



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 amendment has been prepared to demonstrate the site's eligibility for tangible property tax credits through the development of 224 new affordable housing units. Please see attached letter and supporting Regulatory Agreement with the New York City Housing Development Corporation for eligibility determination.

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

Section I. Existing Agreement Information			
BCP SITE NAME: 10-47 Beach 21 Street		BCP SITE NUMBER: C241239	
NAME OF CURRENT APPLICANT(S): Beach 21st Limited Partnership			
INDEX NUMBER OF EXISTING AGREEMENT: C241239-12-19		DATE OF EXISTING AGREEMENT: 12/16/2019	
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)? <input type="checkbox"/> Yes <input type="checkbox"/> No <ul style="list-style-type: none"> 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? <input type="checkbox"/> Yes <input type="checkbox"/> 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 **10-47 Beach 21st Street**

CITY/TOWN Far Rockaway

ZIP CODE 11691

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

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
10-47 Beach 21 Street			15705	69	0.98

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
<p>From ECL 27-1405(31):</p> <p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>	
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: Beach 21st Street Development	BCP SITE NUMBER: C241239
NAME OF CURRENT APPLICANT(S): Beach 21st Limited Partnership	
INDEX NUMBER OF EXISTING AGREEMENT: C241239-12-19	
EFFECTIVE DATE OF EXISTING AGREEMENT: December 16, 2019	

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 Agent (title) of Beach 21st Limited Partnership (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 7/20/2020 Signature: 

Print Name: Susan McCann

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: December 16, 2019

Signature by the Department:

DATED: 8/10/20

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: 

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

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

Site Name: Beach 21st Street Development

Site Number: C241239

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:



8/10/20

Michael J. Ryan, P.E., Asst. 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:_____

January 13, 2020

Rafi Alam
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233

RE: 1047 Beach 21st Street, Far Rockaway, NY
DEC Project No. C241239
Tangible Property Credit Eligibility

Dear Rafi:

On behalf of my team, I would like to extend sincere thanks to you and your team for your assistance in processing the necessary paperwork for the above-referenced project's enrollment in the Brownfield Cleanup Program in order to close in December 2019. This project is going to result in 224 new affordable housing units on the peninsula and will spur continued redevelopment of a revitalized downtown Far Rockaway. Without the efforts of you and your team this could not have happened, and we are truly grateful for your diligence and assistance.

As discussed in December with Jesse Batus, the Brownfield Cleanup Agreement noted that additional information was required to determine the site's eligibility for tangible property tax credits. Note this site is being developed as affordable housing and therefore is eligible for tangible property tax credits. To demonstrate this qualification, attached is a copy of the project's regulatory agreement with New York City Housing Development Corporation and Department of Housing Preservation and Development. Please accept this document and letter as a request for an eligibility determination for tangible property tax credits.

Again, my deepest thanks for your work and support of this project.

Sincerely,



Susan McCann
Authorized Agent

CC: Jesse Batus – TCB; Michael Komoroske, Michael Murphy, Esq. – DEC

REGULATORY AGREEMENT

among

BEACH 21ST LIMITED PARTNERSHIP,

BEACH 21ST AFFORDABLE LLC,

TCB FAR ROCKAWAY 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**

December 20, 2019

BLOCK: 15705

LOT: 69

COUNTY: Queens

RECORD AND RETURN TO:

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

REGULATORY AGREEMENT (as may be amended, this "Agreement"), entered into as of December 20, 2019, among **Beach 21st Limited Partnership** (the "Non-Tax Code Borrower"), a New York limited partnership with an address at c/o The Community Builders, Inc. 90 State Street, Suite 602, Albany, New York 12207, **Beach 21st Affordable 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 c/o The Community Builders, Inc., 90 State Street, Suite 602, Albany, New York 12207, **TCB Far Rockaway Housing Development Fund Corporation** (the "Legal Owner" or "HDFC" and together with the Beneficial Owner, jointly and severally, the "Sponsor"), a New York not-for-profit corporation with an address at c/o The Community Builders, Inc., 90 State Street, Suite 602, Albany, New York 12207, **NEW YORK CITY HOUSING DEVELOPMENT CORPORATION** ("HDC"), a New York public benefit corporation with its address at 110 William Street, New York, NY 10038, and **THE CITY OF NEW YORK** (the "City"), acting by and through its **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT** ("HPD"), with its address at 100 Gold Street, New York, NY 10038.

PRELIMINARY STATEMENT

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

WHEREAS, the City of New York ("Fee Owner") has conveyed leasehold title to the Premises to the New York City Land Development Corporation ("NYCLDC") pursuant to a ground lease dated as of the date of this Agreement (the "Ground Lease");

WHEREAS, as of the date of this Agreement, NYCLDC has assigned its leasehold interest in the Ground Lease to the Legal Owner;

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 Non-Tax Code Borrower has a beneficial leasehold interest in the Premises and the Legal Owner retains the record leasehold interest to the Premises;

WHEREAS, as of the date of this Agreement, the Non-Tax Code Borrower has master leased the portion of the Project that will contain 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 leasehold condominium on the Premises, pursuant to which the Premises will contain one structure with four condominium units: one residential space leasehold condominium unit for the Tax Code Units and 56 rent free parking spaces reserved for use of the Tax Code Units tenants (the "Tax Code Units Condominium Unit") and one residential space leasehold condominium unit for the Non-Tax Code Income-Restricted Units and a 352 square foot break room for the exclusive use of New York City Transit Authority and MTA Bus Company employees (the "Break Room"), (the Non-Tax Code Units Condominium Unit"); one leasehold condominium unit containing approximately 21,231 square feet of commercial space and 40 market rate parking spaces (the "Commercial Condominium Unit"); and one leasehold condominium unit containing approximately 7,245 square feet of community facility space (the "Community Facility Condominium", and together with the Non-Tax Code Units Condominium and the Commercial Condominium, the "Non-LIHTC

Condominium Units"); the Tax Code Units Condo Unit is expected to receive Tax Credits and comprise the "building" for purposes of Section 42 of the Tax Code; however, the Project shall include both residential spaces;

WHEREAS, upon the creation of a leasehold condominium on the Premises, beneficial ownership of the Tax Code Units Condominium Unit will be automatically conveyed to the Tax Code Borrower pursuant to the terms of the Nominee Agreement, the Master Lease will be terminated, and from that time forward (a) the Tax Code Borrower will be the beneficial owner of the Tax Code Units Condominium Unit and the Legal Owner will be the nominal or record leasehold owner of the Tax Code Units Condominium Unit, and (b) the Non-Tax Code Borrower will be the beneficial owner of the Non-Tax Code Units Condominium Unit, the Commercial Condominium Unit and the Community Facility Condominium Unit and the Legal Owner will be the nominal or record leasehold owner of such condominium units;

WHEREAS, HDC has agreed to make, pursuant to the HDC Commitment (as defined below): (i) a first leasehold mortgage loan to the Beneficial Owner in the aggregate principal amount of \$48,850,000 (the "HDC Construction Loan"), which upon the Permanent Conversion will be partially prepaid and will become a permanent leasehold mortgage loan in the aggregate principal amount of \$23,780,000 (the "HDC Permanent Loan" and together with the HDC Construction Loan, the "HDC Loan") and (ii) a subordinate leasehold mortgage loan to the Beneficial Owner in the aggregate principal amount of \$15,000,000 (the "HDC Additional Loan") and (iii) a third-position leasehold mortgage loan to the Beneficial Owner in the aggregate principal amount of \$32,069,282, 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 City Capital Loan" and together with the HDC Loan and the HDC Additional 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 leasehold 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 TD Bank, N.A. (the "Credit Provider") extend a stand-by letter of credit (the "Credit Instrument") for the benefit of HDC to further secure the Beneficial Owner's obligation to HDC under the HDC Construction Loan; the Credit Provider will service the HDC Financing 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, 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 Boston Capital 481 Affordable Housing Fund I, A Limited Partnership, a Massachusetts limited partnership (the "Tax Credit Investor");

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

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

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

WHEREAS, HPD requires that the Project and the Sponsor comply with marketing, occupancy and operating requirements and shall require that a Mandatory Inclusionary Housing Restrictive Declaration (the "MIH Restrictive Declaration") be recorded against the Premises;

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

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

ARTICLE I. DEFINITIONS

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

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

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

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

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

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

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

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

"Break Room" shall have the meaning set forth in the WHEREAS clauses.

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

"Commercial Condominium Unit" shall have the meaning set forth in the WHEREAS clauses.

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

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

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

"Fee Owner" 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Inclusionary Units" shall have the meaning set forth in Section 4.02.

"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.

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

"MIH Restrictive Declaration" shall have the meaning set forth in the WHEREAS clauses.

"Minimum Set Aside" shall mean the minimum set aside requirement of Section 142 of the Tax Code, with respect to this Project; Sponsor has elected 25% of the Units at 60% of AMI or below.

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

"Non-LIHTC Condominium Units" 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 Units Condominium Unit" shall have the meaning set forth in the WHEREAS clauses.

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

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

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

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

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

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

"Permitted Mortgages" shall mean the HDC Mortgage and any other leasehold 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 the PILOT provisions contained in the Ground Lease.

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

"Rental Assistance" shall mean rental subsidies provided through Section 8, the Living in Communities rental assistance program administered by the New York City Human Resources Administration (or any successor agency), or any similar rental subsidy program approved by HDC and HPD in their sole discretion. For purposes of this Agreement, Rental Assistance shall not include any Shelter Allowance payments.

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

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

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

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

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

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

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

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

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

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

"State" shall mean the State of New York.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II. TERM OF RESTRICTIONS

SECTION 2.01 Occupancy Restriction Period. The Project and the Sponsor shall be subject to the requirements of this Agreement during the Occupancy Restriction Period (as defined in this section), except as may be specifically provided otherwise in this Agreement. The "Occupancy Restriction Period" shall mean a period lasting in perpetuity. 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 of 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) 65 (plus any exercised extensions of the Ground Lease) 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) 65 (plus any exercised extensions of the Ground Lease) 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 HDC Mortgage, this Agreement shall terminate only (i) upon written request of the owner of the HDC Mortgage, and (ii) if, within a reasonable period, the Obligations are retired (it being agreed that HDC shall cause the Obligations to be retired within a reasonable period pursuant to the terms of the Resolution) and the HDC Additional Loan and the HDC City Capital Loan are paid in full. However, if the Sponsor or a related person obtains an ownership interest in the Project after any such foreclosure or deed in lieu of foreclosure, but during the Occupancy Restriction Period, this Agreement shall be reinstated in full force and effect.
- (c) Release. At the request of the Sponsor, HDC and HPD shall provide the Sponsor with a release of this Agreement in recordable form upon termination of this Agreement.
- (d) Conversion to Co-Op or Condo. After the Occupancy Restriction Period ends, the Sponsor may convert the Project to cooperative or condominium ownership of individual units. Such a conversion shall not be made pursuant to an eviction plan, as defined by Section 352-eeee of the New York General Business Law, as may be amended.

ARTICLE III. GENERAL COMPLIANCE

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

- (a) HDC and HPD Financing. The Sponsor shall comply, and shall cause the Project to comply, with (i) this Agreement, (ii) the Loan Documents, (iii) the HDC Act and (iv) any rules adopted by HDC or HPD relating to the HDC Financing or the operation of the Project as may be necessary to enforce this Agreement. Any violation of the requirements of the Loan Documents may be declared an Event of Default under this Agreement.
- (b) Tax-Exempt Obligations. The Sponsor shall comply, and shall cause the Project to comply, with the applicable provisions of the Tax Code and this Agreement in order to preserve the exclusion from gross income for purposes of federal income taxation of interest on the Obligations.
- (c) Tax Credits. The Sponsor shall comply, and shall cause the 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; Ground Lease, Other Agreements and Permits. The Sponsor shall do all things necessary: (i) to maintain the Real Property Tax Benefits, (ii) to maintain compliance with the terms and provisions of the Ground Lease (iii) to maintain any permits or agreements with HDC, the New York City Economic Development Corporation ("EDC"), the Fee Owner and NYCLDC, and government agencies, including HPD in good standing and (iv) to comply with the requirements of HPD and other listed agencies. Any default under the Ground Lease, violation of the requirements of the Real Property Tax Benefits or any permits or agreements with or requirements of any government agencies, may be declared an Event of Default under this Agreement.

SECTION 3.02 More Restrictive Provisions Control. If this Agreement conflicts with any other applicable agreement, law, regulation or permit, or if any provision of this Agreement conflicts with any other provision of this Agreement, the more restrictive provision (as determined by HDC and HPD and Fee Owner with respect to conflicts involving the Ground Lease) 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, 133 units shall be Tax Code Units.
 - (i) The Sponsor shall lease no fewer than 67 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 40% of AMI ("40% of AMI Units") of which 23 will be reserved as Homeless Units.
 - (ii) The Sponsor shall lease no fewer than 44 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 50% of AMI ("50% of AMI Units").
 - (iii) The Sponsor shall lease no fewer than 22 Tax Code Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 60% of AMI ("60% of AMI Units").
- (b) Non-Tax Code Income-Restricted Units. In accordance with the distribution set forth in Schedule B, 90 units shall be Non-Tax Code Income-Restricted Units.
 - (i) The Sponsor shall lease no fewer than 90 Non-Tax Code Income-Restricted Units solely to Eligible Tenants whose Annual Income upon initial occupancy does not exceed 100% of AMI ("100% 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 23 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. This requirement will terminate on the last day of the Occupancy Restriction Period as defined with respect to Non-Permanently Affordable Units.

- (e) Inclusionary Units. In accordance with the MIH Restrictive Declaration and as delineated in Schedule B, 68 of the Tax Code Units shall be permanently affordable (the "Inclusionary Units").
- (f) Permanently Affordable Units. In addition to the Inclusionary Units above, 34 of the Tax Code Units will be Permanently Affordable Units as set forth in Schedule B.
- (g) Non-Permanently Affordable Units. 121 of the units as set forth on Schedule B will be neither Permanently Affordable Units nor Inclusionary Units ("Non-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 59.82%, unless the Sponsor receives the prior written consent of HDC and HPD, which may be granted in the sole discretion of HDC and HPD.

SECTION 4.04 General Requirements for Units.

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

- (c) Condition of Units. The units shall be suitable for occupancy and similarly constructed and shall contain living, sleeping, eating, cooking and sanitation facilities for a single person or family. 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 Condominium Unit as a "building" as defined in Section 42 of the Tax Code, the Sponsor shall certify to HDC as to the Household size and student status of each tenant residing in a Tax Code Unit based on certifications obtained from such tenants. Otherwise, on an annual basis, the Sponsor shall (i) obtain a certification of Annual Income, Household size and student status from each tenant residing in a Tax Code Unit, along with verification documentation, and (ii) determine whether each such tenant continues to qualify as an Eligible Tenant. The Sponsor shall verify each certification as provided in paragraph (a) above.
- (d) Annual Agency Reviews (Tax Code Units). The Sponsor shall furnish to HDC (and to HPD, if requested by HPD in writing), on an annual basis or more frequently if required in writing by HDC or HPD in order to ensure compliance with

this Agreement, a certification by the Sponsor documenting the annual tenant certifications provided in accordance with paragraph (c) above, along with verification documentation (if requested by HDC or HPD). The Sponsor shall also furnish any reports or other documents that HDC or HPD reasonably determine are necessary to establish compliance with this Agreement and the Tax Code.

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

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

SECTION 4.08 Next Available Unit Rules.

- (a) Non-Deep Rent Skewing Project. The Sponsor has not elected to "deep rent skew" the Project. Upon the establishment of the Tax Code Units Condominium Unit as a "building" as defined in Section 42 of the Tax Code, if the Annual Income of a tenant in a Tax Code Unit exceeds 140% of the Applicable AMI Limit, then the Sponsor shall lease the next available vacant unit of comparable or smaller size in the Tax Code Units Condominium Unit to a tenant whose Annual Income does not exceed the Applicable AMI Limit required by the Tax Code. Otherwise, if the Annual Income of a tenant in a Tax Code Unit exceeds 140% of the Applicable AMI Limit, then the Sponsor shall lease the next available vacant unit of comparable or smaller size that is not a Tax Code Unit to a tenant in the Project whose Annual Income does not exceed the Applicable AMI Limit required by the Tax Code.
- (b) Tenant's Failure to Certify; Fraud. If the Sponsor fails to commence legal action to terminate the lease of a tenant described in Section 4.06(e) and residing in a Tax Code Unit in a prompt manner, or does not diligently pursue the legal action to the satisfaction of HDC and HPD, then the Sponsor shall lease the next available vacant unit of comparable or smaller size to a tenant who qualifies as an Eligible Tenant for a Tax Code Unit (with an income restriction for occupancy at the same level as the unit occupied by the tenant described in Section 4.06(e), if such level is below the income restriction for occupancy that would otherwise apply to the next available unit) prior to renting any other unit of comparable or smaller size.

SECTION 4.09 Social Services for Homeless Units.

- (a) Social Services Plan. Prior to the initial rent-up of the units, the Sponsor shall submit to HPD (and to HDC, if requested by HDC in writing) a plan detailing the services to be provided to tenants of Homeless Units and the provider of such services (the "Social Services Plan"). 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 implement¹ 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 \$236,500, to be administered by HDC (the "Social Services Reserve"). The Sponsor may deduct from this deposit any amount previously advanced to the Sponsor by the Credit Provider, as servicer of the HDC Loan, prior to the Permanent Conversion and under the social services reserve line item in the Project's budget in order to implement the Social Services Plan and to furnish Homeless Units. Amounts advanced prior to the Permanent Conversion to implement the Social Services Plan shall not exceed \$172,500 and amounts advanced to furnish Homeless Units shall not exceed \$64,000, 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 Services Reserve 100% of the amount by which (x) rent collected from the Homeless Units exceeds (y) the amount of rent that would have been collected from the Homeless Units were the rents equal to the amounts set forth on Schedule B-2, as may be increased annually by 2%. If the Social Service Reserve balance exceeds \$15,000 per Homeless Unit, Sponsor shall use such excess to repay the HDC Additional Loan.
 - (iii) The Sponsor may withdraw funds from the Social Services Reserve to implement the approved Social Services Plan and Social Services Contract.
 - (iv) The requirement to fund the Social Services Reserve shall terminate on the last day of the Occupancy Restriction Period as calculated for 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 must stay with the Project.

ARTICLE V. RENTS AND LEASES

SECTION 5.01 Compliance with Rent Stabilization.

- (a) All Units Subject to Rent Stabilization. All units shall be subject to Rent Stabilization and shall remain subject to Rent Stabilization after the Occupancy Restriction Period ends. The Sponsor shall follow all procedures and guidelines of New York State Homes & Community Renewal ("HCR") (or any successor agency enforcing Rent Stabilization) and all relevant requirements of Rent Stabilization. However, pursuant to a special agreement on rent regulation with the New York State Division of Housing and Community Renewal (a predecessor of HCR), HCR will not regulate the Project in a manner that is inconsistent with the Tax Code or with this Agreement. Where there may be inconsistencies, the more restrictive provisions of the Tax Code and this Agreement shall prevail.
- (b) No Exemptions from Rent Stabilization. The Sponsor shall not claim any exemption or exclusion from Rent Stabilization to which the Sponsor might be entitled with respect to any unit. This includes any exemption or exclusion from the rent limits, lease renewal requirements, registration requirements or other provisions of Rent Stabilization due to (i) the vacancy of a unit where the rent exceeds a prescribed maximum amount, (ii) the fact that the tenant's income or rent exceeds prescribed maximum amounts, (iii) the nature of the tenant or (iv) any other factor. This section shall continue to apply to Income-Restricted Units after the Occupancy Restriction Period ends until any such unit becomes vacant (except for any vacancy resulting from a breach of the warranty of habitability, harassment, constructive eviction or any similar action caused by the Sponsor).
- (c) Permitted Increases under Rent Stabilization.
 - (i) In General. Where this Agreement allows rent increases under Rent Stabilization for Income-Restricted Units (subject to the other restrictions on increases contained in this Agreement), such language shall permit only those increases that are based on the percentage increases for one- and two-year lease renewals approved annually by the New York City Rent Guidelines Board (or any successor). Subject to the exceptions given in this paragraph (c), rents shall not be increased or registered at a greater amount for any other reason typically allowed under Rent Stabilization, including vacancy lease increases, major capital improvement ("MCI") increases or individual apartment improvement ("IAI") increases. This prohibition applies to both Legal Rents (the registered legal regulated rents) and Actual Rents (which are to be registered as preferential rents). To be clear, this section shall not apply after the Occupancy Restriction Period ends.
 - (ii) Exception for Certain Vacancy Lease Increases. Upon vacancy of an Income-Restricted Unit, if the Legal Rent is less than 30% of the Applicable AMI Limit (adjusted for a monthly rent), then the Sponsor may increase the Legal Rent by the lesser of (1) the vacancy lease increase permitted by Rent Stabilization and (2) the amount required to increase the Legal Rent up to 30% of the Applicable AMI Limit (adjusted for a monthly rent).
- (d) Contractual Rent Regulation. If Destabilization (as defined in this paragraph) occurs during the Occupancy Restriction Period, then all units that have undergone Destabilization shall be subject to Contractual Rent Regulation (as defined in this paragraph). If some units remain subject to Rent Stabilization while other units have undergone Destabilization, Contractual Rent Regulation will only apply to the units that have undergone Destabilization. For purposes of this paragraph:

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

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

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

SECTION 5.03 Actual Rents. The Sponsor shall lease each Income-Restricted Unit for a monthly rent that does not exceed the maximum amount permitted below (such amount shall be the "Actual Rent"). The Actual Rent shall be the rent that appears on the lease and that may be

collected by the Sponsor (i.e., it shall include the rent paid by the tenant and any rental subsidy, but not the applicable utility allowance). Certain limits given below may in practice equal the same amount.

(a) Tax Code Units.

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

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

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

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

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

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

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

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

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

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

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

- 1) the Legal Rent (as set forth in Schedule B);
- 2) the prior Actual Rent increased as permitted by Rent Stabilization (as

limited by Section 5.01).

- 3) if the tenant receives Shelter Allowance, the Shelter Allowance.
- (iii) Vacancy. Upon vacancy of a Tax Code Unit that is not a Rental Assistance Unit, the Actual Rent for the new Eligible Tenant shall not exceed the lesser of:
- 1) the Legal Rent; and
 - 2) 30% of the Applicable AMI Limit (adjusted for a monthly rent).

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

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

If the unit is a Homeless Unit that is not a Rental Assistance Unit, the Actual Rent for the new Eligible Tenant shall not exceed the least of:

- 1) the Legal Rent;
- 2) 30% of 30% of AMI (adjusted for a monthly rent);
- 3) if the tenant receives Shelter Allowance, the Shelter Allowance.

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

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

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

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

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

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

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

- 1) the Legal Rent; and

- 2) an amount that is the greater of (x) the Actual Rent that would have been permitted upon lease renewal for the prior tenant and (y) 30% of the Applicable AMI Limit (adjusted for a monthly rent).
- (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, except as provided otherwise in Section 5.04.

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 30% of AMI (adjusted for a monthly rent).
- (b) Vacancy; No New Rental Assistance. Upon vacancy of a Tax Code Unit that had been occupied by a tenant with Rental Assistance, if the next tenant identified for the unit does not have Rental Assistance, but the tenant is an Eligible Tenant for a Tax Code Unit, then the Sponsor shall set the Actual Rent for the new tenant in accordance with Section 5.03, and to an amount that does not exceed the maximum amount that may be collected under the Tax Code. The Sponsor shall register this revised Actual Rent as the new preferential rent for the unit.

SECTION 5.05 Post-Occupancy Restriction Period.

- (a) Rents for Income-Restricted Units at 80% of AMI and Below. After the Occupancy Restriction Period ends, but not less than 150 days prior to the end of each lease with an Eligible Tenant who occupies an Income-Restricted Unit having an income restriction for occupancy at 80% of AMI or below (including Tax Code Units), the Sponsor shall request that the tenant submit to the Sponsor a

certification of Annual Income and Household size and verification documentation. Lease renewals for these tenants shall be offered as follows:

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

SECTION 5.06 Lease Requirements.

- (a) Subordination. In renting units to tenants, the Sponsor shall use a lease expressly subordinate to this Agreement and to the Permitted Mortgages. The lease and any riders shall comply with New York law and shall otherwise be satisfactory to HDC and HPD. With respect to the foregoing, 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 65 (plus any exercised extensions of the Ground Lease) years from the date hereof, 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 Unit as a "building" as defined in Section 42 of the Tax Code, the Applicable Fraction (as defined in this section) for the Tax Code Units Condo Unit for each taxable year in the Extended Use Period shall be not less than 59.82%, 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.

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

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

ARTICLE VIII. OWNERSHIP

SECTION 8.01 Transfers of Project by Sponsor.

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

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

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

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

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

ARTICLE IX. RECORDS AND REPORTING

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

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

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

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

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

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

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

ARTICLE X. ENFORCEMENT

SECTION 10.01 Events of Default; Remedies.

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

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

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

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

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

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

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

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

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

ARTICLE XI. MISCELLANEOUS

SECTION 11.01 Fees.

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

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

- (b) HDC Monitoring Fee (Prepayment in Full). To compensate HDC for continued monitoring of the Project after a prepayment in full of the HDC Loan, upon such a prepayment and on an annual basis thereafter, the Beneficial Owner shall pay to HDC an amount equal to \$50 per unit, 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. 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 Cannon Heyman & Weiss, LLP, 54 State Street, 5th Floor, Albany, New York 12207, to the Tax Credit Investor at Boston Capital 481 Affordable Housing Fund I, A Limited Partnership, One Boston Place, 21st Floor, Boston, MA 02108, and to New York City Economic Development Corporation at One Liberty Plaza, New York, New York, 10006, attn: EVP Asset Management. 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 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 F, as may be

modified by the City from time to time. If the Ground Lease provides for additional or stricter requirements or restrictions than this Agreement, the stricter requirements or restrictions will control.

SECTION 11.17 Environmental Requirements. The Sponsor shall and shall cause the general contractor and all applicable subcontractors to comply with the requirements contained in the HPD Statement of Finding with reference to the Final Environmental Impact Statement for the Downtown far Rockaway Project (CEQR No. 16DME010Q) attached as Schedule G.

SECTION 11.18 Consent of Fee Owner (Ground Lease). For so long as the City is the fee owner of the Premises, in the event of a termination of the Ground Lease, the Minimum Set Aside requirement shall continue and automatically terminate or be deemed to automatically terminate upon the end of the period that is the greater of:

- (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;

SECTION 11.19 RESERVED

SECTION 11.20 Prevailing Wage for Building Service Employees. The Project is located within a City-initiated rezoning area and shall comply with the following provisions:

(a) Prevailing Wage Requirement. Sponsor shall pay a prevailing wage, as defined in New York City Administrative Code Section 6-130(a)(13), or shall ensure that such a prevailing wage is paid, to any building service employee, as defined in New York City Administrative Code Section 6-130(a)(3) ("Building Service Employee") who is employed in the Project, regardless of whether Sponsor is the direct employer of such Building Service Employee. Sponsor shall not discriminate or retaliate against any Building Service Employee who makes a claim that he or she is owed wages due as provided by this prevailing wage requirement. If the Ground Lease provides for additional or stricter requirements or restrictions than this Agreement, the stricter requirements or restrictions will control.

(b) Administrative Requirements. Sponsor shall comply with the certification, record-keeping, and notice-posting requirements of New York City Administrative Code Sections 6-130(c)(2), (3), and (4).

(c) Enforcement. The Mayor of the City of New York or his or her designee may enforce this Section 11.20 pursuant to New York City Administrative Code Sections 6-130(d)(2), (4), (6), and (8). The parties to this Agreement incorporate these provisions of law, with respect to the role of the Mayor or his or her designee, into this Agreement by reference. This includes the right of any aggrieved current or former Building Service Employee to file an administrative complaint, and remedies that may be sought by the City for failure to comply with an order, determination, or disposition issued by the Mayor, his or her designee, or the Office of Administrative Trials and Hearings in accordance with the referenced provisions of the New York City Administrative Code. Further, either the Mayor (or his or her designee) or the affected employer may bring any action or special proceeding available under law to enforce, vacate, or modify the order, determination, or other disposition of the office, agency, or tribunal referenced in New York City Administrative Code

Section 6 130(d)(6). In addition, the Comptroller of the City of New York has the authority to investigate prevailing wage violation complaints in accordance with New York City Administrative Code Section 6 130(d)(3), which is hereby incorporated by reference.

(d) Third-Party Beneficiaries. Any aggrieved current or former Building Service Employee is a third-party beneficiary of this Section 11.20 and has the right to enforce its prevailing wage requirement, but only if the enforcement provisions of New York City Administrative Code Sections 6 130(d)(2), (4), (6), and (8) are determined by a court of competent jurisdiction to be inapplicable to a violation of the prevailing wage requirement.

SECTION 11.21 Labor Peace for Retail and Food Service Establishments. If HPD or HDC determines that the requirements of the Mayor's Executive Order No. 19, dated July 14, 2016, apply to the Project, the Sponsor shall require that each current and future Covered Employer operating on the premises of the Project enter into a Labor Peace Agreement with a Labor Organization that seeks to represent Covered Employees on the premises of the Project. Capitalized terms used in this paragraph but not otherwise defined in this Agreement have the meanings given to them in Executive Order No. 19. Sponsor shall notify HPD and HDC, in writing, upon entering into a lease of retail space greater than 15, 000 square feet to a single tenant. If the Ground Lease provides for additional or stricter requirements or restrictions than this Agreement, the stricter requirements or restrictions will control.

[Signatures follow]

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

BEACH 21ST LIMITED PARTNERSHIP
BY: TCB BEACH 21ST LLC, ITS
GENERAL PARTNER
BY: GBCD PARTNERSHIP SERVICES,
INC. ITS SOLE MEMBER


By: 
Name: Susan M. McCann
Title: Authorized Agent

BEACH 21ST AFFORDABLE LLC
BY: BEACH 21ST LIMITED PARTNERSHIP
ITS MANAGING MEMBER
BY: TCB BEACH 21ST LLC, ITS
GENERAL PARTNER
BY: GBCD PARTNERSHIP SERVICES,
INC., ITS SOLE MEMBER

By: 
Name: Susan M. McCann
Title: Authorized Agent

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 **SUSAN M. McCann**, 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:

Brenda DeCommer NOTARY PUBLIC, STATE OF NEW YORK Registration No. 01DE0249869 Qualified In Kings County Commission Expires October 17, 2023


[Signature Page to Regulatory Agreement]

TCB FAR ROCKAWAY HOUSING
DEVELOPMENT FUND CORPORATION

By: 
Name: Susan M. McCann
Title: Vice President

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 **SUSAN M. McCann**, 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:


Brenda DeCommer NOTARY PUBLIC, STATE OF NEW YORK Registration No. 01DE6249869 Qualified in Kings County Commission Expires October 17, 2023

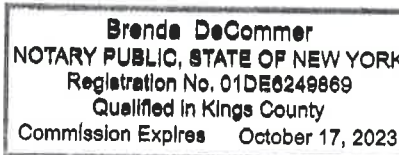
NEW YORK CITY HOUSING
DEVELOPMENT CORPORATION

By: 
Ruth Moreira
Senior Vice President

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

On the 18th 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:



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 17 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.

Adanna Ferguson-Bell
Notary Public
Commission expires:

ADANNA FERGUSON-BELL
NOTARY PUBLIC-STATE OF NEW YORK
No. 01FE6376017
Qualified in Kings County
My Commission Expires 06-04-2022

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

By: /s/ Amrita Barth
Acting Corporation Counsel

Accepted and Agreed as to Section 11.18 of this Agreement

THE CITY OF NEW YORK

By: _____

Name: Vicki Been

Title: Deputy Mayor for Housing
and Economic Development

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On the 18 day of December, 2019, before me, the undersigned, a notary public in and for said state, personally appeared Vicki Been, 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.

Arthur Hauser
Notary Public
Commission expires: 2/11/21

Arthur Hauser
Notary Public, State of New York
NO. 01HA6276327
Qualified in Kings County
Certificate Filed in New York County
Commission Expires 2/11/2021

APPROVED AS TO FORM:

By: _____

[Signature]
Acting Corporation Counsel

(cmH/KB)

SCHEDULE A

LEGAL DESCRIPTION OF PREMISES

LEGAL DESCRIPTION

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

BEGINNING AT A POINT ON THE WESTERLY SIDELINE OF BEACH 21ST STREET (50 FEET WIDE PUBLIC RIGHT-OF-WAY), F/K/A WHITE STREET, SAID POINT BEING DISTANT SOUTHERLY 193.72 FEET FROM THE INTERSECTION OF SAID SIDELINE WITH THE SOUTHWESTERLY SIDELINE OF MOTT AVENUE (60 FEET WIDE PUBLIC RIGHT-OF-WAY);

RUNNING THENCE ALONG THE WESTERLY SIDELINE OF BEACH 21ST STREET, SOUTH 10 DEGREES - 59 MINUTES - 11 SECONDS WEST A DISTANCE OF 304.00 TO A POINT;

THENCE LEAVING THE WESTERLY SIDELINE OF BEACH 21ST STREET, NORTH 79 DEGREES - 00 MINUTES - 49 SECONDS WEST, A DISTANCE OF 140.00 FEET TO A POINT;

THENCE NORTH 10 DEGREES - 59 MINUTES - 11 SECONDS EAST, A DISTANCE OF 304.00 FEET TO A POINT;

THENCE SOUTH 79 DEGREES - 00 MINUTES - 49 SECONDS EAST, A DISTANCE OF 140.00 FEET TO THE POINT AND PLACE OF BEGINNING.

SCHEDULE B

DISTRIBUTION OF UNITS AND INITIAL RENTS

Project: **Beach 21st Street**
1047 Beach 21st
Far Rockaway (Queens), NY
Block 15705, Lot 69

The Project shall contain 224 units in total, of which 223 will be rent restricted and 1 superintendent's unit

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.

Tax Code Units

40% of AMI Units-Homeless Units-Inclusionary Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	5	\$1,212 (80% of AMI)	\$215 (Shelter Allowance)
1-Bedroom	8	\$1,526 (80% of AMI)	\$283 (Shelter Allowance)
2-Bedroom	7	\$1,843 (80% of AMI)	\$425 (Shelter Allowance)
3-Bedroom	3	\$2,121 (80% of AMI)	\$512 (Shelter Allowance)
TOTAL	23		

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

40% of AMI Units-Inclusionary Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	6	\$1,212 (80% of AMI)	\$522 (37% of AMI)
1-Bedroom	17	\$1,526 (80% of AMI)	\$665 (37% of AMI)
2-Bedroom	14	\$1,843 (80% of AMI)	\$809 (37% of AMI)
3-Bedroom	6	\$2,121 (80% of AMI)	\$927 (37% of AMI)
TOTAL	43		

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

40% of AMI Units-Permanently Affordable Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	0	\$1,532 (100% of AMI)	\$522 (37% of AMI)
1-Bedroom	0	\$1,926 (100% of AMI)	\$665 (37% of AMI)
2-Bedroom	1	\$2,323 (100% of AMI)	\$809 (37% of AMI)
3-Bedroom	0	\$2,676 (100% of AMI)	\$927 (37% of AMI)
TOTAL	1		

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

50% of AMI Units-Non-Permanently Affordable Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	2	\$1,532 (100% of AMI)	\$683 (47% of AMI)
1-Bedroom	2	\$1,926 (100% of AMI)	\$865 (47% of AMI)
2-Bedroom	3	\$2,323 (100% of AMI)	\$1,050 (47% of AMI)
3-Bedroom	2	\$2,676 (100% of AMI)	\$1,205 (47% of AMI)
TOTAL	9		

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

50% of AMI Units-Inclusionary Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	0	\$1,212 (80% of AMI)	\$683 (47% of AMI)
1-Bedroom	1	\$1,526 (80% of AMI)	\$865 (47% of AMI)
2-Bedroom	0	\$1,843 (80% of AMI)	\$1,050 (47% of AMI)
3-Bedroom	1	\$2,121 (80% of AMI)	\$1,205 (47% of AMI)
TOTAL	2		

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

50% of AMI Units-Permanently Affordable Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	5	\$1,532 (100% of AMI)	\$683 (47% of AMI)
1-Bedroom	13	\$1,926 (100% of AMI)	\$865 (47% of AMI)
2-Bedroom	10	\$2,323 (100% of AMI)	\$1,050 (47% of AMI)
3-Bedroom	5	\$2,676 (100% of AMI)	\$1,205 (47% of AMI)

TOTAL 33

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

60% of AMI Units-Non-Permanently Affordable Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	3	\$1,532 (100% of AMI)	\$843 (57% of AMI)
1-Bedroom	9	\$1,926 (100% of AMI)	\$1,065 (57% of AMI)
2-Bedroom	6	\$2,323 (100% of AMI)	\$1,290 (57% of AMI)
3-Bedroom	4	\$2,676 (100% of AMI)	\$1,482 (57% of AMI)
TOTAL	22		

*Notwithstanding anything to the contrary contained herein, the Applicable AMI Limit is 60% of AMI

Non-Tax Code Income-Restricted Units

100% of AMI Units-Non-Permanently Affordable Units

	<u>No. of Units</u>	<u>Legal Rent (initial)</u>	<u>Actual Rent (initial)</u>
Studio	14	\$1,532 (100% of AMI)	\$1,212 (80% of AMI)
1-Bedroom	35	\$1,926 (100% of AMI)	\$1,526 (80% of AMI)
2-Bedroom	29	\$2,323 (100% of AMI)	\$1,843 (80% of AMI)
3-Bedroom	12	\$2,676 (100% of AMI)	\$2,121 (80% of AMI)
TOTAL	90		

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

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

Rent Increases at Initial Rent-Up

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

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

Shelter Allowance:

<u>Unit Size</u>	<u>Amount</u>
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 F

HIRENYC RIDER

Introduction

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

In general, Covered Parties are required to

- (a) enroll with the HireNYC program by clicking on the "HPD Portal" link found at nyc.gov/hirenyc,
- (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 G

HPD STATEMENT OF FINDINGS

[Follows]

June 26, 2018

STATEMENT OF FINDINGS

Project Identification: Downtown Far Rockaway Redevelopment Project

CEQR Number: 16DME010Q

SEQRA Classification: Type I

Location: 23-Block area generally bounded by Cornaga Avenue to the south; Beach 22nd Street, Beach Channel Drive and Redfern Avenue to the west and northwest; Gateway Boulevard to the southeast; and Central Avenue and Nameoke Avenue to the east and northeast.

Community District 14
Borough of Queens

Lead Agency: The Office of the Deputy Mayor for Housing and Economic Development
253 Broadway, 14th Floor
New York, NY 10007

This Statement of Findings has been prepared in accordance with the environmental review requirements of Article 8 of the New York State Environmental Conservation Law, the State Environmental Quality Review Act (SEQRA), the implementing regulations as set forth in 6 NYCRR Part 617, and the New York City Rules of Procedure for City Environmental Quality Review (CEQR) and Executive Order 91 of 1977, as amended. This Statement of Findings has been prepared to demonstrate that 1) the procedural requirements have been met; 2) the "Downtown Far Rockaway Redevelopment" project (the "Approved Project") was selected from among reasonable alternatives; and 3) the potential for adverse environmental effects as disclosed in the Final Environmental Impact Statement (FEIS) and during the review process will be avoided or minimized to the maximum extent practicable by the incorporation of mitigation measures and other project components.

Under CEQR, the Office of the Deputy Mayor for Housing and Economic Development was the Lead Agency responsible for conducting the environmental review that determined whether the actions would have significant impacts on public health and the environment. The New York City Department of Housing Preservation and Development ("HPD") was identified as an Involved Agency under CEQR.

The EIS satisfies requirements of SEQRA (6 NYCRR 617.8) and CEQR (Sections 6-08 and 6-12 of Executive Order No. 91 of 1977 as amended), which require that state and local government agencies consider the environmental consequences of projects over which they have discretionary authority before acting on those projects.

A Notice of Completion and Notice of Availability for the Draft Environmental Impact Statement (DEIS) was issued on January 27, 2017, and a public hearing on the DEIS and Technical Memorandum 001 was held at Spector Hall, 22 Reade Street, New York, New York on May 24, 2017. Written comments on the DEIS and Technical Memorandum 001 were requested and were received by the Lead Agency until 5:00 pm on June 5, 2017. The FEIS incorporates responses to the public comments received on the DEIS and the Technical Memorandum 001.

The FEIS was certified as complete, and a Notice of Completion (NOC) was issued on June 29, 2017. On July 10, 2017 the City Council (the "Council") voted to approve the ULURP application for the Downtown Far Rockaway Redevelopment Project. The actions approved by the Council are herein referred to as the "Approved Actions."

After considering the FEIS for no less than 10 days after issuance of the NOC, as well as the technical memoranda prepared to address Council modifications and other changes to the Project, HPD adopts this Statement of Findings.

PROJECT DESCRIPTION

The City of New York, acting through the New York City (NYC) Economic Development Corporation (EDC), the New York City Department of Housing Preservation and Development (HPD), and the New York City Department of Citywide Administrative Services (DCAS), is proposing a series of land use actions, including zoning map amendments, zoning text amendments, disposition and acquisition of property, and the designation and approval of an Urban Renewal Area and Plan to implement recommendations of a comprehensive plan to redevelop and revitalize an approximately 23-block area of the Downtown Far Rockaway neighborhood of Queens, Community District 14.

The FEIS incorporates an amended Uniform Land Use Review Procedure (ULURP) application (referred to hereafter as the "A-Application") that addresses issues raised just before or shortly after the January 27, 2017 issuance of the DEIS. The A-Application consisted of a series of modifications to the land use actions, including zoning text amendments and zoning map amendments, that were crafted in response to feedback on the application, to allow for additional development projects that met the purpose and need of the proposed project, and to ensure successful site planning on a complex and irregular site. Potential environmental impacts of the A-Application were evaluated in Technical Memorandum 001 and the FEIS incorporates the modifications associated with the A-Application.

The discretionary land use approvals, including the A-Application, are herein collectively referred to as the "Proposed Actions" and are described in more detail below. The Proposed Actions are expected to result in a net increase of 3,123 dwelling units (DUs), 164,595 gross square feet (gsf) of retail space and 80,947 gsf of community facility space (the "Proposed Project"). The Proposed Project also would provide a new publicly-accessible open space. The Analysis Year for environmental analysis purposes is 2032.

The Proposed Actions have been developed as part of a comprehensive community planning process that included a Working Group. The community planning process resulted in recommendations which were delivered to Mayor de Blasio in early 2016. In the 2016 State of the City Address, the Mayor announced a



\$91 million commitment for the Downtown Far Rockaway area to spur revitalization of the neighborhood. Following the Mayor's announcement, the City launched an interagency planning effort to respond to the Working Group and reestablish Downtown Far Rockaway as the commercial hub of the Rockaway peninsula, culminating in the release of the Downtown Far Rockaway Roadmap for Action (the Roadmap for Action) in August 2016. The Roadmap for Action integrates land use tools within infrastructure investments and improved community services to transform the downtown core into a vibrant, mixed-use center.

Project Area

The Proposed Actions would affect an approximately 23-block area of the Downtown Far Rockaway neighborhood of Queens. The Project Area is generally bounded by Cornaga Avenue to the south; Beach 22nd Street, Beach Channel Drive and Redfern Avenue to the west and northwest; Gateway Boulevard to the southeast; and Central Avenue and Nameoke Avenue to the east and northeast. Some of the roadways within the Project Area are private streets (not mapped City streets) which are subject to public access easements. The Project Area comprises the areas described below, which would be directly affected by the Proposed Actions.

Rezoning Area

The Rezoning Area is the 23-block portion of the Project Area which would be rezoned to allow new residential uses and a mix of commercial and community facility uses that would complement the location. The boundaries of the Rezoning Area are generally coterminous with the boundaries of the Project Area but for the DSNY Disposition Site (see below), located at Nameoke and Augustina Avenues, which would not be rezoned under the Proposed Actions.

Proposed Downtown Far Rockaway Urban Renewal Area

The Proposed Downtown Far Rockaway Urban Renewal Area (DFRURA) is the approximately 13-acre portion of the Project Area north of Mott Avenue, east of Redfern Avenue and west of Central Avenue that is proposed for redevelopment by the City of New York. Parcels within the Proposed DFRURA may be acquired by the City through negotiations with property owners or through eminent domain and subsequently disposed for redevelopment with new housing, retail, commercial, community facility space, and public plaza space. The Proposed DFRURA would encourage new mixed-use development on a key site within the core of the downtown.

Disposition Sites

The Disposition Sites include two City-owned parcels, one of which is located at Beach 21st Street, between Mott and Cornaga Avenues, and is under the jurisdiction of DOT and the MTA (the DOT/MTA Disposition Site). The second site, located at the northwest corner of Augustina and Nameoke Avenues, is under the jurisdiction of DSNY (the DSNY Disposition Site). The Disposition Sites would be disposed of by sale or lease for redevelopment with housing, community facility space, commercial space and/or retail space.



DESCRIPTION OF THE PROPOSED ACTIONS

The Proposed Actions are intended to facilitate the implementation of the long-term vision for the Downtown Far Rockaway neighborhood to create more affordable housing and more diverse commercial and retail uses, spur economic development, foster safer streets, and generate new community resources. To accomplish these goals, the City is proposing a series of discretionary approvals. These are discussed below.

Zoning Map Amendments

The City is proposing zoning map amendments to change existing R5, R5/C1-2, R5/C2-2, C4-2, C8-1 and M1-1 districts to R5, R5/C2-4, R6, R6/C2-4, and R7-1/ C2-4 districts and establish a Special District known as the Special Downtown Far Rockaway District (the “Special District”). The proposed zoning districts would allow for a wider range of uses and unlock development potential throughout Downtown Far Rockaway. The proposed zoning would enhance the vitality of existing commercial corridors while creating opportunities for a more vibrant, mixed-use community. The proposed zoning changes would concentrate density close to the downtown commercial core and mass transit, while integrating new development with the existing neighborhood scale and preserving the “village” character of Downtown Far Rockaway.

Proposed Zoning Districts

The proposed rezoning would replace the existing R5, R5/C1-2, R5/C2-2, C4-2, C8-1 and M1-1 districts with R5, R6, R7-1 and C2-4 districts. The proposed zoning districts would allow for a wider range of uses and unlock development potential throughout Downtown Far Rockaway. The proposed rezoning would also replace or eliminate portions of existing C1-2 and C2-2 overlays mapped within the existing R5 districts with C2-4 overlays and establish new C2-4 overlays.

R5/C2-4 District (Existing C4-2)

An extension of an R5 district is proposed at the southern end of the Rezoning Area, south of Cornaga Avenue along Beach 20th Street. A C2-4 commercial overlay would be established within this area. The proposed R5/C2-4 district would replace a portion of an existing C4-2 district to provide a transition in height and limit the ranges of uses near the periphery of the Rezoning Area to the downtown core.

R5 districts allow a variety of housing at an FAR of 1.25, which typically produces three- and four-story attached houses and small apartment houses. With a height limit of 40 feet, R5 districts provide a transition between lower- and higher-density neighborhoods. Above a height of 30 feet, a setback of 15 feet is required from the street wall of the building before a building can rise to the maximum permitted building height. Detached, single- and two-family houses must have two side yards that total at least 13 feet, each with a minimum width of 5 feet. Semi-detached houses need one eight-foot-wide side yard, and all other types of residences typically require two side yards, each with a width of eight feet. Front yards must be 10 feet deep or, if deeper, a minimum of 18 feet to prevent cars parked on-site from protruding onto the sidewalk. Cars may park in the side or rear yard, in the garage, or in the front yard within the side lot ribbon; parking is also allowed within the front yard when the lot is wider than 35 feet. Off-street parking is required for 85 percent of the DUs in the building.



Affordable Senior Housing

Within R5 districts, Affordable Independent Residences for Seniors (AIRS) and Long-Term Care Facilities (LTCF) are permitted a maximum FAR of 1.95. The maximum building height is 45 feet, except that beyond 25 feet of the street line, the height may be increased to 55 feet where certain criteria are met, such as adjacency to large lots, existing tall buildings, or a preponderance of multi-family housing.

R6 District (Existing R5, C4-2, C8-1 and M1-1)

R6 districts are proposed to be mapped to the north of Nameoke Avenue generally between Redfern Avenue and Central Avenue, the intersection of Mott Avenue and Beach Channel Drive, along Mott Avenue generally between Beach 19th Street and Gateway Boulevard (extending across Gateway Boulevard on the south side of Mott Avenue), and south of Cornaga Avenue between Beach 21st Street and Beach 19th Street. The proposed R6 district would cover most of the Rezoning Area and would replace portions of existing R5, C4-2 C8-1, and M1-1 districts.

R6 zoning districts would allow residential and community facility uses a maximum FAR of 3.0 (up to 3.6 FAR is allowed in MIH designated areas). R6 districts permit all types of housing. The minimum base height is 40 feet, and the maximum base height is 65 feet for buildings with qualifying ground floors, above which the building must be set back to a depth of at least 10 feet on a wide street and 15 feet on a narrow street. The maximum building height is 75 feet (7 stories) for buildings with qualifying ground floors. For buildings providing inclusionary housing units, the maximum height is increased to 85 feet (8 stories) for buildings with qualifying ground floors. Off-street parking is required for 85 percent of DUs¹, and outside the transit zone, parking is required for 25 percent of income-restricted units.

Affordable Senior Housing

AIRS and LTCF developments in R6 districts are allowed a maximum FAR of 3.9. The maximum base height is 65 feet and the maximum building height is 85 feet (8 stories) for buildings with a qualifying ground floor. Outside the transit zone, AIRS have a parking requirement of ten percent of the total number of DUs.

R7-1 District (Existing C4-2 and C8-1)

The proposed R7-1 district would be mapped from Nameoke Avenue to Mott Avenue, between Redfern Avenue and Augustina and Central Avenues.

R7-1 districts are medium-density apartment house districts. The height factor regulations for R7 districts encourage lower apartment buildings on smaller zoning lots and, on larger lots, taller buildings with less lot coverage. As an alternative, developers may choose the optional Quality Housing regulations to build lower buildings with greater lot coverage. Height factor buildings are often set back from the street and

¹ As described above, in Community District 14 in the Borough of Queens, R6 and R7 Districts shall be subject to the accessory off-street parking regulations of an R5 District, except that such requirement shall not apply to any development located within an urban renewal area established prior to August 14, 2008, or to income-restricted housing units as defined in NYC ZR Section 12-10. The proposed Special District would modify this requirement to reflect what is described here as the requirement for R6 districts.



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surrounded by open space and on-site parking. The maximum FAR is 4.0, and the base height before setback is 40 to 65 feet with a maximum building height of 80 feet. Within R7-1 districts, the area between a building's street wall and the street line must be planted, and the building must have interior amenities for residents pursuant to the Quality Housing Program. Off-street parking is required for 60 percent of the DUs, and can be waived if five or fewer spaces are required.

Affordable Senior Housing

AIRS and LTCF developments in R7-1 districts can be developed or enlarged pursuant to the basic floor area and open space regulations set forth in ZR Section 23-151, as applicable. In R7-1 districts the permitted FAR for affordable, independent residences for seniors is 5.01; in addition, when residential uses or community facility uses are mixed with affordable independent residences for seniors on the same zoning lot, the sum of the floor area allocated to residential and community facility uses cannot exceed the maximum floor area ratio for residential uses, which is 4.0.

C2-4 Overlay District (Existing R5, C4-2, C8-1 and M1-1)

C2-4 commercial overlay are proposed to be mapped along major commercial corridors throughout the Rezoning Area including: Nameoke Avenue, Central Avenue, Mott Avenue, Beach Channel Drive and Cornaga Avenue.

C2-4 commercial overlay districts are typically mapped along streets that serve local retail needs and are found throughout the city's lower- and medium-density areas. The existing C1-2 and C2-2 overlay districts have an FAR of 1.0 when mapped in R5 districts. The proposed C2-4 overlay would allow an additional FAR of 1.0 when compared to the existing C2-2 and C2-2 overlay districts. When mapped in R6 districts, the proposed C2-4 overlay has a maximum commercial FAR of 2.0. Changing the existing C1-2 and C2-2 commercial overlays to C2-4 and C2-4 commercial overlays would reduce the parking from generally one parking space per 300 sf of commercial floor area to one space per 400 sf of commercial floor area.

Proposed Removal of C1-2 and C2-2 Overlay Districts

Existing C1-2 and C2-2 overlays are proposed to be removed from portions of three blocks in western, northern, and southeastern sections of the Rezoning Area along Beach Channel Drive, Central Avenue, and Mott Avenue. The removal of these overlay districts is proposed to more closely reflect existing residential and community facility development on these blocks.

Zoning Text Amendments

The Proposed Actions include amendments to the text of the Zoning Resolution (ZR) to establish a Mandatory Inclusionary Housing Area (MIHA) in the Rezoning Area and to establish the Special District. The proposed zoning text amendments are summarized below.

Mandatory Inclusionary Housing Area

The Proposed Actions would establish an MIHA within the Rezoning Area in Appendix F of the ZR. As a key initiative of Mayor de Blasio's housing plan, *Housing New York*, MIH will require through zoning actions a share of new housing to be permanently affordable. MIH would require permanently affordable



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housing for all developments over 10 units or 12,500 zoning square feet, or, as an additional option for developments between 10 and 25 units (or 12,500 to 25,000 square feet), a payment into an Affordable Housing Fund. In cases of hardship, where these requirements would make development financially infeasible, developers may apply to the Board of Standards and Appeals (BSA) for a special permit to reduce or modify the requirements. Developments, enlargements or conversions that do not exceed either 10 units or 12,500 square feet of residential floor area would be exempt from the requirements of the program. MIH would bring affordable housing for a range of incomes to Downtown Far Rockaway, and would directly support the goals of *Housing New York* by creating new housing opportunities on underutilized private sites and maximizing affordability on City-owned property.

Under MIH, when new housing capacity is approved through land use actions, the City Planning Commission (CPC) and the City Council can choose to impose either one or both of two basic options regarding affordable housing set-asides. Option 1 requires that 25 percent of the residential floor area be set aside for units affordable to households earning an average of 60 percent of Area Median Income (AMI). Option 2 requires that 30 percent of the residential floor area be set aside for households earning an average of 80 percent of AMI. MIH represents the floor, not the ceiling, of affordability that could ultimately be achieved in new development. In City-initiated neighborhood rezonings, each area will be evaluated to determine the role that HPD programs could play in broadening and deepening affordability.

In combination with these two alternatives, two other options may be utilized. A “Deep Affordability Option” may be utilized under which 20 percent of residential floor area contains housing units affordable to households with income at a weighted average of 40 percent of AMI. A “Workforce Option” also may be utilized provided that 30 percent of residential floor area contains housing units affordable to households with income at a weighted average of 115 percent, with five percent of residential floor area kept affordable to households with income at an income band of 70 percent of AMI and another 5 percent of residential floor area affordable to households with an income band of 90 percent of AMI. Other restrictions apply to the Deep Affordability and Workforce Options. As part of this project, both Option 1 and Option 2 are proposed to apply within the MIHA. The CPC and the City Council will ultimately determine whether one or both options will be selected.

Special Downtown Far Rockaway District

The proposed text amendments to the ZR would establish the Special District within the Rezoning Area to modify underlying zoning to promote active community facility and retail uses on the ground floors. Community facility and retail uses would also be allowable on second floors within a commercial core area defined to include the Proposed DFRURA south of Nameoke Avenue, as well as along Beach 20th Street, portions of Mott Avenue, portions of Central Avenue, portions of Beach 18th Street, and portions of Foam Place. Active retail would be concentrated near transit, and would allow for retail uses within Use Groups 5 through 9 and 14. In addition, Use Groups 10A and 12 would be allowable within the same commercial core area described above. Transparency requirements are proposed for ground floor commercial and community facility uses. The Special District would also adjust maximum permitted base and building heights to reflect Downtown Far Rockaway’s existing built scale, and adjust accessory off-street parking requirements to match neighborhood demand.

The proposed Special District would also adjust the maximum permitted FAR for inclusionary housing development within the MIHA. Within R6 districts in the MIHA, the maximum residential FAR is



proposed to be 3.6, irrespective of whether the building has wide street or narrow street frontage. Within the R7-1 district in the MIHA, the maximum residential FAR is proposed to be 4.6, again, irrespective of the type of street frontage. These modifications would allow moderate increases in density to support the redevelopment of the area's underutilized sites.

Maximum permitted base and building heights would be adjusted to help blend new development into the existing neighborhood's fabric and to help unlock the development of the area's deep and irregular lots. Within R6 districts and R7-1 districts, street walls would be required. The maximum permitted base height is proposed to be reduced from 65 feet and 75 feet respectively to 55 feet. To offset the proposed reductions in base height and to allow for greater utilization of the maximum permitted FAR, the proposed Special District would set new maximum building height limits. Within R6 districts on the periphery of the Rezoning Area, the maximum permitted building height is proposed to be 95 feet (9 stories) for inclusionary housing buildings. Within R6 district in the downtown core, the maximum permitted building height is proposed to be 105 feet (10 stories) for inclusionary housing buildings. Within R7-1 districts the maximum permitted building height is proposed to be 115 feet (11 stories) for inclusionary housing buildings.

In order to adjust accessory off-street parking requirements to more closely reflect demand in this area, the accessory off-street parking requirement for income-restricted DUs would increase from 15 to 25 percent in the R7-1 district, and the accessory off-street parking requirement within the Special District for all other residential DUs would decrease from 85 to 50 percent. Commercial and community facility off-street parking would be subject to the requirements of the C2-4 district but the off-street parking requirement for most commercial and community facility uses would generally increase from 1 space per 1,000 sf of commercial floor area to 1 space per 750 sf of commercial floor area.

The proposed Special District would include a Subdistrict A, generally bounded by Nameoke Avenue, Mott Avenue, Central Avenue, and Redfern Avenue, which includes the Far Rockaway Shopping Center. Within this area, the Special District would provide a framework for a publicly accessible private street and open space network, mandatory sidewalk widenings along Mott Avenue and Redfern Avenue, street wall height and setback requirements along designated streets, unique maximum building heights in specified locations, including up to two 15-story buildings, flexibility for location of uses within a building, and a CPC Chairperson Certification to ensure compliance with and maintenance of private street and open space provisions.

Further detail on the regulations that would govern development in Subdistrict A are as follows:

- *Street wall location*
The aggregate width of a street wall required to be within 8 feet of the street line would be reduced from 70 percent to 40 percent on blocks less than 100 wide between parallel streets. For portions of buildings or building segments with frontage on Redfern Avenue located between the prolongation of the northerly street line of Dix Avenue and a line 150 feet south of and parallel to Nameoke Street, the street wall location rules of ZR Section 136-221 would not apply and instead portions of ZR Section 23-661 would apply.
- *Street wall recesses*



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Street wall recesses would be allowed to be located within 30 feet of Redfern Avenue, except at the intersection of Redfern Avenue and Mott Avenue, and the minimum depth of any street wall recess would be reduced from 8 feet to 3 feet.

- ***Minimum and Maximum Base Heights***

The maximum base height for portions of buildings fronting on, or within 100 feet of a street (other than Redfern Avenue) would be reduced from 70 feet to 65 feet. In areas fronting on a private street or a publicly accessible open space and beyond 100 feet of a street that is not a private street or publicly accessible space, the maximum base height would be reduced from 90 feet to 85 feet. The reduced height would allow for base heights along Mott Avenue that would match the surrounding context and heights.

- ***Maximum Building Height and Horizontal Dimension for Tall Buildings***

The area where towers could potentially land would be reduced, further pushing towers to the interior of the Subdistrict. Maximum building heights along Mott Avenue, Nameoke Avenue, and Redfern Avenue would also be established.

- ***Maximum length of buildings***

For portions of buildings that are not located directly below tower portions, the outermost walls of each story located entirely above a height of 95 feet shall be inscribed within a rectangle with a maximum length of any side being 170 feet.

- ***Publicly accessible open space requirements***

In order to better align public open space design to support active retail space, the amount of publicly accessible open space required would be adjusted. The minimum area within Open Area A would be reduced from 27,000 sf to 23,000 sf, and the required minimum area within Open Area B would be reduced from 7,500 sf to 7,000 sf. In addition, Open Area A's shape and dimensions would be adjusted to promote flexibility to respond to the site's unique characteristics. The regulations would also be adjusted to allow a kiosk of up to 400 sf within Open Area A. Planting requirements, the limitations on the amount of accessory signage permitted on establishments fronting on an open area, and the maximum width of a residential lobby adjacent to open areas would be relaxed.

The Proposed Actions also would enable the CPC to authorize modifications of bulk regulations in order to provide additional design flexibility for developing the irregular lots within Subdistrict A, provided that the modifications result in a superior site plan; do not exceed the maximum permitted building heights and horizontal dimensions for tall buildings; do not unduly increase the bulk of buildings or unduly obstruct access of adequate light and air to the detriment of the occupants or users of buildings on the block or nearby blocks, or of people using the public streets and other public spaces; and would not create traffic congestion. Additional measures would include applying ground floor use regulations to buildings within a certain distance of Mott Avenue and fronting on open area; increasing the maximum width of a residential lobby adjacent to open areas; applying transparency and parking wrap requirements to building frontages along the proposed open space; adjusting dormer regulations; and providing an additional degree of flexibility for lot coverage requirements in R6 districts when the Mandatory Inclusionary Housing (MIH) program is applied.

Disposition of Real Property



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In accordance with 197-c (10) and 384(b)(4) of the New York City Charter, the City seeks disposition approval of Queens Block 15534, Lot 70 and Queens Block 15705, part of Lot 59 and Lot 69.

Queens Block 15705, Lot 59 is under the DOT's jurisdiction and is in use as a municipal parking facility and layover area for buses. The total lot size of Lot 59 is 48,565 sf. The City seeks disposition approval for an approximately 35,000-sf portion of Lot 59. The remaining, approximately 14,000-sf portion of Lot 59 will remain in City ownership and within DOT's jurisdiction. The City also seeks disposition approval of approximately 54,000 sf of air rights above the 14,000-sf DOT portion, on part of Lot 59. The current DOT parking facility and bus layover would be closed and a new DOT public plaza (the DOT Plaza) will be built on the 14,000-sf portion of Lot 59. The parking will not be relocated. The construction of the DOT Plaza is independent of the Proposed Project.

City-owned, Queens Block 15705, Lot 69 is also located at Beach 21st Street south of Mott Avenue. Lot 69 is leased by the MTA and is in use as layover area for buses. The City seeks disposition approval of all of Lot 69. The proposed disposition of Lot 69 would require approval from the MTA Board of Directors authorizing the surrender of the MTA's leasehold on this property. The bus layover would be relocated to curb locations within the immediate neighborhood.

City-owned, Queens Block 15534, Lot 70 is located on the northwest corner of Augustina Avenue and Nameoke Avenue. Lot 70 is vacant and is under DSNY's jurisdiction. The City seeks disposition approval of all of Lot 70.

The combination of Lot 69 and the portions of Lot 59 which the City seeks disposition approval, is referred to as the DOT/MTA Disposition Site. Lot 70 is referred to as the DSNY Disposition Site. EDC and HPD intend to issue a Request for Proposals (RFP) for the DOT/MTA Disposition Site and the DSNY Disposition Site. The DOT/MTA Disposition Site would be redeveloped pursuant to the proposed zoning. With the Proposed Actions, it is assumed as part of the RWCDs that the DOT/MTA Disposition Site would be redeveloped with 176 DUs, 7,421 gsf of ground floor retail space, and 11,557 gsf of community facility space. The DSNY Disposition Site would be developed pursuant to the existing R3X zoning. In addition, DSNY would transfer jurisdiction for their site to DCAS to allow for it to be redeveloped pursuant to zoning following a competitive RFP process.

Designation and Adoption of the Downtown Far Rockaway Urban Renewal Area and Plan and Disposition

HPD seeks approval of the Downtown Far Rockaway Urban Renewal Plan (DFRURP), designation of the DFRURA and disposition of properties within the Proposed DFRURA. The DFRURA is generally bounded by Nameoke Avenue to the north, Mott Avenue to the south, Central Avenue and Augustina Avenue to the east, and Redfern Avenue to the west. The proposed urban renewal strategy is intended to complement the proposed rezoning and Special District text as well as facilitate site assemblage and redevelopment.

HPD's urban renewal strategy generally supports the activation of a catalytic site in Downtown Far Rockaway with new mixed-income housing, commercial and community facility space, and new publicly accessible open spaces. The proposed urban renewal strategy is intended to complement the proposed rezoning and Special District text as well as facilitate site assemblage and redevelopment. The Proposed



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DFRURA currently contains the Far Rockaway Shopping Center, which comprises approximately 75 percent of the land area within the Proposed DFRURA. A mix of vacant land, vacant buildings, single- and multi-family dwellings, automotive-related uses, and general service establishments occupy the remaining portion of the Proposed DFRURA. Sites within the Proposed DFRURA include underutilized parcels that act as a barrier to redevelopment along Mott Avenue as well as a physical barrier between the Far Rockaway-Mott Avenue station of the MTA's A train and the terminal station for the LIRR's Far Rockaway branch.

The objectives of the DFRURP are as follows:

- Redevelop the Proposed DFRURA in a comprehensive manner, removing blight and maximizing appropriate land use;
- Remove or rehabilitate substandard and insanitary structures;
- Remove impediments to land assemblage and orderly development;
- Strengthen the tax base of the City by encouraging development and employment opportunities in the Proposed DFRURA;
- Provide new housing of high quality and/or rehabilitated housing of upgraded quality;
- Provide appropriate community facilities, parks and recreational uses, retail shopping, public parking, and private parking; and
- Provide a stable environment within the Proposed DFRURA which will not be a blighting influence on surrounding neighborhoods.

To facilitate implementation of the Proposed Actions, the City may acquire property through a negotiated purchase or through eminent domain. Properties proposed for potential acquisition are located within the Proposed DFRURA. Any property acquired through eminent domain would be done in compliance with the provisions of the New York State Eminent Domain Procedure Law and the NYC Administrative Code. Properties acquired would be disposed of for development in accordance with the DFRURP. The Proposed DFRURP would have a duration of 40 years.

Administrative Actions Related to Properties in Mapped Streets

A number of Projected and Potential Development Sites within the Rezoning Area, and portions of the Proposed DFRURA along Redfern Avenue, are built within mapped street widening lines (a common phenomenon in this area). Future development on these sites assumes that property owners would follow a series of administrative actions to comply with General City Law Section 35 provisions, whereby the owners would submit an application for a GCL 35 waiver at the NYC Board of Standards and Appeals (BSA). Following this submission, the BSA would submit the application to DOT for review and approval.

ANALYTICAL FRAMEWORK

Reasonable Worst Case Development Scenario (RWCDs)

In order to assess the possible effects of the Proposed Actions, a RWCDs was developed to account for existing, the future No Action condition and the future With Action condition. For purposes of the environmental review, the Proposed Project is expected to be complete and operational by 2032, which is



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the Proposed Project's Build Year. While absent the Proposed Actions in 2032, conditions in the Project Area will remain generally unchanged from existing conditions, there are a limited number of development projects. Several known development projects expected in the No Action condition are expected to result in approximately 8 DUs, 90,932 gsf of commercial space, 5,000 gsf of community facility space, 43,822 gsf of industrial space and 310 parking spaces. Under the With Action condition, the Proposed Project would provide over three million square feet of residential floor area or approximately 3,131 DUs, 259,687 gsf of commercial (retail) space, 85,947 gsf of community facility space, and 30,000 sf of new publicly accessible plaza space within the Proposed DFRURA. The incremental difference between the future No Action and future With Action conditions serves as the basis for the impact analysis of the environmental review. The Proposed Actions are expected to result in an incremental increase (over the No Action condition) of 3,123 DUs, 164,595 gsf of commercial (retail) space, 80,947 gsf of community facility space, and approximately 30,000 sf of open space.

Proposed DFRURA RWCDs Assumptions

For purposes of a RWCDs, it is assumed that all existing uses on the Proposed DFRURA would be displaced and the site would be redeveloped with: 1,747 DUs (including 50 percent of the units as affordable); 129,077 gsf of neighborhood retail uses, including a grocery store that would be comparable in size to the existing Food Dynasty grocery store; and 36,295 gsf of community facility uses. These uses would be within eight new buildings that would front onto new private streets that would connect to the surrounding street network. In addition, the Proposed DFRURA would include 30,000 sf of new publicly accessible plaza space. The proposed Special District text described above would establish the street network and include a series of design controls that would set the maximum envelope within which future development could occur. As such, the program and site plan for the Proposed DFRURA in the RWCDs describes a maximum development scenario.

Planning Principles

The development of the Proposed DFRURA would be guided by a set of specific controls within the new Special District intended to facilitate a context-sensitive design that meets the following principles:

- Establish a center to the downtown "village" by creating meaningful, lively new gathering and civic spaces along Mott Avenue that complement and strengthen the existing neighborhood;
- Strengthen the neighborhood's built fabric with new contextual buildings and active street frontages;
- Integrate new streets into an improved pedestrian and vehicular network with key north-south and east-west connection;
- Physically and visually connect pedestrians with clear points of arrival to a variety of commercial and community services; and
- Concentrate taller buildings in the middle of the site that step down to the existing neighborhood through a variety of forms to create a range of contextualized downtown development.

Street Network

The Proposed DFRURA currently forms a superblock within the heart of the Downtown, limiting the connections to the surrounding neighborhood. As part of the Proposed Project, the Proposed DFRURA would include eight separate buildings and a new private street network. The proposed private street grid



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would integrate the Proposed DFRURA with the surrounding street network, breaking up the superblock by establishing publicly-accessible north-south and east-west connections. Portions of six buildings would front on the new north-south connection, while one would front entirely on Central Avenue and the last would front on Redfern and Nameoke Avenues.

The new north-south oriented street would form the main axis on the Proposed DFRURA. This new street would extend through the Proposed DFRURA connecting to Nameoke Avenue on the north. At the southern end, the new street would terminate at a traffic circle between Buildings B and C that front Mott Avenue. Two new east-west streets would directly connect the Proposed DFRURA with Redfern Avenue and Central Avenue. To achieve this, Birdsall Avenue would extend eastward through the Proposed DFRURA between Buildings D and E, intersecting with the new north-south oriented street and connecting with Bayport Place between Buildings F and H, before connecting to Central Avenue. Also from the west, Dix Avenue would be extended eastward between Buildings C and D and then between Buildings B and H, terminating to the east of these buildings. These streets would also provide vehicular access to on-street and off-street parking as well as to the loading areas associated with the buildings on the Proposed DFRURA.

These new streets would visually and physically connect the Proposed DFRURA to the surrounding area, promoting easy movement through the Proposed DFRURA between the Central Avenue corridor and Redfern Avenue as well as between Mott Avenue and Nameoke Avenue. The new north-south oriented street would allow for pedestrians and vehicles to move between the A Train Station on Mott Avenue and the LIRR Station on Nameoke Avenue and between the downtown area and the adjoining neighborhoods.

Active Uses

The site plan and design for the Proposed DFRURA are intended to promote a “Main Street” feeling in Downtown Far Rockaway by concentrating new retail space along the portion of the north-south street closest to Mott Avenue. The new street network allows for active street frontages along Mott Avenue and the new streets by having all of the proposed buildings on the Proposed DFRURA front on either an existing street or one of the new streets. Buildings B and C would front directly on Mott Avenue and would include ground floor retail space that would open onto either the new plaza, Mott Avenue, Redfern Avenue, or the new north-south street. The existing supermarket on the Proposed DFRURA would be replaced with a supermarket of similar size in the ground floor of Building C. Buildings within the Proposed DFRURA, and along Beach 20th Street, would also allow for second-story community facility and retail uses within Use Groups 5 through 9, 10A, 12, and 14. Continuing to the north, the six new buildings within the Proposed DFRURA would primarily be residential with frontages directly on the new north-south and east-west streets, Redfern Avenue, Central Avenue, or Nameoke Avenue. Along Nameoke Avenue, near the LIRR Station and the NYC Housing Authority’s (NYCHA’s) Redfern Houses, Buildings E and K would include ground floor community facility space while Building E would also include ground floor space for new retail uses. Along the Central Avenue, Building G would help to fill a gap along this key corridor with complementary ground-floor retail space.

Open Spaces

A critical component of the Proposed DFRURA’s design is the integration of public spaces within the Proposed DFRURA to create a center to the neighborhood, knitting together the adjacent public library, the



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subway station, and other portions areas of Downtown Far Rockaway. A new public plaza would front Buildings B and C along Mott Avenue and the plaza would continue into the Proposed DFRURA between these two buildings. This plaza would create a pedestrian gateway to the Proposed DFRURA between the two new buildings and would include new plantings, seating, and other street furniture, as well as opportunities for public programming that would improve streetscape conditions within the Proposed DFRURA.

Built Form

The proposed design as amended by the A-Application results in the following:

- Building B: Along Mott Avenue, the base of the building would be reduced from 6 stories as presented in the DEIS to five stories before a setback, rising to a total of eight stories along Mott Avenue. The overall height of the building would be reduced from 12 to 11 stories.
- Building C: The base of the building along Mott Avenue would be reduced by one story and set back three feet from the lot line. The tallest tower would be reduced by 4 stories (from 15 stories in the DEIS to 11 stories), and the remaining building rising to 8 stories. A portion of the building façade along Redfern Avenue also would be reduced by one story to 3-stories.
- Building D: The towers at the center of the building would be increased by 3 stories (from 12 to 15 stories and from 9 to 12 stories). The floor-plates of the towers would be reduced by increasing the depth of the setback from the façade along Redfern Avenue.
- Building E: A portion of the tower along the proposed extension of Birdsall Avenue would be reduced 3 stories (from 12 to 9 stories).
- Building H: The southernmost tower would remain 12 stories, but with a setback after 8 stories instead of rising without setbacks. Along the proposed north-south street, the base of the building would be increased from 6 to 8 stories with an additional side-yard setback after 12 stories. The north tower would remain 15 stories.
- Building G: The Central Avenue facade would increase the setback by one story. The tower height would increase one story (from 9 to 10 stories).

The proposed design would concentrate taller, denser development in the middle of the Proposed DFRURA, along the new north-south oriented street and away from the edges of the site. The buildings within the Special District would be allowed to exceed the maximum height restrictions of the underlying zoning. However, each of the buildings on the Proposed DFRURA would have a series of transitions between the lower rise portions of the building and the maximum height. Building D and H would reach a maximum height of 15-stories (approximately 155 feet), the highest on the Proposed DFRURA. The other buildings would reach a maximum height of 12 stories. Overall, each building on the site would include a series of transition heights of between four, five, and eight stories before reaching their respective maximum heights.

In addition, by stepping building heights down, the buildings on the periphery of the Proposed DFRURA would blend into the existing neighborhood fabric. The portions of Buildings C, D, and E along Redfern Avenue would be between three and four stories high to match the adjacent context. The portions of Buildings B and C along Mott Avenue would have a maximum height of five stories. On Nameoke Avenue, Buildings E, and F and K would have a maximum height of six stories.



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Construction on the Proposed DFRURA would occur in phases, with the final phase expected to be completed by 2032. While a phasing plan has not been finalized, it is expected that construction on the Proposed DFRURA would begin with Buildings B and C along Mott Avenue. Upon substantial completion of these buildings, construction would commence on Buildings D, H, and G. Upon substantial completion of these buildings, construction would commence on Buildings E, F, and K. The duration of construction for specific buildings would vary, but generally each is expected to take approximately two years to complete.

Disposition Sites RWCDs Assumptions

In the future with the Proposed Actions, the vacant City-owned parcel currently under the jurisdiction of DSNY—located at the corner of Augustina and Nameoke Avenues (Block 15534, Lot 70)—would be redeveloped as-of-right with four, approximately three-story (35-foot-tall), residential buildings that would include a total of 8 DUs, all of which would be affordable (8,000 gsf). An approximately 44,000-sf site, including a portion of a lot currently under the jurisdiction of DOT (Block 15705, Lot 59) and a lot under the jurisdiction of the MTA (Block 15705, Lot 69)—located along Beach 21st Street south of Mott Avenue—would be redeveloped with an approximately 10-story (105-foot-tall) building that would include 176 DUs (all of which would be affordable), 7,421 gsf of local ground floor retail, 11,557 gsf of community facility space, and 40 parking spaces at grade. Independent of the Proposed Project, the current bus layover use on this site will be relocated to another location within the immediate neighborhood. As described below, a portion of Lot 59 would be disposed of as part of the Proposed Project and the remaining portion would be developed as a plaza as part of the DOT Downtown Far Rockaway Urban Design and Streetscape Reconstruction Project.

Development Site Criteria (Projected and Potential Development Sites)

In addition to development expected to occur on the Proposed DFRURA and Disposition Sites, the Proposed Actions would result in development elsewhere within the Rezoning Area. In projecting the amount and location of other new development expected to occur as a result of the Proposed Actions, several factors have been considered in identifying likely development sites. These include known development proposals, past and current development trends, and the development site criteria described below. Generally, for area-wide rezonings that create a broad range of development opportunities, new development can be expected to occur on selected, rather than all, sites within the rezoning area. The first step in establishing the development scenario was to identify those sites where new development could be reasonably expected to occur, based on criteria outlined in the *CEQR Technical Manual*. Certain lots that met the criteria have been excluded from the scenario because they are very unlikely to be redeveloped as a result of the Proposed Rezoning.

Definition of Projected and Potential Development Sites

To produce a reasonable, conservative estimate of future growth, the development sites have been divided into two categories: projected development sites and potential development sites. The projected development sites are considered more likely to be developed within the 15-year analysis period for the Proposed Actions (i.e., by the 2032 analysis year). Potential Development Sites are considered less likely to be developed by the 2032 Build Year, and are assessed only for site-specific technical areas of CEQR.



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Of the sites identified based on the criteria described above, Potential Development Sites were identified based on the following criteria:

- Lots with slightly irregular shapes, topographies, or encumbrances such as extensive map easements.
- Active businesses, which may provide unique services or are prominent, and successful neighborhood establishments that are unlikely to move.
- Lots with five or more commercial tenants with their primary frontage on Mott Avenue between Beach Channel Drive and Cornaga Avenue, and that are currently developed to less than 0.5 FAR under existing zoning would be difficult to develop due to long-term leases; however, given their location on primary commercial corridors, it is reasonable to assume that these lots would potentially be redeveloped in the longer-term after the anticipated 2032 build year, and therefore should be considered Potential Development Sites.

Based on the above criteria, in addition to the Proposed DFRURA and the Disposition Sites, a total of 28 development sites (19 Projected Development Sites and 9 Potential Development Sites) have been identified in the Project Area.

Development Scenario Parameters

Dwelling Unit Factor

The number of projected DUs in apartment buildings is determined by dividing the total amount of residential floor area by 1,000 and rounding to the nearest whole number. The Proposed DFRURA would include a series of 4-story townhouses along Redfern Avenue in Building E. Given the design, each of the townhouse units are assumed to be 2,000 gsf each.

Affordable Housing Assumptions

The Proposed Actions will support the development of new permanently affordable housing construction by mapping new zoning districts to permit residential development in areas where it is not permitted today and to increase residential density where it is permitted today. While Downtown Far Rockaway has not experienced market-rate multifamily construction in recent years, the neighborhood is characterized by a number of underutilized sites with capacity for significant growth. Zoning changes to allow residential development at higher densities would facilitate expansion of the neighborhood's supply of affordable housing and the construction of new permanently affordable housing development. For the immediate future, it is anticipated that new multifamily development will resemble recent multifamily development in the broader area, which has generally utilized public subsidy and been affordable to low-income households.

It is expected that a variety of City and State financing programs for affordable housing would result in the creation of a substantial amount of affordable housing within the project area under the Proposed Actions. Included among the Proposed Actions is the designation of a MIHA which will require that new residential developments include a permanently affordable component. The MIH requirement that a percentage of housing units developed under the Proposed Action remain permanently affordable can ensure that new development will address the needs of residents at lower income levels, even in the event that local housing market conditions change. In addition to the permanently affordable housing generated by MIH, the use of public subsidies can help broaden and deepen affordability.



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While it is possible that by the time of the 2032 Build Year, changes in the housing market and government subsidies may result in non-subsidized multifamily development occurring, the MIH program would ensure that a substantial amount of new housing would be permanently affordable to low- to moderate-income households. The MIH program includes two primary options for set-aside percentages with different affordability levels. One option would require 25 percent of residential floor area to be for affordable housing units for residents with incomes averaging 60 percent of AMI (with ten percent of the floor area affordable at 40 percent AMI) and the second would require 30 percent of residential floor area to be for affordable housing units for residents with incomes averaging 80 percent AMI.

In combination with these options, two other options may be utilized. A “Deep Affordability Option” may be utilized under which 20 percent of residential floor area must be affordable housing units affordable to households with income at a weighted average of 40 percent of AMI. Also, a “Workforce Option” also may be utilized providing 30 percent of residential floor area must be affordable housing units affordable to households with income at a weighted average of 115 percent, with five percent of residential floor area must be affordable housing units affordable to households with income at an income band of 70 percent of AMI and another five percent of residential floor area must be affordable housing units affordable to households with income at an income band of 90 percent of AMI. No public funding may be used for MIH development utilizing the “Deep Affordability Option or the “Workforce Option”.

As part of this project, both Option 1 and Option 2 are proposed to apply within the MIHA. The CPC and the City Council will ultimately determine whether one or both options will be selected. Therefore, each impact category utilizes whichever of the two primary MIH options would provide the more conservative basis for its specific analysis.

Within the Proposed DFRURA, it is assumed that 50 percent of the future dwelling units would be affordable. The total number of affordable DUs assumed on the city-owned sites (874 for the Proposed DFRURA and 184 for Disposition Sites) was estimated based on known development proposals, past and current development trends, the City, State, and Federal programs that support the construction of affordable housing, the proposals in Housing New York, the Mayor’s 10-year housing plan, that aim to significantly increase the amount of affordable housing created and preserved in the five boroughs, and the City’s specific commitments to providing affordable housing in Downtown Far Rockaway.

Future with the Proposed Actions

The full build-out of the Proposed Project includes development projected to be completed within the 15-year analysis window by 2032 (this includes development on the Proposed DFRURA, Disposition Sites, and Projected Development Sites). Since Potential Development Sites are not expected to be redeveloped under the Proposed Actions, the program associated with these sites is not included in the projection of future project-generated development. The full build-out under the RWCDS is assumed to include 3,131 DUs, 259,687 gsf of commercial space and 85,947 gsf of community facility space. Most of the off-street parking for the Proposed DFRURA would be provided below grade, as would the parking for Projected Development Sites 6 and 15. All of the remaining off-street parking is assumed to be provided at grade. The Proposed Project also would provide a new privately-owned, publicly-accessible plaza along Mott Avenue on the Proposed DFRURA. The analysis assumptions for the No Action condition, With Action condition, and increment for analysis are summarized below in **Table 1**.



Table 1

Comparison of No Action and With-Action Conditions
Proposed DFRURA, Disposition Sites and Projected Development Sites

Uses	No Action Condition	With-Action Condition	Increment for Analysis
Residential (DUs)	8	3,131	3,123
Retail (GSF)	95,092	259,687	164,595
Community Facility (GSF)	5,000	85,947	80,947
Vacant ¹ (GSF)	334,634	0	(334,634)
Open Space (SF)	0	30,000	30,000
Note: ¹ Includes undeveloped lots, and auto-related uses with no build structures.			
Sources: mapPLUTO 15v1 and AKRF, Inc.			

IDENTIFIED SIGNIFICANT ADVERSE IMPACTS AND MITIGATION

The FEIS disclosed significant adverse impacts in the areas of child care services, open space, transportation, and construction noise. Mitigation measures were identified in the FEIS to address significant adverse impacts of the Project. In some cases, impacts from the Project would be unavoidable. To the greatest extent practicable, mitigation has been proposed for these identified significant adverse impacts. However, in some instances no practicable mitigation was identified to fully mitigate significant adverse impacts, and there are no reasonable alternatives to the Proposed Actions that would meet their purpose and need, eliminate their impacts, and not cause other or similar significant adverse impacts. In other cases, mitigation has been proposed, but absent a commitment to implement the mitigation, the impacts may not be eliminated.

CHILD CARE SERVICES

The Proposed Actions are expected to result in significant adverse impacts to publicly funded child care centers. The Proposed Actions under the Reasonable Worst-Case Development Scenario (RWCDs) would introduce 1,580 affordable residential units, generating an estimated 222 additional children under age six eligible for publicly funded child care programs. With the addition of these children, child care facilities in the study area would operate at 154.2 percent of capacity, which represents an increase in the utilization rate of 57.5 percentage points over the future No Action condition. This increase exceeds the five percent threshold in the *CEQR Technical Manual* for a significant adverse impact.

Possible mitigation measures for this significant adverse impact were developed in consultation with the New York City Administration for Children's Services (ACS) and included the provision of additional suitable location(s) for a child care center and within a reasonable distance, funding, and making program improvements to support additional capacity. While funding and program improvements were not deemed feasible measures, it was identified that increased demand for child care slots could be met through expanded capacity. HPD is expected to subsidize the development of a significant number of new mixed-use buildings in the Proposed DFRURA, and developers of Projected Development Sites may also seek HPD subsidies. The Proposed DFRURA and Projected Development Sites would allow for non-residential ground floor uses in any new development, thus expanding the amount of available commercial and community facility space in the neighborhood. These spaces could be occupied by retail or community facility uses such as day care facilities. HPD will encourage the inclusion of community facilities, including day care providers, in any Request for Proposals for sites within the DFRURA as well



as any developments receiving HPD subsidy. Outside of City-controlled and City-subsidized development sites, the ability to expand capacity is limited because the City cannot mandate the provision of day care facilities on private sites. ACS will monitor the demand and need for additional publicly funded day care services in the area and identify the appropriate measures to meet demand for additional slots. While new development subsidized by HPD may occur in the near future and would potentially offset or at least partially mitigate the identified significant adverse impact by providing day care facilities, there are no known development plans or funding commitments for such developments at this point in time. Therefore, the Proposed Actions would result in an unavoidable significant adverse impact on day care facilities.

OPEN SPACE

Given the anticipated decrease in the total, active, and passive open space ratios in the residential study in the future with the Proposed Actions, a significant adverse open space impact would result. Measures considered to mitigate the Proposed Actions' significant adverse open space impacts included: expanding existing parks within the New York City Housing Authority (NYCHA) Redfern Houses; creating new open space on publicly-owned sites; making the PS 253 Playground accessible to the community after school hours through the Schoolyards to Playgrounds program; and improving existing parks to allow for more diverse programming and enhanced usability. These potential mitigation measures were explored in coordination with the lead agency, DCP, the New York City Department of Parks and Recreation (NYC Parks), NYCHA, and HPD between the DEIS and FEIS. Due to the complexity of interagency coordination required for implementation of these mitigation measures and the lack of committed capital and expense funding to build and maintain the additional open space at this point in time, the significant adverse open space impacts identified will not be mitigated. Consequentially, unavoidable significant adverse open space impacts would occur as a result of the Proposed Actions.

However, the City will continue to explore opportunities to implement the measures identified and contemplated between DEIS and FEIS, as discussed above, and to explore opportunities within the neighborhood to provide more open space, improve existing open spaces, or provide additional programming within existing open spaces. The City will also pursue opportunities to encourage owners of large privately-owned sites to create new public open space as part of their development. In addition, the City will inventory City-owned property within Downtown Far Rockaway as well as throughout the peninsula that would be suitable sites for community farming or gardening.

TRANSPORTATION

TRAFFIC

The Proposed Actions would result in significant adverse traffic impacts at 17 study area intersections during one or more analyzed peak hours; specifically 20 lane groups at 11 intersections during the weekday AM peak hour, 21 lane groups at 12 intersections during the midday peak hour, 28-27 lane groups at 17 intersections during the PM peak hour, and 14 lane groups at 7 intersections during the Saturday midday peak hour.

Most of these impacts could be mitigated through the implementation of traffic engineering improvements, including: modification of traffic signal phasing and/or timing; elimination of on-street parking within 100 feet of intersections to add a limited travel lane, known as "daylighting"; and channelization and lane designation changes to make more efficient use of available street widths. However, some significant adverse impacts could not be fully mitigated. In total, impacts to one or more



approach movements would not be fully mitigated in one or more peak hours at 11 intersections, even with the application of feasible mitigation measures. Consequentially, these impacts would constitute unavoidable significant adverse traffic impacts as a result of the Proposed Actions.

TRANSIT

The Proposed Actions would result in significant adverse impacts to westbound Q22 service and northbound Q113/Q114 service in the AM peak hour and eastbound Q22 service in the PM peak hour. These significant adverse impacts to Q22 and Q113/Q114 bus service could be fully mitigated by the addition of one standard bus to westbound Q22 service and one articulated bus to Q113/Q114 northbound service in the AM peak hour and the addition of one standard bus to eastbound Q22 service in the PM peak hour.

MTA Bus routinely monitors changes in bus ridership, and subject to the agency's fiscal and operational constraints, make necessary service adjustments where warranted. The identified potential impacts could be mitigated if increased service adjustments are made. If adjustments are not made, these impacts would be considered unavoidable.

CONSTRUCTION NOISE

The RWCDs the Proposed Actions would have the potential to result in significant adverse construction noise impacts at several locations throughout the Project Area. Construction activities associated with the Proposed Downtown Far Rockaway Urban Renewal Area (DFRURA) would have the potential to result in significant adverse construction noise impacts at up to 34 receptor locations, while construction activities associated with Projected Development Sites would have the potential to result in significant adverse construction noise impacts at up to 72 receptor locations.

At impacted locations, construction noise levels would exceed *CEQR Technical Manual* noise impact criteria for an extended period of time. These locations, including residences, a library, community facilities, and two open space locations (the Beach 20th Street Plaza and future DOT Plaza to be located between Beach 21st and Beach 22nd Streets along Mott Avenue), would intermittently experience exterior noise levels up to the mid 80s dBA. The maximum predicted noise level increments are predicted to be up to approximately 27 dBA when compared with existing levels. These increments would only occur during times when impact pile driving equipment would be operating at points located nearest to adjacent receptors on the same block as a construction site. The most noise-intensive construction activities would occur during portions of up to approximately 3 to 5 years of the Proposed DFRURA construction period.

At other receptors near construction areas, noise resulting from construction of the Proposed Project may at times be noticeable, but would be temporary, would generally not exceed typical noise levels for New York City, and would not rise to the level of a significant adverse noise impact.

Construction activities would be required to follow the requirements of the *NYC Noise Control Code* (also known as Chapter 24 of the Administrative Code of the City of New York, or Local Law 113) for construction noise control measures. Specific noise control measures would be incorporated in noise mitigation plan(s) required under the *NYC Noise Code*. These measures could include a variety of source and path controls. In terms of source controls (i.e., reducing noise levels at the source or during the most sensitive time periods), the following measures would be implemented in accordance with the *NYC Noise Code*:



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- Equipment that meets the sound level standards specified in Subchapter 5 of the *NYC Noise Control Code* would be utilized from the start of construction.
- As early in the construction period as logistics would allow, diesel- or gas-powered equipment would be replaced with electrical-powered equipment such as welders, water pumps, bench saws, and table saws (i.e., early electrification) to the extent feasible and practicable.
- Where feasible and practicable, construction sites would be configured to minimize back-up alarm noise. In addition, all trucks would not be allowed to idle more than three minutes at the construction site based upon Title 24, Chapter 1, Subchapter 7, Section 24-163 of the *NYC Administrative Code*.
- Contractors and subcontractors would be required to properly maintain their equipment and mufflers.

In terms of path controls (e.g., placement of equipment, implementation of barriers or enclosures between equipment and sensitive receptors), the following measures for construction would be implemented to the extent feasible and practicable:

- Where logistics allow, noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, would be located away from and shielded from sensitive receptor locations.
- Noise barriers constructed from plywood or other materials would be erected to provide shielding; and
- Path noise control measures (i.e., portable noise barriers, panels, enclosures, and acoustical tents, where feasible) for certain dominant noise equipment would be employed to the extent feasible and practical based on the results of the construction noise calculations.

However, the implementation of these measures would not eliminate the identified significant adverse construction noise impacts predicted to occur during hours when the loudest pieces of construction equipment (e.g., impact pile driver) are in use. In order to avoid significant adverse construction noise impacts, Proposed Project buildings could not be developed on the same block as, or across a narrow street from, an existing sensitive receptor; and/or all buildings would require construction without pile foundations, which would severely limit the achievable development density. There are no practical or feasible measures that would fully mitigate the significant adverse construction noise impacts. Therefore, the Proposed Actions would result in unavoidable significant adverse construction noise impacts.

MEASURES INCLUDED AS PART OF THE PROJECT

In addition to the mitigation referenced above, the Approved Actions include measures to preclude significant adverse impacts associated with Hazardous Materials, Noise and Air Quality. Mitigation measures and project elements intended to preclude impacts would be required in connection with the conveyance of City-owned property from HPD to the project sponsor through the Land Disposition Agreement.



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CERTIFICATION AND FINDINGS

Having considered the relevant environmental impacts, facts, and conclusions disclosed in the FGEIS and having weighed and balanced relevant environmental impacts with social, environmental, public health, economic, and other essential considerations as required in 6 NYCRR 617.11, HPD, as an Involved Agency, certifies that:

1. The requirements of 6 NYCRR Part 617 have been met;
2. Consistent with social, environmental, economic, and other essential considerations from among the reasonable alternatives thereto, the action avoids or minimizes adverse environmental impacts to the maximum extent practicable; and
3. Consistent with social, environmental, economic, and other essential considerations, the significant adverse environmental impacts disclosed in the GEIS will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the action those mitigation measures that were identified as practicable.

For these reasons, HPD has determined to undertake activities related to the Approved Actions, including the conveyance of City-owned property and construction financing. The FEIS and these Findings constitute HPD's written statement of facts and the environmental, social, economic and other factors and standards that form the basis of this decision, pursuant to Section 617.11(d) of the SEQRA regulations.



Molly Park

Deputy Commissioner, HPD

City of New York - Department of Housing Preservation & Development

Date: June 26, 2018



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