



Legislation Text

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THE COUNCIL OF THE CITY OF NEW YORK  
RESOLUTION NO. 441

**Resolution approving a conveyance of property located at Block 393, Lot 59, Borough of the Manhattan (Preconsidered L.U. No. 130; 20185420 HAM).**

By Council Members Salamanca and Kallos

WHEREAS, the New York City Department of Housing Preservation and Development ("HPD") submitted to the Council on June 5, 2018 its request dated June 5, 2018 that the Council approve the conveyance of property located at Block 393, Lot 59, Community District 3, Council District 2, Borough of Manhattan (the "Conveyance Area");

WHEREAS, the original Article V Plan and Project was approved by the Board of Estimate on March 20, 1980 (Cal. No. 7), (the "Original Project");

WHEREAS, the Current Owner, Lower East Side II Associates L.P., wishes to convey the Conveyance Area to New Owner, East Village IV LLC, for the construction of one new multiple dwelling that will contain approximately 23 units of rental housing (the "New Project");

WHEREAS, a Restrictive Covenant will be executed and recorded binding the New Owner to the terms set forth in the HPD request;

WHEREAS, upon due notice the Council held a public hearing on the New Project on June 19, 2018; and

WHEREAS, the Council has considered the land use and financial implications and other policy issues relating to the New Project.

RESOLVED:

The Council approves, pursuant to Section 122(1) of the Private Housing Finance Law, contingent upon the execution and recordation of the Restrictive Covenant, a copy of which is attached hereto as Exhibit A, as same may be modified with any necessary administrative or technical changes as are acceptable to Counsel to HPD, the conveyance of the Conveyance Area by the Current Owner to the New Owner.

Adopted.

Office of the City Clerk, }  
The City of New York, } ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on June 28, 2018, on file in this office.

.....  
City Clerk, Clerk of The Council

**EXHIBIT A**

**DECLARATION OF RESTRICTIVE COVENANT**

**WHEN RECORDED RETURN TO:**

New York City  
Department of Housing Preservation and Development  
Office of Legal Affairs  
100 Gold Street, Room 5-U9  
New York, NY 10038

**DECLARATION OF RESTRICTIVE COVENANT**

This Declaration of Restrictive Covenant (“Declaration”) executed as of this \_\_\_th day of \_\_\_\_\_, 2018 (the “Effective Date”) is granted to the City of New York, acting by and through its Department of Housing Preservation and Development (“HPD”), by \_\_\_\_\_ LLC (“Owner” or “Declarant”).

**RECITALS**

- A. Owner is the owner of that certain parcel of land located in the Borough of Manhattan County of New York, State of New York, which is more fully described in Exhibit A hereto (the “Property”).
- B. Owner has acquired the Property pursuant to a Resolution of the New York City Council dated \_\_\_\_\_ (Reso. No. \_\_\_\_\_) (the “Council Resolution”) approving the conveyance of the Property from Lower East Side II Associates, L.P., a redevelopment company which formally owned the Property, to \_\_\_\_\_ LLC .
- C. The Council Resolution conditioned the approval of the conveyance on Owner’s execution and recordation of a Declaration of Restrictive Covenant for the benefit of HPD providing that the greater of (i) 39% of any dwelling units or (ii) eleven (11) dwelling units constructed on the Property (the “Regulated Units”) be affordable to households at certain specified income levels, as set forth more particularly below.

NOW THEREFORE, in consideration of the foregoing premises, the Council Resolution, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner declares as follows:

- 1. **Term.** The term of this Restrictive Covenant (the “Term”) shall commence on the Effective Date and, except as set forth in Section 2 below, shall expire on the fortieth (40th) anniversary of the Effective Date (the “Expiration Date”).
- 2. **Section 421-a Exemption.** The Declarant shall seek a partial real estate tax exemption for the Property pursuant to Section 421-a of the Real Property Tax Law (the “Section 421-a Exemption”). In the event that the Property does receive a Section 421-a Exemption, the Expiration Date shall be the later of the fortieth (40<sup>th</sup>) anniversary of the Effective Date or the date of the expiration of the Section 421-a(16) Exemption. Declarant shall comply with any and all requirements for the receipt of the Section 421-a (16) Exemption, including, but not limited to, any income and rent restrictions. Furthermore, Declarant shall comply with the income and rent provisions of Section 5 of this Declaration.

Declarant may not sell, convey, or transfer the Property without HPD’s prior written consent before receipt of the Section 421-a (16) Exemption.

- 3. **Definitions.** For the purposes of this Agreement, the following terms shall have the meanings set forth below:

“70% of AMI” shall mean 140% of the income levels as modified by household size for the New York metropolitan

statistical area for fifty percent (50%) of median income families (a.k.a. as “very low income families”) as determined from time to time by HUD under Section 3(b)(2) of the United States Housing Act of 1937 (or, if such program is terminated, under such program as was in effect immediately before such termination).

“70% AMI Tenant” shall mean a person or family whose Annual Income at the time of application to lease a Unit is less than or equal to 70% of AMI.

“70% AMI Unit” shall have the meaning set forth in Section 5 of this Declaration.

“130% of AMI” shall mean 260% of the income levels as modified by household size for the New York metropolitan statistical area for fifty percent (50%) of median income families (a.k.a. as “very low income families”) as determined from time to time by HUD under Section 3(b)(2) of the United States Housing Act of 1937 (or, if such program is terminated, under such program as was in effect immediately before such termination).

“130% AMI Tenant” shall mean a person or family whose Annual Income at the time of application to lease a Unit is less than or equal to 130% of AMI.

“130% AMI Unit” shall have the meaning set forth in Section 5 of this Declaration.

“AMI” shall mean the area median income for the primary metropolitan statistical area as determined by HUD from time to time for a family of four, as adjusted for family size.

“Actual Rent” shall mean the rent charged for a Unit in accordance with Section 5 of this Agreement.

“Annual Income” is 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 date of initial determination of income. The definitions and descriptions of income set forth in the HUD regulations contained in 24 CFR 5.609 or any successor regulations shall apply for the purposes of this Agreement and shall be incorporated herein.

“Eligible Tenant” shall mean any tenant who satisfies the income and occupancy restrictions set forth herein.

“HUD” shall mean the United States Department of Housing and Urban Development.

“Legal Rent” shall mean, for each Unit, the maximum rent permitted under the Rent Stabilization Code.

“Regulated Units” shall mean the 70% AMI Units and the 130% AMI Units designated by the Owner and leased pursuant to Section 4 of this Declaration.

“Rent Stabilization Code” shall mean Title 26, Chapter 4 of the New York City Administrative Code (and any successor statute) and the regulations promulgated in connection therewith.

“Units” shall mean the rental dwelling units in the multiple dwellings constructed on the Property.

4. Taxes. Unless the Property receives an exemption from or abatement of real property taxes, Declarant shall pay such real property taxes as may be assessed against the Property and any improvements thereon. Declarant may apply for any form of real estate tax exemption or abatement to which the Property may be legally entitled to apply for.
5. Eligible Tenants and Rents for Regulated Units.
  - (i) Owner shall lease each Regulated Unit to an Eligible Tenant determined as follows:
    - (a) (i) the greater of (A) 39% of all the Units shall be affordable to persons at or below 130% of AMI (each such Unit, a “130% AMI Unit”), and (B) a portion of such Units shall be affordable to persons at or

below 70% of AMI (each such Unit, a “70% AMI Unit”), or

(ii) a minimum of three (3) Units shall be 130% AMI Units and an additional minimum of eight (8) Units shall be 70% AMI Units.

(b) A 70% AMI Unit shall be leased to a 70% AMI Tenant for an Actual Rent equal to the lesser of (1) 30% of 70% of AMI and (2) the Legal Rent as of such date.

(c) A 130% AMI Unit shall be leased to a 130% AMI Tenant for an Actual Rent equal to the lesser of (1) 30% of 130% of AMI and (2) the Legal Rent as of such date.

(d) Units which are not Regulated Units may be leased to tenants without regard to any income restrictions set forth in this Agreement.

(ii) Any Eligible Tenant shall be entitled to remain in occupancy and to obtain a renewal lease in accordance with the Rent Stabilization Code, notwithstanding that such tenant’s Annual Income, after initial occupancy, may exceed the maximum for initial eligibility. Further, no Eligible Tenant may be evicted nor its tenancy terminated except for good cause.

(iii) In order to determine whether a prospective tenant is an Eligible Tenant, Owner shall ascertain the Annual Income of such tenant’s household. Owner may consult with HPD to obtain advice and guidance with respect to income determinations. Owner must retain all records and documents relating to Owner’s determination for a minimum of three years after the date the tenant commences occupancy. Owner shall provide in each lease for the termination of the lease and eviction of the tenant if the tenant falsely or fraudulently certifies income to Owner.

(iv) Owner shall not refuse to lease a Regulated Unit to a holder of a voucher or certificate under the federal Section 8 Voucher Program or Section 8 Certificate Program or successor programs by reason of the status of the prospective tenant as such a holder.

(v) Owner shall not utilize any exemption or exclusion from any requirement of the Rent Stabilization Code to which Owner might otherwise be or become entitled with respect to one or more Regulated Units, including, but not limited to, any exemption from or exclusion from the rent limits, renewal lease requirements, registration requirements or other provisions of the Rent Stabilization Code due to (A) the vacancy of a Regulated Unit where the rent exceeds a prescribed maximum amount, (B) the fact that tenant income and/or rent exceed prescribed maximum amounts, (C) the nature of the tenant, or (D) any other factor.

(vi) Units may only be occupied as a primary residence, as defined in the Rent Stabilization Code, by natural persons or families pursuant to a one or two year lease who have met the applicable income requirements for Eligible Tenants at the time of such tenant’s initial occupancy of such unit. Owner shall only offer a vacant Regulated 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 Regulated Unit for transient occupancy, for occupancy by any household that is not income eligible, or to any corporation or other entity.

6. Enforcement. In the event of a breach or threatened breach of this Declaration, HPD shall be entitled to institute proceedings at law or in equity for relief from the consequences of said breach including seeking injunctive relief to prevent a violation thereof. The prevailing party in any such action shall be awarded its costs and expenses, including reasonable attorneys’ fees, which shall be deemed to have accrued on the commencement of such action and shall be awarded whether or not such action is prosecuted to judgment.

7. Superiority. The charges and burdens of this Declaration are, and shall at all times be, prior and therefore superior to the lien

or charge of any mortgage or deed of trust hereafter made affecting the Property or any part thereof, including any improvements now or hereafter placed thereon, and notwithstanding a foreclosure or other voluntary or involuntary transfer of title pursuant to such instrument, shall remain in full force and effect, but are subordinate to the security interests of record on the Effective Date. Provided, however, that a breach of any of the restrictions hereof shall not defeat or render invalid the lien or charge of any mortgage or deed of trust. The charges and burdens of this Declaration are not intended to either create a lien upon the Property, or grant any right of foreclosure, to any person or party.

8. Notices. All notices provided for herein may be delivered in person, sent by Federal Express or other overnight courier service, mailed in the United States mail postage prepaid, or sent by electronic or facsimile transmission, and, regardless of the method of delivery used, shall be considered delivered upon the actual receipt or refusal of receipt thereof. The name, address and other information to be used in connection with such correspondence and notices to Owner shall be the then-current owner's name and address information maintained in the official real property tax records with respect to the Property.
9. Miscellaneous.
  - (a) Headings. The headings in this Declaration are for convenience only and do not in any way limit or affect the terms and provisions hereof.
  - (b) Unenforceability. If any provision of this Declaration is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remainder of such provision or any other provisions hereof.
  - (c) Gender. Wherever appropriate in this Declaration, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain genders shall be deemed to include either or both of the other genders.
  - (d) Governing Law. This Declaration shall be construed and enforced in accordance with the laws of the State of New York.
  - (e) Amendments. This Declaration may be amended or canceled only by written instrument executed by HPD and the then-current owner of the Property.
  - (f) Entire Agreement. This Declaration constitutes the entire agreement of Owner with respect to the subject matter hereof and supersedes all prior negotiations or discussions, whether oral or written, with respect thereto.
10. Expiration. Except as otherwise provided herein, upon the expiration of the Term, this Declaration shall be of no further force and effect; provided, however, that HPD shall retain all of its rights and remedies to enforce this Declaration with respect to any default or violation that occurred prior to the expiration of the Term. HPD shall, if requested by Owner, execute and deliver to Owner a document in recordable form to acknowledge the expiration of this Declaration.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be signed by its duly authorized representatives, as of the day and year first above written.

OWNER

\_\_\_\_\_ LLC

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

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

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

STATE OF NEW YORK)

)ss.

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2018 before me, the undersigned, personally appeared \_\_\_\_\_ 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 upon behalf of which the individual(s) acted executed the instrument.

Notary Public

**EXHIBIT A**

**PROPERTY DESCRIPTION**

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All those certain plots, pieces and parcels of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, in the City and State of New York, designated as:

<u>Block</u>	<u>Lots</u>	<u>Address</u>
393	59	351-353 East 10 <sup>th</sup> Street

County: New York