[**NOTE**: for use by homeownership projects located inside the Geographic Exclusion Area that are applying for benefits pursuant to RPTL 421-a (1) through (15). Please submit a completed DRAFT of this restrictive declaration together with your 421-a application submission for the 421-a staff’s review. Once the staff approves the DRAFT, you must execute and record against the Property before the Preliminary Certificate of Eligibility can be approved.]

**THIS RESTRICTIVE DECLARATION** ("Restrictive Declaration"), entered into as of the \_\_\_\_ day of \_\_\_, 201\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having its principal office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Owner") *[if subject to a ground lease: and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having its principal office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Applicant")]*.

**WHEREAS**, Owner holds title to certain real property located in the Borough of \_\_\_\_\_\_\_\_\_ in the City and State of New York, known as and by the street address \_\_\_\_\_\_\_\_\_\_\_\_\_\_[*address*], and identified as Block \_\_\_\_\_\_\_, Lots(s) \_\_\_\_ on the Tax Map of the City of New York ("Property"); and

*[if subject to a ground lease: WHEREAS, Applicant holds title to the leasehold estate in the Property pursuant to that certain lease having a term ending on \_\_\_\_\_\_\_\_\_\_\_ between Owner and Applicant, dated \_\_\_\_\_\_\_\_\_\_,201\_ (“Lease”);and]*

**WHEREAS**, the Property contains one or more multiple dwellings receiving an exemption from real property taxation pursuant to Real Property Tax Law §421-a, Administrative Code §11-245, §11-245.1, and §11-245.1-b, and Chapter 6 of Title 28 of the Rules of the City of New York (collectively "§ 421-a") pursuant to § 421-a Application TEOXXXX; and

**WHEREAS**, the Property is located in a geographic exclusion area, as such term is defined in §421-a; and

**WHEREAS**, eligibility for exemption from real property taxation pursuant to §421-a in a geographic exclusion area is conditioned upon not less than twenty percent (20%) of the dwelling units situated onsite in the multiple dwelling in such Property ("Affordable Units") meeting the affordability requirements set forth in Real Property Tax Law §421-a(7)(c): (a) if the multiple dwelling is to be operated as a rental property, upon the initial rental of such units and upon all subsequent rentals of such units after a vacancy, or (b) if the multiple dwelling is to be operated as a homeownership property, only upon the initial sale of such units ("Affordability Requirement");and

**WHEREAS**, if the prospective cooperative or condominium plan for a homeownership property has not been declared effective for filing at a time fifteen months after issuance of the Final Certificate of Eligibility, eligibility for exemption from real property taxation pursuant to §421-a is also conditioned upon the Affordable Units being registered as rent stabilized units with the State Division of Housing and Community Renewal or any successor agency or department thereto ("Rent Stabilization Requirement"); and

**WHEREAS**, to ensure compliance with the Affordability Requirement, if the multiple dwelling is to be operated as a rental property due to the fact that its prospective cooperative or condominium plan was not declared effective for filing at a time fifteen months after issuance of the Final Certificate of Eligibility , §421-a mandates that initial rents for Affordable Units as registered and subsequently adjusted by the Rent Stabilization Law of 1969 and the Emergency Tenant Protection Act of 1974 and all regulations promulgated in connection therewith ("Rent Stabilization Laws") cannot exceed 30% of the applicable income limit for such Affordable Units, minus the amount of any applicable utility allowance if the tenant makes utility payments in addition to rent payments.

**NOW THEREFORE**, in order to obtain exemption from real property taxation pursuant to §421-a, the Owner has *[if subject to a ground lease: and Applicant have]* agreed to execute and record this instrument, which provides as follows:

1. The Property shall be subject to the Affordability Requirement for a period commencing upon the date of completion of construction, which shall be deemed to have occurred upon the issuance of the earlier of (a) the first temporary certificate of occupancy for all of the Affordable Units or (b)a permanent certificate of occupancy for all of the Affordable Units (“Completion Date”), and terminating on a date which is thirty-five (35) years from the date of completion of construction ("Term"). Notwithstanding the foregoing, if the multiple dwelling is operated as a homeownership project, the Affordability Requirement shall only apply to the initial sale of any Affordable Unit during the Term and shall not apply to subsequent sales of any such Affordable Unit during or after the Term. Furthermore, if the multiple dwelling is operated as a homeownership project, any purchaser of an Affordable Unit that is subject to the Affordability Requirement shall only be obligated to pay his or her own closing costs, mortgage payments and common charges.

2. If the multiple dwelling is operated as a rental property, the Affordable Units shall be subject to the Rent Stabilization Requirement during the Term.

3. If the multiple dwelling is operated as a rental property, the rents for each Affordable Unit during the Term shall be the lesser of (a) the rent permitted under the Rent Stabilization Laws, or (b) 30% of the applicable income limit for such Affordable Unit, minus the amount of any applicable utility allowance if the tenant makes utility payments in addition to rent payments ("Rent Cap").

4. If the multiple dwelling is operated as a rental property, tenants in occupancy of Affordable Units at the expiration of the Term shall continue to be subject to the Rent Stabilization Requirement for the duration of their occupancy ("Continuation Requirement").

5. This Restrictive Declaration may be enforced by the City of New York and any of its agencies and instrumentalities, the State of New York and any of its agencies and instrumentalities, and any homeowner ortenant**,** as applicable.

6. The Affordability Requirement, and, if applicable, the Rent Stabilization Requirement, Rent Cap and Continuation Requirement, set forth in this Restrictive Declaration shall run with the land, shall inure to the benefit of the City of New York, the State of New York, and all occupants of the Property, and shall bind and be enforceable against Owner and its successors and assigns to the fullest extent permitted by law and equity.

*[7. [if subject to ground lease: Applicant shall be obligated to perform or cause performance of the terms of this Restrictive Declaration during the term of the Lease and Owner shall be obligated to perform or cause performance of the terms of this Restrictive Declaration following the termination of the Lease. Further, in such instance, Owner shall have the right to enter into another lease of the Property, in which event the tenant thereunder shall be the party obligated under this Restrictive Declaration.]*

8. At any time prior to the Completion Date *[if subject to ground lease: and following termination of the Lease]*, the Owner may terminate this Restrictive Declaration by written notice to the City of New York Department of Housing Preservation and Development *[if subject to ground lease:(“HPD”)]*. *[if subject to ground lease: At any time prior to the Completion Date, the Applicant may terminate this Restrictive Declaration* *by written notice to HPD.]* The exemption from real property taxation pursuant to §421-a shall thereafter terminate, retroactive to the effective date of such exemption. After the Completion Date, Owner *[if subject to ground lease: and/or Applicant]* may not terminate this Restrictive Declaration.

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

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF NEW YORK )

) SS:

COUNTY OF NEW YORK)

On this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 201\_, 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 inthe 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

Record and Return to:

John Leonard, Executive Director

Tax Incentives Programs

Department of Housing Preservation and Development

100 Gold Street, Room 8-D09

New York, New York 10038