

## DISBURSEMENT AGREEMENT

**THIS DISBURSEMENT AGREEMENT** dated as of \_\_\_\_\_, 20\_\_ (this “**Agreement**”), is by and between [\_\_\_\_\_] a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ and having a mailing address of \_\_\_\_\_ (the “**Borrower**”), **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 (the “**Secured Party**”), and [\_\_\_\_\_] a \_\_\_\_\_, having an address at \_\_\_\_\_ (the “**Depository Bank**”).

**WHEREAS**, the Secured Party is providing a certain loan to the Borrower in the original principal amount of up to \_\_\_\_\_ (\$\_\_\_\_\_) (the “**Loan**”) pursuant to the provisions of that certain Assistance Agreement by and between the Secured Party and Borrower on or about the date hereof (the “**Assistance Agreement**” and together with all other documents and instruments executed or delivered in connection therewith collectively, the “**Project Documents**”); and

**WHEREAS**, the Loan will be used in connection with a project known as “\_\_\_\_\_” (the “**Project**”) which is or will be situated on a certain parcel or parcels of land located at \_\_\_\_\_ (the “**Property**”), which Project includes the construction and/or rehabilitation of a multi-family development comprising of \_\_\_\_\_ (\_\_\_) residential units, of which \_\_\_\_\_ (\_\_\_) units (each an “**Workforce/Middle Income Unit**” and collectively, the “**Workforce/Middle Income Units**”) will be restricted for affordability for the purpose of providing subordinate or other financing to multifamily properties to create workforce housing units affordable to middle income households and persons; and

**WHEREAS**, the Loan funds shall be deposited into a deposit account with the Depository Bank (the “**Deposit Account**”) pursuant to that certain Deposit Account Control Agreement by and among the Borrower, Secured Party, and the Depository Bank, of even date herewith (the “**Control Agreement**”); and

**WHEREAS**, the Loan funds will be disbursed and advanced in one or more installments upon the submission by the Borrower of disbursement requests in connection with the Assistance Agreement; and

**WHEREAS**, the Depository Bank will disburse and advance such requests from the Deposit Account to the Borrower pursuant to the procedures, terms, and conditions of this Agreement.

**NOW, THEREFORE**, for good and valuable consideration and in consideration of the covenants and commitments set forth in this Agreement, the parties hereby agree as follows:

Section 1. Definitions. All capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Control Agreement or the Assistance Agreement.

Section 2. Disbursement Requests. All requests by the Borrower for the making of advances under the Assistance Agreement (each a “Disbursement Request”) shall, in addition to the requirements of the Assistance Agreement, comply with the terms and conditions of this Agreement, and be presented in such form as is acceptable to the Depository Bank.

Section 3. Submission of Disbursement Requests. The Borrower shall submit each Disbursement Request for the payment of Eligible Costs to the Depository Bank setting forth the total amount of Eligible Costs included in the Disbursement Request, itemized by the categories identified in the Project Budget, together with the following:

(a) Request for Payment/Expense Verification form, certifying that, as of the date of each Disbursement Request:

(i) The representations and warranties of the Borrower contained in or incorporated by reference in the Assistance Agreement continue to be true, complete and accurate.

(ii) The Borrower has carried out all of its obligations and is in compliance with all the covenants specified in the Assistance Agreement, to the extent that such obligations or covenants are required to have been carried out or are applicable at the time of the Disbursement Request.

(iii) The Borrower has not committed or suffered any act, event, occurrence, or circumstance that constitutes an Event of Default or that with the passage of time or giving of notice or both would constitute an Event of Default.

(iv) The Disbursement Requests previously made, if any, have been used solely to pay or reimburse Eligible Costs actually incurred or paid by the Borrower in accordance with this Assistance Agreement. The Borrower's certification shall include: a schedule showing expenditures made by the Borrower in connection with the Project, itemized as may be reasonably requested by Depository Bank; and a statement of the balance of the Disbursement Requests, if any, held by the Borrower.

(v) The Disbursement Request will be used solely to pay or reimburse Eligible Costs actually incurred or paid by the Borrower in accordance with this Agreement. The Borrower's certification shall include: a schedule showing expenditures to be made by the Borrower in connection with the Project, itemized as may be reasonably requested by DOH; and a statement that the itemized obligations have been properly incurred, are properly chargeable against the Loan, and have not been the basis of any previous Disbursement Request.

(b) approval of the Construction Inspector;

(c) a copy of the Project Budget certified by the Borrower as being accurate and complete subject to approval by the Secured Party, Depository Bank, and the Construction Inspector. The Borrower will promptly notify the Secured Party and Depository Bank of any changes in Eligible Costs for such project from those reflected on the Project Budget approved by the Secured Party, and no material changes in the Project Budget will be made without the prior approval of the Secured Party;

(d) receipted bills, bills, paid invoices, invoices, payroll records or other evidence reasonably satisfactory to the Depository Bank supporting each item of the Eligible Costs covered by the Disbursement Request;

(e) lien releases and waivers from the Contractor under the applicable Construction Contract for the work for which funds are requested (which may be subject to receipt of payment of the funds requested);

(f) a certificate signed by the General Contractor that, as of the date of each contractor invoice for which funds are requested, the work on the Project has been conducted in compliance with the Drawings and Specifications and the Construction Contract (except for such non-material variations as may be noted and certified as such in the certificate). The General Contractor's certification shall include: (i) a statement that all the labor and materials supplied or furnished and invoiced by the General Contractor have been paid in full; and (ii) that to the best of the General Contractor's knowledge there are no liens or rights to liens with respect to such labor and materials;

(g) requisitions from the Contractor (using the standard AIA form G-702) approved by the Borrower and the Construction Inspector and such other documents, certificates and materials required by the Assistance Agreement and as otherwise reasonably required by the Depository Bank; and

(h) upon the request of the Secured Party, an endorsement to the mortgagee title policy from the title insurance company that issued the original policy showing that (i) no exceptions to title exist other than those previously approved in writing by the Secured Party and (ii) the amount of the mortgagee title policy will, upon the making of the requested disbursement, be increased by endorsement to the aggregate amount of all monies disbursed to the Borrower under the Assistance Agreement (including the disbursement being requested in the Disbursement Request).

Section 4. Approval Process. Upon receipt of a Disbursement Request and all required accompanying items, the Depository Bank and the Construction Inspector shall approve or disapprove such Disbursement Request within ten (10) business days after receipt thereof. In the event the Disbursement Request is not approved by the Depository Bank, the Depository Bank shall deliver written notice thereof within such time period by hand, electronic transmission, or overnight delivery to the Borrower and the Secured Party specifying the reasons for such disapproval. If the Disbursement Request is approved by the Depository Bank, the Depository Bank shall send evidence of such approval by electronic transmission to the Borrower and the Secured Party within such time period. The approval of any Disbursement Request by the Depository Bank shall not be deemed an acceptance or approval by the Depository Bank or the Secured Party (for the benefit of the Borrower or any third party) of any work done or improvements constructed or materials furnished or installed in connection with the construction of the Project.

Section 5. Retainage. Each Disbursement Request is subject to a five percent (5%) retainage; provided, however, that following fifty percent (50%) completion of the construction of the Project, as determined by the Depository Bank, upon request made by the Borrower, and at the sole discretion of Depository Bank, further Disbursements may be made to the Borrower without retainage. All retainage held by the Borrower from payment to the General Contractor shall be released to the General Contractor upon the expiration or release of any mechanic's, laborer's, materialman's, warehouseman's or other lien filed against the Property or any other Collateral, expiration of the time frame in which such a lien may be filed without a lien having been filed or ninety-one (91) days after final acceptance by Secured Party of all work covered by the Construction Contract, whichever is later.

Section 6. Timing/Limitations. Disbursements may be requested no more frequently than monthly and, if applicable, the amount disbursed shall be based on the percentage of work completed, as determined by the Depository Bank. The Depository Bank shall use reasonable efforts to process the Disbursement Request within thirty (30) days from the receipt of the request. Each Disbursement Request will be processed upon compliance with all of the terms, conditions and covenants of this Agreement. Any Disbursement Request shall be contingent on satisfactory work progress and the sufficiency of the quantity and quality of the work performed in accordance with the Drawings and Specifications, as reasonably determined by the Depository Bank. All such Disbursement Requests shall be based on a percentage of the total dollar amount of all completed contract work, less any retainage. The Depository Bank shall not be obligated to make any Disbursement Request unless Depository Bank is satisfied, in its sole discretion, that the conditions precedent to the making of such advances have been satisfied by Borrower. Disbursements shall be used to pay or reimburse the Borrower for Eligible Costs.

Section 7. Deficiency in Total Cost Amount. At all times the total unadvanced amounts available under the Assistance Agreement shall be sufficient in the reasonable judgment of the Depository Bank to pay all outstanding Eligible Costs. If at any time the amounts indicated above are not sufficient in the reasonable judgment of the Depository Bank to pay all outstanding direct costs, the Borrower shall, within fifteen (15) days after receipt of the written request of the Depository Bank, fund an amount equal to the deficiency; provided that the Borrower, with the written consent of the Purchaser, may reallocate savings realized from other line items in the Project Budget to cure such deficiency.

Section 8. Change Orders. The Borrower shall not be permitted to execute or permit the performance of work or the furnishing of materials pursuant to, any change order, without the prior written consent of the Secured Party and the Depository Bank.

Section 9. Construction Inspector. The Depository Bank shall have the right to retain, at the Borrower's cost and expense, a construction inspector (the "Construction Inspector") to perform the following services on behalf of the Depository Bank:

(a) to review and advise the Depository Bank whether in the opinion of the Construction Inspector, the Project Budget accurately reflects all Eligible Costs;

(b) to review and advise the Depository Bank whether, in the opinion of the Construction Inspector, the Plans and Specifications are satisfactory for the intended purposes thereof;

(c) to make periodic inspections (approximately at the date of each Disbursement Request) for the purpose of assuring that construction of the Project to date is in accordance with the Plans and Specifications and to approve the Borrower's then current Disbursement Request as being consistent with the Project Budget and the Borrower's obligations under this Agreement, and the Project Documents, and to review the construction schedule and to advise the Depository Bank of the anticipated cost of and time for completion of construction of the Project and the adequacy of any contingency reserve;

(d) to review and advise the Depository Bank on any proposed change orders or construction change directives; and

(e) to review any Construction Contract and subcontracts, for the purpose of providing the Depository Bank with an opinion as to the cost of construction to be incurred to

complete the Project, and also for the purpose of assuring that all such subcontracts are for work required by the Plans and Specifications to be performed.

The fees of the Construction Inspector shall be paid by the Borrower forthwith upon billing therefor and expenses incurred by the Depository Bank on account thereof shall be reimbursed to the Depository Bank forthwith upon request thereof but neither the Depository Bank nor the Construction Inspector shall have any liability to the Borrower on account of (i) the services performed by the Construction Inspector, (ii) any neglect or failure on the part of the Construction Inspector to properly perform its services, or (iii) any approval by the Construction Inspector of construction of the Project. Neither the Depository Bank nor the Construction Inspector assumes any obligation to the Borrower or any other Person concerning the quality of construction of the Project or the absence therefrom of defects.

Section 10. Indemnification. The Borrower hereby agrees to indemnify and hold the Secured Party and Depository Bank harmless from and against any claim, loss, cost, expense (including reasonable attorneys' fees), damage, right, demand or cause of action of any nature whatsoever in connection with or arising from the Borrower's acts or failure to act under this Agreement, in connection with (i) the construction of the Project, (ii) the Secured Party's or the Depository Bank's disapproval in whole or in part of any Disbursement Request or any delay in reviewing a Disbursement Request or in advising the Borrower with respect to any Disbursement Request, (iii) this Agreement, and (iv) any other agreement or undertaking by the Borrower in connection therewith, unless the same is a direct result of the Secured Party's or Depository Bank's negligence or willful misconduct.

Section 11. Notices. Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by facsimile or other electronic means and electronic confirmation of error free receipt is received or two days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth below.

If to Secured Party: Connecticut Housing Finance Authority  
999 West Street  
Rocky Hill, Connecticut 06067  
Attn: General Counsel

If to Depository Bank: \_\_\_\_\_  
Attn: \_\_\_\_\_

If to Borrower: \_\_\_\_\_  
Attn: \_\_\_\_\_

Section 12. Miscellaneous. This Agreement shall inure to the benefit of and be binding upon the Borrower and the Purchaser and its respective successors and assigns. This Agreement shall be governed by, construed in accordance with and enforceable under the laws of the State of Connecticut and applicable federal law without regard to choice of law rules.

Section 13. Counterparts. This Agreement may be executed in any number of counterparts (including those executed and/or delivered by facsimile or other electronic means,

including by DocuSign or a similar platform), each of which shall be considered an original and all of which taken together shall constitute one and the same agreement.

*[Remainder of page intentionally left blank; signature page follows]*

DRAFT



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

**[BORROWER]**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name:  
Title:  
Duly Authorized

STATE OF CONNECTICUT            )  
  )  
COUNTY OF \_\_\_\_\_)        ss: \_\_\_\_\_

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

In Witness Whereof, I hereunto set my hand.

\_\_\_\_\_  
Commissioner of the Superior Court  
Notary Public  
My Commission Expires:

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

**CONNECTICUT HOUSING FINANCE AUTHORITY**

\_\_\_\_\_  
  
\_\_\_\_\_

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

Its:  
Duly Authorized

STATE OF CONNECTICUT        )  
  ): ss.  
COUNTY OF                    )

On this the \_\_\_\_ day of \_\_\_\_\_, 2024, before me the undersigned officer, personally appeared \_\_\_\_\_ who acknowledged herself/himself to be the \_\_\_\_\_ of the Connecticut Housing Finance Authority, and that he/she, as such, acknowledged to me that she executed said instrument on behalf of the Connecticut Housing Finance Authority.

\_\_\_\_\_  
Commissioner of the Superior Court  
Notary Public  
My commission expires: