

# SEIDEN & SCHEIN, P.C.

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OF COUNSEL:  
DAVID F. YAHNER  
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April 13, 2017

**By Hand**

Pramila Louison  
421-a Tax Exemption Unit  
The City of New York Department of  
Housing Preservation and Development  
100 Gold Street, 8th Floor  
New York, New York 10038

Re: 79 Avenue D, New York, New York 10009  
Block 376 / Lot 33 (to be apportioned into condominium tax lots)  
421-a Preliminary & Final Applications  
Online Application Project Sequence No. 64135

Dear Ms. Louison:

This firm represents Avenue D Owners LLC & Avenue D Affordable LLC, the Applicant for 421-a benefits for the above-listed property. Enclosed herewith, please find a check for \$100.00 and the following documents for Preliminary Certification of Eligibility for partial tax exemption under section 421-a of the Real Property Tax Law:

1. Final Application
2. RP-602c
3. Copy of the Survey and Certificate of Occupancy
4. Proof of receipt of Notice to Community Board will be submitted upon availability
5. Regulatory Agreement
6. Architect's/Engineer's Certification
7. Opinion of Counsel
8. Owner's Affidavit
9. One set of DoB approved and marked Architectural and Zoning sheets of the Plans, initialed and dated April 3, 2017

RECEIVED  
421-A&B PARTIAL  
TAX EXEMPTION PROJECT  
2017 APR 20 PM 2:22

Thank you for your assistance with this matter. If you require any additional information or documentation, please contact me.

Yours truly,  
SEIDEN & SCHEIN, P.C.

Jay G. Seiden

Enc.



UNITED STATES  
POSTAL SERVICE®

# POSTAL MONEY ORDER

Serial Number

23690860042

Year, Month, Day

2017-04-06

Post Office

100221

U.S. Dollars and Cents

\$100.00

Amount One Hundred Dollars and 00/100

Pay to

New York City Department of Finance

Clerk

03

Address

100 Gold Street, New York, NY

From

Address

Memo

79 Avenue D - 421-a application filing fee

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SEE REVERSE WARNING • NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS

⑈000008002⑈

23690860042⑈



Department of  
Housing Preservation  
& Development

NYC Department of Housing Preservation and Development

Division of Housing Incentives

## Application for Preliminary Certificate of Eligibility for Partial Tax Exemption

Mail to: NYC Department of Housing Preservation and Development 421-a Partial Tax Exemption Program, 100 Gold Street, Room 8-C09, New York, NY 10038 (212) 863-8540 Fax (212) 863-5899

Instructions: Once you have completed filling out the application and have submitted it electronically to HPD, you must also print, sign and send a hard-copy to the 421-a Partial Tax Exemption Program at HPD along with all required affidavits and documentation. If construction commenced on or after December 28, 2007, each multiple dwelling must contain four (4) dwelling units or more (unless it is built with substantial government assistance). If construction commenced before December 28, 2007, three (3) or more dwelling units is sufficient.

### Section 1B: Entity Owner Information

Entity Type **Limited Liability Company (LLC)**

Entity Name **Avenue D Owners LLC**

Name **David Dishy**

Title **Authorized Signatory**

House No **419**

PO Box/Suite/Floor **18th Floor**

City **New York**

Country **USA**

Phone

Email

Street Name **Park Avenue South**

State **NY**

Zip code **10016**

Fax

RECEIVED  
421-A&S PARTIAL  
TAX EXEMPTION PROGRAM  
2017 APR 20 PM 2:22

### Section 1B: Entity Owner Information

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Entity Name **Avenue D Affordable LLC**

Name **David Dishy**

Title **Authorized Signatory**

House No **419**

PO Box/Suite/Floor **18th Floor**

City **New York**

Country **USA**

Phone

Email

Street Name **Park Avenue South**

State **NY**

Zip code **10016**

Fax

### Section 2: Filing Representative Information

Filing Representative Type **Entity**

Company Name **Seiden & Schein, P.C.**

Name of Contact Person

Name **Jay G Seiden**

House No **570**

PO Box/Suite/Floor **14th Floor**

City **New York**

Country **USA**

Phone **(212) 935-1400**

Email **jayseiden@seidenschein.com**

Street Name **Lexington Avenue**

State **NY**

Zip code **10022**

Fax **(212) 593-4545**

### Section 3A: Project Location Information Project Type : RENTAL

Commencement of construction date

**06/05/2015**

Estimated Year of Construction Completion

**11/01/2018**

Borough	MANHATTAN	Block	00376	Lot	0033	Tax Class	4
Base Year AV	\$1,014,602.00	GEA	Y	REMIC	Y	NPP	N
Will the project involve any subdivision or merger of current lot(s)?				Y			

### Section 3B: Building Location Information

House Number	79	Street Name	Avenue D	Zip Code		Tentative Lot	33
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### Section 3C: Other Standards for Review

Are negotiable certificates being used to qualify a project located in a 421-a geographic exclusion area?	N
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Will this project or any part of this project be receiving tax exemption or tax abatement under any other provision of state or local law?	N
--	---

Was this project site mapped as a public park or utilized for 10 or more consecutive years as a private park immediately prior to October 1, 1971?	N
--	---

Will any part of this project be used as a hotel or for single room occupancy ?	N
---	---

Does this project contain more than 20 dwelling units?	Y
--	---

Were there Class A residential units on the site one month prior to the start of construction?	N
--	---

Does the new project contain at least 5 dwelling units for each Class A dwelling unit on the site one month prior to the new construction?	N/A
--	-----

### Section 3D: Substantial Government Assistance and Affordability Restrictions

Is the project being constructed with Substantial Governmental Assistance?	Y
--	---

Is the Substantial Governmental Assistance pursuant to a program for the development of affordable housing?	Y
---	---

Are at least 20% of the project's units subject to affordability restrictions?	Y
--	---

There is a requirement that at least 20% of the onsite units be affordable to Low and Moderate Income households, as defined in 28 RCNY § 6-01 (c).	N
---	---

There is a requirement that at least 20% of the onsite units be affordable to individuals and families at or below 80% of Area Median Income(AMI).	Y
--	---

There is a requirement that at least 20% of the onsite units be affordable to individuals and families at or below 60% of AMI.	N
--	---

There is a requirement that at least 20% of the onsite units be affordable to individuals and families at or below 120% of AMI, and the average AMI does not exceed 90%.	N
--	---

There is a requirement that at least 20% of the onsite units be affordable to individuals and families at or below 120% of AMI.	N
---	---

There is a requirement that at least 20% of the onsite units be affordable to individuals and families at or below 125% of AMI.	N
---	---

**Section 4A: Building Cost Information      Lot No 0033**

Did you purchase the lot within two (2) years prior to the start of construction?	Y
Please enter purchase price:	\$12,500,000.00
Did you purchase the lot more than two (2) years prior to the start of construction?	
Please enter appraised value at the start of construction:	N/A
Is the lot being performed under a ground lease?	N
Please indicate monthly rent payable during period of construction:	N/A
Please indicate length of a ground lease in months:	N/A

**Section 4B: Project Cost Information**

Total Construction Costs:	\$33,849,202.00
Total Builder's Fee/Developer's Profit:	\$0.00
Total Professional and Other Fees:	\$2,062,625.00
Total Marketing Expenses:	\$278,800.00
Total Financing and Other Charges:	\$7,592,283.00
Total Project Cost:	\$56,282,910.00

**Section 5A: Annual Costs**

Labor (for 6 plus units only):	\$294,051.00
Contractor services:	\$96,700.00
Fuel:	\$0.00
Electricity:	\$154,000.00
Insurance:	\$41,300.00
Water and sewer:	\$0.00
Vacancy, management & administrative fees:	\$107,300.00
Parts and supplies:	\$0.00
Gas:	\$0.00
Real estate taxes:	\$126,704.00
Replacement reserve:	\$27,500.00
Other:	\$21,000.00
Total annual costs for entire project:	\$868,555.00

**Section 5B: Annual Income from Other Sources**

Parking:	\$0.00
Commercial space:	\$354,000.00
Washing and vending machines:	\$0.00
Other income sources (a):	\$0.00

# Section 6A: Building Specifications

79 Avenue D

Tentative Lot: 33

Did any portion of the building apply for the Industrial and Commercial Incentive or Abatement programs (ICIP or ICAP)?

N

Does the building include new residential construction and the concurrent conversion, alteration or improvement of a pre-existing building or structure?

N

Commencement of construction date

06/05/2015

DOB/BIS Job Number

121192574

Building Permit Type

New Building Permit

Floor	Residential A.F.A.	#0 BR	#1 BR	#2 BR	#3 BR	#4 BR	#5 BR	#6 BR	#7 BR	#8 BR	# of Dwelling Units	# Rooms	Non-Residential A.F.A. and Ineligible Residential A.F.A.
R	0.00	0	0	0	0	0	0	0	0	0	0.00	0.00	468.00
Non-Residential A.F.A. and Ineligible Residential A.F.A. Description Bulkhead													
12	7,126.83	1	2	4	0	0	0	0	0	0	7.00	27.50	0.00
Non-Residential A.F.A. and Ineligible Residential A.F.A. Description													
11	7,126.83	1	2	4	0	0	0	0	0	0	7.00	27.50	0.00
Non-Residential A.F.A. and Ineligible Residential A.F.A. Description													
10	7,385.17	1	2	3	1	0	0	0	0	0	7.00	28.50	0.00
Non-Residential A.F.A. and Ineligible Residential A.F.A. Description													
9	7,385.17	1	2	3	1	0	0	0	0	0	7.00	28.50	0.00
Non-Residential A.F.A. and Ineligible Residential A.F.A. Description													
8	8,143.50	4	3	3	0	0	0	0	0	0	10.00	34.00	0.00
Non-Residential A.F.A. and Ineligible Residential A.F.A. Description													
7	9,373.28	6	4	3	0	0	0	0	0	0	13.00	42.50	0.00
Non-Residential A.F.A. and Ineligible Residential A.F.A. Description													
6	9,373.28	6	4	3	0	0	0	0	0	0	13.00	42.50	0.00
Non-Residential A.F.A. and Ineligible Residential A.F.A. Description													
5	9,373.28	6	4	3	0	0	0	0	0	0	13.00	42.50	0.00
Non-Residential A.F.A. and Ineligible Residential A.F.A. Description													
4	9,373.28	6	4	3	0	0	0	0	0	0	13.00	42.50	0.00
Non-Residential A.F.A. and Ineligible Residential A.F.A. Description													
3	9,373.28	5	4	2	1	0	0	0	0	0	12.00	41.00	0.00
Non-Residential A.F.A. and Ineligible Residential A.F.A. Description													
2	7,304.28	3	3	1	1	0	0	0	0	0	8.00	28.00	2,069.00
Non-Residential A.F.A. and Ineligible Residential A.F.A. Description laundry, exercise, lounge													
1	2,657.58	0	0	0	0	0	0	0	0	0	0.00	0.00	8,575.00
Non-Residential A.F.A. and Ineligible Residential A.F.A. Description retail, bike and package													
C	0.00	0	0	0	0	0	0	0	0	0	0.00	0.00	5,429.00
Non-Residential A.F.A. and Ineligible Residential A.F.A. Description commercial storage													

## Parking Questions

1. Will there be parking associated with this building? N
  2. Is the parking applying for 421-a benefits? N/A
  3. Is the parking applying for 421-a benefits accessory to the residential portion of the building? N/A
  4. Is the parking applying for 421-a benefits inside the subject building? N/A
  5. Is the parking applying for 421-a benefits located off-street? N/A
  6. Is the parking applying for 421-a benefits accessory to the commercial portion of the building? N/A
  7. Will this project contain parking or other spaces that will be subdivided into individual tax lots? Y
- 7a. Please provide tax lot numbers and their use(e.g. Retail, lot 1001; Commercial Parking, lot 1002; Roof Cabanas, lots 1003 - 1012; Residential, lots 1013 – 1020; Storage, 1021 -1025, etc.).

To be determined

## Section 6B: Project Summary

Address: 79 Avenue D

Tentative Lot: 33

Floor	#0 BR	#1 BR	#2 BR	#3 BR	#4 BR	#5 BR	#6 BR	#7 BR	#8 BR	#Rooms	Residential A.F.A.	Non-Residential A.F.A. and Ineligible Residential
1	0	0	0	0	0	0	0	0	0	0.00	2,657.58	8,575.00
10	1	2	3	1	0	0	0	0	0	28.50	7,385.17	0.00
11	1	2	4	0	0	0	0	0	0	27.50	7,126.83	0.00
12	1	2	4	0	0	0	0	0	0	27.50	7,126.83	0.00
2	3	3	1	1	0	0	0	0	0	28.00	7,304.28	2,069.00
3	5	4	2	1	0	0	0	0	0	41.00	9,373.28	0.00
4	6	4	3	0	0	0	0	0	0	42.50	9,373.28	0.00
5	6	4	3	0	0	0	0	0	0	42.50	9,373.28	0.00
6	6	4	3	0	0	0	0	0	0	42.50	9,373.28	0.00
7	6	4	3	0	0	0	0	0	0	42.50	9,373.28	0.00
8	4	3	3	0	0	0	0	0	0	34.00	8,143.50	0.00
9	1	2	3	1	0	0	0	0	0	28.50	7,385.17	0.00
C	0	0	0	0	0	0	0	0	0	0.00	0.00	5,429.00
R	0	0	0	0	0	0	0	0	0	0.00	0.00	468.00



Totals:	14	40	34	32	4	0	0	0	0	0	385.00	93,995.76	16,541.00
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# Dwelling Units: 110  
# Rooms: 385.00

Commercial, etc. area in excess of 12% 2.96%

The Commercial, etc area is in excess of 12% and therefore this Project is subject to diminution of tax benefits.

## Section 6C: Project Specifications

Total Square Feet of Finished Space	110,536.76
Total Square Feet of Balcony Space	0.00
Total Square Feet of Unfinished Space	3,775.00
Average Square Feet Per Dwelling Unit	
Total Net SF of Dwelling Units	

## Section 6D: Schedule of Initial Rent 79 Avenue D

No	Apt. No	Rent
1	1001	\$ 5,000.00
2	1002	\$ 9,000.00
3	1003	\$ 11,000.00
4	1004	\$ 9,000.00
5	1005	\$ 7,000.00
6	1006	\$ 9,000.00
7	1007	\$ 7,000.00
8	1101	\$ 5,000.00
9	1102	\$ 9,000.00
10	1103	\$ 9,000.00
11	1104	\$ 9,000.00
12	1105	\$ 7,000.00
13	1106	\$ 9,000.00
14	1107	\$ 7,000.00
15	1201	\$ 5,000.00
16	1202	\$ 9,000.00
17	1203	\$ 9,000.00
18	1204	\$ 9,000.00
19	1205	\$ 7,000.00
20	1206	\$ 9,000.00
21	1207	\$ 7,000.00
22	201	\$ 5,000.00
23	202	\$ 7,000.00

24	203	\$ 5,000.00
25	204	\$ 7,000.00
26	205	\$ 1,831.00
27	206	\$ 9,000.00
28	207	\$ 7,000.00
29	208	\$ 1,231.00
30	301	\$ 5,000.00
31	302	\$ 7,000.00
32	303	\$ 5,000.00
33	304	\$ 1,320.00
34	305	\$ 11,000.00
35	306	\$ 1,591.00
36	307	\$ 1,320.00
37	308	\$ 5,000.00
38	309	\$ 1,231.00
39	310	\$ 7,000.00
40	311	\$ 9,000.00
41	312	\$ 5,000.00
42	401	\$ 5,000.00
43	402	\$ 7,000.00
44	403	\$ 5,000.00
45	404	\$ 1,320.00
46	405	\$ 5,000.00
47	406	\$ 9,000.00
48	407	\$ 1,591.00
49	408	\$ 1,320.00
50	409	\$ 5,000.00
51	410	\$ 1,231.00
52	411	\$ 7,000.00
53	412	\$ 9,000.00
54	413	\$ 5,000.00
55	501	\$ 1,231.00
56	502	\$ 7,000.00
57	503	\$ 5,000.00
58	504	\$ 1,320.00
59	505	\$ 5,000.00
60	506	\$ 9,000.00
61	507	\$ 1,591.00

62	508	\$ 7,000.00
63	509	\$ 5,000.00
64	510	\$ 1,231.00
65	511	\$ 7,000.00
66	512	\$ 9,000.00
67	513	\$ 5,000.00
68	601	\$ 5,000.00
69	602	\$ 7,000.00
70	603	\$ 5,000.00
71	604	\$ 1,320.00
72	605	\$ 5,000.00
73	606	\$ 9,000.00
74	607	\$ 1,591.00
75	608	\$ 7,000.00
76	609	\$ 5,000.00
77	610	\$ 1,231.00
78	611	\$ 7,000.00
79	612	\$ 9,000.00
80	613	\$ 5,000.00
81	701	\$ 5,000.00
82	702	\$ 7,000.00
83	703	\$ 5,000.00
84	704	\$ 1,320.00
85	705	\$ 5,000.00
86	706	\$ 9,000.00
87	707	\$ 9,000.00
88	708	\$ 7,000.00
89	709	\$ 5,000.00
90	710	\$ 1,231.00
91	711	\$ 7,000.00
92	712	\$ 9,000.00
93	713	\$ 5,000.00
94	801	\$ 5,000.00
95	802	\$ 7,000.00
96	803	\$ 5,000.00
97	804	\$ 7,000.00
98	805	\$ 5,000.00
99	806	\$ 9,000.00

100	807	\$ 9,000.00
101	808	\$ 7,000.00
102	809	\$ 5,000.00
103	810	\$ 1,591.00
104	901	\$ 1,231.00
105	902	\$ 1,591.00
106	903	\$ 11,000.00
107	904	\$ 9,000.00
108	905	\$ 7,000.00
109	906	\$ 9,000.00
110	907	\$ 7,000.00

Your submitted summary of proposed initial rents reflecting an average per room per month of **\$1,679.13** is approved. You may set your individual apartment rents to suit your marketing needs, but the maximum gross monthly rental for your apartment may not exceed **\$646,465.00**.

Prior to the completion of your project, events may occur necessitating an increase in your initial rent schedule. This office must be advised of these changes, and documentation must be submitted in advance in support of such changes. Initial rents may not be increased after the issuance of a final certificate of eligibility except as the law permits.

In the case of rental properties, the first rent becomes the base rent for all future increases approved by the New York City Rent Guidelines Board. A copy of the HPD approved rent schedule must be attached to all initial leases. All rental multiple dwellings receiving 421-a benefits must register with the NYS Division of Housing and Community Renewal (DHCR) to enjoy the benefits of the 421-a program. The initial and each successive owner must maintain DHCR registration of the property for the entire period the property is receiving 421-a benefits.

# Section 6E, F & G: Project Specification Summary 79, Avenue D

No	Apt. #	Rent or Sales Price	# of BRs	Is Unit Affordable Unit	Income Restriction	Floor Area
1	201	\$5,000.00	0 Bdrm	No		574
2	202	\$7,000.00	1 Bdrm	No		582
3	203	\$5,000.00	0 Bdrm	No		423
4	204	\$7,000.00	1 Bdrm	No		672
5	205	\$1,831.00	3 Bdrm	Yes	80% AMI	1232
6	206	\$9,000.00	2 Bdrm	No		921
7	207	\$7,000.00	1 Bdrm	No		670
8	301	\$5,000.00	0 Bdrm	No		574
9	303	\$5,000.00	0 Bdrm	No		423
10	304	\$1,320.00	1 Bdrm	Yes	80% AMI	672
11	305	\$11,000.00	3 Bdrm	No		1232
12	306	\$1,591.00	2 Bdrm	Yes	80% AMI	921
13	307	\$1,320.00	1 Bdrm	Yes	80% AMI	670
14	308	\$5,000.00	0 Bdrm	No		516
15	309	\$1,231.00	0 Bdrm	Yes	80% AMI	464
16	310	\$7,000.00	1 Bdrm	No		575
17	311	\$9,000.00	2 Bdrm	No		833
18	312	\$5,000.00	0 Bdrm	No		406
19	401	\$5,000.00	0 Bdrm	No		574
20	402	\$7,000.00	1 Bdrm	No		582
21	403	\$5,000.00	0 Bdrm	No		423
22	404	\$1,320.00	1 Bdrm	Yes	80% AMI	665
23	405	\$5,000.00	0 Bdrm	No		400
24	406	\$9,000.00	2 Bdrm	No		839
25	408	\$1,320.00	1 Bdrm	Yes	80% AMI	670
26	409	\$5,000.00	0 Bdrm	No		516
27	410	\$1,231.00	0 Bdrm	Yes	80% AMI	464

28	411	\$7,000.00	1 Bdrm	No		575
29	412	\$9,000.00	2 Bdrm	No		833
30	413	\$5,000.00	0 Bdrm	No		406
31	501	\$1,231.00	0 Bdrm	Yes	80% AMI	574
32	502	\$7,000.00	1 Bdrm	No		582
33	503	\$5,000.00	0 Bdrm	No		423
34	504	\$1,320.00	1 Bdrm	Yes	80% AMI	665
35	505	\$5,000.00	0 Bdrm	No		400
36	506	\$9,000.00	2 Bdrm	No		839
37	507	\$1,591.00	2 Bdrm	Yes	80% AMI	921
38	508	\$7,000.00	1 Bdrm	No		670
39	509	\$5,000.00	0 Bdrm	No		516
40	510	\$1,231.00	0 Bdrm	Yes	80% AMI	464
41	511	\$7,000.00	1 Bdrm	No		575
42	512	\$9,000.00	2 Bdrm	No		833
43	513	\$5,000.00	0 Bdrm	No		406
44	602	\$7,000.00	1 Bdrm	No		582
45	603	\$5,000.00	0 Bdrm	No		423
46	604	\$1,320.00	1 Bdrm	Yes	80% AMI	665
47	605	\$5,000.00	0 Bdrm	No		400
48	606	\$9,000.00	2 Bdrm	No		839
49	607	\$1,591.00	2 Bdrm	Yes	80% AMI	921
50	609	\$5,000.00	0 Bdrm	No		516
51	610	\$1,231.00	0 Bdrm	Yes	80% AMI	464
52	611	\$7,000.00	1 Bdrm	No		575
53	613	\$5,000.00	0 Bdrm	No		406
54	701	\$5,000.00	0 Bdrm	No		574
55	702	\$7,000.00	1 Bdrm	No		582
56	704	\$1,320.00	1 Bdrm	Yes	80% AMI	665

57	705	\$5,000.00	0 Bdrm	No		400
58	706	\$9,000.00	2 Bdrm	No		839
59	708	\$7,000.00	1 Bdrm	No		670
60	711	\$7,000.00	1 Bdrm	No		575
61	712	\$9,000.00	2 Bdrm	No		833
62	713	\$5,000.00	0 Bdrm	No		406
63	801	\$5,000.00	0 Bdrm	No		574
64	803	\$5,000.00	0 Bdrm	No		423
65	805	\$5,000.00	0 Bdrm	No		400
66	806	\$9,000.00	2 Bdrm	No		839
67	807	\$9,000.00	2 Bdrm	No		921
68	808	\$7,000.00	1 Bdrm	No		670
69	809	\$5,000.00	0 Bdrm	No		569
70	901	\$1,231.00	0 Bdrm	Yes	80% AMI	574
71	902	\$1,591.00	2 Bdrm	Yes	80% AMI	935
72	905	\$7,000.00	1 Bdrm	No		670
73	906	\$9,000.00	2 Bdrm	No		982
74	1001	\$5,000.00	0 Bdrm	No		574
75	1002	\$9,000.00	2 Bdrm	No		935
76	1003	\$11,000.00	3 Bdrm	No		1215
77	1005	\$7,000.00	1 Bdrm	No		670
78	1006	\$9,000.00	2 Bdrm	No		982
79	1007	\$7,000.00	1 Bdrm	No		575
80	1102	\$9,000.00	2 Bdrm	No		952
81	1103	\$9,000.00	2 Bdrm	No		940
82	1104	\$9,000.00	2 Bdrm	No		921
83	1106	\$9,000.00	2 Bdrm	No		982
84	1107	\$7,000.00	1 Bdrm	No		575
85	1201	\$5,000.00	0 Bdrm	No		574

86	1202	\$9,000.00	2 Bdrm	No		952
87	1203	\$9,000.00	2 Bdrm	No		940
88	1204	\$9,000.00	2 Bdrm	No		921
89	1205	\$7,000.00	1 Bdrm	No		670
90	1206	\$9,000.00	2 Bdrm	No		982
91	1207	\$7,000.00	1 Bdrm	No		575
92	208	\$1,231.00	0 Bdrm	Yes	80% AMI	654
93	608	\$7,000.00	1 Bdrm	No		670
94	612	\$9,000.00	2 Bdrm	No		833
95	703	\$5,000.00	0 Bdrm	No		423
96	707	\$9,000.00	2 Bdrm	No		921
97	710	\$1,231.00	0 Bdrm	Yes	80% AMI	464
98	802	\$7,000.00	1 Bdrm	No		582
99	804	\$7,000.00	1 Bdrm	No		665
100	810	\$1,591.00	2 Bdrm	Yes	80% AMI	987
101	903	\$11,000.00	3 Bdrm	No		1215
102	907	\$7,000.00	1 Bdrm	No		575
103	1004	\$9,000.00	2 Bdrm	No		921
104	1101	\$5,000.00	0 Bdrm	No		574
105	1105	\$7,000.00	1 Bdrm	No		670
106	302	\$7,000.00	1 Bdrm	No		582
107	407	\$1,591.00	2 Bdrm	Yes	80% AMI	921
108	601	\$5,000.00	0 Bdrm	No		574
109	709	\$5,000.00	0 Bdrm	No		516
110	904	\$9,000.00	2 Bdrm	No		921



**Section 7: Site Eligibility    Lot No 0033**

To qualify for 421-a benefits, a site must have been vacant, predominantly vacant, underutilized, or improved with a non-conforming use three years prior to the start of construction (i.e. "Operative Date"). In order to determine if your project qualifies for 421-a benefits, this section of the application will take you through a number of questions which will determine your site eligibility. You must complete this section for each of the lots for which you are applying for 421-a benefits. Please enter the information as of the Operative Date.

Commencement of Construction Date:	6/5/2015
Operative Date:	06/05/2012
Total land area of lot (Square Feet):	12,462.00
Square footage of site:	12,462.00

**Test 1: The question below will test your site's eligibility based on vacant lot.**

Actual Assessed Valuation of improvements on the lot in the Fiscal Year in which the Operative Date falls:	\$484,200.00
--	--------------

This site is ineligible based on this test because the actual assessed valuation of the improvements on the lot was not less than or equal to \$2,000. Please move on to the next site eligibility test.

**Test 2: The questions below will test your site's eligibility based on a vacant portion of the former lot as of the Operative Date.**

Is there an existing building that will not be demolished and will remain on the lot?	N
---	---

Is the new multiple dwelling being constructed on a vacant portion of the lot as of the Operative Date?

This site is ineligible based on this test because the land that you are building on is not vacant. Please move on to the next site eligibility test.

**Test 3: The questions below will test your site's eligibility based on predominantly vacant land as of the Operative Date.**

Length of footprint of improvement (sq ft):	134.00	Width of footprint of improvement (sq ft):	93.00
Total area of footprint of improvement on lot (sq ft):	12,462.00	Total land area of lot (sq ft):	12,462.00

This site is ineligible based on this test because the area of the footprint of the improvement is not less than or equal to 15% of the land area of the lot. Please move on to the next site eligibility test.

**Test 4: The questions below will test your site's eligibility based on underutilized buildings as of the Operative Date.**

Was there a building(s) on the lot on the Operative Date?	Y
---	---

What was the tax class of the lot on the Operative Date?	4
--	---

**Test 7: The questions below will test your site's eligibility based on underutilized former non-residential building.**

Did work commence on or after May 12, 2000?	Y
---	---

Is lot located in the Borough of Manhattan on either side or south of 110th Street?	Y
---	---

Is lot located in the outer boroughs or in Manhattan north of 110th Street?	N
---	---

**Test 8: The questions below will test your site's eligibility based on underutilized former non-residential building in Manhattan on either side or south of 110th Street (assessed valuation test).**

Actual assessed valuation of building in the Fiscal Year in which the Operative Date falls: **\$484,200.00**

Actual assessed valuation of land in the Fiscal Year in which the Operative Date falls: **\$562,500.00**

50% of the assessed valuation of the land on the Operative Date is: **\$281,250.00**

This site is ineligible based on this test because the actual assessed valuation of the building is not less than or equal to 50% of the actual assessed valuation of the land. Please move on to the next site eligibility test.

**Test 10: The questions below will test your site's eligibility based on underutilized former non-residential building in Manhattan on either side or south of 110th Street (Floor Area Ratio test).**

Zoning district of lot: **R8A/C1-5**

Zoning map number: **12c**

Maximum residential F.A.R. in this zoning district: **7.20**

Identify Zoning Resolution section which confirms maximum residential F.A.R. above: **23-952**

Maximum non-residential F.A.R. in this zoning district: **6.50**

Identify Zoning Resolution section which confirms maximum non-residential F.A.R. above: **33-121**

Floor Area of former non-residential building: **12,462.00**

Total lot area (sq ft): **12,462.00**

This site has passed this 421-a eligibility test.

## Section 7: Site Eligibility Summary

Lot	Square Feet	421-a Eligible
0033	12462	Pass

Since the Project meets the requirements of §421-a(9)(vi)(c), the Project is exempt from the Exemption Cap of §421-a(9).

## Section 8: Addendum

### Part A: Contact Information for Certifying Professionals

Architect's/Engineer's Certification to be provided by:

Name **Leonard Fusco**

Business Name **GF55 Partners**

House No **19**

Street **West 21st Street, Suite 1201**

City **New York**

State **NY**

Phone Number (212) 352-3099  
Opinion of Counsel to be provided by:  
Name Jay G. Seiden  
Business Name Seiden & Schein, P.C.  
House No 570  
Street Lexington Avenue  
City New York  
State NY  
Phone Number (212) 935-1400

## Checklist

RP604 or RP602 Form ☒

Submit the most recent approved building plans. However, if the most recent approved building plans were already submitted to HPD as part of an earlier Architect's/Engineer's Certification, you do not need to re-submit the building plans. ☒

Surveys ☒

Proof of receipt of Notice to Community Board ☒

Please submit to HPD an executed copy of the regulatory agreement or 421-a written agreement including all attachments. ☒

Architect's/Engineer's Certification ☒

Opinion of Counsel ☒

Please Keep a Copy of this Application for Your Records.



Office of Development  
DIVISION OF HOUSING INCENTIVES  
100 GOLD STREET, NEW YORK, N.Y. 10038  
(212) 863-8540

**FINAL APPLICATION FOR CERTIFICATION OF ELIGIBILITY FOR 421-a PARTIAL TAX EXEMPTION**

Property address: 79 Avenue D  
New York, N.Y.  
10009

Docket #: \_\_\_\_\_  
Date rec'd by HPD: \_\_\_\_\_  
Block: 376 Lot: 33\*

To the Commissioner:

\*to be apportioned into condominium tax lots

The undersigned affirms that: (Place an "X" where applicable)

- ☒ All information previously submitted in the Preliminary Application for a Certification of Eligibility for partial tax exemption remains true and accurate.
- ☐ Documentation is attached advising you of all physical changes made in this project since the submission of the Preliminary Application; and the need, if any, to revise initial rents or selling prices.
- ☐ Documentation is attached advising you of increased development and/or maintenance and operating costs and the need for revised initial rents or selling prices.
- ☒ Each year the owner shall make available to HPD's Tax Incentives Unit a schedule of rents for each unit in the building. An annual rent schedule must be mailed to HPD.
- ☐ All units have been registered with the New York State Division of Housing and Community Renewal.  
Date: \_\_\_\_\_
- ☒ All units in the above building/s will be registered with the NYS Division of Housing and Community Renewal as they become occupied.
- ☐ If the project is owned and operated as a co-op or condominium and if the co-op or condo plan has not been declared effective 15 months after the issuance of a Final Certificate of Eligibility, the owner will register the rental units with the NYS Division of Housing & Community Renewal no later than 15 days after such 15 month period.

The approximate date of completion of this project is: November 1, 2018

Applicant understands that pursuant to Sec. 6-05 (2) of the 421-a Rules that:

- A. The application for a Final Certificate of Eligibility must be filed as follows:
  - 1. For a multiple dwelling owned as a rental and containing more than six units, the application must be filed prior to occupancy of the building, but no earlier than the date of application for a preliminary certificate of eligibility.
  - 2. For a multiple dwelling to be owned as a condominium or co-op, the application must be filed prior to the first taxable status date following the completion of construction.
- B. The application process for a Final Certificate of Eligibility must be completed within 90 days following the issuance of a permanent certificate of occupancy or a temporary certificate of occupancy covering all residential space. In the event that all the required documents are not timely filed, benefits of the Act may be revoked pursuant to Sec. 6-07 (c) (5) of the 421-a Rules.

Applicant understands and agrees that, if tax exemption is granted as a result of this application and there is failure to complete said structure within the time limit set forth in the 421-a Statute and Rules, or if any other breach of the Rules is committed without curing said breach within 90 days after notice of same is given, the Commissioner shall revoke the Certificate of Eligibility for said premises. In the event of Revocation for failure to timely complete, the owner shall pay the City, with interest, the amount of exempted taxes. Such unpaid taxes and the interest thereon shall become a lien against said property.

Affidavit is herewith submitted for the issuance of a final certification of eligibility for partial tax exemption for the structure herein mentioned.

STATE OF NEW YORK )  
CITY OF NEW YORK )  
COUNTY OF New York )

David Dishy, being duly sworn, deposes and says, that, he/she is the applicant or officer of applicant Corp. or General Partner of Authorized signatory of Avenue D Owners LLC & Avenue D Affordable LLC, making application for a Certification of Eligibility for Partial Tax Exemption; he/she has read and agrees to abide by the Regulations for 421-a partial tax exemption, and he/she understands that the City of New York will rely on the statements contained herein in acting upon this application.

Sworn to before me this

5 day of April, 2017  
Ajaenae Spearman  
Notary Public

[Signature]  
Signature  
4/15/17  
Date

(November 2010)

AJAENAE SPEARMAN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01SP6333554  
Qualified In Kings County  
My Commission Expires November 23, 2019

RECEIVED  
421 A&G PARTIAL  
TAX EXEMPTION PROG  
2017 APR 20 PM 4:22



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## Department of Finance

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### New Condo Apportionment Request

Online Form RP 602-C

**APPLICATION STATUS: Approved/Unpaid**

**CASE NUMBER: 20160822000005**

**COMMENTS: Ready for payment. PLEASE PRINT INVOICE. Pay, then present paid receipt along with your printed application with architect diagram to receive Condo # and lot #**

[Print Application](#)

#### Real Property Information

Condo Name      The 751 East 6th Street Condominium  
Borough          Manhattan  
Block    Lot          House #    Street Name  
376      33            79          AVENUE D

How many lots requested? 3

New Lot(s) Usage      Mix (Residential & Commercial)

Is this a to be built condominium? ☐ No ☐

#### Sponsor(s) / Declarant Information

Please use this information to identify the sponsor(s) of the project. This information will be used to identify the sponsor(s) of the project.

Sponsor is a(n): LLC

Business Name:

Avenue D Owners LLC

House #: Street Name: Apt #:

1865      Palmer Avenue Suite 203

City:      State / Province / Region: Country:

Larchmont New York      United States

Zip Code: Email:      Phone:

10538      kkelman@lmdevpartners.com 6465277234

#### Applicant Information

Applicant is a(n): Attorney

First Name: Middle Initial: Last Name:

Jane      Rosenberg

House #: Street Name: Apt #:

570      Lexington Avenue 14th Floor

City:      State / Province / Region: Country:

New York New York

United States

Zip Code: Email:

10022 jrosenberg@seidenschein.com 2129351400

Phone:

Certification

The applicant hereby certifies that in making this application for condo apportionment, s/he is acting as the owner, or under the direction of and for the owner.

Applicant Name

Jane Rosenberg

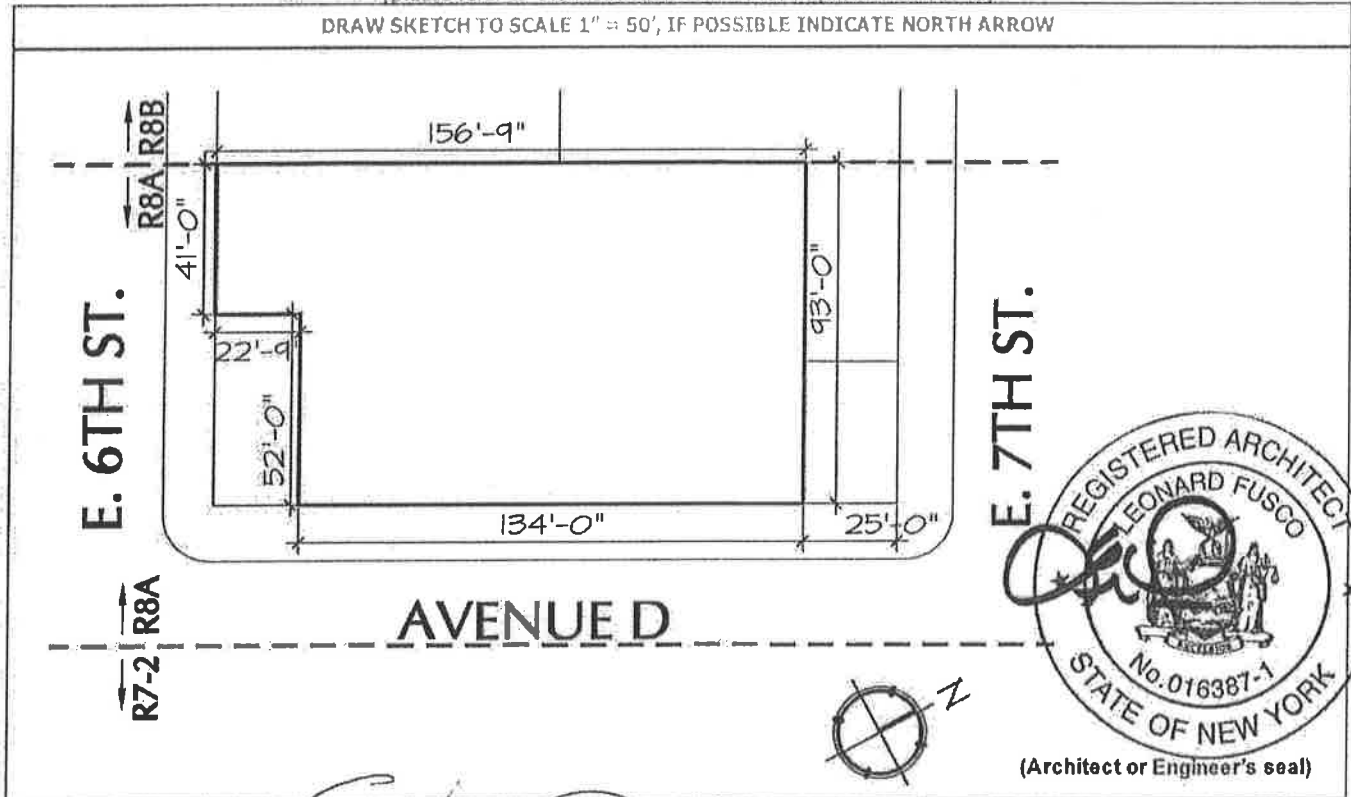
Applicant Signature

Date:

9/1/2016 12:00:00 AM

TAX MAP CHANGE WILL NOT BE MADE UNTIL PRESENTATION OF REQUIRED DOCUMENTS  
(please refer to the instruction section for required documents)

DRAW SKETCH TO SCALE 1" = 50', IF POSSIBLE INDICATE NORTH ARROW



Tax Map Unit Staff:

Date:

12.30.2016

Back

Property Valuation and Mapping Division 66 John Street, 2nd Floor New York, NY 10038

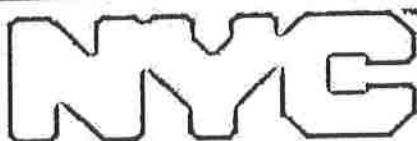
BUILD DATE: 09/08/2015:12:45:36AM Version: 2.2.3

Condo # 2768  
Lots # 1001-1003



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## Department of Finance

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### Tax Map Unit

New Lot (s) Request for Application of Condominium Apportionment and Approval (RP-602c)

Date: 9/21/2016

Borough: Manhattan

Case number: 20160822000005

Block	Lot	Address
376	33	79 AVENUE D

Cost (per lot)	Number of Lots Requested	Total Amount to be Paid
\$73.00	3	\$219.00

Your lots have been approved.

Please print out this payment invoice, and bring it to the borough business center to make a payment.  
After paying, please submit in person your completed application along with proof of payment to the borough tax map office.

Property Valuation and Mapping Division 66 John Street, 2nd Floor New York, NY 10038  
BUILD DATE: 09/08/2015:12:45:36AM Version: 2.2.3

NYC Business Centers  
Department of Finance  
Manhattan Business Center  
66 John Street, 2nd Floor  
New York, NY 10038

Reference Number: 2016365027-12  
Date/Time: 12/30/2016 10:24:47 AM

Property Tax - Miscellaneous Fees  
2016365027-12-1  
CPRR Trans Code: 11  
CPRR Trans Desc: Miscellaneous Fees

Borough: 1  
Block: 376  
Lot: 33

Due Date: 12/30/2016  
UserId: NYC2873  
Total: \$219.00

1 ITEM TOTAL:

\$219.00

TOTAL:

\$219.00

Business Check

Check Nbr: 000001401

Total Received:

\$219.00



C E 2 0 1 6 3 6 5 0 2 7 - 1 2

Thank you! Have a nice day.

TITLE NO. ANY2013-8139C

WURVEY<sup>®</sup> NO. 64649

# ALTA/ACSM LAND TITLE SURVEY



MAP  
NOT TO SCALE

## LEGAL DESCRIPTION

PART 1. LOT 134, T134N, R134E, S134T

ALL the cornering line and parcel of land, shown, held and being in the Borough of Manhattan, City of New York, and State of New York, bounded and described as follows:

BEGINNING at a point on the West side of Avenue D, distant 12 feet 9 inches Southwesterly from the corner formed by the intersection of the West side of Avenue D with the North side of East 6th Street, running thence Westerly and parallel with the North side of East 6th Street, 93 feet;

THENCE Northwesterly and parallel with the West side of Avenue D, 134 feet;

THENCE Easterly and parallel with the West side of Avenue D, 134 feet;

THENCE Southwesterly along the West side of Avenue D, 134 feet to the point of BEGINNING.

PART 2. LOT 135, T134N, R134E, S134T

ALL the cornering line and parcel of land, shown, held and being in the Borough of Manhattan, City of New York, and State of New York, bounded and described as follows:

BEGINNING at a point on the West side of Avenue D, distant 12 feet 9 inches Southwesterly from the corner formed by the intersection of the West side of Avenue D with the North side of East 6th Street, running thence Westerly and parallel with the North side of East 6th Street, 93 feet;

THENCE Northwesterly and parallel with the West side of Avenue D, 134 feet;

THENCE Easterly and parallel with the West side of Avenue D, 134 feet;

THENCE Southwesterly along the West side of Avenue D, 134 feet to the point of BEGINNING.

## SURVEYOR'S CERTIFICATE

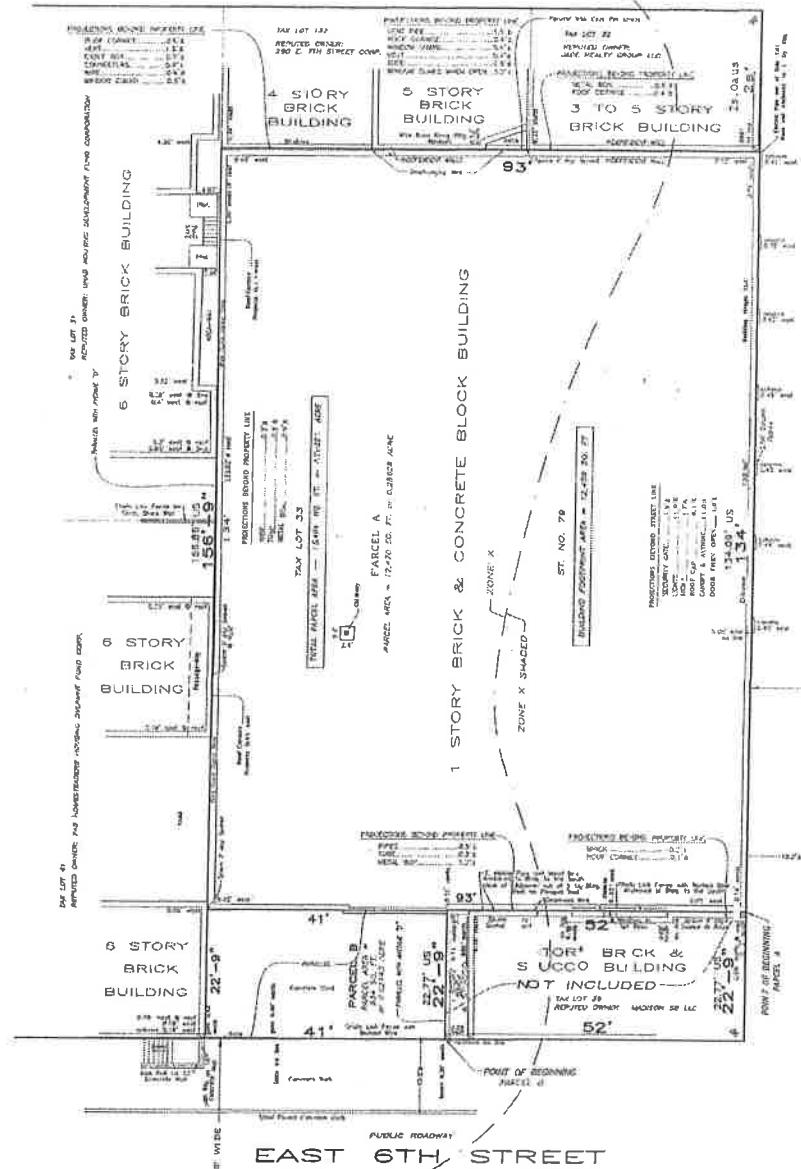
To: The Development Fund, Inc., the successors and/or assigns of, Avenue D Owners LLC, All New York City, New York, Inc., and State of New York, Commission of the City of New York.

This is to certify that the map and plat and the survey on which it is based were made in accordance with the provisions of the Real Property Law of the State of New York, and the rules and regulations of the City of New York, and that the survey was made by me or under my direct supervision and that I am a duly licensed Surveyor in the State of New York.

Date: 4/20/2014

## NOTES

1. ALL the cornering line and parcel of land, shown, held and being in the Borough of Manhattan, City of New York, and State of New York, bounded and described as follows:
2. THE PARCELS 134 and 135, shown, held and being in the Borough of Manhattan, City of New York, and State of New York, bounded and described as follows:
3. THE PARCELS 134 and 135, shown, held and being in the Borough of Manhattan, City of New York, and State of New York, bounded and described as follows:
4. THE PARCELS 134 and 135, shown, held and being in the Borough of Manhattan, City of New York, and State of New York, bounded and described as follows:
5. THE PARCELS 134 and 135, shown, held and being in the Borough of Manhattan, City of New York, and State of New York, bounded and described as follows:
6. THE PARCELS 134 and 135, shown, held and being in the Borough of Manhattan, City of New York, and State of New York, bounded and described as follows:
7. THE PARCELS 134 and 135, shown, held and being in the Borough of Manhattan, City of New York, and State of New York, bounded and described as follows:
8. THE PARCELS 134 and 135, shown, held and being in the Borough of Manhattan, City of New York, and State of New York, bounded and described as follows:
9. THE PARCELS 134 and 135, shown, held and being in the Borough of Manhattan, City of New York, and State of New York, bounded and described as follows:
10. THE PARCELS 134 and 135, shown, held and being in the Borough of Manhattan, City of New York, and State of New York, bounded and described as follows:



AVENUE "D"

## FLOOD HAZARD NOTE

THE PARCELS 134 AND 135, SHOWN, HELD AND BEING IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK, AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

## FLOOD HAZARD NOTE

THE PARCELS 134 AND 135, SHOWN, HELD AND BEING IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK, AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

SCALE: 1" = 60'

CITY OF NEW YORK  
COUNTY OF NEW YORK  
TAX MAP 376  
TAX LOT 33

**MONTROSE**  
SURVEYING CO., LLC  
CITY & LAND SURVEYORS  
140 WEST 42ND STREET, 10TH FLOOR  
NEW YORK, NY 10018-3602  
TEL: 212-692-1234  
FAX: 212-692-1235  
WWW.MONTROSE-SURVEYING.COM

DATE: 4/20/2014  
DRAWN: J. MONTROSE  
CHECKED: J. MONTROSE  
APPROVED: J. MONTROSE

STANDARD, BLOCK STANDARD EXCEPT WHERE NOTED US

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**NO CHANGES OF USE OR OCCUPANCY NOT CONSISTENT WITH THIS CERTIFICATE SHALL BE MADE UNLESS FIRST APPROVED BY THE BOROUGH SUPERINTENDENT**

Unless an approval for the same has been obtained from the Borough Superintendent, no change or rearrangement in the structural parts of the building, or affecting the light and ventilation of any part thereof, or in the exit facilities, shall be made; no enlargement, whether by extending on any side or by increasing in height shall be made; nor shall the building be moved from one location or position to another; nor shall there be any reduction or diminution of the area of the lot or plot on which the building is located.

The building or any part thereof shall not be used for any purpose other than that for which it is certified.

The superimposed, uniformly distributed loads, or concentrated loads producing the same stresses in the construction in any story shall not exceed the live loads specified on reverse side; the number of persons of either sex in any story shall not exceed that specified when sex is indicated, nor shall the aggregate number of persons in any story exceed the specified total; and the use to which any story may be put shall be restricted to that fixed by this certificate except as specifically stated.

This certificate does not in any way relieve the owner or owners or any other person or persons in possession or control of the building, or any part thereof from obtaining such other permits, licenses or approvals as may be prescribed by law for the uses or purposes for which the building is designed or intended; nor from obtaining the special certificates required for the use and operation of elevators; nor from the installation of fire alarm systems where required by law; nor from complying with any lawful order for additional fire extinguishing appliances under the discretionary powers of the fire commissioner; nor from complying with any lawful order issued with the object of maintaining the building in a safe or lawful condition; nor from complying with any authorized direction to remove encroachments into a public highway or other public place, whether attached to or part of the building or not.

If this certificate is marked "Temporary", it is applicable only to those parts of the building indicated on its face, and certifies to the legal use and occupancy of only such parts of the building; it is subject to all the provisions and conditions applying to a final or permanent certificate; it is not applicable to any building under the jurisdiction of the Housing Division unless it is also approved and endorsed by them, and it must be replaced by a full certificate at the date of expiration.

If this certificate is for an existing building, erected prior to March 14, 1916, it has been duly inspected and it has been found to have been occupied or arranged to be occupied prior to March 14, 1916, as noted on the reverse side, and that on information and belief, since that date there has been no alteration or conversion to a use that changed its classification as defined in the Building Code, or that would necessitate compliance with some special requirement or with the State Labor Law or any other law or ordinance; that there are no notices of violations or orders pending in the Department of Housing and Buildings at this time; that Section 646F of the New York City Charter has been complied with as certified by a report of the Fire Commissioner to the Borough Superintendent, and that, so long as the building is not altered, except by permission of the Borough Superintendent, the existing use and occupancy may be continued.

"§ 646 F. No certificate of occupancy shall be issued for any building, structure, enclosure, place or premises wherein containers for combustibles, chemicals, explosives, inflammables and other dangerous substances, articles, compounds or mixtures are stored, or wherein automatic or other fire alarm systems or fire extinguishing equipment are required by law to be or are installed, until the fire commissioner has tested and inspected and has certified his approval in writing of the installation of such containers, systems or equipment to the Borough Superintendent of the borough in which the installation has been made. Such approval shall be recorded on the certificate of occupancy."

Additional copies of this certificate will be furnished to persons having an interest in the building on premises, upon payment of a fee of fifty cents per copy.

AMENDED AND RESTATED REGULATORY AGREEMENT

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AMONG  
THE CITY OF NEW YORK  
AVENUE D OWNERS LLC  
AND  
AVENUE D AFFORDABLE LLC

---

---

<u>Block</u>	<u>Lot</u>	<u>Address</u>
376	33	751 East 6 <sup>th</sup> Street (a/k/a 79-89 Avenue D), New York, New York

County: New York

---

RECORD AND RETURN TO:  
Paul A. Orta  
Department of Housing Preservation  
and Development  
Office of Legal Affairs  
100 Gold Street, Room 5-S5  
New York, NY 10038

---

## AMENDED AND RESTATED REGULATORY AGREEMENT

**AGREEMENT** made this 28th day of October, 2016, among AVENUE D OWNERS LLC ("Owner"), AVENUE D AFFORDABLE LLC ("Affordable Owner" and collectively with Owner, the "Applicant"), each a New York limited liability company having an office at 1865 Palmer Avenue, Suite 203, Larchmont, New York, 10538 and the CITY OF NEW YORK (the "City"), a municipal corporation acting by and through its DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT ("Department"), having an office at 100 Gold Street, Ninth Floor, New York, NY 10038.

**WHEREAS**, Owner is the owner in fee simple of the premises located in the County of New York, City and State of New York, known as and by the street address 751 East 6<sup>th</sup> Street (a/k/a 79-89 Avenue D) New York, New York, identified as Block 376, Lot 33 on the Tax Map of the City (as improved pursuant to this Regulatory Agreement), (the "Premises"), more particularly described in Exhibit A attached hereto and made a part hereof, and intends to construct improvements on such Premises, which improvements will constitute Affordable Housing within the meaning of Section 23-911 of the New York City Zoning Resolution (the "Resolution") and the Inclusionary Housing Program Guidelines (the "Guidelines") (the Guidelines and Resolution are collectively referred to as the "Program"); and

**WHEREAS**, the Department has been duly authorized to administer the Program, including the execution of a Regulatory Agreement between the Department and Applicant for Floor Area Compensation under the Program (the "Agreement"); and

**WHEREAS**, Applicant has filed with the Department an Affordable Housing Plan (the "Plan") pursuant to Section 23-961(d) of the Resolution, attached hereto and made a part hereof as Exhibit B, and the Department has evaluated and approved the Plan as such terms and requirements of the Plan are reflected in this Agreement; and

**WHEREAS**, Applicant intends to provide Low Income Floor Area (as defined in Section 23-911 of the Resolution (the "Affordable Housing Units") to be affordable to and occupied by families having incomes less than or equal to the Low Income Limit in order to enable one or more new multiple dwellings (the "Compensated Development(s)"), to be eligible under the Program for Floor Area Compensation pursuant to Section 23-154 of the Resolution; and

**WHEREAS**, Owner intends to enter into an Agreement of Lease, dated of even date herewith, to lease the Affordable Housing Units to Affordable Owner for a term of ninety-nine (99) years (the "Residential Master Lease");

**WHEREAS**, Applicant intends to construct on the Premises a multi-family, mixed-use building comprised of 110 residential apartments, including 22 Affordable Housing Units; 87 market rate apartments and 1 superintendent's apartment, (ii) approximately 7,693 square feet of ground floor retail space, (iii) basement retail space, and (iv) amenity space and mechanical/lobby space; and

**WHEREAS**, Owner intends following the date hereof to record a declaration of condominium (together with by-laws and other schedules attached thereto, as the same may be amended from time to time, (the "Declaration") with the Office of the City Register of the City of New York,

New York County (the "City Register"), which shall establish the land and the building to be constructed on the Premises as a condominium regime (the "Condominium"); and

**WHEREAS**, upon formation of the Condominium, it is anticipated that Owner will convey the fee interest in the condominium unit containing the Affordable Housing Units (the "Affordable Condo Unit") to Affordable Owner, in which event the Residential Master Lease shall terminate;

**WHEREAS**, the Affordable Condo Unit will constitute Affordable Housing within the meaning of the Program;

**WHEREAS**, Applicant has entered into a certain Regulatory Agreement with the Department, dated as of May 4, 2015 (the "Original Regulatory Agreement"), which was recorded in the City Register as CRFN 2015000180468 on May 29, 2015, as amended by that certain First Amendment to Regulatory Agreement dated September 17, 2015, which was recorded in the City Register as CRFN 2015000347816 on September 29, 2015;

**WHEREAS**, Applicant is delivering to the New York State Housing Finance Agency ("HFA") a Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement in the principal amount of \$52,800,000 and is also entering into that certain Regulatory Agreement, dated of even date herewith with HFA (the "HFA Regulatory Agreement"); and

**WHEREAS**, the parties hereto agree to amend and restate the Original Regulatory Agreement in its entirety, as set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, it is hereby agreed as follows:

1. Capitalized terms not specifically defined herein shall have the meaning set forth in the Program.
2.
  - (i) Applicant will create, through new construction twenty-two (22) Affordable Housing Units pursuant to the building plans submitted to and approved by the Department ("Building Plans"), located at the Premises (the "Building"). Attached hereto as part of Exhibit C, is list identifying each Affordable Housing Unit.
  - (ii) The Declaration shall provide that the owner(s) of the condominium unit or units containing the market rate apartments (including Owner and its successors or assigns, such owners, collectively, the "Market Rate Condo Owner") shall pay all carrying charges and any other carrying costs, including, without limitation, debt service payments and other mortgage payments associated with ownership and operation of the Affordable Condo Unit exceeding the "net rental income" generated by the Affordable Condo Unit (said excess, the "Carrying Cost Differential"). As used in this paragraph, the term "net rental income" means rental income generated by the Affordable Condo Unit less operating expenses of the Affordable Condo Unit. Payment of such Carrying Cost Differential may be made in the form of a loan to the owner of the Affordable Condo Unit, provided, however, any such loan may not encumber the Affordable Condo Unit or give rise to a lien against the Affordable Condo Unit or any interest or portion therein. Notwithstanding the foregoing, the Market Rate Condo Owner may enforce any such loan against the owner of the Affordable Condo Unit to the extent advances have been made under said loan; provided, however, that such enforcement shall not be undertaken without the prior written consent of HPD, which consent shall not be

unreasonably withheld where enforcement of the loan is being undertaken to facilitate acquisition by the Market Rate Condo Owner of all or some of the interest in the Affordable Condo Unit and where such enforcement will not give rise to a lien or other encumbrance against the Affordable Condo Unit.

(iii) Prior to the recording of the Declaration, Applicant shall submit the Declaration to the Department for its review and approval including, but not limited to, the provisions concerning carrying charges. The Declaration shall thereafter not be modified with respect to provisions concerning or affecting the Affordable Condo Unit without the prior written consent of the Department. Upon formation of the Condominium and at such time as Owner no longer owns the fee interest in the Affordable Condo Unit, Owner shall be subject only to Sections 2(ii), 5, 10, 12 and 18 of this Agreement.

3. The twenty-two (22) Affordable Housing Units will be occupied by Low Income Households, as defined in the Resolution which will permit Floor Area Compensation in conformance with the Resolution.
4. The authority pursuant to the Resolution to create additional Floor Area in Compensated Development(s), granted in accordance with this Agreement, may be transferred by Applicant or by whomever Applicant directs the Department, in writing, to receive such transfer authority, subject to the geographic and zoning limitations set forth in the Resolution and subject to the requirements of the Program.
5. The parties hereto agree that the site of the subject Affordable Housing Units is eligible for the construction of Low Income Floor Area pursuant to the Program and the requirements of Sections 23-90 (Inclusionary Housing), inclusive of the Resolution and based on an opinion of counsel, the site meets the requirements of RPTL §421-a. The parties also agree that Applicant shall complete the subject Affordable Housing Units application for tax exemption under the RPTL §421-a, unless the Department has waived, in writing, the necessity for such exemption. The parties hereto further agree that (a) Applicant shall not permit the Building Plans to be professionally certified to the City of New York Department of Buildings ("DOB") and (b) Applicant shall submit such Building Plans to a DOB plan examiner for review, and (c) applicable zoning calculations also shall be approved by a DOB plan examiner, and (d) construction of Affordable Housing Units, as described in the request, is in accordance with the Program requirements and with the Building Plans, with respect to the Affordable Housing Units (which Program requirements and Building Plans are collectively defined as "Construction Requirements"). The Construction Requirements shall not be altered without the Department's written approval.

Applicant shall complete the construction of the Affordable Housing Units within six (6) years from the date of the Original Regulatory Agreement ("Completion Deadline"). The construction of the Affordable Housing Units shall be deemed complete upon the Department's issuance, for presentation to the DOB, of a Certificate of Completion of Affordable Housing Units in accordance with Section 9 of this Agreement ("Completion").

6. This Agreement is subject to the Applicant's compliance with the requirements set forth in the Program. The Department acknowledges that, as of the date of this Agreement, Applicant has satisfied applicable requirements set forth in Sections 23-90 (Inclusionary Housing), inclusive of the Resolution.

7. Affordable Housing Units created pursuant to this Agreement will be occupied solely by tenants who are Low Income Households at the time of such tenant's Initial Occupancy of such housing and shall be operated as Affordable Housing for Low Income Households for the life of the increased Floor Area of the Compensated Development(s). Such obligation shall run with the tax lot(s) within the zoning lot containing such Affordable Housing Units.
8.
  - (i) The rents charged by Applicant for the Affordable Housing Units upon Rent-up of such units shall (a) not exceed the rents set forth in the schedule attached hereto as Exhibit D, which have been established by the Department pursuant to Sections 23-961(b) of the Resolution, (b) be registered with the New York State Division of Housing and Community Renewal or any successor agency ("DHCR") and (c) thereafter shall be subject to Rent Stabilization for the term of this Agreement and upon termination of this Agreement in accordance with Section 8(v). Applicant shall register all Affordable Housing Units with DHCR upon the earlier to occur of: (A) the occupancy of the last remaining unit, or (B) one year from Completion Deadline (the "DHCR Registration Deadline").
  - (ii) Rents for existing tenants of the Affordable Housing Units upon renewal of leases for such units or at any time during the term of the lease shall be the lesser of (a) the rent allowed by Rent Stabilization, or (b) the Maximum Monthly Rent for Low Income Households.
  - (iii) Upon rental of an Affordable Housing Unit that becomes vacant after Initial Occupancy, to a new tenant, the rent shall be the lesser of the rent allowed by Rent Stabilization or the Maximum Monthly Rent for Low Income Households.
  - (iv) Notwithstanding anything to the contrary contained herein, Applicant shall not utilize any exemption or exclusion from any requirement of Rent Stabilization to which Applicant might otherwise be or become entitled with respect to one or more Affordable Housing Units, including, but not limited to, any exemption or exclusion from the rent limits, renewal lease requirements, registration requirements, or other provisions of Rent Stabilization due to (i) the vacancy of a unit where the rent exceeds a prescribed maximum amount, (ii) the fact that tenant income and/or a unit's rent exceeds prescribed maximum amounts, (iii) the nature of the tenant, or (iv) any other factor.
  - (v) In the event that the Affordable Housing Units are not located in the Compensated Development and the increased Floor Area of the Compensated Development generated by such Affordable Housing Units ceases to exist, the Affordable Housing Units shall continue to remain subject to Rent Stabilization so long as the existing tenants in occupancy remain tenants pursuant to the provisions of Rent Stabilization.
  - (vi) Applicant shall grant all tenants the same rights that they would be entitled pursuant to Rent Stabilization. In addition, Applicant shall register the Affordable Housing Units with DHCR pursuant to Rent Stabilization, and such units shall be subject to Rent Stabilization without regard to whether such Affordable Housing Units are statutorily subject to Rent Stabilization. Applicant shall ensure that these rights are stated in each lease for an Affordable Housing Unit. If any court declares that Rent Stabilization is statutorily inapplicable to an Affordable Housing Unit, such unit shall remain in Rent Stabilization in accordance with this Agreement and the lease for such Affordable Housing Unit for the remainder of the Regulatory Period.

9. Applicant agrees not to request or accept a Certificate of Occupancy ("C of O") or a Temporary Certificate of Occupancy ("T C of O") for any portion of the Compensated Development that utilizes Floor Area Compensation until the Department issues a Certificate of Completion of Affordable Housing Units to such Compensated Development.

The Department shall issue a Certificate of Completion of Affordable Housing Units upon Applicant's compliance with the following requirements (a) through (n) of this Section (9):

- (a) (1) submission of proof that each Affordable Housing Unit that is not located in the portion of the Compensated Development that utilizes Floor Area Compensation, has received a C of O or a T C of O, and (2) where applicable each Affordable Housing Unit that is located in the portion of the Compensated Development that utilizes Floor Area Compensation has received certification from DOB that such Affordable Housing Unit is eligible to receive its C of O or T C of O upon the Department's issuance of Certificate of Completion of Affordable Housing Units;
- (b) at the discretion of the Department, performance by the Department of a site inspection which establishes to the satisfaction of the Department that (i) the Affordable Housing Units meet the requirements of Sections 23-96(b), (c) and (d) of the Resolution and (ii) the Building meets the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.
- (c) funding of the Special Reserve Fund in accordance with Section 15 of this Agreement; and
- (d) submission of proof, satisfactory to the Department, that the Affordable Housing Units are being rented in accordance with Sections 8, 21 and 22 of this Agreement and that Applicant has entered into leases with tenants for at least 10% of the Affordable Housing Units in accordance with the Program, pursuant to which the tenants may begin occupancy upon the issuance of a C of O or T C of O; and
- (e) submission of certificates of insurance required by Section 12 of this Agreement with all premiums for the current year fully paid; and
- (f) submission on or after the date that DOB either certifies to the Department that DOB is prepared to issue the C of O or the T C of O for all of the Affordable Housing Units or that DOB has issued the C of O or the T C of O for all of the Affordable Housing Units, as the case may be, of (i) a policy of fee title insurance dated as of the date the Applicant acquired title to the Building, or a title policy insuring the lien of mortgage of the primary Lender for the Building and/or the Premises or such Lender's credit enhancer, dated as of the date of the closing of the financing of such mortgage, will satisfy the foregoing, where such policy (a) has been issued by a title company in good standing licensed to issue title insurance in New York State and contains the Standard New York Endorsement (Owner's Policy) in substantially the form that appears as Exhibit E hereto, (b)



such policy evidences fee simple ownership in the Applicant and the absence of liens and other encumbrances on the Premises other than those approved by the Department, (ii) proof of payment of premiums therefor, and (iii) title continuations run by the title company from the date of the fee title policy to the date of submission of such title policy together with a letter from the title company confirming the absence of liens and encumbrances on the Premises other than those previously approved by the Department and mechanics liens which have been bonded; and

- (g) submission of an executed contract between the Department and the Administering Agent in accordance with Section 11 of this Agreement; and
- (h) submission of a Memorandum of Regulatory Agreement, where applicable, and the Agreement stamped as recorded separately in the Office of the City Register in accordance with Section 24 and Section 29 respectively, of this Agreement; and
- (i) submission of proof that any required subordination and non-disturbance agreement ("Affordable Housing Subordination Agreement") was recorded immediately following execution thereof and that Applicant fully complied with the requirements of Section 19 of this Agreement; and
- (j) submission of, (1) proof of registration of the building on the Premises that contains the Affordable Housing units and all occupied Affordable Housing Units with the DHCR, and, if the building is not fully occupied, an affidavit stating that Applicant shall register all remaining units as they become occupied; (2) proof that such building is entirely free of violations of record issued by any City or State agency pursuant to the Multiple Dwelling Law, the Building Code, the Housing Maintenance Code and the Program and (3) submission of an affidavit stating that Applicant shall complete multiple dwelling registration of the building on the Premises, that contains the Affordable Housing, in accordance with the New York City Housing Maintenance Code; and
- (k) certification that the representations, warranties and statements made by the Applicant that are contained in this Agreement and in any other documents executed in connection with this Agreement remain true and correct as of the date on which the foregoing conditions have been satisfied; and
- (l) submission of proof that the Building Plans were reviewed by a DOB plan examiner and submission of zoning calculations approved by a DOB plan examiner provided, however, that if such approved zoning calculations differ from those set forth in the architect self-certification submitted to the Department June 1, 2016, the Department's issuance of the Certificate of Completion of the Affordable Housing Units shall be based upon such DOB approved calculations; and
- (m) where applicable, submission of proof of completion of all applications for tax exemptions and that Applicant has fully complied with Section 5 of this Agreement; and
- (n) compliance with the terms of this Agreement and the Program.

10. Warranties. Applicant shall obtain and retain commercially reasonable warranties of the work on the Affordable Housing Units from the general contractor and all subcontractors performing such work and, at the Department's request, shall submit such warranties for inspection.
11. Renting Affordable Housing Units.

- (a) For the duration of the Qualified Project Period, as defined in that certain Regulatory Agreement between Applicant and New York State Housing Finance Agency ("HFA Regulatory Agreement") for the Premises, the Affordable Housing Units will be managed and operated by Applicant (in this capacity, "Administering Agent"), an organization qualified to participate in the Program. The Administering Agent shall ensure that Affordable Housing Units are rented at the DHCR Registration Deadline and each subsequent vacancy, in compliance with the Plan and all of the requirements of the Program. Within (60) sixty days of the DHCR Registration Deadline, the Administering Agent shall submit an affidavit to the Department attesting that the Monthly Rent registered and charged for each Affordable Housing Unit, complied with the Monthly Rent requirements for such unit, as Initial Occupancy. Each year after the DHCR Registration Deadline, in the month of March, the Administering Agent shall submit an affidavit to the Department attesting that each lease or sublease of an Affordable Housing Unit or renewal thereof, during the preceding year, complied with the applicable Monthly Rent requirements of the Program.

Applicant may enter into a subcontract with another for-profit entity including an entity affiliated with Applicant to provide certain management services, except that the Administering Agent must retain responsibility for tenant selection and Rent-up, as well as responsibility for annual reporting to the Department with respect to the Affordable Housing Units pursuant to the Program and this Agreement. A contract between the Administering Agent and the Department ("Administering Agent Agreement") is attached hereto and made a part hereof as Exhibit F. The Department reserves the right to replace the Administering Agent in the event that the Affordable Housing Units are not rented at Rent-up and each subsequent vacancy thereafter in compliance with the Program.

- (b) No later than thirty (30) days prior to the expiration or termination of the Qualified Project Period, Applicant shall enter into a contract with a not-for-profit administering agent qualified and approved by the Department, pursuant to Section 23-96(e)(2), to participate in the Program. The contract with the new Administering Agent shall take effect upon the date of expiration or termination of the Qualified Project Period. The Administering Agent hired by Applicant shall ensure that Affordable Housing Units are rented at each subsequent vacancy after the DHCR Registration Deadline, in compliance with the plan and all of the requirements of the Program. Each year after the DHCR Registration Deadline, in the month of March, the Administering Agent shall submit an affidavit to the Department attesting that each lease or sublease of an Affordable Housing Unit or renewal thereof, during the preceding year, complied with applicable Monthly Rent requirements of the Program.

The new Administering Agent and the Department shall enter into a contract substantially in the form of the Administering Agent Agreement attached and made a part hereof as Exhibit F. The Department reserves the right to replace the Administering Agent in the event that the Affordable Housing Units are not rented at each subsequent vacancy after the DHCR Registration Deadline in compliance with the Program. Applicant may enter into a subcontract with another for-profit entity including an entity affiliated with Applicant to provide certain management services, except that the Administering Agent must retain responsibility for tenant selection and Rent-up, as well as responsibility for annual reporting to the Department with respect to the Affordable Housing Units pursuant to the Program and this Agreement. Nothing stated herein limits or modifies in any way whatsoever the requirement contained in Section 7 herein that that Affordable Housing Units be operated as such for the life of the increased floor area of the Compensated Development(s).

12. Insurance.

(a) Insurance.

- (i) Applicant shall obtain and maintain in force all-risk casualty insurance, including broad form extended coverage that, in the event of a casualty to the Building containing the Affordable Housing Units, will pay an amount of insurance equal to full replacement value of the Building containing the Affordable Housing Units.
- (ii) Applicant shall obtain and maintain in force commercial general liability insurance and other insurance of commercially reasonable types and amounts with respect to the Building containing the Affordable Housing Units.

(b) Casualty.

- (i) In the event of a casualty, Applicant and/or the Administering Agent shall promptly notify the Department thereof. The Department agrees that, subject to the terms and conditions set forth in this Section 12, the proceeds of the insurance on the Premises may be utilized as determined by the lender or lenders participating in the financing of the Building (the "Financiers") in accordance with the documents governing such Financiers' loan(s), copies of which have been provided to the Department (the "Loan Documents"). Applicant shall promptly inform the Department of the disposition of such insurance proceeds.
- (ii) (A) In the event of a partial casualty, to the extent that any additional Floor Area created pursuant to this Agreement continues to exist or is reconstructed after such casualty, the Affordable Housing Units shall be reconstructed so as to maintain in the Building the same ratio of Affordable Housing to the additional Floor Area as existed prior to such casualty, notwithstanding the availability of, or priority of payment of, insurance proceeds, and the terms of this Agreement shall remain in full force and effect.

(B) If the Applicant and Financiers determine that due to the nature of the casualty and the condition of the remaining structure, it is not practicable to include the Affordable Housing Units as originally configured in the replacement building, the Affordable Housing Units may be reconstructed in a location other than the Premises in accordance with the requirements of this Agreement and the Program.

- (iii) In the event of a total casualty, where all additional Floor Area created pursuant to this Agreement ceases to exist and the Applicant elects not to utilize the additional Floor Area in the restored building, if any, then all proceeds shall be applied in accordance with the Loan Documents.
- (iv) Applicant agrees that if the Building containing the Affordable Housing Units is reconstructed as provided in Section 12(ii), then: (A) at such time as the restored portion of the Building or any new building is ready for occupancy, the Affordable Housing Units on each restored floor shall be made available for occupancy and re-rented concurrently with the market rate units on the same floor; (B) Applicant shall restore, repair, replace, rebuild, alter or otherwise improve the Affordable Housing Units in accordance with this Agreement and the Program in effect as of the date hereof; (C) such construction shall be free of all violations under the New York City Building Code, the New York State Multiple Dwelling Law and the New York City Housing Maintenance Code and (D) Applicant shall, upon request of the Department, amend this Agreement to reflect any changes to the number, configuration or location of the Affordable Housing Units in any replacement building or off site location for the Affordable Housing Units made in accordance with this Section 12.
- (v) The Department acknowledges and agrees that Applicant has the right to require the Financiers under any current or future Mortgage to use the insurance proceeds for the rebuilding of the Premises (with certain protective procedures).

13. Construction Monitoring. The Department may monitor the construction of the Affordable Housing Units in any reasonable manner, including inspection of the Premises. Upon request (a) Applicant shall give the Department notice of planning and construction progress meetings by telephone or in writing and (b) the Department may (i) participate in planning and construction progress meetings, (ii) review construction contracts, plans, specifications and materials samples and (iii) review proposed changes to the foregoing. Applicant shall give to the Department (x) following the Department's request for any documents or materials pursuant to the preceding sentence, notice of proposed changes to such documents or materials, and (y) notice of any casualty to or other material event concerning the work on the Affordable Housing Units.

14. Disclosure of Financial Arrangements. Upon the request of the Department, Applicant shall fully disclose the financial terms and arrangements relating to the Affordable Housing Units and sale or use by Applicant of the Certificate of Completion of Affordable Housing Units. In the event that the Department obtains information pursuant to this Section 14, the Department shall thereafter disclose such information to third parties only as required by law, except that such data may be used and disclosed without attribution to Applicant as part of an analysis of the Program.

15. Special Reserve Fund.

(a) Simultaneous with or prior to the issuance of a Certificate of Completion of Affordable Housing Units, Applicant will fund a special operating reserve fund (the "Special Reserve Fund") in the amount of either: (1) fifteen thousand three hundred and twenty dollars (\$15,320) which represents \$1.15 per square foot of Affordable Housing as stated in the architect self-certification submitted to the Department on June 1, 2016 (the "Architect Certification") or (2) if, in accordance with Section 9 (l), the DOB approves zoning calculations that differ from the Architect Certification, then \$1.15 per square foot of Affordable Housing as stated in such DOB approved zoning calculations, which shall be placed in a blocked reserve account to be administered by the Department or its designee. The Special Reserve Fund and the interest accrued thereon shall belong to the Affordable Condo Unit and shall be used solely for the benefit of the Affordable Housing Units. The Special Reserve Fund is separate from the Building reserve fund built into the rent roll that will accumulate over time. The proceeds of the Special Reserve Fund shall be available to pay for unanticipated increases in the cost of operating and maintaining the Affordable Housing Units (including, but not limited to, escalating real estate taxes), or for capital repairs or improvements, the cost of which cannot be covered by the Building's capital reserve fund. Expenditures from the Special Reserve Fund shall be made solely at the discretion of the Department and may be made by the Department on behalf of Applicant.

(b) If, the Department authorizes any expenditures to be made from the Special Reserve Fund, Applicant shall replenish the Special Reserve Fund in the amount of the total sum of all such authorized expenditures by applying the excess of collected rents over actual operating expenses until all such repayments have been made. Such repayments into the Special Reserve Fund shall be made prior to the payment of any unpaid developer, syndication or partnership fees. In addition, such repayments shall be supported by the most recent financial statements, an independent auditor's report and a rent roll for the Affordable Condo Unit. Applicant may choose to replenish such Special Reserve Fund on a calendar year basis or on a fiscal year basis. In addition, upon sale, transfer other disposition the Affordable Housing Units or any interest therein, Applicant or owner as applicable, shall repay, in full, all amounts withdrawn from and owed to the Special Reserve Fund.

(c) On the last day of the Occupancy Restriction Period (as defined in the HFA Regulatory Agreement, the Applicant shall deposit into the Special Reserve Fund an additional amount equal to \$1.10 per square foot of the Affordable Housing plus interest, compounded from the date of the issuance of the Certificate of Completion of Affordable Housing Units until the date that is the last day of the Occupancy Restriction Period at a rate equal to the rate at which the initial deposit to the Special Reserve Fund earned interest.

16. Inspection.

(a) The Department shall have full authority to inspect the Affordable Housing Units without prior notice during business hours and Applicant and the Administering Agent shall cooperate fully with the Department in any such inspection. The Department shall have authority to inspect the Affordable Housing Units other than during business hours on three (3) days prior notice.

- (b) The Department shall have full authority to inspect the books and records of Applicant and the Administering Agent without prior notice during business hours and Applicant and the Administering Agent shall cooperate fully with the Department in any such inspection. Applicant and the Administering Agent shall furnish copies of all books and records with respect to the Affordable Housing Units, to the Department, without cost to the Department, upon five (5) day's prior written request.
- 17. Operating Accounts. Applicant shall provide the Department with the names and locations of all bank accounts established with respect to the management and operation of the Affordable Housing Units by Applicant (the "Operating Accounts"). All such accounts shall confer plenary authority on the Department to freeze such accounts, which authority the Department shall exercise subject to Section 18 of this Agreement. Furthermore, Applicant shall provide the Department with annual operating statements for the Affordable Housing Units.
- 18. Remedies of the Department.
  - (a) If Applicant violates any of the terms of this Agreement, or if any of the representations and warranties by Applicant set forth in Section 9(k) of this Agreement are determined to be false, then the Department may declare a default under this Agreement.
  - (b) Upon declaration of a default under this Agreement, the Department shall give Applicant and the Administering Agent, as applicable, notice thereof by facsimile, hand delivery or reputable overnight courier and a reasonable opportunity to cure (if such default can be cured). If at the end of the cure period (if any) the default has not been cured, then the Department shall provide Applicant and the Administering Agent, as applicable, notice thereof and shall provide Applicant and the Administering Agent an opportunity to be heard on not less than three (3) days prior written notice. Following such hearing, upon the existence of an uncured default under this Agreement, the Department may (i) assume responsibility for management of the Affordable Housing Units directly or through a third party designated by it, (ii) freeze the Operating Accounts, (iii) seek specific performance of this Agreement or an injunction against its violation, (iv) have a receiver of its choice appointed during the pendency of any litigation, (v) seek monetary damages against Applicant, and/or (vi) terminate this Agreement with respect to any portion of the Affordable Housing for which a Certificate of Completion of Affordable Housing Units pursuant to Section 9 has not been issued. In the event that the Department exercises its rights under clause (ii) of this Section 18(b) and provided that there are sufficient funds in the Operating Accounts then the Department shall use the funds in such Operating Accounts to make payments due under the loan documents for previously approved mortgage loans of the Applicant and to pay for reasonable and customary operating expenses for the Affordable Housing Units.
  - (c) If an Affordable Housing Subordination Agreement has been entered into by a Financier in accordance with Section 19 of this Agreement, the Department shall terminate this Agreement at anytime prior to the issuance of the Certificate of Completion of Affordable Housing Units at the request of such Financier, or its

successors or assigns, if such Financier, its successors or assigns, commences foreclosure proceedings or receives a deed in lieu of foreclosure with respect to the mortgage loan that is the subject of such Affordable Housing Subordination Agreement. If the Department terminates this Agreement pursuant to this Section 18(c): (1) all benefits granted pursuant to this Agreement to any project will be revoked and (2) this Agreement shall become null and void. The Department shall provide written confirmation of termination in recordable form upon the written request of Applicant and/or Financier.

- (d) The remedies set forth in Section 18(b) shall be cumulative with any other remedies available to the Department at law or in equity and exercise of one or more remedies set forth in Section 18(b) shall not limit the Department in the exercise of one or more other remedies set forth therein or otherwise available to the Department at law or in equity.
  - (e) The Department may exercise the remedies set forth in Section 18(b) without the notice, opportunity to cure or hearing provided therein if the Department determines that exigent circumstances require immediate action to protect the Premises or the tenants thereof. The Department will provide notice and a hearing as provided in Section 18(b) promptly following exercise of its remedies as set forth therein.
  - (f) If the Department elects to assume responsibility for management of the Premises pursuant to this Section 18, Applicant shall (and shall cause the Administering Agent to) immediately deliver possession of the Affordable Housing Units and all books and records kept in connection therewith to the Department or the person designated by the Department and shall cooperate fully in effectuating the smooth transfer of management and control of the Affordable Housing Units, including execution of written instruments and provision of notice to third parties.
  - (g) Applicant hereby grants the Department and its designees an irrevocable license to enter and remain on the Affordable Housing Units for the purpose of managing such Affordable Housing Units as provided in this Section 18.
19. Initial Debt: In accordance with Section 23-93 of the Resolution, Applicant shall not mortgage or otherwise encumber the Affordable Housing Units or this Agreement without the prior written consent of the Department. Furthermore, in the event that the Department consents to a mortgage loan, the lender must enter into a Affordable Housing Subordination Agreement with the Department in form and substance satisfactory to the Department, that subordinates the loan to all of the terms and conditions of this Agreement, substantially in the form annexed hereto as Exhibit G (the "Affordable Housing Subordination Agreement"). Immediately following execution of the Affordable Housing Subordination Agreement, Applicant shall cause such Agreement to be recorded against the Affordable Housing Units in the Office of the City Register for the county in which the Affordable Housing Units are located, and shall pay all required fees and taxes in connection therewith.

Attached hereto as Exhibit H is the development budget approved by the Department setting forth the sources and uses of financing for the construction of

the Affordable Housing. Provided the lender holding a mortgage that secures such debt enters into the Affordable Housing Subordination Agreement in form and substance satisfactory to the Department and the Department receives proof of recordation of such Agreement immediately following execution thereof, the Department approves such debt ("Initial Debt").

- (b) Subsequent Debt: Notwithstanding anything to the contrary contained herein, on or after the date of issuance of the Certificate of Completion of Affordable Housing Units in accordance with Section 9 of this Agreement, or, if more than one Certificate of Completion of Affordable Housing Units is issued, on or after the date of the final Certificate of Completion of Affordable Housing Units) Applicant shall not mortgage or otherwise encumber the Affordable Housing Units or this Agreement with debt other than any Initial Debt approved by the Department and any modifications of same unless, (1) Applicant has notified the Department of such debt; (2) the lender is a local, state, or federal agency, savings bank, commercial bank, life insurance company, public real estate investment company, pension fund, Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), or other lender approved by the Department, (3) if the debt service coverage ratio for the mortgaged property is less than 1.1, Applicant has obtained the prior written consent of the Department, and (4) if such debt is a new indebtedness and/or a new mortgage, the lender enters into a Affordable Housing Subordination Agreement with the Department which Applicant shall cause to be recorded against the Affordable Housing Units immediately following execution thereof in the Office of the City Register for the county in which the Premises are located.
20. Plan Certification. Following the execution of this Agreement, the Department will, upon the request of Applicant, certify that the Plan has been submitted and approved, and is in compliance with the Program.
21. Marketing of Affordable Housing Units. The Administering Agent shall be required to market the Affordable Housing Units in accordance with the Program. Furthermore, each lease for an Affordable Housing Unit shall provide that such lease may be terminated and such tenant may be evicted if such tenant falsely or fraudulently certifies income or household composition to the Administering Agent.
22. Initial Occupancy Certification. Within sixty (60) days following the DHCR Registration Deadline, the Administering Agent shall submit to the Department an affidavit attesting that each Household occupying an Affordable Housing Unit complied, at Initial Occupancy, with the annual income eligibility requirements of the Program and that the Monthly Rent registered and charged for each Affordable Housing Unit, complied with the Monthly Rent requirements for such unit, at Initial Occupancy. In accordance with C.F.R. 5.609 or any successor regulations, "Annual Income" shall mean the anticipated total income from all sources to be received by the household head and spouse and by each additional member of the household, including all net income derived from assets, for the twelve (12) month period following the initial determination of income. The Administering Agent also shall retain all records and documents relating to income determination for a minimum of three (3) years after the date a tenant commences occupancy in a Affordable Housing Unit.



23. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assignees. Prior to issuance of the Certificate of Completion of Affordable Housing Units Applicant shall not sell, transfer or otherwise dispose of the Affordable Housing Units without prior approval from the Department. Before any sale, transfer, or other disposition of the Affordable Housing Units, the Applicant shall require the subsequent purchaser or transferee to assume in writing, Applicant's obligations and duties under this Agreement, pursuant to an Assignment and Assumption Agreement in form and substance satisfactory to the Department, which shall be in recordable form and shall provide the Department with a executed copy of such assumption agreement and proof of recordation thereof.
24. Condominium Conversion. Nothing in this Agreement shall prohibit the Applicant from establishing the Condominium and subdividing the Building into Condominium Units so long as (a) the Department approves any condominium documents, including, but not limited to, the condominium declaration and by-laws, necessary to effectuate such subdivision of the Building, (b) the Condominium and the Condominium Units meet the requirements of Section 339-m of the Real Property Law, (c) the Department determines that the Affordable Housing Units will be operated pursuant to the requirements set forth in the Agreement and the Program, and (d) the Memorandum of Regulatory Agreement in the form attached hereto as Exhibit I has been recorded against the Affordable Condo Unit prior to receipt of a Certificate of Completion of Affordable Housing Units in accordance with Section 9 of this Agreement.
25. Investigation Clause. Applicant and Administering Agent shall be bound by and comply with the provisions of the Investigation Clause annexed hereto as Exhibit J.
26. Modifications.
- (a) No provision of this Agreement may be extended, modified, waived or terminated orally, but only by an instrument in writing signed by the party against whom enforcement is sought.
  - (b) Applicant and/or the Administering Agent, as applicable, shall comply with all modifications to Program reporting requirements as set forth in the Guidelines, of which the Applicant shall be deemed to have constructive notice, concerning: (i) the type of documents to be retained; (ii) the length of time for which such documents must be retained; and (iii) the form and method of submitting such documents to the Department.
27. Counterparts. This Regulatory Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall be deemed one and the same instrument.
28. Notices. All notices, approvals, requests, waivers, consents or other communications given or required to be given under this Agreement shall be in writing and sent or transmitted as follows:

If to Applicant and/or  
Affordable Owner:

Avenue D Owners LLC and/or Avenue D Affordable LLC  
1865 Palmer Avenue, Suite 203  
Larchmont, NY 10538

Attn: Ronald Moelis & Jeffrey Feldman, Esq. .  
Facsimile (914) 833-3092

with a copy to: Katten Muchin Rosenman LLP  
575 Madison Avenue  
New York, NY 10022  
Attn: Matin Siroka, Esq.  
Facsimile

If to the Department: Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038  
Attn: Associate Commissioner for Housing Incentives  
Facsimile (212) 863-5899

with a copy to: Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038  
Attn: General Counsel  
Facsimile (212) 863-8375

Notices must be hand delivered, transmitted via facsimile or sent by certified or registered U.S. mail, return receipt requested or overnight delivery by a reputable national carrier. Notice shall be deemed to have been given upon (i) delivery if sent by hand delivery or U.S. mail, and (ii) confirmed receipt, if sent by facsimile, to both the addressee and the person entitled to receive a copy thereof. Each party named above may designate a change of address by written notice to all of the other parties

29. Recordation.

- (a) Applicant shall cause this Agreement to be recorded against the Premises prior to commencement of construction, in the Office of the City Register for the County in which the Premises are located and shall pay all required fees and taxes in connection therewith.
- (b) If the conversion of the Building to Condominium Units, including without limitation the filing of the Declaration and other actions required to complete such conversion of the Building have not occurred prior to the time when this Agreement is required to be recorded against the Premises, or any other document required hereunder to be recorded against the Premises, then, notwithstanding anything contained herein to the contrary, this Agreement and such other documents shall be recorded against the entire Premises. In such event, at the time of condominium conversion, provided that the Memorandum of Regulatory Agreement referred to in Section 24 is recorded simultaneously therewith, the Department will release the Condominium Units other than the Condominium Unit containing the Affordable Housing.

30. More Restrictive Provisions Govern. In the event of any conflict or ambiguity between the provisions of this Agreement and the HFA Regulatory Agreement, the more restrictive of the applicable provisions of the Agreement and the HFA Regulatory Agreement shall govern and (b) nothing herein, including but not limited to, Sections 7, 8

and 11 hereunder, shall limit, reduce or affect in any way the duration of any restrictions imposed on the operation or occupancy of the Affordable Housing Units by this Agreement.

31. Choice of Law. The covenants, provisions and terms of this Agreement and the rights and obligations of the parties hereunder shall be governed by the construed and interpreted in accordance with the laws of the State of New York, and shall be binding upon and inure to the benefit of Applicant, Owner, the Administering Agent and the Department, and their respective successors, transferees, and assigns.
32. Applicant/Affordable Owner's Consent and Agreement.
  - (a) The Residential Master Lease provides that Applicant's interest in the Premises and the Residential Master Lease and any and all mortgages, whether now or in the future encumbering either Applicant's interest in the Premises or Residential Master Lease, shall be subject and subordinate to the terms of this Agreement during the term of this Agreement. Nothing in this Section 32 shall provide the Department with any remedies that it may not otherwise have under this Agreement or result in the forfeiture of Applicant's interests in the Premises.
  - (b) If the Residential Master Lease is terminated prior to the expiration of this Agreement and Applicant then leases the Affordable Condo Unit to a third party (the "New Residential Master Lease"), the New Residential Master Lease and any amendments thereto shall also be subject to and subordinate to this Agreement and the tenant under the New Residential Master Lease shall be required to assume the ongoing obligations of the Affordable Owner under the Residential Master Lease pursuant to this Agreement for the balance of the term of this Agreement.
  - (c) If the Residential Master Lease or any New Residential Master Lease is terminated and Owner does not either convey the beneficial interest in the Affordable Condo Unit to Affordable Owner or enter into a New Residential Master Lease, Owner shall assume all of the ongoing obligations with respect to the Affordable Condo Unit pursuant to this Agreement for the balance of the term of this Agreement.
  - (d) In the event of any conflict between the terms of the Agreement and the Residential Master Lease, the terms of this Agreement shall govern.
  - (e) Notwithstanding anything in the Agreement to the contrary, if the Residential Master Lease or/and the New Residential Master Lease is terminated prior to the date of the issuance of any Certificate of Completion of Affordable Housing Units hereunder, then Applicant shall have the right, but not the obligation, upon written notice given within 15 business days of the termination of the Residential Master Lease or any New Residential Master Lease to the Department, to terminate this Agreement. To the extent Applicant elects to terminate this Agreement, then the parties hereto shall not be entitled to the benefits of the Program.
  - (f) Applicant agrees that it will promptly execute and deliver to the Department such documents as the Department may reasonably request to effectuate the terms of this Agreement, including but not limited to, a subordination, non-disturbance and

attornment agreement(s) subordinating the Applicant's interest under the Residential Master Lease to this Agreement.

33. Termination.

- (a) The Department reserves the right to terminate this Agreement with notice, in accordance with Section 28, to Applicant if Applicant does not complete the Affordable Housing Units by the Completion Deadline.
- (b) Applicant may terminate this Agreement with notice, in accordance with Section 28, to the Department at any time prior to the issuance of the Certificate of Completion of Affordable Housing Units.

34. Primary Residence. Affordable Housing Units may only be occupied as a primary residence, as defined in Rent Stabilization, by natural persons or families pursuant to a one or two year lease who have met the applicable income requirements for Low Income Households at the time of such tenant's initial occupancy of such unit. Applicant shall only offer a vacant dwelling unit for occupancy by persons or families intending to occupy such unit as their primary residence pursuant to a one or two year lease and shall not cause or permit the sublease or assignment of any dwelling unit for transient occupancy, for occupancy by any household that is not income eligible, or to any corporation or other entity.

[NO FURTHER TEXT; SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the day and year first above written.

**CITY OF NEW YORK**


By: DEPARTMENT OF HOUSING PRESERVATION AND  
DEVELOPMENT

By:   
Name: Louise Carroll  
Title: Associate Commissioner, Housing Incentives

**AVENUE D OWNERS LLC**  
a New York Limited Liability company

By: Avenue D Investors LLC,  
its sole member

By: Avenue D Managers LLC,  
its managing member

By:   
Name: David Dishy  
Title: Authorized Signatory

**AVENUE D AFFORDABLE LLC,**  
a New York Limited Liability company

By: Avenue D Investors LLC, its Managing Member

By: Avenue D Managers LLC, its Managing Member

By:   
Name: David Dishy  
Title: Authorized Signatory

APPROVED AS TO  
FORM BY STANDARD  
TYPE OF CLASS FOR USE  
UNTIL AUGUST 31, 2017


/s/ Howard Friedman  
Howard Friedman  
Acting Corporation Counsel

UNIFORM ACKNOWLEDGEMENTS

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF NEW YORK)

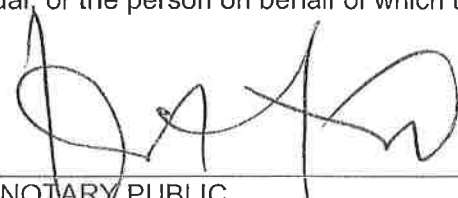
On this 26<sup>th</sup> day of October 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Louise Carroll, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.



  
NOTARY PUBLIC

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF NEW YORK)

On this 27<sup>th</sup> day of October, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared David Dishy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
NOTARY PUBLIC

KELLY A. KAMEN  
Notary Public, State of New York  
No. 02KA6131349  
Qualified in Westchester County  
Commission Expires August 1, 2017

**ALL NEW YORK TITLE AGENCY, INC.**

**Title Number: ANY2015-9997C**

**Exhibit  
SCHEDULE A**

**PART A (OLD TAX LOT 33)**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the Westerly side of Avenue D, distant 22 feet 9 inches Northerly from the corner formed by the intersection of the Westerly side of Avenue D with the Northerly side of East 6th Street;

RUNNING THENCE Westerly and parallel with the Northerly side of East 6th Street, 93 feet;

THENCE Northerly and parallel with the Westerly side of Avenue D, 134 feet;

THENCE Easterly and parallel with the Northerly side of East 6th Street, 93 feet to the Westerly side of Avenue D; and

THENCE Southerly along the Westerly side of Avenue D, 134 feet to the point or place of BEGINNING.

**PART B (OLD TAX LOT 40)**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, in the City of New York, bounded and described as follows:

COMMENCING at a point on the Northerly side of Sixth Street distant fifty-two (52) feet Westerly from the Northwestern corner of Avenue D and Sixth Street;

RUNNING THENCE Westerly along Sixth Street, forty-one (41) feet;

THENCE Northerly and at right angles to Sixth Street twenty-two (22) feet and nine (9) inches;

THENCE Easterly and parallel with Sixth Street, forty-one (41) feet;

THENCE Southerly and parallel with Avenue D, twenty-two (22) feet nine (9) inches to the point or place of BEGINNING.

**EXHIBIT B**  
**AFFORDABLE HOUSING PLAN**  
[following pages]



THE CITY OF NEW YORK  
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT  
Office of Development  
100 GOLD STREET, FIFTH FLOOR, NEW YORK, NEW YORK 10038  
(212) 863-8228

**AFFORDABLE HOUSING PLAN APPLICATION PURSUANT TO THE INCLUSIONARY HOUSING PROGRAM**

Please indicate "Not Applicable" or "NA" where appropriate. Do not leave any lines blank.

1. **Applicant:** Avenue D Owness LLC  
**Address:** 1865 Palmer Avenue, Suite 203, Larchmont NY 10538  
**Fax:** N/A  
**Email:** kkelman @ Imdeupartners.com  
**Primary Contact (Name/Phone/Email):**  
Katherine Kelman / 212-233-0495 / kkelman @ Imdeupartners.com
  
2. **Owner (if different):** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Fax:** \_\_\_\_\_  
**Email:** \_\_\_\_\_  
**Primary Contact (Name/Phone/Email):**  
\_\_\_\_\_
  
3. **Administering Agent:** C & C Apartment Management LLC  
**Address:** 1735 Park Avenue, New York NY 10035  
**Fax:** N/A  
**Email:** rdoetsch @ ccmanagers.com  
**Primary Contact (Name/Phone/Email):**  
Richard Doetsch / 212-348-3248 / rdoetsch @ ccmanagers.com
  
4. **General Contractor:** Congress Builders LLC  
**Address:** 1865 Palmer Avenue, Suite 203, Larchmont, NY 10538  
**Fax:** N/A  
**Email:** sbonasera @ Imdeupartners.com  
**Primary Contact (Name/Phone/Email):**  
Stephen Bonasera / 516-297-7030 / sbonasera @ Imdeupartners.com

5. Architect: GF55 Partners LLP  
 Address: 19 West 21 St, Suite 1200, New York, NY 10010  
 Fax: N/A  
 Email: len@gf55.com  
 Primary Contact (Name/Phone/Email):  
Leonard Fusco / 212 - 352 - 3099 ext 12 / len@gf55.com
6. Attorney and Firm: Adam Hellegers Avenue D Owners LLC  
 Address: 1865 Palmer Ave, Suite 203, Larchmont, NY 10538  
 Fax: N/A  
 Email: ahellegers@lndevpartners.com  
 Primary Contact (Name/Phone/Email):  
Adam Hellegers / 914 - 275 - 8289 / ahellegers@lndevpartners.com
7. Location of Affordable Housing Units  
 Street Address: 79-89 Avenue D  
 Borough: Manhattan  
 Block(s)/Lot(s): 376/33  
 Community Board: 3
8. Inclusionary Housing District of Affordable Housing Units  
☐ R-10 Inclusionary:  
 Is project privately financed (Yes/No)? No  
☒ IH Designated Area (Insert ZR section reference, e.g., §23-952, §98-26, §62-352, etc):  
ZR 23-90  
☐ Special District: \_\_\_\_\_  
☐ Other (please explain): \_\_\_\_\_
9. If publicly financed, list all sources of governmental assistance, including lower income housing tax credits, bond financing, and land disposition programs:  
4% as-of-right LIHTC, HFA tax-exempt and/or taxable bond financing.
10. Type of Project (check all that apply)  
 Construction type  
☒ New Construction  
☐ Preservation  
☐ Substantial Rehabilitation

**10. Type of Project (continued)**

Location

☒ On-site

☐ Off-site

Inclusionary Units

☒ Rental

☐ Homeownership

Non-Inclusionary Units

☒ Rental

☐ Homeownership

☐ Not Applicable

Unit Count

Total Units: 110

Total IH Units: 22

Super's Units: 1

**11. Income Distribution of Affordable Housing Units**

Number of low-income units (equal to or less than 80% AMI): 22

Number of moderate-income units (equal to or less than 125% AMI): 0

Number of middle-income units (equal to or less than 175% AMI): 0

**12. Tax Exemption To Be Requested:** 421-a

**13. If the project will contain a condominium or cooperative structure, please describe the structure and the use of each unit. If not, please indicate N/A:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Authorized Signature of Applicant:** 

**Print name:** Ron Moelis

**Date:** 5/31/2016

**EXHIBIT C**  
**LIST OF AFFORDABLE HOUSING UNITS**

79-89 Avenue D

Exhibit C

Construction Floor #	Marketing Floor #	Apt #	# Bdrms
2	2	205	3
2	2	208	0
3	3	304	1
3	3	306	2
3	3	307	1
3	3	309	0
4	4	404	1
4	4	407	2
4	4	408	1
4	4	410	0
5	5	501	0
5	5	504	1
5	5	507	2
5	5	510	0
6	6	604	1
6	6	607	2
6	6	610	0
7	7	704	1
7	7	710	0
8	8	810	2
9	9	901	0
9	9	902	2

Inclusionary Unit Summary	
# Bdrms	Units
0 Bdrm	8
1 Bdrm	7
2 Bdrm	6
3 Bdrm	1
Total IH Units	22

**EXHIBIT D**  
**SCHEDULE OF RENTS AND EXPENSES**

Exhibit D

Inclusionary Housing Units -- Rents*				
	# Units	AMI Level	Preferential Rent**	Legal Regulated Rent***
0 Bdrm	8	60%	\$913	\$1,231
1 Bdrm	7	60%	\$980	\$1,320
2 Bdrm	6	60%	\$1,183	\$1,591
3 Bdrm	1	60%	\$1,359	\$1,831
Total	22			

\*Tenants are responsible for paying electricity

\*\*For the 60% of AMI Units the initial Preferential Rents may increase or decrease as determined by HFA; however, Preferential Rents shall not exceed the Legal Regulated Rent

\*\*\*The maximum Legal Regulated Rent is 30% of the Income Index as defined in the New York City Zoning resolution

Exhibit D

Total Units: 110  
IH Apartments: 22

<u>Expense Type</u>	<u>Total Expenses*</u>	<u>Per Unit*</u>
General Administration	\$107,300	\$975
Legal and Other Fees	\$21,000	\$191
Payroll and Benefits	\$294,051	\$2,673
Property Insurance	\$41,300	\$375
Repairs and Maintenance	\$96,700	\$879
Utilities	\$154,000	\$1,400
Real Estate Taxes **	\$126,704	\$1,152
Replacement Reserves	\$27,500	\$250
<u>Total Operating Expenses</u>	<u>\$868,555</u>	<u>\$7,896</u>

\*The expenses reflect the overall project underwriting. The project comprises 110 units, of which 22 are Inclusionary Housing units.

\*\*Real estate taxes assume 421a benefits and are based on estimates provided by Applicant.



**EXHIBIT E  
STANDARD NEW YORK ENDORSEMENT  
(OWNER'S POLICY)**

1. The following is added to the insuring provisions on the face page of this policy:

"\_\_\_\_. Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy."

2. Exclusion Number 5 is deleted, and the following is substituted:

5. Any lien on the Title for real estate taxes, assessments, water charges or sewer rents imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as Shown in Schedule A.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

IN WITNESS WHEREOF, \_\_\_\_\_ Insurance Company of New York has caused this Endorsement to be signed and sealed on its date of issue set forth herein.

DATED:

COUNTERSIGNED \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_ Insurance Company

BY: \_\_\_\_\_

**EXHIBIT F**  
**ADMINISTERING AGENT AGREEMENT**  
**INCLUSIONARY HOUSING PROGRAM**  
[following pages]

**Administering Agent Agreement  
Inclusionary Housing Program**

AGREEMENT made this 11th day of May, 2015, between the Settlement Housing Fund, Inc. ("Administering Agent"), having an office at 247 W. 37<sup>th</sup> St., 4<sup>th</sup> Fl, New York, NY 10018, and the Department of Housing Preservation and Development ("Department"), having an office at 100 Gold Street, Ninth Floor, New York, NY 10038.

WHEREAS, Avenue D Owners LLC, ("Owner") has executed a Regulatory Agreement with the Department, to create twenty-two (22) Affordable Housing Units of located at 79-89 Avenue, Manhattan (the "Affordable Housing Units") in accordance with Section 23-90 (Inclusionary Housing), inclusive of the Zoning Resolution ("Resolution") and with the Inclusionary Housing Guidelines ("Guidelines"); and

WHEREAS, Administering Agent has agreed to ensure that the Affordable Housing Units are rented in compliance with the Agreement at Rent-up and each subsequent vacancy and has signed an agreement with the Applicant to that effect; and

WHEREAS, Administering Agent has been qualified to act as an Administering Agent by the Department;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is hereby agreed that Administering Agent will assume the ongoing responsibility for insuring that each Affordable Housing Unit is rented and upon vacancy re-rented in compliance with the Regulatory Agreement. In addition, the Administering Agent shall (1) maintain records setting forth the facts that form the basis of any affidavit submitted to the Department; (2) maintain such records as the Department may require at the Administering Agent's office or other location approved by the Department; and (3) make all records and facts of the operation of the Administering Agent available for the Department's inspection.

Notwithstanding any other remedy contained herein, the Department may commence an action against Administering Agent to require specific performance of Administering Agent's obligations herein. Department reserves the right to replace Administering Agent in the event that the Affordable Housing Units are not rented at Rent-up and each subsequent vacancy thereafter in compliance with the Program.

This Administering Agent Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall be deemed one and the same instrument.

[NO FURTHER TEXT APPEARS ON THIS PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

Department of Housing Preservation and  
Development of the City of New York

BY: 

Louise Carroll  
Assistant Commissioner for  
Inclusionary Housing

Settlement Housing Fund, Inc.

BY: \_\_\_\_\_

Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

Department of Housing Preservation and  
Development of the City of New York

BY: \_\_\_\_\_  
Louise Carroll  
Assistant Commissioner for  
Inclusionary Housing

Settlement Housing Fund, Inc.

BY:  \_\_\_\_\_  
Molly Wasow Park  
Chief Operating Officer

UNIFORM ACKNOWLEDGEMENTS

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF NEW YORK)

On this \_\_\_\_ day of May, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared Louise Carroll, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEW YORK)  
 ) SS:  
COUNTY OF )

On this \_\_\_\_ day of May, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared Molly Wasow Park, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
NOTARY PUBLIC  
KATHY JANE HECHT  
Notary Public, State of New York  
No. 02HE6236941  
Qualified in New York County  
Commission Expires March 14, 2019

UNIFORM ACKNOWLEDGEMENTS

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF NEW YORK)

On this 11 day of May, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared Louise Carroll, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

PAUL ANGEL ORTA  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 020R6291897  
Qualified in Kings County  
Commission Expires Oct. 21, 2017

  
\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEW YORK)  
 ) SS:  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

## EXHIBIT G

### AFFORDABLE HOUSING SUBORDINATION AGREEMENT

#### SUBORDINATION AND NON-DISTURBANCE AGREEMENT

**THIS SUBORDINATION AND NON-DISTURBANCE AGREEMENT** ("Agreement"), made as of this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by [LENDER], a [national banking association], having an office at \_\_\_\_\_, ("Mortgagee" or "Lender"), in favor of **THE CITY OF NEW YORK**, (the "City") a municipal corporation acting by and through its **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**, having an office at 100 Gold Street, New York, New York 10038 ("HPD").

**WHEREAS**, Mortgagee holds a certain mortgage or mortgages dated of even date herewith, as follows: (a) [Construction Loan Mortgage, Assignment of Leases and Rents and Security Agreement, dated of even date herewith], in the principal amount of \$\_\_\_\_\_; (b) [describe all subordinate mortgages, if any], in the principal amount of \$\_\_\_\_\_ and each made by \_\_\_\_\_, in favor of Lender to secure, among other things, the aggregate principal sum of \_\_\_\_\_ DOLLARS AND \_\_\_\_\_ CENTS (\$\_\_\_\_\_) or so much thereof as may be advanced pursuant thereto, and interest, (the "Mortgage(s)") covering the premises described in Schedule A annexed hereto and incorporated herein ("Premises");

**WHEREAS**, HPD, and Applicant have entered into a certain Regulatory Agreement ("Regulatory Agreement") dated \_\_\_\_\_, which Regulatory Agreement is intended to be recorded against the Premises immediately following execution and delivery thereof;

**WHEREAS**, the Regulatory Agreement was entered into under the Inclusionary Housing Program, which is governed by Sections 23-90 and 62-352 (GW) of the New York City Zoning Resolution (the "Resolution") and the Inclusionary Housing Program Guidelines (the "Guidelines") (the Guidelines and the Resolution are collectively referred to as the "Program");

**WHEREAS**, the Regulatory Agreement provides that Applicant shall not mortgage or otherwise encumber the Premises or the Regulatory Agreement without the prior written consent of HPD and that, if HPD consents to a mortgage loan, the lender must subordinate the loan to all of the terms and conditions of the Regulatory Agreement;

**WHEREAS**, Applicant has entered into the Mortgage and other instruments evidencing or securing obligations of the Premises to Mortgagee (collectively, "Other Loan Documents"; the Mortgage and the Other Loan Documents are referred to collectively as the "Loan Documents"); and

**WHEREAS**, HPD has consented to the Loan Documents on the condition that Mortgagee subordinate the Loan Documents to all the terms and conditions of the Regulatory Agreement in the manner hereinafter described.

**NOW THEREFORE**, for good and valuable consideration, the receipt whereof is hereby acknowledged, Mortgagee hereby represents to and agrees with HPD, notwithstanding any contrary term, provision, agreement, covenant, warranty, and/or representation contained or



implied in any Loan Documents of any other document executed in connection with the Premises, that:

1. The Loan Documents are and shall continue to be subject and subordinate to the terms, covenants, agreements, and conditions of the Regulatory Agreement.
2. As used in this Agreement (a) the term "Mortgage" shall refer to any amendments, replacements, substitutions, extensions, modifications, or renewals thereof, and (b) the term "Mortgagee" shall include the Mortgagee's successors and assigns.
3. As used in this Agreement, the phrase "subject and subordinate" means that:
  - (a) to the extent there are any inconsistencies between the provisions of the Regulatory Agreement and any provisions of the Loan Documents, the provisions of the Regulatory Agreement shall take priority over the inconsistent provisions of the Loan Documents, except as provided herein; and
  - (b) if Mortgagee or if any person or entity becomes the owner of the Premises (including, if the Premises is defined as a leasehold interest as well as a fee interest, the owner of such leasehold interest) by foreclosure, conveyance in lieu of foreclosure, or otherwise ("New Owner"), (i) the Regulatory Agreement shall continue in full force and effect and the Mortgagee and New Owner shall have no right to disturb the rights of HPD under the Regulatory Agreement, (ii) HPD shall not be named as a defendant in any action or proceeding to foreclose the Mortgage or otherwise enforce the Mortgagee's or New Owner's rights thereunder, except as set forth below, and (iii) the Premises shall be subject to the Regulatory Agreement in accordance with the provisions thereof; provided, however, that Mortgagee and New Owner shall not be liable for any act or omission of Applicant or bound by any subsequent amendment of or modification to the Regulatory Agreement without its written consent. Subject to the foregoing, nothing contained herein shall prevent the Mortgagee or New Owner from naming HPD in any foreclosure or other action or proceeding initiated by the Mortgagee or New Owner pursuant to the Mortgage to the extent necessary under applicable law in order for the Mortgagee or New Owner to avail itself of and complete the foreclosure or other remedy.
4. Upon a declaration of default under the Regulatory Agreement, HPD shall give Mortgagee notice thereof by facsimile, hand delivery or reputable overnight courier and a reasonable opportunity to cure (if such default can be cured), provided, however, that Mortgagee shall have no obligation to cure any such default. If Mortgagee cures the default during such cure period (if any) or has commenced to cure the specified default within such period and is diligently pursuing completion of such cure, or has commenced the exercise of remedies under the Loan Documents within such period, HPD shall not exercise any of the remedies under Section 18(b) of the Regulatory Agreement by reason of such default. Nothing herein shall limit HPD's right to consent to a replacement manager pursuant to Paragraph 6 herein.
5. If HPD freezes the Operating Account(s) pursuant to Paragraph 18(b) of the Regulatory Agreement, HPD will allow Mortgagee to use funds therein to make payments due under the Loan Documents, provided that there are sufficient funds in the Operating Account(s) to pay for reasonable and customary operating expenses for the Premises. Mortgagee

hereby acknowledges that it has no interest in or rights to any funds held in the Special Reserve Fund Accounts pursuant to the Regulatory Agreement.

6. Notwithstanding anything contained in the Regulatory Agreement or the Loan Documents, neither HPD nor Mortgagee may assume responsibility for management of the Premises or designate a third party to manage the Premises without the consent of the other. If, in the exercise of its remedies under the Regulatory Agreement, HPD notifies Mortgagee of its intention to install a replacement manager of the Premises, then Mortgagee's consent to such manager shall not be unreasonably withheld or delayed. If, in the exercise of its remedies under the Loan Documents, Mortgagee notifies HPD of its intention to install a replacement manager of the Premises, then HPD's consent to such manager shall not be unreasonably withheld or delayed.
7. Upon a casualty to a building on the Premises,
  - (a) where the repair or reconstruction cost is more than thirty-five percent (35%) of the replacement value of a building on the Premises, Mortgagee shall have the right to determine whether insurance proceeds are applied for the reconstruction or repair of the Premises or towards repayment of the Mortgage, and
  - (b) where the repair or reconstruction cost is less than or equal to thirty-five percent (35%) of the replacement value of the Premises, HPD shall have the right to determine how insurance proceeds shall be applied. HPD shall make such determination within sixty (60) days after HPD is notified of the occurrence of the casualty. If HPD determines in such case not to apply the insurance proceeds for the reconstruction or repair of the Premises, the insurance proceeds shall be retained by Mortgagee to the extent of sums then due under the Mortgage.

This paragraph supersedes any contrary provisions in the Regulatory Agreement or Loan Documents.

8. No failure to exercise and no delay in exercising, on the part of HPD, of any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege operate as a waiver of any other right, power or privilege under this Agreement.
9. The covenants, provisions and terms of this Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and interpreted in accordance with the laws of the State of New York, and shall be binding upon and inure to the benefit of Mortgagee, HPD, and their respective successors, transferees, and assigns.
10. Neither this Agreement nor any provision hereof (including this paragraph) may be changed, modified, amended, waived, supplemented, discharged, abandoned, or terminated orally except by an instrument in writing signed by the party against whom enforcement of the change, modification, amendment, waiver, discharge, abandonment, or termination is sought.
11. Notices. All notices, approvals, requests, waivers, consents or other communications given or required to be given under this Agreement shall be in writing and sent or transmitted as follows:

If to HPD, in duplicate, to: Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038  
Attn: Associate Commissioner, Housing Incentives  
Facsimile (212) 863-5899

and: Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038  
Attn: General Counsel  
Facsimile (212) 863-8375

If to Bank, in duplicate, to:

Notices must be hand delivered, transmitted via facsimile, or by overnight delivery (e.g., FEDEX) or sent by certified or registered U.S. mail, return receipt requested. Notice shall be deemed to have been given upon (i) delivery if sent by hand delivery, U.S. mail or overnight delivery, and (ii) confirmed receipt, if sent by facsimile, to both the addressee and the person entitled to receive a copy thereof. Each party named above may designate a change of address by written notice to all of the other parties.

12. Recordation. This Agreement shall be recorded against the Premises immediately after the execution hereof, in the Office of the City Register for the County in which the Premises are located and the Applicant shall pay all required fees and taxes in connection therewith.

13. Counterparts. This Subordination Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one agreement.

**[No further text - signatures on the next page]**

IN WITNESS WHEREOF, the City of New York, acting by and through its Department of Housing Preservation and Development has caused this Subordination Agreement to be signed by its duly authorized commissioner, and Lender has caused this Subordination Agreement to be duly signed by a duly authorized officer, as of the day and year first above written.

**THE CITY OF NEW YORK**

**By: DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT**

By: \_\_\_\_\_  
Louise Carroll  
Associate Commissioner for Inclusionary Housing

**[LENDER]**

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

APPROVED AS TO FORM BY  
STANDARD TYPE OF CLASS  
UNTIL AUGUST 31, 2017

By: Steve Stein Cushman  
Acting Corporation Counsel

**EXHIBIT H**  
**SOURCES AND USES**

# Exhibit H

Total Units: 110  
IH Units: 22

## Sources and Uses\*

<u>Construction Sources</u>	
First Mortgage	<u>Amount</u>
Equity	<u>Per Unit</u>
<b>Total Construction Sources</b>	<b>\$75,279,754</b>
	<b>\$684,361</b>
<u>Uses</u>	
Acquisition Cost	<u>Amount</u>
Hard Costs	<u>Per Unit</u>
Soft Costs	
Financing Costs	
<b>Total Uses</b>	<b>\$75,279,754</b>
	<b>\$684,361</b>

\*The sources and uses reflect the overall project underwriting. The project comprises 110 units, of which 22 are Inclusionary Housing units.

## EXHIBIT I

### MEMORANDUM OF REGULATORY AGREEMENT

**THIS MEMORANDUM OF REGULATORY AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 201[##], by [owner], [description of legal entity (e.g., a New York limited liability company formed pursuant to the laws of the State of New York)], ("Applicant"), having an office at [address].

#### WITNESSETH THAT:

1. The Applicant is owner in fee simple of the premises located in the County of \_\_\_\_\_, City and State of New York, known as and by the street address [address], identified as Block [##], Lot [##] on the Tax Map of the City (the "Premises"), more particularly described in Exhibit A attached hereto and made a part hereof;
2. The Applicant has covenanted and agreed for and on behalf of itself, its successors, assigns, heirs, grantees and lessees, which covenants shall be covenants running with the land to provide Affordable Housing on the Premises in accordance with the Regulatory Agreement ("Regulatory Agreement"), dated as of [insert date] among [insert name(s) of non-HPD parties] and the City of New York, a municipal corporation acting through its Department of Housing Preservation and Development ("HPD") and recorded in the Office of the City Register for New York County on [insert date] as CFRN [insert CFRN number], the provisions of which are by this reference made a part hereof and Section 23-90 (Inclusionary Housing), inclusive of the Resolution.
3. The Regulatory Agreement and the covenants therein, shall run with the land that constitutes the Premises in accordance with the terms therein.
4. This Memorandum of Regulatory Agreement is intended to provide constructive notice of the existence and terms of the Regulatory Agreement and in no way modifies or amends the Regulatory Agreement. If any provisions of this Memorandum of Regulatory Agreement conflict with the Regulatory Agreement, the terms of the Regulatory Agreement shall prevail. The Applicant at its sole cost and expense shall cause this Memorandum of Regulatory Agreement to be recorded against each tax lot within the zoning lot containing the Affordable Housing whether or not such tax lot existed at the time the Regulatory Agreement was recorded.

## EXHIBIT J

### INVESTIGATION CLAUSE

- (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 witness 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, permit, 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; moneys 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 refuses 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 moneys, 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.

City of New York  
Department of Housing Preservation and Development  
Office of Development  
Division of Housing Incentives  
Tax Incentive Programs Unit  
421-a Partial Tax Exemption Program  
100 Gold Street, Room 8-C09  
New York, NY 10038

**Architect's / Engineer's Certification**  
**In Support of Preliminary Application for 421-a Partial Tax Exemption**

Re: Online Application Submission Confirmation # **64135**

Docket # \_\_\_\_\_

Address(es) / Tentative Lot (s)

**Building 1: 79, Avenue D, 33**

Borough **MANHATTAN** Block **00376**

Lot(s) **0033.**

Total Number of Buildings **1**

**Leonard Fusco** , being duly sworn, under penalty of perjury, deposes and says:

1. I am a Registered Architect or Professional Engineer licensed to practice by and in good standing with the New York State Department of Education. As such, I certify to the truth of the matters set forth below in connection with the above pending application (the "Application") for 421-a Partial Tax Exemption.
2. I am the architect or engineer for the above Project. The annexed Building Plans, each page of which is initialed and dated by me as of this date, are a true copy of the most recent plans approved by the New York City Department of Buildings (hereinafter, "Plans").
3. The calculations in Section 6 of the Application are a true and accurate reflection of the layout and dimensions of the Plans, and the room count and dwelling unit count as shown in Section 6 of the Application are in compliance with Section 6-01(c) of Chapter 6 of Title 28 of the Rules of the City of New York (the "421-a Rules").
4. The calculations of Aggregate Floor Area and Floor Area of Commercial Community Facilities and Accessory Use Space of the building(s) applying for 421-a Partial Tax Exemption in Section 6 of the Application are in compliance with Sections 6-01(c) and 6-06(b) of the 421-a Rules and the guidance provided in the latest edition of Department of Housing Preservation and Development's Frequently Asked Questions, dated 06/17/2004.

The annexed survey, dated 06/05/2013, as prepared by Saeid Jalilvand, a licensed land surveyor of \* (name of company, if applicable) is a true copy of the survey used to determine the eligibility of the site for 421-a Partial Tax Exemption. The site eligibility statements and/or calculations stated in Section 7 of the Application accurately represent the conditions at the site on the Operative Date (i.e. 36 months prior to the commencement of construction) and the current lot or lots indicated on the Application are eligible for 421-a Partial Tax Exemption.

\*Montrose Surveying Co., LLP, as confirmed by Certificate of Occupancy No. 36465

The attached RP-604 or RP-602 executed and approved by the New York City Department of Finance Property Division - Survey Unit, dated 12/30, 2016, accurately reflects the Project's tentative lot changes to the current New York City Tax Map.

5. I have read the specific sections of the 421-a Rules applicable to this Project and understand them. I have relied upon this understanding for purposes of the representations I am making in this affidavit. 6/5/2015 is the accurate date of "commencement of construction," (i.e., the date upon which excavation and construction of initial footings and foundations commenced in good faith), for the above-referenced project and is consistent with the definitions of "commencement of construction" in Section 6-01(c) and "commence" in Section 6-09(a) of the 421-a Rules, as applicable.

I make these statements to induce the Department of Housing Preservation and Development of the City of New York to grant a partial tax exemption pursuant to Section 421-a of the New York State Real Property Tax Law, Sections 11-245 and 11-245.1 of the Administrative Code of the City of New York, and the 421-a Rules.

I know that the Department of Housing Preservation and Development will rely on the veracity of these statements in granting 421-a Partial Tax Exemption. I certify that the above statements are true and correct under penalty of perjury.

I understand that if the Department of Housing Preservation and Development finds that any of the statements are incorrect, I may, in HPD's sole discretion, be prevented from certifying any future projects with HPD. Furthermore, I understand that submission of a false certification shall be deemed to be professional misconduct pursuant to Section 6509 of the Education Law.

Sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

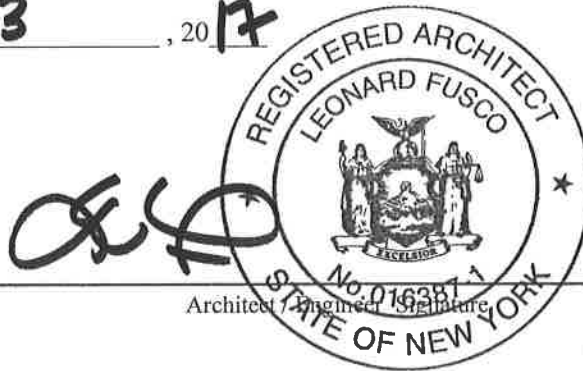
[OR

Dated: \_\_\_\_\_, 20\_\_\_\_

**4.3**

**17**

Seal of RA or PE]



\_\_\_\_\_  
**Leonard Fusco**

Architect / Engineer Name

\_\_\_\_\_  
**GF55 Partners**

Business Name

\_\_\_\_\_  
**19 West 21st Street, Suite 1201 New York, NY**

Business Address

\_\_\_\_\_  
**(212) 352-3099**

Phone Number



## Special Instructions Regarding Owner's Affidavit and Opinion of Counsel

### Owner's Affidavit:

If you are re-filing a 421-a application and no longer hold fee title to or the leasehold interest under a ground lease of the real property identified in the Application, you must also check box 1b in the Owner Affidavit to certify that you have been authorized to make the Application on behalf of all current owners or lessees.

### Opinion of Counsel

#### Individual Owner:

If you are not attaching a title report and currently hold fee title to or a leasehold interest under a ground lease of the real property identified in the Application, your attorney must check box 2a in the Opinion of Counsel (not box 2b). If you are not attaching a title report, are re-filing a 421-a application and no longer hold fee title to or the leasehold interest under a ground lease of the real property identified in the Application, your attorney must check box 2c in the Opinion of Counsel (not box 2d) to indicate that you held fee title to or the leasehold interest under a ground lease of the real property identified in the Application at the time of the original filing.

#### Entity Owner:

If you are not attaching a title report and currently hold fee title to or a leasehold interest under a ground lease of the real property identified in the Application, your attorney must check box 5a in the Opinion of Counsel (not box 5b). If you are not attaching a title report, are re-filing a 421-a application and no longer hold fee title to or the leasehold interest under a ground lease of the real property identified in the Application, your attorney must check box 5c in the Opinion of Counsel (not box 5d) to indicate that you held fee title to or the leasehold interest under a ground lease of the real property identified in the Application at the time of the original filing.

# SEIDEN & SCHEIN, P.C.

ATTORNEYS AT LAW

JAY G. SEIDEN  
ALVIN SCHEIN  
ADAM A. LEVENSON  
JANE ROSENBERG  
JASON C. HERSHKOWITZ

STACY E. JACOBSON

NICHOLAS DiLORENZO  
FRANK D. BAQUERO  
DAVID SHAMSHOVICH  
NICHOLE N. THOMAS  
DAVID W. LU

570 LEXINGTON AVENUE, 14<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10022

TELEPHONE: (212) 935-1400  
FACSIMILE: (212) 593-4545

OF COUNSEL:  
DAVID F. YAHNER  
HILLARY A. POTASHNICK

Date: 3/29/2017

Director, 421-a Programs  
The City of New York  
Department of Housing Preservation and Development  
100 Gold Street Room 8-C09  
New York, New York 10038

Re: Online Application Submission Confirmation # 64135

Docket # \_\_\_\_\_

Address(es) / Tentative Lot (s)

Building 1: 79, Avenue D, 33

Borough MANHATTAN Block 00376

Lot(s) 0033.

Total Number of Buildings 1

Jay G. Seiden, an attorney admitted to practice in the Courts of the State of New York, affirms the following to be true under the penalties of perjury pursuant to Civil Practice Law and Rules 2106:

1. I have acted as legal counsel to Avenue D Owners LLC ("Owner") in connection with its above referenced application for a partial real property tax exemption pursuant to Section 421-a of the Real Property Tax Law (the "Application").
2. I have reviewed all of the organizational documents of the Owner and such other certificates and instruments as necessary for the purpose of this opinion.
3. Owner is a Limited Liability Company (LLC.), which is duly formed and validly existing under the laws of the State of New York.
4. David Dishy is duly authorized to execute and deliver the Application to the City of New York Department of Housing Preservation and Development on behalf of the Owner and to make the representations and warranties contained in the Application.





# SEIDEN & SCHEIN, P.C.

ATTORNEYS AT LAW

JAY G. SEIDEN  
ALVIN SCHEIN  
ADAM A. LEVENSON  
JANE ROSENBERG  
JASON C. HERSHKOWITZ

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570 LEXINGTON AVENUE, 14<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10022

TELEPHONE: (212) 935-1400  
FACSIMILE: (212) 593-4545

OF COUNSEL:  
DAVID F. YAHNER  
HILLARY A. POTASHNICK

Date: 3/29/2017

Director, 421-a Programs  
The City of New York  
Department of Housing Preservation and Development  
100 Gold Street Room 8-C09  
New York, New York 10038

Re: Online Application Submission Confirmation # **64135**

Docket # \_\_\_\_\_  
Address(es) / Tentative Lot (s)

**Building 1: 79, Avenue D, 33**

Borough **MANHATTAN** Block **00376**

Lot(s) **0033.**

Total Number of Buildings **1**

**Jay G. Seiden**, an attorney admitted to practice in the Courts of the State of New York, affirms the following to be true under the penalties of perjury pursuant to Civil Practice Law and Rules 2106:

1. I have acted as legal counsel to **Avenue D Affordable LLC** ("Owner") in connection with its above referenced application for a partial real property tax exemption pursuant to Section 421-a of the Real Property Tax Law (the "Application").
2. I have reviewed all of the organizational documents of the Owner and such other certificates and instruments as necessary for the purpose of this opinion.
3. Owner is a **Limited Liability Company (LLC.)**, which is duly formed and validly existing under the laws of the State of **New York**.

x   5a. Owner holds fee title to the real property identified in the Application.

I understand that if the Department of Housing Preservation and Development finds that any of the statements herein are incorrect, I may, at HPD's sole discretion, be prevented from delivering any certification or legal opinion to HPD in connection with any future project. Furthermore, I understand that any false statement may be deemed to be professional misconduct pursuant to Section 90 of the Judiciary Law.

Attorney's Name



## Special Instructions Regarding Owner's Affidavit and Opinion of Counsel

### Owner's Affidavit:

If you are re-filing a 421-a application and no longer hold fee title to or the leasehold interest under a ground lease of the real property identified in the Application, you must also check box 1b in the Owner Affidavit to certify that you have been authorized to make the Application on behalf of all current owners or lessees.

### Opinion of Counsel

#### Individual Owner:

If you are not attaching a title report and currently hold fee title to or a leasehold interest under a ground lease of the real property identified in the Application, your attorney must check box 2a in the Opinion of Counsel (not box 2b). If you are not attaching a title report, are re-filing a 421-a application and no longer hold fee title to or the leasehold interest under a ground lease of the real property identified in the Application, your attorney must check box 2c in the Opinion of Counsel (not box 2d) to indicate that you held fee title to or the leasehold interest under a ground lease of the real property identified in the Application at the time of the original filing.

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If you are not attaching a title report and currently hold fee title to or a leasehold interest under a ground lease of the real property identified in the Application, your attorney must check box 5a in the Opinion of Counsel (not box 5b). If you are not attaching a title report, are re-filing a 421-a application and no longer hold fee title to or the leasehold interest under a ground lease of the real property identified in the Application, your attorney must check box 5c in the Opinion of Counsel (not box 5d) to indicate that you held fee title to or the leasehold interest under a ground lease of the real property identified in the Application at the time of the original filing.

State of New York )

County of New York ) ss.:

**David Dishy**, being duly sworn, under penalty of perjury, deposes and says:

1. I, **David Dishy, Authorized Signatory, Avenue D Owners LLC**, am making this application for a Preliminary Certificate of Eligibility for 421-a Partial Tax Exemption (the "Application").
2. I have read and understand the requirements for 421-a Partial Tax Exemption.
3. I have reviewed the Application and I swear that all information set forth in the Application is true and correct and I submit the Application to induce the City of New York to grant 421-a Partial Tax Exemption.
4. The multiple dwelling will be operated as a rental. All rental units will be registered with the State of New York Division of Housing and Community Renewal as they become occupied at rents no higher than the rents approved by the Department of Housing Preservation and Development for 421-a Partial Tax Exemption and initial leases of not less than two years will be offered to tenants of such stabilized units, or a shorter term as the tenant requests, in accordance with rent regulation requirements.
5. As required pursuant to §11-245.8 of the Administrative Code of the City of New York and §6-05(d)(1) of Chapter 6, Title 28 of the Rules of the City of New York, whenever any household appliance in any dwelling unit, or any household appliance that provides heat or hot water for any dwelling unit in the multiple dwelling, is installed or replaced with a new household appliance on or after December 19, 2006, such new appliance shall be certified as Energy Star, unless either (A) an appropriately-sized Energy Star certified household appliance is not manufactured, such that movement of walls or fixtures would be necessary to create sufficient space for such appliance, and/or (B) an Energy Star certified boiler or furnace of sufficient capacity is not manufactured.

[For purposes of this paragraph, (A) "household appliance" shall mean any refrigerator, room air conditioner, dishwasher or clothes washer, within a dwelling unit in the multiple dwelling that is provided by the owner, and any boiler or furnace that provides heat or hot water for any dwelling unit in the multiple dwelling, and (B) "Energy Star" shall mean a designation from the United States Environmental Protection Agency or Department of Energy indicating that a product meets the energy efficiency standards set forth by the agency for compliance with the Energy Star program.]

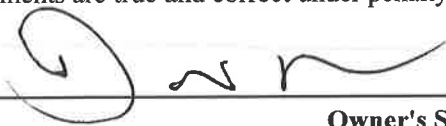
6. As required pursuant to § 421-a(8) of the Real Property Tax Law and § 6-05(d)(1)(ix) of Chapter 6, Title 28 of the Rules of the City of New York, I understand that either (a) all building service employees employed or to be employed at the multiple dwelling shall receive the applicable prevailing wage for the duration of such multiple dwelling's 421-a Partial Tax Exemption, or (b) such multiple dwelling shall contain less than 50 dwelling units, or (c) at initial occupancy of the dwelling units in such multiple dwelling, at least 50% of such dwelling units shall be affordable to individuals or families with a gross household income at or below 125% of the area median income and that any such rental units shall remain affordable for the entire period during which such multiple dwelling receives the 421-a Partial Tax Exemption.

I understand that if the City of New York finds that the Application and/or supporting documents, including but not limited to, the rent roll for the Project; proof of delivery of the Application to the local Community Board; the most recent Department of Buildings approved building plans; the survey; and the RP-604 or RP-602 approved and executed by the Department of Finance contain incorrect or misleading information of a substantial nature, or have omitted information of a material nature, and in the event that such breach or omission is not cured within ninety (90) days of notice thereof, the Department of Housing Preservation and Development shall advise the Department of Finance that the 421-a Certificate of Eligibility has been revoked or that the amount of 421-a Partial Tax Exemption has been reduced, and the Department of Finance shall retroactively or prospectively withdraw or reduce 421-a Partial Tax Exemption and reinstate the amount of taxes which would have been exempted and charge interest at the rate prescribed by the New York City Administrative Code to be calculated from the day on which such taxes would have been payable but for the 421-a Partial Tax Exemption.

I understand that in order to qualify for 421-a benefits, a site must have been vacant, predominantly vacant, underutilized, or improved with a non-conforming use three years prior to the commencement of construction (i.e., "Operative Date"). The site eligibility statements and/or calculations stated in Section 7 of the Application accurately reflect the conditions at the site on the Operative Date and confirm that the real property identified in the Application meets the site eligibility requirement for 421-a benefits.

I make these statements to induce the Department of Housing Preservation and Development of the City of New York to grant a partial tax exemption pursuant to Section 421-a of the New York State Real Property Tax Law, Sections 11-245 and 11-245.1 of the Administrative Code of the City of New York, and the 421-a Rules.

I know that the Department of Housing Preservation and Development will rely on the veracity of these statements in granting 421-a Partial Tax Exemption. I certify that the above statements are true and correct under penalty of perjury.



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**Owner's Signature**

*David Dishy*

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**Owner's Name**

*Authorized Signatory*

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**Owner's Title**

*Avenue D Owners LLC*

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**Owner's Affiliation**

Sworn to me before this 5 day of April, 2017

Ajaenae Spearman  
Notary Public or Commissioner of Deeds

AJAENAE SPEARMAN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01SP6333554  
Qualified In Kings County  
My Commission Expires November 23, 2019

State of New York )

) ss.:

County of New York )

**David Dishy**, being duly sworn, under penalty of perjury, deposes and says:

1. I, **David Dishy, Authorized Signatory, Avenue D Affordable LLC**, am making this application for a Preliminary Certificate of Eligibility for 421-a Partial Tax Exemption (the "Application").
2. I have read and understand the requirements for 421-a Partial Tax Exemption.
3. I have reviewed the Application and I swear that all information set forth in the Application is true and correct and I submit the Application to induce the City of New York to grant 421-a Partial Tax Exemption.
4. The multiple dwelling will be operated as a rental. All rental units will be registered with the State of New York Division of Housing and Community Renewal as they become occupied at rents no higher than the rents approved by the Department of Housing Preservation and Development for 421-a Partial Tax Exemption and initial leases of not less than two years will be offered to tenants of such stabilized units, or a shorter term as the tenant requests, in accordance with rent regulation requirements.
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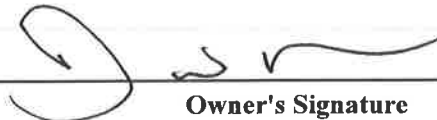
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Owner's Signature

*David Dishy*

Owner's Name

*Authorized Signatory*

Owner's Title

*Avenue D Affordable LLC*



**Owner's Affiliation**

Sworn to me before this 5 day of April, 20 17

Ajaenae Spearman  
Notary Public or Commissioner of Deeds

AJAENAE SPEARMAN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01SP6333554  
Qualified in Kings County  
My Commission Expires November 23, 2019