

RESOLUTION NO. ____ OF 2024

February 20, 2024

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A REGULATORY AGREEMENT BETWEEN THE CITY OF HUDSON AND HUDSONDOTS QOZB, LLC

WHEREAS, the Common Council of the City of Hudson has an interest in providing affordable housing solutions to its residents; and

WHEREAS, HudsonDots QOZB LLC is the owner of certain properties which offers affordable housing options to residents in the City; and

WHEREAS, New York State Real Property Tax Law (RPTL) §581-a allows for income-based assessment of property where the property is subject to a regulatory agreement with a government entity such as the City of Hudson that restricts occupancy of at least 20% of units to tenants who meet an affordable housing income test; and

WHEREAS, HudsonDots has requested that the City of Hudson enter into a RPLT §581-a regulatory agreement wherein rent for 50% of the units of specified properties owned by HudsonDots will be rented for an amount not to exceed 30% of the area medium income for Columbia County, the terms of which are set forth in Exhibit “A” which is annexed hereto and incorporated herein.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor of the City of Hudson is authorized to sign the Regulatory Agreement exhibited to this Resolution between the City of Hudson and HudsonDots QOZB, LLC for an initial term of five (5) years.

Introduced: _____

Seconded: _____

Approved: _____

Mayor Kamal Johnson

CITY OF HUDSON

AND

HUDSONDOTS QOZB LLC

REGULATORY AGREEMENT

DATED AS OF FEBRUARY __, 2024

Tax ID Numbers: 109.44-2-58, 110.55-1-66, 110.55-1-65, 110.45-3-66, 110.45-3-67, 109.44-3-4, and 110.45-1-37 in the City of Hudson, Columbia County, New York

RECORD AND RETURN TO:
Whiteman Osterman & Hanna LLP
One Commerce Plaza
Albany, New York 12260
Attention: Robert M. Gach

REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT (this “Agreement”), dated as of February __, 2024 (the “Effective Date”) by and between the CITY OF HUDSON, a New York municipal corporation having an office for the transaction of business located at 520 Warren Street, Hudson, New York, 12534 (the “City”) and HUDSONDOTS QOZB LLC, a limited liability company duly organized and validly existing under the laws of the State of New York having an office for the transaction of business located at 502 Union Street, Hudson, New York 12534 (the “Company”). The City and the Company shall be referred to herein, individually, as a “party” and, collectively, as the “parties.”

WHEREAS, the Company is the sole member of 308 Columbia St. QOZB LLC, 520 Columbia St. QOZB LLC, 14 Jenkins Pkway QOZB LLC, 16 Jenkins Pkway QOZB LLC, 341 State St. QOZB LLC (collectively, the “Owner Entities”);

WHEREAS, the Owner Entities are the owners of those certain properties identified as SBL Nos. 109.44-2-58, 110.55-1-66, 110.55-1-65, 110.45-3-66, 110.45-3-67, 109.44-3-4, and 110.45-1-37 in the City of Hudson, County of Columbia, State of New York (collectively, the “Property”), as more fully described in Exhibit A attached hereto;

WHEREAS, the Property consists of _____ rental Units (collectively, the “Units” and individually as a “Unit”);

WHEREAS, the City and the Company desire that the Company shall rent a certain portion of the Units subject to the affordability conditions set forth herein; and

WHEREAS, the City and the Company intend that this Agreement shall meet the requirements of New York Real Property Tax Law Section §581-a for the method of real property assessment described therein.

NOW, THEREFORE, the parties agree that the Property will be operated in accordance with the following terms and conditions:

1. Definitions

Affordable Rent: means gross rents, excluding Section 8 payments, utility allowances, not to exceed thirty percent (30%) of the AMI specified herein, adjusted for Unit size. For purposes of this Section and this Agreement, LIHTC Regulations shall act as guidance only as the parties recognize and agree that the Property, as such may be amended from time-to-time, is not utilizing LIHTC.

AMI: means the Area Median Gross Income as determined by the United States Department of Housing and Urban Development for Columbia County.

Applicant: a person or household, including all proposed occupants, that applies for a tenancy who meets the criteria set forth in the Company’s Tenant Selection Plan.

Application Period: As defined in Section 5b.

Governmental Authority: As defined in Section 4c.

LIHTC: Low Income Housing Tax Credits.

LIHTC Regulations: Section 42 of the United States Internal Revenue Code, and the rules and regulations promulgated thereunder and applicable guidance documents.

NYS HCR: New York State Housing and Community Renewal.

Owner Entities: As defined in the recitals.

Preferred Applicant: An Applicant (i) whose income does not exceed the income limit set forth in Section 5 for the applicable Unit, and (ii) will occupy such Unit as their sole residence.

Property: As defined in the recitals.

Rent Limit: the maximum rent permitted for a specified Unit in order for the Units to comply with the affordability requirements in Section 5 herein.

Restricted Units: As defined in Section 5a.

Tenant Selection Plan: The written tenant selection plan formulated and revised by the Company from time-to-time and provided to the City's Assessor upon request, which plan shall include reasonable selection criteria, including financial and leasing history, subject to compliance with applicable laws and regulatory requirements and including an affirmative fair housing marketing plan.

Units: As defined in the Recitals.

2. Agreement to Run with the Land; Recording

This Agreement shall apply to the Property. The definition of the Property can be altered, from year-to-year, upon notice to the City's Assessor prior to March 1 of such year. The Company shall provide the Assessor with information on the Property by request and, otherwise, at least once (1) per year to be provided prior to March 1 of such applicable year. This Agreement and all of the promises, agreements and covenants herein contained shall be recorded by the Company as a restrictive covenant and shall be binding on the Company and all successors of the Company.

3. Term

a) The term of this Agreement (the "Term") shall commence upon the Effective Date and shall roll over year-to-year for up to five (5) years unless terminated by the parties in accordance with this Agreement or as otherwise agreed in writing by the parties.

4. Certification; Records

a) One (1) calendar month subsequent to the close of each calendar year, the Company shall certify to the City under penalty of perjury, in the form attached hereto as Exhibit B, that the Restricted Units are being rented in compliance with the Rent Limits, as set forth herein, and the tenant selection procedures set forth in Section 5 of this Agreement (including compliance with the Tenant Selection Plan).

b) The Company shall obtain and maintain copies of all income certifications required by this Agreement, including supporting documentation, for a period of not less than six (6) years. The Company shall maintain records of occupancy, tenant rents and required Rent Limits for each Unit for a period of not less than six (6) years. The Company shall make copies of the income records and any and all other records regarding tenant income, selection, rents, tenant agreements, and Unit vacancies and shall make such copies available to the City or its designee for audit purposes upon request.

c) If the Company has been notified by any governmental authority having jurisdiction over the Company, the Property or the construction thereon or the use and occupancy thereof ("Governmental Authority"), that the Property, 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, the Company shall additionally certify that the Company has cured such violation within thirty (30) days of receipt of such notification or if such violation could not with due diligence be cured within such period, that Company has commenced to cure within such period and, having so commenced, shall thereafter proceed and complete such cure with due diligence.

5. Rent Limits and Tenant Selection Plan

a) Rent for fifty (50) % of the Units (the "Restricted Units") shall be limited to Affordable Rent for households earning eighty (80) % of AMI.

b) First preference for selection of a tenant shall be given to Preferred Applicants whose income, at the time of initial occupancy, does not exceed the income limit for the Unit, as specified above. In order to give effect to the aforementioned preference requirement, the Company shall maintain a waiting list of Preferred Applicants, the application period for a Unit shall be not less than fourteen (14) calendar days from the date of notice of the vacancy (the "Application Period"), and the Company shall provide notice to Preferred Applicants and to the public of the availability of a Unit and the associated Unit size and Rent Limit for such available Unit.

c) In the selection of tenants for the Restricted Units, the Company will give preference to Applicants in the following priority: first preference will be given to Preferred Applicants, as set forth in Section 5(c) hereof; second preference will be given to Applicants that will occupy the Unit as their sole residence. In the event that no Preferred Applicant has applied to rent a Restricted Unit during the Application Period, the Company may rent such Unit to the next qualified Applicant. The Company's tenant selection procedure shall be conducted in accordance with all applicable New York State and Federal laws including but not limited to fair

housing laws, rules and regulations and the Tenant Selection Plan.

d) The Company 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 Company shall comply with all federal and State fair housing laws, regulations and applicable policies.

7. Management

During the Term hereof, the Company 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 Property 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;

b) disclose the Restricted Rent for a dwelling to an Applicant prior to the execution of a lease for that Unit;

c) require as a condition of initial occupancy, that each Applicant shall, prior to occupancy, submit to the Company a sworn statement regarding the income of the Applicant including any person(s) intending to occupy the Unit. In addition, the Company shall require as a condition of occupancy that all such persons shall provide the Company with information or documentation necessary to verify the original information contained in the Income Certification on an annual basis.;

d) not retaliate against any tenant or lawful occupant who notifies the City or other Governmental Authority of alleged violations of this Agreement;

e) 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;

f) provide the Assessor with information regarding the Units upon request; and

g) prohibit sublets unless the proposed occupants are selected in compliance with the tenant preference procedures in Section 5.

8. Termination of Agreement

This Agreement and the restrictions hereunder shall, in the City's reasonable discretion, cease to apply partially or entirely in the event of involuntary noncompliance caused by unforeseen events

such as fire, seizure, requisition, condemnation, change in federal law, or action of a federal agency after the date of issue, which prevents the City from enforcing any restriction hereunder. Either party may terminate this Agreement from year-to-year with notice to the other by January 1 of each such year. Upon termination, both parties shall have all rights and remedies available at law or in equity relative to the assessment of the Property.

9. Defaults and Remedies

a) The following shall be “Events of Default” under this Agreement, and the terms “Event of Default” or “default” shall mean, A default in the performance or observance of any of the covenants, conditions or agreements on the part of the Company in this Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the City to the Company, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.

b) Whenever any Event of Default hereunder shall have occurred and is continuing beyond any applicable notice and cure periods, the City may revoke the application of RPTL § 581-a as to any Unit that is not in compliance with the terms herewith and thereafter assess such Unit in accordance with Article 3 of the RPTL and take any action at law or in equity which may appear necessary or desirable to enforce the obligations, agreements, or covenants of the Company under this Agreement. For purposes of this Agreement, the date of noncompliance or misrepresentation shall be the date such noncompliance or misrepresentation was first discovered by Company or City or would have been first discovered by Company or City by the exercise of reasonable diligence.

10. Miscellaneous

a) All notices, claims, certificates and other communications under this Agreement shall be in writing and shall be deemed to be duly given if, addressed as first set forth above or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section, when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy, (3) mailed by registered or certified U.S. Mail, return receipt requested, postage prepaid three (3) business days after mailed, , or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

<p><u>To the City:</u> City Hall City Clerk 520 Warren Street Hudson, New York 12534</p>	<p><u>With a Copy to:</u> City Attorney City Hall 520 Warren Street Hudson, New York</p>
<p><u>To the Company:</u> Hudson Depot District LLC 42 West 39th Street, Floor 14 New York, NY 10018</p>	<p><u>With a Copy to Company Counsel:</u> Whiteman Osterman & Hanna LLP One Commerce Plaza Albany NY 12260 Attn: Robert M. Gach, Esq.</p>

b) The Company and any successor in interest shall inform the City of any change in Company’s address, and of any change in ownership of the Property, and the full name(s), address(es), and Federal Tax I.D. Number(s) of the new owner(s), within thirty (30) days of any such change. Any transfer occurring without compliance with the above requirements is hereby prohibited.

c) The Company shall also provide written notice to the City of any sale or transfer of an investor membership interest or limited partnership interest, upon any such sale or transfer.

11. Exhibits

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

- | | |
|-----------|-------------------------------|
| Exhibit A | Legal Description of Property |
| Exhibit B | Form of Annual Report |

[Signature Page(s) Follow]

IN WITNESS WHEREOF, the City and the Company have caused this Regulatory Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF HUDSON

By:
Its:

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

On this ___ day of _____, 2024, 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 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

IN WITNESS WHEREOF, the City and the Company have caused this Regulatory Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

HUDSONDOTS QOZB LLC

By:
Its:

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

On this ___ day of _____, 2024, 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 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

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
FORM OF SUPPLEMENTAL ANNUAL REPORT

I certify to the City that the Property and Units are being rented in compliance with the Regulatory Agreement.

Except for those tenants whose tenancy predates the Effective Date of the Regulatory Agreement, I have received an initial tenant income certification from each and every tenant and documentation to support such certification, and shall make such certifications and any and all other records regarding tenant income, selection, rents, tenant agreements, and Unit vacancies available to the City or its designee for audit purposes upon request.

I certify to the City of Hudson that to the best of my knowledge and belief all of the information on this form is correct.