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Gale A. Brewer, Borough President

Testimony of Gale A. Brewer, Manhattan Borough President
A Review of the 421-a Tax Benefits System
January 29, 2015

Good morning. My name is Gale A. Brewer and I am the Manhattan Borough President. I thank Councilmember Jumaane Williams and members of the Housing and Buildings Committee for the opportunity to testify today about the 421-a Tax Benefits Program.

The 421-a tax benefit was created to incentivize new construction. The program started in 1971 during a time when many people felt New York City needed to spur real estate development activities to reduce blight. Since New York City in the 1970's would have benefited from any kind of new construction, 421-a as it was initially introduced did not restrict the tax benefit to the location or the affordability of new units being developed. But times have changed. Data shows that New York City had 7,191 new construction starts between November 2013 and October 2014.[1] And on January 15, 2015, Mayor Bill de Blasio announced that New York City has exceeded Housing New York's first-year goals with the financing of 17,400 affordable units in 2014, of which 6,191 units were new construction starts.

New York City no longer faces a lack of development. Given that spurring development was the original intention of the 421-a program, we must ask whether giving tax breaks to developments that would take place anyway—especially projects receiving 421-a benefits on an as-of-right basis—is worth foregoing the hundreds of millions of dollars the city would have collected in property tax revenue. Another question to consider is whether 421-a ought to be retargeted to incentivize different housing issues facing us today, for example, the development of affordable housing.

421-a Projects in Manhattan: A Snapshot

My office has spent the past two years gathering data about the 421-a program in my then-Council District, CD 6, and later throughout Manhattan. The goal is to better understand the reach and impact that 421-a has in two areas: How much is 421-a costing New Yorkers, and how many low- and middle-income families are benefitting from this program?

I want to thank many people for making this possible: the NYC Department of Housing Preservation and Development (HPD) for providing data on all active 421-a projects in Council District 6 as of May 2013; Donte' Coleman, Cathy McGath, Evan Pellegrino, Marian Silliman, and Omari Williams from the New School Graduate Program in Urban Policy Analysis and Management who presented a 421-a policy brief to my office in June 2014; the Independent Budget Office's housing and property tax analysis units for providing detailed information for all Manhattan developments receiving 421-a benefits in the FY2015 tax year; and finally, to housing data experts at the NYU Furman Center for Real Estate and Urban Policy and at the Regional Plan Association for the research guidance they provided.

[1] McGraw Hill Construction, as reported by NYC Economic Development Corporation at http://www.nycedc.com/economic-data/real-estate-and-construction.

According to IBO data, there are 701 developments in Manhattan receiving 421-a tax benefits in the current fiscal tax year. By granting 421-a tax exemptions to these developments, the City foregoes collecting over $673.8 million in property tax revenues for FY2015 alone. This amount is spread across 60,738 residential units, averaging just over $11,093 in foregone tax revenue per unit in FY2015. If we assume no change in exempted tax value, a single unit receiving a 25-year 421-a tax exemption would "cost" the City over $277,000 in uncollected tax revenues over the lifetime of the tax exemption.[2]

Unfortunately, no single dataset exists that can definitively show how many affordable units have been constructed under the aide of 421-a. Prior to 2008, Manhattan developments outside of designated Geographic Exclusion Areas (GEA) could receive 421-a as an as-of-right tax benefit without any affordability requirement. Even after 2008, when all of Manhattan became designated under GEA and the tax incentive was tied to the 80/20 program requiring 20% affordability, we don't know for sure whether a developer would choose to apply the 20% requirement to a fifth of the total number of units or to the total residential square footages within a building (both are allowed). In fact, even HPD doesn't seem to have information on how many affordable housing units were constructed under 421-a. HPD staff estimated 1,709 affordable units out of 8,432 within Council District 6 as of May 2013—or around 20%.[3] Applying this to IBO's FY2015 tax year data, we can only estimate that approximately 12,000 units within Manhattan buildings that actively receive 421-a tax benefits can be classified as affordable housing.

Finally, the high cost of construction in Manhattan often necessitates developers to combine multiple tax and other financing incentives to make the creation of residential units viable. If affordable units are part of a project, then a larger amount of subsidy is needed to ensure the project yields a sustainable baseline return on equity (ROE) for the developer, which typically ranges from 8% to 12%.[4] It is not unusual for a project receiving 421-a to also receive Low Income Housing Tax Credit (LIHTC), zoning bonus under the Inclusionary Housing Program (IHP), or other HUD, HPD, or HDC financing. In fact, according to the NYU Furman Center's Subsidized Housing Information Project (SHIP) database, all projects in Manhattan classified as receiving 421-a subsidies also take advantage of other financing options.[5] The database also shows 12 developments in Manhattan are under IHP.

Recommendations

With these data in mind, I have several recommendations both in terms of what can be done on a city level and for committee members' consideration as we continue to participate in larger conversations with state-level policymakers leading up to the expiration of 421-a regulations in June 2015.

End "Double Dipping" of Overlapping Subsidies

While I understand that layering multiple subsidies is necessary to make a real estate development project viable, there is one particular kind of subsidy overlap that must be ended.

[2] $11,093 of assumed 421-a tax exemption a year multiplied by 25 years. Estimate based on average tax expenditure for demonstration purposes only. Exact amount of foregone tax revenue for each unit is different for each tax year. Buildings receive 421-a tax exemption each year for 10, 15, 20, or 25 years.
[3] HPD assumed 5 market rate units per affordable unit for 421-a projects without 20% affordability requirements.
[4] New School policy brief to the MBPO: *Rethinking 421-a Real Property Tax Exemption*, p. 21. Range provided by NYC-based real estate developer, BFC Partners.
[5] NYU Furman Center Subsidized Housing Information Project exported dataset. Filers: Manhattan, 421-a subsidy.

Known as "double dipping," this is when a developer can use the same number of affordable housing units to satisfy the affordable housing requirements of multiple subsidy programs. For example, if the Department of City Planning approves a project for zoning bonus under the Inclusionary Housing Program in exchange for setting aside 20% of the units as affordable housing, then the same 20% should not be used to subsequently obtain 421-a tax benefits. Unfortunately, this happens all too often, and we end up giving away tax breaks without receiving *any* additional affordable housing units for 421-a subsidies.

There are two ways to reform double dipping. First, I urge state policymakers to include in the 421-a reauthorization a new requirement that prohibits either all or a percentage of affordable housing promised under 421-a benefits from being used to satisfy other subsidy programs' affordability requirements. Second, I urge the City Council and the Administration to include similar language in the upcoming zoning text amendment. Whether through continuing IHP or implementing mandatory inclusionary zoning, affordable units created under the granting of zoning bonuses should only be used to satisfy zoning requirements.

Offering Units at Area Median Income (AMI) Ranges Affordable to the Community

The previous 421-a reauthorization in 2008 included language on community preference, specifying that 50% of affordable units created within a GEA (including all of Manhattan) must go toward buyers or renters residing in the same community district where the project is built. Yet too often the "affordable" units are not truly affordable to residents living in the community.

Currently, affordable housing under 421-a is set at 60% AMI with the exception of projects receiving substantial government assistance (SGA), in which case the AMI for affordable units may range from 30% to 120% AMI provided that the average income threshold does not exceed 90% AMI. But let me list several average *neighborhood* income levels in Manhattan: Community District 9 in West Harlem has an average neighborhood income of $41,090; Community District 10 in Central Harlem, $37,460; Community District 11 in East Harlem, $31,537; and Community District 12 in Inwood/Washington Heights, $36,872. For a 4-person household to afford a 60% AMI affordable unit built under the 421-a program, annual income needs to be $51,540, which is beyond the median neighborhood incomes in the districts mentioned above.[6]

The core of the issue is affordability. There are two ways to increase opportunities for low-income households in the community to access affordable housing: lowering the average AMI ceiling of 421-a projects with SGA from its current threshold of 90% AMI, and increasing the percentage of required affordable housing units under 421-a. When the total number of affordable units is increased within an AMI range geared toward a lower average AMI ceiling, more units affordable to low and very-low income families may become available.

I understand that expanding the AMI range and increasing a project's affordable unit requirements is going to have an impact on a developer's Return on Equity (ROE). This is why in June 2014, I asked a team of New School graduate students to conduct ROE analyses based on a typical developer's *pro forma*. The team used 8.8% ROE as a baseline and concluded the following:

- By lowering the average AMI ceiling of 421-a projects with SGA from 90% to 80% AMI, ROE decreases from 8.8% to 7.9%.

[6] Community District median income from NYU Furman Center's State of New York City's Housing and Neighborhoods in 2013. 60% AMI for family of 4 is based on HUD's FY2013 calculations to keep numbers comparable within 2013.

- By increasing the affordable unit requirements from 20% to 30%, ROE decreases from 8.8% to 7.6%.
- In both instances, if additional government subsidies can be secured, a project can potentially achieve 40% to 45% of affordable units at lower average AMI threshold *and* keep ROE above 8% if it is located in a neighborhood with strong housing market such as many parts of Manhattan.[7]

There will be a decrease in operating revenues for developers for doing the right thing and providing more housing opportunities to local residents at a level that they can truly afford. But keep in mind that developers are receiving on average over $10,000 in tax exemption for each unit in the building per year—both affordable and market rate. The dip in ROE is a fair exchange for 10 to 25 years of property tax exemption. I urge Albany to consider both a decrease in average AMI ceiling and an increase in affordable unit percentage requirements.

Permanent Affordability

State policymakers should consider requiring all affordable units created under 421-a tax incentives to be permanently affordable. When affordability is short-term—as it is with all affordable units developed under 421-a without conforming to other programs that require permanent affordability—it sets a countdown clock in motion for the day when tenants will inevitably be displaced. Even for cooperative or condo owners who are committed to living in a neighborhood long-term, the hike in monthly maintenance cost when their building's 421-a exemption expires will be so steep that many will seek to sell their units to higher-income buyers before the subsidy expires, thus accelerating the changing of a neighborhood. For example, a shareholder in an East Harlem cooperative expects to see her maintenance increase by 234% to over $2,000 a month upon the expiration of the building's 421-a tax exemption. For this person at an income level of 70% AMI in FY2014, she will likely have to sell her apartment before the exemption expires.

Requiring permanent affordability also recalibrates 421-a tax benefits to what I believe is the most accountable way to "spend" the city's tax expenditure: by requiring permanent affordability, luxury housing developers will likely forego the tax benefits for the ability to offer their units at market rate, leaving a self-selected pool of affordable housing developers who will truly benefit from 421-a. These organizations are already committed to the long-term stability of New York City neighborhoods. They should be the true recipients of 421-a benefits.

Transparency/Data Collection

In addition to amending the 421-a program's requirements, I also strongly call for comprehensive data collection to track information for each project receiving 421-a subsidy and to make the data publicly available in the spirit of open data.

It is frustrating to ask a simple question such as how many affordable units have been created under full or partial 421-a tax subsidies and be told that only estimates are available. While HPD tracks the number of developments receiving subsidies funded at the city level, it is the Department of Finance that tracks development agreements with affordable unit information. But if a building participates in IHP or other zoning programs, then zoning-related incentives, including FAR bonuses and affordable units attached to the requirements, are tracked by DCP. Ultimately, affordable units are registered with NYS Homes and Community Renewal, but it is widely known that affordable

[7] *Rethinking 421-a Real Property Tax Exemption*, p. 28, p. 35.

housing information isn't always readily available from the agency, and the self-reporting nature of the registry renders the data incomplete. Outside of government agencies, sites such as Furman Center's SHIP database have been invaluable for the tracking and centralizing of subsidized housing data. But these sites are dependent on agency information and have a necessary time lag due to the delay often needed to obtain and then centralize information.

I am calling for a data tracking requirement to be amended into 421-a program regulations so that anyone can go to a website or to HPD or HCR to find out how many affordable housing units have been created using 421-a. Information must be up-to-date and easy to retrieve. Then we can start knowing how much of this year's $673.8 million in tax expenditures goes to support a known number of affordable units. If agencies work together and data from multiple programs are centralized, we will also be able to know whether these affordable units are permanent under zoning programs or are set to expire, by which year, and how we may proactively work with building owners to begin subsidy renewal conversations before it is too late. New Yorkers are collectively paying for the 421-a program by foregoing exempted tax dollars that can otherwise be use to provide services and support other programs, and we all have a right to hold a program like 421-a accountable to let us know exactly how much it is benefiting everyday, working households looking for a place they can afford to call home.

Keep Conversation Focused on 421-a

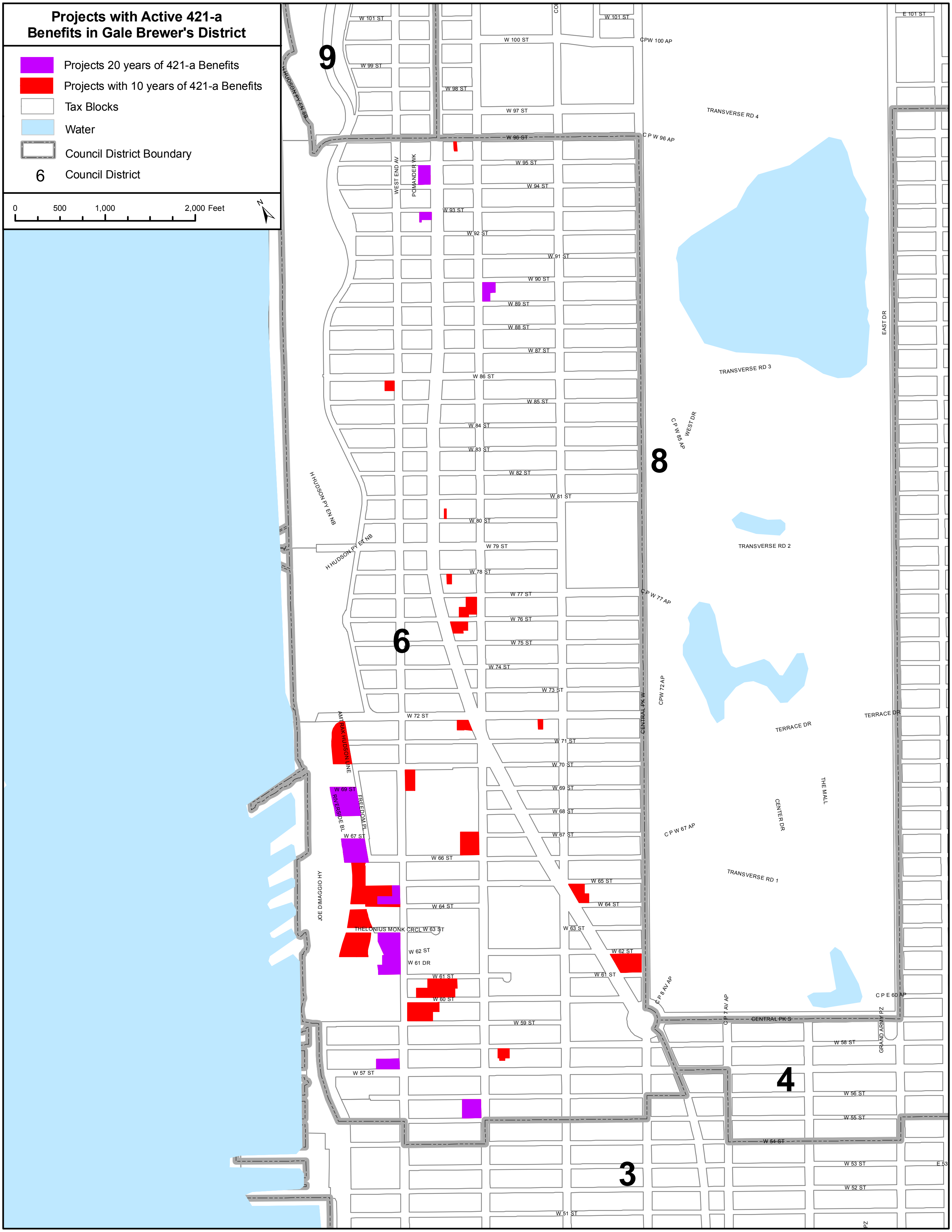
Finally, as City Council, the Administration, and my other colleagues continue to be in conversation with Albany policymakers over the upcoming expirations of many other housing laws and regulations, the 421-a conversation must be kept separate from other affordable housing conversations. Affordable housing is of utmost importance to New York City families and we need to strengthen all policies that can protect affordable housing. Recommendations for 421-a must not be conflated with recommendations for Rent Stabilization Law or with J-51.

In summary, I am calling for the following reforms to the 421-a Tax Benefits Program:

- End "double dipping" – each unit of affordable housing should only be used to satisfy a single subsidy's affordability requirements.
- Create affordable units that are truly affordable to low-income residents in the community – lower the average AMI ceiling for new 421-a projects with SGA, and increase the number of required affordable housing units for all new 421-a projects.
- Increase transparency and accountability – 421-a data, especially the number of affordable housing units created under each project, must be made publicly accessible in a user-friendly manner.

Thank you for the opportunity to testify at today's hearing. I look forward to continuing this conversation with many of you in the months to come.

Projects with Active 421-a Benefits in Gale Brewer's District



Source: NYC Department of Housing Preservation and Development, Office of Development, Division of Housing Incentives. May 16, 2013.

Projects with Active 421-a Benefits in Brewer's Countil District (6)

Data Source: MapPluto						Data Source: Department of Finance, Property Tax Benefit Information						Data Source: Tax Incentives Unit									
OBJECTID	Boro	Block	Lot	Address	Owner	421-a Benefit Amount for Yr 7/1/12 to 6/30/13 (Note 1)	Actual Tax Exemption Value @ Tax Rate= 13.181% (Note 2)	421-a Benefit Year	Total Benefit Years (Note 3)	421-a Benefit Start Date	421-a Benefit End Date	Project Type	Docket Number	Application Type	PCE Approval Date	FCE Approval Date	Length Of Exemption (Yrs)	Project DU	# of Bldgs	# of Lots	Assumed # of Affordable Units (Note 4)
1	MN	1067	7503	462 WEST 58 STREET	WESTWARD 58 PROPERTIES, LLC			3	10	7/1/2010	6/30/2020	CONDO	TEO8452	Online Application	12/21/2009	02/13/2012	10 Years	67	1	1	13
2	MN	1084	25	511 WEST 55 STREET	55TH CLINTON ASSOC LL	$ 32,261,023	$ 4,252,325	8	20	7/1/2005	6/30/2025	RENTAL	TEO4271	Paper Application	06/07/2004	02/22/2007	20 Years	371	1	1	77
3	MN	1105	29	601 WEST 57 StREET	W2001/Z 15 CENTRAL PK	$ 40,230,100	$ 5,302,729	7	20	7/1/2006	6/30/2026	RENTAL	TEO4699	Paper Application	05/09/2005	09/27/2006	20 Years	597	1	1	120
4	MN	1114	7503	15 CENTRAL PARK WEST	EE 57TH STREET NORTH			4	10	7/1/2009	6/30/2019	CONDO	TEO5758	Paper Application	02/28/2006		10 Years	231	1	1	46
5	MN	1117	1	1930 BROADWAY	DELBRO REALTY 1920	$ 17,774,230	$ 2,342,821	7	10	7/1/2006	6/30/2016	RENTAL	TEO4304	Paper Application	09/29/2004		10 Years	232	1	1	46
6	MN	1143	7505	120 West 72 STREET	120 WEST 72ND STREET, LLC			4	10	7/1/2009	6/30/2019	CONDO	TEO8608	Online Application	05/02/2008		10 Years	22	1	1	4
7	MN	1151	7502	10 WEST END AVENUE	EN WEST END AVENUE HOLDINGS LLC			5	10	7/1/2008	6/30/2018	CONDO	TEO6375	Paper Application	02/26/2007		10 Years	173	1	1	35
8	MN	1151	7503	555 WEST 59 STREET	ELEMENT-WEST 59TH STREET LLC			3	10	7/1/2010	6/30/2020	CONDO	TEO7096	Paper Application	07/11/2008	04/10/2013	10 Years	186	1	1	37
9	MN	1152	13	229 WEST 60 STREET	WEST 60TH STREET ASSO	$ 26,144,856	$ 3,446,153	2	10	7/1/2011	6/30/2021	RENTAL	TEO9012	Online Application	05/22/2009		10 Years	301	1	1	60
10	MN	1152	7501	225 WEST 60 STREET	VEST 60TH ST. REALTY PARTNERS LLC			6	10	7/1/2007	6/30/2017	CONDO	TEO6369	Paper Application	05/26/2006	04/23/2009	10 Years	80	1	1	16
11	MN	1152	7502	243 WEST 60 STREET	WEST END ENTERPRISES, LLC			2	10	7/1/2011	6/30/2021	CONDO	TEO8156	Online Application	07/02/2009		10 Years	41	1	1	8
12	MN	1158	7506	200 WEST END AVENUE	200 WEA SUB CO, LLC			4	10	7/1/2009	6/30/2019	CONDO	TEO8126	Online Application	06/30/2008	04/10/2013	10 Years	165	1	1	33
13	MN	1158	7507	150 AMSTERDAM AVENUE	) AMSTERDAM AVENUE HOLDINGS LLC	$ 28,248,018	$ 3,723,371	1	10	7/1/2012	6/30/2022	RENTAL	TEO9384	Online Application	05/28/2010		10 Years	310	1	1	62
14	MN	1163	7503	200 WEST 72 STREET	T-C 200 W 72ND STREET LLC	$ 18,678,780	$ 2,462,050	1	10	7/1/2012	6/30/2022	RENTAL	TEO9169	Online Application	02/16/2010		10 Years	196	1	1	39
15	MN	1167	7502	2148 BROADWAY	76TH AND BROADWAY OWNER LLC			1	10	7/1/2012	6/30/2022	CONDO	TEO10037	Online Application	07/27/2011		10 Years	71	1	1	14
16	MN	1168	7501	205 WEST 76 STREET	TERDAM & 76TH ASSOCIATES, LLC			2	10	7/1/2011	6/30/2021	CONDO	TEO8319	Paper Application	05/26/2009		10 Years	127	1	1	25
17	MN	1169	7502	230 WEST 78 STREET	AMSTERDAM 78, LLC			2	10	7/1/2011	6/30/2021	CONDO	TEO7739	Online Application	10/28/2009		10 Years	34	1	1	7
18	MN	1171	62	101 WEST END AVENUE	ASN WEST LLC	$ 47,843,900	$ 6,306,304	11	20	7/1/2002	6/30/2022	RENTAL	TEO3327	Paper Application	4/27/2001	2/14/2002	20 Years	507	1	1	104
19	MN	1171	63	75 WEST END AVENUE	BROADCOM WEST	$ 21,908,308	$ 2,887,734	17	20	7/1/1996	6/30/2016	RENTAL	TEO2706	Paper Application	4/2/1995	3/14/1996	20 Years	1000	1	1	200
20	MN	1171	129	180 RIVERSIDE BOULEVARD	EQR-180 RIVERSIDE H,	$ 34,224,614	$ 4,511,146	14	20	7/1/1999	6/30/2019	RENTAL	TEO3044	Paper Application	5/7/1999	8/30/1999	20 Years	516	1	1	104
21	MN	1171	133	140 RIVERSIDE BOULEVARD	EQR - 140 RIVERSIDE F, L.L.C.	$ 35,601,089	$ 4,692,580	9	20	7/1/2004	6/30/2024	RENTAL	TEO4139	Paper Application	04/13/2005	06/08/2007	20 Years	354	1	1	71
22	MN	1171	148	400 WEST 63 STREET	IMP ASHLEY LLC	$ 22,326,136	$ 2,942,808	1	10	7/1/2012	6/30/2022	RENTAL	TEO9749	Online Application	04/11/2011		10 Years	209	1	1	42
23	MN	1171	7502	220 RIVERSIDE BOULEVARD	)SON WATERFRONT COMPANY B, LLC			9	10	7/1/2004	6/30/2014	CONDO	TEO3892	Paper Application	06/27/2003	03/26/2004	10 Years	422	1	1	84
24	MN	1171	7503	240 RIVERSIDE BOULEVARD	IDSON WATERFRONT COMPANY A, LLC			7	10	7/1/2006	6/30/2016	CONDO	TEO4595	Paper Application	04/28/2004		10 Years	174	1	1	35
25	MN	1171	7504	120 RIVERSIDE BOULEVARD	DSON WATERFRONT COMPANY G, LLC			6	10	7/1/2007	6/30/2017	CONDO	TEO5566	Paper Application			10 Years	279	1	1	56
26	MN	1171	7505	100 RIVERSIDE BOULEVARD	CRP/EXTELL PARCEL H, L.P			4	10	7/1/2009	6/30/2019	CONDO	TEO7357	Paper Application	10/23/2007		10 Years	267	1	1	53
27	MN	1171	7506	33 WEST END AVENUE	THE 33 WEST END AVE C	$ 16,598,957	$ 2,187,909	6	20	7/1/2007	6/30/2027	RENTAL/COM	TEO7022	Paper Application	11/23/2007		20 Years	211	1	1	43
28	MN	1171	7507	80 RIVERSIDE BOULEVARD	CRP/EXTELL PARCEL I, L.P.			3	10	7/1/2010	6/30/2020	CONDO	TEO9136	Paper Application	05/11/2009		10 Years	289	1	1	58
29	MN	1171	7508	60 RIVERSIDE BOULEVARD	IMP ALDYN LLC	$ 9,975,293	$ 1,314,843	2	10	7/1/2011	6/30/2021	RENTAL	TEO9939	Online Application	03/28/2011		10 Years	136	1	1	27
30	MN	1171	7508	60 RIVERSIDE BOULEVARD	IMP ALDYN LLC			2	10	7/1/2011	6/30/2021	CONDO	TEO9940	Online Application	03/28/2011		10 Years	150	1	1	30
31	MN	1220	1	601 AMSTERDAM AVENUE	LPF SAGAMORE, INC.	$ 16,588,688	$ 2,186,555	13	20	7/1/2000	6/30/2020	RENTAL	TEO2950	Paper Application	3/6/1998		20 Years	265	1	1	54
32	MN	1228	7503	223 WEST 80 STREET	CAVAN DEVELOPMENT CORPORATION			7	10	7/1/2006	6/30/2016	CONDO	TEO4995	Paper Application	02/25/2005	06/23/2011	10 Years	12	1	1	2
33	MN	1240	52	2495 BROADWAY	L&M 93RD STREET LLC	$ 11,666,915	$ 1,537,816	5	20	7/1/2008	6/30/2028	RENTAL	TEO5950	Paper Application	09/18/2006		20 Years	143	1	1	29
34	MN	1242	10	2521 BROADWAY	BROADWAY DEVELOPMENT	$ 4,405,590	$ 580,701	11	20	7/1/2002	6/30/2022	RENTAL	TEO3372	Paper Application	09/27/2001	02/07/2002	20 Years				
35	MN	1242	9055	2527 BROADWAY	TED BROADWAY DEVELOPMENT, L.L.C.	$ 24,669,649	$ 3,251,706	11	20	7/1/2002	6/30/2022	RENTAL	TEO3372	Paper Application	9/27/2001	2/7/2002	20 Years	285	2	2	71
36	MN	1243	139	208 WEST 96 STREET	CATALPA DEVELOPMENT L	$ 3,307,500	$ 435,962	1	10	7/1/2012	6/30/2022	RENTAL	TEO9364	Online Application	03/19/2009	09/12/2011	10 Years	9	1	1	2

Total Market Rate Units	8,432
Total Affordable Units	1,709
% affordable created	20.27%
% affordable in CD6	10.01%

Note 1: Benefit Amount as obtained from DOF = ((AssessedValue - Base YearAssessed Value) * Phase Out Percentage)

Note 2: Actual Tax Exemption Value= Benefit Amt * Tax Rate. Example for Block 1105, Lot 29. ($ 41,311,000 - $ 1,080,900) X 100% = $ 40,230,100 * 13.181% = $5,302,729

Note 3: The Total Benefit Years excludes Construction Benefit which may be up to three years. The completion benefit will decrease at a set percentage as per Table 1.

Note 4: Projects with 20 year tax benefits have affordabilty requirements pursuant to either HDC or HFA financing, or 421-a Regulatory Agreements. Number of affordable units are confirmed. The number of affordable units assocaited with projects with 10 year tax benefits assumes 5 market rate units per affordable unit.