

After recording, please return to:

DECLARATION OF LAND USE RESTRICTIVE COVENANTS

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS, (this “**Declaration**”) is made as of this ____ day of _____ 20____ by _____, a _____ organized and existing under the laws of the State of _____ and having a mailing address of _____ (the “**Owner**” and the “**Declarant**”) and is given as a condition precedent to the award to Owner of Housing Trust Fund Program funds (the “**Funds**”) pursuant to the requirements of the Public Act 23-205 and the Housing Trust Fund Program set forth in Sections 8-336m through 8-336q of the Connecticut General Statutes (as amended, collectively, the “**Act**”), and the regulations promulgated pursuant thereto (as amended, the “**Regulations**”).

WITNESSETH:

WHEREAS, the Owner is the owner of a certain parcel or parcels of real property, being more particularly described in Schedule A attached hereto and made a part hereof (the “**Land**”);

WHEREAS, in accordance with the Act and the Regulations, the Connecticut Housing Finance Authority (“**CHFA**”), a body politic and corporate constituting a public instrumentality and political subdivision of the State of Connecticut, as administrator under the Act, 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 Funds from the State of Connecticut (the “**State**”) for administration of a program for the purpose of providing financing to multifamily properties to finance housing units affordable to middle income households and persons (the “**Program**”);

WHEREAS, the Owner has been selected by CHFA to receive mortgage financing to be made by CHFA from Program Funds;

WHEREAS, the Owner has submitted to CHFA a request for financial assistance (the “**Loan**”) in connection with a project commonly known as _____ (the “**Project**”), which is or will be situated on the Land, and which Project includes the construction and/or rehabilitation of a certain multi-family development comprising _____ (____) residential units (each, a “**Unit**” and collectively, the “**Units**”);

WHEREAS, the financing received by Owner is to be utilized for the construction or rehabilitation of _____ (____) units (each an “**Workforce/Middle Income Unit**” and, collectively, the “**Workforce/Middle Income Units**”), which are included in the Project and which will be restricted for affordability to middle income households and persons in accordance herewith;

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

WHEREAS, the Owner has represented to CHFA certain income and rent restrictions it will maintain on the Workforce/Middle Income Units for the period of time as specified in the agreement for financial assistance of even date herewith from CHFA to the Owner (the “**Assistance Agreement**”) knowing and understanding that CHFA is relying on such representations;

WHEREAS, CHFA requires as a condition precedent to the awarding of the Loan under the Program, that the Declarant execute, deliver and record this Declaration on the official land records of the municipality in which the Land is located in order to create certain covenants running with the Land for the purpose of enforcing the requirements of the Act and the use restrictions found in Section 4 of this Declaration, by regulating and restricting the use, occupancy and transfer of the Project, as set forth herein;

WHEREAS, the regulatory and restrictive covenants set forth herein governing the use, occupancy, operation, and transfer of the Project shall be and are covenants running with the Land thereon for a term set forth herein and are binding upon all subsequent owners of the Land for such term, and are not merely personal covenants of the Declarant; and

WHEREAS, CHFA as a condition of its willingness to extend the Loan, requires that the Declarant shall, by entering into the terms, conditions and covenants set forth below, consent thereby to be regulated and restricted by CHFA as provided herein and by any applicable statutes and rules, regulations, policies and procedures of the Program.

NOW THEREFORE, in consideration of financial assistance under the Program, the Declarant agrees as follows:

Section 1 - Definitions

All the words and phrases used in this Declaration shall have the same meaning as when used in the Act, and applicable State regulations, unless the context requires otherwise.

Section 2 - Recording Filing, Covenants To Run With the Land

(a) Upon execution of this Declaration by the Declarant, the Declarant shall cause this Declaration and all amendments hereto to be filed on the land records of the municipality in which the Land is located and shall pay all fees and charges incurred in connection therewith. Upon recording, the Declarant shall immediately transmit to CHFA a receipt of the same and shall cause the recorded Declaration to be returned by the municipality to CHFA.

(b) The Declarant intends, declares, and covenants, on behalf of itself and all future owners and operators of the Land and the Project during the term of this Declaration, that this Declaration and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Land and the Project: (i) shall be and are covenants running with the land, encumbering the Land and the Project for the term of this Declaration, binding upon the Declarant and its successors in title and all subsequent owners and operators of the Land and the Project; (ii) are not merely personal covenants of the Declarant; and (iii) shall bind the Declarant (and the benefits shall inure to CHFA and any past, present or prospective tenant of the Land and the Project) and its successors and assigns during the term of this Declaration.

(c) Declarant hereby agrees that any and all requirements of the laws of the Act to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the Land shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to ensure that these restrictions run with the Project.

(d) Declarant covenants to obtain the consent of any prior recorded lien holder on the Land and/or Project, as applicable, to this Declaration and to furnish a copy of such consent to CHFA. Such consent(s) shall be furnished to CHFA on or before the date of this Declaration.

Section 3 - Representations, Covenants and Warranties Of The Owner

The Owner hereby represents, covenants, and warrants as follows:

(a) The Owner: (i) is a _____ duly organized under the laws of the State of _____ and is qualified to transact business under the laws of the State of Connecticut; (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted; and (iii) has the full legal right, power and authority to execute and deliver this Declaration.

(b) The execution and performance of this Declaration by the Owner: (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body; (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound; and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Owner will, at the time of execution and delivery of this Declaration, have good and marketable fee simple title in and to the premises constituting the Project, free and clear of any lien or encumbrance (except for encumbrances created pursuant to this Declaration, or other encumbrances permitted pursuant to the terms of the Assistance Agreement).

(d) There is no action, suit, proceeding at law or in equity, or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.

(e) All Units situated within the Project shall remain habitable, safe and sanitary according to all applicable local building codes.

(f) Subject to the requirements of the Act, and this Declaration and with the prior approval of CHFA, the Owner may sell, transfer, or exchange the entire Project at any time, but the Owner shall notify in writing any buyer or successor in interest or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Declaration and to the requirements of the Act and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the Project or any portion of the Project. The Owner agrees that CHFA may void any sale, transfer, or exchange of the Project if the buyer or successor in interest or other person fails to assume in writing the requirements of this Declaration and the requirements of the Act.

(g) The Owner shall not demolish any part of the Project, substantially subtract from any real or personal property of the Project, or permit the use of any residential rental unit situated within the Project for any purpose other than rental housing during the term of this Declaration unless required by law or unless the State has given its prior written consent.

(h) If the Project, or any part thereof, shall be damaged, destroyed, condemned, or acquired for public use, the Owner will use its best efforts, subject to the rights of any mortgagee, to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, and in the case of a partial condemnation, to restore the Project to substantially the same condition as existed prior to such condemnation, to the extent feasible, and thereafter to operate the Project in accordance with the terms of this Declaration.

(i) The Owner has not and will not execute any other declaration with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

Section 4 - Income, Rental, Occupancy and Use Restrictions

The Owner hereby represents, warrants and covenants that the Workforce/Middle Income Units constitute housing for which the tenant income and rent thresholds shall comply with the following restrictions during the entire Workforce/Middle Income Period (as defined herein). The Workforce/Middle Income Units shall comprise the following:

(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.

For purposes hereof, "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. When DOH and CHFA amends AMI, CHFA shall make such information available to the Owner. The Owner shall adjust rentals 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 rental increase.

Section 5 - Term of Declaration

(a) This Declaration, and the term of affordability specified herein (the **“Workforce/Middle Income Period”**), applies to the Project immediately upon recordation of this Declaration, and the Declarant shall comply with all restrictive covenants herein not later than the Project Completion Date (as defined herein). This Declaration shall terminate upon the later of: (i) six (6) years from the Project Completion Date; or (ii) the date of full repayment of the Loan in accordance with the terms of that certain promissory note made by Owner to CHFA dated on or about the date hereof. For purposes hereof **“Project Completion Date”** shall mean the date that CHFA shall have determined that the Project has been completed in accordance with the Assistance Agreement and all certificates of occupancy have been issued for the Workforce/Middle Income Units.

(b) Pursuant to the Act, as amended, this Declaration and the term of affordability shall remain in effect for not less than the Workforce/Middle Income Period described in Section 5(a) above, without regard to the term of any mortgage or other underlying security and without regard to any transfer of ownership.

Section 6 - Enforcement Of Restrictions

(a) The Declarant shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of CHFA, to inspect any books and records of the Declarant regarding the Project with respect to the incomes of tenants of units situated within the Project which pertain to compliance with the restrictions specified in this Declaration.

(b) On an annual basis, Declarant shall: (i) furnish to CHFA a program certification report regarding Declarant’s compliance with its obligations under this Declaration; and (ii) collect tenant income certifications for each tenant household living in the Workforce/Middle Income Units, all in a format set forth in the Assistance Agreement or as otherwise prescribed by CHFA from time to time. Such program certification report shall be submitted to CHFA on or before March 1st for the year ending the preceding December 31st and shall be in a format set forth in the Assistance Agreement or as otherwise prescribed by CHFA from time to time. If requested by CHFA, Declarant shall submit supporting documentation including, without limitation, the tenant income certifications and/or permit CHFA to make an on-site inspection of the Workforce/Middle Income Units in order to verify the certification(s). With respect to the Workforce/Middle Income Units, Declarant shall maintain said tenant income certifications for five (5) years after the expiration of the Workforce/Middle Income Period. Declarant shall submit any other information, documents, or certifications requested by CHFA which CHFA shall deem reasonably necessary to substantiate the Declarant’s continuing compliance with the provisions of the restrictions specified in this Declaration.

(c) The Declarant hereby agrees that the representations and covenants set forth herein may be relied upon by CHFA and all persons interested in Project compliance under the Act and applicable regulations. The Owner further agrees to submit annual certifications and other reports and/or supporting materials to CHFA, upon request, confirming that the Project complies with the Act, the Regulations and the restrictions specified in this Declaration and all other occupancy restrictions applicable to the Project.

(d) The Declarant covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of the Act, the Regulations, this Declaration or any other occupancy restrictions applicable to the Project. Moreover, the Declarant covenants to take any lawful action (including amendment of this Declaration as may be necessary, in the opinion of CHFA) to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed and published by the State from time to time pertaining to the Declarant's obligations under the Act or applicable regulations and affecting the Project.

(e) The Owner agrees to take any and all actions reasonably required by CHFA to substantiate the Owner's compliance with all occupancy restrictions applicable to the Project as now constituted or as subsequently amended.

(f) A Workforce/Middle Income Unit occupied by a family or person who, at the commencement of occupancy, was in compliance with the income and rent restrictions set forth in Section 4 herein (a "**Compliant Workforce/Middle Income Unit**") shall be treated as in compliance with this Declaration during such family or person's tenancy in such Workforce/Middle Income Unit until such family's or person's income exceeds the applicable restriction set forth in Section 4 herein. Upon the occurrence of a person's or family's income exceeding the applicable restriction in Section 4 (an "**Over-Income Event**"), the Workforce/Middle Income Unit occupied by such individual or family shall continue to be treated as in compliance with the restrictions set forth in Section 4 unless, after such Over-Income Event, any Unit in the Project of comparable size and character (as determined by CHFA) is occupied by a new resident whose income exceeds the same income and rent restrictions applicable to the Compliant Workforce/Middle Income Unit.

Section 7 - Recordkeeping

(a) During the term of this Declaration, the Owner shall maintain and make available to CHFA any and all records, documents, and policies necessary which demonstrate compliance with the Act and applicable regulations.

(b) The Owner shall maintain all records as required by the Act as applicable and shall take any and all actions reasonably required by CHFA to substantiate the Owner's compliance. This Declaration and the Assistance Agreement of which it is a part may be enforced by the State or its designee in the event the Declarant fails to satisfy any of the requirements herein.

Section 8 - Miscellaneous

(a) **Severability.** The invalidity of any clause, part, or provision of this Declaration shall not affect the validity of the remaining portions thereof.

(b) **Notices.** All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth above, or to such other place as a party may from time to time designate in writing. CHFA and the Declarant, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

(c) **Amendment.** The Declarant agrees that it will take all actions necessary to effect amendment of this Declaration as may be necessary to comply with the Act and any and all

applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to the Act. CHFA, together with the Declarant, may execute and record any amendment or modification to this Declaration and such amendment or modification shall be binding on third-parties granted rights under this Declaration.

(d) **Governing Law.** This Declaration shall be governed by the laws of the State of Connecticut.

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DRAFT

IN WITNESS WHEREOF, the Owner hereto has set its hand and seal the day and year first written above.

Signed, Sealed and Delivered
in the presence of:

[_____]

By: _____
Name:
Title:
Duly Authorized

STATE OF CONNECTICUT)
)
COUNTY OF _____)

ss: _____, 20____

Personally appeared, _____, _____ of _____, a
_____ and the _____ of _____, a
Signer and Sealer of the foregoing Instrument and acknowledged the same to be [his/her] free
act and deed as _____ of _____, and the free act and deed of
_____, and that said instrument was signed on behalf of and with the authority of said
_____, before me.

Commissioner of the Superior Court
Notary Public

Schedule A

[Legal Description]

DRAFT