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Gale A. Brewer, Borough President

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**Recommendation on
ULURP Application Nos. C 150212 HAM and C 150211 ZMM -
La Promesa
by New York City Department of Housing Preservation and Development**

PROPOSED ACTIONS

The New York City Department of Housing Preservation and Development (“HPD” or “the applicant”) and its proposed development team of the East Harlem Council for Community Improvement (“EHCCI”) and the Acacia Network, seek the approval of multiple land use actions to facilitate the development of a twelve-story, mixed-use affordable housing project at 413 East 120th Street in East Harlem, Manhattan Community District 11. The proposed project is located on Block 1808, part of Lot 8, with frontage on First Avenue and East 120th Street.

HPD seeks designation of City-owned property as an Urban Development Action Area (“UDAA”) and approval for the project as an Urban Development Action Area Project (“UDAAP”). In addition, HPD seeks approval for the disposition of said property to Acacia Gardens HDFC, which will also manage all aspects of the facility. The project is being managed by the East Harlem Council for Community Improvement, Inc. and Acacia Networks (“The Developer.”) The applicant also seeks a zoning map amendment to change from an R7-2 zoning district to an R7X zoning district with a C1-5 commercial overlay on the site.

City-owned properties that are no longer in use or are in deteriorated or deteriorating condition are eligible to be designated as UDAA and UDAAP, pursuant to the Urban Development Area Act (Article 16 of the State General Municipal Law). UDAA and UDAAP provide incentives for private entities to correct substandard, unsanitary and/or blighted conditions. According to New York State General Municipal Law § 694(4), to receive a UDAA and/or UDAAP designation the City Planning Commission and the City Council must find that:

- (a) the present status of the area tends to impair or arrest the sound growth and development of the municipality;
- (b) the financial aid in the form of tax incentives, if any, to be provided by the municipality pursuant to [the tax incentives provisions of the Urban Development Action Area Act]... is necessary to enable the project to be undertaken; and

(c) the area designation is consistent with the policy and purposes [of the Urban Development Action Area Act].

Section 197-c of the New York City Charter mandates that the disposition of all City-owned real property (other than the lease of office space) be subject to the Uniform Land Use Review Procedure (“ULURP”). While no specific findings must be met to make a property eligible for disposition under Section 197-c, Section 1802(6)(j) of the Charter limits HPD to the disposition of residential real property.

PROJECT DESCRIPTION

HPD seeks to develop a 205,484 gross square foot building with 27 parking spaces that will contain 165,057 zoning square feet of residential uses (179 rental units), 4,334 square feet of community facility zoning floor area¹, and 5,450 commercial zoning floor area. The development will be located on City-owned land at 413 East 120th Street, which currently serves as parking and flexible meeting and office space for the East Harlem Multi Service Center (EHMSC). The proposed building is 12 stories tall, approximately 121 feet in height, with a street wall of approximately 85 feet. The property will be owned by Acacia Gardens Housing Development Fund Corporation and will be managed by Promesa Housing Development Fund Corporation’s property management arm, Promesa HDFC Property Management.

The East Harlem Council for Community Improvement, Inc. (EHCCI) is presently contracted by the New York City Human Resources Administration (HRA) to manage the community facility space of the East Harlem Multi-Service Center site and has done so for some time. In 2003, EHCCI became an affiliate of a precursor organization to what is currently Acacia Networks, which provides administrative and infrastructure services as well as assistance with compliance and operational issues as they arise.

The majority of the units will be for households earning 60% Area Median Income (AMI) or below. Eighteen units will be for households earning 30% AMI; 27 units will be for households earning 40% AMI; 27 units will be for households earning 50% AMI; 88 units will be for households earning 60% AMI; and 18 units will be for households earning 90% AMI. The final unit of the 179 unit total will be for the superintendent of the building.

A secondary goal of the project is to promote active living. The building will contain a ground floor level bicycle storage room as the project is conveniently located by East Harlem’s principal north/south bike route along First and Second avenues (Class I, physically separated lanes) and an east/west corridor along East 120th and East 119th streets (Class II, unbuffered bike lane.) Exercise equipment will also be available to building residents.

¹ At the time of certification, the square feet allocated for community facility use was 4,200 sf. This square footage was later revised based on discussions with this office.

Background

HRA previously retained jurisdiction over the entirety of Block 1808, Lot 8, the site of the proposed project and the East Harlem Multi Service Center. Jurisdiction over a portion of the site was transferred to HPD in order to facilitate the development of affordable housing with the condition that if a portion of the service center was removed as part of the construction, that it would be replaced in kind. This condition was memorialized in a June 8, 2009 letter from the Senior Executive Deputy Commissioner of HRA to the Assistant Commissioner of HPD. The letter describes HRA's belief that the structure that replaces the demolished "annex" be used in a manner that is similar to the EHMSC itself. The letter stated that:

1. The deed from HPD to Promesa for this property must include a covenant that runs with the land that states that "a portion of the new structure shall be used to house not-for-profit community service organizations for license or lease fees on a square foot basis that are substantially lower than market value for similar square footage."; and
2. The space used for that function could be "no less than 4,200 square feet and no more than 23,000 square feet of space."

Area Context

The neighborhood surrounding the project site contains strong residential and commercial elements, as well as a variety of building typologies. To the south of the project on First Avenue, mixed use, medium density residential buildings with ground floor retail predominate. To the north, residential tower-in-the-park style public housing is the dominant form. Across East 120th Street, opposite the project site, are midrise multifamily residential buildings.

The project shares the block with the Wagner Houses, a New York City Housing Authority (NYCHA) estate, which, outside of the EHMSC facility, spans the entire block. The NYCHA complex extends to include a block bounded by East 126th Street, First Avenue, East 120th Street and Second Avenue. Other NYCHA estates are found just south of the project site, such as Jefferson Houses and Johnson Houses, five blocks away on East 115th Street. The buildings in Wagner Houses, Jefferson Houses, and Johnson Houses are 16 stories, 14 stories, and 14 stories respectively.

The neighborhood is well served by open space, though access to that open space is limited and at-risk of future reduction. The Wagner House's Pool, managed by the Parks Department, has been underfunded in the past and its continued operation is uncertain. Randall's Island recreation facilities are similarly close to the site, but can only be accessed by traversing the pedestrian walkway across the RFK (Formerly Triboro) Bridge. One block away from the project site there is a pedestrian overpass to the East River Esplanade, which after capital improvements and repairs will serve

as a safe and reliable active and passive recreation space as well as a safe connection to the Upper East Side and Midtown East. Thomas Jefferson Park, which contains a running track, soccer field, swimming pool, and adult jungle gym, lies eight blocks south.

The development site and the block containing the site are zoned R7-2, which permits residential structures to be built up to 3.44 FAR without a height limit and 4.0 FAR and an 80 foot height limit with the Quality Housing option. The area south of the site was rezoned with contextual districts in 2003. The midblocks south of East 120th Street were generally rezoned to R7A and R7B. Lots along First Avenue were rezoned to R7X with a C1-5 overlay. There is a major commercial development six blocks away on East 117th Street, just east of Pleasant Avenue with several big box style retail stores in a C4-4 zoning district.

The neighborhood is accessible by various modes of public transit. Express and local trains on the Lexington Avenue Line are available at East 125th Street and Lexington Avenue. Local 6 train service is also available at East 116th Street and Lexington Avenue. The M15 and M15 Select provide service to the north and south via First and Second avenues respectively. On 120th and Pleasant Avenue, the M116 provides crosstown service via 116th Street. On 125th Street the M60 Select provides crosstown service to the Upper West Side and La Guardia Airport in Queens. The M100 provides service to Upper Manhattan via Amsterdam Avenue and Broadway. The Bx15 provides service to Fordham Plaza via Third Avenue in the Bronx.

While the area is served by public transportation, the Metropolitan Transportation Authority has identified significant capital spending priorities for the neighborhood to expand and improve access. The second phase of the Second Avenue Subway project is awaiting funding to reestablish a second rapid transit heavy rail line on the East Side of Manhattan. The Final Environmental Impact Statement for the project calls for a station on East 116th Street and Second Avenue.

Proposed Actions

The applicant seeks two separate ULURP approvals to facilitate the La Promesa project:

- 1) Application No. C 150212 HAM requests the designation of City-owned property located at 413 East 20th Street (Block 1808, part of Lot 8) as an Urban Development Action Area (“UDAA”) and approval for the project as an Urban Development Action Area Project (“UDAAP”). In addition, HPD seeks approval for the disposition of said property to Acacia Gardens HDFC, which will also manage all aspects of the facility.
- 2) Application No. C 150211 ZMM requests a zoning map change to change the underlying zoning of the site from an R7-2 District to an R7X District with a

C1-5 commercial overlay. The proposed R7X District would extend to a depth of 180 feet from East 120th Street and would extend to a depth of 200 feet from First Avenue. The C1-5 commercial overlay District runs along First Avenue and extends 100 feet into the lot.

With the commercial overlay, the proposed zoning would permit commercial retail uses, which were not permitted under the R7-2 zoning. The proposed zoning increases the residential FAR from 4.0 to 5.0, decreases the community facility FAR to 5.0 from 6.5, and permits 2.0 FAR of commercial use. In addition, the minimum base height is increased from 40 feet to 60 feet, the maximum base height is increased from 65 feet to 85 feet, and the maximum building height is 125 feet for R7X districts instead of 80 feet under the R7-2 zoning.

COMMUNITY BOARD'S RECOMMENDATION

At its Full Board meeting on March 17th, 2015, Manhattan Community Board 11 voted to recommend approval of the application by a vote of 33 in favor, 0 opposed and 2 abstentions.

BOROUGH PRESIDENT COMMENTS

This project is the result of years of work and resolve from EHCCI, the Acacia Network, and HPD. It has survived the financial crisis and resulting recession as well as Hurricane Sandy, which required a redesign to conform to new flood-resilient building regulations. The result of this extended project design period is an impressive number of permanently affordable units for East Harlem residents and New Yorkers.

The project meets the findings for UDAA/UDAAP designation as the expansive surface parking lot that presently dominates the corner of East 120th Street and First Avenue deadens the street and creates an environment that passers-by are quick to avoid. As proposed, the development will serve as a transition between several neighborhood elements. By replacing a surface parking lot with a 179 unit residential building with ground floor retail and community facility space, the development team will extend the liveliness of First Avenue northward to connect with the community that resides in Wagner Houses.

The R7X zoning district is appropriate, as it is an extension of the existing zoning for First Avenue below East 120th Street. The additional density and height that the R7X district provides over the existing R7-2 district will be used to create additional units within a completely affordable development. The contextual district will limit the structure to a height that is lower than the towers of Wagner Houses on the same block. The superblocks of East Harlem generally break up corridors of ground

floor commercial space that are available on neighborhood thoroughfares. Extending the C1-5 commercial overlay over more of the avenue is a step in the right direction in the attempt to repair those gaps and expand the supply of commercial space where it is most appropriate.

The expectations from HRA regarding the amount and usage of community facility space were reasonable. During this office's evaluation of the proposal, it was determined that the amount of community facility space proposed at certification fell slightly below the floor that was established in the 2009 letter from HRA. Given the complexities of the project, it is understandable that some details may have been overlooked. The development team was notified of the discrepancy and they were able to quickly modify the layout of their tenant parking area to accommodate a modest expansion of the community facility space from 3,920 square feet to 4,334 square feet, thus satisfying one of the requirements set out in the letter. The applicant should submit a revised application to memorialize this change. As the approval process continues the applicant must still create a deed restriction to ensure that the community facility space will be filled and utilized in a similar manner to the EHMSC next door. The CPC should ensure that this deed restriction fully conforms to the terms of the 2009 letter.

At the Community Board 11 public hearing, members of the public raised concerns about past labor practices of the general contractor that will be used for the construction of this project. According to HPD, this contractor is on an "Enhanced Contractor Review" list, for firms that are presently involved in or have a history of labor law violations. According to the HPD website, contractors can be placed on this list because:

- The Contractor has \$500,000 or more in current prevailing wage withholdings; or
- The Contractor has a history of multiple or significant construction quality issues; or
- The Contractor has a history of multiple or significant labor law or construction law violations, as evidenced by
 - One or more determinations in judicial or administrative proceedings (unless such determination has been reversed on appeal),
 - One or more settlements, pleas, or other agreements in judicial or administrative proceedings; and/or
 - Non-confidential information based upon which HPD has reason to believe that the Contractor has violated such laws.
- The Contractor is listed in the federal *Excluded Parties List System*, the *List of Employers Ineligible to Bid on or Be Awarded any Public Work Contract* maintained by the State Department of Labor, and/or the *List of Debarred Offerors* maintained by the State Office of General Services.

At the request of HPD, the contractor for this project will take steps to ensure adherence to city rules and policy with the hiring of an independent monitor. While

the use of a contractor from the Enhanced Review List does not change the fact that this project meets the findings, the question remains to what extent must a firm violate the law to not be considered for a project, regardless of submitting the lowest reasonable bid. It is critical that construction be of high quality and safely undertaken and this is most likely to occur when well-paid skilled workers are employed by contractors and subcontractors that abide by labor laws. In addition, when the city undertakes the construction of affordable housing, the construction of such should not exacerbate rent burdens for the target population by paying these workers less.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends approval with conditions of ULURP Application Nos. C 150212 HAM and C 150211 ZMM provided that the applicant:

- 1. Provides community facility space in excess of 4,200 square feet; and**
- 2. Submits language for a deed restriction that would require that the community facility space be occupied by a not-for-profit social service organization at a below market rent as stipulated by the June 8, 2009 HRA letter.**



Gale A. Brewer
Manhattan Borough President