



Department of
Environmental
Conservation

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

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

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

Amendment to modify the existing BCA: [check one or more boxes below]

- Add applicant(s)
- Substitute applicant(s)
- Remove applicant(s)
- Change in Name of applicant(s)

Amendment to reflect a transfer of title to all or part of the brownfield site

1a. A copy of the recorded deed must be provided. Is this attached? Yes No

1b. Change in ownership Additional owner (such as a beneficial owner)

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

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

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

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

Other (explain in detail below)

2. Required: Please provide a brief narrative on the nature of the amendment:

The purpose of this BCA Application to Amend No. 2 is to submit the Affordable Housing Regulatory Agreement by and among New York State Housing Finance Agency and 475 Bay Street LLC, 475 Bay Street Retail Owner LLC, and 475 Bay Street Housing Development Fund Corporation, dated as of December 16, 2021, for the affordable housing portion of this BCP Site - see Attachment A.

Please note that 475 Bay Street LLC is still a pending Volunteer, as DEC has not yet approved the previously submitted BCA Amendment No. 1, dated June 6, 2022. as revised July 14, 2022.

While this BCP Site has already received a TPC eligibility determination as it lies 100% within an en-zone, this Affordable Housing Regulatory Agreement is being submitted to the Department for the purposes of designating this BCP Site as an affordable housing project for the 5% affordable housing BCP tax credit bump-up.

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

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

Section I. Current Agreement Information			
BCP SITE NAME: 475 Bay Street & 31 Wave Street		BCP SITE NUMBER: C243044	
NAME OF CURRENT APPLICANT(S): BFC 475 Residential LLC			
INDEX NUMBER OF AGREEMENT: C243044-10-20		DATE OF ORIGINAL AGREEMENT: 11/12/2020	
Section II. New Requestor Information (complete only if adding new requestor or name has changed)			
NAME			
ADDRESS			
CITY/TOWN		ZIP CODE	
PHONE	FAX	E-MAIL	
<p>1. Is the requestor authorized to conduct business in New York State (NYS)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <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	
<p>2. Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>			
<p>3. Describe Requestor's Relationship to Existing Applicant:</p>			

Section III. Current Property Owner/Operator Information (only include if new owner/operator)
Owner below is: Existing Applicant New Applicant Non-Applicant

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.

12. Requestor's Relationship to Property (check one):

Prior Owner Current Owner Potential /Future Purchaser Other _____

13. 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)

1. Property information on current agreement:

ADDRESS

CITY/TOWN

ZIP CODE

TAX BLOCK AND LOT (SBL)

TOTAL ACREAGE OF CURRENT SITE: _____

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

2. Check appropriate boxes below:

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

2a. PARCELS ADDED:

Acreage
Added by
Parcel

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

Total acreage to be added: _____

Reduction of property

2b. PARCELS REMOVED:

Acreage
Removed
by Parcel

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

Total acreage to be removed: _____

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

2c. NEW SBL INFORMATION:

Parcel Address	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.

3. TOTAL REVISED SITE ACREAGE: _____

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

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input 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 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 type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
From ECL 27-1405(31):	
<p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>	
3. Is the project an affordable housing project as defined below?	<input 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: 475 Bay Street & 31 Wave Street	BCP SITE NUMBER: C243044
NAME OF CURRENT APPLICANT(S): BFC 475 Residential LLC	
INDEX NUMBER OF AGREEMENT: C243044-10-20	
EFFECTIVE DATE OF ORIGINAL AGREEMENT: 11/12/2020	

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 the Authorized Signatory (title) of BFC 475 Residential 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. Joseph Ferrara's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 8/8/22 Signature: _____

Print Name: Joseph Ferrara / BFC 475 Residential LLC

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Please see the following page for submittal instructions.

NOTE: Applications submitted in fillable format will be rejected.

Status of Agreement:

<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: 11/12/2020

Signature by the Department:

DATED: 10/16/2022

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: *Andrew Guglielmi*

Andrew Guglielmi, Director
Division of Environmental Remediation

SUBMITTAL REQUIREMENTS:

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

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

- **NOTE: Applications submitted in fillable format will be rejected.**

FOR DEPARTMENT USE ONLY

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

PROJECT MANAGER: _____ Meghan Medwin

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

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

COVER PAGE

Please select all options that apply. Provide a brief narrative of the nature of the amendment requested. At the bottom of the page, please enter the site code. This field will auto-populate in the bottom left corner of the subsequent pages.

SECTION I CURRENT AGREEMENT INFORMATION

Provide the site name, site code and current requestor exactly as it appears on the existing agreement. Provide the agreement index number and the date of the initial BCA, regardless of any executed amendments.

SECTION II NEW REQUESTOR INFORMATION

Requestor Name

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

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

Requestor Address, etc.

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

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

Consultant Name, Address, etc.

Provide information for the requestor's consultant. Attorney Name, Address, etc.
Provide information for the requestor's attorney.

Please provide 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.

SECTION III CURRENT PROPERTY OWNER/OPERATOR INFORMATION

Only include if a transfer of title has taken place resulting in a change in ownership and/or operation of the site. Provide the relationship of the owner to the site by selecting one of the check-box options.

Owner Name, Address, etc.

Provide information for the new owner of the property. List all new parties holding an interest in the property. Attach separate pages as needed.

Operator Name, Address, etc.

Provide information for the new operator, if applicable.

SECTION IV NEW REQUESTOR ELIGIBILITY INFORMATION

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

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.

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 signing the BCA and throughout the BCP project, including the ability to place an easement on the site. A purchase contract does not suffice as proof of access.

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

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

1. Property Information on Existing Agreement

Provide the site address and tax parcel information exactly as it appears on the current agreement (or as it has been modified in previous amendments).

2a. Addition of Property

Provide the tax parcel information and acreage for each parcel to be added. Provide the total acreage to be added below the far-right column.

2b. Reduction of Property

Provide the tax parcel information and acreage for each parcel to be removed. Provide the total acreage to be removed below the far-right column.

2c. Change to SBL or metes and bounds description

Provide the new tax parcel information and attach a metes and bounds description.

All requested changes to this section should be accompanied by a revised survey or other acceptable map depicting the proposed new site boundary. Additionally, provide a county tax map with the site boundary outlined, as well as a USGS 7.5-minute quadrangle map with the site location clearly identified.

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

This page should only be completed if:

a. The site is located in the five boroughs comprising New York City

AND

b. The site does not currently have an eligibility determination for tangible property credits.

PART II

The information in the top section of page 7 should auto-populate with the information provided on page 2. If a new requestor is applying to enter the program, provide the required information and signature at the bottom of page 7 and the required information and signature on page 8.

If no new requestor is applying to the program but any other change has been made, provide the required information and signature on page 8.

Attachment A:

Affordable Housing Regulatory Agreement, by and among New York State Housing Finance Agency and 475 Bay Street LLC, 475 Bay Street Retail Owner LLC, and 475 Bay Street Housing Development Fund Corporation, dated as of December 16, 2021

REGULATORY AGREEMENT

By and Among

NEW YORK STATE HOUSING FINANCE AGENCY

and

475 BAY STREET LLC,

and

475 BAY STREET RETAIL OWNER LLC

and

475 BAY STREET HOUSING DEVELOPMENT FUND CORPORATION

for

475 BAY STREET

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

Record and Return to:

Remy Bernardo, Esq.
New York State Housing Finance Agency
641 Lexington Avenue
New York, New York 10022

Premises: 475 Bay Street
County: Richmond
Block: 488
Lot: p/o 9 and p/o 164 (to be known as Lot 9
after completion of a proposed
subdivision)

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APPENDICES AND EXHIBITS

- Schedule A – Legal Description of the Premises
- Exhibit A – Unit Distribution and Maximum Permitted Gross Monthly Rents
- Exhibit B – Project Services and Amenities Form
- Exhibit C – HPD AIRS Units

THIS REGULATORY AGREEMENT (“Agreement”), entered into as of December 16, 2021 between **475 BAY STREET LLC (“Beneficial Owner”)**, a New York limited liability company, having an address c/o BFC Partners, 150 Myrtle Avenue, Suite 2, Brooklyn, New York 11201; and **475 BAY STREET RETAIL OWNER LLC (“Retail Owner”)**, a New York limited liability company, having an address c/o BFC Partners, 150 Myrtle Avenue, Suite 2, Brooklyn, New York 1120; and **475 BAY STREET HOUSING DEVELOPMENT FUND CORPORATION (“Nominal Owner”)**; together with the Beneficial Owner and Retail Owner, the **“Owners”**), a New York not-for-profit corporation, having an address c/o Settlement Housing Fund, Inc., 247 W. 37th Street, New York, New York 10018; and the **NEW YORK STATE HOUSING FINANCE AGENCY (“Agency” or “HFA”)**, a corporate governmental agency established pursuant to Article III of the PHFL, constituting a public benefit corporation, having its principal place of business at 641 Lexington Avenue, New York, New York 10022.

W I T N E S S E T H:

WHEREAS, pursuant to the terms of that certain Declaration of Interest and Nominee Agreement, dated as of the date hereof by and between Nominal Owner, Beneficial Owner and Retail Owner (the **“Nominee Agreement”**), the Nominal Owner is the holder of the legal leasehold interest and the Beneficial Owner is the owner of all of the beneficial and equitable leasehold interest in certain real property and improvements now or hereafter erected at located at 475 Bay Street, Richmond County, City and State of New York, as more fully described in Schedule A attached hereto (the **“Premises”**) upon which Beneficial Owner intends to construct a 12-story apartment building containing 270 residential units (inclusive of one superintendent’s unit) and ground floor retail space collectively known as 475 Bay Street (the **“Project”**); and

WHEREAS, all of the Project’s two hundred sixty-nine (269) revenue generating units (collectively, the **“Low Income Units”**) shall be set aside for tenants whose household income is at or below 80% of the area median income for the New York, NY HUD Metro FMR Area Median Income, as adjusted for family size (**“AMI”**), further restricted as follows: one hundred thirty-one (131) units will be set aside for tenants whose household income is at or below 80% of AMI (**“Moderate Income Units”**) and one hundred thirty-eight (138) units will be set aside for tenants whose household income is at or below 30% of AMI for homeless frail elderly/seniors; and

WHEREAS, subject to the terms hereof, Beneficial Owner, as declarant pursuant to the Condominium Act (as hereinafter defined), expects to submit the Premises to a condominium regime of ownership (the **“Condominium”**) prior to the conversion of the Project to permanent financing pursuant to a declaration of condominium (**“Declaration”**) and other related documents, which Condominium is expected to be comprised of the following three units: (a) one condominium unit consisting of one hundred thirty-eight (138) residential units (and one (1) non-revenue generating super’s unit) with households earning no more than 30% of AMI (**“Residential Condo Unit 1”**); (b) one condominium unit consisting of one hundred thirty-one (131) residential units with households earning no more than 80% of AMI (**“Residential Condo Unit 2”** and together with Residential Condo Unit 1, the **“Residential Condo Units”**); and (c) one condominium unit for approximately 10,000 square feet of ground floor retail space (**“Retail Condo Unit”**) of which the costs of construction will be financed with the proceeds of a certain Participation Loan, as defined hereinbelow; and

WHEREAS, under that certain Master Lease, dated as of the date hereof (the “**Master Lease**”) with respect to the Premises, Retail Owner is the tenant and Beneficial Owner is the landlord with respect to the portion of the Project that will ultimately constitute the Retail Condo Unit; and

WHEREAS, one hundred thirty-eight (138) units will be set aside for tenants with household incomes at or below 30% of the AMI for homeless frail elderly/seniors (collectively, the “**Supportive Units**”); the Supportive Units will receive supportive services from Self Help Community Services, Inc. (the “**Service Provider**”) pursuant to one or more contract(s) for the provision of such services including on-site services and rental subsidies from the Empire State Supportive Housing Initiative (collectively, the “**Support Agreement**”) between such Service Provider and the New York State Department of Health to be entered into prior to the occupancy of any unit in the Project; and

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

WHEREAS, pursuant to a Construction Loan and Project Loan Agreement (the “**Loan Agreement**”), the Project is to be financed in part by a mortgage loan from the Agency in the amount not to exceed \$99,865,000 (the “**First Mortgage Loan**”), which will be evidenced by a promissory note (as may be amended, modified or supplemented, the “**Note**”) and secured by a mortgage, assignment of leases and rents, and security agreement (as may be amended, modified or supplemented, the “**First Mortgage**”) granted by Beneficial Owner, Nominal Owner and Retail Owner in favor of the Agency, which will be recorded in the land records of the New York City Registrar, Richmond County (the Note, the First Mortgage, the Loan Agreement and each and every document executed with, by or in favor of the Agency in connection with the Mortgage Loan are hereinafter referred to collectively as the “**Loan Documents**”); and

WHEREAS, the State of New York Mortgage Agency (“**SONYMA**”) has issued its Commitment to Insure (the “**SONYMA Commitment**”) to provide a mortgage insurance policy (the “**SONYMA Mortgage Insurance Policy**”), which mortgage insurance policy will become effective pursuant to the terms set forth in the SONYMA Commitment; and

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

WHEREAS, during the period of rehabilitation and/or construction of the Project, the First Mortgage Loan will be secured, *inter alia*, by a direct pay letter of credit (the “**LOC**”) issued by Wells Fargo Bank, National Association (“**LOC Bank**”), and the Agency will enter into a Servicing and Release Agreement, dated as of the date hereof, with the LOC Bank and Beneficial Owner pursuant to which the Agency will designate the LOC Bank as the servicer of the Mortgage and delegate to the LOC Bank certain of its rights as mortgagee thereunder; and

WHEREAS, in connection with the construction of the Project, the Agency shall also simultaneously herewith provide to the Beneficial Owner a subordinate loan in the aggregate amount

not to exceed \$1,405,937 (the “**Subsidy Loan**”) from proceeds available to the Agency from its Supportive Housing Opportunity Program or any other funds legally available to the Agency, to be advanced pursuant to the Loan Agreement, and which Subsidy Loan shall be evidenced by a promissory note and secured by a subsidy mortgage (as may be amended, modified or supplemented, the “**Subsidy Mortgage**”); and

WHEREAS, in connection with the construction of a portion of the Project containing the ground floor retail space, the Agency shall also simultaneously herewith provide to the Beneficial Owner and Retail Owner a subordinate loan in the aggregate amount not to exceed \$2,058,518 (the “**Participation Loan**”) to be funded by the LOC Bank with a 100% participation interest therein pursuant to a certain Participation Agreement dated as of the date hereof between HFA and LOC Bank; and proceeds of the Participation Loan shall be advanced pursuant to the Loan Agreement, and be evidenced by a promissory note and secured by a participation mortgage (as may be amended, modified or supplemented, the “**Participation Mortgage**”); and

WHEREAS, on or before the Conversion Date, the Participation Loan is expected to be assigned by HFA to the LOC Bank, the Beneficial Owner shall be released as obligor of the Participation Loan, and the Retail Condo Unit shall be released from the lien of the First Mortgage Loan, Subsidy Loan and the HFA Regulatory Agreement, subject to the terms of release set forth in Section 7.16 hereinbelow; and

WHEREAS, in connection with the construction of the Project, the Beneficial Owner shall receive an allocation of brownfields tax credit equity in the approximate amount of \$14,789,257; and

WHEREAS, simultaneously herewith, the Beneficial Owner and Nominal Owner will obtain additional financing for construction of the Project in the form of a subordinate loan from BFC 475 Residential LLC (“**Seller**”), in the amount of \$10,812,023 (the “**Seller Loan**”), which Seller Loan will be evidenced by a promissory note and secured by a mortgage, dated of even date herewith (the “**Seller Mortgage**”); and

WHEREAS, the Project shall receive a full real estate tax exemption for the residential portion of the Project under the New York City 420(c) Tax Incentive Program administered by the New York City Department of Housing Preservation and Development (“**HPD**”); and

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

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

WHEREAS, in connection with the allocation of LIHTCs to the Project, the Beneficial Owner intends to elect the income averaging set aside in accordance with Section 42 of the Code, and Owners agree to comply with the requirements with respect thereto as set forth in Section 42(g)(1)(C) of the Code (the “**IA Requirements**”), provided that at all times no less than 40% of the revenue units in the Project shall continue to be restricted to occupancy by tenants whose

household income are at or below 60% of AMI in accordance with §142(d)(1)(B) of the Code (the “**40/60 Test**”); and

WHEREAS, in connection with an increased zoning allowance that the Project is expected to receive under the Zoning Resolution of the City of New York (“**Zoning Resolution**”), the Owners shall comply with certain requirements promulgated by HPD pursuant to the Affordable Independent Residences for Seniors (AIRS) program, and such requirements are set forth in Section 7.18 hereinbelow; and

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

NOW THEREFORE, the parties do hereby agree as follows:

1.0 **DEFINITIONS** - Except as otherwise defined herein, all capitalized words and phrases herein shall have the meanings assigned to such terms in the First Mortgage and the Code. For general rules of interpretation, see Section 7.1. In addition, the following words and phrases as used in this Agreement shall have the following meanings:

“**40/60 Test**” shall have the meaning assigned in the recitals to this Agreement.

“**Agency**” shall mean the New York State Housing Finance Agency.

“**Agreement**” shall mean this Regulatory Agreement.

“**Area Median Income**” or “**AMI**” shall mean the area median gross income for the county or metropolitan statistical area in which the Project is located, as determined from time to time by the Secretary of the United States Department of Housing and Urban Development (“**HUD**”) as applicable pursuant to the Code; references to 60% of AMI shall mean amounts established by HUD constituting 120% of the Very Low Income Limit for HUD’s Section 8 programs. As used herein, AMI shall be deemed to be adjusted for family size in accordance with applicable income limits as published by HUD from time to time.

“**Beneficial Owner**” shall mean 475 Bay Street LLC, its permitted successors and assigns.

“**Beneficial Owner’s Tax Certification**” shall have the meaning assigned in Section 5.8(b).

“**Bonds**” shall have the meaning assigned in the recitals to this Agreement.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, the Treasury Regulations and published administrative positions of the Internal Revenue Service set forth in Revenue Procedures, Revenue Rulings, and other Internal Revenue Service publications with binding authority applicable thereunder.

“Compliance Period” shall have the meaning assigned in Section 3.1.

“Condominium” shall have the meaning set forth in the recitals.

“Condominium Documents” shall have the meaning set forth in the First Mortgage.

“Credit Period” shall have the meaning assigned in Section 3.1.

“Early Termination” shall have the meaning assigned in Section 3.2(b).

“Eligible Basis” shall have the meaning assigned in Section 6.2(a)(7).

“ELIHC” shall have the meaning assigned in Section 3.2(a).

“Event of Default” shall have the meaning assigned in Section 2.1.

“Extended Use Period” shall have the meaning assigned in Section 3.2(b).

“Federal Section 8” shall have the meaning assigned in Section 3.1.

“First Mortgage” and **“First Mortgage Loan”** shall have the meanings assigned in the recitals to this Agreement.

“General Public” shall have the meaning given in §1.42-9 of the Treasury Regulations, as clarified by §42(g) of the Code.

“Governmental Entity” shall have the meaning assigned in Section 5.6(b).

“Gross Rent Floor” shall have the meaning assigned in the Code.

“Guarantor” shall mean Brandon Baron, Joseph Ferrara, and Donald Capoccia.

“Guidelines” shall mean the Agency’s Fair Housing and Tenant Selection Guidelines, as the same may be amended from time to time.

“HFA Servicing Fee” shall have the meaning assigned in Section 7.11(a).

“HPD” shall have the meaning assigned in the recitals to this Agreement.

“IA Requirements” shall have the meaning assigned in the recitals to this Agreement.

“Individuals of Low Income” shall mean individuals and families: (i) whose income is 60% or less of Area Median Income for purposes of §142(d)(2)(B) and §142(d)(3) of the Code and §1.103-8(b)(8)(v) of the Tax Regulations (except that “60 percent” shall be substituted for “80 percent” therein), provided that with respect to the Moderate Income Units, such income may not be greater than 80% of AMI, all of which shall be in accordance with the IA Requirements; and (ii) who are individuals of low income within the meaning of the New York State Housing Finance Agency Act, Article III of the PHFL.

“**Investor Member**” shall mean 475 Bay Street LIHTC Investor QOF LLC, and its permitted successors and assigns.

“**LIHTC**” shall have the meaning assigned in the recitals to this Agreement.

“**LOC**” and “**LOC Bank**” shall have the meaning assigned in the recitals to this Agreement.

“**Low Income Units**” shall have the meaning assigned in the recitals to this Agreement.

“**Managing Member**” shall mean 475 Bay Street Manager LLC, and its permitted successors and assigns.

“**Nominal Owner**” shall mean 475 Bay Street Housing Development Fund Corporation, and its permitted successors and assigns.

“**Note**” shall have the meaning assigned in the recitals to this Agreement.

“**Operating Agreement**” shall mean that certain Amended and Restated Operating Agreement of the Beneficial Owner, dated as of the date hereof, as the same may be amended from time to time subject to this Agreement.

“**PHFL**” shall have the meaning assigned in the recitals to this Agreement.

“**Premises**” shall have the meaning assigned in the recitals to this Agreement.

“**Principal(s)**” shall mean Brandon Baron, Joseph Ferrara, and Donald Capoccia.

“**Prohibited Person**” shall have the meaning assigned in Section 5.6(a).

“**Project**” shall have the meaning assigned in the recitals to this Agreement.

“**Qualified Project Period**” shall have the meaning assigned in Section 3.1.

“**Replacement Reserve Account**” shall have the meaning assigned in Section 5.3(a).

“**Replacements**” shall have the meaning assigned in Section 5.3(b).

“**Service Provider**” shall have the meaning assigned in the recitals to this Agreement.

“**Services Contract**” shall have the meaning assigned in the recitals to this Agreement.

“**SONYMA**” shall have the meaning assigned in the recitals to this Agreement.

“**Support Agreement**” shall have the meaning assigned in the recitals to this Agreement.

“**Supportive Units**” shall have the meaning assigned in the recitals to this Agreement.

“**Transfer Fee**” shall have the meaning assigned in Section 5.5(d).

2.0 ENFORCEMENT

2.1 Incorporation in First Mortgage and Termination of Agreement - (a) This Agreement and the restrictions hereunder are hereby incorporated by reference into the First Mortgage, so that an Event of Default (as defined herein) hereunder, after expiration of any applicable notice and cure periods, shall constitute an "Event of Default" under the First Mortgage. For purposes of this Agreement, an Event of Default shall be deemed to have occurred if the Owners shall fail to observe any requirement or perform any obligation imposed on the Owners by this Agreement, and the Owners fail to cure such default within thirty (30) days after the Owners and, for so long as the LOC is outstanding, the LOC Bank receive written notice of such default from the Agency, unless such default shall not be a willful default and can be cured but cannot by its nature be cured within such thirty (30) day period, in which case an Event of Default shall not be deemed to have occurred so long as the Owners or the Investor Member or the LOC Bank commence such cure as soon as reasonably possible and proceed with due diligence to cure such default; provided, however, that in any case an Event of Default shall be deemed to have occurred (i) when and if interest on the Bonds shall be includable in gross income for federal income tax purposes or (ii) thirty (30) days before the Agency shall be required to commence foreclosure of the First Mortgage in order to prevent interest on the Bonds from becoming includable in gross income for such purposes. Furthermore, the Investor Member and the LOC Bank shall have the right but not the obligation to cure an Event of Default within the applicable cure period.

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

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

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

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

2.4 Indemnification - (a) The Beneficial Owner shall indemnify and hold the Agency harmless from and against any and all claims, demands, liability, loss, cost or expense (including but not limited to documented attorney fees and other costs of litigation) which may be incurred by the Agency arising out of or in any way related to the Beneficial Owner's breach of any of its obligations under this Agreement or any action taken by the Agency (other than willful misconduct, fraud, or gross negligence on the part of the Agency) to enforce or exercise its rights under this Agreement as a result of such breach. The obligations under this Section shall survive the termination or expiration of this Agreement as necessary to effectuate its provisions. This indemnity is not a guarantee of any portion of the First Mortgage Loan.

(b) Any subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior owner (including the Beneficial Owner) under this Agreement, including, but not limited to, payment of any indemnification obligation. Notwithstanding the prior sentence, neither the LOC Bank or SONYMA, or their respective nominees, successors and/or assigns, in the event that ownership of the Project has been transferred as a result of foreclosure or transfer-in-lieu of foreclosure or to any purchaser of the Project in connection therewith, shall be liable or obligated for the breach or default of any obligation of any prior owner (including the Beneficial Owner) under this Agreement, however, the owner of the Project at the time the default or breach occurred shall remain solely liable hereunder for any and all damages occasioned thereby even after such entity ceases to hold an ownership interest in the Project.

3.0 **TERM**

3.1 Term of Agreement - The term of this Agreement shall commence on the execution and delivery hereof, irrespective of when or if the First Mortgage Loan is actually made, and shall extend through a period ("**Qualified Project Period**") that shall commence immediately and that shall end on the latest of the following: (i) the date which is 15 years after the date on which 50%

of the residential units in the Project are first occupied; (ii) the first date on which no Bonds (and no other private activity bonds relating to the Project) are outstanding; (iii) if applicable, the date on which any project-based assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 (“**Federal Section 8**”) terminates; (iv) the date on which the First Mortgage Loan is no longer outstanding; (v) the end of a period (the “**Compliance Period**”) consisting of 15 taxable years of the Beneficial Owner commencing with the first taxable year of the credit period (“**Credit Period**”) as defined in §42(f)(1) of the Code with respect to any building in the Project; (vi) the expiration or earlier termination of the Extended Use Period, as defined in Section 3.2(b), below, or (vii) forty (40) years from the date at least one (1) of the Low Income Units has been occupied by a qualified tenant. Additionally, as provided in Section 3.2 hereof, certain provisions of this Agreement shall continue in effect beyond the end of the Qualified Project Period. The Owners acknowledge that the Qualified Project Period and other periods required by this Agreement may represent a longer period than that which would otherwise be required by the Code to ensure the tax-exempt status of the Bonds or the allowance of LIHTC or any property tax exemption.

3.2 Special Rules for Tax Credits - (a) This Section 3.2, together with such other provisions of this Agreement as are necessary to give effect to and enforce the provisions hereof, constitute an “extended low income housing commitment” (“**ELIHC**”) in accordance with the requirements of §42(h)(6)(B) of the Code, arising from an election by the Beneficial Owner to accept the benefits of LIHTC and the Agency financing in relation to the Project. Failure to comply with the provisions of the ELIHC shall be an Event of Default under this Agreement and thereby the First Mortgage, and the Agency or its successors may exercise any of the remedies available hereunder or thereunder. Furthermore, the Agency may seek specific performance of the ELIHC by the Beneficial Owner or any successor in interest thereto, without declaring an Event of Default pursuant to the First Mortgage and without waiving any remedies under the Mortgage, by filing an action in any court of competent jurisdiction in the State of New York. Any existing, past or prospective tenant of the Project who qualifies, qualified or would qualify as a low income occupant pursuant to §42(g) of the Code is hereby expressly agreed to be a beneficiary of this ELIHC and may apply to any court of competent jurisdiction in the State of New York for specific performance of any provisions of the ELIHC, notwithstanding any action that may or may not be taken by the Agency.

(b) The ELIHC shall begin on the first day of the Compliance Period and remain in effect until 15 years after the end of the Compliance Period (“**Extended Use Period**”) except that the Extended Use Period will terminate earlier (“**Early Termination**”) on the date of foreclosure of the First Mortgage or deed-in-lieu of foreclosure (unless such events are part of an arrangement with the Beneficial Owner to cause an early termination as determined by the Internal Revenue Service). The Extended Use Period will not be subject to Early Termination pursuant to §42(h)(6)(E)(i)(II) of the Code.

(c) Notwithstanding anything herein to the contrary, the terms of this Agreement necessary to effectuate the terms and conditions of this Section 3.2 shall continue through the expiration of this Agreement or Early Termination.

(d) During the Extended Use Period:

- (1) except as provided in Section 4.2 of this Agreement, the Low Income Units, constituting not less than 100% (*i.e.*, 269 units) of the revenue-generating units in the Project (or such other percentage determined by the Agency upon issuance of the Internal Revenue Service Form 8609 in relation to the Project) shall be occupied or available for occupancy by qualified families or individuals earning not more than 80% of the AMI, subject to the IA Requirements; in addition, the Project shall at all times be in compliance with the 40/60 Test;
- (2) the Rents (as defined in Section 4.3, below) payable by such qualified families or individuals of the Low Income Units, as adjusted by utility allowances and any rental subsidies approved by the Agency in accordance with the Code, shall not be more than 30% of the applicable AMI for any Low Income Unit, each adjusted for family size as follows: (i) for studio or efficiency apartments having no separate bedrooms, the designated family size shall be a 1-person family; and (ii) for apartments containing at least one bedroom, the designated family size shall be equal to 1.5 times the number of bedrooms.
- (3) no portion of any building in the Project shall be disposed of to any person unless all of such building is disposed of to such person;
- (4) the Beneficial Owner shall not refuse to lease to a holder of a voucher or certificate of eligibility under the Federal Section 8 program because of the status of the prospective tenant as such a holder;
- (5) during the Extended Use Period and for the three (3) year period following an Early Termination:
 - (A) no existing tenant (*i.e.*, the tenant occupying the respective Low Income Unit during the Extended Use Period, or upon the occurrence of an Early Termination of the Extended Use Period) may be removed whether by eviction, expiration of lease, or for any reason other than good cause; and
 - (B) no rents for any Low Income Unit occupied by such existing tenant may be increased, except as permitted under §42 of the Code; and
- (6) the “applicable fraction” (as defined in §42(c)(1) of the Code) for the Project with respect to LIHTCs shall be 100% or such other amount as determined by the Agency upon the issuance of the Internal Revenue Service Form 8609 (the Low Income Housing Tax Credit Allocation Certification).

4.0 TENANTS AND LEASES

4.1 Rental Restrictions - Once available for occupancy each residential unit (other than any unit approved by the Agency for occupancy by a superintendent) must be rented or available for rental on a continuous basis to members of the General Public and occupied by individuals or families as their residence. No portion of the Project and none of the units in the Project will, at any

time during the term of this Agreement, be used on a transient basis, for example, as a trailer park or trailer court or a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium or rest home. "Use on a transient basis" shall mean the rental of units for an initial lease term of less than 12 months.

4.2 Low Income Occupancy Requirements - (a) Continuously during the term of this Agreement, all of the Low Income Units shall be occupied or, once having been so occupied, held available for occupancy by Individuals of Low Income. In addition, at all times, the Project shall be occupied in compliance with the IA Requirements and the 40/60 Test. Unit distribution shall be as further set forth in Exhibit A attached hereto.

In accordance with Treasury Regulation §1.103-8(b)(8) and for LIHTC purposes, in accordance with Treasury Regulation §1.42-5(b)(1)(vii) and Internal Revenue Notice 88-80, families of low income shall be determined in a manner consistent with determinations of "lower income families" under Federal Section 8 (or if such program is terminated, under such program as was in effect immediately before such termination).

In accordance with procedures established by the Agency, the Beneficial Owner shall take reasonable steps to verify the low or moderate income status of all families or individuals who occupy the Low Income Units.

(b) A Low Income Unit shall continue to be treated as such, notwithstanding any increase in the income of the occupant of such Low Income Unit except as provided in the next sentence. Any Low Income Unit in which the aggregate income of the occupants as of the most recent annual recertification (as described in the Code) exceeds 140% of the applicable income limit (e.g., 140% of 60% for a unit restricted to tenant with household income not exceeding 60% AMI) shall not be treated as a Low Income Unit if after such determination but before the next determination, any residential unit of comparable or smaller size in the same building is occupied by a new resident whose income exceeds the applicable income limit. Occupancy of a unit shall refer to the date that the tenant has possession of the unit and the right to occupy such unit pursuant to a fully executed lease. Upon the establishment of Residential Condo Unit 1 and Residential Condo Unit 2, if any tenant of an apartment therein exceeds 140% of the applicable income limit for such apartment, then the Beneficial Owner and Nominal Owner shall lease the next available unit of comparable or smaller size in the same condo unit to a tenant whose annual income does not exceed the income restriction for occupancy designated for such apartment unit prior to becoming vacant, provided that the Project is compliance with the IA Requirements.

(c) In addition, the Supportive Units will be reserved for occupancy by tenants who are eligible to receive supportive services from the Service Provider pursuant to the Services Contract. In the event that, for a period of 90 days or more, (i) any Supportive Unit is vacant due to the failure of Service Provider to refer an eligible tenant and the Service Provider is not paying rent with respect to such vacant unit, (ii) if applicable, the Service Provider fails to make any required rent subsidy payment with respect to a Supportive Unit, in each of (i) and (ii) in accordance with the Services Contract, or (iii) any funding with respect to the provision of the applicable support services and/or rent subsidy, as applicable, is no longer available, then such unit shall no longer be a Supportive Unit (but shall continue to be a 60% AMI Unit and the number of Supportive Units hereunder shall be applicably reduced). Nothing in this Section 4.2(c) shall be construed to permit displacement or

termination of any existing tenancy other than for good cause pursuant to the terms of any applicable lease. Notwithstanding the foregoing, the Agency may, upon notice to the Owners, reinstate in whole or in part the required number of Supportive Units if, in the opinion of the Agency, the cause or causes supporting the original reduction of Supportive Units have diminished or cease to exist, and the rent subsidy payable to Beneficial Owner pursuant to the Services Contract which was previously reduced in accordance with the terms of Section 6(a)(ii)(ff) thereof shall be reinstated in whole or in part, as applicable.

4.3 Low Income Unit Rents, Fees and Charges – (a) The annual rents for the Low Income Units shall not exceed 30% of the applicable AMI for such unit (e.g., 30% of 30%, 40%, 50%, 60% or 80% of AMI, as applicable to the respective unit), in each case adjusted for the number of individuals occupying the unit, as follows: for studio or efficiency apartments having no separate bedrooms, the designated family size shall be a 1-person family; and for units having one or more separate bedrooms, 1.5 individuals for each separate bedroom.. “**Rent**” for purposes of this Section 4.3 and Section 3.2(d)(2) and (5): (A) does not include (i) any payment under Federal Section 8 or any comparable rental assistance program, or (ii) any fee for supportive services and/or rental assistance provided on behalf of supportive housing tenants paid to the Beneficial Owner, and (B) does include: (i) any utility allowance determined by the Secretary of Housing and Urban Development as may be adjusted by the Agency, or (ii) the cost of any utilities that would be covered by such utility allowance, as determined by the Agency, if the units were receiving Federal Section 8 assistance, to the extent such costs are payable by the tenant.

(b) Pursuant to the Code, the rents for Low Income Units shall be based on the AMI and may be adjusted upward for inflation annually pursuant to the calculations of AMI made by HUD in accordance with the Code, but in no case shall the rents for the Low Income Units be adjusted downward. For example, if the AMI calculations in effect on the date hereof were to form the basis for setting maximum permitted rents that are not Supportive Units, then such maximum rents would be set as set forth in Exhibit A attached hereto.

Further, the maximum rents will be reduced by a utility allowance, if applicable, which may be revised annually. The Beneficial Owner shall review the utility allowance annually pursuant to the provisions of Treasury Regulation §1.42-10(c)(2). Accordingly, each January the Beneficial Owner shall submit to the Agency documentation satisfactory to the Agency of any utility estimates, usage, cost projections and proposed utility allowance with respect to units in the building for the upcoming year. Based thereon, in accordance with the Code, the Agency shall approve the proposed utility allowance or determine the appropriate utility allowance applicable to the units in the building for such period. The Beneficial Owner’s failure to provide such information on a timely, annual basis, to the satisfaction of the Agency, may result in the Agency delaying or denying a change in Low Income Unit rents, and may constitute noncompliance with applicable requirements of the Code.

(c) The Beneficial Owner shall not impose fees and charges upon the tenants of Low Income Units without the prior written consent of the Agency, except for the following: (1) a late payment charge not to exceed \$25.00 to be charged no earlier than the tenth day that the rent of such tenant is due; and (2) a bounced check or similar “insufficient funds” fee not to exceed the actual fee charged by the financial institution processing such rental payments.

4.4 Lease Provisions for Low Income Units – The Beneficial Owner shall enter into a lease directly with the eligible occupant of each Low Income Unit, which leases shall be for terms of at least one year and shall be expressly subordinate to the First Mortgage. In a separate rider acceptable to the Agency (the “**Low Income Rider**”), the lease shall state that: (i) the lease shall be terminated and the tenant may be evicted for failure to qualify pursuant to the income standards for that unit if a tenant has falsely certified household income or household composition; (ii) false certification constitutes material noncompliance under the lease; (iii) tenants shall be obligated to provide income certification, and any additional recertifications of income as the Agency and/or the Beneficial Owner shall require; (iv) in the event the unit is not receiving a Federal Section 8 subsidy, the Beneficial Owner’s right to increase rent for an existing tenant over the amounts provided in Section 4.3(b) hereof upon the conclusion of the Qualified Project Period shall be conditioned upon the Beneficial Owner meeting the requirements of §42 of the Code as referenced in Section 3.2 hereof and the Beneficial Owner furnishing such tenant with a notice at least six months prior to such increase in a form acceptable to the Agency, and that if such notice is not given, such tenant shall be entitled to lease renewals at the rents provided for in Section 4.3(b) until such notice has been given and six months has elapsed; (v) subletting and the tenant's assignment of the lease shall be prohibited; and (vi) the Agency and its representatives or agents shall have the right to inspect such unit for the purpose of fulfilling the Agency’s responsibilities under the Code. The form of lease to be utilized by the Beneficial Owner in renting the Low Income Units in the Project shall be subject to the Agency’s prior written approval. Failure to utilize an approved form of lease for such units shall subject the Beneficial Owner to a penalty equal to one month’s rent for each affected unit.

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

5.0 OPERATING RULES

5.1 Project Restrictions – The Project shall constitute a qualified multi-family residential rental project within the meaning of §142(d) of the Code and will be used for such purposes during the term of this Agreement. The Beneficial Owner warrants that the Project will be completed with due diligence substantially in accordance with building plans and specifications approved by the Agency for the Project and change orders approved by the Agency, to the extent approval of such change orders is required. Pursuant to the plans and specifications and any change orders, all of the units in the Project have been or will be similarly constructed and/or rehabilitated. The Beneficial Owner (or a party related to the Beneficial Owner) shall not occupy a unit in a building or structure unless such building or structure contains more than four units. All of the units in the Project shall contain within the unit complete living, sleeping, eating, cooking and sanitation facilities, all of which are separate and distinct from other units. In addition, the Project shall contain such other

services and amenities as described in Exhibit B, attached hereto. All facilities used in connection with the Project are: (i) located on the Premises, (ii) solely for the benefit of tenants of the Project, and (iii) of a character and size commensurate with the needs of such tenants. The Beneficial Owner shall use its best efforts to ensure that handicapped or disabled individuals in the Project are afforded equal access to such facilities.

5.2 Low Income Unit Requirements - The Low Income Units shall constitute 100% of the revenue-generating units in the Projects, and shall be subject at all times to the 40/60 Test. To ensure that the Low Income Units are occupied by households of an appropriate number of individuals, the Beneficial Owner shall comply with the following standard for occupancy upon initial rental or re-rental of such units, or such smaller number if so required by local zoning or building department authorities or other governmental regulatory restriction. In addition, the Low Income Units shall be allocated and occupied as follows:

Number of Bedrooms	Number of Persons	Number of Low Income Units
Studio	1	59
One Bedroom	1-2	122
Two Bedrooms	2-4	55
Three Bedrooms	4-6	33

5.3 Replacement Reserve Account – (a) The Beneficial Owner shall establish a replacement reserve account that shall be held and controlled by the Agency, to be known as the "**Replacement Reserve Account**". Commencing at the earlier of (i) the first day of the month following the month in which 90% occupancy is achieved, (ii) the date on which the SONYMA Mortgage Insurance Policy becomes effective, or (iii) the date on which the first amortization payment on the First Mortgage Loan becomes due, and on the first day of each month thereafter for so long as this Agreement is in effect, the Beneficial Owner shall deposit in the Replacement Reserve Account the amount of \$6,750.00 per month (i.e., \$300 per unit per year). Said amounts may be reduced (not below zero) by the amounts required to be deposited by the Beneficial Owner into any replacement reserve account required to be maintained by any agreement with the LOC Bank. All interest earned on funds in the Replacement Reserve Account shall remain on deposit in the Replacement Reserve Account. The Agency shall not be responsible for any losses resulting from the investment of the Replacement Reserve Account or obtaining any specific level or percentage of earnings on such investment.

(b) The amount of monthly payments to the Replacement Reserve Account shall remain constant, until and unless revised in the reasonable discretion of the Agency based on (i) the results of the physical needs assessment report as described in subsection (c) below, (ii) the Project's history of repairs, (iii) the existing physical condition of the Project and (iv) such other factors deemed reasonably relevant by the Agency. Upon the Beneficial Owner's written request, in accordance with the Agency's requirements, the Agency shall disburse to the Beneficial Owner within a reasonable period of time and in a manner reasonably determined by the Agency, such amounts from the Replacement Reserve Account as may be necessary to reimburse or pay the Beneficial Owner for the actual approved cost of repairing and/or replacing building systems, equipment and other items of a capital nature, including, without limitation, the repair or refurbishing of common

areas required for the proper operation and marketing of the Project or to remedy a situation deemed to be of an emergency nature (the “**Replacement(s)**”). No such disbursements shall be made, however, prior to the fifth (5th) anniversary of the date that deposits begin to be made by the Beneficial Owner into the Replacement Reserve Account. The Agency may require the Beneficial Owner to reimburse into the Replacement Reserve Account the amount of any such disbursement, over a reasonable period of time to be determined by the Agency.

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

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

(c) No earlier than the first day of the first month following the tenth anniversary of the date of the First Mortgage and on each successive tenth anniversary thereafter during the term of the First Mortgage Loan, the Beneficial Owner shall engage a licensed independent engineer or architect, acceptable to the Agency, to perform a physical needs assessment of the Project. The physical needs assessment shall be performed at the expense of the Beneficial Owner, which expense shall be reimbursable from the Replacement Reserve Account. At the discretion of the Agency, after review of the physical needs assessment report, the Beneficial Owner’s required monthly payment to the Replacement Reserve Account may be adjusted within 90 days following the Agency’s receipt of the physical needs assessment report so that the amount in the Replacement Reserve Account will, in the Agency's reasonable determination, be sufficient to pay for required Replacements as identified in said assessment. The Agency agrees that it shall exercise reasonable judgment as a prudent lender in determining such increases for required Replacements.

(d) Upon expiration of the Compliance Period, the remaining balance of any operating reserve for the Project as may be required pursuant to the Operating Agreement in excess of an amount equal to the aggregate total of: (i) an amount equal to three (3) months’ of operating expenses of the Project (based on the amount of operating expenses reported in the most recent audited financial statement for the Project), and (ii) an amount equal to three (3) months’ debt service for the First Mortgage Loan, shall be immediately deposited into the Replacement Reserve

Account and administered in accordance with this Section 5.3. The Beneficial Owner shall continue to maintain the balance in an operating reserve account.

(e) After payment in full of all sums secured by the First Mortgage and the expiration of this Agreement, the Agency shall disburse to the Beneficial Owner all amounts remaining in the Replacement Reserve Account.

5.4 Project Management - (a) The Beneficial Owner shall not employ or otherwise use or retain a managing agent for the Project other than WMW Realty Management LLC without the Agency's prior approval of such managing agent and the terms of its retention including compensation, which approval shall not be unreasonably withheld. Any renewal or termination of the managing agent's employment shall be subject to the Agency's approval, which approval shall not be unreasonably withheld or delayed. If the Beneficial Owner shall also retain a leasing/rental agent, other than the managing agent, such leasing/rental agent shall be subject to the Agency's approval, and may not be replaced without the Agency's prior approval, which approval shall not be unreasonably withheld or delayed. If the Beneficial Owner retains a managing agent without having first received approval of the Agency, the Beneficial Owner will be subject to a monetary penalty equal to the lesser of (i) the amount of the monthly management fee paid to the unapproved agent, or (ii) \$20,000, which amount shall be assessed initially and for each month such agent is in place without Agency approval.

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

(c) Notwithstanding the provisions of Section 5.4(b) above, in the event there is a need to replace the managing agent due to premature termination or otherwise, which requires immediate

temporary replacement of the managing agent before approval can be obtained from the Agency, the Beneficial Owner may employ a replacement managing agent, provided that the agreement for such employment is terminable upon receipt by the Beneficial Owner of written notice that said managing agent is not acceptable to the Agency.

(d) The Agency reserves the right to review the performance of the leasing agent and may require the removal and replacement of such agent in a manner similar to the provisions set forth in subsections (b) and (c), above, except that the Agency shall not act in the capacity of leasing agent.

5.5 Change of Principals and Transfer Restrictions - (a) As used in this Section 5.5, the term “transfer” shall include any sale, transfer, assignment or other conveyance, provided, however, that the meaning of the term “transfer” shall not include a mortgaging of the Property or the formation of the Condominium (such formation remains subject to the approval of the Agency as set forth in the First Mortgage).

(b) In addition to the restrictions on conveyance of the Project and the Premises as set forth in the First Mortgage, neither the Beneficial Owner, the Managing Member, nor the Nominal Owner shall transfer the Premises, the Project, or any part of either, without the prior written consent of the Agency which consent shall not be unreasonably withheld or delayed. Any transfer or attempted transfer of the Project or any part thereof made without such consent of the Agency shall be null and void *ab initio*.

(c) No consent of the Agency shall be required for the transfer of any direct or indirect ownership interest in the Beneficial Owner or the Managing Member, provided that after giving effect to such transfer: (i) there shall not be a change of direct or indirect control of the Beneficial Owner, the Managing Member, or, any Principal which is not an individual; (ii) there shall not be a change of (x) more than 10%, in the aggregate, of the respective direct or indirect ownership interests in the Beneficial Owner or of the Managing Member, or (y) more than 50% of any Principal which is not an individual; and (iii) one or more of the Principals shall retain the day to day management and control of the Beneficial Owner and the Project. The consent of the Agency shall be required (however, no Transfer Fee shall apply with respect to such consent) for the removal of the Managing Member in accordance with the provisions of the Operating Agreement, however, no consent shall be required if in connection with such removal the Managing Member’s interest is transferred to an entity controlled by or under common control with the Investor Member, provided that such entity has significant experience in the ownership and operation of comparable multi-family properties, and provided further that any subsequent replacement of the Managing Member shall be subject to the Agency’s consent and any applicable fees hereunder.

(d) Notwithstanding the provisions in Section 5.5(c), above, the following direct or indirect transfers of interests in the Beneficial Owner or the Managing Member shall be permitted without the prior written consent of the Agency, provided that one or more of the Principals, directly or indirectly, maintains all operational, managerial and financial control of the Beneficial Owner and the Project, and, in each case, the Beneficial Owner shall give the Agency prompt written notice thereof:

- (1) any transfer to any Principal or to an entity wholly owned and controlled by one or more of the Principals;
- (2) a transfer by the Investor Member to (A) a nationally recognized entity regularly engaged in the syndication of LIHTC, if (i) such transfer is in connection with the syndication of the Project's LIHTC; and (ii) such entity is not a Prohibited Person as such term is defined in Section 5.6 below, and (iii) such entity does not have the immediate or conditional right to exercise operational, managerial and financial control of the Beneficial Owner and the Project; or (B) to an affiliate of the Investor Member which is an entity primarily engaged in the investment in and syndication of LIHTC, provided that such entity is not a Prohibited Person, and the terms of the Operating Agreement shall remain in effect; or
- (3) any transfer by operation of law or, in the case of any Principal who is a natural person, transfers resulting from the death or incapacity of such person; or
- (4) any transfer of the Retail Condo Unit and the termination of the Master Lease.

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

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

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

with any transfers that do not require the Agency's consent under Section 5.5(c) above, however, the Agency reserves the right to charge Beneficial Owner for any reasonable related out-of-pocket expenses and such other fees as the Agency, in its reasonable discretion, may deem appropriate for such transfers.

(g) The Beneficial Owner shall, within five (5) days after request of the Agency, furnish to the Agency the names of the officers, directors, members, partners and shareholders of Beneficial Owner or the Nominal Owner, together with such additional information as the Agency shall request with respect to such persons.

(h) Notwithstanding any other provision of this Agreement, in no event shall any conveyance of the Project or the addition or substitution of any constituent of the Beneficial Owner, or of any other person or entity directly or indirectly holding an ownership interest in the Beneficial Owner, be permitted if such conveyance or addition or substitution shall cause the Beneficial Owner to become a Prohibited Person.

(i) Notwithstanding the provisions of this Section 5.5, at any time when both the First Mortgage no longer encumbers any interest in the Project, or when none of the Bonds are outstanding, the Agency's consent shall not be required (and no related fees shall be charged by the Agency) with respect to any conveyance of any interest in the Project, or for any change in the ownership or control of any entity holding any interest in the Premises or the Project; provided that such conveyance or change does not cause the Premises or the Project to be owned by a Prohibited Person.

(j) The terms and conditions of this Agreement shall remain outstanding and enforceable against any new owner of the Project.

(k) The Beneficial Owner shall notify the Agency in writing, within thirty (30) days after the occurrence thereof, of: (A) any transfer of any direct ownership interest in Beneficial Owner or the Managing Member; or (B) any change in the Operating Agreement.

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

(a) any individual who has ever been convicted of a felony or any other crime involving moral turpitude, or is an Organized Crime Figure, as defined in Section 5.6(e) hereof, or is reputed to have substantial business or other affiliations with an Organized Crime Figure;

(b) any individual or entity against whom any action or proceeding is pending to enforce rights of any municipal, city, state or Federal government, or any agency, department, public authority, public benefit corporation or local development corporation thereof ("Governmental Entity") arising out of a contractual obligation to any such Governmental Entity;

(c) any individual or entity with respect to whom any notice of monetary default which remains uncured has been given by any Governmental Entity;

(d) any individual who is an officer, director, or otherwise exercises managerial discretion or has an ownership interest in excess of 25% in:

(i) the owner of any one or more dwelling(s) subject to New York State Multiple Residence Law, which dwelling, while under the ownership of the owner in which the individual is an officer, director, or otherwise exercises managerial discretion, has been declared a nuisance by the responsible department, and such nuisance has not been removed by the owner in the time specified in the notice or order declaring the dwelling a nuisance (as such terms are defined and used in New York State Multiple Residence Law);

(ii) the owner of any one or more dwelling(s) subject to New York State Multiple Residence Law, with respect to which dwelling or combination of dwellings, on three distinct occasions, a tenant or tenants have withheld rent pursuant to a rent impairing violation having been noted in the official records of the responsible department, which violation the owner in which the individual is or was an officer, director, or otherwise exercises managerial discretion has failed to remove prior to that amount of time after which such failure permits a resident of such dwelling to legally withhold rent from the owner, and either no action to recover rent or possession has been brought by the owner, or the resident has prevailed in such action (as such terms are defined and used in New York State Multiple Residence Law);

(iii) the owner of any one or more dwelling(s) subject to New York State Multiple Dwelling Law, which dwelling, while under the ownership of the owner in which the individual is an officer, director, or otherwise exercises managerial discretion, has been declared a nuisance by the responsible department, and such nuisance has not been removed by the owner in the time specified in the notice or order declaring the dwelling a nuisance or fines and/or penalties have not been paid with respect thereto (as such terms are defined and used in New York State Multiple Dwelling Law); or

(iv) the owner of any one or more dwelling(s) subject to New York State Multiple Dwelling Law, with respect to which dwelling or combination of dwellings, on three distinct occasions, a tenant or tenants have withheld rent pursuant to a rent impairing violation having been noted in the official records of the responsible department, which violation the owner in which the individual is or was an officer, director, or otherwise exercises managerial discretion has failed to remove prior to that amount of time after which such failure permits a resident of such dwelling to legally withhold rent from the owner, and either no action to recover rent or possession has been brought by the owner, or the resident has prevailed in such action (as such terms are defined and used in New York State Multiple Dwelling Law).

(v) any entity which has ever been, or whose principals have ever been, suspended, debarred, disqualified, found non-responsible, had its and/or their prequalification revoked or otherwise has been declared ineligible to do business with any Governmental Entity or which could be deemed non-responsible under New York law.

(e) An individual shall be deemed to be an “Organized Crime Figure” if he or she is alleged as such in writing by a private investigation agency and such allegation has been confirmed by any state or Federal prosecutorial, investigative or regulatory agency or authority.

5.7 Changes to Structure of Beneficial Owner Entity - The Owners may not materially modify, amend or otherwise materially change the terms of their respective organizational

documents without the prior written approval of the Agency, which approval shall not be unreasonably withheld, except that the approval of the Agency shall not be required if such modification or amendment is for the purpose of substituting or admitting a member or partner, as applicable, of the Beneficial Owner in accordance with Sections 5.5 and 5.9 hereof. In any event, the Beneficial Owner shall provide the Agency with such documents with revisions indicated, within 30 days of the execution thereof.

5.8 General Tax Covenants; Use of Mortgage Proceeds; Other Restrictions - The Beneficial Owner and the Nominal Owner each covenants that it will not take any action, or fail to take any action, or make any use of the Project or the proceeds of the Bonds (including investment earnings), in a way which would adversely affect the exclusion of interest on the Bonds from Federal income taxation under the Code. The Beneficial Owner further covenants and agrees that:

(a) No portion of the First Mortgage Loan shall be used to provide any facilities other than the multi-family housing units and the portion of the Project that is functionally related and subordinate to such units.

(b) All certifications, representations and warranties made in the tax certification executed by the Beneficial Owner (“**Beneficial Owner’s Tax Certification**”), in connection herewith, as the same may have been amended and approved by the Agency, together with all supplements thereto, except as so amended and approved by the Agency, are and will be true and correct. All such certifications, representations and warranties are hereby incorporated and repeated herein with full force and effect. Specifically and not by way of limitation, the Beneficial Owner warrants the accuracy of the schedules of costs included therein. The Beneficial Owner and the Nominal Owner agree to execute and deliver such amendments and supplements to this Agreement as are necessary to preserve the tax exempt status of interest on the Bonds.

(c) The Beneficial Owner and the Nominal Owner each covenants that it will comply with any use or occupancy requirement of any governmental entity providing any subsidy, tax abatement or regulatory approval for the Project, to the extent such requirements do not irreconcilably conflict with the requirements of this Agreement, the First Mortgage or any rule, regulation or policy of any state or federal entity.

(d) In no event shall the Beneficial Owner, Nominal Owner, any Principal or Guarantor become the registered or beneficial owner of any of the Bonds.

5.9 SONYMA Restriction on Transfer – In addition to any other condition, requirement or restriction contained in this Agreement, except as may be permitted pursuant to Section 5.5, above, the Beneficial Owner shall not convey, or further encumber, all or any part of the Project or the Beneficial Owner’s interest in the Project, or obtain additional secondary financing (other than as contemplated by the First Mortgage), or transfer, assign or convey any of its membership, stock or membership interests, as the case may be, without the prior written consent of SONYMA.

6.0 **REPORTING**

6.1 Information and Project Reports - (a) The Beneficial Owner shall submit, or cause to be submitted, to the Secretary of the Treasury, at such time and in such manner as the Secretary shall prescribe, annual certifications as to whether the Project continues to meet the requirements of

§142(d) of the Code. The Beneficial Owner is on notice that the Code provides that any failure to comply will subject the Beneficial Owner to penalty as provided in §6652(j) of the Code.

(b) The Beneficial Owner covenants and agrees to submit to the Agency annually, or more frequently if required in writing by the Agency, reports detailing such facts as the Agency determines are sufficient to establish compliance with the restrictions contained hereunder, including but not limited to, monthly occupancy reports and annual certifications, in a form reasonably acceptable to the Agency, regarding tenant income qualification. The Beneficial Owner covenants and agrees to secure and maintain on file for inspection and copying by the Agency for at least six (6) years after the later of (i) the due date (including any extensions) for any filings required to be made by the Beneficial Owner with the Internal Revenue Service or its successor agency for that year or (ii) the end of the Qualified Project Period, such information, reports and certifications as the Agency may from time to time require in writing. The Beneficial Owner further covenants and agrees to notify the Agency promptly if the Beneficial Owner discovers non-compliance with any restriction or covenant hereunder. The Agency agrees to notify the Beneficial Owner if the Agency discovers non-compliance with any restriction or covenant hereunder but the Agency's failure to do so shall not affect the Beneficial Owner's obligations hereunder.

(c) The Beneficial Owner shall promptly furnish to the Agency a copy of each lease and Low Income Rider entered into for each Low Income Unit, together with a copy of each annual tenant income certification.

(d) Prior to issuance of the Internal Revenue Service Form 8609 with respect any building in the Project, the Beneficial Owner shall file with the Agency a certificate of actual cost, which shall be accompanied by a certification of an independent certified public accountant reasonably acceptable to the Agency. The independent certified public accountant shall certify, in a format reasonably satisfactory to the Agency, that the amounts claimed as costs are necessary and reasonable and ordinarily within the scope of the Project. The Agency reserves the right to reject the certificate of actual cost if it is inconsistent with the required format or is otherwise unsatisfactory to the Agency. Additionally, upon completion of the Project, the Beneficial Owner shall also certify to the Agency, based upon a review of its books and records by such certified public accountant, that the First Mortgage Loan proceeds have been spent in accordance with the Beneficial Owner's Tax Certification, as modified and approved by the Agency.

(e) From the date of the first rental of any unit in the Project and monthly throughout the term hereof, the Beneficial Owner shall submit to the Agency certifications (including a copy of the certification for any Federal Section 8 eligible tenant) and reports of the Beneficial Owner's compliance with the requirements of this Agreement in such detail as may be reasonably required by the Agency. The Beneficial Owner shall notify the Agency of the date of the following within ten days of the date thereof: (i) the issuance of any certificate of occupancy including any temporary certificate of occupancy; (ii) the rental of 50% of the units in the Project; and (iii) the rental of 80% of the units in the Project.

(f) The Beneficial Owner shall submit to the Agency within 90 days of the end of each fiscal year, three copies of the Project's annual audited financial statements, which submission may alternatively be made in electronic format acceptable to the Agency. The financial statements must (i) include a balance sheet, a statement of operations, income, and expenses, a statement of cash flows, and all related notes; (ii) be prepared in accordance with generally accepted accounting

principles (“GAAP”); (iii) be presented in a two-year comparative format; and (iv) be accompanied by an opinion of an independent certified public accountant acceptable to the Agency stating that the financial statements were audited in accordance with GAAP. The Agency may require that the financial statements be prepared in a specific format which, where practical, will be provided to the Beneficial Owner in advance, and may require that certain subjects be included in the notes to the financial statements. The Agency may require interim period financial statements, certified by an officer of the Beneficial Owner, which shall be submitted within 60 days of the date of request therefor, unless prior to the expiration of the applicable period, the Beneficial Owner has requested an additional thirty (30) day extension, which request shall not be unreasonably denied by the Agency.

(g) Commencing with the first month a unit has been occupied and thereafter during the term of this Agreement, the Beneficial Owner shall submit to the Agency, on or before the 20th day of each month (i) a cash flow statement and a schedule of accounts payable for the preceding month certified by an authorized representative of the Beneficial Owner. Such cash flow statement must also be prepared on a monthly basis as well as a cumulative basis (for all months which preceded it in the current fiscal year) for both budgeted and actual results and presented in a format reasonably acceptable to the Agency, and (ii) occupancy reports containing such information as reasonably required by the Agency. In addition, the Beneficial Owner shall submit to the Agency an annual occupancy report no later than March 1 of each year.

(h) Commencing with the first month a unit has been occupied and thereafter during the term of this Agreement, the Beneficial Owner shall submit to the applicable oversight agency/ies any required documentation related to the monitoring of the Supportive Units. Any confidential patient data must be submitted in a secure format.

6.2 Monitoring and Recordkeeping Requirements - (a) The Beneficial Owner shall keep records for each building in the Project for each year in the Qualified Project Period (except where otherwise indicated) showing each of the following:

- (1) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- (2) The percentage of residential rental units in the building that are Low Income Units broken down with the applicable AMIs;
- (3) The rent charged for each residential rental unit in the building (including any utility allowance);
- (4) The Low Income Unit vacancies in the building and information that shows when and to whom the next available originally designated Low Income Units were rented;
- (5) The annual income certification of each tenant unless and until the Agency in its sole discretion waives the requirement to collect and preserve income certifications on an annual basis;
- (6) Documentation to support the income certification made by each tenant of a Low Income Unit (for example, a copy of the tenant’s federal income tax return, Form

W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation), in accordance with Treasury Regulation §1.42-5(b)(1)(vii);

- (7) The eligible basis as defined in §42(d) of the Code (“**Eligible Basis**”) and the qualified basis as defined in §42(c) of the Code of the building at the end of the first year of the Credit Period;
- (8) The character and use of the non-residential portion of the building included in the building’s Eligible Basis (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the Project); and
- (9) Such other information as the Agency may reasonably request from time to time.

(b) The Beneficial Owner shall retain the foregoing records for each building in the Project for at least six years after the due date (with extensions) for filing the Beneficial Owner’s tax return for that year, except that the records for the first year of the Credit Period shall be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period.

(c) The Beneficial Owner shall certify in a sworn statement to the Agency, on the last business day of December of each year through and including the end of the Qualified Project Period, that, for the preceding 12 month period:

- (1) The Project met the requirements of the 40/60 Test and has complied with the IA Requirements;
- (2) There was no change in the “applicable fraction”, as defined in §42(c) (1) (B) of the Code, of any building in the Project, or that there was a change, and a description of the change;
- (3) The Beneficial Owner has received an annual income certification from each tenant of a Low Income Unit (unless the Agency in its sole discretion waives the requirement to collect and preserve income certifications on an annual basis) and documentation to support that certification, or a substitute permitted under Treasury Regulation §1.42-5(c)(1)(iii);
- (4) Each Low Income Unit in the Project was rent-restricted under §42(g)(2) of the Code;
- (5) All units in the Project were for use by the General Public, except for any superintendent’s units, and are used on a non-transient basis, and there has been no finding of discrimination (as defined in Treasury Regulation §1.42-5(c)(1)(v)) with respect to the Project or, if there is or has been such finding, a copy of any such finding has been forwarded to the Agency. The Beneficial Owner shall retain an original or a copy of such finding for review by the Agency during the inspection of the Project;

- (6) Each building in the Project was suitable for occupancy, taking into account local health, safety and building codes applicable to the Project; or, if there have been any violations of such health, safety or building code, a copy of any notice or summons related thereto has been forwarded to the Agency with a description of the violation and a remedial action plan of the Beneficial Owner. The Beneficial Owner shall further indicate whether the violation has been corrected as of the time of certification or the Beneficial Owner's estimate of the time frame necessary for correction. The Beneficial Owner shall forward a copy of the violation to the Agency and retain the original violation report for review by the Agency during the inspection of the Project. Such reports must be retained until the completion of the Agency's inspection of the Project following the correction of the violation;
- (7) There was no change in the Eligible Basis of any building in the Project or, if there was a change, the nature of the change;
- (8) All tenant facilities included in the Eligible Basis of any building in the Project were provided on a comparable basis without charge to all tenants in the building;
- (9) If a Low Income Unit in the Project became vacant during the year, reasonable attempts were or are being made to rent that unit to tenants having a qualifying income before any units in the Project were or will be rented to tenants not having a qualifying income; in addition, if a Supportive Unit became vacant during the year, reasonable attempts were or are being made to rent such unit to a qualifying tenant in accordance with the Services Contract;
- (10) An extended low-income housing commitment as defined in §42(h)(6)(B) of the Code was in effect with respect to the Project, which included the requirement under Code §42(h)(6)(B)(iv) that the Beneficial Owner cannot refuse to lease a unit in the Project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s;
- (11) Each building in the Project complies with the requirements of the Code applicable to the Bonds;
- (12) The Project has been and is in compliance with the Agency's Guidelines; the Beneficial Owner's marketing and tenant selection plan applicable to the Project, as filed with the Agency for its records, complies with the applicable rules as defined in the Agency's Guidelines; and there has been no finding of discrimination under any of such applicable rules, nor any complaint, investigation, administrative inquiry, or other action under such applicable rules, or, if there has been any such finding, complaint, investigation, administrative inquiry, or other action, a listing and an explanation thereof;
- (13) There were no findings of discrimination under the Fair Housing Act or, if there have been such findings, an explanation thereof;

- (14) The Beneficial Owner has complied with all requirements of the LIHTC program, as the same may be amended or supplemented, and with any additional reporting requirements which the Agency may have imposed in order to monitor compliance therewith; and
- (15) Such other matters as the Agency may reasonably request from time to time.

(d) Each year, during the term of this Agreement, the Beneficial Owner shall retain and make available for inspection and review by the Agency a copy of the annual income certification (unless the Agency in its sole discretion waives the requirement to collect and preserve income certifications on an annual basis) from each tenant and a copy of the documentation the Beneficial Owner has received to support that certification and such other information as the Agency deems necessary to comply with the monitoring requirements of §42 of the Code.

(e) The Agency shall have the right to perform audits of the Project through the end of the Qualified Project Period. For this purpose, an audit includes an inspection of any building in the Project, an inspection of any unit in the Project and a review of any of the records described in Section 6.2(a) above. The costs and expenses of any audit or inspection performed by Agency personnel shall be borne by the Agency. The Beneficial Owner shall be solely responsible for any costs incurred by the Beneficial Owner or Beneficial Owner's consultants in connection with any such audit or inspection. However, in the event the Agency determines in its sole discretion that it is necessary to engage a third party to conduct such audit or inspection as a result of the Beneficial Owner's failure to perform its obligations hereunder, then such expenses shall be borne by the Beneficial Owner.

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

(f) The Agency shall provide prompt written notice to the Beneficial Owner if the Agency does not receive the certification described in paragraph (c) of this Section 6.2 or discovers on audit, inspection or review (or in some other manner) that the Project is not in compliance with the provisions of §42 of the Code. Additionally, the Agency shall file Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service no later than 45 days after the end of the correction period (which period shall commence on the date that the Agency notifies the Beneficial Owner of noncompliance pursuant to the preceding sentence and continues for 60 days thereafter, unless the Agency determines that there is good cause for granting an extension of the correction period, in which case the period may be extended by the Agency for up to six months).

(g) The Agency shall retain records of noncompliance or failure to certify for six years after the Agency's filing of the applicable Form 8823. The Agency shall retain the certifications

described in subsection 6.1(c) for three years from the end of the calendar year the Agency receives such certifications.

(h) It is expressly understood by the Beneficial Owner that the Agency's monitoring of the Beneficial Owner's compliance with the requirements of §42 of the Code does not and will not make the Agency liable in any manner whatsoever for any noncompliance with such requirements.

6.3 Late Filing Penalties - Unless otherwise specified herein, all reports, certifications or information required under this Article 6 shall be submitted to the Agency by the 20th day of the month following the month to which they relate, and shall be in a format reasonably acceptable to the Agency. The Agency shall notify the Beneficial Owner in the event it has not received any report required hereunder within fifteen (15) days of the date due (as such due date may be extended upon approval of the Agency). If Beneficial Owner fails to submit such delinquent report within five (5) business days after the date of such notice, the Beneficial Owner will be subject to a late filing fee equal to the lesser of (i) five percent (5%) of the then current monthly mortgage debt service obligation, or (ii) \$5,000, which amount will be assessed initially and for each succeeding month until such report is submitted. Notwithstanding the above, and with respect only to annual audited financial statements required pursuant to Section 6.1(f) above which have been granted a 30 day filing extension, failure to file such reports upon the expiration of such 30 day period (as such period may be further extended at the sole discretion of the Agency) will immediately, and without any notice required from the Agency, subject the Beneficial Owner to a late filing penalty equal to the lesser of (i) five percent (5%) of the then current monthly mortgage debt service obligation, or (ii) \$20,000, which amount will be assessed initially and for each succeeding month until such report is submitted.

6.4 Benchmarking Requirements – The Beneficial Owner, at its own expense, shall contract with a benchmarking software provider capable of collecting automated energy usage data directly from utility companies, which shall include monthly and annual data on the heating, electric and water usage of the Project, and such additional information as may be reasonably required by the Agency, and report such information into the United States Environmental Protection Agency ENERGY STAR Portfolio Manager or other system as designated by the Agency, at such times and in such manner as may be required by the Agency. The Agency shall provide to the Beneficial Owner written instructions regarding implementation of this obligation, which instructions may be modified by the Agency from time to time in any manner which the Agency determines, in its sole discretion, as may be necessary in order to comply with applicable reporting requirements.

7.0 **GENERAL PROVISIONS**

7.1 Interpretation and Section Headings - In this Agreement:

- (1) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms as used in this Agreement refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before the date of this Agreement.
- (2) Unless the context otherwise requires, words of the masculine gender mean and include correlative words of the feminine and neuter genders, and words defined in the singular have the same meaning when used in the plural and vice versa.

New York, New York 10022
Attention: Senior Vice President and Counsel

with a copy to:

New York State Housing Finance Agency
641 Lexington Avenue
New York, New York 10022
Attention: Senior Vice President, Asset Management

If to Beneficial Owner:

475 Bay Street LLC
c/o BFC Partners
150 Myrtle Avenue, Suite 2
Brooklyn, New York 11201
Attention: Donald Capoccia

with a copy to:

Hirschen Singer & Epstein LLP
902 Broadway, 13th Floor
New York, New York 10010
Attention: Russell A. Kivler, Esq.

with a copy to:

475 Bay Street LIHTC Investor QOF LLC
Urban Investment Group
c/o The Goldman Sachs Group, Inc.
200 West Street
New York, New York 10282
Attention: Urban Investment Group Portfolio Manager
Email: gs-uir-portfolio-manager@gs.com

with a copy to:

Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019
Attention: Steven C. Koppel, Esq.

If to Nominal Owner: 475 Bay Street Housing Development Fund Corporation
c/o Settlement Housing Fund, Inc.
247 W. 37th Street, 4th Floor
New York, New York 10018
Attention: General Counsel

with a copy to:

Hirschen Singer & Epstein LLP
902 Broadway, 13th Floor
New York, New York 10010
Attention: Russell A. Kivler, Esq.

If to LOC Bank: Wells Fargo Bank, National Association
Community Lending and Investment
30 Hudson Yards, 62nd Floor
New York, New York 10001
Attention: Katelyn Meehan

with a copy to:

Sidley Austin LLP
787 7th Avenue
New York, New York 10019
Attention: Adam S. Verstandig, Esq.

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

7.7 Severability - All rights, powers and remedies provided herein may be exercised only to the extent that exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable or not entitled to be recorded, registered, or filed under applicable law. If any provision shall be held to be invalid, illegal or unenforceable, only such provision or part thereof shall be affected by such holding and the validity of other provisions of this Agreement and of the balance of any provision held to be invalid, illegal or unenforceable in part only, shall in no way be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision or part thereof had not been contained therein.

7.8 Counterparts - This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be a duplicate original. All such counterparts shall constitute but one and the same instrument.

7.9 HFA Sign - Subject to compliance with local laws and codes, during construction and/or rehabilitation of the Project and for a period of up to six (6) months thereafter, the Beneficial Owner shall at its own expense provide, erect, maintain and insure a sign in a design format and of a size, materials and appearance required by the Agency, in a location at the Project acceptable to the Agency, and stating that the Project has been financed by the Agency. If the Beneficial Owner uses a sign provided by the Agency, the Beneficial Owner shall reimburse the Agency for the cost of the sign, including the cost of transporting the sign to the site of the Project.

7.10 Modification and Waiver - This Agreement and the provisions herein may not be waived, amended, modified or rescinded unless such waiver, amendment, modification or rescission is in writing, and signed by the Beneficial Owner and the Agency.

7.11 Servicing/Monitoring Fee - (a) The Beneficial Owner shall pay to the Agency an annual servicing fee (the “**HFA Servicing Fee**”) in accordance with the Note.

(b) Commencing on the first date on which the First Mortgage Loan is no longer outstanding and until such time as this Regulatory Agreement has expired or been terminated in accordance with its terms, the Beneficial Owner shall pay to the Agency an annual monitoring fee, payable in equal monthly installments, in the amount of the greater of: (i) 1% of the total rent revenue due from the Low Income Units (whether or not actually collected); or (ii) \$10,000 per annum (the “**Monitoring Fee**”). Such Monitoring Fee shall not be applicable so long as the HFA Servicing Fee remains payable to the Agency pursuant to the terms of the Note.

7.12 Approval of Commercial Leases Affecting the Mortgaged Property - The Beneficial Owner shall submit to the Agency for its prior written approval, which shall not be unreasonably withheld, the identity of any prospective commercial tenant and the proposed usage of the space. If there is no response by the Agency within ten (10) business days after receipt of the Beneficial Owner’s request for the Agency’s approval of the identity of any prospective commercial tenant and the proposed usage of the space, such request shall be deemed approved. The Master Lease for the Retail Condo Unit is hereby approved by the Agency.

7.13 Green Building Guidelines - The Project shall comply with the Agency’s Green Building Guidelines.

7.14 Cure by Investor Member and LOC Bank - The Agency agrees to provide copies of all notices related to this Agreement to the Investor Member and, for so long as the LOC is outstanding, to the LOC Bank. The Investor Member and/or the LOC Bank shall have the same right, but not the obligation, to cure any default under this Agreement as the Beneficial Owner or the Nominal Owner, and any cure so made by the Investor Member and/or the LOC Bank pursuant to this paragraph will be recognized by the Agency on the same basis as if made or tendered by the Beneficial Owner or the Nominal Owner.

7.15 Special Requirements Regarding Supportive Units. The Support Agreement shall be in effect on or prior to the date on which the SONYMA Mortgage Insurance Policy becomes effective, and shall remain in effect, by extension, renewal, or replacement, as applicable, such that at all times during the term this Agreement, unless otherwise agreed to in writing by the Agency, the Beneficial Owner or the Managing Member shall be party to a contract with the Service Provider, or any successor thereto, for the provision of supportive services and/or rental subsidy, as applicable, for the benefit of the tenants in the Supportive Units, provided that the Services Contract may be incorporated into the terms of the operating agreement of the Managing Member. Beneficial Owner shall send written notice to the Agency no less than thirty (30) days prior to the expiration of the initial and each subsequent term of the Services Contract, along with evidence of renewal or replacement thereof. In addition, Beneficial Owner shall deliver a copy to the Agency of any notice of default sent to the Service Provider, or received from the Service Provider, pursuant to the Services Contract.

7.16 Condominium Provisions.

(a) In the event of any conflict between the terms of the Condominium Documents (after creation of the Condominium) and the terms of this Agreement, the terms of this Agreement shall apply.

(b) The Beneficial Owner shall not materially amend or otherwise materially modify the Condominium Documents without the written consent of the Agency, which shall not be unreasonably withheld or delayed. The Agency shall not be bound by any such amendment or modification of the Condominium Documents made without the written consent of the Agency and any such amendment or modification made without any required consent of the Agency shall be null and void ab initio.

(c) The Agency shall release the Retail Condo Unit from the encumbrance of this Regulatory Agreement (the "Retail Condo Unit Release"), provided and on condition that:

(1) no Event of Default shall have occurred and be continuing; and

(2) The LOC Bank, Mortgagee and SONYMA have given prior written approval with respect to the Condominium and Condominium Documents; and

(3) Upon the earlier to occur of (i) release of the LOC in accordance with section 16 of the Servicing and Release Agreement and (ii) delivery to Mortgagee by Beneficial Owner of a copy of a temporary certificate of occupancy for the entire Project and evidence that the Participation Loan will be repaid or refinanced (and concurrence thereto by LOC Bank) simultaneously with the Retail Condo Unit Release; and

(4) The Agency shall have reviewed and approved any and all documents to be prepared by the Beneficial Owner and/or the LOC Bank necessary to release the Retail Condo Unit including, but not limited to, documents releasing the Beneficial Owner as obligor of the Participation Loan.

7.17 Conflicts. In the event of any conflict or ambiguity between the terms or provisions of this Agreement and the terms or provisions of any other agreement affecting the use or occupancy of the Premises or Project, whether denominated a regulatory agreement, restrictive declaration or otherwise, to be entered by Owners on the date hereof, or hereafter, the more restrictive provision shall govern.

7.18 HPD's Affordable Independent Residence for Seniors Program

(a) Zoning Resolution Definitions. Capitalized terms used in this Section 7.18 and not defined in this Agreement have the meanings given to them in the Zoning Resolution.

(b) AIRS Units.

(i) Senior Housing Restriction. The units of the Project that will comprise a portion of the Affordable Independent Residence for Seniors (except for any superintendent unit) are identified as senior housing units and “AIRS” units in Exhibit C. The Beneficial Owner shall lease each such unit in accordance with this Agreement and the following:

(A) Age Restriction. The Beneficial Owner shall lease each income-restricted unit that is identified in Exhibit C as a senior housing Unit to an eligible household that includes, upon initial occupancy, not less than one individual who is 62 years of age or older. The Beneficial Owner shall distribute the senior housing Units by apartment size as set forth in Exhibit C. If required by HPD, the Beneficial Owner shall designate the senior housing units and provide a certified schedule of unit designations to HPD upon request.

(B) Human Rights Law Waiver. The Owners confirm that the Project has obtained any required approval of the Project’s senior housing requirement from the State’s Division of Human Rights, in addition to any other approvals from other government agencies that may be necessary.

(ii) Affordability Requirements. In addition to any other restriction contained in this Agreement, which may be more restrictive, the Owner shall lease any unit that comprises a portion of the Affordable Independent Residence for Seniors (except for any Superintendent Unit) in compliance with the Zoning Resolution, including but not limited to the definitions of Affordable Independent Residence for Seniors and Income-Restricted Housing Unit in Section 12-10 of the Zoning Resolution. Without limiting the foregoing sentence, the Beneficial Owner shall lease each such unit (1) to an eligible households whose annual income upon initial occupancy does not exceed 80% of AMI; and (2) for an actual rent that does not exceed a maximum program rent of 80% of AMI, unless the unit is a rental assistance unit, in which case the Beneficial Owner may lease the Unit for an actual rent that does not exceed the rental assistance rent, as long as the Beneficial Owner neither charges nor collects from any tenant of any such unit any amount that is greater than a maximum program rent of 80% of AMI.

(c) Accessory Social and Welfare Facilities. Pursuant to the definition of Affordable Independent Residence for Seniors in Section 12-10 of the Zoning Resolution, the Beneficial Owner shall allocate not less than 4% of the total Floor Area of the Affordable Independent Residence for Seniors at the Project to related Accessory social and welfare facilities primarily for residents, such as cafeterias or dining halls, community rooms, workshops, and other essential service facilities, which may also be made available to the community, and otherwise in compliance with the Zoning Resolution.

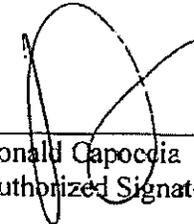
(d) Term of AIRS Restrictions. The Beneficial Owner shall comply, and shall cause the Project to comply, with this Section 7.18 until such time, if any, that all applicable certificates of occupancy with respect to the Project have been duly amended or superseded to reflect that the entire Project may be used other than as an Affordable Independent Residence for Seniors in accordance with the Zoning Resolution. The restriction period for any Units that comprise a portion of the Affordable Independent Residence for Seniors will be deemed to continue until such date.

SIGNATURE PAGE FOLLOWS

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

BENEFICIAL OWNER:

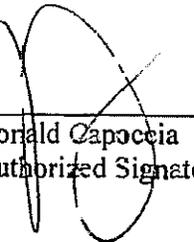
475 BAY STREET LLC,
a New York limited liability company

By: 

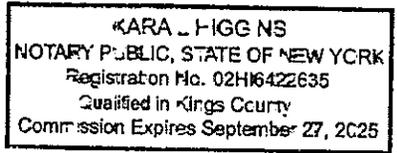
Donald Capoccia
Authorized Signatory

RETAIL OWNER:

475 BAY STREET RETAIL OWNER LLC,
a New York limited liability company

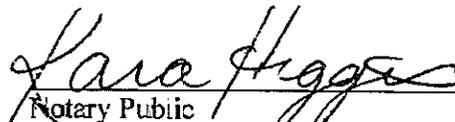
By: 

Donald Capoccia
Authorized Signatory



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

On the 7th day of December in the year 2021, before me, the undersigned, a notary public in and for said state, personally appeared **Donald Capoccia** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.



Notary Public
Commission expires: Sept. 27, 2025

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

NOMINAL OWNER:

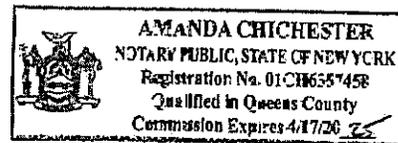
475 BAY STREET HOUSING DEVELOPMENT FUND CORPORATION
a New York not-for-profit corporation

By: *Lee Warshavsky*
Lee Warshavsky
Secretary/Treasurer

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

On the 2nd day of December in the year 2021, before me, the undersigned, a notary public in and for said state, personally appeared **Lee Warshavsky** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Amanda Chester
Notary Public
Commission expires:



SCHEDULE A

LEGAL DESCRIPTION OF PREMISES

ALL THAT CERTAIN plot, piece or parcel of land, situate, lying and being in the Borough of Staten Island, County of Richmond, City and State of New York, more particularly bounded and described as follows:

BEGINNING at a point on the easterly side of Bay Street, distant 166.50 feet northerly from the corner formed by the intersection of the easterly side of Bay Street and the northerly side of Wave Street;

RUNNING thence North 7 degrees 48 minutes 16 seconds West along the easterly side of Bay Street, 19.09 feet (U.S. Standard) 18.94 feet (Deed);

THENCE North 12 degrees 46 minutes 12 seconds East still along the easterly side of Bay Street, 160.23 feet (U.S. Standard and Deed);

THENCE South 77 degrees 36 minutes 05 seconds East, 280.06 feet (U.S. Standard and Deed) to land of the Staten Island Rapid Transit;

THENCE southerly along the westerly side of land of the Staten Island Rapid Transit on a curve to the left with a radius of 1462.69 feet, a distance of 187.46 feet (U.S. Standard) 187.40 feet (Deed);

THENCE North 76 degrees 48 minutes 48 seconds West 133.65 feet to a point parallel to Wave Street;

THENCE South 07 degrees 48 minutes 16 seconds East 101.05 feet to a point on the northerly side of Wave Street;

THENCE South 82 degrees 14 minutes 57 seconds West 30 feet along the northerly side of Wave Street;

THENCE North 07 degrees 48 minutes 16 seconds 112.53 feet to a point;

THENCE North 76 degrees 48 minutes 48 seconds West 151.02 feet to the easterly side of Bay Street to the point or place of BEGINNING.

EXHIBIT A
UNIT DISTRIBUTION AND
MAXIMUM PERMITTED GROSS MONTHLY RENTS*

Unit Type	Studio		One Bedroom		Two Bedrooms		Three Bedrooms		TOTALS
	Max Rent	# of Units	Max Rent	# of Units	Max Rent	# of Units	Max Rent	# of Units	
30% of AMI	\$1,293	59	\$1,386	79	N/A		N/A		138
80% of AMI	N/A		\$1,790	43	\$2,147	55	\$2,481	33	131
		59		122		55		33	269

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

EXHIBIT B
PROJECT SERVICES AND AMENITIES
(see attached)

SERVICES AND AMENITIES FORM

Project: 475 Bay Street, Staten Island, NY 10304

- 1) The project includes commercial space, either financed by the Agency or included in the total development cost of the project: x Yes No
- 2) There will be 1 units reserved for resident managers, superintendents and/or employees:

Unit # (If Known)	Unit Type	Residential or Commercial Use	Revenue- or Non-Revenue- Generating
1	2 Br	Residential	Non-Revenue Generating

- 3) The following services and amenities are available for a fee which is NOT included in the monthly base rent for all tenants (both affordable and market rate):

Parking spaces:

- All spaces
 Indoor parking or garages only
 Additional space(s) after one
 Other: _____

Storage space

Recreational facilities

Individual utilities:

- x Electric Heat
 Gas x A/C
 Water
 x Cable service

Laundry facilities:

- Washer/Dryer hook-up
 Washer/Dryer in unit
 x Laundry room

Structural or architectural features:

- Bay windows Den in apartment
 Balconies Vaulted ceilings
 Fireplaces
 Other: _____

Other services and/or amenities for which a fee will be charged:

If applicable, the service package for senior/congregate/assisted projects includes:

Certification: I, 475 Bay Street LLC, Owner, hereby certify that the information contained herein is accurate and correct.

Signed: 
 Title: Authorized Signatory

Dated: 7/7/21

EXHIBIT C
HPD AIRS UNITS

	APARTMENT #	AMI	Bedroom Size
1.	Apartment #211	80% AMI	3 Bedrooms
2.	Apartment #225	30% AMI	1 Bedroom
3.	Apartment #232	80% AMI	2 Bedrooms
4.	Apartment 731	30% AMI	Studio

Rider to BCA Amendment # 2 to Document a Tangible Property Tax Credit Determination

Site Name: 475 Bay Street & 31 Wave Street

Site Number: C243044

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: Andrew Guglielmi 10/16/2022

Andrew O. Guglielmi, Director
Division of Environmental Remediation

Date