



Legislation Text

File #: Res 0575-2018, Version: *

**THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 575**

Resolution approving a conveyance of property located at Block 1824, Lot 155 (f/k/a p/o Lots 16, 18, 22, 23, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 38, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, and 54 and then as p/o Lot 16), Borough of the Manhattan (L.U. No. 224; 20195047 HAM).

By Council Members Salamanca and Kallos

WHEREAS, the New York City Department of Housing Preservation and Development ("HPD") submitted to the Council on October 1, 2018 its amendment of its original request of August 2018, such amended request dated October 1, 2018 that the Council approve the conveyance of property located at Block 1824, Lot 155 (f/k/a p/o Lots 16, 18, 22, 23, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 38, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, and 54 and then as p/o Lot 16), Community District 10, Council District 9, Borough of Manhattan (the "Conveyance Area");

WHEREAS, the original Article V Plan and Project was approved by the Board of Estimate on July 17, 1980 (Cal. No. 11), (the "Original Project");

WHEREAS, the Current Owner, Church Home Associates, L.P., wishes to convey the Conveyance Area to New Owner, 115th Street Holdings, LLC, for the construction of one new multiple dwelling that will contain a minimum of 288 dwelling 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 September 17, 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 a 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 October 17, 2018, on file in this office.

EXHIBIT A

WHEN RECORDED RETURN TO:

Department of Housing Preservation
and Development
100 Gold Street, Rm 5-W10
New York, New York 10038
Attn: Bryan Kaplan, Esq.

DECLARATION OF RESTRICTIVE COVENANT

This Declaration of Restrictive Covenant (“Declaration”) executed as of this __ day of September, 2018 (the “Effective Date”) is granted to the City of New York (the “City”), acting by and through its Department of Housing Preservation and Development (“HPD”), by 115th Street Holdings LLC, a New York limited liability company with an address at 1865 Palmer Avenue, Suite 203, Larchmont, New York 10538 (“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, identified on the tax map of the City of New York (the “Tax Map”) as Block 1824, Lot 155, which is more fully described in Exhibit A hereto (the “Property”).

- B. Owner has acquired the Property pursuant to a Resolution of the City Council of the City of New York dated _____, 2018 (Reso. No. ____) (the “Council Resolution”) approving the conveyance of the Property by Church Home Associates, L.P., a redevelopment company organized pursuant to Article V of the Private Housing Finance Law, that previously owned the Property.
- 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 the City requiring during its term that any construction on the Property include at least one multiple dwelling containing, unless otherwise agreed by HPD, a minimum of 288 units of rental housing, at least forty percent (40%) of which shall be affordable to households at certain specified income levels in accordance with the terms and conditions set forth herein.

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 Declaration (the “Term”) shall commence on the Effective Date and expire on the earlier of (i) the closing of the New Housing Project (defined below) and (ii) four (4) years from the Effective Date.
2. Conveyance. During the Term, Owner may not sell, transfer, or convey any direct or indirect interests in the Property or Declarant (other than passive investment interests) without the prior written consent of HPD; provided, however, that, unless otherwise agreed by HPD, any such consent shall be delivered by HPD only if such sale, transfer, or conveyance is for the purpose of constructing an affordable housing project where 100% of the units shall be affordable to households at income levels agreed to by HPD.
3. Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

“50% of AMI” shall mean 100% 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).

“50% 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 50% of AMI.

“50% AMI Units” shall have the meaning set forth in Section 6 of this Declaration.

“90% of AMI” shall mean 180% 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).

“90% 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 90% of AMI.

“90% AMI Units” shall have the meaning set forth in Section 6 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 Units” shall have the meaning set forth in Section 6 of this Declaration.

“Actual Rent” shall mean the rent charged for a Unit in accordance with Section 6 of this Agreement.

"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.

"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 Declaration and shall be incorporated herein.

“Destabilization” shall mean any set of facts that causes the Rent Stabilization Code to no longer apply to the Regulated Units, whether by expiration, legislative repeal, judicial invalidation, or any other reason.

“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 and any successor agency.

“Legal Rent” shall mean the initial legal regulated rent as adjusted pursuant to the Rent Stabilization Code.

“Regulated Units” shall mean the 50% AMI Units, 90% AMI Units and 130% AMI Units designated by the Owner and leased pursuant to Section 6 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 New Housing Project.

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.
5. New Housing Project. During the Term, any construction on the Property must include at least one multiple dwelling that will contain, unless otherwise agreed by HPD, a minimum of 288 units of rental housing, at least forty percent (40%) of which shall be affordable to households at the income levels specified in Section 6 below and upon the terms and conditions set forth therein (the “New Housing Project”). The New Housing Project (i) shall be subject to a restrictive declaration or regulatory agreement, acceptable to HPD in its sole discretion, requiring the affordability levels set forth herein for a term of at least thirty-five (35) years, and (ii) shall not receive subsidy (except a real estate tax exemption under (x) Section 421-a (16) of the New York Real Property Tax Law, (y) Section 577 of the New York Private Housing Finance Law, or (z) any successor or equivalent of either) from HPD or any other government agency.
6. Eligible Tenants and Rents for Regulated Units.
 - (i) Owner shall lease each Regulated Unit to an Eligible Tenant determined as follows:
 - (a) No less than ten percent (10%) of the Units shall be leased to 50% AMI Tenants (“50% AMI Units”) at rents affordable to such households, no less than ten percent (10%) of the Units shall be leased to 90% AMI Tenants (“90% AMI Units”) at rents affordable to such households, and no less than twenty percent (20%) of the Units shall be leased to 130% AMI Tenants (“130% AMI Units”) at rents affordable to such households.

No Unit may be counted multiple times for the purpose of meeting the aforesaid percentages.

- (b) Units that are not Regulated Units may be leased to tenants without regard to any income restrictions set forth in this Agreement.
- (ii) If the Actual Rent for a Regulated Unit shall be less than the Legal Rent for such Regulated Unit, the Actual Rent shall be registered as a “preferential rent” under the Rent Stabilization Code. Upon renewal of any lease for an Actual Rent less than the Legal Rent, the Actual Rent may be increased by the amount of the increase, whether expressed as a percentage or otherwise, authorized for one or two year leases (as applicable) in accordance with the Rent Stabilization Code.
- (iii) Following the expiration of the Term, the rent for each Regulated Unit occupied by a tenant whose occupancy began prior to the expiration of the Term shall continue to be determined in accordance with the terms of this Declaration.
- (iv) 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.
- (v) 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.
- (vi) 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.
- (vii) No later than thirty (30) days following the date of the issuance of a temporary certificate of occupancy for any multiple dwelling constructed on the Property (the “TCO Issuance Date”), Owner shall register the rents for any Regulated Unit in accordance with the Rent Stabilization Code at 30% of 50% of AMI for the 50% AMI Units, 30% of 90% of AMI for the 90% AMI Units, and 30% of 130% of AMI for the 130% AMI Units. For purposes of this paragraph, “AMI” shall mean the AMI as determined by HUD as of the TCO Issuance Date. The rents so registered shall be deemed the initial Legal Rent for each Regulated Unit.
- (viii) 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.
- (ix) 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.

- (x) “Contractual Rent Regulation” shall mean the following after Destabilization:
- (a) Owner shall be required to offer renewal leases on the same terms and conditions as had been required by the Rent Stabilization Code at the time of Destabilization (subject however to the provisions in subparagraphs (b) and (c) below), as if the Regulated Unit was still subject to and not excluded or exempted from any provision of the Rent Stabilization Code, including, but not limited to, any exemption or exclusion regarding rent limits, renewal lease requirements, or any other provision due to (i) the vacancy of a Regulated Unit where the rent exceeds a prescribed maximum amount, (ii) the fact that tenant income and/or Regulated Unit rent exceed prescribed maximum amounts, (iii) the nature of the tenant, or (iv) any other factor.
 - (b) The “Legal Rent,” as such term is used in this Declaration, shall be limited by percentage increases calculated based on a method or index established by HPD for determining the maximum increase to Legal Rent upon lease renewal or vacancy. Such method or index shall be based on inflation or on factors substantially equivalent to the factors considered in calculating such increases under the Rent Stabilization Code at the time of Destabilization, and shall incorporate a method for determining and implementing increases to Legal Rent by reason of major capital improvements performed by Owner, to the extent that such increases, if any, are not prohibited hereunder. HPD will publish such methodology in the City Record and will provide a copy of the methodology to Owner upon request.
 - (c) Wherever this Declaration limits increases in rent by increases as permitted by the Rent Stabilization Code (or language of similar import), such increases shall be limited by the percentage increases established by HPD as described in subparagraph (b) above.
 - (d) If Destabilization occurs during the Term, then, for the remainder of the Term, all Regulated Units that have undergone Destabilization shall be subject to Contractual Rent Regulation. If some Regulated Units remain subject to the Rent Stabilization Code while other Regulated Units have undergone Destabilization, Contractual Rent Regulation will apply only to the Regulated Units that have undergone Destabilization.

7. Intentionally omitted.

8. 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 create a lien upon the Property, or grant any right of foreclosure, to any person or party.

9. 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 postage prepaid, return receipt requested, 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.

10. 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 HPD and Declarant with respect to the subject matter hereof and supersedes all prior negotiations or discussions, whether oral or written, with respect thereto.
11. 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.
12. Covenants Run With The Land. This Declaration shall run with the land and bind all subsequent parties in interest to the Property, including but not limited to Owner's successors, assigns, heirs, grantees and lessees, during the Term. All references to "Owner" in this Declaration shall include Owner's successors, assigns, heirs, grantees and lessees.
13. Enforcement.
- (a) In the event of a breach of any of the covenants and agreements contained herein, the City shall have the right to one or more of the following nonexclusive remedies:
 - (i) Institute and prosecute any proceeding for an injunction or for specific performance of Owner's obligations hereunder.
 - (ii) Extend the term of this Declaration by the period of such noncompliance upon the recording of an appropriate document, executed solely by the City, against the Property. The period of noncompliance shall be presumed to be the period running from the date that such noncompliance commenced (the "Noncompliance Date") to the date that such noncompliance is cured; provided, however, that in the event Owner cannot establish the Noncompliance Date definitively, in the sole discretion of HPD, then the Noncompliance Date shall be deemed to be the Effective Date.
 - (b) In the event of a threatened breach of any of the covenants and agreements contained herein, the City shall have the right to the remedy described in Section 13(a)(i) above.

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

115TH STREET HOLDINGS LLC

By: L+M 115th Street Holdings, its sole member

By: _____
Name:
Title: Authorized Signatory

ACKNOWLEDGMENTS

STATE OF NEW YORK)

)ss.

COUNTY OF NEW YORK)

On the ___ day of September 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

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

Borough: Manhattan

County: New York

File #: Res 0575-2018, **Version:** *

Block: 1824

Lot: 155

as more particularly described as follows:

(see following page)

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499 Jericho Turnpike, Suite 201
Mineola, New York 11501
Phone: 516-873-7278
Facsimile: 516-873-1218
Email: JNSurveys@aol.com

Joseph Nicoletti Associates Professional Land Surveyors, P.C.

TAX BLOCK 1824 TAX LOT 155

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE BOROUGH OF MANHATTAN, CITY, COUNTY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT DISTANT 330 FEET 0 INCHES FROM THE CORNER FORMED BY THE INTERSECTION OF WESTERLY SIDE OF LENOX AVENUE (150' WIDE) AND THE NORTHERLY SIDE OF WEST 114TH STREET (60' WIDE);

RUNNING THENCE WESTERLY ALONG THE NORTHERLY SIDE OF WEST 114TH STREET, 70 FEET 0 INCHES TO A POINT;

THENCE NORTHERLY ALONG A LINE PARALLEL WITH LENOX AVENUE, 100 FEET 11 INCHES TO THE CENTER LINE OF BLOCK BETWEEN WEST 114TH STREET AND WEST 115TH STREET (60' WIDE);

THENCE WESTERLY ALONG THE CENTER LINE OF BLOCK, 75 FEET 0 INCHES TO A POINT;

THENCE NORTHERLY ALONG A LINE PARALLEL WITH LENOX AVENUE, 100 FEET 11 INCHES TO A POINT ON THE SOUTHERLY SIDE OF WEST 115TH STREET;

THENCE EASTERLY ALONG THE SOUTHERLY SIDE OF WEST 115TH STREET, 223 FEET 9 INCHES TO A POINT;

THENCE SOUTHERLY ALONG A LINE PARALLEL WITH LENOX AVENUE, 100 FEET 11 INCHES TO A POINT;

THENCE WESTERLY ALONG THE CENTER LINE OF BLOCK BETWEEN WEST 114TH STREET AND WEST 115TH STREET, 78 FEET 9 INCHES TO A POINT;

THENCE SOUTHERLY ALONG A LINE PARALLEL WITH LENOX AVENUE, 100 FEET 11 INCHES TO THE POINT OR PLACE OF BEGINNING

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