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**RECORD AND RETURN TO:**

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(Space above this line for recorder's use.)

**DECLARATION OF RESTRICTIVE COVENANTS AND USE AGREEMENT**

THIS DECLARATION OF RESTRICTIVE COVENANTS AND USE AGREEMENT (this "**Declaration**"), dated as of \_\_\_\_\_, 20\_\_ by and among the NEW YORK CITY HOUSING AUTHORITY, a public benefit corporation organized under the laws of the State of New York with an address of 90 Church Street, 5<sup>th</sup> Floor, New York, New York 10007, (the "**PHA**"), \_\_\_\_\_ HOUSING DEVELOPMENT FUND CORPORATION, a New York not-for-profit corporation organized pursuant to Article XI of the Private Housing Finance Law of the State of New York with an address c/o NYCHA Law Department, 90 Church Street, 11<sup>th</sup> Floor, New York, New York 10007 (the "**HDFC**"), and \_\_\_\_\_, a New York [Entity type] with an address \_\_\_\_\_ (the "**Owner**"), for the benefit of the U.S. Department of Housing and Urban Development, with an address of 451 Seventh Street, SW, Washington, DC 20410, Attention: Office of Public Housing Investments, Special Application Center ("**HUD**").

**RECITALS**

A. The PHA is the fee owner of certain real property described in Exhibit A, attached hereto and incorporated herein (the "**Land**"). The development of the Land, the operation of the Land, and/or the acquisition of the site or sites thereof by the PHA was previously financed with assistance provided by HUD and the Land was previously used for public housing purposes pursuant to agreements by and between HUD and the PHA;

B. HUD and the PHA have released the Land from any declaration of restrictive covenants, declaration of trust and/or obligation associated with the prior public housing uses of the Land pursuant to Section 18 of the Act (as such term is defined below). In lieu of the prior restrictions, HUD and the PHA desire to restrict the ongoing use of the Land as set forth in this Declaration.

C. The PHA, the HDFC, and the Owner are entering into that certain Lease Agreement, dated as of substantially even date herewith, which will convey a leasehold interest in the Land and the improvements thereon, commonly known as \_\_\_\_\_ (the "**Development**" and

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together with a leasehold interest in the Land, the “**Premises**”) to the Owner and HDFC (the “**Lease Agreement**”);

D. The Premises is being conveyed from the PHA to the Owner pursuant to that certain Section 18 Disposition Approval issued by HUD on \_\_\_\_\_, 20\_\_ (the “**Approval**”);

E. The PHA has requested that the Owner modernize or cause the modernization of the Premises;

F. The PHA and Owner are also entering into that certain Section 8 Project-Based Voucher Program Housing Assistance Payments Contracts, effective as of \_\_\_\_\_, with respect to \_\_\_\_\_ Rental Units (as such term is defined in the Lease Agreement) at the Premises (the “**HAP Contract**”);

G. In accordance with the HAP Contract, the Premises will be operated in accordance with the Section 8 Project-Based Voucher program, associated regulations at 24 CFR Part 983 and associated guidance, as each may be amended or waived, including any such waivers that may be contained in the RAD Notice (as such term is defined in the Lease Agreement) (the “**PBV Program**”);

H. The Owner and the HDFC have elected to operate the Premises for Affordable Housing Purposes (as such term is defined below), and the parties desire to document that election in this Declaration. The specific intended Affordable Housing Purposes will include affordable rental housing pursuant to Federal or local housing programs serving Low-Income Households (as such term is defined below) at initial occupancy or as otherwise permitted by HUD; and

I. Except as otherwise agreed in writing by HUD or as set forth on Schedule B of the Owner’s title insurance policy for the Premises dated as of substantially even date herewith (the “**Title Policy**”), this Declaration is to be recorded superior to other liens on the Premises, run until the conclusion of the initial term of the HAP Contract, automatically renew upon each extension or renewal of the HAP Contract for a term that runs with each renewal term of the HAP Contract, and remain in effect even in the case of abatement or termination of the HAP Contract for the term the HAP Contract would have run, absent the abatement or termination.

## **AGREEMENT**

In consideration of the promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as set forth below. The Recitals are incorporated by reference.

### 1. Definitions.

a. “**Act**” shall mean the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 et. seq.

b. “**Affordable Housing Purposes**” shall mean any activity that supports the pre-development, development or rehabilitation of Rental Assistance Demonstration housing projects,

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public housing, housing assisted under Section 8 of the Act, properties subject to low-income housing tax credit use restrictions, or other federal or local housing programs serving households with incomes at or below 80% of area median income at initial occupancy or otherwise permitted by HUD, or that provide services or amenities that will be used primarily by Low-Income Households.

c. “**Low-Income Household**” shall mean a household with income at initial occupancy at or below 80% of area median income as defined by the Act, as may be amended.

d. “**Restricted Period**” shall mean the period the Premises is subject to the Use Requirement, as set forth in Section 2(b).

e. “**Senior Lender**” shall mean the holder(s) of the First Permitted Leasehold Mortgage (as such term is defined in the Lease Agreement).

f. “**Use Requirement**” shall mean the use restrictions set forth in Section 2(a).

2. Use Requirement.

a. Generally.

i. The Owner and PHA shall work diligently to include all eligible Rental Units at the Premises under the HAP Contract in accordance with the requirements of the PBV Program and the Approval.

ii. The Owner shall operate the Premises in compliance with the HAP Contract and the PBV Program for the duration of the term of the HAP Contract and shall renew the HAP Contract provided that such renewals are offered by the PHA.

iii. The PHA shall offer renewals of the HAP Contract when and to the extent permitted by 24 CFR 983.205, as such may be amended or replaced.

iv. The PHA, the HDFC, and the Owner, each for itself and for its successors and assigns, hereby covenants and agrees for the benefit of HUD that the Premises shall be used for Affordable Housing Purposes throughout the Restricted Period.

v. In the event of a termination of the HAP Contract or the PBV Program in part or in full during the Restricted Period, the Owner shall operate the Premises exclusively to provide housing for Low-Income Households for the duration of the Restricted Period.

vi. The PHA shall be responsible for monitoring and enforcing the Use Requirement throughout the Restricted Period.

b. Restricted Period. The Use Requirement shall encumber the Premises from the date of this Declaration through such date which is twenty (20) years following the effective date of the HAP Contract. The Use Requirement shall automatically renew for successive periods that are

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coterminous with the HAP Contract upon the simultaneous renewal of the HAP Contract. It is the intention of the parties that the HAP Contract and this Declaration shall each renew upon the completion of its initial term. Therefore, this Declaration shall remain in effect until a release is recorded as contemplated by Section 3.

c. Exceptions to the Use Requirement. The following events shall not constitute a breach of the Use Requirement:

i. Vacancy. If the Premises or any Rental Unit within the Premises is left vacant for a reasonable period.

ii. Casualties. If the Premises is damaged or destroyed by fire or other casualty and the use of the Premises in conformance with the Use Requirement ceases during a period of repairs and/or reconstruction.

iii. Takings. If the Premises is taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof.

iv. Notwithstanding the foregoing, in the event the Owner requests and is able to demonstrate to HUD's satisfaction that despite the Owner's good faith and diligent efforts to do so, the Owner is unable either (1) to comply with the Use Requirement, or (2) to otherwise provide for the financial viability of the Premises, HUD may, in its sole discretion, agree to reduce the number of Rental Units subject to the Use Requirement or otherwise modify the Use Requirement in a manner acceptable to the Owner and HUD. Any such modification of the Use Requirement shall be evidenced by a written amendment to this Declaration executed by each of the parties hereto.

3. Release. This Declaration shall remain as an encumbrance against the Premises unless and until HUD executes a release for recording. This Declaration may only be released by HUD. Such release shall be evidence of (i) the non-renewal of the HAP Contract, (ii) the determination by the PHA and the Owner not to execute a replacement HAP Contract, and (iii) the termination of this Declaration.

4. Restrictions on Transfer.

a. Except as otherwise approved in writing by the PHA and HUD or as set forth on Schedule B of the Title Policy, any lien on the Premises shall be subject and subordinate to this Declaration. Unless this Declaration is released by HUD, any transferee of the Premises shall take title subject to this Declaration.

b. In the event of a default under the HAP Contract including, without limitation, upon any transfer of the Premises without consent of PHA and HUD, upon expiration of any applicable notice and/or cure periods, PHA may transfer the HAP Contract and the rental assistance contemplated therein to another entity, property and/or project. The Owner has constituted HUD as its attorney-in-fact to effect any such transfer.

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5. Events of Default.

a. Upon breach of any of the terms of this Declaration, HUD shall give the PHA, the HDFC, the Owner, and Senior Lender (collectively, the “**Notice Parties**”) written notice of the breach. The defaulting party shall have thirty (30) calendar days after receipt of such notice of breach to cure the breach; provided that, if the defaulting party uses commercially reasonable efforts to cure the breach within the prescribed thirty (30) day period and is unable to do so, HUD may approve in writing an extension of an additional thirty (30) calendar days to cure the breach, such approval not to be unreasonably withheld, conditioned or delayed. If the breach is not corrected to the satisfaction of HUD within the prescribed cure period HUD may declare a default under this Declaration (an “**Event of Default**”) and will provide written notice to the Notice Parties of such declaration. The PHA and Senior Lender shall have the right, but not the obligation, to cure any Event of Default by the Owner or the HDFC, and HUD agrees to accept the performance of the PHA or Senior Lender as though the same had been done by the Owner or the HDFC, applicable.

Nothing contained in this Declaration shall limit, restrict, inhibit or delay the rights and remedies of Senior Lender, its successors and/or assigns as provided in the Senior Mortgage and Senior Loan documents with respect to a default thereunder, including, but not limited to, collecting rents, revenue, income or receipts from the Premises and/or taking possession of the Premises, whether by foreclosure, a deed-in-lieu of foreclosure, or comparable conversion and transferring the Premises to a new owner; provided, however, that such rights and remedies, upon being exercised, remain subject to this Declaration as a whole.

b. Upon an Event of Default, PHA or HUD shall have all other remedies available under statute, at law or in equity. No person or entity, other than the parties to this Declaration, has any rights or remedies under this Declaration. Further, HUD or the PHA may take whatever investigative steps it deems necessary to ensure compliance. In the Event of Default, to the extent permitted by applicable law, PHA or HUD shall have the right to seek specific performance of this Declaration and/or to enjoin any violation of this Declaration in Federal Court. The right to specific performance and injunction shall be in addition to all other remedies available to PHA or HUD under statute, at law or in equity.

6. Third Party Beneficiaries. No person or entity, other than the parties to this Declaration, has any rights or remedies under this Declaration.

7. Successors and Assigns. Recordation of this Declaration shall constitute the agreement by Owner to be bound by and to comply with the restrictions set forth in this Declaration. The benefits and burdens of this Declaration touch and concern and run with the land and are binding upon and shall inure to the benefit of the respective successors and assigns of the parties to this Declaration, including any PHA-approved transferee.

8. Notices. All notices under this Declaration shall be in writing and shall be served by (a) personal service or receipted courier service, (b) by registered or certified first-class mail, return receipt requested, or (c) nationally-recognized overnight delivery service, addressed to Owner, HUD or the PHA, as appropriate, at the addresses for such parties set forth above. Any

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notice or other communication sent pursuant to clause (a) hereof shall be deemed received upon such personal service, if sent pursuant to clause (b) shall be deemed received seven (7) calendar days following deposit in the mail, and/or if sent pursuant to clause (c) shall be deemed received the next succeeding business day following deposit with such nationally recognized overnight delivery service. Any party may change its address by notice given in accordance with this Section 8.

**PHA:**

New York City Housing Authority  
90 Church Street, 5<sup>th</sup> Floor  
New York, New York 10007  
Attention: Vice President for Real Estate Development

**With copies to:**

New York City Housing Authority  
90 Church Street, 11<sup>th</sup> Floor  
New York, New York 10007  
Attention: Associate General Counsel for Real Estate and Economic Development

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**HUD:**

U.S. Department of Housing and Urban Development  
451 7th Street SW, Room 4100  
Washington, DC 20410  
Attention: Office of the Assistant Secretary for Public and Indian Housing

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**OWNER:**

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**SENIOR LENDER:**

At the addresses set forth at Exhibit C of the Lease Agreement.

9. **Amendments.** This Declaration may be amended only by a written instrument signed by the parties to this Declaration. Notwithstanding the foregoing, the parties may not amend, modify, rescind, revoke and/or terminate this Declaration without the prior written approval of HUD.
10. **Subordination.** Any mortgage liens shall be subject and subordinate to this Declaration. This Declaration shall survive foreclosure and bankruptcy.

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11. Fair Housing and Civil Rights Requirements. The Owner and its agents, where applicable, shall ensure that the Premises complies with applicable federal fair housing and civil rights laws, regulations, and other legal authorities, including those identified at 24 C.F.R. § 5.105.

12. Accessibility Requirements. The Owner and its agents, where applicable, shall ensure that the Premises complies with all applicable federal accessibility requirements under the Fair Housing Act and implementing regulations at 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8, and Titles II and III of the Americans with Disabilities Act and implementing regulations at 28 CFR Parts 35 and 36, respectively.

13. Execution of Other Declarations. Owner covenants and agrees that it has not and shall not execute any other agreement with provisions contradictory of, or in opposition to, the provisions of this Declaration, and that in any event, the provisions of this Declaration are paramount and controlling as to the rights and obligations set forth herein and supersede any conflicting requirements.

14. Governing Law. This Declaration shall be governed, construed and interpreted in accordance with the laws of the State of New York, and the parties shall submit to the jurisdiction and venue of the courts in the City and County of New York.

15. Severability. The invalidity or unenforceability of any clause, part or provision of this Declaration shall not affect the validity or enforceability of the remaining portions thereof.

16. Counterpart Signatures. This Declaration may be executed in any number of original counterparts, all of which evidence only one agreement, and only one of which need be produced for any purpose.

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IN WITNESS WHEREOF, the PHA, the HDFC and the Owner have each duly executed this Declaration as of the date first written above.

**PHA:**

**NEW YORK CITY HOUSING AUTHORITY,**  
a New York public benefit corporation

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

**HDFC:**

\_\_\_\_\_ **HOUSING DEVELOPMENT FUND**  
**CORPORATION,** a New York not-for-profit corporation

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

[Signatures continue on next page]



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**OWNER:**

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

TEMPLATE

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**Exhibit A**  
**Legal Description**

TEMPLATE