



Department of  
Environmental  
Conservation

# BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

Please refer to the attached instructions for guidance on completing this application.

Submission of a full BCP application will be required should this application be determined to be a major amendment. If the amendment seeks to add or subtract more than an insignificant acreage of property to the BCA, applicants are encouraged to consult with the DEC project team prior to submitting this application.

## PART I BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

1. Check the appropriate box(es) below based on the nature of the amendment modification(s) requested:

<input type="checkbox"/>	Amendment to modify the existing BCA (check one or more boxes below):
<input type="checkbox"/>	Add applicant(s)
<input type="checkbox"/>	Substitute applicant(s)
<input type="checkbox"/>	Remove applicant(s)
<input type="checkbox"/>	Change in name of applicant(s)
<input type="checkbox"/>	Amendment to reflect a transfer of title to all or part of the brownfield site:
	<p>a. A copy of the recorded deed must be provided. Is this attached? Yes <input type="radio"/> No <input type="radio"/></p> <p>b. <input type="checkbox"/> Change in ownership <input type="checkbox"/> Additional owner (such as a beneficial owner)</p> <p>c. Pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been submitted prior to a transfer of ownership. If this has not yet been submitted, include the form with this application. Is this form attached? Yes <input type="radio"/> No <input type="radio"/> Submitted on: _____</p>
<input type="checkbox"/>	Amendment to modify description of the property(ies) listed in the existing BCA
<input type="checkbox"/>	Amendment to expand or reduce property boundaries of the property(ies) listed in the existing BCA
<input checked="" type="checkbox"/>	Sites in Bronx, Kings, New York, Queens or Richmond Counties ONLY: amendment to request determination that the site is eligible for tangible property credit component of the brownfield redevelopment tax credit.
<input type="checkbox"/>	Other (explain in detail below)

2. REQUIRED: Please provide a brief narrative describing the specific requests included in this amendment: The purpose of this BCA Amendment application is to state that this is 421-a affordable housing project located in Kings County and to obtain a verification from the Department that the Site is therefore eligible for TPC as per the Applicant's Affidavit and supporting documents appended hereto as Exhibit A.

**SECTION I: CURRENT AGREEMENT INFORMATION***This section must be completed in full. Attach additional pages as necessary.*

BCP SITE NAME: Former A&amp;A Brake Service Site

BCP SITE CODE: C224372

NAME OF CURRENT APPLICANT(S): Sackett Heights LLC

INDEX NUMBER OF AGREEMENT: C224372-02-23

DATE OF ORIGINAL AGREEMENT: 03/07/2023

**SECTION II: NEW REQUESTOR INFORMATION***Complete this section only if adding new requestor(s) or the name of an existing requestor has changed.*

NAME:

ADDRESS:

CITY/TOWN:

ZIP CODE:

PHONE:

EMAIL:

REQUESTOR CONTACT:

ADDRESS:

CITY/TOWN:

ZIP CODE:

PHONE:

EMAIL:

REQUESTOR'S CONSULTANT:

CONTACT:

ADDRESS:

CITY/TOWN:

ZIP CODE:

PHONE:

EMAIL:

REQUESTOR'S ATTORNEY:

CONTACT:

ADDRESS:

CITY/TOWN:

ZIP CODE:

PHONE:

EMAIL:

	Y	N
1. Is the requestor authorized to conduct business in New York State?	<input type="radio"/>	<input type="radio"/>
2. If the requestor is a corporation, LLC, LLP, or other entity requiring authorization from the NYS Department of State (NYSDOS) to conduct business in NYS, the requestor's name must appear exactly as given above in the NYSDOS Corporation & Business Entity Database. A print-out of entity information from the NYSDOS database must be submitted with this application. Is this print-out attached?	<input type="radio"/>	<input type="radio"/>
3. Requestor must submit proof that the party signing this application and amendment has the authority to bind the requestor. This would be documentation showing the authority to bind the requestor in the form of corporate organizational papers, a Corporate Resolution or an Operating Agreement or Resolution for an LLC. Is this proof attached?	<input type="radio"/>	<input type="radio"/>
4. If the requestor is an LLC, the names of the members/owners must be provided. Is this information attached?	N/A <input type="radio"/>	<input type="radio"/>
5. Describe the new requestor's relationship to all existing applicants:		

**SECTION III: CURRENT PROPERTY OWNER/OPERATOR INFORMATION***Complete this section only if a transfer of ownership has taken place. Attach additional pages if necessary.*Owner listed below is: ☐ Existing Applicant ☐ New Applicant ☐ Non-Applicant

OWNER'S NAME:

CONTACT:

ADDRESS:

CITY/TOWN:

ZIP CODE:

PHONE:

EMAIL:

OPERATOR:

CONTACT:

ADDRESS:

CITY/TOWN:

ZIP CODE:

PHONE:

EMAIL:

**SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION***Complete this section only if adding new requestor(s). Attach additional pages if necessary.*

If answering "yes" to any of the following questions, please provide additional information as an attachment. Please refer to ECL § 27-1407 for details.

	Y	N
1. Are any enforcement actions pending against the requestor regarding this site?	<input type="radio"/>	<input type="radio"/>
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site?	<input type="radio"/>	<input type="radio"/>
3. Is the requestor subject to an outstanding claim by the Spill Fund for the site? Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.	<input type="radio"/>	<input type="radio"/>
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of (i) any provision of the subject law; (ii) any order or determination; (iii) any regulation implementing ECL Article 27 Title 14; or (iv) any similar statute or regulation of the state or federal government? If so, provide additional information as an attachment.	<input type="radio"/>	<input type="radio"/>
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as site name, address, DEC site number, reason for denial, and any other relevant information.	<input type="radio"/>	<input type="radio"/>
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting or contaminants?	<input type="radio"/>	<input type="radio"/>
7. Has the requestor been convicted of a criminal offense (i) involving the handling, storing, treating, disposing or transporting of contaminants; or (ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state?	<input type="radio"/>	<input type="radio"/>
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department?	<input type="radio"/>	<input type="radio"/>

SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION (continued)		Y	N
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application?		<input type="radio"/>	<input type="radio"/>
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order?		<input type="radio"/>	<input type="radio"/>
11. Are there any unregistered bulk storage tanks on-site which require registration?		<input type="radio"/>	<input type="radio"/>
12. THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL § 27-1405(1) BY CHECKING ONE OF THE BOXES BELOW:			
<input type="checkbox"/> <b>PARTICIPANT</b> A requestor who either (1) was the owner of the site at the time of the disposal of contamination or (2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of contamination.		<input type="checkbox"/> <b>VOLUNTEER</b> A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of a hazardous waste or discharge of petroleum. NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that they have exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: (i) stop any continuing discharge; (ii) prevent any threatened future release; (iii) prevent or limit human, environmental or natural resource exposure to any previously released hazardous waste. <b>If a requestor's liability arises solely as a result of ownership, operation of or involvement with the site, they must submit a statement describing why they should be considered a volunteer – be specific as to the appropriate care taken.</b>	
13. If the requestor is a volunteer, is a statement describing why the requestor should be considered a volunteer attached?		N/A <input type="radio"/>	Y <input type="radio"/>
14. Requestor's relationship to the property (check all that apply): <input type="checkbox"/> Prior Owner <input type="checkbox"/> Current Owner <input type="checkbox"/> Potential/Future Purchaser <input type="checkbox"/> Other: _____			
15. If the requestor is not the current site owner, proof of site access sufficient to complete the remediation must be submitted. Proof must show that the requestor will have access to the property before being added to the BCA and throughout the BCP project, including the ability to place an easement on the site. Is this proof attached?		N/A <input type="radio"/>	Y <input type="radio"/>

**SECTION V: PROPERTY DESCRIPTION AND REQUESTED CHANGES**

Complete this section only if property is being added to or removed from the site, a lot merger or other change to site SBL(s) has occurred, or if modifying the site address for any reason.

1. Property information on current agreement (as modified by any previous amendments, if applicable):

ADDRESS:

CITY/TOWN

ZIP CODE:

CURRENT PROPERTY INFORMATION

TOTAL ACREAGE OF CURRENT SITE:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE


2. Requested change (check appropriate boxes below):

☐

a. Addition of property (may require additional citizen participation depending on the nature of the expansion – see instructions)

PARCELS ADDED:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE


TOTAL ACREAGE TO BE ADDED: \_\_\_\_\_

☐

b. Reduction of property

PARCELS REMOVED:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE


TOTAL ACREAGE TO BE REMOVED: \_\_\_\_\_

☐

c. Change to SBL (e.g., lot merge, subdivision, address change)

NEW PROPERTY INFORMATION:

PARCEL ADDRESS

SECTION

BLOCK

LOT

ACREAGE


3. TOTAL REVISED SITE ACREAGE: \_\_\_\_\_

4. For all changes requested in this section, documentation must be provided. Required attachments are listed in the application instructions. Is the required documentation attached?

Y	N
<input type="radio"/>	<input type="radio"/>

**APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT SUPPLEMENT  
QUESTIONS FOR SITE SEEKING TANGIBLE PROPERTY CREDITS IN NEW YORK CITY ONLY**

*Complete this section only if the site is located within the five counties comprising New York City and the requestor is seeking a determination of eligibility for tangible property credits. Provide supporting documentation as required. Refer to the application instructions for additional information.*

	Y	N
1. Is the site located in Bronx, Kings, New York, Queens or Richmond County?	<input checked="" type="radio"/>	<input type="radio"/>
2. Is the requestor seeking a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit?	<input checked="" type="radio"/>	<input type="radio"/>
3. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see DEC's website for more information.	<input type="radio"/>	<input checked="" type="radio"/>
4. Is the property upside down as defined below?  <b>From ECL 27-1405(31):</b>  "Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.	<input type="radio"/>	<input checked="" type="radio"/>
5. Is the project and affordable housing project as defined below?  <b>From 6 NYCRR 375-3.2(a) as of August 12, 2016:</b>  (a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty-seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units. <ul style="list-style-type: none"> <li>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' household's annual gross income.</li> <li>(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for homeowners at a defined maximum percentage of the area median income.</li> <li>(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States Department of Housing and Urban Development, or its successor, for a family of four, as adjusted for family size.</li> </ul>	<input checked="" type="radio"/>	<input type="radio"/>

APPLICATION SUPPLEMENT FOR NYC SITES (continued)	Y	N
<p>6. Is the project a planned renewable energy facility site as defined below?</p> <p><b>From ECL 27-1405(33) as of April 9, 2022:</b></p> <p>"Renewable energy facility site" shall mean real property (a) this is used for a renewable energy system, as defined in section sixty-six-p of the public service law; or (b) any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission, sub-transmission, or distribution system.</p> <p><b>From Public Service Law Article 4 Section 66-p as of April 23, 2021:</b></p> <p>(b) "renewable energy systems" means systems that generate electricity or thermal energy through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.</p>	<input type="radio"/>	<input checked="" type="radio"/>
<p>7. Is the site located within a disadvantaged community, within a designated Brownfield Opportunity Area, and meets the conformance determinations pursuant to subdivision ten of section nine-hundred-seventy-r of the general municipal law?</p> <p><b>From ECL 75-0111 as of April 9, 2022:</b></p> <p>(5) "Disadvantaged communities" means communities that bear the burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households, as identified pursuant to section 75-0111 of this article.</p>	<input type="radio"/>	<input checked="" type="radio"/>

**PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT****EXISTING AGREEMENT INFORMATION**

BCP SITE NAME: Former A&amp;A Brake Service Site

BCP SITE CODE: C224372

NAME OF CURRENT APPLICANT(S): Sackett Heights LLC

INDEX NUMBER OF AGREEMENT: C224372-02-23

DATE OF ORIGINAL AGREEMENT 03/07/2023

**Declaration of Amendment:**

By the requestor(s) and/or applicant(s) signature(s) below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from obligations held under the Agreement or those same laws.

**STATEMENT OF CERTIFICATION AND SIGNATURES: NEW REQUESTOR**

*Complete the appropriate section (individual or entity) below only if this Amendment adds a new requestor. Attach additional pages as needed.*

(Individual)

I hereby affirm that the information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(Entity)

I hereby affirm that I am \_\_\_\_\_ (title) of \_\_\_\_\_ (entity); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

\_\_\_\_\_ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_



**STATEMENT OF CERTIFICATION AND SIGNATURES: EXISTING APPLICANT(S)**

*An authorized representative of each applicant must complete and sign the appropriate section (individual or entity) below. Attach additional pages as needed.*

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

(Entity)

I hereby affirm that I am authorized signatory (title) of Sackett Heights LLC (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. Solomon Schwimmer's signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 8/21/24 Signature: [Signature]Print Name: Solomon Schwimmer**PLEASE SEE THE FOLLOWING PAGE FOR SUBMITTAL INSTRUCTIONS****REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:

**PARTICIPANT**

A requestor who either (1) was the owner of the site at the time of the disposal of contamination or (2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of contamination.

**VOLUNTEER**

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.

Effective Date of the Original Agreement: 03/07/2023

Signature by the Department:

DATED: 9/20/24NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

Janet E. BrownJanet E. Brown, Assistant Director  
Division of Environmental Remediation

## Rider to BCA Amendment # 1 to Document a Tangible Property Tax Credit Determination

**Site Name: A&A Brake Service**

**Site Number: C224372**

1- The Department has determined that the Site is eligible for tangible property tax credits pursuant to ECL § 27-1407(1-a) because the Site is located in a City having a population of one million or more and:

- ☐ At least half of the site area is located in an environmental zone as defined in section twenty-one of the tax law
- ☐ The property is upside down, as defined by ECL 27-1405 (31)
- ☐ The property is underutilized, as defined by 375-3.2(l).
- ☒ The project is an affordable housing project, as defined by 375-3.2(a).

2- The Site is located in a City having a population of one million or more and the Applicant:

☐ Has not requested a determination that the Site is eligible for tangible property tax credits. It is therefore presumed that the Site is not eligible for tangible property tax credits. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category.

☐ Requested a determination that the Site is eligible for tangible property tax credits and pursuant to ECL § 27-1407(1-a), the Department has determined that the Site is not eligible for tangible property tax credits because the Applicant has not submitted documentation sufficient to demonstrate that at least one of the following conditions exists: at least half of the site area is located in an environmental zone as defined in section twenty-one of the tax law, the property is upside down, the property is underutilized, or the project is an affordable housing project. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category.

3- For sites statewide, where applicable:

☐ In accordance with ECL § 27-1407(1-a), based on data submitted with the application the Department has determined the Site is not eligible for tangible property tax credits because the contamination in ground water and/or soil vapor is solely emanating from property other than the Site.

☐ The remedial investigation or other data generated during the remedial program the Department has identified an on-site source of contamination, which now makes this site eligible for tangible property tax credits.

☐ The Department has determined that the Site or a portion of the Site has previously been remediated pursuant to Article 27, Title 9, 13 or 14] of the ECL, Article 12 of the Navigation Law or Article 56, Title 5 of the ECL. Therefore, in accordance with ECL § 27-1407(1-a), the Site is not eligible for tangible property tax credits.

THIS RIDER TO AN AMENDMENT TO THE BCA ESTABLISHING ELIGIBILITY  
FOR TANGIBLE PROPERTY TAX CREDITS IS HEREBY  
APPROVED, Acting by and Through the Department of  
Environmental Conservation as Designee of the Commissioner,

By:

*Janet E. Brown*

Janet Brown, P.E.

Assistant Division Director

Division of Environmental Remediation

*9/20/24*

Date

**INSTRUCTIONS FOR COMPLETING AN APPLICATION TO AMEND BROWNFIELD CLEANUP  
AGREEMENT AND AMENDMENT**

This form must be used to add or remove a party, reflect a change in property ownership to all or part of the site, modify a property description, or reduce/expand property boundaries for an existing BCP Agreement.

*NOTE: DEC requires a standard full BCP application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.*

**COVER PAGE**

Please select all options that apply. Provide a brief narrative of the nature of the amendment requested.

**SECTION I: CURRENT AGREEMENT INFORMATION**

*This section must be completed in its entirety. The information entered here will auto-populate throughout the application and amendment.*

Provide the site name, site code and name(s) of current requestor(s) exactly as this information appears on the existing agreement. This should reflect any changes made by previous amendments to the site name or parties on the BCA. Provide the agreement index number and the date of the initial BCA.

**SECTION II: NEW REQUESTOR INFORMATION**

*This section is to be completed only if a new requestor is being added to the BCA, or if the name of the existing requestor has changed with the NYSDOS.*

Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information.) The requestor is the person or entity seeking DEC review and approval of the remedial program.

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's Corporation & Business Entity Database.

Requestor, Consultant and Attorney Contact Information

Provide the contact name, mailing address, telephone number and e-mail address for each of the following contacts:

*Requestor's Representative:* This is the person to whom all correspondence, notices, etc., will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative unless another contact name and address is provided with the application.

*Requestor's Consultant:* Include the name of the consulting firm and the contact person.

*Requestor's Attorney:* Include the name of the law firm and the contact person.

*Required Attachments for Section II:*

- 1. NYSDOS Information: A print-out of entity information from the NYSDOS database to document that the applicant is authorized to do business in NYS. The requestor's name must appear throughout the application exactly as it does in the database.*
- 2. LLC Organization: If the requestor is an LLC, provide a list of the names of the members/owners of the LLC.*
- 3. Authority to Bind: Proof must be included that shows that the party signing this application and amendment is authorized to do so on behalf of the requestor. This documentation may be in the form of corporate organizational papers, a Corporate Resolution or Operating Agreement or Resolution.*

### **SECTION III: CURRENT PROPERTY OWNER/OPERATOR INFORMATION**

*Complete this section only if a transfer of ownership has taken place for all or part of the site property. Attach additional pages for each new owner if applicable.*

Provide the relationship of the owner to the site by selecting one of the check-box options.

#### Owner Name, Address, etc.

Provide information for the new owner of the property. List all new parties holding an interest in the property. Attach separate pages as needed.

#### Operator Name, Address, etc.

Provide information for the new operator, if applicable.

*NOTE: Pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been submitted prior to a transfer of ownership. If this form was not previously submitted, it must be included with this application. See <http://www.dec.ny.gov/chemical/76250.html> for additional information.*

#### *Required Attachments for Section III:*

1. *Copy of deed as proof of ownership.*
2. *Ownership/Nominee Agreement, if applicable.*
3. *Change of Use form, if not previously submitted to the Department.*

### **SECTION IV: NEW REQUESTOR ELIGIBILITY INFORMATION**

*For additional information regarding requestor eligibility, please refer to ECL §27-1407.*

Provide a response to each question listed. If any question is answered in the affirmative, provide an attachment with detailed relevant information. It is permissible to reference specific sections of existing property reports; however, such information must be summarized in an attachment. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.

If the requestor is not the current site owner, proof of site access sufficient to complete the remediation must be submitted. Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site. A purchase contract does not suffice as proof of access.

#### *Required Attachments for Section IV:*

1. *Detailed information regarding any questions answered in the affirmation, if applicable.*
2. *Statement describing why the requestor should be considered a volunteer, if applicable.*
3. *Site access agreement, as described above, if applicable.*

## SECTION V: PROPERTY DESCRIPTION AND REQUESTED CHANGES

*NOTE: DEC requires a standard full BCP application to request major changes to the description of the property set forth in the BCA (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). The application must be submitted to DEC in the same manner as the original application to participate.*

### Property Information on Existing Agreement

Provide the site address and tax parcel information exactly as it appears on the current agreement (including as it has been modified in previous amendments).

### Addition of Property

Provide the tax parcel information and acreage for each parcel to be added. Provide the total acreage to be added below the far-right column.

### Reduction of Property

Provide the tax parcel information and acreage for each parcel to be removed. Provide the total acreage to be removed below the far-right column.

### Change to address, SBL or metes and bounds description

Provide the new address and tax parcel information.

### Total Revised Site Acreage

Provide the new total site acreage after addition or removal of property. If no change to site boundary, this should match the acreage provided above, under Property Information on Existing Agreement.

All requested changes to this section should be accompanied by a revised survey or other acceptable map depicting the proposed new site boundary. Additionally, provide a county tax map with the site boundary outlined, as well as a USGS 7.5-minute quadrangle map with the site location clearly identified.

### *Required Attachments for Section V:*

1. *For all additions and removal of property:*
  - a. *Site map clearly identifying the existing site boundary and proposed new site boundary*
  - b. *County tax map with the new site boundary clearly identified*
  - c. *USGS 7.5-minute quadrangle map with the site location clearly identified*
2. *For address changes, lot mergers, subdivisions and any other change to the property description:*
  - a. *County tax map with the site boundary and all SBL information clearly identified*
  - b. *USGS 7.5-minute quadrangle map with the site location clearly identified*
  - c. *Approved application for lot merger or apportionment, or the equivalent thereof, as proof from the municipality of the SBL change(s)*

**SUPPLEMENT TO THE APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT – QUESTIONS FOR SITES SEEKING TANGIBLE PROPERTY CREDITS IN NEW YORK CITY ONLY**

*Complete this section only if the site is located within the five counties comprising New York City and the requestor is seeking a determination of eligibility for tangible property credits.*

Provide responses to each question. If any question is answered in the affirmative, provide required documentation as applicable.

*Required Attachments for NYC Site Supplement:*

- 1. For sites located all or partially in an En-zone: provide a map with the site boundary clearly identified and the En-zone overlay showing that all or a portion of the site is located within an En-zone. This map must also indicate the census tract number in which the site is located. See DEC's website for additional information.*
- 2. For affordable housing projects: provide the affordable housing regulatory agreement and any additional relevant information.*
- 3. For renewable energy site projects: for (a) planned renewable energy facilities generating/storing less than twenty-five (25) megawatts, provide a local land use approval; or, for (b) planned renewable energy facilities generating/storing twenty-five (25) megawatts or greater, provide the permit issued by the NYS Office of Renewable Energy Siting.*
- 4. For sites located within a disadvantaged community and a conforming Brownfield Opportunity Area: provide a map with the site boundary clearly identified and the disadvantaged community overlay showing that the site is located within a disadvantaged community.*

**PART II: BROWNFIELD CLEANUP PROGRAM AMENDMENT**

The information in the "EXISTING AGREEMENT INFORMATION" section should auto-populate with the information provided on page 2.

If a new requestor is applying to enter the program, provide the required information and signature at the bottom of page 8 and the required information and signature on page 9.

If no new requestor is applying to the program but any other change has been made, provide the required information and signature on page 9.

# Exhibit A

## APPLICANT'S AFFIDAVIT

STATE OF NEW YORK

COUNTY OF New York

SS:

Solomon Schwimmer, being duly sworn, deposes and says:

1. I am the Authorized Signatory of Sackett Heights LLC (the "Company"), a New York limited liability company, with authority to bind the Company as an Authorized Signatory of the Company.
2. The Company is the fee owner of certain real property located at 558 Sackett Street, Brooklyn, NY 11217; Block 433, Lot 14 on the New York City Department of Finance Tax Map of the Borough of Kings (the "Site").
3. The Company acquired fee title to Site by that certain deed dated November 8, 2022, and recorded with the City Register of the City of New York as City Register File No. 2022000420098.
4. The Site is subject to a Brownfield Site Cleanup Agreement with the New York State Department of Environmental Conservation ("NYSDEC") effective March 7, 2023, to which the Company is the sole applicant as a Volunteer party as described in the BCA.
5. The Site is being developed and will be operated as an affordable housing project under the Affordable Housing New York program described in subdivision 16 of section 421-a of the New York Real Property Tax Law (the "421-a Program").
6. The Site's development as affordable housing will include (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income ("AMI") based on the occupants' household annual gross income, as is required by the ECL 27-1405(29) statutory definition of "affordable housing project."
7. Appended hereto as Attachment 1 is a copy of the Mandatory Inclusionary Housing Restrictive Declaration, providing that the Site is located in a Mandatory Inclusionary Housing area within the meaning of Section 23-911 of the New York City Zoning Resolution and the Inclusionary Housing Program Guidelines and that the Company filed and the New York City Department of Housing Preservation and Development ("Department") approved an Affordable Housing Plan Application.
8. Accordingly, the Site is eligible for the tangible property credit ("TPC") of the brownfield redevelopment tax credit ("BRTC") as an affordable housing project.
9. I have reviewed this statement, and it is true and correct to the best of my knowledge.

  
\_\_\_\_\_  
Solomon Schwimmer  
Authorized Signatory  
Sackett Heights LLC

Sworn to before me this  
21<sup>st</sup> day of August, 2024

Noelia S. Castillo  
\_\_\_\_\_  
Notary Public

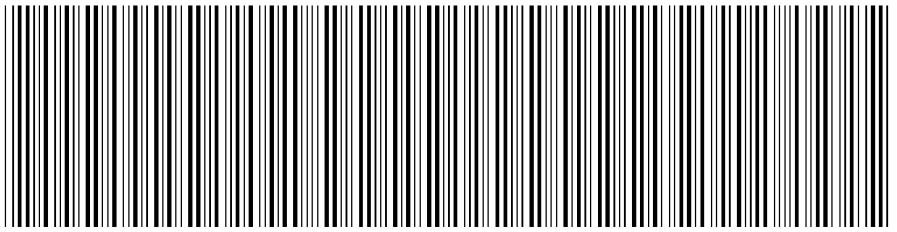




# ATTACHMENT 1

## 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.



2024022600402004001E5321

### RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 39

Document ID: 2024022600402004

Document Date: 02-14-2024

Preparation Date: 02-26-2024

Document Type: SUNDRY AGREEMENT

Document Page Count: 38

#### PRESENTER:

EXECUTIVE ABSTRACT GROUP, INC.  
16 ISRAEL ZUPNICK DRIVE, SUITE 117  
EAG-5628  
MONROE, NY 10950  
845-782-2400  
BLIMY@EXECUTIVE-ABSTRACT.COM

#### RETURN TO:

ELIZABETH LAPPIN, ESQ.  
DOHPAD OFFICE OF LEGAL AFFAIRS  
100 GOLD STREET, ROOM 5-W7  
NEW YORK, NY 10038

#### PROPERTY DATA

Borough	Block	Lot	Unit	Address
BROOKLYN	433	14	Entire Lot	558 SACKETT STREET
<b>Property Type:</b> NON-RESIDENTIAL VACANT LAND				

#### CROSS REFERENCE DATA

CRFN \_\_\_\_\_ or DocumentID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

#### PARTIES

##### PARTY 1:

SACKETT HEIGHTS LLC  
199 LEE AVENUE, #257  
BROOKLYN, NY 11211

#### 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: \$ 227.00

Affidavit Fee: \$ 0.00

##### Filing Fee:

\$ 0.00

##### NYC Real Property Transfer Tax:

\$ 0.00

##### NYS Real Estate Transfer Tax:

\$ 0.00

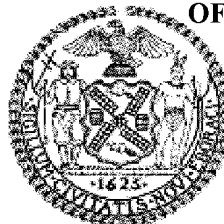
#### RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE

##### CITY OF NEW YORK

Recorded/Filed 02-27-2024 09:47

City Register File No.(CRFN):

2024000048802



*Colette McChia-Jacques*

City Register Official Signature

## **MANDATORY INCLUSIONARY HOUSING RESTRICTIVE DECLARATION**

**THIS MANDATORY INCLUSIONARY HOUSING RESTRICTIVE DECLARATION** ("Restrictive Declaration"), made as of the 14th day of February, 2024, by **SACKETT HEIGHTS LLC**, a New York limited liability company ("Applicant"), having an office at 199 Lee Avenue, #257, Brooklyn, NY 11211.

**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 558 Sackett Street, Brooklyn, identified as Block 433, Lot 14 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 (the "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 an 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 on the Premises with a total Residential Floor Area not to exceed 22,796.57 square feet; and

**WHEREAS**, Applicant intends to provide 6,066.78 square feet of Affordable Floor Area for Qualifying Households (as defined in Section 23-911 of the Resolution (the "Affordable Housing Units") at the Premises 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 nine (9) Affordable Housing Units at 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 the 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 the 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 the "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 (the "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 Section 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 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 **Affordable for NY, 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 sixty (60) days after the DHCR Registration Deadline, the Administering Agent submits 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 submits 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 the 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 with 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(b)(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.

**SACKETT HEIGHTS LLC**

By: \_\_\_\_\_

Name: Solomon Schwimmer  
Title: Authorized Signatory

By: \_\_\_\_\_

Name: Jacob Joseph Schwimmer  
Title: Authorized Signatory

APPROVED AS TO FORM BY  
STANDARD TYPE OF CLASS  
UNTIL: March 31, 2024

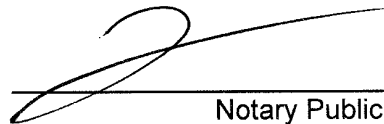
By: /s/ Isabel Galis-Menendez  
Acting Corporation Counsel

[Acknowledgments to Follow on Next Page]

**ACKNOWLEDGEMENT**

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

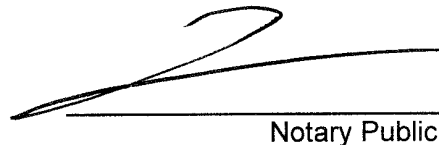
On this 6 day of Feb, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Joel Joseph Schummer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
Notary Public

JOEL SANDER  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01SA6332466  
Qualified in Kings County  
My Commission Expires 11-02-2027

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

On this 6 day of Feb, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Sebastian Schummer, 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 he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
Notary Public

JOEL SANDER  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01SA6332466  
Qualified in Kings County  
My Commission Expires 11-02-2027

## 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(s)</u>	<u>Address</u>
433	14	558 Sackett Street

Borough: Brooklyn

County: Kings

**Executive Abstract Group, Inc.  
as agent for  
Stewart Title Insurance Company**

Title Number: **EAG-5628**  
Page **1**

**SCHEDULE A DESCRIPTION**

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on Southerly side of Sackett Street distant 128.00 feet Easterly from the corner formed by the intersection of the Southerly side of Sackett Street with the Easterly side of Nevins Street;

RUNNING THENCE Southerly approximately parallel with Nevins Street, 100.00 feet;

THENCE Easterly approximately parallel with Sackett Street, 64.00 feet;

THENCE Northerly approximately parallel with Nevins Street, 100.00 feet;

THENCE Westerly along the Southerly side of Sackett Street, 64.00 feet, to the point or place of BEGINNING.

For Information Only:

Said premises is also known as 558 Sackett Street, Brooklyn, New York  
Block 433 Lot 14

**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:** Sackett Heights LLC  
Address: 199 Lee Avenue Suite 257, Brooklyn NY 11211  
Fax: 718-873-2111  
Email: sls@bornox.com  
Primary Contact (Name, Phone, Email):  
Solomon Schwimmer, 917-663-5500, sls@bornox.com
- 2.Owner (if different):** \_\_\_\_\_  
Address: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Primary Contact (Name, Phone, Email):  
\_\_\_\_\_
- 3.Administering Agent:** Affordable for NY, Inc.  
Address: 141 Flushing Avenue #1201 Brooklyn NY 11205  
Fax: \_\_\_\_\_  
Email: eugene@afny.org  
Primary Contact (Name, Phone, Email):  
Eugene Goldstein, 212,655,5800 X250, Eugene@afny.org
- 4.General Contractor:** Bornox Realty LLC  
Address: 199 Lee Avenue Suite 257, Brooklyn NY 11211  
Fax: \_\_\_\_\_  
Email: sls@bornox.com  
Primary Contact (Name, Phone, Email):  
Solomon Schwimmer, 917-663-5500, sls@bornox.com
- 5.Architect:** Ellipses Design  
Address: 18 Heyward St Brooklyn NY 11249  
Fax: \_\_\_\_\_  
Email: dob@ellipsesdesign.com  
Primary Contact (Name, Phone, Email):  
Eli Pavel, 718-858-8400, eli@ellipsesdesign.com

**6. Attorney and Firm:** Adler & Stachenfeld LLP

Address: 555 Madison Ave New York, NY 10022

Fax: \_\_\_\_\_

Email: ypatka@adstach.com

Primary Contact (Name, Phone, Email):

YuhTyng Patka, 212.692.5532, ypatka@adstach.com

**7. Location of Affordable Housing Units**

Street Address: 558 Sackett Street Brooklyn, NY 11217

Borough: Brooklyn

Block(s)/Lot(s): 433 / 14

Community Board: 6

**8. Mandatory Inclusionary Housing Area**

(Include Zoning Resolution Appendix F Map Reference):

Appendix F - Brooklyn CD 6 - Map 1

☐ 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: 34 Total MIH Units: 9 Super's Units: 0

**Income Distribution of Affordable Housing Units:**

Number of low-income units (equal to or less than 80% AMI): 8

Number of moderate-income units (equal to or less than 125% AMI): 1

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 tax exemption (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/#/>

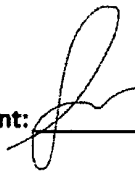
### Hot Water

- ☐ 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:**

N/A

**Authorized Signature of Applicant:**



**Print name:** Solomon Schwimmer

**Date:** 11/19/2023

**EXHIBIT C**  
**LIST OF AFFORDABLE HOUSING UNITS**

(following page)

558 Sackett Street

Mandatory Inclusionary Housing Units			
Construction Floor	Marketing Floor	Apt #	# Bedrooms
1	1	1A	1
2	2	2B	1
3	3	3E	1
4	4	4C	2
5	5	5B	1
6	6	6B	1
7	7	7A	2
7	7	7C	2
8	8	8A	2

Super/Resident Manager Unit(s)			
Construction Floor	Marketing Floor	Apt #	# Bedrooms
N/A	N/A	N/A	N/A

Exhibit C

Unit Summary	
# Bedrooms	Units
Studios	0
1 Bedroom	5
2 Bedroom	4
3 Bedroom	0
<b>Total</b>	<b>9</b>

**EXHIBIT D**  
**SCHEDULE OF RENTS AND EXPENSES**

(following page)

Mandatory Inclusionary Housing Units—Rents*			
	# Units	Income Band/AMI Level	Legal Regulated Rent**
1 BR	4	40%	\$933
<b>Subtotal</b>	<b>4</b>		

	# Units	Income Band/AMI Level	Legal Regulated Rent**
2 BR	4	60%	\$1,739
<b>Subtotal</b>	<b>4</b>		

	# Units	Income Band/AMI Level	Legal Regulated Rent**
1 BR	1	130%	\$3,317
<b>Subtotal</b>	<b>1</b>		
<b>Project Total</b>	<b>9</b>		

\*Tenants are responsible for electricity, electric stove, and electric heat (ccASHP)

\*\*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.

**558 Sackett Street**

Total Units: 34

Mandatory Inclusionary Housing Units: 9

<b>EXPENSES*</b>	<b>Amount</b>	<b>Per Unit</b>
Legal Fee	\$6,800	\$200
Accounting Fee	\$10,000	\$294
Management	\$53,361	\$1,569
Insurance (fire & liability)	\$34,000	\$1,000
Water & Sewer	\$13,230	\$389
Common Area Utilities	\$9,010	\$265
Supplies/Cleaning/Exterminating	\$6,615	\$195
Repair & Maintenance	\$22,100	\$650
Payroll/Super	\$68,000	\$2,000
Elevator	\$7,500	\$221
Reserves	\$11,900	\$350
Admin Agent	\$900	\$26
Real Estate Taxes (assumes 421-a benefit)	\$35,969	\$1,058
<b>Total Expenses</b>	<b>\$279,385</b>	<b>\$8,217</b>

\*The expenses reflect the overall 558 Sackett Street project underwriting dated 1/31/2024, which comprises 34 units, of which 9 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 \_\_\_\_\_, 20[##], 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 Inclusionary 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.

UNIFORM ACKNOWLEDGEMENTS

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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 (this "Agreement") made this 14th day of February, 2024, between **AFFORDABLE FOR NY, INC.** ("Administering Agent"), having an office at 141 Flushing Avenue, Brooklyn Navy Yard Building 77, Suite 1201A, Brooklyn, NY 11205, and the **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT** (the "Department"), having an office at 100 Gold Street, New York, NY 10038.

WHEREAS, **Sackett Heights LLC**, ("Applicant") has recorded a Restrictive Declaration (the "Restrictive Declaration") pursuant to which Applicant has agreed to create nine (9) Affordable Housing Units located at 558 Sackett Street Brooklyn, identified as Block 433, Lot 14 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 New York City Zoning Resolution (the "Resolution") and the Inclusionary Housing Guidelines (the "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 Agreement shall be terminated.

This 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:   
Tricia Dietz  
Assistant Commissioner, Housing Incentives

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

On this 6<sup>th</sup> day of Feb. in the year 2024, 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 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

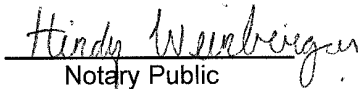
**ELIZABETH LAPPIN**  
Notary Public, State of New York  
No. 02LA0015361  
Qualified in New York County  
Commission Expires November 1, 2027

AFFORDABLE FOR NY, INC.

By:   
Name: Eugene Goldstein  
Title: CEO

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

On the 7 day of February in the year 2024 before me, the undersigned, a notary public in and for said state, personally appeared Eugene Goldstein, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

Weinberger Hindy  
Notary Public-State Of New York  
No. 01WE6416379  
Qualified in Kings County  
My Commission expires 04/12/2025

**EXHIBIT H**  
**AFFORDABLE HOUSING SUBORDINATION AGREEMENT**  
(following pages)

**THIS SUBORDINATION AND NON-DISTURBANCE AGREEMENT** ("Agreement"), made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_, having an address at \_\_\_\_\_ ("Mortgagee"), 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: \_\_\_\_\_ made by **[Applicant]**, a \_\_\_\_\_ ("Applicant") in favor of Mortgagee to secure, among other things, the aggregate principal sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) 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 (the "Premises");

**WHEREAS**, Applicant has executed a certain Mandatory Inclusionary Housing Restrictive Declaration dated as of the date hereof (the "Restrictive Declaration"), 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 Section 23-90, inclusive, of 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 Affordable Housing Units (as defined in the Restrictive Declaration) 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 the Mortgage and 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, supplement, 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: Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038  
Attn: Assistant Commissioner, Housing Incentives

with a copy to: Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038

Attn: General Counsel

If to Mortgagee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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 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 Agreement as of the day and year first above written.

**THE CITY OF NEW YORK**

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title

APPROVED AS TO FORM  
BY STANDARD TYPE OF CLASS  
FOR USE UNTIL \_\_\_\_\_

By: /s/ \_\_\_\_\_  
Acting Corporation Counsel

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 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 the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

[MORTGAGEE]

By: \_\_\_\_\_  
Name:  
Title:

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 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 the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## **SCHEDULE A**

### **PROPERTY DESCRIPTION**

All those certain plots, pieces and parcels of land, with the buildings and improvements thereon erected, situate, lying and being in the City and State of New York, designated on the Tax Map of the City of New York as:

<u>Block</u>	<u>Lot(s)</u>	<u>Address</u>
--------------	---------------	----------------

County:

---

**SUBORDINATION AND NON-DISTURBANCE AGREEMENT**

---

by and between

**THE CITY OF NEW YORK**

-and-

**[MORTGAGEE]**

---

The property affected by this written instrument lies within the:

Block

Lot(s)

Address

County:

**RECORD AND RETURN TO:**

[HPD Counsel]  
Department of Housing Preservation  
and Development  
Office of Legal Affairs  
100 Gold Street, Room [ ]  
New York, NY 10038

---

**MANDATORY INCLUSIONARY HOUSING  
RESTRICTIVE DECLARATION**

**BY**

**SACKETT HEIGHTS LLC**

---

The property affected by this written instrument lies within the:

<u>Block</u>	<u>Lot(s)</u>	<u>Address</u>
433	14	558 Sackett Street

Borough: Brooklyn

County: Kings

**RECORD AND RETURN TO:**

Elizabeth Lappin, Esq.  
Department of Housing Preservation  
and Development  
Office of Legal Affairs  
100 Gold Street, Room 5-W7  
New York, New York 10038