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[RECIPIENT]

and

NEW YORK STATE

DIVISION OF HOUSING AND COMMUNITY RENEWAL

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LOW-INCOME HOUSING CREDIT  
REGULATORY AGREEMENT

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Dated as of \_\_\_\_\_, 2012

This instrument affects real and personal property situated in the State of New York, [Section \_\_, Block \_\_, Lot \_\_] [Tax Map No. \_\_], County of \_\_\_\_\_, [Town] [City] of \_\_\_\_\_, commonly known as \_\_\_\_\_.

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DHCR Project Manager \_\_\_\_\_.  
Project SHARS I.D. No. \_\_\_\_\_.

RECORD AND RETURN TO:

N.Y.S. DIVISION OF HOUSING  
AND COMMUNITY RENEWAL

, New York 12207

NEW YORK STATE  
DIVISION OF HOUSING AND COMMUNITY RENEWAL

Regulatory Agreement

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ between the New York State Division of Housing and Community Renewal ("DHCR") with an office at 38-40 State Street, Albany, New York 12207 and \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ ("Recipient").

Whereas, pursuant to Section 42 of the United States Internal Revenue Code (the "Statute"), Executive Order No. 11 dated March 2, 2011, and 9 NYCRR Part 2040 (the "DHCR Regulations"), DHCR is authorized to allocate certain federal income tax credits for the purpose of facilitating investment in housing meeting the eligibility requirements of the Statute ("Low-Income Housing Credits"); and

Whereas, Recipient has submitted an application to DHCR for an allocation of Low-Income Housing Credits for a certain project as more fully described in Exhibit A attached hereto (the "Project") with respect to land and improvements (collectively the "Property") located at \_\_\_\_\_, which land is more fully described in Exhibit B attached hereto; and

Whereas, DHCR has allocated, or agreed to allocate, Low-Income Housing Credits to Recipient in accordance with the Statute to assist the Project in consideration of, among other things, Recipient's undertaking to comply with all the terms and conditions of this agreement, the Statute, the rules and regulations promulgated thereunder (the "Federal Regulations") and the DHCR Regulations, as may be amended from time to time; and

Whereas, as a condition of receiving Low-Income Housing Credits Recipient is required by the Statute to enter into an Extended Low-Income Housing commitment as evidenced by an agreement which is recorded pursuant to State law as a restrictive covenant;

Now, therefore, the parties agree that the Project will be operated in accordance with the following terms and conditions:

1. Definitions

The capitalized terms utilized herein shall have the meanings set forth in the Statute and the Federal Regulations unless otherwise defined herein.

2. Agreement to Run with the Land; Recording

This agreement shall apply to the Property and the Project. This agreement and all of the promises, agreements and covenants herein contained shall be recorded by the Recipient as a restrictive covenant and shall be binding on the Recipient and all successors of the Recipient.

3. Term

(a) The term of this agreement shall begin on the date that the Project is Placed In Service and, subject to the limitations set forth in the Statute, shall terminate:

- 1) \_\_\_\_\_ ( ) years after the close of the fifteen (15) year Compliance Period; or
- 2) on the date the Project is acquired by foreclosure or an instrument in lieu of foreclosure; or

b) This Agreement shall not be subject to termination pursuant to a request for a Qualified Contract pursuant to the Statute.

c) In the event that this agreement terminates pursuant to 3(a)(2) of this agreement, no tenant residing in any Low-Income Unit in the Project shall be evicted except for good cause, nor shall any such tenant be subject to an increase in the gross rent of such unit before the close of the three (3) year period following a termination of this agreement pursuant to subsection 3(a)(2) of this agreement.

d) This agreement shall not be terminated if ownership is transferred by foreclosure or by a deed in lieu of foreclosure as a result of any action to collect debt which is owed to any entity which at any time after the issuance of an IRS Form 8609 had any ownership interest in the Project.

4. Annual Certification

a) One calendar month subsequent to the close of Recipient's fiscal year, or at such other time as the Commissioner may prescribe, Recipient shall certify to DHCR under

penalty of perjury, in a form prescribed by the Commissioner, that the Project as owned and operated is in compliance with all provisions of the Statute, the Federal Regulations, the DHCR Regulations and DHCR's policies and procedures and shall provide all information relevant to the Project which DHCR requires. The Recipient shall also certify that, if the Recipient has been notified by any governmental authority having jurisdiction over the Recipient, the Project or the construction thereon or the use and occupancy thereof ("Governmental Authority"), that the Project, any construction thereon, or the use and occupancy thereof, is being conducted in violation of the provisions of any law, ordinance, rule, regulation or requirements of such Governmental Authority, Recipient shall additionally certify that Recipient has cured such violation, within 90 days of receipt of such notification or if such violation could not with due diligence be cured within such period, that Recipient has commenced to cure within such period and, having so commenced, shall thereafter proceed and complete such cure with due diligence.

b) DHCR shall, in addition to any remedies it may have at law or equity in the event of Recipient's failure to comply with this agreement, notify the United States Internal Revenue Service ("IRS") of any and all violations of the Statute or the Federal Regulations. Failure to file the certification required by section 4(a) of this agreement shall result in DHCR's notification to the IRS of such failure.

5. Eligible Occupants; Rights and Requirements

a) The Project shall contain \_\_\_ ( ) dwelling units. \_\_\_\_ ( ) units shall be occupied by persons or families whose incomes, at the time of initial occupancy, do not exceed [30] [40] [50%] [60%] of the Area Median Gross Income as determined in accordance with the Statute, and \_\_\_\_ ( ) units shall be occupied by persons or families whose incomes, at the time of initial occupancy, do not exceed [30] [40] [50%] [60%] of the Area Median Gross Income as determined in accordance with the Statute ("Qualifying Tenant(s)"). [One unit shall be occupied by a Resident Manager. The Recipient shall immediately notify DHCR when and if both 1) the unit ceases to be occupied by resident manager and 2) the Recipient does not intend to employ another resident manager; the Recipient shall then make the unit available to a Qualifying Tenant. Recipient shall also notify DHCR of any such changes as required by the

Statute, the DHCR Regulations, the Federal Regulations and any notices or revenue rulings issued by the IRS.] The Recipient shall adhere to the marketing plan attached hereto as Exhibit C (the "Marketing Plan"). The Marketing Plan shall set forth the procedure for the selection of occupants who qualify as members of special populations as may be defined by governmental agencies and the minimum number of units that will be available for those occupants. The Recipient's tenant selection procedure shall be conducted in accordance with all applicable state and federal laws including but not limited to fair housing laws, rules and regulations.

b) Unless the Project is a Deep Rent Skewed Project as defined by section 142(d)(4)(B) of the United States Internal Revenue Code (the "Code"), if any unit in the Low-Income Portion of the Project is occupied by a Qualifying Tenant(s) at the time of initial occupancy, and such Qualifying Tenant's income should subsequently exceed 140% of the applicable income limit under the Statute, the Recipient shall, after such determination of income, rent the next available residential unit of comparable or smaller size in the Project to a person or family whose income meets the requirements of paragraph (a) of this section.

c) If the Project is a Deep Rent Skewed Project as defined by section 142(d)(4)(B) of the Code, if any unit in the Low-Income Portion of the Project is occupied by a Qualifying Tenant(s) at the time of initial occupancy, and such Qualifying Tenant's income should subsequently exceed 170% of the applicable income limit, the Recipient shall, after such determination of income, rent the next available low-income unit in the building to a person or family whose income is not in excess of 40% of Area Median Gross Income as determined in accordance with the Statute.

d) The Applicable Fraction (as defined in Section 42(c)(1) of the Statute) for the Project [shall not be less than \_\_\_%] [buildings shall not be less than that shown in Exhibit C (1) attached hereto.]

e) Recipient shall not evict or otherwise terminate the tenancy of any tenant of any low-income unit for other than good cause, nor increase the gross rent with respect to such unit except as permitted by the Statute.

f) Recipient shall not refuse to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.

6. Applicable Statutes, Rules, Regulations

The Recipient shall comply with the terms and provisions of the Statute, the Federal Regulations, the DHCR Regulations currently published at 9 NYCRR Part 2040, and the policies and procedures promulgated by the Federal government and DHCR regarding Low-Income Housing Credit projects and allocations.

7. Management

During the term hereof, the Recipient shall:

- a) conduct its business and maintain its books and records to assure that the development, construction, management, operation and maintenance and any sale of the Project and the units are carried out in accordance with all applicable federal, State, and local laws, ordinances, rules, regulations and requirements including, but not limited to those listed in Section 6 above, the policies and procedures of DHCR, and with applicable agreements relating to the Project executed by the Project Recipient;
- b) complete and attach the summary of this agreement, attached hereto as exhibit D, to the lease of each low-income unit and shall provide a copy of this agreement, free of charge, to any person who requests a copy;
- c) disclose the Restricted Rent for a dwelling to a prospective tenant prior to the execution of a lease for that dwelling unit;
- d) require as a condition of initial and continued occupancy, that each person who is or who intends to become a tenant in the Low-Income Portion of the Project shall, prior to occupancy and on an annual basis, submit to the Recipient a statement regarding the income of the person(s) occupying or intending to occupy the dwelling unit ("Income Certification"). In addition, the Recipient shall require as a condition of occupancy that all such persons shall provide the Recipient with any other information or documentation necessary to verify the information contained in the income certification (for projects in which 100% of the residential units are LIHC qualified low-income units, after the initial income certifications have been completed for all Project units, the certification required by this section (d) shall not be required unless required by DHCR pursuant to the Statute, the Federal Regulations, or the DHCR Regulations);

- e) not retaliate against any tenant or lawful occupant of the Project who notifies DHCR of alleged violations of this agreement;
- f) shall not transfer, to any person or entity, or otherwise dispose of any portion of any building to which this agreement applies unless all of such building is transferred to such person or entity;
- g) if required pursuant to the Statute, the Federal Regulations, or the DHCR Regulations, determine each year whether the occupants of each unit in the Low Income Portion of the Project are Qualifying Tenants in accordance with the Statute, the **Federal** Regulations, and the DHCR Regulations, policies, and procedures;
- h) submit a copy of an independent audit to DHCR if an independent audit is required by any regulating or financing entity; and
- i) maintain Reserve and Escrow accounts as shown in Exhibit E].

8. Monitoring Fees

The Recipient shall pay, at such time as the Commissioner may require, an annual fee to DHCR of .5% multiplied by the maximum Restricted Rents of the Low-Income Portion of the Project or such other fee as the Commissioner may prescribe (the "Monitoring Fee"). The fee shall be paid by check made payable to New York State Division of Housing and Community Renewal, and shall be sent to the DHCR Finance Unit, 38-40 State Street, Albany, N.Y. 12207. The check shall bear the Project's SHARS I.D. number and the words "monitoring fee".

9. Standing of Past, Present and Prospective Occupants

Project tenants, occupants and all individuals who meet the income limitation applicable to the Project under Section 42(g) of the Statute (whether prospective, present or former tenants or occupants of the Project) shall have the right to enforce section 3(c) and section 5 of this Agreement for each taxable year in which the Project is subject to this Agreement or any provision of this agreement, in any New York State court.

10. Miscellaneous

- a) All notices or other communications with respect to the subject matter of this agreement shall be in writing and shall be deemed to have been given when received and

shall be sent by certified mail, return receipt requested, to the Recipient at \_\_\_\_\_ and to DHCR at 38-40 State Street, Albany, New York 12207, Attention: Low-Income Housing Credit Compliance Officer, or at such other address as a party to receive such notice may designate by giving such notice in writing. In circumstances deemed appropriate by DHCR, notice may be deemed given when received via facsimile transmission or via overnight courier, by agreement between DHCR and Recipient.

b) The Recipient and any successor in interest shall inform DHCR of any change in Recipient's address, and of any change in ownership of the Project (or any building in the Project if the Project is a multiple building Project), and the full name(s), address(es), and Federal Tax I.D. Number(s) of the new owner(s), within 30 days of any such change. Any transfer occurring without compliance with the above requirements is hereby prohibited.

c) the [HDFC] [IDA] [Fee Title Holder/ Lessee/Lessor] has executed this Agreement to subject its interest, if any, in the Property, to the lien of this Agreement. [HDFC] [IDA] [Fee title holder / Lessee/Lessor] shall have no affirmative obligations pursuant to this agreement, nor shall DHCR have any recourse to the [Fee Title Holder/ Lessee/Lessor] unless [Fee Title Holder/ Lessee/Lessor] has obtained possession and/or control of the Project.

## 11. Exhibits

The following schedule, exhibits are hereby incorporated into this Agreement and the Project Recipient, to the extent applicable, shall adhere to the provisions contained therein.

Exhibit A	Proposal Summary
Exhibit B	Description of Property
Exhibit C	Marketing Plan
Exhibit C1	Applicable Fraction Schedule
Exhibit D	Summary of Tenant Rights and Obligations
Exhibit D1	Additional Regulatory Provisions

Exhibit E

Reserve Account Requirements

Exhibit F

Affordability Plan

IN WITNESS WHEREOF, the parties have each duly executed this agreement as of the day and year first above written.

[RECIPIENT]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DIVISION OF HOUSING  
AND COMMUNITY RENEWAL

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

Name: Arnon Adler

Title: Director, Low-Income Housing  
Credit Program

STATE OF NEW YORK     )  
  :ss.:  
COUNTY of                     )

On \_\_\_\_\_, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, as \_\_\_\_\_ of the \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same

in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

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

On \_\_\_\_\_, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared **ARNON ADLER** as Director, Low-Income Housing Credit Program of the **New York State Division of Housing and Community Renewal**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**PROPOSAL SUMMARY**

**EXHIBIT B**  
**PROPERTY DESCRIPTION**

**EXHIBIT C**  
**MARKETING PLAN**

**EXHIBIT C(1)**  
**BUILDING BY BUILDING**  
**APPLICABLE FRACTION SCHEDULE**

**Building Location**

**Applicable Fraction**

**EXHIBIT D**  
**LOW-INCOME HOUSING CREDIT REGULATORY AGREEMENT**  
**SUMMARY OF TENANT RIGHTS AND OBLIGATIONS**

**1. TERM OF REGULATION**

The Building in which you live is a Low-Income Housing Credit Project which is subject to regulation by the New York State Division of Housing and Community Renewal (DHCR) and the United States Internal Revenue Service pursuant to U.S. Internal Revenue Code Section 42 (the "Statute"), and a Low-Income Housing Credit Regulatory Agreement between DHCR and the owner of the Project (the "Agreement"). The term of regulation began on the date that the Project was placed in service and ends on the earlier of the following dates (except as indicated in section 7(b) below):

- a. \_\_\_\_ years after the Placed in Service date as defined by the Statute ; or
- b. \_\_\_\_ on the date the Project is acquired by foreclosure or an instrument in lieu of foreclosure.

**2. AVAILABILITY OF THE AGREEMENT/RENT DISCLOSURE**

The landlord must attach a copy of this Summary to all leases for regulated apartments and must give a copy of the entire Agreement to any person who requests a copy. The landlord must disclose the restricted rent for a regulated apartment to a prospective tenant prior to the signing of a lease for that apartment.

**3. RETALIATION PROHIBITED**

The landlord cannot retaliate against any tenant or lawful occupant of the Project who notifies DHCR of alleged violations of this Summary or the Agreement.

**4. ANNUAL INCOME CERTIFICATION REQUIRED**

Prior to occupancy, and upon request on an annual basis, you must submit a statement regarding your income and the income of all other persons occupying your apartment (or intending to occupy the apartment unit as the case may be) and any other information and/or documentation necessary to verify the information contained in that statement.

**5. RIGHTS TENANTS MAY ENFORCE IN ANY NEW YORK STATE COURT**

Any person whose income makes them eligible to rent a low-income apartment in the Project can enforce certain rights listed in the Agreement in any New York State Court. You do not have to be a tenant in the Project to enforce these rights. These rights are secured by the Agreement which is recorded in the [ \_\_\_\_\_ County Clerk's Office] [Office of the City Register for the County of \_\_\_\_\_.]

**6. SECTION 8 TENANTS**

You can not be refused an apartment because of your status as a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937.

**7. EVICTIONS/RENT INCREASES**

- a. You and the other lawful occupants of your apartment can not be evicted or otherwise have your tenancy terminated for other than good cause, nor can the landlord increase the rent for your apartment except as permitted by the Statute.
- b. In the event that regulation of the Project is terminated pursuant to Section 1(b) of this summary, no tenant residing in any low-income apartment in the Project can be evicted except for good cause, nor can the new landlord increase the rent for your apartment before the close of the three (3) year period following a termination of this agreement pursuant to subsection 1(b) above.

**EXHIBIT D1**  
**ADDITIONAL REGULATORY PROVISIONS**

**EXHIBIT E**  
**RESERVE ACCOUNT REQUIREMENTS**

**Capitalized Reserves**

Recipient shall deposit a total of \$\_\_\_\_\_.00 into an operating reserve account [created pursuant to a Housing Trust Fund Corporation Regulatory Agreement] as follows:

\$\_\_\_\_\_.00 upon [receipt of the first installment of the proceeds of syndication of the Low-Income Housing Credits] [the closing of the Housing Trust Fund Corporation Loan] or \_\_\_/\_\_\_/\_\_\_ whichever is earlier;

\$\_\_\_\_\_.00 [upon receipt of the second installment of the proceeds of syndication of the Low-Income Housing Credits] [the closing of the Housing Trust Fund Corporation Loan] or \_\_\_/\_\_\_/\_\_\_ whichever is earlier;

Recipient shall deposit a total of \$\_\_\_\_\_.00 into an replacement reserve account [created pursuant to a Housing Trust Fund Corporation Regulatory Agreement] as follows:

\$\_\_\_\_\_.00 upon [receipt of the first installment of the proceeds of syndication of the Low-Income Housing Credits] [the closing of the Housing Trust Fund Corporation Loan] or \_\_\_/\_\_\_/\_\_\_ whichever is earlier;

\$\_\_\_\_\_.00 upon receipt of the second installment of the proceeds of syndication of the Low-Income Housing Credits or \_\_\_/\_\_\_/\_\_\_ whichever is earlier;

**Early Issuance (prior to 3<sup>rd</sup> Underwrite) – reserves paragraph**

Recipient shall make such (other) deposits to the operating reserve account(s) as DHCR shall determine at the time of DHCR=s final determination of housing credit dollar amount pursuant to U.S. Internal Revenue Code section 42(m) and issuance of IRS form 8609.

**Annual Reserve Requirement(s)**

During the term of this agreement, commencing with the first year the Recipients claim the credit, the Recipients shall annually deposit into a Operating Reserve Account an amount equal to 3% of gross rents per year. Operating Reserve Account deposits may be reduced or suspended any month the balance of the Operating Reserve Account equals 50% of the annually budgeted gross rent.

During the term of this agreement, commencing with the first year the Recipients claim the credit, the Recipients shall annually deposit into a Replacement Reserve Account an amount equal to \$\_\_\_\_\_.00 per year.

**Rural Development Corporation Reserve Paragraph**

During the term of this agreement, commencing with the first year the Recipients claim the credit, the Recipients shall annually deposit into a Rural Development Corporation Project Reserve Account an amount equal to \$\_\_\_\_, .00 per year.

Should the Project cease to be regulated by Rural Development Corporation during the term of this agreement: Recipient shall annually deposit into a Replacement Reserve Account the amount of \$\_\_\_\_.00; and Recipients shall be are hereby prohibited from making any withdrawals from the Replacement Reserve Account without the written consent of DHCR.

### **Standard Withdrawal/Reporting Provisions**

[The above reserve accounts shall be established so that the Bank shall be prohibited from allowing withdrawals without the written consent of DHCR.] Recipient is hereby prohibited from making any withdrawals from the above reserve accounts without the written consent of DHCR. The consent of DHCR shall not be necessary in the event that withdrawals from the above account(s) require the approval of the City of New York's Department of Housing Preservation and Development, or the Community Preservation Corporation.

The Recipient shall submit an annual budget to the DHCR Office of Housing Management proposing the level of disbursements from pre-funded reserves. Withdrawals in excess of 110% the approved level may not be made without the approval of DHCR.

The Recipient shall annually document, to the satisfaction of DHCR, reserve account activity for the prior year.

### **Operating Deficit Guarantee Requirement**

Recipient is obligated under the DHCR Regulations to provide an operating deficit guarantee of not less than one-fifth of the developer's fee approved by the division. The amount of the applicable operating deficit required by DHCR is \$\_\_\_\_\_.00 (the "Guarantee Amount"). The operating deficit guarantee obligates Recipient to pay all operating deficits during the first thirty six (36) months after the Project is Placed in Service, including, but not limited to the funding of reserve accounts, up to a total of the Guarantee Amount. No withdrawals shall be made from the above reserve accounts unless the operating deficit guarantee obligation has been fulfilled.

**EXHIBIT F**  
**AFFORDABILITY PLAN**