**RECORD AND RETURN TO**:

Reno & Cavanaugh, PLLC

455 Massachusetts Ave. NW, Suite 400

Washington, DC 20001

Attention: Sarah Molseed, Esq.

(Space above this line for recorder’s use.)

**DECLARATION OF RESTRICTIVE COVENANTS AND USE AGREEMENT**

**344 EAST 28TH STREET & WISE TOWERS**

THIS DECLARATION OF RESTRICTIVE COVENANTS AND USE AGREEMENT (this “**Declaration**”), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2020 by and among the NEW YORK CITY HOUSING AUTHORITY, a public benefit corporation organized under the laws of the State of New York with an address of 90 Church Street, 5th Floor, New York, New York 10007, (the “**PHA**”), NYCHA MB HOUSING DEVELOPMENT FUND CORPORATION, a New York not-for-profit corporation organized pursuant to Article XI of the Private Housing Finance Law of the State of New York with an address c/o NYCHA Law Department, 90 Church Street, 5th Floor, New York, New York 10007 (the “**HDFC**”), and PACT RENAISSANCE COLLABORATIVE LLC, a New York limited liability company with an address at 155 3rd Street, Brooklyn, New York 11231 (the “**Owner**”), for the benefit of the U.S. Department of Housing and Urban Development, with an address of 451 Seventh Street, SW, Washington, DC 20410, Attention: Office of Public Housing Investments, Special Application Center (“**HUD**”).

**RECITALS**

1. The PHA is the fee owner of certain real property described in Exhibit A, attached hereto and incorporated herein (the “**Land**”). The development of the Land, the operation of the Land, and/or the acquisition of the site or sites thereof by the PHA was previously financed with assistance provided by HUD, and the Land was previously used for public housing purposes pursuant to agreements by and between HUD and the PHA;
2. HUD and the PHA have released the Land from any declaration of restrictive covenants, declaration of trust and/or obligation associated with the prior public housing uses of the Land pursuant to 24 CFR Part 200. In lieu of the prior restrictions, HUD and the PHA desire to restrict the ongoing use of the Land as set forth in this Declaration.
3. The PHA, the HDFC, and the Owner are entering into that certain Lease Agreement, dated as of substantially even date herewith, which will convey a leasehold interest in the Land and the improvements thereon, commonly known as 344 East 28th Street and Wise Towers (collectively, the “**Development**” and together with the leasehold interest in the Land, the “**Premises**”) to the Owner and HDFC (the “**Lease Agreement**”);
4. The Premises is being conveyed from the PHA to the Owner pursuant to that certain Part 200 Retention Approval issued by HUD on June 12, 2020 (the “**Approval**”);
5. The PHA has requested that the Owner modernize or cause the modernization of the Development;
6. As a condition of the Approval, the Premises will be operated in accordance with the PBV Requirements (as such term is defined below);
7. The PHA previously entered into certain Section 8 Project-Based Voucher Program Housing Assistance Payments Contracts, effective as of March 16, 2010 with respect to certain rental units at the Development (as may be amended, modified, extended or replaced, the “**HAP Contract**”), which HAP Contract the Owner shall assume as of the date hereof;
8. The PHA and the Owner shall agree to (i) amend such HAP Contract to include all eligible rental units at the Development, (ii) extend the term of the HAP Contract for a period of five (5) years and (iii) extend the term of the HAP Contract for an additional period of twenty (20) years such that the HAP Contract term shall extend to March 16, 2050;
9. The Owner and the HDFC have elected to operate the Premises for Affordable Housing Purposes (as such term is defined below), and the parties desire to document that election in this Declaration. The specific intended Affordable Housing Purposes will include affordable rental housing pursuant to Federal or local housing programs serving Low-Income Households (as such term is defined below) at initial occupancy or as otherwise permitted by HUD; and
10. Except as otherwise agreed in writing by HUD or as set forth on Schedule B of the Owner’s title insurance policy for the Premises dated as of substantially even date herewith (the “**Title Policy**”), this Declaration is to be recorded superior to other liens on the Premises, run until the conclusion of the initial term of the HAP Contract, automatically extend upon each extension of the HAP Contract for a term that runs with each extension of the HAP Contract, and remain in effect even in the case of abatement or termination of the HAP Contract for the term the HAP Contract would have run, absent the abatement or termination.

**AGREEMENT**

In consideration of the promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as set forth below. The Recitals are incorporated by reference.

# Definitions.

## “**Act**” shall mean the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 et. seq.

## “**Affordable Housing Purposes**” shall mean any activity that supports the pre-development, development or rehabilitation of Rental Assistance Demonstration housing projects, public housing, housing assisted under Section 8 of the Act, properties subject to low-income housing tax credit use restrictions, or other federal or local housing programs serving households with incomes at or below eighty percent (80%) of area median income at initial occupancy or otherwise permitted by HUD, or that provide services or amenities that will be used primarily by Low-Income Households.

## “**Low-Income Household**” shall mean a household with income at initial occupancy at or below eighty percent (80%) of area median income as defined by the Act, as may be amended.

## “**PBV Requirements**” shall mean the legal requirements applicable to the Section 8 project-based voucher program including, without limitation, the Act; HUD regulations thereunder (and to the extent applicable, any HUD-approved waivers of regulatory requirements, including any such waivers that may be contained in the RAD Notice, as such term is defined herein, that are applicable to the PBV Units); any other federal laws, regulations, notices, and Executive Orders pertaining to the Section 8 project-based voucher program; the PHA’s Section 8 Administrative Plan; and the HAP Contract.

## “**PBV Units**” shall mean those units subject to the HAP Contract.

## “**RAD Notice**” shall mean Notice H-2019-09 PIH-2019-23 (September 5, 2019), as may be amended or replaced.

## “**Restricted Period**” shall mean the period the Premises is subject to the Use Requirement, as set forth in Section 2(b).

## “**Senior Lender**” shall mean the holder(s) of the First Permitted Leasehold Mortgage (as such term is defined in the Lease Agreement).

## “**Use Requirement**” shall mean the use restrictions set forth in Section 2(a).

# Use Requirement.

## Generally.

### The Owner and PHA shall work diligently to include all eligible rental units at the Development under the HAP Contract in accordance with the PBV Requirements and the Approval.

### The Owner shall operate the Development in compliance with the HAP Contract and the PBV Requirements for the duration of the term of the HAP Contract.

### As a condition of entering into the Lease Agreement, the PHA requires and the Owner covenants and agrees for the benefit of the PHA that Owner shall extend the HAP Contract in the event that such extensions are offered by the PHA; provided however that the PHA shall only offer extensions of the HAP Contract when and to the extent permitted by the PBV Requirements, as such may be amended or replaced.

### The PHA, the HDFC, and the Owner, each for itself and for its successors and assigns, hereby covenants and agrees for the benefit of HUD that the Premises shall be used for Affordable Housing Purposes throughout the Restricted Period.

### In the event of a termination of the HAP Contract or the Section 8 project-based voucher program in part or in full during the Restricted Period, the Owner shall operate the Development exclusively to provide housing for Low-Income Households for the duration of the Restricted Period.

### The PHA shall be responsible for monitoring and enforcing the Use Requirement throughout the Restricted Period.

## Restricted Period. The Use Requirement shall encumber the Premises from the date of this Declaration through such date which is forty (40) years following the date of this Declaration. To the extent the HAP Contract is extended beyond forty (40) years, the Use Requirement shall automatically extend for successive periods that are coterminous with the HAP Contract.

## Exceptions to the Use Requirement. The following events shall not constitute a breach of the Use Requirement:

### Vacancy. If the Premises or any rental units within the Premises is left vacant for a reasonable period.

### Casualties. If the Premises is damaged or destroyed by fire or other casualty and the use of the Premises in conformance with the Use Requirement ceases during a period of repairs and/or reconstruction.

### Takings. If the Premises is taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof.

### Existing Households Not Subject to HAP Contract. If a household in occupancy at the Development as of the date hereof (1) resides in a rental unit that is not subject to the HAP Contract and (2) the household’s total tenant payment, as calculated under the PBV Requirements, equals or exceeds the gross rent of a similarly sized unit assisted under the HAP Contract, such household may remain in occupancy at the Development provided that (A) the rent to the owner for the household’s unit shall equal the lesser of thirty percent (30%) of the household’s income, as calculated under the Act, or the contract rent for a similarly sized unit assisted under the HAP Contract and (B) the household remains subject to the terms and requirements of its residential lease.

### Notwithstanding the foregoing, in the event the Owner requests and is able to demonstrate to HUD’s satisfaction that despite the Owner’s good faith and diligent efforts to do so, the Owner is unable either (1) to comply with the Use Requirement, or (2) to otherwise provide for the financial viability of the Premises, HUD may, in its sole discretion, agree to reduce the number of rental units subject to the Use Requirement or otherwise modify the Use Requirement in a manner acceptable to the Owner and HUD. Any such modification of the Use Requirement shall be evidenced by a written amendment to this Declaration executed by each of the parties hereto.

# Release. This Declaration shall remain as an encumbrance against the Premises unless and until HUD executes a release for recording. This Declaration may only be released by HUD. Such release shall be evidence of (i) the determination by the PHA and the Owner not to execute an extension of the HAP Contract, (ii) the determination by the PHA and the Owner not to execute a replacement HAP Contract, and (iii) the termination of this Declaration.

# Restrictions on Transfer.

## Except as otherwise approved in writing by the PHA and HUD or as set forth on Schedule B of the Title Policy, any lien on the Premises shall be subject and subordinate to this Declaration. Unless this Declaration is released by HUD, any transferee of the Premises shall take title subject to this Declaration.

## In the event of a default under the HAP Contract including, without limitation, upon any transfer of the Premises without consent of PHA and HUD, upon expiration of any applicable notice and/or cure periods, PHA may transfer the HAP Contract and the rental assistance contemplated therein to another entity, property and/or project. The Owner has constituted HUD as its attorney-in-fact to effect any such transfer.

# Events of Default.

## Upon breach of any of the terms of this Declaration, HUD shall give the PHA, the HDFC, the Owner, and Senior Lender (collectively, the “**Notice Parties**”) written notice of the breach. The defaulting party shall have thirty (30) calendar days after receipt of such notice of breach to cure the breach; provided that, if the defaulting party uses commercially reasonable efforts to cure the breach within the prescribed thirty (30) day period and is unable to do so, HUD may approve in writing an extension of an additional thirty (30) calendar days to cure the breach, such approval not to be unreasonably withheld, conditioned or delayed. If the breach is not corrected to the satisfaction of HUD within the prescribed cure period HUD may declare a default under this Declaration (an “**Event of Default**”) and will provide written notice to the Notice Parties of such declaration. The PHA and Senior Lender shall have the right, but not the obligation, to cure any Event of Default by the Owner or the HDFC, and HUD agrees to accept the performance of the PHA or Senior Lender as though the same had been done by the Owner or the HDFC, applicable. Nothing contained in this Declaration shall limit, restrict, inhibit or delay the rights and remedies of Senior Lender, its successors and/or assigns as provided in the Senior Lender’s loan documents with respect to a default thereunder, including, but not limited to, collecting rents, revenue, income or receipts from the Premises and/or taking possession of the Premises, whether by foreclosure, a deed-in-lieu of foreclosure, or comparable conversion and transferring the Premises to a new owner; provided, however, that such rights and remedies, upon being exercised, remain subject to this Declaration as a whole.

## Upon an Event of Default, PHA or HUD shall have all other remedies available under statute, at law or in equity. No person or entity, other than the parties to this Declaration, has any rights or remedies under this Declaration. Further, HUD or the PHA may take whatever investigative steps it deems necessary to ensure compliance. In the Event of Default, to the extent permitted by applicable law, PHA or HUD shall have the right to seek specific performance of this Declaration and/or to enjoin any violation of this Declaration in Federal Court. The right to specific performance and injunction shall be in addition to all other remedies available to PHA or HUD under statute, at law or in equity.

# Third Party Beneficiaries. No person or entity, other than the parties to this Declaration, has any rights or remedies under this Declaration.

# Successors and Assigns. Recordation of this Declaration shall constitute the agreement by Owner to be bound by and to comply with the restrictions set forth in this Declaration. The benefits and burdens of this Declaration touch and concern and run with the land and are binding upon and shall inure to the benefit of the respective successors and assigns of the parties to this Declaration, including any PHA-approved transferee.

# Notices. All notices under this Declaration shall be in writing and shall be served by (a) personal service or receipted courier service, (b) by registered or certified first-class mail, return receipt requested, or (c) nationally-recognized overnight delivery service, addressed to Owner, HUD or the PHA, as appropriate, at the addresses for such parties set forth above. Any notice or other communication sent pursuant to clause (a) hereof shall be deemed received upon such personal service, if sent pursuant to clause (b) shall be deemed received seven (7) calendar days following deposit in the mail, and/or if sent pursuant to clause (c) shall be deemed received the next succeeding business day following deposit with such nationally recognized overnight delivery service. Any party may change its address by notice given in accordance with this Section 8.

If to PHA: New York City Housing Authority

90 Church Street, 5th Floor

New York, New York 10007

Attn: Executive Vice President

for Real Estate

with a copy to: New York City Housing Authority

90 Church Street, 11th Floor

New York, New York 10007

Attn: Associate General Counsel for

Real Estate and Economic Development

and a copy to: Reno & Cavanaugh, PLLC

455 Massachusetts Avenue NW, Suite 400

Washington, DC 20001

Attn: Sarah Molseed, Esq.

# If to HUD: U.S. Department of Housing and Urban Development

451 7th Street SW, Room 4100

Washington, DC 20410

Attn: Office of the Assistant Secretary for

Public and Indian Housing

If to Owner: PACT Renaissance Collaborative LLC

c/o Monadnock Development LLC
155 3rd Street
Brooklyn, New York 11231
Attn: Amy Stokes

with a copy to: Nixon Peabody LLP

55 West 46th Street

New York, New York 10036

Attn: Joseph J. Lynch, Esq.

and a copy to: The Community Development Trust LP

1350 Broadway, Suite 700

New York, New York 10018

Attn: Michael Lear

and a copy to: The Community Preservation Corporation

220 East 42nd Street, floor 9

New York, NY 10017

Attn: R. Kumro, General Counsel

If to Senior Lender: As set forth at Exhibit C of the Lease Agreement.

# Amendments. This Declaration may be amended only by a written instrument signed by the parties to this Declaration. Notwithstanding the foregoing, the parties may not amend, modify, rescind, revoke and/or terminate this Declaration without the prior written approval of HUD.

# Subordination. Any mortgage liens shall be subject and subordinate to this Declaration. This Declaration shall survive foreclosure and bankruptcy.

# Fair Housing and Civil Rights Requirements. The Owner and its agents, where applicable, shall ensure that the Premises complies with applicable federal fair housing and civil rights laws, regulations, and other legal authorities, including those identified at 24 CFR 5.105.

# Accessibility Requirements. The Owner and its agents, where applicable, shall ensure that the Premises complies with all applicable federal accessibility requirements under the Fair Housing Act and implementing regulations at 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8, and Titles II and III of the Americans with Disabilities Act and implementing regulations at 28 CFR Parts 35 and 36, respectively.

# Conflicts. In the event of a conflict between any requirement contained in this Declaration and the PBV Requirements, the PBV Requirements shall in all instances be controlling.

# Execution of Other Declarations. Owner covenants and agrees that it has not and shall not execute any other agreement with provisions contradictory of, or in opposition to, the provisions of this Declaration, and that in any event, the provisions of this Declaration are paramount and controlling as to the rights and obligations set forth herein and supersede any conflicting requirements.

# Governing Law. This Declaration shall be governed, construed and interpreted in accordance with the laws of the State of New York, and the parties shall submit to the jurisdiction and venue of the courts in the City and County of New York.

# Severability. The invalidity or unenforceability of any clause, part or provision of this Declaration shall not affect the validity or enforceability of the remaining portions thereof.

# Counterpart Signatures. This Declaration may be executed in any number of original counterparts, all of which evidence only one agreement, and only one of which need be produced for any purpose.

[signature page(s) to follow]

IN WITNESS WHEREOF, the PHA, the HDFC and the Owner have each duly executed this Declaration as of the date first written above.

**PHA:**

**NEW YORK CITY HOUSING AUTHORITY,**

a New York public benefit corporation

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

Jonathan Gouveia

Executive Vice President

for Real Estate Development

STATE OF NEW YORK }

 } ss:

COUNTY OF NEW YORK }

On this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2020, before me, the undersigned, personally Jonathan Gouveia 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.

Notary Public

Commission expires:

[signatures continue on next page]

**HDFC:**

**NYCHA MB HOUSING DEVELOPMENT FUND CORPORATION**, a New York not-for-profit corporation

By: NYCHA III Parent Housing Development

Fund Corporation, a New York not-for-profit

corporation, its sole member

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

Jonathan Gouveia

Authorized Signatory

Executive Vice President

for Real Estate Development

New York City Housing Authority

STATE OF NEW YORK }

 } ss:

COUNTY OF NEW YORK }

On this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2020, before me, the undersigned, personally Jonathan Gouveia 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.

Notary Public

Commission expires:

[signatures continue on next page]

**OWNER:**

**PACT Renaissance Collaborative LLC**, a New York limited liability company

By:      **PRC MANAGING MEMBER LLC**, a New York

            limited liability company, its managing member

By:      **PRC MLK JV LLC**, a New York limited

            liability company, its managing member

By:      **PRC MONADNOCK LLC**, a New York limited

            liability company, its managing member

By:      **MONADNOCK DEVELOPMENT LLC**, a

Delaware limited liability company, its managing member

By:      **MonDev Manager LLC**, a Delaware limited

liability company, its manager

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

Name:   Nicholas Lembo

Title:     Member

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

On the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2020, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

Commission expires:

**EXHIBIT A**

**Legal Description**

**344 East 28th Street**

**Block 933 Lot 25**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the westerly side of First Avenue (100 feet wide) and the northerly side of East 27th Street, a/k/a Pedestrian Way (60 feet wide);

RUNNING THENCE northerly along the westerly side of First Avenue, 197.60 feet (Survey) 197.50 feet (Deed) to the southerly side of East 28th Street (60 feet wide);

THENCE westerly along the southerly side of East 28th Street, 250 feet to the easterly side of A New Street, a/k/a Mount Carmel Place (60 feet wide);

THENCE southerly along the easterly side of A New Street, 152.60 feet (Survey) 152.50 feet (Deed) to a point;

THENCE easterly parallel to the southerly side of East 28th Street 105 feet to a point;

THENCE southerly parallel to the westerly side of First Avenue 45 feet to the northerly side of East 27th Street, a/k/a Pedestrian Way (60 feet wide);

THENCE easterly along the northerly side of East 27th Street, a/k/a Pedestrian Way 145 feet at the point and place of BEGINNING.

**Wise Towers**

**Block 1221 Lot 7**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of West 91st Street (60 feet wide) distant 150 feet westerly from the corner formed by the intersection of the southerly side of West 91st Street with the westerly side of Columbus Avenue (100 feet wide);

RUNNING THENCE southerly and parallel with Columbus Avenue 201.33 feet (Survey) 201.42 feet (Deed) to the northerly side of West 90th Street, a/k/a Henry J. Browne Boulevard (60 feet wide);

THENCE westerly along the northerly side of West 90th Street, a/k/a Henry J. Brown Boulevard 500 feet to a point;

THENCE northerly parallel to the easterly side of Amsterdam Avenue (100 feet wide) 100.665 feet (Survey) 100.71 feet (Deed) to a point;

THENCE easterly parallel to the southerly side of West 91st Street 4.50 feet to a point;

THENCE northerly parallel to the easterly side of Amsterdam Avenue 100.665 feet (Survey) 100.71 feet (Deed) to the southerly side of West 91st Street;

THENCE easterly along the southerly side of West 91st Street 495.50 feet at the point and place of BEGINNING.