

Rider to BCA Amendment #3 to Document a Tangible Property Tax Credit Determination

Site Name: HPS Parcel G

Site Number: C241226

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

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

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

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

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

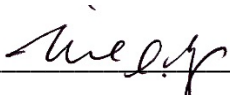
3- For sites statewide, where applicable:

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

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

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

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

By:  11/05/20
Michael J. Ryan, P.E. Date
Director
Division of Environmental Remediation



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:

This BCA amendment application seeks a determination that Site C241226 is eligible for the tangible property credit component of the brownfield redevelopment tax credit. The Site is an affordable housing project. Attached to this application is the regulatory agreement with the New York City Department of Housing Preservation and Development reflecting the same.

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

Section I. Existing Agreement Information

BCP SITE NAME: HPS Parcel G

BCP SITE NUMBER: C241226

NAME OF CURRENT APPLICANT(S): See Schedule A

INDEX NUMBER OF EXISTING AGREEMENT: C241226-11-18 DATE OF EXISTING AGREEMENT: 12/3/2018

Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)

NAME

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Is the requestor authorized to conduct business in New York State (NYS)? Yes No

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

NAME OF NEW REQUESTOR'S REPRESENTATIVE

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable)

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? Yes No

Describe Requestor's Relationship to Existing Applicant:

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

OWNER'S NAME (if different from requestor)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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

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

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.

Requestor's Relationship to Property (check one):

Prior Owner Current Owner Potential /Future Purchaser Other _____

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 2nd Street (street address not yet assigned)

CITY/TOWN Queens

ZIP CODE 11101

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

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
N/A 2nd Street		Queens	6	20	.46

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
Please answer questions below and provide documentation necessary to support answers.	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information.	<input type="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
From ECL 27-1405(31):	
<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: HPS Parcel G	BCP SITE NUMBER: C241226
NAME OF CURRENT APPLICANT(S): See Schedule A	
INDEX NUMBER OF EXISTING AGREEMENT: C241226-11-18	
EFFECTIVE DATE OF EXISTING AGREEMENT: December 3, 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 _____) of (entity _____); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law. _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department. Date: _____ Signature: _____ Print Name: _____

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

(Individual)

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

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am Authorized Signatory (title) of GO HPS LIHTC LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 10/22/20 Signature: 

Print Name: David L. Picket

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Status of Agreement:

<input type="checkbox"/> PARTICIPANT A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input checked="" type="checkbox"/> VOLUNTEER A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement: 12/08/18

Signature by the Department:

DATED: 11/05/20

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: 

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

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

(Individual)

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

Date: _____ Signature: _____

Print Name: _____

(Entity)

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

Date: 10/22/20 Signature: 

Print Name: David L. Picket

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Status of Agreement:

<input type="checkbox"/> PARTICIPANT A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input checked="" type="checkbox"/> VOLUNTEER A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement: 12/08/18

Signature by the Department:

DATED: 11/05/20

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: 

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

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

(Individual)

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

Date: _____ Signature: _____

Print Name: _____

(Entity)

South Point Housing
Development Fund

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

Date: 10/26/2020 Signature: 

Print Name: Scott Short, President

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Status of Agreement:

<input type="checkbox"/> PARTICIPANT A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.	<input checked="" type="checkbox"/> VOLUNTEER A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.
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Effective Date of the Original Agreement: 12/08/18

Signature by the Department:

DATED: 11/05/20

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

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

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____ **LEAD OFFICE:** _____

PROJECT MANAGER: _____

**BROWNFIELD CLEANUP PROGRAM (BCP)
INSTRUCTIONS FOR COMPLETING A BCP AMENDMENT APPLICATION**

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

SECTION II NEW REQUESTOR INFORMATION

Requestor Name

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

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

Requestor Address, etc.

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

Representative Name, Address, etc.

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

Consultant Name, Address, etc.

Provide information for the requestor's consultant.

Attorney Name, Address, etc.

Provide information for the requestor's attorney.

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

Owner Name, Address, etc.

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

Operator Name, Address, etc.

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

SECTION IV**NEW REQUESTOR ELIGIBILITY INFORMATION**

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

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

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

Property Address

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

Tax Parcel Information

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

Schedule A

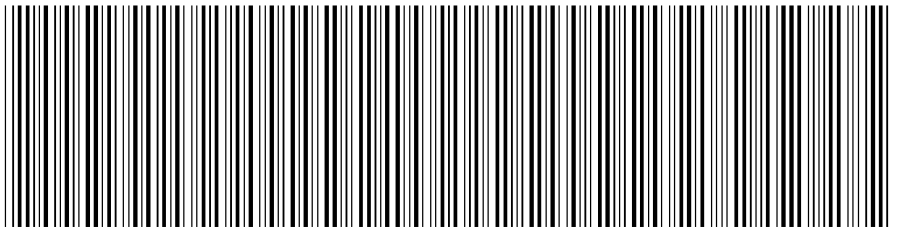
Section 1: Name of Current Applicants

- South Point Housing Development Fund Corporation
- GO HPS LLC
- GO HPS LIHTC LLC

Attachment A

**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**

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



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RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 89

Document ID: 2019122400612008

Document Date: 12-20-2019

Preparation Date: 12-24-2019

Document Type: AGREEMENT

Document Page Count: 87

PRESENTER:

FIRST AMERICAN TITLE INSURANCE CO. NCS
666 THIRD AVENUE
3020-906721
NEW YORK, NY 10017
212-850-0644
JGAMBOA@FIRSTAM.COM

RETURN TO:

NEW YORK CITY HOUSING DEVELOPMENT CORPORATION
110 WILLIAM STREET
NEW YORK, NY 10038

PROPERTY DATA

Borough	Block	Lot	Unit	Address
QUEENS	6	30	Entire Lot	N/A CENTER BOULEVARD

Property Type: RESIDENTIAL VACANT LAND

Borough	Block	Lot	Unit	Address
QUEENS	6	20	Entire Lot	N/A 2ND STREET

Property Type: NON-RESIDENTIAL VACANT LAND

CROSS REFERENCE DATA

CRFN _____ or DocumentID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES

PARTY 1:

GO HPS LLC
432 PARK AVENUE SOUTH, 2ND FLOOR
NEW YORK, NY 10016

PARTY 2:

THE CITY OF NEW YORK
100 GOLD STREET
NEW YORK, NY 10038

Additional Parties Listed on Continuation Page

FEES AND TAXES

Mortgage :

Mortgage Amount: \$ 0.00

Taxable Mortgage Amount: \$ 0.00

Exemption:

TAXES: County (Basic): \$ 0.00

City (Additional): \$ 0.00

Spec (Additional): \$ 0.00

TASF: \$ 0.00

MTA: \$ 0.00

NYCTA: \$ 0.00

Additional MRT: \$ 0.00

TOTAL: \$ 0.00

Recording Fee: \$ 475.00

Affidavit Fee: \$ 0.00

Filing Fee:

\$ 0.00

NYC Real Property Transfer Tax:

\$ 0.00

NYS Real Estate Transfer Tax:

\$ 0.00

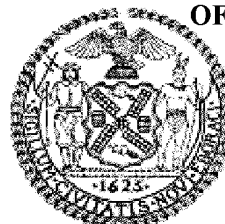
**RECORDED OR FILED IN THE OFFICE
OF THE CITY REGISTER OF THE**

CITY OF NEW YORK

Recorded/Filed 12-26-2019 10:50

City Register File No.(CRFN):

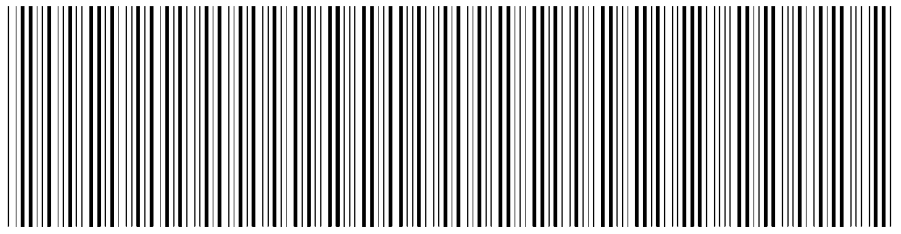
2019000421727



Annette McMill

City Register Official Signature

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



2019122400612008001C0FBF

RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)

PAGE 2 OF 89

Document ID: 2019122400612008
Document Type: AGREEMENT

Document Date: 12-20-2019

Preparation Date: 12-24-2019

PARTIES

PARTY 1:

GO HPS LIHTC LLC
432 PARK AVENUE SOUTH, 2ND FLOOR
NEW YORK, NY 10016

PARTY 1:

SOUTH POINT HOUSING DEVELOPMENT FUND
CORPORATION
217 WYCKOFF AVENUE
BROOKLYN, NY 11237

PARTY 1:

NEW YORK CITY HOUSING DEVELOPMENT
CORPORATION
110 WILLIAM STREET
NEW YORK, NY 10038

PARTIES

PARTY 2:

DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT
100 GOLD STREET
NEW YORK, NY 10038

8

2020 - 906721

REGULATORY AGREEMENT

among

GO HPS LLC,

GO HPS LIHTC LLC,

SOUTH POINT 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**

As of December 20, 2019

BLOCK: 6
LOTS: 20 & 30
COUNTY: Queens

N/A 2ND STREET, N/A CENTER BLVD.

RECORD AND RETURN TO:

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

**First American Title
Insurance Company**
666 Third Avenue 5th Fl
New York, N.Y. 10017
Phone: (212) 922-9700
Fax: (212) 922-0881

REGULATORY AGREEMENT (as may be amended, this "Agreement"), entered into as of December 20, 2019, among **GO HPS LLC** (the "Non-Tax Code Borrower"), a New York limited liability company with an address at 432 Park Avenue, 2nd Floor, New York, NY 10003, **GO HPS LIHTC LLC** (the "Tax Code Borrower" and together with the Non-Tax Code Borrower, jointly and severally, the "Beneficial Owner"), a New York limited liability company with an address at 432 Park Avenue, 2nd Floor, New York, NY 10003, **SOUTH POINT 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 217 Wyckoff Avenue, Brooklyn, NY 11237, **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, the City has conveyed fee title to the Premises to the Legal Owner, and the City, the Legal Owner and the Non-Tax Code Borrower have entered into a Land Disposition Agreement dated as of the date of this Agreement, which is to be recorded against the Premises;

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

WHEREAS, as of the date of this Agreement, the Non-Tax Code Borrower has master leased 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 Tax Code Borrower pursuant to a master lease (the "Master Lease");

WHEREAS, the Sponsor intends to create a commercial condominium on the Premises, pursuant to which the Premises will contain two structures ("Building F" and "Building G") with a total of fourteen (14) condominium units: one residential space condominium unit in each building structure for the Tax Code Units that are 30% AMI Units, 40% AMI Units and 50% AMI Units (collectively, the "30%-50% AMI Tax Code Units Condo Units"), one residential space condominium unit in each building structure for the Tax Code Units that are 80% AMI Units (collectively, the "80% Tax Code Units Condo Units" and together with the 30%-50% AMI Tax Code Units Condo Units, the "Tax Code Units Condo Units"), one residential space condominium unit in each building structure for the Non-Tax Code Income-Restricted Units, one residential space condominium unit in each building structure for the Market-Rate Units, one commercial space condominium unit in Building F, two community facility space condominium units in Building G (one of which may be transferred to The Flux Factory, Inc. (the "Flux Condo Unit" and collectively, the "Building G Community Facility Condo Units")) and one community facility space condominium unit in Building F (the "Building F Community Facility Condo Unit", and together with the Building G Community Facility Condo Units, the "Community Facility Condo Units"), one condominium unit consisting of a comfort station (the "Comfort Station Unit")

and one parking space unit in Building F (the "Parking Condo Unit"); the Tax Code Units Condo Units are expected to receive Tax Credits and comprise the "buildings" 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 the creation of a condominium on the Premises, the Non-Tax Code Borrower intends to convey beneficial ownership of the Tax Code Units Condo Units to the Tax Code Borrower, the Master Lease will be terminated, and the Tax Code Borrower and the Legal Owner intend to enter into a separate Nominee Agreement pursuant to which the Tax Code Borrower will be the beneficial owner of the Tax Code Units Condo Units and the Legal Owner will be the record fee title owner of the Tax Code Units Condo Units; at the same time, the Non-Tax Code Borrower and the Legal Owner intend to amend the existing Nominee Agreement to provide that the Non-Tax Code Borrower will be the beneficial owner of the condominium units containing the Non-Tax Code Income-Restricted Units, the Market-Rate Units, the commercial space, the parking, the comfort station and the community facility space, and the Legal Owner will be the record fee title owner of such 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 \$311,717,000 (the "HDC Construction Loan"), which upon the Permanent Conversion will be partially prepaid and will become a permanent mortgage loan in the aggregate principal amount of \$282,000,000 (the "HDC Permanent Loan" and together with the HDC Construction Loan, the "HDC Loan"), (ii) a second-position mortgage loan to the Beneficial Owner in the aggregate principal amount of \$133,630,000, 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 "HDC Second Loan") and (iii) a third-position mortgage loan to the Beneficial Owner in the aggregate principal amount of \$778,000, to be funded by a grant of City Capital funds from HPD to HDC pursuant to a grant agreement (the "Grant Agreement") between HPD and HDC, dated as of the date of this Agreement (the "HDC Third Loan" and together with the HDC Second Loan, the "HDC City Capital Loan" and together with the HDC Loan, the "HDC Financing"); the HDC Financing will be evidenced by notes made by the Beneficial Owner and dated as of the date of this Agreement (collectively, and as may be amended, the "HDC Mortgage Note") and secured by mortgages made by the Sponsor and dated as of the date of this Agreement (collectively, and as may be amended, the "HDC Mortgage");

WHEREAS, the Beneficial Owner has requested that Wells Fargo Bank, National Association (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 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 Beneficial Owner will be Wells Fargo Affordable Housing Community Development 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 conveyance of the Premises to the Legal Owner, 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.

"AIRS Units" shall mean units qualifying as Affordable Independent Residences for Seniors under the Zoning Resolution of the City of New York.

"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 rents as set forth in Schedule B, such that, by way of example, the Applicable AMI Limit for a 125% of AMI Unit (the income restriction for occupancy) is 100% of AMI (the initial rent level).

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

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

"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 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.

"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 WHEREAS clauses.

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

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

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

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

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

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

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

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

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

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

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

"HDC Third 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-Permanently Affordable Unit" shall have the meaning set forth in Section 4.02.

"Non-Tax Code Income-Restricted Unit" shall mean any unit that is not a Tax Code Unit, but that is required to be leased pursuant to this Agreement to a tenant who qualifies as an Eligible Tenant with an Annual Income prior to initial occupancy that is at or below an income level or levels specified in Section 4.02. This category includes any units designated in Section 4.02 as having income restrictions for occupancy at any level above 80% of AMI (but not any Market-Rate Units).

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

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

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

"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 or 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 80% 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 Units" 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 period lasting in perpetuity 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. Notwithstanding that the Occupancy Restriction Period is intended to last in perpetuity, the following provisions are included in this Agreement to satisfy requirements of the Tax Code and other financing requirements. This Agreement contains these and other provisions referring to the end of the Occupancy Restriction Period and the period after the Occupancy Restriction Period ends. Any such provisions are included out of caution only and shall not apply barring unforeseen amendment of this Agreement, change in law or court order. In no event shall the Occupancy Restriction Period end prior to the latest of the following dates:

- (a) the date that is 15 years after the date on which 50% of the units are first occupied;
- (b) the first day on which no Obligation or other tax-exempt private activity obligation with respect to the Project is outstanding;
- (c) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates;
- (d) the date of the end of the Extended Use Period (see Section 6.02);
- (e) the date on which the Real Property Tax Benefits expire;
- (f) the date on which the HDC Mortgage and any other mortgage held by HDC or HPD with respect to the Project have been satisfied;
- (g) 60 years from the date of the Permanent Conversion; and
- (h) 40 years from the date hereof.

Notwithstanding the foregoing, with respect to the Non-Permanently Affordable Units (as defined in Section 4.02 below and delineated in Schedule B), the Occupancy Restriction Period

is intended to end earlier and shall end on the latest of the following dates:

- (i) the date that is 15 years after the date on which 50% of the units are first occupied;
- (ii) the first day on which no Obligation or other tax-exempt private activity obligation with respect to the Project is outstanding;
- (iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates;
- (iv) the date of the end of the Extended Use Period (see Section 6.02);
- (v) the date on which the Real Property Tax Benefits expire;
- (vi) the date on which the HDC Mortgage and any other mortgage held by HDC or HPD with respect to the Project have been satisfied;
- (vii) 60 years from the date of the Permanent Conversion; and
- (viii) 40 years from the date hereof.

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 HDC Mortgage, and (ii) if, within a reasonable period, the Obligations are retired (it being agreed that HDC shall cause the Obligations to be retired within a reasonable period pursuant to the terms of the Resolution) and the HDC City Capital Loan is paid in full. However, if the Sponsor or a related person obtains an ownership interest in the Project after any such

foreclosure 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 Project to comply, with (i) the provisions of the Tax Code governing the Tax Credits, (ii) the extended low income housing commitment provisions of this Agreement (Article VI) and (iii) HDC's monitoring procedures with respect to the Tax Credits.
- (d) Real Property Tax Benefits; Other Agreements and Permits. The City Council of The City of New York, by resolution dated November 14, 2019, No. 1159 (the "Council Resolution"), a copy of which is attached as Schedule D, 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 any permits or agreements with government agencies, including HDC and HPD, in good standing and (iii) to comply with the requirements of such agencies. Any violation of the requirements of the Real Property Tax Benefits, or any permits or agreements with or requirements of any government agencies, may be declared an Event of Default under this Agreement. The Parking Condo Unit shall be restricted to the residents of the Project. The certificate of occupancy for the Parking Condo Unit shall be limited to use groups 2, 3 and 4 of the Zoning Resolution of the City of New York. Without limiting the foregoing, the Sponsor

shall lease the Community Facility Condo Units solely for uses within Use Groups 3 and 4 of the Zoning Resolution of the City of New York.

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.

- (a) Tax Code Units. In accordance with the distribution set forth in Schedule B, 338 units shall be Tax Code Units provided that the Sponsor complies with the Income Averaging Requirement as set forth in Section 42(g)(2)(D)(iii) of the Tax Code. In

furtherance thereof, HDC shall further require as described herein that the units be allocated as follows.

- (i) The Sponsor shall lease no fewer than 56 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 30% of AMI ("30% of AMI Units").
 - (ii) The Sponsor shall lease no fewer than 114 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 40% of AMI ("40% of AMI Units").
 - (iii) The Sponsor shall lease no fewer than 111 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 50% of AMI ("50% of AMI Units").
 - (iv) The Sponsor shall lease no fewer than 57 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 80% of AMI ("80% of AMI Units").
- (b) Non-Tax Code Income-Restricted Units. In accordance with the distribution set forth in Schedule B, 509 units shall be Non-Tax Code Income-Restricted Units.
- (i) The Sponsor shall lease no fewer than 227 Non-Tax Code Income-Restricted Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 125% of AMI ("125% of AMI Units").
 - (ii) The Sponsor shall lease no fewer than 282 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 no fewer than 114 of the 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) AIRS Units. No fewer than 98 Tax Code Units shall be AIRS Units. The Sponsor shall lease each AIRS Unit to an Eligible Tenant whose Household, upon initial occupancy of the unit, includes at least one person who is 62 years of age or

older. Sponsor shall comply with the requirements of Affordable Independent Residences for Seniors set forth in the Zoning Resolution of the City of New York.

- (f) Market-Rate Units. In accordance with the distribution set forth in Schedule B, 283 units shall be Market-Rate Units which units shall not be Permanently Affordable Units (the "Non-Permanently Affordable Units").
- (g) Permanently Affordable Units. The Tax Code Units and Non-Tax Code Income-Restricted Units will be permanently affordable (the "Permanently Affordable Units").

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 29.86%, 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. 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 Income Restricted 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; provided, however, the Sponsor shall be permitted to rent five percent (5%) of total number of Market Rate Units to corporations or other entities, or such higher percentage as approved by HPD and HDC in their discretion.
- (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 Units 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 Units as a "building" as defined in Section 42 of the Tax Code, if the Annual Income of a tenant in the Tax Code Units Condo Units exceeds the amount permitted by the Tax Code, then the Sponsor shall lease the next available vacant unit of comparable or smaller size in the same condo unit to a tenant whose Annual Income does not exceed the income restriction for occupancy designated for such unit prior to becoming vacant. If the Tax Code Units Condo Units are not established as separate buildings under the Tax Code (i) for purposes of Section 142 of the Tax Code, if the Annual Income of a tenant in a Tax Code Unit that is not an 80% of AMI Unit exceeds 140% of 60% of AMI, then if required to maintain compliance with the Minimum Set Aside and any other applicable provisions of the Tax Code in order to preserve the exclusion from gross income for purposes of federal income taxation of interest on the Obligations, Sponsor shall lease the next available vacant unit in the Project of comparable or smaller size with an income restriction for occupancy designated for such unit prior to becoming vacant that is above 60% of AMI only to a tenant whose income does not exceed 60% of AMI and (ii) for purposes of Section 42 of the Tax Code, if the Annual Income of a tenant in a Tax Code Unit exceeds 140% of 60% of AMI (for any Tax Code Unit with an income restriction for occupancy designated at or below 60% of AMI) or 80% of AMI (for any Tax Code Unit with an income restriction for occupancy designated at or below 80% of AMI), as applicable, then the Sponsor shall lease the next available vacant unit of comparable or smaller size in the Project to a tenant whose Annual Income does not exceed the income restriction for occupancy designated for such unit prior to becoming vacant, or, for any Non-Tax Code Income-Restricted Unit, to a tenant whose Annual Income does not exceed the income restriction for occupancy which would have to be designated with respect to such unit in order to meet the Income Averaging Requirement a set forth in Section 42(g)(c) of the 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"). 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 \$1,168,000, 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 \$855,000, and amounts advanced to furnish Homeless Units shall not exceed \$313,000, 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 80% of the difference between (x) rent collected from the Homeless Units and (y) the amount of rent that would have been collected from the Homeless Units were the rent equal to 30% of 30% of the AMI for such year, provided, however, that if the Social Services Reserve shall have a balance of \$15,000 per Homeless Unit, increasing by three percent (3%) annually, at the Sponsor's election, the amount that would have been used to fund the Social Services Reserve above such balance pursuant to this Section 4.10(a)(ii) shall instead be applied to repay the

outstanding principal balance of the HDC City Capital Loan. If funds are withdrawn from the Social Services Reserve as provided herein, then Sponsor shall annually replenish the Social Services Reserve in accordance with this Section 4.10(a)(ii).

- (iii) The Sponsor may withdraw funds from the Social Services Reserve (x) to implement the approved Social Services Plan and Social Services Contract, (y) to fill any operating shortfalls in the Project caused by Sponsor's inability to collect the rent underwritten for the Homeless Units due to loss of Rental Assistance by a tenant in the Homeless Unit, subject to HPD and HDC approval in their sole discretion (if such approval right is requested), and (z) for any other purpose, subject to HPD and HDC approval in their sole discretion.
- (iv) The requirement to fund the Social Services Reserve shall terminate on the last day of the Occupancy Restriction Period as calculated for the Non-Permanently Affordable Units. At the end of the Occupancy Restriction Period, any remaining funds in the Social Services Reserve and the HDC Operating Reserve (as defined in the HDC Mortgage) must stay with the Project.

SECTION 4.11 Social Services for AIRS Units. Prior to the initial rent-up of the Units, the Sponsor shall enter into a contract with a social services provider for the provision of social services to the AIRS Units, which contract and social services provider shall both be subject to HPD approval (and HDC approval, if HDC has requested to review the contract and provider) (the "AIRS Social Services Contract"). The annual fee for the social services provided under the AIRS Social Services Contract shall not be less than \$58,800, which fee shall increase annually by three percent (3%). The obligations in this Section 4.11 shall remain so long as there are AIRS Units in the Project.

ARTICLE V. RENTS AND LEASES

SECTION 5.01 Compliance with Rent Stabilization.

- (a) All Units Subject to Rent Stabilization. All Income Restricted Units shall be subject to Rent Stabilization and shall remain subject to Rent Stabilization after the Occupancy Restriction Period ends. In connection with the Income Restricted Units, 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. Provided, however, MCI increases shall be allowed upon vacancy provided that such major capital improvements are not funded with the HDC Financing or any reserves related to the Project.
- (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).

(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 Income Restricted Unit in accordance with Rent Stabilization as follows:

- (a) Legal Rents. The initial legal regulated rent for each unit shall be the amount set forth in Schedule B. This amount may increase upon lease renewal or vacancy in accordance with Rent Stabilization (as limited by Section 5.01). This amount, as adjusted from time to time as permitted, shall be the "Legal Rent".
- (b) Registered Preferential Rents. If the Actual Rent (as defined in the following section) for an Income Restricted 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 Income Restricted 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 40% of AMI (adjusted for a monthly rent);
- 3) 30% of the Annual Income (adjusted for monthly rent, but in no event less than the amounts set forth on Schedule B-2 as adjusted for the number of bedrooms); and
- 4) 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 initial Actual Rent 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) 30% of 40% of AMI (adjusted for a monthly rent).

(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.

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;
- 2) 30% of 40% of AMI (adjusted for a monthly rent);
- 3) 30% of the Annual Income (adjusted for monthly rent, but in no event less than the amounts set forth on Schedule B-2 as adjusted for the number of bedrooms); and
- 4) 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).
 - (iv) 2% Floor. Notwithstanding the provisions of paragraph (b) above, upon lease renewal or vacancy of any Non-Tax Code Income-Restricted Unit, if the percentage increase that is allowed under Rent Stabilization is 2% or greater, but an Actual Rent at 30% of the Applicable AMI Limit (adjusted for a monthly rent) would restrict the rent increase to a percentage increase that is less than 2%, then the Sponsor may increase the tenant's Actual Rent by 2%.
- (c) 30% Limits Apply to Gross Rents. All provisions in this Agreement limiting a rent to 30% of the Applicable AMI Limit shall mean that the sum of the rent and the applicable utility allowance (i.e., the gross rent) shall not exceed 30% of the Applicable AMI Limit.
- (d) Homeless Units. Actual Rents for Homeless Units shall be subject to the provisions of paragraph (a) above.

SECTION 5.04 Additional Requirements for Rental Assistance Units.

- (a) Tenant's Loss of Rental Assistance.
- (i) 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.
 - (ii) 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 40% of AMI (adjusted for 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 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 Project must be in compliance with all provisions of Section 42 of the Tax Code, any and all related regulations, the provisions of this extended low income housing commitment, and HDC's monitoring procedures with respect to the Tax Credits, in each case during the term of the Compliance Period and the Extended Use Period (and otherwise as provided in this Agreement). For purposes of this Agreement:

- (a) "Compliance Period" shall mean the period commencing upon the Compliance Period Commencement Date and ending on the Compliance Period Termination Date.
- (b) "Compliance Period Commencement Date" shall mean the date that is the first day of the first taxable year of the Credit Period.
- (c) "Compliance Period Termination Date" shall mean the date that is 15 years after the Compliance Period Commencement Date.
- (d) "Credit Period" shall mean the period of 10 taxable years beginning with (i) the taxable year in which the building is placed in service, or (ii) at the election of the Sponsor, the succeeding taxable year, but only if the Project is a qualified low income housing project under Sections 42(g) and 142(d) of the Tax Code.
- (e) "Extended Use Period" shall mean the period commencing upon the Compliance Period Commencement Date and terminating on the date that is 40 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 14th year of the Compliance Period.

SECTION 6.04 Applicable Fraction. Upon the establishment of the Tax Code Units Condo Units 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 Units 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 Gotham Real Estate Managers

LLC as the Managing Agent and Riseboro Management Corp. as the sub-managing agent for the AIRS Units for purposes of the Construction Loan Closing.

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

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

ARTICLE VIII. OWNERSHIP

SECTION 8.01 Transfers of Project by Sponsor.

- (a) In General. The Sponsor covenants that it shall not sell, lease, sublease, convey, transfer or otherwise dispose of all or any portion of the Project (each, a "Transfer") without the prior written consent of HDC and HPD, which shall not be unreasonably withheld. As a condition to a Transfer of all or substantially all of the Project, the transferee shall be required to assume all of the Sponsor's obligations under this Agreement from the date of such Transfer and to execute any document that HDC or HPD shall reasonably require in connection with the assumption. Sponsor may transfer the Flux Condo Unit to The Flux Factory, Inc. or its designee so long as the transfer is evidenced by documents satisfactory to HDC and HPD in their respective reasonable discretion.
- (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 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, Wells Fargo Affordable Housing Community Development Corporation. Any interest in the Beneficial Owner of a special member or limited partner may be transferred only together with a permitted transfer of the Tax Credit Investor's interest in the Beneficial Owner or of the interest of the manager, managing member or general partner of the Tax Credit Investor, and only to the same transferee or to a party that is an affiliate of, and is and remains controlled by or under common control with the transferee.

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

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 (i) immediate family members of David L. Pickett or Matthew Pickett or trusts for the benefit of such immediate family members for estate planning purposes and (ii) to employees of affiliates of Beneficial Owner provided such transfer does not have any decision making authority and such transfers do not exceed ten percent (10%) of direct or indirect interest in the aggregate, 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 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 Institutional Investor. HDC and HPD consent to the following:

- (a) Any transfers of (i) interests in in GS HPS Investor Opportunity Fund LP ("GS Investor"), (ii) GS Investor's direct or indirect interests in the Non-Tax Code Borrower to an affiliate wholly owned or controlled directly or indirectly by the Goldman Sachs Group, Inc. and (iii) GS Investor's direct or indirect interests in the Non-Tax Code Borrower to an Institutional Investor (as defined below) (GS Investor is a non-managing member in GO HPS Venture, LLC, the sole member of the Non-Tax Code Borrower);
- (b) The removal by GS Investor of GO HPS MM, LLC as the managing member of GO HPS Venture, LLC, in accordance with the terms of that certain Amended and Restated Operating Agreement of GO HPS Venture, LLC, dated on or about December 17, 2019 (as the same may be amended or modified from time to time (the "Operating Agreement")); provided that the replacement managing member is either (i) GS Investor or (ii) a Permitted Entity;
- (c) The limited partners in GS Investor may transfer their direct or indirect interests in GS Investor or remove the general partner of GS Investor so long as the general partner of GS Investor is controlled, directly or indirectly, by Goldman Sachs Group, Inc. or an Institutional Investor that is a Permitted Entity;
- (d) Any transfers of (i) interests in GSUIG Real Estate Member LLC ("GS LIHTC Investor"), (ii) GS LIHTC Investor's direct or indirect interests in Sponsor to an affiliate wholly owned or controlled directly or indirectly by the Goldman Sachs Group, Inc. and (iii) GS LIHTC Investor's direct or indirect interests in the Tax Code Borrower to an Institutional Investor (as defined below) (GS LIHTC Investor

is a non-managing member in GO HPS LIHTC MM, LLC, a member of the Tax Code Borrower);

(e) The removal by GS LIHTC Investor of GO HPS MM, LLC as the managing member of GO HPS LIHTC MM, LLC, in accordance with the terms of that certain Operating Agreement of GO HPS LIHTC MM, LLC, dated on or about December 17, 2019 (as the same may be amended or modified from time to time (the "Operating Agreement")); provided that the replacement managing member is either (i) GS LIHTC Investor or (ii) a Permitted Entity; and

(f) Notwithstanding the foregoing, with respect to any transfer of GS Investor's or GS LIHTC Investor's direct or indirect interests in the applicable Sponsor to an individual or to a non-publicly traded entity, such transferees shall be subject to HDC's standard sponsor review procedures to be performed by HDC on an expedited basis 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 customarily employs under their sponsor review procedure.

(g) For purposes of this Agreement:

- (i) "Institutional Investor" shall mean any entity controlled by a person or persons who (a) has individual or combined net assets of not less than Two Hundred Million Dollars (\$200,000,000), (b) has liquid assets (including, without limitation, unfunded capital commitments) of at least Fifteen Million Dollars (\$15,000,000) and (c) is subject to the jurisdiction of the courts of the State of New York.
- (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 employs under their sponsor review procedure.

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. Additionally, if HPD makes a determination as described in Paragraph 3a of the Council Resolution, HPD shall provide the notice and opportunity to cure set forth in the Council Resolution.

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, 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 Wells Fargo Bank, National Association, Community Lending and Investment, 150 East 42nd Street, 36th Floor, New York, NY 10017, MAC: J0161-367, Attention: Mark Lippi, 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 Hirschen Singer & Epstein LLP, 902 Broadway, 13th Floor, New York, NY 10010, Attention: Russell Kivler, Esq., with a copy to RiseBoro Community Partnership Inc., 217 Wyckoff Avenue, Brooklyn, NY 11237, Attention: Emily Kurtz, with a copy to Goldstein Hall PLLC, 80 Broad Street, Suite 303, New York, NY

10004, Attention: Niki Tsismenakis, Esq., and to the Tax Credit Investor at Wells Fargo Affordable Housing Community Development Corporation, MAC D1053-170, 301 South College Street, Charlotte, NC 28288, Attention: Director of Tax Credit Asset Management with a copy to Sidley Austin LLP, One South Dearborn Street, Chicago, IL 60603, Attention: Philip C. Spahn, Esq. 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 as more particularly set forth in the HireNYC Rider attached as Schedule E, 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 F.

SECTION 11.19 Living Wage Law. The Sponsor shall comply with the Living Wage Law Contract Provisions attached to this Agreement as Schedule G, where applicable.

SECTION 11.20 Comfort Station. Sponsor shall construct a comfort station in Building G as part of the Project and shall comply with that certain Maintenance and Operations Agreement (Comfort Station) dated as of the date hereof among Sponsor and The City of New York, acting by its Department of Parks and Recreation, which is to be recorded against the Premises.

SECTION 11.21 Project Amenities. All amenity spaces in the Project shall be available to all Households in the Project free of charge, except for the spaces indicated in Schedule H.

SECTION 11.22 Revenue Sharing Agreement. Reference is made to the Revenue Sharing Agreement dated as of May 20, 2009, by and between the Port Authority of New York and New Jersey ("Port Authority"), the City, and the New York City Economic Development Corporation, and recorded against the Premises at CRFN 2009000182668 (the "Revenue Sharing Agreement"). Capitalized terms used in this Section 11.20 but not defined in this Agreement are defined in the Revenue Sharing Agreement:

- (a) The Sponsor shall pay to the City or, at the City's option, to another party identified by the City, any amounts that become due under the Revenue Sharing Agreement from or arising out of or in connection with the Premises, including, without limitation, any Net Revenues, late fees, interest, or other costs and expenses, where such amounts become due (i) because of a failure of the Sponsor to comply with this Agreement, or (ii) because of a failure of the Sponsor to maintain the ratio of ZFA developed as Affordable Housing within the Premises to the total ZFA that could be developed within the Premises, as contemplated pursuant to the HPD-approved plans for the Project as of the date of this Agreement. In addition, the Sponsor shall make no changes to the ratio of ZFA developed as Affordable Housing within the Premises to the total ZFA that could be developed within the Premises without the prior written consent of HPD.
- (b) The Sponsor shall provide the City with all information that the City deems necessary to satisfy any reporting obligations under the Revenue Sharing Agreement. The Sponsor shall provide all such information as the City may from time to time request promptly upon request by the City and no later than 45 days after the date of any such request by the City.
- (c) The Sponsor shall maintain the accounts and records that are required to be maintained with respect to the Premises under the Revenue Sharing Agreement in the manner and for the period required under the Revenue Sharing Agreement. The Sponsor shall provide the City with all information that the City deems necessary to satisfy any accounting or record-keeping obligations under the Revenue Sharing Agreement. The Sponsor shall provide all such information as the

City may from time to time request promptly upon request by the City and no later than 12 days after the date of any such request by the City.

(d) The Sponsor shall cooperate fully with the City in connection with the performance of the City's obligations under the Revenue Sharing Agreement, including, without limitation, in any adjustment procedure, arbitration, or other dispute with respect to payments or other obligations under the Revenue Sharing Agreement, and shall provide such further assurances as the City deems necessary to comply with the Revenue Sharing Agreement.


(e) HPD will make reasonable efforts, promptly following the date of this Agreement, to obtain an acknowledgement in writing from the Port Authority that the Premises, if operated in compliance with this Agreement, will meet the Safe Harbor set forth in the Revenue Sharing Agreement. The Sponsor acknowledges that any modification of the Revenue Sharing Agreement would be at the sole discretion of all parties to the Revenue Sharing Agreement:

[Signatures follow]

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


GO HPS LLC,
a New York limited liability company

By: GO HPS Venture, LLC, its sole member

By: 
Name: David L. Picket
Title: Authorized Signatory

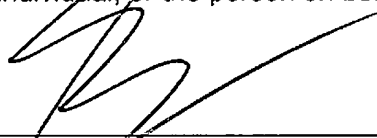
GO HPS LIHTC LLC,
a New York limited liability company

By: GO HPS LIHTC MM, LLC, its managing member

By: 
Name: David L. Picket
Title: Authorized Signatory

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

On the 17 day of December, 2019, before me, the undersigned, a notary public in and for said state, personally appeared **DAVID L. PICKET**, 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:
GARY POLLARD
Notary Public, State of New York
No. C1PO4827351
Qualified in New York County
Commission Expires April 30, 2014 / 172

**SOUTH POINT HOUSING
DEVELOPMENT FUND CORPORATION,**
a New York not-for-profit corporation

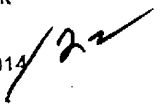
By: C-K
Name: Emily Kurtz
Title: Vice President/Treasurer

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

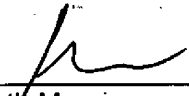
On the 17 day of December, 2019, before me, the undersigned, a notary public in and for said state, personally appeared **EMILY KURTZ**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged 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:

GARY POLLARD
Notary Public, State of New York
No. 01PO4827351
Qualified in New York County
Commission Expires April 30, 2014 

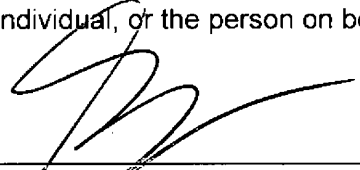
**NEW YORK CITY HOUSING
DEVELOPMENT CORPORATION**

By: 

Ruth Moreira
Senior Vice President

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

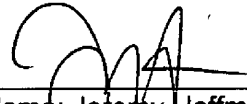
On the 19 day of December, 2019, before me, the undersigned, a notary public in and for said state, personally appeared **RUTH MOREIRA**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged 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:

GARY POLLARD
Notary Public, State of New York
No. 01PO4827351
Qualified in New York County
Commission Expires April 30, 2014 22

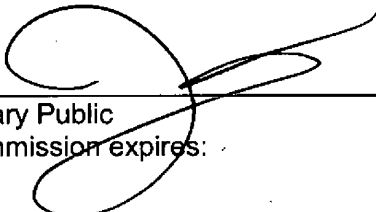
THE CITY OF NEW YORK, acting by and through its DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

By: 
Name: Jeremy Hoffman
Title: Assistant Commissioner

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

On the 17th 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.

JENNIFER A KUBICKI
Notary Public, State of New York
No. 02KU6278123
Qualified in Kings County
Commission Expires Sept. 6, 2021



Notary Public
Commission expires:

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

PROPERTY DESCRIPTION

PARCEL I:

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

Beginning at a point on the southeasterly sideline of 2nd Street (75 feet wide), therein distant 95.21 feet southwesterly from the intersection formed by the centerline prolongation of 56th Avenue (60 feet wide) with the southeasterly sideline prolongation of 2nd Street, running thence;

Southerly with an exterior angle of $130^{\circ}49' 6''$ seconds with the preceding course, 111.23 feet to a point, thence

Southerly with an interior angle of $167^{\circ}57' 41''$ with the preceding course, 11.64 feet to a point, thence

Southwesterly with an interior angle of $142^{\circ}53' 31''$ with the preceding course, 176.10 feet to a point, thence

Northwesterly with an interior angle of $87^{\circ}11' 54''$ with the preceding course, 91.42 feet to a point, thence

Northeasterly with an interior angle of $92^{\circ}46' 00''$ with the preceding course, 253.68 feet to the point and place of Beginning.

PARCEL II:

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

Beginning at a point 150.00' westerly from the corner formed by the intersection of the northeasterly side of 57th Avenue (60 feet wide) with the westerly side of 2nd Street (75 feet wide)

Running thence westerly along the northerly side of 57th Avenue, 156.61 feet to a point;
Running thence northerly along the easterly side of Center Boulevard, along a curve to the left having a radius of 497.80 feet and length of 145.11 feet to a point;

Running thence northeasterly along the southerly side of 56th Avenue, 202.08 feet to a point;

Running thence southerly along a line forming an interior angle of $61^{\circ}55'1''$ with the southerly side of 56th Avenue, 245.74 feet to the point and place of Beginning.

AS TO PARCEL II:

Together with the benefits of certain easements contained in a Zoning Lot Development and Easement Agreement made by and among the City of New York, GO HPS LLC, GO HPS LIHTC LLC, and South Point Housing Development Fund Corporation, dated as of December 20, 2019 and to be recorded in the Office of the City Register, Queens County.

SCHEDULE B

DISTRIBUTION OF UNITS AND INITIAL RENTS

Project: **Hunters Point South Sites F&G**
57-28 2nd Street and 1-15 57th Avenue
Long Island City, NY
Block 6, Lots 20 & 30

The Project shall contain 1,132 units in total (including 2 Superintendent 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), except in the case of the Legal Rents for units occupied initially by tenants with Rental Assistance vouchers or certificates, which are based on the FMR percentages given with no deduction for the utility allowance.

1-15 57TH Avenue (Building F)

Tax Code Units

30% of AMI Units (Permanently Affordable Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 30% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	0	\$1,545 (100% of AMI)	\$375 (27% of AMI)
1-Bedroom	0	\$1,942 (100% of AMI)	\$481 (27% of AMI)
2-Bedroom	10	\$2,342 (100% of AMI)	\$588 (27% of AMI)
3-Bedroom	2	\$2,698 (100% of AMI)	\$672 (27% of AMI)
TOTAL	12		

30% of AMI Units (AIRS, Permanently Affordable Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 30% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	15	\$1,545 (100% of AMI)	\$375 (27% of AMI)
1-Bedroom	24	\$1,942 (100% of AMI)	\$481 (27% of AMI)
2-Bedroom	0	\$2,342 (100% of AMI)	\$588 (27% of AMI)
3-Bedroom	0	\$2,698 (100% of AMI)	\$672 (27% of AMI)
TOTAL	39		

40% of AMI Units (Homeless Units, Permanently Affordable Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 40% of AMI.

SCHEDULE B (continued)

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	16	\$1,545 (100% of AMI)	\$375 (27% of AMI)
1-Bedroom	12	\$1,942 (100% of AMI)	\$481 (27% of AMI)
2-Bedroom	23	\$2,342 (100% of AMI)	\$588 (27% of AMI)
3-Bedroom	2	\$2,698 (100% of AMI)	\$672 (27% of AMI)
TOTAL	53		

50% of AMI Units (Permanently Affordable Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 50% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	1	\$1,545 (100% of AMI)	\$696 (47% of AMI)
1-Bedroom	0	\$1,942 (100% of AMI)	\$881 (47% of AMI)
2-Bedroom	21	\$2,342 (100% of AMI)	\$1,069 (47% of AMI)
3-Bedroom	3	\$2,698 (100% of AMI)	\$1,227 (47% of AMI)
TOTAL	25		

50% of AMI Units (AIRS, Permanently Affordable Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 50% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	19	\$1,545 (100% of AMI)	\$696 (47% of AMI)
1-Bedroom	23	\$1,942 (100% of AMI)	\$881 (47% of AMI)
2-Bedroom	0	\$2,342 (100% of AMI)	\$1,069 (47% of AMI)
3-Bedroom	0	\$2,698 (100% of AMI)	\$1,227 (47% of AMI)
TOTAL	42		

80% of AMI Units (Permanently Affordable Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 80% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	2	\$1,545 (100% of AMI)	\$1,176 (77% of AMI)
1-Bedroom	3	\$1,942 (100% of AMI)	\$1,481 (77% of AMI)
2-Bedroom	11	\$2,342 (100% of AMI)	\$1,789 (77% of AMI)
3-Bedroom	2	\$2,698 (100% of AMI)	\$2,059 (77% of AMI)
TOTAL	18		

SCHEDULE B (continued)**80% of AMI Units (AIRS, Permanently Affordable Units)**

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 80% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	8	\$1,545 (100% of AMI)	\$1,176 (77% of AMI)
1-Bedroom	9	\$1,942 (100% of AMI)	\$1,481 (77% of AMI)
2-Bedroom	0	\$2,342 (100% of AMI)	\$1,789 (77% of AMI)
3-Bedroom	0	\$2,698 (100% of AMI)	\$2,059 (77% of AMI)
TOTAL	17		

Non-Tax Code Income-Restricted Units**125% of AMI Units (Permanently Affordable Units)**

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 100% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	41	\$1,866 (120% of AMI)	\$1,545 (100% of AMI)
1-Bedroom	48	\$2,342 (120% of AMI)	\$1,942 (100% of AMI)
2-Bedroom	43	\$2,823 (120% of AMI)	\$2,342 (100% of AMI)
3-Bedroom	6	\$3,253 (120% of AMI)	\$2,698 (100% of AMI)
TOTAL	138		

165% of AMI Units (Permanently Affordable Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 125% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	50	\$2,266 (145% of AMI)	\$1,946 (125% of AMI)
1-Bedroom	60	\$2,842 (145% of AMI)	\$2,442 (125% of AMI)
2-Bedroom	54	\$3,423 (145% of AMI)	\$2,943 (125% of AMI)
3-Bedroom	8	\$3,946 (145% of AMI)	\$3,391 (125% of AMI)
TOTAL	172		

57-28 2nd Street (Building G)**Tax Code Units****30% of AMI Units (Permanently Affordable Units)**

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 30% of AMI.

SCHEDULE B (continued)

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	1	\$1,545 (100% of AMI)	\$375 (27% of AMI)
1-Bedroom	1	\$1,942 (100% of AMI)	\$481 (27% of AMI)
2-Bedroom	3	\$2,342 (100% of AMI)	\$588 (27% of AMI)
3-Bedroom	0	\$2,698 (100% of AMI)	\$672 (27% of AMI)
TOTAL	5		

40% of AMI Units (Homeless Units, Permanently Affordable Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 40% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	13	\$1,545 (100% of AMI)	\$375 (27% of AMI)
1-Bedroom	38	\$1,942 (100% of AMI)	\$481 (27% of AMI)
2-Bedroom	6	\$2,342 (100% of AMI)	\$588 (27% of AMI)
3-Bedroom	4	\$2,698 (100% of AMI)	\$672 (27% of AMI)
TOTAL	61		

50% of AMI Units (Permanently Affordable Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 50% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	8	\$1,545 (100% of AMI)	\$696 (47% of AMI)
1-Bedroom	26	\$1,942 (100% of AMI)	\$881 (47% of AMI)
2-Bedroom	6	\$2,342 (100% of AMI)	\$1,069 (47% of AMI)
3-Bedroom	4	\$2,698 (100% of AMI)	\$1,227 (47% of AMI)
TOTAL	44		

80% of AMI Units (Permanently Affordable Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 80% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	5	\$1,545 (100% of AMI)	\$1,176 (77% of AMI)
1-Bedroom	13	\$1,942 (100% of AMI)	\$1,481 (77% of AMI)
2-Bedroom	3	\$2,342 (100% of AMI)	\$1,789 (77% of AMI)
3-Bedroom	1	\$2,698 (100% of AMI)	\$2,059 (77% of AMI)
TOTAL	22		

Non-Tax Code Income-Restricted Units

125% of AMI Units (Permanently Affordable Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 100% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	18	\$1,866 (120% of AMI)	\$1,545 (100% of AMI)
1-Bedroom	52	\$2,342 (120% of AMI)	\$1,942 (100% of AMI)
2-Bedroom	13	\$2,823 (120% of AMI)	\$2,342 (100% of AMI)
3-Bedroom	6	\$3,253 (120% of AMI)	\$2,698 (100% of AMI)
TOTAL	89		

165% of AMI Units (Permanently Affordable Units)

Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 125% of AMI.

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	22	\$2,266 (145% of AMI)	\$1,946 (125% of AMI)
1-Bedroom	66	\$2,842 (145% of AMI)	\$2,442 (125% of AMI)
2-Bedroom	15	\$3,423 (145% of AMI)	\$2,943 (125% of AMI)
3-Bedroom	7	\$3,946 (145% of AMI)	\$3,391 (125% of AMI)
TOTAL	110		

Project Market-Rate Units (Non-Permanently Affordable Units)

A total of 283 units shall be Market-Rate Units. The Market Rates Units are not subject to Rent Stabilization. The Market-Rate Units shall be distributed as follows:

	<u>No. of Units</u>
Studio	68
1-BR	127
2-BR	67
3-BR	21
TOTAL	283

Rent Increases at Initial Rent-Up

The Legal Rents and Actual Rents specified in this Schedule B may be increased to the 2020 AMI levels at initial rent-up. 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 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
3-Bedroom	\$512

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 D

COUNCIL RESOLUTION

[Follows] ... and ...

... of the ...

... of the following business of ...

**THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 1159**

Resolution approving a tax exemption pursuant to Article XI of the Private Housing Finance Law (L.U. No. 563; Non-ULURP No. 20205105 HAQ).

By Council Members Salamanca and Adams

WHEREAS, the New York City Department of Housing Preservation and Development ("HPD") submitted to the Council on September 24, 2019 its request dated September 23, 2019 that the Council approve a real property tax exemption pursuant to Section 577 of the Private Housing Finance Law (the "Tax Exemption Request") for property located at Block 6, Lots 20 and 30, Borough of Queens, Community District No. 2, Council District No. 26 (the "Exemption Area");

WHEREAS, upon due notice, the Council held a public hearing on the Tax Exemption Request on November 4, 2019; and

WHEREAS, the Council has considered the land use and financial implications and other policy issues relating to the Tax Exemption Request.

RESOLVED:

Pursuant to Section 577 of the Private Housing Finance Law, the Council approves an exemption of the Exemption Area from real property taxes as follows:

1. For the purposes hereof, the following terms shall have the following meanings:
 - a. "Community Facility Space" shall mean those portions of the Exemption Area which the Regulatory Agreement requires to be devoted solely to community facility uses.
 - b. "Company" shall mean GO HPS, LLC or any other entity that acquires the beneficial interest in the Exemption Area with the prior written consent of HPD.
 - c. "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.
 - d. "Exemption" shall mean the real property taxation provided hereunder.
 - e. "Exemption Area" shall mean the real property located in the Borough of Queens, City and State of New York, identified as Block 6, Lots 20 & 30 on the Tax Map of the City of New York.

- f. "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.
 - g. "HDC" shall mean the New York City Housing Development Corporation.
 - h. "HDFC" shall mean South Point Housing Development Fund Corporation or a housing development fund company that acquires the Exemption Area with the prior written consent of HPD.
 - i. "HPD" shall mean the Department of Housing Preservation and Development of the City of New York.
 - j. "Owner" shall mean, collectively, the HDFC and the Company.
 - k. "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 Exemption.
2. 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 or commercial use other than the Community Facility Space) 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.
3. Notwithstanding any provision hereof to the contrary:
- a. The 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 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 and all mortgagees of record, 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 Exemption shall prospectively terminate.

- b. The Exemption shall apply to all land in the Exemption Area, but shall only apply to buildings on the Exemption Area that have a new permanent certificate of occupancy or a temporary certificate of occupancy for all residential areas on or before five years from the Effective Date.
 - c. Nothing herein shall entitle the HDFC, the Owner, or any past owner to a refund of any real property taxes which accrued and were paid with respect to the Exemption Area prior to the Effective Date.
4. In consideration of the Exemption, the owner of the Exemption Area shall, for so long as the 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.

Adopted.

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 The Council

SCHEDULE E

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,
- (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 (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 F

HPD NEGATIVE DECLARATION

[Follows]

REVISED NEGATIVE DECLARATION
(Supersedes Negative Declaration issued August 16, 2019)

Project Identification **Hunter's Point South Parcels F & G**
Location: Queens, NY
 (Block 6, Lots 20 and 30)
CEQR No. 19HPD010Q
SEQRA Classification: Type I

Name and Description of Proposed Action

Hunter's Point South Parcels F & G:

The proposal involves an application by the New York City Department of Housing Preservation and Development (HPD) on behalf of GO HPS, LLC (the "project sponsor") for the approval of discretionary actions ("Proposed Actions") affecting a site located on Block 6, Lots 20 and 30 in the Hunters Point neighborhood of Queens, Community District 2 (the "project site"). The Proposed Actions consist of the disposition of city-owned land, a tax exemption pursuant to Article XI of the Private Housing Finance law, and a mayoral zoning overrides of certain sections of the New York City Zoning Resolution. The project site is currently vacant land.

In the future with the proposed actions (the "With Action condition"), the applicant would construct a new mixed-use tower on Parcel F that would have a total of approximately 703,360 gross square feet (gsf) of floor area (approximately 210,000 gsf smaller than the No Action condition), with 689 dwelling units (DUs), of which 517 DUs (or roughly 75 percent) would be affordable, including approximately 98 DUs of senior housing. The building would also contain approximately 9,120 gsf of retail space, and approximately 19,490 gsf of community facility space. In addition, the building would have 83 parking spaces, a reduction of 507 spaces as compared to the No Action condition. The applicant would also construct a new mixed-use tower on Parcel G that would have a total of approximately 367,906¹ gsf of floor area, with 443 dwelling units (DUs), of which 332 DUs (roughly 75 percent) would be affordable, an increase of approximately 118 affordable DUs from the No Action condition. The building would also contain approximately 6,657 gsf of community facility space, a reduction of approximately 21,943 gsf as compared to the No Action condition. The project sponsors are requesting construction and permanent funding through the New York City Department of Housing Preservation and Development's (HPD) New Construction Program to facilitate the proposed project. In addition, mortgage insurance is sought through the U.S. Department of Housing and Urban Development's (HUD) HFA Risk Sharing program.

This Revised Negative Declaration supersedes the Negative Declaration issued on August 16, 2019. The Revised Negative Declaration dated September 4, 2019 incorporates provisions related to the Proposed Actions in order to ensure that there are no significant adverse environmental

¹ Exclusive of outdoor terrace area.

impacts. The conclusions of the EAS and Revised Negative Declaration remain unchanged from the original documents issued on August 16, 2019.

According to the Environmental Assessment Statement (EAS), the proposed project would be implemented in a single phase and is expected to be completed and operational in 2023. Absent the proposed actions (the No Action condition), it is anticipated that the development will reflect what was contemplated as the Approved Project from the Hunter's Point South Rezoning Final Environmental Impact Statement (FEIS) (CEQR No. 08DME006Q) and as modified in subsequent Technical Memoranda (Technical Memorandums 001, 002, 003, 004, and 005. In the No Action condition, the Approved Project would consist of a 913,300 gsf residential tower on Parcel F, with 769 DUs (461 affordable to moderate-to-high income households), 9,100 gsf of retail space, and approximately 590 parking spaces. As was assumed in the 2008 FEIS, the tower would comply with the 400-foot maximum building height applied by the approved zoning envelope. The tower would be set on a 13-story base. On Parcel G, the residential tower would consist of 354,200 total gsf with 357 DUs (214 affordable to moderate-to-high income households) and 28,600 gsf of community facility space. As was assumed in the 2008 FEIS, the tower (including bulkhead) would reach a 300-foot maximum building height, complying with the approved zoning envelope. The building would occupy much of the parcel.

The net change or incremental development assessed in the EAS is the difference between the With Action and No Action conditions, which forms the baseline for environmental analyses. The With Action condition would contain six more total residential units as the No Action condition; however, there would be an increase in the overall number of affordable DUs and in affordable to low income household DUs. There would be a child care component where one was not contemplated in the No Action condition. There would also be a decrease of 507 parking spaces.

The Proposed Project would be implemented in conformance with the following provisions in order to ensure that there are no significant adverse impacts. The provisions are as follows:

Hazardous Materials:

The Phase I Environmental Site Assessment (ESA), prepared by Roux Environmental Engineering and Geology, D.P.C., dated April 2018, identified potential sources of contamination at the development site and surrounding area including sugar refinery operations, an incinerator and ash pit within or nearby the footprint of Parcel G, and the storage of up to 34,000 gallons of solvents on the adjacent property, likely related to a former newspaper publisher. Additionally, subsurface contamination was identified in previous investigations, including chlorinated volatile organic compounds (CVOCs) in soil vapor and polycyclic aromatic hydrocarbons (PAHs) and metals in soils.

The project sponsor has entered into a Brownfield Cleanup Agreement (BCA) with the New York State Department of Environmental Conservation (NYSDEC) on December 3, 2018 to address remediation on the Proposed Development Site (current NYSDEC BCP #'s C241225 and C241226), which requires NYSDEC oversight in the preparation of a Remediation Investigation Report (RIR) and Remedial Action Work Plan (RAWP) prior to the issuance of a NYSDEC Decision Document. Construction in accordance with



NYSDEC's approvals would be required through the Land Disposition Agreement (LDA) between the project sponsor and HPD for the Proposed Development Site (Block 6, Lots 20 and 30).

Should the project sponsor withdraw from the Brownfield Cleanup Program at any point prior to the closing on the disposition and construction financing with HPD and the start of construction of the Proposed Development, the review of testing and remediation planning would fall under the jurisdiction of the New York City Department of Environmental Protection (DEP). DEP oversight and approval of investigation and planned remediation activities would be required in writing prior to the closing on the disposition and construction financing with HPD, and construction in accordance with DEP approvals would be required through the LDA between HPD and the project sponsor.

Noise:

In order to attain an indoor noise level of 45 dBA within the first four floors of the 57-story building proposed within Parcel F, as per CEQR regulations, and based on the cumulative exterior L10(1) level of 73.5 dBA, a composite window/wall noise attenuation of 31 dBA for residential and community facility use or 26 dBA for commercial use of the southeast frontage (facing school playground) is required. From the fifth to the 57th floor along the southeast frontage and all windows fronting Center Boulevard, and 56th and 57th Avenues, a composite window/wall attenuation of 28 dBA for residential and community facility use or 23 dBA for commercial use. To ensure that closed window condition is maintained, an alternative means of ventilation is required and should be incorporated into building design and construction.

The Projects Sponsor's architect of record would be required to provide a certified written commitment with details on the Proposed Development's compliance with the window-wall attenuation and alternative means of ventilation specified above to HPD's Environmental Planning Unit. Construction for the building in accordance with these requirements would be required through the LDA and Regulatory Agreement between HPD and the project sponsor. With these measures in place, the Proposed Project would be expected to provide sufficient attenuation to achieve CEQR interior noise level requirements.

Air Quality:

The HVAC system within Parcel F and Parcel G will be required to be fueled by natural gas to ensure no significant adverse impacts on air quality. The Projects Sponsor's architect of record would be required to provide a certified written commitment with details on the Proposed Development's compliance with the above to HPD's Environmental Planning Unit. Construction for the building in accordance with these requirements would be required through the LDA and the Regulatory Agreement between HPD and the project sponsor. With these measures in place, there would be no potential for significant adverse impacts relating to air quality.

Statement of No Significant Effect:

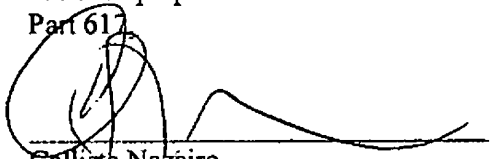


Pursuant to the CEQR rules adopted on June 6, 1991, Executive Order 91, HPD has completed its technical review of the EAS dated August 16, 2019 and has determined that the proposed actions will have no significant effect on the quality of the environment.

Supporting Statements:

The air quality, noise (window-wall attenuation), and hazardous material measures described above would be implemented in connection with construction and/or the operation of the proposed project and would be required through the Regulatory Agreement and HOME Written Agreement between HPD and the project sponsor.

The EAS is on file with HPD and available for public review. This Revised Negative Declaration has been prepared in accordance with Article 8 of the Environmental Conservation Law 6NYCRR Part 617.



Callista Nazaire
Director of Environmental Planning, HPD

September 4, 2019
Date

- cc: P. Straughter, A. Rawding, M. Goff (HPD)
Tristan Nadal (Gotham)
Kenneth Lowenstein (Holland & Knight LLP)
Noah Bernstein (AKRF)
Central File



SCHEDULE G

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 Section [_____] 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 [] 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 \$[] (the "Compliance Fee") from the Covered Employer.

I. On August 1st 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 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.

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.

[Signature]

[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 H

PROJECT AMENITIES SUBJECT TO A FEE

Building F

- Coworking space, lounge, and gym located on the 3rd and 4th floors
- Grilling station located on the 12th floor
- Bike storage*

Building G

- Rooftop deck located on the 33rd floor
- Bike storage*

*Subject to a nominal fee.