

HPD CREDIT RESERVATION AGREEMENT

This Agreement made as of the 12th day of December 2016 by and between THE CITY OF NEW YORK, acting by and through its Department of Housing Preservation and Development ("HPD"), having an office located at 100 Gold Street, New York, New York 10038 ("HPD") and **2065 Walton Avenue Associates LLC** having an office located at c/o **Jericho Project and B&B Supportive LLC**, 419 Park Avenue South, 18th Floor, New York, NY 10016.

WHEREAS, the Tax Reform Act of 1986, as amended ("Act") created a low income housing tax credit ("Credit") to be granted by state credit agencies to projects complying with certain low income occupancy requirements; and

WHEREAS, the State of New York Homes and Community Renewal has granted to HPD low income housing tax credit allocation authority; and

WHEREAS, the Recipient has proposed to construct or rehabilitate a project known as **Jericho Walton Avenue Apartments** and located at:

2065 Walton Avenue, Bronx NY 10453

which Project shall provide affordable housing to families or individuals of low to moderate income; and

WHEREAS, the Recipient has represented to HPD that the Project is expected to be eligible to receive a credit allocation of approximately \$ **1,201,164** if (a) at least 10% of the reasonably expected basis in the Project is incurred by December 31, 2016 or such earlier date as HPD, for administrative purposes, may establish, and (b) the Project is placed in service by December 31, 2018, and has requested that HPD allocate the Credit Amount for the Project; and

WHEREAS, HPD has agreed to reserve the Credit Amount for the Project in reliance on Recipient's representations that it will comply with all requirements which are applicable to the Credit, including all requirements of the New York State Homes and Community Renewal, of the Act and Internal Revenue Code, and any rules and regulations to be promulgated there under ("Code"), as the Act and the Code may be amended from time to time (collectively, all applicable provisions of the Act and the Code including any future statutory, regulatory or judicial changes shall hereinafter be referred to as the "Tax Credit Law"); and

WHEREAS, Recipient has advised HPD that it expects the Project to satisfy all of the Tax Credit Law requirements with respect to the Credit including, but not limited to, applicable criteria regarding eligibility for the Credit to be allocated in 2016; and

WHEREAS, Recipient represents that based upon its construction plans and anticipated construction schedule for the Project, Recipient will be able to evidence the fact that (a) at least 10% of the reasonably expected basis in the Project will have been incurred by December 31, 2016 or such earlier date as HPD, for administrative purposes, may establish, and (b) that the Project will be placed in service by December 31, 2018.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. CREDIT RESERVATION

HPD reserves the Credit Amount and commits and agrees to allocate to the Recipient the Credit Amount for the Project ("Credit Reservation") in accordance with the terms of this Agreement and the Tax Credit Law.

2. TAX CREDIT LAW COMPLIANCE

Recipient shall comply and shall cause the Project to comply with all requirements of the Tax Credit Law pertaining to the allocation of the Credit Amount. Prior to HPD's allocation of the Credit Amount, HPD may monitor any aspect of the construction or operation of the Project for the purposes of determining compliance with the Tax Credit Law.

3. NON-COMPLIANCE AND TERMINATION

At any time prior to HPD's allocation of the Credit Amount, HPD may cancel the Credit Reservation if HPD shall have reasonably determined that Recipient and/or the Project is not in compliance with or will not be able to comply with the Tax Credit Law, including, but not limited, to, failure to (a) expend at least 10% of the reasonably expected basis in the Project by December 31, 2016 or such earlier date as HPD, for administrative purposes, may establish ("Non-Compliance"), and (b) place the Project in service by December 31, 2018. Within thirty (30) days of such cancellation, HPD shall provide Recipient with a written notice (a) stating that HPD has cancelled the Credit Reservation, and (b) setting forth in reasonable detail the basis for HPD's determination to cancel the Credit Reservation ("Termination").

4. ALLOCATION: RECIPIENT CERTIFICATIONS AND DELIVERY OF DOCUMENTS

Prior to the date of allocation of the Credit Amount, Recipient shall deliver the following documents to HPD upon request, all in a form and substance acceptable to HPD:

- (a) documentation acceptable to HPD setting forth the eligible basis underlying the Credit Amount;
- (b) a certification by Recipient as to the actual or expected date the buildings in the Project will be "placed in service" for purposes of the Tax Credit Law;
- (c) a letter from a certified public accountant certifying that the Recipient has qualified for an allocation of credit by having incurred at least 10% of the reasonably expected basis in the Project by December 31, 2016 or such earlier date as HPD, for administrative purposes, may establish; and

- (d) any and all other documents required by the Tax Credit Law or HPD.

Upon receipt of the aforementioned documents HPD shall allocate the Credit Amount except as provided in Section 3.

5. HPD DISCLAIMER OF LIABILITY; RECIPIENT REPRESENTATIONS

- (a) HPD has relied on the information supplied by Recipient with respect to the Credit Amount. HPD disclaims any liability to Recipient and/or any individual or entity who claims a reliance on this Agreement which results from (i) HPD's reservation or allocation of the Credit Amount to the Project; (ii) HPD's cancellation of the Credit Reservation in accordance with this Agreement, (iii) HPD's failure to allocate the Credit Amount to the Project unless such failure results from a willful breach of this Agreement by HPD; or (iv) any change in the information supplied by Recipient after reservation or allocation of the Credit Amount.
- (b) HPD makes no representations (i) to Recipient as to the qualification of the Credit Amount or compliance with the Tax Credit Law, or any other laws or regulations governing low income housing tax credits, (ii) to Recipient, including its limited partners, or any individual or entity who relies upon this Agreement or who seeks to obtain or claims a benefit or entitlement concerning any tax consequences resulting from this Agreement or any allocation of the Credit Amount, or (iii) to Recipient, including its limited partners, concerning any duty or obligation of HPD to monitor the Project to assure compliance with the Tax Credit Law.
- (c) No member, officer, agent or employee of the City of New York or HPD shall be personally liable concerning any matters arising out of or in relation to the undertakings or obligations set forth in this Agreement.
- (d) Recipient represents that it has made an independent assessment of the Project's ability to receive the allocation of the Credit Amount in compliance with the Tax Credit Law and that it is not relying on any representation of HPD.

Recipient shall include the terms of this Section in any document utilized in offering the tax benefits of the Credit Amount to investors and shall provide evidence to HPD of compliance with the terms of this paragraph prior to marketing and/or transferring the Credit Amount.

6. INDEMNIFICATION

Recipient agrees to defend, release, indemnify and hold HPD harmless from any claims, loss, demand, suit or judgment against HPD ("Action") arising from this Agreement including the payment of any expenses, court and other costs and all attorney's fees, of whatever kind or nature, that HPD may hereafter incur, suffer or be required to pay including, but not limited to:

- (a) any Action by a party, who invests in the Credit Amount or is offered the Credit Amount for investment purposes as a result of (i) any reservation or allocation of the Credit Amount to the Project, (ii) any failure to allocate the Credit Amount to the Project unless such failure results from a willful breach of this Agreement by HPD or (iii) the recapture of any Credit Amount by the Internal Revenue Service; and
- (b) any Action by Recipient or any principal of Recipient as a result of the recapture of any Credit Amount by the Internal Revenue Service provided HPD is not in violation of this Agreement.

7. DOCUMENTATION REQUESTED BY HPD

Recipient shall provide any documentation requested by HPD in form and substance acceptable to HPD at any time during the compliance period set forth in the Tax Credit Law.

8. SURVIVAL OF OBLIGATIONS

The representations, warranties and obligations of Recipient and HPD as set forth herein shall survive the allocation of the Credit Amount and shall not be deemed to terminate or merge with the awarding of the allocation. Recipient shall continue to cooperate with HPD including the furnishing upon request of such documents, reports, exhibits or showings required by the Tax Credit Law.

9. NOTICE

All notices or communications required hereunder shall be in writing and shall be delivered by hand or by a next day express mail service to the address listed below or to such other address as the addressee may have furnished by notice to the other party to this Agreement:

- (a) if to Recipient:

2065 Walton Avenue Associates LLC
c/o Jericho Project and B&B Supportive LLC
419 Park Avenue South, 18Th Floor
New York, NY 10016

- (b) if to HPD:

100 Gold Street, Room 9 Z-1
New York, NY 10038
Attention: Assistant Commissioner Miriam Colón
Division of Housing Incentives

Any notice delivered hereunder shall be deemed to have been given and effective when delivered by hand or when received by the person to which it is directed in the manner provided above.

10. ASSIGNMENT AND AMENDMENT

This Agreement shall not be assigned or amended without the written consent of both parties.

11. BENEFICIARIES

This Agreement shall inure only to the benefit of the parties hereto, their successors and assigns.

12. APPLICABLE LAW

This Agreement shall be governed by the laws of the State of New York.

13. INVESTIGATION CLAUSE COMPLIANCE

Recipient, its members, officers, directors or shareholders shall observe and perform all of the provisions contained in the attached Investigation Clause Rider, Exhibit A.

14. ELECTION


Recipient irrevocably elects, pursuant to Section 42(b)(2)(A)(ii)(I) of the Code at the flat rate of 9% as prescribed by the Secretary of the Treasury.


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

2065 Walton Avenue Associates LLC
A New York Limited Liability Corporation

NEW YORK CITY
DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT

By:
2065 Walton Avenue Managing Member LLC
A New York Limited Liability Corporation,
Managing Member

By: 
Name: Elisa Barnes
Title: Member

By: 
Miriam Colón
Assistant Commissioner

By /s/ Steven Stein Cushman
Acting Corporation Counsel

ACKNOWLEDGEMENTS

State of New York)
) ss:
County of New York)

On the 12th day of December in the year 2016 before me, the undersigned, a Notary Public in and for said State personally appeared Miriam Colón, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

CHRISTINA DURAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DU6277082
Qualified In Kings County
My Commission Expires February 25, 2017

Christina Duran

State of New York)
) ss:
County of New York)

On the 12th day of December in the year 2016 before me, the undersigned, a Notary Public in and for said State personally appeared Elisa Barnes, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

CHRISTINA DURAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DU6277082
Qualified In Kings County
My Commission Expires February 25, 2017

Christina Duran

EXHIBIT A

INVESTIGATION CLAUSE

1.1 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, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

1.2(a) 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 witnesses 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;

1.2(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

1.3(a) 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.

1.3(b) 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 1.5 below without the City incurring any penalty or damages for delay or otherwise.

1.4 The penalties which may attach a final determination by the commissioner or agency head may include but shall not exceed:

- (a) 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

- (b) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

1.5 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 (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:

- (a) 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.
- (b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
- (c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
- (d) 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 1.4 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 1.3(a) 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.

1.6(a) 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.

(b) 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.

(c) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receive monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

(d) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

1.7(a) The parties to this agreement warrant and represent that to the best of their knowledge, (1) no officer, agent, employee or representative of the City of New York has received any payment or other consideration for the making of this agreement or in connection with the performance thereof, and (2) that no officer, agent, employee or representative of the City of New York has any interest, directly or indirectly, in this agreement or the proceeds thereof. The parties to this agreement agree that they shall not hereafter make or pay any consideration as aforesaid and that they will cooperate fully with the Commissioner of Investigation of the City of New York and will promptly report in writing 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, procurement or obtaining of this agreement by the parties or affecting the performance of this agreement.

1.7 (b) In the event of a violation of 1.7(a), the Commissioner of the Department of Housing Preservation and Development may convene a hearing pursuant to Section 1.3(a) hereof and upon such hearing, make a determination, in accordance with the consideration set forth in Section 1.5 hereof, as to whether a violation has occurred, the penalties imposed may include but shall not exceed the penalties set forth in Section 1.4(a) hereof.

EXHIBIT B

LOW INCOME HOUSING TAX CREDIT PROVISIONS

Project: Jericho Walton Avenue Apartments

1. Applicant agrees to waive the option of seeking to terminate the Extended Use Period if the City of New York cannot identify a qualified purchaser for their project at the end of Year 15. Agreeing to this waiver means the Extended Use Period will be in effect.
2. Applicant agrees to extend the low-income affordability period for an additional 30 years beyond the Compliance Period and Extended Use Period, that is, for a total of 60 years from the start of the Compliance Period.
3. At least (58) of the residential rental units will be set aside for homeless families. This restriction will remain in effect for 30 years.
4. Applicant agrees of the total Residential Rental Units in the project, at least 16 units must be set aside for occupancy by households whose incomes do not exceed 50% of Median Income as defined the Tax Credit Law (“Very Low Income Households”). Rents on these units occupied by Very Low Income Households may not exceed 30% of 50% of Median Income.