
From: "Simmons, Tiffani" <Tiffani.Simmons@ag.ny.gov>
Date: Monday, February 1, 2021 at 6:00 PM
To: Cliff Schneider <cschneider@cohenschneider.com>
Cc: Cory Storch <cstorch@cohenschneider.com>
Subject: File No. NA20-0178, Friends of Growing Up Green Leasehold Condominium

Cliff,

The Department of Law ("DOL") has granted the issuance of a no-action letter pursuant to the above-referenced no-action letter application ("NAL Application") as of **February 1, 2021**. The DOL will not take enforcement action based on the transaction(s) described in the NAL Application.

This email shall serve as the DOL's official issuance letter for this NAL Application; no other issuance letter will be issued by the DOL for this NAL Application. This email constitutes a public record and any alteration to this email may constitute a criminal offense.

Any material change of fact or circumstance affecting the property or information provided in the NAL Application will require the applicant(s) to obtain an amended no-action letter. Any misstatement or concealment of material fact in the materials submitted as part of the NAL Application renders the no-action letter void ab initio. The DOL has relied on the truth of the affidavit(s), expert opinion letter(s), supporting documentation, and the transmittal letter of the submitting attorney provided as part of the NAL Application.

The issuance of this no-action letter shall not be construed as approval of the contents or terms thereof by the Attorney General of the State of New York, nor shall it act as a waiver of or limitation on the Attorney General's authority to take enforcement action for violation of Article 23-A of the General Business Law or other applicable law, except as expressly stated in such letter. The issuance of this letter is conditioned upon the collection of all fees imposed by law. It is the responsibility of the sponsor to ensure that correct fee amounts have been paid.

Please note that the DOL may issue administrative deficiencies while processing this no-action letter's issuance. It is the sponsor's responsibility to cure all such deficiencies in an expeditious manner. If there are any outstanding deficiencies at the time of submission of the next amendment to this no-action letter, the DOL reserves the right to reject the submission of such amendment until all outstanding deficiencies are cured. **Notwithstanding, this will not impact the date of issuance set forth above.**

If you have any questions or comments, please feel free to contact me. Thank you.

Very truly yours,
Tiffani

Tiffani M. Simmons | Assistant Attorney General and Syndications Counsel
Real Estate Finance Bureau
Office of the New York State Attorney General
28 Liberty Street, New York, NY 10005

☎ 212-416-8128 | 📠 212-416-8179

✉ tiffani.simmons@ag.ny.gov

<http://www.ag.ny.gov/bureau/real-estate-finance-bureau>

To receive updates from the Bureau, click [HERE](#).

IMPORTANT NOTICE: This e-mail, including any attachments, may be confidential, privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.

AFFIDAVIT OF DECLARANT

FRIENDS OF GROWING UP GREEN CHARTER SCHOOL II

With respect to a No-Action Application concerning

89-17 161st Street, Jamaica, NY

Building A

STATE OF NEW YORK)

) ss:

COUNTY OF NY)

MATTHEW GREENBERG, being duly sworn, deposes and says:

1. I am an authorized signatory of the **FRIENDS OF GROWING UP GREEN CHARTER SCHOOL**, a New York not-for-profit corporation, having an address at 39-27 28th Street, Long Island City, NY 11101 (the “Declarant”).

2. The Declarant’s predecessor-in-interest, GROWING UP GREEN CHARTER SCHOOL II, acquired a leasehold interest in the property located at 89-17 161st Street, Jamaica, New York (Block: 9760, Lot: 34) and referred to as “Building A” (the “Property”) pursuant to an Amended and Restated Agreement of Lease dated October 21, 2019 with JJSS JAMAICA CF LLC as landlord (the “Lease”), which Lease, pursuant to its terms, was assigned to Declarant by that certain Assignment of Lease dated June 30, 2020. The Commencement Date of the Lease was February 11, 2020. The Expiration Date of the Lease will be the later of: (i) July 31, 2053; and (ii) the first July 31st that is no less than thirty (30) years after the date that the Leasehold Declaration (as defined in the Lease) is recorded. The recorded Memorandum of Lease setting forth certain terms of the Lease is annexed hereto as **Exhibit A**.

3. I submit this Affidavit in support of an application by the Declarant to the Department of Law (the “Application”), requesting that the Department of Law exercise its discretion and issue a finding (in the form of a “no-filing required” letter or “no action” letter or in such other form as may be appropriate (a “No-Action Letter”)) that the filing of an offering plan for the Property in accordance with the Martin Act (and the regulations promulgated thereunder) is not applicable to or required with respect to: (i) the initial submission by Declarant of its leasehold interest in the Property to condominium ownership pursuant to Article 9-B of the New York Real Property Law; and (ii) in connection therewith, the creation of two condominium units (the “Units”) comprising a public charter school, including: (a) a space located on the cellar floor of the building for use as a gymnasium or such other purposes as are permitted under the Lease, to be designated “Unit A-1” and (b) a space located on the gallery floor, first through third

floors, and roof of the building for classroom and ancillary purposes or such other uses as are permitted under the Lease, to be designated "Unit A-2".

4. Declarant's purpose in creating the proposed leasehold condominium is to enable Declarant, as a New York not-for-profit organization, to qualify for a real estate tax exemption under RPTL § 420-a, and to the best of Declarant's knowledge, this project qualifies for real estate tax exemption under RPTL § 420-a.

5. The Property consists of the entire building known as "Building "A" and located at 89-17 161st Street.

6. The proposed percentage common interest has been allocated between the two Units, subject to final adjustment, as follows:

(i) Unit A-1: 11.24%

(ii) Unit A-2: 88.76%

A letter certifying compliance with Real Property Law § 339-i is included with the Application.

7. If the Application is granted, Applicant will cause the Units to be formed in conformity with applicable law, including the New York Condominium Act. Furthermore, subsequent to the creation of the proposed condominium by Applicant, the Property's use will comply with the Property's certificate of occupancy and all applicable zoning and building laws.

8. Declarant will be retaining title to both Units. Declarant represents that it shall not transfer or convey the Units unless the Department of Law issues an amended No Action Letter permitting the same, and any transfers or conveyances of the Units will be pursuant to an amended No Action Letter or an offering plan accepted by the Department of Law. Declarant represents that it will not subdivide either of the Units into separate condominium units without first obtaining an amended No Action Letter or an offering plan accepted by the Department of Law, and if in the future further subdivision of any of the Units is contemplated and a public offering takes place (with an offering plan), the filed condominium declaration (based on a no-action letter) will not be amended without effectiveness first being achieved in accordance with the applicable regulations of 13 NYCRR.

9. Declarant respectfully submits that the nature of the foregoing contemplated transaction does not require the filing of an offering plan in order to effectuate the purpose of GBL Article 23-A or to protect the public interest inasmuch as no for-sale unit is being created at this time or is contemplated by the Application, and (ii) the general public is not involved.

10. I have no actual knowledge of any omission or untrue statement of a material fact included in this Affidavit or the Application.

11. As of the date hereof, Declarant has not, within the preceding five years, (i) participated as an applicant or principal thereof in any other applications for a No-Action Letter

or (ii) made any other offerings that were not pursuant to an offering plan filed with the Department of Law.

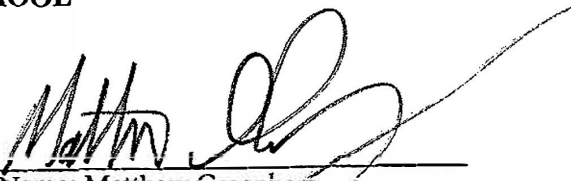
12. The anticipated date of condominium formation is in 2021, subject to the review and approval of the relevant condominium documents by applicable municipal agencies.

13. There was no public financing used in connection with this project. Declarant represents that there will be no residential use of the Property.

14. Declarant represents that the condominium declaration will be filed only for the use described in the Application.

15. Based upon the foregoing and as otherwise set forth in the Application, Declarant's request for the issuance of a No-Action Letter should be granted.

**FRIENDS OF GROWING UP GREEN CHARTER
SCHOOL**

By: 
Name: Matthew Greenberg
Title: Authorized Signatory

Sworn to before me this 13th day
of January, 2021

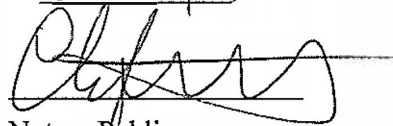

Notary Public



Exhibit A

Recorded Memorandum of Lease

See attached.

MEMORANDUM OF AMENDED AND RESTATED LEASE

THIS MEMORANDUM OF AMENDED AND RESTATED LEASE (this “**Memorandum**”) is entered into as of February 11, 2020, by and between JJSS JAMAICA CF LLC, having an address at 511 Canal Street, Suite 500, New York, New York 10013 (“**Landlord**”), and FRIENDS OF GROWING UP GREEN CHARTER SCHOOL, having an address at 32-97 28th Street, Long Island City, New York 11101 (“**Tenant**”).

1. *Defined Terms.* Capitalized terms used, but not defined herein, shall have the meanings ascribed to such terms in the Lease (as defined below).

2. *Premises.* Landlord is the owner of the parcel of real property commonly known as 89-17 161st Street, Jamaica, New York, which real property is more particularly described in Exhibit A attached hereto (the “**Real Property**”). Landlord has leased to Tenant and Tenant has leased from Landlord, the Real Property and a portion of the improvements thereon for the term of the Lease (as hereinafter defined) (the “**Premises**”).

3. *Lease.* Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord pursuant to that certain Amended and Restated Lease (as more particularly described on Exhibit B attached hereto, the “**Lease**”).

4. *Term.* The Commencement Date of the Lease was February 11, 2020. The Expiration Date of the Lease will be later of: (i) July 31, 2053; and (ii) the first July 31st that is no less than thirty (30) years after the date that the Leasehold Declaration (as defined in the Lease) is recorded.

5. *No Effect on Lease.* This Memorandum is prepared, signed, and acknowledged for recording purposes under New York law. This Memorandum does not modify, increase, decrease, or in any other way affect the rights, duties, and obligations of Landlord and Tenant under the Lease. Each of Landlord and Tenant have rights, duties, and obligations (and conditions to its rights) under the Lease that are not stated in this Memorandum. If the Lease and this Memorandum conflict, the Lease governs.

6. *Successors and Assigns.* The Lease and this Memorandum will bind and benefit the parties and their successors and permitted assigns. The foregoing will not affect any rights of assignment or other transfer in the Lease or any restrictions on assignment or other transfer in the Lease.

7. *Termination.* This Memorandum will automatically terminate and be of no force or effect upon any termination of the Lease.

8. *Further Assurances.* Each party will execute, acknowledge (where necessary), and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the intent of the parties as expressed in the Lease and this Memorandum. If the Lease terminates, then Tenant will execute, acknowledge (where necessary), and deliver such documents

as Landlord may reasonably require or as any title insurance, abstract company, or lender may require to remove this Memorandum of record.

9. *Counterparts.* This Memorandum may be executed in counterparts.

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease as of ~~December 8, 2020~~ (OK)

February 11, 2020

LANDLORD:

JJSS JAMAICA CF LLC

By: _____

Name: John Silvano

Title: Member

TENANT:

FRIENDS OF GROWING UP GREEN CHARTER SCHOOL, INC.

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease as of ~~December 8~~, 2020. ~~OK~~

February 11, 2020

LANDLORD:

JJSS JAMAICA CF LLC

By: _____

Name:

Title:

TENANT:

FRIENDS OF GROWING UP GREEN CHARTER SCHOOL

By:  _____

Name: *Matthew Greenberg*

Title: *Founder / Executive Director*

State of New York }
 } ss.:

County of _____ }

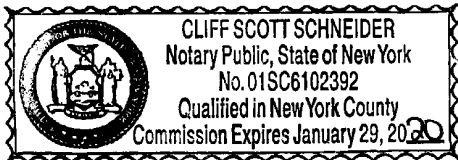
On the _____ day of _____ in the year 2020 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person/entity upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York }
 } ss.:

County of Queens }

On the 23rd day of November in the year 2020 before me, the undersigned, personally appeared Matthew Greenberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person/entity upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

EXHIBIT A

LEGAL DESCRIPTION

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY LINE OF 89TH AVENUE (70' WIDE) AND THE EASTERLY LINE OF 161ST STREET (VARIABLE WIDTH), AND FROM SAID POINT OF BEGINNING RUNNING, THENCE;

1. EASTERLY, ALONG SAID SOUTHERLY LINE OF 89TH AVENUE, HAVING AN INTERIOR ANGLE OF 90 DEGREES - 58 MINUTES - 35 SECONDS WITH THE SAID EASTERLY LINE OF 161ST STREET, A DISTANCE OF 94.21 FEET TO A POINT ON THE DIVIDING LINE BETWEEN BLOCK 9760, LOTS 31 AND 45, THENCE;
2. SOUTHERLY, ALONG SAID DIVIDING LINE BETWEEN BLOCK 9760, LOT 31 AND LOT 45, HAVING AN INTERIOR ANGLE OF 89 DEGREES - 01 MINUTES - 36 SECONDS WITH THE PREVIOUS COURSE, A DISTANCE OF 97.57 FEET TO A POINT, THENCE;
3. SOUTHERLY, ALONG THE DIVIDING LINE BETWEEN BLOCK 9760, LOT 50 AND LOT 31, HAVING AN INTERIOR ANGLE OF 179 DEGREES - 59 MINUTES - 51 SECONDS WITH THE PREVIOUS COURSE, A DISTANCE OF 59.01 FEET TO A POINT, THENCE;
4. WESTERLY, ALONG A LINE THROUGH LOT 31, HAVING AN INTERIOR ANGLE OF 89 DEGREES - 59 MINUTES - 40 SECONDS WITH THE PREVIOUS COURSE, A DISTANCE OF 94.21 FEET TO A POINT, THENCE;
5. NORTHERLY, ALONG THE EASTERLY LINE OF 161ST STREET, HAVING AN INTERIOR ANGLE OF 90 DEGREES - 00 MINUTES - 00 SECONDS WITH THE PREVIOUS COURSE, A DISTANCE OF 154.97 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 14,674 SQUARE FEET OR 0.337 ACRES

THIS PROPERTY MAY BE SUBJECT TO EASEMENTS AND/OR ENCUMBRANCES, EITHER WRITTEN OR IMPLIED.

THIS DESCRIPTION WAS WRITTEN WITH REFERENCE TO A MAP ENTITLED "TAX LOT SUBDIVISION 89-17 161ST STREET, LOT 31, BLOCK 9760, JAMAICA, BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK", PREPARED BY CONTROL POINT ASSOCIATES DATED 05-17-19 AND REVISED 05-20-19 AS REVISION 1.

EXHIBIT B

THE LEASE

1. Amended and Restated Agreement of Lease dated as of October 21, 2019, by and between JJSS Jamaica CF LLC, as landlord, and Growing Up Green Charter School II, as tenant.
2. Assignment and Assumption of Lease dated as of June 30, 2020 by and between Growing Up Green Charter School II, as assignor, and Friends of Growing Up Green Charter School, as assignee.
3. Consent to Assignment and Sublease and First Amendment of Lease dated as of June 30, 2020 by and among JJSS Jamaica CF LLC, as landlord, Growing Up Green Charter School II, as the school, and Friends of Growing Up Green Charter School, as assignee.
4. Second Amendment to Amended and Restated Lease dated as of September 30, 2020 by and among JJSS Jamaica CF LLC, as landlord, and Friends of Growing Up Green Charter School, as tenant.

**OWNER'S AFFIDAVIT
IN SUPPORT OF NO-ACTION LETTER**

**FRIENDS OF GROWING UP GREEN CHARTER SCHOOL II
With respect to a No-Action Application concerning
89-17 161st Street, Jamaica, NY
Building A**

STATE OF NEW YORK)
) ss:

COUNTY OF New York)

[Scott Barone] , being duly sworn, deposes and says:

1. I am an authorized signatory of **JSS JAMAICA CF LLC**, a limited liability company having an address at 511 Canal Street, Suite 500, New York, New York 10013 ("Owner"), and submit this Affidavit in support of the application for a No-Action Letter (the "No-Action Letter") being made by Friends of Growing Up Green Charter School ("Applicant") to the Department of Law of the State of New York ("Department of Law").

2. Owner is the fee owner of the property known as 89-17 161st Street, Jamaica, New York (Block: 9760, Lot: 34) (the "Property") and has granted a leasehold interest in the Property to Applicant, as tenant, for a term of at least 30 years pursuant to that certain Amended and Restated Agreement of Lease dated October 21, 2019 (the "Lease"). A Memorandum of Lease setting forth certain terms of the Lease is annexed hereto as Exhibit A.

3. Owner submits this Affidavit in support of the application by Applicant for a No-Action Letter pursuant to Article 9-B of the New York Real Property Law; and in connection therewith, the establishment of a two-unit leasehold condominium (the "Condominium") to house a public charter school.

4. In accordance with the Lease, Applicant proposes to file and record the requisite documents to establish the Condominium on the Property.

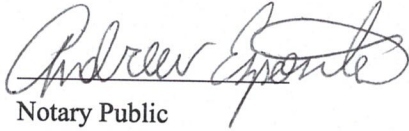
5. Owner supports Tenant's application for the No-Action Letter and has no objection to the creation of the Condominium at the Property in accordance with the terms of the Lease.

[Signature page follows]

JJSS JAMAICA CF LLC

By: 
Name: **Scott Barone**
Title: Authorized Signatory

Sworn to before me this 12 day
of January, 2021


Notary Public

ANDREW ESPOSITO
NOTARY PUBLIC-STATE OF NEW YORK
No. 02ES6377946
Qualified in Queens County
My Commission Expires 07-16-2022

Exhibit A

Memorandum of Lease

See attached.

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3. *Lease.* Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord pursuant to that certain Amended and Restated Lease (as more particularly described on Exhibit B attached hereto, the “**Lease**”).

4. *Term.* The Commencement Date of the Lease was February 11, 2020. The Expiration Date of the Lease will be later of: (i) July 31, 2053; and (ii) the first July 31st that is no less than thirty (30) years after the date that the Leasehold Declaration (as defined in the Lease) is recorded.

5. *No Effect on Lease.* This Memorandum is prepared, signed, and acknowledged for recording purposes under New York law. This Memorandum does not modify, increase, decrease, or in any other way affect the rights, duties, and obligations of Landlord and Tenant under the Lease. Each of Landlord and Tenant have rights, duties, and obligations (and conditions to its rights) under the Lease that are not stated in this Memorandum. If the Lease and this Memorandum conflict, the Lease governs.

6. *Successors and Assigns.* The Lease and this Memorandum will bind and benefit the parties and their successors and permitted assigns. The foregoing will not affect any rights of assignment or other transfer in the Lease or any restrictions on assignment or other transfer in the Lease.

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as Landlord may reasonably require or as any title insurance, abstract company, or lender may require to remove this Memorandum of record.

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[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease as of ~~December 8, 2020~~ (OK)

February 11, 2020

LANDLORD:

JJSS JAMAICA CF LLC

By: _____

Name: John Silvano

Title: Member

TENANT:

FRIENDS OF GROWING UP GREEN CHARTER SCHOOL, INC.

By: _____

Name: _____

Title: _____

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JJSS JAMAICA CF LLC

By: _____

Name: _____

Title: _____

TENANT:

FRIENDS OF GROWING UP GREEN CHARTER SCHOOL

By: _____

Name: Matthew Greenberg

Title: Founder / Executive Director

State of New York }
 } ss.:

County of _____ }

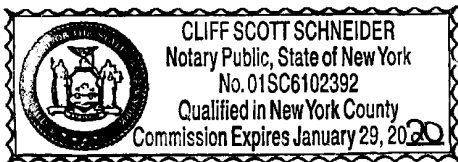
On the _____ day of _____ in the year 2020 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person/entity upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York }
 } ss.:

County of Queens }

On the 23rd day of November in the year 2020 before me, the undersigned, personally appeared Matthew Greenberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person/entity upon behalf of which the individual(s) acted, executed the instrument.



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