 of the PHFL, property of the Agency, its income and operations shall at all times be free from taxation.
- 11. The Mortgage, the Regulatory Agreement, the Loan Agreement, the Notice of Lending and the Subordination Agreement (collectively, the "Documents") are to be recorded or filed as an operation of the Agency, and such recordation and/or filing are not subject to the mortgage recording tax imposed by Article XI of the Tax Law of the State of New York because each Document is being recorded by the Agency, or its designated agent, as a public benefit corporation specifically exempted therefrom pursuant to Section 53 of the PHFL.
- 12. Pursuant to Section 8017(a) of the New York Civil Practice Law and Rules, the Documents are also exempt from any clerk's fees for filing, recording or indexing any paper or document or for furnishing a transcript, certification or copy of any paper or document.
- 13. UCC Financing Statements (collectively, the "UCCs") relating to the Mortgage are to be duly filed and/or recorded in the County Clerk's Office and the New York Department of

State, Uniform Commercial Code Unit, and are not subject to Article XI of the Tax Law and are exempt from fees for filing pursuant to Section 8017(a) of the New York Civil Practice Law and Rules.

WHEREFORE, it is respectfully requested that Queens County record and/or file the Mortgage, the Regulatory Agreement, the Loan Agreement, the Subsidy Mortgage, the Subordination Agreement, the UCCs and the Notice of Lending without demand for payment of fees or payment of the mortgage recording tax and that the New York Department of State, Uniform Commercial Code Unit accept the UCCs for filing without demand for payment of filing fees.

BOMOPREGHA A JULIUS

Sworn to before me this of December, 2021.

Notary Public

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NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER

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RECORDING AND ENDORSEMENT COVER PAGE PAGE 1 OF 111

Document ID: 2022012000298013 Document Date: 12-16-2021 Preparation Date: 01-20-2022

Document Type: AGREEMENT Document Page Count: 109

PRESENTER:

212-532-8686

KENSINGTON VANGUARD NATIONAL LAND SERVICES 39 W37TH STREET TITLE NO. 598196-S-NY-CP-KV NEW YORK, NY 10018

RETURN TO:

NEW YORK CITY DEPARTMENT OF HPD OFFICE OF LEGAL AFFAIR, 100 GOLD STREET, ROOM 5-Q5 JOSHUA BLOODWORTH NEW YORK, NY 10038

PROPERTY DATA

Borough Block Lot Unit Address

QUEENS 15843 15 Entire Lot 5123 BEACH CHANNEL DRIVE

Property Type: NON-RESIDENTIAL VACANT LAND

CROSS REFERENCE DATA

CRFN______ or DocumentID_____ or ____ Year___ Reel__ Page____ or File Number_____

PARTY 1:

EC A1 LIMITED PARTNERSHIP C/O THE ARKER COMPANIES, 1044 NORTH BOULEVARD, 2ND FLOOR ROSLYN, NY 11576

PARTIES

PARTY 2: THE CITY OF NEW YORK 100 GOLD STREET NEW YORK, NY 10038

☑ Additional Parties Listed on Continuation Page

FEES AND TAXES

Mortgag	e :	
Mortgage	: Amount:	\$ 0.00
Taxable I	Mortgage Amount:	\$ 0.00
Exemptic	n:	
TAXES:	County (Basic):	\$ 0.00
	City (Additional):	\$ 0.00
	Spec (Additional):	\$ 0.00
	TASF:	\$ 0.00
	MTA:	\$ 0.00
	NYCTA:	\$ 0.00
	Additional MRT:	\$ 0.00
	TOTAL:	\$ 0.00
Record	ing Fee:	\$ 582.00
Affidav	rit Fee:	\$ 0.00

Filing Fee:

\$ 0.00

NYC Real Property Transfer Tax:
\$ 0.00

NYS Real Estate Transfer Tax:

\$ 0.00

RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE

CITY OF NEW YORK

Recorded/Filed 01-27-2022 08:43 City Register File No.(CRFN):

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City Register Official Signature

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER



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RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)

PAGE 2 OF 111

Document ID: 2022012000298013Document Type: AGREEMENT

Document Date: 12-16-2021

Preparation Date: 01-20-2022

PARTIES

PARTY 1:

EC A1 HOUSING DEVELOPMENT FUND CORPORATION C/O: BLOCK INSTITUTE, INC., 376 BAY 44TH STREET BROOKLYN, NY 11214

Affordable Housing Regulatory Agreement

between:

EC A1 LIMITED PARTNERSHIP,

EC A1 HOUSING DEVELOPMENT FUND CORPORATION

and

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

December 16, 2021

Borough:

Queens

Block:

15843

Lot:

0015

Record and return to:

New York City Department of

Housing Preservation and Development

Office of Legal Affairs

100 Gold Street, Room 5-Q5 Joshua

Bloodworth)

New York, NY 10038

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XHIBIT	C FORM OF MEMORANDUM OF REGULATORY AGREEMENT

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

EC A1 LIMITED PARTNERSHIP, a New York limited partnership having an address at c/o The Arker Companies, 1044 Northern Boulevard 2nd Floor, Roslyn, NY 11576 ("Beneficial Owner");

EC A1 HOUSING DEVELOPMENT FUND CORPORATION, a New York not-for-profit corporation having an address at c/o Block Institute, Inc., 376 Bay 44th Street, Brooklyn, New York 11214 ("**Legal Owner**", and together with the Beneficial Owner, "**Owner**"); and

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

RECITALS

- A. Capitalized terms have the meanings given in Section 1.01.
- B. The Owner intends to own and operate the housing project described in Exhibit B ("Project") on the real property identified in Exhibit A ("Property"). Exhibit A and Exhibit B are annexed to this Agreement and made a part of this Agreement.
- C. Reserved.
- D. The Beneficial Owner has entered into a Declaration of Interest and Nominee Agreement with the Legal Owner (together with any other nominee agreement with respect to the Property, "Nominee Agreement"), pursuant to which the Beneficial Owner is the beneficial and equitable owner of the Property and the Legal Owner retains the nominal record title to the Property.
- E. The Owner intends to create a condominium on the Property, to consist of the following condominium units: one residential space condominium unit containing the Units that are designated as low-income units pursuant to Section 42 of the Internal Revenue Code and residential parking, one commercial condominium unit containing a supermarket; one commercial condominium unit containing another retail space, and one commercial parking condominium unit (collectively, such non-residential units shall be referred to as the "Commercial Units").
- F. The Agency has agreed to release the Commercial Units from this Agreement upon the effectiveness of the condominium regime on the Property and the satisfaction of other requirements.
- G. Reserved.
- H. Reserved.

- I. HPD is providing financing to the Owner pursuant to Article 15 of the Private Housing Finance Law ("HPD Financing").
- J. The Owner expects that the Project will receive real property tax benefits pursuant to Section 420-c of the Real Property Tax Law ("Real Property Tax Benefits").
- K. The Project has been allocated federal low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code ("LIHTC").
- L. Reserved.
- M. The Property is located in a Mandatory Inclusionary Housing area under the Zoning Resolution, and the Owner intends to satisfy the requirements of the Zoning Resolution by providing affordable housing on the Property. The Owner is subject to a separate Restrictive Declaration concerning the Mandatory Inclusionary Housing program.
- N. Reserved.
- Reserved.
- P. Reserved.
- Q. The Agency requires that the Owner and the Project comply with this Agreement as a condition to participation in the Agency's affordable housing program.

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

[Continues on next page]

ARTICLE 1

DEFINITIONS

1.01 Certain Definitions.

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

"Agency" means HPD.

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

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

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

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

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

"City" means The City of New York.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Permanent Loan Conversion" means the date of the conversion of the HPD Financing from the construction phase to the permanent phase.

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

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

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

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

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

"Real Property Tax Benefits" has the meaning set forth in the Recitals.

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

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

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

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

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

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

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

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

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

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

"State" means the State of New York.

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

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

"Unit" means a dwelling unit within the Project.

[Continues on next page]

ARTICLE 2

TERM OF RESTRICTIONS

2.01 Restriction Period.

- (a) Length of Period. The Owner shall comply, and shall cause the Project to comply, with this Agreement during the period that begins on the date of this Agreement and ends on the latest of the following dates ("Restriction Period"):
 - (i) The date identified as the Agency Program Termination Date in Exhibit B.
 - (ii) The date on which (1) the Property and the Project are not subject to any mortgage or lien held by or on behalf of the City or HDC, and (2) the Owner does not owe any indebtedness to the City or HDC with respect to the Project.
 - (iii) The date on which the Real Property Tax Benefits expire by their stated term and not due to any early voluntary or involuntary termination, revocation, or suspension.
 - (iv) The date on which the Extended Use Period ends.
 - (v) Reserved.
- (b) Permanent Affordability. This Agreement restricts all or a portion of the Units in perpetuity as permanently affordable Units (as set forth in Exhibit B, and not including any Units that are covered separately by an Inclusionary Housing regulatory agreement or restrictive declaration unless such Units are also designated as permanently affordable Units under this Agreement). If a court of competent jurisdiction, after the exhaustion of any appeals, orders that a perpetual term of this Agreement is unenforceable, then the Agency Program Termination Date for any Unit that is permanently affordable under this Agreement will mean the date that is 80 years from the date of this Agreement. The foregoing sentence and all provisions in this Agreement referring to the end of the Restriction Period do not apply to any such permanently affordable Units unless a court issues such an order.
- (c) **Project-Wide Requirements.** Except as may be specifically provided in this Agreement, if the Restriction Period ends on different dates for different Units (or does not end, in the case of any Unit that is permanently affordable under this Agreement), any requirement of this Agreement that is not explicitly tied to a specific Unit or class of Units applies until the latest date on which the Restriction Period ends for any Unit (or in perpetuity, if applicable). These requirements include, but are not limited to, those with respect to program compliance, non-residential uses, project operations, reserves, ownership and financing, and compliance monitoring.

2.02 After the Restriction Period.

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

[Continues on next page]

ARTICLE 3

GENERAL REQUIREMENTS

3.01 Compliance with Law; Agreements.

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

3.02 More Restrictive Provisions Control.

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

3.03 Real Property Tax Benefits.

The Owner shall comply, and shall cause the Project to comply, with all applicable requirements of the Real Property Tax Benefits, including, but not limited to, the Law under which the Real Property Tax Benefits have been, or will be, granted, all related Laws, and any related agreements and restrictive covenants.

(a) Section 420-c Tax Exemption. In order to obtain Real Property Tax Benefits under Section 420-c of the Real Property Tax Law, in addition to any other requirements of Law, the Owner shall comply, and shall cause the Project to comply, with the Regulatory Agreement, dated as of the date hereof, between the Owner and the New York State Housing Finance Agency, and to be recorded against the Property in the land records in the county of Queens, which agreement serves as the "extended low-income housing commitment" required by Section 42(h)(6) of the Internal Revenue Code.

3.04 Rental Assistance.

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

(a) Notice of Defaults. The Owner shall provide the Agency with notice of any default or material adverse change with respect to a Rental Assistance Contract that covers any of the Units (including, but not limited to, any termination or

material reduction of Rental Assistance with respect to one or more Units, and any event that would allow the Owner to terminate a Rental Assistance Contract, or fail to extend or renew the contract, with respect to one or more Units pursuant to Section 3.04(b)) no later than 30 days after the date on which the Owner obtains evidence in writing that the default or material adverse change has occurred or is reasonably likely to occur.

- (b) Obligation to Maintain Rental Assistance Contract. The Owner shall keep in effect any Rental Assistance Contract that covers any of the Units, shall timely exercise any right to extend or renew any such contract, and shall not cause or permit, by act or omission, the contract to be terminated with respect to one or more Units, unless one of the following conditions is satisfied, or the Owner has otherwise obtained the Agency's prior written consent:
 - (i) Replacement Rental Assistance. The contract is immediately replaced by other Rental Assistance that is substantially equivalent in all material respects to the terminated contract, as reasonably determined by the Agency.
 - (ii) No Fault Termination. The contract terminates with respect to one or more Units through no fault of the Owner (including, but not limited to, any termination by the Owner that is permitted under the Rental Assistance program after a reduction in funding for the Rental Assistance Contract that is not caused by the Owner), and the Owner has been unable, after making commercially reasonable efforts, to replace the contract with other Rental Assistance that is substantially equivalent in all material respects to the terminated contract, as reasonably determined by the Agency.
 - (ii) Reserved.
 - (iii) Reserved.
- (c) Mitigation of Loss of Rental Assistance.
 - (i) Financial Projections. No later than 10 business days after the date on which the Agency receives notice from the Owner of any termination or material reduction of a Rental Assistance Contract with respect to one or more Units, or any event that would allow the Owner to terminate a Rental Assistance Contract, or fail to extend or renew the contract, with respect to one or more Units pursuant to Section 3.04(b), the Owner shall provide the Agency with current financial statements and reasonably detailed financial projections for the Project, in addition to any other information that the Agency may reasonably request in writing in response to the Owner's notice.
 - (ii) **Mitigation Measures.** Upon receipt of a notice from the Owner pursuant to Section 3.04(c)(i), the Agency may assist the Owner to identify alternative forms of Rental Assistance and propose other measures to mitigate the loss of Rental Assistance. The Agency may also propose a

plan to minimize the displacement of affected Tenants. If the Agency proposes any such measures or plan, and the proposal is commercially reasonable, the Owner shall use good faith efforts to assist the Agency in implementing the proposed measures or plan.

3.05 Reserved.

3.06 HPD Financing.

- (a) **Statutory Authority.** The Owner shall comply, and shall cause the Project to comply, with all applicable requirements of the statutory authority under which HPD is providing the HPD Financing, and any other Laws related to the HPD Financing.
- (b) Loan Documents. The Owner shall also comply, and shall cause the Project to comply, with all documents evidencing, securing, or otherwise signed and delivered by the Owner to HPD in connection with the HPD Financing, including, but not limited to, commitment letters, notes, and mortgages. This covenant does not independently obligate any party under a note or other agreement, however, if the party has not signed the agreement.
- (c) Reserved.
- (d) Reserved.
- (e) Reserved.
- (g) Required Statutory Covenants (Article 15 Loan). HPD is providing all or a portion of the HPD Financing under the authority of Article 15 of the Private Housing Finance Law.
 - (i) Findings. As required by Section 803 of the Private Housing Finance Law, HPD has determined that the area in which the Project is situated is a blighted, deteriorated, or deteriorating area, or has a blighting influence on the surrounding area, or is in danger of becoming a slum or a blighted area because of the existence of substandard, insanitary, deteriorating, or deteriorated conditions, an aged housing stock, or under-utilized non-residential property, or other factors indicating an inability of the private sector unaided to cause the Project to be completed.
 - (ii) Notice to Occupants. If the Project is occupied on the date of this Agreement, (i) HPD has notified occupants of the Project of the contemplated rehabilitation and has advised them of the expected rental increase to result from the rehabilitation, if any, and (ii) a representative of HPD has met or has offered to meet at least once with the occupants.

- (h) Reserved.
- 3.07 Reserved.
- 3.08 Reserved.
- 3.09 Reserved.
- 3.10 Reserved.
- 3.11 Reserved.

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ARTICLE 4

PROJECT OCCUPANCY

4.01 Occupancy Restrictions.

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

designate the Homeless Units and provide a certified schedule of unit designations to the Agency upon request. In addition, the Owner shall enter into a lease meeting the requirements of this Agreement with each Tenant residing in a Homeless Unit and shall include each such Tenant on the Project's rent roll.

- (ii) Statutory Minimum (Title 28, Ch. 26 of the Ad. Code). Notwithstanding anything to the contrary in this Agreement, Section 26-2802 of the Administrative Code requires the Owner to lease not less than 15% of the Income-Restricted Units as Homeless Units.
- (ii) Reserved.
- (iii) Reduction of Homeless Unit Requirement.
 - (1) Loss of Funding. If the Agency determines that the Owner, through no fault of the Owner and despite reasonable and customary efforts, is unable to obtain or maintain a source of funding for the social services for each Homeless Unit, the Agency may permit the Owner to rent any such Unit that becomes vacant not as a Homeless Unit and to an Eligible Household whose Annual Income upon initial occupancy does not exceed the income limit for the Unit set forth in Exhibit B (unless the vacancy results from a breach of the warranty of habitability, harassment, constructive eviction, or any similar action caused by the Owner; and subject to any other occupancy requirements of this Agreement).
 - (2) Waiver. Any such waiver by the Agency must be in writing and may contain additional conditions to its effectiveness and limits on its scope. The Agency shall not unreasonably deny or condition any such waiver requested by the Owner.
 - (3) Reinstatement. The Agency may, with notice to the Owner, reinstate in whole or in part the required number of Homeless Units if, in the reasonable opinion of the Agency, the cause for the reduction of the number of Homeless Units has diminished or ceased to exist, or if the Agency finds that the Owner is taking actions to evict Tenants without good cause or to improperly encourage the vacancy of any Unit.
- (iv) Reserved.
- (d) Reserved.
- (e) Reserved.

4.02 Changes to Project.

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

4.03 Integration of Units.

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

4.04 Primary Residence.

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

4.05 Lease-Up and Marketing.

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

4.06 Qualification of Eligible Households.

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

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

4.07 Leases of Units.

- (a) Form of Lease. In renting Units to Tenants, the Owner shall use a form of lease that is consistent with this Agreement and satisfactory to the Agency. The Owner shall ensure that its leases of Units, including, but not limited to, the riders to such leases, comply with the Law.
- (b) Subordination. The Owner shall ensure that all leases of Units are expressly subordinate to this Agreement and to any Permitted Mortgage. The Owner shall not include in any lease of a Unit, or in any rider to such a lease, any provision that conflicts with this Agreement, nor shall the Owner enforce any such provision that may be included in such a lease or rider. To the extent permitted by Law, this Agreement controls if it conflicts with any other requirement of, or applicable to, the Owner's leases of Units.
- (c) Agency Lease Rider. If required by the Agency in writing, and to the extent permitted by Law, the Owner shall include one or more lease riders provided or approved by the Agency in each lease of an Income-Restricted Unit.
- (d) Requirements of Rental Assistance Contract. If the Agency determines in writing that this Section 4.07 conflicts with or is superseded by a requirement of a Rental Assistance Contract covering any Unit, the conflicting or superseded requirement will not apply to the Unit while it is covered by the Rental Assistance Contract.

4.08 Subleases and Assignments.

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

4.09 Right to Renewal Lease.

The Owner shall offer each Tenant in occupancy of an Income-Restricted Unit a renewal lease in accordance with, and subject to, the requirements of Rent Stabilization. The

Owner shall not refuse to permit any such Tenant to remain in occupancy of the Unit because the Tenant's Annual Income, after initial occupancy of the Unit, exceeds the maximum permitted for initial occupancy of the Unit.

4.10 Evictions.

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

4.11 Successors to Tenants.

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

4.12 Rental Assistance Status.

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

4.13 Non-Discrimination.

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

(d) Reserved.

4.14 Conversion to Co-Op or Condo.

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

4.15 Reserved.

4.16 Non-Residential Space.

- (a) Agency Consent. The Owner shall obtain the prior written consent of the Agency for any lease, sublease, license, or occupancy agreement affecting any non-residential portion of the Project. The Owner shall also obtain the prior written consent of the Agency for any amendment of such an agreement, if the amendment changes the permitted use or otherwise alters a material term.
- (b) Non-Residential Leasing Guidelines. Without limiting the conditions that the Agency may impose to provide a consent under Section 4.16(a), the Owner shall ensure that any lease, sublease, license, or occupancy agreement affecting any non-residential portion of the Project that is presented to the Agency for consent complies with any non-residential leasing guidelines that have been issued by the Agency.
- (c) **Prohibited Uses.** The Owner shall not permit the Property or the Project to be used for (i) any use that would violate the applicable zoning or certificate of occupancy; or (ii) any use that the Agency reasonably determines may create a nuisance or hazard to the Tenants or a deleterious effect on their quiet enjoyment of their Units, the common areas of the Property, and the areas adjacent to the Property.
- (d) Arm's-Length Leases. The Owner shall not lease any non-residential space in the Project to an affiliate or principal of the Owner, or lease or otherwise permit occupancy of any such space at less than the prevailing market rent in the Project's neighborhood for a term of 10 years or more (including renewal options), unless in each case the Owner has obtained the prior written consent of the Agency.
- (e) Threshold for Consent. Notwithstanding Section 4.16(a), the Agency's consent is not required for any lease, sublease, license, or occupancy agreement that: (i) affects less than 5,000 square feet of non-residential space in the Project; (ii) is otherwise consistent with this Agreement, including, but not limited to, this Section 4.16; (iii) does not contain an option to acquire all or any portion of the

- Project; and (iv) does not primarily concern telecommunications equipment or solar or other energy-related equipment.
- (f) Parking Use Restriction. The parking located within the residential condominium unit shall be used by residents of the Project only.
- High Road Retail. Capitalized terms used in this paragraph but not otherwise defined in this Agreement have the meanings given to them in the Mayor's Executive Order No. 19, dated July 14, 2016. Pursuant to Executive Order No. 19, the Owner shall comply with Executive Order No. 19 and shall include or cause to be included in any lease, sublease, license, or other occupancy agreement covering space in the Project that will be operated as a Retail or Food Service Establishment, where such lease, sublease, license, or other occupancy agreement (i) is entered into with a tenant or other user that employs, or is anticipated to employ upon opening, 10 or more employees at the Project, and (ii) covers, or is anticipated to cover, in excess of 15,000 gross square feet of space in the Project, a "labor peace" clause such that the tenant or other user is required to enter into a Labor Peace Agreement with any Labor Organization that seeks to represent Covered Employees at the Project. The Agency must be identified as a third-party beneficiary of the labor peace clause.
- (h) Reserved.

[Continues on next page]

ARTICLE 5

RESIDENTIAL RENTS

5.01 Rents Charged to Tenants.

- (a) In General.
 - (i) Rent Limits. The Owner shall lease each Income-Restricted Unit for a monthly rent that does not exceed the amount permitted by this Section 5.01 for the Unit. The Owner may lease an Income-Restricted Unit for less than the permitted amount if doing so does not endanger the financial viability of the Project.
 - (ii) Determining Rents. This Agreement incorporates multiple limits on the rent for each Income-Restricted Unit, including (1) the legal regulated rent under Rent Stabilization, (2) a programmatic rent limit (usually based on a percentage of AMI and required by one or more subsidy programs), and (3) if applicable, a rent that is allowed by a Rental Assistance program. In entering into a lease of an Income-Restricted Unit, the Owner shall offer a rent that complies with each of the applicable limits, as reconciled in accordance with the rules given in this Agreement and any requirements of Law. Some of these rent limits may in practice equal the same amount at one or more points in time.
- (b) Certain Definitions. In this Agreement:
 - (i) "Actual Rent" means, with respect to any Unit, the monthly rent that the Owner may collect pursuant to its lease of the Unit and includes the rent required to be paid by the Tenant and any Rental Assistance, but not any applicable utility allowance.
 - (ii) "Legal Rent" means, with respect to any Unit, the legal regulated rent for the Unit under Rent Stabilization, as may be adjusted pursuant to Rent Stabilization and Section 5.02(c).
 - (iii) "Maximum Program Rent", with respect to any Unit, has the meaning set forth in Exhibit B for the Unit. The Owner shall calculate the monthly rent limit for any percentage of AMI that is set forth as a Maximum Program Rent (or any other rent limit) on Exhibit B as 30% of the percentage of AMI, divided by 12, rounded down to the nearest whole dollar, and then minus the applicable utility allowance. To adjust AMI for family size in rent calculations, the Owner shall deem Units with no bedrooms to be occupied by one individual, and Units with one or more bedrooms to be occupied by 1.5 individuals per bedroom, regardless of the actual number of occupants.

- (iv) "Renewal Lease Adjustment" means the applicable rent adjustment pursuant to Rent Stabilization that has been approved by the New York City Rent Guidelines Board (or any successor) for a renewal lease of a dwelling unit.
- (v) "Rental Assistance Rent" means, with respect to any Unit, the maximum monthly assistance payment for the Unit under the applicable Rental Assistance program before deducting any payment by the Tenant (i.e., the payment standard authorized by the government agency issuing a voucher (or similar right to subsidy), or the contract rent that is approved by the government agency administering a Rental Assistance Contract, as applicable), but in any case not to exceed the Maximum Rental Assistance Rent, if any, that is set forth in Exhibit B for the Unit.
- (vi) "Rental Assistance Unit" means an Income-Restricted Unit that receives, or that is occupied by a Tenant who receives, Rental Assistance.

(c) Initial Rents.

- (i) General Rule. Upon the initial lease after the date of this Agreement of an Income-Restricted Unit, the Owner shall lease the Unit for an Actual Rent that does not exceed the least of:
 - (1) the initial Legal Rent set forth in Exhibit B,
 - (2) the initial Actual Rent set forth in Exhibit B, and
 - (3) the Maximum Program Rent.
- (ii) Rental Assistance. Notwithstanding subsection (i) above, and unless otherwise prohibited by Law, upon the initial lease after the date of this Agreement of an Income-Restricted Unit that is also a Rental Assistance Unit, the Owner may lease the Unit for an Actual Rent that does not exceed the least of:
 - (1) the initial Legal Rent set forth in Exhibit B,
 - (2) for any Unit that is covered by a Rental Assistance Contract, the initial Actual Rent set forth in Exhibit B, and
 - (3) the Rental Assistance Rent.

- (d) Renewal Leases.
 - (i) General Rule. Upon the renewal of a lease of an Income-Restricted Unit, the Owner shall lease the Unit for an Actual Rent that does not exceed the least of:
 - (1) the Legal Rent,
 - (2) the Actual Rent in effect for the prior lease term adjusted by the Renewal Lease Adjustment, and
 - (3) the Maximum Program Rent.
 - (ii) Rental Assistance. Notwithstanding subsection (i) above, and unless otherwise prohibited by Law (including, but not limited to, any applicable restriction on adjustments to preferential rents under Rent Stabilization), upon the renewal of a lease of an Income-Restricted Unit that is also a Rental Assistance Unit, the Owner may lease the Unit for an Actual Rent that does not exceed the lesser of:
 - (1) the Legal Rent, and
 - (2) the Rental Assistance Rent.
 - (iii) Reserved.
- (e) Vacancy Leases.
 - (i) General Rule. Upon the vacancy of an Income-Restricted Unit, the Owner shall lease the Unit for an Actual Rent that does not exceed the lesser of:
 - (1) the Legal Rent, and
 - (2) the Maximum Program Rent.
 - (ii) Rental Assistance. Notwithstanding subsection (i) above, and unless otherwise prohibited by Law, upon the vacancy of an Income-Restricted Unit that will become or remain a Rental Assistance Unit, the Owner may lease the Unit for an Actual Rent that does not exceed the lesser of:
 - (1) the Legal Rent, and
 - (2) the Rental Assistance Rent.

- (f) Additional Rental Assistance Requirements.
 - (i) Tenant Rent Share Generally. The Owner shall not charge or collect from the Tenant of any Rental Assistance Unit any tenant rent share or other portion of the rent that is required to be paid by the Tenant under the applicable Rental Assistance program exceeding (1) the amount that the Tenant is required to pay under the applicable Rental Assistance program, and (2) the amount that is allowed by Law (including, but not limited to, any Laws with respect to applicable subsidy programs).
 - (ii) Tenant Rent Share Limited to Maximum Program Rent. The Owner shall not charge or collect from the Tenant of any Rental Assistance Unit any tenant rent share or other portion of the rent that is required to be paid by the Tenant under the applicable Rental Assistance program that is greater than the Maximum Program Rent.
 - (iii) Rental Assistance Contract Rents. The Owner shall provide to the Agency for review and approval the initial contract rents for all Units that are covered by any Rental Assistance Contract.
- (g) Reserved.
- (h) Reserved.
- (i) Deep Rent Skewing Rent Rule. The Owner has elected to deep rent skew the Project pursuant to Section 142(d)(4)(B) of the Internal Revenue Code. Accordingly, the Owner shall comply with the gross rent rule in Section 142(d)(4)(B)(iii) of the Internal Revenue Code.
- (j) Reserved.

5.02 Rent Stabilization.

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

other factor. This provision continues to apply to Income-Restricted Units after the Restriction Period until any such Unit becomes vacant (unless the vacancy results from a breach of the warranty of habitability, harassment, constructive eviction, or any similar action caused by the Owner). The Owner may claim any exemption that is permitted under Rent Stabilization for a Superintendent Unit.

(c) Permitted Rent Adjustments.

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

(d) Registration.

(i) Initial Registrations. The Owner shall complete the initial building registrations of the Project and the initial apartment registration for each occupied Unit that is subject to Rent Stabilization, all in accordance with Rent Stabilization, no later than 60 days following: (1) the Project's receipt of a temporary or final certificate of occupancy, or (2) the date of this Agreement, if the Project does not require a new certificate of occupancy. If a Unit is subject to Rent Stabilization and is vacant at the time the Owner completes the initial building registrations of the Project, the Owner shall complete the initial apartment registration of the Unit no later than 60 days following the lease-up of the Unit. The Owner shall

- provide the Agency with satisfactory proof of all initial registrations promptly upon request.
- (ii) Annual Registrations. On an annual basis in accordance with Rent Stabilization, the Owner shall complete the annual rent registrations for each Unit that is subject to Rent Stabilization. The Owner shall provide the Agency with satisfactory proof of all annual rent registrations promptly upon request.
- (iii) Registered Rents. For each Unit that is subject to Rent Stabilization, the Owner shall register: (1) on any initial apartment registration, the initial Legal Rent for the Unit set forth in Exhibit B, and (2) on any annual rent registration, the Legal Rent then in effect for the Unit. If at the time of any registration of a Unit in accordance with Rent Stabilization, the Actual Rent for the Unit is less than the Legal Rent, the Owner shall register the Actual Rent then in effect as a preferential rent under Rent Stabilization (or shall register the Actual Rent as the Legal Rent if required by Law).
- (e) Destabilization; Contractual Rent Regulation.
 - (i) Renewal and Vacancy Leases. If any Unit that is subject to Rent Stabilization undergoes any set of facts that causes Rent Stabilization to no longer apply to the Unit during the Restriction Period, whether by expiration, legislative repeal, judicial invalidation, or any other reason ("Destabilization"), then the Owner shall offer renewal and vacancy leases for the Unit on the same terms as had been required by Rent Stabilization at the time of Destabilization (subject to subsections (ii) and (iii) below), as if the Unit were still subject to and not exempted or excluded from any provision of Rent Stabilization (including, but not limited to, the exemptions or exclusions identified in Section 5.02(b)).
 - (ii) Legal Rent Index. After Destabilization, HPD shall establish an index for determining adjustments to the Legal Rent upon the renewal of a lease or vacancy of a Unit. HPD shall base this index on inflation or on factors substantially equivalent to the factors considered in calculating adjustments to rents under Rent Stabilization at the time of Destabilization. HPD shall incorporate into the index, or separately establish, a method for determining and implementing MCI Increases, to the extent they are not prohibited under this Agreement. HPD shall publish the index in *The City Record* and shall provide a copy to the Owner upon request.
 - (iii) Rent Adjustments. After Destabilization, where this Agreement permits or requires rent adjustments pursuant to Rent Stabilization (or similar language), the Owner shall adjust the applicable rent pursuant to the method established by HPD and described in subsection (ii) above.

(f) Reserved.

5.03 Loss of Rental Assistance.

(a) General Rule. If (i) a Tenant receiving tenant-based or project-based Rental Assistance is occupying an Income-Restricted Unit, (ii) the Actual Rent for the Tenant's Unit exceeds the amount that may be collected for a non-Rental Assistance Unit under Section 5.01, and (iii) the Tenant loses the Rental Assistance at any time, then upon the loss of Rental Assistance, the Unit is no longer a Rental Assistance Unit and the Owner shall immediately revise the Tenant's Actual Rent to an amount that does not exceed the maximum amount that may be collected for the Unit as a non-Rental Assistance Unit under Section 5.01(d). The Owner shall not charge or collect from any such Tenant any amount that exceeds the amount permitted by this Section 5.03.

(b) Homeless Units with Project-Based Rental Assistance.

- (i) Our Space Fall Back. If a Tenant described by Section 5.03(a) is occupying a Homeless Unit and was receiving project-based Rental Assistance prior to the loss of Rental Assistance, then upon the loss of Rental Assistance and any subsequent loss of Rental Assistance with respect to the same Unit, in addition to the requirements of Section 5.03(a), the Owner shall revise the Tenant's Actual Rent to an amount that does not exceed as follows (if such amount is less than the Actual Rent that would otherwise be required by Section 5.03(a)): If the Tenant receives Shelter Allowance, the Shelter Allowance. If the Tenant does not receive Shelter Allowance, then the lesser of (1) the Tenant's Income-Based Rent (but not less than any minimum Income-Based Rent for the Unit that is set forth on Exhibit B) and (2) 30% of 60% of AMI, divided by 12, rounded down to the nearest whole dollar, and then minus the applicable utility allowance. Upon each renewal or vacancy lease thereafter, the Owner shall lease the Unit for an Actual Rent that does not exceed the amount that may be collected under Section 5.01.
- (ii) Waiver. The Agency may waive the requirement of subsection (i) above, and may condition any such waiver on, among other conditions, the implementation of a plan to minimize the displacement of affected Tenants.
- (ii) Non-Complying Tenants. The Owner is not required to comply with subsection (i) above if the government agency administering the Rental Assistance has determined that the Tenant's loss of Rental Assistance was caused solely by a failure of the Tenant to comply with the requirements of the Rental Assistance program or the Law.

5.04 After the Restriction Period.

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

[Continues on next page]

ARTICLE 6

PROJECT OPERATIONS

6.01 Standard of Care.

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

6.02 Maintenance of Project.

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

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

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

6.03 Taxes and Municipal Charges.

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

6.04 Records; Retention.

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

6.05 Contracting.

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

6.06 HPD Building Registration.

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

6.07 Property Management.

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

(e) Reserved.

6.08 Insurance.

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

additional insureds. The amount of the coverage must be sufficient to prevent the application of any co-insurance clause.

- (i) **Builder's Risk.** During any period of substantial construction at the Project, the Agency may require the Owner to maintain, or to cause its construction contractor to maintain, builder's risk insurance on a completed value, non-reporting form. During any such period, the Owner shall maintain this insurance, or cause it to be maintained, in addition to or, with the written consent of the Agency, in lieu of any other commercial property insurance. The insurance must cover losses on or damage to construction work and the storage and transport of materials, equipment, and supplies of any kind to be used in or incidental to the construction of the Project. The insurance must include a soft costs endorsement for actual losses sustained, with no monthly limit. Any builder's risk policy must permit the insured to occupy the Property prior to completion.
- (ii) Boiler and Machinery. The Owner's property insurance must include boiler and machinery coverage in an amount satisfactory to the Agency and covering all boilers, machinery, air conditioning systems, pressure vessels, and similar equipment commonly covered under a broad-form boiler and machinery policy.
- (iii) Business Income. The Owner's property insurance must include business income insurance in an amount sufficient to pay the total anticipated rental income for the Project for one year, or any longer period if required in writing by the Agency, for actual losses sustained with no monthly limit. This coverage is not required prior to completion of the initial construction of the Project.
- (iv) Prohibited Exclusions. The Owner's property insurance must not exclude losses due to terrorism. The Owner shall obtain the prior written consent of the Agency for any other exclusion of coverage from the Owner's property insurance policy.
- (d) Flood. If any portion of the Project is located in a federal "special flood hazard area", the Owner shall maintain or cause to be maintained flood insurance covering the Owner as named insured and all additional insureds for each building in the Project and its contents in an amount equal to the lesser of (i) the maximum amount available per building under the national flood insurance program and (ii) the full replacement cost of the Improvements and the Equipment. If flood insurance is required, the Agency strongly recommends private flood insurance in addition to, or in place of, the federal coverage, but it is not required.
- (e) Commercial Automobile Liability. If vehicles are used in connection with the Project, the Owner shall maintain or cause to be maintained commercial automobile liability insurance with respect to the Project, with bodily injury and property damage limits of not less than \$2 million per occurrence, combined single limit. This insurance must cover the Owner as named insured and all

additional insureds against liability arising out of the ownership, maintenance, or use of any owned, non-owned, or hired vehicles. The coverage must be at least as broad as the most recently issued ISO Form CA 00 01. The insurance must also include a waiver of subrogation against all parties named as additional insured. If any vehicles transport hazardous materials, the insurance must include pollution liability broadened coverage for covered autos (ISO Form CA 99 48) and proof of MCS-90.

- (f) Commercial General Liability and Commercial Automobile Liability (Construction Contractor). During any period of substantial construction at the Project, the Owner shall cause its construction contractor to maintain commercial general liability insurance and commercial automobile liability insurance satisfactory to the Agency. The contractor's insurance must include owners and contractors protective liability coverage, including products and completed operations coverage to apply for two years following the completion of the work. Any such policy must name the Owner as an additional insured.
- (g) Workers' Compensation and Disability Benefits. If the Owner has employees, the Owner shall maintain or cause to be maintained workers' compensation and disability benefits insurance as required by Law. In addition, the Owner shall ensure that its contractors (including any construction contractor and Managing Agent) maintain such coverage as applicable.
- (h) Employer's Liability. If the Owner has employees, the Owner shall maintain or cause to be maintained employer's liability insurance with a limit of not less than \$500,000 per occurrence, annual aggregate, combined single limit for bodily injury, personal injury, or property damage. This insurance must cover the Owner as named insured and all additional insureds if an employee is not eligible for, or is able to reject, statutory workers' compensation benefits, and the employee or other authorized person elects to sue for an injury or death deemed to have been sustained in the performance of duties on the Project. The insurance must also include a waiver of subrogation against all parties named as additional insured. In addition, the Owner shall ensure that its contractors (including any construction contractor and Managing Agent) maintain such coverage as applicable.
- (i) Other Insurance. The Owner shall maintain or cause to be maintained insurance against other risks, in any amount that the Agency may reasonably require, if such insurance is then commonly carried by reasonably prudent owners of property located in New York City containing buildings or improvements similar to the Project in type, size, use, and value.
- (j) Deductibles. All deductibles must not exceed the amount that would be carried by a reasonably prudent owner of property located in New York City containing buildings or improvements similar to the Project in type, size, use, and value.

(k) City as Additional Insured.

- (i) Liability Policies. The Owner shall ensure that each liability insurance policy required by this Agreement names "The City of New York, together with its officials and employees, and each of their successors and assigns, as their interests may appear" as an additional insured, with coverage at least as broad as the most recently issued ISO Forms CG 20 10 and CG 20 26.
- (ii) **Property Policies.** The Owner shall ensure that each property insurance policy required by this Agreement (including any flood or builder's risk policy) contains a standard mortgagee, loss payee, or additional insured clause, as applicable, naming "The City of New York, together with its officials and employees, and each of their successors and assigns, as their interests may appear" as an additional insured, and as a loss payee. If required by a senior lender to the Project that has been approved in writing by the Agency, the Owner may name the senior lender or its servicing agent as the sole loss payee.
- (iii) Contractor Policies. If the Owner requires any contractor to maintain insurance and requires the contractor to list the Owner as an additional insured, the Owner shall ensure that the policy also lists "The City of New York, together with its officials and employees, and each of their successors and assigns, as their interests may appear" as an additional insured as described in this subsection (k).

(I) Reserved.

- (m) Evidence of Insurance. Upon the Agency's request, the Owner shall provide the Agency with the following evidence of each insurance policy required by this Agreement: (i) a certificate of insurance satisfactory to the Agency accompanied by a completed certification of insurance broker or agent; (ii) any additional insured endorsements; and (iii) proof of payment of the policy's premium. With respect to workers' compensation and disability benefits insurance, the Owner shall provide the Agency with evidence of coverage or an exemption in a form acceptable to the New York State Workers' Compensation Board. ACORD forms are not acceptable proof of such insurance. Upon the Agency's request, the Owner shall provide the Agency with a copy of any insurance policy, including all declarations and endorsements, certified by an authorized representative of the issuing insurance carrier. The Agency's acceptance of a certificate or a policy does not excuse the Owner from maintaining or causing to be maintained the insurance required by this Agreement or from any liability arising from its failure to do so.
- (n) Standard for Insurers. The Owner shall obtain each insurance policy required by this Agreement from an insurer of recognized competence who is acceptable to the Agency and who is licensed to issue policies in New York State. Each insurer must also have (i) an A.M. Best rating of not less than "A-" / "Class VII",

- (ii) a Standard & Poor's rating of not less than "A", (iii) a Moody's rating of not less than "A3", or (iv) a Fitch rating of not less than "A-".
- (o) General Requirements for Policies. The Owner shall ensure that each insurance policy required by this Agreement is satisfactory to the Agency and provides that: (i) the insurance is primary and non-contributory; (ii) the policy may not be cancelled, terminated, modified, or amended by the insurer or its authorized agent on less than 30 days' prior written notice to the Agency (or 10 days' for non-payment of premium); (iii) notice of any claim to the insurer by either the Agency or the Owner is sufficient notice under the policy; (iv) notice of any claim by the Agency is sufficient if given to the insurer or its authorized agent not more than 60 days after the later of the date that notice of the claim is delivered to the Owner, or the date that a notice of claim regarding such claim is filed with the Comptroller of the City; (v) no act or omission of the Owner will invalidate the policy as to the additional insureds, and no act or omission of the additional insureds will invalidate the policy as to the Owner; (vi) the insurer shall defend the additional insureds under any and all circumstances relating to or arising out of this Agreement; (vii) the insurer may not refuse to defend on the grounds of negligence, negligence per se, or contributory negligence; and (viii) the presence of employees or agents of the additional insureds on the Property will not invalidate the policy as far as the additional insureds are concerned.
- (p) Monetary Limits. The minimum monetary limits that are required by the Agency for any insurance policy required by this Agreement are the greater of (i) the minimum limits set forth in this Agreement and (ii) the limits that are actually provided to the Owner as named insured under the insurance policy. The Agency may increase the monetary limits for insurance policies required by this Agreement on one or more occasions to reflect the insurance coverage that would be carried by a reasonably prudent owner of property located in New York City containing buildings or improvements similar to the Project in type, size, use, and value.
- Notice of Events. Whenever notice of an event is required under an insurance policy required by this Agreement, the Owner shall provide the insurer with timely notice of the event on behalf of all additional insureds, even where the Owner may not be covered for the loss. The notice from the Owner to the insurer must state that the notice is being given on behalf of the additional insureds, and shall contain, to the extent known, (i) the policy number, (ii) the name of the named insured, (iii) the date and location of the event, (iv) the identity of the individuals or things injured, damaged, or lost, (v) the title of the claim or suit, if applicable, and (vi) the address, block, and lot of the Property. The Owner shall simultaneously send a copy of such notice to the Agency. If the Owner fails to comply with these requirements, the Owner shall indemnify the additional insureds that are required by this Agreement for all losses, judgments, settlements, and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice.
- (r) **No Release.** Maintaining insurance as required by this Agreement does not relieve the Owner of any other obligation under this Agreement or any other

- agreement by which the Owner is bound or preclude the Agency from exercising any rights under the Law, this Agreement, or any other agreement.
- (s) Release of Claims. The Owner waives all rights against the City and its officials and employees with respect to any losses that are or would be covered under an insurance policy required by this Agreement (whether or not the policy is actually procured or claims are paid under the policy) or any other insurance applicable to the operations of the Owner or its contractors.
- Right to Obtain Insurance. After written notice to the Owner and not less than 10 business days to cure, the Agency may arrange to obtain any insurance that is required by this Agreement if the Owner fails to do so. The Owner shall reimburse the Agency upon demand for any amounts paid by the Agency or any agent to obtain such insurance, with interest at the Default Rate from the date of payment to the date of reimbursement by the Owner. Any arrangement to obtain insurance by the Agency will not waive a violation of this Agreement by the Owner or any rights of the Agency under the Law, this Agreement, or any other agreement.
- (u) Financing Requirements. The Owner shall comply with any insurance requirements that may be imposed in connection with the financing of the Project, including, but not limited to, any greater monetary coverage limits that may be contained in any related mortgage or financing agreement.

6.09 Utilities.

- Building Benchmarking. The Owner shall comply with the requirements of HPD's building benchmarking protocol. Upon the issuance of a temporary certificate of occupancy for any space in the Project, or as of the date of this Agreement if the Project already has a certificate of occupancy, the Owner shall contract, at the Owner's expense, with a qualified benchmarking software provider on the HDC-approved list to collect utility performance information with respect to the Project, including monthly and annual data on heating, electric, and water usage, in accordance with HPD's building benchmarking protocol. HPD may require the Owner to replace the qualified benchmarking software provider if the provider is no longer on the HDC-approved list.
- (b) Utility Performance Reporting. No later than May 1 of each year, the Owner shall ensure that the qualified software provider retained by the Owner inputs the utility performance information for the Project for the immediately preceding year into the U.S. Environmental Protection Agency's ENERGY STAR Portfolio Manager system, or such other system as may be designated in writing by the Agency. The Owner shall ensure that the utility performance information is made available to the Agency through an account located on such system. The Agency may also receive the utility performance information directly from the qualified benchmarking software provider, and the Owner consents to the sharing of such information with the Agency.

- (c) Reserved.
- (d) **Broadband Access.** The Owner shall make available to each Unit wireless broadband internet service and, upon request by a Tenant, wired broadband internet service with a wired connection point in the living room of such Tenant's Unit, each at no cost to the Tenant. The Owner shall comply with HPD guidelines regarding the level of broadband internet service and its operation and maintenance, including but not limited to fees, service speed, enhancements and repairs. If requested by the Agency, the Owner shall enter into a broadband access lease rider, in a form approved by the Agency, with each Tenant.

6.10 Mechanics and Tax Liens.

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

6.11 Loans by Owner.

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

6.12 Reasonable Accommodations.

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

6.13 Equal Access to Amenities.

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

6.14 Distribution of Information.

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

6.15 Operation of Homeless Units.

(a) Approval of Social Services. Prior to the initial marketing of the Homeless Units, the Owner shall submit to HPD (i) a social services plan detailing the services and furnishings to be provided to Tenants of Homeless Units, a budget, and the provider of such services; or (ii) if required in writing by HPD, a social services contract with an approved provider or a commitment to enter into such a

contract. The Owner shall not begin the initial lease-up of the Homeless Units until HPD has approved the social services plan or contract in writing. Evidence satisfactory to the Agency of a services award from an Agency-approved source will satisfy the foregoing requirement.

- 6.16 Reserved.
- 6.17 Reserved.
- 6.18 Environmental Requirements.

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

6.19 Building Service Prevailing Wage.

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

- 6.20 Reserved.
- 6.21 Reserved.

[Continues on next page]

ARTICLE 7

RESERVES

7.01 Replacement Reserve.

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

7.02 Operating Reserve.

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

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

(c) Reserved.

7.03 Other Reserves.

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

7.04 Servicing of Reserves.

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

- (c) Fees. For any reserve account that is established with the Agency or with an Agency-designated servicer, the Agency may withdraw (or permit the servicer to withdraw) funds from the account, at any time and on one or more occasions, to pay the reasonable account-related fees of the Agency or the servicer of the account, so long as the amount withdrawn each year does not exceed 1% of the average monthly balance of the account for the year. In addition, the Owner shall pay all bank fees and investment breakage fees that are due to third parties and incurred by the Agency or a servicer in connection with servicing any such account.
- (d) Requirements of Senior Lender. If a senior lender or provider of credit enhancement on the senior loan to the Project that has been approved in writing by the Agency (including but not limited to any senior lender or provider of credit enhancement who takes possession of the Property following a foreclosure, deed-in-lieu of foreclosure, or comparable conversion of the Project) requires exclusive control over the Replacement Reserve, then for so long as the senior lender or credit enhancer's requirements remain in effect, the Agency's right to demand control over the Replacement Reserve under Section 7.04(a) does not apply.

7.05 Replenishment of Reserves.

If the Owner withdraws funds from a reserve account that is required by this Agreement, the Agency may require the Owner to replenish the account, in the amount withdrawn, using the Project's available cash flow or other funds of the Owner. The Owner shall make any such replenishment over the period that the Agency may reasonably require. The Agency shall not require the Owner to replenish the account at a rate that is faster than 1/12th of the amount to be replenished per month, however.

7.06 Reserves Remain with Project.

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

7.07 Disposition of Reserves.

Upon the end of the Restriction Period, the Owner shall use the entire outstanding balance in the reserve accounts that are required by this Agreement in the following order of priority, unless reordered or waived by the Agency in writing (to the extent permitted by Law): first, to pay any outstanding taxes, charges, or other amounts owed to the Agency or the City, other than any Agency financing for the Project; second, to pay all accrued unpaid interest on, and the unpaid principal balance of, any Agency financing for the Project, in that order; third, to perform necessary capital and maintenance work at the Project, as may be required by the Agency; fourth, to pay into a

new replacement, operating, or other reserve for the Project, as may be required by the Agency; fifth, to repay loans, if any, made by the Owner or an affiliate of the Owner that were made for the purpose of funding Project operating account deficits or for any other Project purposes; and sixth, to be disbursed to the Owner for use in any manner consistent with its purposes and contractual obligations.

7.08 Reserved.

[Continues on next page]

ARTICLE 8

OWNERSHIP AND FINANCING

8.01 Property Transfers.

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

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

8.02 Changes in Ownership.

- Agency Consent Required. Except as provided in this Section 8.02, the Owner shall not cause or permit any Change in Ownership of the Owner (including, individually, any individual or entity that is a party to this Agreement and is included in the definition of Owner) without the prior written consent of the Agency. "Change in Ownership" means, with respect to any entity, any transfer of any direct or indirect ownership interest in the entity at any tier, including, but not limited to, sales or other transfers of ownership interests, admissions of new owners, substitutions of owners, withdrawals of owners (except by death), acquisitions of additional ownership interests, and changes to the membership interests in a not-for-profit corporation (but not changes to the directors of a not-for-profit corporation unless specifically provided in this Agreement). The Agency shall not unreasonably withhold its consent to a Change in Ownership.
 - (i) Passive Investors. The Agency's consent is not required for any Change in Ownership of the Owner that concerns solely an individual or entity (i) that has no present or contingent control over management or operations of the Owner or the Project, as determined by the Agency, and (ii) the only role of which, as determined by the Agency, is to make a monetary investment.
 - (ii) Exception for Certain LIHTC Investor Interests. Notwithstanding subsection (i) above, the Agency's prior written consent is required for any Change in Ownership of the Owner that concerns the ownership interest of a LIHTC investor in the Beneficial Owner, or any direct or indirect ownership interest in such an entity at any tier, unless the Change in Ownership concerns solely a transfer of (i) a passive ownership interest in the LIHTC investor in the Beneficial Owner or (ii) such LIHTC investor's

passive ownership interest in the Beneficial Owner, so long as (x) the LIHTC investor is a passive investor in the Beneficial Owner, and (y) the manager of the LIHTC investor, or any transferee of the LIHTC investor's passive ownership interest in the Beneficial Owner, is an affiliate of, and is and remains controlled by or under common control with, the LIHTC syndicator or investor parent entity identified in Exhibit B. In addition, any ownership interest in the Beneficial Owner of a special member or special limited partner may be transferred only together with a permitted transfer of the LIHTC investor's ownership interest in the Beneficial Owner, or of the interest of the manager of the LIHTC investor, and only to the same transferee or to a party that is an affiliate of, and is and remains controlled by or under common control with the transferee.

(iii) Reserved.

- (b) Notice of All Changes. If a Change in Ownership is permitted without Agency consent under this Section 8.02, the Owner shall give the Agency notice of the Change in Ownership promptly after it occurs and shall certify in writing that the Change in Ownership is in compliance with this Agreement. The foregoing does not apply to any Change in Ownership that concerns solely the ownership interest of a shareholder in a publicly traded company.
- (c) **Death or Incapacity.** The Agency's consent is not required for any Change in Ownership of the Owner that concerns solely a transfer to an executor, administrator, or guardian of a deceased or incapacitated individual. Any subsequent Change in Ownership with respect to the interest of an executor, administrator, or guardian requires the Agency's consent.
- (d) Transfers Among Existing Owners. The Agency's consent is not required for any Change in Ownership of the Owner that concerns solely a transfer of a direct or indirect ownership interest in the Owner to any existing owner of a direct or indirect ownership interest in the Owner that has previously received the Agency's approval in writing, as long as the transfer does not (i) result in a change to the present or contingent control over management or operations of the Owner or the Project, as determined by the Agency, or (ii) result in a change in the direct or indirect ownership interests of the Owner that would require the transferee to comply with the Agency's sponsor review procedures.
- (e) Reserved.
- (f) Reserved.
- (g) Housing Committee. One or more of the entities that comprises the Owner, or a parent of such an entity, is a not-for-profit corporation that has created a housing committee to exercise the powers and duties of its board of directors with respect to the Project. Until the Permanent Loan Conversion, (i) the Owner shall not cause or permit any director to be added to the housing committee without the prior written consent of the Agency, (ii) the Owner shall notify the Agency if any existing director resigns from or is otherwise removed from the

housing committee, and (iii) the Owner shall not cause or permit the housing committee to be disbanded or eliminated without the prior written consent of the Agency.

- (h) Reserved.
- (i) Reserved.
- (i) Reserved.

8.03 Financing.

- (a) Agency Consent Required. Except as provided in this Section 8.03, the Owner shall not incur, assume, or permit to exist any financing with respect to or encumbering all or any portion of the Project or the Property, or any direct or indirect ownership interest in the Owner, including but not limited to any mezzanine debt or preferred equity financing, without the prior written consent of the Agency, nor shall the Owner extend or renew any such existing financing on materially different terms without the prior written consent of the Agency.
- (b) Mortgages and Other Encumbrances. Except as provided in this Section 8.03, the Owner shall not permit any mortgage, lien, pledge, assignment, transfer, encumbrance, grant of a participation interest in, or hypothecation of or on all or any portion of the Project or the Property, or of or on any direct or indirect ownership interest in the Owner (or the income, proceeds, or other economic benefits of any such ownership interest) without the prior written consent of the Agency. Any mortgage or other encumbrance that encumbers all or any portion of the Project or the Property without the Agency's written consent will be void.
- (c) Exceptions to Consent Requirement. The Agency's consent is not required for (i) any financing with respect to or encumbering solely any indirect ownership interest in the Owner, and any encumbrance of an indirect ownership interest in the Owner that secures solely such financing, where the exercise of any rights or remedies by the holder of such debt would not in any circumstance cause (1) a change in present or contingent control over management or operations of the Owner or the Project, or (2) a transfer of a direct or indirect ownership interest in the Owner in violation of this Agreement; or (ii) any financing that is provided to the Owner by its members or partners, as applicable, pursuant to the Owner's organizational documents, and any encumbrance of a direct or indirect ownership interest in the Owner that secures solely such financing.
- (d) **Permitted Mortgages.** The Agency consents to any mortgage or other encumbrance that is (i) recorded against the Property before the date of this Agreement or (ii) signed and delivered on or after the date of this Agreement with the prior written consent of the Agency (including but not limited to any mortgage signed and delivered to secure any Agency financing with respect to the Project), and the financing secured by any such mortgage or other encumbrance ("**Permitted Mortgage**").

(e) Approval of Future Financing.

- (i) Notice to Agency. The Owner shall provide the Agency with written notice of any proposed financing that requires the consent of the Agency not less than 60 days before the anticipated closing of the financing. The Owner shall provide the Agency with (1) a commitment or term sheet from the proposed lender, (2) the Project's financial statements for the previous 12 months, as certified by the Owner and showing the Project's net operating income for the period, (3) reasonably detailed projections of the Project's net operating income and debt service for the following 12 months assuming the Owner obtains the proposed financing, (4) a current appraisal of the Project prepared by an independent real estate appraiser not affiliated with the Owner, and (5) such further information as the Agency may reasonably request in connection with the proposed financing.
- Standard for Consent Where No Agency Financing. If the Property (ii) and the Project are not subject to any mortgage or lien held by or on behalf of the City or HDC, and the Owner does not owe any mortgage indebtedness to the City or HDC with respect to the Project, the Agency shall consent to any proposed financing with respect to or encumbering all or any portion of the Project or the Property, or any direct or indirect ownership interest in the Owner, and any related mortgage or other encumbrance, if the Agency confirms that (1) the proposed financing will be provided by HDC; the Community Preservation Corporation (or its affiliate); a City, State, or federal agency; Fannie Mae; Freddie Mac; a financial institution (including, but not limited to, a savings bank, commercial bank, life insurance company, public real estate investment company, or pension fund) with assets in excess of \$500 million and whose loans are subject to regulation by a State or federal agency; or another lender acceptable to the Agency ("Institutional Lender"); (2) after incurring the proposed financing, the debt service coverage ratio for the Project, taking into account all of the financing affecting the Project, will equal or exceed 1.2; and (3) after incurring the proposed financing, the loan-to-value ratio for the Project, taking into account all of the financing affecting the Project, will not exceed 80%. If the proposed financing does not satisfy these requirements, the Agency may consent to the financing but is not required to do so.

8.04 Zoning; Development Rights.

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

general development, large-scale community facility development, rezoning, or zoning text amendment.

8.05 Nominee Legal Owner.

- (a) Nominee Agreement. Neither the Legal Owner nor the Beneficial Owner shall amend the Nominee Agreement, assign the Nominee Agreement, or enter into a new Nominee Agreement without the prior written consent of the Agency. The Legal Owner and the Beneficial Owner shall comply with the Nominee Agreement and shall copy the Agency on any notice of default under the Nominee Agreement. A default under the Nominee Agreement that remains uncured beyond any applicable cure period is a breach of this Agreement. If this Agreement conflicts with the Nominee Agreement, this Agreement controls.
- (b) Right to Cure. If there is a default under any City, State, or federal loan or regulatory document, including, but not limited to, any mortgage, regulatory agreement, or financing commitment, then notwithstanding any provision of the Nominee Agreement or any other agreement to the contrary, the Beneficial Owner shall permit the Legal Owner to enter the Project and take such other actions with respect to the Project as may be necessary to cure the default, unless the Beneficial Owner is acting diligently to cure the default.

8.06 Condominium.

- (a) Agency Approval of Condominium Documents. The Owner shall obtain the prior written consent of the Agency for any condominium declaration that covers all or any portion of the Project and for all related documents, including, but not limited to, the by-laws of the condominium. The Owner shall submit all such condominium documents to the Agency for review and approval prior to their signing and recording. After approval of any such condominium document by the Agency, the Owner shall not cause or permit the amendment of the document without the prior written consent of the Agency. Any such condominium document, including any amendment, that is entered into without the Agency's written consent will be void.
- (b) Requirements for Condominium Documents. The Owner shall ensure that any condominium documents covering all or any portion of the Project provide for the following to the satisfaction of the Agency: (i) limits on the payment of common charges by any condominium unit containing Income-Restricted Units, (ii) control of the condominium's board of managers by the condominium units subject to this Agreement, (iii) maintenance of insurance by the condominium and the appointment of an Agency-approved insurance trustee, (iv) Agency approval of the use of casualty and condemnation proceeds, (v) restrictions on transfers and the use of condominium units that are not subject to this Agreement, (vi) Agency approval of structural or other material work, (vii) Agency access to the condominium's records, (viii) Agency approval of amendments to the condominium documents, and (ix) the delivery of notices of default and other material reports under the condominium documents to the Agency. The Agency

- may impose additional requirements in connection with its approval of any such documents.
- (c) Subordination; Memorandum of Regulatory Agreement. Any condominium declaration that covers all or any portion of the Project is subordinate to this Agreement. Promptly following the establishment of a condominium, the Owner shall record a memorandum of this Agreement in accordance with Section 12.01(b).
- (d) Transfers of Released Condominium Units. The Owner shall not cause or permit, and shall ensure that any condominium documents that cover all or any portion of the Project do not permit, (i) a Property Transfer of any condominium unit that is a part of the same condominium that the Project is a part of, but that has been released from this Agreement, or (ii) a Change in Ownership of the owner of such a condominium unit, without the prior written consent of the Agency. Any such Property Transfer requiring the Agency's consent that occurs without the Agency's written consent will be void. The Agency shall consent to any such Property Transfer or Change in Ownership that is not to or for the benefit of a Prohibited Person. In addition, the Agency's consent is not required for: (i) any Property Transfer that concerns solely a non-residential lease. sublease, license, or occupancy agreement to an end user of the space in the ordinary course of business, or (ii) any Change in Ownership that concerns solely an individual or entity (1) that has no present or contingent control over management or operations of the owner of such condominium unit or the Project, as determined by the Agency, and (2) the only role of which, as determined by the Agency, is to make a monetary investment.
- (e) Reserved.
- 8.07 Reserved.

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ARTICLE 9

COMPLIANCE MONITORING

9.01 Annual Submissions.

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

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

holds each reserve account, the current balance in each reserve account, each contribution and withdrawal from the reserve account during the prior year, supporting documentation for any calculations that are required to determine contribution amounts (including, but not limited to, calculations of amounts to be contributed from net cash flow, if required by Exhibit B), current bank statements, and any other reserve account information that the Agency may reasonably request.

- (e) **Proof of Insurance.** If requested in writing by the Agency, no later than April 1 of each year, satisfactory evidence of each insurance policy required by Section 6.08, as further described in Section 6.08(m).
- (f) **Utility Performance.** No later than May 1 of each year, the utility performance information for the Project as required by Section 6.09(b).
- (g) Other Submissions. Any other Records or certification that may be required to be submitted to the Agency by Law, no later than the date that is required by Law.
- (h) Reserved.
- (i) Reserved.
- (j) Reserved.
- (k) Reserved.

9.02 Late Fees.

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

9.03 Testimony and Documents.

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

9.04 Access to Property.

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

9.05 Reports of Non-Compliance.

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

9.06 Reports of Legal Actions.

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

9.07 Interaction with Authorities.

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

9.08 Disclosure of Ownership.

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

9.09 Additional Information.

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

9.10 Reserved.

9.11 HPD LIHTC Monitoring Fee.

Pursuant to the Internal Revenue Code, HPD is entitled to a reasonable fee for monitoring the Project's LIHTC compliance. During the LIHTC compliance period, the Beneficial Owner shall pay to HPD an annual LIHTC monitoring fee. This fee is currently \$25 per year for each Unit that is designated as a low-income unit pursuant to Section 42 of the Internal Revenue Code but is subject to change and may vary based on factors reasonably determined by HPD. Without limitation, HPD may impose one amount if the Owner satisfies reporting obligations electronically in accordance with HPD's specifications and a higher amount if the Owner satisfies reporting requirements through paper submissions (to account for the increased time required to review paper submissions).

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ARTICLE 10

ENFORCEMENT

10.01 Defaults.

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

10.02 Remedies.

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

- (a) Specific Performance. Seek a temporary or permanent injunction or an order for specific performance of this Agreement. The Agency may also seek this remedy if it determines that a violation of this Agreement is threatened.
- (b) Extension of Restriction Period. Record a document against the Property, executed solely by the Agency, to extend the Restriction Period by the period of

non-compliance. The Agency may presume that the period of non-compliance is the period running from the date of this Agreement until the date that the Agency declares a Default. The Owner may rebut this presumption.

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

10.03 All Rights Cumulative.

All rights and remedies of the Agency under (a) this Agreement, (b) any other document related to the Project, (c) the Law, or (d) any other source of authority, are cumulative and may be exercised alone or concurrently, at the Agency's option. The exercise or

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

10.04 Waivers of Agreement.

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

10.05 No Distributions Upon Default.

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

10.06 Prior Owner Defaults.

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

10.07 No Retaliation.

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

10.08 Waiver of Opposition.

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

10.09 Third-Party Beneficiaries.

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

10.10 Tenant Right to Enforce.

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

10.11 Reserved.

[Continues on next page]

ARTICLE 11

STATEMENTS OF FACT

11.01 In General.

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

11.02 Organization.

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

11.03 Not-for-Profit Corporations.

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

11.04 Due Authorization.

The party has duly authorized and signed this Agreement.

11.05 Valid and Binding Obligation.

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

11.06 No Conflicts.

The entry into and performance of this Agreement and the consummation of the transactions contemplated by this Agreement do not, and will not (a) conflict with any Law or applicable order, (b) conflict with the party's organizational documents, or (c) constitute a breach or default under any material agreement of the party.

11.07 Obtaining of Approvals.

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

11.08 Litigation.

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

11.09 Bankruptcy.

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

11.10 Accuracy of Information.

All information that the party has provided or caused to be provided to the Agency regarding the party or the Project remains complete and correct in all material respects

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

11.11 Rent Roll.

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

11.12 Title to Property.

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

11.13 Flood Zone Status.

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

11.14 Utilities and Public Streets.

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

11.15 Property Condition.

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

11.16 Taxes.

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

11.17 Insurance.

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

11.18 Reserves.

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

11.19 Zoning and Building Codes.

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

11.20 Environmental Laws.

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

11.21 Financing,

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

11.22 Law and Agreements.

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

11.23 Agency and City Personnel.

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

or any other document or decision related to the Project; or (c) has any interest, directly or indirectly, in the Project, the Property, or the proceeds of either.

11.24 Owner Personnel.

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

11.25 Lobbying.

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

11.26 Sponsor Loans.

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

11.27 Sponsor Loans (LIHTC Basis).

With respect to any loan that is made to the Owner by an affiliate of the Owner, including but not limited to any deferred developer fee loan, and that is included in the eligible basis of the Project for LIHTC purposes, (a) the applicable note is negotiable, repayable, and if not secured by a mortgage affecting the Project, recourse to the Owner, (b) the Owner intends to repay the loan in accordance with the applicable note and any other loan documents, (c) there are no formal or informal understandings or arrangements with the lender that the loan will be forgiven, and (d) the Owner will not request that the lender forgive the loan in the future.

[Continues on next page]

ARTICLE 12

MISCELLANEOUS

12.01 Recording.

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

12.02 Successors.

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

12.03 Notices.

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

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

12.04 Agency Approvals.

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

(c) Reserved.

12.05 Amendments.

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

12.06 Severability.

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

12.07 Claims Against Officials.

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

12.08 Cooperation.

The Owner shall diligently render to the City, without additional compensation, any assistance that the City may reasonably require if (a) an action is brought against the City that relates in any way to the Project, the Property, this Agreement, or any other document related to the Project, and (b) neither the City, on one hand, and the Owner, on the other hand, are adverse parties in the action.

12.09 Forum Selection.

- (a) Choice of Law. This Agreement and all other documents related to the Project are deemed to be executed in New York City and New York State, regardless of the domicile of the Owner, and are governed by and should be construed in accordance with the laws of the State.
- (b) Consent to Jurisdiction and Venue. Any claim asserted by or against the City and arising under this Agreement or related to the Project or any other document concerning the Project must be heard and determined either in a federal court

located in New York City or in a State court located in New York County. To realize this intent of the parties, the parties agree as follows:

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

12.10 Indemnity.

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

12.11 Provisions Required by Law.

Any provision required by Law to be inserted into this Agreement is deemed to be incorporated into this Agreement. This Agreement is to be read and enforced as though each such provision is included in this Agreement. If, through mistake, change in Law,

or otherwise, any such provision is not inserted, or is incorrectly inserted into this Agreement, then, upon the written request of any party, all parties shall deem this Agreement to have been amended to make such insertion or correction so as to comply strictly with the Law.

12.12 Further Assurances.

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

12.13 Duplicate Originals.

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

12.14 Interpretation.

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

12.15 Joint and Several Obligations.

Each provision of this Agreement that applies in any way to the Owner (including, but not limited to, any obligation of the Owner or any waiver of rights by the Owner) applies in full measure, individually, to each party to this Agreement that is included in the definition of "Owner". Each representation, warranty, or other statement of fact made by the Owner, any such party to this Agreement, any entity or individual that owns a direct or indirect interest in the party at any tier, any individual that is a principal, officer, or director of the party or any such direct or indirect owner, or any of their respective agents or representatives, either in this Agreement or in connection with the Project, is the responsibility of every party to this Agreement included in the definition of "Owner".

12.16 No Merger.

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

12.17 Other Consents.

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

12.18 Relationship of Parties.

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

12.19 Reserved.

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ARTICLE 13

INVESTIGATIONS

13.01 Definitions.

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

13.02. Cooperation.

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

13.03. Refusal to Testify.

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

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

13.04. Adjournments.

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

13.05. Penalties.

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

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

13.06. Factors.

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

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

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

13.07. Warranties and Enforcement.

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

[Signatures follow]

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

EC A1 LIMITED PARTNERSHIP, a New York limited partnership

By: EC A1 GP LLC,

its general partner

By: EC A1 Partners LLC,

its managing member

By: Edgemere A1 investors LLC,

its managing member

By: Name: Daniel Moritz

Title: Authorized Person

STATE OF NEW YORK)

COUNTY OF NASSAU) ss

On the _____ day of December, 2021, before me, the undersigned, a notary public in and for said state, personally appeared Daniel Moritz, 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

CAROL GIULIANI

NOTARY PUBLIC, STATE OF NEW YORK Registration No. 01Gl4803300 Qualified in Nassau County

My Commission Expires July 31, 20

EC A1 HOUSING DEVELOPMENT FUND CORPORATION.

By:

Name: Scott Barkin Title: Authorized Person

STATE OF NEW YORK

) Ss.:

COUNTY OF NEW YORK

) SE }

On the ____ day of December, 2021, before me, the undersigned, a notary public in and for said state, personally appeared Scott Barkin, 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

THE CITY OF NEW YORK

By: DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

By:

Name: Brendan McBride Title: Associate Commissioner

STATE OF NEW YORK

) ss.:

COUNTY OF NEW YORK

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

Notary Public

Commission expires:

TOMMY WU Notary Public, State of New York No. 02WU6241603 Qualified in Kings County Commission Expires May 23, 2023

APPROVED AS TO FORM BY STANDARD TYPE OF CLASS FOR USE UNTIL November 18, 2022:

By: <u>/s/ Isabel Galis-Menendez</u> Acting Corporation Counsel

EXHIBIT A

PROPERTY DESCRIPTION

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

Borough: Queens

Block: 15843

Lot: 15

Address: 51-23 Beach Channel Drive

And being more particularly described as:

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

BEGINNING at the corner formed by the intersection of the southerly side of Beach Channel Drive with the easterly side of Beach 53rd Street;

RUNNING THENCE North 84 degrees 42 minutes 48 seconds East, along the southerly side of Beach Channel Drive, a distance of 225.02 feet to a point;

THENCE South 04 degrees 22 minutes 44 seconds East, a distance of 305.18 feet to a point;

THENCE South 85 degrees 35 minutes 46 seconds West, a distance of 224.98 feet to the easterly side of Beach 53rd Street;

THENCE North 04 degrees 22 minutes 56 seconds West, along the easterly side of Beach 53rd Street, a distance of 301.71 feet to the corner formed by the intersection of the southerly side of Beach Channel Drive with the easterly side of Beach 53rd Street, the point or place of BEGINNING.

Together with the benefits of that certain Off-Site Accessory Parking Restrictive Declaration dated as of July 15th, 2021 recorded in the Office of the New York City Register, Queens County on October 12, 2021 as CRFN #2021000398478.

EXHIBIT B

PROJECT DETAILS

Project

Name	Peninsula A1	
Address	51-23 Beach Channel Drive Queens, New York	
Borough, Block, and Lot	Queens Block 15843, Lot 15	
Building Identification Number	4623356	
Sponsor	The Arker Companies Block Institute Inc.	
Number of Units (excluding Superintendent Units)	194	
euponinonaoni omioj	Studio	45
	1-Bedroom	87
	2-Bedroom	54
	3-Bedroom	7
Superintendent Units	1 two-bedroom	Unit
Summary of Occupancy Restrictions (See individual tables that follow in Exhibit B for apartment-size distributions, rent limits, and other restrictions.)	38 – 30% of AMI Units - 38 MIH	

Non-Residential Space	Approximately 22,562 square feet of structured residential parking. In addition, there will be commercial parking with approximately 25,067 square feet and commercial retail space with approximately 21,631 square feet, which may be released from this Regulatory Agreement in accordance with the terms set forth herein
Initial Managing Agent	Progressive Management of NY V LLC
(Acknowledged by the Agency as of the date of this Agreement only. Any change to the Managing Agent requires Agency consent per Section 6.07. The Agency may also require a replacement per Section 6.07.)	Robert Corso 1044 Northern Blvd, 2 nd FI Roslyn NY 11576 516-277-9328, rcorso@progressivemgmt.net
Management Fee Limit	6% of the Project's net rent collection, which includes all amounts actually collected with respect to the Units as rent, rental subsidies, or other payments.
LIHTC Syndicator or Investor Parent Entity	Wells Fargo Affordable Housing Community Development Corporation
Applicable Fraction	100%
Minimum Set-Aside	25% at 60% of AMI

Restriction Period

Agency Program Termination Date (This Agreement may remain in effect beyond this date; see Section 2.01.)	Later of: 30 years from the date of this Agreement and 30 years from the Permanent Loan Conversion. With respect to the permanently affordable Units identified as such in this Exhibit B, no termination date. The parties intend for the Restriction Period for these Units to last in perpetuity. (The foregoing does not apply to any Units that are covered separately by an Inclusionary Housing regulatory agreement or restrictive declaration unless such Units are also designated as permanently affordable Units under this Agreement.)
Extended Use Period (This Agreement may remain in effect beyond this date; see Section 2.01.)	30 years from the beginning of the compliance period (as defined in Section 42(i)(1) of the Internal Revenue Code), or any earlier date on which the Extended Use Period terminates upon a foreclosure or deed in lieu of foreclosure pursuant to Section 42 of the Internal Revenue Code

30% of AMI Units (Mandatory Inclusionary Housing)

Income Limi	t	30% of AMI	
Maximum Program Rent		30% of AMI	
Other Restri	ctions	Mandatory Inclusionary Housing	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	0	\$643 (40% of 2021 AMI)	\$410 (27% of 2021 AMI)
1-Bedroom	9	\$812 (40% of 2021 AMI)	\$521 (27% of 2021 AMI)
2-Bedroom	6	\$965 (40% of 2021 AMI)	\$615 (27% of 2021 AMI)
3-Bedroom	0	\$1,105 (40% of 2021 AMI)	\$701 (27% of 2021 AMI)
Total	15		

30% of AMI Units (Mandatory Inclusionary Housing)

Income Limit	t	30% of AMI	······································
Maximum Pr	ogram Rent	30% of AMI	
Other Restric	ctions	Mandatory Inclusionary Housing	j
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	0	\$822 (50% of 2021 AMI)	\$410 (27% of 2021 AMI)
1-Bedroom	7	\$1,036 (50% of 2021 AMI)	\$521 (27% of 2021 AMI)
2-Bedroom	14	\$1,233 (50% of 2021 AMI)	\$615 (27% of 2021 AMI)
3-Bedroom	2	\$1,415 (50% of 2021 AMI)	\$701 (27% of 2021 AMI)
Total	23		

50% of AMI Units (Homeless Units, OPWDD, Permanently Affordable)

Income Limi	t	50% of AMI	
Maximum Pr	ogram Rent	Rent 50% of AMI Homeless Units, OPWDD, Permanently Affordable Referrals for OPWDD Units shall be made by the New York State Office for People With Developmental Disabilities in accordance with the documents evidencing the OPWDD Rental Assistance Contract (also known as the OPWDD Housing Services Agreement between EC A1 Limited Partnership and Block Institute Inc. dated as of December 7th, 2021) for so long as such agreement is in effect.	
Other Restri	ctions		
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	3	\$1,717 (100% of 2021 AMI)	\$972 (50% of 2021 AMI)
1-Bedroom	3	\$2,155 (100% of 2021 AMI)	\$1,036 (50% of 2021 AMI)
2-Bedroom	4	\$2,576 (100% of 2021 AMI)	\$1,233 (50% of 2021 AMI)
3-Bedroom	0	\$2,966 (100% of 2021 AMI)	\$1,415 (50% of 2021 AMI)
Total	10		

50% of AMI Units (Homeless Units, OPWDD)

Income Limi	t	50% of AMI		
Maximum P	rogram Rent	50% of AMI		
Other Restri	ctions	Homeless Units, OPWDD		
		documents evidencing the OPW known as the OPWDD Housing	all be made by the New York State Office Disabilities in accordance with the DD Rental Assistance Contract (also Services Agreement between EC A1 stitute Inc. dated as of December 7th, ment is in effect.	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent	
Studio	12	\$1,717 (100% of 2021 AMI)	\$972 (50% of 2021 AMI)	
1-Bedroom	7	\$2,155 (100% of 2021 AMI)	\$1,036 (50% of 2021 AMI)	
2-Bedroom	0	\$2,576 (100% of 2021 AMI)	\$1,233 (50% of 2021 AMI)	
3-Bedroom	0	\$2,966 (100% of 2021 AMI)	\$1,415 (50% of 2021 AMI)	
0-DC4100111			1 / 1 / 2 / 2 / 2 / 2 / 2 / 2 / 2 / 2 /	

60% of AMI Units (Mandatory Inclusionary Housing)

Income Limi	t	60% of AMI	
Maximum Pr	ogram Rent	60% of AMI	
Other Restri	ctions	Mandatory Inclusionary Housing	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	0	\$1,359 (80% of 2021 AMI)	\$947 (57% of 2021 AMI)
1-Bedroom	11	\$1,708 (80% of 2021 AMI)	\$1,193 (57% of 2021 AMI)
2-Bedroom	0	\$2,039 (80% of 2021 AMI)	\$1,421 (57% of 2021 AMI)
3-Bedroom	0	\$2,346 (80% of 2021 AMI)	\$1,632 (57% of 2021 AMI)
Total	11		

60% of AMI Units (Permanently Affordable)

Income Limit	t	60% of AMI	
Maximum Pr	ogram Rent	60% of AMI Permanently Affordable	
Other Restric	ctions		
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	0	\$1,717 (100% of 2021 AMI)	\$947 (57% of 2021 AMI)
1-Bedroom	3	\$2,155 (100% of 2021 AMI)	\$1,193 (57% of 2021 AMI)
2-Bedroom	3	\$2,576 (100% of 2021 AMI)	\$1,421 (57% of 2021 AMI)
3-Bedroom	3	\$2,966 (100% of 2021 AMI)	\$1,632 (57% of 2021 AMI)
Total	9		

60% of AMI Units

Income Limit	t	60% of AMI	<u>V</u>
Maximum Pr	ogram Rent	60% of AMI	
Other Restric	ctions	N/A	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	0	\$1,717 (100% of 2021 AMI)	\$947 (57% of 2021 AMI)
1-Bedroom	35	\$2,155 (100% of 2021 AMI)	\$1,193 (57% of 2021 AMI)
2-Bedroom	16	\$2,576 (100% of 2021 AMI)	\$1,421 (57% of 2021 AMI)
3-Bedroom	0	\$2,966 (100% of 2021 AMI)	\$1,632 (57% of 2021 AMI)
Total	51		

60% of AMI Units (Homeless Units, ESSHI, Permanently Affordable)

Income Limi	t	60% of AMI	
Maximum Pr	ogram Rent	60% of AMI	
Other Restrictions		Homeless Units, ESSHI, Permanently Affordable	
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
Studio	3	\$1,717 (100% of 2021 AMI)	\$947 (57% of 2021 AMI)
1-Bedroom	0	\$2,155 (100% of 2021 AMI)	\$1,193 (57% of 2021 AMI)
2-Bedroom	0	\$2,576 (100% of 2021 AMI)	\$1,421 (57% of 2021 AMI)
3-Bedroom	0	\$2,966 (100% of 2021 AMI)	\$1,632 (57% of 2021 AMI)
Total	3		

60% of AMI Units (Homeless Units, ESSHI)

Income Limi	t	60% of AMI		
Maximum Pr	ogram Rent	60% of AMI		
Other Restri	ctions	Homeless Units, ESSHI		
Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent	
Studio	27	\$1,717 (100% of 2021 AMI)	\$947 (57% of 2021 AMI)	
1-Bedroom	0	\$2,155 (100% of 2021 AMI)	\$1,193 (57% of 2021 AMI)	
2-Bedroom	0	\$2,576 (100% of 2021 AMI)	\$1,421 (57% of 2021 AMI)	
3-Bedroom	0	\$2,966 (100% of 2021 AMI)	\$1,632 (57% of 2021 AMI)	
Total	27			

80% of AMI Units (Permanently Affordable)

Income Limit Maximum Program Rent Other Restrictions		80% of AMI 80% of AMI Permanently Affordable					
				Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
				Studio	0	\$1,717 (100% of 2021 AMI)	\$1,305 (77% of 2021 AMI)
í-Bedroom	3	\$2,155 (100% of 2021 AMI)	\$1,640 (77% of 2021 AMI)				
2-Bedroom	3	\$2,576 (100% of 2021 AMI)	\$1,958 (77% of 2021 AMI)				
3-Bedroom	2	\$2,966 (100% of 2021 AMI)	\$2,252 (77% of 2021 AMI)				
Гotal	8						

80% of AMI Units

Income Limit Maximum Program Rent Other Restrictions		80% of AMI 80% of AMI N/A					
				Unit Size	Number of Units	Initial Legal Rent	Initial Actual Rent
				Studio	0	\$1,717 (100% of 2021 AMI)	\$1,305 (77% of 2021 AMI)
1-Bedroom	9	\$2,155 (100% of 2021 AMI)	\$1,640 (77% of 2021 AMI)				
2-Bedroom	8	\$2,576 (100% of 2021 AMI)	\$1,958 (77% of 2021 AMI)				
3-Bedroom	0	\$2,966 (100% of 2021 AMI)	\$2,252 (77% of 2021 AMI)				
Total	17						

Other Rent Matters

Utility Allowances	Tenant pays electric only, with an electric stove
Maximum Rental Assistance Rent	N/A

Reserves

Replacement Reserve Contributions	Monthly payments of \$300 per unit divided by 12 (the then-applicable monthly contribution will be increased each year by 3%) beginning on the first day of the first month following the Permanent Loan Conversion.
Initial Operating Reserve Contribution	\$597,390 at the Permanent Loan Conversion.
Servicer of Reserves	Wells Fargo

Permitted Transfers and Mortgages

Permitted Property Transfers and Changes in Ownership	Owner may transfer the Commercial Units to EC A1 Commercial LLC, an affiliate of Borrower, upon creation of the Condominium and provided there is no default under the loan documents evidencing the HPD Financing and hereunder
Permitted Mortgages	The Agency consents to the following Permitted Mortgages: Those (i) certain mortgages delivered by Owner to New York State Housing Finance Agency in the aggregate amount of \$59,950,000 dated as of the date hereof, and (ii) certain mortgages delivered by Owner to New York State Housing Finance Agency in the aggregate amount of \$5,000,000 (HFA OPWDD Subsidy Loan) dated as of the date hereof.

Copies of Notices

Address for Counsel to Beneficial Owner	Cannon Heyman & Weiss, LLP 726 Exchange Street, Suite 500 Buffalo, NY 14210 Attention: Stephen L. Yonaty
Address for LIHTC Investor	Wells Fargo 150 East 42 nd Street, 36 th Floor New York, NY 10017 Attention: Gregory P. Richards
Address for Counsel to LiHTC Investor	Sidley Austin LLP 1 S Dearborn St Chicago, IL 60603 Attention: Philip C. Spahn
Address for Letter of Credit Provider	Wells Fargo 150 East 42 nd Street, 36 th Floor New York, NY 10017 Attention: Jeffrey Nixon
Address for Counsel to Letter of Credit Provider	Holland & Knight 31 West 52 nd Street New York, NY 10019 Attention: Kathleen Furey

EXHIBIT C

FORM OF MEMORANDUM OF REGULATORY AGREEMENT

ı nıs 11 20	hemorandum of regulatory agreement is made as of, by: ("Owner"), a		
having an address at			
1.	The Owner is owner of the premises located in County, City and State of New York, known as and by the street address, and identified as Block, Lot on the Tax Map of the City of New York ("Property"), as more particularly described in Exhibit A attached to this Memorandum and made a part hereof.		
2.	The Owner has agreed for and on behalf of itself, its successors, assigns, heirs, grantees, and lessees to comply with the Affordable Housing Regulatory Agreement ("Regulatory Agreement") dated as of, 20, by and between the Owner, the City of New York, acting through its Department of Housing Preservation and Development ("HPD"), and any other parties to the Regulatory Agreement.		
3.	The Regulatory Agreement was recorded in the land records on, 20, at		
4.	The Regulatory Agreement runs with the land that constitutes the Property in accordance with the terms of the Regulatory Agreement.		
5.	The provisions of the Regulatory Agreement are incorporated by reference into this Memorandum. This Memorandum is intended to provide constructive notice of the Regulatory Agreement and in no way modifies or amends the Regulatory Agreement. If this Memorandum conflicts with the Regulatory Agreement, the terms of the Regulatory Agreement control.		
This M	lemorandum has been signed as of the date first set forth above.		
Attach	signature pages and Exhibit A to completed Memorandum		

EXHIBIT D

Environmental Requirements

See Attached



OFFICE OF ENVIRONMENTAL REMEDIATION

100 Gold Street - 2nd Floor New York, New York 10038

> Mark P. McIntyre, Esq. Director

Tel: (212) 788-8841

NOTICE TO PROCEED DOB Job Number – NB 421133339

November 5, 2021

Re: 5123 Beach Channel Drive

Queens Block 15843, Lot 15

Hazardous Materials, Air Quality, and Noise "E" Designation

E-532: Peninsula Hospital Redevelopment Plan - CEQR 18DCP124Q 14/2

OER Project Number 21EHAN249O

Dear Queens Borough Commissioner:

The New York City Office of Environmental Remediation (OER) hereby issues a Notice to Proceed for the above-referenced Department of Buildings Job Number. This correspondence is provided pursuant to OER's responsibilities as established in Chapter 24 of Title 15 of the Rules of the City of New York and Section 11-15 of the Zoning Resolution of the City of New York. The Appricant has filed a NYSDEC-approved BCP Remedial Action Work Plan and NYSDEC Decision Document that are acceptable to this Office and has prepared a Construction Health and Safety Plan for implementation on this project. The applicant also filed a Noise and Air Quality remedial action plan that is acceptable to this Office. OER's Decision Document that defines the remedial actions required for this project has been prepared and nied and is available on request.

At the conclusion of remedial activities, equired under this action, the Zoning Resolution and §24-07 of the Rules of the City of New York requires that OER issue a Notice of Satisfaction signifying that all remedial action requirements established for this projet have been satisfied prior to issuance of the Certificate of Occupancy or Temporary Certificate of Occupancy by Department of Buildings.

If you have any questions the ambients, please feel free to contact Alysha Alfieri at 212-676-0459.

Sincerely.

Maurizio Bertini, Ph.D. Assistant Director

Aex Arker, Eight & Seventh Lmtd Partnership - alex@arkercompanies.com

hant Shah, The Arker Companies - ashah@chatgc.com

Javier Perez-Maldonado, NYSDEC - javier.perez-maldonado@dec.ny.gov

Ariel Aufgang, Aufgang Architects LLC - ariel@aufgang.com

Jason Ross, VHB - jross@vhb.com

Nancy Doon, VHB - ndoon@vhb.com

Ariella Liebman, VHB - aliebman@vhb.com

Mark McIntyre, Shaminder Chawla, Zach Schreiber, Sarah Pong

Alysha Alfieri, PMA-OER

DECISION DOCUMENT

Former Peninsula Hospital Site Brownfield Cleanup Program Far Rockaway, Queens County Site No. C241200 March 2021



Prepared by
Division of Environmental Remediation
New York State Department of Environmental Conservation

DECLARATION STATEMENT - DECISION DOCUMENT

Former Peninsula Hospital Site Brownfield Cleanup Program Far Rockaway, Queens County Site No. C241200 March 2021

Statement of Purpose and Basis

This document presents the remedy for the Former Peninsula Hospital Site site, a brownfield cleanup site. The remedial program was chosen in accordance with the New York State Environmental Conservation Law and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 375.

This decision is based on the Administrative Record of the New York State Department of Environmental Conservation (the Department) for the Former Peninsula Hospital Site site and the public's input to the proposed remedy presented by the Department.

Description of Selected Remedy

The elements of the selected remedy are as follows:

1. Remedial Design

A remedial design program will be implemented to provide the details necessary for the construction, operation, optimization, maintenance, and monitoring of the remedial program. Green remediation principles and techniques will be implemented to the extent feasible in the design, implementation, and site management of the remedy as per DER-31. The major green remediation components are as follows;

Considering the environmental impacts of treatment technologies and remedy stewardship over the long term;

- Reducing direct and indirect greenhouse gases and other emissions;
- Increasing energy efficiency and minimizing use of non-renewable energy;
- Conserving and efficiently managing resources and materials;
- Reducing waste, increasing recycling and increasing reuse of materials which would otherwise be considered a waste;
- Maximizing habitat value and creating habitat when possible;
- Fostering green and healthy communities and working landscapes which balance ecological, economic and social goals;
- Integrating the remedy with the end use where possible and encouraging green and sustainable re-development; and
- Additionally, to incorporate green remediation principles and techniques to the extent feasible in the future development at this site, any future on-site buildings will include, at

a minimum, a 20-mil vapor barrier/waterproofing membrane on the foundation to improve energy efficiency as an element of construction.

2. Excavation

Excavation and off-site disposal of all soils that exceed the protection of groundwater soil cleanup objectives (for contaminants present in groundwater) to a depth of approximately 8 feet below grade, as defined by 6 NYCRR Part 375-6.8(b) to achieve a Track 4 restricted residential remedy. The areas targeted for soil removal are depicted in Figure 2. Approximately 450 cubic yards of contaminated soil will be removed from the site. On-site soil which does not exceed the excavation criteria may be used to backfill the excavation to establish the designed grades at the site below the cover system described in remedy element 3. Clean fill meeting the requirements of Part 375-6.7(d) will be brought in to replace excavated soil and establish the designed grades at the site.

3. Site Cover

A site cover will be required to allow for restricted residential use of the site in areas where the upper two feet of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs). Where a soil cover is to be used it will be a minimum of two feet of soil placed over a demarcation layer, with the upper six inches of soil of sufficient quality to maintain a vegetative layer. Soil cover material, including any fill material brought to the site, will meet the SCOs for cover material for the use of the site as set forth in 6 NYCRR Part 375-6.7(d). Substitution of other materials and components may be allowed where such components already exist or are a component of the tangible property to be placed as part of site redevelopment. Such components may include, but are not necessarily limited to: pavement, concrete, paved surface parking areas, sidewalks, building foundations and building slabs.

4. Institutional Control

Imposition of an institutional control in the form of an environmental easement for the controlled property which will:

- requires the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8 (h)(3);
- allows the use and development of the controlled property for restricted-residential, commercial and industrial uses as defined by Part 375-1.8(g), although land use is subject to local zoning laws;
- restricts the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the NYSDOH or NYCDOHMH; and
- requires compliance with the Department approved Site Management Plan.

5. Site Management Plan

A Site Management Plan is required, which includes the following:

a) An Institutional and Engineering Control Plan that identifies all use restrictions and engineering controls for the site and details the steps and media-specific requirements necessary to ensure the following institutional and/or engineering controls remain in place and effective:

Institutional Controls: The Environmental Easement discussed in Paragraph 5 above.

Engineering Controls: The Cover System discussed in Paragraph 3 above.

This plan includes, but may not be limited to:

- a) An Excavation Plan which details the provisions for management of future excavations in areas of remaining contamination;
 - descriptions of the provisions of the environmental easement including any land use and groundwater use restrictions;
 - a provision for evaluation of the potential for soil vapor intrusion for any buildings developed on the site, including provision for implementing actions recommended to address exposures related to soil vapor intrusion;
 - a provision that should a building foundation or building slab be removed in the future, a
 cover system consistent with that described in Paragraph 3 above will be placed in any
 areas where the upper two feet of exposed surface soil exceed the applicable soil cleanup
 objectives (SCOs);
 - provisions for the management and inspection of the identified engineering controls;
 - maintaining site access controls and Department notification; and
 - the steps necessary for the periodic reviews and certification of the institutional and/or engineering controls.
- b) A Monitoring Plan to assess the performance and effectiveness of the remedy. The plan includes, but may not be limited to:
 - monitoring of groundwater to assess the performance and effectiveness of the remedy;
 - a schedule of monitoring and frequency of submittals to the Department; and
 - monitoring for vapor intrusion for any buildings developed on the site, as may be required by the Institutional and Engineering Control Plan discussed above.

Declaration

The remedy conforms with promulgated standards and criteria that are directly applicable, or that are relevant and appropriate and takes into consideration Department guidance, as appropriate. The remedy is protective of public health and the environment.

March 4, 2021	Ad WBh
Date	Gerard Burke, Director Remedial Bureau B

DECISION DOCUMENT

Former Peninsula Hospital Site Far Rockaway, Queens County Site No. C241200 March 2021

SECTION 1: SUMMARY AND PURPOSE

The New York State Department of Environmental Conservation (the Department), in consultation with the New York State Department of Health (NYSDOH), has selected a remedy for the above referenced site. The disposal of contaminants at the site has resulted in threats to public health and the environment that would be addressed by the remedy. The disposal or release of contaminants at this site, as more fully described in this document, has contaminated various environmental media. Contaminants include hazardous waste and/or petroleum.

The New York State Brownfield Cleanup Program (BCP) is a voluntary program. The goal of the BCP is to enhance private-sector cleanups of brownfields and to reduce development pressure on "greenfields." A brownfield site is real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a contaminant.

The Department has issued this document in accordance with the requirements of New York State Environmental Conservation Law and 6 NYCRR Part 375. This document is a summary of the information that can be found in the site-related reports and documents.

SECTION 2: CITIZEN PARTICIPATION

The Department seeks input from the community on all remedies. A public comment period was held, during which the public was encouraged to submit comment on the proposed remedy. All comments on the remedy received during the comment period were considered by the Department in selecting a remedy for the site. Site-related reports and documents were made available for review by the public at the following document repositories:

DECInfo Locator - Web Application https://gisservices.dec.ny.gov/gis/dil/index.html?rs=C241200

The Archives at Queens Library 89-11 Merrick Boulevard Jamaica, NY 11432 Phone: 718-990-0700

Queens Community Board #14 1931 Mott Avenue Far Rockaway, NY 11691 Phone: (718) 471-7300

Receive Site Citizen Participation Information By Email

Please note that the Department's Division of Environmental Remediation (DER) is "going paperless" relative to citizen participation information. The ultimate goal is to distribute citizen participation information about contaminated sites electronically by way of county email listservs. Information will be distributed for all sites that are being investigated and cleaned up in a particular county under the State Superfund Program, Environmental Restoration Program, Brownfield Cleanup Program and Resource Conservation and Recovery Act Program. We encourage the public to sign up for one or more county http://www.dec.ny.gov/chemical/61092.html

SECTION 3: SITE DESCRIPTION AND HISTORY

Location:

The Former Peninsula Hospital Site is identified on the New York City Tax Map as Borough of Queens, Block 15843, Lot 1 with an address of 51-15 Beach Channel Drive. The site is located in an urban area of Far Rockaway. The site is bounded by Beach Channel Drive to the north, Beach 53rd Street to the west, a nursing home to the northeast, Beach 50th Street to the east, and Rockaway Beach Boulevard to the south.

Site Features:

The site consist of approximately 8.76 acres. The site previously contained a vacant building formerly used as the Peninsula Hospital, and an adjoining paved parking lot to the southeast of the hospital building. The building was demolished in 2018. Since that time, the site has remained vacant. The proposed site redevelopment will include ten multistory mixed-use buildings, parking areas, landscaped public open spaces, and a public plaza.

Zoning and Land Use:

The site is currently inactive and is zoned R5 (residential) with a C1-2 and C8-1 (commercial) overlay. The surrounding parcels are used for a combination of commercial, light industrial, and transportation uses.

Past Use of the Site:

The site was formerly developed with a large building between 1957 and 1962 that was operated as the Peninsula Hospital until closing in 2012. Prior to the hospital use, the site was undeveloped except for the southwestern corner, which was occupied by a small hotel (from prior to 1912 until sometime before 1933), several residences, and three small stores (by 1951).

Geology and Hydrogeology:

The site is approximately 5 to 10 feet above mean sea level (MSL) and its surface is generally flat. The stratigraphy of the site, from the surface down, consists up to 5 feet of urban fill consisting of brown to gray fine to coarse sand with trace quantities of brick, concrete, and/or gravel fragments and occasional asphalt fragments underlain by native soil generally consisting

of fine to medium-grained light brown to gray sand with intervals of gravel and/or silt. Organic materials from former marsh deposits were noted in the deeper portions of soil borings. Depth to groundwater beneath the site is generally between 4 and 8 feet below grade and the groundwater flow direction is generally to the north.

A site location map is attached as Figure 1.

SECTION 4: LAND USE AND PHYSICAL SETTING

The Department may consider the current, intended, and reasonably anticipated future land use of the site and its surroundings when evaluating a remedy for soil remediation. For this site, alternatives that restrict the use of the site to restricted-residential use (which allows for commercial use and industrial use) as described in Part 375-1.8(g) were evaluated in addition to an alternative which would allow for unrestricted use of the site.

A comparison of the results of the Remedial Investigation (RI) to the appropriate standards, criteria and guidance values (SCGs) for the identified land use and the unrestricted use SCGs for the site contaminants is available in the RI Report.

SECTION 5: ENFORCEMENT STATUS

The Applicant under the Brownfield Cleanup Agreement is a Volunteer. The Applicant does not have an obligation to address off-site contamination. However, the Department has determined that this site does not pose a significant threat to public health or the environment; accordingly, no enforcement actions are necessary.

SECTION 6: SITE CONTAMINATION

6.1: Summary of the Remedial Investigation

A remedial investigation (RI) serves as the mechanism for collecting data to:

- characterize site conditions;
- determine the nature of the contamination; and
- assess risk to human health and the environment.

The RI is intended to identify the nature (or type) of contamination which may be present at a site and the extent of that contamination in the environment on the site, or leaving the site. The RI reports on data gathered to determine if the soil, groundwater, soil vapor, indoor air, surface water or sediments may have been contaminated. Monitoring wells are installed to assess groundwater and soil borings or test pits are installed to sample soil and/or waste(s) identified. If other natural resources are present, such as surface water bodies or wetlands, the water and sediment may be sampled as well. Based on the presence of contaminants in soil and groundwater, soil vapor will also be sampled for the presence of contamination. Data collected in the RI influence the development of remedial alternatives. The RI report is available for review in the site document repository and the results are summarized in section 6.3.

The analytical data collected on this site includes data for:

- groundwater
- soil
- soil vapor

6.1.1: Standards, Criteria, and Guidance (SCGs)

The remedy must conform to promulgated standards and criteria that are directly applicable or that are relevant and appropriate. The selection of a remedy must also take into consideration guidance, as appropriate. Standards, Criteria and Guidance are hereafter called SCGs.

To determine whether the contaminants identified in various media are present at levels of concern, the data from the RI were compared to media-specific SCGs. The Department has developed SCGs for groundwater, surface water, sediments, and soil. The NYSDOH has developed SCGs for drinking water and soil vapor intrusion. For a full listing of all SCGs see: http://www.dec.ny.gov/regulations/61794.html

6.1.2: RI Results

The data have identified contaminants of concern. A "contaminant of concern" is a contaminant that is sufficiently present in frequency and concentration in the environment to require evaluation for remedial action. Not all contaminants identified on the property are contaminants of concern. The nature and extent of contamination and environmental media requiring action are summarized below. Additionally, the RI Report contains a full discussion of the data. The contaminants of concern identified at this site is/are:

lead mercury benzo(a)pyrene pyrene naphthalene trichloroethene (TCE) tetrachloroethene (PCE)

The contaminants of concern exceed the applicable SCGs for:

groundwater soil

6.2: Interim Remedial Measures

An interim remedial measure (IRM) is conducted at a site when a source of contamination or exposure pathway can be effectively addressed before issuance of the Decision Document.

There were no IRMs performed at this site during the RI.

6.3: Summary of Environmental Assessment

This section summarizes the assessment of existing and potential future environmental impacts presented by the site. Environmental impacts may include existing and potential future exposure pathways to fish and wildlife receptors, wetlands, groundwater resources, and surface water. The RI report presents a detailed discussion of any existing and potential impacts from the site to fish and wildlife receptors.

Nature and Extent of Contamination:

Soil and groundwater were analyzed for volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), metals, polychlorinated biphenyls (PCBs), pesticides, and per- and polyfluoroalkyl substances (PFAS). Soil vapor was analyzed for VOCs. The primary contaminants of concern at the site include metals, SVOCs and VOCs. Previous environmental investigation in the area revealed concentrations of metals, SVOCs, and VOCs exceeding Standards, Criteria, and Guidance values in the soil and/or groundwater.

Soil:

Based upon investigations to date, surface and sub-surface soils are contaminated with metals, SVOCs and VOCs. Data results from soils sampling reported a number of metals, and SVOCs (polycyclic aromatic hydrocarbons, PAHs). The PAHs and most metals contamination in soils is likely related to the presence of historic fill. Maximum detections in comparison to applicable protection of groundwater or restricted-residential use soil cleanup objectives (PGSCO/RRSCO) are as follows: lead at 1,520 parts per million (ppm) vs. RRSCO of 400 ppm, mercury at 0.992 ppm vs. RRSCO of 0.81 ppm, benzo(a)pyrene at 120 ppm vs. PGSCO of 22 ppm, pyrene at 200 ppm vs. RRSCO of 100 ppm, and naphthalene at 130 ppm vs. RRSCO of 100 ppm.

PFAS were detected in seven of eight soil samples analyzed for the compounds, with both perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) detected below the current guidance values for restricted-residential and/or protection of groundwater use of 33 parts per billion (ppb) and 44 ppb, and 1.1 ppb and 3.7 ppb, respectively.

Data does not indicate any off-site impacts in soil related to this site.

Groundwater:

Groundwater sampling found SVOCs (PAHs) contamination above Class GA groundwater standards. Maximum detections vs. standards is as follows: Benzo(a)pyrene at 0.94 ppb vs non-detect.

PFOA and PFOS were reported at concentrations of up to 216 and 108 parts per trillion (ppt), respectively, exceeding the Maximum Contaminant Level (drinking water standard) of 10 ppt for each. Based on the soil data, there is no apparent on-site source for PFAS in site groundwater. 1.4-dioxane was not detected.

Data does not indicate any off-site impacts in groundwater-related to this site.

Soil Vapor:

VOCs were detected in soil vapor during the remedial investigation. The maximum concentrations of tetrachloroethene, trichloroethene and carbon tetrachloride in soil vapor were

detected in mostly in the central portion of the site at the respective concentrations of 583 micrograms per cubic meter (ug/m3), 16 ug/m3 and 16.5 ug/m3, respectively. Data does not indicate any off-site impacts in soil vapor related to this site.

6.4: Summary of Human Exposure Pathways

This human exposure assessment identifies ways in which people may be exposed to site-related contaminants. Chemicals can enter the body through three major pathways (breathing, touching or swallowing). This is referred to as *exposure*.

The site is currently vacant and fenced; therefore people are not expected to come in contact with any site related contamination in the soil. People are not drinking the contaminated groundwater because the area is served by a public water supply that is not affected by this contamination. Volatile organic compounds in soil vapor (air spaces within the soil) may move into buildings and affect the indoor air quality. This process, which is similar to the movement of radon gas from the subsurface into the indoor air of buildings, is referred to as soil vapor intrusion. The potential exists for the inhalation of site contaminants due to soil vapor intrusion for any future onsite redevelopment and occupancy. Environmental sampling indicates soil vapor intrusion is not a concern for offsite buildings.

6.5: Summary of the Remediation Objectives

The objectives for the remedial program have been established through the remedy selection process stated in 6 NYCRR Part 375. The goal for the remedial program is to restore the site to pre-disposal conditions to the extent feasible. At a minimum, the remedy shall eliminate or mitigate all significant threats to public health and the environment presented by the contamination identified at the site through the proper application of scientific and engineering principles.

The remedial action objectives for this site are:

Groundwater

RAOs for Public Health Protection

- Prevent ingestion of groundwater with contaminant levels exceeding drinking water standards.
- Prevent contact with, or inhalation of volatiles, from contaminated groundwater.

RAOs for Environmental Protection

Remove the source of ground or surface water contamination.

Soil

RAOs for Public Health Protection

- Prevent ingestion/direct contact with contaminated soil.
- Prevent inhalation of or exposure from contaminants volatilizing from contaminants in soil.

RAOs for Environmental Protection

Prevent migration of contaminants that would result in groundwater or surface

water contamination.

Soil Vapor

RAOs for Public Health Protection

 Mitigate impacts to public health resulting from existing, or the potential for, soil vapor intrusion into buildings at a site.

SECTION 7: ELEMENTS OF THE SELECTED REMEDY

The alternatives developed for the site and the evaluation of the remedial criteria are presented in the Alternative Analysis. The remedy is selected pursuant to the remedy selection criteria set forth in DER-10, Technical Guidance for Site Investigation and Remediation and 6 NYCRR Part 375.

The selected remedy is a Track 4: Restricted use with site-specific soil cleanup objectives remedy.

The selected remedy is referred to as the Excavation and Soil Cover remedy.

The elements of the selected remedy, as shown in Figure 2, are as follows:

1. Remedial Design

A remedial design program will be implemented to provide the details necessary for the construction, operation, optimization, maintenance, and monitoring of the remedial program. Green remediation principles and techniques will be implemented to the extent feasible in the design, implementation, and site management of the remedy as per DER-31. The major green remediation components are as follows;

Considering the environmental impacts of treatment technologies and remedy stewardship over the long term;

- Reducing direct and indirect greenhouse gases and other emissions;
- Increasing energy efficiency and minimizing use of non-renewable energy;
- Conserving and efficiently managing resources and materials;
- Reducing waste, increasing recycling and increasing reuse of materials which would otherwise be considered a waste:
- Maximizing habitat value and creating habitat when possible;
- Fostering green and healthy communities and working landscapes which balance ecological, economic and social goals;
- Integrating the remedy with the end use where possible and encouraging green and sustainable re-development; and
- Additionally, to incorporate green remediation principles and techniques to the extent
 feasible in the future development at this site, any future on-site buildings will include, at
 a minimum, a 20-mil vapor barrier/waterproofing membrane on the foundation to
 improve energy efficiency as an element of construction.

2. Excavation

Excavation and off-site disposal of all soils that exceed the protection of groundwater soil cleanup objectives (for contaminants present in groundwater) to a depth of approximately 8 feet below grade, as defined by 6 NYCRR Part 375-6.8(b) to achieve a Track 4 restricted residential remedy. The areas targeted for soil removal are depicted in Figure 2. Approximately 450 cubic yards of contaminated soil will be removed from the site. On-site soil which does not exceed the excavation criteria may be used to backfill the excavation to establish the designed grades at the site below the cover system described in remedy element 3. Clean fill meeting the requirements of Part 375-6.7(d) will be brought in to replace excavated soil and establish the designed grades at the site.

3. Site Cover

A site cover will be required to allow for restricted residential use of the site in areas where the upper two feet of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs). Where a soil cover is to be used it will be a minimum of two feet of soil placed over a demarcation layer, with the upper six inches of soil of sufficient quality to maintain a vegetative layer. Soil cover material, including any fill material brought to the site, will meet the SCOs for cover material for the use of the site as set forth in 6 NYCRR Part 375-6.7(d). Substitution of other materials and components may be allowed where such components already exist or are a component of the tangible property to be placed as part of site redevelopment. Such components may include, but are not necessarily limited to: pavement, concrete, paved surface parking areas, sidewalks, building foundations and building slabs.

4. Institutional Control

Imposition of an institutional control in the form of an environmental easement for the controlled property which will:

- requires the remedial party or site owner to complete and submit to the Department a
 periodic certification of institutional and engineering controls in accordance with Part
 375-1.8 (h)(3);
- allows the use and development of the controlled property for restricted-residential, commercial and industrial uses as defined by Part 375-1.8(g), although land use is subject to local zoning laws;
- restricts the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the NYSDOH or NYCDOHMH; and
- requires compliance with the Department approved Site Management Plan.

5. Site Management Plan

A Site Management Plan is required, which includes the following:

a) An Institutional and Engineering Control Plan that identifies all use restrictions and engineering controls for the site and details the steps and media-specific requirements necessary to ensure the following institutional and/or engineering controls remain in place and effective:

Institutional Controls: The Environmental Easement discussed in Paragraph 4 above.

Engineering Controls: The Cover System discussed in Paragraph 3 above.

This plan includes, but may not be limited to:

- a) An Excavation Plan which details the provisions for management of future excavations in areas of remaining contamination;
 - descriptions of the provisions of the environmental easement including any land use and groundwater use restrictions;
 - a provision for evaluation of the potential for soil vapor intrusion for any buildings developed on the site, including provision for implementing actions recommended to address exposures related to soil vapor intrusion;
 - a provision that should a building foundation or building slab be removed in the future, a
 cover system consistent with that described in Paragraph 3 above will be placed in any
 areas where the upper two feet of exposed surface soil exceed the applicable soil cleanup
 objectives (SCOs);
 - provisions for the management and inspection of the identified engineering controls;
 - maintaining site access controls and Department notification; and
 - the steps necessary for the periodic reviews and certification of the institutional and/or engineering controls.
- b) A Monitoring Plan to assess the performance and effectiveness of the remedy. The plan includes, but may not be limited to:
 - monitoring of groundwater to assess the performance and effectiveness of the remedy;
 - a schedule of monitoring and frequency of submittals to the Department; and
 - monitoring for vapor intrusion for any buildings developed on the site, as may be required by the Institutional and Engineering Control Plan discussed above.

