

After recording, return to:

SUBORDINATION AND INTERCREDITOR AGREEMENT

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT (this “**Agreement**”) is entered into this ____ day of _____, 20__ by and among _____, a _____, having an address at _____ (the “**Senior Lender**”), the **CONNECTICUT HOUSING FINANCE AUTHORITY**, a body politic and corporate constituting a public instrumentality and political subdivision of the State of Connecticut, at its office at 999 West Street, Rocky Hill, Connecticut 06067 (“**Subordinate Lender**”) and _____, a _____ organized and existing under the laws of the State of Connecticut and having a mailing address of _____, Connecticut _____ (the “**Borrower**”).

RECITALS

A. The Senior Lender has made or is making a loan (the “**First Mortgage Loan**”) to the Borrower in the original principal amount of _____. The First Mortgage Loan is secured by a certain mortgage lien (the “**First Mortgage**”) upon the Borrower’s interest in and to certain real property located in _____, Connecticut and being more particularly described in Schedule A attached hereto and made a part hereof (the “**Property**”). The Borrower’s obligation to repay the First Mortgage Loan is evidenced by a Promissory Note dated _____, 20__ (the “**First Mortgage Note**”).

B. The Borrower has requested the Senior Lender to permit Subordinate Lender to: (i) make a subordinate loan to Borrower in the original principal amount of \$_____ (the “**Subordinate Loan**”) pursuant to certain Build4CT housing program requirements (the “**Program**”) that CHFA is administering to benefit middle income families and persons in accordance with Chapter 137e of the Connecticut General Statutes, Public Act 23-205, applicable authorizations of the State Bond Commission, Chapter 134 of the Connecticut General Statutes, and a memorandum of agreement between the CHFA and the State of Connecticut Department of Housing, and (ii) secure the Subordinate Loan by, among other things, placing a mortgage lien on the Borrower’s interest in and to the Property.

C. The Senior Lender has agreed to permit the Subordinate Lender to make the Subordinate Loan and to place a subordinate mortgage lien against the Property subject to all of the conditions contained in this Agreement.

NOW, THEREFORE, in order to induce the Senior Lender to permit the Subordinate Lender to make the Subordinate Loan to the Borrower and to place a subordinate mortgage lien against the Borrower’s interest in and to the Property, and in consideration thereof, the Senior Lender, the Subordinate Lender and the Borrower agree as follows:

1. Definitions. In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

“**Affiliate**” means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under

common control with, or which controls such Person (the term “control” for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of fifty percent (50%) or more of the equity interests).

“**Business Day**” means any day other than Saturday, Sunday or a legal holiday observed in the State of Connecticut.

“**Default Notice**” means: (a) a copy of the written notice from the Senior Lender to the Borrower stating that a First Mortgage Loan Default has occurred; or (b) a copy of the written notice from Subordinate Lender to the Borrower stating that a Subordinate Loan Default has occurred.

“**First Mortgage Loan Default**” means the occurrence of a default by the Borrower in performing or observing any of the terms, covenants or conditions in the First Mortgage Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the First Mortgage Loan Documents for curing the default.

“**First Mortgage Loan Documents**” means the First Mortgage Note, the First Mortgage and all other documents evidencing, securing or otherwise executed and delivered in connection with the First Mortgage Loan.

“**Person**” means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

“**Senior Lender**” means the Person named as such in the first paragraph on page 1 of this Agreement. When any other Person becomes the legal holder of the First Mortgage Note or of the First Mortgage Loan Documents, such other Person shall automatically become the Senior Lender.

“**Subordinate Lender**” means the Person named as such in the first paragraph on page 1 of this Agreement and any other Person who becomes the legal holder of the Subordinate Loan after the date of this Agreement.

“**Subordinate Loan Default**” means a default by the Borrower in performing or observing any of the terms, covenants or conditions in any of the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in such Subordinate Loan Documents for curing the default.

“**Subordinate Loan Documents**” means the Subordinate Loan Note, the Subordinate Loan Mortgage, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan, all as amended, restated, supplemented or otherwise modified.

“**Subordinate Loan Mortgage**” means the mortgage or deed of trust encumbering the Property as security for the Subordinate Loan, which Subordinate Lender will cause to be recorded among the applicable land records immediately before this Agreement.

“Subordinate Loan Note” means the promissory note of even date herewith issued by the Borrower to Subordinate Lender, or order, to evidence the Subordinate Loan.

2. Permission to Place Mortgage Liens Against Property. The Senior Lender agrees, notwithstanding the restrictions on inferior liens on the Property contained in the First Mortgage Loan Documents and subject to the provisions of this Agreement, to permit Subordinate Lender to record the Subordinate Loan Mortgage and other recordable Subordinate Loan Documents against the Property (which are subordinate in all respects to the lien of the First Mortgage, the First Mortgage Loan Documents, and, to the extent permitted under this Agreement, the Senior Loan and the First Mortgage Loan Documents) to secure the Borrower’s obligation to repay the Subordinate Loan Note and all other obligations, indebtedness and liabilities of the Borrower to Subordinate Lender under and in connection with the Subordinate Loan.

3. Borrower’s Representations and Warranties.

The Borrower makes the following representations and warranties to the Senior Lender:

(a) **Relationship of Borrower to Subordinate Lender and Senior Lender.** The Subordinate Lender is not an Affiliate of the Borrower and is not in possession of any facts which would lead it to believe that the Senior Lender is an Affiliate of the Borrower.

(b) **Subordinate Loan Documents.** Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender a true, correct, and complete executed copy of each of the Subordinate Loan Documents.

(c) **First Mortgage Loan Documents.** Upon execution and delivery of the First Mortgage Loan Documents, Borrower shall deliver to Subordinate Lender a true, correct, and complete executed copy of each of the First Mortgage Loan Documents.

4. Terms of Subordination; Priority of Declaration of Land Use Restrictive Covenant. The Senior Lender and the Subordinate Lender agree that to the extent and in the manner provided in this Agreement: (a) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the prior payment in full of the indebtedness evidenced by the First Mortgage Loan Documents; and (b) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Mortgage and the other First Mortgage Loan Documents. Notwithstanding the foregoing or any other provision in this Agreement, Senior Lender hereby subordinates such right or property as it has or ought to have by virtue of the Senior Mortgage to that of the Declaration of Land Use Restrictive Covenants executed by Borrower and recorded on the Property (the **“Restrictive Covenant”**), and does hereby covenant and agree with Subordinate Lender that the Restrictive Covenant shall take precedence over the Senior Mortgage and First Mortgage Loan Documents, and that the Restrictive Covenant shall be entitled to the same rights and privileges, both in law and in equity, as it would have had had it been executed, delivered and recorded prior to the Senior Mortgage and the First Mortgage Loan Documents.

5. Default Under Subordinate Loan Documents.

(a) **Notice of Default and Cure Rights.** The Subordinate Lender shall promptly deliver to the Senior Lender a Default Notice in each case where the Subordinate Lender has given a Default Notice to the Borrower. Failure of the Subordinate Lender to send a Default Notice to the Senior Lender shall not prevent the exercise of the Subordinate Lender’s rights and remedies under the Subordinate Loan

Documents, subject to the provisions of this Agreement. The Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within sixty (60) days following the date of such notice (the “**Senior Lender Cure Period**”); *provided, however*, that, subject to the terms of this Agreement, the Subordinate Lender shall be entitled, during such sixty (60) day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents. All amounts paid by the Senior Lender in accordance with the First Mortgage Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by the Senior Lender pursuant to, and shall be secured by the lien of, the First Mortgage.

(b) **Subordinate Lender’s Exercise of Remedies After Notice to Senior Lender.** If a Subordinate Loan Default occurs and is continuing, the Subordinate Lender agrees that it will not, without Senior Lender’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, commence foreclosure proceedings with respect to the Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents during the Senior Lender Cure Period, including, but not limited to accelerating the Subordinate Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder, however, the Subordinate Lender shall be entitled to enforce covenants and agreements of the Borrower relating to income, rent, reporting requirements, fair housing requirements, compliance with State laws concerning agreements entered into with the Subordinate Lender (i.e. compliance with executive orders and non-discrimination provisions) or affordability restrictions contained in the Subordinate Loan Documents, including, but not limited to, the Restrictive Covenant.

(c) **Cross Default.** The Borrower and the Subordinate Lender agree that a Subordinate Loan Default shall constitute a First Mortgage Loan Default and the Senior Lender shall have the right to exercise all rights or remedies under the First Mortgage Loan Documents in the same manner as in the case of any other First Mortgage Loan Default. If the Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice has been cured or waived, as determined by the Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the First Mortgage Loan Documents, any First Mortgage Loan Default under the First Mortgage Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the First Mortgage Loan shall be reinstated, *provided, however*, that the Senior Lender shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the Senior Lender during such First Mortgage Loan Default.

6. Default Under First Mortgage Loan Documents.

(a) **Notice of Default and Cure Rights.** The Senior Lender shall promptly deliver to the Subordinate Lender a Default Notice in each case where the Senior Lender has given a Default Notice to the Borrower. Failure of the Senior Lender to send a Default Notice to the Subordinate Lender shall not prevent the exercise of the Senior Lender’s rights and remedies under the First Mortgage Loan Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such First Mortgage Loan Default within sixty (60) days following the date of such notice; *provided, however*, that the Senior Lender shall be entitled during such sixty (60) day period to continue to pursue its remedies under the First Mortgage Loan Documents. Subordinate Lender may have up to ninety (90) days from the date of the Default Notice to cure a non-monetary default if during such ninety (90) day period all payments required by the First Mortgage Loan Documents are kept current. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or Senior Lender’s secured position relative to the Property, as determined by Senior Lender in its sole but reasonable discretion, then Senior Lender may exercise during such ninety (90) day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from

the Property. All amounts paid by the Subordinate Lender to the Senior Lender to cure a First Mortgage Loan Default shall be deemed to have been advanced by the Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

(b) **Cross Default.** The Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a First Mortgage Loan Default shall not constitute a default under the Subordinate Loan Documents if no other default has occurred and is continuing under the Subordinate Loan Documents until either (i) the Senior Lender has accelerated the maturity of the First Mortgage Loan, or (ii) the Senior Lender has taken affirmative action to exercise its rights or remedies under the First Mortgage including but not limited to its right to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the First Mortgage. At any time after a First Mortgage Loan Default is determined to constitute a default under the Subordinate Loan Documents, the Subordinate Lender may pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time the Borrower cures any First Mortgage Loan Default to the satisfaction of the Senior Lender, as evidenced by written notice from the Senior Lender to the Subordinate Lender, any default under the Subordinate Loan Documents arising from such First Mortgage Loan Default shall be deemed cured provided, however, that the Subordinate Lender shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the Subordinate Lender during such Subordinate Loan Default.

7. Conflict. The Borrower, the Senior Lender and the Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the First Mortgage Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Senior Lender and the Subordinate Lender in the Property; (b) the timing of the exercise of remedies by the Senior Lender and the Subordinate Lender under the First Mortgage and the Subordinate Mortgage, respectively; and (c) solely as between the Senior Lender and the Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which the Senior Lender and the Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any First Mortgage Loan Default or Subordinate Loan Default, as the case may be; give the Borrower the right to notice of any First Mortgage Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the First Mortgage Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

8. Conversion, Modification or Refinancing of First Mortgage Loan. The Subordinate Lender consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the First Mortgage Loan Documents, including any provision requiring the payment of money, *provided, however*, that such consent shall not be deemed to apply to any modification of the First Mortgage Loan Documents and/or the First Mortgage Loan Documents which has the effect of increasing the then outstanding principal amount of the First Mortgage Loan.

9. Notices. Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "**notices**" and referred to singly as a "**notice**") which the Senior Lender or the Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the

next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), to the respective parties at the addresses set forth above or such other address as such party may designate by notice given pursuant to this Section, but notice of a change of address shall only be effective upon receipt.

10. General.

(a) **Assignment/Successors.** This Agreement shall be binding upon the Borrower, the Senior Lender and the Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of the Senior Lender and the Subordinate Lender.

(b) **No Partnership or Joint Venture.** The Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute the Senior Lender as a joint venturer or partner of the Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) **Senior Lender's and Subordinate Lender's Consent.** Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever the Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) **Further Assurances.** The Subordinate Lender, Senior Lender and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by the title insurance company insuring the lien of the Senior Mortgage in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the First Mortgage.

(e) **Amendment.** This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) **Severable Provisions.** If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(g) **Term.** The term of this Agreement shall commence on the date it is fully executed and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the First Mortgage Loan Documents, other than as a result of a Conversion or other refinancing of the First Mortgage Loan in accordance with this Agreement; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents; (iii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the First Mortgage (it being understood and agreed that any such acquisition would be subject to the prior lien of the Restrictive Covenant); or (iv) the acquisition by the Subordinate Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

(h) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

(i) **WAIVER OF TRIAL BY JURY.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE PARTIES HERETO (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL. NOTHING IN THIS SECTION CONSTITUTES A WAIVER OR COMPROMISE OF THE SOVEREIGN IMMUNITY OF THE STATE OF CONNECTICUT.

11. Governing Law; Venue. The parties deem the Agreement to have been made in the City of Hartford, State of Connecticut. The parties agree that it is fair and reasonable for the validity and construction of the Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, *provided, however,* that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Senior Lender and the Borrower waive any objection which they may now have or will have to the laying of venue of any claims in any forum and further irrevocably submit to such jurisdiction in any suit, action or proceeding.

12. Program Publicity & Marketing. Senior Lender hereby acknowledges, consents and grants to Subordinate Lender the right to distribute, publicize and/or advertise any and all materials regarding the Subordinate Loan or the Property 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.

[Signatures Follow on the Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

Signed, sealed and delivered
in the presence of:

SENIOR LENDER:
[LENDER]

Print name:

By: _____

Its:
Duly Authorized

Print name:

STATE OF CONNECTICUT

)

): ss.

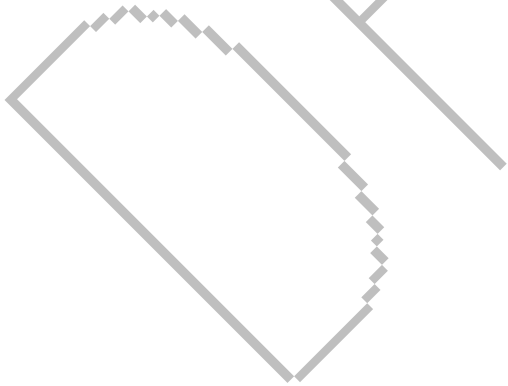
COUNTY OF

)

On this the ____ day of _____, 20__, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, and that he/she as the _____ of the national banking association and being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the national banking association by himself/herself as such _____.

IN WITNESS WHEREOF, I hereunto set my hand.

Commissioner of the Superior Court
Notary Public
My commission expires:



Signed, sealed and delivered:
in the presence of:

BORROWER:
[BORROWER]

Print name:

By: _____

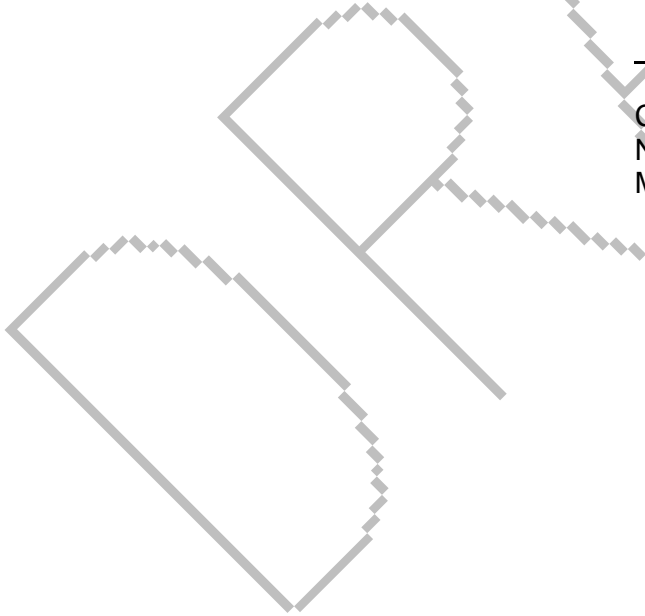
Its Managing Member
Duly Authorized

STATE OF CONNECTICUT)
) ss.
COUNTY OF)

On this _____ day of _____, 20__ before me, the undersigned officer,
personally appeared _____, the duly authorized _____ of _____, and that
he/she as such managing member and being duly authorized to do so, executed the foregoing
instrument for the purposes therein contained by signing the name of the limited liability company by
himself/herself as such managing member.

In Witness Whereof, I hereunto set my hand.

Commissioner of the Superior Court
Notary Public
My Commission Expires:



Signed, sealed and delivered:
in the presence of:

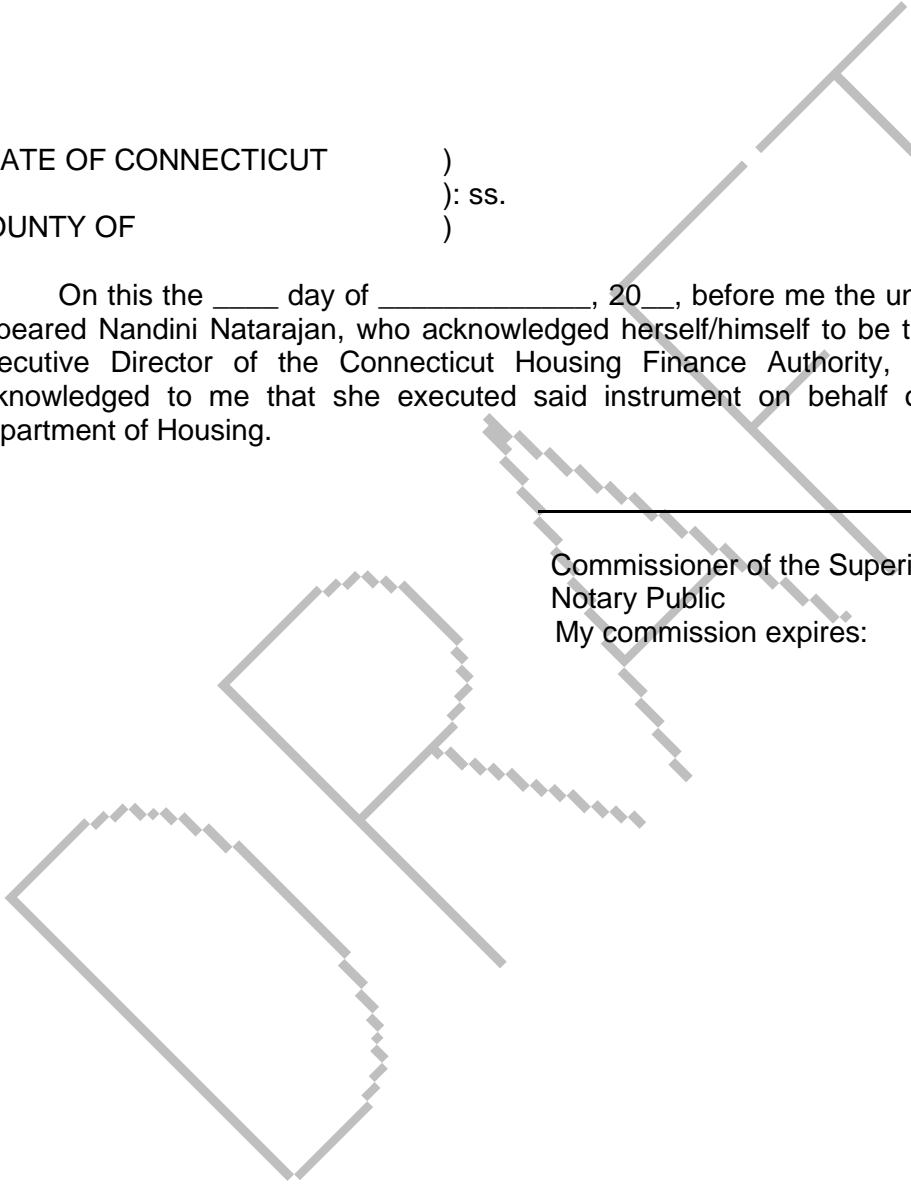
**SUBORDINATE LENDER:
CONNECTICUT HOUSING FINANCE AUTHORITY**

By: _____
Nandini Natarajan
Its Chief Executive Officer – Executive Director
Duly Authorized

STATE OF CONNECTICUT)
): ss.
COUNTY OF)

On this the ____ day of _____, 20__, before me the undersigned officer, personally appeared Nandini Natarajan, who acknowledged herself/himself to be the Chief Executive Officer – Executive Director of the Connecticut Housing Finance Authority, and that he/she, as such, acknowledged to me that she executed said instrument on behalf of the State of Connecticut Department of Housing.

Commissioner of the Superior Court
Notary Public
My commission expires:



Schedule A

[LEGAL DESCRIPTION OF PROPERTY]

