

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants (the “**Declaration**”) is made as of December 16, 2020 by **ASBURY APARTMENTS LLC**, a New York corporation limited liability company (“**Declarant**”).

RECITALS

This Declaration affects that certain real property commonly known as Asbury Terrace Apartments, and located in the Village of Tarrytown, Westchester County, State of New York (the “**Village**”), as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Property**”) and is entered into based on the following facts and understandings:

It has been represented to Declarant by Asbury Terrace Housing Development Fund Company, Inc., a New York not-for-profit corporation (the “**HDFC**”), that the Property was developed by the HDFC as a residential project comprised exclusively of affordable housing units (the “**Affordable Housing Development**”) to address long term affordable housing needs in the Village.

In consideration of sale of the Property by the HDFC to Declarant, the Declarant has agreed, for itself and its successors and assigns, to ensure the continued operation of the Affordable Housing Development by entering into this Declaration and encumbering the Property to restrict the development, use and occupancy of the Affordable Housing Development on the term and conditions set forth herein.

NOW, THEREFORE, Declarant, in consideration of the sale of the Property by HDFC to Declarant and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby covenants, agrees and declares that the Property shall be owned, held, used, maintained, and transferred pursuant to the following restrictive covenants (the “**Covenants**”):

COVENANTS

1. Operation as Affordable Housing Development. Declarant hereby declares and covenants that the Property is restricted to the development and use of the Affordable Housing Development as affordable housing and uses ancillary thereto for a period of fifty (50) years from the date of this Declaration (the “**Restricted Period**”). For the purposes of this Declaration and the Covenants, as of the date that the HDFC conveyed the Property to the Declarant, Asbury Terrace Apartments shall be considered by the parties hereto to be an Affordable Housing Development, and that all households regardless of their incomes, shall be considered to be occupying an affordable housing unit. Asbury Terrace Apartments shall continue to be considered an Affordable Housing Development, provided that, commencing on the date hereof, any vacant unit shall be leased to a household whose income is at or below 80% of the area

median gross income for the Westchester County New York Statutory Exception Area (“AMI”) as determined from time to time by the Secretary of the United States Department of Housing and Urban Development (“HUD”) and the rent payable by any such household is equal to 30% or less of its income, and, to the best of the Declarant’s information and belief, the rent payable by each household currently residing in the Asbury Terrace Apartments is equal to 30% or less of its respective income. The HDFC acknowledges that the Declarant has not received, nor will be entitled to obtain, any income information for any household currently residing in the Asbury Terrace Apartments unless such household receives or has a pending request to receive Section 8 rental assistance, and that any representation contained herein by the Declarant regarding the income of any household not receiving Section 8 rental assistance or without a pending request to receive Section 8 rental assistance is based solely upon information provided by the Community Housing Management Corp., the management agent for the Property. The Affordable Housing Development shall have the following occupancy and affordability restrictions:

- a. As of the date hereof, no household receiving Section 8 rental assistance shall have an income that exceeds 60% of AMI and such household’s portion of the rent payable for its unit shall not exceed 30% of its income.
- b. Commencing on the date hereof and during the Restricted Period, upon the vacancy of a unit, such unit shall be leased to a household with an income that does not exceed 80% of AMI and such household’s portion of the rent payable for its unit shall not exceed 30% of its income.
- c. Up to eighty-six (86) (the “**HAP Units**”) units shall be used exclusively as assisted housing for tenants meeting the eligibility and income targeting requirements in accordance with Section 8 of the U.S. Housing Act of 1937 (42 USC 14371), as amended, all applicable regulations, and any applicable Housing Assistance Payments Contract (“**HAP Contract**”). It shall not constitute a breach of the Covenants should the U.S. Department of Housing and Urban Development or any successor agency (“**HUD**”) cease to provide assistance payments for the Property, either through a project-based Section 8 housing assistance payment contract or any future subsidy program intended to supplant the Section 8 program. In the event that HUD should cease to provide assistance payments for the HAP Units, such units must continue to be operated as affordable housing at eighty percent (80%) or less of the area median income, as adjusted for household size, as published by HUD from time to time, for the remainder of the Restricted Period.
- d. In addition to the HAP Units, the remaining units shall be operated as affordable housing as follows: (i) each unit occupied on the date hereof shall be considered an affordable housing unit for as long as such household occupies the unit, and (ii) following the vacancy of any such units, each unit shall be leased to households meeting the eligibility and income targeting at eighty percent (80%) or less of AMI, as adjusted for household size, as published by HUD from time to

time, and such household's portion of the rent payable for its unit shall not exceed 30% of its income for the remainder of the Restricted Period.

2. **Repair and Maintenance.** Declarant agrees:

- a. To keep the Property in a decent, safe, sanitary, rentable, tenantable condition and repair, and permit no waste thereof;
- b. Not to commit or suffer to be done or exist on or about the Property any condition causing the Property to become materially less valuable;
- c. Not to remove or demolish any buildings and improvements now or hereinafter located on the Property except in the event of a casualty;
- d. To use commercially reasonable efforts to repair, restore or rebuild promptly any buildings or improvements on the Property that may become damaged or be destroyed while subject to this Declaration;
- e. To comply with all applicable laws, ordinances and governmental regulations affecting the Property or requiring any alteration or improvement thereof, and not to suffer or permit any violations of any such law, ordinance or governmental regulation, nor of any covenant, condition or restriction affecting the Property; and
- f. To not materially alter the use of all or any part of the Property without prior written consent of the Administrator.

3. **Review and Inspection.** During the Restricted Period, the Declarant shall, on or before March 31st of each year following the date hereof, submit to the Housing Action Council, a New York not-for-profit corporation (together with any designee or successor compliance monitor appointed by the then-serving Administrator, the "**Administrator**"), a copy of a certified rent roll from the Property manager (with household names redacted) from December of the previous year, and shall also provide a representation that any vacancy that was filled during the previous calendar year was filled by a household whose income did not exceed 80% of AMI and whose portion of the rent did not exceed 30% of its income, and that to the best of the Declarant's information and belief none of the households at Asbury Terrace were paying more than 30% of their income for rent. Prior to any sale or transfer of the Property (excluding a foreclosure by a Third Party or an acceptance of a deed in lieu of foreclosure by a Third Party; "**Third Party**" means a person or entity that is none of the following (i) Declarant, (2) an affiliate of Declarant, or (3) a related party of Declarant), Declarant (or its successors, assigns or transferees) shall provide no less than twenty (20) days' prior written notice to Administrator of such contemplated sale or transfer.

4. **Default Remedies.** The development, use and maintenance of the Property as an Affordable Housing Development in accordance with this Declaration is of a special and unique kind and character, so that a breach of any material provision of this Declaration by Declarant, its

successors, assigns or transferees, would not have an adequate remedy at law. Therefore, upon any breach of the Covenants, to the extent permitted by applicable law, Administrator shall have after written notice to Declarant and thirty (30) days for Declarant to cure such breach, the right to seek specific performance of the Covenants and/or to enjoin any violation of the Covenants in a court of competent jurisdiction. The right to specific performance and injunction shall be in addition to all other remedies available under statute, at law or in equity.

5. Covenants Run with the Land. The Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land. Declarant expressly acknowledges and agrees that the Covenants are reasonable restraints on Declarant's right to own, use, maintain, and transfer the Property and any estate or interest therein and are not and shall not be construed to be an unreasonable restraint on alienation. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument. Declarant acknowledges, for itself, that the provisions of this Declaration fair and reasonable under the circumstances, that such Declarant has received a substantial benefit from the HDFC having conveyed the Property to Declarant on favorable terms, and that the HDFC would not have conveyed the Property to Declarant absent Declarant's agreement to execute this Declaration and abide by the Covenants contained herein. Notwithstanding the foregoing, upon the transfer of title to the Property to a Third Party as a result of a foreclosure of any mortgage, or the acceptance of a deed in lieu of foreclosure by a Third Party with respect to such mortgage, this Declaration and the Covenants contained herein shall automatically terminate and no further instrument shall be required for such termination.

6. Binding Effect. This Declaration and the Covenants contained herein shall be binding upon Declarant and all of Declarant's successors, assigns and transferees to the Property, and all leases, tenants, contractors, agents, and all persons claiming an interest in the Property, or claiming an interest by and through any of the foregoing. Any purchaser of the Property or of any portion of or interest in the Property, by the acceptance of a deed therefore, whether from Declarant or from any subsequent owner of the Property, or by the signing of a contract or agreement to purchase the Property, shall by the acceptance of such deed or by the signing of such contract or agreement be deemed to have consented to and accepted the Covenants set forth in this Declaration. Notwithstanding the foregoing, upon the transfer of title to the Property to a Third Party as a result of a foreclosure, or the acceptance of a deed in lieu of foreclosure by a Third Party with respect to such mortgage, this Declaration and the Covenants contained herein shall automatically terminate and no further instrument shall be required for such termination.

7. Governing Law. This Declaration shall be interpreted and be governed by the laws of the State of New York.

8. Severability. Every provision of this Declaration is intended to be severable. If any provision of this Declaration is held invalid, illegal, or unenforceable by a court of competent

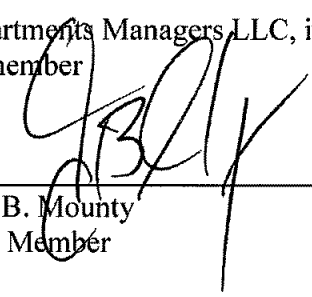
jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

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

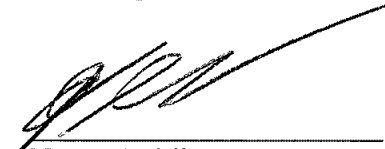
ASBURY APARTMENTS LLC, a New York limited liability company

By: Asbury Apartments Managers LLC, its managing member

By: 
Name: Joel B. Mounty
Title: Sole Member

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

On the 9th day of December, 2020, before me, the undersigned, a notary public in and for said state, personally appeared Joel Mounty, personally known to me or proved to me on the basis of satisfactory evidence to be the individual 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

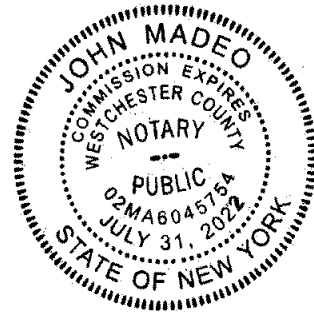


EXHIBIT A
Legal Description

EXHIBIT A

LEGAL DESCRIPTION

SECTION 1.40, BLOCK 9, LOT 1

ALL that certain plot, piece or parcel of land situate, lying and being in the Village of Tarrytown, Town of Greenburgh, County of Westchester and State of New York, said piece or parcel of land being more particularly described as follows:

BEGINNING at a point on the northerly side of Main Street at the dividing line between the herein described premises and land now or formerly of the Village of Tarrytown (Park Site);

RUNNING thence along said dividing line, North 3 degrees 35' 00" East, a distance of 13.37 feet to land now or formerly of Asbury Terrace Housing Development Fund Co., Inc.;

RUNNING thence along the last mentioned division line, South 74 degrees 30' 25" East, a distance of 227.16 feet and in the arc of a curve to the left, having a radius of 40.00 feet, a distance of 68.83 feet to the westerly side of Cottage Place;

RUNNING thence along the last mentioned division line, South 6 degrees 54' 20" West, a distance of 61.93 feet and in the arc of a curve to the right, having a radius of 15.00 feet, a distance of 32.43 feet to the northerly side of Main Street;

RUNNING thence along the last mentioned division line in the arc of a curve to the left, having a radius of 184.00 feet, a distance of 80.90 feet and North 74 degrees 23' 54" West a distance of 173.67 feet to the point or place of BEGINNING.

SECTION 1.40, BLOCK 9, LOT 2

ALL that certain plot, piece or parcel of land situate, lying and being in the Village of Tarrytown, Town of Greenburgh, County of Westchester and State of New York, said parcel being particularly described as follows:

BEGINNING at a point on the westerly side of Cottage Place at the dividing line between land now or formerly of Barbella and land formerly of Post Associates; now of Tarrytown Urban Renewal Agency; said line also being designated as the dividing line between Lots 16 and 17, Sheet 2, Block 12 of the Village of Tarrytown Tax Maps and;

RUNNING thence from said point of beginning, along the westerly side of Cottage Place, South 12 degrees 49' 20" West a distance of 23.23 feet and South 06 degrees 54' 20" West a distance of 145.82 feet;

THENCE running over and across land of Tarrytown Urban Renewal Agency and along the arc of a curve to the right having a radius of 40.00 feet, a distance of 68.83 feet;

THENCE running North 74 degrees 30' 25" West a distance of 227.16 feet to the southwesterly corner of Parcel No. 1;

THENCE running North 03 degrees 35' 00" East a distance of 323.06 feet and South 86 degrees 25' 00" East a distance of 225.00 feet to the line of land now or formerly of Alpine;

THENCE running along the lines of land of said Alpine and of lands now or formerly of Avellino, Levy, Mascola and Barbella:

South 11 degrees 11' 00" West, a distance of 110.00 feet;

North 81 degrees 43' 10" West, a distance of 15.59 feet;

South 02 degrees 34' 40" West, a distance of 25.07 feet;

South 81 degrees 50' 50" East, a distance of 19.72 feet;

South 02 degrees 34' 40" West, a distance of 25.01 feet; and

South 81 degrees 58' 50" East, a distance of 67.39 feet, to the point or place of BEGINNING.