ATTORNEY GENERAL OF THE STATE OF NEW YORK
REAL ESTATE FINANCE BUREAU

In the Matter of

Corrected
Assurance No. 21-053

**Investigation by LETITIA JAMES,**
**Attorney General of the State of New York,** of

Gotham City Residential Manager I, LLC; Gotham City Residential Manager II, LLC; Gotham City Residential Advisors II, LLC; Gotham Segregated Account GP I, LLC; Gotham Segregated Account Manager I, LLC; Hygrocybe 1115 Union GP V, LLC; Hygrocybe Manager V, LLC; Tarzetta Catinus LP; 5008 Broadway LLC; 658 West 188th Street LLC; 80 Clarkson LLC; 92 Pinehurst Avenue LLC; 3100 Brighton 2nd Street LLC; Brightwater 219 LLC; Brightwater 231 LLC; 66 St. Nicholas Place LLC; 75 St. Nicholas Place LLC; 76 St. Nicholas Place LLC; 853 St. Nicholas Avenue LLC; 79 Brighton 11th Street LLC; 125 Brighton 11th Street LLC; 1511-1521 Brightwater Avenue LLC; 120 East 19th Street GSA I LLC; 146 East 19th Street LLC; 165 East 19th Street GSA I LLC; 287 East 18th Street LLC; 1803 Beverly Road LLC; Broadway Towers NYC, LLC; and 1115 Union Apartments, LP;

Respondents.

## ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (the "OAG") commenced an investigation pursuant to Executive Law § 63(12) into the costs claimed for renovations performed to New York City apartments owned by various limited partnerships and limited liability companies and by the funds ("the Funds") associated with Gotham City Residential Manager I, LLC; Gotham City Residential Manager II, LLC; Gotham City Residential Advisors II, LLC; Gotham Segregated Account GP I, LLC; Gotham Segregated Account Manager I, LLC;

3. All of the properties owned by Respondents and held in the Funds, at the time of acquisition and at the present time, contain units subject to rent regulation under the Rent Stabilization Law ("RSL") and Rent Stabilization Code ("RSC").

## II. Retention of Newcastle Realty Services, LLC and Highcastle Management LLC to Manage the Properties and to Assume Responsibility for Respondents' Obligations Under Rent Regulation

4. Newcastle Realty Services, LLC ("Newcastle") was, until it ceased operations in or around December 2019, a real estate investment and operations firm located in New York City that acted as property manager for approximately 2,500 apartments. Highcastle Management LLC ("Highcastle") is a real estate services company that is also a property manager for apartments in New York City.

5. From 2006 until 2019, Newcastle and Highcastle acted as property managers of all buildings in the Funds and owned by certain of the Respondents. In that capacity, Newcastle and Highcastle were responsible for routine property management tasks, including, *inter alia*, rent collection, leasing of apartments, tenant communications, and hiring contractors to perform repairs.

6. In their role as property managers, Newcastle and Highcastle were also delegated responsibility for compliance with New York State rent regulation requirements. These tasks, included, among others: preparing and filing for every building under their management rent registration statements with the New York State Division of Housing and Community Renewal ("DHCR")—a regulatory requirement under the RSL; issuing leases to tenants in accordance with requirements of rent stabilization, including preparing required lease riders and calculating legal regulated rents; determining whether the legal regulated rents for apartments were subject to increase and whether apartments were exempt from rent stabilization; and preparing rent rolls

Hygrocybe 1115 Union GP V, LLC; Hygrocybe Manager V, LLC; and Tarzetta Catinus LP and the regulated rent increases taken as a result of such claimed costs. This Assurance of Discontinuance ("Assurance") contains the findings of the OAG, and the relief agreed to by the OAG and Respondents (the OAG and Respondents are collectively referred to herein as the "Parties" and individually as a "Party").

## OAG'S FINDINGS

### I. Respondents' Ownership and Management Interests in New York City Residential Properties

1. Respondents Gotham City Residential Manager I, LLC; Gotham City Residential Manager II, LLC; Gotham City Residential Advisors II, LLC; Gotham Segregated Account GP I, LLC; Gotham Segregated Account Manager I, LLC; Hygrocybe 1115 Union GP V, LLC; Hygrocybe Manager V, LLC; and Tarzetta Catinus LP are either Delaware limited liability companies or limited partnerships that conduct business in New York and have offices at 1251 Avenue of the Americas, 35th Floor, New York, New York 10020.

2. Respondents 5008 Broadway LLC; 658 West 188th Street LLC; 80 Clarkson LLC; 92 Pinehurst Avenue LLC; 3100 Brighton 2nd Street LLC; Brightwater 219 LLC; Brightwater 231 LLC; 66 St. Nicholas Place LLC; 75 St. Nicholas Place LLC; 76 St. Nicholas Place LLC; 853 St. Nicholas Avenue LLC; 79 Brighton 11th Street LLC; 125 Brighton 11th Street LLC; 1511-1521 Brightwater Avenue LLC; 120 East 19th Street GSA I LLC; 146 East 19th Street LLC; 165 East 19th Street GSA I LLC; 287 East 18th Street LLC; 1803 Beverly Road LLC; Broadway Towers NYC, LLC; and 1115 Union Apartments, LP are limited liability companies and limited partnerships that own multi-family residential properties in the City of New York.

setting forth the legal regulated rents and regulatory status of each apartment in a given building for prospective purchasers.

7. In addition to routine property management functions and rent regulatory compliance functions, Newcastle and Highcastle advised on and carried out capital expenditures in each building in the Funds and owned by certain of the Respondents.

8. In this vein, one of Newcastle's and Highcastle's responsibilities was planning and overseeing Individual Apartment Improvements ("IAIs") to rent regulated apartments.

9. In exchange for its services, Newcastle and Highcastle received a monthly property management fee equivalent to five percent of the relevant building's monthly income. In addition, Respondents paid Newcastle and Highcastle a bonus of $5,000 for certain apartments that underwent an IAI pursuant to various agreements entered into from time to time.

10. As detailed below, the OAG has determined that Newcastle and Highcastle violated the law and rent regulations by, among other things, soliciting kickbacks from contractors and assigning false costs to contract labor associated with Gotham IAIs. The OAG has also determined that Respondents' oversight was insufficient to detect or prevent Newcastle and Highcastle's misconduct.

## III. Individual Apartment Improvements to Gotham I Apartment Units

11. Upon acquiring each property, the entities managing the Gotham City Residential Partners I, LP ("Gotham I") Fund endeavored to maximize the market values of the properties in the Fund through targeted investments. One type of investment Respondents undertook was renovations to individual apartments in the portfolio.

### A. IAIs and Rent Stabilized Units

12. Section 2522.4(a)(1) of the RSC allows owners of rent-stabilized buildings to collect rent increases when there has been new equipment installed or improvements made to a housing accommodation. Owners may increase the legal regulated rent—that is, the maximum rent allowed to be charged and collected from the tenant of a rent stabilized apartment—based on the costs of these improvements. Owners are not required to obtain the approval from the DHCR for such rent increases.

13. Before the passage of the Housing Stability and Tenant Protection Act of 2019 ("HSTPA"), owners of rent-stabilized properties were allowed to apply a fraction of the cost of an IAI to the monthly legal regulated rent in perpetuity, resulting in a permanent rent increase for the accommodation in question. R.S.C. § 2522.4(a)(4). That fractional value was 1/40th the cost of the IAI until September 24, 2011, at which time the fractional value in buildings with more than thirty-five (35) units decreased to 1/60th the cost of the IAI.

14. Most IAIs take place when an apartment is vacant, as the RSC requires the owner to obtain consent from the tenant in order to claim an IAI for tenanted apartments.

15. Before HTSPA changed the law to eliminate it in 2019, "high rent vacancy decontrol" occurred when, upon vacancy of the prior tenant of a rent-stabilized apartment, the monthly legal regulated rent for the apartment reached a threshold value set by the RSL (hereinafter "deregulation threshold"). RSL § 26-504.2.

16. During the period in which the Gotham I Fund acquired and sold buildings, the deregulation threshold ranged from $2,000 to $2,733.75.

**B. The Role of IAIs in Respondents' Investment Strategy**

17. From in or around 2008 to in or around 2012, Respondents' strategy for the Gotham I Fund included investing in apartment renovations in order to use IAIs as a mechanism

to increase the legal regulated rents of stabilized units and then remove them from deregulation pursuant to high rent decontrol. At the time, Newcastle and Highcastle were awarded "deregulation" bonuses if they invested sufficient funds into a unit to remove it from rent regulation.

18. In or around 2012, following certain changes to applicable rent regulation laws, Respondents represent they abandoned the strategy of deregulation and instead focused on renovating units to a reasonable estimate of what the market would bear for the unit once renovated. From that point, bonuses paid to Newcastle and Highcastle were termed "interior design bonuses" and were paid irrespective of a unit's regulatory status.

19. Nevertheless, as discussed below, the OAG found instances of violations of rent regulations into 2016. Respondents neither admit nor deny that finding.

20. Many of the IAIs undertaken by Newcastle and Highcastle consisted of major or "gut" renovations to Gotham I apartments, including removing and replacing flooring, installing new appliances and countertops, installing new bathrooms, and painting.

21. Newcastle and Highcastle used a select group of contractors to perform the labor for these renovations. Many of these contractors had close ties to employees and agents of Newcastle and Highcastle. Newcastle and Highcastle employees and agents knew these contractors, socialized with them, and hired them to perform work on their personal residences. These contractors relied on Newcastle and Highcastle for a steady stream of work, as many hundreds of renovations occurred over a few years in the Gotham I properties.

**C. False Costs Attributed to IAIs**

22. From in and around 2008 to in and around 2016, Newcastle and Highcastle violated rent regulation by assigning false costs to contractor labor—and, in certain instances,

window installation—associated with Gotham I IAIs. Newcastle and Highcastle used those costs as a basis for raising rents, including rents that exceeded the applicable deregulation thresholds.

23. These false costs fell into the following three categories: (i) costs that were "fixed," or pre-determined, by Newcastle and Highcastle; (ii) costs that were falsely inflated or deflated because they were not wholly attributable to the apartment being renovated; and (iii) costs that were inflated because they included false change orders and/or included kickbacks to Newcastle and Highcastle employees and agents.

i. *Predetermined Labor Costs*

24. For certain renovations, Newcastle and Highcastle predetermined the prices they were willing to pay for labor towards a renovation project without any competitive bidding and without considering the actual cost of the labor.

25. Newcastle and Highcastle repeatedly and persistently set the price of labor to the amount necessary to deregulate a unit. While "hard" costs, such as materials and supplies, were not impacted, the cost of labor varied dramatically from apartment to apartment and renovation to renovation, even when the actual work performed by the contractor and time spent laboring in the unit was roughly equivalent.

26. Newcastle and Highcastle repeatedly set the price of labor before even determining a scope of work or inviting a contractor to take a job. Once invited, Newcastle and Highcastle told the contractor the price it would pay for the job—regardless of the price the contractor would have bid for the job and often without the contractor even seeing the apartment. These costs did not necessarily change based on the renovation needs for a given apartment.

27. The labor price fixed for a job often had nothing to do with the size of the apartment. Thus, in 2012 Newcastle set the price of renovation of two similar one-bedroom

apartments in the same building and on the same line at $52,500 and $38,000. There was no material difference in the contractor's scope of work; rather, the apartments had different legal regulated rents, and the former required more than $14,000 extra by way of IAI to push the rent to the deregulation threshold.

28. By contrast, three years later, in 2015, Newcastle set a price for labor of $24,000 for the renovation of another one-bedroom apartment—less than half the cost of one of the 2012 jobs. The scope of work was the same as scopes of work for all such renovations, and the size of the apartment was equivalent to that of other one-bedroom apartments.

29. For certain IAIs undertaken between 2008 and 2012, the labor costs were pre-determined by Newcastle and Highcastle in order to result in a renovation budget sufficient to reach the deregulation threshold for the apartment being renovated.

ii. *Cost allocation among Gotham I Units*

30. Newcastle and Highcastle also allocated labor costs for multiple renovations in order to arrive at renovation budgets sufficient to deregulate those apartments without consideration of the actual labor costs attributable to each apartment. This conduct impacted properties in the Gotham I Fund.

31. Newcastle and Highcastle often hired one contractor to provide labor for renovations of multiple Gotham I apartments. Though the contractor agreed to a lump-sum cost for all labor associated with all renovations, Newcastle and Highcastle from time to time divided that cost among apartments in order to attribute excessive labor costs to low rent apartments and to attribute minimal labor costs to deregulated apartments or high rent apartments irrespective of the relationship between the work performed in a unit and the cost allocated to that unit by Newcastle and Highcastle.

32. For example, in 2012 Newcastle hired a single contractor to undertake IAIs for nine apartments and the basement pursuant to one integrated contract with Newcastle. The scopes of work for renovating all nine apartments were identical, and yet rather than attribute the costs, as they were in fact incurred for each unit's renovation, Newcastle calculated the total price of labor required to bring the rent for each unit to the deregulation threshold and then applied that price to each apartment, regardless of the actual cost of labor for each apartment. Accordingly, in this example of cost-splitting, Newcastle claimed that one high rent one-bedroom apartment experienced $14,500 in labor costs for a gut renovation, whereas a low-rent studio apartment that was smaller experienced $95,000 in labor costs for a gut renovation. In fact, the labor costs for both apartments were roughly equivalent, and the claimed labor costs had no basis in the actual labor costs.

33. Newcastle did not only allocate lump sum renovation costs among multiple apartments in a single building—it also allocated those costs among apartments located in different buildings throughout the Gotham I portfolio. Because multiple renovations occurred at the same time, Newcastle and Highcastle bundled renovation jobs for each contractor—offering a lump sum payment for two or three jobs. Then Newcastle and Highcastle allocated labor costs to each apartment depending on the amount of an IAI needed to deregulate each unit.

34. In addition, on more than one occasion, Newcastle and Highcastle engaged in cost-splitting with units intended to be used for building staff (commonly referred to as "super's units"). Under the RSC, apartments that are owner- or employee-occupied are typically exempt from rent stabilization. Newcastle and Highcastle awarded renovation jobs to a contractor to renovate multiple apartments, including a super's unit, then understated the amount spent on

renovating a super's unit in order to overstate the amount spent on renovating rent-stabilized units.

35. Similarly, on more than one occasion, Newcastle and Highcastle engaged in cost-splitting with commercial units in a building. Under the RSC, commercial units are exempt from rent stabilization. Newcastle and Highcastle awarded renovation jobs to a contractor to renovate multiple apartments, including a commercial unit, then understated the amount spent on renovating a commercial unit in order to overstate the amount spent on renovating rent-stabilized units.

iii. *Newcastle's and Highcastle's Change Orders*

36. Newcastle and Highcastle created false change orders in order to increase IAI costs associated with renovations to Gotham I units. This conduct impacted certain properties owned by the funds.

37. In certain instances, Newcastle's and Highcastle's budgeted renovation costs—including costs for labor—were not enough to substantiate an IAI that would lead to high-rent deregulation of a unit, possibly because of mathematical error or unexpected low costs for materials. In these instances, Newcastle and Highcastle created false change orders, displaying contractor letterhead, and purporting to seek more money for additional work to increase the cost of the IAI. In fact, the contractor did not request the change order and the additional work was not required.

iv. *Inflated Costs Containing Kickbacks to Newcastle Employees*

38. From 2009 through 2017, two Newcastle employees repeatedly and persistently solicited and accepted kickbacks from contractors and other individuals who renovated apartments managed by Newcastle and owned by the Funds and by certain of the Respondents

and from contractors who provided windows and window installation services for those apartments. In total, these Newcastle employees received more than $1,000,000 in kickbacks.

39. Under this kickback scheme, contractors and other individuals paid the employees in exchange for being awarded apartment renovation jobs and window installation jobs from Newcastle.

40. Newcastle included the amounts paid in kickbacks in the amount Newcastle claimed was spent on IAIs. For example, a contractor looking to be awarded a Gotham I renovation job paying $50,000 paid $5,000 in kickbacks to the Newcastle employees engaged in the scheme, reducing the actual cost of the job to $45,000. Nevertheless, Newcastle represented that the cost of labor was $50,000.

41. Respondents represent that they justifiably relied on documentation prepared by the two Newcastle employees. This reliance may have resulted in illegal rent increases or illegal deregulation of units.

**D. The Sale of Gotham I Buildings and Four Additional Buildings to Outside Purchasers**

42. Between August 2012 and February 2018, the entities owning properties in the Gotham I Fund and other funds sold the buildings comprising the Gotham I portfolio and four additional buildings to outside purchasers.

* * *

43. The OAG finds that Respondents' acts and deficiencies are in violation of the RSL, the RSC, and Executive Law § 63(12).

44. In light of the Respondents' relationship to the Funds and owner entities of the properties discussed herein, and in furtherance of Respondents' commitment to supporting fair and affordable housing in New York, Respondents have agreed to enter into this Assurance.

45. Respondents neither admit nor deny the Factual Findings set forth in Paragraphs 1 through 42, and the OAG maintains that the Factual Findings set forth in Paragraphs 1 through 42 amount to violations of Executive Law § 63(12).

46. After the OAG informed Respondents of the conduct set forth in Paragraphs 1 through 42, Respondents voluntarily undertook the following actions: (1) retained the law firm of Davis Polk & Wardwell LLP to perform an internal investigation into conduct alleged above; (2) terminated Newcastle Realty Services, LLC and Highcastle Management LLC as property managers; (3) terminated their relationships with any contractors involved in the kickback scheme or alleged IAI manipulation; (4) vetted new property managers and hired a new property management company to manage the buildings currently owned by Respondents; and (5) hired an outside entity to supplement the work of property managers and review all capital expenditures.

47. In addition, Respondents have fully cooperated with the OAG in its investigation into the conduct set forth in the above Paragraphs.

48. Respondents represent that none of their principals, managers, nor current employees were aware of the conduct set forth in the Paragraphs 1 through 42, nor were Respondents aware of any conduct by Newcastle, Highcastle, its associates, or any of Respondents' agents that violated Executive Law § 63(12) or the RSC and RSL. The OAG has made no finding to the contrary based upon the OAG's investigation, which the OAG paused in light of the cooperation of Respondents and the actions described in Paragraph 46 and has now concluded as to Respondents and their affiliates.

49. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant

to Executive Law § 63(15), in lieu of commencing any civil or other statutory proceeding at any time against Respondents for violations of Executive Law § 63(12) based on the conduct described above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

**RELIEF**

50. Affordable Housing-AG Settlement Fund Payment: Respondents will pay $4,000,000 (four million dollars) to the State of New York to be held in reserve to be distributed to the Affordable Housing-AG Settlement Fund established by the City of New York Department of Housing Preservation and Development ("HPD") for the purpose of remediating the impact of the conduct described herein on the affected communities. This Fund is used by HPD to fund housing-related initiatives, programs and projects for "persons of low income" and "families of low income," as those terms are defined by New York Private Housing Finance Law § 2(19). Respondents shall make this payment in full within five (5) business days after execution of this Assurance.

51. Review of Rent Histories and Rent Setting: Within ten (10) business days after the execution of this Assurance, Respondents will retain counsel with expertise in New York City rent regulation to complete a review of the regulated status and legal regulated rents of certain residential units currently owned by the Funds and Respondents pursuant to the guidelines annexed hereto as Exhibit A ("the guidelines"). Those guidelines are designed to identify units whose regulated status or lawful rents may have been impacted by the kickback scheme described above and estimate the magnitude of such potential impact, if any. Respondents' review will be completed within sixty (60) days of the execution of this Assurance. Respondents will provide the OAG with results of the review upon completion. To the extent

the review indicates that the regulated status or lawful rent of a unit may have been impacted by the kickback scheme, Respondents will follow the protocols annexed hereto as Exhibit B ("the protocols") to reset the legal rents, offer rent-stabilized leases, and, if applicable, refund current tenants for any overpayment calculated pursuant to the Exhibit A guidelines.

52. By annexing the guidelines and protocols hereto and receiving the results consistent with this Assurance, the OAG is not endorsing or ratifying the results of Respondents' review. Nor is it endorsing or ratifying the revised legal regulated rents set by Respondents.

53. New Institutional Protocols: Within thirty (30) days after the execution of this Assurance, Respondents will implement new institutional protocols, annexed hereto as Exhibit C, to avoid the occurrence of the conduct described herein at other New York City multifamily properties in which Respondents have an ownership or management interest.

54. Cooperation: Respondents will continue to cooperate with the OAG's investigation into the conduct set forth in Paragraphs 1 through 42.

## MISCELLANEOUS

Subsequent Proceedings

55. Respondents expressly agree and acknowledge that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to Paragraph 61, and agrees and acknowledges that in such event:

a. any statute of limitations or other time-related defenses are tolled from and after June 20, 2019 through November 4, 2020 and from January 11, 2022 through April 18, 2022, pursuant to the agreement, in writing, of the Parties and the New York State Executive Order pertaining to suspensions of statutes of limitations;

b. the OAG may use statements, documents, or other materials produced or provided by the Respondents prior to or after the effective date of this Assurance;

c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue; and

d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

56. If a court of competent jurisdiction determines that the Respondents have violated the Assurance, the Respondents shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

57. All terms and conditions of this Assurance shall continue in full force and effect on any affiliated successor, assignee, or transferee of the Respondents. Respondents shall include in any such affiliated successor, assignment, or transfer agreement a provision that binds the affiliated successor, assignee, or transferee to the terms of the Assurance. No Party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG. For the avoidance of doubt, this provision does not limit the Respondents or their affiliates from selling any of the properties in the Funds to unaffiliated third parties after the review of rents and, if necessary resetting of rents, is completed for such property pursuant to Paragraph 51. Nor do Respondents or their affiliates need OAG consent for such a sale after the terms of Paragraph 51 are satisfied for such property. Unaffiliated third parties shall not be bound to the terms of the Assurance.

58. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

59. Any failure by the OAG to insist upon the strict performance by Respondents of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondents.

Communications:

60. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 21-053, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondents, to:

Antonio J. Perez-Marques
Angela T. Burgess
Martine M. Beamon
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
antonio.perez@davispolk.com
angela.burgess@davispolk.com
martine.beamon@davispolk.com

If to the OAG, to:

Rachel Hannaford, Esq.
Housing Protection Unit
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Rachel.Hannaford@ag.ny.gov

or in her absence, to the person holding the title of Chief, Housing Protection Unit or Chief of Enforcement, Real Estate Finance Bureau.

Representations and Warranties:

61. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondents and their counsel and the OAG's own factual investigation as set forth in Findings, Paragraphs 1 through 42 above. The Respondents represent and warrant that neither they nor their counsel have made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondents or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion upon 10 days written notice to Respondents.

62. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondents in agreeing to this Assurance.

63. The Respondents represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondents further represent and warrant that Connell J. Watters, as the signatory to this Assurance, is a duly authorized officer acting at the direction of the Boards of Directors of Respondents.

General Principles:

64. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondents' obligations under this Assurance are enduring. Nothing in this Assurance shall relieve Respondents of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

65. To the extent permitted by law, Respondents agree not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis. Nothing in this paragraph affects Respondents': (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party. Nothing in this Assurance shall be considered an admission of fraud.

66. Neither this Assurance nor any acts performed or documents executed in furtherance of this Assurance: (a) may be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing, liability or lack of wrongdoing or liability; or (b) may be deemed or used as an admission of or evidence of any such alleged fault or omission of Respondents or their affiliates in any civil, criminal, arbitration or administrative proceeding in any court administrative agency or other tribunal. This Assurance shall not confer any rights upon persons or entities who are not a party to this Assurance. For the avoidance of doubt, nothing in this paragraph shall limit the Parties' rights in enforcing this Assurance or in the event that this Assurance is voided.

67. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondents violate the Assurance after its effective date.

68. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

69. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

70. Respondents acknowledge that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

71. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

72. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any Party that may be found to have been the drafter.

73. This Assurance may be executed in multiple counterparts by the Parties hereto. All counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned, and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

74. The effective date of this Assurance shall be the date this Assurance is signed by the OAG.

Dated: New York, New York
July 11, 2022

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: _____
Rachel Hannaford
Senior Enforcement Counsel
Housing Protection Unit

By: _____
Louis M. Solomon
Chief of Enforcement
Real Estate Finance Bureau

Gotham City Residential Manager I, LLC; Gotham City Residential Manager II, LLC; Gotham City Residential Advisors II, LLC; Gotham Segregated Account GP I, LLC; Gotham Segregated Account Manager I, LLC; Hygrocybe 1115 Union GP V, LLC; Hygrocybe Manager V, LLC; Tarzetta Catinus LP, by Myriostoma, its General Partner; 5008 Broadway LLC; 658 West 188th Street LLC; 80 Clarkson LLC; 92 Pinehurst Avenue LLC; 3100 Brighton 2nd Street LLC; Brightwater 219 LLC; Brightwater 231 LLC; 66 St. Nicholas Place LLC; 75 St. Nicholas Place LLC; 76 St. Nicholas Place LLC; 853 St. Nicholas Avenue LLC; 79 Brighton 11th Street LLC; 125 Brighton 11th Street LLC; 1511-1521 Brightwater Avenue LLC; 120 East 19th Street GSA I LLC; 146 East 19th Street LLC; 165 East 19th Street GSA I LLC; 287 East 18th Street LLC; 1803 Beverly Road LLC; Broadway Towers NYC, LLC; and 1115 Union Apartments, LP, by 1115 Union GP, LLC, its General Partner.

By: _____
Connell J. Watters, Secretary

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

On the 7th day of July in the year 2022 before me, the undersigned, personally appeared Connell J Watters 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 Signature
Print Elizabeth Bonanno

ELIZABETH MARIE BONANNO
NOTARY PUBLIC, STATE OF NEW YORK
No. 01BO6429796
Qualified in Suffolk County
Commission Expires 02/22/2026

Title or Office: _____
My commission expires: 2/22/2026

**AOD Exhibit A (Guidelines for Review)**

Respondents and OAG have agreed upon the following guidelines to identify units currently owned by the Funds and certain of the Respondents whose regulated status or legal rents may have been impacted by the kickback scheme described in paragraphs 38-41 of Assurance of Discontinuance ("AOD") 21-053.

**Scope of Review.** The review will cover units in properties currently owned by the Funds through limited partnerships or limited liability companies and owned by certain of the Respondents (such properties, "Covered Properties") for which Respondents claimed a rent increase associated with an IAI in which a Relevant Contractor (as defined below) performed some or all labor (such units, "Covered Units"). Units where no work was undertaken by a Relevant Contractor are not subject to the guidelines and protocols sets forth in Exhibits A or B.

The review will cover the period beginning on the date the Covered Property was purchased by the Funds or Respondents until the effective date of this AOD. Respondents represent that no Relevant Contractor has been hired to perform any work on the Covered Units since May 2019.

**Relevant Contractors** shall mean (i) Apical; (ii) C&D of New York Inc.; (iii) Carson St. Equities; (iv) DRW Consolidated; (v) Hausmann Service Corporation; (vi) JK Windows & Doors; (vii) KKA Consolidated; (viii) Land Design Studio Inc.; (ix) OVQ Consolidated Corp.; and (x) Progeny Restoration.

**Recalculated Rent.** Respondents, with the assistance of counsel retained pursuant to paragraph 51 of the AOD, will recalculate the Legal Regulated Rent ("LRR") of each Covered Unit by removing 10% of the labor costs of the Relevant Contractor from the claimed IAI and determining the LRR that would result (the "Initial Recalculated Rent"). All other costs will remain as claimed, including material costs and the labor costs of contractors other than the Relevant Contractors. In addition, for the avoidance of doubt, in cases where the IAI was performed while the Covered Unit is vacant, the Initial Recalculated Rent will include any applicable lawful rent increases, including vacancy rent increases and longevity rent increases allowed by the RSL and RSC at the time of the vacancy.

If the Initial Recalculated Rent is greater than or equal to the high-rent deregulation threshold applicable at the time of the first lease following the IAI, no further review is required.

If the Initial Recalculated Rent is less than the high-rent deregulation threshold applicable at the time of the IAI, Respondent, with the assistance of counsel retained pursuant to paragraph 51 of the Assurance, will further calculate the effective LRR, based on the Initial Recalculated Rent, at all points in time from the date of the first lease following the IAI to the present, taking into account all subsequent lawful rent increases for the unit, including, but not limited to, all allowable vacancy rent increases, all allowable longevity rent increases, and all available New York City Rent Guidelines Board rent increases associated with the unit (the "Effective Recalculated Rent").

If the Effective Recalculated Rent is greater than or equal to the high-rent deregulation threshold applicable at the time that the current tenant entered into the effective lease for the Covered Unit, no further review is required.

**Rent Overcharge Sum**. If: (i) the Effective Recalculated Rent, as calculated pursuant to the definition herein, at the time that the current tenant entered into the effective lease for the Covered Unit is less than the applicable high-rent deregulation threshold; and (ii) the rent paid by the current tenant[1] exceeds or exceeded the relevant Effective Recalculated Rent, then Respondents will calculate the rent overcharge as the rent paid by the tenant at any point during the tenancy less the Effective Recalculated Rent ("Rent Overcharge"). Respondents will calculate the sum of any Rent Overcharges for a current tenant since the commencement of his or her tenancy ("Rent Overcharge Sum").

In the event that Respondents determine there is a Rent Overcharge Sum, Respondents will pay the tenant in the applicable Covered Unit the Rent Overcharge Sum in accordance with the protocols annexed hereto as Exhibit B.

* * *

The guidelines set forth above were devised as part of a settlement of the matters discussed in AOD 21-053 and shall not be deemed to be a determination on the part of the OAG regarding the appropriate legal regulated rent for any particular unit or the appropriate Rent Overcharge Sum due to any tenant.

Nothing contained herein shall be construed as to deprive any person of any private right under the law.

[1] The rent paid by the current tenant at any point during the tenancy shall be determined net of any previous adjustments and repayments.

**AOD Exhibit B (Protocols for Rent Setting)**

If, pursuant to the terms set forth in Exhibit A, the Effective Recalculated Rent at the time that a current tenant entered into the effective lease for a Covered Unit is less than the applicable high-rent deregulation threshold, Respondents will proceed as follows:

a. Within 120 days of the effective date of the AOD, Respondents will send via first class mail and certified mail to the current tenant a notice stating:

   i. That the landlord is subject to a settlement with the OAG, as memorialized in AOD 21-053.

   ii. An explanation of how the new legal regulated rent for that unit was calculated.

   iii. That the tenant is entitled to consult with an attorney about the contents of the notice.

   iv. If a Rent Overcharge Sum is calculated pursuant to Exhibit A[1], stating that sum, including a breakdown of how that sum was calculated by counsel.

   v. The tenant is entitled to challenge the calculation of the legal regulated rent and any Rent Overcharge Sum by filing a complaint with the New York State Division of Housing and Community Renewal at https://hcr.ny.gov/system/files/documents/2021/05/ra-89-fillable.pdf.

   vi. A phone number and email address to be used for any tenant wishing to discuss the matter with the landlord.

b. Within 130 days of the effective date of the AOD, for any Covered Units for which the current Effective Recalculated Rent is less than the current rent paid by the tenant, Respondents will offer the current tenant the option of a one- or two-year rent-regulated lease based on the Effective Recalculated Rent.

c. Within 140 days of the effective date of the AOD, Respondents will amend rent registrations on file with DHCR to reflect the recalculated legal regulated rents.

d. If there is an applicable Rent Overcharge Sum (as defined in Exhibit A), Respondent will pay such amount to the current tenant concurrent with the notice provided in subsection (a) above.

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[1] For the avoidance of doubt, pursuant to Exhibit A, the Rent Overcharge Sum is calculated if (i) the Effective Recalculated Rent at the time that the current tenant entered into the effective lease for the Covered Unit is less than the applicable high-rent deregulation threshold; and (ii) the rent paid by the current tenant exceeds or, at any point during the current tenancy, exceeded the relevant Effective Recalculated Rent.

For the avoidance of doubt, if the Effective Recalculated Rent is greater than or equal to the rent paid by the current tenant, Respondents will have no obligations under these protocols to offer a refund to a tenant currently in possession of a unit subject to the guidelines set forth in Exhibit A.

*  *  *

The protocols set forth above were devised as part of a settlement of the matters discussed in AOD 21-053 and shall not be deemed to be a determination on the part of the OAG regarding the appropriate legal regulated rent for any particular unit or the appropriate Rent Overcharge Sum due to any tenant.

Nothing contained herein shall be construed as to deprive any person of any private right under the law.

**AOD Exhibit C (Institutional Protocols)**

In connection with the Assurance, Respondents agree to the following oversight procedures and best practices for ownership and management of rent regulated apartments:

- **Policies & Procedures.** Respondents will require that the property management company maintain a compliance policy or code of ethics for employees, as well as policies and procedures covering:
    - Hiring, screening, and personnel;
    - Reporting structures, including: supervision of on-site staff, reporting hierarchies, and decision-making structures;
    - Hiring and overseeing third-party contractors up until project completion, including: project design, bidding process, contract review, and project oversight; and
    - Maintenance programs, including violation tracking and certification.
- **Due Diligence.** In order to continue to engage property management companies with deep knowledge of rent stabilization laws and a track record of compliance, Respondents will conduct due diligence with respect to each property management company it seeks to engage that requires, among other things, the proposed company to:
    - Provide copies or details regarding the above listed policies and procedures;
    - Describe the company's experience managing New York City rent regulated apartments, including its experience with: rent regulation statutes; agencies (e.g., Housing Preservation & Development, Division of Housing and Community Renewal); programs (e.g., Section 8, Senior Citizen Rent Increase Exemption, Disability Rent Increase Exemption); and real-property tax matters (e.g., J-51);
    - Provide an example of one or more lease files for a unit that has been upgraded and for which rents have been increased based on individual apartment improvements;
    - Provide the biographies of individuals who would be responsible for the portfolio and a list of comparable properties that such individuals have managed;
    - Disclose any prior instances of violations or alleged non-compliance with rent stabilization laws on the part of the company and the individuals who would be responsible for the portfolio; and

- Describe the company's accounting systems and processes, including the software system(s) utilized.

- **Conflicts of Interest.** Respondents' due diligence will further involve an assessment of potential conflicts of interest on the part of contractors hired to perform renovation work and capital improvements. In conducting such due diligence, Respondents will obtain a list of all contractors engaged in the bidding process and a certification from the relevant property managers attesting that any property management principals or management-level employees do not have a conflict of interest with respect to such contractors. Such certification will also attest that such contractors have not performed any work on the residences of any property management principals or management-level employees. Respondents will also confirm that such contractors do not have any conflict of interest with respect to any employee or agent of Respondents and have not performed any work on the residences of any of Respondents' principals or management-level employees.

- **Competitive Bidding.** Respondents will require any property management company engaged to manage rent-stabilized units in New York to conduct a competitive bidding process in order to award contractors renovation work and capital improvement jobs, with the exception of ordinary repairs and maintenance.[1] To facilitate an open and fair competitive bidding process, property management companies must, for example:

  - Retain an engineer or cost estimator to review the condition or project at the property, formulate a work scope, and review the bids submitted by potential contractors for all capital work in excess of $20,000; and

  - Submit three independent bids to Respondents for all capital improvement work, including unit renovations. The bids must be based on a consistent project scope.

- **Ongoing Oversight.** Once retained, each property management company will, upon request, make available to Respondents any information needed to verify compliance with applicable rent stabilization laws and regulations.

[1] "Ordinary repairs [and] maintenance" include any work on an apartment unit that is not done as a necessary component of allowable Individual Apartment Improvements (IAIs) or Major Capital Improvements (MCIs). As described by the New York State Division of Housing and Community Renewal, such work may include: "a. Installing sheetrock in less than the full apartment; b. Plastering, painting; c. Scraping, shellacking or coating floors with polyurethane; d. Replacing light fixtures, outlets or switches; [or] e. certain new ceilings." Operational Bulletin 2016-1 REVISED (February 3, 2020) at 6, https://hcr.ny.gov/system/files/documents/2020/02/operational-bulletin-2016-1_0.pdf.

- Respondents will engage knowledgeable external counsel or consultants to conduct a review, on an annual basis, of instances of apartment deregulation or rent increases.