

REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT entered into as of the __ day of _____, _____, by and between, and _____ **HOUSING DEVELOPMENT FUND CORPORATION** ("Owner"), a corporation formed under the Business Corporation Law and Article XI of the Private Housing Finance Law, whose address is _____ and **THE CITY OF NEW YORK** ("City"), a municipal corporation of the State of New York acting by and through its **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT** ("HPD"), having an office at 100 Gold Street, New York, New York 10038.

WHEREAS, on _____ ("Sale Date"), Owner acquired certain real property conveyed to it by the City ("Premises"), as more particularly described in Schedule A annexed hereto; and

WHEREAS, pursuant to the terms of sale, the Premises is operated as a cooperative; and

WHEREAS, this Regulatory Agreement is being entered into pursuant to Section 577-b of the Private Housing Housing Finance Law.

NOW THEREFORE, the parties hereby agree as follows:

1. **Suspension of Tax Arrears**

- (a) The City shall suspend the obligation of Owner to pay real estate taxes attributable to the Premises, including interest and penalties if any, that accrued prior to January 1, 2001 ("Tax Arrears"). Such suspension shall continue provided that Owner complies with the terms of this Regulatory Agreement.
- (b) The City shall forgive all the Tax Arrears if Owner complies with and certifies at such time that it has complied with this Regulatory Agreement for a period of ten (10) years from the date hereof.
- (c) The City may reinstate all suspended Tax Arrears if Owner, during the first ten (10) years of the Restriction Period (hereinafter defined), fails to comply with this Regulatory Agreement.

2. **Term Of Restrictions**

The term of the restrictions set forth in this Regulatory Agreement shall commence on the date hereof and shall terminate on the thirtieth (30th) anniversary of the date hereof ("Restriction Period").

3. **Restrictions on Renting and Subletting; Rights of Certain Tenants**

- (a) Owner shall be prohibited from renting vacant units if Owner owns more than 20% of the units in the Premises.
- (b) Owner shall not rent units, and shall prohibit shareholders from subletting units, to households whose Annual Household Income (as defined below) at the time of initial occupancy exceeds 120% of the area median income as determined from time to time by the United States Department of Housing and Urban Development ("Median").

- (c) Owner shall prohibit shareholders from subletting units for a period longer than eighteen (18) months per five year period per unit.
- (d) Notwithstanding anything to the contrary in this Agreement, tenants who were renting units on the Sale Date and have been continuously renting units from the Sale Date to the date of this Agreement shall be entitled to remain in occupancy in accordance with the terms of their current leases. Owner shall have the option, but not the obligation, to renew their leases at the end of their terms notwithstanding that such tenant's Annual Household Income may be greater than 120% of the Median.

“Annual Household Income” shall mean (i) when referring to the income of one tenant, the total income from all sources received by such tenant, including all net income derived from assets, for the prior calendar year, as evidenced by such tenant’s federal tax return for such year, and (ii) when referring to the income of a tenant household, the total income from all sources received by such household, including all net income derived from assets, for the prior calendar year, as evidenced by such household’s federal tax return for such year.

4. Restriction on Sales

- (a) Owner shall not sell units to any household whose Annual Household Income exceeds 120% of Median.
- (b) Owner shall prohibit shareholders from selling units to any household whose Annual Household Income exceeds 120% of Median except for a member of a household who had been a primary resident for 2 years.

6. Increase of Maintenance Charges / Assessments.

If necessary, Owner shall increase maintenance charges or impose assessments to insure that Owner can meet its financial and other obligations.

7. Transfer Fee

Owner shall require that, upon a sale of a unit by a shareholder, the shareholder must pay the Owner 30% of the resale profits from such sale. “Resale profits” shall mean (i) the gross sales price for such sale, less (ii) the sum of the consideration paid by such shareholder when purchasing the unit plus special assessments for building wide improvements sales. “Sales price” shall include the principal amount of any loan used to finance the sale, non-cash consideration, cash, real property, and personal property.

[Notwithstanding the provisions of any previous document entered into between Owner and HPD, no portion of the resale profits from a sale of a unit by a shareholder shall be payable to the City.]

8. Primary Residency

Owner shall prohibit shareholders from occupying or using a unit or any part of it to be occupied or used for any purpose other than as a primary residence for the shareholder, the shareholder’s spouse, children, parents, brothers, sisters, grandparents, grandchildren and

domestic employees, without the prior written approval of Owner. "Primary residence" is defined as follows: (a) The shareholder is domiciled at the unit or (b) if not domiciled at the unit, the shareholder had spent more than 183 days in the preceding calendar year at the unit, unless the shareholder is in active service in the Armed Forces of the United States or began occupancy of the unit during the preceding calendar year.

9. **Management**

Owner shall manage and operate the Premises in accordance with generally acceptable management practices in New York City, including, but not limited to, the following:

- (a) Owner shall cause the Premises to be maintained and operated in a proper, safe, sanitary and healthful condition in compliance with all applicable legal requirements, and to make all necessary repairs and replacements.
- (b) Owner shall pay all municipal charges in a timely manner, including taxes, assessments (and installments of any assessments that are payable in installments), water charges, sewer rents, and other charges, including without limitation, vault charges and license fees for the use of vaults, chutes, and similar areas adjoining the Premises, now or hereafter levied or assessed against the Premises (hereinafter referred to as the "Charges") prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof.
- (c) Owner shall keep the buildings, improvements and all other property on the Premises insured by procuring general liability and building policies issued by an insurance company licensed in the State of New York providing sufficient coverage against fire, vandalism, malicious mischief, collapse, flood (if in a federally designated flood area), earthquakes and other risks customarily insured against under extended coverage policies in the City of New York. Owner shall provide HPD on an annual basis with copies of insurance certificates in form satisfactory to HPD evidencing compliance with such requirements.

HPD shall have full power to investigate into and order Owner to furnish such reports and information as HPD may require concerning the management and operation of the Premises, and shall have full power to inspect the Premises and audit the books of Owner with respect to such matters.

10. **Training for Directors**

All persons who, as of the date hereof and at any time during the Restriction Period, are members of Owner's board of directors shall take at least one training course in housing management approved by HPD.

11 **Books, Records and Certifications**

- (a) Owner shall keep and maintain full and accurate books and records regarding maintenance, operation and management of the Premises and comply with customary financial and other reporting requirements, and shall permit HPD to review, examine and audit such books and records at all reasonable hours. Owner shall submit to HPD such reports and information as HPD may require. Said books and records shall be retained by Owner for six (6) years after the expiration of the

Restriction Period. Upon ten (10) days' written notice from HPD Owner, including any of its members, officers, directors, employees or agents, shall submit under oath, to an oral examination by authorized representative(s) of HPD concerning any or all matters relating to the Premises and shall produce for examination, review and/or audit by HPD all or such books and records, including, without limitation, journals, ledgers, accounts, check books, canceled vouchers, contracts, correspondence, stock book and minute book, as such notice may specify. Such notice shall specify the time and place of examination.

- (b) Owner shall also deliver to HPD, upon request, duly issued receipts or other evidence satisfactory to HPD evidencing payment of Charges.
- (c) Owner shall submit to HPD annually, in such forms as shall be approved by HPD, (i) a statement of the income and expenses of the Premises, (ii) a copy of the certified annual financial report with certification of its distribution to shareholders, and (iii) certification of an annual election with the names and addresses of board members and officers. Owner shall distribute copies of such certification to all shareholders.

12. **Reserve Fund**

- (a) Within sixty (60) days of the date of this Agreement, Owner shall establish a Reserve Fund for the Premises on the terms and conditions hereinafter described ("Reserve Fund"). The Reserve Fund shall be an FDIC-insured or NCUA-insured interest-bearing blocked bank account at a financial institution acceptable to HPD. The resolution filed with the bank when such account is established shall provide that no withdrawals may be made from such account unless the withdrawal request is accompanied by an "Authorization for Expenditure of Funds" signed by a designated official of HPD. Further, such resolution shall provide that it shall remain in full force and effect unless and until revoked with the written consent of HPD. In addition, Owner may not make any withdrawal from the Reserve Fund unless such withdrawal is approved by a majority of Owner's Board of Directors. All documents and agreements required by the depository bank in order to establish the Reserve Fund shall be submitted to HPD within thirty (30) days of the date hereof for HPD's review and approval.
- (b) Owner shall deposit an initial sum of \$200/per dwelling unit in the Premises into the Reserve Fund and shall deposit the sum of \$200/per dwelling unit in the Premises on the first anniversary of the date of this Agreement and on every anniversary date of this Agreement thereafter throughout the Restriction Period.
- (c) Owner may not make a withdrawal from the Reserve Fund without having obtained HPD's prior approval. Owner, from time to time, may make a written request to HPD for HPD to approve a withdrawal from the Reserve Fund for the purpose of paying for a building repair or replacement for the Premises (the "Work") or for extraordinary costs resulting from unanticipated and unbudgeted substantial increases in operating expenses ("Emergency Expense"). Such request shall contain (i) a detailed description of the Work or Emergency Expense, (ii) an explanation of the need for the Work or the need to pay for the Emergency Expense, (iii) the itemized cost of the Work or Emergency Expense and how the cost was determined, (iv) the estimated time frame for the Work (where applicable), (v) an explanation of the need to use funds in the Reserve Fund to pay for the Work or Emergency Expense rather

than funds in Owner's regular operating account or any other account established for the Premises, and (vii) a corporate resolution approving such withdrawal. If HPD approves the request, HPD will approve a withdrawal from the Reserve Fund in the amount stated in the approved request.

- (d) The terms and conditions of the Reserve Fund shall provide that it may not be amended in any way without the approval of HPD.
- (e) Owner shall inform all shareholders in writing of any withdrawal from the Reserve Funds prior to such withdrawal. Such information shall include, at the minimum, the amount to be withdrawn and the purpose for the withdrawal.

13. Amendment of Owner's Certificate of Incorporation, By-Laws and Proprietary Leases

Owner represents that its Certificate of Incorporation, by-laws and forms of proprietary leases have been amended to reflect the provisions of this Regulatory Agreement.

14. Enforcement

If a violation of any of the foregoing covenants occurs or is attempted, and such occurrence or attempt is uncorrected for a period of thirty (30) days after written notice from HPD, or if the condition giving rise to the violation is such that correction or cure is impossible or impracticable to complete within such time period, and Owner does not commence to cure or correct the violation within such time period and does not thereafter diligently pursue the cure or correction of such violation, then the City and its successors and assigns, without regard to whether the City and its successors and assigns is an owner of any land or interest therein to which these covenants relate, shall have the right to

- (a) institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by Owner, its successors and assigns, of its obligations hereunder;
- (b) appoint to the board of directors of Owner a number of new directors, which number shall be sufficient to constitute a majority of such board, notwithstanding any other provision in the certificate of incorporation of Owner; and/or
- (c) order such repairs as will preserve the health and safety of the occupants of the Premises.

No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation hereof at any later time.

These rights are in addition to the City's right to discontinue the suspension of Tax Arrears or to reinstate Tax Arrears if Owner fails to comply with this Regulatory Agreement.

15. Investigations

Owner agrees to be bound by the provisions of the Investigation Clause attached hereto as Exhibit B.

16 Binding Nature Of Restrictions

As to the Premises, the restrictions set forth in this Regulatory Agreement shall run with the land and bind Owner, the Owner, the Owner's successors, assigns, heirs, grantees, and lessees, but only for the term of the Restriction Period.

17. Notices

All notices, approvals, requests, waivers, consents or communications given or required to be sent under this Agreement shall be in writing and shall be personally delivered, or sent by certified mail, return receipt requested, addressed as follows:

- A. When sent to Owner, at the address first set forth above, with copies sent to all then current members of Owner's Board of Directors.
- B. When sent to the City it shall be addressed to the following:

Department of Housing Preservation and Development
100 Gold Street
New York, New York 10038
Attention: Commissioner

Any notice given hereunder shall be deemed to have been given when personally delivered if given by personal delivery or on the third day after such notice has been deposited in the United States mail, postage prepaid, addressed as aforesaid. Any notices of a change in address shall only be deemed given when received by the other party.

Each party shall notify the other in the case of a change in address, which changed address shall thereafter be the address to which notices are sent.

18. Expiration

Upon the expiration of the Restriction Period, this Regulatory Agreement shall become null and void and of no further force and effect with respect to the Premises and HPD shall, at its sole cost and expense, execute and deliver to the Owner any document in recordable form requested by the Owner to reflect the expiration of this Regulatory Agreement with respect to the Premises.

IN WITNESS WHEREOF, this Regulatory Agreement has been duly executed by the City of New York and Owner.

**CITY OF NEW YORK, ACTING BY AND
THROUGH ITS DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT**

By: _____

_____ HOUSING DEVELOPMENT
FUND CORPORATION

By: _____
Print Name:
Print Title:

APPROVED AS TO FORM
BY STANDARD TYPE OF CLASS
FOR USE UNTIL _____

By: _____
Acting Corporation Counsel

EXHIBIT A

Property Description

All those certain plots, pieces and parcels of land, with the buildings and improvements thereon erected, situate, lying and being in the City and State of New York, designated on the Tax Map of the City of New York as:

Block(s) Lot(s) Address(es)

County:

EXHIBIT B

Investigation Clause Rider

- (a) The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contracts, lease, permit, or license that is the subject of the investigation, audit or inquiry.
- (b) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witness and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;
- (c) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;
- (d) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- (e) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph (g) below without the City incurring any penalty or damages for delay or otherwise.
- (f) The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:
 - (1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or

transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

- (2) The cancellation or termination of any and all such existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.
- (g) The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate:
- (1) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
 - (2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
 - (3) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
 - (4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (f) above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in (d) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
- (h)
- (1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
 - (2) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
 - (3) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

- (4) The term "member" as used herein shall be defined as any person in association with another person or entity as a partner, officer, principal or employee.

- (i) In addition to and notwithstanding any other provisions of this Agreement the Commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three (3) days written notice in the event the contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

REGULATORY AGREEMENT

BETWEEN

AND

AND

THE CITY OF NEW YORK

Block(s) Lot(s) Address(es)

County:

RECORD AND RETURN TO:

_____, Esq.
Department of Housing Preservation
and Development
Office of Legal Affairs
100 Gold Street, Room 5-____
New York, New York 10038
