

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is entered into this 12th day of November, 2015, by and between the Petitioner Attorney General of the State of New York (the "Petitioner" or "NYAG") and Respondents Ft. George Apt. Corp. ("Apt. Corp."), Fort George Property, LLC, Fort George Realty, LLC and NY Tryon Realty LLC (collectively the "Respondents") (Petitioner and Respondents are collectively referred to herein as the "Parties" and individually as a "Party"). This Settlement Agreement is entered voluntarily by the Parties.

WHEREAS, on January 15, 2015, the Petitioner commenced this special proceeding pursuant to New York Business Corporation Law §§ 109, 1101(a)(2), and 1115, and Civil Practice Law and Rules §§ 6301 and 6313, seeking dissolution of Respondent Apt. Corp., the owner of the building located at 121-131 Fort George Avenue, New York, New York (the "Building").

WHEREAS, the Parties wish to settle this proceeding and all disputes between them on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

IT IS HEREBY CONSENTED TO, STIPULATED AND AGREED, by and between the Parties, as follows:

1. Simultaneous with the execution of this Settlement Agreement, the Parties shall execute the Stipulation of Discontinuance with prejudice in the form annexed hereto and made a

part hereof as Exhibit A and NYAG shall electronically file the Stipulation of Discontinuance immediately thereafter.

2. As also set forth herein below in paragraph 14, simultaneous with the execution of the Settlement Agreement all apartments in the Building shall be registered with the New York State Division of Housing and Community Renewal (“DHCR”) and tenants shall be provided rent stabilized leases by mailing same and executing the Affidavit of Mailing and Registration annexed hereto as Exhibit B.

3. Respondents Fort George Property, LLC, Fort George Realty, LLC and NY Tryon Realty LLC (“Respondent Owners”)¹ will amend and restate the existing offering plan in accordance with the terms hereof.

4. NYAG hereby agrees that Respondent Owners may submit an amended and restated Plan (the “Restated Plan”).

5. Respondent Owners shall submit the Restated Plan to NYAG within four (4) months of execution of this Settlement Agreement. In the event Respondent Owners do not submit the Restated Plan to NYAG within such timeframe, NYAG and Respondents agree that the initial offering plan for the Apt. Corp. shall be deemed abandoned and the NYAG shall process the RS-3 currently held in escrow. If Respondent Owners timely submit the Restated Plan, the RS-3 shall be returned within two (2) business days of submission of the Restated Plan to Respondent Owners and the NYAG will not retain any copies.

6. In the event Respondent Owners fail to submit a Restated Plan within the timeframe set forth in Paragraph 5 above, Respondent Owners shall not be precluded from

¹ Any and all obligations set forth herein for Respondent Owners include ongoing obligations on Respondent Owners, its principals, affiliates, successors or assigns, and any holders of unsold shares or successor sponsors.

converting the Building to a Housing Development Fund Company (“HDFC”) under Article XI of the N.Y. Priv. Hous. Fin. Law after abandoning the offering plan. Such HDFC shall be incorporated with the consent of the New York City Department of Housing Preservation and Development, which shall serve as the supervising agency (“Supervising Agency”). NYAG and Respondent Owners agree that such conversion shall be subject to N.Y. Gen. Bus. Law Section 352-e, and that NYAG shall permit the conversion of the Building to an HDFC pursuant to the terms of an exemption application in lieu of an offering plan. NYAG shall waive the fee for such exemption application. The exemption application shall include the terms and conditions agreed to in Paragraphs 10, 11, 12 and 17, unless the Supervising Agency objects thereto.

7. Once the Restated Plan is submitted, NYAG shall issue comments, if any, to the Restated Plan to Respondent Owners’ attorneys within thirty (30) days² of submission of the Restated Plan to NYAG.

8. Respondent Owners shall pay the \$225 amendment filing fee required by N.Y. Gen. Bus. Law § 352-e(7)(a) at the time of the submission of the Restated Plan. NYAG agrees that Respondent Owners shall not be required to pay any other fee for filing the Restated Plan.

9. Respondent Owners shall file an amendment to the Restated Plan annually, for as long as there are unsold apartments in the Building, and pay the amendment filing fee required by N.Y. Gen. Bus. Law § 352-e(7)(a) for each subsequent amendment submission.

10. The Restated Plan shall comply with disclosure requirements of the Martin Act and 13 N.Y.C.R.R. Part 18, unless NYAG agrees to exempt the Respondent Owners from meeting the disclosure requirements of the regulations. Moreover, the Restated Plan must include the following negotiated terms:

² All references herein to obligations to be completed by the Parties within a stated number of days refer to calendar days, not business days.

- a. A Schedule A of the Restated Plan with prices as set forth in Exhibit C annexed hereto and made a part hereof.
- b. An exclusive ninety (90) day purchase period for tenants in occupancy to purchase shares allocated to their apartments at the “insider” price set forth on Exhibit C. After the expiration of such ninety (90) day period, Respondent Owners may change the “insider” price pursuant to the terms of the Restated Plan or by a duly filed price change amendment to the Restated Plan.
- c. A statement (or representation) that Respondent Owners will have an obligation to sell all shares allocated to unsold apartments, as they become vacant, to bona-fide purchasers, through the use of commercially reasonable good faith efforts, subject only to subparagraphs 10(f) – (g) hereof.
- d. A statement (or representation) that Respondent Owners shall not be obligated to sell any shares allocated to apartments occupied by non-purchasing tenants until they are lawfully vacated.
- e. That Respondent Owners shall use commercially reasonable good faith efforts to sell shares allocated to vacant apartments in a reasonably timely fashion. “Commercially Reasonable Good Faith Efforts” shall include, but not be limited to, listing an apartment for at least 120 days with an independent qualified real estate broker at a price that is consistent with comparable apartments sold within a comparable time period within Manhattan Community District 12.
- f. Thereafter, if Respondent Owners are unsuccessful in selling shares allocated to an apartment after using Commercially Reasonable Good Faith Efforts to sell shares allocated to a vacant apartment, the apartment may be sublet. When the subtenant vacates the apartment, Respondent Owners are once again obligated to undertake Commercially Reasonable Good Faith Efforts to sell the shares allocated thereto. The subletting of an apartment by Respondent Owners shall be subject to rent stabilization laws and any exemptions thereto, including 9 N.Y.C.R.R. § 2520.11(l) and N.Y.C. Adm. Code § 26-504.
- g. At no point may Respondent Owners sublease, at market-rate rents, more than 20% of the apartments in the Building, i.e. 9 apartments, unless apartments have not sold pursuant to Commercially Reasonable Good Faith Efforts, and leaving such apartments vacant would result in a financial hardship for Respondent Owners (e.g. lender default).
- h. Accompanying the annual amendment to the Restated Plan (as required hereinabove in paragraph 9), as a back-up exhibit, but not included therein, in addition to complying with 18 N.Y.C.R.R. § 18.5, Respondent Owners shall disclose the status of each apartment in the Building, including apartment number, apartment occupancy status (whether occupied by rent stabilized

tenant, market-rate tenant, vacant, or sold to a bona fide purchaser), date range of any period(s) of time during which the apartment was vacant (if applicable), date range for any period of time that the apartment was marketed for sale (if applicable), date sold (if applicable), the date the apartment was leased by a market-rate tenant (if applicable), and the date the market-rate lease is set to expire (if applicable). The format should be as follows:

Apartment #	Apartment occupancy status	Dates vacant	Dates marketed for sale	Date sold	Date leased to market Tenant	Market Tenant lease expiration date
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NYAG reserves the right to request additional information to ensure Respondent Owners are complying with the terms of the Settlement Agreement. Upon request by the NYAG, Respondent Owners shall produce such information within thirty (30) days.

- i. Respondent Owners shall establish a reserve fund for Apt. Corp. pursuant to the recommended contribution set forth by the 30-year capital needs “Reserve Fund Study” performed by Strategic Inspections, LLC, dated August 20, 2015,³ to be funded by (i) cash contributions by Respondent Owners, (ii) allocations from maintenance payments by the shareholders to be capped at ten percent (10%) based on a Building operating budget without a reserve fund, (iii) funds received from a flip tax not to exceed five percent (5%) of sales price; and (iv) proceeds from a mortgage on the Building, which may be paid as an operating expense from maintenance charges, so long as such mortgage does not exceed 25% of the market value of the Building, and is from a conventional lender with prevailing terms. Under no circumstances shall the Respondents Owners encumber the Building with a wraparound mortgage.
- j. Respondent Owners will relinquish control of the Board of Directors of Apt. Corp. no later than the earlier of (i) five (5) years after the first closing of a sale of unsold shares pursuant to the Restated Plan, or (ii) whenever the unsold shares constitute less than fifty percent (50%) of the total shares of Apt. Corp.
- k. Respondent Owners shall cooperate and work in good faith with either a governmental agency or not-for-profit organization, such as the New York City Department of Housing Preservation and Development (“HPD”) or the New York Mortgage Coalition (“NYMC”), to provide tenants in occupancy with conventional financing necessary to purchase shares allocated to their

³ The “Reserve Fund Study” performed by Strategic Inspections, LLC, shall be annexed to the Restated Plan as an Exhibit.

apartments, which may include, but not be limited to (i) participating and cooperating, where necessary, with a HUD-approved housing counseling agency charged with conducting informational workshops with tenants in occupancy for home-buying readiness; (ii) providing at least two (2) conventional lenders as preferred lenders in the Restated Plan who shall offer financing for tenants in occupancy; and (iii) providing access to the Building and necessary documentation required to pre-qualify the Building with the preferred lenders. Respondent Owners shall not be required to pay any additional costs for these services, other than the commercially reasonable administrative costs of Respondent Owners associated with meeting the criteria set forth above, *e.g.*, providing necessary personnel and files.

- l. Respondent Owners shall disclose in the Restated Plan the name of the governmental agency or not-for-profit organization secured to provide the services set forth in subparagraph j above, and shall comply with the financing contingency disclosures set forth at 13 N.Y.C.R.R. § 18.3(t) and include such disclosures in the Restated Plan.
- m. Respondent Owners shall also ensure that the Restated Plan includes tenant protections for existing non-purchasing tenants and existing tenants in occupancy, as required by the Martin Act and 13 N.Y.C.R.R. Part 18.

11. NYAG acknowledges and confirms that because the Restated Plan to be submitted pursuant to this Settlement Agreement is amended and restated, Respondent Owners shall not be required to:

- a. Re-declare the Plan effective (*e.g.*, no requirement for 15% of sales);
- b. Create a new reserve fund pursuant to Local Law 70 of 1982 as represented by HPD to NYAG;

12. At the time the Restated Plan is submitted to NYAG, pursuant to 13 N.Y.C.R.R. § 18.1(k), Respondent Owners may apply for an exemption from the following items in the Restated Plan, and NYAG shall grant Respondent Owners' request for an exemption so that the Restated Plan need not include:

- a. Certified financial statements prior to 2014;
- b. A form of contract of sale for the Building;
- c. Discussion of tax consequences regarding tax free exchange upon sale of the Building, as required by Gen. Bus. Law § 351, if applicable;

- d. Description of Property and Building Condition Report;
- e. An Asbestos Report;
- f. A Certification by Engineer or Architect;
- g. Opinion of Reasonable Relationship and Attorney's Income Tax Opinion, which shall be substituted with the following information:
 - i. A copy of the original Opinion Reasonable Relationship Letter;
 - ii. A copy of the original Attorney's Income Tax Opinion; and
 - iii. A statement in the Restated Plan as to whether the Apartment Corporation is currently a qualified cooperative housing corporation under Section 216 of the Internal Revenue Code ("IRC"), and a statement that Respondent Owners, or the Apartment's Corporation's accountants, will provide the tenant-shareholders with the information necessary to take advantage of the tax deductions permitted by IRC 216 annually, to extent applicable.

13. In the event that Respondent Owners receive subscription agreements for less than forty (40%) percent of the unsold apartments by the end of the ninety (90) day exclusive purchase period for tenants in occupancy after the filing of the Restated Plan, inclusive of any unsold vacant apartments subscribed for by bona fide non-tenant purchasers, Respondent Owners shall have the right, at their sole option, to declare the Restated Plan abandoned by submitting an amendment to that effect to NYAG. In the event the Restated Plan is so abandoned, NYAG shall process the RS-3 referenced in Paragraph 5, and the unsold apartments shall remain subject to rent stabilization and any exemptions thereto, except the cooperative exemption to rent stabilization pursuant to N.Y.C. Adm. Code § 26-504 and 9 N.Y.C.R.R. § 2520.11(l) shall not apply, unless Respondent Owners shall thereafter file a new offering plan. Any such new offering plan shall not be restated and amended, but shall be in the form of a new offering plan and will not have the benefit of Paragraphs 3, 4, 8, 11 and 12 hereof. In the event the Restated Plan is abandoned, the building shall continue to be owned by Ft. George Apt. Corp. but shall be operated exclusively as

a rent stabilized building.

14. Simultaneously with the full execution of this Settlement Agreement, Respondent Owners shall submit for registration all apartments in the Building with DHCR.

- a. The base rents to be registered with DHCR are set forth in Exhibit D attached hereto and made a part hereof.
- b. Simultaneously with registration of the rents, Respondent Owners shall mail proposed rent stabilized leases, offering the option of one (1) or two (2) year leases to all tenants of record in occupancy of the Building, at the rents set forth on Exhibit D.

15. As set forth in Exhibit E, a letter executed by Sheldon Melnitsky, the managing attorney of DHCR, DHCR has determined that the rents, as set forth in Exhibit D, upon registration with DHCR shall constitute the valid and proper rents and tenants will not be entitled to overcharges for any non-stabilized rents charged prior to registration of the rents set forth in Exhibit D. As a requirement of amending and restating the existing offering plan, NYAG and Respondent Owners hereby agree that all apartments in the Building must be registered with DHCR prior to submission of the Restated Plan to NYAG for review. Because, pursuant to the Restated Plan, Respondent Owners are making a new offering of the shares allocated to apartments to tenants in occupancy, DHCR and NYAG take the position that N.Y.C. Adm. Code § 26-504 and 9 N.Y.C.R.R. § 2520.11(1) are currently inapplicable, and that apartments in the Building shall not be eligible for exemption from Rent Stabilization Laws until the following occur: 1) the Restated Plan is accepted for filing by NYAG or the Building is converted to an HDFC; and 2) the 90-day exclusive period to tenants in occupancy has expired. Pursuant to 9 N.Y.C.R.R. § 2522.6 and 2520.4, the rents shall be registered with DHCR at the amount set forth in Exhibit D.

16. All Parties are relying on and agree with the representations made by DHCR that

the rents to be registered with DHCR, as set forth in Exhibit D, are valid and in compliance with law and all parties agree not to challenge the validity and enforceability of such rents. NYAG hereby agrees to cooperate with Respondent Owners in any proceeding brought by any tenants or other parties before DHCR or any court challenging the validity of the rents on Exhibit D.

17. Respondent Owners shall not offer buy-outs of rent stabilized tenants from the date of the execution of this Settlement Agreement through 120 days after presentation of the Restated Plan. Thereafter, if Respondent Owners wish to offer buy-outs to all tenants, they may do so only after the Restated Plan has been updated by a duly filed amendment that complies with the disclosure requirements set forth in the July 9, 2015 Policy Memo "Tenant Buyouts" prior to offering buy-outs. Any apartment that is vacated as a result of a Respondent Owner-initiated buy-out must be marketed and sold by Respondent Owners; such apartments shall not be subleased thereafter. If buy-out offer(s) is stated in an amendment, then it is *prima facie* Respondent Owner-initiated. Any apartment that is vacated as a result of a tenant-initiated buy-out and buy-out as a result of a landlord-tenant proceedings, are subject to subparagraphs 10(f)-(g) and Respondent Owners must engage in Commercially Reasonable Good Faith Efforts to sell such an apartment, but if unsuccessful, may sublet thereafter. If the buy-out is tenant-initiated, such must be explicitly stated in affidavits from Respondent Owners and from the tenant who has accepted the buyout offer. NYAG takes no position on the legality of rent-stabilized tenant buy-outs. Notwithstanding the forgoing, if Respondent Owners abandon Restated Plan this paragraph shall have no force and effect.

18. Simultaneous with the full execution of this Settlement Agreement, Respondent Owners shall pay NYAG by check or wire transfer the sum of ten thousand dollars and zero cents (\$10,000.00) for NYAG's costs and expenses of its investigation; the undersigned Assistant

Attorney General shall provide wiring instructions, if necessary.

19. This Settlement Agreement may not be amended except by an instrument in writing signed on behalf of all of the Parties to this Settlement Agreement, and any purported amendment of this Settlement Agreement that is not memorialized in a writing signed by all Parties shall be deemed null and void.

20. This Settlement Agreement shall be binding on and inure to the benefit of the Parties to this Settlement Agreement and their respective successors and assigns.

21. In the event that any one or more of the immaterial provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Settlement Agreement.

22. All notices, reports, requests and other communications to any Party pursuant to this Settlement Agreement shall be in writing and sent by personal delivery, overnight courier or certified or registered mail, return receipt requested, and shall be directed as follows:

If to Respondents:

Black Spruce Management LLC
276 Fifth Avenue, Suite 402
New York, New York 10001
Attn: Mr. Josh Gotlib

with a copy to:

Pryor Cashman LLP
7 Times Square,
New York, New York 10036
Attn: Ronald B. Kremnitzer, Esq.

If to NYAG:

Bureau Chief
Real Estate Finance Bureau
Office of the Attorney General
120 Broadway, 23rd Floor
New York, New York 10271

23. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

24. This Settlement Agreement constitutes the entire agreement between the NYAG and Respondents and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Settlement Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth in this Settlement Agreement has been made to or relied upon by any Party in entering into this Settlement Agreement.

25. Entry into this Settlement Agreement by (i) NYAG shall not be deemed or construed as approval by NYAG of any of the practices, acts, or conduct alleged in the Petition; Respondents shall not state or imply or cause to be stated or implied that the NYAG has approved, sanctioned, or authorized any practice, act or conduct of Respondents alleged in the Petition, and (ii) Respondents shall not be deemed or construed an admission of any wrong doing by Respondents.

26. NYAG retains the right under New York Executive Law Section 63(15) to compel compliance with this Settlement Agreement. Evidence of a violation of this Settlement Agreement shall constitute *prima facie* proof of violation of the applicable law

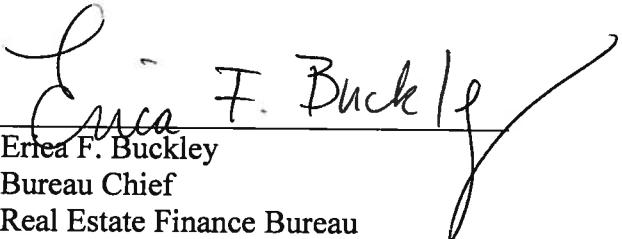
in any civil action or proceeding thereafter commenced by NYAG.

27. NYAG finds the relief and agreements contained in this Settlement Agreement appropriate and in the public interest.

28. This Settlement Agreement may be executed in one (1) or more counterparts, by either original signature or signature transmitted by facsimile transmission or electronic mail, and each copy so executed shall be deemed an original.

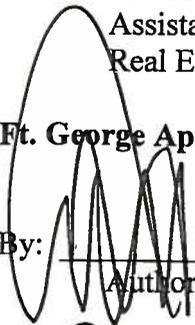
IN WITNESS WHEREOF, this Settlement Agreement is executed by Respondents and NYAG as of November 12, 2015.

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York

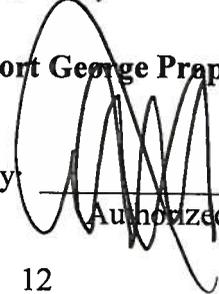
By: 
Erica F. Buckley
Bureau Chief
Real Estate Finance Bureau

By: 
Richard Shore
Assistant Attorney General
Real Estate Finance Bureau

Ft. George Apt. Corp.

By: 
Authorized Signatory

Fort George Property, LLC

By: 
Authorized Signatory

Fort George Realty, LLC

By: _____
Authorized Signatory

NY Tryon Realty LLC

By: _____
Authorized Signatory