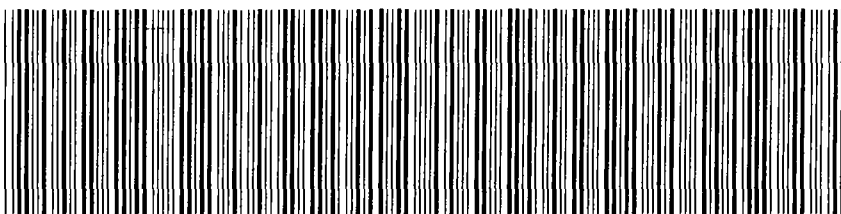


**NYC DEPARTMENT OF FINANCE  
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**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 18**

**Document ID: 2003031701639001**

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**PRESENTER:**

EXCALIBUR LAND SERVICES, INC.  
77 SPRUCE STREET  
SUITE 206  
CEDARHURST, NY 11516  
516-374-0080  
karla@excaliburland.com (elto4033)

**RETURN TO:**

KRAMER LEVIN NAFTALIS & FRANKEL LLP  
919 THIRD AVENUE  
ATTN: MICHAEL T. SILLERMAN, ESQ.  
NEW YORK, NY 10022

**PROPERTY DATA**

Borough	Block	Lot	Unit	Address
MANHATTAN	1347	122	Entire Lot	351 EAST 54 STREET
<b>Property Type: APARTMENT BUILDING</b>				

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or Document ID \_\_\_\_\_ or Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**GRANTOR/SELLER:**

EAST 54TH STREET HOUSING DEVELOPMENT FUND  
CORP.  
80 MAIDEN LANE, 21ST FLOOR  
NY, NY 10038

**GRANTEE/BUYER:**

351 EAST 54 LLC.  
C/O ALEXICO MANAGEMENT GROUP, INC., 150  
EAST 58TH STREET  
NY, NY 10155

**FEES AND TAXES**

<b>Mortgage</b>			Recording Fee: \$	122.00
Mortgage Amount:	\$	0.00	Affidavit Fee: \$	0.00
Taxable Mortgage Amount:	\$	0.00	NYC Real Property Transfer Tax Filing Fee:	
Exemption:			\$	25.00
<b>TAXES:</b>			NYS Real Estate Transfer Tax:	
County (Basic):	\$	0.00		EXEMPT
City (Additional):	\$	0.00		
Spec (Additional):	\$	0.00		
TASF:	\$	0.00		
MTA:	\$	0.00		
NYCTA:	\$	0.00		
<b>TOTAL:</b>	\$	0.00		

**RECORDED OR FILED IN THE OFFICE  
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CITY OF NEW YORK**

Recorded/Filed 07-03-2003 10:54

City Register File No.(CRFN):

2003000210182



*John J. Lawrence*  
City Register Official Signature

## **ZONING LOT DEVELOPMENT AND EASEMENT AGREEMENT**

**THIS ZONING LOT DEVELOPMENT AND EASEMENT AGREEMENT** (this "Agreement"), dated as of this 13<sup>th</sup> day of February, 2003, between **EAST 54TH STREET HOUSING DEVELOPMENT FUND CORP.**, a New York housing development fund corporation, having an address at 80 Maiden Lane, 21st Floor, New York, New York 10038 ("54 HDFC") and **351 EAST 54 LLC**, a New York limited liability company, having an address at c/o Alexico Management Group, Inc., 150 East 58th Street, New York, New York 10155 ("351 LLC").

### **WITNESSETH:**

**WHEREAS**, 54 HDFC is the owner in fee of certain land, with the building and improvements thereon, located in the Borough of Manhattan, County, City and State of New York, known as Lot 122 in Block 1347 on the Tax Map of the City of New York, and as and by the street address 351 East 54th Street, New York, New York, and more particularly described in **Exhibit "A"** annexed hereto and made a part hereof (said land is hereinafter referred to as the "Land"; said building and improvements together with any alterations to and future replacements thereof are hereinafter referred to as the "54 HDFC Building"; and the Land and 54 HDFC Building are hereinafter referred to as the "54 HDFC Premises");

**WHEREAS**, the 54 HDFC Building contains less floor area, as defined in the Zoning Resolution (as hereinafter defined), than is now available for use on the 54 HDFC Premises pursuant to the Zoning Resolution, so that the Excess Development Rights (as hereinafter defined) are available for transfer to and use on the Airspace (as hereinafter defined) and any Additional Parcel (as hereinafter defined) in accordance with Section 12-10 of the Zoning Resolution;

**WHEREAS**, 54 HDFC acquired the 54 HDFC Premises from 351 LLC pursuant to a certain Asset Administration Agreement, dated as of October 21, 2002, as amended by that certain Supplementary Asset Administration Agreement, dated October 29, 2002 (the "Contract"), which Contract provided, among other things, that 351 LLC would retain and continue to own the Excess Development Rights; and in connection therewith, 351 LLC transferred the 54 HDFC Premises to 54 HDFC by a deed dated of even date herewith, which excluded from the conveyance and reserved to 351 LLC (i) the Excess Development Rights and (ii) the Airspace, so that 351 LLC today owns in fee simple the Excess Development Rights and the Airspace, and 54 HDFC has no right, title or interest in either the Excess Development Rights or the Airspace; the Excess Development Rights and Airspace, together with the Land and 54 HDFC Building, are hereinafter referred to as the "Property";

**WHEREAS**, 351 LLC may, in the future, acquire one or more Additional Parcels (as hereinafter defined), and construct thereon one or more new buildings, or expand or enlarge

any existing buildings located thereon, and such building(s) together with any additions thereto or future alterations thereto or replacements thereof not prohibited by the terms of this Agreement, are herein collectively referred to as the "351 Building";

**WHEREAS**, 54 HDFC and 351 LLC wish to allocate their respective rights in the Property; to provide to the maximum extent possible for each to exercise its rights in the future without having to seek any consent, approval or other action from the other; and to provide further that, except as specifically set forth in this Agreement, 54 HDFC shall have all rights, both real and personal, choate and inchoate inuring to the Land, the 54 HDFC Building, and the Utilized Development Rights, and 351 LLC shall have all rights, both real and personal, choate and inchoate, inuring to the Excess Development Rights, any Additional Development Rights (as hereinafter defined) and the Airspace.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Certain Definitions. The following terms used herein shall have the meanings and definitions as hereinafter set forth:

(a) "Additional Parcels" shall mean any parcels of real property that are located in the County of Manhattan, other than the Property, which become part of a zoning lot that includes the Property.

(b) "Additional Development Rights" shall mean any Development Rights that are available for transfer to and utilization by the Property pursuant to (i) the merger of Additional Parcels with the Property in accordance with Section 12-10 of the Zoning Resolution, or (ii) any other applicable provision of the Zoning Resolution.

(c) "Airspace" shall mean that volume of air bounded on four sides by the property lines of the Land and above the Horizontal Plane.

(d) "City Agencies" shall mean the New York City Planning Commission, the New York City Council, the New York City Department of Buildings, the Landmarks Preservation Commission and any other relevant or necessary city agencies, or any successor entity to any of the foregoing.

(e) "Development Rights" shall mean the rights, as determined in accordance with the Zoning Resolution, which are appurtenant to a zoning lot, to develop the zoning lot by enlarging an existing building or other structure thereon or by erecting a new building of other structure thereon which has a total floor area determined by (i) multiplying the area of the zoning lot by the floor area ratio established for the zoning district or districts in which the zoning lot is located, (ii) the inclusion of any bonus floor area available to the zoning lot pursuant to the Zoning Resolution, and (iii) the further inclusion of any use, bulk, density, and other development rights permitted under the Zoning Resolution and which may be authorized to be

developed by the appropriate agency of the City of New York from time to time.

(f) “Excess Development Rights” shall mean all of the Development Rights now or hereafter belonging or appurtenant to the Land in excess of the Utilized Development Rights, which shall include any additional Development Rights that may become available to the Property pursuant to a validly enacted amendment of the Zoning Resolution increasing the Development Rights appurtenant to the Property. It is agreed and acknowledged that as of the date hereof the Excess Development Rights comprise 11,683 square feet of floor area.

(g) “Horizontal Plane” shall mean a horizontal plane having an elevation of ten (10) feet above the top of the elevator bulkhead located on the roof of the 54 HDFC Building as it exists on the date hereof.

(h) “Permitted Mechanical Fixtures” shall mean any parapet, bulkhead, fence, elevator shaft, water tower, antenna, satellite dish, chimney, pipe, ladder, fire escape, or other mechanical or telecommunications equipment located on the roof of the 54 HDFC Building and utilized by 54 HDFC in connection with the 54 HDFC Building or any Rebuilding, provided the same do not extend more than ten (10) feet above the top of the elevator bulkhead located on the roof of the 54 HDFC Building as it exists on the date hereof, and do not decrease the Excess Development Rights.

(i) “Utilized Development Rights” shall mean all of the Development Rights appurtenant to the Land that are utilized by the 54 HDFC Building as of the date hereof. It is agreed and acknowledged that as of the date hereof the Utilized Development Rights comprise 8,400 square feet of floor area.

(j) “Zoning Resolution” shall mean the Zoning Resolution of the City of New York, as in effect as of the date hereof and as amended or restated from time to time hereafter.

(k) Undefined terms used in this Agreement which are defined in the Zoning Resolution -- such as, without limitation, the terms “bulk,” “curb level,” “dwelling unit,” “height,” “floor area,” “floor area ratio,” “lot area,” “lot coverage,” “parties in interest,” “rooms” or “zoning rooms” and “zoning lot” -- shall be defined and construed as those terms are defined in and construed pursuant to Section 12-10 of the Zoning Resolution.

## 2. Use of Airspace; Easement.

A. 54 HDFC shall not use or occupy, and it hereby covenants not to use or occupy, any portion of the Airspace for any purpose. 351 LLC shall comply with all applicable laws, rules and regulations in the use of the Airspace, and it shall promptly cure any violations within the Airspace of such laws, rules and regulations as would adversely affect 54 HDFC’s power, authority and/or ability to utilize the 54 HDFC Premises in any manner permitted under this Agreement.

B. 54 HDFC hereby acknowledges that 351 LLC shall have the right to build any 351 Building located on an Additional Parcel that is contiguous to the 54 HDFC Land to the lot

lines of the 54 HDFC Land, as such lot lines exist on the date of this Agreement, and to maintain any such 351 Building at such lot lines. 54 HDFC hereby grants to 351 LLC a perpetual easement for light and air, and unobstructed view, over the entire 54 HDFC Parcel, except for the air space occupied by the 54 HDFC Building as it exists on the date hereof (the "Owner Building Envelope"). 54 HDFC covenants and agrees that no new buildings, improvements, alterations or additions shall be constructed or allowed to exist on the 54 HDFC Parcel, and no construction, addition, reconstruction, replacement, repair or rebuilding (each, a "Rebuilding") of the 54 HDFC Building, whether following a casualty or otherwise, shall be made so as to encroach beyond the Owner Building Envelope into the area of the easement granted herein (but nothing contained in this Section 2B shall be deemed to prohibit or restrict the placement or replacement, or continued maintenance, on or above the roof of the 54 HDFC Building or any Rebuilding of any Permitted Mechanical Fixtures.

C. Nothing set forth in this Agreement, including the provisions of this Section 2, shall be interpreted or construed so as to allow 351 LLC to (i) build or rebuild any permanent building, improvement, alteration or addition within the Airspace or in such a manner as to cantilever over the Land or the 54 HDFC Building, or (ii) utilize the Excess Development Rights or any Additional Development Rights within the Airspace. Notwithstanding the foregoing, 351 LLC shall have the right to utilize the air space over the improved or unimproved portions of the 54 HDFC Premises for temporary projections and/or intrusions which are reasonably required in connection with any construction of the 351 Building, provided that 351 LLC shall indemnify and hold harmless 54 HDFC from and against any costs, damages and liabilities resulting from 351 LLC's use of such temporary projections and/or intrusions.

3. Use of the 54 HDFC Premises. 54 HDFC (i) shall not change, or permit the change of, the use of the 54 HDFC Premises or the Property to any use prohibited by the Zoning Resolution, (ii) shall not in any way create, or permit the creation of, a new or increase any existing nonconforming use or non-compliance under the Zoning Resolution with respect to the 54 HDFC Premises or the Property, and (iii) shall comply with all applicable laws, rules and regulations in the occupancy, use operation, maintenance or Rebuilding of the 54 HDFC Building. 54 HDFC shall promptly cure all violations of any laws, rules and regulations (each, a "Violation") which would adversely affect 351 LLC's power, authority and/or ability to utilize the Airspace, the Excess Development Rights, any Additional Development Rights or any Additional Parcels in any manner permitted under this Agreement.

4. Allocation of Development Rights; Development Limitations.

A. 54 HDFC owns the 54 HDFC Premises and all of the Utilized Development Rights, and 351 LLC owns all of the Excess Development Rights, the Airspace and any and all Additional Development Rights. Except as expressly set forth in this Agreement, neither party shall, and each party hereby covenants to the other party that it shall not, utilize any Development Rights or interest in the Property owned by the other party. Except as expressly set forth in this Agreement, 54 HDFC retains full ownership, dominion and control over the 54 HDFC Building.

B. 54 HDFC covenants and agrees that no Rebuilding of the 54 HDFC Building shall be made with respect to the 54 HDFC Premises (i) so as to create a non-compliance by the 351 Building with any requirement of the Zoning Resolution at the time of such Rebuilding when the effect of such Rebuilding is considered together with the Development Rights utilized by the 54 HDFC Building and the other buildings on the Property or the Merged Zoning Lot and/or the effect of any pending Rebuilding of the other buildings on the Property or the Merged Zoning Lot, if such non-compliance would affect 351 LLC's right to obtain a Certificate of Occupancy for the 351 Building, or would affect 351 LLC's right to construct, maintain, alter or occupy the 351 Building, or (ii) so as to utilize any Development Rights allowed to the 54 HDFC Parcel pursuant to the Zoning Resolution other than the Utilized Development Rights, as the same may be decreased by a validly enacted amendment to the Zoning Resolution or variance thereof or pursuant to the terms hereof.

C. 351 LLC covenants and agrees that no Rebuilding shall be made on any Additional Parcel (i) so as to create a non-compliance by the 54 HDFC Building with any requirement of the Zoning Resolution at the time of such Rebuilding when the effect of such Rebuilding is considered together with the Development Rights utilized by the 351 Building and the other buildings on the Merged Zoning Lot and/or the effect of any pending Rebuilding of the other buildings on the Merged Zoning Lot, if such noncompliance would affect 54 HDFC's right to obtain or maintain a Certificate of Occupancy for the 54 HDFC Building, or would adversely affect 54 HDFC's right to construct, maintain, alter or occupy the 54 HDFC Building, or (ii) except as otherwise provided herein, so as to utilize any Utilized Development Rights as the same may be decreased by a validly enacted amendment to the Zoning Resolution or variance thereof or pursuant to the terms hereof.

D. Notwithstanding anything to the contrary contained in Section 2B or Section 4B, 54 HDFC covenants and agrees that, in the event any applicable law, rule, regulation or ordinance hereafter limits or restricts the Rebuilding of the 54 HDFC Building, whether following a casualty or otherwise, to a manner more restrictive than that provided in Section 2B or Section 4B, any such Rebuilding shall be accomplished in compliance with such limitation or restriction.

E. Notwithstanding anything to the contrary contained in Section 4C, 351 LLC covenants and agrees that, in the event any applicable law, rule, regulation or ordinance hereafter limits or restricts the Rebuilding of the 351 Building, whether following a casualty or otherwise, to a manner more restrictive than that provided in Section 4C, any such Rebuilding shall be accomplished in compliance with such limitation or restriction.

F. 54 HDFC covenants and agrees (i) not to enter into any agreement effecting, or purporting to effect, any further merger of the zoning lot in which the Property is situated, with any parcel of land not, as of the date of this Agreement, contained in the Property, except at the express direction of 351 LLC pursuant to Section 6 hereof, or (ii) acquire or attempt to acquire any additional Development Rights.

G. 351 LLC covenants and agrees not to enter into any agreement effecting,

or purporting to effect, any further merger of the zoning lot in which the Property is situated with any parcel of land not, as of the date of this Agreement, contained in the Property, if such agreement would, in of itself, (i) create a non-compliance by any building on the Property or the Merged Zoning Lot with any requirement of the Zoning Resolution, (ii) adversely affect the maintenance of a permanent Certificate of Occupancy for the 54 HDFC Building, or (iii) constitute a Violation.

H. 351 LLC covenants and agrees to cooperate with 54 HDFC in all reasonable respects, but at the sole cost and expense of 54 HDFC, in connection with any Rebuilding or an alteration or improvement to the 54 HDFC Building, provided the same complies with this Agreement, and 54 HDFC shall reimburse to 351 LLC any reasonable out-of-pocket expenses incurred by 351 LLC in connection therewith.

I. 54 HDFC covenants and agrees to cooperate with 351 LLC in all reasonable respects, but at the sole cost and expense of 351 LLC, in connection with any Rebuilding or an alteration, addition or improvement to the 351 Building, provided the same complies with this Agreement, and 351 LLC shall reimburse to 54 HDFC any reasonable out-of-pocket expenses incurred by 54 HDFC in connection therewith.

J. 54 HDFC acknowledges that the owners of other properties, whether now a part of or which may hereafter be merged into the Property, may have reserved or retained certain Development Rights attributable to their properties, and 54 HDFC covenants and agrees not to (i) utilize, or attempt to utilize, in the 54 HDFC Parcel all or any portion of any such reserved or retained Development Rights or (ii) make any application to the Department of Buildings of the City of New York (the "Department of Buildings") to incorporate all or any portion of any such Development Rights into the 54 HDFC Parcel.

K. 54 HDFC acknowledges that Additional Development Rights may become available to the Property, and 54 HDFC covenants that: (i) any Additional Development Rights shall be for the sole benefit of 351 LLC, and 54 HDFC shall not utilize, or attempt to utilize, all or any portion of any such Additional Development Rights; (ii) 54 HDFC shall not make any applications for or independently acquire any Additional Development Rights which are proposed for use on the 54 HDFC Premises; (iii) 54 HDFC shall not make any applications to incorporate all or any portion of any Additional Development Rights into the 54 HDFC Premises; (iv) no Rebuilding of the 54 HDFC Building shall be made with respect to the Property so as to utilize any Additional Development Rights; and (v) 54 HDFC shall not take any action which would, in any way, directly or indirectly, interfere with any application by 351 LLC to any of the City Agencies for any work or determination permitted pursuant to this Agreement.

L. 351 covenants that, if the 351 Building is located on a parcel directly adjacent to the 54 HDFC Premises, it shall not permit any advertising, billboards or other displays on any exterior wall of the 351 Building facing the 54 HDFC Building.

M. 54 HDFC covenants that, if the 351 Building is located on a parcel directly adjacent to the 54 HDFC Premises, it shall not permit any advertising, billboards or other

displays on any exterior wall of the 54 HDFC Building facing the 351 Building.

5. Floor Area Notice. Notice is hereby given that this Agreement restricts the 54 HDFC and the 54 HDFC Premises, and benefits the 351 LLC, the Airspace and any Additional Parcel, by reducing (subject to the terms of this Agreement) the Development Rights which are appurtenant to the Property and available for use by the 54 HDFC Premises by 11,683 square feet of floor area, all of which comprise the Excess Development Rights on the date hereof.

6. Additional Parcels; Additional Development Rights. 54 HDFC, by its execution of this Agreement and without any further action on its part, and all present and future parties in interest to the Property, including 54 HDFC and anyone holding under or through 54 HDFC, are each hereby deemed to have consented to, waived objection to and to have subordinated its respective interest in the Property to the merger of one or more Additional Parcels with the Property, and to any and all future enlargements to, and subdivisions of, any zoning lot which includes the Property and to any and all agreements entered into in connection therewith; provided that such enlargement, subdivision or agreement does not adversely affect 54 HDFC's ability to exercise its rights with respect to the 54 HDFC Premises or the Utilized Development Rights permitted pursuant to this Agreement. Without limiting the generality of the foregoing, this paragraph constitutes a waiver by 54 HDFC and all present and future parties in interest of their respective right to execute, and their subordination to, (i) this Agreement, (ii) any declaration of zoning lot restrictions or similar instrument required by the Zoning Resolution to create, enlarge or subdivide a zoning lot including the Property, and (iii) any zoning lot development agreement or similar instrument executed in connection with such creation, enlargement or subdivision, and (ii) each addition, amendment or replacement to any such declaration of zoning lot restrictions, any such zoning lot development agreement and/or this Agreement, whether or not such parties sign such addition, amendment or replacement. 351 LLC shall give 54 HDFC twenty (20) business days prior notice of any such enlargement or subdivision of the zoning lot which includes the Property and shall provide 54 HDFC with copies of any instruments and agreements to be executed in connection therewith, including any zoning lot declaration or development agreement and amendment, addition, or replacements of the same or of this Agreement. In addition, and notwithstanding the foregoing, if requested by 351 LLC, 54 HDFC shall, within twenty (20) business days after such request, execute, acknowledge and deliver and shall make reasonable efforts to cause any and all parties in interest to the Property to execute or cause the execution, acknowledgement and delivery of all such instruments as may reasonably be required or necessary to effectuate the intent of this paragraph; provided that (1) 351 LLC shall have provided 54 HDFC with all reasonably necessary documents and information in connection with such request, (2) any such instruments shall not adversely affect the use of the 54 HDFC Premises or the Utilized Development Rights permitted under this Agreement, and (3) 351 LLC shall reimburse 54 HDFC for its reasonable costs and expenses (including, but not limited to, attorneys' and other professionals' fees and expenses) incurred in connection with the review, execution, acknowledgement and delivery of such instruments. In addition, if required by law, 54 HDFC shall cause the certificate of occupancy of the 54 HDFC Building to be amended to reflect the existence of such enlarged or subdivided zoning lot, provided that such amendment shall not adversely affect or interfere with the use, occupancy or apartment



configuration of the 54 HDFC Building permitted under the certificate of occupancy and as limited by this Agreement, and provided 351 LLC shall reimburse 54 HDFC for its reasonable costs and expenses (including, but not limited to, attorneys' and other professionals' fees and expenses) incurred in connection therewith.

7. Cooperation. 54 HDFC shall take all appropriate steps and shall cooperate, at 351 LLC's sole cost and expense (including the reimbursement of the reasonable costs and expenses of 54 HDFC, including, but not limited to, attorneys and other professional fees), with 351 LLC in connection with the transfer or utilization of the Excess Development Rights and any Additional Development Rights by 351 LLC including, without limitation, the prosecution of all zoning and variance applications requested by 351 LLC relating thereto, all applications by 351 LLC to increase or decrease the size of the zoning lot of which the Property is a part, and all applications and filings for a building permit or permits for the construction of any building allowing utilization of the Excess Development Rights, and any Additional Development Rights permitted pursuant to this Agreement. 351 LLC shall have the right at any time to make application to any governmental authority for such licenses, permits, approvals, certificates, rulings, or amendments (collectively, the "Approvals"), as 351 LLC, in its reasonable discretion, shall deem necessary or desirable in connection with the Airspace, the Excess Development Rights, any Additional Development Rights, or any Additional Parcels and any development thereon, provided the foregoing are in compliance with and permitted by this Agreement. 54 HDFC shall, at 351 LLC's sole cost and expense (including the reimbursement of the reasonable costs and expenses of 54 HDFC, including, but not limited to, attorneys and other professional fees), cooperate with 351 LLC and is hereby deemed to have given all necessary consents in connection with the filing and prosecution of applications for the Approvals, and shall execute such documents and applications and furnish such information as may be reasonably requested by 351 LLC in connection with such applications. Without limiting the generality of the foregoing, 54 HDFC covenants and agrees that:

(i) 54 HDFC shall cooperate with 351 LLC, at 351 LLC's sole cost and expense (including the reimbursement of the reasonable costs and expenses of 54 HDFC, including, but not limited to, attorneys and other professional fees), in the development of any Additional Parcel, including, without limitation, the prosecution and execution of all zoning and variance applications and applications for other approvals relating to any new development and the incorporation therein of the Excess Development Rights or any Additional Development Rights, and the execution of all other documents pertaining thereto and reasonably required therefor;

(ii) 54 HDFC shall not appear in opposition to 351 LLC in any application, action, or hearing brought, sought or defended by 351 LLC before any City Agency or any other municipal, governmental department, court or agency of the City of New York, the State of New York or the United States of America arising out of or in connection with any zoning or variance applications relating to the Airspace, the Excess Development Rights, any Additional Development Rights or any Additional Parcel, or any other certificate, amendment, permit, approval, license or ruling, or any other application for or proceeding with respect to an Approval, or in connection with any other proceedings that, in the reasonable judgment of 351

LLC, affects or may affect the ability of 351 LLC to conduct a Rebuilding of any new or additional buildings on any parcels of land to which such transfer is permitted pursuant to the provisions of the Zoning Resolution and to incorporate the Excess Development Rights or any Additional Development Rights therein, or which may affect 351 LLC's ability to obtain any special permit or variance or develop an Additional Parcel or otherwise to utilize the Excess Development Rights and/or any Additional Development Rights, provided the foregoing are in compliance with and permitted by this Agreement, and provided that the foregoing shall not adversely affect or interfere with the use of the 54 HDFC Premises or the 54 HDFC Building (as limited by this Agreement);

(iii) 54 HDFC shall furnish 351 LLC upon request copies of all plans, applications and submissions hereafter submitted by 54 HDFC to the Department of Buildings or any other city, state or federal agency or authority relating to any proposed Rebuilding or demolition of the 54 HDFC Building.

8. Subdivision. 351 LLC shall have the right to subdivide the Property or the Merged Zoning Lot to the extent permitted by the Zoning Resolution and other applicable law, provided that such subdivision shall be subject to this Agreement and shall not adversely diminish 54 HDFC's right to utilize the Utilized Development Rights or the 54 HDFC, as utilized on the date hereof, and as limited by this Agreement. 54 HDFC shall not have the right to subdivide 54 HDFC or the Merged Zoning Lot. 351 LLC shall not apply for any such subdivision without first furnishing 54 HDFC with: (i) a copy of the application, and (ii) the opinion of an architect licensed in New York State, familiar with New York City zoning requirements, addressed to 54 HDFC, stating the zoning consequences of the subdivision and concluding that the subdivision will not diminish 54 HDFC's right to utilize the Utilized Development Rights or 54 HDFC, as utilized on the date hereof, and as limited by the Declaration and this Agreement. 54 HDFC shall cooperate with 351 LLC in connection with any such subdivision, provided 351 LLC shall pay any reasonable out-of-pocket fees and expenses incurred by 54 HDFC (including, but not limited to, attorneys' and other professionals' fees and expenses) in connection therewith.

9. Transfer of Air Space and Airspace Easement.

A. Upon the merger by 351 LLC of the Property with an Additional Parcel so as create one zoning lot, 351 LLC shall transfer the Airspace (but not the Excess Development Rights) to 54 HDFC, reserving to 351 LLC a perpetual easement for light and air, and unobstructed view, in, through and over the Airspace; provided that (i) all transfer documents relating to the transfer of the Airspace shall be prepared by 351 LLC at 351 LLC's sole cost and expense and shall be forwarded to 54 HDFC for 54 HDFC's execution; (ii) 351 LLC shall reimburse 54 HDFC for its reasonable costs and expenses (including, but not limited to, attorneys' and other professionals' fees and expenses) incurred in connection with 54 HDFC's review, execution, acknowledgement and delivery of such transfer documents; (iii) the transfer shall be limited to the Airspace and shall not affect the Excess Development Rights, any Additional Parcels or any Additional Development Rights or any of 351 LLC's rights therein; and (iv) upon the closing of the transfer of the Airspace, all references in this Agreement to the

Airspace shall be deemed deleted.

B. In the event that 351 LLC transfers the Excess Development Rights to another party, 351 LLC shall also transfer the Airspace to such party, and such transfer shall be subject to the obligation set forth in Section 9A hereof to transfer the Airspace to 54 HDFC upon any subsequent merger of the Property with an Additional Parcel.

10. Binding Effect. All of the rights, interest, covenants, agreements and conditions contained in this Agreement:

(a) shall run with the Property, any Additional Parcel and the parties' respective interests therein;

(b) shall inure to the benefit of and be binding upon each party to this Agreement and such party's heirs, legal representatives, successors and assigns of any such party, and any mortgagee of such party which may become a "mortgagee-in-possession";

(c) shall inure to the benefit of and be binding upon any party who joins in any declaration of zoning lot restrictions or similar instrument required by the Zoning Resolution to create, enlarge or subdivide a zoning lot which includes, or shall include, the Property, or executes a waiver of their right to join in any such declaration of zoning lot restrictions or similar instrument, and any zoning lot development agreement or similar instrument executed in connection with such creation, enlargement or subdivision, and any such party's successors and assigns; and

(d) shall, to the extent rights hereunder are assigned to the holder of any mortgage or any interest therein, be enforceable by any such assignee as provided under any such mortgage or documents ancillary thereto.

11. Future Transfers. The parties executing this Agreement agree that any third party who shall acquire any interest whatsoever in the Property, whether from a party hereto or its heirs, legal representatives, successors or assigns, shall be bound by and subordinate to the provisions of this Agreement, and any future modifications hereto, to the same extent that it would have been had it been a signatory to this Agreement, or any future modifications thereto.

12. No Third Party Beneficiaries. No covenant or agreement contained herein shall inure to the benefit of any party, including, without limitation, any occupant of the Property, other than to 54 HDFC and 351 LLC, their respective heirs, distributees, successors and assigns, and any mortgagee, of either the Property or any parcel which may be merged into one zoning lot with the Property, which may become a "mortgagee-in-possession," except as otherwise specifically provided herein. The parties hereto further acknowledge and agree that nothing herein contained grants to any party the right or easement of access upon or over the Land of any other party, or the right to perform any construction upon the Land of any other party, except as specifically provided herein or in any separate agreement that may be entered into by or among

any of the parties hereto.

13. Notices. All notices, demands and requests ("Notices") which may be given by either party to the other pursuant to the provisions of this Agreement shall be in writing. All Notices may be delivered to either party either personally or by Federal Express (or other reputable overnight delivery service), and shall be deemed to have been duly given as of the time received or refused by the addressee (if personally delivered) or the next business day (in the case of a delivery by Federal Express or such other service). All Notices shall be addressed, if intended for 54 HDFC to it at 80 Maiden Lane, 21st Floor, New York, New York 10038, Attention: Gary Gutterman, with a copy to Hoenig & Hoenig, 132 Spruce Street, Cedarhurst, New York 11516, Attention: Bernard Hoenig, Esq., or, if intended for 351 LLC, to it at c/o Alexico Management Group, Inc., 150 East 58th Street, New York, New York 10155, Attention: Izak Senbahar, with a copy to Kramer Levin Naftalis & Frankel LLP, 919 Third Avenue, New York, New York 10022, Attention: Michael T. Sillerman, Esq., or such other address or addressee as either party may designate by written notice to the other as herein provided. Notice given by the attorneys for 54 HDFC and 351 LLC shall be deemed notice by the respective parties.

14. Estoppel Certificates. Whenever requested by a party upon at least ten (10) business days' prior written notice, the other party shall furnish to the requesting party a written statement setting forth: (i) whether this Agreement is in full force and effect; (ii) the extent to which this Agreement has been assigned, modified or amended by any instrument, whether or not of record (and if it has, then stating the nature thereof); (iii) whether the other party has served any written notice of default under this Agreement, which default remains uncured; (iv) that the statement may be relied upon by the requesting party; and (v) to the best of its knowledge, there exists no state of facts which, with the giving of notice, the passage of time, or both, would constitute a default by the requesting party under this Agreement. Such certificate shall act as a waiver of any claim by the party furnishing such certificate to the extent such claim is based upon facts which are contrary to those asserted in the certificate but only to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts contrary to those contained in the certificate and who has acted in reasonable reliance upon the certificate. Such certificate shall in no event subject the party furnishing it to any liability whatsoever (except for fraud), notwithstanding the negligent or inadvertent failure of such party to disclose correct or relevant information.

15. Limitation of Liability. Notwithstanding anything to the contrary contained herein, the parties hereto shall look only to the other party's then estate in the Property, including insurance proceeds if applicable, for the satisfaction of their respective remedies, including, but not limited to, for the collection of a judgment (or other judicial process) requiring the payment of money by any other party in the event of any default by any other party hereunder, and no other property or assets of the other party or its principals, officers, directors, trustees, members and partners disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of the first party's remedies hereunder.

16. Governing Law. This Agreement shall be governed by, and construed in

all respects in accordance with, the internal laws of the State of New York (without giving effect to New York's principles of conflicts of law). Each party hereby irrevocably submits to the exclusive jurisdiction of any New York State or Federal court sitting in the Borough of Manhattan, City of New York over any suit, action or proceeding commenced by or on behalf of any party hereto arising out of, or relating to, this Agreement.

17. Remedies, Waiver of Trial by Jury. In the event of any breach or threatened breach of this Agreement by any party, the other party shall have the right to any remedy available at law or in equity, including but not limited to injunctive relief and specific performance. Each of the parties waives its right to trial by jury in any action or proceeding brought under or pursuant to this Agreement.

18. Recording. This Agreement shall be recorded in the Office of the City Register for New York County.

19. Further Assurances. Each party shall, upon request of and at the expense of the other party, promptly take such action and/or furnish to the other party and/or execute, acknowledge and deliver to the other party any and all information in its possession, documents and other instruments which may be required or desired by the requesting party, in order (a) to make applications to, or prosecute and gain approval of applications from, any governmental authority relating to the utilization of the Property, the Airspace, the Utilized Development Rights, the Excess Development Rights, any Additional Development Rights, any Additional Parcels and/or any Zoning Modifications, as the case may be, (b) to carry out and effectuate the intent and purpose of this Agreement, or (iii) to permit in all other respects the requesting party to exercise its rights under this Agreement.

20. No Oral Agreements; Integration. Except as stated in this Agreement and the exhibits and schedules annexed hereto, this Agreement contains all the promises, agreements, conditions, inducements and understandings between the parties relative to the matters stated herein and therein, and there are no oral promises, agreements, conditions, understandings, inducements, warranties or representations, expressed or implied, between the parties other than as set forth herein and therein. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the parties in connection herewith, other than with respect to any agreement between the parties hereto either (i) executed and delivered simultaneously with this Agreement, and/or (ii) which, implicitly or explicitly, by its terms survives the execution of this Agreement and/or the Closing thereunder. This Agreement may not be modified, amended or terminated except by an instrument in writing signed by the parties hereto, except that any party in interest to any other parcels merged with the Property in accordance with a declaration of zoning lot restrictions or an amendment, addition or replacement thereto, shall be deemed to be bound by the provisions of this Agreement, and if such party in interest shall, upon request of 351 LLC, execute a document to that effect; provided, however, in the event the Property or any other parcel merged with the Property is encumbered by a mortgage, and the mortgagee thereunder reasonably requests a modification or amendment to this Agreement which does not materially increase the obligations or decrease the rights of the parties hereunder, the parties agree to amend

reasonably requests a modification or amendment to this Agreement which does not materially increase the obligations or decrease the rights of the parties hereunder, the parties agree to amend or modify this Agreement accordingly.

21. Severability. If any term of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law, with the parties hereto covenanting nonetheless to negotiate in good faith, in order to agree upon the terms of a mutually satisfactory provision to be substituted for the term or provision which is void or unenforceable.

22. Captions; Headings. The captions, paragraph headings, titles and sections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

23. No Waiver. No failure or delay of either party in the exercise of any right given to such party hereunder or the waiver by any party of any condition or provision hereunder for its benefit (unless the time specified herein for exercise of such right, or satisfaction or such condition, has expired) shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.

24. Pronouns, etc. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require. The terms "herein," "hereof," or "hereunder" or similar terms used in this Agreement refer to this entire Agreement and not to the particular provision in which the term is used unless a contrary intent is expressly set forth.

25. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall be construed as and shall constitute but one and the same instrument.

26. Exhibits and Schedules. Each of the exhibits and schedules referred to herein and attached hereto is incorporated herein by this reference.

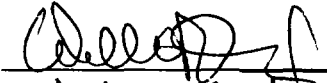
**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

351 EAST 54 LLC

EAST 54TH STREET HOUSING  
DEVELOPMENT FUND CORP.

By:   
Name: IZAK SENBAHAR  
Title: MANAGING MEMBER

By:   
Name: William Rappaport  
Title: President

STATE OF New York )  
 )ss.:  
COUNTY OF Westchester )

On the 13 day of February in the year 2003 before me, the undersigned, personally appeared Izak Senbahar, 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 or entity upon behalf of which the individual acted, executed the instrument.

Liza W. Beaujean  
Notary Public

Notary Public  
Westchester County, NY  
Expires May 10, 2003

STATE OF NEW YORK )  
 )ss.:  
COUNTY OF NEW YORK )

On the 13th day of February in the year 2003 before me, the undersigned, personally appeared William Rappaport, 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 or entity upon behalf of which the individual acted, executed the instrument.

  
Notary Public

Robert D. Grogan  
Notary Public, State of New York  
No. 01GR6034533  
Qualified in Nassau County  
Commission Expires Jan 3, 2006



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**ALL THAT CERTAIN** plot, piece or parcel of land, with the buildings and improvements thereon erected, 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 northerly side of 54<sup>th</sup> Street, distant eighty feet westerly from the corner formed by the intersection of the westerly side of First Avenue and the northerly side of 54<sup>th</sup> Street;

**RUNNING THENCE** northerly parallel with First Avenue, one hundred feet five inches to the center line of the block between 54<sup>th</sup> Street and 55<sup>th</sup> Street;

**THENCE** westerly along the said center line of the block, twenty feet;

**THENCE** southerly parallel with First Avenue and part of the distance through a party wall, one hundred feet five inches to the northerly side of 54<sup>th</sup> Street;

**THENCE** easterly along the northerly side of 54<sup>th</sup> Street, twenty feet to the point place of **BEGINNING**.

Said premises are known as 351 East 54<sup>th</sup> Street, New York, New York, and designated as Lot 122 in Block 1347 on the Tax Map of the City of New York.

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**ZONING LOT DEVELOPMENT AND EASEMENT AGREEMENT**

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**NEW YORK COUNTY  
BLOCK 1347  
LOT 122**

**RECORD AND RETURN TO:**

**KRAMER LEVIN NAFTALIS & FRANKEL LLP  
919 THIRD AVENUE  
NEW YORK, NEW YORK 10022  
ATTENTION: MICHAEL T. SILLERMAN, ESQ.**