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RECORD AND RETURN TO:

REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT (this “**Agreement**”), dated as of _____, is 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, 5th 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, 5th Floor, New York, New York 10007 (the “**HDFC**”), and _____, a New York [limited liability company/ partnership] with an address at _____ (the “**Owner**”).

RECITALS

- A. The PHA’s mission is to increase opportunities for low- and moderate-income New Yorkers by providing safe, affordable housing and facilitating access to social and community services.
- B. The PHA has adopted in collaboration with the New York City Rental Assistance Demonstration Roundtable on Resident Rights and Protections those certain “Principles for the Rental Assistance Demonstration: Supplemental Resident Rights and Protections Under RAD Conversion” dated as of June 13, 2016 (the “**PACT Principles**”);
- C. The PHA is the fee owner of certain real property described in Exhibit A, attached hereto and incorporated herein (the “**Property**”);
- D. The PHA, the HDFC, and the Owner are entering into that certain Lease Agreement, dated as of even date herewith (the “**Lease Agreement**”), which will convey a leasehold interest in the affordable housing development commonly known as _____ (the “**Development**”) to the HDFC and Owner;
- E. The Owner and the HDFC have elected to operate the Development for affordable housing purposes and documented such elections in the RAD Use Agreement and HUD Declaration (as such terms are defined below);
- F. Furthermore, PHA, either directly or through its affiliate, possesses certain approval rights and oversight of the Development and its continued affordability under the Lease Agreement, the Owner’s [Amended and Restated Partnership Agreement], that certain Control Agreement between PHA and the Owner, those certain subsidy contracts between the PHA and Owner

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providing operating assistance to the Development, and that certain Payment in Lieu of Tax Agreement applicable to the Development (the “**PILOT**”); and

G. The PHA, the HDFC and the Owner desire to further encumber the Property with this Agreement in order to preserve the Development as affordable housing by setting forth below certain rights afforded the PHA.

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. “**Effective Date**” shall mean the date of this Agreement.
- b. “**HUD Declaration**” shall mean, collectively, those certain Declarations of Restrictive Covenants and Use Agreements by and among PHA, Owner and HDFC, dated as of substantially even date herewith and recorded simultaneously herewith.
- c. “**Persons of Low Income**” and “**Families of Low Income**” shall have the meaning set forth in section two of the Private Housing Finance Law of the State of New York, as may be further restricted by the definition of the same terms in section three of the Public Housing Law of the State of New York.
- d. “**Project Documents**” shall mean the RAD Use Agreement, the HUD Declaration, the Lease, and the Control Agreement.
- e. “**RAD Use Agreement**” shall mean, collectively, those certain Rental Assistance Demonstration Use Agreements by and among HUD, PHA, Owner and HDFC, dated as of substantially even date herewith and recorded simultaneously herewith.
- f. “**Restricted Period**” shall mean the period the Property is subject to the Use Requirement, as set forth in Section 2(b).
- g. “**Use Requirement**” shall mean the use restrictions set forth in Section 2(a).

2. Use Requirement.

a. Generally. The PHA, the HDFC, and the Owner, each for itself and for its successors and assigns, hereby covenants and agrees that initial occupancy of all residential units in the Development shall be restricted as set forth in the Project Documents; provided, however in the event of a conflict in the Project Documents, the more restrictive requirement shall control. In the event that the RAD Use Agreement and/or HUD Declaration terminate or expire, initial occupancy of all residential units in the Development shall be made available to Persons of Low Income and Families of Low Income throughout the period set forth in Section 2(b).

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b. Restricted Period. The Use Requirement shall encumber the Property from the Effective Date through such date which is ninety-nine (99) years following the Effective Date.

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

i. Vacancy. If any unit in the Development is left vacant for a reasonable period and Owner is exercising commercially reasonable efforts to eliminate such vacancy.

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

iii. Takings. If the Development 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.

3. PHA Approval and Removal Rights. PHA, either directly or through its affiliate(s), shall have the right to:

a. approve certain actions in accordance with the Operating Agreement of _____ (the “[**Sole Member/Managing Member/General Partner**]”), a [New York limited liability company] and the [sole member/managing member/general partner] of the Owner (the “[**Operating Agreement**]”), including but not limited to:

i. approval and adoption of the form of residential lease, tenant screening process, and tenant selection method and any modification thereof, in compliance with the RAD Requirements or the PBV Requirements for the Development, as applicable, and the PACT Principles; and

ii. any action having a material adverse impact on the affordability of the Development or the Development’s continued eligibility for the PILOT;

b. cause the removal of the managing member/general partner of the [Sole Member/Managing Member/General Partner] upon the occurrence of a “Removal Event” as described in the Operating Agreement which Removal Events shall include, but not be limited to, failure to comply with and subsequent failure, after notice thereof, to correct instances of non-compliance with the Lease Agreement, the RAD Requirements, the PBV Requirements, the Control Agreement or the PACT Principles, provided that such failure has a material adverse effect on the operation of the Development; and

c. in accordance with the Operating Agreement, be permitted to ensure that the Development be maintained and operated as affordable housing, as such affordability standards may be determined by PHA or its affiliate(s) in its reasonable discretion and in accordance with the RAD Requirements, the PBV Requirements, the Control Agreement, the PACT Principles and regulatory agreements entered into by the Owner.

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4. Release. This Agreement shall remain as an encumbrance against the Property for the Restricted Period unless there is mutual consent by the PHA, the HDFC and the Owner to release prior to the termination of the Restricted Period. The release of this Agreement shall not affect the restrictions imposed by any other document recorded against the Property or to which the PHA, Owner and HDFC are parties affecting the Property and the Development.

5. Subordination.

a. This Agreement is subordinate to the RAD Use Agreement and the HUD Declaration. If there are any conflicts between the provisions of this Agreement and the RAD Use Agreement and the HUD Declaration, the provisions of the RAD Use Agreement and the HUD Declaration shall control.

b. This Agreement and all terms and conditions contained herein shall be subject to and subordinate to, in all respects, any lien secured by any mortgage encumbering the Property (including future mortgages executed after the date hereof) held by any lender and any rights of any lender secured by such mortgages.

c. In the event of any inconsistency between the Use Requirement and the tenant income requirements set forth in any other document recorded against the Property, the most restrictive tenant income requirement shall control.

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

7. Successors and Assigns. Recordation of this Agreement shall constitute the agreement by Owner to be bound by and to comply with the restrictions set forth in this Agreement. The benefits and burdens of this Agreement 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 Agreement, including any PHA-approved transferee.

8. Notices. All notices under this Agreement 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, or the PHA, as appropriate, at the addresses for such parties set forth above. Any 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, 5th Floor
New York, New York 10007
Attention: Vice President for Real Estate Development

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

OWNER:

9. Amendments. This Agreement may be amended only by a written instrument signed by the parties to this Agreement.
10. Governing Law. This Agreement 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.
11. Severability. The invalidity or unenforceability of any clause, part or provision of this Agreement shall not affect the validity or enforceability of the remaining portions thereof.
12. Counterpart Signatures. This Agreement 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.
13. Definitions. All initially capitalized terms used in this Agreement, if not otherwise defined herein, shall have the meanings ascribed to such terms in the Operating Agreement.

[Remainder of this page intentionally left blank].

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IN WITNESS WHEREOF, the PHA, the HDFC and the Owner have each duly executed this Agreement 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

[Attached]

TEMPLATE