



Department of Environmental Conservation

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

Please refer to the attached instructions for guidance on completing this application.

Submission of a full BCP application will be required should this application be determined to be a major amendment. If the amendment seeks to add or subtract more than an insignificant acreage of property to the BCA, applicants are encouraged to consult with the DEC project team prior to submitting this application.

**PART I BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION**

1. Check the appropriate box(es) below based on the nature of the amendment modification(s) requested:

<input type="checkbox"/>	Amendment to modify the existing BCA (check one or more boxes below):
<input type="checkbox"/>	Add applicant(s)
<input type="checkbox"/>	Substitute applicant(s)
<input type="checkbox"/>	Remove applicant(s)
<input type="checkbox"/>	Change in name of applicant(s)
<input type="checkbox"/>	Amendment to reflect a transfer of title to all or part of the brownfield site:
	a. A copy of the recorded deed must be provided. Is this attached?      Yes <input type="radio"/> No <input type="radio"/>
	b. <input type="checkbox"/> Change in ownership <input type="checkbox"/> Additional owner (such as a beneficial owner)
	c. Pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been submitted prior to a transfer of ownership. If this has not yet been submitted, include the form with this application. Is this form attached?      Yes <input type="radio"/> No <input type="radio"/> Submitted on: _____
<input type="checkbox"/>	Amendment to modify description of the property(ies) listed in the existing BCA
<input type="checkbox"/>	Amendment to expand or reduce property boundaries of the property(ies) listed in the existing BCA
<input checked="" type="checkbox"/>	Sites in Bronx, Kings, New York, Queens or Richmond Counties ONLY: amendment to request determination that the site is eligible for tangible property credit component of the brownfield redevelopment tax credit.
<input type="checkbox"/>	Other (explain in detail below)

2. REQUIRED: Please provide a brief narrative describing the specific requests included in this amendment:

The purpose of this BCA Amendment application is to state that this 421-a affordable housing project located in Queens County is eligible for TPC based on the Applicant's Affidavit and supporting documents appended hereto as Exhibit A.

**SECTION I: CURRENT AGREEMENT INFORMATION***This section must be completed in full. Attach additional pages as necessary.*

BCP SITE NAME: Former FO Pierce Company

BCP SITE CODE: C241251

NAME OF CURRENT APPLICANT(S): 50th &amp; 5th LIC LLC

INDEX NUMBER OF AGREEMENT: C241251-05-21

DATE OF ORIGINAL AGREEMENT: 06/04/2021

**SECTION II: NEW REQUESTOR INFORMATION***Complete this section only if adding new requestor(s) or the name of an existing requestor has changed.*

NAME:

ADDRESS:

CITY/TOWN:

ZIP CODE:

PHONE:

EMAIL:

REQUESTOR CONTACT:

ADDRESS:

CITY/TOWN:

ZIP CODE:

PHONE:

EMAIL:

REQUESTOR'S CONSULTANT:

CONTACT:

ADDRESS:

CITY/TOWN:

ZIP CODE:

PHONE:

EMAIL:

REQUESTOR'S ATTORNEY:

CONTACT:

ADDRESS:

CITY/TOWN:

ZIP CODE:

PHONE:

EMAIL:

Y

N

1. Is the requestor authorized to conduct business in New York State?

2. If the requestor is a corporation, LLC, LLP, or other entity requiring authorization from the NYS Department of State (NYSDOS) to conduct business in NYS, the requestor's name must appear exactly as given above in the NYSDOS Corporation &amp; Business Entity Database. A print-out of entity information from the NYSDOS database must be submitted with this application. Is this print-out attached?

3. Requestor must submit proof that the party signing this application and amendment has the authority to bind the requestor. This would be documentation showing the authority to bind the requestor in the form of corporate organizational papers, a Corporate Resolution or an Operating Agreement or Resolution for an LLC. Is this proof attached?

4. If the requestor is an LLC, the names of the members/owners must be provided. Is this information attached?

N/A

5. Describe the new requestor's relationship to all existing applicants:

**SECTION III: CURRENT PROPERTY OWNER/OPERATOR INFORMATION**

*Complete this section only if a transfer of ownership has taken place. Attach additional pages if necessary.*

Owner listed below is:	<input type="checkbox"/> Existing Applicant	<input type="checkbox"/> New Applicant	<input type="checkbox"/> Non-Applicant
OWNER'S NAME:		CONTACT:	
ADDRESS:			
CITY/TOWN:		ZIP CODE:	
PHONE:	EMAIL:		
OPERATOR:		CONTACT:	
ADDRESS:			
CITY/TOWN:		ZIP CODE:	
PHONE:	EMAIL:		

**SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION**

*Complete this section only if adding new requestor(s). Attach additional pages if necessary.*

If answering "yes" to any of the following questions, please provide additional information as an attachment. Please refer to ECL § 27-1407 for details.

	Y	N
1. Are any enforcement actions pending against the requestor regarding this site?	<input type="radio"/>	<input type="radio"/>
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site?	<input type="radio"/>	<input type="radio"/>
3. Is the requestor subject to an outstanding claim by the Spill Fund for the site? Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.	<input type="radio"/>	<input type="radio"/>
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 or regulation of the state or federal government? If so, provide additional information as an attachment.	<input type="radio"/>	<input type="radio"/>
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as site name, address, DEC site number, reason for denial, and any other relevant information.	<input type="radio"/>	<input type="radio"/>
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 or contaminants?	<input type="radio"/>	<input type="radio"/>
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?	<input type="radio"/>	<input type="radio"/>
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?	<input type="radio"/>	<input type="radio"/>

SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION (continued)		Y	N
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?		<input type="radio"/>	<input type="radio"/>
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?		<input type="radio"/>	<input type="radio"/>
11. Are there any unregistered bulk storage tanks on-site which require registration?		<input type="radio"/>	<input type="radio"/>
12. 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:			
<input type="checkbox"/> <b>PARTICIPANT</b> 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 type="checkbox"/> <b>VOLUNTEER</b> 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 a 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 they have 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.  <b>If a requestor's liability arises solely as a result of ownership, operation of or involvement with the site, they must submit a statement describing why they should be considered a volunteer – be specific as to the appropriate care taken.</b>	
13. If the requestor is a volunteer, is a statement describing why the requestor should be considered a volunteer attached?		N/A <input type="radio"/>	Y <input type="radio"/>
14. Requestor's relationship to the property (check all that apply):			
<input type="checkbox"/> Prior Owner <input type="checkbox"/> Current Owner <input type="checkbox"/> Potential/Future Purchaser <input type="checkbox"/> Other: _____			
15. If the 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 being added to the BCA and throughout the BCP project, including the ability to place an easement on the site. Is this proof attached?		N/A <input type="radio"/>	Y <input type="radio"/>

**SECTION V: PROPERTY DESCRIPTION AND REQUESTED CHANGES**

*Complete this section only if property is being added to or removed from the site, a lot merger or other change to site SBL(s) has occurred, or if modifying the site address for any reason.*

1. Property information on current agreement (as modified by any previous amendments, if applicable):

ADDRESS:

CITY/TOWN

ZIP CODE:

CURRENT PROPERTY INFORMATION

TOTAL ACREAGE OF CURRENT SITE:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE

PARCEL ADDRESS	SECTION	BLOCK	LOT	ACREAGE

2. Requested change (check appropriate boxes below):

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

PARCELS ADDED:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE

PARCEL ADDRESS	SECTION	BLOCK	LOT	ACREAGE

TOTAL ACREAGE TO BE ADDED: \_\_\_\_\_

b. Reduction of property

PARCELS REMOVED:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE

PARCEL ADDRESS	SECTION	BLOCK	LOT	ACREAGE

TOTAL ACREAGE TO BE REMOVED: \_\_\_\_\_

c. Change to SBL (e.g., lot merge, subdivision, address change)

NEW PROPERTY INFORMATION:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE

PARCEL ADDRESS	SECTION	BLOCK	LOT	ACREAGE

3. TOTAL REVISED SITE ACREAGE: \_\_\_\_\_

4. For all changes requested in this section, documentation must be provided. Required attachments are listed in the application instructions. Is the required documentation attached?

Y	N
<input type="radio"/>	<input type="radio"/>

**APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT SUPPLEMENT  
QUESTIONS FOR SITE SEEKING TANGIBLE PROPERTY CREDITS IN NEW YORK CITY ONLY**

*Complete this section only if the site is located within the five counties comprising New York City and the requestor is seeking a determination of eligibility for tangible property credits. Provide supporting documentation as required. Refer to the application instructions for additional information.*

	Y	N
1. Is the site located in Bronx, Kings, New York, Queens or Richmond County?	<input checked="" type="radio"/>	<input type="radio"/>
2. Is the requestor seeking a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit?	<input checked="" type="radio"/>	<input type="radio"/>
3. 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="radio"/>	<input checked="" type="radio"/>
4. Is the property upside down as defined below?  <b>From ECL 27-1405(31):</b>  "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.	<input type="radio"/>	<input checked="" type="radio"/>
5. Is the project and affordable housing project as defined below?  <b>From 6 NYCRR 375-3.2(a) as of August 12, 2016:</b>  (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. (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' household's annual gross income. (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 homeowners at a defined maximum percentage of the area median income. (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.	<input checked="" type="radio"/>	<input type="radio"/>

APPLICATION SUPPLEMENT FOR NYC SITES (continued)	Y	N
<p>6. Is the project a planned renewable energy facility site as defined below?</p> <p><b>From ECL 27-1405(33) as of April 9, 2022:</b></p> <p>"Renewable energy facility site" shall mean real property (a) this is used for a renewable energy system, as defined in section sixty-six-p of the public service law; or (b) any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission, sub-transmission, or distribution system.</p> <p><b>From Public Service Law Article 4 Section 66-p as of April 23, 2021:</b></p> <p>(b) "renewable energy systems" means systems that generate electricity or thermal energy through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.</p>	<input type="radio"/>	<input checked="" type="radio"/>
<p>7. Is the site located within a disadvantaged community, within a designated Brownfield Opportunity Area, and meets the conformance determinations pursuant to subdivision ten of section nine-hundred-seventy-r of the general municipal law?</p> <p><b>From ECL 75-0111 as of April 9, 2022:</b></p> <p>(5) "Disadvantaged communities" means communities that bear the burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households, as identified pursuant to section 75-0111 of this article.</p>	<input type="radio"/>	<input checked="" type="radio"/>

**PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT**

**EXISTING AGREEMENT INFORMATION**

BCP SITE NAME: Former FO Pierce Company

BCP SITE CODE: C241251

NAME OF CURRENT APPLICANT(S): 50th & 5th LIC LLC

INDEX NUMBER OF AGREEMENT: C241251-05-21

DATE OF ORIGINAL AGREEMENT 06/04/2021

**Declaration of Amendment:**

By the requestor(s) and/or applicant(s) signature(s) 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 obligations held under the Agreement or those same laws.

**STATEMENT OF CERTIFICATION AND SIGNATURES- NEW REQUESTOR**

*Complete the appropriate section (individual or entity) below only if this Amendment adds a new requestor. Attach additional pages as needed.*

**(Individual)**

I hereby affirm that the 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 complete and sign the appropriate section (individual or entity) below. Attach additional pages as needed.*

(Individual)

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

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

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

(Entity)

I hereby affirm that I am an Authorized Signatory (title) of 50th & 5th LIC LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My \_\_\_\_\_ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 12/05/2023 Signature: \_\_\_\_\_

Print Name: Stephen Ohnemus

**PLEASE SEE THE FOLLOWING PAGE FOR SUBMITTAL INSTRUCTIONS**

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

Status of Agreement:

<input type="checkbox"/> <b>PARTICIPANT</b> 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"/> <b>VOLUNTEER</b> 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: 06/04/2021

Signature by the Department:

DATED: 12-19-2023

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By:

*David Harrington*

David Harrington, Assistant Director  
 Division of Environmental Remediation

**APPLICANT'S AFFIDAVIT**

STATE OF NEW YORK  
COUNTY OF QUEENS

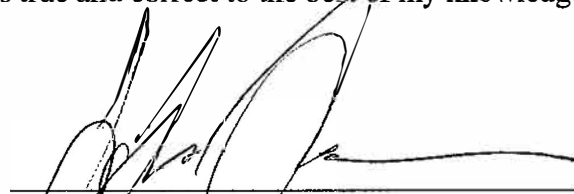


SS:

Stephen Ohnemus, being duly sworn, deposes and says:

1. I am an Authorized Signatory of 50<sup>th</sup> & 5<sup>th</sup> LIC LLC (the "Company"), a New York limited liability company, with authority to bind the Company.
2. The Company is the fee owner of certain real property located at 2-33 50<sup>th</sup> Avenue, Queens County, Long Island City, New York, Tax Map/Parce/ No. 17-1 on the New York City Department of Finance Tax Map of the Borough of Queens (the "Site").
3. The Company acquired fee title to the Site by that certain deed dated as of September 20, 2021, and recorded with the City Register of the City of New York on October 1, 2021, as City Register File No. 2021000387737.
4. The Site is subject to a Brownfield Site Cleanup Agreement with the New York State Department of Environmental Conservation ("NYSDEC") effective June 4, 2021 (the "BCA"), to which the Company is the sole applicant as a Volunteer party as described in the BCA.
5. The Site is being developed and will be operated as an affordable housing project under the Affordable Housing New York program described in subdivision 16 of section 421-a of the New York Real Property Tax Law (the "421-a Program").
6. The Site's development as affordable housing will include (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 ("AMI") based on the occupants' household annual gross income, as is required by the ECL 27-1405(29) statutory definition of "affordable housing project."
7. Appended hereto as Attachment 1 is an Affidavit by the affordable housing project's architect of record, S9 Architecture and Engineering DPC, which affirms that the affordable housing project under construction at the Site has a "Commencement Date" of May 9, 2022, pursuant to the 421-a Program by installing an initial foundation element that was completed on that date.
8. Appended hereto as Attachment 2 is an Opinion of Counsel of Seiden & Schein, P.C. which notes that based on the planned construction of at least 150 affordable rental housing units (i.e., at least 30% of total dwelling units which will be restricted based on a percentage of AMI and on other information and attachments recited in the opinion letter of a total of 499 dwelling units in the Project and concludes that "... the Project will be eligible for a construction period partial tax exemption and a thirty-five (35) year post-construction partial tax exemption, as provided by 421-a."

9. Appended hereto as Attachment 3 are excerpts from the Building Loan Agreement between the Company as borrower and Wells Fargo Bank, among others, as lender, providing that the Company shall qualify for the 421-a Program and that the failure to do so constitutes an event of default for such construction loan.
10. Accordingly, the Site is eligible for the tangible property credit component ("TPC") of the brownfield redevelopment tax credit ("BRTC") as an affordable housing project.
11. I have reviewed this statement, and it is true and correct to the best of my knowledge.

  
\_\_\_\_\_  
Stephen Ohnemus  
Authorized Signatory  
50<sup>th</sup> & 5<sup>th</sup> LIC LLC

Sworn to before me this 5th  
day of December, 2023

Stephanie Blass  
Notary Public



6615292.1

# **Attachment 1 to Exhibit A**

## Architect's Affidavit

AFFIDAVIT



STATE OF NEW YORK )

: SS.:

COUNTY OF QUEENS )

1. I am a Registered Architect licensed to practice by and in good standing with New York State. As such, I certify to the truth of the matters set forth below in connection with the application for 421-a Partial Tax Exemption for the below premises (the "Project"):

Address – 2-33 50<sup>th</sup> Avenue, LIC, NY 11101

Block, Lot(s) – Block 17, Lot 1

- 2. I am a licensed architect at S9 Architecture & Engineering, PC, the architect of records, and as such I am fully familiar with the facts and circumstances herein.
- 3. I am over 18 years of age and I maintain an office at 322 8<sup>TH</sup> Avenue, 10<sup>th</sup> floor, New York, New York 10001.
- 4. On March 28, 2022, Permit Number (Q00597123-I1-GC) (Exhibit 1) was issued by the New York City Department of Buildings ("DOB") pursuant to plans approved by DOB on September 22, 2021, which allowed the installation of the Project's initial foundation element (pile).
- 5. The installation of the initial foundation element began on May 5<sup>th</sup>, 2022, and the installation was completed on May 9<sup>th</sup>, 2022.
- 6. The above referenced foundation element, as shown on the survey by Fehringer Surveying P.C., dated August 13, 2022 and revised on May 11, 2022 (Exhibit 2), is the foundation element for the project, will become part of the new multiple dwelling, and is identified on the attached copy of the NYC DOB Approved Foundation Drawings (Exhibit 3).
- 7. Pursuant to 421-a Statute, and as referenced in the attached Start of Construction Affidavit (Exhibit 4), construction commencement on May 9<sup>th</sup>, 2022.
- 8. I have reviewed this statement and it is true and correct to the best of my knowledge.

Michael Warwell  
 NOTARY PUBLIC, STATE OF NEW YORK  
 Registration No. 01WA0010302  
 Qualified in Bronx County  
 Commission Expires June 27, 2027

Signed before me this

7th day of November, 2023.

Notary Public

# **Exhibit 1 to Attachment 1 to Exhibit A**



**Buildings**



# Work Permit Department Of Buildings

Permit Number: Q00597123-I1-GC

Permit Classification: ALTERATION

Address: QUEENS 2-33 50 AVENUE

Work on Floor(s): OPEN SPACE

Total number of dwelling units at location: 0

Number of dwelling units occupied during construction: 0

Issued: 01/19/2023

Expires: 01/19/2024

Issued To: SANFORD LOEWENTHEIL

Business: CONGRESS BUILDERS LLC

License No: GC-600734



Description: INSTALL LOAD TEST PILES. THIS FOUNDATION WORK IS BEING PERFORMED IN CONNECTION WITH NB Q00564746-I1 & PER HPD GUIDANCE, AND WILL SUFFICE AS THE INSTALLATION OF STRUCTURAL ELEMENT REQUIRED FOR THE AFFORDABLE NEW YORK 421A TAX ABATEMENT PROGRAM.

For detailed information regarding this permit, please log on to DOB NOW at [www.nyc.gov/buildings](http://www.nyc.gov/buildings).  
Call 311 with any questions or complaints.

Borough Commissioner:

Commissioner of Buildings:

  
Acting Commissioner of Buildings

Tampering with or knowingly making a false entry in or falsely altering this permit is a crime that is punishable by a fine, imprisonment or both.

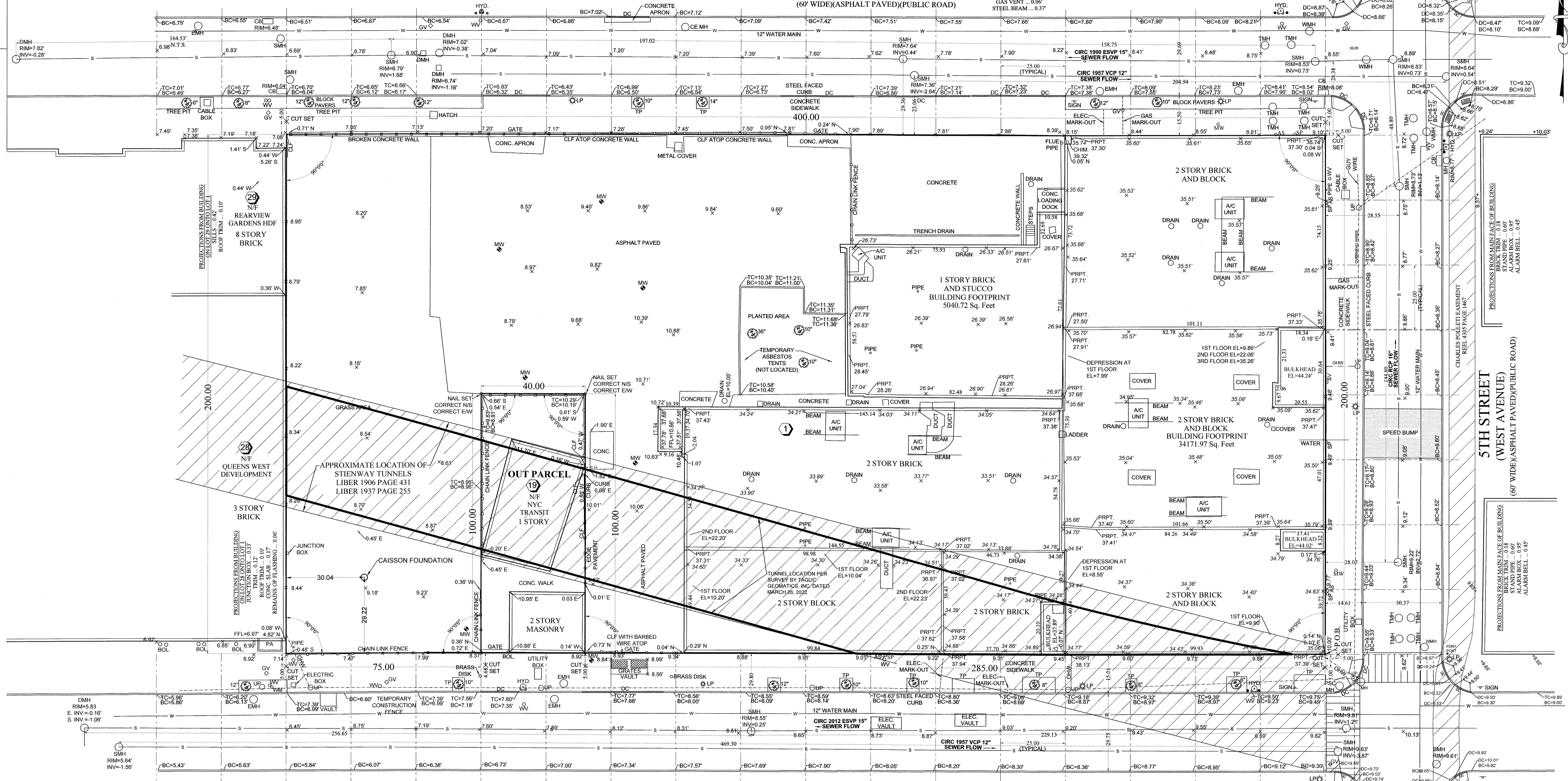
# **Exhibit 2 to Architect's Affidavit**



BLOCK: 17  
 LOT: 1  
 TOTAL LOT AREA:  
 SQ. FT.: 76,000.00  
 ACRES: 1.7447

# ARCHITECTURAL SURVEY

49TH AVENUE  
 (5TH STREET)  
 (60' WIDE) (ASPHALT PAVED) (PUBLIC ROAD)



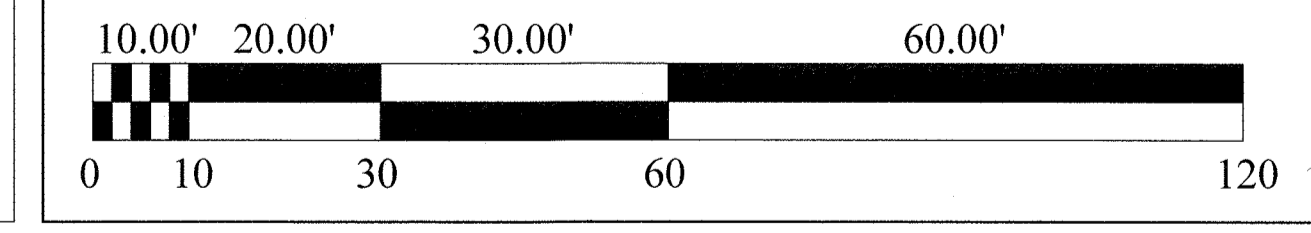
50TH AVENUE  
 (4TH STREET)  
 (60' WIDE) (ASPHALT PAVED) (PUBLIC ROAD)

LEGEND	
— W —	WATER MAIN
— E —	ELECTRIC MAIN
— G —	GAS MAIN
— S —	SEWER LINE
— ST —	STEAM MAIN
— T —	TELEPHONE LINE
—	OVERHEAD UTILITY WIRES
CE MH	CON ED MANHOLE COVER
EMH	ELECTRIC MANHOLE COVER
WMH	WATER MANHOLE COVER
SMH	SEWER MANHOLE COVER
TMH	TELEPHONE MANHOLE COVER
COMH	CLEAN OUT MANHOLE COVER
PSM	PUBLIC SERVICE COMMISSION MANHOLE COVER
WV	WATER VALVE
GV	GAS VALVE
UP	UTILITY POLE
AS	AUTO SPRINKLER
SP	STAND PIPE
HYD.	FIRE HYDRANT
DC	DROP CURB
TC	TOP OF CURB
BC	BOTTOM OF CURB
CL	CENTER LINE OF ROAD
BW	BACK OF WALK
CLF	CHAIN LINK FENCE
WIF	WROUGHT IRON FENCE
WSF	WOOD STOCKADE FENCE
PRF	POST AND RAIL FENCE
CE	CELLAR ENTRANCE
PA	PLANTED AREA
T.P.	TREE PIT
CB	CATCH BASIN
MM	MUNI-METER
EB	ELECTRIC BOX
TSP	TRAFFIC SIGN POLE
LP	LIGHT POLE
—	SIGN
OF	OIL FILL
○	TAX LOT

NOTES:  
 THIS IS TO CERTIFY THAT THERE ARE NO VISIBLE STREAMS OR NATURAL WATER COURSES IN THE PROPERTY AS SHOWN ON THIS SURVEY.  
 ALL ELEVATIONS ARE IN NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVDS8).  
 ALL UNDERGROUND UTILITIES INDICATED HEREON HAVE BEEN PLOTTED FROM MAPS AS PROVIDED BY THE RESPECTIVE UTILITY COMPANIES AND/OR GOVERNMENTAL AGENCIES. WE BEAR NO RESPONSIBILITY FOR THEIR ACCURACY OR COMPLETENESS. IT IS THE OWNERS RESPONSIBILITY TO CONTACT THE APPROPRIATE UTILITY COMPANY PRIOR TO ANY EXCAVATION IN ORDER TO VERIFY ALL UTILITY LOCATIONS.  
 ALL MANHOLE COVERS PLOTTED FROM ACTUAL FIELD MEASUREMENTS. INVERT ELEVATIONS FIELD VERIFIED.  
 CAUTION:  
 BEFORE DOING ANY DIGGING OR DRILLING ON THIS SITE IT IS REQUIRED THAT SUB-SURFACE SERVICE, INCLUDING THE UNDERGROUND MAINS, DUCTS & CABLES BE MARKED AND IDENTIFIED BY THE UTILITY INVOLVED. THIS SHOULD BE DONE BY PROVIDING THE AFFECTED UTILITY WITH THE NOTICE REFERRED TO IN THE STATE OF NEW YORK INDUSTRIAL CODE 53.

PROJECTIONS FROM MAIN FACE OF BUILDING  
 GUTTER ... 1.10'  
 DOWNSPOUTS ... 0.25'  
 DRAIN PIPE ... 0.56'  
 STAND PIPE ... 0.73'  
 METAL VENT ... 0.89'  
 ALARM ... 0.30'  
 BRICK TRIM ... 0.05'

UPDATED: MAY 11, 2022: PIER LOCATED  
 REVISED: APRIL 26, 2022: TUNNEL LOCATION ADDED  
 REVISED: JANUARY 12, 2022: ADDITIONAL GRADES  
 UPDATED: NOVEMBER 10, 2021  
 REVISED: AUGUST 17, 2021: PROPOSED LOT LINES REMOVED  
 REVISED: MAY 17, 2021: PROPOSED LOT LINES  
 UPDATED: MAY 12, 2021: ADDITIONAL DETAIL  
 REVISED: NOVEMBER 30, 2020: ADDITIONAL OFFSETS



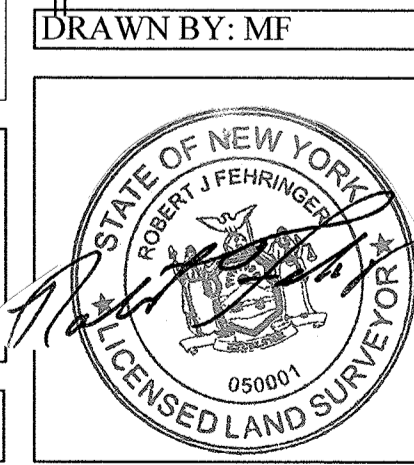
SCALE: 1" = 20'

SURVEYED: AUGUST 13, 2020

SURVEY OF PROPERTY SITUATED IN:  
 2-33 50TH AVENUE  
 BOROUGH OF QUEENS  
 COUNTY OF QUEENS  
 CITY OF NEW YORK  
 STATE OF NEW YORK

UNAUTHORIZED ALTERATION OR ADDITION TO THIS SURVEY IS A VIOLATION OF SECTION 2209 OF THE NEW YORK STATE EDUCATION LAW.  
 COPIES OF THIS SURVEY MAP NOT BEARING THE LAND SURVEYORS SEAL OR EMBOSSED SEAL SHALL NOT BE CONSIDERED TO BE A VALID TRUE COPY.  
 GUARANTEES INDICATED HEREON SHALL RUN ONLY TO THE PERSON FOR WHOM THE SURVEY IS PREPARED, AND ON BEHALF TO THE TITLE COMPANY, GOVERNMENTAL AGENCY AND LENDING INSTITUTION LIMITED HEREON, AND TO THE ASSIGNEES OF THE LENDING INSTITUTION. GUARANTEES ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.

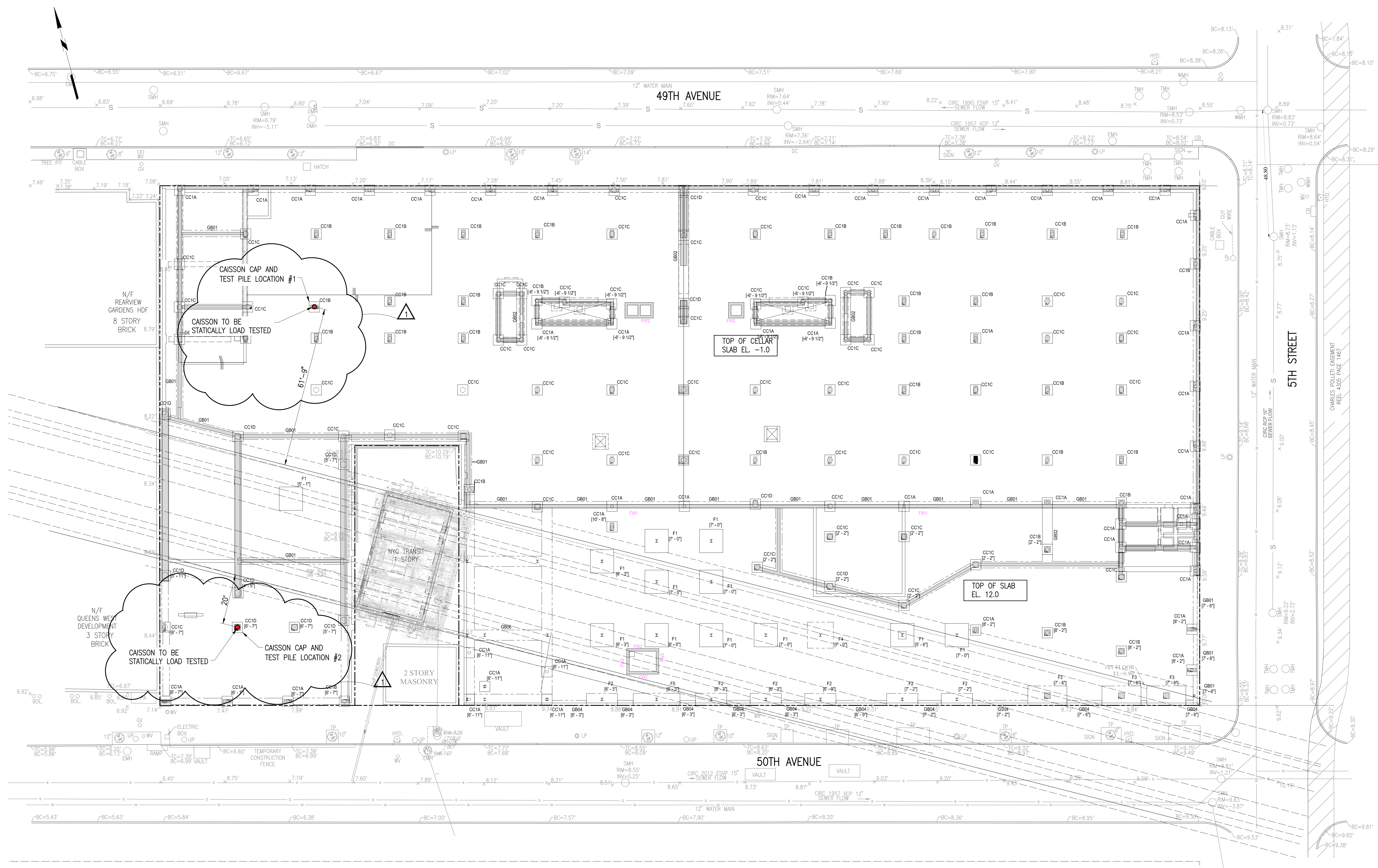
FEHRINGER SURVEYING, P.C.  
 ROBERT FEHRINGER  
 LICENSED LAND SURVEYOR  
 WWW.FEHRINGERSURVEYING.COM  
 2200 JACKSON AVENUE  
 SEAFORD, N.Y. 11783  
 (516) 763 - 5515 FAX NO. (516) 763 - 5525  
 FS@FEHRINGERSURVEYING.COM



DRAWN BY: MF

# **Exhibit 3 to Architect's Affidavit**

NO.	DATE	REVISION
2	02-10-22	REVISED PLAN
1	10-14-21	REVISED PLAN
	09-16-21	PILE LOAD TEST LOCATION PLAN
NO.	DATE	ISSUE



**PLAN**  
SCALE: 1/16"=1'-0"

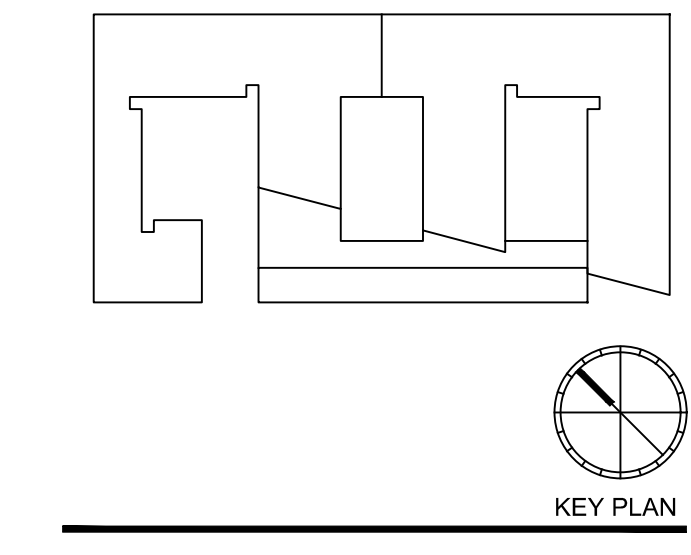
ITEM DESCRIPTION	PROPOSED DESIGN VALUE	CODE—PRESCRIBED VALUE AND CITATION
ENERGY ANALYSIS/2016 NYCECC CODE CHAPTER AND/OR STANDARD USED FOR DESIGN AS PER TABLE C403.2.3(1) AND C403.2.10 CLIMATE ZONE 4A		
AIR CONDITIONERS, AIR COOLED < 65,000 BTU/H	EXEMPT	14.0 SEER EFFICIENCY [TABLE C403.2.3(1) 2016 NYCECC]
AIR CONDITIONERS, AIR COOLED > 65,000 BTU/H AND < 135,000 BTU/H	EXEMPT	11.0 EER 12.6 EER EFFICIENCY [TABLE C403.2.3(1) 2016 NYCECC]
PIPING INSULATION	EXEMPT	TABLE C403.2.10 2016 NYCECC

SPECIAL INSPECTIONS	
SPECIAL INSPECTION	CURRENT CODE REFERENCE
DRILLED PILE FOUNDATIONS	1704.8

**NOTES:**

- BASE PLAN FROM
  - PROPERTY SURVEY PREPARED BY ERLANDSEN-CROWELL & SHAW CITY ENGINEERS & CITY SURVEYORS OF NEW HYDE PARK, NEW YORK DATED APRIL 25, 2013.
  - SITE SURVEY PREPARED BY MONTROSE SURVEYING FOR BLOCK 17 LOT 28, DATED SEPTEMBER 18, 1999.
- FOUNDATION PLAN IS BASED ON DRAWING FO-100.00 DATED 08/13/21.
- ELEVATIONS ARE BASED UPON NAVD 88 DATUM.
- DESIGN LOAD: 350 TON COMPRESSION
- ALL CAISSON INSTALLATION AND TESTING SHALL BE PERFORMED IN ACCORDANCE WITH REQUIREMENTS OF NYC BUILDING CODE.
- APPARATUS FOR APPLYING AND MEASURING TEST LOADS SHALL CONFORM TO THE REQUIREMENTS OF THE APPLICABLE ASTM STANDARDS. THE LOADS SHALL BE APPLIED DIRECTLY BY MEANS OF HYDRAULIC JACKS ACTING AGAINST EITHER (1) A WEIGHTED BOX OR PLATFORM, OR (2) A REACTION PILE AND FRAME SYSTEM OR (3) OTHER AVAILABLE REACTION SYSTEM. THE WEIGHTED BOX, PLATFORM OR REACTION SYSTEM SHALL BE CAPABLE OF PROVIDING A REACTION OF AT LEAST 275 PERCENT OF THE DESIGN LOAD.
- INSTALL AND MONITOR VIBRATION MONITORING EQUIPMENT OVER NYCT VENT STRUCTURE DURING CAISSON INSTALLATION ACTIVITIES. CONTRACTOR SHALL COMPLY WITH NOTE #10 ON NYCT GENERAL NOTES REGARDING VIBRATION THRESHOLD LEVELS. NYCT VENT STRUCTURE SHALL BE FREE FROM ANY SUPERIMPOSED LOADING. VIBRATION RESULTS SHALL BE SENT TO NYCT FOR REVIEW.
- CAISSON DESIGNATED AS STATIC LOAD TEST #1 SHALL BE INSTALLED FIRST. IF VIBRATIONS AT THE NYCT VENTS REMAIN BELOW THRESHOLD VALUES DURING PILE DRIVING, THEN INSTALLATION OF CAISSON DESIGNATED AS STATIC LOAD TEST #2 CAN BE PERFORMED. REMAINING CAISSON INSTALLATION SHALL START WITH WITH CAISSONS FARTHEST AWAY FROM SUBWAY STRUCTURE AND WORK TOWARDS THE SUBWAY STRUCTURE.

**LEGEND**



Owner:  
**80TH & 5TH LLC**  
184 N 8TH STREET  
BROOKLYN, NY 11211  
718-670-0884

Architect/Interior Designer:  
**SS ARCHITECTURE**  
322 8TH AVENUE  
NEW YORK, NY 10001  
212-457-4077

Structural Engineer:  
**THORNTON TOMASETTI**  
120 BROADWAY, 15TH FLOOR  
NEW YORK, NY 10271  
917-461-7800

MEP Engineer:  
**ETTINGER ENGINEERING**  
105 8TH AVENUE, 24TH FLOOR  
NEW YORK, NY 10018  
212-244-2410

Civil Engineer:  
**THORNTON TOMASETTI**  
120 BROADWAY, 15TH FLOOR  
NEW YORK, NY 10271  
917-461-7800

Landscape Architect:  
**FUTURE GREEN**  
18 BAY STREET  
BROOKLYN, NY 11231  
718-855-8995

Vertical Transportation Consultant:  
**SALUCORE ELEVATOR CONSULTANTS**  
100 PARK AVE, 16TH FLOOR  
NEW YORK, NY 10017  
212-889-0505

Exterior Facade:  
**THORNTON TOMASETTI**  
120 BROADWAY, 15TH FLOOR  
NEW YORK, NY 10271  
917-461-7800

Architect/Interior Designer:  
**HUSBAND + WIFE**  
322 8TH AVENUE  
NEW YORK, NY 10001  
212-457-4077

Lighting Designer:  
**ONE LUX STUDIO**  
158 WEST 29TH ST, 10TH FLOOR  
NEW YORK, NY 10001  
212-201-5790

Pool Designer:  
**LOTHROP ASSOCIATES LLP**  
333 WESTCHESTER AVENUE  
WHITE PLAINS, NY 10604  
914-741-1115

Geotechnical Engineer:  
**MUSKER RUTLEDGE CONSULTING ENGINEERS, PLLC**  
PENN PLAZA, 225 W 34TH STREET  
NEW YORK, NY 10  
917-339-9000

PROJECT TITLE:  
**2-33 50TH AVE**

2-33 50th Ave  
Long Island City, NY 11101  
**PROJECT NO: 13925**

DRAWING TITLE:  
**PILE LOAD TEST LOCATION PLAN**

SCALE: AS NOTED PAGE: 1 OF 1

**FO-098.02**

DOB SCAN STICKER



**NOT FOR CONSTRUCTION**  
09/16/21

DOB NO: Q00597123-P2  
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Last saved by: jbanklin on Thursday, Feb 10, 2022 - 12:49:13 PM  
Printed on: Thursday, Feb 10, 2022 - 12:48:36 PM  
Printed by: Julia Boardman  
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**Attachment 2 to Exhibit A**

Opinion Letter

Confidential



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

**Counsel's 421-a Real Estate  
Tax Benefits Opinion**

December 21, 2021

Wells Fargo Bank, National Association  
30 Hudson Yards  
500 West 33rd Street, 62nd Floor  
New York, New York 10001

Jay G. Seiden  
Alvin Schein  
Adam A. Levenson  
Jane Rosenberg  
Jason C. Hershkowitz  
David Shamshovich

**Re: 421-a Partial Tax Exemption ("421-a")  
Premises: 2-33 50<sup>th</sup> Avenue  
Block: 17, Lot: 1 (the "Site")  
Queens, New York**

Hillary A. Potashnick  
Stacy E. Jacobson

Dear Sir or Madam:

Frank D. Baquero  
David W. Lu  
Zachary L. Nathanson  
Luisa A. Gutierrez  
Brenda J. Slochowsky  
Scott A. Schreiber

I have been requested by our client, 50<sup>th</sup> and 5<sup>th</sup> LIC LLC (the "Developer"), to prepare a letter opining as to the eligibility of the above-captioned Site and the approximately four hundred ninety-nine (499) class A residential rental dwelling units, inclusive of one superintendent unit, along with commercial space and parking being constructed thereon (together, the "Project"), for section 421-a(16) partial real estate tax exemption benefits ("421-a benefits"). Developer has advised us that at least one hundred fifty (150) of the Project's dwelling units, which will constitute at least thirty percent (30%) of all dwelling units in the Project (the "Affordable Units"), will be income restricted and made affordable to households earning up to one hundred thirty percent (130%) of Area Median Income ("AMI").

Of Counsel:  
David F. Yahner

In order to opine as to the Project's eligibility for 421-a benefits, I have set forth the requirements of the program. The application of these requirements to the Site and Project are discussed below

**I. ELIGIBILITY REQUIREMENTS**

To be eligible for section 421-a tax benefits, the Project must comply with one of Affordability Options A through G and each of the eligibility requirements set forth in section 421-a(16) of the New York State Real Property Tax Law, as amended by Chapter 20 of the Laws of 2015 and Chapter 59 of the Laws of 2017 (the "Statute"); Chapter 51 of Title 28 of the Rules of the City of New York (the

December 21, 2021

Page 2

“Rules”) and local law pursuant to the New York City Administrative Code (the “Local Law”), which may be enacted or amended from time to time.

**Please note that in order for the Project, or any portion thereof, to be eligible for 421-a benefits under the current Statute, construction must commence on or before June 15, 2022. Pursuant to the Statute, “commence” means the date upon which excavation and construction of initial footings and foundations lawfully begins in good faith.**

The Statute was enacted with the specific intent of encouraging residential construction. The Statute does so by providing for partial real estate tax exemption on increases in assessed valuation of eligible rental properties which result from the construction of new class “A” Multiple Dwellings, during the construction period and for thirty-five (35) years after completion of construction.

**A. Location**

**1. Enhanced Affordability Areas and Affordability Option**

The Statute provides that projects located within Enhanced Affordability Areas that contain 300 or more units must elect Affordability Options E, F or G. The Project is located within the Queens Enhanced Affordability Areas and will contain 499 dwelling units. The Developer has represented that it will elect Affordability Option G.

In addition, the Statute provides that a new multiple dwelling not receiving substantial governmental assistance in the form of grants, loans or subsidies provided by a federal, state or local governmental agency or instrumentality pursuant to a program for the development of affordable housing (“SGA”) and not located in the Manhattan Enhanced Affordability Area is eligible for Affordability Option G, which allows for 30% of the project’s dwelling units to be affordable at or below 130% of AMI. The Developer has represented that the Project will not be receiving SGA, and the Project is not located within the Manhattan Enhanced Affordability Area. The Developer has represented that it intends to choose Affordability Option G and has advised us that at least 150 of the Project’s dwelling units will be income restricted and made affordable to households earning up to 130% of AMI. As a result, the Project will comply with Affordability Option G.

Finally, the Statute provides that projects located within Enhanced Affordability Areas that contain 300, which must elect Affordability Options E, F or G, are required to pay a Minimum Average Hourly Wage to construction workers and provide certified payroll reports of the Project and its subcontractors to the New York City Comptroller’s office within certain time periods. Developer has represented that it will comply with these requirements.

**B. Project Requirements**

1. Eligible Multiple Dwelling

The Statute provides that a project is eligible for 421-a benefits only if it is an eligible multiple dwelling. An eligible multiple dwelling is a multiple dwelling, as defined pursuant to the multiple dwelling law, containing six (6) or more dwelling units. A multiple dwelling, as per the multiple dwelling law, “is a dwelling which is either rented, leased, let or hired out, to be occupied, or is occupied as the residence or home of three or more families living independently of each other.” The Project shall consist of approximately 499 class A dwelling units being constructed pursuant to a new building permit from the New York City Department of Buildings (“DOB”), and Developer has represented that the Project will comply as a multiple dwelling. Therefore, the Project will comply with this requirement.

2. Not Used as a Hotel

The Statute deems any building or portion thereof which is used as a hotel ineligible for 421-a benefits. Section 51-01 of the Rules defines Hotel as

(i) any Class B multiple dwelling, as such term is defined in the Multiple Dwelling Law, (ii) any structure or part thereof containing living or sleeping accommodations which is used or intended to be used for transient occupancy, (iii) any apartment hotel or transient hotel as defined in the Zoning Resolution, or (iv) any structure or part thereof which is used to provide short term rentals or owned or leased by an entity engaged in the business of providing short term rentals. For purposes of this definition, a lease, sublease, license or any other form of rental agreement for a period of less than one year shall be deemed to be a short term rental.

The Developer has represented that no part of the Project will be used as Hotel as defined by the Statute and Rules.

3. Prevailing Wage Requirement

The Statute requires that, for projects containing thirty (30) or more dwelling units, all building service employees receive the applicable prevailing wage for the duration of the restriction period. The Developer has represented that the Project will contain approximately 499 dwelling units and will comply with the requirement that all building service employees receive the applicable prevailing wage.

4. Affordable Rent Limit

Section 51-01 of the Rules prohibits the rent for any Affordable Housing Unit from exceeding the rent for any market rate unit of comparable bedroom size. Developer has represented that the Project will comply with this requirement.

**C. Construction Requirements**

1. Replacement Ratio

The Statute provides that if the land on which an eligible site is located contained any dwelling units three years prior to commencement of construction, then the project must contain at least one affordable unit for each dwelling unit that existed on such date and was subsequently demolished, removed or reconfigured. Pursuant to the records of the New York City Department of Finance (“DOF”) (**Exhibit A**), no dwelling units existed on the Site during the period defined above, and therefore the Project will comply with this requirement.

2. Affordable Unit Requirements

The Statute requires, unless preempted by a federal, state or local housing program, that either (a) the affordable units have a unit mix proportional to the market rate units, or (b) at least fifty percent (50%) of the affordable units have two or more bedrooms and no more than twenty-five percent (25%) of the affordable units can be smaller than one bedroom. Developer has represented that the Project will comply with this requirement.

3. Common Entrances and Areas Requirement

The Statute requires that affordable units shall share the same common entrances and common areas as market rate units, and shall not be isolated to a specific floor or area of a building. The Developer has represented that the Project will comply with this requirement.

In addition, pursuant to Section 51-03(a) of the Rules, if a story (as defined in Section 12-10 of the Zoning Resolution) contains one or more affordable units, not less than thirty percent (30%) of the dwelling units on such story shall be units that are not affordable units. Developer has represented that the Project will comply with this requirement.

**D. Limitation on Other Real Estate Tax Benefits**

The Statute provides that a project receiving 421-a benefits shall not receive any exemption from or abatement of property taxes under any other law. The Developer has represented that the tax block and lot containing the Project will not receive real estate tax benefits under any other law.

**E. Minimum Average Hourly Wage**

Projects located within an Enhanced Affordability Area that contain 300 or more dwelling units are required to pay a Minimum Average Hourly Wage to construction workers and provide certified payroll reports of the Project and its subcontractors to the New York City Comptroller’s office within certain time periods. The Minimum Average Hourly Wage applicable to the Project is forty-five dollars (\$47.25). 421-a applicants may be fined for failure to comply with this requirement; however, pursuant to section 421-a(16)(o)(iv), HPD may not require proof of



compliance with the Minimum Average Hourly Wage requirements as a condition of approval of 421-a benefits. The Developer has represented that it will comply with these requirements.

## **II. TIMING REQUIREMENTS**

### **A. Project Commencement**

The Statute requires that construction of a project commences on or after January 1, 2016 and on or before June 15, 2022. Developer has represented that the Project will comply with this requirement.

### **B. Project Completion**

The Statute requires that an eligible multiple dwelling receive its first temporary or permanent certificate of occupancy covering all residential areas on or before June 15, 2026. The Developer has represented that the Project will comply with this requirement.

### **C. Application Timing**

The Statute requires that the 421-a application be filed no later than one (1) year following completion of construction, as evidenced by the first temporary or permanent certificate of occupancy covering all residential areas. The Developer has represented that it will comply with this requirement.

In addition, the 421-a application must be accompanied by a payment of three thousand dollars (\$3,000.00) per dwelling unit included in the application. The Developer has represented that it will comply with this requirement.

### **D. Notice of Intent to Market Timing**

Section 51-02(d)(2) of the 421-a Rules requires (a) that projects containing one hundred or more Affordable Housing Units file a 421-a(16) Workbook, setting forth the project's Affordability Option selection, affordable unit mix and affordable unit distribution with HPD between fifteen months before the project completes construction and no later than two months after the completion of the Project and (b) that a Notice of Intent to Market is filed with HPD. Developer has represented that the Project will comply with these requirements.

In addition, prior to approval of the 421-a application, HPD will require that the applicant enter into a monitoring contract, which requires (i) the fee owner to provide monthly rent rolls for all Affordable Units to a marketing monitor<sup>1</sup> and to notify the marketing monitor no more than seven business days after an Affordable Unit becomes vacant; (ii) the marketing monitor to ensure that any Affordable Unit which becomes vacant during the Restriction Period (discussed in Section

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<sup>1</sup> A marketing monitor is defined as "an organization approved by [HPD] and retained by the applicant for [421-a benefits] to monitor compliance with the requirements ... relating to the leasing, subleasing, and occupancy of [Affordable Units]."

III, below), (a) is not held off the market for a period that is longer than is reasonably necessary to perform needed repairs, (b) is promptly marketed pursuant to such requirements as are established by HPD, (c) is rented to a household that meets the applicable income and occupancy requirements for such Affordable Unit and that has been approved by HPD prior to execution of a lease, (d) is not offered to or rented by a corporation, partnership or other entity, and (e) is offered for occupancy pursuant to a rent stabilized lease for a term of one or two years, at the option of the tenant; and (iii) the marketing monitor to submit quarterly rent rolls for all Affordable Units in the Eligible Multiple Dwelling to HPD. Developer has represented that it will comply with this requirement.

### **III. RESTRICTION PERIOD**

1. The Statute requires that affordable units in projects that choose Affordability Option G must, for forty (40) years from the completion of construction, (1) comply with the affordability requirements of the Statute, and (2) remain rent stabilized and allow tenants holding a lease and in occupancy at the expiration of such 40-year period to remain as rent stabilized tenants for the duration of their occupancy. In addition, every lease renewal for Affordable Units must be for a term of one (1) or two (2) years, and no dwelling units receiving 421-a benefits may be converted to cooperative or condominium ownership. The Developer has represented that the Affordable Units in the Project will be duly registered and will remain rent stabilized for as long as required by the Statute, that it will comply with the lease renewal requirements, and that no dwelling units in the Project will be converted to cooperative or condominium ownership.

2. The Statute also requires that a market unit shall be subject to rent stabilization unless, in the absence of 421-a benefits, the owner would be entitled to remove such market unit from rent stabilization upon vacancy by reason of the monthly rent exceeding any limit established thereunder. The Developer has represented that it will comply with this requirement.

3. Section 51-02(d)(1) of the 421-a Rules requires that, prior to approval of the 421-a application, a restrictive declaration in a form satisfactory to HPD: (a) has been executed by the fee owner and any ground lessee of the Project; (b) has been recorded against the real property containing the Project; (c) with respect to a rental project, (i) identifies each Affordable Unit in the Project, the number of bedrooms in such Affordable Unit, the applicable AMI level of each Affordable Unit, and provides that the rents to be charged to the tenants of each such Affordable Unit shall be established pursuant to the Rules, and (ii) provides that the Affordable Units in the Project shall for the restriction period, be (a) rented to eligible tenants at or below the applicable AMI level, and (b) subject to rent stabilization, allowing tenants holding a lease and in occupancy at the expiration of the restriction period to continue to be protected by rent stabilization for the duration of their occupancy; and (d) provides that such Projects must comply with all of the requirements for 421-a benefits during the restriction period. The Developer has represented that it will comply with this requirement.

**IV. REDUCTION OF BENEFIT FOR EXCESS COMMERCIAL, COMMUNITY FACILITY OR ACCESSORY USE SPACE**

The Statute provides that the benefit granted shall be reduced if the floor area of the Project's eligible commercial, community facility and accessory use space exceeds twelve percent (12%) of the Project's aggregate floor area ("AFA"). The amount of space attributable to commercial and accessory use space in the Project will be determined in accordance with the Statute. The Project will comply with this requirement.

**V. DURATION OF 421-A BENEFITS**

The Statute states that a construction period exemption from any increase in the prior assessed valuation ("Prior Assessed Value") is available for up to three (3) years, beginning on the later of the commencement of construction date or three years prior to the completion of construction date, and a thirty-five (35) year post-construction exemption, beginning on the completion of construction date, is available for new multiple dwellings located in the borough of Queens that choose Affordability Option G, provided that construction commences on or before June 15, 2022 and further provided that HPD certifies that the affordability requirements of the chosen Affordability Option are met. The Prior Assessed Value is equal to the taxable assessed value of the Site in the tax year immediately preceding the Project's commencement of construction. The Project is located in the borough of Queens, and the Developer has represented that it will comply with the necessary affordability requirements of the chosen Affordability Option. Therefore, the Project would be eligible for a construction period exemption of up to 3 years and a 35-year post-construction exemption.

The schedule for the post-construction partial tax exemption is as follows:

<b>Benefit Years</b>	<b>Percent of Exemption of Increases in Assessed Value</b>
1-35	100%
36 and subsequent years	0%

**VI. Counsel's Opinion**

Based upon the information which the Developer has provided to us and the assumptions stated herein, we are of the opinion that the Project will be eligible for a construction period partial tax exemption and a thirty-five (35) year post-construction partial tax exemption, as provided by 421-a. Except as stated specifically herein, this letter is based solely upon the information which Developer has provided to us and the assumptions stated herein. We have not verified any of Developer's statements or investigated the accuracy of our assumptions; however, we have no knowledge that any such statements or assumptions are incorrect. The Project must satisfy all requirements of the 421-a Statute, Rules and Local Law in order to be eligible for benefits and we cannot render a final opinion regarding eligibility until all documentation required for a Certificate of Eligibility has been provided to us and reviewed, and we have no reason to believe such requirements shall not be satisfied. This letter relates only to the above-captioned Project and the specific facts, circumstances and documentation attached hereto which Developer has provided to us in connection therewith.

December 21, 2021

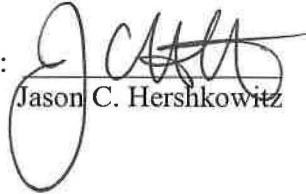
Page 8

**VII. LIMITATIONS**

This is an opinion, not a guaranty, that the Project will qualify for real estate tax benefits pursuant to section 421-a. No warranties are made that the laws, regulations and agency interpretations upon which this opinion is based will not be changed. In no event will we be liable to any party if the Project fails to qualify for such real estate tax benefits for any reason beyond our control including, but not limited to, changes to section 421-a or to the regulations issued, decisional law or New York State and City agency interpretations thereunder. This opinion is intended for use by the addressees of this opinion and their successors and/or assigns and may not be relied on by any other persons or entity without our prior written consent.

Very truly yours,  
SEIDEN & SCHEIN, P.C.

By:

  
Jason C. Hershkowitz

**EXHIBIT A**

#526452919011501#

January 15, 2019

FORTRESS NEW YORK HOLDING INC  
 4920 5TH ST  
 LONG ISLAND CITY NY 11101-5728

**Owner(s)**  
 FORTRESS NEW YORK HOLDING INC

**Property Address**  
 2-33 50 AVENUE

**Borough:** 4 **Block:** 17 **Lot:** 1

**Tax Class:** 4 **Building Class:** E9 **Units:** 1 non-residential

**YOUR NOTICE OF PROPERTY VALUE (NOPV) AT A GLANCE**

**2019-20 Market Value:** \$11,325,000

**2019-20 Assessed Value:** \$5,096,250

**Your property tax exemptions:** None

See below for an estimate of your 2019-20 property tax.

**WHAT IS THIS NOTICE?**

This is your annual notice of property value, or NOPV. **It is not a bill, and no payment is required.** This notice will:

- Inform you of our assessment of your property for tax year 2019-20, and tell you how to challenge it if you believe there is a mistake.
- Explain how property taxes are calculated.
- Provide an estimate of your property tax for tax year 2019-20.

Please keep a copy of this notice with your records. You may also view your NOPV and property tax bills online at [www.nyc.gov/nopv](http://www.nyc.gov/nopv).

**ESTIMATED 2019-20 PROPERTY TAX**

We cannot calculate your 2019-20 property tax until the new tax rate is established by the city council. Until then, you will pay the 2018-19 rate. The table below estimates the amount you will owe by multiplying the taxable value of your property by the current tax rate of 10.514%. This table is provided for informational purposes only; the actual amount you owe may differ.

Please note that property tax abatements, including the coop-condo abatement, are not included in this estimate. If you receive any abatements, they will be subtracted from your property taxes. Check your July tax bill for the value of any abatements you receive.

Year	Taxable Value		Tax Rate	=	Estimated Property Tax
2019-20	\$4,261,590	x	0.10514	=	\$448,063.57

**KEY DATES**

**March 1, 2019**

Last day to challenge your assessed value. (See page 2.)

**April 1, 2019**

Last day to challenge your market value. (See page 2.)

**July 1, 2019**

2019-20 tax year begins.

**November 2019**

2019-20 tax rate is determined.

**January 2020**

First bill with the new tax rate.

**To learn more, visit**  
**[www.nyc.gov/nopv](http://www.nyc.gov/nopv)**

## ABOUT YOUR PROPERTY TAXES

Property taxes are determined using a complex formula that takes into account many different amounts and calculations. Visit [www.nyc.gov/nopv](http://www.nyc.gov/nopv) for more information about property valuation and taxation.

The Department of Finance estimates that as of January 5, 2019, the Market Value for this property is \$11,325,000. The Department of Finance will use this Market Value to determine your property taxes starting July 1, 2019.

The Department of Finance estimates your property's Market Value using the income approach. Market Value is determined by dividing the net operating income by the overall cap rate.

The following factors are used by the Department of Finance to determine Market Value:

Estimated Building Gross Square Footage: 95,750  
 Estimated Gross Income: \$2,147,673  
 Estimated Expenses: \$537,158

Net Operating Income: We subtract estimated expenses from estimated gross income, resulting in a net operating income of \$1,610,515.

Base Cap Rate: We used a capitalization rate of 9.490% which is Finance's estimate of the rate of return that an ordinary investor would expect on their investment in this type of property.

Overall Cap Rate: We add an effective tax rate of 4.731% to account for taxes due. Added together your overall capitalization rate is 14.221%.

Visit [www.nyc.gov/nopv](http://www.nyc.gov/nopv) for more information.

If you own income-producing property, you must file a Real Property Income and Expense (RPIE) statement or a claim of exclusion unless you are exempt by law. The deadline to file is June 3, 2019. Failure to file will result in penalties and interest, which will become a lien on your property if they go unpaid. Visit [www.nyc.gov/rpie](http://www.nyc.gov/rpie) for more information.

### WHAT TO DO IF YOU DISAGREE WITH THESE VALUES

Challenge Your Market Value with the Department of Finance	Challenge Your Assessed Value with the New York City Tax Commission
<p>If you believe the Department of Finance has made an error in determining your market value, you may submit a "Request for Review" form. The form is available at <a href="http://www.nyc.gov/nopv">www.nyc.gov/nopv</a>, or by calling 311.</p> <p><b>Deadline: April 1, 2019</b></p>	<p>You have the right to challenge your assessed value by appealing to the New York City Tax Commission, an independent agency that is separate from the Department of Finance. The Tax Commission has the authority to reduce your property's assessed value, change its tax class, and adjust your tax exemptions. The Tax Commission cannot change your market value, property description, or building class.</p> <p>Your application must be received by the filing deadline. To access Tax Commission appeal forms, visit <a href="http://www.nyc.gov/taxcommission">www.nyc.gov/taxcommission</a>. You may also visit a Department of Finance business center (locations at <a href="http://www.nyc.gov/nopv">www.nyc.gov/nopv</a>). For more information, call 311.</p> <p><b>Deadline: March 1, 2019</b></p>

**PLEASE REVIEW: YOUR PROPERTY DETAILS**

The Department of Finance has the following information on record for your property. Please review this information and inform us of any errors by filing a "Request to Update" form, available at [www.nyc.gov/nopv](http://www.nyc.gov/nopv) or by calling 311.

**Owner(s):** FORTRESS NEW YORK HOLDING INC

**Building Class:** E9 (Warehouses)

**Borough:** 4 (Queens)

**Building Category:** I020

**Block:** 17

**Building Sub-Category:** 4D

**Lot:** 1

**Number of Buildings:** 1

**Gross Square Footage:** 95,750

**Number of Stories:** 2.00

**Number of Residential Units:** 0

**Structure Type:** Misc Wrhs/St

**Gross Residential Square Footage:** 0

**Grade:** C Grade

**Number of Commercial Units:** 1

**Construction Type:** Masonry

**Gross Commercial Square Footage:** 95,750

**Primary Zoning:** M1-5R8A

**Year Built:** 1931

**WHAT'S CHANGED: COMPARING TAX YEARS 2018-19 AND 2019-20**

	Current Year (2018-19)	Next Year (2019-20)	Change
<b>Market Value</b>	\$10,328,000	\$11,325,000	+\$997,000
<b>Assessment Percentage</b>	45%	45%	--
<b>Actual Assessed Value</b>	\$4,647,600	\$5,096,250	+\$448,650
<b>Transitional Assessed Value</b>	\$3,919,140	\$4,261,590	+\$342,450
<b>Exemption Value</b>	\$0	\$0	+\$0
<b>Taxable Value</b>	\$3,919,140	\$4,261,590	+\$342,450

- **Market value** is the Department of Finance's estimated value for your property.
- **Assessment percentage** is a fixed percentage of market value. For class 4 properties, it is 45%.
- **Actual assessed value** is calculated by multiplying your market value by the assessment percentage.
- Changes to your assessed value are phased in over a five-year period. The **transitional assessed value** represents the changes being phased in for the coming tax year.
- **Exemption value** is the amount of the reduction in your assessed value as a result of any property tax exemptions you receive. The value shown above is your actual exemption value, but a transitional exemption value may be used to calculate your taxable value.
- **Taxable value** is the lower of the actual or transitional assessed value, minus the actual or transitional exemption value.

**HOMEOWNER TAX EXEMPTIONS**

New York City offers tax breaks known as exemptions to seniors, veterans, clergy members, people with disabilities, and others. In addition to reducing your taxes, many exemptions can keep you out of the lien sale. See the enclosed sheet for more information about the lien sale.

The deadline to apply for homeowner exemptions is March 15, 2019. For more information, visit [www.nyc.gov/nopv](http://www.nyc.gov/nopv) or call 311.

New York State offers a STAR benefit that covers many homeowners and an Enhanced STAR benefit for seniors. If you applied with the state for the STAR or Enhanced STAR credit after March 15, 2015, the credit will not appear on this notice. Visit [www.tax.ny.gov/star](http://www.tax.ny.gov/star) for more information.

**COOP-CONDO TAX ABATEMENT**

Owners of cooperative units and condominiums can receive an abatement that will help them save money on their property taxes. Your unit must be in an eligible building and it must be your primary residence.

Your managing agent or board of directors must apply on your behalf and certify that the unit is your primary residence. The deadline is February 15, 2019. Please contact your managing agent or board of directors with any questions.

If you need additional information, or if you do not have a managing agent, contact the Department of Finance at [www.nyc.gov/contactcoopabat](http://www.nyc.gov/contactcoopabat), or call 311.



## HOW TO GET HELP

### CONTACT THE DEPARTMENT OF FINANCE

If you have questions about any of the information in this notice, contact the New York City Department of Finance:

**Online:** [www.nyc.gov/nopv](http://www.nyc.gov/nopv)

**Phone:** Dial 311. (Outside NYC or for relay service, call 212-639-9675.)

**Mail:** NYC Department of Finance  
Correspondence Unit  
1 Centre St, 22nd Fl  
New York, NY 10007

**In Person:** Visit a DOF business center (locations at [www.nyc.gov/nopv](http://www.nyc.gov/nopv)) or attend a Department of Finance outreach event (details below).

### DEPARTMENT OF FINANCE OUTREACH EVENTS

Receive one-on-one help with your notice of property value. Call 311 or visit [www.nyc.gov/nopv](http://www.nyc.gov/nopv) to confirm dates and locations and find other events in your borough. Bring your NOPV to the event.

MORNING EVENTS (10 A.M. - 12 P.M.)	
<b>February 5</b> Bronx	Bronx Borough President's Office 851 Grand Concourse, Rotunda
<b>February 6</b> Manhattan	David N. Dinkins Municipal Building 1 Centre St, Mezzanine North
<b>February 7</b> Brooklyn	Brooklyn Borough Hall 209 Joralemon St
<b>February 12</b> Queens	Queens Borough Hall 120-55 Queens Blvd, Atrium
<b>February 14</b> Staten Island	Staten Island Borough Hall 10 Richmond Terrace, Room 125

EVENING EVENTS (5 - 7 P.M.)	
<b>February 13</b> Manhattan	David N. Dinkins Municipal Building 1 Centre St, Mezzanine North
<b>February 19</b> Brooklyn	Brooklyn Borough Hall 209 Joralemon St
<b>February 20</b> Queens	Queens Borough Hall 120-55 Queens Blvd, Atrium
<b>February 21</b> Bronx	Bronx Borough President's Office 851 Grand Concourse, Rotunda
<b>February 25</b> Staten Island	Staten Island Borough Hall 10 Richmond Terrace, Room 125

### OFFICE OF THE TAXPAYER ADVOCATE

If you have made a reasonable effort to resolve a tax issue with the Department of Finance but feel that you have not received a satisfactory response, the Office of the Taxpayer Advocate can help. For assistance, visit [www.nyc.gov/taxpayeradvocate](http://www.nyc.gov/taxpayeradvocate) and complete form DOF-911, "Request for Help from the Office of the Taxpayer Advocate."

**Email:** [DOFTaxpayerAdvocate@finance.nyc.gov](mailto:DOFTaxpayerAdvocate@finance.nyc.gov)

**Call:** 212-312-1800

**Mail:** NYC Office of the Taxpayer Advocate, 253 Broadway, 6th Floor, New York, NY 10007

**If due to a disability you need an accommodation in order to apply for and receive a service or participate in a program offered by the Department of Finance, please contact the Disability Service Facilitator at [www.nyc.gov/contactdofeeo](http://www.nyc.gov/contactdofeeo) or by calling 311.**

## **Attachment 3 to Exhibit A**

Excerpts from the Building Loan Agreement

Confidential

The relevant 421-a Program provisions of the Building Loan Agreement ("BLA") are reproduced below.

Defined Terms. Defined terms in the BLA relevant to the 421-a Program are as follows:

- "**Improvements** -- A four hundred ninety nine (499) unit residential rental apartment building comprised of (i) three hundred forty eight (348) market rate units; (ii) one hundred fifty (150) affordable units; (iii) one (1) superintendent's unit; (iv) approximately 31,040 square feet of retail space; (v) approximately 3,411 square feet of community facility space; and (vi) a parking structure with approximately 108 parking spaces."
- "**Project** – Collectively, the Premises and the Improvements to be constructed thereon."
- "**Tax Exemption** -- The real property tax exemption under Section 421-a of the New York Real Property Tax Law, known as the 'Affordable New York Housing Program.'"
- "**Events of Default**" are defined in Section 7.1 of the BLA. Among other things:
  - BLA Section 7.1(b) provides that it shall be an Event of Default, "(b) if Borrower fails for thirty (30) days after Administrative Agent provides written notice that Borrower comply with any covenants or agreements made by it in this Agreement other than a covenant to pay or expend any sum of money or if Borrower otherwise fails to comply with any terms or conditions of this Agreement ... ." [Provisions relating to Borrower's ability to cure an Event of Default have been omitted here].
  - BLA Section 7.1(jj) provides that it shall be an Event of Default, "(jj) if Borrower fails to timely perform the covenant contained in Section 6.2(ee);" [Note: section 6.2(ee), reproduced below, requires Borrower to qualify for the 421-a Tax Exemption.]

Conditions Precedent. Article IV of the BLA sets forth conditions precedent to the Lenders' obligation to make the loan, and Article V sets forth conditions precedent to Lenders' obligations to make advances under the loan.

- Section 4.2 provides that Lenders shall have received certain documents prior to loan closing. Section 4.2(d) required a delivery of
  - "An opinion of Borrower's counsel that the Project, when completed, *shall be eligible for the Tax Exemption.*" (*Emphasis added*).
- Section 5.4 provides that certain conditions must be satisfied for Lenders to make the last loan advance evidencing substantial completion of the project,. Specifically, Section 5.4(g) requires:

"The submission of evidence satisfactory to Administrative Agent that Borrower has complied with the requirements of the applicable provisions of Section 421-a of the New York Real

Property Tax Law and the Rent Stabilization Law to the extent possible in order to confirm that the Tax Exemption is or will be in place."

Covenants. Section 6.2 sets forth Borrower's covenants and agreements with Lender.

- Section 6.2(ee) requires Borrower to seek and obtain the 421-a Tax Exemption, as follows:

**"Borrower shall qualify for the Tax Exemption.** Evidence of Borrower's application to HPD for the Tax Exemption shall be provided to Administrative Agent, which evidence shall be provided no later than one hundred twenty (120) days after Borrower shall have obtained temporary certificates of occupancy for all of the residential units contained in the Improvements. Borrower shall diligently pursue HPD's approval of the Tax Exemption application and shall promptly provide to Administrative Agent all requested information and documentation. Borrower shall take all commercially reasonable actions required in order to qualify for (including, but not limited to, installing footings and foundations at the Premises prior to June 15, 2022) and maintain the availability of the Tax Exemption and shall diligently pursue all such actions if it receives notice of the non-availability thereof, including, without limitation, executing the Declaration when required by HPD. Borrower shall comply with the requirements set forth in any Declaration and eligibility requirements under the Affordability Option G under the Tax Exemption. Borrower shall not voluntarily terminate any Declaration and any such termination without the prior written consent of Administrative Agent shall constitute the willful misconduct of Borrower;" (*emphasis added*)

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