ASSIGNMENT AND SUBORDINATION OF MANAGEMENT AGREEMENT

**THIS ASSIGNMENT AND SUBORDINATION OF MANAGEMENT AGREEMENT** (this “**Assignment**”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (collectively, jointly and severally “**Borrower**”), and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Agent**”), for the benefit of **NEW YORK CITY HOUSING DEVELOPMENT CORPORATION** (including its successors, transferees and assigns, “Lender”).

RECITALS:

A. This Assignment is being executed in connection with the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Loan**”) to a Permanent Loan in the principal amount of $X,XXX,XXX(the “**Permanent Loan**”). The proceeds of the Loan were used for the construction of improvements upon real property located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Property**”).

B. The Loan is evidenced and secured by the First Building Loan Mortgage Note and First Project Loan Mortgage Note (collectively, the “**Notes**”) and First Building Loan Mortgage and First Project Loan Mortgage (collectively, the “**Mortgages**”), (together with the Regulatory Agreement, the “**Loan Documents**”).

C. Pursuant to that certain Management Agreement, dated on or about \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ between Borrower and Agent (a true and correct copy of which Management Agreement is attached hereto as Exhibit A), Borrower has employed Agent exclusively to rent, lease, operate and manage the Property (the “**Management Agreement**”).

NOW, THEREFORE, in consideration of the above and the mutual promises contained in this Assignment, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. Assignment of Management Agreement. As additional security for the Loan, Borrower hereby conditionally and collaterally transfers, sets over and assigns to Lender all of Borrower’s right, title and interest in and to the Management Agreement, said transfer and assignment to automatically become a present, unconditional assignment, at Lender’s option, in the event of and during the continuance an Event of Default (as defined in the Loan Documents) by Borrower under the Loan Documents and the failure of Borrower to cure such Event of Default (provided that in no event shall Lender be obligated to accept the cure of an Event of Default). In the event of a dispute between Lender and Borrower as to whether an Event of Default has been cured, Agent shall take direction solely from Lender and shall have no obligation to Borrower.
2. Termination. At such time as the Loan is repaid in full, this Assignment and all of Lender’s right, title and interest hereunder with respect to the Management Agreement shall immediately and without further action required by the Borrower or Lender, terminate.
3. Borrower’s Covenants. Borrower hereby covenants with Lender that during the term of this Assignment: (a) Borrower shall not transfer the responsibility for the management of the Property from Agent to any other person or entity without the prior written consent of Lender, which consent will not be unreasonably withheld; (b) Borrower shall not terminate or materially amend any of the terms or provisions of the Management Agreement without the prior written consent of Lender, which consent will not be unreasonably withheld; and (c) Borrower shall, in the manner provided for in this Assignment, give notice to Lender of any notice or information that Borrower receives which indicates that Agent is terminating the Management Agreement or that Agent is otherwise discontinuing its management of the Property.
4. Agent’s Representations. Agent warrants and represents to Lender as of the date hereof that (a) Agent has agreed to act as manager of the Property pursuant to the Management Agreement, (b) the entire agreement between Agent and Borrower for the management of the Property is evidenced by the Management Agreement, (c) the Management Agreement constitutes the valid and binding agreement of Agent, enforceable in accordance with its terms, and Agent has full authority under all state and local laws and regulations, to perform all of its obligations under the Management Agreement and (d) Borrower is not in default in the performance of any of its obligations under the Management Agreement and all payments and fees required to be paid by Borrower to Agent thereunder have been paid to the date hereof.
5. Agreement by Borrower and Agent. Borrower and Agent hereby agree that in the event of an Event of Default by Borrower under any of the Loan Documents during the term of this Assignment or in the event of a default by Agent under the Management Agreement, at the option of Bank exercised by written notice to Borrower and Agent: (a) all rents, security deposits, issues, proceeds and profits of the Property collected by Agent, after payment of all costs and expenses of operating the Property (including, without limitation, operating expenses, real estate taxes, insurance premiums, repairs and maintenance and the fees and commissions payable under the Management Agreement), shall be applied in accordance with Lender’s written directions to Agent, which direction shall be in accordance with applicable law; (b) Lender may exercise its rights under this Assignment and may immediately terminate the Management Agreement and require Agent to transfer its responsibility for the management of the Property to a management company selected by Lender in Lender’s sole and absolute discretion; and (c) Agent shall, if requested by Lender, continue performance, on behalf of Lender of all of Agent’s obligations under the terms of the Management Agreement with respect to the Property, provided Lender sends to Agent the notice set forth in Section 12 hereof and performs or causes to be performed the obligations of Borrower to Agent under the Management Agreement accruing or arising from and after, and with respect to the period commencing upon, the effective date of such notice.
6. Subordination of Management Agreement and Fees. Borrower and Agent hereby agree that the Management Agreement and any and all liens, rights (including the right to receive management fees) and interests (whether choate or inchoate) owed, claimed or held by Agent in and to the Property and the rent and revenue generated therefrom, are and shall be in all respects subordinate and inferior to the liens and security interests created or to be created for the benefit of Lender, its successors and assigns, and securing the repayment of the Notes including, without limitation, those created under the Mortgages covering, among other things, the Property, and filed or to be filed of record in the public records maintained for the recording of mortgages in the jurisdiction where the Property is located, and all renewals, extensions, increases, supplements, amendments, modifications and replacements thereof.
7. Consent and Agreement by Agent. Agent hereby acknowledges and consents to this Assignment and agrees that Agent will act in conformity with the provisions of this Assignment and Lender’s rights hereunder or otherwise related to the Management Agreement. In the event that the responsibility for the management of the Property is transferred from Agent in accordance with the provisions hereof, Agent shall, and hereby agrees to, fully cooperate in transferring its responsibility to a new management company and effectuate such transfer no later than thirty (30) days from the date the Management Agreement is terminated. Further, Agent hereby agrees (a) not to contest or impede the exercise by Lender of any right it has under or in connection with this Assignment; and (b) that it shall, in the manner provided for in this Assignment, give at least thirty (30) days prior written notice to Lender of its intention to terminate the Management Agreement or otherwise discontinue its management of the Property.
8. Lender’s Agreement. So long as Borrower is not in an Event of Default under any of the Loan Documents but subject to the limitation in Section 11 of this Assignment, Lender agrees to permit any sums due to Agent under the Management Agreement to be paid directly to Agent.
9. No Joint Venture. Lender has no obligation to Agent with respect to the Mortgages or Loan Documents and Agent shall not be a third-party beneficiary with respect to any of Lender’s obligations to Borrower set forth in the Loan Documents. The relationship of Lender to Borrower, is one of a lender(s) to a debtor, and Lender is not a joint venturer or partner of Borrower.
10. Lender’s Reliance on Representations. Agent has executed this Assignment in order to induce Lender to accept the Mortgages and the Loan Documents and with full knowledge that Lender shall rely upon the representations, warranties and agreements herein contained, and that but for this Assignment and the representations, warranties and agreements herein contained, Lender would not take such actions.
11. Manager’s Compensation. Agent agrees that, notwithstanding anything to the contrary contained in the Management Agreement, Agent shall not be entitled to receive compensation for its services conducted in connection with the Property in excess of 5.00% of the net residential income collected from the Property.
12. Notice. All notices given hereunder shall be in writing and shall be either hand delivered or sent by FedEx or other reputable courier service, to the parties at their respective addresses below or at such other address for any party as such party may designate by notice to the other parties hereto:

To the Lender:

New York City Housing Development Corporation

120 Broadway, 2nd Floor

New York, New York 10271

Attention: General Counsel

To the **Borrower:**

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

with a copy to:

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

To the Agent:

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

1. Binding Nature of Assignment. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
2. Counterparts. This Assignment may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument.
3. **Waiver of Jury Trial. The undersigned hereby irrevocably and unconditionally waive any and all right to trial by jury in any action, suit or counterclaim arising in connection, out of or otherwise relating to this Assignment.**

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this Assignment on the date and year first written above.

**BORROWER:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**AGENT:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

[signature follows on next page]

Acknowledged and Consented to By:

**LENDER:**

**NEW YORK CITY HOUSING**

**DEVELOPMENT CORPORATION**

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

Name: Alex Medina

Title: Senior Vice President

EXHIBIT A

MANAGEMENT AGREEMENT