



57 Route 6, Suite 207
Baldwin Place, New York 10505
Telephone: 845.306.7705
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June 1, 2022

Rhinebeck Workforce Housing Committee
80 East Market Street
Rhinebeck, New York 12572

Re: Workforce Housing Comment Letter 5_20_22

Dear Chairman Mensch and the Rhinebeck Workforce Housing Committee,

Kearney Realty and Development Group (Kearney Group) and NYC Partnership Housing Development Fund Company (NYC Partnership), hereinafter collectively referred to as “Development Team”, would like to take this opportunity to thank the Rhinebeck Workforce Housing Committee (WHC) for its efforts to ensure safe, affordable housing is available for residents of Rhinebeck. The Development Team has received your questions dated May 20, 2022, regarding the proposed Hamlet at Rhinebeck (The Hamlet) development. The Development Team’s responses are below:

- 1. Is there a specific funding source/program (such as a New York State program) that the developer is targeting for the project? If so, does that source/program provide for continuing input on operations and to what degree is the operation of the project under continuing review/inspection from the funding source? Is there a draft contract with the funding source and, if not, is it possible to be provided with a contract with that funding source for a similar project?*

The Development Team will be applying for tax credits from Homes and Community Renewal’s (HCR) Multifamily Finance 9% Funding Program. These tax credits will serve as the primary source of funding for The Hamlet. After a project is awarded tax credits, HCR remains heavily engaged in the project. Up until the project is stabilized, HCR has mandatory weekly checkpoints to ensure the project is proceeding on time and in compliance with what was initially proposed. After a project is stabilized, HCR remains involved via annual audits. These audits review the project’s operations from top to bottom including financials, rent levels, property management proficiency, etc. Prior to a project’s construction commencement, HCR and the project developer execute a Regulatory Agreement which codifies the project’s regulatory term, area median income (AMI) / rent levels, funding amounts, etc. Once the Regulatory Agreement is executed, it cannot be adjusted for the duration of the regulatory term. A Regulatory Agreement from one of Kearney Group’s previous developments is attached.

- 2. On a related note, what is driving the unit mix and price point breakdown? There is a large percentage at 60% of AMI and a certain percentage above 80%, which is the maximum set forth in the underlying*



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Rhinebeck zoning which would govern this type of project. Does the project require housing above 80%AMI (Average Medium Income) and, if so, will the developers ask the Town to change this requirement? Are there any other changes to the Town's laws the developer will seek?

The unit mix for The Hamlet is being driven by the primary source of funding and market demand. In order to remain within the parameters of HCR's tax credit program and keep the project financially feasible, the bulk of the project units can only be up to 60% AMI. With respect to the proposed units above 80% AMI, there is not a requirement by HCR for these units. However, Kearney Group has extensive experience with workforce housing developments and in that experience, it has been found that including units at 90% AMI in a workforce housing development helps create a more mixed/diverse tenant base. Additionally, as HCR prefers to see as many AMI bands included in proposed developments as possible, including 90% AMI in workforce housing developments makes the development of more interest to HCR. Although the Development Team recommends the inclusion of 90% AMI units, the Development Team is open to reducing these units to the 80% AMI level if so desired by the Town of Rhinebeck.

3. How does the developer propose handling ongoing project reporting and monitoring to the Town - is this something that will happen as part of ongoing funding program requirements?

While it is not a requirement of HCR for developers to provide ongoing reports to the project's local municipality, the Development Team is more than willing to provide ongoing project reports/updates at the Town of Rhinebeck's request. This can be accomplished in the form of annual reports which summarize The Hamlet's leasing activity, rent levels, etc. In the past, Kearney Group has provided ongoing reporting for its Dutchess County developments to the Dutchess County Department of Planning and Development.

4. What is the structure for ongoing property management, repair and leasing? Is this something that is handled on-site, through a central office or a combination of the two?

As with all of Kearney Group's previous developments, the ongoing property management, repair, and leasing will be handled by Kearney Group. There will be an onsite management office which will be staffed on weekdays, as well as an onsite superintendent who resides within the development to assist tenants 24/7. We encourage the committee to contact Dutchess County Department of Planning and Development's Assistant Commissioner, Anne Saylor, to inquire about Kearney Group's experience managing affordable housing developments.

Sincerely,
Ken Kearney
President
Kearney Realty & Development Group

THE MEWS AT HOPEWELL JUNCTION LIMITED PARTNERSHIP

and

NEW YORK STATE

DIVISION OF HOUSING AND COMMUNITY RENEWAL

NEW YORK STATE
EXTENDED LOW INCOME HOUSING COMMITMENT
and
REGULATORY AGREEMENT

Dated as of December __, 2016

This instrument affects real and personal property situated in the State of New York, Section 6457, Block 03, Lot 300307, County of Dutchess, Town of East Fishkill, commonly known as NYS Route 376 (to be known as Cannon Lane).

DHCR Project Manager: Robert Shields
Project SHARS I.D. No.: 20146043

RECORD AND RETURN TO:

N.Y.S. DIVISION OF HOUSING
AND COMMUNITY RENEWAL
HAMPTON PLAZA
38-40 STATE STREET
ALBANY, NEW YORK 12207

NEW YORK STATE
DIVISION OF HOUSING AND COMMUNITY RENEWAL
EXTENDED LOW INCOME HOUSING COMMITMENT AND REGULATORY
AGREEMENT

Agreement made this ___ day of December ___, 2016 by and among the New York State Division of Housing and Community Renewal ("DHCR") with an office at 38-40 State Street, Albany, New York 12207; **The Mews at Hopewell Junction Limited Partnership** (the "LP"), having its principal place of business at c/o The Kearney Realty & Development Group, Inc., 34 Clayton Boulevard, Suite A, Baldwin Place, New York 10505; and **The Mews at Hopewell Junction Housing Development Fund Company, Inc.** (the "HDFC/ Lessee"), having its principal place of business at c/o Abilities First, Inc., 70 Overocker Road, Poughkeepsie, New York 12603 (the LP and the HDFC, individually and collectively the "Recipient").

Whereas, pursuant to Article 2-A of the New York State Public Housing Law (the Statute"), and 9 NYCRR Part 2040.14 (the "Regulations"), DHCR is authorized to allocate certain New York State tax credits for the purpose of facilitating investment in housing which meets the eligibility requirements of the Statute ("State Low Income Housing Tax Credits" or "SLIHC"); and

Whereas, Recipient has submitted an application to DHCR for an allocation of State Low Income Housing Credits for a certain project as more fully described in Exhibit A attached hereto (the "Project") with respect to land and improvements (collectively the "Property") located at NYS Route 376, East Fishkill, New York 12533, which land is more fully described in Exhibit B attached hereto; and

Whereas, DHCR has allocated, or agreed to allocate, State Low-Income Housing Credits to Recipient in accordance with the Statute to assist the Project in consideration of, among other things, Recipient's undertaking to comply with all the terms and conditions of this agreement, the Statute, the rules and regulations promulgated thereunder (the "DCHR Regulations"), as may be amended from time to time; and

Whereas, as a condition of receiving State Low-Income Housing Credits Recipient is required by the Statute to enter into an Extended Low-Income Housing Commitment as evidenced by an agreement which is recorded pursuant to State law as a restrictive covenant;

Now, therefore, the parties agree that the Project will be operated in accordance with the following terms and conditions:

1. Definitions

The capitalized terms utilized herein shall have the meanings set forth in the Statute, the DHCR Regulations, section 42 of the U.S. Internal Revenue Code and the regulations promulgated pursuant thereto (the "Federal Regulations") unless otherwise defined herein.

2. Agreement to Run with the Land; Recording

This agreement shall apply to the Property and the Project. This agreement and all of the promises, agreements and covenants herein contained shall be recorded by the Recipient as a restrictive covenant and shall be binding on the Recipient and all successors of the Recipient.

3. Term

(a) The term of this agreement shall begin on the date that the Project is Placed In Service and, subject to the limitations set forth in the Statute, shall terminate:

1) Thirty-five (35) years after the close of the fifteen (15) year Compliance Period;
or

2) On the date the Project is acquired by foreclosure or an instrument in lieu of foreclosure.

b) This Agreement shall not be subject to termination pursuant to a request for a Qualified Contract pursuant to the Statute.

c) In the event that this agreement terminates pursuant to 3(a)(2) of this agreement, no tenant residing in any Low-Income Unit in the Project shall be evicted except for good cause, nor shall any such tenant be subject to an increase in the gross rent of such unit before the close of the three (3) year period following a termination of this agreement pursuant to subsection 3(a)(2) of this agreement.

d) This agreement shall not be terminated if ownership is transferred by foreclosure or by a deed in lieu of foreclosure as a result of any action to collect debt which is owed to any entity which at any time after the issuance of New York State Department of Taxation and Finance (the "Tax Department") Form DTF-625 had any ownership interest in the Project.

4. Annual Certification

a) One calendar month subsequent to the close of Recipient's fiscal year, or at such other time as the Commissioner may prescribe, Recipient shall certify to DHCR under penalty of perjury, in a form prescribed by the Commissioner, that the Project as owned and operated is in compliance with all provisions of the Statute, the DHCR Regulations and DHCR's policies and procedures and shall provide all information relevant to the Project which DHCR requires. The Recipient shall also certify that, if the Recipient has been notified by any governmental authority having jurisdiction over the Recipient, the Project or the construction thereon or the use and occupancy thereof ("Governmental Authority"), that the Project, any construction thereon, or the use and occupancy thereof, is being conducted in violation of the provisions of any law, ordinance, rule, regulation or requirements of such Governmental Authority, Recipient shall additionally certify that Recipient has cured such violation, within 90 days of receipt of such notification or if such violation could not with due diligence be cured within such period, that Recipient has commenced to cure within such period and, having so commenced, shall thereafter proceed and complete such cure with due diligence.

b) DHCR shall, in addition to any remedies it may have at law or equity in the event of Recipient's failure to comply with this agreement, notify Tax Department of any and all violations of the Statute or the Regulations. Failure to file the certification required by section 4(a) of this agreement shall result in DHCR's notification to the Tax Department of such failure.

5. Eligible Occupants; Rights and Requirements

a) The Project shall contain eighty-nine (89) dwelling units. Twenty-three (23) units shall be occupied by persons or families whose incomes, at the time of initial occupancy, do not exceed 30% of the Area Median Gross Income as determined in accordance with

the Statute; fifteen (15) units shall be occupied by persons or families whose incomes, at the time of initial occupancy, do not exceed 50% of the Area Median Gross Income as determined in accordance with the Statute ; forty-six (46) units shall be occupied by persons or families whose incomes, at the time of initial occupancy, do not exceed 60% of the Area Median Gross Income as determined in accordance with the Statute; and four (4) units shall be occupied by persons or families whose incomes, at the time of initial occupancy, do not exceed 80% of the Area Median Gross Income as determined in accordance with the Statute ("Qualifying Tenant(s)"). One unit shall be occupied by a Resident Manager. The Recipient shall immediately notify DHCR when and if both 1) the unit ceases to be occupied by Resident Manager and 2) the Recipient does not intend to employ another Resident Manager; the Recipient shall then make the unit available to a Qualifying Tenant. Recipient shall also notify DHCR of any such changes as required by the Statute, the DHCR Regulations, the Regulations and any notices or revenue rulings issued by the IRS. The Recipient shall adhere to the marketing plan attached hereto as Exhibit C (the "Marketing Plan"). The Marketing Plan shall set forth the procedure for the selection of occupants who qualify as members of special populations as may be defined by governmental agencies and the minimum number of units that will be available for those occupants. The Recipient's tenant selection procedure shall be conducted in accordance with all applicable state and federal laws including but not limited to fair housing laws, rules and regulations.

b) If any unit in the Low Income portion of the project is occupied by a Qualifying Tenant(s) at the time of initial occupancy, and such Qualifying Tenant's income should subsequently exceed 140% of the applicable income limit under the Statute, the Recipient shall, after such determination of income, rent the next available residential unit of comparable or smaller size in the Project to a person or family whose income meets the requirements of paragraph (a) of this section.

c) The Applicable Fraction (as defined in Section 42(c)(1) of the Statute) for the Project shall not be less than 100%.

d) Recipient shall not evict or otherwise terminate the tenancy of any tenant of any low-income unit for other than good cause, nor increase the gross rent with respect to such unit except as permitted by the Statute.

e Recipient shall not refuse to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.

6. Applicable Statutes, Rules, Regulations

The Recipient shall comply with the terms and provisions of the Statute, the Regulations, currently published at 9 NYCRR Part 2040, and the policies and procedures of DHCR regarding New York State Low Income Housing Tax Credit projects and allocations.

7. Management

During the term hereof, the Recipient shall:

- a) conduct its business and maintain its books and records to assure that the development, construction, management, operation and maintenance and any sale of the Project and the units are carried out in accordance with all applicable federal, State, and local laws, ordinances, rules, regulations and requirements including, but not limited to those listed in Section 6 above, the policies and procedures of DHCR, and with applicable agreements relating to the Project executed by the Recipient;
- b) complete and attach the summary of this agreement, attached hereto as Exhibit D, to the lease of each low-income unit and shall provide a copy of this agreement, free of charge, to any person who requests a copy;
- c) disclose the Restricted Rent for a dwelling to a prospective tenant prior to the execution of a lease for that dwelling unit;
- d) require as a condition of initial and continued occupancy, that each person who is or who intends to become a tenant in the Low-Income Portion of the Project shall, prior to occupancy and on an annual basis, submit to the Recipient a statement regarding the income of the person(s) occupying or intending to occupy the dwelling unit ("Income Certification"). In addition, the Recipient shall require as a condition of occupancy that all such persons shall provide the Recipient with any other information or documentation necessary to verify the information contained in the income certification (for projects in which 100% of the residential units are SLIHC qualified low-income units, after the initial income certifications have been completed for all Project units, the certification

required by this section (d) shall not be required unless required by DHCR pursuant to the Statute, the Federal Regulations, or the DHCR Regulations);

e) not retaliate against any tenant or lawful occupant of the Project who notifies DHCR of alleged violations of this agreement;

f) not transfer, to any person or entity, or otherwise dispose of any portion of any building to which this agreement applies unless all of such building is transferred to such person or entity;

g) if required pursuant to the Statute, the Federal Regulations, or the DHCR Regulations, determine each year whether the occupants of each unit in the Low Income Portion of the Project are Qualifying Tenants in accordance with the Statute, the Federal Regulations, and the DHCR Regulations, policies, and procedures;

h) submit a copy of an independent audit to DHCR if an independent audit is required by any regulating or financing entity; and

i) maintain Reserve accounts as shown in Exhibit E.

8. Monitoring Fees

The Recipient shall pay, at such time as the Commissioner may require, an annual fee to DHCR of .5% multiplied by the maximum Restricted Rents of the Low-Income Portion of the Project or such other fee as the Commissioner may prescribe (the "Monitoring Fee"). The fee shall be paid by check made payable to New York State Division of Housing and Community Renewal, and shall be sent to the DHCR Finance Unit, 38-40 State Street, Albany, N.Y. 12207, or to such other address as DHCR may direct. The check shall bear the Project's SHARS I.D. number and the words " NYS Low Income Housing Tax Credit monitoring fee".

9. Standing of Past, Present and Prospective Occupants

Project tenants, occupants and all individuals who meet the income limitation applicable to the Project under the Statute (whether prospective, present or former tenants or occupants of the Project) shall have the right to enforce section 3(c) and section 5 of this Agreement for each taxable year in which the Project is subject to this Agreement or any provision of this agreement, in any New York State court.

10. Default

The following shall constitute Events of Default hereunder:

- a) If Recipient fails, in the opinion of the DHCR, to comply with or perform any of the conditions or covenants contained in this Agreement, the Statute, the Regulations or the Policies and Procedures of DHCR.
- b) Upon the occurrence of an event of default, and such default shall have continued for a period of thirty (30) days (unless a shorter cure period is provided for therein), after written notice specifying such default and demanding that the same be remedied shall have been given by DHCR to the Project Recipient (or if such default cannot with due diligence be cured within such period, the Recipient shall have failed to commence to cure within such period, or having commenced, shall thereafter fail to prosecute and complete such cure with due diligence) (an "Event of Default"), the DHCR shall have the right to pursue any remedies available at law or in equity for any breach of this Agreement, including the right to terminate this Agreement, the right to injunctive relief, the right to enforce the provisions of this Agreement, the right to recover damages suffered by DHCR as a result of any breach of this Agreement by the Project Recipient and the right to revoke, recapture, or direct the revocation or recapture of SLIHC or any portion of SLIHC allocated by DHCR.

11. Miscellaneous

- a) All notices or other communications with respect to the subject matter of this agreement shall be in writing and shall be deemed to have been given when received and shall be sent by certified mail, return receipt requested, to the LP at c/o The Kearney Realty & Development Group Inc., 34 Clayton Boulevard, Suite A, Baldwin Place, New York 10505 and to DHCR at 38-40 State Street, Albany, New York 12207, Attention: Low-Income Housing Credit Compliance Officer, or at such other address as a party to receive such notice may designate by giving such notice in writing. In circumstances deemed appropriate by DHCR, notice may be deemed given when received via facsimile transmission or via overnight courier, by agreement between DHCR and Recipient.
- b) The Recipient and any successor in interest shall inform DHCR of any change in Recipient's address, and of any change in ownership of the Project (or any building in the Project if the Project is a multiple building Project), and the full name(s), address(es), and

Federal Tax I.D. Number(s) of the new owner(s), within 30 days of any such change. **Any transfer occurring without compliance with the requirements of Section 18 of the New York State Tax Law and the above requirements is hereby prohibited.**

12. Exhibits

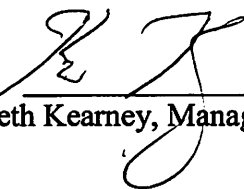
The following schedule, exhibits are hereby incorporated into this Agreement and the Project Recipient, to the extent applicable, shall adhere to the provisions contained therein.

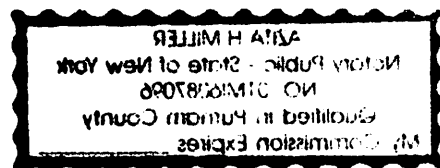
Exhibit A	Proposal Summary
Exhibit B	Description of Property
Exhibit C	Marketing Plan
Exhibit D	Summary of Tenant Rights and Obligations
Exhibit E	Reserve Account Requirements
Exhibit F	Additional Regulatory Provisions
Exhibit G	Affordability Plan

IN WITNESS WHEREOF, the parties have each duly executed this agreement as of the day and year first above written.

**THE MEWS AT HOPEWELL
JUNCTION LIMITED PARTNERSHIP**

By: The Mews at Hopewell Junction
Associates, LLC,
its Managing General Partner

By: 
Kenneth Kearney, Manager



**THE MEWS AT HOPEWELL
JUNCTION HOUSING
DEVELOPMENT FUND
COMPANY, INC., as Nominee**

By: Jeffery Fox, Ph. D.

Name: *Jeffery Fox*

Title: President

**DIVISION OF HOUSING
AND COMMUNITY RENEWAL**

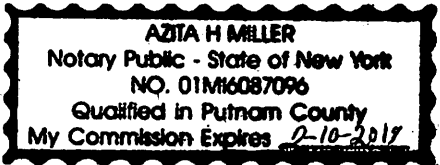
By: *Sean Fitzgerald*

Name: Sean Fitzgerald

Title: Assistant Commissioner

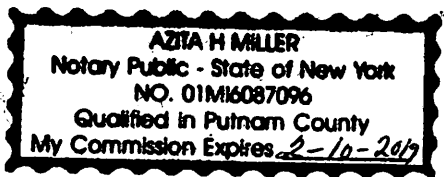
STATE OF NEW YORK)
 :ss.:
COUNTY of)

On April 14, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Kenneth Kearney, as Manager of The Mews at Hopewell Junction Associates, LLC, the managing general partner of **The Mews at Hopewell Junction Limited Partnership**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

 *Azita H. Miller*
Notary Public

STATE OF NEW YORK)
 :SS.:
COUNTY of)

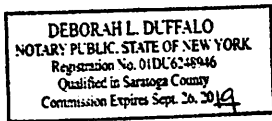
On April 14, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared ~~Jeffery FOX~~ ^{Ken Kearney}, as President of ~~The Mews at Hopewell Junction Housing Development Fund Company, Inc.~~ ^{Limited Partnership}, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Azita H. Miller
Notary Public

STATE OF NEW YORK)
 :SS.:
COUNTY OF ALBANY)

On April 8, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared ~~SEAN FITZGERALD~~ as Assistant Commissioner, of the New York State Division of Housing and Community Renewal, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Deborah L. Duffalo
Notary Public