



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

### PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

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

☒ Amendment to [check one or more boxes below]

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

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

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

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

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

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

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

☐ Other (explain in detail below)

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

Requestor J2 Owner LLC became the beneficial owner of the BCP site and Jamaica II Housing Development Fund Corporation (HDFC) became the bare legal title holder pursuant to a Declaration of Interest and Nominee Agreement. Requestor J2 Owner LLC wishes to be added as a volunteer to the BCA to facilitate low-income housing financing as well as qualify for the liability protections available under the Certificate of Completion. The Existing Applicant will remain responsible for implementing the BCP remedial program until the Requestor is added to the BCA.

The Requestor and the HDFC entered into regulatory agreements with the New York City Housing Development Corporation and the New York City Housing Preservation and Development Corporation on December 24, 2019. According the Existing Applicant and Requestor seek a determination that the BCP site is eligible for the a tangible property tax credit component of the brownfield redevelopment tax credit.

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

Section I. Existing Agreement Information			
BCP SITE NAME: 147-25 94th Avenue		BCP SITE NUMBER: C241206	
NAME OF CURRENT APPLICANT(S): J2 147-07 94th Avenue LLC			
INDEX NUMBER OF EXISTING AGREEMENT: C241206-03-18 DATE OF EXISTING AGREEMENT: 5/1/2018			
Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)			
NAME J2 Owner LLC			
ADDRESS 316 West 118th Street			
CITY/TOWN New York		ZIP CODE 10026	
PHONE 646-834-9380	FAX	E-MAIL evan@artimusnyc.com	
Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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 Ronen Haron			
ADDRESS 316 West 118th Street			
CITY/TOWN New York		ZIP CODE 10026	
PHONE 646-834-9380	FAX	E-MAIL evan@artimusnyc.com	
NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) N/A			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) N/A			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Describe Requestor's Relationship to Existing Applicant:  Requestor is the beneficial owner of the BCP site pursuant to a Declaration of Interest and Nominee Agreement. The Existing Applicant is the managing member of J2 Investor LLC which, in turn, is 100% owner of the Requestor, J2 Owner LLC. Refer to Attachment B for the project organization chart.			

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

OWNER'S NAME (if different from requestor) JAMAICA II HOUSING DEVELOPMENT FUND CORPORATION

ADDRESS c/o Settlement Housing Fund, Inc, 247 West 37th Street, 4th Floor

CITY/TOWN New York, New York

ZIP CODE 10018

PHONE (212) 265-6530 ex 125

FAX

E-MAIL lwarshavsky@shfinc.org

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

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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

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

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

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

☐

**PARTICIPANT**

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

☒

**VOLUNTEER**

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

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

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

Requestor's Relationship to Property (check one):

☐

Prior Owner

☐

Current Owner

☐

Potential /Future Purchaser

☒

Other

Beneficial owner under nominee agreement

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

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

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

ADDRESS **N/A**

CITY/TOWN

ZIP CODE

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

Parcel Address

Parcel No.

Section No.

Block No.

Lot No.

Acreage




Check appropriate boxes below:

☐

Changes to metes and bounds description or TBL correction

☐

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

Approximate acreage added: \_\_\_\_\_

**ADDITIONAL PARCELS:**

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

☐

Reduction of property

Approximate acreage removed: \_\_\_\_\_

**PARCELS REMOVED:**

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

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

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

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

## PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: 147-25 94th Avenue	BCP SITE NUMBER: C241206
NAME OF CURRENT APPLICANT(S): J2 147-02 94th Avenue LLC	
INDEX NUMBER OF EXISTING AGREEMENT: C241206-03-18	
EFFECTIVE DATE OF EXISTING AGREEMENT: 5/1/2018	

### 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 Manager) of (entity J2 Owner LLC); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

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

Date: 12/13/19 Signature: 

Print Name: Ronen Haron

**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 Manager (title) of J2 147-07 94th Avenue LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. \_\_\_\_\_ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 12/13/19 Signature: [Signature]

Print Name: Ronen Haron

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

Status of Agreement:

☐

**PARTICIPANT**

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

☒

**VOLUNTEER**

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

Effective Date of the Original Agreement: May 1, 2018

Signature by the Department:

DATED: March 13, 2020

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

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



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

Site Name: 147-25 94th Avenue

Site Number: C241206

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

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

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

☐ Has not requested a determination that the Site is eligible for tangible property tax credits. It is therefore presumed that the Site is not eligible for tangible property tax credits. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category.

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

3- For sites statewide, where applicable:

☐ In accordance with ECL § 27-1407(1-a), based on data submitted with the application the Department has determined the Site is not eligible for tangible property tax credits because the contamination in ground water and/or soil vapor is solely emanating from property other than the Site.


☐ The remedial investigation or other data generated during the remedial program the Department has identified an on-site source of contamination, which now makes this site eligible for tangible property tax credits.

☐ The Department has determined that the Site or a portion of the Site has previously been remediated pursuant to Article 27, Title 9, 13 or 14] of the ECL, Article 12 of the Navigation Law or Article 56, Title 5 of the ECL. Therefore, in accordance with ECL § 27-1407(1-a), the Site is not eligible for tangible property tax credits.

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

MAR 13 2020

By:

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

**SUBMITTAL INFORMATION:**

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in 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

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**FOR DEPARTMENT USE ONLY**

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

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



## **BROWNFIELD CLEANUP AGREEMENT AMENDMENT**

**147-25 94<sup>th</sup> Avenue  
BCP Site No. C241206**

### ***Section II. New Requestor Information***

The New York State entity authorization for the Requestor, J2 Owner LLC, is provided in Attachment A.

A project organization chart is provided in Attachment B.

### ***Section IV. Volunteer Statement***

The Requestor, J2 Owner LLC, holds a beneficial interest in the Site pursuant to a Declaration of Interest and Nominee Agreement. The Requestor does not hold legal title to the BCP Site, all disposals of hazardous substances occurred prior to the date the Requestor obtained its beneficial interest to the BCP Site and the Requestor does not have any affiliation with any responsible party.

After being added to the BCA, the Requestor will exercise appropriate care by ensuring the requirements of the BCP have been implemented by the current applicant. Any liability of the Requestor would arise solely as a result of its involvement with the redevelopment of the BCP Site subsequent to the disposal of hazardous substances and contaminants. As such, the Requestor qualifies as a Volunteer as defined in ECL 27-1405(1)(b).

An Access Agreement, indicating proof of site access, is provided in Attachment C.

**ATTACHMENT A**  
**NYS ENTITY INFORMATION**

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through October 10, 2019.

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Selected Entity Name: J2 OWNER LLC

Selected Entity Status Information

**Current Entity Name:** J2 OWNER LLC

**DOS ID #:** 5630739

**Initial DOS Filing Date:** OCTOBER 01, 2019

**County:** NEW YORK

**Jurisdiction:** DELAWARE

**Entity Type:** FOREIGN LIMITED LIABILITY COMPANY

**Current Entity Status:** ACTIVE

Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

C/O ARTIMUS

316 WEST 118 STREET

NEW YORK, NEW YORK, 10026

**Registered Agent**

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

**\*Stock Information**

**# of Shares**

**Type of Stock**

**\$ Value per Share**

No Information Available

\*Stock information is applicable to domestic business corporations.

### Name History

Filing Date	Name Type	Entity Name
OCT 01, 2019	Actual	J2 OWNER LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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# State of New York Department of State } ss:

*I hereby certify, that J2 OWNER LLC a DELAWARE Limited Liability Company filed an Application for Authority pursuant to the Limited Liability Company Law on 10/01/2019. I further certify that so far as shown by the records of this Department, such Limited Liability Company is still authorized to do business in the State of New York.*

*I further certify, that no other documents have been filed by such Limited Liability Company.*



\*\*\*

*Witness my hand and the official seal  
of the Department of State at the City  
of Albany, this 15th day of October  
two thousand and nineteen.*

Brendan C. Hughes  
Executive Deputy Secretary of State

CERTIFICATE OF AUTHORITY UNDER SEC. 805 OF THE LIMITED LIABILITY COMPANY LAW

ENTITY NAME: J2 OWNER LLC

DOCUMENT TYPE: APPLICATION FOR AUTHORITY (FOR LLC)

COUNTY: NEWY

FILED:10/01/2019 DURATION:\*\*\*\*\* CASH#:191001000574 FILM #:191001000553  
DOS ID:5630739

FILER:

EXIST DATE

NRAI SERVICES LLC  
160 GREENTREE ST  
STE 101  
DOVER, DE 19904

10/01/2019

ADDRESS FOR PROCESS:

C/O ARTIMUS  
316 WEST 118 STREET  
NEW YORK, NY 10026

REGISTERED AGENT:



The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the biennial statement is due will only be made via email. Please go to [www.email.ebiennial.dos.ny.gov](http://www.email.ebiennial.dos.ny.gov) to provide an email address to receive an email notification when the Biennial Statement is due.

SERVICE COMPANY: DELANEY CORPORATE SERVICES LTD.

SERVICE CODE: 30

FEES	285.00
FILING	250.00
TAX	0.00
CERT	0.00
COPIES	10.00
HANDLING	25.00

PAYMENTS	285.00
CASH	0.00
CHECK	0.00
CHARGE	0.00
DRAWDOWN	285.00
OPAL	0.00
REFUND	0.00

DOS-1025 (04/2007)



***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on October 2, 2019.

*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State

191001000553

**APPLICATION FOR AUTHORITY**

**OF**

**J2 OWNER LLC**

Under Section 802 of the Limited Liability Company Law

FIRST: The name of the limited liability company is: J2 OWNER LLC.

SECOND: The jurisdiction of organization of the limited liability company is Delaware. The date of its organization is: September 27, 2019.

THIRD: The county, within this state in which the office, or if more than one office, the principal office of the limited liability company is to be located is: New York County.

FOURTH: The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process against it served upon him or her is: c/o Artimus, 316 West 118 Street, New York, NY 10026.

FIFTH: The address of the office required to be maintained in the jurisdiction of its formation is: c/o National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, DE 19904.

SIXTH: The foreign limited liability company is in existence in its jurisdiction of formation at the time of filing of this application.

SEVENTH: The name and the address of the Secretary of State or other authorized official in its jurisdiction of organization where a copy of its articles of organization is: Jeffrey W. Bullock, Delaware Secretary of State, Townsend Bldg., 401 Federal St., Suite 3, Dover, DE 19901.

Signed on: September 27, 2019

/s/ Ronen Haron

Ronen Haron

Authorized Person

191001000553

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "J2 OWNER LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FIRST DAY OF OCTOBER, A.D. 2019.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "J2 OWNER LLC" WAS FORMED ON THE TWENTY-SEVENTH DAY OF SEPTEMBER, A.D. 2019.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN ASSESSED TO DATE.



7629685 8300

SR# 20197310948

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature in black ink, appearing to read "JBULLOCK", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Authentication: 203699446

Date: 10-01-19

553

**APPLICATION FOR AUTHORITY  
OF**

**J2 OWNER LLC**

Under Section 802 of the Limited Liability Company Law

Filed by: NRAI SERVICES LLC  
(Name)  
160 Greentree Street, Ste 101  
(Mailing address)  
Dover, DE 19904  
(City, State and Zip code)

*lee*  
**STATE OF NEW YORK  
DEPARTMENT OF STATE**

FILED OCT 01 2019

TAX \$

BY: *Wk*

RECEIVED

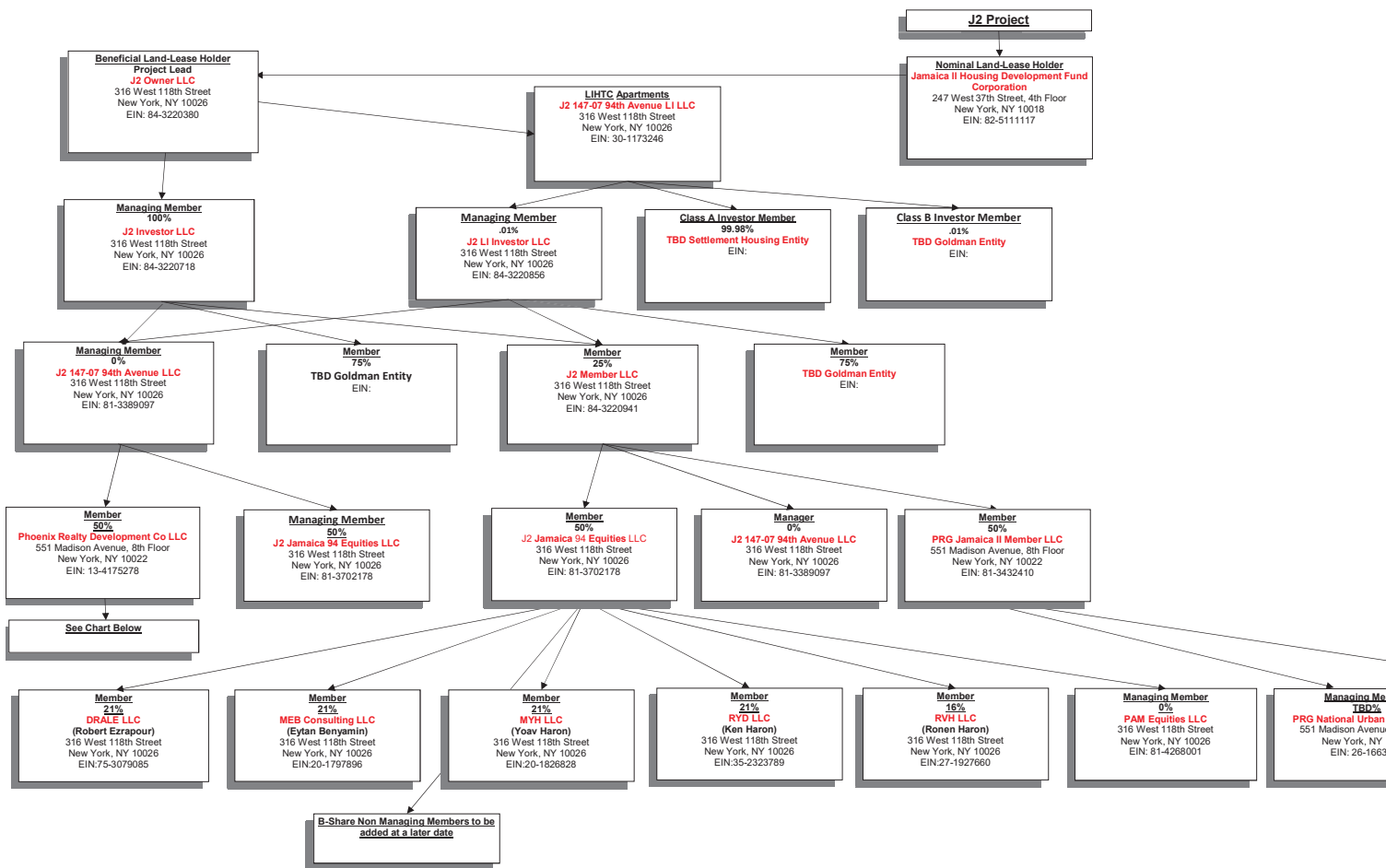
2019 OCT -1 PM 12:15

**Drawdown #30**

2019 OCT -1 PM 2:18

574

**ATTACHMENT B**  
**PROJECT ORGANIZATION CHART**





**ATTACHMENT C  
ACCESS AGREEMENT**



## Land & Sea Development Corp.

---

147-07 94th Avenue ~ Jamaica, NY 11435  
Phone (718) 658-4000 ~ Fax (718) 658-3578

This letter confirms that J2 147-07 94<sup>th</sup> Avenue LLC and J2 Owner LLC have been granted access to the real property known as Tax Block 9998, Lot 25, with a street address of 147-25 94<sup>th</sup> Avenue, Queens, New York to implement any investigation or remedial work, inclusive of placement of an environmental easement on the property, as required by the New York State Department of Environmental Conservation (NYSDEC) pursuant to the Brownfield Cleanup Program (BCP).

Sincerely yours,

By:

\_\_\_\_\_  
Ron Romeo, President

Date:

10-16-19

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**DECLARATION OF INTEREST AND NOMINEE AGREEMENT**

**among**

**J2 OWNER LLC**

**("Owner")**

**and**

**J2 147-07 94<sup>TH</sup> AVENUE LI LLC**

**("Affordable")**

**and**

**JAMAICA II HOUSING DEVELOPMENT FUND CORPORATION**

**(the "HDFC")**

**Premises:**

**BLOCK: 9998**

**LOT: 25**

**Street Address: 147-25 94<sup>th</sup> Avenue**

**County: Queens**

**City: New York**

**State: New York**

**Dated: December 24, 2019**

**Jeffrey Scharff**

**Katten Muchin Rosenman LLP**

**2900 K Street NW**

**North Tower - Suite 200**

**Washington, DC 20007-5118**

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## **DECLARATION OF INTEREST AND NOMINEE AGREEMENT**

THIS DECLARATION OF INTEREST AND NOMINEE AGREEMENT (this "Agreement") dated as of December 24, 2019, is executed by and among J2 OWNER LLC, a Delaware limited liability company, with an office at 316 West 118<sup>th</sup> Street, New York, New York 10026 ("Owner"), J2 147-07 94<sup>th</sup> AVENUE LI LLC, a Delaware limited liability company, with an office at 316 West 118<sup>th</sup> Street, New York, New York 10026 ("Affordable"), and JAMAICA II 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, having its office at 247 West 37<sup>TH</sup> Street, 4<sup>TH</sup> Floor, New York, NY 10018 (the "HDFC").

WHEREAS, on or about the date hereof, Land & Sea Development Corp. ("Fee Owner") will enter into a ground lease (as it may be amended from time to time, the "Ground Lease") with the Owner and the HDFC pursuant to which Fee Owner will lease to Owner, as beneficial and equitable owner of the leasehold estate, and to the HDFC, as legal owner of such leasehold estate, that certain real property located at 147-25 94<sup>th</sup> Avenue in Queens, New York and known as Block 9998, Lot 25 on the tax map of the City of New York, New York (the "Property") as more particularly described on Exhibit A attached hereto and made a part hereof;

WHEREAS, Owner and Affordable intend to construct on the Real Property a residential rental project;

WHEREAS, pursuant to the Ground Lease, the HDFC shall also hold record fee title to the improvements constructed on the Property and the Owner shall own all beneficial and equitable interest in such improvements;

WHEREAS, on or about the date hereof, Owner and the HDFC, as lessors, and Affordable and the HDFC, as lessees, will enter into an agreement of lease (the "Affordable Sublease") pursuant to which Affordable, as beneficial owner of such sublease estate and the HDFC, as legal owner of such sublease estate, will sublease from Owner and the HDFC the portion of the Property containing those certain two hundred sixteen (216) residential apartments reserved for households earning up to fifty percent (50%) of the area median income ("AMI") (the "Affordable Apartments");

WHEREAS, the parties hereto (with the reasonable assistance of Fee Owner if necessary) will put in place a condominium regime on the Property (the "Condo Regime"), pursuant to which Condo Regime the following four (4) condominium units shall be created (collectively, the "Units"): (i) a unit containing all of the Affordable Apartments (the "Low Income Unit"), (ii) a unit (the "Second Residential Unit") containing (a) the remaining residential units consisting of (1) one hundred sixty two (162) residential apartments reserved for households whose annual income does not exceed 130% of AMI, (2) twenty-eight (28) residential apartments reserved for households whose annual income does not exceed 165% of AMI, (3) one hundred thirty-five (135) market rate residential apartments and (4) two apartments to be used by the building superintendents (the apartments contained or to be contained in the Low Income Unit and the apartments contained or to be contained in the Second Residential Unit being

collectively referred to as the “Residential Units”; the Residential Units excluding the 163 market rate units are referred to as the “Restricted Residential Units”), and (b) certain common elements or limited common elements consisting of residential amenities and community space, (iii) a unit containing parking (the “Parking Unit”) and (iv) a unit containing retail space (the “Retail Unit”; and together with the Low Income Unit, Second Residential Unit and the Parking Unit, the “Project”);

WHEREAS, upon implementation of the Condo Regime, (a) the parties to the Affordable Sublease will terminate the Affordable Sublease, and (b) the Units shall be conveyed by deed or other appropriate assignment of conveyance such that (i) Owner shall be the full beneficial and equitable owner of, and the HDFC shall be the legal title owner of, the Second Residential Unit, the Parking Unit and the Retail Unit and (ii) Affordable shall be the full beneficial and equitable owner of, and the HDFC shall be the legal title owner of, the Low Income Unit;

WHEREAS, in the event Owner determines that it cannot implement a condominium regime on the leasehold interest under the Ground Lease, it is expected that the condominium will be established by Fee Owner on the fee interest whereupon the Low Income Unit, the Second Residential Unit, the Parking Unit and the Retail Unit will be ground leased by Fee Owner (with the HDFC being legal owner of the leasehold interest in the Low Income Unit, the Second Residential Unit, the Parking Unit and the Retail Unit and Owner being the beneficial and equitable owner of the leasehold interest in the Second Residential Unit, the Parking Unit and the Retail Unit and Affordable being the beneficial and equitable owner of the leasehold interest in the Low Income Unit);

WHEREAS, pursuant to that certain Regulatory Agreement dated as of even date herewith (the “HDC/HPD Regulatory Agreement”) by and among Owner, Affordable, HDFC, the New York City Housing Development Corporation (the “Agency”), and the City of New York acting through its Department of Housing Preservation and Development (“HPD”), the Restricted Residential Units are intended to be rented at affordable rents to persons of low- and moderate-income in accordance with the requirements of the HPD/HDC Regulatory Agreement;

WHEREAS, in addition to the HPD/HDC Regulatory Agreement, Owner, Affordable, the HDFC, the Fee Owner and HPD will enter into a Regulatory Agreement of even date herewith (the “IH Regulatory Agreement”; together with the HPD/HDC Regulatory Agreement and any Article XI Regulatory Agreement, the “Regulatory Agreements”);

WHEREAS, among the charitable purposes of the HDFC’s sole member is “the development, ownership and operation of affordable housing”;

WHEREAS, the Restricted Residential Units are intended to be operated in furtherance of the charitable purpose of the HDFC’s sole member, and on such basis, the HDFC is authorized and directed to acquire legal title to the leasehold interest in the Property prior to the establishment of the Condo Regime and, after the establishment of the Condo Regime, hold legal title to the Project (and/or the leasehold interest therein);

WHEREAS, Owner and Affordable are authorized and directed to, among other things, undertake the construction, ownership and operation of the Project;

WHEREAS, Owner and the HDFC desire that legal title to the leasehold interest in the Property initially be held by the HDFC with all beneficial and equitable interest in, to and with respect to the Property remaining in Owner in accordance with the terms of this Agreement;

WHEREAS, Owner, Affordable and the HDFC desire to enter into the Affordable Sublease to preserve tax benefits for the parties until the Condo Regime can be created;

WHEREAS, Owner, Affordable and the HDFC desire that following the formation of the Condo Regime, the Affordable Sublease shall be terminated and legal title to the Project (and/or the leasehold interest therein) be held by the HDFC with all beneficial and equitable interest in, to and with respect to the Project remaining in Owner and/or Affordable, as applicable, in accordance with the terms of this Agreement; and

WHEREAS, Owner, Affordable and the HDFC agree that the HDFC's ownership of legal title to the Property and the Project (and/or the leasehold interest therein) shall be in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises, covenants and agreements herein contained, the adequacy of which are hereby acknowledged, the parties hereto represent, warrant, covenant and agree as follows:

1. Upon acquisition by the HDFC of legal title to the Property (and/or the leasehold interest therein) pursuant to the Ground Lease, the HDFC shall hold legal title to the Property (and/or the leasehold interest therein) as nominee of and solely for the benefit and on behalf of, Owner. Upon formation of the Condo Regime, the HDFC shall hold legal title to the Project (and/or the leasehold interest therein) as nominee of and solely for the benefit and on behalf of, Owner and Affordable, as applicable. The HDFC shall continue to hold legal title to the Project (and/or the leasehold interest therein) as nominee of and solely for the benefit and on behalf of, Owner and Affordable, as applicable, until such time as specified in this Agreement. References in this Agreement to ownership of the Project "solely for the benefit and on behalf of, Owner and Affordable, as applicable" or similar phrases shall mean (i) prior to establishment of the Condo Regime, that the Owner is the beneficial owner of all of the leasehold interests in the Project other than the subleasehold interest in the Affordable Apartments and Affordable is beneficial owner of the subleasehold interest in the Affordable Apartments and (ii) upon establishment of the Condo Regime, that the Owner is the beneficial owner of all of the leasehold interests in the Project other than the leasehold interest in the Low Income Unit and Affordable is beneficial owner of the leasehold interest in the Low Income Unit.

2. If at any time the HDFC reasonably determines that the holding of legal title by the HDFC of the Project (and/or the leasehold interest therein) violates the certificate of incorporation of the HDFC's sole member as a New York not-for-profit corporation or such sole member's exemption from federal income taxes pursuant to Internal Revenue Code Section 501(c)(3) (collectively, "Charitable Status"), in a manner which could reasonably be anticipated to cause a Material Nominee Event (as hereinafter defined) or otherwise violate this Agreement, the HDFC shall promptly notify Owner and Affordable. Upon receipt of such notice, Owner and Affordable shall have a reasonable period of time of not less than 180 days to cure such violation so long as Owner or Affordable is diligently pursuing such cure. In the event such violation is



not cured within such 180-day period (or such longer period as determined by the HDFC, or such shorter period as determined by the HDFC if a Material Nominee Event could occur sooner than the expiration of such period), (i) the sole member of the HDFC shall have the right to convey its membership interest in the HDFC to another eligible tax-exempt not-for profit entity reasonably acceptable to Owner and Affordable (the "New Member"), or (ii) the HDFC shall have the right to convey its interest in the Project to another eligible tax-exempt not-for-profit entity reasonably acceptable to Owner and Affordable qualifying to serve as nominee (the "New Nominee"), or (iii) the HDFC shall have the right to convey legal title to the Property and the Project (and/or the leasehold interest therein) to Owner or Affordable (or their designees as designated by Owner or Affordable, as applicable) ("Designee") (in all cases it being understood and agreed that New Member, New Nominee or Designee, as applicable, must be approved by those Project Lenders (as defined below), Credit Enhancer (as defined below) and governmental agencies to the extent such consent is required under the express terms of the documents listed on Schedule 1 attached hereto which were or will be executed by the HDFC (such documents, as they may be amended, modified or replaced from time-to- time, the "Applicable Project Documents")). Owner and Affordable shall reasonably cooperate with the HDFC in connection with such transfer, at the sole cost and expense of Owner and Affordable (including without limitation the reimbursement of the HDFC's reasonable legal fees and expenses, and payment of any transfer taxes in connection with any such transfer), and shall indemnify the HDFC pursuant to Section 11 below against all liabilities, obligations, claims, causes of action judgments, damages, penalties, costs and expenses (including without limitation reasonable attorneys' fees and expenses) asserted against or incurred by the HDFC arising from such transfer or from any violation of the HDFC's Charitable Status by reason of any acts or omissions of Owner or Affordable.

3. The HDFC, Affordable and Owner agree that it is contemplated that the Property will be subjected to the Condo Regime following the date hereof pursuant to documents approved by any credit enhancer of a portion of the senior portion of a loan made by the Agency to finance the development of the Property and/or the Project (a "Credit Enhancer"), if applicable, any other lender providing financing for the Property and/or the Project including, but not limited to, the Agency and HPD (a "Project Lender"), the Agency, Fee Owner and HPD. Upon establishment of the Condo Regime, references in this Agreement to the Property and the Project shall be deemed modified to reflect the specific condominium units to which the HDFC holds legal title.

4. All beneficial and equitable interest in the Property and the Project shall at all times be owned by Owner and/or Affordable, as applicable, and their respective successors and assigns in accordance with the terms of this Agreement.

5. The HDFC is acting and shall act solely as an agent on behalf of Owner and Affordable, as principals, in all acts with respect to the Property and the Project. The HDFC shall not take any action with respect to the Property and the Project without the prior written consent of Owner and Affordable, except as otherwise specified in this Agreement.

6. Owner and Affordable shall be and remain the sole beneficial and equitable owners of the Property and the Units as set forth in this Agreement for all purposes (including Federal income tax purposes) and Owner and Affordable, and not the HDFC, shall have the sole rights and obligations related thereto including, but not limited to:

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

(b) sole and 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 rents and other moneys from mortgages, pledges, sales, refinancings, or other dispositions of the Property and/or the Project (and/or the leasehold interest therein);

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

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

(e) sole and unconditional obligation to maintain (i) insurance coverage on, and such reserves with respect to, the Property and the Project as may be required by the members of Owner and Affordable and/or any Project Lenders with respect to the Property, which coverage shall include, without limitation, commercial general liability insurance coverage naming the HDFC and Settlement Housing Fund, Inc. ("SHF") and the condominium board of managers as named and additional insureds and certificate holders, as may be necessary to protect the interests of the HDFC and SHF in their capacity under this Agreement, and (ii) contractual coverage insuring the indemnity obligations of Owner and Affordable to the HDFC and SHF set forth in Section 11;

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

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

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

(i) sole and unconditional obligation to pay for all maintenance and operating costs in connection with the Property and the Project, including the removal of any municipal violations and the payment of any associated fines or penalties;

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

(k) sole and unconditional and exclusive right to develop and lease residential units and retail space, if any, in, and to operate and manage the Property and the Project and to enter into all leases, restrictive covenants, service contracts and other agreements to effectuate any of the foregoing (subject, however, to the HDFC's obligation to execute certain regulatory

agreements in favor of HPD and the Agency as set forth in this Agreement and to execute and deliver the Ground Lease to Fee Owner);

(l) sole and 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;

(m) sole and unconditional and exclusive right to subject the Property and the Project to the Condo Regime and to execute, deliver and file all plans, bylaws, declarations and other documents and instruments (the "Condominium Documents") necessary to establish such Condo Regime and any and all amendments to the Condominium Documents;

(n) sole and unconditional and exclusive right to lease, sublease, assign, encumber, transfer or sell the Property and/or the Project or any portion thereof or interest therein or any right or indicia of ownership in connection therewith (subject, however, to the HDFC's obligation to execute any deed or assignment of conveyance in the case of sale, and any mortgage instrument in the case of financing, as set forth in this Agreement);

(o) sole and unconditional and exclusive right to obtain mortgage and other financing on the Property and the Project; and sole and unconditional obligation to pay all debt service and other sums due, and to provide all guaranties in connection with, and protect the HDFC from any liability whatsoever in connection with, such mortgage and other financing (provided, however, that Owner and Affordable shall in no event indemnify or protect the HDFC with respect to any liability arising from the fraud, willful misconduct or gross negligence of the HDFC, any intentional breach by the HDFC of this Agreement or of any mortgage financing document to which the HDFC is a party or any bad faith actions taken by the HDFC);

(p) sole and unconditional obligation to cause compliance of the Property and the Project with the Regulatory Agreements and any other regulatory agreement executed by Owner, Affordable and the HDFC with the Agency and/or HPD and protect the HDFC from any and all liabilities and/or obligations that the HDFC may have under the Regulatory Agreements provided, however, that Owner and Affordable shall in no event indemnify or protect the HDFC with respect to any liability arising from the fraud, willful misconduct or gross negligence of the HDFC, any intentional breach by the HDFC of this Agreement or of the Regulatory Agreements or any bad faith actions taken by the HDFC;

(q) sole and unconditional obligation to make all payments of fees and reimbursable expenses payable to the HDFC pursuant to that certain Oversight/Monitoring Agreement of even date herewith between the HDFC, Owner and Affordable; and

(r) sole and unconditional obligation to make all rent and other payments and otherwise comply with all obligations under the Ground Lease and protect the HDFC from any and all liabilities and/or obligations that the HDFC may have under the Ground Lease; provided, however, that Owner and Affordable shall in no event indemnify or protect the HDFC with respect to any liability arising from the fraud, willful misconduct or gross negligence of the HDFC, any intentional breach by the HDFC of this Agreement or the Ground Lease or any bad faith action taken by the HDFC.

Owner and Affordable, in accordance with the terms of this Agreement, have the unilateral right to execute and deliver any documents related to the Property and the Project, including, without limitation, the right to execute and deliver any financing documents, leases, subleases, service contracts, contracts relating to the construction and development of the Project, and other documents and instruments relating to the operation, development, financing, management or leasing of the Property and the Project, which the parties acknowledge do not require the consent or execution by the HDFC; subject, however, to the provisions hereof regarding a Material Nominee Event (as hereinafter defined).

In the event that any financing documents (including without limitation any mortgages), restrictive covenants, easements, Condominium Documents, regulatory agreements (including, but not limited to, the Regulatory Agreements) or any other documents or instruments required to operate, manage, finance, develop or lease the Property and the Project require, as reasonably determined by Owner or Affordable, as applicable, the execution and delivery by the HDFC, the HDFC shall, so long as the execution and delivery of such documents by the HDFC would not result in a "Material Nominee Event" (as defined below), execute any such documents as may be requested by Owner or Affordable, as applicable, via written notice (which written notice shall provide in bold face at the top of such notice that **"FAILURE TO RESPOND WITHIN TEN (10) BUSINESS DAYS FROM THE DATE HEREOF TO THE BELOW REQUEST COULD RESULT IN EXECUTION OF CERTAIN DOCUMENTS ON YOUR BEHALF"**) (a "Request Notice") from time to time within ten (10) business days following receipt by the HDFC of such a Request Notice accompanied by substantially final forms of such documents; provided, however, that only five (5) business days' notice shall be required in connection with any amendments to the forms previously submitted to the HDFC so long as the execution and delivery of the revised document would not result in a Material Nominee Event. For purposes of this Agreement, a "Material Nominee Event" shall exist if a reasonable determination is made by the HDFC in writing to Owner or Affordable, as applicable, certifying that the execution and delivery of the requested documents by the HDFC would (x) violate the HDFC's Charitable Status, (y) other than HDFC's legal title to the Property and the Project (and/or the leasehold interest therein), subject the HDFC to liability related to the Property and the Project, or (z) violate the affordability restrictions mandated by HPD or the Agency or otherwise violate the terms of any Regulatory Agreement with respect to the Property. Any such written certification must include a reasonably detailed explanation identifying the specific provision(s) contained in the requested documents that create(s) the alleged Material Nominee Event along with reasonable supporting documentation thereof. Except for a determination by the HDFC in its sole but reasonable discretion that the execution and delivery of such document would result in a Material Nominee Event, the HDFC promptly shall execute such documents and shall have no right to disapprove or object to the execution, or challenge the effectiveness or enforceability of, any such documents including, without limitation, any documents to effectuate a refinancing of the Property and the Project, any increase in or extension of any mortgage financing or any other changes to the economic or other terms of any financing or refinancing obtained by Owner or Affordable, as applicable.

The HDFC hereby irrevocably appoints each of Owner and Affordable as its true and lawful attorney-in-fact, which appointment is coupled with an interest, to execute all documents and take all actions necessary to effectuate such proxy, provided that such appointment is being made on the understanding that Owner and/or Affordable, as applicable, (i) shall only exercise

the rights and powers provided in this proxy in the event the HDFC fails or refuses to execute and deliver to Owner or Affordable, as applicable, the requested document(s) within ten (10) business days after receipt of any Request Notice, and (ii) Owner or Affordable, as applicable, reasonably determines that no Material Nominee Event would result from the execution and delivery of such document(s), in which event Owner and/or Affordable, as applicable, shall have the full power and authority to execute and deliver in the name of the HDFC and, if applicable, record such document(s).

7. The HDFC covenants and agrees to perform all acts reasonably requested by Owner or Affordable in regard to or arising from the HDFC's ownership of legal title to the Property and the Project (and/or the leasehold interest therein) on behalf of Owner and Affordable, as applicable, at Owner's or Affordable's, as applicable, sole cost and expense, provided, however, that the HDFC shall not be required to take any action as provided in this Agreement unless furnished with sufficient funds by Owner or Affordable, as applicable, therefor, and further provided that the HDFC shall not be obligated to perform any such acts that would reasonably be anticipated to cause a Material Nominee Event or otherwise violate this Agreement. In the event the HDFC reasonably determines that any such act would reasonably be anticipated to cause a Material Nominee Event or otherwise violate this Agreement, the HDFC promptly shall notify Owner and Affordable. The HDFC covenants and agrees to maintain its status in good standing under the laws of the State of New York. The HDFC shall have the sole and unconditional obligation to maintain directors and officers liability insurance which covers the HDFC and its sole member, and its and their officers and directors, from any liabilities of the type covered by such insurance which arise in connection with this Agreement and/or the Project. During the term of this Agreement, Owner or Affordable shall reimburse the HDFC for the reasonable costs of maintaining the insurance required in the preceding sentence. For so long as the HDFC shall hold legal or record title to the Property and the Project (and/or the leasehold interest therein), Owner and/or Affordable, as applicable, shall prepare the Federal and State tax returns on behalf of the HDFC, and, if determined to be required by the HDFC, the NYS CHAR 410 Form and the yearly NYS CHAR 500 Forms, and provide such returns, and, if applicable, such CHAR Forms, to the HDFC for execution, at no charge to the HDFC.

8. The HDFC covenants and agrees at the direction of Owner or Affordable, as applicable, to execute any and all documents, except for mortgage loan notes, any other notes, or any indemnification agreements, reasonably requested by Owner, Affordable, the Agency, HPD, Fee Owner, any Credit Enhancer or any other Project Lender or government entity in connection with the acquisition, financing, operation, and/or leasing of the Property and/or the Project or the establishment of the Condo Regime and to otherwise reasonably cooperate in connection with any such financing or a sale of all or any portion of the Property or Project, provided, further, that the HDFC shall not be obligated to execute any such documents that would reasonably be anticipated to cause a Material Nominee Event or otherwise violate this Agreement, and provided further that except for the HDFC's legal title to the Property and the Project (and/or the leasehold interest therein), such documents shall not create any liability or recourse to any other assets of the HDFC. Owner or Affordable, as applicable, shall reimburse the HDFC for its reasonable out-of-pocket costs and expenses in reviewing any such documentation.

9. In the event of any default by the HDFC in respect of its obligations hereunder, beyond ten (10) business days' notice and grace period (an "Event of Default"), upon the written

demand of Owner or Affordable, the HDFC shall, without any compensation therefor (except for reimbursement of expenses as hereinafter provided), immediately execute and deliver to Owner or Affordable, as applicable, a bargain and sale deed without covenants against grantor's acts, except for a covenant by the HDFC that the HDFC has not otherwise conveyed, pledged or encumbered all or any portion of the Property except at the express direction of Owner or Affordable, or other appropriate assignment of conveyance, in proper recordable form transferring and conveying to Owner, Affordable or any third party designated by Owner or Affordable, as applicable, and approved by those Project Lenders, Credit Enhancer and governmental agencies to the extent such consent is required under the Applicable Project Documents, the legal title in and to the Property or the Units (and/or the leasehold interest therein), as applicable, free and clear of any liens, claims, charges or encumbrances to the extent created by the HDFC without the consent of any Credit Enhancer, if applicable, the Project Lenders, the Agency, HPD, Owner or Affordable, as applicable (if any) (all liens, claims, charges or encumbrances other than to the extent created by the HDFC without the consent of any Credit Enhancer, if applicable, the Project Lenders, the Agency, HPD, Owner or Affordable, as applicable, the "Permitted Encumbrances"). In addition, at any time upon written demand therefor by Owner or Affordable following an Event of Default, the HDFC shall, at the expense of Owner or Affordable, as applicable, immediately execute and deliver to a new non-profit entity designated by Owner and/or Affordable, as applicable, and approved by those Project Lenders, Credit Enhancer and governmental agencies (to the extent such consent is required under the express terms of the Applicable Project Documents), a bargain and sale deed without covenants against grantor's acts, except for a covenant by the HDFC that the HDFC has not otherwise conveyed, pledged or encumbered all or any portion of the Property except at the express direction of Owner or Affordable, or other appropriate assignment of conveyance, in proper recordable form transferring and conveying to such designated non-profit entity the legal title in and to the Property and the Project (and/or the leasehold interest therein) free and clear of any liens, claims, charges or encumbrances except for the Permitted Encumbrances. In connection with any transfer under this paragraph, the HDFC shall simultaneously deliver such evidence of corporate authority with respect to the execution and delivery of such deed or assignment of conveyance as may be reasonably required by Owner and/or Affordable, as applicable. The HDFC hereby solely and unconditionally and unequivocally constitutes and appoints Owner or Affordable, as applicable, to be its lawful and true agent and attorney-in-fact coupled with an interest, with full power of substitution to either separately or jointly execute and record any such deed or other appropriate assignment of conveyance and any other documents or instrument required to convey the Property and the Project (and/or the leasehold interest therein) on behalf of the HDFC, in the name, place and stead of the HDFC with the same force and effect as if such deed or other appropriate assignment of conveyance was executed and recorded by the HDFC. Owner or Affordable, as applicable, shall reasonably cooperate with the HDFC in connection with such transfer (including without limitation the payment of any transfer taxes in connection with any such transfer), and shall indemnify the HDFC pursuant to Section 11 below against all liabilities, obligations, claims, causes of action judgments, damages, penalties, costs and expenses (including without limitation reasonable attorneys' fees and expenses) asserted against or incurred by the HDFC arising from such transfer. The parties agree that the HDFC's failure to comply with the provisions of this Section 9 shall cause irreparable harm to Owner and/or Affordable, as applicable, for which no adequate remedy at law will be available and, in addition, to any other available remedies, Owner and/or Affordable, as



applicable, shall be entitled to the right of specific performance in the event of a breach by the HDFC of the provisions of this Section 9. The HDFC authorizes any third party to rely on the aforesaid power of attorney granted in this Section 9 and hereby waives and releases any claim or claims the HDFC may have against such third party in so relying on such power of attorney.

10. Owner, Affordable and the HDFC on behalf of themselves and their respective successors and assigns, and for the benefit of any Project Lenders, the Agency, Fee Owner, Credit Enhancer, Project Lenders and HPD with respect to the Property and their respective successors and assigns, who are recognized as “third party beneficiaries” hereunder, hereby jointly and severally represent, warrant, acknowledge, covenant and agree as follows:

(a) So long as the HDFC shall hold legal title in the Property and the Project (and/or the leasehold interest therein), Owner and/or Affordable, as applicable, shall have complete and exclusive possession, management and control of the Property and the Project in accordance with the terms of this Agreement and the HDFC shall not have any right to possess, manage or control the Property and/or the Project;

(b) Owner and/or Affordable, as applicable, are the sole “owners”, as that term is defined in Section 2 of the New York Lien Law, of the Property and the Project in accordance with the terms of this Agreement;

(c) The HDFC is not in any respects an “owner” of the Property or the Project for federal tax purposes or under the New York Lien Law and Owner and/or Affordable, as applicable, are the sole “owners” of the Property and the Project, in accordance with the terms of this Agreement, for federal tax purposes;

(d) The HDFC is the sole “owner” of the Units for purposes of the New York State and New York City Sales Taxes;

(e) The HDFC is not, and shall not be, entitled to receive any proceeds of any loan or bond proceeds or any rental assistance and/or interest reduction payments made available to Owner or Affordable, as applicable, and/or otherwise have any rights, title, interests or benefits from, of, to and/or under any documents pertaining to such loan or bond proceeds;

(f) Unless specifically authorized in writing by Owner and/or Affordable in accordance with the terms of this Agreement or otherwise specifically provided for in this Agreement, the HDFC shall have no power, right and/or authority to sell, lease, encumber, lien, and/or create or grant any rights and/or interests in or to the Property and/or the Project and/or any part or parts thereof and any sale, lease, encumbrance, lien, right and/or interest purported to be created, granted, permitted and/or resulting from any action or inaction of the HDFC in connection with the Property and 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 Owner, Affordable, the Property and/or the Project;

(g) Notwithstanding anything contained herein to the contrary, if there is an Event of Default (as defined in any Government Financing Document (as defined below) binding on the Property) under such Government Financing Document, and provided that Owner and Affordable are not diligently acting to cure such Event of Default, the HDFC shall enter the

Property to cure such Event of Default as agent for and on behalf of, and at the sole cost and expense of, Owner and Affordable; provided, however, that the HDFC shall not be required to act to cure such Event of Default unless (i) the HDFC (x) has received express direction from Owner or Affordable to take such curative actions or (y) has received a written notice from the Agency or HPD demanding that the HDFC act to cure such Event of Default, which notice the HDFC has forwarded to Owner and Affordable, and neither Owner nor Affordable has responded in writing within ten (10) business days, in which event Owner and Affordable shall be deemed to have consented to the HDFC taking such curative actions, and (ii) Owner or Affordable has provided to the HDFC all such funds reasonably necessary for the HDFC to take such curative actions. For purposes of this provision, a "Government Financing Document" shall mean any city, state or federal loan documents, including but not limited to mortgages, regulatory agreements and financing commitments. If the HDFC shall take such curative action as provided, Owner and Affordable shall indemnify and protect the HDFC in the HDFC's actions in connection therewith, and the HDFC shall have no liability whatsoever to Owner and Affordable; provided, however, that Owner and Affordable shall in no event indemnify or protect the HDFC with respect to any liability arising from the fraud of the HDFC, any intentional breach by the HDFC of this Agreement or any bad faith actions taken or malfeasance by the HDFC;

(h) 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 and/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 and/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 Owner or Affordable;

(i) The HDFC shall, at the request and sole cost and expense of Owner or Affordable, as applicable, prosecute a legal action in respect of the Property or the Project, join in and be a party to any legal action or proceeding relating to the Property or the Project, provided that such action or participation by the HDFC is necessary to protect the HDFC's and/or the Owner's or Affordable's, as applicable, respective interests in the Property and/or the Project. In the event of such action or participation by the HDFC, the HDFC shall use counsel retained by Owner or Affordable, as applicable, unless such counsel or counsel to the HDFC reasonably determines in writing addressed to the HDFC and Owner or Affordable, as applicable, that a conflict of interest exists in which case the HDFC shall be entitled to retain separate counsel of its choice with respect to the matter giving rise to such conflict, whose expenses, costs and reasonable legal fees, including appeals, shall be paid by Owner or Affordable, as applicable;

(j) The HDFC shall not commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; 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 of any substantial part of its property; shall not make any general assignment for the benefit of creditors; shall not fail generally to pay its debts as such debts become due; and shall not take any action in furtherance of any of the foregoing. The HDFC

shall have no rights, powers and/or authority over, or any liabilities or obligations with respect to, the Property and/or the Project and/or any part or parts thereof or any interest therein in any bankruptcy or other proceeding in which Owner or Affordable may hereafter be a party and no officer, trustee, receiver, administrator, legal representative, regulator or creditor of the HDFC shall have any right, power and/or authority over, with respect to and/or in connection with the Property and/or the Project and/or any part or parts thereof or any interest therein;

(k) No actions may be taken by the HDFC nor may the HDFC permit any other person to take any actions which relate to or will impact or affect the Property or the Project and/or any parts thereof or any interest therein, except with the prior written consent of Owner and/or Affordable, as applicable, in accordance with the terms of this Agreement, which may be withheld in their respective sole discretion. Further, any and all actions taken by the HDFC with respect to the Property and/or the Project and/or any parts thereof or any interest therein shall be taken solely in its capacity as nominee for Owner and/or Affordable, as applicable, and not for its own ends or purposes. Notwithstanding the foregoing, in no event shall Owner and/or Affordable, as applicable, be entitled to direct the HDFC to take any actions, or prevent the HDFC from taking any actions, which would reasonably be anticipated to cause a Material Nominee Event or otherwise violate this Agreement;

(l) In the event any property insurance policy obtained by Owner or Affordable names the HDFC as an insured as its interests may appear, the HDFC shall hold such policy of insurance with respect to the Property and/or the Project and/or any parts thereof that may be issued to it, and all claims and payments to be received thereunder, solely for the benefit of Owner or Affordable, as applicable, and will take such action under such policy or policies as Owner or Affordable, as applicable, may direct, but at the expense of Owner or Affordable, as applicable. The HDFC agrees that all proceeds of any insurance policies which relate to the Property or the Project shall be received in its capacity as nominee of Owner and Affordable, as applicable, and shall be immediately deposited in Owner's or Affordable's name, as applicable, in Owner's or Affordable's accounts, as applicable, including, but not limited to, liability, property, casualty and title insurance proceeds. In the event there is an action in eminent domain, any award in respect thereof shall be received by the HDFC as agent for Owner or Affordable, as applicable, and all proceeds in respect of Owner's and Affordable's interest in the Project and the Property shall be paid to Owner or Affordable, as applicable, directly by the governmental authority upon issuance of a letter of direction by the HDFC. The HDFC hereby constitutes and appoints Owner or Affordable, as applicable, to be its lawful and true agent and attorney-in-fact coupled with an interest, with full power of substitution to either separately or jointly execute and record any document or instrument required in connection with any such insurance claim or condemnation proceeding on behalf of the HDFC, in the name, place and stead of the HDFC with the same force and effect as if such document or instrument was executed and delivered by the HDFC. The HDFC authorizes any third party to rely on the aforesaid power of attorney granted in this Section 9(l) and hereby waives and releases any claim or claims the HDFC may have against such third party in so relying on such power of attorney;

(m) The HDFC may make no settlement in respect of a casualty loss or a taking in the nature of eminent domain without the express written authorization of Owner or Affordable, as applicable;

(n) Owner, Affordable and the HDFC each has full power and authority to enter into this Agreement and to comply with all of the terms, provisions and conditions contained in this Agreement;

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

(p) The HDFC shall not be entitled to any moneys received or payable with respect to the Property or the Project, whether as rent, other income, insurance proceeds, condemnation proceeds, proceeds of sale, financing or refinancing proceeds or otherwise, all of which shall be the property of Owner and/or Affordable, as applicable, and if the HDFC shall receive any such moneys, the HDFC shall hold such moneys as agent solely for the benefit of Owner and/or Affordable, as applicable, and shall pay such moneys to Owner and/or Affordable, as applicable, immediately upon receipt thereof;

(q) The HDFC shall maintain itself as a single purpose entity and shall not hold title to any property other than the Property or the Project; and

(r) Notwithstanding the provisions of this Section 10, it is acknowledged and agreed between the HDFC, Owner and Affordable that the ownership interest of the HDFC in the Property and the Project (and/or the leasehold interest therein) is in furtherance of the HDFC's charitable purposes and consistent with the HDFC's Charitable Status, based on Owner's and Affordable's obligations and commitments to operate the low- and moderate-income housing at the Project. In furtherance of the same, Owner and Affordable covenant and agree that they will operate low- and moderate-income housing at the Project in compliance with the HPD and Agency requirements and the requirements of other governmental authorities applicable thereto, for so long as the HDFC owns legal title to the Property or any Unit.

11. Owner and Affordable shall fully indemnify, defend the HDFC and SHF and their respective agents, directors, officers and employees (with counsel selected by Owner or Affordable, as applicable, unless such counsel or counsel to the HDFC reasonably determines in writing addressed to the HDFC, Owner and Affordable that a conflict of interest exists, in which case the HDFC shall be entitled to retain separate counsel of its choice with respect to the matter giving rise to such conflict, whose expenses, costs and reasonable legal fees, including appeals, shall be paid by Owner or Affordable), and hold the HDFC and SHF harmless from and against any and all liabilities, obligations, claims, causes of actions, judgments, damages, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) arising out of or in any way relating to (a) this Agreement, any other agreement between the HDFC and the Owner and/or Affordable relating to the Property and/or the Project, (b) ownership of the Property and the Project (and/or the leasehold interest therein) from and after the date of transfer of title to the Property and/or the Units (and/or the leasehold interest therein) to the HDFC, (c) the Project, (d) the use or occupancy of the Project, (e) environmental liabilities arising with respect to the Project, whether arising prior to or following the date of transfer of title to the

Property and/or the Units (and/or the leasehold interest therein) to the HDFC, (f) the enforcement of any obligation under any policy of insurance or indemnity provision provided in the Project Documents, (g) any and all claims arising from any legal actions or proceedings described in Section 10(i) above, except if arising from the willful misconduct or gross negligence of the HDFC or SHF, as applicable, or (h) any breach by Owner or Affordable of this Agreement (collectively, "Claims"). The foregoing indemnification shall include, but shall not be limited to, Owner's or Affordable's, as applicable, primary obligation to defend all Claims on its own behalf and on behalf of all additional insureds, and indemnification for Claims resulting from any (i) accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or the Project 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 the Project 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 Owner or Affordable, as applicable, to perform or comply with any of the terms of any of the acquisition, financing or construction documents executed by Owner or Affordable, as applicable, in connection with the acquisition and/or development of the Project or any applicable law, rule or regulation; (iv) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or the Project or any part thereof; (v) defect in the construction or condition or characteristics of the Property or the Project, whoever and whatever the cause; and (vi) any other cause or matter arising in connection with the Project and/or the obligations of Owner and Affordable in respect thereof, including under this Agreement; provided, however, that Owner and Affordable shall in no event indemnify or protect the HDFC or SHF with respect to any liability arising from the fraud, willful misconduct or gross negligence of the HDFC or SHF, as applicable, any intentional breach by the HDFC or SHF, as applicable, of this Agreement or any bad faith actions taken by the HDFC or SHF. The provisions of this Section 11 shall survive the closing and the termination of this Agreement.

12. (a) The parties hereto agree that if the Project and the Property fails at any time to comply with the stricter of (i) the affordability restrictions mandated by HPD for the Project, or (ii) the affordability restrictions mandated by the Agency governing the income levels of tenants, and such failure continues uncured after the expiration of any applicable notice and cure period provided by HPD or the Agency with respect to clauses (i) or (ii) above ("Beneficial Owner Affordability Default"), then the HDFC shall, at Owner's and Affordable's option, either (x) re-convey its interest in the Property and the Project or the Units, as applicable, back to Owner or Affordable, as applicable, or (y) convey its interest in the Property and the Project or the Units to a Designee of Owner or Affordable, as applicable, and approved by those Project Lenders, the Credit Enhancer and governmental agencies to the extent such consent is required under the express terms of the Applicable Project Documents (an "Approved Replacement Nominee"), in either case pursuant to a bargain and sale deed without covenants against grantor's acts, except for a covenant by the HDFC that the HDFC has not otherwise conveyed, pledged or encumbered all or any portion of the Property except at the express direction of Owner or Affordable, or other appropriate assignment of conveyance, in recordable form, at Owner's or Affordable's expense, as applicable, for nominal consideration, subject to only the Permitted Encumbrances and return all reports, information and documents relating to the Property and the Project to Owner or Affordable, as applicable. Upon such conveyance, this Agreement shall be terminated and be of no further force and effect. Owner or Affordable, as applicable, shall reasonably cooperate with the HDFC in connection with such transfer, at the

sole cost and expense of Owner or Affordable, as applicable (including without limitation the reimbursement of the HDFC's reasonable legal fees and expenses, and payment of any transfer taxes in connection with any such transfer), and shall indemnify the HDFC pursuant to Section 11 against all liabilities, obligations, claims, causes of action judgments, damages, penalties, costs and expenses (including without limitation reasonable attorneys' fees and expenses) asserted against or incurred by the HDFC arising from such transfer, provided, however, that Owner and Affordable shall in no event indemnify or protect the HDFC with respect to any liability arising from the fraud, willful misconduct or gross negligence of the HDFC, any intentional breach by the HDFC of this Agreement or any bad faith actions taken by the HDFC. Owner and Affordable shall additionally hold the HDFC and its affiliates harmless from any and all actual loss, cost damage or expense arising from any loss of the HDFC's Charitable Status arising out of a Beneficial Owner Affordability Default.

(b) Each of the HDFC, Owner and Affordable shall have the right in its sole discretion, upon not less than 180 days' prior written notice, to elect to terminate this Agreement and to have the membership interest in the HDFC conveyed or fee title (or leasehold, as applicable) to the Property and the Project conveyed to a qualified non-profit designee of Owner or Affordable which has been approved by Owner, Affordable and those Project Lenders, Credit Enhancer, HPD and other governmental agencies to the extent such consent is required under the express terms of the Applicable Project Documents. The conveyance of fee or leasehold title, if applicable, shall be pursuant to a bargain and sale deed without covenants against grantor's acts, except for a covenant by the HDFC that the HDFC has not otherwise conveyed, pledged or encumbered all or any portion of the Property except at the express direction of Owner or Affordable, or other appropriate assignment of conveyance, and the Property and the Project shall be subject to only the Permitted Encumbrances. The HDFC, Owner and/or Affordable, as applicable, shall reasonably cooperate with the other parties to this Agreement in connection with such transfer, at the sole cost and expense of Owner or Affordable, as applicable (including without limitation the reimbursement of the HDFC's legal fees and expenses, and payment of any transfer taxes in connection with any such transfer, and shall indemnify the HDFC pursuant to Section 11 against all liabilities, obligations, claims, causes of action, judgments, damages, penalties, costs and expenses (including without limitation the HDFC's reasonable legal fees and expenses) asserted against or incurred by the HDFC arising from such transfer, provided, however, that Owner and Affordable shall in no event indemnify or protect the HDFC with respect to any liability arising from the fraud, willful misconduct or gross negligence of the HDFC, any intentional breach by the HDFC of this Agreement or any bad faith actions taken by the HDFC. Simultaneously therewith the HDFC shall return all reports, information and documents relating to the Property and the Project to Owner or Affordable, as applicable, or their respective Approved Replacement Nominees. The HDFC shall cooperate with Owner or Affordable, as applicable, in identifying possible Approved Replacement Nominees. If despite using reasonable efforts to identify an Approved Replacement Nominee, Owner or Affordable, as applicable, is unable to designate and arrange for an Approved Replacement Nominee by the end of such 180-day period, the closing under this paragraph (b) shall be extended until such date which is not less than thirty (30) days following the date that an Approved Replacement Nominee has agreed in writing with Owner and Affordable to accept a conveyance of the membership interest from the HDFC's sole member or legal title from the HDFC, but not later than an additional 180 days from the expiration of the original 180-day period.



(c) The HDFC hereby irrevocably and unconditionally agrees, promptly upon the request of Owner and Affordable, to convey fee title (or leasehold, as applicable) to the Property and the Project to Owner and Affordable Owner, as applicable, or any designee thereof. In furtherance thereof, the HDFC shall execute and deliver to Owner and Affordable Owner or such designee a bargain and sale deed without covenants against grantor's acts, except for a covenant by the HDFC that the HDFC has not otherwise conveyed, pledged or encumbered all or any portion of the Property except at the express direction of Owner or Affordable, or other appropriate assignment of conveyance, and the Property and the Project shall be subject to only the Permitted Encumbrances. The HDFC hereby unconditionally and unequivocally constitutes and appoints Owner or Affordable, as applicable, to be its lawful and true agent and attorney-in-fact coupled with an interest, with full power of substitution to either separately or jointly execute and record any such deed or other appropriate assignment of conveyance and any other documents or instrument required to convey the Property and the Project (and/or the leasehold interest therein) on behalf of the HDFC, in the name, place and stead of the HDFC with the same force and effect as if such deed or other appropriate assignment of conveyance was executed and recorded by the HDFC. Upon such transfer, this Agreement shall terminate and be of no further force or effect, except for obligations expressly stated to survive the termination of this Agreement. The parties agree that the HDFC's failure to comply with the provisions of this Section 12(c) shall cause irreparable harm to Owner and Affordable for which no adequate remedy at law will be available and, in addition to any other available remedies, Owner and Affordable shall be entitled to the right of specific performance in the event of a breach by the HDFC of the provisions of this Section 12(c). The HDFC authorizes any third party to rely on the aforesaid power of attorney granted in this Section 12(c) and hereby waives and releases any claim or claims the HDFC may have against such third party in so relying on such power of attorney. Notwithstanding anything to the contrary herein, HDFC shall be under no obligation to execute and/or deliver any deeds or other documents which would reasonably be anticipated to cause a Material Nominee Event.

13. Owner and Affordable hereby represent and warrant to the HDFC, to their knowledge, that: (a) they are not aware of any violations in any material respect of any applicable environmental laws with respect to the Property; (b) there is no pending, or to Owner's or Affordable's knowledge, litigation threatened in writing involving environmental matters at the Property; (c) they have delivered to the HDFC copies of any material correspondence by Owner, Affordable or their respective affiliates with any governmental or regulatory bodies regarding environmental conditions at the Property in the possession of Owner or Affordable as of the date hereof; and (d) they do not have in their possession any internal reports, audits or memoranda, relating in any way to environmental conditions at the Property which they have not shared with the HDFC.

14. This Agreement may not be amended, modified, revised or revoked except by written instrument duly executed by each of the parties hereto.

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

16. This Agreement shall be binding upon the HDFC, Affordable and Owner and their respective successors; it being understood and agreed that except as provided herein, this

Agreement may not be assigned by any party without the prior written consent of the other parties, provided, however, that Affordable and Owner may assign this Agreement, or its rights and/or obligations hereunder, without the HDFC's consent, provided such assignment is approved by the Agency and/or HPD, as applicable. The HDFC shall not have the right to delegate the performance of its obligations hereunder to any person without the prior consent of Owner and Affordable.

17. 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.

18. 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.

19. As used herein, "knowledge of Owner," "Owner's knowledge," "knowledge of Affordable," "Affordable's knowledge," or any similar phrase shall mean the actual, and not imputed, knowledge of Ronen Haron.

20. 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.

21. 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. The HDFC covenants and agrees to promptly deliver to Owner and Affordable any and all notices, statements and communications received by the HDFC with respect to the Property or the Project.

If to Owner or Affordable:

c/o Artimus  
316 West 118<sup>th</sup> Street  
New York, New York 10026  
Attn: Benjamin Kursman, Esq.

with a copy to:

Katten Muchin Rosenman LLP  
2900 K Street, NW  
North Tower - Suite 200  
Washington, DC 20007  
Attn: Jeffrey Scharff, Esq.

If to the HDFC:

247 West 37<sup>TH</sup> Street  
4<sup>TH</sup> Floor  
New York, NY 10018  
Attn: Lee Warshavsky, Esq.

22. 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 in writing by the party which will be responsible for the obligation.

23. Any third party may rely on this Agreement with respect to the rights and obligations of Owner, Affordable and the HDFC hereunder.

24. This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

[signatures on following pages]

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

"OWNER":

J2 OWNER LLC, a Delaware limited liability company

By: J2 Investor LLC, a Delaware limited liability company, its sole member

By: J2 147-07 94<sup>th</sup> Avenue LLC, a Delaware limited liability company, its managing member

By: J2 Jamaica 94 Equities LLC, a New York limited liability company, its managing member

By:   
Name: Ronen Haron  
Title: Authorized Signatory

"AFFORDABLE":

J2 147-07 94<sup>th</sup> AVENUE LI LLC,  
a Delaware limited liability company

By: J2 147-07 94<sup>th</sup> Avenue LLC, a Delaware limited liability company, its managing member

By: J2 Jamaica 94 Equities LLC, a New York limited liability company, its managing member

By:   
Name: Ronen Haron  
Title: Authorized Signatory

[signatures continue on following page]

*[Signature Page to Nominee Agreement]*

"THE HDFC":

JAMAICA II HOUSING DEVELOPMENT FUND  
CORPORATION, a New York not-for-profit corporation

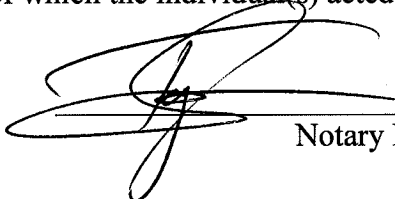
By:

Name: Lee Warshavsky

Title: Secretary/Treasurer

State of New York     )  
                                  )ss:  
County of New York    )

On the 23 day of December in the year 2019 before me, the undersigned, a Notary public in and for said State, personally appeared Lee Warshavsky, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/this executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

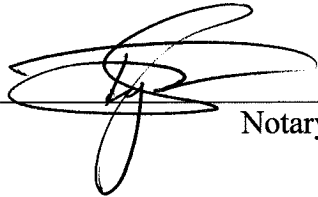
  
Notary Public

TYLER H. GABLENZ  
Notary Public, State of New York  
Registration #01GA6336625  
Qualified In Westchester County  
Commission Expires Feb. 8, 2020

*[Signature Page to Nominee Agreement]*

State of New York     )  
                                  )ss:  
County of New York    )

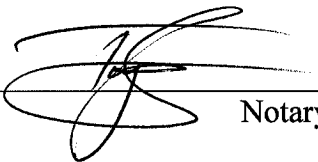
On the 23 day of December in the year 2019 before me, the undersigned, a Notary public in and for said State, personally appeared Ronen Haron, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/this executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

TYLER H. GABLENZ  
Notary Public, State of New York  
Registration #01GA6336625  
Qualified In Westchester County  
Commission Expires Feb. 8, 2020

State of New York     )  
                                  )ss:  
County of New York    )

On the 23 day of December in the year 2019 before me, the undersigned, a Notary public in and for said State, personally appeared Ronen Haron, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/this executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

TYLER H. GABLENZ  
Notary Public, State of New York  
Registration #01GA6336625  
Qualified In Westchester County  
Commission Expires Feb. 8, 2020

*[Signature Page to Nominee Agreement]*

## EXHIBIT A

### **LEGAL DESCRIPTION**

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

BEGINNING at a point on the northerly side of 94th Avenue (formerly known as Johnson Avenue) distant 60.97 feet (61.24 feet – survey) easterly from the corner formed by the intersection of the northerly side of 94th Avenue with the easterly side of Sutphin Boulevard (as widened);

THENCE easterly along the northerly side of 94th Avenue, a distance of 328.25 feet to the easterly line of Lot 30 on a certain map entitled, “Map of Talfourd Lawn in Jamaica, Long Island, surveyed April, 1870 by E.W. Conklin filed July 11, 1871 as Map No. 460;

THENCE northerly at right angles to the northerly side of 94th Avenue and along the easterly line of said Lot 30, a distance of 93.07 feet;

THENCE westerly and parallel with the northerly side of 94th Avenue, 35.03 feet;

THENCE northerly at right angles to the preceding course, 7.01 feet to the southerly side of Lot 27 as laid out on the above mentioned map;

THENCE westerly at right angles to the preceding course and along the southerly line of Lot 27, a distance of 15.01 feet to the westerly line of said lot;

THENCE northerly at right angles to the preceding course and along the westerly side of said Lot 27, a distance of 13.21 feet;

THENCE westerly parallel with the northerly side of 94th Avenue and distant 113.29 feet northerly therefrom when measured at right angles to said Avenue, a distance of 107.41 feet;

THENCE South 11 degrees 25’ 00” East .09 feet;

THENCE South 73 degrees 03’ 30” West 159.84 feet;

THENCE South 11 degrees 25’ 00” East along a line which is the prolongation in a southerly direction of the east side of the bridge abutment of the Long Island Railroad bridge over Guilford Street 113.73 feet to the northerly side of 94th Avenue, at the point or place of BEGINNING.



## **SCHEDULE 1**

- Building Loan Agreement made among the Agency, the HDFC, Owner and Affordable;
- Project Loan Agreement made among the Agency, the HDFC, Owner and Affordable;
- HDC Bond Building Loan Leasehold and Subleasehold Mortgage, Assignment of Leases and Rents and Security Agreement, made by the HDFC, Owner and Affordable in favor of the Agency;
- Non-Bond Building Loan Leasehold and Subleasehold Mortgage, Assignment of Leases and Rents and Security Agreement, made by the HDFC, Owner and Affordable in favor of the Agency;
- Second HDC Building Loan Leasehold and Subleasehold Mortgage, Assignment of Leases and Rents and Security Agreement, made by the HDFC, Owner and Affordable in favor of the Agency;
- Third HDC Building Loan Leasehold and Subleasehold Mortgage, Assignment of Leases and Rents and Security Agreement, made by the HDFC, Owner and Affordable in favor of the Agency;
- HDC Bond Project Loan Leasehold and Subleasehold Mortgage, Assignment of Leases and Rents and Security Agreement, made by the HDFC, Owner and Affordable in favor of the Agency;
- Non-Bond Project Loan Leasehold and Subleasehold Mortgage, Assignment of Leases and Rents and Security Agreement, made by the HDFC, Owner and Affordable in favor of the Agency;
- Second HDC Project Loan Leasehold and Subleasehold Mortgage, Assignment of Leases and Rents and Security Agreement, made by the HDFC, Owner and Affordable in favor of the Agency;
- Third HDC Project Loan Leasehold and Subleasehold Mortgage, Assignment of Leases and Rents and Security Agreement, made by the HDFC, Owner and Affordable in favor of the Agency;
- Regulatory Agreement made among HPD, the Agency, the HDFC, Owner and Affordable;
- Four (4) UCC-1 Financing Statements made by the HDFC, Owner and Affordable as the Debtors and the Agency as the Secured Party;
- Mortgage Recording Tax Affidavits;

- Lease for the Property among Fee Owner, the HDFC and Owner;
- Memorandum of Ground Lease among Fee Owner, the HDFC and Owner;
- Agreement of Lease among the HDFC and Owner, as Lessor, and Affordable and the HDFC, as Lessee;
- Memorandum of Lease made between the HDFC and Owner, as Lessor, and the HDFC and Affordable as Lessee;
- Article XI Regulatory Agreement among HPD, the HDFC, Fee Owner, Owner and Affordable.
- Regulatory Agreement among HPD, the Agency, the HDFC, Fee Owner, Owner and Affordable.

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**REGULATORY AGREEMENT**

among

**J2 OWNER LLC,**

**J2 147-07 94<sup>TH</sup> AVENUE LI LLC,**

**JAMAICA II HOUSING DEVELOPMENT FUND CORPORATION,**

**NEW YORK CITY HOUSING DEVELOPMENT CORPORATION**

and

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

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December 24, 2019

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BLOCK: 9998

LOT: 25

COUNTY: Queens

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RECORD AND RETURN TO:

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

**REGULATORY AGREEMENT** (as may be amended, this "Agreement"), entered into as of December 24, 2019, among **J2 OWNER LLC** (the "Non-Tax Code Borrower"), a Delaware limited liability company with an address at c/o Artimus Construction Inc., 316 West 118<sup>th</sup> Street, New York, NY 10026, **J2 147-07 94<sup>TH</sup> AVENUE LI LLC** (the "Tax Code Borrower" and together with the Non-Tax Code Borrower, jointly and severally, the "Beneficial Owner"), a Delaware limited liability company with an address at c/o Artimus Construction Inc., 316 West 118<sup>th</sup> Street, New York, NY 10026, **JAMAICA II HOUSING DEVELOPMENT FUND CORPORATION** (the "Legal Owner", and together with the Beneficial Owner, jointly and severally, the "Sponsor"), a New York not-for-profit corporation with an address at 247 West 37<sup>th</sup> Street, 4<sup>th</sup> Floor, New York, NY 10018, **NEW YORK CITY HOUSING DEVELOPMENT CORPORATION** ("HDC"), a New York public benefit corporation with its address at 110 William Street, New York, NY 10038, and **THE CITY OF NEW YORK** (the "City"), acting by and through its **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT** ("HPD"), with its address at 100 Gold Street, New York, NY 10038.

### **PRELIMINARY STATEMENT**

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

**WHEREAS**, Land & Sea Development Corp. (the "Fee Owner") has leased the Premises to the Legal Owner, as nominee leasehold owner, and Non-Tax Code Borrower, as beneficial leasehold owner, pursuant to a ground lease dated as of the date of this Agreement (the "Ground Lease");

**WHEREAS**, as of the date of this Agreement, the Non-Tax Code Borrower and the Legal Owner have entered into a Declaration of Interest and Nominee Agreement (the "Nominee Agreement"), pursuant to which the Non-Tax Code Borrower is the beneficial owner of the leasehold interest in the Premises;

**WHEREAS**, as of the date of this Agreement, the Legal Owner and the Non-Tax Code Borrower have master leased portions of the Premises intended to constitute the Tax Code Units (as defined below; capitalized terms used but not defined in this preliminary statement are defined in Section 1.01) to the Legal Owner and the Tax Code Borrower pursuant to an Agreement of Sublease dated as of the date of this Agreement (the "Master Lease");

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

**WHEREAS**, upon and pursuant to the creation of a leasehold condominium on the Premises, the Non-Tax Code Borrower intends to convey beneficial ownership of the Tax Code Units Condo Unit to the Tax Code Borrower, the Master Lease will be terminated, and, pursuant to the

Nominee Agreement, the Tax Code Borrower will be the beneficial owner of the Tax Code Units Condo Unit and the Legal Owner will be the record fee title owner of the Tax Code Units Condo Unit; at the same time, the Non-Tax Code Borrower will be the beneficial owner of Market-Rate Units Condo Unit, the Retail Condo Unit and the Parking Condo Unit, and the Legal Owner will be the record fee title owner of such leasehold condominium units;

**WHEREAS**, HDC has agreed to make, pursuant to the HDC Commitment: (i) a first mortgage loan to the Beneficial Owner in the aggregate principal amount of \$94,190,000 (the "HDC Construction Loan"), which upon the Permanent Conversion will become a permanent mortgage loan in the aggregate principal amount of \$79,055,000 (the "HDC Permanent Loan" and together with the HDC Construction Loan, the "HDC Loan"), (ii) a second-position mortgage loan to the Beneficial Owner in the aggregate principal amount of \$30,600,000 (the "HDC Additional Loan" and (iii) a third-position mortgage loan to the Beneficial Owner in the aggregate principal amount of \$56,034,276 (the "HDC City Capital Loan" and together with the HDC Loan and the HDC Additional Loan, the "HDC Financing"), to be funded by a grant of City Capital funds from HPD to HDC pursuant to a Grant Agreement between HPD and HDC, dated as of the date of this Agreement (the "Grant Agreement"); the HDC Financing will be evidenced by notes made by the Beneficial Owner and dated as of the date of this Agreement (collectively, and as may be amended, the "HDC Mortgage Note") and secured by mortgages made by the Sponsor and dated as of the date of this Agreement (collectively, and as may be amended, the "HDC Mortgage");

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

**WHEREAS**, upon the Permanent Conversion, the HDC Loan is expected to be insured by the Federal Housing Administration, an organizational unit within HUD, under Section 542(c) of the Housing and Community Development Act of 1992, as amended, and the regulations promulgated under the statute at 24 CFR part 266 (the "FHA Risk-Sharing Program");

**WHEREAS**, the Beneficial Owner has applied, on behalf of the Tax Code Borrower, to receive an allocation of Tax Credits from HPD by reason of the issuance of the Obligations by HDC, and an extended low income housing commitment is required pursuant to the Tax Code; the Tax Credits equity investor in the Tax Code Borrower will be an entity initially controlled by 301 Housing Development Fund Corporation (the "Tax Credit Investor");

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

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

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

**WHEREAS**, in order for the Project to have the benefit of the HDC Financing and the Tax Credits, HDC and HPD require that the Sponsor (i) agree to operate the Project in accordance

with this Agreement and (ii) agree that the restrictions in this Agreement shall run with the Premises and bind all of the successors and assigns of the Sponsor, for so long as set forth in this Agreement;

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

## ARTICLE I. DEFINITIONS

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

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

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

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

"Annual Income" shall mean the current gross income of the Household, calculated in a manner consistent with the determination of low income families under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, under such program as was in effect immediately before such termination).

"Applicable AMI Limit" shall mean for any Tax Code Unit, the percentage of AMI specified as the income restriction for occupancy of the unit, as set forth in Section 4.02, such that, by way of example, the Applicable AMI Limit for a 60% of AMI Unit is 60% of AMI, and for any Non-Tax Code Income-Restricted Unit, the percentage of AMI specified for the initial Actual Rents as set forth in Schedule B, such that, by way of example, the Applicable AMI Limit for a 100% of AMI Unit (the income restriction for occupancy) is 80% of AMI (the initial rent level).

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

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

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

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

"Construction Loan Closing" shall mean the closing of the HDC Financing.

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



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

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

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

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

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

"Fee Owner" shall have the meaning set forth in the WHEREAS clauses.

"FHA Risk-Sharing Program" shall have the meaning set forth in the WHEREAS clauses.

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

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

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

"Ground Lease Term Affordable Unit" shall have the meaning set forth in Section 4.02(g).

"Ground Lessor" shall mean the Fee Owner.

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

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

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

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

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

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

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

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

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

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

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

"Homeless Unit" shall have the meaning set forth in Section 4.02.

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

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

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



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

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

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

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

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

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

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

"Market-Rate Unit" shall mean any unit that is not a Superintendent Unit or Income-Restricted Unit.

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

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

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

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

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

"Permanent Conversion" shall mean the conversion of the HDC Financing to the permanent phase.

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

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

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

"Public Assistance" shall mean Temporary Assistance for Needy Families, Family Assistance or Safety Net Assistance, each as administered by the New York City Human Resources Administration (or any successor agency), or any other public assistance program approved by HPD and HDC.

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

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

"Rental Assistance" shall mean rental subsidies provided through Section 8, the Living in Communities rental assistance program administered by the New York City Human Resources

Administration (or any successor agency), or any similar rental subsidy program approved by HDC and HPD in their sole discretion. For purposes of this Agreement, Rental Assistance shall not include any Shelter Allowance payments.

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

"Rental Assistance Unit" shall mean a unit receiving a form of Rental Assistance.

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

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

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

"Shelter Allowance" shall mean the monthly portion of Public Assistance intended and used for housing expenses, as adjusted for household size.

"Social Services Contract" shall have the meaning set forth in Section 4.09.

"Social Services Plan" shall have the meaning set forth in Section 4.09.

"Social Services Reserve" shall have the meaning set forth in Section 4.10.

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

"State" shall mean the State of New York.

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

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

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

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

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

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

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

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

any related rules and regulations.

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

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

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

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

## ARTICLE II. TERM OF RESTRICTIONS

**SECTION 2.01**      Occupancy Restriction Period. The Project and the Sponsor shall be subject to the requirements of this Agreement during the Occupancy Restriction Period (as defined in this section), except as may be specifically provided otherwise in this Agreement. The "Occupancy Restriction Period" shall mean a minimum of [40] years from the date that is the later of (i) the date that 10% of the units are first occupied and (ii) the date of issuance of the Obligations. The Occupancy Restriction Period may be longer than this minimum period, and shall end on the latest of the following dates:

- (a) the date that is 15 years after the date on which 50% of the units are first occupied;
- (b) the first day on which no Obligation or other tax-exempt private activity obligation with respect to the Project is outstanding;
- (c) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates;
- (d) the date of the end of the Extended Use Period (see Section 6.02);
- (e) the date on which the Real Property Tax Benefits expire;
- (f) the date on which the HDC Mortgage and any other mortgage held by HDC or HPD with respect to the Project have been satisfied;
- (g) 40 years from the date of the Permanent Conversion;
- (h) 40 years from the date hereof; and
- (i) Solely with respect to the Ground Lease Term Affordable Units, the later of the date on which the term of the Ground Lease, including extensions (to the extent exercised), expires or 65 years.

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

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

**SECTION 2.04**      Termination; Release.

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

**ARTICLE III. GENERAL COMPLIANCE**

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

- (a)      HDC and HPD Financing. The Sponsor shall comply, and shall cause the Project to comply, with (i) this Agreement, (ii) the Loan Documents, (iii) the HDC Act and (iv) any rules adopted by HDC or HPD relating to the HDC Financing or the operation of the Project as may be necessary to enforce this Agreement. Any violation of the requirements of the Loan Documents may be declared an Event of Default under this Agreement.
- (b)      Tax-Exempt Obligations. The Sponsor shall comply, and shall cause the Project to comply, with the applicable provisions of the Tax Code and this Agreement in order to preserve the exclusion from gross income for purposes of federal income taxation of interest on the Obligations.



- (c) Tax Credits. The Sponsor shall comply, and shall cause the Tax Code Units to comply, with (i) the provisions of the Tax Code governing the Tax Credits, (ii) the extended low income housing commitment provisions of this Agreement (Article VI) and (iii) HDC's monitoring procedures with respect to the Tax Credits.
- (d) Real Property Tax Benefits; Ground Lease, Other Agreements and Permits. The City Council of The City of New York, by resolution dated November 14, 2019, No. 1157 (the "Council Resolution"), a copy of which is attached as Schedule E, has approved the Real Property Tax Benefits to the Premises pursuant to Section 577 of the New York Private Housing Finance Law. The Sponsor shall do all things necessary: (i) to maintain the Real Property Tax Benefits, (ii) to maintain compliance with the terms and provisions of the Ground Lease, (iii) to maintain any permits or agreements with government agencies, including HDC and HPD, in good standing and (iii) to comply with the requirements of such agencies. Any default under the Ground Lease or violation of the requirements of the Real Property Tax Benefits, or any permits or agreements with or requirements of any government agencies (including the HDC-HDC parking and amenities' guidelines set forth in Schedule I attached hereto, "HDC\_HPD Parking and Amenities' Guidelines"), may be declared an Event of Default under this Agreement.

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

#### ARTICLE IV. PROJECT OCCUPANCY

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

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

Tax Code Units. In accordance with the distribution set forth in Schedule B, 216 units shall be Tax Code Units.

- (i) The Sponsor shall lease no fewer than 53 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 40% of AMI ("40% of AMI Units").

- (ii) The Sponsor shall lease no fewer than 163 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 50% of AMI ("50% of AMI Units").
- (b) Non-Tax Code Income-Restricted Units. In accordance with the distribution set forth in Schedule B, 190 units shall be Non-Tax Code Income-Restricted Units.
  - (i) The Sponsor shall lease no fewer than 162 Non-Tax Code Income-Restricted Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 120% of AMI ("120% of AMI Units").
  - (ii) The Sponsor shall lease no fewer than 28 Non-Tax Code Income-Restricted Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 165% of AMI ("165% of AMI Units").
- (c) Disability Set-Asides. The Sponsor shall ensure that a minimum of 5% of the units, or one unit, whichever is greater, is accessible and set aside for Households with a person with a mobility disability. The Sponsor shall ensure that an additional minimum of 2% of the units, or one unit, whichever is greater, is accessible and set aside for Households with a person with a hearing or vision disability.
- (d) Homeless Units. The Sponsor shall lease the 53 40% of AMI Units solely to tenants who are referred by the New York City Department of Homeless Services, HPD or an alternate referral source acceptable to HPD and HDC ("Homeless Units"). The distribution of Homeless Units shall be as set forth in Schedule B. This distribution may be adjusted at initial rent-up with the prior written consent of HDC and HPD.
- (e) Market-Rate Units. In accordance with the distribution set forth in Schedule B, 135 units shall be Market-Rate Units.
- (f) Ground Lease Term Affordable Units. In accordance with the distribution set forth in Schedule B, 99 of the Tax Code Units will be affordable until the later of the date on which the term of the Ground Lease, including extensions (to the extent exercised), expires or 65 years (the "Ground Lease Term Affordable Units").
- (g) Inclusionary Housing Regulatory Agreement Units. 117 of the Tax Code Units shall be subject to the requirements of the Inclusionary Housing Regulatory Agreement by and among the Sponsor and HPD, as may be amended.

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

- (a) Changes Violating Certifications. The Sponsor shall make no changes in the amount of residential and non-residential space or in the number of units, which in the opinion of Bond Counsel, would cause a violation of the certifications presented to HDC with respect to such space or units and adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Obligations; and
- (b) Tax Code Unit Percentage. The Sponsor shall not reduce the Tax Code Unit Percentage for the Project below 40%, unless the Sponsor receives the prior

written consent of HDC and HPD, which may be granted in the sole discretion of HDC and HPD.

**SECTION 4.04**      General Requirements for Units.

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

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

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

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



the public housing agency providing the assistance gives the Sponsor a statement indicating that the applicant qualifies as an Eligible Tenant. The Sponsor may consult with HDC and HPD to obtain guidance on the applicant certification process.

- (b) Agency Review Prior to Initial Rental. Prior to the initial rental of any Income-Restricted Unit or the rental of any Income-Restricted Unit after vacancy, the Sponsor shall furnish to HDC (and to HPD, if requested by HPD in writing) the certification of Annual Income and Household size provided by the applicant selected for the unit, along with verification documentation as may be required by HDC, HPD or under the Tax Code in order to review the qualifications of the applicant. No lease for any Income-Restricted Unit shall be executed until the Sponsor has received approval from HDC (and HPD, if applicable).
- (c) Annual Tenant Certifications (Tax Code Units). Upon the establishment of the Tax Code Units Condo Unit as a "building" as defined in Section 42 of the Tax Code, the Sponsor shall certify to HDC as to the Household size and student status of each tenant residing in a Tax Code Unit based on certifications obtained from such tenants. Otherwise, on an annual basis, the Sponsor shall (i) obtain a certification of Annual Income, Household size and student status from each tenant residing in a Tax Code Unit, along with verification documentation, and (ii) determine whether each such tenant continues to qualify as an Eligible Tenant. The Sponsor shall verify each certification as provided in paragraph (a) above.
- (d) Annual Agency Reviews (Tax Code Units). The Sponsor shall furnish to HDC (and to HPD, if requested by HPD in writing), on an annual basis or more frequently if required in writing by HDC or HPD in order to ensure compliance with this Agreement, a certification by the Sponsor documenting the annual tenant certifications provided in accordance with paragraph (c) above, along with verification documentation (if requested by HDC or HPD). The Sponsor shall also furnish any reports or other documents that HDC or HPD reasonably determine are necessary to establish compliance with this Agreement and the Tax Code.
- (e) Tenant's Failure to Certify; Fraud. If a tenant residing in an Income-Restricted Unit fails to provide the Sponsor with certifications and documentation as required within 60 days of the Sponsor's request, or if such a tenant provides false or fraudulent materials at any time, then the Sponsor may, or at the request of HDC or HPD shall, refuse to offer a lease renewal and/or commence legal action to terminate the lease of the tenant.

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

**SECTION 4.08**      Next Available Unit Rules.

- (a) Non-Deep Rent Skewing Project. The Sponsor has not elected to "deep rent skew" the Project. Upon the establishment of the Tax Code Units Condo Unit as a "building" as defined in Section 42 of the Tax Code, if the Annual Income of a tenant in a Tax Code Unit exceeds 140% of the Applicable AMI Limit, then the Sponsor shall lease the next available vacant unit of comparable or smaller size



in the Tax Code Units Condo Unit to a tenant whose Annual Income does not exceed the Applicable AMI Limit required by the Tax Code. Otherwise, if the Annual Income of a tenant in a Tax Code Unit exceeds 140% of the Applicable AMI Limit, then the Sponsor shall lease the next available vacant unit of comparable or smaller size that is not a Tax Code Unit to a tenant in the Project whose Annual Income does not exceed the Applicable AMI Limit required by the Tax Code.

- (b) Tenant's Failure to Certify; Fraud. If the Sponsor fails to commence legal action to terminate the lease of a tenant described in Section 4.06(e) and residing in a Tax Code Unit in a prompt manner, or does not diligently pursue the legal action to the satisfaction of HDC and HPD, then the Sponsor shall lease the next available vacant unit of comparable or smaller size to a tenant who qualifies as an Eligible Tenant for a Tax Code Unit (with an income restriction for occupancy at the same level as the unit occupied by the tenant described in Section 4.06(e), if such level is below the income restriction for occupancy that would otherwise apply to the next available unit) prior to renting any other unit of comparable or smaller size.

#### **SECTION 4.09**      Social Services for Homeless Units.

- (a) Social Services Plan. Prior to the initial rent-up of the units, the Sponsor shall submit to HPD (and to HDC, if requested by HDC in writing) a plan detailing the services to be provided to tenants of Homeless Units and the provider of such services (the "Social Services Plan"). If, at such time, HPD and HDC determine that no funding source is available to fund ongoing social services, then the Social Services Plan shall include, minimally, tenant referrals to services necessary, in the judgment of HPD (and HDC, if HDC has requested to review the plan), to ensure the stability of this tenant population. The Sponsor shall obtain the written approval of HPD for the Social Services Plan (and the written approval of HDC, if HDC has requested to review the plan) prior to the initial rent-up of the units.
- (b) Implementation of Plan. After the Social Services Plan is approved by HPD (and HDC, if applicable), the Sponsor shall enter into a contract, subject to approval by HPD (and by HDC, if HDC has requested to review the contract), with the approved provider documenting the Social Services Plan (the "Social Services Contract") and shall cause the provider to implement the approved Social Services Plan on a continuous basis. Any amendments to the Social Services Plan or to the Social Services Contract shall require the prior written consent of HPD (and HDC, if requested by HDC in writing).

#### **SECTION 4.10**      Reserves for Homeless Units.

- (a) Social Services Reserve.
  - (i) At or prior to the Permanent Conversion, the Sponsor shall deposit with HDC a social services reserve in the amount of \$545,500, to be administered by HDC (the "Social Services Reserve"). The Sponsor may deduct from this deposit any amount previously advanced to the Sponsor by the Credit Provider, as servicer of the HDC Loan, prior to the Permanent Conversion and under the social services reserve line item in the Project's budget in order to implement

the Social Services Plan and to furnish Homeless Units. Amounts advanced prior to the Permanent Conversion to implement the Social Services Plan shall not exceed \$397,500 and amounts advanced to furnish Homeless Units shall not exceed \$148,000, which amount shall be equally distributed among all Homeless Units based on the number of rooms. Proposed furnishings are subject to the prior approval of HPD.

- (ii) Within ninety (90) days of the first anniversary of the Permanent Conversion, and annually thereafter at the end of each fiscal year of the Project, Sponsor shall deposit into the Social Service Reserve 100% of the amount by which (x) the rent collected from the Homeless Units exceeds (y) the amount of rent that would have been collected from the Homeless Units were the rent equal to the amounts set forth on Schedule B-2, as may be increased annually by 2%. If the Social Service Reserve balance exceeds \$15,000 per Homeless Unit, Sponsor shall use such excess to repay the HDC Additional Loan.
- (iii) Reserved.
- (iv) The Sponsor may withdraw funds from the Social Services Reserve only upon the approval of HPD and HDC and to implement the approved Social Services Plan and Social Services Contract.
- (v) The requirement to fund the Social Services Reserve shall terminate on the last day of the Occupancy Restriction Period and any remaining funds in the Social Services Reserve must stay with the Project. At the end of the Occupancy Restriction Period, any remaining funds in the Social Services Reserve must stay with the Project.

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

### **SECTION 5.01      Compliance with Rent Stabilization.**

- (a) All Income-Restricted Units Subject to Rent Stabilization. All Income-Restricted Units (excluding any Market-Rate Units) shall be subject to Rent Stabilization and shall remain subject to Rent Stabilization after the Occupancy Restriction Period ends. The Sponsor shall follow all procedures and guidelines of New York State Homes & Community Renewal ("HCR") (or any successor agency enforcing Rent Stabilization) and all relevant requirements of Rent Stabilization. However, pursuant to a special agreement on rent regulation with the New York State Division of Housing and Community Renewal (a predecessor of HCR), HCR will not regulate the Project in a manner that is inconsistent with the Tax Code or with this Agreement. Where there may be inconsistencies, the more restrictive provisions of the Tax Code and this Agreement shall prevail.
- (b) No Exemptions from Rent Stabilization. The Sponsor shall not claim any exemption or exclusion from Rent Stabilization to which the Sponsor might be entitled with respect to any Income-Restricted Unit. This includes any exemption or exclusion from the rent limits, lease renewal requirements, registration requirements or other provisions of Rent Stabilization due to (i) the vacancy of a unit where the rent exceeds a prescribed maximum amount, (ii) the fact that the tenant's income or rent exceeds prescribed maximum amounts, (iii) the nature of the tenant or (iv) any other factor. This section shall continue to apply to Income-

Restricted Units after the Occupancy Restriction Period ends until any such unit becomes vacant (except for any vacancy resulting from a breach of the warranty of habitability, harassment, constructive eviction or any similar action caused by the Sponsor).

(c) Permitted Increases under Rent Stabilization.

- (i) In General. Where this Agreement allows rent increases under Rent Stabilization for Income-Restricted Units (subject to the other restrictions on increases contained in this Agreement), such language shall permit only those increases that are based on the percentage increases for one- and two-year lease renewals approved annually by the New York City Rent Guidelines Board (or any successor). Subject to the exceptions given in this paragraph (c), rents shall not be increased or registered at a greater amount for any other reason typically allowed under Rent Stabilization, including vacancy lease increases, major capital improvement ("MCI") increases or individual apartment improvement ("IAI") increases. This prohibition applies to both Legal Rents (the registered legal regulated rents) and Actual Rents (which are to be registered as preferential rents). To be clear, this section shall not apply after the Occupancy Restriction Period ends.
- (ii) Exception for Certain Vacancy Lease Increases. Upon vacancy of an Income-Restricted Unit, if the Legal Rent is less than 30% of the Applicable AMI Limit (adjusted for a monthly rent), then the Sponsor may increase the Legal Rent by the lesser of (1) the vacancy lease increase permitted by Rent Stabilization and (2) the amount required to increase the Legal Rent up to 30% of the Applicable AMI Limit (adjusted for a monthly rent).

Exception for MCI Increases After Year 30. During the period commencing on the 30<sup>th</sup> anniversary of the Permanent Loan Closing, MCI increases shall be allowed provided that such major capital improvements are not funded with the HDC Financing or any reserves related to the Project.

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

- (i) "Destabilization" shall mean any set of facts that causes Rent Stabilization to no longer apply to the units, whether by expiration, legislative repeal, judicial invalidation or any other reason.
- (ii) "Contractual Rent Regulation" shall mean the following after Destabilization:
  - (1) The Sponsor shall be required to offer new and renewal leases on the same terms and conditions as had been required by Rent Stabilization at the time of Destabilization (subject however to the provisions in subparagraphs (2) and (3) below) as if the unit were still subject to and not excluded or exempted from any provision of Rent Stabilization, including, but not limited to, any exemption or exclusion regarding rent limits, renewal lease requirements, or any other provision due to (w) the vacancy of a unit where the rent exceeds a prescribed maximum amount, (x) the fact that tenant income or unit rent exceeds

prescribed maximum amounts, (y) the nature of the tenant or (z) any other factor. (2) The "Legal Rent," as such term is used in this Agreement, shall be limited by percentage increases calculated based on a method or index established by HPD for determining the maximum increase to Legal Rent upon lease renewal or vacancy. Such method or index shall be based on inflation or on factors substantially equivalent to the factors considered in calculating such increases under Rent Stabilization at the time of Destabilization, and shall incorporate a method for determining and implementing increases to Legal Rent by reason of major capital improvements performed by the Sponsor, to the extent that such increases, if any, are not prohibited under this Agreement. HPD will publish such methodology in the City Record and will provide a copy of the methodology to the Sponsor upon request. (3) Wherever this Agreement limits increases in rent by increases as permitted by Rent Stabilization (or language of similar import), such increases shall be limited by the percentage increases established by HPD as described in subparagraph (2) above.

**SECTION 5.02**      Registration in Accordance with Rent Stabilization. The Sponsor shall register the rents for each unit other than the Market-Rate Units in accordance with Rent Stabilization as follows:

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

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

- (a)    Tax Code Units.



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

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

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

- 1) the Legal Rent (as set forth in Schedule B);
- 2) the Rental Assistance Rent; and
- 3) for Rental Assistance Units that are not Homeless Units, 90% of FMR, or for Rental Assistance Units that are Homeless Units, 100% of FMR.

If the unit is a Homeless Unit that is not a Rental Assistance Unit, the initial Actual Rent shall not exceed the least of:

- 1) the Legal Rent (as set forth in Schedule B);
- 2) 30% of 30% of AMI (adjusted for a monthly rent); and
- 3) if the Tenant receives Shelter Allowance, the Shelter Allowance.

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

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

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

- 1) the Legal Rent;
- 2) the Rental Assistance Rent; and
- 3) for Rental Assistance Units that are not Homeless Units, 90% of FMR, or for Rental Assistance Units that are Homeless Units, 100% of FMR.

If the unit is a Homeless Unit that is not a Rental Assistance Unit, the Actual Rent upon lease renewal shall not exceed the least of:

- 1) the Legal Rent (as set forth in Schedule B);
- 2) the prior Actual Rent increased as permitted by Rent Stabilization (as limited by Section 5.01); and
- 3) if the Tenant receives Shelter Allowance, the Shelter Allowance.

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

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

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

- 1) the Legal Rent;
- 2) the Rental Assistance Rent; and
- 3) for Rental Assistance Units that are not Homeless Units, 90% of FMR, or for Rental Assistance Units that are Homeless Units, 100% of FMR.

If the unit is a Homeless Unit that is not a Rental Assistance Unit, the Actual Rent upon lease renewal shall not exceed the least of:

- 1) the Legal Rent (as set forth in Schedule B);
- 2) 30% of 30% of AMI (adjusted for a monthly rent); and
- 3) if the Tenant receives Shelter Allowance, the Shelter Allowance.

- (iv) Tax Code Maximums. In no event shall any tenant of a Tax Code Unit, including those Rental Assistance Units that are also Tax Code Units, pay a rent that is greater than the amount permitted by the Tax Code or, for tenants of Rental Assistance Units, a tenant rent share that is greater than the amount required by the Rental Assistance program and allowed by the Tax Code, nor shall the Sponsor charge an Actual Rent or increase the Actual Rent for any Tax Code Unit except as permitted by the Tax Code.

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

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

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

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

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

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

- 1) the Legal Rent; and

- 2) an amount that is the greater of (x) the Actual Rent that would have been permitted upon lease renewal for the prior tenant and (y) 30% of the Applicable AMI Limit (adjusted for a monthly rent).
- (c) 30% Limits Apply to Gross Rents. All provisions in this Agreement limiting a rent to 30% of the Applicable AMI Limit shall mean that the sum of the rent and the applicable utility allowance (i.e., the gross rent) shall not exceed 30% of the Applicable AMI Limit.
- (d) Homeless Units. Actual Rents for Homeless Units shall be subject to the provisions of paragraph (a) above, except as provided otherwise in Section 5.04.

**SECTION 5.04**      Additional Requirements for Rental Assistance Units.

- (a) Tenant's Loss of Rental Assistance. If a Rental Assistance tenant is occupying a Tax Code Unit that is not a Homeless Unit and the tenant loses Rental Assistance at any time, then the Sponsor shall immediately revise the tenant's Actual Rent to an amount that does not exceed the maximum amount that may be collected under the Tax Code and this Agreement.
  - (i) If a Rental Assistance tenant is occupying a Homeless Unit and the tenant loses Rental Assistance at any time, and the tenant receives Shelter Allowance, then the Sponsor shall immediately revise the tenant's Actual Rent to an amount equal to such Shelter Allowance. If such tenant does not receive Shelter Allowance, then the Sponsor shall immediately revise the tenant's Actual Rent to an amount that does not exceed the lesser of (x) 30% of the household's Annual Income (adjusted for a monthly rent) (but in no event less than the amounts set forth on Schedule B-2 (adjusted for the number of bedrooms)) and (y) 30% of 30% of AMI (adjusted for a monthly rent).
- (b) Vacancy; No New Rental Assistance. Upon vacancy of a Tax Code Unit that had been occupied by a tenant with Rental Assistance, if the next tenant identified for the unit does not have Rental Assistance, but the tenant is an Eligible Tenant for a Tax Code Unit, then the Sponsor shall set the Actual Rent for the new tenant in accordance with Section 5.03, and to an amount that does not exceed the maximum amount that may be collected under the Tax Code. The Sponsor shall register this revised Actual Rent as the new preferential rent for the unit.

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

- (a) Rents for Income-Restricted Units at 80% of AMI and Below. After the Occupancy Restriction Period ends, but not less than 150 days prior to the end of each lease with an Eligible Tenant who occupies an Income-Restricted Unit having an income restriction for occupancy at 80% of AMI or below (including Tax Code Units), the Sponsor shall request that the tenant submit to the Sponsor a certification of Annual Income and Household size and verification documentation. Lease renewals for these tenants shall be offered as follows:
  - (i) Continuing Eligible Tenants. A tenant with a verified Annual Income and Household size that continues to qualify the tenant as an Eligible Tenant for the unit, as applicable, as of the date of the certification shall be entitled to a lease renewal and shall pay the Actual Rent that would be in effect for the succeeding lease renewal term. Thereafter, the tenant shall be entitled to

continued lease renewals, and the rent shall be increased as permitted pursuant to Rent Stabilization for so long as the tenant continues to legally reside in the unit. The tenant shall not be required to provide further certifications of Annual Income and Household size pursuant to this Agreement.

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

## **SECTION 5.06      Lease Requirements.**

- (a) Subordination. In renting units to tenants, the Sponsor shall use a lease expressly subordinate to this Agreement and to the Permitted Mortgages. The lease and any riders shall comply with New York law and, other than the leases for Market-Rate Units, shall otherwise be satisfactory to HDC and HPD. To the extent legally permissible, this Agreement shall take precedence and shall control over any other requirements.
- (b) HDC Lease Riders. In renting Income-Restricted Units to tenants, and to the extent legally permissible, the Sponsor shall use a lease rider provided by HDC that sets forth the applicable occupancy and rental requirements of this Agreement (the "HDC Rider"). The HDC Rider shall, among other things, (i) require the tenant to meet HDC's and HPD's eligibility standards in accordance with this Agreement, (ii) prohibit or restrict sublets and (iii) permit the Sponsor to



terminate or refuse to renew the tenant's lease if the tenant fails to provide the Sponsor with certifications and documentation as required within 60 days of the Sponsor's request, or if the tenant provides false or fraudulent materials. No lease or other rider for an Income-Restricted Unit shall contain any provision that conflicts with the terms of this Agreement or the HDC Rider (and no such provision shall be enforceable).

- (c) Subleases; Assignments. The Sponsor shall not consent to any sublease or assignment of lease by a tenant of an Income-Restricted Unit except as may be expressly required by law (and, in such event, only upon at least 30 days' prior written notice to HDC and HPD).

## ARTICLE VI. EXTENDED LOW INCOME HOUSING COMMITMENT

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

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

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

is part of an arrangement with the Sponsor, a purpose of which is to terminate the Extended Use Period.

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

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

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

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

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

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

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

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

## **ARTICLE VII. MANAGEMENT**

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

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

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

## **ARTICLE VIII. OWNERSHIP**

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

- (a)      In General. Except for the conveyance of the Tax Code Units Condo Unit described herein, the Sponsor covenants that it shall not sell, lease, sublease, convey, transfer or otherwise dispose of all or any portion of the Project (each, a



"Transfer") without the prior written consent of HDC and HPD, which shall not be unreasonably withheld. As a condition to a Transfer of all or substantially all of the Project, the transferee shall be required to assume all of the Sponsor's obligations under this Agreement from the date of such Transfer and to execute any document that HDC or HPD shall reasonably require in connection with the assumption.

- (b) Residential Leases. This covenant shall not require HDC's or HPD's consent for the Sponsor to enter into leases with residential tenants or users of the Project, if such leases (i) are consistent with this Agreement and (ii) do not contain an option to acquire all or any portion of the Project while this Agreement is in effect.
- (c) Other Consents. Nothing contained in this Agreement shall affect any provision of the Loan Documents that requires the Sponsor to obtain the consent of the holder of the HDC Mortgage (which may be HDC) or any other person as a condition to a Transfer.
- (d) Foreclosure. This covenant shall not require HDC's or HPD's consent to a Transfer in connection with the foreclosure or deed in lieu of foreclosure of the HDC Mortgage or a comparable conversion of the Project. Any subsequent Transfer, however, shall require the prior written consent of HDC and HPD.

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

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

**SECTION 8.04**      Interests in Tax Credit Investor. Notwithstanding the requirements of Section 8.03, and provided that the Tax Credit Investor is a passive investor in the Beneficial Owner, transfers of (i) passive investment interests in the Tax Credit Investor and (ii) the Tax Credit Investor's passive investment interest in the Beneficial Owner are permitted with written notice to HDC and HPD, so long as (a) the manager, managing member or general partner of the Tax Credit Investor, or any transferee of the Tax Credit Investor's interest in the Beneficial Owner, is an affiliate of, and is and remains controlled by or under common control with, Goldman Sachs & Co., or (b) the transferee is a financial institution, corporation, financial service firm or insurance company that is investment grade (defined as BBB- or better rating by S&P or similar rating agency) or has net assets of \$500,000,000 or more or is a wholly-owned subsidiary of such an entity, provided they are in good standing with The City of New York including as determined by a review of the PASSPORT system or is the manager, managing member or general partner of the transferee Tax Credit Investor, or (c) the transferee is a syndicated low-income housing tax credit fund whose manager is nationally recognized and has at least ten (10) years of prior experience in low-income housing tax credit funds which have totaled in the aggregate at least \$500,000,000 in equity.

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

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

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

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

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

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

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

- (a) Any transfers of (i) interests in Alvista II Investor QOF LLC ("Alvista GS Investor") and UIG BSPI Holdco LLC ("UIG GS Investor") (each, a "GS Investor"), (ii) a GS Investor's investment interest in a Beneficial Owner to an entity wholly owned or controlled directly or indirectly by The Goldman Sachs Group, Inc., (iii) the Alvista GS Investor's investment interest in J2 Investor LLC to an Institutional Investor (as defined below) (Alvista GS Investor is a non-managing member of J2 Investor LLC, which is the sole member and manager of the Non-

- Tax Code Borrower, and (iv) the UIG GS Investor's investment interest in the J2 LI Investor LLC, which is the managing member of the Tax Code Borrower);
- (b) The removal by a GS Investor of J2 147-07 94th Avenue LLC as the managing member of J2 Investor LLC and/or the removal by a GS Investor of J2 Jamaica 94 Equities LLC and/or PRG Jamaica II QOF LLC as a non-managing member of J2 Investor LLC, each in accordance with the terms of that certain Operating Agreement of J2 Investor LLC dated as of December 24, 2019 (the "J2 Operating Agreement"); provided that any replacement managing member is either (i) GS Investor or (ii) a Permitted Entity; and
  - (c) The purchase by a GS Investor of the membership interest of J2 147-07 94th Avenue LLC, J2 Jamaica 94 Equities LLC, and/or PRG Jamaica II QOF LLC in J2 Investor LLC in accordance with the terms of the J2 Operating Agreement, upon written notice to HDC and HPD; provided that (i) a GS Investor becomes the sole member of J2 Investor LLC (ii) a GS Investor replaces J2 147-07 94th Avenue LLC, J2 Jamaica 94 Equities and/or PRG Jamaica II QOF with a Permitted Entity or (iii) a GS Investor sells the membership interest of J2 147-07 94th Avenue LLC, J2 Jamaica 94 Equities and/or PRG Jamaica II QOF LLC to a Permitted Entity.
  - (d) For purposes of this Agreement:
    - (i) "Institutional Investor" shall mean any person or entity controlled by a person or persons who (a) has individual or combined net assets of not less than \$200,000,000, (b) has liquid assets (including, without limitation, unfunded capital commitments) of at least \$15,000,000 and (c) is subject to the jurisdiction of the courts of the State.
    - (ii) "Permitted Entity" shall mean, following the submission of all required disclosure statements and related documents to HDC and HPD, any person or entity that HDC and HPD shall have approved in writing on an expedited basis pursuant to HDC and HPD's sponsor review procedures considering the same types of information and performing the same types of inquiries regarding the integrity and competence of the proposed transferee and its principals or officers as HDC and HPD customarily employ under their sponsor review procedures.

## ARTICLE IX. RECORDS AND REPORTING

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

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



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

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

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

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

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

## **ARTICLE X. ENFORCEMENT**

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

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



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

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

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

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

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

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

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

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

## **ARTICLE XI. MISCELLANEOUS**

**SECTION 11.01**      Fees.

- (a)      Tax Credits Monitoring Fee. Pursuant to the Tax Code, HDC is entitled to a reasonable fee for monitoring the Project's compliance with respect to the Tax Credits. During the Compliance Period, the Beneficial Owner shall pay to HDC an annual monitoring fee that is equal to the sum of (i) an annual fee of \$100 per building in the Project, not subject to an annual cap (the "Building Fee"); and (ii) 0.75% of the maximum annual tax credit rent for the Tax Code Units, subject to an annual cap of \$12,500, if there are 150 or fewer Tax Code Units in the Project, or \$17,500, if there are more than 150 Tax Code Units in the Project (such fee, the "Unit Fee", and together with the Building Fee, the "Tax Credits Monitoring Fee"). If the HDC Loan is paid in full prior to the end of the Compliance Period, the Beneficial Owner shall pay to HDC an amount that is equal to the present value (based on the Daily Treasury Yield Curve Rates, as published by the U.S. Department of the Treasury) of the Tax Credits Monitoring

Fee at the time of the prepayment for each year remaining in the Compliance Period. After such a payment, no additional Tax Credits Monitoring Fee shall be due.

- (b) HDC Monitoring Fee (Prepayment in Full). To compensate HDC for continued monitoring of the Project after a prepayment in full of the HDC Loan, upon such a prepayment and on an annual basis thereafter, the Beneficial Owner shall pay to HDC an amount equal to \$50 per unit (other than the Market-Rate Units), subject to an annual cap of \$12,500, if there are 150 or fewer units in the Project, or \$17,500, if there are more than 150 units in the Project, such amount to be increased annually in accordance with any increase in the New York City Consumer Price Index. If the Beneficial Owner transfers its interest in the Project (subject to the requirements of this Agreement), HDC reserves the right, in its sole discretion, to charge a one-time monitoring fee or to revise the annual fee for continued monitoring.
- (c) Compliance Escrow. If the Project is not in compliance with this Agreement on the date that the Beneficial Owner gives notice of a prepayment to HDC, then unless the Beneficial Owner withdraws the notice until the Project is in compliance, the Beneficial Owner shall enter into a compliance escrow agreement with HDC and deposit \$20,000, such amount to be increased at the time in accordance with any increase in the New York City Consumer Price Index. This compliance escrow shall be in addition to the monitoring fee required by paragraph (b) above. The compliance escrow shall be applied ratably by HDC to monitor compliance with this Agreement. Once the Project is restored to compliance, any balance of the compliance escrow will be refunded to the Beneficial Owner, without interest.

**SECTION 11.02**      Equal Opportunity. The Sponsor shall use reasonable efforts to ensure that businesses owned by women and by members of traditionally disadvantaged minority groups are afforded equal opportunity to participate in any development and construction contracts entered into in connection with the Project.

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

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

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



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

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

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

**SECTION 11.09**      Notices. Any notice, demand, direction, request or other instrument authorized or required to be given or filed under this Agreement shall be deemed to have been sufficiently given or filed if and when sent (i) by certified mail, return receipt requested, (ii) by fax or other electronic means with notice of receipt or (iii) by hand delivery. All notices sent by mail or hand delivery shall be sent to the addresses given above or to any other address of any party that it has notified the other parties of in writing. Notices to HDC or HPD shall be sent to the attention of the General Counsel. Notices required to be given to the Credit Provider shall be sent to JPMorgan Chase Bank, N.A., 237 Park Avenue, 6<sup>th</sup> Floor, New York, New York 10017, Attention: Alisha B. Ozeri, with a copy to Sidley Austin LLP, 787 Seventh Avenue, New York, NY 10019, Attention: Aviva Yakren, Esq. HDC and HPD shall make an effort to send copies of all notices that are sent to the Beneficial Owner to the Beneficial Owner's counsel at Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, New York 10022, Attention: Martin Siroka, Esq., and to the Tax Credit Investor and Alvista GS Investor at Goldman Sachs Bank USA, 200 West Street, New York, NY 10282, Attention: Yarojin Robinson and Urban Investment Group Portfolio Manager, with a copy to Sidley Austin LLP, 787 Seventh Avenue, New York, NY 10019, Attention: Steven C. Koppel, Esq. and to the Fee Owner at Land & Sea Development Corp., 153 Skunks Misery Road, Locust Valley New York 11560, Attention: Rocco Ron Romeo with a copy to Kasowitz, Benson & Torres LLP, 1633 Broadway, New York, New York 10019, Attention David Szeker, Esq. Failure to send any copy, however, shall not affect the effectiveness of the notice.

**SECTION 11.10**      Governing Law; Jurisdiction; Service of Process. The parties unconditionally and irrevocably agree that this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws

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

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

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

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

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

**SECTION 11.15**      Concerning the Legal Owner.

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

- (c) Must Remain in Project for Term of Mortgages. The Legal Owner (including any successor or permitted assign) shall remain in the Project's ownership structure for the entire term of the HDC Mortgage.

**SECTION 11.16** FHA Risk-Sharing Program. For so long as the HDC Loan is insured under the FHA Risk-Sharing Program, the Sponsor and the Project shall comply with all requirements of the FHA Risk-Sharing Program, including each of the following:

- (a) HDC Loan Payments and Reserves. The Beneficial Owner shall make all payments due under the HDC Mortgage and the HDC Mortgage Note, including any required payments into a building reserve.
- (b) Affordable Housing. The Sponsor shall maintain the Project as affordable housing, as defined in 24 CFR part 266.5, and continue to use the units for their original purposes.
- (c) Physical Condition Standards. The Project shall be maintained in accordance with the physical condition standards set forth in 24 CFR part 5, subpart G. HDC (or HUD where applicable) will perform annual physical inspections of the Project in accordance with these standards and the procedures and standards prescribed by HUD's Real Estate Assessment Center (REAC). Failure to maintain the Project in accordance with these standards is a violation of this Agreement and 24 CFR part 266.507. In addition, the Project must comply with the lead-based paint requirements in 24 CFR part 35 and 24 CFR part 200.820, paragraphs (a)-(d).
- (d) Books and Records; Annual Financial Statements. The Sponsor shall maintain complete books and records established solely for the Project; make the books and records available for HUD or General Accounting Office review with appropriate notification; permit HUD officials or employees to inspect the Project upon request; and submit to HDC the annual audited financial statement after the end of the Project's fiscal year.
- (e) Single Asset Mortgagor. Each entity comprising the Sponsor shall operate as a single-asset mortgagor.
- (f) Affirmative Fair Housing Marketing Plan. The Sponsor shall have and comply with an Affirmative Fair Housing Marketing Plan that complies with the provisions set forth in 24 CFR part 200, Subpart M and 24 CFR part 108.
- (g) Equal Employment. The Sponsor shall follow the equal employment requirements pursuant to Executive Order 11246, as implemented by 41 CFR part 60.
- (h) Nondiscrimination in Housing and Employment. The Sponsor certifies to HDC that the Sponsor shall practice nondiscrimination in housing and employment, including by:
  - (i) not using tenant selection procedures that discriminate against families with children, except in the case of a project that constitutes "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act (42 U.S.C. 3607(b)(2));
  - (ii) not discriminating against any family because of the sex of the head of household; and



- (iii) complying with the Fair Housing Act (42 U.S.C. 3601-3619), as implemented by 24 CFR part 100; Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101-12213), as implemented by 28 CFR part 35; Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135; the Equal Credit Opportunity Act (15 U.S.C. 1691-1691f), as implemented 12 CFR part 202; Executive Order 11063, as amended by Executive Order 12259, and implemented by 24 CFR part 107; Executive Order 11246, as implemented by 41 CFR part 60; other applicable federal laws and regulations issued pursuant to these authorities; and applicable State and local fair housing and equal opportunity laws; in addition, so long as the Sponsor receives federal financial assistance, the Sponsor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), as implemented by 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107), as implemented by 24 CFR part 146; and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by 24 CFR part 8.

**SECTION 11.17**      HireNYC. The Sponsor shall comply, and shall cause the Project's general contractor and all applicable subcontractors to comply, with the requirements of HireNYC during the construction period for the Project, as more particularly set forth in the HireNYC Rider attached as Schedule [F], as may be modified by the City from time to time.

**SECTION 11.18**      Environmental Requirements. The Sponsor shall comply the requirements contained in the HPD Negative Declaration attached as Schedule [G].

**SECTION 11.19**      Consent of Fee Owner (Ground Lease). The Fee Owner is signing this Agreement to subject its fee interest in the Premises to this Agreement and to consent to the terms of this Agreement and the following:

- (a)      **Fee Interest Subject to this Agreement.** The Ground Lessor's fee interest in the Premises is subject to this Agreement, and the Ground Lease is subordinate to this Agreement. The Ground Lessor consents to the recording of this Agreement against its fee interest. The Ground Lessor shall promptly provide such further assurances of subordination as HDC and/or HPD may require, including, but not limited to, a separate subordination and non-disturbance agreement satisfactory to the Agency. Notwithstanding the foregoing, HDC and/or HPD shall not look to the Ground Lessor for satisfaction of the obligations of the Sponsor under this Agreement unless the Ground Lease ends prior to the end of its stated term for any reason and the Ground Lessor has not entered into a new ground lease that satisfies Section 11.19(b).
- (b)      **Termination of Ground Lease.** If the Ground Lease ends for any reason prior to the termination of this Agreement and the stated term of the Ground Lease, and the Ground Lessor leases the Premises to a new ground tenant, the new ground lease and the rights of the ground tenant under the new ground lease are subject and subordinate to this Agreement. The ground tenant under the new ground lease shall assume the obligations of the Sponsor under this Agreement for the term otherwise remaining under the original Ground Lease. If the Ground Lessor has not entered into a new ground lease of the Premises, the Ground Lessor shall assume the obligations of the Sponsor under this Agreement. Notwithstanding the foregoing, Fee Owner (and its successors) shall not become payment obligors on account of any financing evidenced by the Loan Documents

solely on account of Fee Owner's succession to Sponsor's interest in the Project resulting from the exercise of its enforcement or termination rights under the Ground Lease.

- (c) **Term of Ground Lease.** The Sponsor and the Ground Lessor represent to HDC and HPD that the Ground Lease is for a term, inclusive of all renewal options exercisable by the Sponsor in its absolute discretion, of not less than 99 years from the date of this Agreement.
- (d) **Fee Mortgages.** The Ground Lessor shall only mortgage or otherwise encumber its fee interest in the Premises in accordance with the terms of the Ground Lease.
- (e) **Leasehold Mortgages.** If HDC and/or HPD holds a leasehold mortgage on the Premises, the Ground Lessor shall provide HDC and/or HPD, as applicable, as leasehold mortgagee with a subordination and non-disturbance agreement satisfactory to HDC and/or HPD. In any such agreement, the Ground Lessor shall (i) provide the leasehold mortgagees with notice of any default under the ground lease, (ii) give the leasehold mortgagees the right to cure any such default, and (iii) consent to the leasehold mortgagees receiving and controlling the use of any casualty proceeds or condemnation awards with respect to the Premises pursuant to any agreements among the leasehold mortgagees and the Sponsor.
- (f) **Transfers of Fee Interest.** The Ground Lessor shall not cause or permit a Transfer of its fee ownership or a transfer or change in ownership of the Ground Lessor except in accordance with the terms of the Ground Lease. If the Ground Lessor is required to assume the obligations of the Sponsor under this Agreement, during any such period, the Ground Lessor shall comply with the property transfer and change in ownership provisions applicable to the Sponsor as provided herein.
- (g) **Consent to Agreement; Ownership of Project; Cooperation.** The Ground Lessor consents to the entry into this Agreement by the Sponsor. The Ground Lessor acknowledges that the Sponsor owns the Project (not including the fee) and may construct and alter the Project in accordance with the terms and conditions of the Ground Lease. The Ground Lessor shall cooperate with the Sponsor, at Sponsor's sole cost and expense, to obtain any building permits or other government approvals that are required for the Project. In addition, the Ground Lessor shall cooperate with HDC and HPD and the Sponsor, at Sponsor's sole costs and expense, in connection with any proposed extension of this Agreement or any other affordability restrictions with respect to the Property.
- (h) **Recording; Conflicts.** The Sponsor shall ensure that a memorandum of the Ground Lease is recorded against the Premises, and Sponsor shall pay all recording fees and transfer taxes as provided in the Ground Lease. If this Agreement conflicts with any ground lease of the Premises, this Agreement controls.

**SECTION 11.20** Living Wage Law. The Sponsor shall comply with the Living Wage Law Contract Provisions attached to this Agreement as Schedule H, where applicable.

[Signatures follow]



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

**J2 OWNER LLC**

a Delaware limited liability company

By: **J2 INVESTOR LLC**

a Delaware limited liability company  
its sole member

By: **J2 147-07 94<sup>TH</sup> AVENUE LLC**

a Delaware limited liability company  
its managing member

By: **J2 JAMAICA 94 EQUITIES LLC**

a New York limited liability company  
its managing member

By: \_\_\_\_\_

Name: Ronen Haron

Title: Authorized Signatory

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

On the 23 day of December, 2019, before me, the undersigned, a notary public in and for said state, personally appeared **RONEN HARON**, 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:

TYLER H. GABLENZ  
Notary Public, State of New York  
Registration #01GA6336625  
Qualified In Westchester County  
Commission Expires Feb. 8, 2020

**J2 147-07 94<sup>TH</sup> AVENUE LI LLC**  
a Delaware limited liability company

By: **J2 147-07 94<sup>TH</sup> AVENUE LLC**  
a Delaware limited liability company  
its managing member

By: **J2 JAMAICA 94 EQUITIES LLC**  
a New York limited liability company  
its managing member

By:   
Name: Ronen Haron  
Title: Authorized Signatory

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

On the 23 day of December, 2019, before me, the undersigned, a notary public in and for said state, personally appeared **RONEN HARON**, 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:

TYLER H. GABLENZ Notary Public, State of New York Registration #01GA6336625 Qualified In Westchester County Commission Expires Feb. 8, 2020
---

JAMAICA II HOUSING DEVELOPMENT  
FUND CORPORATION

By:

Name: Lee Warshavsky

Title: Secretary/Treasurer

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

On the 23 day of December, 2019, before me, the undersigned, a notary public in and for said state, personally appeared **LEE WARSHAVSKY**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public


Commission expires:

TYLER H. GABLENZ  
Notary Public, State of New York  
Registration #01GA6336625  
Qualified In Westchester County  
Commission Expires Feb. 8, 2020

Agreed and Accepted Solely as to  
Section 11.19 of this Agreement

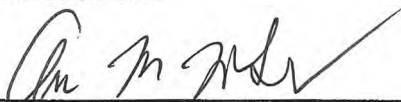
**LAND & SEA DEVELOPMENT CORP.**

By:

  
\_\_\_\_\_  
Name:  
Title:

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


On the 19 day of December, 2019, before me, the undersigned, a notary public in and for said state, personally appeared Rocco Ron Romano, 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:

ANNE M. MCLASKY  
Notary Public, State of New York  
No. 01MC6284034  
Qualified in Suffolk County  
Term Expires June 17, 20 21

NEW YORK CITY HOUSING  
DEVELOPMENT CORPORATION

By:

  
Ruth Moreira  
Senior Vice President

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

On the 23 day of December, 2019, before me, the undersigned, a notary public in and for said state, personally appeared **RUTH MOREIRA**, 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:

JOSEPH S. PETRILLO  
Notary Public, State of New York  
No. 02PE5012175  
Qualified in Westchester County  
Commission Expires June 15, 2023




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

By:

  
Name: Jeremy Hoffman  
Title: Assistant Commissioner

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

On the 23<sup>rd</sup> day of December, 2019, before me, the undersigned, a notary public in and for said state, personally appeared **JEREMY HOFFMAN**, 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: 10/09/2023

RAJEN CHAUHAN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02CH6175284  
Qualified In Nassau County  
My Commission Expires 10-09-2023

APPROVED AS TO FORM BY STANDARD  
TYPE OF CLASS FOR USE UNTIL December 31, 2019:

By: /s/ Amrita Barth  
Acting Corporation Counsel

**SCHEDULE A**

**LEGAL DESCRIPTION OF PREMISES**

[Follows]



## **EXHIBIT A**

### **Legal Description**

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

BEGINNING at a point on the northerly side of 94th Avenue (formerly known as Johnson Avenue) distant 60.97 feet (61.24 feet – survey) easterly from the corner formed by the intersection of the northerly side of 94th Avenue with the easterly side of Sutphin Boulevard (as widened);

THENCE easterly along the northerly side of 94th Avenue, a distance of 328.25 feet to the easterly line of Lot 30 on a certain map entitled, “Map of Talfourd Lawn in Jamaica, Long Island, surveyed April, 1870 by E.W. Conklin filed July 11, 1871 as Map No. 460;

THENCE northerly at right angles to the northerly side of 94th Avenue and along the easterly line of said Lot 30, a distance of 93.07 feet;

THENCE westerly and parallel with the northerly side of 94th Avenue, 35.03 feet;

THENCE northerly at right angles to the preceding course, 7.01 feet to the southerly side of Lot 27 as laid out on the above mentioned map;

THENCE westerly at right angles to the preceding course and along the southerly line of Lot 27, a distance of 15.01 feet to the westerly line of said lot;

THENCE northerly at right angles to the preceding course and along the westerly side of said Lot 27, a distance of 13.21 feet;

THENCE westerly parallel with the northerly side of 94th Avenue and distant 113.29 feet northerly therefrom when measured at right angles to said Avenue, a distance of 107.41 feet;

THENCE South 11 degrees 25’ 00” East .09 feet;

THENCE South 73 degrees 03’ 30” West 159.84 feet;

THENCE South 11 degrees 25’ 00” East along a line which is the prolongation in a southerly direction of the east side of the bridge abutment of the Long Island Railroad bridge over Guilford Street 113.73 feet to the northerly side of 94th Avenue, at the point or place of BEGINNING.

## SCHEDULE B

### DISTRIBUTION OF UNITS AND INITIAL RENTS

Project: **Jamaica II**  
147-25 94th Avenue Jamaica  
Queens, NY  
Block 9998, Lot 25

The Project shall contain 543 units in total, including 2 Superintendents' Units.

Note: The applicable utility allowance is deducted from the Legal Rents and Actual Rents set forth in this Schedule B (i.e. they are "net" rents),

#### Tax Code Units

##### 40% of AMI Units\* – Homeless – Inclusionary Housing Regulatory Agreement Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	7	\$1,212 (80% of AMI)	\$215 (Shelter Allowance)
1-Bedroom	19	\$1,526 (80% of AMI)	\$283 (Shelter Allowance)
2-Bedroom	6	\$1,843 (80% of AMI)	\$425 (Shelter Allowance)
TOTAL	32		

*\*Notwithstanding anything to the contrary contained within this table, the Applicable AMI Limit is 40% of AMI.*

##### 40% of AMI Units\* –Homeless Ground Lease Term Affordable Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	4	\$1,533 (100% of AMI)	\$215 (Shelter Allowance)
1-Bedroom	8	\$1,926 (100% of AMI)	\$283 (Shelter Allowance)
2-Bedroom	9	\$2,323 (100% of AMI)	\$425 (Shelter Allowance)
TOTAL	21		

*\*Notwithstanding anything to the contrary contained within this table, the Applicable AMI Limit is 40% of AMI.*

**SCHEDULE B (continued)****50% of AMI Units\* –Inclusionary Housing Regulatory Agreement Units**

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	17	\$1,212 (80% of AMI)	\$683 (47% of AMI)
1-Bedroom	42	\$1,526 (80% of AMI)	\$865 (47% of AMI)
2-Bedroom	26	\$1,843 (80% of AMI)	\$1,050 (47% of AMI)
TOTAL	85		

*\*Notwithstanding anything to the contrary contained within this table, the Applicable AMI Limit is 50% of AMI.*

**50% of AMI Units\* Ground Lease Term Affordable Units**

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	16	\$1,533 (100% of AMI)	\$683 (47% of AMI)
1-Bedroom	43	\$1,926 (100% of AMI)	\$865 (47% of AMI)
2-Bedroom	19	\$2,323 (100% of AMI)	\$1,050 (47% of AMI)
TOTAL	78		

*\*Notwithstanding anything to the contrary contained within this table, the Applicable AMI Limit is 50% of AMI.*

**Non-Tax Code Income-Restricted Units****120% of AMI Units\***

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	34	\$1,853 (120% of AMI)	\$1,532 (100% of AMI)
1-Bedroom	84	\$2,326 (120% of AMI)	\$1,926 (100% of AMI)
2-Bedroom	44	\$2,804 (120% of AMI)	\$2,323 (100% of AMI)
TOTAL	162		

*\*Notwithstanding anything to the contrary contained within this table, the Applicable AMI Limit is 100% of AMI.*

**SCHEDULE B (continued)****165% of AMI Units\***

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	6	\$2,333 (140% of AMI)	\$1,853 (120% of AMI)
1-Bedroom	0	\$2,926 (140% of AMI)	\$2,326 (120% of AMI)
2-Bedroom	22	\$3,524 (140% of AMI)	\$2,804 (120% of AMI)
TOTAL	28		

*\*Notwithstanding anything to the contrary contained within this table, the Applicable AMI Limit is 120% of AMI.*

**Market-Rate Units**

A total of 135 units shall be Market-Rate Units. The Market-Rate Units shall be distributed as follows:

	<u>No. of Units</u>
Studio	26*
1-Bedroom	87*
2-Bedroom	22*
TOTAL	135

\*Rent for the Market-Rate Units shall be set by the Beneficial Owner. The Market-Rate Units are not subject to Rent Stabilization.

This distribution may be adjusted at initial rent-up with the prior written consent of HDC and HPD.

**Rent Increases at Initial Rent-Up**

The Legal Rents and Actual Rents specified in this Schedule B shall be increased to the 2020 AMI levels at initial rent-up. In certain circumstances, the Legal Rents and Actual Rents specified in this Schedule B may be increased at initial rent-up with the prior written consent of HDC and HPD (and at the sole discretion of HDC and HPD). The parties shall amend this Agreement at the Permanent Conversion to document Schedule B as modified.

**Re-Registration Upon End of Occupancy Restriction Period**

Notwithstanding anything to the contrary in this Agreement, upon the first lease (renewal or vacancy) of a unit after the end of the Occupancy Restriction Period, if the Legal Rent for the unit is higher than the Applicable AMI Limit that had applied to the unit during the Occupancy Restriction Period, the Sponsor shall re-register the Legal Rent for the unit under Rent Stabilization to an amount that does not exceed such Applicable AMI Limit (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 allowed by Rent Stabilization. The foregoing

**SCHEDULE B** (continued)

requirement shall not apply to a renewal lease for a Rental Assistance Unit. If, at such time, this Agreement requires the Sponsor to offer an Actual Rent for the unit that is lower than this newly established Legal Rent, the Sponsor shall register any such Actual Rent as a preferential rent under Rent Stabilization.

**SCHEDULE B-2**

Unit Size	Amount
Studio	\$215
1-Bedroom	\$283
2-Bedroom	\$425



## SCHEDULE C

### INVESTIGATIONS CLAUSE

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

b. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State; or

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

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

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

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

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

2. The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination;

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

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

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

2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

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

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

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

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

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

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

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

**SCHEDULE E**

**COUNCIL RESOLUTION**

[Follows]

THE COUNCIL OF THE CITY OF NEW YORK  
RES. NO. 1157

Resolution approving an exemption from real property taxes for property located at (Block 9998, Lot 25) Queens, pursuant to Section 577 of the Private Housing Finance Law (Preconsidered L.U. No. 577).

By Council Member Dromm

**WHEREAS**, The New York City Department of Housing Preservation and Development ("HPD") submitted to the Council its request dated October 17, 2019 that the Council take the following action regarding a housing project located at (Block 9998, Lot 25) Queens ("Exemption Area"):

Approve an exemption of the Project from real property taxes pursuant to Section 577 of the Private Housing Finance Law (the "Tax Exemption");

**WHEREAS**, The project description that HPD provided to the Council states that the purchaser of the Project (the "Owner") is a duly organized housing development fund company under Article XI of the Private Housing Finance Law;

**WHEREAS**, the Council has considered the financial implications relating to the Tax Exemption;

**RESOLVED:**

The Council hereby grants an exemption from real property taxes as follows:

1. For the purposes hereof, the following terms shall have the following meanings:
  - a. "Company" shall mean J2 147-07 94th Avenue LLC or any other entity that acquires the beneficial leasehold interest in the Exemption Area with the prior written consent of HPD.
  - b. "Effective Date" shall mean the later of (i) the date of conveyance of the Exemption Area to the HDFC, or (ii) the date that HPD, HDC and the Owner enter into the Regulatory Agreement.
  - c. "Exemption Area" shall mean the real property located in the Borough of Queens, City and State of New York, identified as Block 9998, Lot 25 on the Tax Map of the City of New York.
  - d. "Expiration Date" shall mean the earlier to occur of (i) a date which is forty (40) years from the Effective Date, (ii) the date of the expiration or termination of the Regulatory Agreement, or (iii) the date upon which the Exemption Area ceases to be owned by either a housing development fund company or an entity wholly controlled by a housing development fund company.

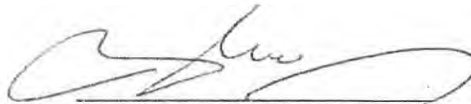
- e. "HDFC" shall mean Jamaica II Housing Development Fund Corporation or a housing development fund company that acquires the legal leasehold interest in the Exemption Area with the prior written consent of HPD.
  - f. "HPD" shall mean the Department of Housing Preservation and Development of the City of New York.
  - g. "New Exemption" shall mean the exemption from real property taxation provided hereunder with respect to the Exemption Area.
  - h. "Owner" shall mean, collectively, the HDFC and the Company.
  - i. "Prior Exemption" shall mean any tax exemption of the Exemption Area in effect on or before the Effective Date.
  - j. "Regulatory Agreement" shall mean the regulatory agreement between HPD, HDC and the Owner establishing certain controls upon the operation of the Exemption Area during the term of the New Exemption.
- 2. The Prior Exemption shall terminate upon the Effective Date.
  - 3. All of the value of the property in the Exemption Area, including both the land and any improvements (excluding those portions, if any, devoted to business, commercial, or community facility use), shall be exempt from real property taxation, other than assessments for local improvements, for a period commencing upon the Effective Date and terminating upon the Expiration Date.
  - 4. Notwithstanding any provision hereof to the contrary:
    - a. The New Exemption shall terminate if HPD determines at any time that (i) the Exemption Area is not being operated in accordance with the requirements of Article XI of the Private Housing Finance Law, (ii) the Exemption Area is not being operated in accordance with the requirements of the Regulatory Agreement, (iii) the Exemption Area is not being operated in accordance with the requirements of any other agreement with, or for the benefit of, the City of New York, (iv) any interest in the Exemption Area or in the leasehold interest of the HDFC is conveyed or transferred to a new owner without the prior written approval of HPD, or (v) the construction or demolition of any private or multiple dwelling on the Exemption Area has commenced without the prior written consent of HPD. HPD shall deliver written notice of any such determination to Owner, all mortgagees of record, and, where there has been an unauthorized conveyance or transfer of any interest in the Exemption Area, to the new owner of such interest in the Exemption Area, or in the leasehold interest of the HDFC, which notice shall provide for an opportunity to cure of not less than sixty (60) days. If the noncompliance specified in such notice is not cured within the time period specified therein, the New Exemption shall prospectively terminate.



- b. The New Exemption shall apply to all land in the Exemption Area, but shall only apply to a building on the Exemption Area that has a new permanent certificate of occupancy or a temporary certificate of occupancy for all of the residential areas issued after the Effective Date and on or before five years from the Effective Date.
  - c. Nothing herein shall entitle the HDFC, the Owner, or any other person or entity to a refund of any real property taxes which accrued and were paid with respect to the Exemption Area prior to the Effective Date.
5. In consideration of the New Exemption, the owner of the Exemption Area shall, for so long as the New Exemption shall remain in effect, waive the benefits of any additional or concurrent exemption from or abatement of real property taxation which may be authorized under any existing or future local, state, or federal law, rule, or regulation. Notwithstanding the foregoing, nothing herein shall prohibit the granting of any real property tax abatement pursuant to Sections 467-b or 467-c of the Real Property Tax Law to real property occupied by senior citizens or persons with disabilities.

Office of the City Clerk,    }  
The City of New York        } ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of the City of New York on November 14, 2019, on file in this office.

  
City Clerk, Clerk of Council



## **SCHEDULE F**

### **HIRENYC RIDER**

#### **Introduction**

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

In general, Covered Parties are required to

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

#### **A. Enrollment**

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

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

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

#### **B. Recruitment Requirements**

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

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

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

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

#### **C. Reporting Requirements**

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

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

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

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

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

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

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

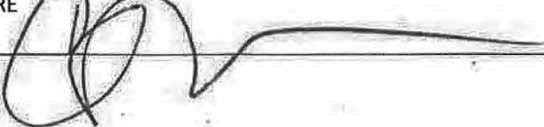
**SCHEDULE G**

**HPD NEGATIVE DECLARATION**

[Follows]

**Part III: DETERMINATION OF SIGNIFICANCE (To Be Completed by Lead Agency)**

**INSTRUCTIONS:** In completing Part III, the lead agency should consult 6 NYCRR 617.7 and 43 RCNY § 6-06 (Executive Order 91 or 1977, as amended), which contain the State and City criteria for determining significance.

1. For each of the impact categories listed below, consider whether the project may have a significant adverse effect on the environment, taking into account its (a) location; (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude.		<b>Potentially Significant Adverse Impact</b>	
<b>IMPACT CATEGORY</b>	<b>YES</b>	<b>NO</b>	
Land Use, Zoning, and Public Policy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Socioeconomic Conditions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Community Facilities and Services	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Open Space	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Shadows	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Historic and Cultural Resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Urban Design/Visual Resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Natural Resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Hazardous Materials	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Water and Sewer Infrastructure	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Solid Waste and Sanitation Services	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Energy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Transportation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Air Quality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Greenhouse Gas Emissions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Noise	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Public Health	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Neighborhood Character	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Construction	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
2. Are there any aspects of the project relevant to the determination of whether the project may have a significant impact on the environment, such as combined or cumulative impacts, that were not fully covered by other responses and supporting materials?  If there are such impacts, attach an explanation stating whether, as a result of them, the project may have a significant impact on the environment.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Check determination to be issued by the lead agency:  <input type="checkbox"/> <b>Positive Declaration:</b> If the lead agency has determined that the project may have a significant impact on the environment, and if a Conditional Negative Declaration is not appropriate, then the lead agency issues a <i>Positive Declaration</i> and prepares a draft Scope of Work for the Environmental Impact Statement (EIS).  <input type="checkbox"/> <b>Conditional Negative Declaration:</b> A <i>Conditional Negative Declaration</i> (CND) may be appropriate if there is a private applicant for an Unlisted action AND when conditions imposed by the lead agency will modify the proposed project so that no significant adverse environmental impacts would result. The CND is prepared as a separate document and is subject to the requirements of 6 NYCRR Part 617.  <input checked="" type="checkbox"/> <b>Negative Declaration:</b> If the lead agency has determined that the project would not result in potentially significant adverse environmental impacts, then the lead agency issues a <i>Negative Declaration</i> . The <i>Negative Declaration</i> may be prepared as a separate document (see <u>template</u> ) or using the embedded <b>Negative Declaration</b> on the next page.			
<b>4. LEAD AGENCY'S CERTIFICATION</b>			
TITLE Director of Environmental Planning	LEAD AGENCY City of New York- Department of Housing Preservation and Development		
NAME Callista Nazaire	DATE 09/30/2019		
SIGNATURE			



**NEGATIVE DECLARATION (Use of this form is optional)****Statement of No Significant Effect**

Pursuant to Executive Order 91 of 1977, as amended, and the Rules of Procedure for City Environmental Quality Review, found at Title 62, Chapter 5 of the Rules of the City of New York and 6 NYCRR, Part 617, State Environmental Quality Review, City of New York- Department of Housing Preservation and Development assumed the role of lead agency for the environmental review of the proposed project. Based on a review of information about the project contained in this environmental assessment statement and any attachments hereto, which are incorporated by reference herein, the lead agency has determined that the proposed project would not have a significant adverse impact on the environment.

**Reasons Supporting this Determination**

The above determination is based on information contained in this EAS, which finds that the proposed project: 147-25 94<sup>th</sup> Avenue, CEQR No. 18HPD063Q, would not result in any significant adverse impacts.

The proposal involves a request from the project sponsor, J2 147-25 94th Avenue LLC., for construction financing from HPD to facilitate the development of a new mixed-use building containing affordable housing and retail space (the "Proposed Development") in the Jamaica neighborhood of Queens, Community District 12. The Proposed Development would be financed through HPD's Mix and Match program.

The project site is located at 147-25 94th Avenue (Block 9998, Lot 25), bounded by the Long Island railroad to the north, 150th Street to the east, 94th Avenue to the south and Sutphin Boulevard to the west. The privately-owned site measures approximately 35,000 gross square feet (gsf) in area and is currently occupied by a warehouse. Under the proposal, the site would be developed with a new 25-story (254-foot-tall), approximately 545,000 gsf building containing approximately 542 units of affordable housing (plus one unit reserved for a superintendent for a total of approximately 543 units). In addition to the residential units, the building would provide approximately 6,700 gsf of retail space, and approximately 145 on-site parking spaces within a garage. The Proposed Development would be constructed in conformance with the site's C6-4/Special Downtown Jamaica zoning district.

According to the Environmental Assessment Statement, the Proposed Development would be implemented in a single phase and is expected to be completed and operational in 2022.

The project site is mapped with an existing E-designation, E-175 for Air Quality, Hazardous Materials, and Noise. The E-Designation program falls under the jurisdiction of the Mayor's Office of Environmental Remediation (OER). At the conclusion of construction and prior to the issuance of a Certificate of Occupancy by DOB, OER will issue a Notice to Proceed signifying that all requirements established for this project have been satisfied. Construction of the proposed project in accordance with OER approvals will be required through the LDA between HPD and the Project Sponsor.

No other significant effects upon the environment that would require the preparation of a Draft Environmental Impact Statement are foreseeable. This Negative Declaration has been prepared in accordance with Article 8 of the New York State Environmental Conservation Law (SEQRA).

TITLE Director of Environmental Planning	LEAD AGENCY City of New York- Department of Housing Preservation and Development
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NAME Callista Nazaire	DATE 09/27/19
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SIGNATURE 
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## **SCHEDULE H**

### **LIVING WAGE LAW CONTRACT PROVISIONS**

Section 6-134 of title 6 of the Administrative Code of the City of New York ("Section 6-134") and the Mayor's Executive Order No. 7 dated September 30, 2014 (the "EO No. 7") regulate the wages of employees employed by Covered Employers (as such term as is defined under Section 6-134) and Additional Covered Employers (as such term is defined under EO No. 7) (Covered Employers and Additional Covered Employers, other than those entities exempted under Section 6-134 as modified by EO No. 7, shall collectively be referred to herein as "Covered Employers"). Therefore, in accordance with Section 6-134 and EO No. 67, the Covered Employers agrees:

A. The Covered Employer shall comply with the requirements of Section 6-134 and EO No. 7 and any rules promulgated thereunder (collectively, the "LW Laws"), including but not limited to, the payment of no less than a Living Wage (as defined in EO No. 7).

B. This Schedule H shall remain in full force and effect for the term of the Financial Assistance (as such term is defined in Section 6-134) from The City of New York (the "City") or a City economic development entity (as such term is defined under Section 6-134 and EO No. 7), or ten (10) years, which ever period is longer.

C. (1) The covered Employer shall ensure that any (i) tenant, subtenant, leaseholder or subleaseholder of the Covered Employer that occupies property improved or developed with Financial Assistance, (ii) concessionaire that operates on the property improved or developed with Financial Assistance, and (iii) any person or entity that contracts or subcontracts with the Covered Employer to perform work for a

period of more than 90 days on the premises of the property improved or developed with Financial Assistance, including temporary services or staffing agencies, food service contractors and other on-site service contractors, but (iv) excluding those persons or entities excluded from the definition of "Additional Covered Employer" in EO No. 7 (all such persons or entities shall be collectively referred to herein as "covered occupants") pays employees no less than a Living Wage, and otherwise complies with the requirements of the LW Laws. The Covered Employer shall include in any contract or agreement with the covered occupant the attached covered occupants' rider ("Rider") to this Section, and take such additional steps as are reasonably necessary to ensure covered occupants are in compliance with the LW Laws, including inspecting the books and records of the covered occupant and confirming delivery of all required notices.

(2) If a covered occupant fails to comply with the LW Laws, the Covered Employer may be subject to imposition of a Compliance Fee as provided for in Paragraph H below.

D. The Covered Employer shall not retaliate, discharge, demote, suspend or take any adverse employment action in the terms and conditions of employment against employee for reporting or asserting a violation of this Agreement or of the LW Laws, for seeking or communicating information regarding rights conferred by the LW Laws, for exercising any rights protected under LW Laws, or for participating in any investigatory, administrative or court proceeding related thereto. The foregoing protections shall also apply to any employee or his or her representative who in good faith alleges a violation of the LW Laws, or who seeks or communicates information regarding rights conferred by the LW Laws in circumstances where he or she in good faith believes it applies. The Covered Employer acknowledges and agrees that taking adverse employment action

against an employee or his or her representative within sixty (60) days of the employee engaging in any of the aforementioned activities shall raise a rebuttable presumption of the Covered Employer having done so in retaliation for those activities.

E. The Covered Employer shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects or assignments that are subject to the requirements of Section 6-134, the wages paid and benefits provided for such hours worked, and the delivery of required employee notices. The Covered Employer shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of six (6) years after the later of completion of this Agreement or the project is completed. The Covered Employer acknowledges and agrees that failure to so retain such payroll records shall create a rebuttable presumption that the Covered Employer did not pay its employees the wages and benefits required under Section 6-134 and EO No. 7. Upon request, the Covered Employer shall provide a certified original payroll record to the [City or City economic development entity].

F. The Covered Employer shall maintain a current list of all its covered occupants and provide that list to the [City or City economic development entity] upon request.

G. No later than the day on which an employee begins work at a site subject to the requirements of Section 6-134 and/or EO No. 7, the Covered Employer shall post in a prominent and accessible place at every such work site and provide each employee with a copy of a written notice, in a form provided by the [City or City economic development entity], detailing the wages, benefits, and other protections to which

covered employees are entitled under Section 6-134 and EO No. 7, providing the name, address and phone number of the Comptroller, and advising employees that if they have been paid less than the Living Wage they may notify the Comptroller and request an investigation. The Covered Employer shall promptly replace any posted notice that is damaged, defaced, illegible or removed for any reason. Such notices shall be provided in English, Spanish and any other language deemed appropriate in the area of the project site. The Covered Employer shall provide the aforementioned written notices to its covered occupants, and require each covered occupant to comply with this Paragraph G in the same manner as the Covered Employer.

H. The Covered Employer agrees that failure to comply with any of the requirements of the LW Laws shall constitute a material breach by the Covered Employer of the terms of this Agreement. The Covered Employer acknowledges and agrees that the [City or City economic development entity] shall have the right, subject to any cure provisions provided for under Section 6-134, to pursue any rights or remedies available under this Agreement, Section 6-134 and EO No. 7 or under applicable law, including (i) termination of this Agreement, (ii) recovering from the Covered Employer the financial assistance disbursed or provided to the Covered Employer, including requiring repayment of any taxes abated or deferred, (iii) withholding of any payment due from the [City or City economic development entity] to the financial assistance recipient in order to safeguard the rights of employees [in a manner consistent with the withholding procedures established by subdivision 2 of section 235 of the New York Labor Law], and (iv) imposing any of the remedies provided for in subsection (g)(2) and (7) of Section 6-134, including payment of wages

and benefits, interest, civil penalties and sums withheld at the commencement of an investigation, and directing reinstatement and/or filing and disclosure. No provision in this Agreement is intended to limit any right of any employee to seek legal and/or equitable relief from a court of competent jurisdiction as provided for in subsection (g) of Section 6-134.

In addition, if the Covered Employer fails to perform in accordance with any of the requirements of Section 6-134 and EO No. 7 and fails to cure such failure, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or any part thereof, and may charge (including any administrative charge established by the [City or City economic development entity]), the Covered Employer for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and Applicable law.

For purposes of Section C of this Agreement, in the event that a covered occupant fails to pay a Living Wage or otherwise comply with Section 6-134 and/or EO No. 7, the [City or City economic development entity] may provide written notice of its intent to impose a Compliance Fee (defined below) on the Covered Employer unless, within [120] days of delivery of the notice, the Covered Employer provides sufficient evidence to the City of the Covered Employer's diligent efforts to enforce the requirement that covered occupants comply with the LW Laws. For purposes of this subsection H, diligent efforts shall mean that (i) the Covered Employer has attached the Rider or included similar living wage language in any contract or agreement with a covered occupant; (ii) the Covered Employer has provided each covered occupant with



written notices as set forth in subsection G herein; (iii) the Covered Employer shall obtain and maintain all certifications from the covered occupants certifying that it has paid its employees a Living Wage; (iv) The Covered Employer shall obtain an Employee Certification log in the form attached as Exhibit B; (v) The Covered Employer shall retain such documentation as is reasonably necessary to prove that it used diligent efforts to enforce the requirement that the covered occupant comply with the LW Laws, which may consist of signed copies of the notices, default letters, email receipts and/or logs; and (vi) the Covered Employer diligently pursues such action to remove the covered occupant and/or otherwise cure the violation.

In the event that the Covered Employer fails to timely deliver such evidence, the City or City development agency shall be entitled to collect liquidated damages in the amount of \$500.00 (the "Compliance Fee") from the Covered Employer.

I. On August 1<sup>st</sup> of each year during the Term of this Agreement, the Covered Employer shall submit to the [City or City economic development entity] an annual certification (in the form attached hereto and made a part hereof as Exhibit A), in a form provided by the [City or City economic development entity], executed under penalty of perjury, stating that all of its employees are paid no less than the Living Wage and are otherwise treated in accordance with the LW Laws, providing the names, addresses and telephone numbers of such employees and affirming the obligation of the Covered Employer to assist the [City or City economic development entity] to remedy any non-compliance by the Covered Employer. All such statements shall be certified by the chief executive or chief financial officer of the Covered Employer, or the designee of any such person.

J. The Covered Employer shall pay to the [City or City economic development entity] all fees, costs expenses, (including, without limitation, attorneys' fees and disbursements) incurred in connection with the enforcement of the terms of this Section by the [City or City economic development entity], or any investigation related thereto, within \_\_\_\_\_ (\_\_\_\_\_) days after demand therefor.

K. The Covered Employer shall cooperate with the Comptroller, Department of Consumer Affairs ("DCA"), the City in connection with their monitoring, investigation, inspection and enforcement efforts related to compliance with the LW Laws, and provide the Comptroller, the City with any and all records and information reasonably requested by such entities in connection with such efforts. In connection with any such activities, the Covered Employer shall permit the Comptroller, the City to observe work being performed at the job site, interview employees during and after work hours and examine the books and records related to the payrolls being investigated and the delivery of required notices. If the Covered Employer fails to comply with this subsection K, such failure to comply shall be deemed a default under this contract or agreement and the Covered Employer shall be subject to any and all remedies set forth in this Section. The Covered Employer acknowledges and agrees that the Comptroller, DCA, the City are each intended to be third party beneficiaries of the terms and provisions of this section.

L. Training provided by DCA in connection with LW Laws.

M. The provisions of this Section shall survive the Expiration of the Term and/or the termination of this Agreement.

### COVERED OCCUPANTS' RIDER

All agreements between Covered Employer and covered occupants (as defined above) shall include the following provisions:

The Covered Occupant hereby agrees to:

1. comply with the requirements of Section 6-134 and EO No. 7, including but not limited to, the payment of no less than a living wage to each of its employees (as such term is defined under Section 6-134).
2. pay all employees a living wage for the term of the financial assistance (as such term is defined under Section 6-134) or ten (10) years, which ever period is longer.
3. maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects or assignments that are subject to the requirements of Section 6-134 and EO No. 7, and the wages paid and benefits provided for such hours worked. The Covered Occupant shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of six (6) years after the later of completion of this Agreement or the project is completed. The Covered Occupant acknowledges and agrees that failure to so retain such payroll records shall create a rebuttable presumption that the Covered Occupant did not pay its employees the wages and benefits required under Section 6-134 and EO No. 7. Upon request, the Covered Occupant shall provide a certified original payroll record to Landlord, the City and/or City economic development entity within ten (10) Business Days.

4. cooperate with the Comptroller, Department of Consumer Affairs ("DCA") and the City in connection with their monitoring, investigation, inspection and enforcement efforts related to compliance with the LW Laws, and provide the Comptroller and the City or City economic development entity with any and all records and information reasonably requested by such entities in connection with such efforts. In connection with any such activities, the Covered Occupant shall permit the Comptroller and the City to observe work being performed at the job site, interview employees during and after work hours and examine the books and records related to the payrolls being investigated and the delivery of required notices. The Covered Occupant acknowledges and agrees that the Comptroller, DCA, and the City are each intended to be third party beneficiaries of the terms and provisions of this Section.
5. post in prominent and accessible place at every such work site and provide each employee with a copy of a written notice, in a form provided by the (applicable Covered Employer), detailing the wages, benefit, and other protections to which covered employees are entitled under Section 6-134 and EO No. 7, providing the name, address and phone number of the Comptroller, and advising employees that if they have been paid less than the Living Wage they may notify the Comptroller and request an investigation. The Covered Occupant shall promptly replace any posted notice that is damaged, defaced, illegible for removed for any reason. Such notices shall be provided in English, Spanish and any other language deemed appropriate in the area of the project site.

6. not retaliate, discharge, demote, suspend or take any adverse employment action in terms and conditions of employment against any employee for reporting or asserting a violation of this Agreement or of the LW Laws, for seeking or communicating information regarding rights conferred by the LW Laws, for exercising any rights protected under LW Laws, or for participating in any investigatory, administrative or court proceeding related thereto. The foregoing protections shall also apply to any employee or his or her representative who in good faith alleges a violation of the LW Laws, or who seeks or communicates information regarding rights conferred by the LW Laws in circumstances where he or she in good faith believes it applies. The Covered Occupant acknowledges and agrees that taking adverse employment action against an employee or his or her representative within sixty (60) days of the employee engaging in any of the aforementioned activities shall raise a rebuttable presumption of the Covered Occupant having done so in retaliation for these activities.
7. provide a written list of all other Covered Occupants at the project site to Covered Employer within ten (10) business days of Covered Occupants receipt of a request therefor.
8. be subject to any rights or remedies against the Covered Employer and available under this Agreement, Section 6-134 and EO No. 7 or under applicable law for Covered Occupant's failure to comply with the requirements set forth in this Agreement, Section 6-134 and EO No. 7.



9. pay to the [City or City economic development entity] all fees, costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred in connection with the enforcement of the terms herein, Section 6-134 and EO No. 7 within \_\_\_\_\_(\_\_\_\_) days after demand therefor.
10. The provisions set forth herein shall survive the Expiration of the Term and/or the termination of this Agreement.

**EXHIBIT A**

**CERTIFICATION**

Reference is hereby made to that certain \_\_\_\_\_ dated as of \_\_\_\_\_ (“Project Agreement”), by and between \_\_\_\_\_ (“Certifying Entity”) and \_\_\_\_\_ (“Agency”).

Pursuant to New York City Administrative Code Section 6-134, also known as the Fair Wages for New Yorkers Act (the “Act”), the undersigned certifies under the penalties of perjury, that the following information is true:

- 1 I am the chief executive officer or the chief financial officer of the Certifying Entity, or the designee of either of them.
- 2 The undersigned, on behalf of \_\_\_\_\_ (“Certifying Entity”) agrees to comply with the requirements of Section 6-134 of the Administrative Code of the City of New York, and with all applicable federal, state and local laws.
- 3 [Certifying Entity, as of the \_\_\_\_\_ day of \_\_\_\_\_, qualifies for the exemption pursuant to the Act and Executive Order No. 7 because (state reason for exemption)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ]
- 4 All of the “employees” of the Certifying Entity at the project site are paid no less than a “living wage” (as such terms are defined in the Act).

- 5 The Certifying Entity has notified all other “covered employers” operating at the project site that they must pay their “employees” not less than a “living wage” and must comply with all other requirements of the Act (as such terms are defined in the Act).
- 6 The Certifying Entity hereby affirms its obligation to assist the Comptroller and the City of New York to investigate, monitor and enforce and remedy non-compliance of all “covered employers” (as such term is defined in the Act) with the Act.
- 7 The Certifying Entity provides the following information. Attach additional sheets if necessary.

Full Name of Certifying Entity\_\_\_\_\_

Address\_\_\_\_\_

City\_\_\_\_\_State\_\_\_\_\_Zip Code\_\_\_\_\_

Telephone Number\_\_\_\_\_

The names, addresses and telephone numbers of all "covered employers" at the project site (whether or not such "covered employers" are exempt) are:

Company's Name:\_\_\_\_\_

Company's Address:\_\_\_\_\_

Company's Phone Number:\_\_\_\_\_

Other Covered Employer's Name:\_\_\_\_\_

Other Covered Employer's Address:\_\_\_\_\_

Other Covered Employers Phone Number:\_\_\_\_\_

Other Covered Employer's Name\_\_\_\_\_

Other Covered Employer's Address:\_\_\_\_\_

Other Covered Employer's Phone Number\_\_\_\_\_

Other Covered Employer's Name\_\_\_\_\_

Other Covered Employer's Address:\_\_\_\_\_

Other Covered Employer's Phone Number\_\_\_\_\_

Other Covered Employer's Name\_\_\_\_\_

Other Covered Employer's Address:\_\_\_\_\_

Other Covered Employer's Phone Number\_\_\_\_\_

**[SIGNATURE TO FOLLOW]**



IN WITNESS WHEREOF, on this \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_, I hereby certify under penalty of perjury that  
the foregoing statements and information are true and correct.

[NAME OF CERTIFYING ENTITY]

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**EXHIBIT B**

**EMPLOYEE LOG CERTIFICATION**

I, \_\_\_\_\_, hereby certify under penalty of perjury, that the following information is true and correct:

1. I am an employee of \_\_\_\_\_ (the "Company")
2. My position is \_\_\_\_\_.
3. The Company provided me with a written notice explaining my rights as an employee and the Company's obligation under the Fair Wages for New Yorkers Act, constituting New York City Administrative Code Section 6-134, as expanded by the Executive Order No. 7, dated September 30, 2014 (the "Act").
4. The Company pays me no less than a living wage pursuant to the Act.

By: \_\_\_\_\_

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

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

## SCHEDULE I

### HDC-HPD Parking and Amenities' Guidelines

#### **Parking:**

1. Use of the Parking Condo Unit shall be restricted to the residents of the Project, provided that any unused parking spaces in the Parking Condo Unit may be rented to the public.
2. Before any parking spaces in the Parking Condo Unit are offered to the public, all residents of the Project must be presented with the option to acquire a parking space in the Parking Condo Unit at a price that is at least twenty percent (20%) lower than the price, if any, that such parking spaces will or would be offered to the public.
3. The certificate of occupancy for the Parking Condo Unit shall be for use group 2.

#### **Amenities:**

1. For purposes of this Agreement, Amenities shall mean any feature of the Project contained in the Tax Code Units Condo Unit or the Market-Rate Units Condo Unit that (a) is not inside an individual residential unit and (b) is available for use by the residents of the Project.
2. All residents of the Project shall be able to use the following Amenities without cost, fee or charge.
  - a. *Roof Lounge on 5th floor;*
  - b. *The indoor lounge areas; and*
  - c. *any children's play room*
3. All other Amenities shall be offered to all the residents of the Project with the following discounts on the annual price, if any, of such Amenity:

AMI Units	Discount
Market and 165% of AMI Units	No Discount
120% of AMI Units	25% reduction of annual cost/fees
50% of AMI Units	50% reduction of annual cost/fees
40% of AMI Units	50% reduction of annual cost/fees

## REGULATORY AGREEMENT

**AGREEMENT** made as of December 24, 2019, by and among **JAMAICA II HOUSING DEVELOPMENT FUND CORPORATION**, a New York not-for-profit corporation, having its office at 247 West 37<sup>th</sup> Street, 4<sup>th</sup> Floor, New York, New York 10018, (the "Legal Owner") and **J2 OWNER LLC**, a Delaware limited liability company having its office at c/o Artimus Construction Inc., 316 West 118<sup>th</sup> Street, New York, NY 10026 (the "Non-LIHTC Applicant"), **J2 147-07 94TH AVENUE LI LLC**, a Delaware limited liability company having its office at c/o Artimus Construction Inc., 316 West 118<sup>th</sup> Street, New York, NY 10026 (the "LIHTC Applicant" together with Non-LIHTC Applicant, collectively, "Applicant", and Applicant together with Legal Owner, collectively, "Sponsor") and the **CITY OF NEW YORK** (the "City"), a municipal corporation acting by and through its **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT** ("Department"), having an office at 100 Gold Street, Ninth Floor, New York, NY 10038.

**WHEREAS**, Land & Sea Development Corp. (the "Owner") has conveyed leasehold title to the premises located in the County of Queens, City and State of New York, currently identified as **Block 9998, Lot 0025** on the Tax Map of the City (as shall be improved by Sponsor pursuant to this Regulatory Agreement), (the "Premises"), more particularly described in Exhibit A attached hereto and made a part hereof to the Legal Owner and Non-LIHTC Applicant pursuant to that certain Lease dated as of the date of this Agreement (the "Ground Lease");

**WHEREAS**, Applicant holds title to the beneficial and equitable leasehold interest in the Premises pursuant to that certain Declaration of Interest and Nominee Agreement ("Nominee Agreement") between Legal Owner and Applicant, dated as of the date hereof;

**WHEREAS**, Sponsor intends to construct improvements on such Premises, which improvements will constitute Affordable Housing within the meaning of Section 23-911 of the New York City Zoning Resolution (the "Resolution") and the Inclusionary Housing Program Guidelines (the "Guidelines") (the Guidelines and Resolution are collectively referred to as the "Program"); and

**WHEREAS**, pursuant to that certain Agreement of Sublease dated as of the date hereof, Non-LIHTC Applicant and Legal Owner have subleased a portion of the Premises intended to contain 216 low income apartments which will ultimately be in the Tax Code Units Condo Unit (as defined herein) to LIHTC Applicant ("Sublease"); and

**WHEREAS**, the Department has been duly authorized to administer the Program, including the execution of a Regulatory Agreement between the Department and Applicant for Floor Area Compensation under the Program (the "Agreement"); and

**WHEREAS**, Applicant has filed with the Department an Affordable Housing Plan pursuant to Section 23-961(d) of the Resolution, attached hereto and made a part hereof as Exhibit B (the "Plan"), and the Department has evaluated and approved the Plan as such terms and requirements of the Plan are reflected in this Agreement; and

**WHEREAS**, Applicant intends to provide Low Income Floor Area (as defined in Section 23-911 of the Resolution (the "Affordable Housing Units")) to be affordable to and occupied by families having incomes less than or equal to the Low Income Limit (as defined in Section 23-911 of the Resolution) in order to enable one or more new multiple dwellings (the "Compensated Development(s)"), to be eligible under the Program for Floor Area Compensation pursuant to

Section 23-932 (R10) or Section 23-154 (Inclusionary Housing designated areas) of the Resolution; and

**WHEREAS**, Non-LIHTC Applicant and Legal Owner shall record a declaration of leasehold condominium (together with by-laws and other schedules attached thereto, as the same may be amended from time to time, the "Condominium Declaration"), with the City Register's Office prior to Applicant's request for a Completion Notice, which such Condominium Declaration shall establish the building to be constructed on the Premises as a condominium (the "Condominium"); and

**WHEREAS**, the Condominium Declaration will establish four (4) separate condominium units, as follows: (i) a leasehold condominium unit containing 216 low income residential units under Sections 42 and 142 of the Internal Revenue Code of 1986, as amended (the "Tax Code Units Condo Unit"), of which 117 are Affordable Housing Units (as defined here), (ii) a leasehold condominium unit containing (a) 162 residential rental units to households whose annual income does not exceed 120% of AMI and 28 residential rental units to households whose annual income does not exceed 165% of AMI (the "Non-Tax Code Income-Restricted Units"), (b) 135 residential rental units which shall be market rate units ("Market Rate Units"), and (c) two (2) superintendent units (together with the Non-Tax Code Income-Restricted Units and Market Rate Units, the "Market Rate Condo Unit"), (iii) a leasehold condominium unit containing approximately 5,972 square feet of retail space (the "Retail Condo Unit") and (iv) a leasehold condominium unit containing the parking (the "Parking Condo Unit", and together with the Tax Code Units Condo Unit, the Market Rate Condo Unit, and the Retail Condo Unit; each a "Condominium Unit" and collectively, the "Condominium Units"); and

**WHEREAS**, upon the formation of the Condominium, the Sublease will terminate and the Tax Code Units Condo Unit will be conveyed to the Legal Owner and the LIHTC Applicant; and

**WHEREAS**, the parties hereto wish to enter into this Agreement to set forth the rights and obligations hereunder;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, it is hereby agreed as follows:

1. Capitalized terms not specifically defined herein shall have the meaning set forth in the Program.
2. (i) Applicant will create, through new construction, one hundred seventeen (117) Affordable Housing Units pursuant to the building plans submitted to and approved by the Department ("Building Plans"), located at the Premises (the "Building") Attached hereto as part of Exhibit C, is list identifying each Affordable Housing Unit.  
  
(ii) Notwithstanding anything to the contrary in this Agreement or the Nominee Agreement, Non-LIHTC Applicant (or its successors and assigns) shall pay all Common Charges and any other carrying costs, including, without limitation, debt service payments and other mortgage payments associated with ownership and operation of the Tax Code Units Condo Unit exceeding the "net rental income" generated by Tax Code Units Condo Unit (said excess, the "Carrying Cost Differential"). As used in this paragraph, the term "net rental income" means rental income generated by the Tax Code Units Condo Unit less operating expenses of Tax Code Units Condo Unit. Payment of such Carrying Cost Differential may be made in the form of a loan to the

owner of the Tax Code Units Condo Unit provided, however, any such loan may not encumber the Tax Code Units Condo Unit or give rise to a lien against the Tax Code Units Condo Unit or any interest or portion therein. Notwithstanding the foregoing, Non-LIHTC Applicant (or its successors or assigns) may enforce any such loan against the owner of the Tax Code Units Condo Unit to the extent advances have been made under said loan; provided, however, that such enforcement shall not be undertaken without the prior written consent of HPD, which consent shall not be unreasonably withheld where enforcement of the loan is being undertaken to facilitate acquisition by Non-LIHTC Applicant (or its successors or assigns) of all or some of the interest in the Tax Code Units Condo Unit and where such enforcement will not give rise to a lien or other encumbrance against the Tax Code Units Condo Unit.

(iii) Prior to the recording of the Declaration, LIHTC Applicant shall submit the Declaration to the Department for its review and approval including, but not limited to, the provisions concerning carrying charges. The Declaration shall thereafter not be modified with respect to provisions concerning or affecting Tax Code Units Condo Unit without the prior written consent of the Department. Upon formation of the Condominium Units and at such time as Non-LIHTC Applicant no longer owns the beneficial interest in Tax Code Units Condo Unit, Non-LIHTC Applicant shall be subject only to Sections 2(ii) and (iii), 5, 10, 12 and 18 of this Agreement.

3. The one hundred seventeen (117) Affordable Housing Units are to be occupied by Low Income Households, as defined in the Resolution, which will permit Floor Area Compensation in conformance with the Resolution.
4. The authority pursuant to the Resolution to create additional Floor Area in Compensated Development(s), granted in accordance with this Agreement, may be transferred by Sponsor or by whomever Sponsor directs the Department, in writing, to receive such transfer authority, subject to the geographic and zoning limitations set forth in the Resolution and subject to the requirements of the Program.
5. The parties hereto agree that the site of the subject Affordable Housing Units is eligible for the construction of Low Income Floor Area pursuant to the Program and the requirements of Sections 23-90 (Inclusionary Housing). The parties also agree that Applicant shall complete the subject Affordable Housing Units application for tax exemption under Article XI of the Private Housing Finance Law, unless the Department has waived, in writing, the necessity for such exemption. The parties hereto further agree that (a) Applicant shall not permit the Building Plans to be professionally certified to the City of New York Department of Buildings ("DOB") and (b) Applicant shall submit such Building Plans to a DOB plan examiner for review, and (c) applicable zoning calculations also shall be approved by a DOB plan examiner, and (d) construction of Affordable Housing Units, as described in the request, is in accordance with the Program requirements and with the Building Plans, with respect to the Affordable Housing Units, (which Program requirements and Building Plans are collectively defined as "Construction Requirements"). The Construction Requirements that relate to the Program requirements or Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall not be altered without the Department's written approval.

Applicant shall complete the construction of the Affordable Housing Units within three (3) years from the date of this Agreement ("Completion Deadline"). The construction of the



Affordable Housing Units shall be deemed complete upon the Department's issuance, for presentation to the DOB, of a Completion Notice in accordance with Section 9 of this Agreement ("Completion").

6. This Agreement is subject to the Applicant's compliance with the requirements set forth in the Program. The Department acknowledges that, as of the date of this Agreement, Applicant has satisfied applicable requirements set forth in Sections 23-90 (Inclusionary Housing), inclusive of the Resolution.
7. Affordable Housing Units created pursuant to this Agreement will be occupied solely by tenants who are Low Income Households at the time of such tenant's Initial Occupancy of such housing and shall be operated as Affordable Housing for Low Income Households for the life of the increased Floor Area of the Compensated Development(s). Such obligation shall run with the tax lot(s) within the zoning lot containing such Affordable Housing Units.
8.
  - (i) The rents charged by Applicant for the Affordable Housing Units upon Rent-up of such units shall (a) not exceed the rents set forth in the schedule attached hereto as Exhibit D, which have been established by the Department pursuant to Sections 23-961(b) of the Resolution, (b) be registered with the New York State Division of Housing and Community Renewal or any successor agency ("DHCR") and (c) thereafter be subject to Rent Stabilization for the term of this Agreement and upon termination of this Agreement in accordance with Section 8(v). Applicant shall register all Affordable Housing Units with DHCR upon the earlier to occur of: (A) the occupancy of the last remaining unit, or (B) one year from Completion Deadline, hereinafter (the "DHCR Registration Deadline"). If rents at Initial Occupancy are tax credit rents, Applicant may register at Initial Occupancy, the Maximum Monthly Rent as the Rent Stabilization rent and the tax credit rents as a preferential rent. Tenant leases must reflect that tenants will be charged the preferential rent in the manner required by the government body that issued the tax credits.
  - (ii) Rents for existing tenants of the Affordable Housing Units upon renewal of leases for such units or at any time during the term of the lease shall be the lesser of (a) the rent allowed by Rent Stabilization, or (b) the Maximum Monthly Rent for Low Income Households, or (c) for units rented to households with incomes, at Initial Occupancy, below the Low Income Limit, the last rent charged for such unit plus the percentage increase established by the Rent Guidelines Board or its successor entity at the time of such renewal or at any time during the lease.
  - (iii) Upon rental of an Affordable Housing Unit that becomes vacant after Initial Occupancy, to a new tenant, the rent shall be the lesser of the rent allowed by Rent Stabilization or the Maximum Monthly Rent for Low Income Households.
  - (iv) Notwithstanding anything to the contrary contained herein, Applicant shall not utilize any exemption or exclusion from any requirement of Rent Stabilization to which Applicant might otherwise be or become entitled with respect to one or more Affordable Housing Units, including, but not limited to, any exemption or exclusion from the rent limits, renewal lease requirements, registration requirements, or other provisions of Rent Stabilization due to (i) the vacancy of a unit where the rent exceeds a prescribed maximum amount, (ii) the fact that tenant income and/or a unit's rent exceeds prescribed maximum amounts, (iii) the nature of the tenant, or (iv) any other factor.

(v) In the event that the Affordable Housing Units are not located in the Compensated Development and the increased Floor Area of the Compensated Development generated by such Affordable Housing Units ceases to exist, the Affordable Housing Units shall continue to remain subject to Rent Stabilization so long as the existing tenants in occupancy remain tenants pursuant to the provisions of Rent Stabilization.

(vi) Applicant shall grant all tenants the same rights that they would be entitled pursuant to Rent Stabilization. In addition, Applicant shall register the Affordable Housing Units with DHCR pursuant to Rent Stabilization, and such units shall be subject to Rent Stabilization without regard to whether such Affordable Housing Units are statutorily subject to Rent Stabilization. Applicant shall ensure that these rights are stated in each lease for an Affordable Housing Unit. If any court declares that Rent Stabilization is statutorily inapplicable to an Affordable Housing Unit, such unit shall remain in Rent Stabilization in accordance with this Agreement and the lease for such Affordable Housing Unit for the remainder of the Regulatory Period.

(vii) All Affordable Housing Units at the Premises may only be occupied as a primary residence, as defined in Rent Stabilization, by natural persons or families pursuant to a one or two year lease who have met the applicable income requirements for Low Income Households at the time of such tenant's initial occupancy of such unit. Applicant shall only offer a vacant dwelling unit for occupancy by persons or families intending to occupy such unit as their primary residence pursuant to a one or two year lease and shall not cause or permit the sublease or assignment of any dwelling unit for transient occupancy, for occupancy by any household that is not income eligible, or to any corporation or other entity.

9. Applicant agrees not to request or accept a Certificate of Occupancy ("C of O") or a Temporary Certificate of Occupancy ("T C of O") for any portion of the Compensated Development that utilizes Floor Area Compensation until the Department issues a Completion Notice to such Compensated Development.

The Department shall issue a Completion Notice upon Applicant's compliance with the following requirements (a) through (n) of this Section (9):

- (a) submission of proof that each Affordable Housing Unit that is not located in the portion of the Compensated Development that utilizes Floor Area Compensation, has received a C of O or a T C of O, and (2) where applicable each Affordable Housing Unit that is located in the portion of the Compensated Development that utilizes Floor Area Compensation has received certification from DOB that such Affordable Housing Unit is eligible to receive its C of O or T C of O upon the Department's issuance of a Completion Notice;
- (b) at the discretion of the Department, performance by the Department of a site inspection which establishes to the satisfaction of the Department that (i) the Affordable Housing Units meet the requirements of Sections 23-96(b), (c) and (d) of the Resolution and (ii) the Building meets the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

- (c) funding of the Special Reserve Fund in accordance with Section 15 of this Agreement; and
- (d) submission of proof, satisfactory to the Department, that the Affordable Housing Units are being rented in accordance with Sections 8, 21 and 22 of this Agreement and that LIHTC Applicant has entered into leases with tenants for at least 10% of the Affordable Housing Units in accordance with the Program, pursuant to which the tenants may begin occupancy upon the issuance of a C of O or T C of O; and
- (e) submission of certificates of insurance required by Section 12 of this Agreement with all premiums for the current year fully paid; and
- (f) submission on or after the date that DOB either certifies to the Department that DOB is prepared to issue the C of O or the T C of O for all of the Affordable Housing Units or that DOB has issued the C of O or the T C of O for all of the Affordable Housing Units, as the case may be, of (i) a policy of leasehold title insurance dated as of the date the Legal Owner and Non-LIHTC Applicant acquired leasehold title to the Premises, or a title policy insuring the lien of mortgage of the primary Lender for the Premises and/or the Premises or such Lender's credit enhancer, dated as of the date of the closing of the financing of such mortgage, will satisfy the foregoing, where such policy (a) has been issued by a title company in good standing licensed to issue title insurance in New York State and contains the Standard New York Endorsement in substantially the form that appears as Exhibit E hereto, (b) such policy evidences the leasehold ownership in the HDFC and the Non-LIHTC Applicant, and the absence of liens and other encumbrances on the Premises other than those approved by the Department, (ii) proof of payment of premiums therefor, and (iii) title continuations run by the title company from the date of the title policy to the date of submission of such title policy together with a letter from the title company confirming the absence of liens and encumbrances on the Premises other than those previously approved by the Department and mechanics liens which have been bonded; and
- (g) submission of an executed contract between the Department and the Administering Agent in accordance with Section 11 of this Agreement; and
- (h) submission of a Memorandum of Regulatory Agreement, where applicable, and the Agreement stamped as recorded separately in the Office of the City Register in accordance with Section 24 and Section 29 respectively, of this Agreement; and
- (i) submission of proof that any required subordination and non-disturbance agreement ("Affordable Housing Subordination Agreement") was recorded immediately following execution thereof and that Applicant fully complied with the requirements of Section 19 of this Agreement; and
- (j) submission of, (1) proof of registration of the building on the Premises that contains the Affordable Housing Units and all occupied Affordable Housing Units with the DHCR, and, if the building is not fully occupied, an affidavit stating that Applicant shall register all remaining units as they become occupied; (2) proof

that such building is entirely free of violations of record issued by any City or State agency pursuant to the Multiple Dwelling Law, the Building Code, the Housing Maintenance Code and the Program and (3) submission of an affidavit stating that Applicant shall complete multiple dwelling registration of the building on the Premises, that contains the Affordable Housing, in accordance with the New York City Housing Maintenance Code; and

- (k) certification that the representations, warranties and statements made by the Applicant that are contained in this Agreement and in any other documents executed in connection with this Agreement remain true and correct as of the date on which the foregoing conditions have been satisfied; and
- (l) submission of proof that the Building Plans were reviewed by a DOB plan examiner and submission of a zoning sheet approved by DOB after the issuance of a temporary certificate of occupancy for the Affordable Housing Units; the Department's issuance of the Completion Notice shall be based upon such DOB approved calculations; and
- (m) where applicable, submission of proof of completion of all applications for tax exemptions and that Applicant has fully complied with Section 5 of this Agreement. With respect to an application for real property tax exemption benefits pursuant to Article XI of the Private Housing Finance Law ("Article XI"), Applicant shall be deemed to have complied with this Section 9(m) when Applicant has provided the Department with all information the Department deems necessary for it to submit a request, on behalf of Applicant, to the New York City Council for real property tax exemption benefits for the Affordable Housing pursuant to Article XI; and
- (n) compliance with the terms of this Agreement and the Program.

10. Warranties. Applicant shall obtain and retain commercially reasonable warranties of the work on the Affordable Housing Units from the general contractor and all subcontractors performing such work and, at the Department's request, shall submit such warranties for inspection.

11. Renting Affordable Housing Units.

- (a) Occupancy Restriction Period: For the duration of the Occupancy Restriction Period as defined in that certain Regulatory Agreement among Legal Owner, Applicant, HPD and New York City Housing Development Corporation ("HDC Regulatory Agreement") for the Premises, the Affordable Housing Units will be managed and operated by LIHTC Applicant (in this capacity, "Administering Agent"), an organization qualified to participate in the Program. The Administering Agent shall ensure that Affordable Housing Units are rented prior to the DHCR Registration Deadline and each subsequent vacancy, in compliance with the Plan and all of the requirements of the Program. Within (60) sixty days of the DHCR Registration Deadline, the Administering Agent shall submit an affidavit to the Department attesting that the Monthly Rent registered and charged for each Affordable Housing Unit, complied with the Monthly Rent requirements for such unit, at Initial Occupancy. Each year after the DHCR Registration Deadline, in the month

of March, the Administering Agent shall submit an affidavit to the Department attesting that each lease or sublease of an Affordable Housing Unit or renewal thereof, during the preceding year, complied with the applicable Monthly Rent requirements of the Program.

Applicant may enter into a subcontract with another for-profit entity including an entity affiliated with Applicant to provide certain management services, except that the Administering Agent must retain responsibility for tenant selection and Rent-up, as well as responsibility for annual reporting to the Department with respect to the Affordable Housing Units pursuant to the Program and this Agreement. A contract between the Administering Agent and the Department ("Administering Agent Agreement") is attached and made a part hereof as Exhibit F. The Department reserves the right to replace the Administering Agent in the event that the Affordable Housing Units are not rented at Rent-up and each subsequent vacancy thereafter in compliance with the Program.

- (b) After the Occupancy Restriction Period: No later than thirty (30) days prior to the expiration or termination of Occupancy Restriction Period, Applicant shall enter into a contract with a not-for-profit administering agent qualified and approved by the Department, pursuant to Section 23-96(e)(2), to participate in the Program. The contract with the new Administering Agent shall take effect upon the date of expiration or termination of the HDC Regulatory Agreement restriction period. The Administering Agent hired by Applicant shall ensure that Affordable Housing Units are rented at each subsequent vacancy after the DHCR Registration Deadline, in compliance with the Plan and all of the requirements of the Program. Each year after the DHCR Registration Deadline, in the month of March, the Administering Agent shall submit an affidavit to the Department attesting that each lease or sublease of an Affordable Housing Unit or renewal thereof, during the preceding year, complied with the applicable Monthly Rent requirements of the Program.

The Department reserves the right to replace the Administering Agent in the event that the Affordable Housing Units are not rented at each subsequent vacancy after the DHCR Registration Deadline in compliance with the Program. Applicant may enter into a subcontract with another for-profit entity including an entity affiliated with Applicant to provide certain management services, except that the Administering Agent must retain responsibility for tenant selection and Rent-up, as well as responsibility for annual reporting to the Department with respect to the Affordable Housing Units pursuant to the Program and this Agreement. Applicant may not terminate its agreement with the Administering Agent without simultaneously entering into a new Administering Agent Agreement approved in writing by the Department.

Nothing stated herein limits or modifies in any way whatsoever the requirement contained in Section 7 herein that the Affordable Housing Units be operated as such for the life of the increased floor area of the Compensated Development(s).

12. Insurance.

(a) Insurance.

- (i) Applicant shall obtain and maintain in force all-risk casualty insurance, including broad form extended coverage that, in the event of a casualty to the Building containing the Affordable Housing Units, will pay an amount

of insurance equal to full replacement value of the Building containing the Affordable Housing Units.

- (ii) Applicant shall obtain and maintain in force commercial general liability insurance and other insurance of commercially reasonable types and amounts with respect to the Building containing the Affordable Housing Units.

(b) Casualty.

- (i) In the event of a casualty, Applicant and/or the Administering Agent shall promptly notify the Department thereof. The Department agrees that, subject to the terms and conditions set forth in this Section 12, the proceeds of the insurance on the Premises may be utilized as determined by the lender or lenders participating in the financing of the Building (the "Financiers") in accordance with the documents governing such Financiers' loan(s), copies of which have been provided to the Department (the "Loan Documents"). Applicant shall promptly inform the Department of the disposition of such insurance proceeds.

- (ii) (A) In the event of a partial casualty, to the extent that any additional Floor Area created pursuant to this Agreement continues to exist or is reconstructed after such casualty, the Affordable Housing Units shall be reconstructed so as to maintain in the Building the same ratio of Affordable Housing to the additional Floor Area as existed prior to such casualty, notwithstanding the availability of, or priority of payment of, insurance proceeds, and the terms of this Agreement shall remain in full force and effect.

(B) If Applicant and Financiers determine that due to the nature of the casualty and the condition of the remaining structure, it is not practicable to include the Affordable Housing Units as originally configured in the replacement building, the Affordable Housing Units may be reconstructed in a location other than the Premises in accordance with the requirements of this Agreement and the Program.

- (iii) In the event of a total casualty, where all additional Floor Area created pursuant to this Agreement ceases to exist and the Applicant elects not to utilize the additional Floor Area in the restored building, if any, then all proceeds shall be applied in accordance with the Loan Documents.

- (iv) Applicant agrees that if the Building containing the Affordable Housing Units is reconstructed as provided in Section 12(b)(ii), then: (A) at such time as the restored portion of the Building or any new building is ready for occupancy, the Affordable Housing Units on each restored floor shall be made available for occupancy and re-rented concurrently with the market rate units on the same floor; (B) Applicant shall restore, repair, replace rebuild, alter or otherwise improve the Affordable Housing Units in accordance with this Agreement and the Program in effect as of the date hereof; (C) such construction shall be free of all violations under the New York City Building Code, the New York State Multiple Dwelling Law and



the New York City Housing Maintenance Code and (D) Applicant shall, upon request of the Department, amend this Agreement to reflect any changes to the number, configuration or location of the Affordable Housing Units in any replacement building or off site location for the Affordable Housing Units made in accordance with this Section 12.

- (v) The Department acknowledges and agrees that Applicant has the right to require the Financiers under any current or future Mortgage to use the insurance proceeds for the rebuilding of the Premises (with certain protective procedures).

13. Construction Monitoring. The Department may monitor the construction of the Affordable Housing Units in any reasonable manner, including inspection of the Premises. Upon request (a) Applicant shall give the Department notice of planning and construction progress meetings by telephone or in writing and (b) the Department may (i) participate in planning and construction progress meetings, (ii) review construction contracts, plans, specifications and materials samples and (iii) review proposed changes to the foregoing. Applicant shall give to the Department (x) following the Department's request for any documents or materials pursuant to the preceding sentence, notice of proposed changes to such documents or materials, and (y) notice of any casualty to or other material event concerning the work on the Affordable Housing Units.
14. Disclosure of Financial Arrangements. Upon the request of the Department, Applicant shall fully disclose the financial terms and arrangements relating to the Affordable Housing Units and sale or use by Applicant of the Completion Notice. In the event that the Department obtains information pursuant to this Section 14, the Department shall thereafter disclose such information to third parties only as required by law, except that such data may be used and disclosed without attribution to Applicant as part of an analysis of the Program.
15. Special Reserve Fund. (a) Simultaneous with or prior to the issuance of a Completion Notice, Applicant will fund a special operating reserve fund (the "Special Reserve Fund") in the amount of either: (1) Ninety-Nine Thousand three Hundred Ninety-Six dollars (\$99,396) which represents \$1.15 per square foot of Affordable Housing as stated in the architect self-certification submitted to the Department on October 10, 2019 (the "Architect Certification") or (2) if, in accordance with Section 9 (I), the DOB approves zoning calculations that differ from the Architect Certification, then \$1.15 per square foot of Affordable Housing as stated in such DOB approved zoning calculations, which shall be placed in a blocked reserve account to be administered by the Department or its designee. The Special Reserve Fund and the interest accrued thereon shall belong to the Tax Code Units Condo Unit and the beneficial owner of the Tax Code Units Condo Unit and shall be used solely for the benefit of the Affordable Housing Units. The Special Reserve Fund is separate from the Building reserve fund built into the rent roll that will accumulate over time. The proceeds of the Special Reserve Fund shall be available to pay for unanticipated increases in the cost of operating and maintaining the Affordable Housing Units (including, but not limited to, escalating real estate taxes), or for capital repairs or improvements, the cost of which cannot be covered by the Building's capital reserve fund. Expenditures from the Special Reserve Fund shall be made solely at the discretion of the Department and may be made by the Department on behalf of LIHTC Applicant.

(b) If, the Department authorizes any expenditures to be made from the Special Reserve Fund, Applicant shall replenish the Special Reserve Fund in the amount of the total sum of all such authorized expenditures by applying the excess of collected rents over actual operating expenses until all such repayments have been made. Such repayments into the Special Reserve Fund shall be made prior to the payment of any unpaid developer, syndication or partnership fees. In addition, such repayments shall be supported by the most recent financial statements, an independent auditor's report and a rent roll for the Premises. Applicant may choose to replenish such Special Reserve Fund on a calendar year basis or on a fiscal year basis. In addition, upon sale, transfer other disposition the Affordable Housing Units or any interest therein, Applicant or Legal Owner as applicable, shall repay, in full, all amounts withdrawn from and owed to the Special Reserve Fund.

(c) In the event that the Occupancy Restriction Period shall terminate (the "HDC/HPD Regulatory Termination"), the Applicant shall deposit into the Special Reserve Fund an additional amount equal to \$1.10 per square foot of the Affordable Housing plus interest, compounded from the date of the issuance of the Completion Notice until the date that the Occupancy Restriction Period termination occurs at a rate equal to the rate at which the initial deposit to the Special Reserve Fund earned interest.

(d) Upon the occurrence of the HDC/HPD Regulatory Termination, Applicant shall transfer any funds remaining in the Operating Reserve Fund (as such term is defined in that certain mortgage delivered from Applicant and Legal Owner to HDC dated as of the date hereof) but in no event less than \$543,000, (the "Minimum Transfer Amount"), into the Special Reserve Fund, to be held and administered by the Department or its designee. In the event that such remaining funds are less than the Minimum Transfer Amount, Applicant and/or Owner shall make additional contributions to the Special Reserve Fund pursuant to the provisions in Section 15(b) until the aggregate amount of such contributions equals the Minimum Transfer Amount.

16. Inspection.

(a) The Department shall have full authority to inspect the Affordable Housing Units without prior notice during business hours and Applicant and the Administering Agent with respect to the Affordable Housing Units shall cooperate fully with the Department in any such inspection. The Department shall have authority to inspect the Affordable Housing Units other than during business hours on three (3) days prior notice.

(b) The Department shall have full authority to inspect the books and records of Applicant and the Administering Agent without prior notice during business hours and Applicant and the Administering Agent shall cooperate fully with the Department in any such inspection. Applicant and the Administering Agent shall furnish copies of all books and records with respect to the Affordable Housing Units, to the Department, without cost to the Department, upon five (5) days prior written request.

17. Operating Accounts. Applicant shall provide the Department with the names and locations of all bank accounts established with respect to the management and operation of the Affordable Housing Units by LIHTC Applicant (the "Operating Accounts"). All such accounts shall confer plenary authority on the Department to freeze such accounts, which authority the Department shall exercise subject to Section 18 of

this Agreement. Furthermore, LIHTC Applicant shall provide the Department with annual operating statements for the Affordable Housing Units.

18. Remedies of the Department.

- (a) If Applicant violates any of the terms of this Agreement, or if any of the representations and warranties by Applicant set forth in Section 9(k) of this Agreement are determined to be false, then the Department may declare a default under this Agreement.
- (b) Upon declaration of a default under this Agreement, the Department shall give Applicant and the Administering Agent, as applicable, notice thereof by facsimile, hand delivery or reputable overnight courier and a reasonable opportunity to cure (if such default can be cured). If at the end of the cure period (if any) the default has not been cured, then the Department shall provide Applicant and the Administering Agent, as applicable, notice thereof and shall provide Applicant and the Administering Agent an opportunity to be heard on not less than three (3) days prior written notice. Following such hearing, upon the existence of an uncured default under this Agreement, the Department may (i) assume responsibility for management of the Affordable Housing Units directly or through a third party designated by it, (ii) freeze the Operating Accounts for the Tax Code Units Condo Unit, (iii) seek specific performance of this Agreement or an injunction against its violation, (iv) have a receiver of its choice appointed during the pendency of any litigation, (v) seek monetary damages against Applicant, and/or (vi) terminate this Agreement with respect to any portion of the Affordable Housing for which a Completion Notice pursuant to Section 9 has not been issued. In the event that the Department exercises its rights under clause (ii) of this Section 18(b) and provided that there are sufficient funds in the Operating Accounts then the Department shall use the funds in such Operating Accounts to make payments due under the loan documents for previously approved mortgage loans of the Applicant and to pay for reasonable and customary operating expenses for the Affordable Housing Units.
- (c) If an Affordable Housing Subordination Agreement has been entered into by a lender ("Financier") in accordance with Section 19 of this Agreement, the Department shall terminate this Agreement at any time prior to the issuance of the Completion Notice at the request of such Financier, or its successors or assigns, if such Financier, its successors or assigns, commences foreclosure proceedings or receives a deed in lieu of foreclosure with respect to the mortgage loan that is the subject of such Affordable Housing Subordination Agreement. If the Department terminates this Agreement pursuant to this Section 18(c): (1) all benefits granted pursuant to this Agreement to any project will be revoked and (2) this Agreement shall become null and void. The Department shall provide written confirmation of termination in recordable form upon the written request of Applicant and/or Financier.
- (d) The remedies set forth in Section 18(b) shall be cumulative with any other remedies available to the Department at law or in equity and exercise of one or more remedies set forth in Section 18(b) shall not limit the Department in the exercise of one or more other remedies set forth therein or otherwise available to the Department at law or in equity.

- (e) The Department may exercise the remedies set forth in Section 18(b) without the notice, opportunity to cure or hearing provided therein if the Department determines that exigent circumstances require immediate action to protect the Premises or the tenants thereof. The Department will provide notice and a hearing as provided in Section 18(b) promptly following exercise of its remedies as set forth therein.
- (f) If the Department elects to assume responsibility for management of the Affordable Housing Units pursuant to this Section 18, Sponsor shall immediately deliver possession of the Affordable Housing Units and all books and records kept in connection therewith to the Department or the person designated by the Department and shall cooperate fully in effectuating the smooth transfer of management and control of the Affordable Housing Units, including execution of written instruments and provision of notice to third parties.
- (g) Applicant hereby grants the Department and its designees an irrevocable license to enter and remain on the Affordable Housing Units for the purpose of managing such Affordable Housing Units as provided in this Section 18.

19. Debt Restrictions.

- (a) Initial Debt: In accordance with Section 23-93 of the Resolution, Applicant shall not mortgage or otherwise encumber the Affordable Housing Units or this Agreement without the prior written consent of the Department. Furthermore, in the event that the Department consents to a mortgage loan, the lender must enter into an Affordable Housing Subordination Agreement with the Department in form and substance satisfactory to the Department, that subordinates the loan to all of the terms and conditions of this Agreement, substantially in the form annexed hereto as Exhibit K (the "Affordable Housing Subordination Agreement"). Immediately following execution of the Affordable Housing Subordination Agreement, Applicant shall cause such Agreement to be recorded against the Affordable Housing Units in the Office of the City Register for the county in which the Affordable Housing Units are located, and shall pay all required fees and taxes in connection therewith.

Attached hereto as Exhibit J is the development budget approved by the Department setting forth the sources and uses of financing for the construction of the Affordable Housing Units. Provided the lender holding a mortgage that secures such debt enters into the Affordable Housing Subordination Agreement in form and substance satisfactory to the Department and the Department receives proof of recordation of such Agreement immediately following execution thereof, the Department approves such debt ("Initial Debt").

- (b) Subsequent Debt: Notwithstanding anything to the contrary contained herein, on or after the date of issuance of the Completion Notice in accordance with Section 9 of this Agreement, or, if more than one Completion Notice is issued, on or after the date of the final Completion Notice, Applicant shall not mortgage or otherwise encumber the Affordable Housing Units or this Agreement with debt other than any Initial Debt approved by the Department and any modifications of same unless, (1) Applicant has notified the Department of such debt; (2) the lender is a

local, state, or federal agency, savings bank, commercial bank, life insurance company, public real estate investment company, pension fund, Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), or other lender approved by the Department, (3) if the debt service coverage ratio is less than 1.1, Applicant has obtained the prior written consent of the Department, and (4) if such debt is a new indebtedness and/or a new mortgage, the lender enters into an Affordable Housing Subordination Agreement with the Department in the form annexed hereto as Exhibit L which Applicant shall cause to be recorded against the Affordable Housing Units immediately following execution thereof in the Office of the City Register for the county in which the Affordable Housing Units are located.

20. Plan Certification. Following the execution of this Agreement, the Department will, upon the request of Applicant, certify that the Plan has been submitted and approved, and is in compliance with the Program.
21. Marketing of Affordable Housing Units. The Administering Agent shall be required to market the Affordable Housing Units in accordance with the Program. Furthermore, each lease for an Affordable Housing Unit shall provide that such lease may be terminated and such tenant may be evicted if such tenant falsely or fraudulently certifies income or household composition to the Administering Agent.
22. Initial Occupancy Certification. Within sixty (60) days following the DHCR Registration Deadline, the Administering Agent shall submit to the Department an affidavit attesting that each Household occupying an Affordable Housing Unit complied, at Initial Occupancy, with the annual income eligibility requirements of the Program and that the Monthly Rent registered and charged for each Affordable Housing Unit, complied with the Monthly Rent requirements for such unit, at Initial Occupancy. In accordance with C.F.R. 5.609 or any successor regulations, "Annual Income" shall mean the anticipated total income from all sources to be received by the household head and spouse and by each additional member of the household, including all net income derived from assets, for the twelve (12) month period following the initial determination of income. The Administering Agent also shall retain all records and documents relating to income determination for a minimum of three (3) years after the date a tenant commences occupancy in an Affordable Housing Unit.
23. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assignees. Neither Legal Owner, Non-LIHTC Applicant nor LIHTC Applicant shall sell, transfer or otherwise dispose of ("Transfer") the Affordable Housing Units without prior approval from the Department; provided, however, that no such approval shall be required in connection with the Transfer of the Affordable Housing Units in connection with a foreclosure, deed in lieu of foreclosure or other method whereby a lender (or any parent, affiliate or subsidiary of such lender, as may be applicable) acquires title to the Affordable Housing Units and no such approval shall be required for any Transfer from a lender (or any parent, affiliate or subsidiary of such lender, as may be applicable) to any transferee described in this proviso which shall be referred to as, a "Lender Transferee". Before any Transfer of the Affordable Housing Units, the Legal Owner, Non-LIHTC Applicant and LIHTC Applicant, as applicable, shall require the subsequent purchaser or transferee ("Transferee") to assume in writing, Applicant's and Legal Owner's obligations and duties under this Agreement, pursuant to an Assignment and Assumption

Agreement in form and substance satisfactory to the Department. Legal Owner's, Non-LIHTC Applicant's and LIHTC Applicant's, as applicable, request for HPD approval of a Transfer shall include evidence that after any such transfer, the Affordable Housing Units are financially feasible without any City subsidy or discretionary tax exemption. Any such Assignment and Assumption Agreement shall be in recordable form, and Legal Owner, Non-LIHTC Applicant and LIHTC Applicant, as applicable, shall provide the Department with an executed copy of such Assignment and Assumption Agreement and proof of recordation thereof. Notwithstanding anything to the contrary contained herein, promptly after a Transfer to a Lender Transferee, such Lender Transferee shall engage an Administering Agent for the Affordable Housing Units that has been approved by the Department.

24. Condominium Conversion. Nothing in this Agreement shall prohibit the Applicant from subdividing the Building on the Premises into Condominium Units, so long as (a) the Department approves any condominium documents, including, but not limited to, the condominium declaration and by-laws, necessary to effectuate such subdivision of the Building, (b) the Condominium Units meet the requirements of Section 339-m of the Real Property Law, (c) the Department determines that the Affordable Housing Units will be operated pursuant to the requirements set forth in the Agreement and the Program, and (d) the Memorandum of Regulatory Agreement in the form attached hereto as Exhibit H has been recorded against the Affordable Housing Units prior to receipt of a Completion Notice in accordance with Section 9 of this Agreement.
25. Investigation Clause. Applicant and Administering Agent shall be bound by and comply with the provisions of the Investigation Clause annexed hereto as Exhibit I.
26. Modifications.
  - (a) No provision of this Agreement may be extended, modified, waived or terminated orally, but only by an instrument in writing signed by the party against whom enforcement is sought.
  - (b) Applicant and/or the Administering Agent, as applicable, shall comply with all modifications to Program reporting requirements as set forth in the Guidelines, of which the Applicant shall be deemed to have constructive notice, concerning: (i) the type of documents to be retained; (ii) the length of time for which such documents must be retained; and (iii) the form and method of submitting such documents to the Department.
27. Counterparts. This Regulatory Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall be deemed one and the same instrument.
28. Notices. All notices, approvals, requests, waivers, consents or other communications given or required to be given under this Agreement shall be in writing and sent or transmitted as follows:

If to Applicant:

J2 Owner LLC  
c/o Artimus Construction Inc.  
316 West 118 Street  
New York, New York 10026



Attn: Robert Ezrapour and Ben Kursman

and

J2 147-07 94<sup>TH</sup> Avenue LI LLC  
c/o Artimus Construction Inc.  
316 West 118th Street  
New York, New York 10026  
Attn: Robert Ezrapour and Ben Kursman

and

Jamaica II Housing Development Fund Corporation  
247 West 37<sup>th</sup> Street, 4<sup>th</sup> Floor  
New York, New York 10018  
Attn: Lee Warshavsky

with a copy to:

Katten Muchin Roseman LLP  
575 Madison Avenue  
New York, New York 10022  
Attn: Martin Siroka, Esq.

If to the Department:

Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038  
Attn: Assistant Commissioner for Housing Incentives  
Facsimile (212) 863-5899

with a copy to:

Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038  
Attn: General Counsel  
Facsimile (212) 863-8375

if to Landlord:

Land & Sea Development Corp.  
153 Skunks Misery Road  
Locust Valley, New York 11560  
Attention: Rocco Ron Romeo

with a copy to:

Kasowitz, Benson & Torres LLP  
1633 Broadway  
New York, New York 10019  
Attention: David Szeker, Esq

Notices must be hand delivered, transmitted via facsimile or sent by certified or registered U.S. mail, return receipt requested or overnight delivery by a reputable national carrier. Notice shall be deemed to have been given upon (i) delivery if sent by hand delivery or U.S. mail, and (ii) confirmed receipt, if sent by facsimile, to both the addressee and the person entitled to receive a copy thereof. Each party named above may designate a change of address by written notice to all of the other parties

29. Recordation.

- (a) Applicant shall cause this Agreement to be recorded against the Premises prior to commencement of construction, in the Office of the City Register for the County in which the Premises are located and shall pay all required fees and taxes in connection therewith.
  - (b) If the conversion of the Building to Condominium Units, including without limitation the filing of the Declaration and other actions required to complete such conversion of the Building have not occurred prior to the time when this Agreement is required to be recorded against the Premises, or any other document required hereunder to be recorded against the Premises, then, notwithstanding anything contained herein to the contrary, this Agreement and such other documents shall be recorded against the entire Premises. In such event, at the time of condominium conversion, provided that the Memorandum of Regulatory Agreement referred to in Section 24 is recorded simultaneously therewith, the Department will release the Condominium Units other than the Condominium Unit containing the Affordable Housing Units.
- 30. More Restrictive Provisions Govern. If the Affordable Housing Units are also subject to the HDC Regulatory Agreement, then (a) in the event of any conflict or ambiguity between the provisions of this Agreement and the HDC Regulatory Agreement, the more restrictive of the applicable provisions of the Agreement and the HDC Regulatory Agreement shall govern and (b) nothing herein, including but not limited to, Sections 7, 8 and 11 hereunder, shall limit, reduce or affect in any way the duration of any restrictions imposed on the operation or occupancy of the Affordable Housing Units by this Agreement.
- 31. Choice of Law. The covenants, provisions and terms of this Agreement and the rights and obligations of the parties hereunder shall be governed by, construed and interpreted in accordance with the laws of the State of New York, and shall be binding upon and inure to the benefit of Applicant, the Administering Agent and the Department, and their respective successors, transferees, and assigns.
- 32. Termination.
  - (a) The Department reserves the right to terminate this Agreement with notice, in accordance with Section 28, to Applicant if Applicant does not complete the Affordable Housing Units by the Completion Deadline.
  - (b) Applicant may terminate this Agreement with notice, in accordance with Section 28, to the Department, at any time prior to the date that the initial advertisement for the Affordable Housing Units is published on the New York City Housing Connect lottery system (or any successor program administered by the Department to market vacant Affordable Housing Units).
- 33. Owner/Ground Lessor's Consent and Agreement.
  - (a) The Ground Lease provides that Owner's title to the Fee, Owner's interest in the Ground Lease and any and all Fee Mortgages, whether now or in the future encumbering either Owner's interest in the Fee or Lease, shall be subject and subordinate to the terms of this Agreement during the term of this Agreement. Nothing in this Section 33 shall

provide the Department with any remedies that it may not otherwise have under this Agreement or result in the forfeiture of Owner's interests in the Fee.

- (b) Owner, as fee owner and as the landlord under the Ground Lease consents to the execution and delivery of this Agreement by Applicant and to all of the terms and conditions of this Agreement.
- (c) If the Ground Lease is terminated prior to the expiration of this Agreement and Owner then leases the Premises to a third party (the "New Ground Lease"), the New Ground Lease and any amendments thereto shall also be subject to and subordinate to this Agreement and the tenant under the New Ground Lease shall be required to assume the ongoing obligations of the Legal Owner and Non-LIHTC Applicant under the Ground Lease pursuant to this Agreement for the balance of the term of this Agreement.
- (d) If the Ground Lease or any New Ground Lease is terminated and Owner does not enter into a New Ground Lease, Owner shall assume all of the ongoing obligations of Applicant pursuant to this Agreement for the balance of the term of this Agreement.
- (e) In the event of any conflict between the terms of the Agreement and the Ground Lease, the terms of this Agreement shall govern.
- (f) Notwithstanding anything in the Agreement to the contrary, if the Ground Lease or/and New Ground Lease is terminated prior to the date of the issuance of any Completion Notice hereunder, then Owner shall have the right, but not the obligation, upon written notice given within 15 business days of the termination of the Ground Lease or any New Ground Lease to the Department, to terminate this Agreement. To the extent Owner elects to terminate this Agreement, then the parties hereto shall not be entitled to the benefits of the Program and shall comply with the Resolution without the benefits of the Program hereunder.
- (g) Notwithstanding any provision of this Agreement to the contrary and notwithstanding the Owner's execution of this Agreement, the Department agrees to look only to Applicant for satisfaction of all obligations of Applicant under this Agreement arising or accruing up to the date of any termination of the Ground Lease (including, without limitation, any indemnification provisions relating thereto or to such period), and Owner and its successors and assigns shall in no event be liable for any thereof.
- (h) Owner agrees that it will promptly execute and deliver to the Department such documents as the Department may reasonably request to effectuate the terms of this Agreement, including but not limited to, a subordination, non-disturbance and attornment agreement(s) subordinating the Owner's interest under the Ground Lease to this Agreement.

34. Transfer of Additional Floor Area.

For the purposes of this Section, "Additional Floor Area" shall mean any Floor Area not used on the Premises.

- (i) Applicant shall deposit any and all proceeds generated by the sale or transfer of additional Floor Area created in accordance with this Agreement ("IH Proceeds"), with HPD, its designee, or a depository approved by HPD ("Depository"). Each transfer of additional Floor Area shall be evidenced by an executed sales contract or contracts

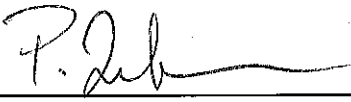
(each a "PSA") which shall be for a minimum sales price per square foot of such additional Floor Area equal to: (1) the price per square foot of land for existing developable sites in the Community Board which the Premises are located on the date of such sale, as determined by HPD, or (2) such other price as may be approved by HPD, including, but not limited to, the best price attainable for additional Floor Area within the geographic area in which the additional Floor Area from the Premises/Generating Site may be used. The PSA shall name a Depository for the IH Proceeds. HPD will not issue a Permit Notice or a Certificate of Floor Area Compensation until HPD is in receipt of an executed PSA and the IH Proceeds have been deposited as further described below. Notwithstanding the foregoing, with HPD's prior written consent, Applicant may use such Additional Floor Area for Other Affordable Projects, as defined below or for the Premises including, but not limited to, funding of additional reserves.

(ii) IH Proceeds may be used with HPD approval to create, rehabilitate or preserve additional affordable housing in accordance with HPD term sheets ("Other Affordable Housing Projects"). The use of IH Proceeds must be expressly approved by HPD.

[No further text; signatures immediately follow]

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

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


By:   
Name: Patricia Zafiriadis  
Title: Associate Commissioner for Housing Incentives

APPROVED AS TO FORM BY  
STANDARD TYPE OF CLASS  
FOR USE UNTIL DECEMBER 31, 2019

s/ Amrita Bartha  
Acting Corporation Counsel

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

On this 23 day of December, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Patricia Zafiriadis , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
NOTARY PUBLIC  
YAKREN AVIVA YAKREN  
NOTARY PUBLIC, State of New York  
No. 02YA8061736  
Qualified in Queens County  
Commission Expires September 18, 2023

J2 OWNER LLC  
a Delaware limited liability company

By: J2 Investor LLC,  
a Delaware limited liability company,  
its sole member

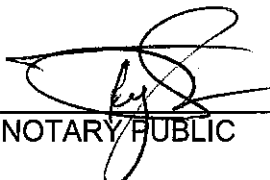
By: J2 147-07 94TH AVENUE LLC,  
a Delaware limited liability company,  
its managing member

By: J2 Jamaica 94 Equities LLC,  
a New York limited liability company,  
its managing member

By:   
Name: Ronen Haron  
Title: Authorized Signatory

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

On this 23 day of December, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Ronen Haron, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
NOTARY PUBLIC

TYLER H. GABLENZ  
Notary Public, State of New York  
Registration #01GA6336625  
Qualified In Westchester County  
Commission Expires Feb. 8, 2020



J2 147-07 94TH AVENUE LI LLC  
a Delaware limited liability company

By: J2 147-07 94th Avenue LLC,  
a Delaware limited liability company,  
its managing member

By: J2 Jamaica 94 Equities LLC,  
a New York limited liability company,  
its managing member

By:

  
Name: Ronen Haron  
Title: Authorized Signatory

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

On this 23 day of December, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Ronen Haron, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
NOTARY PUBLIC

TYLER H. GABLENZ  
Notary Public, State of New York  
Registration #01GA6336825  
Qualified In Westchester County  
Commission Expires Feb. 8, 2020

JAMAICA II HOUSING DEVELOPMENT FUND CORPORATION, a  
not for profit corporation incorporated under the laws  
of New York State

By: 

Name: Lee Warshavsky  
Title: Secretary/Treasurer

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

On this 23 day of December, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Lee Warshavsky, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
NOTARY PUBLIC

TYLER H. GABLENZ  
Notary Public, State of New York  
Registration #01GA6336625  
Qualified In Westchester County  
Commission Expires Feb. 8, 2020

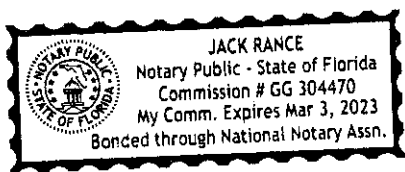
Agreed and Accepted Solely as to  
Section 33 of this Agreement

LAND & SEA DEVELOPMENT CORP.

By: *Rocco Rance*  
Name:  
Title:

*Palm Beach, Florida*  
STATE OF ~~NEW YORK~~ )  
*Palm Beach* SS:  
COUNTY OF ~~NEW YORK~~

On this 23 day of December, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared *Rocco Rance*, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.



*J Rance*  
NOTARY PUBLIC

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

# ***Fidelity National Title Insurance Company***

**ALL NEW YORK TITLE AGENCY, INC.**

## **SCHEDULE A**

**Title No.: ANY2019-4243C**

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

BEGINNING at a point on the northerly side of 94th Avenue (formerly known as Johnson Avenue) distant 60.97 feet (61.24 feet – survey) easterly from the corner formed by the intersection of the northerly side of 94th Avenue with the easterly side of Sutphin Boulevard (as widened);

THENCE easterly along the northerly side of 94th Avenue, a distance of 328.25 feet to the easterly line of Lot 30 on a certain map entitled, “Map of Talfourd Lawn in Jamaica, Long Island, surveyed April, 1870 by E.W. Conklin filed July 11, 1871 as Map No. 460;

THENCE northerly at right angles to the northerly side of 94th Avenue and along the easterly line of said Lot 30, a distance of 93.07 feet;

THENCE westerly and parallel with the northerly side of 94th Avenue, 35.03 feet;

THENCE northerly at right angles to the preceding course, 7.01 feet to the southerly side of Lot 27 as laid out on the above mentioned map;

THENCE westerly at right angles to the preceding course and along the southerly line of Lot 27, a distance of 15.01 feet to the westerly line of said lot;

THENCE northerly at right angles to the preceding course and along the westerly side of said Lot 27, a distance of 13.21 feet;

THENCE westerly parallel with the northerly side of 94th Avenue and distant 113.29 feet northerly therefrom when measured at right angles to said Avenue, a distance of 107.41 feet;

THENCE South 11 degrees 25’ 00” East .09 feet;

THENCE South 73 degrees 03’ 30” West 159.84 feet;

THENCE South 11 degrees 25’ 00” East along a line which is the prolongation in a southerly direction of the east side of the bridge abutment of the Long Island Railroad bridge over Guilford Street 113.73 feet to the northerly side of 94th Avenue, at the point or place of BEGINNING.

**EXHIBIT B**  
**AFFORDABLE HOUSING PLAN**



**THE CITY OF NEW YORK**  
**DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**  
**OFFICE OF DEVELOPMENT**  
100 GOLD STREET, ROOM 5G, NEW YORK, NEW YORK 10038  
(212) 863-8228

**AFFORDABLE HOUSING PLAN APPLICATION PURSUANT TO  
THE VOLUNTARY INCLUSIONARY HOUSING PROGRAM**

*Please indicate "Not Applicable" or "NA" where appropriate. Do not leave any lines blank.*

- 1. Applicant:** J2 Owner LLC, J2 147-07 94th Avenue LI LLC (Beneficial Owners)  
**Address:** 316 West 118 Street, New York, NY 10026  
**Fax:** \_\_\_\_\_  
**Email:** Evan@artimusnyc.com  
**Primary Contact (Name, Phone, Email):**  
Evan Kashanian, 212-996-5100, evan@artimusnyc.com
- 2. Owner (if different):** Jamaica II Housing Development Fund Corporation (and applicant)  
**Address:** 247 West 37th Street, 4th Floor, New York, NY 10018  
**Fax:** (212) 757-0571  
**Email:** lwarshavsky@shfinc.org  
**Primary Contact (Name, Phone, Email):**  
Lee Warshavsky, (212) 265-6530 ex 125, lwarshavsky@shfinc.org
- 3. Administering Agent:** J2 147-07 94th Avenue LI LLC  
**Address:** 316 West 118th Street, NY, NY 10026  
**Fax:** \_\_\_\_\_  
**Email:** evan@artimusnyc.com  
**Primary Contact (Name, Phone, Email):**  
Evan Kashanian, 212-996-5100, evan@artimusnyc.com
- 4. General Contractor:** Artimus Construction Inc.  
**Address:** 316 West 118 Street, New York, NY 10026  
**Fax:** \_\_\_\_\_  
**Email:** Evan@artimusnyc.com  
**Primary Contact (Name, Phone, Email):**  
Evan Kashanian, 212-996-5100, evan@artimusnyc.com
- 5. Architect:** GF55 Architects LLP  
**Address:** 19 W. 21th Street, New York, NY 10010  
**Fax:** \_\_\_\_\_  
**Email:** shay@gf55.com  
**Primary Contact (Name, Phone, Email):**  
Shay Alster, 212 352 3099, shay@gf55.com

**6. Attorney and Firm:** Martin Siroka, Katten Muchin Rosenman LLP

Address: 575 Madison Avenue, New York, NY 10022

Fax: 212-940-6679

Email: m.siroka@katten.com

Primary Contact (Name, Phone, Email):

Martin Siroka, 212-940-6679, m.siroka@katten.com

**7. Location of Affordable Housing Units**

Street Address: 147-25 94th Avenue

Borough: Queens

Block(s)/Lot(s): 9998/25

Community Board: 12

**8. Inclusionary Housing District of Affordable Housing Units**

☒ R-10 Inclusionary: YES

Is project privately financed? (Yes/No) No

☐ IH Designated Area (Insert ZR section reference, e.g., §23-154, §23-952, §98-23, §62-352, etc.): \_\_\_\_\_

☒ Special District: (DJ) Special Downtown Jamaica District

☐ Other (please explain): \_\_\_\_\_

**9. Unit Count**

Total units in project: 543

Total IH units in project: 117

Super's units: 2

For projects with more than one building:

1. Address for first building: \_\_\_\_\_

Total units in first building: \_\_\_\_\_ Total IH units in first building: \_\_\_\_\_ Super's units: \_\_\_\_\_

2. Address for second building: \_\_\_\_\_

Total units in second building: \_\_\_\_\_ Total IH units in second building: \_\_\_\_\_ Super's units: \_\_\_\_\_

*For additional buildings, please add additional pages as needed.*

Income Distribution of Affordable Housing Units:

Number of low-income units (equal to or less than 80% AMI): 117

Number of moderate-income units (equal to or less than 125% AMI): \_\_\_\_\_

Number of middle-income units (equal to or less than 175% AMI): \_\_\_\_\_

**10. If publicly financed, list all sources of governmental assistance, including tax credits, bond financing, and land disposition programs:**

City Subsidy, Bond financing, LIH Tax Credits

Tax Exemption to be requested: Yes Article XI

**11. Type of Project (check all that apply)**

Construction type:

- ☒ New Construction  
☐ Preservation  
☐ Substantial Rehabilitation

Location of Floor Area Compensation:

- ☒ On-site  
☐ Off-site  
☐ On-site and Off-site

Inclusionary Units:

- ☒ Rental  
☐ Homeownership

Non-Inclusionary Units:

- ☒ Rental  
☐ Homeownership  
☐ Not Applicable

Electric Utility Systems:

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

**12. If the project will contain a condominium or cooperative structure, please describe the structure and the use of each unit. If not, please indicate N/A:**

There will be four separate condominium units - 1) containing the low income residential units,  
2) non-tax code income restricted units/market rate units,  
3) retail space, 4) parking unit with 146 spaces

Authorized Signature of Applicant:

Print name: Robert Ezrapour

Date: 12/3/19

**EXHIBIT C**  
**AFFORDABLE HOUSING UNITS**

Apartments			
Construction Floor	Marketing Floor	Apt #	# Bedrooms
5	5	504	0
5	5	505	1
5	5	506	2
5	5	510	1
6	6	601	1
6	6	607	0
6	6	610	1
6	6	611	2
6	6	614	1
6	6	615	1
6	6	618	1
7	7	704	0
7	7	707	0
7	7	714	1
7	7	715	1
7	7	718	1
7	7	718	2
7	7	725	2
8	8	802	1
8	8	809	0
8	8	814	1
8	8	815	1
8	8	816	1
8	8	818	2
8	8	825	2
9	9	904	0
9	9	905	2
9	9	907	0
9	9	914	1
9	9	915	1
9	9	916	1
9	9	925	2
10	10	1004	0
10	10	1011	2
10	10	1013	1
10	10	1014	1
10	10	1015	1
10	10	1023	1
10	10	1025	2
11	11	1102	1
11	11	1104	0
11	11	1107	0
11	11	1111	2
11	11	1114	1
11	11	1115	1
12	12	1204	0
12	12	1207	0
12	12	1214	1
12	12	1215	1
12	12	1216	1
12	12	1218	2
12	12	1225	2
13	13	1302	1
13	13	1304	0
13	13	1314	1
13	13	1315	1
13	13	1316	1
13	13	1324	0
13	13	1325	2

Apartments			
Construction Floor	Marketing Floor	Apt #	# Bedrooms
14	14	1409	0
14	14	1411	2
14	14	1413	1
14	14	1414	1
14	14	1415	1
14	14	1416	1
14	14	1417	1
15	15	1507	0
15	15	1511	2
15	15	1513	1
15	15	1514	1
15	15	1515	1
15	15	1516	1
15	15	1518	2
16	16	1602	1
16	16	1604	0
16	16	1613	1
16	16	1614	1
16	16	1615	1
16	16	1617	1
16	16	1618	2
16	16	1623	1
17	17	1709	0
17	17	1714	1
17	17	1715	1
17	17	1716	1
17	17	1718	2
17	17	1725	2
18	18	1802	1
18	18	1809	0
18	18	1814	1
18	18	1815	1
18	18	1816	1
18	18	1818	2
18	18	1825	2
19	19	1909	0
19	19	1911	2
19	19	1914	1
19	19	1915	1
19	19	1916	1
19	19	1918	2
19	19	1925	2
20	20	2002	1
20	20	2009	0
20	20	2011	2
20	20	2014	1
20	20	2015	1
20	20	2016	1
20	20	2018	2
21	21	2109	0
21	21	2111	2
21	21	2114	1
22	22	2209	0
22	22	2211	2
22	22	2218	2
22	22	2225	2
23	23	2309	0
23	23	2311	2

Unit Summary	
# Bedrooms	# Units
Studios	24
1 Bedroom	61
2 Bedrooms	32
3 Bedrooms	0
<b>Total</b>	<b>117</b>

Super / Resident Manager Unit(s)			
Construction Floor	Marketing Floor	Apt	Bdrms
5	5	513	2
6	6	605	2

**EXHIBIT D**  
**SCHEDULE OF RENTS AND EXPENSES**



Inclusionary Housing Units -- Rents*				
	# Units	Income Band/AMI Level	HDC Preferential Rent**	Maximum Legal Regulated Rent***
Studio	7	80%	\$215 (Shelter Rent)	\$1,212
1 Bedroom	19		\$283 (Shelter Rent)	\$1,526
2 Bedroom	6		\$425 (Shelter Rent)	\$1,843
<b>Total</b>	<b>32</b>			

Inclusionary Housing Units -- Rents*				
	# Units	Income Band/AMI Level	HDC Preferential Rent**	Maximum Legal Regulated Rent***
Studio	17	80%	\$683 (47% AMI)	\$1,212
1 Bedroom	42		\$865 (47% AMI)	\$1,526
2 Bedroom	26		\$1,050 (47% AMI)	\$1,843
<b>Total</b>	<b>85</b>			

\*Tenants are responsible for paying electricity, including electricitcity for electric stove.

\*\*Initial Preferential Rents may increase or decrease as determined by HDC; however, Preferential Rents shall not exceed the Maximum Legal Regulated Rent.

\*\*\* The maximum Legal Regulated Rent is 30% of 80% of the Income Index as defined in the New York City Zoning Resolution, including applicable utility allowances. Maximum Legal Regulated Rent are subject to adjustment as set forth in Schedule B to the HDC Regulatory Agreement. The parties shall amend this agreement to reflect any such adjustment.

543 Total Units

117 Inclusionary Housing Units

Operating Expenses*	Amount	Per Unit
Legal	\$119,460	\$220
Accounting	\$16,000	\$29
Management Fee	\$615,453	\$1,133
Fire/Liability Insurance	\$325,800	\$600
Benchmarking	\$495	\$1
TC Monitoring	\$17,500	\$32
Heating	\$417,250	\$768
Electricity & Cooking Gas	\$273,716	\$504
Water/Sewer	\$455,637	\$839
Supplies/Cleaning/Exterminating	\$225,315	\$415
Repairs/Replacement	\$380,100	\$700
Super & Maintenance Salaries	\$861,048	\$1,586
Elevator Maintenance & Repairs	\$42,000	\$77
Replacement Reserve	\$162,900	\$300
Ground Rent Payments	\$1,200,000	\$2,210
Real Estate Taxes (Assumes Article XI benefit)	\$0	\$0
<b>Total Expenses</b>	<b>\$5,112,674</b>	<b>\$9,416</b>

\*The expenses reflect the overall 147-25 94th Avenue project underwriting dated 12.04.19 , which comprises 543 units, of which 117 are Inclusionary Housing units.

**EXHIBIT E  
STANDARD NEW YORK ENDORSEMENT**

1. The following is added to the insuring provisions on the face page of this policy:

“\_\_\_ . Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy.”

2. Exclusion Number 5 is deleted, and the following is substituted:

5. Any lien on the Title for real estate taxes, assessments, water charges or sewer rents imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as Shown in Schedule A.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

IN WITNESS WHEREOF, \_\_\_\_\_ Insurance Company of New York has caused this Endorsement to be signed and sealed on its date of issue set forth herein.

DATED:

COUNTERSIGNED \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_ Insurance Company

BY: \_\_\_\_\_

**EXHIBIT F**  
**ADMINISTERING AGENT AGREEMENT**  
**INCLUSIONARY HOUSING PROGRAM**

**Administering Agent Agreement  
Inclusionary Housing Program**

AGREEMENT made this 24<sup>th</sup> day of December, 2019, between the J2 147-07 94th Avenue LI LLC ("Administering Agent"), having an office at c/o Artimus Construction Inc., 316 West 118<sup>th</sup> Street, New York, NY 10026, and the Department of Housing Preservation and Development ("Department"), having an office at 100 Gold Street, Ninth Floor, New York, NY 10038.

WHEREAS, Administering Agent, J2 Owner, LLC and Jamaica II Housing Development Fund Corporation has executed a Regulatory Agreement with the Department, to create one hundred seventeen (117) Affordable Housing Units of located at 147-25 94<sup>th</sup> Avenue, Jamaica, New York (the "Affordable Housing Units") in accordance with Section 23-90 (Inclusionary Housing), inclusive of the Zoning Resolution ("Resolution") and with the Inclusionary Housing Guidelines ("Guidelines"); and

WHEREAS, Administering Agent has agreed to ensure that the Affordable Housing Units are rented in compliance with the Agreement at Rent-up and each subsequent vacancy and has signed an agreement with the Applicant to that effect; and

WHEREAS, Administering Agent has been qualified to act as an Administering Agent by the Department;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is hereby agreed that Administering Agent will assume the ongoing responsibility for insuring that each Affordable Housing Unit is rented and upon vacancy re-rented in compliance with the Regulatory Agreement. In addition, the Administering Agent shall (1) maintain records setting forth the facts that form the basis of any affidavit submitted to the Department; (2) maintain such records as the Department may require at the Administering Agent's office or other location approved by the Department; and (3) make all records and facts of the operation of the Administering Agent available for the Department's inspection.

Notwithstanding any other remedy contained herein, the Department may commence an action against Administering Agent to require specific performance of Administering Agent's obligations herein. Department reserves the right to replace Administering Agent in the event that the Affordable Housing Units are not rented at Rent-up and each subsequent vacancy thereafter in compliance with the Program.

This Administering Agent Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall be deemed one and the same instrument.

[NO FURTHER TEXT APPEARS ON THIS PAGE]



J2 147-07 94TH AVENUE LI LLC  
a Delaware limited liability company

By: J2 147-07 94th Avenue LLC,  
a Delaware limited liability company,  
its managing member

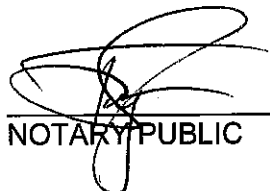
By: J2 Jamaica 94 Equities LLC,  
a New York limited liability company,  
its managing member

By:

  
Name: Ronen Haron  
Title: Authorized Signatory

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

On this 23 day of December, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Ronen Haron, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
NOTARY PUBLIC

TYLER H. GABLENZ  
Notary Public, State of New York  
Registration #01GA6336625  
Qualified In Westchester County  
Commission Expires Feb. 8, 2020



**EXHIBIT G**  
**AFFORDABLE HOUSING UNITS TRANSFEREE AGREEMENT**

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Facsimile( ) \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Facsimile( ) \_\_\_\_\_

[APPLICANT]

By: \_\_\_\_\_  
[Name]  
[Title]

TRANSFEEE]

[AFFORDABLE HOUSING UNITS

By: \_\_\_\_\_  
[Name]  
[Title]

UNIFORM ACKNOWLEDGEMENTS

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

On this \_\_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEW YORK)  
 ) SS:  
COUNTY OF )

On this \_\_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT H**  
**MEMORANDUM OF REGULATORY AGREEMENT**

**THIS MEMORANDUM OF REGULATORY AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 201[#], by and among **JAMAICA II HOUSING DEVELOPMENT FUND CORPORATION**, a New York not-for-profit corporation, having its office at 247 West 37<sup>th</sup> Street, 4<sup>th</sup> Floor, New York, New York 10018, (the "Legal Owner") and **J2 OWNER LLC**, a Delaware limited liability company having its office at c/o Artimus Construction Inc., 316 West 118<sup>th</sup> Street, New York, NY 10026 (the "Non-LIHTC Applicant"), **J2 147-07 94TH AVENUE LI LLC**, a Delaware limited liability company having its office at c/o Artimus Construction Inc., 316 West 118<sup>th</sup> Street, New York, NY 10026 (the "LIHTC Applicant" together with Non-LIHTC Applicant, collectively, "Applicant", and Applicant together with Legal Owner, collectively, "Sponsor").

**WITNESSETH THAT:**

1. Land & Sea Development Corp. (the "Owner") has conveyed leasehold title to the premises located in the County of Queens, City and State of New York, currently identified as **Block 9998, Lot 0025** on the Tax Map of the City (as shall be improved by Sponsor pursuant to this Regulatory Agreement), (the "Premises"), more particularly described in Exhibit A attached hereto and made a part hereof to the Legal Owner and Non-LIHTC Applicant pursuant to that certain Lease dated as of December \_\_, 2019 (the "Ground Lease");
2. The Applicant has covenanted and agreed for and on behalf of itself, its successors, assigns, heirs, grantees and lessees, which covenants shall be covenants running with the land to provide Affordable Housing on the Premises in accordance with the Regulatory Agreement ("Regulatory Agreement"), dated as of December 24, 2019 among Sponsors and the City of New York, a municipal corporation acting through its Department of Housing Preservation and Development ("HPD") and recorded in the Office of the City Register Queens County on [*insert date*] as CFRN [*insert CFRN number*], the provisions of which are by this reference made a part hereof and Section 23-90 (Inclusionary Housing), inclusive of the Resolution.
3. The Regulatory Agreement and the covenants therein, shall run with the land that constitutes the Premises in accordance with the terms therein.
4. This Memorandum of Regulatory Agreement is intended to provide constructive notice of the existence and terms of the Regulatory Agreement and in no way modifies or amends the Regulatory Agreement. If any provisions of this Memorandum of Regulatory Agreement conflict with the Regulatory Agreement, the terms of the Regulatory Agreement shall prevail. The Applicant at its sole cost and expense shall cause this Memorandum of Regulatory Agreement to be recorded against each tax lot within the zoning lot containing the Affordable Housing whether or not such tax lot existed at the time the Regulatory Agreement was recorded.

**NO FURTHER TEXT**

IN WITNESS WHEREOF, this Memorandum of Regulatory Agreement has been executed as of the date first set forth above.

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Associate Commissioner for Housing Incentives

APPROVED AS TO FORM BY  
STANDARD TYPE OF CLASS  
FOR USE UNTIL \_\_\_\_\_

s/ \_\_\_\_\_  
Acting Corporation Counsel

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

On this\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

J2 OWNER LLC  
a Delaware limited liability company

By: J2 Investor LLC,  
a Delaware limited liability company,  
its sole member

By: J2 147-07 94TH AVENUE LLC,  
a Delaware limited liability company,  
its managing member

By: J2 Jamaica 94 Equities LLC,  
a New York limited liability company,  
its managing member

By: \_\_\_\_\_  
Name:  
Title:

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

On this\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

J2 147-07 94TH AVENUE LI LLC  
a Delaware limited liability company

By: J2 147-07 94th Avenue LLC,  
a Delaware limited liability company,  
its managing member

By: J2 Jamaica 94 Equities LLC,  
a New York limited liability company,  
its managing member

By: \_\_\_\_\_  
Name:  
Title:

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

On this\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

On this\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

40



LAND & SEA DEVELOPMENT CORP.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

**NOTARY PUBLIC**

## **EXHIBIT I**

### **INVESTIGATION CLAUSE**

- (a) The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contracts, lease, permit, or license that is the subject of the investigation, audit or inquiry.
- (b) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witness and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;
- (c) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witness and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;
- (d) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- (e) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph (g) below without the City incurring any penalty or damages for delay or otherwise.
- (f) The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:
  - (1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of

which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and /or

- (2) The cancellation or termination of any and all such existing City contracts, leases, permit, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; moneys lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.
- (g) The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate:
  - (1) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
  - (2) The relationship of the person who refuses to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
  - (3) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
  - (4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (f) above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in (d) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

(h)

- (1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
- (2) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- (3) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives moneys, benefits, licenses, leases, or permits from or through the city or otherwise transacts business with the City.
- (4) The term "member" as used herein shall be defined as any person in association with another person or entity as a partner, officer, principal or employee.

- (i) In addition to and notwithstanding any other provisions of this Agreement the Commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three (3) days written notice in the event the contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

**EXHIBIT J**  
**[NEXT PAGE: DEVELOPMENT BUDGET]**

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543 Total Units

117 Inclusionary Housing Units

**Sources and Uses\***

<b><u>Construction Sources</u></b>	<b><u>Amount</u></b>	<b><u>Per Unit</u></b>
First Mortgage (HDC TE Bonds)	\$43,980,000	\$80,994
First Mortgage (HDC Non VC TE Bonds)	\$25,105,000	\$46,234
First Mortgage (HDC TX Bank Loan)	\$25,105,000	\$46,234
Second Mortgage (Lender: HDC Mix&Match)	\$30,600,000	\$56,354
Third Mortgage (Lender: HPD Mix&Match)	\$56,034,276	\$103,194
Deferred Construction Interest	\$5,577,486	\$10,272
Developer Equity	\$28,000,000	\$51,565
Deferred Reserves	\$543,000	\$1,000
LIHTC Equity	\$15,933,227	\$29,343
Deferred Developer's Fee	\$9,805,500	\$18,058
<b>Total Sources</b>	<b>\$240,683,489</b>	<b>\$443,248</b>

<b><u>Permanent Sources</u></b>	<b><u>Amount</u></b>	<b><u>Per Unit</u></b>
First Mortgage (Conventional Loan)	\$79,055,000	\$145,589
Second Mortgage (Lender: HDC Mix&Match)	\$30,600,000	\$56,354
Third Mortgage (Lender: HPD Mix&Match)	\$56,034,276	\$103,194
Deferred Construction Interest	\$5,577,486	\$10,272
Developer Equity	\$30,000,000	\$55,249
LIHTC Equity	\$35,416,727	\$65,224
Brownfield Equity	\$4,000,000	\$7,366
<b>Total Sources</b>	<b>\$240,683,489</b>	<b>\$443,248</b>

<b><u>Uses</u></b>	<b><u>Amount</u></b>	<b><u>Per Unit</u></b>
Land Lease Cost	\$11,750,000	\$21,639
Construction Cost	\$174,615,000	\$321,575
Soft Cost	\$43,423,489	\$79,970
Developer Fee	\$10,895,000	\$20,064
<b>Total Uses</b>	<b>\$240,683,489</b>	<b>\$443,248</b>

\*The sources and uses reflect the overall 147-25 94th Avenue project underwriting dated 12.04.19 , which comprises 543 units, of which 117 are Inclusionary Housing units.

**EXHIBIT K  
FORM OF SNDA**

**THIS SUBORDINATION AND NON-DISTURBANCE AGREEMENT** ("Agreement"), made as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by [LENDER], a [national banking association], having an office at \_\_\_\_\_, ("Mortgagee" or "Lender"), in favor of **THE CITY OF NEW YORK**, (the "City") a municipal corporation acting by and through its **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**, having an office at 100 Gold Street, New York, New York 10038 ("HPD").

**WHEREAS**, Mortgagee holds a certain mortgage or mortgages dated of even date herewith, as follows: (a) [*Construction Loan Mortgage, Assignment of Leases and Rents and Security Agreement, dated of even date herewith*], in the principal amount of \$ \_\_\_\_\_; (b) [*describe all subordinate mortgages, if any*], in the principal amount of \$ \_\_\_\_\_ and each made by [Borrower], a [*describe type of entity*] ("Applicant" or "Borrower") [and describe owner if different than applicant ("Owner")] in favor of Lender to secure, among other things, the aggregate principal sum of \_\_\_\_\_ DOLLARS AND \_\_\_\_\_ CENTS (\$ \_\_\_\_\_) or so much thereof as may be advanced pursuant thereto, and interest, (the "Mortgage(s)") covering the premises described in **Schedule A** annexed hereto and incorporated herein ("Premises");

**WHEREAS**, HDC, HPD, Jamaica II Housing Development Fund Corporation ("HDFC") and Borrower have entered into that certain Regulatory Agreement, dated December 24, 2019 (the "HDC Regulatory Agreement"); and

**WHEREAS**, HPD, HDFC and Borrower have also entered into a certain Regulatory Agreement ("HPD Regulatory Agreement") dated December 24, 2019, which Regulatory Agreement is intended to be recorded against the Premises immediately following execution and delivery thereof; and

**WHEREAS**, the HPD Regulatory Agreement was entered into under the Inclusionary Housing Program, which is governed by Sections 23-90 (Inclusionary Housing), inclusive of the New York City Zoning Resolution (the "Resolution") and the Inclusionary Housing Program Guidelines (the "Guidelines") (the Guidelines and the Resolution are collectively referred to as the "Program"); and

**WHEREAS**, the HPD Regulatory Agreement provides that no Borrower shall mortgage or otherwise encumber their respective interests in the Premises or the HPD Regulatory Agreement other than in accordance with the terms thereof and that, if HPD consents to a mortgage loan, the lender must subordinate the loan to all of the terms and conditions of the HPD Regulatory Agreement; and

**WHEREAS**, Borrowers have entered into the Mortgage, and other instruments, evidencing or securing obligations on the Premises with the Mortgagees (collectively, the "Other Loan Documents" the Mortgage and the Other Loan Documents are referred to collectively as the "Loan Documents"); and

**WHEREAS**, HPD has consented to the Loan Documents on the condition that the Mortgagees subordinate the Loan Documents to all the terms and conditions of the HPD Regulatory Agreement in the manner hereinafter described.



**NOW THEREFORE**, for good and valuable consideration, the receipt whereof is hereby acknowledged, Mortgagee hereby represents to and agrees with HPD, notwithstanding any contrary term, provision, agreement, covenant, warranty, and/or representation contained or implied in any Loan Documents or any other document executed in connection with the Premises, that:

1. The Loan Documents are and shall continue to be subject and subordinate to the terms, covenants, agreements, and conditions of the Regulatory Agreement.
2. As used in this Agreement (a) the term "Mortgage" shall refer to any amendments, replacements, substitutions, extensions, modifications, or renewals thereof, and (b) the term "Mortgagee" shall include the Mortgagee's successors and assigns.
3. As used in this Agreement, the phrase "subject and subordinate" means that:
  - (a) to the extent there are any inconsistencies between the provisions of the Regulatory Agreement and any provisions of the Loan Documents, the provisions of the Regulatory Agreement shall take priority over the inconsistent provisions of the Loan Documents, except as provided herein; and
  - (b) if Mortgagee or if any person or entity becomes the owner of the Premises (including, if the Premises is defined as a leasehold interest as well as a fee interest, the owner of such leasehold interest) by foreclosure, conveyance in lieu of foreclosure, or otherwise ("New Owner"), (i) the Regulatory Agreement shall continue in full force and effect and the Mortgagee and New Owner shall have no right to disturb the rights of HPD under the Regulatory Agreement, (ii) HPD shall not be named as a defendant in any action or proceeding to foreclose the Mortgage or otherwise enforce the Mortgagee's or New Owner's rights thereunder, except as set forth below, and (iii) the Premises shall be subject to the Regulatory Agreement in accordance with the provisions thereof; provided, however, that Mortgagee and New Owner shall not be liable for any act or omission of Applicant or bound by any subsequent amendment of or modification to the Regulatory Agreement without its written consent. Subject to the foregoing, nothing contained herein shall prevent the Mortgagee or New Owner from naming HPD in any foreclosure or other action or proceeding initiated by the Mortgagee or New Owner pursuant to the Mortgage to the extent necessary under applicable law in order for the Mortgagee or New Owner to avail itself of and complete the foreclosure or other remedy.
4. Upon a declaration of default under the Regulatory Agreement, HPD shall give Mortgagee notice thereof by facsimile, hand delivery or reputable overnight courier and a reasonable opportunity to cure (if such default can be cured), provided, however, that Mortgagee shall have no obligation to cure any such default. If Mortgagee cures the default during such cure period (if any) or has commenced to cure the specified default within such period and is diligently pursuing completion of such cure, or has commenced the exercise of remedies under the Loan Documents within such period, HPD shall not exercise any of the remedies under Section 18(b) of the Regulatory Agreement by reason of such default. Nothing herein shall limit HPD's right to consent to a replacement manager pursuant to Paragraph 6 herein.

5. If HPD freezes the Operating Account(s) pursuant to Paragraph 18(b) of the Regulatory Agreement, HPD will allow Mortgagee to use funds therein to make payments due under the Loan Documents, provided that there are sufficient funds in the Operating Account(s) to pay for reasonable and customary operating expenses for the Premises. Mortgagee hereby acknowledges that it has no interest in or rights to any funds held in the Special Reserve Fund Accounts pursuant to the Regulatory Agreement.
6. Notwithstanding anything contained in the Regulatory Agreement or the Loan Documents, neither HPD nor Mortgagee may assume responsibility for management of the Premises or designate a third party to manage the Premises without the consent of the other. If, in the exercise of its remedies under the Regulatory Agreement, HPD notifies Mortgagee of its intention to install a replacement manager of the Premises, then Mortgagee's consent to such manager shall not be unreasonably withheld or delayed. If, in the exercise of its remedies under the Loan Documents, Mortgagee notifies HPD of its intention to install a replacement manager of the Premises, then HPD's consent to such manager shall not be unreasonably withheld or delayed.
7. Upon a casualty to a building on the Premises,
  - (a) where the repair or reconstruction cost is more than thirty-five percent (35%) of the replacement value of a building on the Premises, Mortgagee shall have the right to determine whether insurance proceeds are applied for the reconstruction or repair of the Premises or towards repayment of the Mortgage, and
  - (b) where the repair or reconstruction cost is less than or equal to thirty-five percent (35%) of the replacement value of the Premises, HPD shall have the right to determine how insurance proceeds shall be applied. HPD shall make such determination within sixty (60) days after HPD is notified of the occurrence of the casualty. If HPD determines in such case not to apply the insurance proceeds for the reconstruction or repair of the Premises, the insurance proceeds shall be retained by Mortgagee to the extent of sums then due under the Mortgage.

This paragraph supersedes any contrary provisions in the Regulatory Agreement or Loan Documents.

8. No failure to exercise and no delay in exercising, on the part of HPD, of any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege operate as a waiver of any other right, power or privilege under this Agreement.
9. The covenants, provisions and terms of this Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and interpreted in accordance with the laws of the State of New York, and shall be binding upon and inure to the benefit of Mortgagee, HPD, and their respective successors, transferees, and assigns.
10. Neither this Agreement nor any provision hereof (including this paragraph) may be changed, modified, amended, waived, supplemented, discharged, abandoned, or terminated orally except by an instrument in writing signed by the party against whom

enforcement of the change, modification, amendment, waiver, discharge, abandonment, or termination is sought.

11. Notices. All notices, approvals, requests, waivers, consents or other communications given or required to be given under this Agreement shall be in writing and sent or transmitted as follows:

If to HPD, in duplicate, to: Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038  
Attn: Assistant Commissioner, Housing Incentives  
Facsimile (212) 863-5899

and: Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038  
Attn: General Counsel  
Facsimile (212) 863-8375

If to Bank, in duplicate, to:

Notices must be hand delivered, transmitted via facsimile, or by overnight delivery (e.g., FEDEX) or sent by certified or registered U.S. mail, return receipt requested. Notice shall be deemed to have been given upon (i) delivery if sent by hand delivery, U.S. mail or overnight delivery, and (ii) confirmed receipt, if sent by facsimile, to both the addressee and the person entitled to receive a copy thereof. Each party named above may designate a change of address by written notice to all of the other parties.

12. Recordation. This Agreement shall be recorded against the Premises immediately after the execution hereof, in the Office of the City Register for the County in which the Premises are located and the Applicant [and/or Owner] shall pay all required fees and taxes in connection therewith.

13. Counterparts. This Subordination Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one agreement.

**[No further text - signatures on the next page]**

IN WITNESS WHEREOF, the City of New York, acting by and through its Department of Housing Preservation and Development has caused this Subordination Agreement to be signed by its duly authorized commissioner, and Lender has caused this Subordination Agreement to be duly signed by a duly authorized officer, as of the day and year first above written.

**THE CITY OF NEW YORK**  
Acting by and through its **DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT**

By: \_\_\_\_\_  
Patricia Zafiriadis  
Associate Commissioner for Inclusionary Housing

**[LENDER]**

By: \_\_\_\_\_  
Print Name  
Print Title

APPROVED AS TO FORM BY  
STANDARD TYPE OF CLASS  
UNTIL: \_\_\_\_\_

By: \_\_\_\_\_  
Acting Corporation Counsel

## ACKNOWLEDGEMENTS

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her 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   )  
  ) ss.:  
COUNTY OF NEW YORK )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## **SCHEDULE A**

### **PROPERTY DESCRIPTION**

All those certain plots, pieces and parcels of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of \_\_\_\_\_, in the City and State of New York, designated as:

Block

Lot

County:

Address:

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**SUBORDINATION AGREEMENT**

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by and between  
**THE CITY OF NEW YORK**

-and-

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The property affected by this written instrument lies within the:

Block      Lot      Address

County:  
Address:

**RECORD AND RETURN TO:**

[LENDER'S COUNSEL]

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REGULATORY AGREEMENT

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BETWEEN

THE CITY OF NEW YORK

AND

JAMAICA II HOUSING DEVELOPMENT FUND CORPORATION

AND

J2 OWNER LLC

AND

J2 147-07 94<sup>TH</sup> AVENUE LI LLC

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<u>Block(s)</u>	<u>Lot(s)</u>	<u>Address(es)</u>
9998	0025	147-25 94th Avenue

County: Queens

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RECORD AND RETURN TO:  
Joshua Bloodworth, Esq.  
Department of Housing Preservation  
and Development  
Office of Legal Affairs  
100 Gold Street, Room 5Q5  
New York, NY 10038

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