

LOUISE CARROLL
Commissioner

ELIZABETH OAKLEY
Deputy Commissioner

PATRICIA ZAFIRIADIS
Associate Commissioner

Inclusionary Housing
100 Gold Street
New York, N.Y. 10038

May 23, 2022

Reda Shehata, R.A.
Borough Commissioner
Brooklyn Borough Office
New York City Department of Buildings
210 Joralemon Street, 8th Floor
Brooklyn, NY 11201

RE: Mandatory Inclusionary Housing -
Permit Notice

2840 Atlantic Avenue
Brooklyn, NY 11207
Block 3964, Lot 8
("MIH Site")

2840 Atlantic Avenue
Brooklyn, NY 11207
Block 3964, Lot 8
("MIH Development")

Dear Commissioner Shehata:

Empire State Dairy LLC ("Applicant") executed and submitted for recordation a Restrictive Declaration ("Declaration") dated as of May 19, 2022 with respect to the above-referenced MIH Site. In order to permit the above-referenced MIH Development to commence construction of improvements within a Mandatory Inclusionary Housing area, the Declaration states that Applicant will comply with Option 1 pursuant to Section 23-154(d)(3)(i) of the Zoning Resolution. The MIH Site Application complies with the relevant sections of the Zoning Resolution and is reflected in the Declaration.¹ Therefore, the Department of Housing Preservation and Development ("HPD") has approved the MIH Application for the MIH Site.

¹ Capitalized terms not specifically defined herein shall have the meaning set forth in the Zoning Resolution.



HPD received a sworn certification dated April 26, 2022 from R. John Woelfling stating that they are the Registered Architect for the MIH Site and stating the total Residential Floor Area of the MIH Development and the amount of Floor Area devoted to Affordable Housing in the MIH Site. Based on this sworn certification, Applicant has informed HPD that, the MIH Site will contain the following:

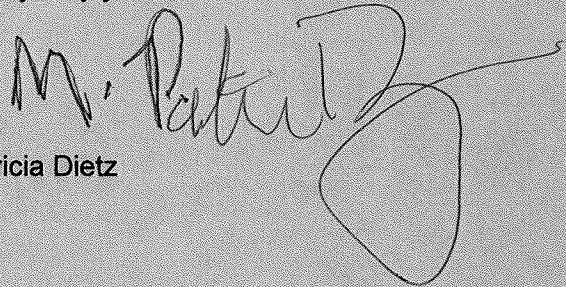
54,260.70 square feet occupied or to be occupied by Qualifying Households. The Affordable Housing Floor Area is equal to at least 25 percent of the residential floor area within such MIH Development pursuant to Section 23-154(d)(3)(i) of the Zoning Resolution.

This letter does not constitute HPD approval of the Floor Area measurement stated herein and HPD recognizes that this Floor Area measurement is subject to change based upon as-built plans.

No permanent Certificate of Occupancy may be issued for any portion of the MIH Development until such time as HPD has issued a Completion Notice for the MIH Site pursuant to Section 23-953 (b) (1).

If a review by HPD and/or the approval by the Department of Buildings of as-built plans for the MIH Site reflects a different amount of Affordable Floor Area than stated herein, (i) HPD will modify all relevant documents to reflect the correct Floor Area in the MIH Site, and (ii) the MIH Development may need to take additional steps in order to comply with the Affordable Housing requirement prior to the issuance of a temporary or permanent Certificate of Occupancy for the MIH Development.

Very truly yours,



Tricia Dietz

HPD
5/2/22

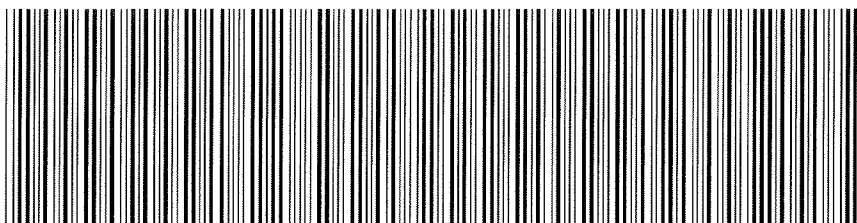


NYC

Printed on paper containing 30% post-consumer material.

**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



2022060300974008002E27EE

RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 44

Document ID: 2022060300974008

Document Date: 05-19-2022

Preparation Date: 06-08-2022

Document Type: SUNDRY MISCELLANEOUS

Document Page Count: 43

PRESENTER:

INFINITY LAND SERVICES LLC *IL11618*
AS AGENT FOR OLD REPUBLIC NATIONAL TITLE
INSURANCE
2361 NOSTRAND AVENUE, SUITE 802
BROOKLYN, NY 11210
718-338-4200

RETURN TO:

EMPIRE STATE DAIRY LLC
C/O BUSHBURG PROPERTIES LLC
3611 14TH AVENUE, SUITE 215
BROOKLYN, NY 11218

				PROPERTY DATA	
Borough	Block	Lot	Unit	Address	
BROOKLYN	3964	8	Entire Lot	2840 ATLANTIC AVENUE	
Property Type: INDUSTRIAL BUILDING					

CROSS REFERENCE DATA

CRFN _____ or DocumentID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES

PARTY 1:

EMPIRE STATE DAIRY LLC
3611 14TH AVENUE, SUITE 215
BROOKLYN, NY 11218

FEES AND TAXES

Mortgage :

Mortgage Amount: \$ 0.00

Taxable Mortgage Amount: \$ 0.00

Exemption:

TAXES: County (Basic): \$ 0.00

City (Additional): \$ 0.00

Spec (Additional): \$ 0.00

TASF: \$ 0.00

MTA: \$ 0.00

NYCTA: \$ 0.00

Additional MRT: \$ 0.00

TOTAL: \$ 0.00

Recording Fee: \$ 252.00

Affidavit Fee: \$ 0.00

Filing Fee:

\$ 0.00

NYC Real Property Transfer Tax:

\$ 0.00

NYS Real Estate Transfer Tax:

\$ 0.00

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

Recorded/Filed 06-21-2022 16:23

City Register File No.(CRFN):

2022000245995



Annette McMill

City Register Official Signature

MANDATORY INCLUSIONARY HOUSING RESTRICTIVE DECLARATION

THIS RESTRICTIVE DECLARATION ("Restrictive Declaration"), made as of the 19th day of May, 2022, by **EMPIRE STATE DAIRY LLC**, a New York limited liability company formed pursuant to the laws of the State of New York ("Applicant"), having an office at 3611 14TH Avenue, Suite 215, Brooklyn, New York 11218.

WHEREAS, Applicant is owner in fee simple of the premises located in the County of Kings, City and State of New York, known as and by the street address 2840 Atlantic Avenue, identified as Block 3964, Lot 8 on the Tax Map of the City (the "Premises"), more particularly described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Premises is located in a Mandatory Inclusionary Housing area within the meaning of Section 23-911 of the New York City Zoning Resolution (the "Resolution") and the Inclusionary Housing Program Guidelines (the "Guidelines") (the Guidelines and Resolution are collectively referred to herein as the "Program"); and

WHEREAS, pursuant to Section 23-154(d)(1) of the Resolution, no Residential Development, Enlargement or Conversion from non-Residential to Residential Use is permitted at a property located in a Mandatory Inclusionary Housing area, unless either Affordable Housing is provided, a contribution is made to the Affordable Housing Fund, or a special permit exempting the property from such requirements is obtained from the Board of Standards and Appeals ("BSA"), and

WHEREAS, Applicant has not obtained a special permit from the BSA; and

WHEREAS, Applicant does not qualify to make a contribution to the Affordable Housing Fund or chooses to forgo making such contribution to the Affordable Housing Fund; and

WHEREAS, Applicant intends to satisfy the requirements of the Program by constructing improvements on the Premises that will constitute Affordable Housing within the meaning of the Program; and

WHEREAS, the New York City Department of Housing Preservation and Development (the "Department") has been duly authorized to administer the Program; and

WHEREAS, Applicant has filed with the Department a MIH Application pursuant to Section 23-961(d) of the Resolution, attached hereto and made a part hereof as Exhibit B, and the Department has evaluated and approved the MIH Application as such terms and requirements of the MIH Application are reflected in this Restrictive Declaration; and

WHEREAS, Applicant intends to construct one or more buildings containing one residential condominium and one commercial condominium on the Premises with a total Residential Floor Area not to exceed 216,195 square feet; and

WHEREAS, Applicant intends to provide 54,260.70 sq square feet of Affordable Floor Area for Qualifying Households (as defined in Section 23-911 of the Resolution (the "Affordable Housing Units")) to be affordable to and occupied by Qualifying Households; and

WHEREAS, Capitalized terms not specifically defined herein shall have the meaning set forth in the Resolution.

NOW THEREFORE, the Applicant has agreed to execute and record this Restrictive Declaration against the Premises.

1. Applicant shall construct SEVENTY-SEVEN (77) Affordable Housing Units on the Premises (the "Building") pursuant to the building plans submitted to and approved by the Department ("Building Plans"). Attached hereto as Exhibit C, is a list identifying each Affordable Housing Unit.
2. The amount of Affordable Floor Area for Qualifying Households shall be equal to at least 25% of the total Residential Floor Area to be constructed on the Premises.
3. The weighted average of all Income Bands for Affordable Housing Units shall not exceed 60% of the Income Index and no Income Band shall exceed 130% of the Income Index. At least 10% of the Residential Floor Area within the MIH Development shall be affordable within an Income Band at 40% of the Income Index.
4. Construction Requirements and Construction Period.
 - (a) Applicant shall not permit the Building Plans to be professionally certified to the City of New York Department of Buildings ("DOB"). Applicant shall submit (i) such Building Plans and (ii) applicable zoning calculations to a DOB plan examiner for review and approval. Construction of Affordable Housing Units shall be in accordance with the Program requirements and the Building Plans with respect to the Affordable Housing Units (which Program requirements and Building Plans with respect to the Affordable Housing Units are collectively defined as "Construction Requirements"). Applicant shall not alter the Construction Requirements that relate to the Program requirements or Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) without the Department's prior written approval.
 - (b) Applicant shall complete the construction of the Affordable Housing Units within three (3) years from the date of this Restrictive Declaration ("Completion Deadline"). The construction of the Affordable Housing Units shall be deemed complete upon the Department's issuance of a Completion Notice in accordance with Section 8 of this Restrictive Declaration ("Completion").
5. Affordable Housing Units will be occupied solely by tenants who are Qualifying Households at the time of such tenant's Initial Occupancy and shall be operated as Affordable Housing for Qualifying Households for the life of the MIH Development. Such obligation shall run with the land.
6. Rents.
 - (i) The rents charged by Applicant for the Affordable Housing Units upon Initial Occupancy shall: (a) not exceed the rents set forth in the schedule attached hereto as Exhibit D, which have been established by the Department pursuant to Sections 23-961(b) of the Resolution, (b) be registered with the New York State Division of Housing and Community Renewal or any successor agency ("DHCR") and (c) thereafter be subject to Rent Stabilization without regard to whether such Affordable Housing Units are

statutorily subject to Rent Stabilization. If a court determines that Rent Stabilization is statutorily inapplicable to an Affordable Housing Unit, such unit shall remain subject to Rent Stabilization in accordance with the terms of this Restrictive Declaration and the lease for such Affordable Housing Unit for the remainder of the Regulatory Period. Applicant shall register all Affordable Housing Units with DHCR upon the earlier to occur of: (A) the occupancy of the last remaining unit, or (B) one year from Completion Deadline (the "DHCR Registration Deadline").

(ii) Rents for existing tenants of the Affordable Housing Units upon renewal of leases for such units or at any time during the term of the lease shall be the lesser of (a) the rent allowed by Rent Stabilization, or (b) the Maximum Monthly Rent for Qualifying Households.

(iii) Upon rental of an Affordable Housing Unit that becomes vacant after the Initial Occupancy, the rent for any new tenant shall be the lesser of (a) the rent allowed by Rent Stabilization, or (b) the Maximum Monthly Rent for Qualifying Households.

(iv) Notwithstanding anything to the contrary contained herein, Applicant shall not utilize any exemption or exclusion from any requirement of Rent Stabilization to which Applicant might otherwise be or become entitled with respect to one or more Affordable Housing Units, including, but not limited to, any exemption or exclusion from the rent limits, renewal lease requirements, registration requirements, or other provisions of Rent Stabilization due to (i) the vacancy of a unit where the rent exceeds a prescribed maximum amount, (ii) the fact that tenant income and/or a unit's rent exceeds prescribed maximum amounts, (iii) the nature of the tenant, or (iv) any other factor.

(v) Applicant shall grant all tenants in Affordable Housing Units the same rights that they would be entitled to pursuant to Rent Stabilization, and such rights shall be stated in each lease for an Affordable Housing Unit.

7. Applicant shall not request or accept a temporary certificate of occupancy ("TCO") or a permanent certificate of occupancy ("CO") for any portion of the MIH Development until the Department issues a Completion Notice; provided, however, that Applicant is permitted, without the Department's prior approval and prior to the issuance by the Department of a Completion Notice, to request or accept a TCO for any Stories in the building to be constructed on the Premises that contain Affordable Housing Units.
8. Applicant acknowledges that the Department shall not issue a Completion Notice prior to Applicant complying with the following requirements (a) through (l) of this Section 8:
 - (a) submission of proof satisfactory to the Department that each Affordable Housing Unit has received a CO or a TCO and such CO or TCO has not expired, been suspended or been revoked and that, except for the issuance of a Completion Notice, the MIH Development is otherwise eligible to receive a TCO or CO;
 - (b) at the discretion of the Department, performance by the Department of a site inspection which establishes to the satisfaction of the Department that (i) the Affordable Housing Units meet the requirements of Section 23-96(d) of the Resolution, and (ii) the Building(s) comprising the MIH Site meets the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

- (c) submission of proof, satisfactory to the Department, that the Affordable Housing Units are being rented in accordance with the Program and that Applicant has entered into leases with tenants for at least ten percent (10%) of the Affordable Housing Units in accordance with the Program, pursuant to which the tenants may begin occupancy upon the issuance of a CO or TCO;
- (d) submission of certificates of insurance evidencing coverage of the types and in the amounts required by Section 11 of this Restrictive Declaration with all premiums for the current year fully paid;
- (e) submission on or after the date that DOB either certifies to the Department that DOB is prepared to issue the CO or the TCO for all of the Affordable Housing Units or that DOB has issued the CO or the TCO for all of the Affordable Housing Units, as the case may be, of (i) a policy of fee title insurance dated as of the date the Applicant acquired title to the Premises, or a title policy insuring the lien of mortgage of the primary Lender for the Premises and/or the Premises or such Lender's credit enhancer, dated as of the date of the closing of the financing of such mortgage, will satisfy the foregoing, where such policy (a) has been issued by a title company in good standing licensed to issue title insurance in New York State and contains the Standard New York Endorsement (Owner's Policy) in substantially the form that appears as Exhibit E hereto, (b) such policy evidences fee simple ownership in the Applicant and the absence of liens and other encumbrances on the Premises other than those approved by the Department, (ii) proof of payment of premiums therefor, and (iii) title continuations run by the title company from the date of the title policy to the date of submission of such title policy together with a letter from the title company confirming the absence of liens and encumbrances on the Premises other than those previously approved by the Department and mechanics liens which have been bonded;
- (f) submission of (1) proof of registration of the Building and all Affordable Housing Units with DHCR; (2) proof that such Building is entirely free of violations of record issued by any city or state agency pursuant to the Multiple Dwelling Law, the Building Code, the Housing Maintenance Code and the Program; and (3) submission of an affidavit stating that Applicant shall complete multiple dwelling registration of the Building in accordance with the New York City Housing Maintenance Code;
- (g) certification that all applicable representations, warranties and statements made by Applicant in this Restrictive Declaration and in any other documents submitted to the Department in connection with this Restrictive Declaration and the Program remain true and correct as of the date on which the foregoing conditions have been satisfied;
- (h) [Omitted];
- (i) submission of a Memorandum of Restrictive Declaration, in the form attached hereto as Exhibit F, where applicable, and the Restrictive Declaration stamped as recorded separately in the Office of the City Register in accordance with Section 14;

- (j) submission of proof that any required Affordable Housing Subordination Agreement (defined in Section 12 herein) was recorded immediately following execution thereof and that Applicant fully complied with the requirements of Section 12 herein;
 - (k) submission of proof that the Building Plans submitted to the Department were reviewed by a DOB plan examiner and submission of a zoning sheet approved, prior to the issuance of a TCO or a CO, by DOB; the Department's issuance of the Completion Notice shall be based upon such DOB approved calculations; and
 - (l) compliance with the terms of this Restrictive Declaration.
- 9. Warranties. Applicant shall obtain and retain commercially reasonable warranties of the work on the Affordable Housing Units from the general contractor and all subcontractors performing such work and, at the Department's request, shall submit such warranties for inspection.
- 10. Renting Affordable Housing Units. Applicant has contracted with **All Borough Solutions Inc.** a not-for profit organization qualified by the Department to participate in the Program, to act as Administering Agent for the Affordable Housing Units ("Administering Agent Agreement"). The Administering Agent Agreement shall require that the Administering Agent ensure that Affordable Housing Units are rented at Rent-up and each subsequent vacancy, in compliance with this Restrictive Declaration and all of the requirements of the Program. The Applicant shall ensure that within (60) sixty days after the DHCR Registration Deadline, the Administering Agent submit an affidavit to the Department attesting that at Initial Occupancy, the Monthly Rent registered and charged for each Affordable Housing Unit complied with the Monthly Rent requirements for such unit. The Applicant shall also ensure that each March after the DHCR Registration Deadline, the Administering Agent submit an affidavit to the Department attesting that each lease or sublease of an Affordable Housing Unit or renewal thereof, during the preceding year, complied with the applicable Monthly Rent requirements of the Program. A contract between the Administering Agent and the Department is attached and made a part hereof as Exhibit G. The Department may replace the Administering Agent in the event that the Affordable Housing Units are not rented at Rent-up and each subsequent vacancy thereafter in compliance with the Program. Applicant may not terminate the Administering Agent Agreement without simultaneously entering into a new Administering Agent Agreement approved in writing by the Department.
- 11. Insurance.
 - (a) Insurance.
 - (i) Applicant shall obtain and maintain in force all-risk casualty insurance, including broad form extended coverage that, in the event of a casualty to the Building containing the Affordable Housing Units, will pay an amount of insurance equal to full replacement value of the Building containing the Affordable Housing Units.

- (ii) Applicant shall obtain and maintain in force commercial general liability insurance and other insurance of commercially reasonable types and amounts with respect to the Building containing the Affordable Housing Units.

(b) Casualty.

- (i) In the event of a casualty, Applicant shall promptly notify the Department thereof. Subject to the terms and conditions set forth in this Section 11, the proceeds of the insurance on the Premises may be utilized as determined by the lender or lenders participating in the financing of the Building (the "Financiers") in accordance with the documents governing such Financiers' loan(s), copies of which have been provided to the Department (the "Loan Documents"). Applicant shall promptly inform the Department of the disposition of such insurance proceeds.
- (ii) (A) In the event of a partial casualty, if the Building is reconstructed after such casualty, the Affordable Housing Units shall also be reconstructed so as to maintain in the Building the same ratio of Affordable Housing to total Residential Floor Area required by the Program, notwithstanding the availability of, or priority of payment of, insurance proceeds, and the terms of this Restrictive Declaration shall remain in full force and effect.

(B) If the Applicant and Financiers determine that, due to the nature of the casualty and the condition of the remaining structure, it is not practicable to include the Affordable Housing Units as originally configured in the replacement building, the Affordable Housing Units may be reconstructed in a location other than the Premises in accordance with Section 23-154(d)(5) of the Resolution, the requirements of this Restrictive Declaration and the Program.
- (iii) In the event of a total casualty, where all Residential Floor Area created pursuant to this Restrictive Declaration ceases to exist and the Applicant elects not to reconstruct Residential Floor Area in the restored building, if any, then all proceeds shall be applied in accordance with the Loan Documents.
- (iv) Applicant agrees that if the Building containing the Affordable Housing Units is reconstructed as provided in Section 11(b)(ii), then: (A) at such time as the restored portion of the Building or any new building is ready for occupancy, the Affordable Housing Units on each restored floor shall be made available for occupancy and re-rented prior to the market rate units on the same floor; (B) Applicant shall restore, repair, replace, rebuild, alter or otherwise improve the Affordable Housing Units in accordance with this Restrictive Declaration and the Program in effect as of the date hereof; (C) such construction shall be free of all violations under the New York City Building Code, the New York State Multiple Dwelling Law and the New York City Housing Maintenance Code; and (D) Applicant shall, upon request of the Department, amend this Restrictive Declaration to reflect any changes to the number, configuration or location of the Affordable Housing Units in any replacement building.

- (v) Applicant may require the Financiers under any current or future Mortgage to use the insurance proceeds for the rebuilding of the Premises (with certain protective procedures).
12. Debt Restrictions. Applicant shall not mortgage or otherwise encumber the Affordable Housing Units or this Restrictive Declaration with debt other than any initial debt approved by the Department and any modifications of same unless, (1) Applicant has notified the Department of such debt; (2) the lender is a local, state, or federal agency, savings bank, commercial bank, life insurance company, public real estate investment company, pension fund, Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), or other lender approved by the Department, (3) if the debt service coverage ratio for the mortgaged property would be less than 1.1 if the Affordable Housing Units were to be encumbered with such subsequent debt, Applicant has obtained the prior written consent of the Department, and (4) if such debt is a new indebtedness and/or a new mortgage, the lender enters into a subordination and non-disturbance agreement between the lender, Owner and the Department ("Affordable Housing Subordination Agreement") in form and substance satisfactory to the Department, substantially in the form annexed hereto as Exhibit H, which Applicant shall cause to be recorded against the Affordable Housing Units immediately following execution thereof in the Office of the City Register for the county in which the Premises are located.
13. Construction Monitoring. The Department may monitor the construction of the Affordable Housing Units in any reasonable manner, including inspection of the Premises. Upon request (a) Applicant shall give the Department notice of planning and construction progress meetings by telephone or in writing, and (b) the Department may (i) participate in planning and construction progress meetings, (ii) review construction contracts, plans, specifications and materials samples, and (iii) review proposed changes to the foregoing. Following the Department's request for any documents pursuant to Section 13(iii) herein, Applicant shall give to the Department (x) notice of proposed changes to such documents or materials, and (y) notice of any casualty to or other material event concerning the work on the Affordable Housing Units.
14. Condominium Declaration. Nothing in this Restrictive Declaration shall prohibit the Applicant from subdividing the Building into condominium units, so long as (i) any condominium documents, including, but not limited to, the condominium declaration and by-laws (the "Condominium Declaration") with all exhibits thereto, necessary to effectuate such subdivision of the Building are submitted to the Department, for review and approval prior to submission to the New York State Attorney General's Office and prior to recording of the Condominium Declaration with the Office of the City Register and (ii) the Memorandum of Restrictive Declaration has been recorded against the Affordable Housing Units prior to receipt of a Completion Notice in accordance with Section 8 of this Restrictive Declaration. After such review and approval, the portions of the Condominium Declaration affecting the Affordable Housing Units shall not be modified without the prior written approval of the Department.
15. Covenants Running With The Land. The restrictions, covenants and provisions set forth in this Restrictive Declaration shall run with the land, bind Applicant and all other parties in interest to the Premises and their respective successors and assigns, and be

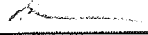
perpetual in duration. In the event of any conveyance of the Premises, the grantee(s) shall be bound to the terms and conditions contained in this Restrictive Declaration.

16. Recordation. Applicant, at its sole expense, shall promptly after execution of this Restrictive Declaration submit this Restrictive Declaration for recordation against the Premises in the Office of the City Register, and deliver satisfactory evidence of such recordation to the Department.
17. Amendments. This Restrictive Declaration may only be amended or modified by an instrument in recordable form executed by Applicant with the written approval of the Department thereon.
18. No Third Party Beneficiaries. The provisions of this Restrictive Declaration are solely and exclusively for the benefit of the City and Applicant and no other person shall be a beneficiary thereof.
19. No Waiver. No failure or delay on the part of the City to exercise any right, power or remedy under this Restrictive Declaration or available at law or in equity shall operate as a waiver thereof, or limit or impair the City's right to take any action or to exercise any such right, power or remedy, or prejudice its rights against Applicant in any respect.
20. Enforcement. The City of New York or the Department may enforce the terms of this Restrictive Declaration through the exercise of remedies at law or in equity.
21. Primary Residence. Affordable Housing Units may only be occupied as a primary residence, as defined in Rent Stabilization, by natural persons or families pursuant to a one or two year lease who have met the applicable income requirements for Qualifying Households at the time of such tenant's initial occupancy of such unit. Applicant shall only offer a vacant dwelling unit for occupancy by persons or families intending to occupy such unit as their primary residence pursuant to a one or two year lease and shall not cause or permit the sublease or assignment of any dwelling unit for transient occupancy, for occupancy by any household that is not income eligible, or to any corporation or other entity.
22. HPD's eRent Roll System. Applicant shall submit required rent rolls to the Department in such form and in such manner as directed by the Department, including, but not limited to, submission by electronic means using software designated by the Department.

[No further text; signature page immediately follows]

IN WITNESS WHEREOF, Applicant has executed this Restrictive Declaration as of the day and year first above written.

EMPIRE STATE DAIRY LLC

By: 
Name: Stephen S. Holman
Title: Member

APPROVED AS TO FORM BY
STANDARD TYPE OF CLASS
UNTIL November 18, 2022

By: /s/ Isabel Galis-Menendez
Acting Corporation Counsel

STATE OF NEW YORK)
COUNTY OF Kings) SS:

On this 16th day of May, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Abraham J. Holman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Gitty Waldman
NOTARY PUBLIC

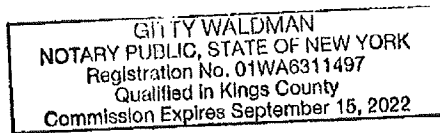


EXHIBIT A

PROPERTY DESCRIPTION

ALL those certain plots, pieces or parcels of land situate, lying and being in the City and State of New York described as follows and the improvements now or hereafter located thereon:

<u>Block</u>	<u>Lot</u>	<u>Address</u>
3964	8	2840 Atlantic Avenue

Borough: Brooklyn

County: Kings

EXHIBIT B
MIH APPLICATION
(following page)

THE CITY OF NEW YORK
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT
OFFICE OF DEVELOPMENT
100 GOLD STREET, ROOM 5G, NEW YORK, NEW YORK 10038
Inclusionary@hpd.nyc.gov

AFFORDABLE HOUSING PLAN APPLICATION PURSUANT TO
THE MANDATORY INCLUSIONARY HOUSING PROGRAM
Please indicate "Not Applicable" or "NA" where appropriate. Do not leave any lines blank.

1. Applicant: Empire State Dairy LLC
Address: 3611 14th Avenue, Suite 215, Brooklyn, NY 11218
Fax: _____
Email: Jh@bushburg.com
Primary Contact (Name, Phone, Email):
Abraham J Hoffman, 718-417-1616 ext 201, Jh@bushburg.com

2. Owner (if different): _____
Address: _____
Fax: _____
Email: _____
Primary Contact (Name, Phone, Email):

3. Administering Agent: All Borough Solutions Inc.
Address: 199 Lee Avenue, Suite 903, Brooklyn, NY 11211
Fax: 718-650-6570
Email: Sam@jackjaffa.com
Primary Contact (Name, Phone, Email):
Sam Posner, 718-650-6570, Sam@jackjaffa.com

4. General Contractor: Bushburg Builders LLC
Address: PO Box 180075, Brooklyn, NY 11218
Fax: _____
Email: Construction@bushburg.com
Primary Contact (Name, Phone, Email):
Abraham J Hoffman, 718-417-1616, Construction@bushburg.com

5. Architect: Dattner Architects
Address: 1385 Broadway, New York, NY 10018
Fax: _____
Email: Jwoelfling@dattner.com
Primary Contact (Name, Phone, Email):
John Woelfling, 212-247-2660, Jwoelfling@dattner.com

Application updated May 2021

6. Attorney and Firm: YuhTyng Patka, Duval & Stachenfeld LLP

Address: 555 Madison Avenue, New York, NY 10022

Fax: _____

Email: Ypatka@dslip.com

Primary Contact (Name, Phone, Email):

YuhTyng Patka, 212-692-5532, Ypatka@dslip.com

7. Location of Affordable Housing Units

Street Address: 2840 Atlantic Avenue, Brooklyn, NY 11207

Borough: Brooklyn

Block(s)/Lot(s): 03964-0008

Community Board: 5

8. Mandatory Inclusionary Housing Area

(Include Zoning Resolution Appendix F Map Reference):

☐ Special Permit: _____

9. MIH Option for Compliance with Affordable Housing Requirement – ZR 23-154 (d)(3)(i-iv):

☒ Option 1

☐ Option 2

☐ Deep Affordability Option

☐ Workforce Option

10. Unit Count:

Total Units: 320 Total MIH Units: 77 Super's Units: 1

Income Distribution of Affordable Housing Units:

Number of low-income units (equal to or less than 80% AMI): 62

Number of moderate-income units (equal to or less than 125% AMI): 15

Number of middle-income units (equal to or less than 175% AMI): _____

11. If publicly financed, list all sources of governmental assistance, including tax credits, bond financing, and land disposition programs:

Tax Exemption to be requested: 421a Option A

12.Type of Project (check all that apply)

Construction type:

- ☒ New Construction
- ☐ Conversion
- ☐ Enlargement

Location of MIH Units:

- ☒ On-site (MIH Site is located on the same zoning lot as MIH Development)
- ☐ Off-site (MIH Site is located on a different zoning lot to MIH Development)

Tenure of Units:

MIH Units

- ☒ Rental
- ☐ Homeownership

Non-MIH Units

- ☒ Rental
- ☐ Homeownership
- ☐ Not Applicable/All units are MIH units

13.Tenant-Paid Utilities:

Check all tenant-paid utilities that will apply, or check N/A if owner-paid

Apartment Electricity

- ☒ Electricity
- ☐ N/A: Apartment electric is paid by owner

Cooking

- ☐ Gas Stove
- ☒ Electric Stove
- ☐ N/A: Cooking is paid by owner

Heating

- ☐ Gas Heating
- ☒ Electric Heat: Cold Climate Air Source Heat Pump (ccASHP)*
- ☐ Electric Heat: other (e.g. Electric Resistance Heating, Electric PTACs, Electric Furnace)
- ☐ N/A: Heating is paid by owner

*Product must be listed on the NEEP Cold Climate Air Source Heat Pump (ccASHP) Product List:

<https://ashp.neep.org/#/>

Hot Water

- ☐ Gas Hot Water Heater
- ☐ Electric Hot Water Heating: Heat Pump Water Heaters (HPWHs)
- ☐ Electric Hot Water Heating: Other (e.g. resistance-type Hot Water Heater)
- ☒ N/A: Hot water heating is paid by owner

14. If the project will contain a condominium or cooperative structure, please describe the structure and the use of each unit. If not, please indicate N/A:

1 Residential, 1 Commercial

Authorized Signature of Applicant:



Print name: Abraham J Hoffman

Date: 5/11/22

EXHIBIT C
LIST OF AFFORDABLE UNITS
(following page)

2840 Atlantic Avenue

Exhibit C

Inclusionary Housing Units			
Construction Floor	Marketing Floor	Apt #	# Bedrooms
2	2	204	0
2	2	206	1
2	2	207	2
2	2	219	1
2	2	220	1
2	2	225	0
2	2	228	0
2	2	231	3
3	3	302	1
3	3	306	1
3	3	307	2
3	3	308	1
3	3	316	1
3	3	317	1
3	3	319	1
3	3	320	1
3	3	321	1
3	3	327	1
4	4	402	1
4	4	406	1
4	4	407	2
4	4	408	1
4	4	416	1
4	4	417	1
4	4	419	1
4	4	420	1
4	4	421	1
4	4	427	1
5	5	502	2
5	5	504	0
5	5	506	1
5	5	507	2
5	5	508	1
5	5	509	0
5	5	516	1
5	5	517	1
5	5	519	1
5	5	531	3
6	6	604	0
6	6	606	1
6	6	607	2
6	6	608	1
6	6	609	0
6	6	616	1
6	6	617	1

Unit Summary	
# Bedrooms	Units
Studios	18
1 Bedroom	41
2 Bedroom	15
3 Bedroom	3
Total	77

6	6	619	1
6	6	625	0
6	6	631	3
7	7	704	0
7	7	706	2
7	7	708	2
7	7	709	1
7	7	714	0
7	7	716	1
7	7	717	1
7	7	725	0
7	7	727	2
8	8	804	0
8	8	806	2
8	8	808	2
8	8	809	1
8	8	814	0
8	8	816	1
8	8	817	1
8	8	819	1
8	8	825	0
9	9	902	2
9	9	904	0
9	9	910	1
9	9	925	0
9	9	927	2
9	9	931	0
9	9	932	1
10	10	1002	2
10	10	1025	0
10	10	1027	2
10	10	1032	1

EXHIBIT D
SCHEDULE OF RENTS AND EXPENSES

(following page)

Mandatory Inclusionary Housing Units --Rents*			
# Bedrooms	# Units	Income Band/AMI Level	Legal Regulated Rent**
0 BR	6	40%	\$823
1 BR	16		\$874
2 BR	5		\$1,031
Subtotal	27		

# Bedrooms	# Units	Income Band/AMI Level	Legal Regulated Rent**
0 BR	9	60%	\$1,290
1 BR	17		\$1,374
2 BR	9		\$1,631
3 BR	2		\$1,868
Subtotal	37		

# Bedrooms	# Units	Income Band/AMI Level	Legal Regulated Rent**
0 BR	3	100%	\$2,224
1 BR	8		\$2,375
2 BR	1		\$2,832
3 BR	1		\$3,255
Subtotal	13		
Project Total	77		

*Tenants are responsible for electricity, electric stove, and electric heat (NEEP-approved cold climate heat pumps).

**The maximum Legal Regulated Rent is 30% of the applicable income band as defined in the New York City Zoning Resolution, including applicable utility allowances.

2840 Atlantic Avenue

Exhibit D

Total Units: 320

Mandatory Inclusionary Housing Units: 77

EXPENSES	Amount
Property Tax*	296,609
Insurance	144,000
Water/Sewer	208,000
Utilities	144,000
Repairs & Maintenance	128,000
Elevator	21,000
Payroll	320,000
Legal/Professional	32,000
Management (includes AA)	313,833
Reserves	80,000
Other	32,000
Total Expenses	\$1,719,442

*The expenses reflect the overall 2840 Atlantic Avenue project underwriting dated April 29, 2022, which comprises 320 units, of which 77 are Mandatory Inclusionary Housing units.

EXHIBIT E

**STANDARD NEW YORK ENDORSEMENT
(OWNER'S POLICY)**

1. The following is added to the insuring provisions on the face page of this policy:

"____. Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy."

2. Exclusion Number 5 is deleted, and the following is substituted:

5. Any lien on the Title for real estate taxes, assessments, water charges or sewer rents imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as Shown in Schedule A.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

IN WITNESS WHEREOF, _____ Insurance Company of New York has caused this Endorsement to be signed and sealed on its date of issue set forth herein.

DATED:

COUNTERSIGNED _____
Authorized Signatory

_____ Insurance Company

BY: _____

EXHIBIT F

MEMORANDUM OF RESTRICTIVE DECLARATION

THIS MEMORANDUM OF RESTRICTIVE DECLARATION made this ____ day of _____, 202[##], by [owner], [description of legal entity (e.g., a New York limited liability company formed pursuant to the laws of the State of New York], ("Applicant"), having an office at [address].

WITNESSETH THAT:

1. The Applicant is owner in fee simple of the premises located in the County of _____, City and State of New York, known as and by the street address [address], identified as Block [##], Lot [##] on the Tax Map of the City (the "Premises"), more particularly described in Exhibit A attached hereto and made a part hereof;
2. The Applicant has covenanted and agreed for and on behalf of itself, its successors, assigns, heirs, grantees and lessees, which covenants shall be covenants running with the land to provide Affordable Housing on the Premises in accordance with the Mandatory Housing Restrictive Declaration ("Declaration"), dated as of [insert date] by [insert name(s) of non-HPD parties] and recorded in the Office of the City Register for New York County on [insert date] as CRFN [insert CRFN number], the provisions of which are by this reference made a part hereof and Section 23-90 (Inclusionary Housing), inclusive of the Resolution.
3. The Declaration and the covenants therein, shall run with the land that constitutes the Premises in accordance with the terms therein.
4. This Memorandum of Declaration is intended to provide constructive notice of the existence and terms of the Declaration and in no way modifies or amends the Declaration. If any provisions of this Memorandum of Declaration conflict with the Declaration, the terms of the Declaration shall prevail. The Applicant at its sole cost and expense shall cause this Memorandum of Restrictive Declaration to be recorded against each tax lot within the zoning lot containing the Affordable Housing whether or not such tax lot existed at the time the Declaration was recorded.

NO FURTHER TEXT

IN WITNESS WHEREOF, this Memorandum of Restrictive Declaration has been executed as of the date first set forth above.

[illegible]

STATE OF NEW YORK)

) SS:

COUNTY OF NEW YORK)

On this _____ day of _____, 202_, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

UNIFORM ACKNOWLEDGEMENTS

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

On this _____ day of _____, 202__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

EXHIBIT G

Administering Agent Agreement Inclusionary Housing Program

AGREEMENT made this 19th day May 2022, between **All Borough Solutions Inc.** ("Administering Agent"), having an office at 199 Lee Avenue, Suite 903, Brooklyn, New York, 11211 and the **Department of Housing Preservation and Development** ("Department"), having an office at 100 Gold Street, Ninth Floor, New York, NY 10038.

WHEREAS, EMPIRE STATE DAIRY LLC, a New York limited liability formed pursuant to the laws of the State of New York, having an office at 3611 14TH Avenue, Suite 215, Brooklyn, New York 11218 ("Applicant" or "Owner") has recorded a Restrictive Declaration (the "Restrictive Declaration") pursuant to which Owner has agreed to create seventy-seven (77) Affordable Housing Units located at 2840 Atlantic Avenue, identified as Block 3964, Lot 8 on the Tax Map of the City of New York (the "Affordable Housing Units") in accordance with Section 23-90 (Inclusionary Housing), inclusive of the Zoning Resolution ("Resolution") and with the Inclusionary Housing Guidelines ("Guidelines", and together with the Resolution collectively referred to as the "Program"); and

WHEREAS, Administering Agent has agreed to ensure that the Affordable Housing Units are rented in compliance with the Restrictive Declaration at Rent-up and each subsequent vacancy and has signed an agreement with the Applicant to that effect; and

WHEREAS, Administering Agent has been qualified to act as an Administering Agent by the Department;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is hereby agreed that Administering Agent will assume the ongoing responsibility for ensuring that each Affordable Housing Unit is rented and upon vacancy re-rented in compliance with the Restrictive Declaration. In addition, the Administering Agent shall (1) maintain records setting forth the facts that form the basis of any affidavit submitted to the Department; (2) maintain such records as the Department may require at the Administering Agent's office or other location approved by the Department; and (3) make all records and facts of the operation of the Administering Agent available for the Department's inspection.

Notwithstanding any other remedy contained herein, the Department may commence an action against Administering Agent to require specific performance of Administering Agent's obligations herein. Department reserves the right to replace Administering Agent in the event that the Affordable Housing Units are not rented at Rent-up and each subsequent vacancy thereafter in compliance with the Program. If the agreement between Applicant and Administering Agent is terminated or expires, Administering Agent shall provide the Department with written notice of such termination or expiration and this Administering Agent Agreement shall be terminated.


This Administering Agent Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall be deemed one and the same instrument.

[NO FURTHER TEXT APPEARS ON THIS PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

THE CITY OF NEW YORK

BY: DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT

By: 
Name: Tricia Dietz
Title: Assistant Commissioner,
Inclusionary Housing

All Borough Solutions Inc.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

THE CITY OF NEW YORK

BY: DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT

By: _____
Name: Tricia Dietz
Title: Assistant Commissioner,
Inclusionary Housing


All Borough Solutions Inc.

By:  _____
Name: Samuel Posner
Title: president

UNIFORM ACKNOWLEDGEMENTS

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

On this 18th day of May 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Tricia Dietz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.



NOTARY PUBLIC

ANN M. RIVERA
Notary Public, State of New York
No. 01R16401350
Qualified in Bronx County
Commission Expires Dec. 09, 2023

STATE OF NEW YORK)
) SS:
COUNTY OF)

On this _____ day of May 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

UNIFORM ACKNOWLEDGEMENTS

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

On this ____ day of May 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Tricia Dietz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

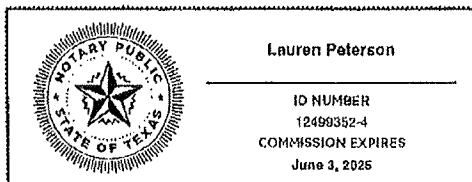
NOTARY PUBLIC

Texas
STATE OF ~~NEW YORK~~)
) SS:
COUNTY OF ~~Comal~~)

On this 16th day of May 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Samuel Posner, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that [s]he executed the same in [her]his capacity, and that by [her]his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

(Acknowledgement)

Samuel Posner
Capacity: President, Representing: All Borough Solutions Inc



Lauren Peterson

NOTARY PUBLIC

Lauren Peterson
Notary Public, State of Texas
Expiration: 06/03/2025
Commission ID: 124993524

Notarized online using audio-video communication

EXHIBIT H

AFFORDABLE HOUSING SUBORDINATION AGREEMENT

(following pages)

THIS SUBORDINATION AND NON-DISTURBANCE AGREEMENT ("Agreement"), made as of this ____ day of _____, 202__, by _____, [*describe type of entity*], having an address at _____ ("Mortgagee" or "Lender"), in favor of **THE CITY OF NEW YORK**, (the "City") a municipal corporation acting by and through its **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**, having an office at 100 Gold Street, New York, New York 10038 ("HPD").

WHEREAS, Mortgagee holds a certain mortgage or mortgages dated of even date herewith, as follows: (a) [*Construction Loan Mortgage, Assignment of Leases and Rents and Security Agreement, dated of even date herewith*], in the principal amount of \$ _____; (b) [*describe all subordinate mortgages, if any*], in the principal amount of \$ _____ and each made by [**Borrower**], a [*describe type of entity*] ("Applicant") [and describe owner if different than applicant ("Owner")] in favor of Lender to secure, among other things, the aggregate principal sum of _____ DOLLARS AND _____ CENTS (\$ _____) or so much thereof as may be advanced pursuant thereto, and interest, (the "Mortgage(s)") covering the premises described in **Schedule A** annexed hereto and incorporated herein ("Premises");

[**WHEREAS**, Owner and Borrower have entered into a Declaration of Interest and Nominee Agreement, dated as of the date hereof, pursuant to which Owner will retain legal title to the Premises and Beneficial Owner will, collectively, hold the beneficial interests in the Premises;]

WHEREAS, Applicant has executed a certain Mandatory Inclusionary Housing Restrictive Declaration ("Restrictive Declaration") dated as of the date hereof, which Restrictive Declaration is intended to be recorded against the Premises immediately following execution and delivery thereof;

WHEREAS, the Restrictive Declaration was entered into under the Mandatory Inclusionary Housing Program, which is governed by Sections 23-90 the New York City Zoning Resolution (the "Resolution") and the Inclusionary Housing Program Guidelines (the "Guidelines") (the Guidelines and the Resolution are collectively referred to as the "Program");

WHEREAS, the Restrictive Declaration provides that Applicant shall not mortgage or otherwise encumber the Premises or the Restrictive Declaration without the prior written consent of HPD and that, if HPD consents to a mortgage loan, the lender must subordinate the loan to all of the terms and conditions of the Restrictive Declaration;

WHEREAS, Applicant has entered into the Mortgage and other instruments evidencing or securing obligations of the Premises to Mortgagee (collectively, "Other Loan Documents"; the

Mortgage and the Other Loan Documents are referred to collectively as the "Loan Documents"); and

WHEREAS, HPD has consented to the Loan Documents on the condition that Mortgagee subordinate the Loan Documents to all the terms and conditions of the Restrictive Declaration in the manner hereinafter described.

NOW THEREFORE, for good and valuable consideration, the receipt whereof is hereby acknowledged, Mortgagee hereby represents to and agrees with HPD, notwithstanding any contrary term, provision, agreement, covenant, warranty, and/or representation contained or implied in any Loan Documents or any other document executed in connection with the Premises, that:

1. The Loan Documents are and shall continue to be subject and subordinate to the terms, covenants, agreements, and conditions of the Restrictive Declaration.
2. As used in this Agreement (a) the term "Mortgage" shall refer to any amendments, replacements, substitutions, extensions, modifications, or renewals thereof, and (b) the term "Mortgagee" shall include the Mortgagee's successors and assigns.
3. As used in this Agreement, the phrase "subject and subordinate" means that:
 - (a) to the extent there are any inconsistencies between the provisions of the Restrictive Declaration and any provisions of the Loan Documents, the provisions of the Restrictive Declaration shall take priority over the inconsistent provisions of the Loan Documents, except as provided herein; and
 - (b) if Mortgagee or if any person or entity becomes the owner of the Premises (including, if the Premises is defined as a leasehold interest as well as a fee interest, the owner of such leasehold interest) by foreclosure, conveyance in lieu of foreclosure, or otherwise ("New Owner"), (i) the Restrictive Declaration shall continue in full force and effect and the Mortgagee and New Owner shall have no right to disturb the rights of HPD under the Restrictive Declaration, (ii) HPD shall not be named as a defendant in any action or proceeding to foreclose the Mortgage or otherwise enforce the Mortgagee's or New Owner's rights thereunder, except as set forth below, and (iii) the Premises shall be subject to the Restrictive Declaration in accordance with the provisions thereof; provided, however, that Mortgagee and New Owner shall not be liable for any act or omission of Applicant or bound by any subsequent amendment of or modification to the Restrictive Declaration without its written consent. Subject to the foregoing, nothing contained herein shall prevent the Mortgagee or New Owner from naming HPD in any foreclosure or other action or proceeding initiated by the Mortgagee or New Owner pursuant to the Mortgage to the extent necessary under applicable law in order for the Mortgagee or New Owner to avail itself of and complete the foreclosure or other remedy.

4. Upon a declaration of default under the Restrictive Declaration, HPD shall give Mortgagee notice thereof by hand delivery or reputable overnight courier and a reasonable opportunity to cure (if such default can be cured), provided, however, that Mortgagee shall have no obligation to cure any such default. If Mortgagee cures the default during such cure period (if any) or has commenced to cure the specified default within such period and is diligently pursuing completion of such cure, or has commenced the exercise of remedies under the Loan Documents within such period, HPD shall not exercise any remedies under the Restrictive Declaration by reason of such default. Nothing herein shall limit HPD's right to consent to a replacement manager pursuant to Paragraph 6 herein.
5. Mortgagee hereby acknowledges that it has no interest in or rights to any funds held in the Special Reserve Fund pursuant to the Restrictive Declaration.
6. Notwithstanding anything contained in the Restrictive Declaration or the Loan Documents, neither HPD nor Mortgagee may assume responsibility for management of the Affordable Housing Units (as defined in the Restrictive Declaration) or designate a third party to manage the Affordable Housing Units without the consent of the other. If, in the exercise of its remedies under the Restrictive Declaration, HPD notifies Mortgagee of its intention to install a replacement manager of the Affordable Housing Units, then Mortgagee's consent to such manager shall not be unreasonably withheld or delayed. If, in the exercise of its remedies under the Loan Documents, Mortgagee notifies HPD of its intention to install a replacement manager of the Affordable Housing Units, then HPD's consent to such manager shall not be unreasonably withheld or delayed. The aforesaid provisions shall apply to management of the Premises (and not only management of the Affordable Housing Units) if it is not feasible or practical for the Affordable Housing Units to be managed separately from the rest of the Premises.
7. Upon a casualty to a building on the Premises,
 - (a) where the repair or reconstruction cost is more than thirty-five percent (35%) of the replacement value of a building on the Premises, Mortgagee shall have the right to determine whether insurance proceeds are applied for the reconstruction or repair of the Premises or towards repayment of the Mortgage, and
 - (b) where the repair or reconstruction cost is less than or equal to thirty-five percent (35%) of the replacement value of the Premises, HPD shall have the right to determine how insurance proceeds shall be applied. HPD shall make such determination within sixty (60) days after HPD is notified of the occurrence of the casualty. If HPD determines in such case not to apply the insurance proceeds for the reconstruction or repair of the Premises, the insurance proceeds shall be retained by Mortgagee to the extent of sums then due under the Mortgage.

This paragraph supersedes any contrary provisions in the Restrictive Declaration or Loan Documents.

8. No failure to exercise and no delay in exercising, on the part of HPD, of any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege operate as a waiver of any other right, power or privilege under this Agreement.
9. The covenants, provisions and terms of this Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and interpreted in accordance with the laws of the State of New York, and shall be binding upon and inure to the benefit of Mortgagee, HPD, and their respective successors, transferees, and assigns.
10. Neither this Agreement nor any provision hereof (including this paragraph) may be changed, modified, amended, waived, supplemented, discharged, abandoned, or terminated orally except by an instrument in writing signed by the party against whom enforcement of the change, modification, amendment, waiver, discharge, abandonment, or termination is sought.
11. All notices, approvals, requests, waivers, consents or other communications given or required to be given under this Agreement shall be in writing and sent as follows:

If to HPD, in duplicate, to: Department of Housing Preservation and Development
100 Gold Street
New York, NY 10038
Attn: Associate Commissioner, Housing Incentives

and: Department of Housing Preservation and Development
100 Gold Street
New York, NY 10038
Attn: General Counsel

If to Lender, in duplicate, to: [Lender Name]
[Lender Address]
Attn:

and: [Lender's Counsel Name]
[Lender's Counsel Address]
Attn:

Notices must be hand delivered, sent by overnight delivery (e.g., FEDEX) or sent by certified or registered U.S. mail, return receipt requested. Notice shall be deemed to have been given upon delivery if sent by hand delivery, U.S. mail or overnight delivery. Each party named above may designate a change of address by written notice to all of the other parties.

12. This Agreement shall be recorded against the Premises immediately after the execution hereof, in the Office of the City Register for the County in which the Premises are located and the Applicant [and/or Owner] shall pay all required fees and taxes in connection therewith.

13. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one agreement.

[No further text - signatures on the next page]

IN WITNESS WHEREOF, the undersigned have duly executed this Subordination and Non-Disturbance Agreement as of the day and year first above written.

THE CITY OF NEW YORK

**BY: DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT**

By: _____
Tricia Dietz
Assistant Commissioner, Inclusionary Housing

APPROVED AS TO FORM BY
STANDARD TYPE OF CLASS
UNTIL

By: /s/ Lori Barrett- Peterson
Acting Corporation Counsel

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

On the ____ day of _____ in the year 202__ before me, the undersigned, personally appeared **Tricia Dietz**, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

SUBORDINATION AND NON-DISTURBANCE AGREEMENT

by and between
THE CITY OF NEW YORK

-and-
[LENDER]

The property affected by this written instrument lies within the:

Block Lot Address

County:
Address:

RECORD AND RETURN TO:

[HPD COUNSEL]

**MANDATORY INCLUSIONARY HOUSING
RESTRICTIVE DECLARATION**

BY

EMPIRE STATE DAIRY LLC

The property affected by this instrument lies within the:

<u>Block</u>	<u>Lot</u>	<u>Address</u>
3964	8	2840 Atlantic Avenue

Borough: Brooklyn

County: Kings

Record and Return To:

Alyson Lanzer, Esq.
NYC Department of Housing Preservation and
Development
100 Gold Street, Room 5S7
New York, New York 10038