August 4, 2014

Steve Fodera
Director of Management Review and Internal Compliance
New York City Department of Housing Preservation and Development
100 Gold Street
New York, N.Y. 10038

Via email: smf@hpd.nyc.gov

Dear Mr. Fodera:

**Re: Form J-10b.2 Affidavit by Certified Public Accountants and Statement by Certified Public Accountants Required by Section 421(a)**

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 28,000 CPAs in public practice, business, government and education, respectfully offers its suggested revisions to the above captioned certifications.

On March 11, 2014, we submitted to you our comment letter regarding a New York City Department of Housing Preservation and Development (HPD) required opinion letter by an "independent certified public accountant of the cost of the conversion, alterations or improvements" as presented in HPD Form J-2 certification required by the New York City J-51 benefit program. Our letter recommended a modification to Form J-2 to ameliorate identified inconsistencies between the requirements of form J-2 and the CPA's opinion required by Generally Accepted Auditing Standards (GAAS).

Since that time, we continue to receive numerous inquiries from our members regarding two other CPA certifications: HPD Form J-10b.2 and the sworn statement of actual project costs under Section 421(a) of the NYS Real Property Tax law. These HPD certifications are not in accordance with professional standards promulgated by the Financial Accounting Standards Board (FASB), or those of the American Institute of Certified Public Accountants (AICPA) which we as New York CPAs are required to follow in accordance with the standards of our profession and New York State Department of Education laws and regulations. Consequently, we are recommending that these HPD certifications be revised as shown in the attached CPA certification exhibits that are in compliance with professional standards.

Our objective remains to meet the HPD's qualitative requirements and to avoid the conflict that CPAs have in meeting their professional standards arising from the certifications currently required by HPD. Our specific comments and recommendations are contained in the attachment.

Please contact Real Estate committee chair Michael J. Giglio at (212) 471-4331, vice chair Abraham E. Haspel at (917) 685-1650, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303, if you have any questions.

Sincerely,

Scott M. Adair
President

Attachment

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**NEW YORK STATE SOCIETY OF**

**CERTIFIED PUBLIC ACCOUNTANTS**

**PROPOSED REVISIONS TO:**

**FORM J-10b.2 AFFIDAVIT BY CERTIFIED PUBLIC ACCOUNTANTS REQUIRED BY THE APPLICATION PROCEDURE UNDER J-51 RULE 5-05(d) CHAPTER 5 OF TITLE 28 OF THE RULES OF THE CITY OF NEW YORK REGARDING *AFFIDAVIT OF COOPERATIVE OR CONDOMINIUM ELIGIBILITY FOR ACCOUNTANTS***

**A SWORN STATEMENT BY CERTIFIED PUBLIC ACCOUNTANTS OF THE ACTUAL TOTAL PROJECT COST OF THE NEWLY CONSTRUCTED BUILDING REQUIRED BY SECTION 421(a) OF THE REAL PROPERTY TAX LAW AND TITLE 28 OF THE RULES OF THE CITY OF NEW YORK CHAPTER 6 RULE 6(d)(i)**

**August 4, 2014**

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**Grace G. Singer**

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## New York State Society of Certified Public Accountants

**Proposed Revisions to**

**Form J-10b.2 affidavit by Certified Public Accountants required by the application procedure under J-51 Rule 5-05(d) Chapter 5 of Title 28 of the Rules of the City of New York regarding *Affidavit Of Cooperative Or Condominium Eligibility For Accountants***

**A sworn statement by Certified Public Accountants of the actual total project cost of the newly constructed building required by Section 421(a) of the Real Property Tax law and Title 28 of the rules of the City of New York Chapter 6 Rule 6(d)(i)**

### Form J-10b.2

Form J-10b-2 requires the CPA to submit an *Affidavit of Cooperative or Condominium Eligibility for Accountants* as to the averages of sales price of units/shares and the real estate tax assessment if the application for tax abatement/exemption occurred three years after commencement of construction of the subject building. This affidavit is a mirror image of the one filed by the officers of the Coop/Condo Form J-10a.2. This type of CPA certification is an engagement governed by American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements (SSAEs) that require “certified public accountants in the practice of public accounting (thereinafter referred to as practitioners)” perform their examination in accordance with those standards and govern the form and content of the report that they render. The “Affidavit” does not include the following elements that are required for the Independent Accountant’s Report to be in conformity with SSAEs:

- A statement that the CPA is independent. Attest standards require that the CPA must be independent when performing an examination and that fact is required by standards to be disclosed in the attestation engagement report.

- A statement that management is responsible for the assertions regarding assessed valuation and average unit/shares sales during the applicable time periods. Management’s assertions are the subject matter of the CPA’s examination. While HPD addresses management’s involvement and responsibility on HPD Form J-10a.2 in the form of an affidavit signed by the officers of the Coop/Condo, a statement of management’s responsibility is a required element of the CPA’s report and therefore must be included on Form J-10b.2.

- A description of the examination procedures used by the CPA.

- A description of the criteria used by the CPA in forming the opinion. Criteria are the benchmarks against which the CPA evaluates management’s assertions. The criteria for these engagements are based on Chapter 5 Section 5.03(iv) of the Rules of the City of New York.

For clarity purposes, we propose dividing Form 10b.2 into two separate reports.

Attached as Exhibit A are illustrative Form 10.b2 reports that meet the requirements of the SSAEs. The attached revisions include a “Criteria Note” appended to the opinion (J10-b.2) stating that the average assessed valuation and the average sales price per room were calculated using the arithmetic mean and the “time” construction commenced is interpreted to mean the “date” construction commenced. (If HPD has different definitions, please let us know.)

**421-a Sworn Statement/Actual Total Development Cost (Schedule)**

HPD’s “Final Application for Certification of Eligibility for 421-a Partial Tax Exemption” pages 6-8 provide three different CPA sworn statements. The last of which appears to be closest to current professional standards; therefore, we are confining our remarks to that report. The last sworn statement refers to Generally Accepted Auditing Standards (GAAS) and states that the determination of costs is not intended to be in conformity with Generally Accepted Accounting Principles (GAAP). Rules of the New York State Board of Regents prohibit references to GAAS, unless the reports conform to the standards established by authoritative bodies such as the AICPA or the FASB. Our specific comments follow:

- ***Generally Accepted Auditing Standards (GAAS)***

  The current CPA certification report required by HPD is not in accordance with GAAS. It should be noted that there have been revisions to the requirements of GAAS that are effective for periods ending on or after December 15, 2012. These revised requirements, among other things, address the form and content of the auditor’s report that include the use of headers and prescribed language that are absent from the HPD certification report. Were they included in the HPD certification report, it would be more informative to its users.

- ***Differences between the Basis of Accounting of the Schedule and GAAP***

  The current certification report required by HPD states that the basis of accounting used to prepare the schedule is not intended to be conformity with GAAP. When the basis of accounting used is not GAAP, GAAS requires a description of the differences between the basis of accounting and GAAP.

  Under GAAP, the costs of a building reflected in the applicant’s accounting records and related financial statements are generally understood to comprise those expenditures that materially extend the original useful life of the building or increase its value or efficiency. The following costs included in the Schedule do not meet that test under GAAP:

  (1) Marketing costs that do not involve the acquisition of tangible assets such as the cost of model units or, services to obtain regulatory approvals,
  (2) The costs of 421a tax exemption fees and negotiable certificates,
  (3) Builders fee or developers profit,

(4) Accounting fees, and
(5) Loan acquisition costs that are amortized over periods that exceed the construction and initial rent up period.

GAAS requires a description of these differences (the costs that do not materially extend the original useful life of the building or increase its value or efficiency).

- ***Independent Accounting Firm's Responsibility for Auditor's Report and Signature of Engagement Partner***
  The auditor's report includes the word "independent" to indicate clearly that it is the report of an independent auditor. We believe that the declaration that no related party relationship exists with the entity under audit is unnecessary. However, if the declaration is retained, it should not be part of the auditor's report, but be provided as an addendum to the auditor's report.

  In addition, we believe that the appropriate signatory for the auditor's report should be the firm; it should not be the engagement partner. The signature of the firm more appropriately reflects that the firm, under the direction of the engagement partner, is responsible for the audit and GAAS provides that the auditor's report should be signed by the firm. However, if the request of the engagement partner's name and license number is retained, it should be provided as an addendum to the auditor's report; and should not be part of the auditor's report.

We have presented in Exhibit B our recommended auditor's report that complies with the requirements of GAAS.

# EXHIBIT A

## SUGGESTED UNQUALIFIED INDEPENDENT ACCOUNTANT'S REPORT RELATING TO J-51 FORM 10b.2

## 1. Accountant's Report if less than 10% of dwelling units were sold 3 years preceding commencement of construction

Independent Accountant's Report

We have examined the following management's assertions regarding the building and land located at ___________________________________ in connection with the application for Tax Exemption and/or Tax Abatement benefits pursuant to Section 11-243 of the New York City Administrative Code of the City of New York dated ________ pursuant to the rules of the City on New York Title 28 Chapter 5 Section 5.03(iv):

1. The actual assessed valuation (as defined in the J-51 Rules and Regulations) of the building and land cited above was $_______________ on _________ and did not exceed the applicable limit per dwelling unit at the date of commencement of construction.

2. For the three years immediately preceding commencement of construction, less than ten percent of the dwelling units (or amount of stock allocated to less than ten percent of such dwelling units) were transferred, and at the time construction commenced, the average assessed valuation per dwelling unit was $_____________________________ and did not exceed the applicable limit per dwelling unit.

XYZ Company's management is responsible for the assertion cited above. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence supporting the amount of transferred dwelling units or if applicable, cooperative corporation shares, average assessed valuation per dwelling unit and date construction commenced, and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

In our opinion management's assertions stated above are correct in all material respects based on the criteria set forth in Note 1.

This report is intended solely for the information and use of the Company and NYC Department of Housing Preservation and Development and is not intended to be and should not be used by anyone other than these specified parties.

Firm [*Signature*]

[*Date*]

**ATTACHMENT:**

Copy of the tax assessments for the Department of Finance for the period of ________________.

**NOTES ATTACHED TO INDEPENDENT ACCOUNTANT'S REPORT:**

**NOTE 1- CRITERIA:**

1. The Rules of the City of New York Title 28 Chapter 5 Section 5.03(iv) state the following:
    a. (iv) Any cooperative or condominium, for work commenced after August 7, 1992 which meets the following requirements:

        A. "the actual assessed valuation of such multiple dwelling shall not exceed an average of forty thousand dollars ($40,000) per dwelling unit at the time of the commencement of construction of the alterations and improvements, and
        B. ."…. an amount less than ten percent (10%) of the dwelling units or an amount of stock less than the amount allocable to ten percent (10%) of such

dwelling units was not transferred during such preceding three year period eligibility for benefits shall be conditioned upon the multiple dwelling having an actual assessed valuation per dwelling unit of no more than forty thousand dollars ($40,000) at the time of the commencement of construction of the alteration or improvement. (Emphasis provided)".

C. Assessed valuation shall be actual assessed valuation and not the transitional assessed value."

2. *Average assessed valuation* was calculated using the arithmetic mean.

3. The "*time construction commenced*" is interpreted as the date construction commenced.

## EXHIBIT A (continued)

### 2. Accountant's report if 10% or more of the dwelling units were sold 3 years preceding commencement of construction

Independent Accountant's Report

We have examined the following management's assertions regarding the building and land located at ___________________________________ in connection with the application for Tax Exemption and/or Tax Abatement benefits pursuant to Section 11-243 of the New York City Administrative Code of the City of New York dated ________ pursuant to the rules of the City on New York Title 28 Chapter 5 Section 5.03(iv):

1. The actual assessed valuation (as defined in the J-51 Rules and Regulations) of the building and land cited above was $_______________ on _________ and did not exceed the applicable limit per dwelling unit at the date of commencement of construction.
2. For the three years immediately preceding commencement of construction ten percent or more of the dwelling units were sold and the average price per room for the dwelling units (or the stock allocated to such dwelling units) was $_____________. The total number of J-51 rooms in these units is _____.

XYZ Company's management is responsible for the assertions cited above. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence supporting the assessed valuation, the average price per room for the dwelling units and the total number of J-51 rooms for those dwelling units and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

In our opinion management's assertions stated above are correct in all material respects based on the criteria set forth in Note 1.

This report is intended solely for the information and use of the Company and NYC Department of Housing Preservation and Development and is not intended to be and should not be used by anyone other than these specified parties.

Firm [*Signature*]

[*Date*]

**ATTACHMENTS:**

Copy of the tax assessments for the Department of Finance for the period of _______________.

List of units sold, their size, price and date of transfer to a *bona fide* purchaser.

## NOTES ATTACHED TO INDEPENDENT ACCOUNTANT'S REPORT

**NOTE 1- CRITERIA:**

1. The Rules of the City of New York Title 28 Chapter 5 Section 5.03(iv) state the following:

   (iv) Any cooperative or condominium, for work commenced after August 7, 1992 which meets the following requirements:

   (A) The actual assessed valuation of such multiple dwelling shall not exceed an average of forty thousand dollars ($40,000) per dwelling unit at the time of the commencement of construction of the alterations and improvements, and

   (B) During the three years immediately preceding the commencement of construction of the alterations and improvements the average per room sale price of the dwelling units or the stock allocated to such dwelling units shall have been no greater than thirty-five percent (35%) of the maximum mortgage amount for a single family house eligible for purchase by the Federal National Mortgage Insurance Corporation provided that if:

a. an amount less than ten percent (10%) of the dwelling units or an amount of stock less than the amount allocable to ten percent (10%) of such dwelling ***units was not transferred during such preceding three year period*** eligibility for benefits shall be conditioned upon the multiple dwelling having an actual assessed valuation per dwelling unit of no more than forty thousand dollars ($40,000) at the time of the commencement of construction of the alteration or improvement.(Emphasis provided)

(C) Assessed valuation shall be actual assessed valuation and not the transitional assessed value.

2. "Average assessed valuation was calculated using the arithmetic mean"

3. The "time construction commenced" is interpreted as the date construction has commenced.

# EXHIBIT B

## SUGGESTED UNQUALIFIED INDEPENDENT AUDITOR'S REPORT RELATING TO 421-a

INDEPENDENT AUDITORS' REPORT

To the Commissioner of the NYC Department of Housing Preservation and Development
Office of Development Tax Incentives - Real Property Tax Law § 421-a Tax Benefit Program

We have audited the development costs of **_____________**, the builder/developer, included in the accompanying 421-a Addendum of Actual Total Development Costs (the "Schedule") for the property address **___________________** (Block **__** Lot**___**) (the "Project") as of **________________**. The Schedule was prepared in accordance with the accounting and reporting provisions of the Real Property Tax Law ("RPTL") §421-a Tax Benefit Program prescribed by the NYC Department of Housing Preservation and Development.

**Management's Responsibility for the Schedule**

Management is responsible for the preparation and fair presentation of the Schedule in accordance with the accounting and reporting provisions of the NYC Department of Housing Preservation and Development. Management is also responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the Schedule that is free from material misstatements, whether due to fraud or error.

**Auditors' Responsibility**

Our responsibility is to express an opinion on the Schedule based on our audit. We conducted our audit in accordance with Generally Accepted Auditing Standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Schedule is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the Schedule. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the Schedule, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the builder/developer's preparation and fair presentation of the Schedule in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the builder/developer's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the Schedule.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Opinion**

In our opinion, the Schedule presents fairly, in all material respects, the actual development costs of $________ for the Project as of _________________, in accordance with the accounting and reporting provisions of the RPTL §421-a Tax Benefit Program prescribed by the NYC Department of Housing Preservation and Development.

**Basis of Accounting**

We draw your attention to Note 1 of this report, which describes the basis of accounting. The Schedule is prepared on the basis of the accounting and reporting provisions of the RPTL §421-a Tax Benefit Program prescribed by the NYC Department of Housing Preservation and Development (HPD), which is an other comprehensive basis of accounting than Generally Accepted Accounting Principles (GAAP). Our opinion is not modified with respect to this matter.

As an independent certified public accounting firm, we declare that we are in no way connected with the applicant, financially or otherwise.

**Restriction on Use**

This report is intended solely for the information and use of the management of _________ and the NYC Department of Housing Preservation and Development and is not intended to be and should not be used by anyone other than these specified parties.

____________________________

Firm [Signature]

__________________, 2014

## NOTES ATTACHED TO INDEPENDENT AUDITOR'S REPORT

(*This suggested language would be modified based on management's specific circumstances*)
NOTE 1: BASIS OF ACCOUNTING

As previously mentioned in this report the basis of accounting used is prescribed by HPD in accordance with RPTL Section 421-a Tax Benefit Program" and differs from GAAP in that the following expenditures are not included in determining the costs of acquiring the subject real property:

(1) Marketing costs that do not involve the acquisition of tangible assets such as the cost of model units or, services to obtain regulatory approvals

(2) The costs of 421a tax exemption fees and negotiable certificates
(3) Builders fee or developers profit,
(4) Accounting fees
(5) Loan acquisition costs that are amortized over periods that exceed the construction and initial rent up period

NOTE 2: DIFFERENCES BETWEEN FINAL AND ESTIMATED COST

In the event the final costs are different than the estimated costs, please add "the reason why actual development costs shown here is different from the original costs set forth previously by the developer" is it because the original costs $_____________were estimated prior to the completion of construction and the amounts set forth above are actual costs.