

After recording, please return to: CHFA, 999 West St., Rocky Hill, CT 06067; Attn: Legal

EXTENDED LOW-INCOME HOUSING COMMITMENT

This EXTENDED LOW-INCOME HOUSING COMMITMENT (the "Agreement") is made this ____ day of _____, 20____, by and between [_____] a [_____] with an office and principal place of business at [_____] (the "Owner") and the **CONNECTICUT HOUSING FINANCE AUTHORITY**, a body politic and corporate constituting a public instrumentality and political subdivision of the State of Connecticut, with an office and principal place of business at 999 West Street, Rocky Hill, Connecticut 06067 (the "Authority").

W I T N E S S E T H :

WHEREAS, the Authority is designated as the allocating housing credit agency responsible for the administration and allocation of low-income housing tax credits for the State of Connecticut;

WHEREAS, the Owner is the owner of certain real property known as [_____] and located at [_____] (the "Property"), which Property is more particularly described on **Exhibit A**, attached hereto and made a part hereof;

[4% /// TAX-EXEMPT BOND FINANCING: WHEREAS, the Property has qualified for low-income housing tax credits in the annual amount of [\$_____] for buildings financed by tax-exempt bonds pursuant to Section 42(h)(4) of the Internal Revenue Code of 1986, as amended (collectively, the "Code");

[9% /// NO TAX-EXEMPT BOND FINANCING: WHEREAS, the Authority has issued an allocation of [20____] low-income housing tax credits in the amount of [\$_____] to the Owner; and

WHEREAS, Section 42(h)(6)(A) of the [Code] [Internal Revenue Code of 1986, as amended (collectively, the "Code")] mandates that no low-income housing tax credit shall be allowed with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

NOW, THEREFORE, in consideration of the foregoing and for the good and valuable consideration acknowledged hereby, the Authority and the Owner hereby covenant and agree as follows:

I. DEFINITIONS.

As used in this Agreement, the terms below shall have the definitions set forth for each one, as follows:

- (a) "Compliance Period" means, with respect to any building, the period of fifteen (15) taxable years beginning with the first (1st) taxable year of the Credit Period with respect thereto.
- (b) "Credit Period" means, with respect to any building, the period of ten (10) taxable years beginning with:
- (i) the taxable year in which the building is placed in service, or
 - (ii) at the irrevocable election of the taxpayer, the succeeding year,
- but only if the building is a "qualified low-income building" (as such term is defined in the Code) as of the close of the first (1st) year of such period.
- (c) "Development" means all real and personal property, and all assets of whatever nature or wherever situate, used in (or owned by) the business conducted on the Property, which business is to provide rental accommodations for persons of low and moderate income and other activities incidental thereto, and which shall also include, without limitation, a building or structure, or several proximate and interrelated buildings or structures and facilities functionally related and subordinated thereto, financed under a common plan, all located on a single tract of land [except as provided for in Section 42(g)(7) of the Code (relating to scattered site projects) and Section 42(h)(6)(K) of the Code (relating to projects which consist of more than one (1) building)], which buildings shall be owned by the same person for tax purposes and shall each contain one (1) or more similarly constructed units, having separate and complete facilities for living, sleeping, eating, cooking and sanitation for an individual or a family, and facilities which are functionally related and subordinate to such units, and all of such units shall be rented or available for rental on a non-transient basis to members of the general public, *provided, however, special provisions shall apply for eligible single room occupancy housing and transitional housing for the homeless;*
- (d) "Extended Use Period" means the period of time:
- (i) beginning on the first (1st) day in the Compliance Period on which such building is part of a qualified low-income housing project; and
 - (ii) ending on the later of:
 - (A) the date specified in Section II(d) of this Agreement, or
 - (B) the date which is fifteen (15) years after the close of the Compliance Period.
- (e) "HUD" means the United States Department of Housing and Urban Development, or its successor;

- (f) "Qualified Person(s)" means individuals and families who, at the time each such individual or family first occupies a Unit in the Development, are of low income, having annual income not exceeding sixty percent (60%) of area median gross income, adjusted for family size, within the meaning of the Code and the Treasury Regulations promulgated thereunder;

[BEYOND 60% AMI: provided, however, in case of individuals and families occupying at least: (i) [_____ (___) Units, individuals and families having an annual income not exceeding fifty percent (50%) of area median gross income at such time, and (ii) [_____ (___) additional Units, individuals and families having an annual income not exceeding twenty-five percent (25%) of area median gross income at such time.]

[ALTERNATE RENTAL SUBSIDY LANGUAGE: *As of the date hereof, the Development has (or is expected to have) the benefit of a contract for project based vouchers under Section 8 of the United States Housing Act of 1937, as amended (the "HAP Contract") and if during the Extended Use Period, the HAP Contract is not renewed at the end of its term, or is terminated or otherwise is no longer in full force and effect, the Authority will consider a request by the Owner to revert Qualified Units to being occupied by individuals and families having an annual income not exceeding sixty percent (60%) of area median income at such time, provided, however, a decision by the Authority on such a request shall be made in the sole discretion of the Authority.]*

- (g) "Qualified Rent" means gross rent (as defined in Section 42(g)(2)(B) of the Code) not greater than thirty percent (30%) of the imputed income limitation applicable to a particular Unit, within the meaning of Section 42(g)(2)(C) of the Code, as adjusted annually;
- (h) "Qualified Unit" means those Units occupied by Qualified Persons at a Qualified Rent; and
- (i) "Unit" means an individual dwelling referenced in Section I(c) of this Agreement.

II. THE COMMITMENT.

(a) Failure to comply with the provisions of this Agreement is an event of default hereunder and the Authority or its successors and/or assigns may exercise any of the remedies available hereunder. Furthermore, the Authority may seek specific performance of this Agreement by the Owner, or any successor in interest thereto, without declaring an event of default and without waiving any remedies hereunder, by filing an action in any court of competent jurisdiction in the State of Connecticut. In accordance with Section 42(g)(1) of the Code, Owner hereby irrevocably elects that **[twenty percent (20%)]**~~forty percent (40%)~~ or more of the residential units in the Development shall be both rent-

restricted and occupied by individuals whose income is [fifty percent (50%)] [sixty percent (60%)] or less of area median gross income.

(b) For each taxable year in the Extended Use Period, the applicable fraction (as defined in Section 42(c)(1)(B) of the Code as the smaller of the “unit fraction” [low income Units/residential rental Units] or the “floor space fraction” [total floor space of low-income Units/total floor space of residential rental Units]), shall not be less than:

[____ / ____]
[_____] percent (___%)

[Omit if 100% low-income units: Notwithstanding anything herein to the contrary, the Owner shall have the right to rent more than [_____] percent (___%) of the Units in the Development to Qualified Persons.]

(c) Individuals who meet the income limitation applicable to the Development under Section 42(g)(1) of the Code (whether prospective, present, or former occupants who qualify, qualified, or would qualify) hereby have the right to enforce, in any State court, the requirements set forth in Sections II(a) and II(b) of this Agreement, and the prohibitions set forth in Section II(e)(iii), II(e)(iv), and II(f) of this Agreement, and said individuals may apply to any court of competent jurisdiction in the State of Connecticut for specific performance of the provisions of this Agreement, notwithstanding any action which may or may not be taken by the Authority.

(d) The Extended Use Period shall be for an additional [_____] (___) years after the close of the Compliance Period, unless terminated earlier (“Early Termination”) on: (i) the date of the Development’s foreclosure or deed-in-lieu of foreclosure (unless the Secretary of the Treasury determines that such foreclosure or deed-in-lieu of foreclosure is part of an arrangement with a purpose of terminating the Extended Use Period); or (ii) the last day of the one (1) year period beginning on the date which a request is made by the Owner (which request is made not earlier than the end of the fourteenth (14th) year of the Compliance Period) for the Authority to present a “qualified contract” (as defined in Section 42(h)(6)(F) of the Code and Section 1.42-18 of the Treasury Regulations) for the acquisition of the low-income portion of the Development, as defined in Section 42(h)(6)(H) of the Code, all in accordance with Section 42(h)(6) of the Code, provided that the Authority has not presented such a contract. ***Notwithstanding the foregoing, in the event the Extended Use Period as agreed upon herein is longer than the date which is fifteen (15) years after the close of the Compliance Period, the Owner hereby acknowledges and agrees that such additional period constitutes a more stringent requirement as provided by Section 42(h)(6)(E) of the Code and that Section II(d)(ii) of this Agreement therefore shall not apply and shall have no force or effect.***

(e) During the Extended Use Period:

(i) not less than [_____] (___) Units [(_____] percent (___%) of the Units)] in the Development shall be occupied (or will be available for occupancy) by Qualified Persons (*Note: at the discretion of the Secretary of the Treasury, the maximum income levels may deviate from the area median income*)

data to reflect current HUD policy or future Treasury policy on income limits with respect to areas with unusually low family income or high housing costs relative to family income consistent with HUD determinations under Section 8 of the United States Housing Act of 1937);

- (ii) the rents for each Qualified Unit shall not exceed the Qualified Rent, which will be uniform for each particular housing unit size (i.e., efficiencies, one-bedroom units, two-bedroom units), regardless of the number of persons residing in the household and in accordance with Section 42(g) of the Code;
- (iii) no tenant who was occupying a Qualified Unit at any time during (or at the end of) the Extended Use Period may be removed whether by eviction, expiration of lease or for any termination of the tenancy (other than for good cause);
- (iv) no rent may be increased for any Qualified Unit beyond the Qualified Rent:
 - (A) at any time during the Extended Use Period; or
 - (B) as long as it is occupied by the tenant who was occupying the unit at the expiration of the Extended Use Period.

(f) The tenant protections set forth in Section 42(h)(6)(E)(II) of the Code shall survive for a period of three (3) years following an Early Termination and for such three (3) year period such tenant protections shall be binding upon the Property and upon any holder of a mortgage on the Property or any successor or assign of such holder who succeeds to all or any part of the Owner's interest in, or otherwise acquires title to, the Property. Such protection provides, without limitation, that for a period of three (3) years following an Early Termination of the Extended Use Period: (i) no tenant who was occupying a Qualified Unit at the end of the Extended Use Period may be removed whether by eviction, expiration of lease or any termination of the tenancy (other than for good cause); and (ii) no rent may be increased for any Qualified Unit beyond the Qualified Rent as long as it is occupied by the tenant who was occupying the unit at the Early Termination of the Extended Use Period.

III. REPRESENTATIONS, WARRANTIES & COVENANTS.

(a) The Owner hereby represents, covenants, warrants and agrees, as follows:

(i) the Development is to be developed, owned, managed and operated for the Extended Use Period as "residential rental property" (as such phrase is used in Section 42(d) of the Code), on a continuous basis during the Extended Use Period and that the Development constitutes, or will constitute, a qualified low-income building or qualified project, as applicable (as defined in Section 42 of the Code);

(ii) Owner is a legally organized entity, qualified to transact business under the laws of the State of Connecticut, has the power and authority to own its properties and assets and to carry on its business as now being conducted, and has the full legal right, power and authority to execute and deliver this Agreement;

(iii) Owner shall, at the time of execution and delivery of this Agreement, have good and marketable title to the Development, free and clear of any lien or encumbrance (subject to encumbrances approved by the Authority);

(iv) Owner shall make no change in the nature, size (including number of Units) or location of the Development from that which was described in the **[Owner's Application to the Authority dated _____] [Board presentation and Resolution dated _____, 20____, and adopted _____, 20____]**, without the prior written consent of the Authority;

(v) Owner shall obtain the agreement of any buyer, or successor, or other person acquiring the Property or the Development, or any interest therein, that such acquisition is subject to the requirements of this Agreement, and the Owner shall promptly notify the Authority of any such transfer. *Notwithstanding the foregoing, this provision shall not act to waive any other restriction on such sale, transfer or exchange of the Development;*

(vi) Once available for occupancy, each Qualified Unit in the Development shall be rented or available for rental on a continuous basis to members of the general public on a non-transient basis throughout the Extended Use Period (except for transitional housing for the homeless or single-room occupancy units provided under Section 42(i)(3)(B)(iii) and (iv) of the Code);

(vii) Owner shall not discriminate on the basis of race, creed, color, sex, sexual preference, age, handicap, marital status, national origin, familial status, source of income or disability in the lease, use or occupancy of the Development, or in the employment of persons for the operation and management of the Development;

(viii) Owner has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions of this Agreement and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herein;

(ix) Owner shall obtain the consent of all holders of prior recorded mortgages or liens on the Property to this Agreement and such consent shall be a condition precedent to the issuance of the Internal Revenue Service Form 8609 constituting the final allocation of the low-income housing tax credits for the Development;

(x) Owner shall record this Agreement promptly on the land records of the municipality in which the Property is located, upon recording of this Agreement, the Owner shall immediately transmit to the Authority evidence of said recording including the date and volume and page numbers, and the Owner agrees that the Authority will not issue the Internal Revenue

Service Form 8609, constituting final allocation of low-income housing tax credits for the Development, until the Authority has received a certified copy of the recorded Agreement;

(xi) Owner shall comply with any monitoring plan, guidelines, procedures, or requirements as may be adopted or amended from time to time by the Authority in accordance with the requirements of the Code, or regulations promulgated thereunder by the United States Department of the Treasury, Internal Revenue Service, or otherwise in order to monitor compliance with the provisions of this Agreement;

(xii) Notwithstanding anything in this Agreement to the contrary, in the event that the Owner fails to comply fully with the covenants and agreements contained herein or within the Code, all applicable regulations, rules, rulings, policies, procedures, or other official statements promulgated by the Department of Treasury, the Internal Revenue Service or the Authority, from time to time, pertaining to the obligations of the Owner as set forth therein or herein, the Authority may, in addition to all of the remedies provided by law or in equity, report such noncompliance to the Internal Revenue Service which could result in penalties and/or re-capture of low-income housing tax credits;

(xiii) Owner hereby agrees that this Agreement prohibits: (A) the disposition to any person of any portion of the building to which this Agreement applies unless all of the building to which such Agreement applies is disposed of to such person; and (B) the refusal to lease to a holder of a voucher or certificate of eligibility under Section 8 of the U.S. Housing Act of 1937 because of the status of the prospective tenant as such a holder; and

(xiv) In the event any foreclosure proceedings are initiated affecting the Property, Owner shall provide the Authority with notice of the same immediately upon receipt of service of process of said foreclosure action.

IV. MISCELLANEOUS.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Connecticut and federal law, where applicable.

(b) The invalidity of any provisions of this Agreement shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of the provisions of this Agreement, which shall continue in full force and effect as if such invalid provision had never been included herein.

(c) False statements made herein are punishable under the penalty for false statement set out in Connecticut General Statutes § 53a-157b.

(d) This Agreement shall be binding on all successors and/or assigns of the Owner and this Agreement shall be recorded and encumber the Property as a restrictive covenant in accordance with the laws of the State of Connecticut.

(e) Neither this Agreement nor any term hereof may be altered, amended, modified, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

(f) Any notice or other communication in connection with this Agreement shall be in writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as FedEx, addressed to the addressees, as set forth on the first page hereof. Any such addressee may change its address for such notices to any other address in the United States as such addressee shall have specified by written notice given as set forth above. A notice shall be deemed to have been given, delivered and received upon the earliest of: (A) if sent by certified or registered mail, on the date of actual receipt (or tender of delivery and refusal thereof) as evidenced by the return receipt; or (B) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address. Notice shall not be deemed to be defective with respect to the recipient thereof for failure of receipt by any other party. Failure or delay in delivering copies of any notice, demand, request, consent, acceptance, declaration or other communication within any corporation or firm to the persons designated to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, acceptance, declaration or other communication.

[Remainder of Page Intentionally Left Blank – Signature Pages Follow]

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

OWNER:

[_____]
By: [_____]
Its [_____]

By: _____
Name:
Title:
Duly Authorized

STATE OF CONNECTICUT)
)
COUNTY OF _____)

ss: _____, 20__

Personally appeared, [_____] the [_____] of [_____] the [_____] of [_____] as aforesaid 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

CONNECTICUT HOUSING FINANCE AUTHORITY

By: _____
Name:
Title:
Duly Authorized

STATE OF CONNECTICUT)
)
COUNTY OF HARTFORD) ss. Rocky Hill _____, 20__

Personally appeared, _____, _____ of the Connecticut Housing Finance Authority, duly authorized as aforesaid Signer and Sealer of the foregoing Instrument and acknowledged the same to be his free act and deed and the free act and deed of said Authority, on behalf of said Authority, before me.

Commissioner of the Superior Court
Notary Public

Exhibit A

[Legal Description]