

ASSISTANCE AGREEMENT

THIS ASSISTANCE AGREEMENT (the "Agreement") is entered into as of _____, 20____ by and between the **CONNECTICUT HOUSING FINANCE AUTHORITY**, a body politic and corporate constituting a public instrumentality and political subdivision of the State of Connecticut and having its office and principal place of business at 999 West Street, Rocky Hill, Connecticut 06067 ("**CHFA**"), and [____], a _____ organized and existing under the laws of the State of Connecticut, with an office and principal place of business at _____ (the "**Borrower**").

WITNESSETH THAT,

WHEREAS, the Borrower owns fee simple title to certain real property located in _____, Connecticut located at the site on which the Project (as defined herein) is to be implemented (the "Property");

WHEREAS, pursuant to the provisions of the Connecticut Housing Trust Fund Program set forth in Section 8-336m through 8-336q of the Connecticut General Statutes (the "**Act**"), CHFA has entered into a certain Memorandum of Agreement with the State of Connecticut Department of Housing ("**DOH**") (as further amended from time to time, the "**MOA**") which provides for CHFA to receive funding from the State of Connecticut (the "**State**") for administration of a program for the purpose of providing subordinate or other financing to multifamily properties to create workforce housing units affordable to middle income households and persons (the "**Program**");

WHEREAS, the Borrower has been selected by CHFA to receive mortgage financing to be made by CHFA from funds made available under the Program;

WHEREAS, the Borrower has submitted to CHFA a request for financial assistance in connection with a project commonly known as _____ (the "**Project**"), which is or will be situated on a certain parcel or parcels of land located _____, Connecticut (such land, together with any and all improvements located or to be located thereon, the "**Property**"), which Project includes the construction and/or rehabilitation of a multi-family development comprising _____ (____) residential units (each, a "**Unit**");

WHEREAS, the financing received by Borrower is to be utilized for the construction of _____ (____) units (each an "**Workforce/Middle Income Unit**" and collectively, the "**Workforce/Middle Income Units**") included in the Project which will be restricted for affordability in accordance herewith to middle income households and persons and for the purposes of this Agreement;

WHEREAS, the Project is an eligible activity under the Program;

WHEREAS, as part of its request for financial assistance, the Borrower has submitted to CHFA a Development Budget for the Project (as it may be amended from time to time, the "**Development Budget**"); and

WHEREAS, following its review of the Project and the Borrower's request for financial assistance, CHFA is willing to make a loan to the Borrower in the maximum amount of up to _____ and 00/100 Dollars (\$_____) (the "**Loan**"), utilizing funds available to CHFA, for the intended uses and purposes of the Project, subject to the Borrower's compliance with and satisfaction of the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual obligations, covenants, and promises of the parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and CHFA hereby agree as follows:

ARTICLE 1 DEFINITIONS

"Workforce/Middle Income Housing" shall mean housing which satisfies the following criteria: (a) housing for persons and families with an annual income not exceeding one hundred twenty percent (120%) of AMI, as determined by CHFA, with reference to data made available to CHFA by HUD (as hereinafter defined); and (b) housing for which the tenant income threshold and rent is the limits established by CHFA for the Workforce/Middle Income Units, as set forth more particularly in this Agreement.

"Workforce/Middle Income Period" shall mean a period commencing on the Project Completion Date (as hereinafter defined) and ending on the later of: (i) six (6) years from the Project Completion Date, or (ii) the date of full repayment of the Loan.

"AMI" shall mean the area median income for the municipality, census tract, or other geographic area in which the Project is located, as such area median income is determined by DOH and CHFA and which may be adjusted for household size, with reference to data made available by HUD.

"Disbursement" shall mean an advance of proceeds of the Loan by CHFA to the Borrower for Eligible Costs. Disbursements may be requested no more frequently than monthly and the amount disbursed shall be based on the percentage of work completed, as determined by CHFA.

"Drawings and Specifications" shall mean the detailed drawings and specifications of the Project prepared by the Project Architect, submitted to CHFA for its approval and reviewed to its satisfaction, and in form suitable for submission to the General Contractor for the purpose of performing the work necessary to complete the Project.

"Eligible applicant" shall have the meaning assigned to said term under Section 8-336m(4) of the Act.

"Eligible Costs" shall mean the costs as defined in the Act for which Loan proceeds are to be used in carrying out the Project, as set forth in the Development Budget, *provided, however*, that costs incurred in connection with any activity that is determined to be ineligible under the Program by CHFA shall not constitute Eligible Costs.

"Eligible Project" shall mean a project designed for the purpose of providing Workforce/Middle Income Housing and shall include those activities set forth in Section (a)(6) of the Act.

“**General Contractor**” shall mean _____.

“**Loan**” shall mean a loan in the amount of _____ and ___/100ths Dollars (\$_____) from CHFA to the Borrower, the proceeds of which Borrower shall use for the Project.

“**Maturity Date**” shall mean the earlier of: (1) the date the Project is sold or otherwise transferred to an independent third party, or (2) _____ (____) years following the date of the Note (as hereafter defined).

“**Program Funds**” shall mean funds made available to the Borrower by CHFA under the Program.

“**Project Completion Date**” shall mean the earlier of (i) the date that CHFA shall have determined that the Project has been completed in accordance with the Drawings and Specifications and this Agreement and certificates of occupancy have been issued for the Workforce/Middle Income Units, and (ii) the Required Completion Date.

“**Project Documents**” shall mean this Agreement and all documents executed by the Borrower in connection with this Agreement.

“**Required Completion Date**” means _____, 20____.

ARTICLE 2 LOAN

2.1 Agreement to Make Loan. On the basis of and in reliance on the representations, warranties and covenants of Borrower in this Agreement and the other documents incident hereto, and subject to compliance with and full satisfaction of each of the terms and conditions of this Agreement, CHFA agrees to make the Loan to Borrower in a principal sum not to exceed _____ and ___/100ths Dollars (\$_____).

2.2 Loan Terms and Conditions. The Loan shall be subject to the following terms and conditions:

(a) Term. The term of the Loan shall commence on the date hereof and mature on the Maturity Date.

(b) Debt Service Payments. Payments shall be due to in accordance with the terms of the Note (as defined below).

(c) Restrictions. The covenant of Borrower set forth in Article 5 hereof shall be evidenced by the execution of a Declaration of Land Use Restrictive Covenant dated as of even date herewith (the “**Restrictive Covenant**”) that shall set forth that such obligation continues in effect for the Workforce/Middle Income Period.

(d) Use. The proceeds of the Loan may be used only to pay or reimburse Eligible Costs.

(e) Conflict. In the event of any conflict between the terms of this Agreement and the Note, the terms and conditions of the Note shall govern.

2.3. Mortgage Note. The Loan shall be evidenced by a mortgage note dated as of even date herewith (the "**Note**").

2.4. Closing. The closing of the Loan (the "**Closing**") shall be held pursuant to the terms and conditions of this Agreement at such time and place as Borrower and CHFA shall agree. On or prior to Closing, Borrower shall have executed and delivered the Note to CHFA.

2.5. Security. The Note shall be secured by (a) no less than a second (2nd) priority mortgage encumbering the Borrower's interest in and to the Property (the "Mortgage"); (b) a conditional assignment of all rents, issues and profits derived from the subject premises; (c) a security interest in all furnishings, building materials, fixtures, equipment and other personal property located at and used in connection with the construction, use and operation of the subject premises and (d) a conditional assignment of and security interest in and to all construction contracts, operating contracts, licenses, permits and other public approvals necessary to construct, occupy and operate the Project for its intended use (collectively, the "**Collateral**").

The Collateral shall be subject only to the prior lien rights of _____ (the "**First Mortgage Lender**") pursuant to a construction and/or permanent loan in the total principal amount not to exceed \$_____.

2.7. Appraisal. Prior to Closing, the "as-is" and "to-be-developed" values of the Project shall be appraised by an independent appraiser, hired by the Borrower and acceptable to CHFA.

2.8. Prepayment. No prepayment of the Loan shall be made by the Borrower except in accordance with the terms of the Note.

2.9. Repayments. Any unexpended funds and/or interest or similar income derived from Program Funds provided pursuant to this Agreement shall be returned to CHFA upon demand. If the Project is terminated, as determined by CHFA in its sole discretion, prior to completion, the Borrower shall repay the Program Funds provided.

ARTICLE 3 SUBSTANTIVE CONDITIONS TO CHFA'S OBLIGATION TO MAKE INITIAL DISBURSEMENT

The obligation of CHFA to enter into the Loan and to make the initial Disbursement under the Loan is subject to the following substantive conditions:

3.1. Existence, Qualification, and Authority. Borrower shall provide to CHFA any evidence required by CHFA to demonstrate the existence, qualification, and authority of Borrower to execute this Agreement and to perform the acts necessary to carry out the Project.

3.2. Environmental Review. At Borrower's expense, Borrower shall provide to Authority all environmental assessments with respect to the Project. The cost of such environmental assessments shall be an Eligible Cost.

3.3 Survey. At Borrower's expense, as requested, Borrower shall provide to Authority a survey of the Property in a form, substance, and quality that is acceptable to Authority. The cost of such survey shall be an Eligible Cost.

3.4 Title Insurance. At Borrower's expense, Borrower shall provide to CHFA a title insurance policy on the Property issued by a title insurance company subject to CHFA's reasonable acceptance thereof. The title insurance policy shall insure the Mortgage to be a valid lien on the Property, free and clear of all defects and encumbrances not otherwise approved by CHFA and shall provide copies of all instruments creating exceptions. The cost of such title policy shall be an Eligible Cost.

3.5 Permits and Approvals. At Borrower's expense, as requested, Borrower shall provide to CHFA copies of any and all permit approvals, and authorizations including plot plan, plat, zoning variances, sewer, building, and other permits required by governmental authorities for the construction, rehabilitation, use, and occupancy of the Property for its stated purposes so as to permit the Project to be constructed and operated in accordance with all applicable building, environmental, ecological, landmark, subdivision, and zoning codes, laws, and regulations. The cost of such permits and approvals shall be an Eligible Cost.

3.6 Construction Drawings and Specifications. Borrower shall develop and construct the Project in accordance with Drawings and Specifications which have been signed or initialed by Borrower, the Project Architect, the General Contractor, the General Contractor's Surety and any revisions thereof approved by CHFA in writing, and in accordance with this Agreement, CHFA and local laws and regulations, and all Program orders and regulations from time to time.

3.7 Construction Contractor. Borrower shall provide CHFA with evidence that the proposed General Contractor maintains the financial capacity and experienced staff and personnel to undertake the development of the Project. CHFA acknowledges that upon its receipt and approval of such information, the General Contractor is acceptable to CHFA as the general contractor for this Project.

3.8 Construction Contract. Borrower shall provide CHFA with a copy of the executed construction contract with the General Contractor for the Project together with a copy of all required insurance applicable thereto, subject to CHFA's reasonable acceptance thereof.

3.9 Annual Operating Budget. Borrower shall adopt and provide CHFA, upon written request, with its annual operating budget.

3.10 Borrower's Insurance. Subject to the First Mortgage Lender, Borrower shall maintain all required insurance in amounts, form, substance and quality acceptable to CHFA. As requested, certificates evidencing such insurance shall be delivered to CHFA at the time of the execution of this Agreement and annually thereafter for the duration of this Agreement.

3.11 Contractor's Insurance. Subject to the First Mortgage Lender, Borrower shall cause any General Contractor or subcontractor that is not covered by Borrower's insurance to provide Borrower with certificates of insurance in amounts, form, substance and quality acceptable to CHFA.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF BORROWER

Borrower represents and warrants, as of the date hereof, the following:

4.1 Existence and Qualification. Borrower is a _____ duly organized and validly existing and qualified to do business under the laws of the State of Connecticut and is in full compliance with all recording and filing requirements.

4.2 Authority. Borrower has the requisite power, right, and legal authority to execute, deliver, and perform its obligations under this Agreement and has taken all action necessary to authorize the execution, delivery, performance, and observance of its obligations under this Agreement. This Agreement, when executed and delivered, shall constitute the legal, valid, and binding obligations of Borrower enforceable against Borrower in accordance with its respective terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, or other similar laws of general applicability affecting the enforcement of creditors' rights generally and (b) the application of general principles of equity without the joinder of any other party.

4.3 No Litigation Material to Financial Condition or Project. Except as disclosed to and approved by CHFA in writing, no litigation or administrative proceeding before any court or governmental body or agency is now pending, nor, to the best of Borrower's knowledge, is any such litigation or proceeding now threatened, or anticipated against Borrower that, if adversely determined, would have a material adverse effect on the financial condition, business, or assets of Borrower or on the Borrower's ability to perform and observe its obligations under this Agreement or that would either directly or indirectly have an adverse effect on or impair the completion of the Project.

4.4 No Conflict of Interest. The Borrower has adopted and agrees to enforce measures appropriate to assure that no officer, agent or employee of the Borrower shall have or acquire voluntarily an interest in an agreement or proposed agreement in connection with the undertaking of the Project.

4.5 No Legal Bar. The execution, delivery, performance, or observance by Borrower of this Agreement will not, to the best of Borrower's knowledge, materially violate or contravene any provisions of: (a) any existing law or regulation, or any order or decree of any court, governmental authority, bureau, or agency; (b) the partnership agreement or organizational documents of Borrower; or (c) any mortgage, indenture, security agreement, contract, undertaking, or other agreement or instrument to which Borrower is a party or that is binding on any of its properties or assets, the result of which would materially or substantially impair Borrower's ability to perform and discharge its obligations or its ability to complete the Project under this Agreement.

4.6 No Violation of Law. To the best of Borrower's knowledge, this Agreement and the operation of the Project as contemplated by Borrower do not violate any existing federal, state, or local laws or regulations.

4.7 No Litigation Material to Project. Except as disclosed to and approved by CHFA in writing, there is no action, proceeding, or investigation now pending, or any basis therefor known or believed to exist by Borrower that questions the validity of this Agreement or of any action to be taken under this Agreement that would, if adversely determined, materially or substantially impair Borrower's ability to perform and observe its obligations under this Agreement or that would either directly or indirectly have an adverse effect on or impair the completion of the Project.

4.8 Assurance of Governmental Approvals and Licenses. Borrower has obtained and, to the best of Borrower's knowledge, is in compliance with all federal, state, and local governmental reviews, consents, authorizations, approvals, and licenses presently required by law to be obtained by Borrower for the Project as of the date hereof.

4.9 Representations in Other Documents. All statements contained in the application filed by Borrower with CHFA, any certification, financial statement, legal opinion or other instrument delivered by or on behalf of the Borrower pursuant to or in connection with this Agreement shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement shall be made as of the date of this Agreement, and at and as of the date of each Disbursement. All representations and warranties made under this Agreement are correct and complete and shall survive the execution and delivery hereof and shall not be deemed to have been waived by any investigation made or not made by CHFA.

4.10 Eligible applicant. Borrower is an Eligible applicant.

ARTICLE 5 COVENANTS AND AGREEMENTS OF BORROWER

Borrower covenants and agrees to the following for as long as the Loan is outstanding or until the expiration of the Workforce/Middle Income Period, whichever period is longer:

5.1 Maintenance of Existence, Qualification, and Authority. Borrower shall maintain the existence, qualifications, and authority necessary to continue its business and shall comply with all laws and regulations applicable to it, its property, and its operations, the noncompliance with which could materially affect its business, its financial condition, or the Project. Borrower shall not permit a change in the ownership of Borrower nor shall the owners of Borrower permit a change in the ownership of themselves or of Borrower, without the prior written consent of CHFA.

5.2 Payment of Liabilities. Borrower shall pay and discharge in the ordinary course of its business all material obligations and liabilities, the nonpayment of which could have a material or adverse impact on its financial condition, business, or assets or on the operation of the Project, except such obligations and liabilities that have been disclosed to CHFA in writing and are being contested in good faith.

5.3 Compliance with Laws. Borrower shall promptly and faithfully comply with, conform to and obey all present and future federal, state and local statutes, regulations, rules, ordinances and other legal requirements applicable by reason of the Loan or otherwise to the Project.

5.4 Use of Funds. Borrower covenants and agrees that it shall use the proceeds from the Loan only to pay or reimburse Eligible Costs. If any proceeds of the Loan shall be determined to have been used by Borrower for something other than an Eligible Cost, an equal amount from non-state funds shall become immediately due and payable to CHFA, *provided, however*, that Borrower shall, subject to its full cooperation with CHFA, be entitled to participate in any opportunity to remedy, contest, or appeal such determination.

5.5 Ownership. Except for leases entered into in accordance with this Article 5, Borrower shall not sell, lease, or otherwise dispose of all or any material part of the Property without the prior written consent of CHFA, which consent shall not be unreasonably withheld or delayed.

5.6 Cure Title Defects. Borrower shall use its best efforts to promptly cure, or cause to be cured, any defect in the title to the Property, except such defects, if any, as may have been disclosed to and found acceptable by CHFA in connection with the policy of title insurance issued pursuant to Article 3 hereunder.

5.7 No Other Liens. Except as otherwise acknowledged and/or consented to by CHFA in this Agreement or otherwise, Borrower shall not create or incur, or suffer to be created or incurred, or to exist, any additional mortgage, pledge, encumbrance, lien, charge, or other security interest of any kind on the Property, without the prior written consent of CHFA.

5.8 Discharge of Liens. Borrower shall discharge, bond, or insure over or otherwise collateralize to CHFA's reasonable satisfaction any mechanic's, laborer's, materialman's, warehouseman's, or other lien filed against the Property within thirty (30) days after the date the lien is filed.

5.9 Terms and Conditions of Construction Contract. Borrower shall cause:

(a) The Project funded by the Loan to be undertaken in compliance with all laws and ordinances (including without limitation all applicable state, local and federal building, zoning, environmental, historic preservation, cultural resources and safety and sanitary codes), in a good and workmanlike manner, and substantially in accordance with the Drawings and Specifications and this Agreement.

(b) The Project to commence on the date set forth on the Project timetable approved by CHFA or, if a delay is created by a labor dispute, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond Borrower's control, within a reasonable amount of time thereafter.

(c) Such Project to be carried on diligently and expeditiously and to be fully completed no later than the Required Completion Date.

5.10 Compliance with Environmental Laws. Borrower shall cause the Project to be in compliance with, and not to cause or permit the Project to be in violation of, any existing or future environmental law, rule, regulation, ordinance, or statute. Although CHFA will utilize its employees and agents for regular inspection of the Property, Borrower agrees that, if CHFA has reasonable grounds to suspect any such violation, Borrower shall be entitled to thirty (30) days' notice and

opportunity to cure such violation. If the suspected violation is not cured, CHFA shall have the right to retain an independent consultant to inspect and test the Property for such violation. If a violation is discovered, Borrower shall pay for the cost of the independent consultant. Additionally, Borrower agrees: (a) That CHFA shall not be directly or indirectly involved with the removal or abatement of asbestos, asbestos containing materials, and lead based paint or the removal of other hazardous or toxic chemicals, materials, substances, or wastes and that full responsibility of supervision and oversight of such work shall be with Borrower; (b) Not to use, generate, manufacture, produce, store, release, discharge, or dispose of on, under, or about the Property or surrounding real estate or transport to or from the Property or surrounding real estate any hazardous or toxic chemicals, materials, substance, or wastes or allow any person or entity to do so except in such amounts and under such terms and conditions permitted by applicable laws, rules, regulations, ordinances, and statutes; (c) To give prompt written notice to CHFA of the following: (i) Any proceeding or inquiry by any governmental authority with respect to the presence of any hazardous or toxic chemicals, materials, substance, or waste in or on the Property or the surrounding real estate or the migration thereof from or to other property; (ii) All claims made or threatened by any third party against Borrower or the Property relating to any loss or injury resulting from any hazardous or toxic chemicals, materials, substance, or waste; (iii) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that would cause the Property or underlying or surrounding real estate or part thereof to be subject to any restrictions on the ownership, occupancy, transferability, or use of the property under any environmental law, rule, regulation, ordinance or statute, including, without limitation, Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property; (d) To indemnify, defend, and hold CHFA harmless from any and all claims, actions, causes of action, demands, judgments, damages, injuries, administrative orders, consent agreements, orders, liabilities, penalties, costs, expenses (including attorney's fees and expenses), and disputes of any kind whatsoever arising out of or relating to Borrower's or any other party's use or release of any hazardous or toxic chemicals, materials, substance, or wastes on the Property regardless of cause or origin; (e) To indemnify, defend, and hold CHFA harmless from any and all liability arising out of or relating to any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature relating to any hazardous or toxic chemicals, materials, substance, or waste in or on the Property regardless of cause or origin; (f) To deliver an environmental indemnity agreement to CHFA at the time of the Closing of the Loan; (g) The results of all environmental site assessments shall be satisfactory to CHFA, in its sole discretion. Copies of all environmental site assessments obtained by the Borrower with respect to the Property shall be given to CHFA. All required remediation work shall be properly completed and evidence of proper remediation, satisfactory to CHFA, shall be submitted. If required by CHFA, Borrower shall provide CHFA with proof that the Property is insurable against Environmental Hazards; and (h) Borrower covenants and agrees that the Project will comply with the Lead Based Paint Prevention Program established by the State of Connecticut Department of Public Health. Borrower shall maintain records on the compliance of each dwelling unit situated in the Project with said program and evidence that the appropriate notices have been provided to each Tenant.

5.11 Adequate Repair and Maintenance. Upon completion of the Project, Borrower shall deliver to CHFA a copy of the certificate of occupancy for each Workforce/Middle Income Unit in the Project and Borrower shall maintain the Property in compliance with all applicable codes, laws, and ordinances.

5.12 Lease of Units. Borrower shall lease the dwelling units that are situated in the Project, as they become available in a manner to satisfy the Workforce/Middle Income Housing requirement, utilizing the leases provided to CHFA. Borrower shall not modify the leases provided to CHFA for use in connection with the Project without the prior written consent of CHFA, which consent shall not be unreasonably withheld or delayed.

5.13 Records. Borrower shall keep and maintain at its offices for a minimum period of five (5) years after the expiration of the Workforce/Middle Income Period, complete and accurate records and other documents relating to its receipt and disbursement of the Loan and any other records and documents pertaining to the Project that CHFA may be required to maintain or report under the Program or under the rules, regulations and policies now or hereafter applicable to the Program.

5.14 Inspection of Property. Any duly authorized representative of CHFA shall, at all reasonable times, have access and the right to inspect the Property until completion of the Project and expiration of the Workforce/Middle Income Period.

5.15 Indemnification. Borrower shall and hereby agrees to indemnify, defend, and hold CHFA, and its agents, officials, and employees, harmless from and against any and all suits, damages, claims, causes of actions, demands, judgments, penalties, costs, expenses, attorney's fees, and any and all injuries to persons or property and all other matters arising out of or incurred in connection with the performance by Borrower of the terms, conditions, and covenants of this Agreement or in connection with the operation of the Project.

5.16 Report of Events of Default. Borrower shall promptly give written notice to CHFA upon becoming aware of any Event of Default under this Agreement.

5.17 Workforce/Middle Income Housing.

The Borrower shall ensure that the Workforce/Middle Income Units constitute Workforce/Middle Income Housing during the entire Workforce/Middle Income Period. The Workforce/Middle Income Units shall be as set forth below and as more particularly set forth on **Schedule A** attached hereto:

(a) _____ (___) one-bedroom Workforce/Middle Income Units shall be restricted to families and persons whose household income does not exceed _____ percent (____%) of the AMI (as defined below) and shall have an initial monthly rental (including, without limitation, any required amenity, occupancy or use charge) not greater than \$_____, and as thereafter adjusted in accordance herewith.

(b) _____ (___) two-bedroom Workforce/Middle Income Units shall be restricted to families and persons whose household income does not exceed _____ percent (____%) of the AMI and shall have an initial monthly rental (including, without limitation, any required amenity, occupancy or use charge) not greater than \$_____, and as thereafter adjusted in accordance herewith.

(c) _____ (___) three-bedroom Workforce/Middle Income Units shall be restricted to families and persons whose household income does not exceed _____ percent (____%) of the AMI and shall have an initial monthly rental (including, without limitation,

any required amenity, occupancy or use charge) not greater than \$_____, and as thereafter adjusted in accordance herewith.

When DOH and CHFA amends AMI, CHFA shall make such information available to the Owner. The Owner shall adjust rents in accordance with the AMI subsequently established by CHFA under the Program. The Owner shall provide each tenant with a minimum of thirty (30) days prior written notice before implementing a rent increase.

To evidence the Workforce/Middle Income Housing restrictions required under this Agreement, the Borrower shall, at the Closing, execute and file, or cause to be filed, on the land records in the municipality in which the Property is located the Restrictive Covenant, which document shall provide that such restrictions shall run with the land and continue in effect for the entire Workforce/Middle Income Period. During the Workforce/Middle Income Period, the Restrictive Covenant shall have priority over all mortgages and other monetary liens encumbering the Project (including without limitation the mortgage securing the loan held by the First Mortgage Lender). Notwithstanding anything to the contrary in this Agreement, in the event that the Borrower fails to comply with the requirements hereunder and under the Restrictive Covenant, CHFA shall be entitled to enjoin the Borrower from leasing the Workforce/Middle Income Units, as the Borrower acknowledges that damages are not an adequate remedy at law for such breach. Upon the expiration of the Workforce/Middle Income Period, if the Borrower shall have complied with the requirements hereunder and the Restrictive Covenant, CHFA shall join in an instrument with the Borrower that shall provide that the Restrictive Covenant is terminated and of no further force or effect.

5.18 Annual Program Certification Reports. On an annual basis, Borrower shall: (a) furnish to CHFA a program certification report (each a “**Program Certification Report**”), the format of which is attached hereto as Schedule B-1 and made a part hereof; and (b) collect tenant income certifications (each a “**Tenant Income Certification Report**”), the format of which is attached hereto as Schedule B-2 and made a part hereof, for each tenant household living in the Workforce/Middle Income Units, both regarding Borrower’s compliance with its obligations under this Agreement and the Restrictive Covenant. Such Program Certification Report shall be submitted to CHFA on or before March 1st for the year ending the preceding December 31st. If requested by CHFA, Borrower shall submit Tenant Income Certifications Reports, any supporting documentation, and/or permit CHFA to make an on-site inspection to verify the certification(s). On an annual basis, Borrower shall reexamine the income of each tenant household living in the Units. Borrower shall maintain all Program documentation for five (5) years after the expiration of the Workforce/Middle Income Period.

5.19 Leases. Borrower covenants and agrees to utilize only written leases that conform to applicable law and include a Program rider in the format set forth on Schedule C, attached hereto and made a part hereof. Additionally, Borrower agrees not to terminate the tenancy or to refuse to renew a Lease with a tenant of rental housing assisted with Program Funds except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable federal, state, or local law, or for other good cause. Any such termination or refusal to renew must be preceded by not less than thirty (30) days by Borrower's service upon the tenant of a written notice specifying the grounds for such action.

5.20 Anti-Terrorism Laws. Borrower covenants and agrees that: (a) neither Borrower nor any person or entity which controls, is controlled by or under common control with the

Borrower is in violation of any laws or regulations relating to terrorism or money laundering (“**Anti-Terrorism Laws**”), including Federal Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “**Executive Order**”) and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56. (b) neither Borrower nor any person or entity which controls, is controlled by or under common control with the Borrower is a Prohibited Person. A “**Prohibited Person**” is any of the following: (i) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) a person or entity with whom any bank is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (iv) a person or entity who commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or (v) a person or entity that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list. (c) Borrower (i) does not conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) does not deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) does not engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law; (d) Borrower shall not (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and Borrower shall deliver to the DOH any certification or other evidence requested from time to time by the DOH in its reasonable discretion, confirming Borrower’s compliance herewith).

5.21 Other Restrictions; Other Defaults. The Borrower is not in default under any document or agreement to which it is a party or which affects the Property or the Project, including, but not limited, to the documents and instruments evidencing the loan held by the First Mortgage Lender [and the occupancy restrictions with respect to [_____] Units encumbering the Property for the benefit of [_____] (the “**Inclusionary Unit Restriction**”), as identified and described on **Schedule A** attached hereto and made a part hereof.] Borrower shall comply with [the **Inclusionary Unit Restriction, in addition to**] the Restrictive Covenant and all aspects of the Borrower’s plan for the development of the Project comply with all such documents and instruments and the requirements and specifications contained therein. **[Borrower’s ongoing full and complete compliance with the Inclusionary Unit Restriction, as determined by CHFA in its sole discretion, is an inducement to CHFA, and a condition precedent upon which CHFA is relying, in the provision of the Loan to the Borrower for the benefit of the Project.] [Without limiting the generality of the foregoing, (i) the Borrower acknowledges and agrees that the amount of the Loan takes into account and consideration, and credit has been given for, the Inclusionary Unit Restrictions and that but for the Inclusionary Unit Restriction, the Loan would not be in the amount stated herein, (ii) the Inclusionary Unit Restrictions requires that _____ (____) units (separate and apart from the Workforce/Middle Income Housing units) be restricted for affordability to persons and families whose income is equal to or less than _____ % AMI for a period of**

not less than _____ (____) years, and (iii) the Borrower shall provide CHFA such documents and other evidence as is reasonably requested by CHFA to confirm the Borrower's and the Project's compliance with the Inclusionary Unit Restriction.]

5.22 Debarment and Suspension. The Borrower is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity.

5.23 No Convictions, Terminations or Improper Arrangements. The Borrower hereby represents and warrants that it: (a) has not, within the three years preceding this Agreement, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would perform under this Agreement, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records or property, making false statements, or receiving stolen property; (b) is not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above; (c) has not within the three (3) years preceding this Agreement had one or more contracts with any governmental entity terminated; and (d) has not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure this Agreement and that it has not paid or agreed to pay any entity or person, other than a bona fide employee working solely for it, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement or any assignments made in accordance with the terms of this Agreement.

5.24 Taxes and Compliance. The Borrower hereby represents and warrants that: (a) it has paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut; (b) it has a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations; (c) it does not owe any unemployment compensation contributions; and (d) all of its vehicles have current registrations and, unless such vehicles are no longer in service, it shall not allow any such registrations to lapse.

ARTICLE 6 EVENT OF DEFAULT; REMEDIES

6.1 Event of Default. Each of the following shall constitute an "Event of Default" for purposes of this Agreement: (a) The failure of Borrower to make any payment according to the tenor and effect of this Agreement, including, but not limited to, any payment of principal, interest, premiums, penalties, taxes, etc., when and as the same shall become due and payable, whether at maturity, by acceleration, or otherwise within thirty (30) days after written notice that such payments have become due and payable; (b) Except as otherwise provided herein, the failure of Borrower to punctually and properly perform any other covenant or agreement contained in this Agreement, including the failure to provide in a timely manner any certificate or report, notice, financial record, or other document required to be produced or requested by CHFA in relation to the Project, or the failure to forebear from any unpermitted act and such failure shall continue and remain unremedied for a period of thirty (30) days after written notice thereof, provided, however,

that if such failure cannot be remedied in such time, Borrower shall have an additional thirty (30) days to remedy such failure so long as Borrower is diligently and in good faith pursuing such remedy; (c) Any representation, warranty, or certificate given or furnished by or on behalf of Borrower shall prove to be materially false as of the date of which the representation, warranty, or certification was given, provided, however, that if any representation, warranty, or certification that proves to be materially false is due merely to Borrower's inadvertence, Borrower shall have a thirty (30) day opportunity after written notice thereof to cause such representation, warranty, or certification to be true and complete in every respect; (d) Borrower shall file, or have filed against it, a petition of bankruptcy, insolvency, or similar law, state or federal, or shall file any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, and such petition shall not have been vacated within thirty (30) days; or shall be adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, under state or federal law, and such judgment or decree is not vacated or set aside within thirty (30) days; (e) Borrower shall make an assignment for the benefit of creditors, or shall submit in writing Borrower's inability to pay its debts as they become due; (f) A receiver, trustee, or liquidator shall be appointed for Borrower or any substantial part of Borrower's assets or properties, and not removed within thirty (30) days; (g) the failure of the Borrower to commence and complete the Project on or prior to the Required Completion Date or the Borrower's abandonment or termination of the Project prior to the expiration of the Workforce/Middle Income Period; (h) The failure of Borrower to comply with all pertinent provisions of local, state and federal laws, rules and regulations, in connection with this Agreement; (i) Default by the Borrower in the payment of any indebtedness for borrowed money or default with respect to any of the terms of any evidence of such indebtedness or of any indenture or other agreement relating thereto; (k) The Borrower shall dissolve or liquidate, or be dissolved or liquidated, or cease to legally exist, or merge or consolidate with or into any corporation or entity, or the composition of the partnership shall change without the written consent of the Commissioner; (l) A judgment or judgments for the payment of money shall be rendered against the Borrower and any such judgment shall remain unpaid, unstayed on appeal, unbonded, undischarged or undismissed for a period of ninety (90) consecutive days; and (m) Failure of Borrower to pay its debts as such debts become due. Failure to pay when due and payable, the principal of or interest on or any other amount owed with respect to any indebtedness for borrowed money upon which the Borrower is obligated to make payment, or the maturity of any such indebtedness shall have been accelerated in accordance with the provisions of any agreement or instrument providing for the creation of or concerning such indebtedness, or any event shall have occurred and be continuing after any applicable cure period which would permit any holder or holders of such indebtedness, any trustee or agency acting on behalf of such holder or holders or any other persons so to accelerate such maturity.

6.2 Remedies. Upon the happening of any one or more of the Events of Default, beyond any applicable notice and cure period, CHFA shall have, to the fullest extent permitted by law, each and all the following remedies in addition to those provided for in other portions of this Agreement: (a) suspend all further payments by CHFA to the Borrower until such noncompliance is cured to the satisfaction of CHFA; (b) without notice, declare the entire unpaid balance of the principal and interest on the Loan immediately due and payable, whereupon the same shall become and be immediately due and payable, without presentation, demand, protest, notice of protest, or other notice of dishonor of any kind, all of which are expressly waived by Borrower, and without relief from valuation and appraisal laws; (c) purchase or redeem, pursuant to foreclosure proceedings, bankruptcy proceedings or other judicial proceedings, any property on which CHFA holds a mortgage or other lien or in which CHFA has an interest; and (d) maintain

any and all actions at law or suits in equity, including receivership or other proper proceedings, to cure or remedy any defaults or breaches of covenants under this Agreement or to protect the interests of CHFA, including but not limited to foreclosure of the Mortgage.

ARTICLE 7 MISCELLANEOUS

7.1 Expenses Incurred Upon Event of Default. Borrower shall reimburse CHFA for all reasonable expenses and costs of collection and enforcement, including reasonable attorney's fees, incurred by CHFA as a result of one or more Events of Default by Borrower under this Agreement.

7.2 No Assignment or Succession. Except as otherwise provided herein, neither this Agreement, nor any interest of Borrower in, under, or to this Agreement or the Project, may be assigned or transferred by Borrower without the prior written consent of CHFA, which consent shall not be unreasonably withheld or delayed.

7.3 Amendments. No modification or amendment of any provision of this Agreement shall be effective unless made in writing and signed by all parties.

7.4 Disclaimer of Relationship. Nothing contained in this Agreement, nor any act of CHFA or of Borrower, or of any other person, shall in and by itself be deemed or construed by any person to create any relationship of third party beneficiary, or of principal and agent, of limited or general partnership, or of joint venture. No contractor, subcontractor, mechanic, materialman, laborer, vendor, or other person dealing with Borrower shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement, but each such person shall be deemed to have agreed (a) that they shall look to Borrower as their sole source of recovery if not paid, and (b) except as otherwise agreed to by CHFA and any such person in writing, they may not enter any claim or bring any such action against CHFA under any circumstances. Except as provided by law, or as otherwise agreed to in writing between CHFA and such person, each such person shall be deemed to have waived in writing all right to seek redress from CHFA under any circumstances whatsoever.

7.5 Survival of Covenants. All representations, warranties, covenants, and agreements made by Borrower in connection with this Agreement and all certificates delivered by Borrower and the General Contractor shall survive the execution of this Agreement and the completion of the Project and shall remain in full force and effect throughout the entire Workforce/Middle Income Period; provided, further, that no third party shall be entitled to rely on any representations, warranties, covenants, agreements, or certificates.

7.6 Notices. Any and all notices or other communications required or permitted under this Agreement shall be in writing and shall be sufficiently given when delivered in person to, or sent by, first-class mail, postage prepaid, addressed to addresses set forth above, or to such other address or person as shall be designated from time to time by notice.

7.7 Governing Law. Except to the extent preempted by applicable federal law, the laws of the State of Connecticut shall govern all aspects of this Agreement, including execution, interpretation, performance, and enforcement.

7.8 No Waiver. Neither failure nor delay on the part of CHFA in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement or consent to any departure by Borrower therefrom shall be effective unless the same shall be in writing, signed on behalf of CHFA by a duly authorized officer thereof, and the same shall be effective only in the specific instance for which it is given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notices or demands in similar or other circumstances, or constitute a waiver of any of CHFA's right to take other or further action in any circumstances without notice or demand.

7.9 Remedies Cumulative. All powers and remedies given by this Agreement shall be cumulative and in addition to those otherwise provided by law.

7.10 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original for all purposes.

7.11 Binding of All Successors and Assigns. All the terms and provisions of this Agreement shall be binding on and inure to the benefit of the parties hereto, and their respective successors, assigns, and legal representatives.

7.12 Severability. The invalidity, illegality, or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity, legality, or enforceability of the remaining provisions hereof or thereof.

7.13 Headings. The headings of the articles, sections, and paragraphs used in this Agreement are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

7.14 Entire Agreement. This Agreement embodies the entire agreement and understanding between CHFA and Borrower and supersedes all prior verbal and written agreements by, between, and among the parties.

7.15 Warranties/Representation. It is understood that the Commissioner has relied upon each of the warranties and representations of the Borrower contained herein and would not have entered into this agreement but for said warranties and representations.

7.16 Parole Evidence. This agreement shall be the final repository of all of the terms, conditions, and understandings of the parties hereto. The parties mutually release and discharge each other from any prior understanding and/or agreements concerning this Project.

7.17 Jurisdiction. The Borrower agrees that the execution of this Agreement and the other Project Documents, and the performance of its obligations hereunder and thereunder, shall be deemed to have a Connecticut situs and the Borrower shall be subject to the personal jurisdiction of the courts of the State of Connecticut with respect to any action CHFA, its successors or assigns may commence hereunder or thereunder. Accordingly, the Borrower hereby specifically and irrevocably consents to the jurisdiction of the courts of the State of Connecticut with respect to all matters concerning this Agreement or any of the other Project

Documents or the enforcement thereof in any action initiated by CHFA or which CHFA voluntarily joins as a party.

7.18 Indemnification. The Borrower shall indemnify and hold the Commissioner and CHFA harmless from any and all losses, liabilities, injuries, suits, actions, proceedings, and claims arising out of or relating to the Project and all documents executed in conjunction herewith.

7.19 No Third-Party Beneficiary. No contractor, subcontractor, mechanic, materialman, laborer, vendor, or other person dealing with Borrower shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement, but each such person shall be deemed to have agreed (a) that they shall look to Borrower as their sole source of recovery if not paid, and (b) except as otherwise agreed to by CHFA and any such person in writing, they may not enter any claim or bring any such action against CHFA under any circumstances. Except as provided by law, or as otherwise agreed to in writing between CHFA and such person, each such person shall be deemed to have waived in writing all right to seek redress from CHFA under any circumstances whatsoever.

7.20 Commercial Transaction and Waiver. THE BORROWER AGREES THAT THE TRANSACTION OF WHICH THIS AGREEMENT IS A PART IS A COMMERCIAL TRANSACTION AND WAIVES ANY RIGHT TO NOTICE, PRIOR HEARING, AND ANY OTHER RIGHTS IT MAY HAVE UNDER CHAPTER 903a OF THE CONNECTICUT GENERAL STATUTES, AS MAY BE AMENDED, OR OTHER APPLICABLE LAW WITH RESPECT TO ANY REMEDY WHICH CHFA MAY DESIRE TO USE, AND THE COMMISSIONER MAY INVOKE ANY PREJUDGMENT REMEDY AVAILABLE TO IT, INCLUDING, BUT NOT LIMITED TO, GARNISHMENT, ATTACHMENT, FOREIGN ATTACHMENT AND REPLEVIN, WITH RESPECT TO ANY TANGIBLE OR INTANGIBLE PROPERTY (WHETHER REAL OR PERSONAL) OF THE BORROWER TO ENFORCE THE PROVISIONS OF THE PROJECT DOCUMENTS, WITHOUT GIVING THE BORROWER ANY NOTICE OR OPPORTUNITY FOR A HEARING.

7.21 Jury Trial Waiver. THE BORROWER HEREBY WAIVES TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING OR ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE TRANSACTION OF WHICH THIS AGREEMENT IS A PART AND/OR THE ENFORCEMENT OF ANY OF ITS RIGHTS AND REMEDIES. THE BORROWER ACKNOWLEDGES THAT IT MAKES THIS WAIVER KNOWINGLY, VOLUNTARILY AND ONLY AFTER CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH ITS ATTORNEY.

ARTICLE 8
PROGRAM LAWS, REGULATIONS, RULES AND EXECUTIVE ORDERS

8.1 Compliance with Local, State and Federal Laws, and Maintenance of Property. In the administration and execution of the Project, the Borrower shall comply with all pertinent provisions of local, State and Federal law applicable to it and/or its properties and/or its business, and maintain its property in good repair. Failure to do so shall constitute an Event of Default by the Borrower under this Agreement.

8.2 Fair Housing. Borrower shall comply with all applicable provisions of §§ 8-37ee-1 through 8-37ee-17 and §§ 8-37ee-300 through 8-37ee-314 of the Regulations of Connecticut State Agencies related to fair housing choice and racial and economic integration.

8.3 Access for Physically Disabled; Listing all Units. (a) The Development shall at all times comply with the State Fair Housing and Handicap Accessibility Requirements set forth in §§29-269 of the Connecticut General Statutes, as well as the provisions of the Fair Housing Act set forth in §§ 46a-64b and 46a-64c of the Connecticut General Statutes and the provisions of §§29-273 of the Connecticut General Statutes. (b) The Borrower shall list or cause to be listed on DOH's accessibility database established and maintained in accordance with the provisions of §8-119x of the Connecticut General Statutes, which database is presently known as "*CT Housing Search*" and is presently located at <http://www.cthousingsearch.org/>, the availability of all of the Units and, in connection with such listings, shall include up-to-date accessibility information. DOH reserves the right to designate a different listing database at any time during the Workforce/Middle Income Period upon not less than forty-five (45) days advance written notice to Borrower.

8.4 Property Standards. The Borrower shall ensure that each Affordable Unit at the Development as required under the Project Documents, at all times until the expiration of the applicable affordability period for such Affordable Unit, shall comply with all applicable CHFA property standards.

8.5 Protection of Confidential Information. (a) Borrower and Borrower Parties (as defined below) have a duty to and shall, at their own expense, protect from a Confidential Information Security Incident (as defined below) any and all Confidential Information (as defined below) that they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards. (b) Borrower and all Borrower Parties shall develop, implement and maintain a comprehensive data-security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and State law and in the written policy of the State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following: (i) a security policy for employees related to the storage, access and transportation of data containing Confidential Information; (ii) reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept; (iii) a process for reviewing policies and security measures at least annually; (iv) creating secure access controls to Confidential Information, including but not limited to passwords; and (v) encrypting Confidential Information that is stored on laptops, portable devices, or being transmitted electronically. (c) Borrower and

Borrower Parties shall notify DAS, Client Agency and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Borrower or Borrower Parties have come to possess or control has been subject to a Confidential Information Security Incident. If a Confidential Information Security Incident has occurred which, in the sole opinion of DOH after consultation with the Attorney General, constitutes a breach of security as defined in § 36a-701b of the Connecticut General Statutes, or otherwise (collectively, a "**Breach**"), Borrower shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, DOH and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring and protection plan shall be made available by Borrower at its own cost and expense to all individuals and entities affected by the Confidential Information Security Incident. Such credit monitoring and protection plans shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to § 36a-701a of the Connecticut General Statutes. Such credit monitoring and protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Breach. Neither Borrower's nor any Borrower Party's costs and expenses for the credit monitoring and protection plan shall be recoverable from DAS, DOH or any State of Connecticut entity or any affected individuals and shall be outside of any liability cap or limitation contained in this Agreement. (d) The Borrower shall incorporate the requirements of this Section in all subcontracts requiring each Borrower Party to safeguard Confidential Information in the same manner as provided for in this Section. (e) Nothing in this Section shall supersede in any manner Borrower's or Borrower Party's obligations pursuant to HIPAA or the provisions of this Agreement concerning the obligations of Borrower to DOH or DAS.

For purposes hereof:

"Borrower Parties" shall mean the Borrower's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Borrower is in privity of oral or written contract and the Borrower intends for such other person or entity to perform under the Project Documents and this Agreement in any capacity

"Confidential Information" shall mean any sensitive security information or personally identifiable information about an individual that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, telephone number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as facial images, fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that the State classifies as "personal," "confidential," "restricted," or "highly restricted," including, but not limited to medical or disability information. Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records that are lawfully made available to the general public.

“Confidential Information Security Incident” shall mean, generally, an instance where an unauthorized person or entity is suspected of having accessed Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; (4) if such Confidential Information is maintained in a manner that allows for or causes a substantial risk of identity theft or fraud to an individual, Borrower, contractor, DOH, the Connecticut Department of Administrative Services (“**DAS**”) or the State; or (5) the accessing or disclosure of Confidential Information by any person for unauthorized purposes, regardless of whether the Confidential Information is encrypted.

8.6 Compliance with Local, State and Federal Laws, and Maintenance of Property. In the administration and execution of the Development, the Borrower shall comply with all pertinent provisions of local, State and Federal law applicable to it and/or its properties and/or its business, and maintain its property in good repair. Failure to do so shall constitute an Event of Default by the Borrower under the Project Documents.

8.7 Compliance with Nondiscrimination and Affirmative Action in accordance with § 4a-60 of the Connecticut General Statutes. The Borrower agrees to provide each labor union or representative of workers with which the Borrower has a collective bargaining agreement or other contract or understanding and each vendor with which the Borrower has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers’ representative of the Borrower’s commitments under this section, and to post copies of such notice in conspicuous places available to be seen by employees and applicants for employment. Specifically, but not by way of limitation, the Borrower agrees to the following:

(A) Definitions. For the purposes of this Section 6, the following terms are defined as follows:

“Commission” means the Connecticut Commission on Human Rights and Opportunities

“Contract” and **“contract”** means this Agreement and any extension or modification of this Agreement;

“Contractor” and **“contractor”** means the Borrower and includes any successors or assigns of the Borrower;

“Gender identity or expression” means a person’s gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related

identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

“Good faith” means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

“Good faith efforts” shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

“Marital status” means being single, married as recognized by the State of Connecticut, widowed, separated or divorced;

“Mental disability” means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's *“Diagnostic and Statistical Manual of Mental Disorders”*, or a record of or regarding a person as having one or more such disorders;

“Minority business enterprise” means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of CGS § 32-9n; and

“Public works contract” means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of subsection (B) of this Section, the terms **“Contract”** and **“contract”** do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency project contract, (2) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in § 1-267 of the Connecticut General Statutes, (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, state or government described in the immediately preceding enumerated items (1), (2), (3), or (4).

(B)(1)(a) The contractor agrees and warrants that in the performance of the Contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the

State of Connecticut; and the contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the contractor that such disability prevents performance of the work involved; (b) the contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (c) the contractor agrees to provide each labor union or representative of workers with which the contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the contractor's commitments under this Section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (d) the contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statute §§ 46a-56, 46a-68e and 46a-68f and (e) the contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects. (2) Determination of the contractor's good faith efforts shall include, but shall not be limited to, the following factors: the contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects. (3) The contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission of its good faith efforts. (4) The contractor shall include the provisions of subsection (1) of this Section 2(B) in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer, unless exempted by regulations or orders of the Commission. The contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter. (5) The contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto. (6)(a) The contractor agrees and warrants that in the performance of the Contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of

Connecticut, and that employees are treated when employed without regard to their sexual orientation; (b) the contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the contractor's commitments under this Section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (c) the contractor agrees to comply with each provision of this Section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (d) the contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor which relate to the provisions of this Section Connecticut General Statutes § 46a-56. (7) The contractor shall include the provisions of subsection (6) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter. (8) Pursuant to subsection (c) of section 4a-60 and subsection (b) of section 4a-60a of the Connecticut General Statutes, the Contractor, for itself and its authorized signatory of this Contract, affirms that it understands the obligations of this section and that it will maintain a policy for the duration of the Contract to assure that the Contract will be performed in compliance with the nondiscrimination requirements of such sections. The Contractor and its authorized signatory of this Contract demonstrate their understanding of this obligation by (A) having provided an affirmative response in the required online bid or response to a proposal question which asks if the Contractor understands its obligations under such sections, (B) signing this Contract, or (C) initialing this nondiscrimination affirmation in the following line:

BORROWER INITIALS: _____

8.8 Campaign Contribution Restriction. For all State contracts, defined in § 9-612 of the Connecticut General Statutes as having a value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract represents that they have received the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.

8.9 Executive Orders and Other Enactments. (a) All references in this Contract to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, "**Enactments**") shall mean Enactments that apply to the Contract at any time during its term, or that may be made applicable to the Contract during its term. This Contract shall

always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments Unless otherwise provided by Enactments, the Contractor is not relieved of its obligation to perform under this Contract if it chooses to contest the applicability of the Enactments or the Client Agency's authority to require compliance with the Enactments. (b) This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it. (c) This Contract may be subject to (1) Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services; and (2) Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and Management, Policy ID IT-SDLC-17-04. If any of the Executive Orders referenced in this subsection is applicable, it is deemed to be incorporated into and made a part of this Contract as if fully set forth in it.

8.10 Summary of Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes (a) the State has provided to the Contractor the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes, which summary is incorporated by reference into and made a part of this Contract as if the summary had been fully set forth in this Contract; (b) the Contractor represents that the chief executive officer or authorized signatory of the Contract and all key employees of such officer or signatory have read and understood the summary and agree to comply with the provisions of state ethics law; (c) prior to entering into a contract with any subcontractors or consultants, the Contractor shall provide the summary to all subcontractors and consultants and each such contract entered into with a subcontractor or consultant on or after July 1, 2021, shall include a representation that each subcontractor or consultant and the key employees of such subcontractor or consultant have read and understood the summary and agree to comply with the provisions of state ethics law; (d) failure to include such representations in such contracts with subcontractors or consultants shall be cause for termination of the Contract; and (e) each contract with such contractor, subcontractor or consultant shall incorporate such summary by reference as a part of the contract terms.

For purposes hereof, "**Large state construction or procurement contract**" means any contract, having a cost of more than five hundred thousand dollars, for (A) the remodeling, alteration, repair or enlargement of any real asset, (B) the construction, alteration, reconstruction, improvement, relocation, widening or changing of the grade of a section of a state highway or a bridge, (C) the purchase or lease of supplies, materials or equipment, as defined in § 4a-50 OF THE Connecticut General Statutes, or (D) the construction, reconstruction, alteration, remodeling, repair or demolition of any public building.

8.11 Whistleblower Protection Law. If an officer, employee or appointing authority of the Borrower takes or threatens to take any personnel action against any employee of the Borrower in retaliation for such employee's disclosure of information to any employee of DOH, the Auditors of Public Accounts or the Attorney General under the provisions of § 4-61dd(a) of the Connecticut General Statutes, the Borrower shall be liable for a civil penalty of not more than

five thousand dollars (\$5,000) for each offense, up to a maximum of twenty percent (20%) of the value of this Agreement. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. The Borrower shall post a notice in a conspicuous place which is readily available for viewing by employees informing employees of the provisions of § 4-61dd of the Connecticut General Statutes relating to large State contractors.

8.12 Disclosure of Records. This Agreement may be subject to the provisions of § 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars (\$2,500,000) between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to Connecticut's Freedom of Information Act ("FOIA") and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of §§ 1-205 and 1-206 of the Connecticut General Statutes.

8.13 Large State Contract Representation for Contractor. Pursuant to section 4-252 of the Connecticut General Statutes and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the Contractor, for itself and on behalf of all of its principals or key personnel who submitted a bid or proposal, represents: (1) That no gifts were made by (A) the Contractor, (B) any principals and key personnel of the Contractor, who participate substantially in preparing bids, proposals or negotiating State contracts, or (C) any agent of the Contractor or principals and key personnel, who participates substantially in preparing bids, proposals or negotiating State contracts, to (i) any public official or State employee of the State agency or quasi-public agency soliciting bids or proposals for State contracts, who participates substantially in the preparation of bid solicitations or requests for proposals for State contracts or the negotiation or award of State contracts, or (ii) any public official or State employee of any other State agency, who has supervisory or appointing authority over such State agency or quasi-public agency; (2) That no such principals and key personnel of the Contractor, or agent of the Contractor or of such principals and key personnel, knows of any action by the Borrower to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the Contractor to provide a gift to any such public official or State employee; and (3) That the Contractor is submitting bids or proposals without fraud or collusion with any person.

8.14 Large State Contract Representation for Official of Employee of State Agency. Pursuant to § 4-252 of the Connecticut General Statutes and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the State agency official or employee represents that the selection of the most qualified or highest ranked person, firm or corporation was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

8.15 Iran Energy Investment Certification. (a) Pursuant to § 4-252a of the Connecticut General Statutes, the Contractor certifies that it has not made a direct investment of twenty million

dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, and has not increased or renewed such investment on or after said date. (b) If the Contractor makes a good faith effort to determine whether it has made an investment described in subsection (a) of this section shall not be deemed to be in breach of the Contract or in violation of this section. A **"good faith effort"** for purposes of this subsection includes a determination that the Contractor is not on the list of persons who engage in certain investment activities in Iran created by the Department of General Services of the State of California pursuant to Division 2, Chapter 2.7 of the California Public Contract Code. Nothing in this subsection shall be construed to impair the ability of the State agency or quasi-public agency to pursue a breach of contract action for any violation of the provisions of this Contract.

8.16 Distribution of Project Materials and Project Publicity. Borrower hereby acknowledges, consents and grants to CHFA the right to distribute, publicize and/or advertise any and all materials regarding the Project and the Loan in relation to promotion or publicity of the Program, including, without limitation, the use and dissemination of marketing materials, educational materials, photographs, records, prints, text, presentations and/or commentary.

No Further Text On This Page – Signature Page Follows

DRAFT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

[_____]

By: _____

Name:
Title:
Duly Authorized

Date: _____

CONNECTICUT HOUSING FINANCE AUTHORITY

By: _____

Date: _____

DRAFT

Schedule A

[Workforce/Middle Income Units]

DRAFT

Schedule B-1

[Program Certification Report Format]

DRAFT

Schedule B-2

[Tenant Income Certification Report Format]

DRAFT

Schedule C

[Program Lease Rider Format]

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