

Memorandum

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APR 06 2022

2:30 PM

New Canaan Town Clerk

To: Claudia Weber, Town Clerk
From: Lynn Brooks Avni, AICP, Town Planner/Sr. Enforcement Officer
Date: April 5, 2022
Re: Application to the CT Department of Housing for a Certificate of Affordable Housing Completion (Moratorium on the Applicability of C.G.S. § 8-30g)

The 3-ring binder accompanying this memo is a copy of the documents and information to be submitted to the Connecticut Department of Housing, requesting a Certificate of Affordable Housing Completion pursuant to Section 8-30g(l)(4)(B) of the General Statutes.

Acceptance and approval of the Application by the DOH would result in a 4-year moratorium on the acceptance of applications for affordable housing submitted by the developers to the Planning and Zoning Commission under Section 8-30g.

A data sheet providing background information on the basic calculations for this Application and the applicable Section 8-30g requirements is included immediately following this memo, as a quick overview.

Copies of the legal notices of the "Intent to Apply" for the Certificate are attached, and are to be published as follows:

- April 6, 2022 The Connecticut Law Journal
- April 7, 2022 The New Canaan Advertiser

This copy of the Application is being provided to your office as per the statement in the Legal Notices (and the requirements of the applicable Section 8-30g law) that the Application is "available for public inspection and comment."

Written comments can be accepted within the 20-day period following the publication of the Legal Notices (by April 27, 2022).

All questions and comments on the Application should be directed to the Planning and Zoning Office, at the following address:

Lynn Brooks Avni, AICP
New Canaan Town Hall
77 Main Street
New Canaan, CT 06840

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TAB 1

TOWN OF NEW CANAAN

TOWN HALL, 77 MAIN STREET
NEW CANAAN, CT 06840

KEVIN J. MOYNIHAN
FIRST SELECTMAN

TEL: (203) 594-3000
FAX: (203) 594-3123

July 20, 2022

Commissioner Seila Mosquera-Bruno
State of Connecticut Department of Housing
505 Hudson Street
Hartford, CT 06106-7106

Re: Application for Certificate of Affordable Housing Completion/Moratorium –
Town of New Canaan, Connecticut

Dear Commissioner Mosquera-Bruno:

This application includes documentation for two additional affordable housing residential developments in the Town of New Canaan.

The Certificate of Affordable Housing Completion requires proof of “housing unit equivalent points” (HUE points) of no less than 2% of 7,551 (total housing units in the Town), or **151.02 HUE points**. This Application for the State Certificate provides documentation and justification for 87 affordable units in two housing developments totaling **152.5 HUE points**. The Town has additional available qualified units for HUE points that will be used for a future Certificate application.

I am very proud of the accomplishments New Canaan has made toward the State’s goal of Affordable Housing. In my five years serving the Executive branch of town government, I have witnessed a dramatic improvement in the quality and quantity of our Affordable Housing stock.

Documentation in this application has been reviewed and certified by our Assistant Town Attorney, Nicholas Bamonte. The application was compiled and assembled by the New Canaan Planning and Zoning staff. Attorney Bamonte and our P&Z staff can be made available to answer any of your questions or to provide additional information. Please feel free to contact them at the phone numbers and/or the email addresses listed below:

Nicholas Bamonte, Esq. (203) 227-9545 nbamonte@berchemmoses.com

Lynn Brooks Avni, AICP (203) 594-3046 lynn.brooksavni@newcanaanct.gov

I appreciate your consideration and review of this matter and I look forward to hearing from you. Please feel free to contact me directly if you require any additional assistance.

Sincerely,



Kevin Moynihan



BERCHEM MOSES.COM

75 Broad Street
Milford, CT 06460
T: 203.783.1200
F: 203.878-2235

1221 Post Road East
Westport, CT 06880
T: 203.227.9545
F: 203.226.1641

July 20, 2022

Commissioner Seila Mosquera-Bruno
State of Connecticut Department of Housing
505 Hudson Street
Hartford, CT 06106-7106

Application for Certificate of Affordable Housing Completion/Moratorium – Town of New Canaan, Connecticut

Dear Commissioner Mosquera-Bruno:

This letter will constitute the certification required by §8-30g-6(c)(2) of the Regulations of Connecticut State Agencies regarding the accompanying Application for State Certification of Affordable Housing Completion (hereafter “Application”) which is being submitted by the Town of New Canaan (hereafter “Town”).

In my opinion, the Application complies with the provisions of Conn. Gen. Stat. §8-30g and with §8-30g-6 of the Regulations of Connecticut State Agencies in effect on the day that the Application is being submitted.

By way of background, I have reviewed the statistical information, calculations, and historical information provided to me regarding the two (2) housing projects submitted as part of this Application, focusing on dates of certificates of occupancy and income requirements as set forth in the governing laws.

The following summarizes the two (2) referenced projects:

1. Millport Apartments – 33, 35, 59 and 61 Millport Avenue
(71 of 73 total units claimed = 118.5 HUE Points)

This 73-unit § 8-30g development was originally approved by the Planning and Zoning Commission in 2015 and is comprised of 100% affordable units. Because two of the units had been claimed towards New Canaan’s last Certification of Affordable Housing Completion in 2017, 71 of the 73 units are claimed in the present application. The property is owned and operated by the New Canaan Housing Authority. Certificates of Occupancy for the units were issued in 2016 and 2018.

Robert L. Berchem
Marsha Belman Moses
Stephen W. Studer ▶
Richard J. Buturla
Floyd J. Dugas
Ira W. Bloom
Jonathan D. Berchem •
Michelle C. Laubin ♦
Gregory S. Kimmel
Christopher M. Hodgson
Mario F. Coppola
Christine A. Sullivan

Paula N. Anthony ♦
Richard C. Buturla
Ryan P. Driscoll ♦♦
Bryan L. LeClerc ♦♦
Brian A. Lema
Douglas E. LoMonte

Alfred P. Bruno
Jacob P. Bryniczka
Eileen Lavigne Flug
Peter V. Gelderman ◇
Warren L. Holcomb
Eugene M. Kimmel
Paul A. Testa * ▶

Nicholas R. Bamonte
Carolyn Mazanec Dugas
Rebecca E. Goldberg
Christopher R. Henderson
Herbert Z. Rosen
Matthew L. Studer
Tyler I. Williams

* - Also Admitted in FL
◇ - Also Admitted in IL
▶ - Also Admitted in MA
• - Also Admitted in NJ
♦ - Also Admitted in NY
* - Also Admitted in PA

PLEASE REPLY TO
WESTPORT OFFICE

2. Canaan Parish – 186 Lakeview Avenue
(16 of 100 total units claims = 34 HUE Points)

This 100-unit § 8-30g development was originally approved by the Planning and Zoning Commission in 2018 and is comprised of 100% affordable units. Because the majority of the HUE points required for the issuance of a new Certification of Affordable Housing Completion result from the Millport Apartments development described above, only 16 units in Canaan Parish are claimed in the present application. The property is owned by the Town of New Canaan and operated by the New Canaan Housing Authority and Canaan Parish Redevelopment LP. Certificates of Occupancy for the units were issued in 2021.

Although this Application claims HUE points for new dwelling units from both Canaan Parish and Millport Apartments that were constructed after pre-existing dwelling units had been demolished, no deductions in HUE points are necessary pursuant to C.G.S. § 8-30g(l)(8), which provides:

Points shall be subtracted, applying the formula in subdivision (6) of this subsection, for any affordable dwelling unit which, on or after July 1, 1990, was affected by any action taken by a municipality which caused such dwelling unit to cease being counted as an affordable dwelling unit.

Section 8-30g(l)(8) is not applicable to the Town's Application because the prior dwelling units were not "affordable dwelling units" as contemplated by Section 8-30g. Although the prior units were included on the 1990 Affordable Housing Appeals List maintained by DOH, a critical factor is that those prior units had been restricted to 80% *Area* Median Income ("AMI") – which in New Canaan, is not the applicable metric for determining affordability under Section 8-30g.

Section 8-30g applies to "set-aside developments" with at least 30% of the total dwelling units restricted to persons whose income is less than 80% of the "median income." Median income is defined as "*the lesser of the state median income or the area median income for the area in which the municipality containing the affordable housing development is located....*" In New Canaan, the AMI is much higher than State Median Income ("SMI"). For example, the 2022 AMI for a family of four in the Stamford-Norwalk Metro Area is \$180,900 (see figures in Tab 2). The 2022 SMI for a family of four is \$112,600 (see Tab 2). Therefore, to benefit from the broader protections of Section 8-30g, a set aside development in New Canaan must be restricted to 80% SMI, not AMI.

As discussed above, the prior dwelling units at Canaan Parish and Millport Apartments had been restricted to 80% AMI, not SMI, and therefore do not constitute "affordable dwelling units" subject to deductions under Section 8-30g(l)(8). Moreover, the units claimed for HUE points in this Application are not only brand new and fully updated, but they are also drastically more affordable than the pre-existing units and cannot be considered comparable replacements to the deteriorated pre-existing units formerly at Canaan Parish and Millport Apartments. The New Canaan Housing Authority and Canaan Parish Redevelopment LP have provided public comments (attached at Tab 5) further detailing the new units and fully supporting the HUE points claimed in the Town's Application.

In conclusion, the new units claimed in this Application validly contribute HUE points towards another Certificate of Affordable Housing Completion and no point deductions are required. This is consistent with the methodology employed by DOH when approving the Town's Certification of Affordable Housing Completion in 2017, which awarded HUE points for similar new units but applied no deductions.

If you or any of the DOH staff have any questions, please contact me at (203) 571-1713 or nbamonte@berchemmoses.com. Thank you for your attention and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to be 'NB' followed by a stylized flourish.

Nicholas R. Bamonte

Town of New Canaan, Connecticut
Application for Certificate of Affordable Housing Completion

Timeline – as of 7/21/2022

Procedural Compliance for Submission to DECD

1. PUBLISH INTENT TO APPLY

- | | |
|---|-----------|
| a. Submit notice to CT Law Journal | 5/30/2022 |
| b. Submit notice to New Canaan Advertiser | 4/1/2022 |
| c. Submit to New Canaan Town Clerk for public inspection | |
| d. (copy also available in the Planning and Zoning Office) | 4/7/2022 |
| e. Legal notice publication in CT Law Journal (CLJ) | 4/5/2022 |
| f. Legal notice publication in New Canaan Advertiser | 4/7/2022 |
| g. 20 days for comments following CT Law Journal Publication
and New Canaan Advertiser notices | 4/27/22 |

2. PUBLIC HEARING

- | | |
|---------------|----------------|
| a. If needed. | None requested |
|---------------|----------------|

3. APPLICATION TO DECD

- | | |
|--|-----------|
| a. Submit application to DECD (no comments from the public were received; application includes documentation of requirements in #1) | 7/21/2022 |
| b. If complete, DECD notifies applicant, and application is considered "received" on the date of the original submission. | |
| c. If incomplete, applicant must provide additional information, and date of receipt becomes date of receipt of missing information. | |
| d. DECD then promptly publishes notice of receipt in CT Law Journal | |
| e. Comment period (30 days from CLJ publication date) | |

4. ACTION / DECISION

- | | |
|--|--|
| a. Approval or Rejection within 90 days from receipt of complete application. | |
| b. If action taken, DECD to publish decision in CT Law Journal | |
| c. If no action, the application is "provisionally approved" / New Canaan publishes in CLJ and New Canaan Advertiser | |

5. EFFECTIVE DATE OF MORATORIUM

- | | |
|--|--|
| a. Date of publication of notice in the CLJ and New Canaan Advertiser. | |
|--|--|

NOTICE OF CONNECTICUT STATE AGENCIES

CONNECTICUT PORT AUTHORITY

Notice of Intent to Adopt a Procurement Manual

In accordance with Conn. Gen. Stat. § 1-121, the Connecticut Port Authority (the "Port Authority") hereby gives notice that it intends to adopt a Procurement Manual developed in coordination with the State contracting Standards Board.

Statement of the substance and purpose of the proposed policies and procedures:

Connecticut Port Authority (CPA) PROCUREMENT MANUAL

Developed in coordination with the State contracting Standards Board (SCSB)

[SCSB SUGGESTION (copied from Office of Policy and Management's Procurement Standards document dated February 17, 2009, revised in 2012 and 2014) modified to fit CPA's quasi-public structure and reviewed with SCSB in March 2022.]

Per Public Act 21-2, the CPA is considered a state contracting CPA for the purposes of chapter 62 except for the provisions of section 4e-16, and shall be subject to the CPA of the State Contracting Standards Board (SCSB) established under section 4e-2 from the enactment of the bill in July 2021 through July 1, 2026.

This document provides the CPA staff with procurement standards and provides guidance on how to implement them. The Procurement Manual is meant to complement the CPA's existing Operating Procedures.

A copy of the above proposed Procurement Manual document will also be made available on the Port Authority's website (<https://ctportauthority.com/rfqsrfps-3/>) under "Public Notices."

Manner of presenting views: All interested persons are invited to present their views in writing no later than **May 5, 2022**. Comments are to be submitted to the Connecticut Port Authority, Andrew Lavigne either by e-mail to alavigne@ctportauthority.com (please put "Public Comment re: Procurement Manual" in the subject line) or by postal mail addressed to him at:

Connecticut Port Authority
ATTN: Andrew Lavigne
455 Boston Post Road, Suite 204
Old Saybrook, CT, 06475

LEGAL NOTICE

NOTICE OF INTENT TO APPLY FOR A STATE CERTIFICATE OF AFFORDABLE HOUSING COMPLETION

Notice is hereby given that the Town of New Canaan, Connecticut intends to file an Application for a Certificate of Affordable Housing Completion (moratorium on

the applicability of Section 8-30g) with the Department of Housing of the State of Connecticut, pursuant to Section 8-30g(l)(4)(B) of the Connecticut General Statutes.

The proposed application, including all supporting documentation, is available for public inspection and comment in the Office of the Town Clerk, Town Hall, 77 Main Street (First Floor), New Canaan, Connecticut, from 8:30 a.m. to 4:00 p.m. weekdays. Written comments may be submitted to Lynn Brooks Avni, Town Planner, at the Planning and Zoning Office in the lower level of Town Hall, 77 Main Street, within 20 days of the publication of this notice in the New Canaan Advertiser and the Connecticut Law Journal. The Town will hold a public hearing with respect to the proposed if a petition requesting a public hearing signed by at least twenty-five (25) residents of the Town is filed with the Town Clerk within the 20-day comment period. A copy of all written comments received and responses prepared by the Town will be included as part of the application to the Department of Housing.

Kevin Moymihan
First Selectman
Town of New Canaan, CT

CONNECTICUT RETIREMENT SECURITY AUTHORITY

Notice of Intent to Adopt Procedures

In accordance with Section 1-121(a) of the Connecticut General Statutes, notice is hereby given that the Connecticut Retirement Security Authority (the "Authority") is proposing to adopt the operating procedures outlined below for the purpose of operating the Authority pursuant to Section 31-418 of the Connecticut General Statutes. The procedures include: (a) Enrollment by Non-Covered Employees; (b) Employer Deadlines and Wave Structure; and (c) Submission of Grievances, Complaints and Appeals.

The proposed procedures are available by sending an email to the Authority at Jessica.Muirhead@ct.gov (please include "Operating Procedures" in the subject line and specify which documents you wish to receive).

Interested persons wishing to present their views on these procedures are invited to do so in writing within thirty (30) days following publication of this notice. Comments can be submitted electronically to the Authority at Jessica.Muirhead@ct.gov (please include "Operating Procedures" in the subject line). Comments can also be mailed to Ms. Jessica Muirhead, Senior Program Administrator, Office of the State Comptroller, 165 Capitol Avenue, Hartford, CT 06106-1775.

Brooks Avni, Lynn

From: COLPlj <COLPlj@jud.ct.gov>
Sent: Wednesday, March 30, 2022 11:44 AM
To: Nicholas R. Bamonte
Subject: RE: LEGAL NOTICE 4/5/22 RUN


Hi Nicholas,
We received your notice it will be published in the Law Journal of April 5, 2022. Have a wonderful afternoon☺

Thank You,

~Maryann☺

Maryann Moslander
Judicial Branch - Information Technology Division
Commission on Official Legal Publications
111 Phoenix Avenue, Enfield, CT 06082
Phone: (860) 741-3027 ext. 3103
Maryann.Moslander@jud.ct.gov

From: Nicholas R. Bamonte <nbamonte@berchemmoses.com>
Sent: Wednesday, March 30, 2022 11:16 AM
To: COLPlj <COLPlj@jud.ct.gov>
Cc: 'Brooks Avni, Lynn' <lynn.brooksavni@newcanaanct.gov>
Subject: LEGAL NOTICE 4/5/22 RUN

 You don't often get email from nbamonte@berchemmoses.com. [Learn why this is important](#)
Good Morning:

Attached please find a legal notice that I am submitting on behalf of the Town of New Canaan for publication in the 4/5/22 CT Law Journal. Please confirm receipt and publication date. Thank you,



Nicholas R. Bamonte
Berchem Moses PC



1221 Post Road East Westport, CT 06880
(203) 571-1713
<http://www.berchemmoses.com>
nbamonte@berchemmoses.com

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WARNING: FRAUD ALERT. If you receive an e-mail appearing to be from this office which requests that you wire or otherwise transfer funds to any party, you must confirm the request and any corresponding instructions via telephone before you initiate any wire or other transfer. PLEASE CONFIRM BY CALLING THE ORIGINATOR OF THE EMAIL, USING PREVIOUSLY KNOWN CONTACT INFORMATION, PRIOR TO WIRING OR OTHERWISE TRANSFERRING FUNDS.

Links contained in this email have been replaced by ZixProtect Link Protection. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

Order Confirmation

<u>Ad Order Number</u>	<u>Customer Account</u>
0002697208	335309
<u>Sales Rep.</u>	<u>Customer Information</u>
mhutchings	NEW CANAAN LAND USE/P&Z-
<u>Order Taker</u>	77 MAIN ST
mhutchings	NEW CANAAN CT 06840
<u>Ordered By</u>	USA
Lola Sweeney	<u>Phone:</u> 2035943042
<u>Order Source</u>	<u>Fax:</u>
Phone	<u>E-Mail:</u> lola.sweeney@newcanaanct.g
	ov

<u>Ad Cost</u>	<u>Payment Amt</u>	<u>Amount Due</u>
\$85.00	\$0.00	\$85.00

Blind Box Materials

Order Notes

<u>Ad Number</u>	<u>External Ad #</u>	<u>Pick Up Number</u>
0002697208-01		
<u>Ad Type</u>	<u>Ad Size</u>	<u>PO Number</u>
Legal Liners	2 X 34 li	
<u>Color</u>	<u>Color Requests</u>	
\$0.00		

<u>Product and Zone</u>	<u># Inserts</u>	<u>Placement</u>
New Canaan Advertiser	1	Public Notices

Note: Retail Display Ads May Not End in Identified Placement

Run Dates
4/7/2022

Ad Content Proof

Note: Ad size does not reflect actual ad

TOWN OF NEW CANAAN
OFFICE OF THE FIRST SELECTMAN

LEGAL NOTICE

NOTICE OF INTENT TO APPLY FOR A STATE CERTIFICATE OF
AFFORDABLE HOUSING COMPLETION

Notice is hereby given that the Town of New Canaan, Connecticut, intends to file an Application for a Certificate of Affordable Housing Completion (moratorium on the applicability of Section 8-30g) with the Department of Housing of the State of Connecticut, pursuant to Section 8-30g(l)(4)(B) of the Connecticut General Statutes.

The proposed application, including all supporting documentation, is available for public inspection and comment in the Office of the Town Clerk, Town Hall, 77 Main Street (First Floor), New Canaan, Connecticut, from 8:30 a.m. to 4:00 p.m. weekdays. Written comments may be submitted to Lynn Brooks Arai, Town Planner, at the Planning and Zoning Office in the lower level of Town Hall, 77 Main Street, within 20 days of the publication of this notice in the New Canaan Advertiser and the Connecticut Law Journal. The Town will hold a public hearing with respect to the proposed application, requesting a public hearing, signed by at least twenty-five (25) residents of the Town is filed with the Town Clerk within the 20-day comment period. A copy of all written comments received and responses prepared by the Town will be included as part of the application to the Department of Housing.

OFFICE OF THE FIRST SELECTMAN
Town of New Canaan

By: Kevin Moynihan
Dated: April 7, 2022

AFFORDABLE HOUSING MORATORIUM FACT SHEET

Town of New Canaan

- Moratorium eligibility for a Town is based on providing proof that the Town has accumulated a required number of “Housing Equivalent Points”.
- Required number of points is determined by multiplying the total number of dwelling units within the municipality (per the 2010 US Census) by 2%:
 - **7,551 dwelling units X 2% = 151.02 points for New Canaan**
- Points are calculated as follows:
 - Market-rate unit in set-aside development = .25 points
 - Elderly unit @ 80% SMI or less = .50 points
 - Owned family unit @ 80% SMI or less = 1.0 points
 - Owned family unit @ 60% SMI or less = 1.5 points
 - Owned family unit @ 40% SMI or less = 2.0 points
 - Rented family units @ 80% SMI or less = 1.5 points
 - Rented family units @ 60% SMI or less = 2.0 points
 - Rented family units @ 40% SMI or less = 2.5 points
 - Owned or rented family units with 3+ bedrooms = .25 bonus points
- Points may only be counted for units that were issued Certificates of Occupancy after July 1, 1990 (effective date of the adoption of the §8-30g statutes)
- “Assisted housing” can be eligible for points if it can be proven that the income restrictions and duration of restrictions are at least equivalent to the restrictions in the §8-30g law.

- Points for New Canaan moratorium have been counted for:
- 87 affordable units in two developments which were both approved by the Planning & Zoning Commission under restrictions from the ELIHC program with CHFA as well as under the income limits of 8-30g for a term of 40 years.
 - **TOTAL: 152.5 HUE POINTS**
- New Canaan received a Certificate of Affordable Housing Completion in 2017 for affordable units in five developments totaling 151.75 HUE Points including 8-30g set-aside developments and elderly/assisted housing:
 - Avalon at New Canaan
 - Schoolhouse Apartments
 - New Canaan Group Home
 - Mill Apartments
 - Millport Apartments (Phase I)
- If approved by the DECD, the moratorium on acceptance of new §8-30g applications will be for four years.

TAB 2



TOWN OF NEW CANAAN, CONNECTICUT
Application for Certificate of Affordable Housing Completion

Calculation of Housing Unit Equivalency (HUE) Points

As provided in Connecticut General Statutes Section 8-30g(l), the housing unit-equivalency points required for a certificate shall be equal to two percent (2%) of all dwelling units in the municipality but no less than seventy-five (75) housing unit-equivalency points. Units and housing unit-equivalency points that serve as the basis of approval of a state certificate, whether a provisional approval or issuance by the Commissioner, shall not be the basis of a subsequent application. The housing unit-equivalency points necessary for a state certificate shall be calculated using as the denominator the total estimated dwelling units in the municipality as reported in the most recent United States decennial census.

2010 US Census housing units in New Canaan: **7,551 housing units**

$$2\% \times 7,551 = 151.02$$

**151.02 Housing Unit-Equivalency Points required for New Canaan to qualify for
a Certificate of Affordable Housing Completion pursuant to Section 8-
30g(l)(4)(A) of the Connecticut General Statutes**

The documentation included in this application will demonstrate that New Canaan has claimed Housing Unit-Equivalency Points as follows:

Millport Apartments	118.5 HUE
Canaan Parish	34.0 HUE
TOTAL	152.5 HUE

SUMMARY OF UNIT COUNT AND HOUSING UNIT-EQUIVALENCY POINTS

Application for Certificate of Affordable Housing Completion

Town of New Canaan

Name of Development	Address	Certificate of Occupancy Date	Deed Restriction or Affordability Plan Filing Information	Term	Total Units	Units Counted for this Application	HUE Points
Millport Apartments 45 @ 1.50 = 67.5 HUE 8 @ 1.75 = 14 HUE 14 @ 2.00 = 28 HUE 4 @ 2.25 = 9 HUE = 118.5 HUE	33, 35, 59 & 61 Millport Avenue	12/9/2016, 2/14/2018 3/218/2018	Notice of Ground Lease - Vol 950 / Pgs 297-303 Open-End Leasehold Mortgage Deed - Vol 950 / Pgs 503 – 525	40 years	73 Rental Family Units	71	118.5
Canaan Parish 8 @ 2.00 = 16 HUE 8 @ 2.25 = 18 HUE = 34 HUE	186 Lakeview Avenue (Building 1)	10/23/2021	Affordability Plan - Vol 1052 / Pgs 176 – 200	40 years	60 Rental Family Units	16	34
TOTAL						87	152.5

To: Department of Housing, State of Connecticut

Re: Application for Certificate of Affordable Housing Completion
Town of New Canaan, CT



CERTIFICATION OF NO DEDUCTIONS

I, Lynn Brooks Avni, Town Planner for the Town of New Canaan, Connecticut, hereby depose and say, to the best of my knowledge and belief, and as supported by the review of our consultant's extensive research and gathering of documentation for the Application for State Certificate of Affordable Housing Completion, that there has been no action by the municipality, the Housing Authority of New Canaan or any other Town agency, to disqualify any unit claimed as providing housing unit-equivalency points, and no points have been deducted or otherwise excluded from the total housing unit-equivalency points claimed, as of the date of the submission of the Application.

State of Connecticut

ss: New Canaan

County of Fairfield

Lynn Brooks Avni, AICP Town Planner

Personally appeared Lynn Brooks Avni, signer and sealer of the foregoing instrument and acknowledged the same to be his/her free act and deed before me.

SHAWN KELLEY SOLJOUR
NOTARY PUBLIC
My Commission Expires March 31, 2027

Notary Public

Dated: 4/29/2022

S. DEPARTMENT OF HUD
STATE:CONNECTICUT

PROGRAM	2021 ADJUSTED HOME INCOME LIMITS							
	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Bridgeport, CT HUD Metro FMR Area								
30% LIMITS	21600	24700	27800	30850	33350	35800	38300	40750
VERY LOW INCOME	36050	41200	46350	51450	55600	59700	63800	67950
60% LIMITS	43260	49440	55620	61740	66720	71640	76560	81540
LOW INCOME	55950	63950	71950	79900	86300	92700	99100	105500
Danbury, CT HUD Metro FMR Area								
30% LIMITS	24350	27800	31300	34750	37550	40350	43100	45900
VERY LOW INCOME	40600	46400	52200	57950	62600	67250	71900	76500
60% LIMITS	48720	55680	62640	69540	75120	80700	86280	91800
LOW INCOME	56300	64350	72400	80400	86850	93300	99700	106150
Stamford-Norwalk, CT HUD Metro FMR Area								
30% LIMITS	31650	36150	40650	45150	48800	52400	56000	59600
VERY LOW INCOME	52700	60200	67750	75250	81300	87300	93350	99350
60% LIMITS	63240	72240	81300	90300	97560	104760	112020	119220
LOW INCOME	63950	73050	82200	91300	98650	105950	113250	120550
Hartford-West Hartford-East Hartford, CT HU								
30% LIMITS	21950	25050	28200	31300	33850	36350	38850	41350
VERY LOW INCOME	36550	41750	46950	52150	56350	60500	64700	68850
60% LIMITS	43860	50100	56340	62580	67620	72600	77640	82620
LOW INCOME	55950	63950	71950	79900	86300	92700	99100	105500
Southern Middlesex County, CT HUD Metro FMR								
30% LIMITS	24100	27550	31000	34400	37200	39950	42700	45450
VERY LOW INCOME	40150	45850	51600	57300	61900	66500	71100	75650
60% LIMITS	48180	55020	61920	68760	74280	79800	85320	90780
LOW INCOME	55950	63950	71950	79900	86300	92700	99100	105500
Milford-Ansonia-Seymour, CT HUD Metro FMR A								
30% LIMITS	21600	24700	27800	30850	33350	35800	38300	40750
VERY LOW INCOME	36050	41200	46350	51450	55600	59700	63800	67950
60% LIMITS	43260	49440	55620	61740	66720	71640	76560	81540
LOW INCOME	55950	63950	71950	79900	86300	92700	99100	105500

STATE:CONNECTICUT

-----SECTION 8 INCOMELIMITS-----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Bridgeport-Stamford-Norwalk, CT MSA								
Bridgeport, CT HMEFA								
FY 2015 MFI: 39000	18650	21300	23950	26600	28750	32570	36730	40890
EXTR LOW INCOME								
VERY LOW INCOME	31050	35450	39900	44300	47850	51400	54950	58500
LOW-INCOME	46100	52650	59250	65800	71100	76350	81600	86900
Danbury, CT HMEFA								
FY 2015 MFI: 112400	23600	27000	30350	33700	36400	39100	41800	44500
EXTR LOW INCOME								
VERY LOW INCOME	39350	45000	50600	56200	60700	65200	69700	74200
LOW-INCOME	51700	59100	66500	73850	79800	85700	91600	97500
Stamford-Norwalk, CT HMEFA								
FY 2015 MFI: 127900	26850	30700	34550	38350	41450	44500	47600	50650
EXTR LOW INCOME								
VERY LOW INCOME	44800	51200	57600	63950	69100	74200	79300	84450
LOW-INCOME	55250	63150	71050	78900	85250	91550	97850	104150
Hartford-West Hartford-East Hartford, CT MSA								
Hartford-West Hartford-East Hartford, CT HMEFA								
FY 2015 MFI: 87500	18400	21000	23650	26250	28410	32570	36730	40890
EXTR LOW INCOME								
VERY LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
LOW-INCOME	46100	52650	59250	65800	71100	76350	81600	86900
Southern Middlesex County, CT HMEFA								
FY 2015 MFI: 102600	21600	24650	27750	30800	33300	35750	38200	40890
EXTR LOW INCOME								
VERY LOW INCOME	35950	41050	46200	51300	55450	59550	63650	67750
LOW-INCOME	46100	52650	59250	65800	71100	76350	81600	86900
New Haven-Milford, CT MSA								
Milford-Ansonia-Seymour, CT HMEFA								
FY 2015 MFI: 93500	19650	22450	25250	28050	30300	32570	36730	40890
EXTR LOW INCOME								
VERY LOW INCOME	32750	37400	42100	46750	50500	54250	58000	61750
LOW-INCOME	46100	52650	59250	65800	71100	76350	81600	86900
New Haven-Mariden, CT HMEFA								
FY 2015 MFI: 83400	17500	20000	22500	25000	28410	32570	36730	40890
EXTR LOW INCOME								
VERY LOW INCOME	29200	33400	37550	41700	45050	48400	51750	55050
LOW-INCOME	46100	52650	59250	65800	71100	76350	81600	86900
Waterbury, CT HMEFA								
FY 2015 MFI: 67500	17050	19500	21950	24450	26410	29570	32730	35890
EXTR LOW INCOME								

Table 8.

Population and Housing Units: 1990 to 2010; and Area Measurements and Density: 2010

[For information concerning historical counts and geographic change, see "User Notes." For information on confidentiality, nonsampling error, and definitions, see Appendixes.]

State County/County Equivalent County Subdivision Place	Population		Housing units		Area measurements in square miles		Average per square mile of land	
	1990		2000		1990		2010	
	2010	2000	2010	2000	Total area	Land area	Population density	Housing unit density
Connecticut.....	3,574,097	r 3,405,602	1,487,591	r 1,385,997	5,543.41	4,842.36	738.1	307.3
Fairfield County	916,829	882,567	361,221	339,456	836.92	624.89	1,467.2	578.1
Bethel town	18,584	18,067	7,310	6,653	16.93	16.89	1,100.3	432.8
Bethel CDP	9,549	9,137	4,168	3,744	4.09	4.09	2,334.7	1,019.1
Bridgeport town	144,229	139,529	57,012	54,367	19.34	15.97	9,031.2	3,569.9
Bridgeport city	144,229	139,529	57,012	54,367	19.34	15.97	9,031.2	3,569.9
Brookfield town	16,452	15,664	6,562	5,781	20.37	19.77	832.2	331.9
Danbury town	80,893	74,848	31,154	28,519	44.14	41.89	1,931.1	743.7
Danbury city	80,893	74,848	31,154	28,519	44.14	41.89	1,931.1	743.7
Darien town	20,732	19,607	7,074	6,792	23.48	12.66	1,637.6	558.8
Darien CDP	20,732	19,607	7,074	6,792	23.48	12.66	1,637.6	558.8
Easton town	7,490	7,272	2,715	2,511	28.66	27.42	273.2	99.0
Fairfield town	59,404	57,340	21,648	21,029	31.38	29.90	1,986.8	724.0
Southport CDP	1,585	(X)	846	(X)	0.99	0.86	1,843.0	983.7
Greenwich town	61,171	61,101	25,631	24,511	67.29	47.62	1,284.6	538.2
Byram CDP	4,146	(X)	1,786	(X)	0.86	0.80	5,182.5	2,232.5
Cos Cob CDP	6,770	(X)	2,696	(X)	2.19	2.07	3,270.5	1,303.4
Glenville CDP	2,327	(X)	1,104	(X)	0.74	0.74	3,144.6	1,491.9
Greenwich CDP	12,942	(X)	6,548	(X)	4.43	4.11	3,148.9	1,593.2
Old Greenwich CDP	6,611	(X)	2,430	(X)	3.48	1.98	3,338.9	1,227.3
Pemberton CDP	3,680	(X)	1,632	(X)	0.69	0.68	5,411.8	2,400.0
Riverside CDP	8,416	(X)	3,074	(X)	3.23	2.42	3,477.7	1,270.2
Monroe town	19,247	19,247	6,918	6,601	26.27	26.07	747.2	265.4
New Canaan town	19,738	19,395	7,551	7,141	22.52	22.19	869.5	340.3
New Fairfield town	13,981	13,953	5,593	5,148	25.15	20.44	679.1	270.6
Newtown town	27,560	25,031	10,061	8,601	59.07	57.66	478.0	174.5
Newtown borough	1,941	1,843	732	668	2.31	2.31	840.3	316.9
Norwalk town	85,603	82,951	35,415	33,753	36.35	22.86	3,744.7	1,549.2
Norwalk city	85,603	82,951	35,415	33,753	36.35	22.86	3,744.7	1,549.2
Redding town	9,158	8,270	3,811	3,086	32.06	31.50	290.7	121.0
Georgetown CDP (part)	393	307	203	124	0.37	0.35	1,122.9	580.0

FY 2021 Income Limits Summary

Selecting any of the buttons labeled "Click for More Detail" will display detailed calculation steps for each of the various parameters.

FY 2021 Income Limit Area	Median Family Income Click for More Detail	FY 2021 Income Limit		Persons in Family							
		Category		1	2	3	4	5	6	7	8
Stamford- Norwalk, CT HUD Metro FMR Area	\$151,800	Very Low (50%) Income Limits (\$)		52,700	60,200	67,750	75,250	81,300	87,300	93,350	99,350
		Click for More Detail									
		Extremely Low Income Limits (\$)*		31,650	36,150	40,650	45,150	48,800	52,400	56,000	59,600
		Click for More Detail									
		Low (80%) Income Limits (\$)		63,950	73,050	82,200	91,300	98,650	105,950	113,250	120,550
		Click for More Detail									



FY 2022 FAIR MARKET RENT DOCUMENTATION SYSTEM

The FY 2022 Stamford-Norwalk, CT HUD Metro FMR Area FMRs for All Bedroom Sizes

Final FY 2022 & Final FY 2021 FMRs By Unit Bedrooms				
Year	Efficiency	One-Bedroom	Two-Bedroom	Three-Bedroom Four-Bedroom
FY 2022 FMR	\$1,520	\$1,855	\$2,230	\$2,757 \$3,056
FY 2021 FMR	\$1,292	\$1,621	\$1,958	\$2,439 \$2,720

New Canaan town, Connecticut is part of the Stamford-Norwalk, CT HUD Metro FMR Area, which consists of the following towns: Darien town (Fairfield County), CT; Greenwich town (Fairfield County), CT; New Canaan town (Fairfield County), CT; Norwalk town (Fairfield County), CT; Stamford town (Fairfield County), CT; Weston town (Fairfield County), CT; Westport town (Fairfield County), CT; and Wilton town (Fairfield County), CT. All information here applies to the entirety of the Stamford-Norwalk, CT HUD Metro FMR Area.

2022 Income Limit Area Definitions Connecticut Metropolitan & Non-Metropolitan Areas

**(Effective 04/18/2022)
Must be in use no later than 6/1/2022**

Source:

<https://www.huduser.gov/portal/datasets/mtsp/mtsp22/HERA-Income-Limits-Report-FY22.pdf>

AND

<https://www.huduser.gov/portal/datasets/il/il22/area-definitions-FY22.pdf>

09 CONNECTICUT continued

-----Components of FMR AREA within STATE-----

SA: Norwich-New London, CT HMFA - METRO35980M35980
011-New London County, CT

Worcester, MA-CT MSA - 49340
SA: Windham County, CT HMFA - METRO49340N09015
015-Windham County, CT

Bozrah town, East Lyme town, Franklin town, Griswold town,
Groton town, Ledyard town, Lisbon town, Lyme town,
Montville town, New London town, North Stonington town,
Norwich town, Old Lyme town, Preston town, Salem town,
Sprague town, Stonington town, Voluntown town, Waterford town

Ashford town, Brooklyn town, Canterbury town, Chaplin town,
Eastford town, Hampton town, Killingly town, Plainfield town,
Pomfret town, Putnam town, Scotland town, Sterling town,
Thompson town, Windham town, Woodstock town

-----Towns within nonmetropolitan counties-----

005-Litchfield County.....

Barkhamsted town, Bethlehem town, Bridgewater town, Canaan town,
Colebrook town, Cornwall town, Goshen town, Harwinton town,
Kent town, Litchfield town, Morris town, New Hartford town,
New Milford town, Norfolk town, North Canaan town,
Plymouth town, Roxbury town, Salisbury town, Sharon town,
Thomaston town, Torrington town, Warren town, Washington town,
Watertown town, Winchester town, Woodbury town

-----NONMETROPOLITAN COUNTIES-----

PROGRAM	1 PERSON	2 PER	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Bridgeport, CT HMFA								
FY 2022 MFI: \$103,900	39450	45050	50700	56300	60850	65350	69850	74350
60% INCOME LIMIT	47340	54060	60840	67560	73020	78420	83820	89220
Colchester-Lebanon, CT HMFA								
FY 2022 MFI: \$128,500	45000	51400	57850	64250	69400	74550	79700	84850
60% INCOME LIMIT	54000	61680	69420	77100	83280	89460	95640	101820
Danbury, CT HMFA								
FY 2022 MFI: \$134,700	45400	51850	58350	64800	70000	75200	80400	85550
60% INCOME LIMIT	54480	62220	70020	77760	84000	90240	96480	102660
Hartford-West Hartford-East Hartford, CT HM								
FY 2022 MFI: \$112,700	39450	45100	50750	56350	60900	65400	69900	74400
60% INCOME LIMIT	47340	54120	60900	67620	73080	78480	83880	89280
Milford-Ansonia-Seymour, CT HMFA								
FY 2022 MFI: \$113,600	39800	45450	51150	56800	61350	65900	70450	75000
60% INCOME LIMIT	47760	54540	61380	68160	73620	79080	84540	90000
HERA Special 50%*	39800	45500	51200	56850	61400	65950	70500	75050
HERA Special 60%*	47760	54600	61440	68220	73680	79140	84600	90060
New Haven-Meriden, CT HMFA								
FY 2022 MFI: \$99,700	39450	45050	50700	56300	60850	65350	69850	74350
60% INCOME LIMIT	47340	54060	60840	67560	73020	78420	83820	89220
Norwich-New London, CT HMFA								
FY 2022 MFI: \$102,700	39450	45050	50700	56300	60850	65350	69850	74350
60% INCOME LIMIT	47340	54060	60840	67560	73020	78420	83820	89220
Southern Middlesex County, CT HMFA								
FY 2022 MFI: \$124,900	43750	50000	56250	62450	67450	72450	77450	82450
60% INCOME LIMIT	52500	60000	67500	74940	80940	86940	92940	98940
Stamford-Norwalk, CT HMFA								
FY 2022 MFI: \$180,900	58950	67350	75750	84150	90900	97650	104350	111100
60% INCOME LIMIT	70740	80820	90900	100980	109080	117180	125220	133320
HERA Special 50%*	63350	72400	81450	90450	97700	104950	112200	119400
HERA Special 60%*	76020	86880	97740	108540	117240	125940	134640	143280
Waterbury, CT HMFA								
FY 2022 MFI: \$87,400	39450	45050	50700	56300	60850	65350	69850	74350
60% INCOME LIMIT	47340	54060	60840	67560	73020	78420	83820	89220
Windham County, CT HMFA								
FY 2022 MFI: \$89,800	39450	45050	50700	56300	60850	65350	69850	74350
60% INCOME LIMIT	47340	54060	60840	67560	73020	78420	83820	89220
Litchfield County, CT								
FY 2022 MFI: \$112,600	39450	45050	50700	56300	60850	65350	69850	74350
60% INCOME LIMIT	47340	54060	60840	67560	73020	78420	83820	89220

* Income limit for any project in a HUD impacted area whose current limit would be less than last year or less than its FY2008 limit times the Current Year Median (FY2022) over the FY2008 median.
HUD impacted areas are areas with Section 8 Income Limits held harmless by HUD in FY2007 or FY2008.

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Bridgeport, CT HMFA								
FY 2022 MFI: \$103,900	39450	45050	50700	56300	60850	65350	69850	74350
60% INCOME LIMIT	47340	54060	60840	67560	73020	78420	83820	89220
Colchester-Lebanon, CT HMFA								
FY 2022 MFI: \$128,500	45000	51400	57850	64250	69400	74550	79700	84850
60% INCOME LIMIT	54000	61680	69420	77100	83280	89460	95640	101820
Danbury, CT HMFA								
FY 2022 MFI: \$134,700	45400	51850	58350	64800	70000	75200	80400	85550
60% INCOME LIMIT	54480	62220	70020	77760	84000	90240	96480	102660
Hartford-West Hartford-East Hartford, CT HM								
FY 2022 MFI: \$112,700	39450	45100	50750	56350	60900	65400	69900	74400
60% INCOME LIMIT	47340	54120	60900	67620	73080	78480	83880	89280
Milford-Ansonia-Seymour, CT HMFA								
FY 2022 MFI: \$113,600	39800	45450	51150	56800	61350	65900	70450	75000
60% INCOME LIMIT	47760	54540	61380	68160	73620	79080	84540	90000
HERA Special 50%*	39800	45500	51200	56850	61400	65950	70500	75050
HERA Special 60%*	47760	54600	61440	68220	73680	79140	84600	90060
New Haven-Meriden, CT HMFA								
FY 2022 MFI: \$99,700	39450	45050	50700	56300	60850	65350	69850	74350
60% INCOME LIMIT	47340	54060	60840	67560	73020	78420	83820	89220
Norwich-New London, CT HMFA								
FY 2022 MFI: \$102,700	39450	45050	50700	56300	60850	65350	69850	74350
60% INCOME LIMIT	47340	54060	60840	67560	73020	78420	83820	89220
Southern Middlesex County, CT HMFA								
FY 2022 MFI: \$124,900	43750	50000	56250	62450	67450	72450	77450	82450
60% INCOME LIMIT	52500	60000	67500	74940	80940	86940	92940	98940
Stamford-Norwalk, CT HMFA								
FY 2022 MFI: \$180,900	58950	67350	75750	84150	90900	97650	104350	111100
60% INCOME LIMIT	70740	80820	90900	100980	109080	117180	125220	133320
HERA Special 50%*	63350	72400	81450	90450	97700	104950	112200	119400
HERA Special 60%*	76020	86880	97740	108540	117240	125940	134640	143280
Waterbury, CT HMFA								
FY 2022 MFI: \$87,400	39450	45050	50700	56300	60850	65350	69850	74350
60% INCOME LIMIT	47340	54060	60840	67560	73020	78420	83820	89220
Windham County, CT HMFA								
FY 2022 MFI: \$89,800	39450	45050	50700	56300	60850	65350	69850	74350
60% INCOME LIMIT	47340	54060	60840	67560	73020	78420	83820	89220
Litchfield County, CT								
FY 2022 MFI: \$112,600	39450	45050	50700	56300	60850	65350	69850	74350
60% INCOME LIMIT	47340	54060	60840	67560	73020	78420	83820	89220

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CONNECTICUT DEPARTMENT OF HOUSING

Section 8 Housing Choice Voucher Program

Utility Allowance Schedule

for the period 07/01/2022 - 06/30/2023



Services↓ Bedroom

Size →

Utility Type↓

		0	1	2	3	4	5	6
Heating: (S22)								
Single	Natural Gas	48	72	84	97	120	132	145
Family	Oil	126	147	168	198	244	270	295
	Electric	94	118	157	176	206	226	249
	Propane/Bottle Gas	122	163	203	236	285	313	346
Heating: (R22)								
Row &	Natural Gas	33	60	75	90	105	115	127
Garden	Oil	93	122	152	181	211	232	257
Apts.	Electric	78	98	132	152	186	205	225
	Propane/Bottle Gas	110	126	171	212	244	268	297
Heating: (H22)								
High	Natural Gas	25	52	67	82	90	99	109
Rise	Oil	84	105	139	168	181	198	219
	Electric	59	78	108	137	167	183	202
	Propane/Bottle Gas	73	106	163	195	244	268	297
Heating: (M22)								
Mobile	Coal (Kerosene)	51	61	89	106	124		
Home	Oil	110	135	160	190	227		
	Propane/Bottle Gas	118	142	191	224	264		
Cooking:								
	Natural Gas	9	11	14	18	21	25	28
	Electric	13	16	21	27	31	34	37
	Propane/Bottle Gas	16	20	28	37	45	53	61
Water								
	Natural Gas	21	26	35	53	70	77	84
Heating: (Hot H2O)								
	Oil	29	46	63	93	122	152	181
	Electric	60	72	82	92	103	113	124
	Propane/Bottle Gas	37	53	73	102	130	142	159
Electricity:		36	46	62	72	87	113	118
Cold Water:		30	48	82	116	150	184	218
Sewer:		11	22	45	67	89	112	134
Trash:		35	35	35	35	35	35	35
Refrigerator:		3	3	3	3	4	4	4
Range/Stove:		2	2	3	3	4	4	4
Gas Service Fee: Other		18	18	18	18	18	18	18



FY 2022 FAIR MARKET RENT DOCUMENTATION SYSTEM

The FY 2022 Stamford-Norwalk, CT HUD Metro FMR Area FMRs for All Bedroom Sizes

Final FY 2022 & Final FY 2021 FMRs By Unit Bedrooms					
Year	Efficiency	<u>One-Bedroom</u>	Two-Bedroom	<u>Three-Bedroom</u>	<u>Four-Bedroom</u>
FY 2022 FMR	\$1,520	\$1,855	\$2,230	\$2,757	\$3,056
<u>FY 2021 FMR</u>	\$1,292	\$1,621	\$1,958	\$2,439	\$2,720

New Canaan town, Connecticut is part of the Stamford-Norwalk, CT HUD Metro FMR Area, which consists of the following towns: Darien town (Fairfield County), CT; Greenwich town (Fairfield County), CT; New Canaan town (Fairfield County), CT; Norwalk town (Fairfield County), CT; Stamford town (Fairfield County), CT; Weston town (Fairfield County), CT; Westport town (Fairfield County), CT; and Wilton town (Fairfield County), CT. All information here applies to the entirety of the Stamford-Norwalk, CT HUD Metro FMR Area.

Fair Market Rent Calculation Methodology

Show/Hide Methodology Narrative

Fair Market Rents for metropolitan areas and non-metropolitan FMR areas are developed as follows:

1. 2015-2019 5-year American Community Survey (ACS) estimates of 2-bedroom adjusted standard quality gross rents calculated for each FMR area are used as the new basis for FY2022 provided the estimate is statistically reliable. For FY2022, the test for reliability is whether the margin of error for the estimate is less than 50% of the estimate itself and whether the ACS estimate is based on at least 100 survey cases. HUD does not receive the exact number of survey cases, but rather a categorical variable known as the count indicator indicating a range of cases. An estimate based on at least 100 cases corresponds to a count indicator of 4 or higher.

If an area does not have a reliable 2015-2019 5-year, HUD checks whether the area has had at least minimally reliable estimate in any of the past 3 years, or estimates that meet the 50% margin of error test described above. If so, the FY2022 base rent is the average of the inflated ACS estimates.

If an area has not had a minimally reliable estimate in the past 3 years, the estimate State for the area's corresponding metropolitan area (if applicable) or State non-metropolitan area is used as the basis for FY2022.

STAMFORD-NORWALK HMFA

For use by developments Placed in Service ON OR BEFORE 12/31/2008 (FY2022 HERA Special)

INCOME LIMITS	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
20% of Median	25340	28960	32580	36180	39080	41980	44880	47760
25% of Median	31675	36200	40725	45225	48850	52475	56100	59700
30% of Median	38010	43440	48870	54270	58620	62970	67320	71640
40% of Median	50680	57920	65160	72360	78160	83960	89760	95520
50% of Median	63350	72400	81450	90450	97700	104950	112200	119400
60% of Median	76020	86880	97740	108540	117240	125940	134640	143280
70% of Median	88690	101360	114030	126630	136780	146930	157080	167160
80% of Median	101360	115840	130320	144720	156320	167920	179520	191040
RENT LIMITS	Studio	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom			
20% of Median	633	678	814	940	1049			
25% of Median	791	848	1018	1175	1311			
30% of Median	950	1018	1221	1411	1574			
40% of Median	1267	1357	1629	1881	2099			
50% of Median	1583	1696	2036	2351	2623			
60% of Median	1900	2036	2443	2822	3148			
70% of Median	2217	2375	2850	3292	3673			
80% of Median	2534	2715	3258	3763	4198			

STAMFORD-NORWALK HMFA

For use by developments Placed in Service ON OR AFTER 1/1/2009 to PRESENT (FY2022)

INCOME LIMITS	1 person	2 person	3 person	4 person	5 person	6 person	7 person	8 person
20% of Median	23580	26940	30300	33660	36360	39060	41740	44440
25% of Median	29475	33675	37875	42075	45450	48825	52175	55550
30% of Median	35370	40410	45450	50490	54540	58590	62610	66660
40% of Median	47160	53880	60600	67320	72720	78120	83480	88880
50% of Median	58950	67350	75750	84150	90900	97650	104350	111100
60% of Median	70740	80820	90900	100980	109080	117180	125220	133320
70% of Median	82530	94290	106050	117810	127260	136710	146090	155540
80% of Median	94320	107760	121200	134640	145440	156240	166960	177760
RENT LIMITS	Studio	1 bedroom	2 bedroom	3 bedroom	4 bedroom			
20% of Median	589	631	757	875	976			
25% of Median	736	789	946	1094	1220			
30% of Median	884	947	1136	1312	1464			
40% of Median	1179	1263	1515	1750	1953			
50% of Median	1473	1578	1893	2188	2441			
60% of Median	1768	1894	2272	2625	2929			
70% of Median	2063	2210	2651	3063	3417			
80% of Median	2358	2526	3030	3501	3906			

DOCUMENTATION OF ELIGIBILITY FOR CERTIFICATE OF AFFORDABLE HOUSING PROJECT COMPLETION

Introduction/Overview of Eligible Projects:

The Planning and Zoning Commission of the Town of New Canaan has approved two projects in recent years that have now reached completion and comprise the required number of HUE points needed for this application: Millport Apartments and Canaan Parish.

Both projects have involved the demolition and rebuilding of previously existing low-income affordable housing developments in New Canaan that were aging and required modernization. Additionally, the original low income affordable dwelling units, that were demolished, at each respective site were rebuilt and the projects were expanded to include additional new units that would allow New Canaan to increase its stock of affordable units. None of the original existing low income dwelling units at either site would have qualified as affordable under CGS 8-30g.

The projects are both managed by the New Canaan Housing Authority and its partner organizations and all units in both developments are rent-restricted by deed, financing terms (Extended Low-Income Housing Commitments with the Connecticut Home Finance Authority), stipulations in a lease agreement, and/or other recorded covenants, for terms that meet or exceed the income limits (80% State Median Income or less) and duration of restriction required (40 years) under §8-30g at the time that these developments were approved.

A portion of the funds utilized for construction of these aforementioned projects comes from the Town's Affordable Housing Trust Fund. The long-established fund, officially known as the Inclusionary Zoning Fee has been a forward-thinking model, created pursuant to CGS 8-2i – \$10 per every \$1,000 of construction value is collected for every Zoning Permit for any new building, construction or addition in any zone. The monies collected from the Inclusionary Zoning fee can be used towards the rehabilitation and construction of affordable housing units.

The Town of New Canaan has provided information in the materials that follow to certify that these units are in compliance with the requirements of §8-30g(l)(4) [procedures for obtaining a Certificate of Affordable Housing Completion] and Sec. 8-30g-6 ["State Certificate of Affordable Housing Completion" procedures listed in the Regulations of State Agencies]. Claimed Housing Unit-Equivalency points are explained for each of these developments, with documentation and certifications included as part of the Application package in the sections that follow.

MILLPORT APARTMENTS

73 Units, 100% Affordable, 8-30g/ELIHC
Completed 2018



**DOCUMENTATION OF ELIGIBILITY FOR CERTIFICATE OF
AFFORDABLE HOUSING PROJECT COMPLETION**

1) PROJECT NAME: Millport Apartments

2) PROJECT TYPE: 73 Family Rentals under 8-30g, financing by ELIHC/CHFA

3) PROJECT ADDRESS: 33, 35, 59, 61 Millport Avenue
New Canaan, CT 06840

4) PROPERTY OWNER AND ADDRESS:

Housing Authority of New Canaan (HANC) (aka NCHA)
57 Millport Avenue
New Canaan, CT 06840

5) DEVELOPER/OWNER:

Millport Phase I + Phase II Limited Partnership
57 Millport Avenue
New Canaan, CT 06840

6) PERSON OR ENTITY RESPONSIBLE FOR COMPLIANCE:

Westmount Management
36 Park Place
Branford, CT 06405

7) PROJECT NARRATIVE AND DESCRIPTION:

In 2015, the New Canaan Planning & Zoning Commission approved the tear-down of the 22 Millport Apartments, in six buildings that dated from the 1980s and construction of 73 new affordable dwelling units in four buildings. This property is owned by the Housing Authority of New Canaan (HANC) and includes an additional parcel at 33 Millport Avenue that contained a two-family house that was purchased by HANC and merged with the adjoining land. The Housing Authority of New Canaan was represented by Attorney Tim Hollister of Shipman & Goodwin LLP in its application to the Planning and Zoning Commission.

The construction took place in two phases. Phase I in 2016 included the first two structures at 33 Millport Avenue (18 units) and 35 Millport Avenue (15 units). Phase II involved the second two buildings, 59 Millport Avenue and 61 Millport Avenue

each respectively contain 20 units and were completed in 2018. In the approval and financing documents, the addresses of this development vary. The documents refer to 41, 57 and 65 Millport as well as the addresses listed above. Due to numerous lot mergers required for this project, there have been address changes as the project reached completion. The four buildings are currently identified by the US Postal Service as 33, 35, 59 and 61.

The project was financed under the ELIHC program with CHFA, and the income restrictions follow §8-30g income limits. An affordability plan was approved as a part of the application to the Planning & Zoning Commission designating at least 15% of the units (11 units) restricted to 60% of State Median Income and the remaining 62 units restricted to 80% State Median Income for a term of 40 years. Currently, nearly 25% of the units at Millport are restricted to those making 60% of State Median Income which is higher than what was originally required by the affordability plan. This affordability restriction on the rebuilt units utilizes State Median Income making them more restrictive than previously.

In New Canaan's first approved Affordable Housing Project Completion application in 2017, two of the 80% units from Millport Apartments (in Building 1 which had been completed at the time of that submission) were claimed and included in the HUE point calculation. As a result, the remaining 71 of the 73 total units are being included in this application.

8) LIST OF ALL UNITS CONTRIBUTING TO HUE POINTS:

33 Millport Avenue	Building 1	16 units
35 Millport Avenue	Building 2	15 units
59 Millport Avenue	Building 3	20 units
61 Millport Avenue	Building 4	20 units

As noted in the 2017 Certificate of Housing Completion, 31 Millport Avenue, known as the Millport Apartments is a project that involved the demolition and re-development of affordable apartment buildings that were built in the 1980's, creating 73 new units of housing which are located in four buildings. Six buildings containing a total of 22 units were torn down to make room for the four new buildings. The approval and construction of 73 new units at 33, 35, 59

and 63 Millport Avenue (the "Millport Apartments") was referred to during the P&Z review/approval process as "Phase II" of the New Canaan Housing Authority (NCHA) Millport Avenue Developments.

9) TABLE OF POINTS:

Type of Unit	# of Units	Housing Unit-Equivalency Point Value Per Unit	Total Housing Unit-Equivalency Points
Family units, rented, that are restricted to households with annual income no more than: <ul style="list-style-type: none"> 80% of (State) median income <ul style="list-style-type: none"> 1 and 2 BRs 3 BRs 60% of (State) median income <ul style="list-style-type: none"> 1 and 2 BRs 3 BRs 	45	1.5	67.5
	8	1.75	14
	14	2.0	28
	4	2.25	9
TOTAL	71		118.5 HUE Points

10) LIST OF INCLUDED DOCUMENTATION OF AFFORDABILITY RESTRICTION:

Documents justifying the claim of 118.5 HUE points for the 71 family rental units in Buildings 1, 2, 3 and 4 (33, 35, 59 and 61 Millport Avenue) are listed in the table that follows and further explained in the bullet points below. Restrictions in documents filed in the New Canaan Planning & Zoning Department and Town of New Canaan Land Records ensure that rents for the Millport Avenue Apartments are established under “enforceable obligations” that are “binding at the time of application for at least the duration required by Section 8-30g at the time of the submission to the Commission.”

References to the establishment of affordable rents in the financing documents listed in the table refer to “Area Median Gross Income in the federal regulations, which is defined as “income determined by the Secretary of the Treasury in a manner consistent with determinations under Section 8 of the United States Housing Act of 1937, as amended” The Planning & Zoning Commission also

approved an Affordability Plan as part of its approval, which states that "Under this Plan, 73 newly-constructed apartment homes will meet or exceed the criteria for affordable housing as defined in Connecticut General Statutes 8-30g(a)."

Note: The approval and construction of 73 new units at Millport Avenue (the "Millport Apartments") was referred to during the P&Z review/approval process as "Phase II" of the NCHA Millport Avenue Developments. However, the financing document pertaining to the commencement of the "Phase II" portion of the property is now referred to as "Phase I" for the purposes of construction of the buildings at 33 and 35 Millport Avenue (totaling 33 new units). The financing for the second phase at 59 and 61 Millport Avenue (40 new units) will be referred to as "Phase II."

Each listed document below will be identified as either associated with Phase I or Phase II or applying to both I and II jointly.

The documents listed in the table contain at least the following restrictions:

- The Ground Lease shows that the property has been leased to Millport Phase I & II Limited Partnership for a period of **90 years**
- The ELIHCs (Extended Low-Income Housing Commitments) with the Connecticut Housing Finance Authority (CHFA) limits rents to "Qualified Persons" defined as "individuals and families who ... are of low income, having an annual income not exceeding sixty percent of area median gross income ... within the meaning of the [federal] Code ..."
- The Land Use Restriction Agreements (for bond financing from the HANC) refer to the 90-year period in the Ground Lease, and "Rental Term" and "Term" mean the period commencing on the dates of the issuance of the Bonds. Rent rates are to be controlled showing the restrictions "for the first forty-two (42) years of the Rental Term," referencing Gross Rent to Qualified Tenants of Moderate Income.
- The "Affordability Plan for Phase II/73 Apartment Homes" was submitted to the New Canaan Planning & Zoning Commission as part of the application for approval of the development, along with a proposed text amendment to the Zoning Regulations for the Millport Housing Zone and an application to

amend the Zoning Map. The Site Plan for the development, the Regulation Text

3-4

Amendment and the zoning map amendment were all adopted by the P&ZC on January 29, 2015.

Following the table are copies of each document.

Document	Phase	Description	Notes
Compliance Certification Affidavit		Millport Apartments 5/19/2022	Ann Werner, Compliance Manager Westmount Management
Low Income Housing Tax Credit (LIHTC) Compliance	I	Compliance Report by Spectrum dated 10/5/2018	No issues were found with compliance with income limitations
	II	Compliance Report by Spectrum dated 9/25/2020	No issues were found with compliance with income limitations
Deed Restriction	I	Notice of Ground Lease - Vol 950 / Pgs 297-303 Open-End Leasehold Mortgage Deed - Vol 950 / Pgs 503 - 525	Vol 950/297: Term of Lease is 90 years Vol 950/509: Sec. 14 reference to Affordability Plan and 8-30g
	II	Open-End Leasehold Mortgage Deed - Vol 973 / Pgs 951 - 967	Pg 973/951: Sec. 14 reference to Affordability Plan and 8-30g
Recorded Covenant	I	Land Use Restriction Agreement - Vol 950 / Pgs 312-335	Reference to "Rental Term" through 1/1/2053 and reference to 42-year Rental Term for Moderate Income Restriction

	II	Land Use Restriction Agreement - Vol 973 / Pgs 694-716	Reference to "Rental Term" through 5/1/2054 and reference to 42-year Rental Term for Moderate Income Restriction
Zoning Approval	I & II	P&ZC adopted approvals for: - Zoning Text Amendment - Zoning Map Amendment - Site Plan Approval	Adopted 1/29/2015
Zoning Regulation	I & II	New Section 5.7 – "Millport Housing Zone"	Adopted 1/29/2015 Section 5.7.H references maximum monthly payments under 8-30g
Financing/Assistance Agreement	I	ELIHC with CHFA - Vol 950/ Pgs 304-311	Pg 950/306 reference to "Qualified Persons" at 60% AMI Pg 950/307 reference to "Extended Use Period" for 40 years
	II	ELIHC with CHFA	Pg 2 reference to "Qualified Persons" at 60% AMI Pg 4 reference to "Extended Use Period" for 40 years

Affordability Plan	I & II	Dated January 2015	Page 2 references the income limits under 8-30g and the 40-year affordability period
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CERTIFICATION OF CERTIFICATES OF OCCUPANCY
New Canaan Application for
State Certificate of Affordable Housing Completion

I hereby certify that valid Certificates of Occupancy have been issued and are currently in effect for the following residential developments which contain affordable housing units within the Town of New Canaan as per the dates indicated and as shown on the copies of the certificates attached.

Date Issued

33 Millport Avenue (Building 1)

12/9/2016

18 affordable units

* Two units were already claimed in previous application

35 Millport Avenue (Building 2)

12/9/2016

15 affordable units

57 (now 59) Millport Avenue (Building 3)

2/14/2018

20 affordable units

57 (now 61) Millport Avenue (Building 4)

3/28/2018

20 affordable units

73 TOTAL AFFORDABLE UNITS

State of Connecticut

ss: New Canaan

County of Fairfield



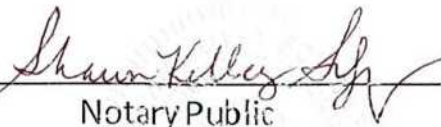
Brian Platz, Chief Building Official

Personally appeared Brian W. Platz, signer and sealer of the foregoing instrument and acknowledged the same to be his/her free act and deed before me.

SHAWN KELLEY SOLJOUR

NOTARY PUBLIC

My Commission Expires March 31, 2027


Notary Public

Dated: 4/29/2022

SCHEDULE

BUILDING PERMITS AND PERMANENT CERTIFICATES OF OCCUPANCY

New Canaan Housing Authority

41 Millport Avenue

(f/k/a 33, 35, and 57 Millport Avenue)

4 Multi-Family buildings, Total 73 Residential Units

Accessory Structures:

Clubhouse

Building #, Unit #	Building Permit # Issue Date	Permanent C.O. Issue Date
Building 1 (18 Units)	#15-01098 – 01/08/2016	12/09/2016
Building 2 (15 Units)	#15-01099 – 01/08/2016	12/09/2016
Building 3 (20 Units)	#17-129 – 06/05/2017	2/14/2018
Building 4 (20 Units)	#17-130 – 06/05/2017	3/28/2018
Accessory Structures	Building Permit # Issue Date	Permanent C.O. Issue Date
Clubhouse	#17-131 – 06/05/2017	2/13/2018

COMPLIANCE CERTIFICATION AFFIDAVIT
Pursuant to Section 8-30h of the Connecticut General Statutes

Connecticut General Statutes § 8-30h. Annual certification of continuing compliance with affordability requirements. Noncompliance.

On and after January 1, 1996, the developer, owner or manager of an affordable housing development, developed pursuant to subparagraph (B) of subdivision (1) of subsection (a) of section 8-30g, that includes rental units shall provide annual certification to the commission that the development continues to be in compliance with the covenants and deed restrictions required under said section.

If the development does not comply with such covenants and deed restrictions, the developer, owner or manager shall rent the next available units to persons and families whose incomes satisfy the requirements of the covenants and deed restrictions until the development is in compliance.

The commission may inspect the income statements of the tenants of the restricted units upon which the developer, owner or manager bases the certification. Such tenant statements shall be confidential and shall not be deemed public records for the purposes of the Freedom of Information Act, as defined in section 1-200.

To: New Canaan Planning and Zoning Department, 77 Main Street, New Canaan, CT 06840

From: ANN WERNER, Compliance Manager
Westmount Management, 36 Park Place, Branford, CT 06405

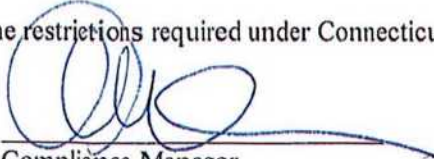
Development Name/Address: Millport Apartments – 33, 35, 59 and 61 Millport Avenue

I hereby certify that the seventy-three (73) total units in the 100% affordable set-aside development known as Millport Apartments are restricted under a Housing Affordability Plan filed in the office of the Planning and Zoning Department of the Town of New Canaan, and that the units are restricted in compliance with that Plan for a period of 40 years from the date of the issuance of the Certificate of Occupancy for each of the units. I have ascertained to the best of my knowledge and belief that the income limits for tenants required under the Plan and under Connecticut General Statutes § 8-30g have been satisfied at all times since the issuance of the Certificate of Occupancy for each of the units. The occupants have provided the appropriate supporting documentation from which I verified their income.

Therefore, the development continues to be in compliance with the restrictions required under Connecticut General Statutes § 8-30g.

State of Connecticut

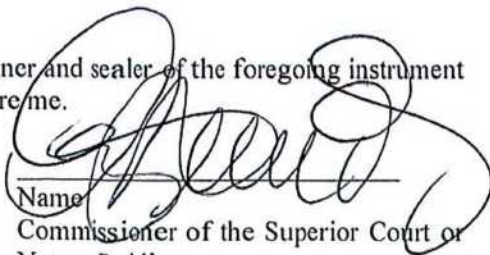
ss: Branford


Compliance Manager

County of Fairfield

Personally appeared Ann Werner, signer and sealer of the foregoing instrument and acknowledged the same to be his/her free act and deed before me.

Date: 5/19/2022


Name _____
Commissioner of the Superior Court or
Notary Public

SPECTRUM SEMINARS, INC.
www.spectrumseminars.com
admin@spectrumseminars.com



545 Shore Road
Cape Elizabeth, ME 04107
207-767-8000

SPECTRUM ENTERPRISES, INC.
www.spectrumlihtc.com
info@spectrumlihtc.com

October 5, 2018

Mr. Scott Hobbs
Millport Phase I LP
33-35 Millport Ave.
New Canaan, CT 06840

RE: Monitoring for Low Income Housing Tax Credit (LIHTC) Compliance in Connecticut:
Final Summary Report Letter

Property: **Millport Phase I – CT - 15063**

Dear Mr. Hobbs:

Enclosed please find a summary of our monitoring and findings of your property for this monitoring period covering the areas of review as noted in the Owner's Report Letter. We are required to report any findings we discover to the Internal Revenue Service. In instances where revisions have been requested and not received by the execution date of this letter, additional findings may be cited upon their reception and review. **As stated in the Code, Section 1.42-5(g) Liability: Compliance with requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. The Agency's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an owner's non-compliance.**

The results of our monitoring of **Millport Phase I** are as follows:

1. **Owner's Certifications:** The Owner's Certification of Continuing Project Compliance received for **2017** was reviewed. The results of that review are as follows:

No issues.
2. **Original Qualifying Basis and Minimum Set-Aside:** As determined by reviewing the first year Status Report database or previously submitted QBTS. The results of that review are as follows:

No issues.

3. **Status Reports:** The SPECTRUM Status Report database received was reviewed for compliance in 2017 using **Stamford-Norwalk MSA** income limits. The results of that review are as follows:

No issues.

4. **Physical Inspection:** The physical inspection was conducted on 7/9/2018. Two (2) buildings (BINs CT-15063-01 through CT-15063-02), all common areas, and 20% of the LIHTC units were inspected. All CHFA Inspection Standards and Guidelines were adhered to with the following repairs noted/required:

CT-15063-02

Unit 233

The kitchen countertop was not installed correctly and is loose. Management clarified that the contractor has been alerted and a plan of action is being developed. Due to the fact that this is not a life/safety issue it will be marked as cleared as a plan of action is being taken.
Issue cleared.

5. **Tenant/Administrative File Review:** The file review was conducted on 7/9/2018. 20% of the LIHTC files were selected for review. Leases, move-in verifications, certifications, and rents were reviewed. The results of that review are as follows:

No issues.

FINDINGS:

None.

COMMENTS:

This concludes the monitoring for this compliance period.

If you have any questions, please do not hesitate to contact us at (207) 805-0035.

Sincerely,



Harold Tucker, Compliance Analyst
Spectrum Enterprises

cc: Andrew Bowden, Spectrum Enterprises
Joe Voccio, Connecticut Housing Finance Authority
James Welter II, Connecticut Housing Finance Authority

Enclosures

SPECTRUM SEMINARS, INC.
www.spectrumseminars.com
steve.rosenthal@spectrumseminars.com



75 John Roberts Road
Suite 2C
South Portland, ME 04106
207-767-8000

SPECTRUM ENTERPRISES, INC.
www.spectrumlitc.com
info@spectrumlitc.com

September 25, 2020

Mr. Scott Hobbs
Millport Phase II LP
57 Millport Ave.
New Canaan, CT 06840

RE: Monitoring for Low Income Housing Tax Credit (LIHTC) Compliance in Connecticut:
Final Summary Report

Property: **Millport Phase II – CT-16408**

Dear Mr. Hobbs:

Enclosed please find a summary of our monitoring and findings of your property for this monitoring period covering the areas of review as noted in the Owner's Report Letter. We are required to report any findings we discover to the Internal Revenue Service. In instances where revisions have been requested and not received by the execution date of this letter, additional findings may be cited upon their reception and review. **As stated in the Code, Section 1.42-5(g) Liability: Compliance with requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. The Agency's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an owner's non-compliance.**

The results of our monitoring of **Millport Phase II** are as follows:

1. **Owners Certifications:** The Owner's Certifications of Continuing Project Compliance received for **2018 and 2019** were reviewed. The results of that review are as follows:

No issues.

2. **Original Qualifying Basis and Minimum Set-Aside:** As determined by reviewing the first year Status Report database or previously submitted QBTS. The results of that review are as follows:

The 8609s with part II completed by the owner were provided. In addition, the Extended Low-Income Housing Commitment was provided. The applicable fraction of 40/40 or 100% is confirmed. **Issue cleared.**

3. **Status Reports:** The SPECTRUM Status Report database received was reviewed for compliance in **2018 and 2019** using **Stamford-Norwalk MSA** income limits. The results of that review are as follows:

Unit 434 has been vacant since August 2019. Management explained this vacancy is due to applicants failing background screenings and applicants not being income qualified. They were also experiencing some staffing issues. A qualified household moved into this unit on 2/1/2020. **Issue cleared.**

Unit 436 has been vacant since April 2019. Management explained this vacancy is due to applicants failing background screenings and applicants not being income qualified. They were also experiencing some staffing issues. A qualified household moved into this unit on 4/1/2020. **Issue cleared.**

4. **Physical Inspection:** The physical inspection was conducted on TBD. Two buildings (BINs CT-16408-01 to CT-16408-02), all common areas, and sixteen of the LIHTC units were inspected. All CHFA Inspection Standards and Guidelines were adhered to with the following repairs noted/required:

ATTENTION:

Due to the ongoing health crises, CHFA has suspended all physical inspections of LIHTC properties.

5. **Tenant/Administrative File Review:** The file review was conducted on 6/19/2020. Sixteen of the LIHTC files were selected for review. Leases, move-in verifications, certifications, and rents were reviewed. The results of that review are as follows:

Part VII regarding student status is blank on most Tenant Income Certifications. Management reported that this was a software issue and they have manually corrected Part VII on TICs regarding Student Status. **Issue cleared.**

CT-16408-01

Unit 313/Musilli

In accordance with IRS notice 2020-53, the 4/1/2020 annual certification is not required. The 4/1/2019 annual recertification was reviewed during the audit and there were no issues. **Issue cleared.**

Unit 323/Plaza

We requested pay stubs in place of the tax returns for the 6/1/2020 annual certification. Management explained that due to COVID-19, they were unable to obtain the pay stubs. Tenant is well below the income limit. **Issue cleared.**

Unit 325/Moroch

The 2018 initial certification and the 2/1/2020 annual certification were provided as requested. The move-in date was corrected to 2/20/2018. **Issues cleared.**

Unit 332/Lowman

The move-in date was corrected to 2/22/2018 as requested. A Certificate of Zero Income was provided for Hunter. **Issues cleared.**

Unit 335/Vecchini

Signed TICS for 2018 and 2019 were provided as requested. Be sure to add "true and correct" as of the certification date and have tenant initial. In accordance with IRS notice 2020-53, the 4/1/2020 annual certification is not required. **Issues cleared.**

Unit 337/Platt

The 3/1/2020 annual recertification was provided as requested. **Issue cleared.**

CT-16408-02

Unit 421/Brown

The signed 12/1/2019 annual certification was provided as requested, as well as the completed 12/31/2018 move-in certification. **Issues cleared.**

Unit 438/Tatarintseva

A signed 3/1/2020 TIC has been provided as requested. Be sure the tenants add, "True and correct as of 3/1/2020." **Issue cleared.**

FINDINGS:

None.

COMMENTS:

This concludes our LIHTC compliance monitoring for this period. Thank you for your cooperation with our monitoring and special thanks to the management staff for their cordiality and assistance.

If you have any questions, please do not hesitate to contact us at (207) 805-0039.

Sincerely,

Wil Whalen

Wil Whalen, C15P
Compliance Analyst

cc: Andrew Bowden, Spectrum Enterprises
Joe Voccio, Connecticut Housing Finance Authority
Colette Slover, Connecticut Housing Finance Authority

WHEN RECORDED MAIL TO:

Robinson & Cole LLP
280 Trumbull Street
Hartford, Connecticut 06103
Attn: David M. Panico, Esq.



Doc ID: 002549230007 Type: LAN
Book 950 Page 297 - 303
File# 2235

NOTICE OF GROUND LEASE

Pursuant to Section 47-19 of the Connecticut General Statutes, notice is hereby given of the following lease (the "Lease"):

NAME AND ADDRESS OF LESSOR: HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, a municipal housing authority duly organized and existing pursuant to the laws of the State of Connecticut, having an address at 57 Millport Avenue, New Canaan, Connecticut 06840.

NAME AND ADDRESS OF LESSEE: MILLPORT PHASE I LIMITED PARTNERSHIP, a Connecticut limited partnership having an address at c/o the Housing Authority of the Town of New Canaan, 57 Millport Avenue, New Canaan, Connecticut 06840.

DATE OF LEASE: January 27, 2016.

DEMISED PREMISES: the land and all improvements located at 33 & 35 Millport Avenue, New Canaan, Connecticut 06840 (the "Property"), which land is more particularly described on Schedule A attached hereto.

TERM: The initial term of the Lease is for ninety (90) years and commences on the Date of the Lease and expires on December 1, 2106.

OPTION TO EXTEND: None.

OPTION TO PURCHASE THE PROPERTY: None.

COPY OF THE LEASE: A complete copy of the Lease is on file at the office of the Lessor set forth above.

EFFECT OF THIS NOTICE OF LEASE: This Notice of Lease is entered into by the parties, and is to be recorded only to set forth the Lease as a matter of record. Nothing contained in this Notice of Lease shall be deemed to modify, amend, alter, limit or otherwise change any of the provisions of the Lease itself or the rights and obligations of the parties thereto as provided therein. All capitalized terms in this Notice of Lease shall have the meaning ascribed in the Lease. In the event of any conflict or ambiguity between the terms of this Notice of Lease and the terms of the Lease, the terms of the Lease shall prevail. Reference is hereby made to the Lease for all of the terms, covenants and conditions thereof.

VOL 950 PG 0298

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Notice of Lease as of the Date of the Lease.

WITNESSED BY:

[Signature]
Name: DIMITRI TOWANT

[Signature]
Name: BARNARD E. SIMPKIN

LESSOR:

HOUSING AUTHORITY OF THE TOWN OF
NEW CANAAN,

a public body corporate and politic organized under
the laws of the State of Connecticut

By: [Signature]
Name: Scott Hobbs
Title: Chairman

STATE OF CONNECTICUT)

COUNTY OF FAIRFIELD)

ss: New Canaan Stamford

I, Gayle E. Clark, a Notary Public in and for Fairfield County, Connecticut/Commissioner of the Superior Court, do hereby certify that Scott Hobbs, Chairman of the Housing Authority of the Town of New Canaan, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as Chairman and the free and voluntary act of The Housing Authority of the Town of New Canaan, for the uses and purposes therein set forth.

Given under my hand this 26 day of January, 2016

[Signature]
Notary Public; My Commission expires: 11/30/20
Commissioner of the Superior Court

VOL 950 PG 0299

WITNESSED BY:

Bernard E. Simpson
 Name: Bernard E. Simpson

Dim. Tr. Towns
 Name: Dim. Tr. Towns

LESSEE:

**MILLPORT PHASE I LIMITED
 PARTNERSHIP,**
 a Connecticut limited partnership

By: Millport Phase I GP Corporation
 a Connecticut corporation
 Its: Sole General Partner

By: Scott Hobbs
 Name: Scott Hobbs
 Title: Director, duly authorized /Chairman

STATE OF CONNECTICUT

COUNTY OF FAIRFIELD

) ss: Stamford

I, Gayle E. Clark, a Notary Public in and for the State of Connecticut/Commissioner of the Superior Court, do hereby certify that Scott Hobbs, a Director and authorized signatory on behalf of Millport Phase I GP Corporation ("General Partner"), which is the Sole General Partner of Millport Phase I Limited Partnership, Lessee named above, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as an authorized signatory and the free and voluntary act of the Lessee named above, for the uses and purposes therein set forth.

Given under my hand this 26 day of January, 2016

Gayle E. Clark
 Notary Public; My Commission expires: 11/30/20
 Commissioner of the Superior Court

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Schedule A

All that certain piece, parcel or tract of land, being a portion of that new consolidated parcel, comprised of former Assessor Lot 623 and a portion of former Assessor Lot 630, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, shown and designated as **Parcel 623, 33 Millport Avenue and a portion of Parcel 630, 35 Millport Avenue**, within shaded area on a map entitled "ALTA/ACSM LAND TITLE SURVEY (PROPERTY SURVEY) 33, 35, 41, 57 & 65 MILLPORT AVENUE DEPICTING LEASE PARCEL I PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN NEW CANAAN, CONNECTICUT" dated December 18, 2015, revised to January 22, 2016, Scale 1"=30', made by William W. Seymour & Associates, P.C., which map is or will be filed in the Office of the Town Clerk of New Canaan, more particularly bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point being the intersection of said northwesterly line of Millport Avenue with the former division line between properties known as 33 Millport Avenue and 41 Millport Avenue;

Thence, running northwesterly along said former division line between properties known as 33 Millport Avenue and 41 Millport Avenue north 45°58'50" west a distance of 229.69 feet to a point on the former division line between properties known as 35 Millport Avenue and 57 Millport Avenue;

Thence, running northeasterly through said property known as 35 Millport Avenue north 44°01'10" east a distance of 100.00 feet to a point on the division line between said property known as 35 Millport Avenue and property now or formerly of New Canaan Medical Properties LLP and known as 173 East Avenue;

Thence, running southeasterly, northeasterly and again southeasterly along said division line between properties known as 173 East Avenue, 35 Millport Avenue and 33 Millport Avenue south 45°58'50" east a distance of 70.39 feet and north 62°37'30" east a distance of 5.07 feet and south 57°58'00" east a distance of 24.93 feet and south 50°38'00" east a distance of 5.19 feet and south 57°04'20" east a distance of 92.74 feet to the aforesaid northwesterly line of Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south 01°56'30" west a distance of 38.04 feet and south 20°47'30" west a distance of 39.35 feet and south 45°52'30" west a distance of 50.22 feet and south 53°23'00" west a distance of 13.83 feet to the intersection of said northwesterly line of Millport Avenue with the former division line between properties known as 33 Millport Avenue and 41 Millport Avenue and the point of beginning.

the "Leasehold Parcel",

Together with the rights, provisions, terms and conditions set forth in an **Easement Agreement** by and among the Housing Authority of the Town of New Canaan, NCHA Mill Apartments Limited Partnership and Millport Phase I Limited Partnership, and consented to by the State of Connecticut Department of Housing, People's United Bank, National Association, the United States Department of Housing and Urban Development, U.S. Bank National Association, as Trustee, and Bankwell Bank, dated as of January 1, 2016 and recorded in the New Canaan Land Records.

Such easements and rights of way are also shown and depicted on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING LEASE PARCELS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is or will be filed in the Office of the Town Clerk of New Canaan as:

"Easement Area X", more particularly bounded and described as follows:

Beginning at a point, said point being the intersection of the former division lines between properties known as 35, 41 & 57 Millport Avenue, said point being further described as lying north 45°58'50" west a distance of 222.40 feet from the intersection of the former division line between properties known as 33 & 41 Millport Avenue with the northwesterly line of Millport Avenue;

Thence, running southwesterly along the former division line between said properties known as 41 & 57 Millport Avenue south 44°32'10" west a distance of 14.79 feet to a point;

Thence, running northerly and northeasterly through said property known as 57 Millport Avenue north 13°46'40" west a distance of 2.90 feet and north 44°01'10" east a distance of 13.24 feet to a point on the aforesaid former division line between properties known as 35 & 57 Millport Avenue;

Thence, running southeasterly along said former division line between said properties known as 35 & 57 Millport Avenue south 45°58'50" east a distance of 2.59 feet to the point of beginning.

"Easement Area Z", more particularly bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point being the intersection of said northwesterly line of Millport Avenue with the former division line between properties known as 33 Millport Avenue and 41 Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south 53°23'00" west a distance of 43.21 feet to a point;

Thence, running northwesterly, southwesterly and again northwesterly through said property known as 41 Millport Avenue north $29^{\circ}10'20''$ west a distance of 81.00 feet and south $60^{\circ}10'00''$ west a distance of 30.90 feet and north $29^{\circ}50'00''$ west a distance of 53.20 feet and north $35^{\circ}49'30''$ west a distance of 67.50 feet and north $13^{\circ}46'40''$ west a distance of 13.85 feet to a point on the former division line between properties known as 41 Millport Avenue and 57 Millport Avenue;

Thence, running northeasterly along said former division line between properties known as 41 Millport Avenue and 57 Millport Avenue north $44^{\circ}32'10''$ east a distance of 14.79 feet to a point on the aforesaid former division line between properties known as 33 Millport Avenue and 41 Millport Avenue;

Thence, running southeasterly along said former division line between properties known as 33 Millport Avenue and 41 Millport Avenue south $45^{\circ}58'50''$ east a distance of 222.40 feet to the aforesaid northwesterly line of Millport Avenue and the point of beginning.

and "Driveway Easement Parcel" shown and depicted as "Proposed Driveway Easement for Phase I" on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING DRIVEWAY EASEMENTS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., Scale 1"=30 ft., by William F. Seymour & Associates, P.C., bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point lying north $78^{\circ}17'30''$ east 1.87 feet of the intersection of the former division line between properties known as 65 & 57 Millport Avenue with said northwesterly line of Millport Avenue;

Thence, running northerly and northwesterly a distance of 10.52 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $20^{\circ}05'35''$ and having a chord bearing of north $01^{\circ}39'42''$ west and north $11^{\circ}42'30''$ west a distance of 76.82 feet and 61.26 feet along an arc curving to the right having a radius of 39.00 feet and subtending a central or delta angle of $89^{\circ}59'20''$ to a point;

Thence, running northeasterly, southeasterly and again northeasterly north $78^{\circ}16'50''$ east a distance of 48.75 feet and 10.92 feet along an arc curving to the right having a radius of 15.00 feet and subtending a central or delta angle of $41^{\circ}42'10''$ and south $60^{\circ}01'00''$ east a distance of 4.71 feet and 6.23 feet along an arc curving to the left having a radius of 6.00 feet and subtending a central or delta angle of $59^{\circ}30'50''$ and north $60^{\circ}28'10''$ east a distance of 84.71 feet to a point on the southerly line of Phase I - Easement Area 'Z';

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Thence, running southeasterly along said southerly line of Phase I - Easement Area 'Z' south $29^{\circ}31'50''$ east a distance of 20.00 feet to a point;

Thence, southwesterly and southeasterly south $60^{\circ}28'10''$ west a distance of 74.22 feet and south $78^{\circ}16'50''$ west a distance of 84.18 feet and 23.56 feet along an arc curving to the left having a radius of 15.00 feet and subtending a central or delta angle of $89^{\circ}59'20''$ and south $11^{\circ}42'30''$ east a distance of 68.57 feet and 20.00 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $38^{\circ}11'39''$ and a chord bearing of south $30^{\circ}48'19''$ east to a point on the aforesaid northwesterly line of Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south $78^{\circ}17'30''$ west a distance of 32.25 feet to the point of beginning.

Received for record on 1-27-16 at 3:32 pm
and recorded by Claudia A. Weber
TOWN CLERK

25199/1/3409522.5

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

CT-15-06301 & CT-15-06302

EXTENDED LOW-INCOME HOUSING COMMITMENT

This Extended Low-Income Housing Commitment (the "ELIHC") is made this 21st day of January, 2016, by and between **MILLPORT PHASE I LIMITED PARTNERSHIP**, a Connecticut limited partnership with an office and principal place of business at 57 Millport Avenue, New Canaan, Connecticut 06840 (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").

WITNESSETH:

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

WHEREAS, the Owner is the owner of property known as Millport Phase I, located at 33-35 Millport Avenue, New Canaan, Connecticut 06840 (the "Property");

WHEREAS, the Property has qualified for low-income housing tax credits in the annual amount of \$323,044 for buildings financed by tax-exempt bonds pursuant to Section 42(h)(4) of the Internal Revenue Code of 1986, as amended (the "Code").

WHEREAS, Section 42(h)(6)(A) of 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:

1. DEFINITIONS

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

- a. "Compliance Period" means, with respect to any building, the period of fifteen (15) taxable years beginning with the first taxable year of the credit period with respect thereto.



Doc ID: 002549240008 Type: LAN
Book 950 Page 304 - 311
File# 2236

-- 1 --

Millport Phase I
CT-15-06301 & CT-15-06302
Extended Low-Income Housing Commitment v1

Book: 950 Page: 304 File Number: 2236 Seq: 1

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b. "Credit Period" means, with respect to any building, the period of ten (10) taxable years beginning with:

- (1) the taxable year in which the building is placed in service, or
- (2) at the irrevocable election of the taxpayer, the succeeding year,

but only if the building is a qualified low-income building as of the close of the first 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, which shall also include the following:

(1) Components of Development - The Development will consist of 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 Sections 42(g)(7) (relating to scattered site projects) and 42(h)(6)(K) (relating to projects which consist of more than one (1) building) of the Code), which buildings shall be owned by the same person for tax purposes:

- (i) each containing one 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
- (ii) all of the units of which will be rented or available for rental on a nontransient basis to members of the general public.

NOTE: Special provisions apply for eligible single room occupancy housing and transitional housing for the homeless.

(2) Change in Development - The Owner will 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 June 9, 2015, without the prior written consent of the Authority.

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- d. "Extended Use Period" means the period:
- (1) beginning on the first day in the Compliance Period on which such building is part of a qualified low-income housing project; and
 - (2) ending on the later of -
 - (i) the date specified by the Authority in Section 2d of this ELIHC, or
 - (ii) 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 Persons" 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;
- 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 the individual dwelling referenced in subsection (1) of subsection (c) of this first section of this ELIHC.

2. THE COMMITMENT

- a. Failure to comply with the provisions of this ELIHC is an event of default and the Authority or its successors may exercise any of the remedies available hereunder. Furthermore, the Authority may seek specific performance of this ELIHC 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.

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- b. The applicable fraction (as defined in Section 42(c)(1)(B) of the Code) for each taxable year in the Extended Use Period shall not be less than 33/33 (Qualified Units/total Units or total floor space of Qualified Units/total floor space of total Units, as applicable).
- 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 of subsections a. and b. of this second section and the prohibitions of (3) and (4) and (1) and (2) of subsections e. and f., respectively, of this second section of this ELIHC and may apply to any State court for specific performance of the provisions of this ELIHC notwithstanding any action which may or may not be taken by the Authority.
- d. The Extended Use Period shall be for an additional twenty-five (25) 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 the Owner a purpose of which is to terminate the Extended Use Period; or (II) the last day of the one-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.

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 subclause (II) hereof therefore does not apply and has no force or effect.

- e. During the Extended Use Period:
 - (1) not less than thirty-three (33) units (one hundred percent (100%) of the Units) in the Development shall be occupied or 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);

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- (2) 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;
 - (3) 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); and
 - (4) no rent may be increased for any Qualified Unit beyond the Qualified Rent:
 - (i) at any time during the Extended Use Period; or
 - (ii) as long as it is occupied by the tenant who was occupying the unit at the early termination of the Extended Use Period.
- f. For the 3-year period following an Early Termination of the Extended Use Period:
- (1) 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
 - (2) 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.
- g. The Owner hereby agrees that this ELIHC prohibits (i) the disposition to any person of any portion of the building to which this ELIHC applies unless all of the building to which such ELIHC applies is disposed of to such person; and (ii) 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.
- h. The restrictive covenants of this section shall be binding on all successors and assigns of the Owner and this ELIHC shall be recorded pursuant to Connecticut Law as a restrictive covenant.
- i. The Owner hereby agrees to record this ELIHC promptly on the land records of the town or city where the Property is located prior to the recording of any other lien or restrictions. If any financing liens on the Property have already been recorded on the land records at the time this ELIHC is recorded, the Owner agrees to use its best efforts to obtain an agreement from the holders of such liens, naming the Authority as a party, to subordinate such liens to the lien created by this ELIHC, and to provide the Authority with a copy of such subordination agreement.

3. MISCELLANEOUS

- a. This ELIHC 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 ELIHC shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of the provisions of this ELIHC, 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 C.G.S. Section 53a-157b.

[Intentionally left blank -- signature pages to follow]

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

OWNER:

MILLPORT PHASE I LIMITED PARTNERSHIP

By: Millport Phase I GP Corporation
Its General Partner

By: Scott Hobbs
Scott Hobbs
Its Chairman
Duly Authorized

Dimitri Tourant
DIMITRI TOURANT

Valerie M. Saiz
Valerie M. Saiz

STATE OF CONNECTICUT)

COUNTY OF Fairfield)ss: Stanford Jun 26, 2016

Personally appeared, Scott Hobbs, the Chairman of Millport Phase I GP Corporation, the general partner of Millport Phase I Limited Partnership, as aforesaid Signer and Sealer of the foregoing Instrument, and acknowledged the same to be his free act and deed as Chairman of Millport Phase I GP Corporation, General Partner, and the free act and deed of Millport Phase I Limited Partnership, and that said instrument was signed on behalf of and with the authority of said Owner, before me.

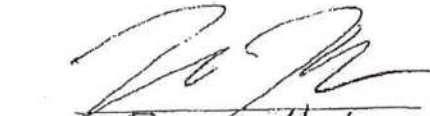
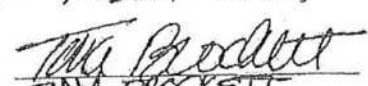
Gayle E. Clarke
Commissioner of the Superior Court
Notary Public

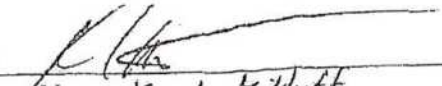
GAYLE E. CLARKE
Notary Public, State of Connecticut
My Commission expires: 11/30/20

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CONNECTICUT HOUSING FINANCE AUTHORITY


Robert Hirsch

TINA BROCKETT

By: 
Name: Karl Kilduff
Title: Executive Director
Duly Authorized

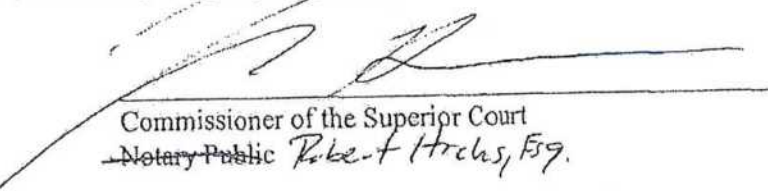
STATE OF CONNECTICUT)

) ss. Rocky Hill

January 27, 2016

COUNTY OF HARTFORD)

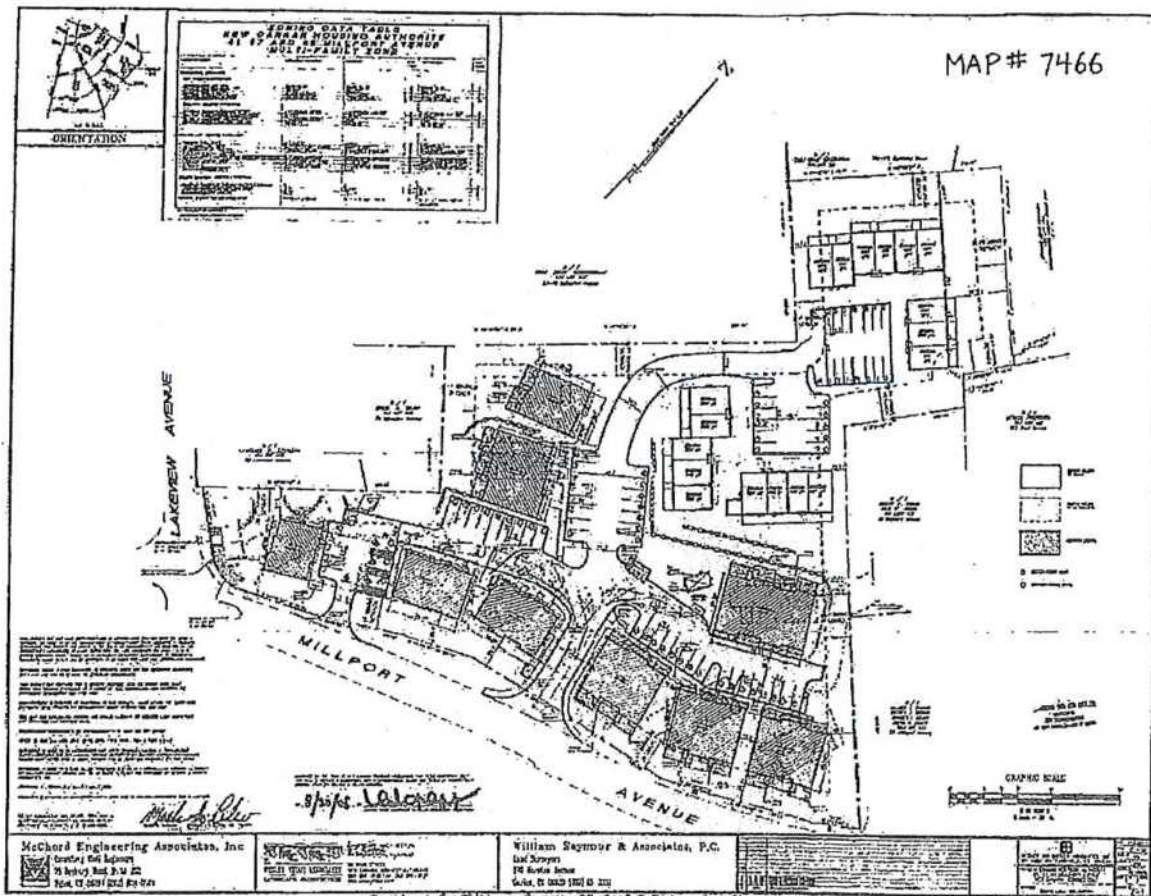
Personally appeared, Karl Kilduff, Executive Director of the
CONNECTICUT HOUSING FINANCE AUTHORITY, duly authorized as aforesaid Signer and Sealer
of the foregoing Instrument and acknowledged the same to be his free act and deed and the free act and
deed of said Authority, on behalf of said Authority, before me.


Commissioner of the Superior Court

~~Notary Public~~ Robert Hirsch, Esq.

Received for record on 1-27-16 at 3:33 pm
and recorded by Claudia A. Weber
TOWN CLERK

-- 8 --



McChord Engineering Associates, Inc.
 7500 Highway 101, Suite 100
 Fort Worth, Texas 76116

William Segmiller & Associates, P.C.
 10000 Highway 101, Suite 100
 Fort Worth, Texas 76116

William Segmiller & Associates, P.C.
 10000 Highway 101, Suite 100
 Fort Worth, Texas 76116

Recorded for Filing on August 27, 2002 at 3:00pm by Claudia Arribas, Town Clerk



TOTAL CONSOLIDATED AREA = 194,0215 SQ. FT. OR 4.4077 ACRES

MILLPORT

AVENUE

7647

NO. 107, BROADWAY, NEW YORK, N.Y. 10038
 MADE IN U.S.A. *Charles O. Kelly*
 NEW YORK, N.Y. 10038

RECEIVED 1 - 23 97
DECEMBER 2, 2015

66-13176. *Convolvulus* DC.

EXISTING LEASE AREA = 104,987± SQ. FT.
SEE VOL. 61A, PG. 675 & BK. 282 AC. AS
OF THE NEW CANADIAN LAND RECORDS

EXISTING LEASE AREA = 104,303.6 SQ. FT.
or 2.38564 Acres

After recording, return to:
Kirsten M. Vargo
Wiggin and Dana LLP
265 Church Street
New Haven CT 06510-1832


Doc ID: 002549270023 Type: LAN
Book 950 Page 503 - 525
File# 2239

OPEN-END LEASEHOLD MORTGAGE DEED
Millport Phase I Limited Partnership

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

KNOW YE, THAT MILLPORT PHASE I LIMITED PARTNERSHIP, a Connecticut limited partnership, with a principal place of business at 57 Millport Avenue, New Canaan, Connecticut 06840 ("Grantor"), for One Dollar (\$1.00) and other valuable consideration received to their full satisfaction of the HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, a municipal housing authority duly organized and existing pursuant to the laws of the State of Connecticut, having an address at 57 Millport Avenue, New Canaan, Connecticut 06840 ("Grantee"), does give, grant, bargain sell AND confirm unto the said Grantee, its successors AND assigns forever, with MORTGAGE COVENANTS:

All of its leasehold interests as established under that certain ground lease, more particularly described in Schedule A (hereinafter called the "Lease"), in and to all those certain tracts or parcels of land and all improvements now or hereafter thereon situated, lying and being in the Town of New Canaan, the County of Fairfield and the State of Connecticut, and also more particularly described in Schedule A attached hereto and made a part hereof (hereinafter called the "Premises").

TOGETHER with all right, title and interest of the Grantor in and to any and all sidewalks, plazas and alleys, and all strips and gores of land adjoining or adjacent to said Premises, and all and singular the tenements, hereditaments, privileges, easements and appurtenances belonging or in any wise appertaining to said Premises, and all the estate, right, title, interest, claim and demand whatsoever, in law or in equity, which the Grantor now has or may hereafter acquire in and to such property;

TOGETHER with all right, title and interest of the Grantor now owned or hereafter acquired, in and to any and all buildings, structures and improvements now or at any time hereafter erected, constructed or situated upon said Premises or any part thereof and all apparatus, fixtures, furniture, furnishings and equipment now or hereafter attached to or used or procured for use in connection with the operation or maintenance of any such building, structure or other improvement, including, but without limiting the generality of the foregoing, all engines, furnaces, boilers, pumps, heaters, tanks, antennae, motors, generators, switchboards, electrical equipment, heating, plumbing, lifting and ventilating apparatus, air-cooling and air-conditioning apparatus, gas and electric fixtures, refrigerating equipment, stoves and clothes washing machines, elevators, escalators, fittings and machinery, awnings, storm and screen windows and doors, window shades and blinds, together with any and all substitutions therefor, replacements thereof and additions thereto, all of which are hereby

declared and shall be deemed to be fixtures and an accession to the freehold and a part of the realty and to be subject to the lien of this mortgage (this "Mortgage");

TOGETHER with all rights, title and interest, if any, of the Grantor, now owned or hereafter acquired in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining said land, to the center line thereof;

TOGETHER with all rights of the Grantor to modify, amend or terminate any lease now or hereafter relating to the Premises;

All of the foregoing Premises, leasehold estate and property is hereinafter collectively called the "Mortgaged Premises".

TO HAVE AND TO HOLD the above granted and bargained Mortgaged Premises with all the privileges and appurtenances thereof, unto the Grantee, its successors and assigns forever, to its and their proper use and behoof.

AND ALSO the Grantor does for itself, its successors and assigns, covenant with the Grantee, its successors and assigns, that at and until the ensembling of these presents, it has good right to bargain and sell said Mortgaged Premises in manner and form as above written, and that the same is free from all encumbrances whatsoever, except as set forth in said Schedule A.

AND FURTHERMORE, the Grantor does hereby by these presents bind itself and its successors and assigns forever to WARRANT AND DEFEND the above granted and bargained Mortgaged Premises to the Grantee, its successors and assigns, against all claims and demands whatsoever, except as set forth in said Schedule A and Schedule A-1.

THE CONDITION OF THIS DEED IS SUCH THAT,

WHEREAS, the Grantor is justly indebted to the Grantee in the maximum principal amount of up to **Three Million and No/100 Dollars (\$3,000,000.00)** (the "Loan"), as evidenced by the Grantor's Promissory Note of even date herewith (hereinafter the "Note"), which Note is attached hereto as Schedule B; and

WHEREAS the Grantee is desirous of securing the prompt payment of the Note together with interest thereon, if any, and any additional indebtedness accruing to it on account of any future payments, advances or expenditures made by it pursuant to the terms hereof (all hereinafter sometimes collectively referred to as the "Indebtedness secured hereby");

NOW, THEREFORE, said Grantor, in order to protect more fully the security of the Grantee hereunder, does hereby covenant and agree with the Grantee that:

1. Grantor shall pay promptly when due, all principal, interest, if any, and all other sums to become due under the terms of the Note.

2. Grantor shall keep the Mortgaged Premises in good condition and repair, reasonable wear and tear excepted; shall not permit nor perform any act which would in any way impair the value of the same; shall not remove any fixture nor remove or demolish any building or improvement located or to be constructed on the above-described Premises without the written consent of the Grantee, which shall not be unreasonably withheld; shall neither commit nor permit waste of the Mortgaged Premises; and shall not, without the Grantee's prior written consent (which consent shall not be unreasonably withheld), commence construction of any buildings or improvements on the Mortgaged Premises the effect of which would be to reduce the value of the Mortgaged Premises; provided, however, that Grantor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such equipment as from time to time may become worn out or obsolete, provided that simultaneously with or prior to such removal any such equipment shall be replaced with other equipment of a value at least equal to that of the replaced equipment and free from any title retention or security agreement or other encumbrance, and by such removal and replacement the Grantor shall be deemed to have subjected such other equipment to the lien of this Mortgage.

3. Grantor shall pay all debts, claims or other charges that may become liens against the Mortgaged Premises or any part thereof for repairs or improvements that may have been, or may hereafter be, made on the Mortgaged Premises and shall not permit any lien or encumbrance of any kind which might become superior or adverse to the title of Grantee or the lien of this Mortgage to accrue or remain on the Mortgaged Premises or any part thereof, except for liens or encumbrances set forth on Schedule A-1. Grantor shall give prompt notice to the Grantee of the imposition or filing of any liens or encumbrances against the Mortgaged Premises.

4. Grantor shall provide, maintain, and deliver to the Grantee a fire and extended coverage insurance policy and such other insurance as the Grantee may from time to time require, including, but not limited to, adequate liability insurance naming the Grantee as an insured and loss of rent insurance in an amount not less than the annual aggregate rental value of the Mortgaged Premises, all such policies to be issued by companies and in form and amounts satisfactory to the Grantee, upon the buildings and improvements now or hereafter situated on the Mortgaged Premises, and shall deliver to the Grantee copies of all insurance policies of any kind or in any amount now or hereafter issued upon the Mortgaged Premises, naming the Grantee as a mortgagee. Grantor shall give immediate notice in writing to the Grantee of any loss or damage to the Mortgaged Premises caused by any casualty. The Grantee is authorized to settle and compromise in good faith any and all claims under any and all policies and to demand, and except as hereinafter provided, to receive and receipt for all moneys becoming payable thereunder and to assign any or all policies to any endorsee of the Note or to any subsequent owner of the Mortgaged Premises in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Premises. In the event of loss under any policy of insurance herein referred to, and if Grantor shall not then be in default hereunder, the proceeds of such policy shall be paid by the insurer to the Grantor and the Grantee, and any checks therefor shall be endorsed by Grantor to the Grantee, to be held as additional collateral hereunder. If Grantor shall fully reconstruct, repair or restore the Mortgaged Premises to as good condition as the same were in immediately prior to the damage or destruction thereof resulting in such loss, the Grantee shall thereafter apply such proceeds, after deducting all costs of collection, toward such reconstruction, repair or restoration of the Mortgaged Premises. Provided that Grantee is assured in its reasonable discretion that: (i) the amount of any insurance proceeds is sufficient to restore the Mortgaged

Premises to its prior condition, and (ii) no leases of the Mortgaged Premises have been or will be terminated as a result of any such damage or destruction to the Mortgaged Premises, Grantee will make advances of the proceeds to Grantor as the restoration progresses to pay for the cost of the restoration. All work shall be completed in accordance with plans and specifications and a schedule for performing the work approved by Grantee in advance, and in accordance with all applicable laws and regulations. Provided, however, that if Grantor shall then be in default hereunder, or if Grantor shall not elect to so reconstruct, repair or restore the Mortgaged Premises, the Grantee may apply such proceeds to the Indebtedness secured hereby, whether or not then due or payable, and in such manner as the Grantee in its sole discretion may see fit, and shall remit the excess, if any, to Grantor. The rights of the Grantee under the provisions of this Section 4 are subject to any such rights of prior mortgagees of record.

5. The rents, income and profits of all and every part of the Mortgaged Premises are hereby specifically pledged to the payment of the Indebtedness secured hereby. If any Event of Default shall occur, the Grantee shall have the right forthwith and without notice to enter into and upon the Mortgaged Premises, take possession thereof, and collect said rents, income and profits with or without the appointment of a receiver, regardless of the value of the Mortgaged Premises. All such net income after payment of the reasonable costs of collection thereof, and management and attorneys' fees, shall be applied toward the payment of any advances made by the Grantee or in reduction of the Indebtedness secured hereby, in such manner or proportion as the Grantee in its sole discretion may elect. The rights of the Grantee under the provisions of this Section 5 are subject to any such rights of prior mortgagees of record.

6. If Grantor shall fail to insure the Mortgaged Premises, pay any taxes or assessments, pay debts, claims or other charges for repairs and improvements, or to keep the Mortgaged Premises in good condition and repair, all as provided herein, the Grantee may, at its option, but shall not be obligated to, procure such insurance, pay such taxes and assessments with any penalty or interest thereon, if any, redeem the property from any tax sale, procure such receipts, or enter upon the Mortgaged Premises and make such repairs as it may deem necessary, and Grantor shall immediately pay to the Grantee all sums which the Grantee may have so paid, together with interest thereon at the rate provided in the Note, if any, and for payment thereof, this Mortgage shall stand as security in like manner and effect as for the payment of the Indebtedness referred to above. The failure of the Grantee to procure such insurance, to pay such taxes and assessments, to redeem the property from any tax sale, or to make repairs shall in no way render Grantee liable to Grantor nor obligate it to make any such payment on Grantor's behalf. If Grantee shall elect to advance insurance premiums, taxes or assessments, or redeem from tax sale, the receipt of the insurance company, or the proper tax official, shall be conclusive evidence of the amount, validity and the fact of payment thereof. No payment by the Grantee under this paragraph shall constitute a waiver of any Event of Default on account of nonpayment by Grantor. The rights of the Grantee under the provisions of this Section 6 are subject to any such rights of prior mortgagees of record.

7. The Grantor shall immediately pay to the Grantee all sums, including costs, expenses and reasonable agent's or attorney's fees, which the Grantee may expend or become obligated to pay in any proceedings, legal or otherwise, to prevent the commission of waste, to establish or sustain the lien of this Mortgage or its priority, or to defend against liens, claims, rights, estates, easements, or

restrictions (other than those set forth on Schedule A-1) asserting priority to this Mortgage in payment, settlement, discharge or release of any asserted lien, claim, right, easement or restriction made upon advice of counsel that the same is superior or adverse to the lien of this Mortgage; for title insurance, abstract of title or extension thereof; or in connection with any suit to enforce or foreclose this Mortgage; or to recover any sums hereby secured. All such sums so paid by the Grantee shall bear interest at the rate of provided in the Note, if any, until paid to the Grantee by the Grantor, and for payment of such sums and interest, if any, this Mortgage shall stand as security.

8. Without the prior written consent of the Grantee which consent shall not be unreasonably withheld, the Grantor shall not suffer or permit any termination, cancellation, amendment, modification, substitution or waiver of any right of the Grantor created under or arising out of the Lease or any rights appurtenant to the Premises that may be created hereafter in addition to or supplementing the aforesaid. Grantee may enter upon the Mortgaged Premises from time to time through its employees and agents to inspect the Mortgaged Premises.

9. If any one or more of the following "Events of Default" shall occur and be continuing:

(i) Default in the payment of the principal of the Note, or in the payment of interest on the Note, if any, or in the payment of any other indebtedness owing by the Grantor to the Grantee under the Note, now existing or hereinafter incurred, for more than ten (10) days from the date when the same shall be due; or

(ii) Failure by the Grantor to observe or perform any covenant contained in this Mortgage or the Note for a period of thirty (30) days after written notice to Grantor and the limited partners of Grantor; or

(iii) Any representation or warranty made by the Grantor herein, or any statement, certificate or other data furnished in connection herewith, proves to be incorrect in any material respect when made; or

(iv) Grantor or any endorser, guarantor, maker or surety of the Indebtedness shall (1) apply for or consent to the appointment of a receiver, custodian, trustee or liquidator of Grantor or any such endorser, guarantor, maker or surety, of all or a substantial part of its assets; (2) file or have filed against it any petition or answer seeking as to itself the liquidation, arrangement, reorganization, or the like under any insolvency or bankruptcy law; or (3) take any action for the purpose of effecting any of the foregoing; or

(v) An order, judgment or decree shall be entered, without the application, approval or consent of Grantor or any endorser, guarantor, maker or surety of the Indebtedness, by any court of competent jurisdiction, approving a petition seeking the liquidation, arrangement or reorganization of any of them or appointing a receiver, trustee or liquidator of any of them or of all or a substantial part of any of their assets, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days; or

(vi) except for the mortgages set forth in Section 13 and the purchase option set forth

in Section 14 of this Mortgage, Grantor shall convey to any other party a security interest in the Mortgaged Premises, or any part thereof, without the prior written consent of the Grantee, or in the event the Grantor shall sell, transfer or otherwise dispose of the Mortgaged Premises, or any part thereof, or if the legal or equitable title shall become vested in any other person, without the prior written consent of the Grantee; or

(vii) Grantor shall without the prior written consent of Grantee merge into or consolidate with or into any corporation or entity or acquire all or substantially all of the assets of another corporation;

then, upon notice in writing to the Grantor and the limited partners of the Grantor of the occurrence of one or more of the foregoing Events of Default, then, and in any such event, the Grantor and the limited partner of the Grantor shall have ninety (90) days within which to cure such Event of Default, provided, however, that if such Event of Default has not been cured upon the expiration of such ninety (90) day period, the entire Indebtedness secured hereby and all other amounts secured hereby shall, at the option of the Grantee, become immediately due and payable without any demand or notice and the Grantee shall have the immediate right to foreclose this Mortgage.

10. No delay or failure of the Grantee to exercise any right, power, privilege or option herein given to or conferred upon the Grantee shall constitute a waiver of or estop Grantee from afterwards exercising the same or any other right, power, privilege or option at any time, and the payment or contraction to pay by the Grantee of anything the Grantor has herein agreed to pay shall not constitute a waiver of any Event of Default of the Grantor in failing to make any such payment and shall not estop the Grantee from foreclosing this Mortgage on account of such failure of the Grantor. All rights, powers, privileges, options and remedies herein given to or conferred upon the Grantee shall be cumulative and no one or more of them shall be exclusive of the other or others, or of any right or remedy now or hereafter given or allowed by law.

11. Notwithstanding any taking of all or any part of the Mortgaged Premises by eminent domain by any public or quasi-public authority or corporation or any other injury to or decrease in value of the Mortgaged Premises resulting from any alteration of the grade of any highway or street or any other action by any such public or quasi-public authority or corporation, the Grantor shall be obligated under the Note as provided therein. Any award in payment resulting therefrom, shall be paid to the Grantee to the extent of the Indebtedness secured hereby, and the Grantee may hold such proceeds as additional collateral hereunder. To the extent feasible, the Grantor shall alter, restore or rebuild any part of the Mortgaged Premises which may be altered, damaged or destroyed as a result of any such taking or alteration of grade or other such action by any such public or quasi-public authority or corporation, and if the Grantor is not then in default hereunder, such amount of such award or payment as may be necessary to reimburse the Grantor, without interest, for the cost of any such alteration, restoration or rebuilding by the Grantor may, at the reasonable option of the Grantee, be paid by the Grantee to the Grantor, otherwise, the same may be retained by the Grantee and applied, in the discretion of the Grantee, to the Indebtedness secured hereby. Any excess shall be remitted to the Grantor. If prior to the receipt by the Grantee of such award or payment the Mortgaged Premises shall have been sold on foreclosure of this Mortgage, the Grantee shall have the right to receive said award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon,

whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, together with the reasonable counsel fees, costs and disbursements incurred by the Grantee in connection with the collection of such award or payment. The rights of Grantee under the provisions of this Section 11 are subject to any such rights of prior mortgagees of record.

12. The Grantee shall not be obligated to release, or be prevented from foreclosing or enforcing this Mortgage upon all or any part of the Mortgaged Premises, unless and until all items hereby secured shall have been paid in full; and shall not be required to accept any part or parts of said Mortgaged Premises as distinguished from the entire whole thereof as payment of or upon the Indebtedness secured hereby to the extent of the value of any such part or parts; and shall not be compelled to accept or allow any apportionment of the said debt to or among any separate parts of the said Mortgaged Premises.

13. Notwithstanding anything contained herein to the contrary, this Mortgage and the rights of the Grantee hereunder shall be and are hereby expressly made subject to and subordinate at all times to any mortgage on the Mortgaged Premises and any assignments of leases and rents and UCC-1 financing statements affecting the Mortgaged Premises from the Grantor in favor of Bankwell Bank ("Bankwell"), to secure two (2) loans from Bankwell to the Grantor in the respective maximum principal amounts of \$2,134,580 and \$4,700,000, as well as any other project financing now or hereafter existing, and to all amendments, modifications, renewals, extensions, consolidations and replacements of the foregoing, and to all advances made or hereafter to be made upon the security thereof. Such subordination(s) shall be automatic and shall require no further action by the Grantor or the Grantee for its or their effectiveness.

14. Notwithstanding anything contained herein to the contrary, this Mortgage, the Mortgaged Premises and the rights of the Grantee hereunder shall be and are hereby expressly made subject to the Affordability Plan, dated January 27, 2015, and Section 8-30g of the Connecticut General Statutes, as amended.

15. The execution and delivery of a purchase option and right of first refusal agreement described in that certain Amended and Restated Limited Partnership Agreement of the Grantor, dated as of the date hereof shall not constitute a default under this Mortgage of the Note or accelerate the maturity of the Loan. Any requisite consent of Grantee to (a) the exercise of said purchase option and right of first refusal agreement by the project sponsor identified therein and to (b) the assumption without penalty of Loan obligations by the project sponsor and the release of Grantor from such obligations, shall not be unreasonably withheld. Subject to any such consent requirement, the exercise of rights under such agreement shall not constitute a default or accelerate maturity of the Loan.

16. All provisions and promises in the Note secured hereby and any security agreement given in connection herewith, shall be and hereby are made and adopted as covenants of the Grantor and part of this Mortgage.

17. This mortgage shall constitute a security agreement and financing statement as provided in Section 42a-9-402(6) of the Connecticut General Statutes. Upon and after any default,

the Grantee shall have all of the remedies of a secured party under the Uniform Commercial Code.

18. This Mortgage shall not be amended, modified or changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

19. All the covenants, conditions and agreements hereof shall bind the successors and assigns of the Grantor and shall inure to the benefit of and be available to the successors and assigns of the Grantee.

20. This is an "OPEN-END MORTGAGE" made pursuant to and subject to all of the terms and provisions of Section 49-2(c) of the Connecticut General Statutes and the holder hereof shall have all of the rights, powers and protection to which the holder of an OPEN-END MORTGAGE is entitled under Connecticut law. Upon request the Grantee may, in its discretion, make future advances to the Grantor, notwithstanding any repayments or prepayments of the outstanding principal balance of the Note. Any such future advance and the interest payable thereon shall be secured by this mortgage, equally with, and with the same priority over other claims as the original debt secured hereby when evidenced by promissory notes stating that the notes are secured hereby. At no time shall the principal amount of the debt secured by this mortgage exceed the original loan authorized, nor shall the maturity of any future advance secured hereby extend beyond the maturity of the original mortgage debt as set forth in the Note.

NOW THEREFORE, if all the agreements herein contained shall be fully and faithfully performed and said Note shall be well and truly paid in all respects according to its tenor, then this deed shall be void, otherwise to remain in full force and effect.

[SIGNATURE PAGE FOLLOWS]


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IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly executed and delivered as of the 27 day of January, 2016.

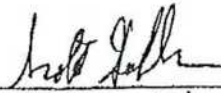
Signed, sealed and delivered
in the presence of:

MILLPORT PHASE I
LIMITED PARTNERSHIP

By: Millport Phase I GP Corporation
Its General Partner


Print Name: Dimmitt Tanguen


Print Name: BARNARD E. SIMPSON

By: 
Name: Scott Hobbs
Title: Chairman
Hereunto Duly Authorized

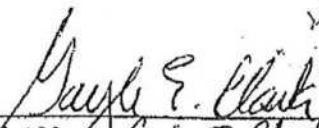
STATE OF CONNECTICUT)

: ss. New Canaan

January 26, 2016

COUNTY OF FAIRFIELD)

Personally appeared Scott Hobbs, known to me to be the Chairman of Millport Phase I GP Corporation, a Connecticut corporation, the general partner of Millport Phase I Limited Partnership, a Connecticut limited partnership, and that as such signer and sealer of the foregoing instrument acknowledged the execution of the same to be his/her free act and deed as such officer of such corporation, and the free act and deed of said limited liability company and limited partnership, before me.


Print Name: Gayle E. Clarke
Notary Public
My Commission Expires: 11/30/20
Commissioner of the Superior Court

Signature page to Open-End Mortgage Deed

SCHEDULE A
LEGAL DESCRIPTION

All that certain piece, parcel or tract of land, being a portion of that new consolidated parcel, comprised of former Assessor Lot 623 and a portion of former Assessor Lot 630, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, shown and designated as Parcel 623, 33 Millport Avenue and a portion of Parcel 630, 35 Millport Avenue, within shaded area on a map entitled "ALTA/ACSM LAND TITLE SURVEY (PROPERTY SURVEY) 33, 35, 41, 57 & 65 MILLPORT AVENUE DEPICTING LEASE PARCEL 1 PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN NEW CANAAN, CONNECTICUT" Sheets 1 of 2 and 2 of 2 dated December 18, 2015, revised January 22, 2016, Scale 1"=30', made by William W. Seymour & Associates, P.C., which map is or will be filed in the Office of the Town Clerk of New Canaan, more particularly bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point being the intersection of said northwesterly line of Millport Avenue with the former division line between properties known as 33 Millport Avenue and 41 Millport Avenue;

Thence, running northwesterly along said former division line between properties known as 33 Millport Avenue and 41 Millport Avenue north 45°58'50" west a distance of 229.69 feet to a point on the former division line between properties known as 35 Millport Avenue and 57 Millport Avenue;

Thence, running northeasterly through said property known as 35 Millport Avenue north 44°01'10" east a distance of 100.00 feet to a point on the division line between said property known as 35 Millport Avenue and property now or formerly of New Canaan Medical Properties LLP and known as 173 East Avenue;

Thence, running southeasterly, northeasterly and again southeasterly along said division line between properties known as 173 East Avenue, 35 Millport Avenue and 33 Millport Avenue south 45°58'50" east a distance of 70.39 feet and north 62°37'30" east a distance of 5.07 feet and south 57°58'00" east a distance of 24.93 feet and south 50°38'00" east a distance of 5.19 feet and south 57°04'20" east a distance of 92.74 feet to the aforesaid northwesterly line of Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south 01°56'30" west a distance of 38.04 feet and south 20°47'30" west a distance of 39.35 feet and south 45°52'30" west a distance of 50.22 feet and south 53°23'00" west a distance of 13.83 feet to the intersection of said northwesterly line of Millport Avenue with the former division line between properties known as 33 Millport Avenue and 41 Millport Avenue and the point of beginning.

the "Leasehold Parcel",

Together with the rights, provisions, terms and conditions set forth in an Easement Agreement by and among the Housing Authority of the Town of New Canaan, NCHA Mill Apartments Limited Partnership and Millport Phase I Limited Partnership, and consented to by the State of Connecticut Department of Housing, People's United Bank, National Association, the United States Department of Housing and Urban Development, U.S. Bank National Association, as Trustee, and Bankwell Bank, dated January 26, 2016, and recorded prior hereto in the New Canaan Land Records.

Such easements and rights of way are also shown and depicted on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING LEASE PARCELS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is or will be filed in the Office of the Town Clerk of New Canaan as:

"Easement Area X", more particularly bounded and described as follows:

Beginning at a point, said point being the intersection of the former division lines between properties known as 35, 41 & 57 Millport Avenue, said point being further described as lying north 45°58'50" west a distance of 222.40 feet from the intersection of the former division line between properties known as 33 & 41 Millport Avenue with the northwesterly line of Millport Avenue;

Thence, running southwesterly along the former division line between said properties known as 41 & 57 Millport Avenue south 44°32'10" west a distance of 14.79 feet to a point;

Thence, running northerly and northeasterly through said property known as 57 Millport Avenue north 13°46'40" west a distance of 2.90 feet and north 44°01'10" east a distance of 13.24 feet to a point on the aforesaid former division line between properties known as 35 & 57 Millport Avenue;

Thence, running southeasterly along said former division line between said properties known as 35 & 57 Millport Avenue south 45°58'50" east a distance of 2.59 feet to the point of beginning.

"Easement Area Z", more particularly bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point being the intersection of said northwesterly line of Millport Avenue with the former division line between properties known as 33 Millport Avenue and 41 Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south 53°23'00" west a distance of 43.21 feet to a point;

Thence, running northwesterly, southwesterly and again northwesterly through said property known as 41 Millport Avenue north 29°10'20" west a distance of 81.00 feet and south 60°10'00" west a distance of 30.90 feet and north 29°50'00" west a distance of 53.20 feet and north 35°49'30" west a distance of 67.50 feet and north 13°46'40" west a distance of 13.85

feet to a point on the former division line between properties known as 41 Millport Avenue and 57 Millport Avenue;

Thence, running northeasterly along said former division line between properties known as 41 Millport Avenue and 57 Millport Avenue north $44^{\circ}32'10''$ east a distance of 14.79 feet to a point on the aforesaid former division line between properties known as 33 Millport Avenue and 41 Millport Avenue;

Thence, running southeasterly along said former division line between properties known as 33 Millport Avenue and 41 Millport Avenue south $45^{\circ}58'50''$ east a distance of 222.40 feet to the aforesaid northwesterly line of Millport Avenue and the point of beginning.

and "Driveway Easement Parcel" shown and depicted as "Proposed Driveway Easement for Phase I" on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING DRIVEWAY EASEMENTS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., Scale 1"=30 ft., by William F. Seymour & Associates, P.C., bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point lying north $78^{\circ}17'30''$ east 1.87 feet of the intersection of the former division line between properties known as 65 & 57 Millport Avenue with said northwesterly line of Millport Avenue;

Thence, running northerly and northwesterly a distance of 10.52 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $20^{\circ}05'35''$ and having a chord bearing of north $01^{\circ}39'42''$ west and north $11^{\circ}42'30''$ west a distance of 76.82 feet and 61.26 feet along an arc curving to the right having a radius of 39.00 feet and subtending a central or delta angle of $89^{\circ}59'20''$ to a point;

Thence, running northeasterly, southeasterly and again northeasterly north $78^{\circ}16'50''$ east a distance of 48.75 feet and 10.92 feet along an arc curving to the right having a radius of 15.00 feet and subtending a central or delta angle of $41^{\circ}42'10''$ and south $60^{\circ}01'00''$ east a distance of 4.71 feet and 6.23 feet along an arc curving to the left having a radius of 6.00 feet and subtending a central or delta angle of $59^{\circ}30'50''$ and north $60^{\circ}28'10''$ east a distance of 84.71 feet to a point on the southerly line of Phase I - Easement Area 'Z';

Thence, running southeasterly along said southerly line of Phase I - Easement Area 'Z' south $29^{\circ}31'50''$ east a distance of 20.00 feet to a point;

Thence, southwesterly and southeasterly south $60^{\circ}28'10''$ west a distance of 74.22 feet and south $78^{\circ}16'50''$ west a distance of 84.18 feet and 23.56 feet along an arc curving to the left having a radius of 15.00 feet and subtending a central or delta angle of $89^{\circ}59'20''$ and south $11^{\circ}42'30''$ east a distance of 68.57 feet and 20.00 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $38^{\circ}11'39''$ and a chord bearing of south $30^{\circ}48'19''$ east to a point on the aforesaid northwesterly line of Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south $78^{\circ}17'30''$ west a distance of 32.25 feet to the point of beginning.

which maps are on file or will be filed in the Office of the Town Clerk of New Canaan, respectively, (hereinafter, the **"Easement Parcels"**).

Together with the rights, provisions, terms and conditions set forth in a Ground Lease from the Housing Authority of the Town of New Canaan to Millport Phase I Limited Partnership, a Notice of which is dated January 26, 2016, and recorded prior hereto in the New Canaan Land Records.

All of the above referred to as the **"Premises"**.

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SCHEDULE A-1
Encumbrances

AS TO MILLPORT PHASE I LIMITED PARTNERSHIP LEASEHOLD PARCEL

1. Real estate taxes and assessments for the Grand List of October 1, 2014 is tax exempt; Real estate taxes and assessments on the Grand List of October 1, 2015 and all subsequent years, which are not yet due and payable. As of the date of this policy, the Land is tax exempt.
2. Water use charges as may be due Aquarion Water Company. Said charges are reported to be current.
3. Permit granted by the Town of New Canaan Inland Wetlands Commission dated December 31, 2014 and recorded in Volume 929 at Page 444 of the New Canaan Land Records. (Affects former Lot 645, former Lot 644 and former Lot 643)
4. Rights, provisions, terms and conditions set forth in a Ground Lease from the Housing Authority of the Town of New Canaan to Millport Phase I Limited Partnership, a Notice of which is dated January 27, 2016, and recorded in the New Canaan Land Records.
5. Rights, provisions, terms and conditions set forth in an Easement Agreement by and among the Housing Authority of the Town of New Canaan, NCHA Mill Apartments Limited Partnership and Millport Phase I Limited Partnership, and consented to by the State of Connecticut Department of Housing, People's United Bank, National Association, the United States Department of Housing and Urban Development, U.S. Bank National Association, as Trustee, and Bankwell Bank, dated January 27, 2016, and recorded in the New Canaan Land Records, comprehensively hereinafter referred to as the "Easement Agreement".
6. Extended Low-Income Housing Commitment from Millport Phase I Limited Partnership to the Connecticut Housing Finance Authority dated January 27, 2016, and recorded in the New Canaan Land Records.
7. Land Use Restriction Agreement by and between the Housing Authority of the Town of New Canaan and Millport Phase I Limited Partnership dated January 27, 2016, and recorded in the New Canaan Land Records.
8. Open-End Construction Leasehold Multifamily Mortgage, Assignment of Leases, Security Agreement and Fixture Financing Statement in the amount of \$6,834,580.00 from Millport Phase I Limited Partnership in favor of Bankwell Bank, dated January 27, 2016, and recorded in the New Canaan Land Records.
9. Open-End Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing from Millport Phase I Limited Partnership to the Housing Authority of the Town of New Canaan in the amount of up to \$3,000,000.00 dated January 27, 2016, and recorded in the New Canaan Land Records.
10. Option and Right of First Refusal Agreement by and among Millport Phase I Limited Partnership, Millport Phase I GP Corporation, and the Housing Authority of the Town of New Canaan, consented to by People's United Bank, National Association dated January 27, 2016, and

recorded in the New Canaan Land Records.

As to former Lot 623 - 33 MILLPORT AVENUE

11. Zoning variance granted by the New Canaan Zoning Board of Appeals dated December 4, 1989 and recorded in Volume 365 at Page 488 of the New Canaan Land Records.
12. Permit granted by the Town of New Canaan Inland Wetlands Commission dated December 31, 2014 and recorded in Volume 929 at Page 444 of the New Canaan Land Records

As to former Lot 630 - 35 MILLPORT AVENUE

13. Permit granted by the Town of New Canaan Inland Wetlands Commission dated December 31, 2014 and recorded in Volume 929 at Page 444 of the New Canaan Land Records.

As to appurtenant easement rights in the Easement Agreement on former Lot 645, former Lot 644 and former Lot 643 - 41, 57 and 65 MILLPORT AVENUE

14. As to the Easement Parcels: rights of residential tenants to periodic tenancy, as tenants only, under unrecorded leases, with no rights of first refusal or rights to purchase.
15. Declaration of Trust by the Housing Authority of the Town of New Canaan in favor of the United States of America dated June 17, 2002 and recorded in Volume 593 at Page 87 of the New Canaan Land Records, as partially released by Partial Release dated as of June 11, 2010 and recorded in Volume 828 at Page 211 of said Land Records. (Affects former Lot 644), *as affected by the Easement Agreement defined in item 5 above.*
16. Special permit granted by the Planning & Zoning Commission of the Town of New Canaan recorded September 4, 2007 in Volume 775 at Page 317 of the New Canaan Land Records. (Affects former Lot 645, former Lot 644 and former Lot 643)
17. Special permit granted by the Planning & Zoning Commission of the Town of New Canaan recorded March 10, 2008 in Volume 784 at Page 609 of the New Canaan Land Records. (Affects former Lot 645, former Lot 644 and former Lot 643)
18. Land Use Restriction Agreement by and among The New Canaan Housing Authority, NCHA Mill Apartments Limited Partnership and U.S. Bank National Association, as Trustee dated as of December 1, 2009 and recorded in Volume 819 at Page 650 of the New Canaan Land Records, as amended by First Amendment dated as of July 1, 2010 and recorded in Volume 829 at Page 970 of said Land Records. (Affects former Lot 645 and former Lot 643, and a portion of former Lot 644), *as affected by the Easement Agreement defined in item 5 above.*
19. Access/Utility Easement Agreement by and between The New Canaan Housing Authority and NCHA Mill Apartments Limited Partnership dated as of December 1, 2009 and recorded in Volume 819 at Page 679 of the New Canaan Land Records. (Affects former Lot 644), *as affected by the Easement Agreement defined in item 5 above.*

20. Ground Lease from The New Canaan Housing Authority to NCHA Mill Apartments Limited Partnership, a notice of which is dated as of December 1, 2009 and recorded in Volume 819 at Page 675 of the New Canaan Land Records, as amended by Amendment to Notice of Ground Lease and Reservation of Access Easement dated as of July 1, 2010 and recorded in Volume 829 at Page 958 of said Land Records; as affected by Subordination by NCHA Mill Apartments Limited Partnership dated March 30, 2010 and recorded in Volume 825 at Page 1041 of said Land Records. (Affects former Lot 645 and former Lot 643, and a portion of former Lot 644), *as affected by the Easement Agreement defined in item 5 above.*
21. Right of Way Agreement in favor of Aquarion Water Company dated March 22, 2010 and recorded in Volume 823 at Page 925 of the New Canaan Land Records. (Affects former Lot 645, former Lot 644 and former Lot 643).
22. Electric Distribution Easement in favor of The Connecticut Light and Power Company dated March 22, 2010 and recorded in Volume 823 at Page 928 of the New Canaan Land Records (Affects former Lot 645, former Lot 644 and former Lot 643).
23. Extended Low-Income Housing Commitment by and between NCHA Mill Apartments Limited Partnership and the Connecticut Housing Finance Authority dated March 19, 2010 and recorded in Volume 823 at Page 1112 of the New Canaan Land Records. (Affects former Lot 645 and former Lot 643, and a portion of former Lot 644).
24. Declaration of Land Use Restrictive Covenants by NCHA Mill Apartments Limited Partnership to the State of Connecticut, Department of Economic and Community Development dated as of April 5, 2010 and recorded in Volume 824 at Page 462 of the New Canaan Land Records, as amended by Amended and Restated Declaration of Land Use Restrictive Covenants dated as of July 1, 2010 and recorded in Volume 830 at Page 102 of said Land Records. (Affects former Lot 645 and former Lot 643, and a portion of former Lot 644), *as affected by the Easement Agreement defined in item 5 above.*
25. License granted by the Town of New Canaan Inland Wetlands Commission dated April 12, 2010 and recorded in Volume 824 at Page 567 of the New Canaan Land Records. (Affects former Lot 645, former Lot 644 and former Lot 643).
26. Permit granted by the Town of New Canaan Inland Wetlands Commission dated December 31, 2014 and recorded in Volume 929 at Page 444 of the New Canaan Land Records. (Affects former Lot 645, former Lot 644 and former Lot 643).
27. Terms and conditions set forth in that certain Easement Agreement defined in item 5 of Schedule B of this policy.
28. Leasehold Open-End Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Financing Statement from NCHA Mill Apartments Limited Partnership in favor of The New Canaan Housing Authority in the amount of \$4,000,000.00 dated as of December 1, 2009 and recorded in Volume 819 at Page 686 of the New Canaan Land Records, as assigned to U.S. Bank National Association, as Trustee by Assignment of Open-End Leasehold Mortgage and Note dated as of December 1, 2009 and recorded in Volume 819 at Page 768 of said Land Records; as amended by First Amendment dated as of July 1, 2010 and recorded in Volume 829 at Page 986 of said Land Records; as affected by Subordination by U.S. Bank National Association, as Trustee dated April 8, 2010 and recorded in Volume 825 at Page 1040 of said Land Records. (Affects

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former Lot 645 and former Lot 643, and a portion of former Lot 644), *as affected by the Easement Agreement defined in item 5 above.*

29. UCC-1 Financing Statement from NCHA Mill Apartments Limited Partnership in favor of U.S. Bank National Association recorded January 4, 2010 in Volume 819 at Page 772 of the New Canaan Land Records, as amended by Amendment recorded July 14, 2010 in Volume 829 at Page 997 of said Land Records. (Affects former Lot 645 and former Lot 643, and a portion of former Lot 644), *as affected by the Easement Agreement defined in item 5 above.*
30. Open-End Mortgage Deed (Leasehold Mortgage) from NCHA Mill Apartments Limited Partnership in favor of the State of Connecticut, Department of Economic and Community Development in the amount of \$2,138,150.00 dated as of April 5, 2010 and recorded April 12, 2010 in Volume 824 at Page 474 of the New Canaan Land Records, as amended by Amended and Restated Open-End Mortgage Deed (Leasehold Mortgage) dated as of July 1, 2010 and recorded July 19, 2010 in Volume 830 at Page 118 of said Land Records. (Affects former Lot 645 and former Lot 643, and a portion of former Lot 644), *as affected by the Easement Agreement defined in item 5 above.*
31. Collateral Assignment of Leases and Rents from NCHA Mill Apartments Limited Partnership in favor of The State of Connecticut, Department of Economic and Community Development dated as of April 5, 2010 and recorded in Volume 824 at Page 494 of the New Canaan Land Records. (Affects former Lot 645 and former Lot 643, and a portion of former Lot 644), *as affected by the Easement Agreement defined in item 5 above.*

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SCHEDULE B

(See Attached Promissory Note)

PROMISSORY NOTE

Up to \$3,000,000.00

Effective as of January 1, 2016

FOR VALUE RECEIVED, the undersigned, **MILLPORT PHASE I LIMITED PARTNERSHIP**, a Connecticut limited partnership, with a principal place of business at 57 Millport Avenue, New Canaan, Connecticut 06840 (the "Borrower"), unconditionally promises to pay to the order of the **HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN**, a municipal housing authority duly organized and existing pursuant to the laws of the State of Connecticut, having an address at 57 Millport Avenue, New Canaan, Connecticut 06840 (the "Lender"), the maximum principal amount of up to **THREE MILLION AND 00/100 DOLLARS (\$3,000,000.00)** or such lesser amount of the aggregate outstanding principal amount of all disbursements made by Lender to Borrower hereunder pursuant to the terms hereof and evidenced on Schedule 1 attached hereto and made a part hereof. The Borrower further agrees to pay all taxes levied or assessed upon said principal sum against the payee or holder of this "Note" (except income taxes) and all costs of collection, including reasonable attorneys' fees, incurred by Lender or by the holder of this Note in any action to collect this Note or to enforce the "Mortgage" (as defined below), whether or not suit is brought.

By its acceptance of this Note, including Schedule 1, and by its recording of the Mortgage defined below, Lender acknowledges that the funds to be loaned to Borrower by Lender consist of an initial commitment to disburse **ONE MILLION NINE HUNDRED THIRTY THOUSAND AND 00/100 DOLLARS (\$1,930,000.00)** (the "Initial Disbursements") and subsequent disbursements of up to **ONE MILLION SEVENTY THOUSAND AND 00/100 DOLLARS (\$1,070,000.00)** to the extent that such funds become available to the Lender (the "Remaining Disbursements", and together with the Initial Disbursements, the "Disbursements"). The Disbursements shall be made available to the Borrower in the amounts and on the dates to be shown and entered by Lender on Schedule 1. At no time will the Disbursements exceed **THREE MILLION AND 00/100 DOLLARS (\$3,000,000.00)**.

The Borrower agrees to pay interest at a rate of zero percent (0%), based on a year of 360 days; provided, however, that interest payable on the first and last month shall be based on the number of days actually elapsed during which the principal was outstanding.

The unpaid principal amount hereunder shall become due and payable forty (40) years from the date hereof (the "Maturity Date"). Subject to Section 4.8 of that certain Loan Agreement (and Security Agreement), dated as of January 1, 2016, by and among the Borrower, the Lender and Bankwell Bank, the Borrower may prepay at any time any part or all of the unpaid principal balance.

Principal is payable in lawful money of the United States of America to the Lender at the address above, or at such other place as the holder of this Note shall from time designate, in immediately available funds.

This Note is secured by a leasehold mortgage dated of even date herewith relating to a leasehold interest in that certain property situated in the Town of New Canaan, the County of Fairfield and the State of Connecticut (the "Mortgaged Premises") as more particularly described in the Open-End Leasehold Mortgage Deed securing this Note (the "Mortgage"), recorded or to be recorded in the Land Records of the Town of New Canaan in the State of Connecticut.

This Note is a nonrecourse obligation of the Borrower. Neither the Borrower, nor the general or limited partners of the Borrower, nor any other party shall have any personal liability for repayment of this Note. The sole recourse of the Lender for repayment of this Note shall be the exercise of its rights under the Mortgage.

Each of the following events or conditions shall be an "Event of Default" under this Note: (a) failure of the Borrower to pay any of its liabilities or obligations to Lender (whether under this Note or the Mortgage) for more than ten (10) days from the date due to be paid; or (b) failure by the Borrower to comply with the terms of, or the occurrence of an Event of Default under the Mortgage, or any other agreement which may secure this Note beyond any applicable grace period.

Upon notice in writing to the Borrower and to the limited partners of the Borrower of the occurrence of an Event of Default specified above, then, and in any such event, the Borrower and the limited partners of the Borrower shall have ninety (90) days within which to cure such Event of Default, provided, however, that if such Event of Default has not been cured upon the expiration of such ninety (90) day period, then, in any such event, and notwithstanding any other provisions of this Note, the entire unpaid principal sum hereof and any late charges, as specified above, shall immediately become due and payable, without the necessity for presentment, protest, demand or other notice of any kind, all of which are expressly waived, at the option of Lender or the holder hereof.

No failure on the part of the Lender or holder of this Note to exercise and no delay in exercising any right, remedy or power hereunder or under any other document or agreement executed in connection herewith shall operate as a waiver thereof, nor shall any single or partial exercise by the Lender or holder of this Note of any right, remedy or power hereunder or under any other document or agreement executed in connection herewith preclude any other or future exercise of any other right, remedy or power.

Any delay on the part of the holder hereof in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted for one occasion shall not operate as a waiver in the event of any subsequent default. It is hereby agreed that any extension or extensions of time of payment of any sum or sums payable hereunder, which may be granted by the holder of this Note before, at or after maturity at the request of the Borrower shall be binding upon the Borrower which shall continue to be bound for all payments under this Note.

This Note is executed and delivered in the State of Connecticut and is to be governed by and construed in accordance with the laws of the State of Connecticut.

THE BORROWER AND THE LENDER SHALL AND THEY HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY THE LENDER OR THE BORROWER AGAINST THE OTHER TO ENFORCE THIS NOTE OR ON ANY OTHER MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS NOTE.

THE BORROWER HEREBY ACKNOWLEDGES THAT THE LOAN EVIDENCED HEREBY WILL BE USED EXCLUSIVELY FOR BUSINESS AND COMMERCIAL PURPOSES AND HEREBY WAIVES PRESENTMENT, PROTEST AND NOTICE OF DISHONOR AND ANY OTHER FORMALITIES WHICH MAY AFFECT OR IMPEDE THE RIGHT OF THE HOLDER OF THIS NOTE TO EXERCISE ITS RIGHTS OR TO COLLECT THE SUMS DUE HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY AND ALL RIGHTS UNDER CHAPTER 903a OF THE CONNECTICUT GENERAL STATUTES, AS THE SAME MAY BE AMENDED, OR UNDER SIMILAR LAWS THAT MAY BE HEREAFTER ENACTED, OR AS OTHERWISE ALLOWED BY ANY STATE OR FEDERAL LAW WITH RESPECT TO ANY PREJUDGMENT REMEDY WHICH THE LENDER OR THE HOLDER HEREOF MAY USE.

In the event that any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part, or in any respect, or in the event that any one or more of the provisions of this Note shall operate, or would prospectively operate, to invalidate this Note, then, and in any such event, such provision or provisions only shall be deemed null and void and of no force or effect and shall not affect any other provision of this Note, and the remaining provisions of this Note shall remain operative and in full force and effect, shall be valid, legal and enforceable, and shall in no way be affected, prejudiced or disturbed thereby.

The Mortgage and this Note shall be automatically subordinate and subject to any bona fide mortgage, assignment of leases and rents, declaration of restrictive covenants, loan or security agreement, and/or any other collateral or financing instruments recorded or to be recorded on the Mortgaged Premises (and any modifications or amendments thereto in any respect) to be granted in favor of any governmental, quasi-governmental, state, public or federal agency or department or any financial institution or lending organization relating to the acquisition, development, financing and/or construction of a certain 33-unit affordable housing project to be constructed upon the Mortgaged Premises.

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

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BORROWER:

MILLPORT PHASE I LIMITED PARTNERSHIP

By: Millport Phase I GP Corporation
Its General Partner

By: _____
Name: _____
Title: _____
Hereunto Duly Authorized

COPY

Sponsor Note.

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SCHEDULE 1

DISBURSEMENT AND PAYMENT SCHEDULE

DISBURSEMENTS BY LENDER:

<u>Date of Disbursement</u>	<u>Amount of Disbursement</u>	<u>Signature of Officer of Lender Acknowledging Disbursement</u>
_____, 2016	\$1,930,000.00	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

Received for record on 1-27-16 at 3:36 pm
 and recorded by Claudia A. Weber
 TOWN CLERK

Sponsor Note

When Recorded Return to:
Robinson & Cole LLP
280 Trumbull Street
Hartford, Connecticut 06103
Attn: David M. Panico, Esq.

EXECUTION COPY



Doc ID: 002549250024 Type: LAN
Book 950 Page 312 - 335
File# 2237

LAND USE RESTRICTION AGREEMENT

by and between

HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN,
and

MILLPORT PHASE I LIMITED PARTNERSHIP

Dated as of January 1, 2016

(Phase I = 33 units
@ 33 1/2 Millport
Avenue)

\$6,834,580 HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN
MULTIFAMILY HOUSING REVENUE BONDS
(MILLPORT PHASE I PROJECT), SERIES 2016

LAND USE RESTRICTION AGREEMENT

Pertaining to:

\$6,834,580 HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN
MULTIFAMILY HOUSING REVENUE BONDS
(MILLPORT PHASE I PROJECT), SERIES 2016

THIS AGREEMENT, together with any amendments or supplements hereto (this "Agreement"), dated as of January 1, 2016, is entered into by the HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, a public body politic and corporate, organized and existing under the laws of the State of Connecticut, and having its principal place of business at 57 Millport Avenue, New Canaan, Connecticut 06840 (the "Authority"), and MILLPORT PHASE I LIMITED PARTNERSHIP, a Connecticut limited partnership with its principal place of business located at 57 Millport Avenue, New Canaan, Connecticut 06840 (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the "Borrower");

WITNESSETH:

WHEREAS, pursuant to Chapter 128 of the General Statutes of Connecticut, Revision of 1958, as amended (the "Act") the Authority has authorized the issuance of \$6,834,580 aggregate principal amount of its Multifamily Housing Revenue Bonds (Millport Phase I Project), Series 2016 comprised of \$4,700,000 Housing Authority of the Town of New Canaan Multifamily Housing Revenue Bonds (Millport Phase I Project), Series 2016A (the "Series A Bonds") and \$2,134,580 Housing Authority of the Town of New Canaan Multifamily Housing Revenue Bonds (Millport Phase I Project), Series 2016B (the "Series B Bonds" and together with the Series A Bonds, the "Bonds") under that certain Loan Agreement, dated as of January 1, 2016, by and among Bankwell Bank (the "Purchaser"), the Authority and the Borrower, as supplemented and amended from time to time (the "Loan Agreement");

WHEREAS, the proceeds of the Bonds shall be used to fund a loan to the Borrower pursuant to the Loan Agreement, to provide, in part, financing for the demolition, construction, reconstruction, rehabilitation and equipping of an apartment project located in the Town of New Canaan, Connecticut and known as Millport Apartments located on the real property site described in Exhibit A hereto (as further described herein, the "Project"), to be occupied by tenants meeting the requirements of Section 142(d)(1) of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, the Code and the Treasury Regulations (as hereinafter defined) and rulings promulgated with respect thereto prescribe that the use and operation of the Project (as hereinafter defined) be restricted in certain respects and in order to ensure that the Project will be used and operated in accordance with the Code and the Treasury Regulations, the Authority and the Borrower have determined to enter into this Agreement in order to set forth certain terms and conditions relating to the acquisition, construction, use and operation of the Project;

WHEREAS, the Authority is the owner of the Land (as hereinafter defined) and the Project (as hereinafter defined) as of the date hereof and pursuant to a Ground Lease, dated as of the date hereof, by and between the Authority as lessor and the Borrower as lessee (the "Ground Lease" a Notice of which will be recorded on the New Canaan Land Records immediately subsequent to the recording of this Agreement), pursuant to which Ground Lease the Authority has leased the Land and transferred the ownership of the Project to the Borrower for a term of ninety (90) years; and

WHEREAS, in order to comply with the Code and the Treasury Regulations, the Borrower hereby subjects the Land and the Project to the terms of this Agreement.

NOW, THEREFORE, in consideration of issuance of the Bonds by the Authority and the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Borrower agree and declare as follows:

SECTION 1. Definitions. When used in this Agreement, the terms defined in this Section 1 shall have the meanings set forth below. All capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

"Act" means Chapter 128 of the Connecticut General Statutes, Sections 8-38 through 8-119s, as the same may be amended from time to time.

"Adjusted Income" means the anticipated total annual income of the individual or family for the Certification Year, determined in accordance with the criteria prescribed by the Secretary of Housing and Urban Development under Section 8(f)(3) of the United States Housing Act of 1937, as amended, and as set forth in the Income Certification of each Tenant who proposes to live in a Unit after the beginning of the Certification Year and who is considered an occupant of the Unit by the Secretary of Housing and Urban Development. Such determination is not affected by income earned or received during the Certification Year which is not included in the Income Certification.

"Agreement" means this Land Use Restriction Agreement by and between the Authority and the Borrower.

"Area" means the Metropolitan Statistical Area or Authority, as applicable, in which the Project is located, as defined by the United States Department of Housing and Urban Project.

"Area Median Gross Income" means income determined by the Secretary of the Treasury in a manner consistent with determinations under Section 8 of the United States Housing Act of 1937, as amended, including adjustments for family size.

"Authority" means the Housing Authority of the Town of New Canaan.

"Available Units" means residential units in the Project that are actually occupied and residential units in the Project that are vacant and have been occupied at least once after becoming available for occupancy, provided that (a) a residential unit that is vacant on the later of (i) the date the Project is acquired or (ii) the issue date of the Notes, is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after the renovations are completed.

"Bond Counsel" means Robinson & Cole LLP, Hartford, Connecticut, or such other independent legal counsel which may be approved by the Authority and whose opinions are regularly and generally accepted nationally in the field of municipal finance.

"Bonds" means the \$4,700,000 Housing Authority of the Town of New Canaan Multifamily Housing Revenue Bonds (Millport Phase I Project), Series 2016A and the \$2,134,580 Housing Authority of

the Town of New Canaan Multifamily Housing Revenue Bonds (Millport Phase I Project), Series 2016B, issued for application by the Borrower to finance the acquisition, construction and equipping of the Project.

"Bondholder" means any person who is or was at any time the registered owner of one or more of the Bonds.

"Borrower" means Millport Phase I Limited Partnership, a Connecticut limited partnership with its principal place of business located at c/o the Housing Authority of the Town of New Canaan, 57 Millport Avenue, New Canaan, Connecticut 06840, and its successors and assigns, and shall also mean each of the Borrower's successors in title to the Project.

"Building" means each of the structures to be owned by the Borrower and to be constructed, reconstructed or rehabilitated, and comprising the Project in New Canaan, Connecticut, consisting of an independent foundation, outer walls and a roof for 2 buildings, all of which contain in the aggregate 33 Units.

"Business Day" means any day other than a Saturday or a Sunday or a day on which national banking institutions in the State of Connecticut are authorized or obligated by law or executive order to be closed.

"Certification Year" means the twelve (12) month period beginning on the later of (a) the date the Unit is first placed in service or (b) the date on which the person first occupies the Unit on a rental basis or signs a lease with respect to the Unit, whichever occurs first.

"Code" means the Internal Revenue Code of 1986, as amended, each reference to the Code is deemed to include (i) any successor internal revenue law and (ii) the applicable regulations whether final, temporary or proposed under the Code or such successor law. Any reference to a particular provision of the Code is deemed to include any successor provision of any successor internal revenue law and applicable regulations whether final, temporary or proposed under such provision or successor provision.

"Commissioner" means the Commissioner of Economic and Community Development of the State of Connecticut or any successor with jurisdiction with respect to the housing comprising the Project.

"Functionally Related and Subordinate Facilities" means property which is functionally related and subordinate to, and of a character and size commensurate with the Project, including heating and cooling equipment, trash disposal equipment, units for resident managers and maintenance personnel and facilities used by the tenants such as parking areas, common areas and other facilities.

"Gross Income" means the gross income of a person (together with the gross income of all persons who intend to reside with such person in one residential unit) as calculated in the manner prescribed under Section 8 of the Housing Act.

"Gross Rent" means the amount charged a Tenant for occupancy of a Unit for the applicable period, including any payments and any utility allowance provided under Section 8 of the United States Housing Act of 1937, as amended.

"Ground Lease" shall have the meaning ascribed to such term in the Recitals above.

"Housing Act" means Section 8 of the United States Housing Act of 1937, as amended, and the regulations thereunder.

"HUD" means the United States Department of Housing and Urban Development.

"Income Certification" means a Tenant Income Certification and a Tenant Income Certification Questionnaire in a form acceptable to the Authority or as otherwise approved by the Authority.

"Land" means the tract of real property described in Exhibit A attached hereto.

"Loan Agreement" means the Loan Agreement, dated as of January 1, 2016, by and among the Authority, the Borrower, and the Purchaser pursuant to which the Authority shall loan the proceeds of the Bonds to the Borrower.

"Low Income" means Adjusted Income which is fifty percent (50%) or less of Area Median Gross Income, determined at least annually on the basis of the current Adjusted Income of the Qualified Tenant.

"Moderate Income" means Adjusted Income which is 60% or less of Area Median Gross Income, determined at least annually on the basis of the current Adjusted Income of the Qualified Tenant.

"Monitoring Agent" means the Authority or such other person who may be subsequently designated by the Authority to receive and review the documents and certificates to be delivered by the Borrower or person occupying a Unit in the Project pursuant to Section 2.2 hereof, and to perform such audits of the operation of the Project as the Authority may require. Such person shall be knowledgeable and experienced in performing the functions required to be performed by the Monitoring Agent hereunder.

"Mortgage Documents" means the Open-End Construction Leasehold Multifamily Mortgage, Assignment of Leases, Security Agreement, and Fixture Financing Statement, UCC-1 Financing Statement, the Easement Agreement dated as January 1, 2016, by and between the Authority, NCHA Mill Apartments Limited Partnership and the Borrower (the "Easement Agreement"), Assignment of Plans, Specifications, Borrowers Rights and Agreement, the Assignment of Permits, Licenses, Approvals and Contracts delivered from the Borrower to the Purchaser in connection with the issuance of the Bonds.

"Note" means the Note or Notes made and delivered by the Borrower and payable to the order of the Authority in the original principal amount of \$6,834,580 and evidenced by the Bonds.

"Person" means any entity, whether an individual, trustee, association, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, joint stock company, joint venture, trust, estate, unincorporated organization, firm, or government or any agency or political subdivision thereof.

"Project" means the Land, the Building and the Functionally Related and Subordinate Facilities, which are to be used on other than a transient basis by members of the general public as a Qualified Residential Rental Project.

"Qualified Project Period" means the period beginning on the first day on which 10% of the Units in the Project are occupied and ending on the later of: (1) the date which is 30 years after the date on which 50% of the Units in the Project are occupied, (2) the first day on which no tax exempt private activity bond issued with respect to such Project is outstanding, or (3) the date on which any assistance provided with respect to the Project under the Housing Act terminates.

"Qualified Tenant" means a Tenant of Moderate Income. If a Qualified Tenant was a Qualified Tenant upon the commencement of occupancy of a Unit, such Qualified Tenant shall continue to be

considered a Qualified Tenant unless: (1) the Adjusted Income of such Qualified Tenant as of the most recent determination exceeds 140% of the applicable percentage of Area Median Gross Income for such Qualified Tenant and after such determination and prior to the next such determination, any Unit of comparable or smaller size in the Project is occupied by new resident whose Adjusted Income exceeds 60% of Area Median Gross Income.

"Qualified Residential Rental Project" means a residential rental housing project that meets the requirements of Section 142(d) of the Code, applicable Treasury Regulations and this Agreement.

"Related Person" means: (a) Persons having a relationship which would result in a disallowance of losses under Section 267 or 707(b) of the Code, and (b) Persons which are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code except that "more than 50%" shall be substituted for "at least 80%" in each place in which it appears in Section 1563(a)).

"Rental Term" and "Term" means the period commencing on the date of issuance of the Bonds and ending at 11:59 p.m. on January 1, 2053.

"State" means the State of Connecticut.

"Student" means an individual who during each of five calendar months during the calendar year in which the taxable year of the individual begins is either: (a) a full-time student at an educational organization described in Section 170(b)(1)(A)(ii) of the Code; or (b) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in Section 170(b)(1)(A)(ii) of the Code or of a State or political subdivision thereof, or as such term shall be revised and redefined by subsequent regulations or other authority for purposes of federal income taxation.

"Tax Regulatory Agreement" means the Tax Regulatory Agreement, dated as of January 27, 2016, by and between the Authority and the Borrower, as the same may be amended from time to time.

"Tenant" means individuals or families (two or more persons related by blood, marriage, operation of law or deemed to occupy the Unit by the Secretary of Housing and Urban Development) other than individuals all of which are Students and no one of which is entitled to file a joint return under Section 6013 of the Code occupying a Unit.

"Treasury Regulations" means Income Tax Regulations promulgated under Code Sections 42, 103, or 141 through 150 by the Department of the Treasury from time to time.

"Unit" means an accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation located in the Project.

Section 2. Covenants and Agreements.

2.1 Qualified Residential Rental Project. The Borrower hereby declares its understanding and intent and covenants and agrees with the Authority and the Bondholders, and for the benefit of the Commissioner on behalf of the State, that the Project is to be owned, managed and operated on a continuous basis for the full Rental Term hereof as a Qualified Residential Rental Project. To that end, the Borrower hereby declares, represents, warrants, covenants and agrees, for the full Rental Term with respect to the Project, as follows:

(a) The Project shall be acquired, constructed and equipped for the purpose of providing a Qualified Residential Rental Project, and the Borrower shall own, manage and operate the Project as a Qualified Residential Rental Project comprised of Units and Functionally Related and Subordinate Facilities thereto, in accordance with Section 142(d) of the Code.

(b) All Buildings in the Project shall be located on the Land or be "proximate" to Buildings located on the Land (within the meaning of such term in Treasury Regulations Section 1.103-8(b)(4)(ii)).

(c) Each Building contains and shall contain one or more "similarly constructed" Units (within the meaning of Treasury Regulations Section 1.103-8(b)(4)(i)).

(d) None of the Units shall at any time be utilized on a transient basis, none of the Units shall be occupied at any time except in accordance with a written lease, none of the Units shall ever be leased or rented for a period of less than thirty (30) days, and neither the Project nor any portion thereof shall ever be used as a hotel (other than for purposes of temporary relocation of Unit occupants during rehabilitation or renovation), motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, rest home or trailer park or court.

(e) All of the Units shall be rented or available for rental on a continuous basis to members of the general public, and the Borrower shall not give preference in renting Units to any particular class or group of persons or otherwise discriminate against any person or group of persons on the grounds of race, color, religious creed, gender, age, marital status, sexual orientation, national origin, mental retardation or physical disability except as may be required in order to comply with the restrictions contained in Section 2.2 hereof. Notwithstanding the foregoing, to the extent permitted by applicable law, the Borrower may give preference in renting Units to (i) current Tenants of the Authority being relocated to accommodate the redevelopment or renovation of any other Authority owned, sponsored, or operated residential rental projects; (ii) eligible employees of the Town of New Canaan, Connecticut; and (iii) eligible Tenants qualifying for a preference under a policy adopted by the Authority and approved by HUD.

(f) No part of the Project will at any time during the Qualified Project Period be owned by a cooperative housing corporation, nor shall the Borrower take any steps in connection with a conversion to such ownership or use, and the Borrower will not take any steps in connection with a conversion of the Project to condominium ownership during the Qualified Project Period (except that the Borrower may obtain final map approval and the Final Subdivision Public Report from the Connecticut Department of Real Estate and may file a condominium plan with the Town).

(g) Any Building which contains fewer than five Units will not have a Unit occupied by the Borrower or a Related Person to the Borrower.

(h) The entire Project shall be owned for Federal tax purposes at all times by one Person.

(i) During the Qualified Project Period, the Borrower will comply with all of the provisions of the Tax Regulatory Agreement, the terms and provisions of which are hereby incorporated herein by reference. A violation of any covenant, agreement or restriction of the Tax Regulatory Agreement shall be considered a violation of the restrictions, covenants and provisions hereof and subject to Section 4.1 hereof.

2.2 Rental of Units. In order to satisfy the requirement of Section 142(d) of the Code, the Borrower hereby represents, warrants, covenants and agrees:

(a) For the first forty-two (42) years of the Rental Term ("Initial Term") hereof with respect to the Project as follows:

(i) None of the Units shall be made available for occupancy at or below Gross Rent to Qualified Tenants of Low Income; and

(ii) One hundred percent (100%) of the Units (33) shall be made available for occupancy at or below Gross Rent to Qualified Tenants of Moderate Income.

(b) For the remainder of Rental Term hereof with respect to the Project, one hundred percent (100%) of the Units (33) shall be made available for occupancy at or below Gross Rent to Qualified Tenants of Moderate Income.

(c) Units occupied by each type of Qualified Tenant shall include a reasonably proportionate mixture of the various room sizes (e.g., one, two and three bedroom, etc.) which comprise the Project.

(d) The Units shall have substantially the same equipment and amenities.

(e) The Borrower will at all times during the Term rent or lease the Units in accordance with the requirements of Section 2.2(a) or 2.2(b), as the case may be.

(f) If, at any time the Borrower is unable to rent or lease any Unit in compliance with Section 2.2(a) or 2.2(b), as the case may be, it will hold such unrented Unit vacant and continue to offer it for occupancy until it can be rented in compliance with Section 2.2(a) or 2.2(b).

(g) Before entering into a lease with any Tenant covering a Unit and before permitting any Tenant to occupy any Unit (including, without limitation, occupancy under a lease or a sublease or as a guest in such a Unit for more than thirty days), the Borrower will obtain from each such Tenant an Income Certification. On or before each anniversary date of each Qualified Tenant's first day of occupancy of a Unit, the Borrower shall obtain from such Tenant a new Income Certification. The Borrower shall maintain all such Income Certifications on file for at least three (3) years after the expiration of the Rental Term. Within three (3) Business Days of the end of each month during the Rental Term, the Borrower will deliver a copy of each Income Certification received during such month to the Monitoring Agent.

2.3 Warranties and Covenants with Respect to the Bonds. The Borrower covenants that it will take such action or actions (except actions prohibited by HUD pursuant to the Housing Act), including consenting and agreeing to amendments to this Agreement, the Loan Agreement, the Tax Regulatory Agreement, the Mortgage Documents, the Note and any other documents as may be necessary, in the opinion of Bond Counsel, so that the Borrower, all subsequent owners of the Project and the Project comply fully with, or will come into full compliance with, the Act, Section 103 and related Sections of the Code applicable to the Project, and all applicable rulings, policies, procedures, or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service in order to ensure that the interest on the Bonds is excludable from gross income for purposes of federal income taxation under the Code. The Monitoring Agent will take all action required to ensure such compliance by the Borrower.

2.4 Approval of Form of Lease and Contents of Lease.

(a) The Borrower will not enter into a lease of any Unit unless the form of such lease has been approved in writing by the Monitoring Agent. The Borrower will not permit or enter into any modification or amendment of such lease form without the prior written approval of the Monitoring Agent. Any lease for a Unit which is entered into on a form which has not been approved by the Monitoring Agent shall be voidable at the option of the Monitoring Agent whether or not the lease contains a provision to that effect.

(b) Each lease of a Unit shall contain the following:

(i) a provision to the effect that, in order to protect the exclusion from gross income of interest on the Bonds, of which each person occupying a Unit is a beneficiary, if any Tenant occupying a Unit is subsequently determined by the Borrower or the Monitoring Agent not to have been a Qualified Tenant, as the case may be, at the time occupancy of such Unit commenced, such lease shall be null and void ab initio and of no further force and effect upon the giving of written notice thereof to such Tenant by the Borrower or the Monitoring Agent, and such Tenant shall immediately vacate such Unit;

(ii) a provision to the effect that the Unit leased thereby may not be subleased without the prior written approval of the Borrower and the Monitoring Agent.

(iii) the provision: "The tenant agrees to furnish the information required by the attached Certification/Recertification of Tenant Eligibility at the commencement of occupancy of the unit, each anniversary thereof and such other times as may be requested by the Borrower, the Monitoring Agent or the Commissioner of Economic and Community Development of the State of Connecticut. The tenant agrees that the Borrower, the Monitoring Agent or the Commissioner of Economic and Community Development of the State of Connecticut may request verification of the information submitted by the tenant in such Certification of Tenant Eligibility from the tenant's employer or other source of income."

The form of the Income Certification shall be an attachment to the lease form for any Unit.

(c) The Borrower agrees that it will not approve any sublease if the effect thereof would be to permit occupancy of a Unit by a Tenant who is not a Qualified Tenant. No sublease shall in any manner permit or be contingent upon the receipt by the Tenant or the Borrower of any consideration from the sublessee other than the payment of the rent stipulated under the Tenant's lease with the Borrower.

2.5 Reports and Management Review.

(a) The Borrower will prepare and submit to the Monitoring Agent, within ten (10) days after the end of each month during the Rental Term, a certificate executed by the Borrower, substantially in the form of that attached hereto as Exhibit B, certifying:

(iv) each Unit in the Project which is occupied;

(ii) the last name of each Tenant of an occupied Unit;

(iii) vacant Units deemed occupied by a Qualified Tenant by virtue of being previously occupied by a Qualified Tenant and occupied Units deemed occupied by a Qualified Tenant whose actual Adjusted Income exceeds Moderate Income;

- (iv) the number of occupants of each Unit;
- (v) the current monthly and annual Gross Rent of each Qualified Tenant;
- (vi) the percentage of occupied Units occupied by each category (i.e., Moderate Income, Low Income and Very-Low Income) of Qualified Tenant; and
- (vii) the current (A) Area Median Gross Income, (B) Moderate Income, (C) Low Income, (D) Moderate Income and Low Income adjusted for family size from one occupant to the highest number of occupants of any Unit determined in Subparagraph (iv) above.

(b) The Borrower shall maintain records regarding the Adjusted Income of each Qualified Tenant in addition to the Income Certification and shall permit representatives of the Monitoring Agent to inspect such records and Income Certifications upon three (3) Business Days written notice delivered to the Borrower by U.S. mail, overnight mail, hand delivery or facsimile.

(c) Throughout the Rental Term, the Borrower shall maintain current accounting records with respect to the acquisition and construction of the Project and its operation and maintenance once occupied by tenants. The Authority and the Purchaser, or their respective duly authorized agents, shall have the right at any time, upon three (3) Business Days written notice delivered to the Borrower by U.S. mail, overnight mail, hand delivery or facsimile, to enter upon and to examine and inspect any part of the Project and to examine such accounting records.

(d) Throughout the Rental Term, the accounting records for the Project for each fiscal year of the Borrower shall be audited by a firm of independent certified public accountants selected by the Borrower with the consent of the Authority which consent shall not be unreasonably withheld. Until the entire Project has been placed in service and is ready for occupancy, each such annual audit shall include a schedule or statement, separate from or a part of the audited financial statements, confirming the use of the proceeds of the Bonds as set forth in Section 3.3 of the Tax Regulatory Agreement in a form substantially similar to that of Schedule B to the Tax Regulatory Agreement, or such other form as the Authority and Bond Counsel shall agree upon. A copy of such annual audited financial statements shall be delivered to the Authority within ten (10) Business Days of the date of the accountant's report included in such annual audited financial statements.

(e) Throughout the Rental Term, the Borrower shall furnish the Authority for its review and comment, prior to approval, the following:

- (v) any proposed management agreements;
- (vi) any management plans for the Project;
- (iii) an operating budget not less than thirty (30) days prior to the beginning of each fiscal year of the Borrower setting forth in detail the estimated income and expenses of the Project, including separate documentation of administration expenses, operating expenses, maintenance expenses, utilities, insurance, taxes and assessments, debt service, and deposits to replacement and other reserve funds.

The Borrower shall within ten (10) business days respond in writing to any comments and recommendations of the Authority delivered to the Borrower within ten (10) business days of the Authority's receipt of said management agreements, management plans and operating budgets. Nothing contained herein shall

authorize the Authority to interfere with the Borrower or its management agent in the conduct of business on the premises, or to interfere with the tenants' rights of enjoyment of their Units.

(f) Throughout the Rental Term, until the end of the Qualified Project Period, the Borrower shall furnish the Authority with a copy of Form 8703, Annual Certification of a Residential Rental Project, and Form 8609, Low-Income Housing Credit Allocation Certification, within twenty (20) Business Days of the filing of such forms with the Internal Revenue Service.

2.6 Occupancy Threshold Certificates. The Borrower covenants and agrees that it will record a certificate in the Land Records of the Town of New Canaan, Connecticut, substantially in the form attached hereto as Exhibit C, within thirty (30) days following: (a) the date on which ten percent (10%) of the Units in the Project are occupied and (b) the date on which fifty percent (50%) of the Units in the Project are occupied.

Section 3. Project Restrictions.

3.7 Beneficiaries.

(a) The Borrower acknowledges, represents and warrants that the issuance and sale of the Bonds by the Authority and the use of the proceeds thereof are necessary to induce the Borrower to undertake the acquisition, construction and equipping of the Project and the Borrower would not complete the construction of the Project if the Bonds were not issued.

(b) The Borrower hereby acknowledges that the restrictions, covenants and provisions contained herein are necessary to ensure that the Project will be operated as a Qualified Residential Rental Project within the meaning of Section 142(d) of the Code and that the interest on the Bonds will be exempt from gross income for the holders thereof of purposes of federal income taxation under Section 103 of the Code during the Qualified Project Period. Therefore, the Borrower covenants, agrees and acknowledges that: (i) the Authority and the Bondholders are the beneficiaries of this Agreement; (ii) the Authority has relied on this Agreement in determining to issue and sell the Bonds; and (iii) each and all of the Bondholders have relied on this Agreement in determining to purchase or otherwise become the registered owner or owners of any of the Bonds.

3.8 Limitation Upon Transfer or Other Disposition of Project. During the Rental Term, until the end of the Qualified Project Period the Borrower shall not sell, convey, transfer or otherwise dispose of the Project without obtaining the prior written consent of the Authority, which consent of the Authority shall be conditioned solely upon receipt of an opinion of Bond Counsel addressed and satisfactory to the Authority that the Borrower's purchaser or transferee has assumed in full all of the Borrower's duties and obligations under this Agreement and that such sale, conveyance, transfer or other disposition shall not affect the exclusion from gross income of the interest on the Bonds for federal income tax purposes. The provisions of the foregoing sentence shall not affect in any manner any independent right of consent of the Authority or any other party arising under any other agreement to which the Authority or the Borrower is a party, including the Ground Lease. The Borrower further agrees that any sale, conveyance, transfer or other disposition of the Project in violation hereof shall be null, void and without effect, shall cause a reversion of title to the Borrower and shall be ineffective to relieve the Borrower of its obligations under this Agreement.

It is understood and agreed by the parties hereto and the beneficiaries hereof that nothing contained in this Agreement shall prevent or limit any transferor Borrower from requiring and obtaining an agreement from the purchaser or transferee of the Project to indemnify and hold such transferor Borrower harmless

from and against all loss, liability and damages resulting from a violation of any of the covenants, restrictions or provisions hereof by such purchaser or transferee or its successors and assigns.

3.9 Covenants to Run With Land and Project. The Borrower hereby agrees with the Authority and declares that it is the express intent of the Borrower that each and all of the covenants, restrictions and provisions set forth in this Agreement shall be deemed covenants running with the Land and the Project and an equitable servitude for the benefit of the Authority, the Commissioner on behalf of the State and the Qualified Tenants until the expiration of the Term, and of the Bondholders until the end of the Qualified Project Period, and shall pass to and be binding upon all Borrower's successors in interest to the Land and title to the Project and the improvements with respect thereto and the Borrower's successors and assigns until the expiration of the Rental Term. Each and every contract, deed or other instrument hereafter executed covering or conveying the Land or the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such restrictions, covenants and provisions, regardless of whether or not such restrictions, covenants and provisions or any reference thereto are set forth in such contract, deed or other instrument. Each and every reference to the "Authority" and "Borrower" herein shall include such parties' successors interest to the Land and title to the Project and their respective successors and assigns.

3.10 Term. The Term of this Agreement of this Agreement shall commence upon the date of issuance of the Bonds and shall end at 11:59 p.m. on January 1, 2053, notwithstanding any sooner termination expiration of the Ground Lease, it being the intention that this Agreement shall run as amended in accordance with the land for the entire Term as set forth in Section 3.3 above. The Borrower hereby agrees and acknowledges that except as amended terminated in accordance with Section 5 hereof, this Agreement and the restrictions, covenants and provisions contained herein shall be in full force and effect during the such Term.

Section 4. Remedies; Reimbursement of Expenses of Enforcement.

4.11 Remedies.

(a) In the event of a violation of, noncompliance with or default under any of the restrictions, covenants or provisions hereof during the Term, or of the Tax Regulatory Agreement during the Qualified Project Period, the Monitoring Agent, the Authority, the Commissioner, or, subject to the terms of the Loan Agreement, the Purchaser, may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation, noncompliance or default, or the Monitoring Agent, the Authority or the Commissioner may institute and prosecute any proceeding at law or in equity to recover monetary damages caused by such violation, noncompliance with, or default under any of the restrictions, covenants or agreements of this Agreement. Notwithstanding the foregoing, no Bondholder shall have any right to institute or prosecute any proceeding at law or in equity in the event of a violation of, noncompliance with or default under any of the restrictions, covenants or provisions hereof unless such Bondholder shall have complied with Section 11 of the Loan Agreement.

(b) Without limiting the generality of the foregoing, the Borrower acknowledges and agrees that the remedy of specific performance shall be available to the Monitoring Agent, the Authority, or the Commissioner to enforce compliance with the restrictions, covenants and provisions contained herein, and further, that under the Loan Agreement until the end of the Qualified Project Period, the Authority and the Purchaser shall take all action necessary to assure and enforce compliance with the restrictions, covenants and provisions contained in this Agreement.

(c) Notwithstanding anything herein to the contrary, the Authority agrees that failure of the Borrower to comply with the covenants and restrictions of this Agreement will not constitute an event of default under the Note and that enforcement of this Agreement shall not result in a claim against the property subject to the Note, any proceeds of the Note, any reserve or deposit required as a part of the Note transaction, or any rents or income from the property subject to the Note.

(d) In the event that the violation, non-compliance or default results from the occupancy of any Unit by one or more persons who were not Qualified Tenants in compliance with Sections 2.2(a) or 2.2(b) at the time occupancy of the Unit commenced, the Monitoring Agent may institute and prosecute, or may cause the Borrower to institute and prosecute, an action to evict or otherwise terminate the occupancy of such Unit by such tenants, without regard to the remaining term of such lease and whether or not a provision to that effect is included in any lease of such Unit. During the occupancy of the Unit by such tenant, the Borrower shall identify another Unit in the Project, if any, which may be occupied by such tenant in compliance with Sections 2.2(a) or 2.2(b) hereof.

4.12 Reimbursement of Expenses of Enforcement. The Borrower shall reimburse the Monitoring Agent and their respective officers, employees and agents for all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by them in enforcing or attempting to enforce any of the restrictions, covenants, provisions and remedies contained herein against the Borrower.

Section 5. Amendments.

(a) This Agreement may not be modified, amended, changed, altered or terminated with respect to the Project during the Qualified Project Period except by a written amendment executed by the Borrower and the Authority and receipt of an opinion of Bond Counsel that such modification, amendment, change, alteration or termination will not affect the exemption of interest on the Bonds from gross income for federal income tax purposes. All amendments hereto must be in writing and recorded in the Land Records of the Town of New Canaan, Connecticut. In addition to the provisions herein controlling, the Authority may consent to and execute any such amendment only as provided in the Loan Agreement. Qualified Tenants, Bondholders, tenants, other purported beneficiaries of this Agreement or representatives of benefited persons shall not be required to consent to any amendment as herein provided, and shall be fully bound by such amendment when executed by the Borrower and the Authority without further action.

(b) This Agreement shall remain in full force and effect with respect to the Project for the Term hereof except as otherwise amended during the Qualified Project Period in accordance with an opinion of Bond Counsel to the effect that this Agreement must be amended to assure the continued exclusion of interest on the Bonds from gross income of the holders thereof for purposes of federal income taxation. Upon receipt of such an opinion, this Agreement shall be subject to amendment by the Borrower and the Authority, without any action or consent by the Bondholders. The Borrower recognizes that the issuance of the Bonds on a tax exempt basis is of material benefit to the Borrower and to the Bondholders, and that the intent of this Agreement is to ensure the continued tax exempt status of the interest on the Bonds. To that end, the Borrower agrees that it will cooperate fully with the Authority to the extent necessary, including, without limitation, effecting an amendment to this Agreement pursuant to this paragraph.

Section 6. Miscellaneous.

6.13 Indemnification of the Authority. The Borrower hereby covenants and agrees to indemnify, hold harmless and defend the Authority and the Monitoring Agent and their respective officers, members,

supervisors, directors, officials, agents and employees ("Indemnified Persons") from and against any and all claims, losses, costs, injuries, death, damages, expenses and liabilities of whatsoever nature or kind (including, but not limited to, reasonable attorneys' fees, litigation and court costs) directly and indirectly resulting from, arising out of, or in any way related to the enforcement of the provisions of this Agreement, or the acquisition, design, construction, rehabilitation, installation, operation, use, occupancy, maintenance or ownership of the Project. This indemnification is effective only with respect to any loss incurred by an Indemnified Person which is not due to any unlawful or grossly negligent action or omission or willful misconduct on their part.

6.14 Notices. All notices, certificates or other communications shall be sufficiently given and shall be deemed given when delivered, or when mailed by first-class mail, postage prepaid, addressed as follows:

if to the Authority to:

Housing Authority of the Town of New Canaan
57 Millport Avenue
New Canaan, Connecticut 06840
Attn: Chairperson

if to the Borrower to:

Millport Phase I Limited Partnership
57 Millport Avenue
New Canaan, Connecticut 06840
Attn: Millport Phase I GP Corporation

The Authority and the Borrower may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

6.15 Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

6.16 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

6.17 Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of Connecticut, except to the extent that the laws of the United States may prevail.

6.18 Binding Effect. This Agreement shall inure to the benefit of the Authority and the Bondholders and their respective heirs, personal representatives, successors and assigns and shall be binding upon the Borrower and its successors and assigns.

6.19 Section Headings. Section headings are for descriptive and convenience purposes only and shall not control or limit the interpretation of this Agreement as set forth in the text.

6.8 Impossibility of Performance. The Borrower acknowledges that it is the purpose and intention of this Agreement provide for the continued existence of rental housing for individuals and

families earning less than the income levels as provided herein during the Term. The parties acknowledge, however, that given the length of the Term, the covenants, restrictions and agreements set forth in this Agreement and including Section 2.2(b) may become impossible or impracticable and/or may otherwise require amendment for reasons currently not foreseeable following the Initial Term. In such event the Authority and the Borrower agree that this Agreement shall not terminate or be terminated as a result thereof but that the parties shall cooperate in good faith to amend the affected provisions of this Agreement, including Section 2.2(b) in a manner that is deemed reasonable under the circumstances. In the event that the parties are unable to reach agreement on an appropriate amendment, the matter shall be resolved by an action brought in a court of competent jurisdiction in the State of Connecticut seeking to amend this Agreement because of the impossibility or impracticability of performance; provided, however, if such an action does not lie, then the matter shall be resolved by arbitration in accordance with the provisions of American Arbitration Association. The parties acknowledge their intention that there be no conflict between the uses contemplated by the Ground Lease and those permitted by this Agreement. Accordingly, any proceeding to amend the provisions of this Agreement for the reasons set forth above shall be joined with a proceeding to similarly amend the Ground Lease pursuant to the provision of the Ground Lease which is similar to this Section.

[Signature Pages Follow]

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

WITNESSED BY:

Barnard A. Simkins
Name: BARNARD A. SIMKINS

Dimitri Tourvas
Name: DIMITRI TOURVAS

AUTHORITY:

HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN,
a public body corporate and politic organized under the laws of the State of Connecticut

By: Scott Hobbs
Name: Scott Hobbs
Title: Chairman

STATE OF CONNECTICUT)

COUNTY OF FAIRFIELD)

) ss: ~~New Canaan~~ Stamford

I, Gayle E. Clark, a Notary Public in and for Fairfield County, Connecticut/Commissioner of the Superior Court, do hereby certify that Scott Hobbs, Chairman of the Housing Authority of the Town of New Canaan, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as Chairman and the free and voluntary act of the Housing Authority of the Town of New Canaan, for the uses and purposes therein set forth.

Given under my hand this 26 day of [January], 2016

Gayle E. Clark
Notary Public: My Commission expires: 11/30/20
Commissioner of the Superior Court

WITNESSED BY:

Barnard E. Simpkins
 Name: BARNARD E. SIMPKINS

Dimitri Tournas
 Name: DIMITRI TOURNAS

BORROWER:

MILLPORT PHASE I LIMITED PARTNERSHIP,
 a Connecticut limited partnership

By: Millport Phase I GP Corporation
 a Connecticut corporation
 Its: General Partner

By: Scott Hobbs
 Name: Scott Hobbs
 Title: Director, duly authorized

STATE OF CONNECTICUT

COUNTY OF FAIRFIELD

)
) ss: New Canaan Stamford
)

I, Gayle E. Clark, a Notary Public in and for Fairfield County, Connecticut/Commissioner of the Superior Court, do hereby certify that [], a Director and an authorized signatory of the Millport Phase I GP Corporation ("General Partner"), which is the General Partner of Millport Phase I Limited Partnership, Borrower named above, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as an authorized signatory and the free and voluntary act of the Borrower named above, for the uses and purposes therein set forth.

Given under my hand this 26 day of [January], 2016

Seal:

Gayle E. Clark
 Notary Public: My Commission expires: 11/30/20
 Commissioner of the Superior Court

EXHIBIT A

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land, being a portion of that new consolidated parcel, comprised of former Assessor Lot 623 and a portion of former Assessor Lot 630, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, shown and designated as **Parcel 623, 33 Millport Avenue and a portion of Parcel 630, 35 Millport Avenue**, within shaded area on a map entitled **"ALTA/ACSM LAND TITLE SURVEY (PROPERTY SURVEY) 33, 35, 41, 57 & 65 MILLPORT AVENUE DEPICTING LEASE PARCEL I PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN NEW CANAAN, CONNECTICUT"** Sheets 1 of 2 and 2 of 2 dated December 18, 2015, revised January 22, 2016, Scale 1"=30', made by William W. Seymour & Associates, P.C., which map is or will be filed in the Office of the Town Clerk of New Canaan, more particularly bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point being the intersection of said northwesterly line of Millport Avenue with the former division line between properties known as 33 Millport Avenue and 41 Millport Avenue;

Thence, running northwesterly along said former division line between properties known as 33 Millport Avenue and 41 Millport Avenue north $45^{\circ}58'50''$ west a distance of 229.69 feet to a point on the former division line between properties known as 35 Millport Avenue and 57 Millport Avenue;

Thence, running northeasterly through said property known as 35 Millport Avenue north $44^{\circ}01'10''$ east a distance of 100.00 feet to a point on the division line between said property known as 35 Millport Avenue and property now or formerly of New Canaan Medical Properties LLP and known as 173 East Avenue;

Thence, running southeasterly, northeasterly and again southeasterly along said division line between properties known as 173 East Avenue, 35 Millport Avenue and 33 Millport Avenue south $45^{\circ}58'50''$ east a distance of 70.39 feet and north $62^{\circ}37'30''$ east a distance of 5.07 feet and south $57^{\circ}58'00''$ east a distance of 24.93 feet and south $50^{\circ}38'00''$ east a distance of 5.19 feet and south $57^{\circ}04'20''$ east a distance of 92.74 feet to the aforesaid northwesterly line of Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south $01^{\circ}56'30''$ west a distance of 38.04 feet and south $20^{\circ}47'30''$ west a distance of 39.35 feet and south $45^{\circ}52'30''$ west a distance of 50.22 feet and south $53^{\circ}23'00''$ west a distance of 13.83 feet to the intersection of said northwesterly line of Millport Avenue with the former division line between properties known as 33 Millport Avenue and 41 Millport Avenue and the point of beginning.

the "Leasehold Parcel",

Together with the rights, provisions, terms and conditions set forth in an Easement Agreement by and among the Housing Authority of the Town of New Canaan, NCHA Mill Apartments Limited Partnership and Millport Phase I Limited Partnership, and consented to by the State of Connecticut Department of Housing, People's United Bank, National Association, the United States Department of Housing and Urban Development, U.S. Bank National Association, as Trustee, and Bankwell Bank, dated as of January 27, 2016, and recorded prior hereto in the New Canaan Land Records.

Such easements and rights of way are also shown and depicted on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING LEASE PARCELS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is or will be filed in the Office of the Town Clerk of New Canaan as:

"Easement Area X", more particularly bounded and described as follows:

Beginning at a point, said point being the intersection of the former division lines between properties known as 35, 41 & 57 Millport Avenue, said point being further described as lying north 45°58'50" west a distance of 222.40 feet from the intersection of the former division line between properties known as 33 & 41 Millport Avenue with the northwesterly line of Millport Avenue;

Thence, running southwesterly along the former division line between said properties known as 41 & 57 Millport Avenue south 44°32'10" west a distance of 14.79 feet to a point;

Thence, running northerly and northeasterly through said property known as 57 Millport Avenue north 13°46'40" west a distance of 2.90 feet and north 44°01'10" east a distance of 13.24 feet to a point on the aforesaid former division line between properties known as 35 & 57 Millport Avenue;

Thence, running southeasterly along said former division line between said properties known as 35 & 57 Millport Avenue south 45°58'50" east a distance of 2.59 feet to the point of beginning.

"Easement Area Z", more particularly bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point being the intersection of said northwesterly line of Millport Avenue with the former division line between properties known as 33 Millport Avenue and 41 Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south 53°23'00" west a distance of 43.21 feet to a point;

Thence, running northwesterly, southwesterly and again northwesterly through said property known as 41 Millport Avenue north 29°10'20" west a distance of 81.00 feet and south 60°10'00" west a distance of 30.90 feet and north 29°50'00" west a distance of 53.20 feet and north 35°49'30" west a distance of 67.50 feet and north 13°46'40" west a distance of 13.85 feet to a point on the former division line between properties known as 41 Millport Avenue and 57 Millport Avenue;

Thence, running northeasterly along said former division line between properties known as 41 Millport Avenue and 57 Millport Avenue north $44^{\circ}32'10''$ east a distance of 14.79 feet to a point on the aforesaid former division line between properties known as 33 Millport Avenue and 41 Millport Avenue;

Thence, running southeasterly along said former division line between properties known as 33 Millport Avenue and 41 Millport Avenue south $45^{\circ}58'50''$ east a distance of 222.40 feet to the aforesaid northwesterly line of Millport Avenue and the point of beginning.

and "Driveway Easement Parcel" shown and depicted as "Proposed Driveway Easement for Phase I" on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING DRIVEWAY EASEMENTS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., by William F. Seymour & Associates, P.C., bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point lying north $78^{\circ}17'30''$ east 1.87 feet of the intersection of the former division line between properties known as 65 & 57 Millport Avenue with said northwesterly line of Millport Avenue;

Thence, running northerly and northwesterly a distance of 10.52 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $20^{\circ}05'35''$ and having a chord bearing of north $01^{\circ}39'42''$ west and north $11^{\circ}42'30''$ west a distance of 76.82 feet and 61.26 feet along an arc curving to the right having a radius of 39.00 feet and subtending a central or delta angle of $89^{\circ}59'20''$ to a point;

Thence, running northeasterly, southeasterly and again northeasterly north $78^{\circ}16'50''$ east a distance of 48.75 feet and 10.92 feet along an arc curving to the right having a radius of 15.00 feet and subtending a central or delta angle of $41^{\circ}42'10''$ and south $60^{\circ}01'00''$ east a distance of 4.71 feet and 6.23 feet along an arc curving to the left having a radius of 6.00 feet and subtending a central or delta angle of $59^{\circ}30'50''$ and north $60^{\circ}28'10''$ east a distance of 84.71 feet to a point on the southerly line of Phase I - Easement Area 'Z';

Thence, running southeasterly along said southerly line of Phase I - Easement Area 'Z' south $29^{\circ}31'50''$ east a distance of 20.00 feet to a point;

Thence, southwesterly and southeasterly south $60^{\circ}28'10''$ west a distance of 74.22 feet and south $78^{\circ}16'50''$ west a distance of 84.18 feet and 23.56 feet along an arc curving to the left having a radius of 15.00 feet and subtending a central or delta angle of $89^{\circ}59'20''$ and south $11^{\circ}42'30''$ east a distance of 68.57 feet and 20.00 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $38^{\circ}11'39''$ and a chord bearing of south $30^{\circ}48'19''$ east to a point on the aforesaid northwesterly line of Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south $78^{\circ}17'30''$ west a distance of 32.25 feet to the point of beginning.

which maps are on file or will be filed in the Office of the Town Clerk of New Canaan, respectively, (hereinafter, the "Easement Parcels").

Together with the rights, provisions, terms and conditions set forth in a Ground Lease from the Housing Authority of the Town of New Canaan to Millport Phase I Limited Partnership, a Notice of which is dated as of January 27, 2016, and recorded prior hereto in the New Canaan Land Records.

All of the above referred to as the "Land",

EXHIBIT B

CERTIFICATION OF CONTINUING COMPLIANCE

I. UNIT OCCUPANCY

<u>Unit No.</u>	<u>Unit Code</u>	<u>Last Name</u>	<u>No. of Occupants</u>	<u>Current Gross Rent/Monthly</u>	<u>Current Gross Rent/Annual</u>
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II. AREA MEDIAN GROSS INCOME FACTORS

<u>Month</u>	<u>AMGI</u>	<u>AMGI</u>	<u>Number of Occupants</u>							
			<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>

EXHIBIT C

OCCUPANCY THRESHOLD CERTIFICATE

Re: Millport Apartments, located at 33 & 35 Millport Avenue, New Canaan, Connecticut 06840 and defined as the Project in a certain Land Use Restriction Agreement dated as of January 1, 2016 and recorded in Volume __, Page __ of the New Canaan Land Records (the Agreement").

Pursuant to Section 2.6 of the Agreement, the undersigned, _____ of Millport Phase I Limited Partnership, owner of the Project, hereby certifies that, as of the date of this Certificate, the statements set forth in paragraphs 1 and/or 2 below are true and correct.

1. Ten percent (10%) of the Units (as defined in the Agreement) in the Project are occupied.
2. Fifty percent (50%) of the Units in the Project are occupied.

Dated at _____, this __ day of _____, 20__.

MILLPORT PHASE I LIMITED PARTNERSHIP,
a Connecticut limited partnership

By: Millport Phase I GP Corporation
a Connecticut corporation
Its: General Partner

By: _____
Name: _____
Title: Director, duly authorized

Received for record on 1-27-16 at 3:34 pm
and recorded by Claudia A. Weber
TOWN CLERK



TOWN OF NEW CANAAN

TOWN HALL, 77 MAIN STREET
NEW CANAAN, CT 06840

STEVE KLEPPIN
TOWN PLANNER
SR. ENFORCEMENT OFFICER

TEL: (203) 594-3044
FAX: (203) 594-3127
steven.kleppin@newcanaanct.gov

Certified Mail/Return Receipt: 7012 2920 0001 3978 9411

February 17, 2015

Timothy Hollister
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103-1919

RE: Resolutions & Approvals: Millport Phase II

Dear Mr. Hollister:

Attached please find the resolution language approving your text and map amendments for the "Millport Zone" and the accompanying Site Plan Application, which were approved at the Commission's January 27, 2015 meeting.

Section 8.2.A.5.a of the zoning regulations requires that a Mylar copy of the approved Site Plan be filed. I would recommend the map also include the consolidation of all the affected parcels into a single parcel, if possible at that time.

Should you have any questions please contact me.

Sincerely,

Steve Kleppin, AICP
Town Planner/Sr. Enforcement Officer

cc w/encl. C. Berman, NC Housing Authority
S. Hobbs, NC Housing Authority
D. McCarthy, Jonathon Rose Company

Town of New Canaan
Planning and Zoning Commission

Requests

1. Upon application of Timothy Hollister, Shipman & Goodwin LLP, Authorized Agent, for New Canaan Housing Authority, owner; such application made pursuant to Connecticut General Statutes Section 8-30g, for a text amendment to the Zoning Regulations, amended through April 14, 2014, to add section 5.7 to the regulations, "Millport Housing Zone" and to amend the Zoning Map dated January 7, 2010, rezoning 33 Millport Avenue (Map R Block 80 Lot 623), 35 Millport Avenue (Map R Block 80 Lot 630) from the B Residence Zone; and 41 Millport Avenue (Map R Block 80 Lot 645), 57 Millport Avenue (Map N Block 80 Lot 644) and 65 Millport Avenue (Map N Block 80 Lot 643) from the Multi-Family Zone to the Millport Housing Zone.

Resolution

WHEREAS, the applications were physically received by the Planning and Zoning Department on October 24, 2014.

WHEREAS, the Planning and Zoning Commission (Commission) opened a hearing on said application on November 18, 2014 and conducted subsequent hearings on December 16, 2014 and January 29, 2015.

WHEREAS, the Commission closed the hearing on the application on January 29, 2015.

WHEREAS, the Commission conducted and concluded deliberations on the closed application on January 29, 2015, at which time they made the following findings:

1. The Commission finds that the proposed regulation amendment is consistent with relevant goals contained within the Plan of Conservation and Development.
2. The Commission finds that the proposed text amendment will help the town in their goal of providing additional affordable housing in and around New Canaan's downtown.
3. The proposed Millport Regulation, which includes minimum acreage, existing multi-family use, recent additional parcel acquisitions by the applicant, and need to coordinate the addition of new multi-family units with existing units all justify the drafting and adoption of a zoning regulation that is specific to the Millport Avenue site.
4. The proposed regulation contains appropriate standards to control the new development, integrate it with existing site conditions, and ensure a level of quality that is consistent with the surrounding neighborhood and uses.

5. The proposed density is appropriate in light of the site already being used for multi-family residential purposes.
6. The regulation has been drafted in a site-specific way that does not constitute spot zoning, and does not subject other parcels of land in New Canaan to comparable level of development.

THEREFORE, BE IT RESOLVED, that upon a motion made by Ms. Grzelecki and seconded by Mr. Papp, the Commission voted to approve the proposed amendment to the zoning regulations with an effective date of February 15, 2015.

Town of New Canaan
Planning and Zoning Commission

Requests

1. Upon application of Timothy Hollister, Shipman & Goodwin LLP, Authorized Agent, for New Canaan Housing Authority, owner; such application made pursuant to Connecticut General Statutes Section 8-30g, for a text amendment to the Zoning Regulations, amended through April 14, 2014, to add section 5.7 to the regulations, "Millport Housing Zone" and to amend the Zoning Map dated January 7, 2010, rezoning 33 Millport Avenue (Map R Block 80 Lot 623), 35 Millport Avenue (Map R Block 80 Lot 630) from the B Residence Zone; and 41 Millport Avenue (Map R Block 80 Lot 645), 57 Millport Avenue (Map N Block 80 Lot 644) and 65 Millport Avenue (Map N Block 80 Lot 643) from the Multi-Family Zone to the Millport Housing Zone.

Resolution

WHEREAS, the applications were physically received by the Planning and Zoning Department on October 24, 2014.

WHEREAS, the Planning and Zoning Commission (Commission) opened a hearing on said application on November 18, 2014 and conducted subsequent hearings on December 16, 2014 and January 29, 2015.

WHEREAS, the Commission closed the hearing on the application on January 29, 2015.

WHEREAS, the Commission conducted and concluded deliberations on the closed application on January 29, 2015, at which time they made the following findings:

1. The Commission finds that the proposed map amendment is consistent with relevant goals contained within the Plan of Conservation and Development.
2. The Commission finds that the proposed map amendment will help the town in their goal of providing additional affordable housing in and around New Canaan's downtown.
3. Rezoning of 4.8 acres to Millport Zone is appropriate considering the site's location, abutting and neighboring uses, utilities, traffic access, elevations, and topography considering the type of development proposed in the Millport regulation.
4. The site's location near the center of New Canaan makes it an ideal location for expansion of the existing multi-family development.

THEREFORE, BE IT RESOLVED, that upon a motion made by Mr. Flinn and seconded by Ms. Grzelecki, the Commission voted to approve the proposed amendment to the zoning map with an effective date of February 15, 2015.

Town of New Canaan
Planning and Zoning Commission

Requests

1. Upon application of Timothy Hollister, Shipman & Goodwin LLP, Authorized Agent, for New Canaan Housing Authority, owner; such application made pursuant to Connecticut General Statutes Section 8-30g, for a Site Plan approval to construct 88 residential apartment homes in four new buildings and the demolition of six existing residential buildings for property located at 33 Millport Avenue (Map R Block 80 Lot 623), 35 Millport Avenue (Map R Block 80 Lot 630), 41 Millport Avenue (Map R Block 80 Lot 645) and 57 Millport Avenue (Map N Block 80 Lot 644).

Resolution

WHEREAS, the applications were physically received by the Planning and Zoning Department on October 24, 2014.

WHEREAS, the Planning and Zoning Commission (Commission) opened a hearing on said application on November 18, 2014 and conducted subsequent hearings on December 16, 2014 and January 29, 2015.

WHEREAS, the Commission closed the hearing on the application on January 29, 2015.

WHEREAS, the Commission conducted and concluded deliberations on the closed application on January 29, 2015, at which time they made the following findings:

1. The site's location near the center of New Canaan makes it an ideal location for expansion of the existing multi-family development.
2. The applicant has demonstrated that the proposed site plan complies with the standards contained within the proposed Millport Regulation.
3. The applicant has made several substantial revisions of the site plan, including density, parking, landscaping, and buffering of abutting uses, in response to comments from the Commission and the public.
4. The applicant has also made renovations to the building's architecture to address concerns of the Commission and the public which will result in a project that is in keeping with the high architectural standards of the town.
5. The site plan as proposed will increase New Canaan's multi-family residential housing stock at rents that will be accessible to moderate and own income households and will provide additional economic diversity.

THEREFORE, BE IT RESOLVED, that upon a motion made by Ms. DeLuca and seconded by Mr. Flinn, the Commission voted to approve the proposed Site Plan application with the following conditions.

1. Per Final Site Layout SE1, Alternate "C", Site Grading & Soil Erosion Control Plan SE2, Site Utility Plan SE3 and Construction Notes & Details DT1, 33, 35, 41, 57 & 65 Millport Avenue, Plan dated 1/21/15, prepared by McChord Engineering Associates, on-file with the Planning & Zoning Department.
2. Per Building 1, Typ. Floor Plans (A-101), Building 2, Typ. Floor Plans (A-102), Building 3, Typ. Floor Plans (A-103), Building 4, Typ. Floor Plans (A-104), Per Building 4, Typ. Floor Plans (A-105), Building 4, Typ. Floor Plans (A-106), Building 1, Elevations (A-201), Building 1, Elevations (A-201), Building 2, Elevations (A-202), Building 3, Elevations (A-203), Building 4, Elevations (A-204), Typ. Bldg. 1 Section (A-301), Typ. Bldg. Section, Bldg. 2, 3 & 4 (A-302), dated 1/24/15, prepared by Doh. Chung & Partners, on-file with the Planning & Zoning Department.
3. Per Clubhouse Plans & Elevations, A-107, dated 10/24/15, prepared by Doh. Chung & Partners, on-file with the Planning & Zoning Department.
4. Per Building Typ. 1 Bedroom & Loft Floor Plans (A-501), Typ. 2 Bedroom & Loft Floor Plans (A-502) and Patio Unit Floor Plans (A-503), prepared by Doh. Chung & Partners, on-file with the Planning & Zoning Department.
5. Per Landscape Site Plan, SPL-1.0, Trash Enclosure Planting, SKL-1.0 and Lighting Plan, dated 1/27/15, prepared by Eric Rains Landscape Architect, on-file with the Planning & Zoning Department.



SPECIAL PERMIT APPLICATION/PUBLIC HEARING REQUEST FORM

The undersigned owner(s) of record hereby apply for a SPECIAL PERMIT as to certain Real Estate located at:
57 Millport Avenue Street/Road.

Within 500 feet of another municipality? Yes () No (X) Town of _____

Applicant's Name: New Canaan Housing Authority

Applicant's Telephone Number: 966-2408 Email Address: clberman@macfarlanepartners.com

In the Family Zone, as shown in the New Canaan Land Records: VOLUME _____, PAGE _____

And more particularly described by bounding owners as follows:

Northerly by: Gray Stone Condos

Southerly by: Millport Ave. & Mill Pond

Easterly by: Chang & Schmid

Westerly by: Major & Czaronis

MAP # 000N

BLOCK # 0080

LOT # 0644

I am requesting a SPECIAL PERMIT of Section(s) 5.3.C (or requesting a PUBLIC HEARING)
described as follows: To demolish 16 existing units and construct a total
of 40 units of affordable housing as defined in Section 7.6.B.3.

You must attach a detailed statement describing: 1) the existing and proposed use or uses; and 2) how the Special Permit criteria are addressed.

Were Special Permits or Variances previously granted for this property? Yes () No (X)
If yes, a copy of the Certificates or Decision must be attached.

I hereby acknowledge that unless I comply with provisions of Article 8, Section 8, I.G. of the Zoning Regulations, which require specific notification of certain neighbors, my application will not be complete and cannot be heard.

PRINT: New Canaan Housing Authority AUTHORIZED BY [Signature]

Owner of record

Owner of record

Official date of receipt: 07/30/07

Hearing scheduled: 08/28/07

I, xx Jean Grzelecki, Secretary of the Planning & Zoning Commission of the Town of New Canaan, hereby certify that at a meeting of said Commission duly held on 08/28/07, said Commission by resolution voted:

1. That said Special Permit be DENIED.
- XX 2. That said Special Permit be GRANTED.
- XX 3. That said Special Permit be effective upon its recording on the Land Records in the Town Clerk's Office.
- XX 4. That notice of such Action be published as required.
- yy 5. Conditions, modifications, or restrictions: Please see page 2 attached.

Jean M. Grzelecki
Jean Grzelecki, Secretary

09/06/07

Published

New Canaan Housing
Authority

C:\Documents and Settings\delvus\Local Settings\Temporary Internet Files\OLK1258\Special Permit App_Info 02 25 07.doc

08/28/07 Granted Special Permit - 47, 57, 65 Millport Avenue - New Canaan Housing Authority - Page 2

Conditions, modifications, or restrictions are as follows:

1. The Housing Authority shall install and maintain appropriate fencing along the northern and eastern property lines.
2. Existing perimeter trees shall not be removed unless necessary as part of the construction of the new residential units.
3. Per Zoning Location (Z-1) dated July 31, 2007, as revised August 13, 2007, prepared by William Seymour & Associates, P.C., on-file with the Planning and Zoning Department.
4. Per Tree Demo Plan (SP-1.0), see condition 2, dated August 13, 2007, prepared by Wesley Stout Associates, on-file with the Planning and Zoning Department.
5. Per Planting Plan (SP-2.0), see condition 2 dated August 13, 2007, prepared by Wesley Stout Associates, on-file with the Planning and Zoning Department.
6. Per Lighting Plan (SP-3.0), dated August 13, 2007, prepared by Wesley Stout Associates, on-file with the Planning and Zoning Department.
7. Per Site Details (SP-4.0), dated August 13, 2007, prepared by Wesley Stout Associates, on-file with the Planning and Zoning Department.
8. Per Site Layout Plan (SE1), dated August 13, 2007, prepared by McChord Engineering Associates, on-file with the Planning and Zoning Department.
9. Per Site Grading & soil erosion Control Plan (SE2), dated August 13, 2007, prepared by McChord Engineering Associates, on-file with the Planning and Zoning Department.
10. Per Site Utility Plan (SE3), dated August 13, 2007, prepared by McChord Engineering Associates, on-file with the Planning and Zoning Department.
11. Per Construction Notes & Details (DT1), dated August 13, 2007, prepared by McChord Engineering Associates, on-file with the Planning and Zoning Department.
12. Per Proposed Architectural Site Plan (SP-01), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
13. Per Building #1 Plans (A-110), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
14. Per Building #1 Plans (A-110.1), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
15. Per Building #2 Plans (A-111), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
16. Per Building #2 Elevations (A-111.1), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
17. Per Building #3 Plans (A-112), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
18. Per Building #3 Elevations (A-112.1), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
19. Per Building #4 Plans (A-113), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
20. Per Building #4 Elevations (A-113.1), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
21. Per Building #5 Plans (A-114), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
22. Per Building #5 Elevations (A-114.1), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
23. Per Building #6 Plans (A-115), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
24. Per Building #6 Elevations (A-115.1), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
25. Per Building #7 Plans (A-116), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
26. Per Building #7 Elevations (A-116.1), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
27. Per Building #8 Plans (A-117), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
28. Per Building #8 Elevations (A-117.1), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.
29. Per Site Details (A-1181'), dated July 31, 2007, prepared by Becker and Becker Associates, Inc., on-file with the Planning and Zoning Department.

SAP&ZM Legal Decision - Resolution Language - P&Z/2007/08.28.07 SP Pg 2 47, 57, 65 Millport Ave Housing Authority.doc

Received for record on 9-4-07 at 3:52 pm
 And recorded by Claudia A. Weber
 TOWN CLERK

VOL 784 PG 609

SPECIAL PERMIT APPLICATION/PUBLIC HEARING REQUEST FORM

The undersigned owner(s) of record hereby apply for a SPECIAL PERMIT as to certain Real Estate located at:
57 Millport Avenue Street/Road.

Within 500 feet of another municipality? Yes () No (X) Town of _____

Applicant's Name: New Canaan Housing Authority Address: _____
Applicant's Telephone Number: 966-2408 Email Address: cberman@macfarlanepartners.com
In the Family Zone, as shown in the New Canaan Land Records: VOLUME _____, PAGE _____
And more particularly described by bounding owners as follows:

Northerly by: Gray Stone Condos Southerly by: Millport Ave. and Mill Pond
Easterly by: Chang & Schmid Westerly by: Major and Czasonis

MAP # 000N BLOCK # 0080 LOT # 0644

I am requesting a SPECIAL PERMIT of Section(s) 5.3.C (or requesting a PUBLIC HEARING)
described as follows: To demolish 16 existing units and construct a
total of 40 units of affordable housing as defined in Section
7.6.B.3.

You must attach a detailed statement describing: 1) the existing and proposed use or uses; and 2) how the Special Permit criteria are addressed.

Were Special Permits or Variances previously granted for this property? Yes (X) No ()
If yes, a copy of the Certificates or Decision must be attached.

I hereby acknowledge that unless I comply with provisions of Article 8, Section 8.1.G. of the Zoning Regulations, which require *specific notification of certain neighbors*, my application will not be complete and *cannot* be heard.

PRINT: Charles Berman SIGNED: Charles Berman
Owner of record Owner of record

Official date of receipt: 01/21/08 Hearing scheduled: 02/26/08

..... Iaszlo Papp, Chairman and Secretary Pro Tem
I, XX Jean Grzelecki, Secretary of the Planning & Zoning Commission of the Town of New Canaan, hereby certify that at a meeting of said Commission duly held on _____, said Commission by resolution voted:

- _____ 1. That said Special Permit be DENIED.
- XX 2. That said Special Permit be GRANTED.
- XX 3. That said Special Permit be effective upon its recording on the Land Records in the Town Clerk's Office.
- XX 4. That notice of such Action be published as required.

XX 5. Conditions, modifications, or restrictions: The applicant must apply for Site Plan Application regarding the final design and orientation of the buildings, including the size and location of the proposed sheds. The issues regarding tree removal shall be reviewed with the neighbors prior to submitting the Site Plan Application.

Jean Grzelecki
Jean Grzelecki, Secretary

03/06/08 New Canaan Advertiser
Published

Iaszlo Papp, Chairman and Secretary Pro Tem

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Received for record on 3-10-08 at 12:16 pm

And recorded by Claudia A. Welch
TOWN CLERK

PLANNING & ZONING COMMISSION MINUTES

THURSDAY, JANUARY 29, 2015

REGULAR MEMBERS PRESENT: REGULAR MEMBERS ABSENT:

Mr. Goodwin, Chairman
Mrs. Grzelecki, Secretary
Ms. DeLuca
Mr. Flinn
Mr. Papp
Mr. Radman (arrived at 7:06 pm)
Mr. Ward

Mr. Shizari
Mr. Turner

ALTERNATE MEMBERS PRESENT: ALTERNATE MEMBERS ABSENT:

VACANCY Mr. Crofton
VACANCY

Also in Attendance:
Steve Kleppin, Town Planner/Senior Enforcement Officer

PUBLIC HEARING

Chairman Goodwin opened the Public Hearing at 7:00 pm.

LEGAL ADVERTISEMENT

12A NEW CANAAN ADVERTISER, NEW CANAAN, CONN., THURSDAY, JANUARY 15, 2015

TOWN OF NEW CANAAN	foot, 1-story, 8-bay, detached	41).
PLANNING & ZONING	garage. Properties are located	Upon application of St
COMMISSION	In the Two Acre Residence	Lukes Foundation Inc, owner,
Notice is hereby given	Zone at 43 Lone Tree Farm	for a Special Permit application
that the Planning and Zoning	Road (Map 38 Block 903 Lot	of Section 6.4.G to result
Commission will hold a	86).	in greater than 1,000 cubic
Public Hearing on Tuesday,	Upon application of Amy	yards of earth materials and
January 27, 2015 at 7:00 p.m.	S. Zabetakis, Esq., Rucci Law	soil disturbance greater than
in the Community Room, N.	Group, Authorized Agent, for	10,000 square feet. The property
C. Nature Center, 144 Oenoke	Telljana and Leon B. Pogacnik,	is located in the Four Acre
Ridge to hear and decide the	owners, for a Special Permit	Residence Zone at 377 North
application(s) as follows:	of Section 3.3.C.3 to permit	Wilton Road (Map 40 Block
Upon application of David	a home office to be located	105 Lot 90).
J. Rucci Esq., Lampert, Toohy	In an existing detached accessory	Dated: January 8, 2015
and Rucci, LLC, Authorized	structure. The property	New Canaan, Connecticut
Agent, for Paul B. and Ann-	is located in the Four Acre	Jean N. Grzelecki
Marie Queally, owners, for a	Residence Zone at 607 Laurel	Secretary
Special Permit of Section 3.4.C	Road (Map 40 Block 105 Lot	1-151-22
to construct a 2,600 square		

REGULAR MEETING

1. 3M Capital Trust LLC, owner, 16 Cross Street – Special Permit.

Upon application of Stephen A. Finn, Esq., Wofsey, Rosen, Kweskin & Kuriansky, LLP, Authorized Agent, for 3M Capital Trust LLC, owner, for approval of the street's building façade pursuant to the Special Permit of Sections granted December 16, 2014. Property is located in the Business B Zone at 16 Cross Street (Map T Block 71 Lot 720).

Attorney Stephen Finn noted that one of the conditions of approval of the Special Permit granted on December 16, 2014 was that the applicant must obtain approval of the building's street façade from the Commission. His client met with a subcommittee of the Commission and presented several façade designs. He presented the Commissioners with a picture of the façade design selected by the subcommittee.

Upon motion of Mrs. Grzelecki and second of Mr. Papp, the Commission voted unanimously to approve the building façade as recommended by the subcommittee of the Commission.

PLANNING & ZONING COMMISSION MINUTES

THURSDAY, JANUARY 29, 2015

REGULAR MEMBERS PRESENT: REGULAR MEMBERS ABSENT:

Mr. Goodwin, Chairman
Mrs. Grzelecki, Secretary
Ms. DeLuca
Mr. Flinn
Mr. Papp
Mr. Radman (arrived at 7:06 pm)
Mr. Ward

Mr. Shizari
Mr. Turner

ALTERNATE MEMBERS PRESENT: ALTERNATE MEMBERS ABSENT:

VACANCY
VACANCY

Mr. Crofton

Also in Attendance:
Steve Kleppin, Town Planner/Senior Enforcement Officer

PUBLIC HEARING

Chairman Goodwin opened the Public Hearing at 7:00 pm.

LEGAL ADVERTISEMENT

12A NEW CANAAN ADVERTISER, NEW CANAAN, CONN., THURSDAY, JANUARY 15, 2015

TOWN OF NEW CANAAN	foot, 1-story, 8-bay, detached	41).
PLANNING & ZONING	garage. Properties are located	Upon application of St
COMMISSION	in the Two Acre Residence	Lukes Foundation Inc, owner,
Notice is hereby given	Zone at 43 Lone Tree Farm	for a Special Permit application
that the Planning and Zoning	Road (Map 38 Block 903 Lot	of Section 6.4.G to result
Commission will hold a	86).	in greater than 1,000 cubic
Public Hearing on Tuesday,	Upon application of Amy	yards of earth materials and
January 27, 2015 at 7:00 p.m.	S. Zabelakis, Esq., Rucci Law	soil disturbance greater than
in the Community Room, N.	Group, Authorized Agent, for	10,000 square feet. The property
C. Nature Center, 144 Oenoke	Taljana and Leon B. Pogacnik,	is located in the Four Acre
Ridge to hear and decide the	owners, for a Special Permit	Residence Zone at 377 North
application(s) as follows:	of Section 3.3.C.3 to permit	Wilton Road (Map 40 Block
Upon application of David	a home office to be located	105 Lot 90).
J. Rucci Esq., Lampert, Toohey	in an existing detached accessory	Dated: January 8, 2015
and Rucci, LLC, Authorized	structure. The property	New Canaan, Connecticut
Agent, for Paul B. and Ann-	is located in the Four Acre	Jean N. Grzelecki
Marie Queally, owners, for a	Residence Zone at 607 Laurel	Secretary
Special Permit of Section 3.4.C	Road (Map 40 Block 105 Lot	1-151-22
to construct a 2,600 square		

REGULAR MEETING

1. 3M Capital Trust LLC, owner, 16 Cross Street – Special Permit.

Upon application of Stephen A. Finn, Esq., Wofsey, Rosen, Kweskin & Kuriansky, LLP, Authorized Agent, for 3M Capital Trust LLC, owner, for approval of the street's building façade pursuant to the Special Permit of Sections granted December 16, 2014. Property is located in the Business B Zone at 16 Cross Street (Map T Block 71 Lot 720).

Attorney Stephen Finn noted that one of the conditions of approval of the Special Permit granted on December 16, 2014 was that the applicant must obtain approval of the building's street façade from the Commission. His client met with a subcommittee of the Commission and presented several façade designs. He presented the Commissioners with a picture of the façade design selected by the subcommittee.

Upon motion of Mrs. Grzelecki and second of Mr. Papp, the Commission voted unanimously to approve the building façade as recommended by the subcommittee of the Commission.

PUBLIC HEARING

2. New Canaan Housing Authority, owner, 33, 35, 41, 57 & 65 Millport - text amendment.

Upon application of Timothy Hollister, Shipman & Goodwin LLP, Authorized Agent, for New Canaan Housing Authority, owner; such application made pursuant to Connecticut General Statutes Section 8-30g, for a text amendment to the Zoning Regulations, amended through April 14, 2014, to add section 5.7 to the regulations, "Millport Housing Zone" and to amend the Zoning Map dated January 7, 2010, rezoning 33 Millport Avenue (Map R Block 80 Lot 623), 35 Millport Avenue (Map R Block 80 Lot 630) from the B Residence Zone; and 41 Millport Avenue (Map R Block 80 Lot 645), 57 Millport Avenue (Map N Block 80 Lot 644) and 65 Millport Avenue (Map N Block 80 Lot 643) from the Multi-Family Zone to the Millport Housing Zone. (Continued from the November 18, 2014 meeting).

and

3. New Canaan Housing Authority, owner; 33, 35, 41, 57 Millport - Site Plan.

Upon application of Timothy Hollister, Shipman & Goodwin LLP, Authorized Agent, for New Canaan Housing Authority, owner; such application made pursuant to Connecticut General Statutes Section 8-30g, for a Site Plan approval to construct 88 residential apartment homes in four new buildings and the demolition of six existing residential buildings for property located at 33 Millport Avenue (Map R Block 80 Lot 623), 35 Millport Avenue (Map R Block 80 Lot 630), 41 Millport Avenue (Map R Block 80 Lot 645) and 57 Millport Avenue (Map N Block 80 Lot 644). (Continued from November 18, 2014 meeting).

Items 2 and 3 were heard together.

Attorney Timothy Hollister reviewed the application process to date and stated that in response to comments from the Commission and the public some changes have been made to the site plan. The size of the project has been reduced from 88 units to 73 units.

Holt McChord, PE described the site plan design changes. The ratio of parking spaces to units has to been increased to 1:1. The number of units in Building 3 has been reduced. Parking has been added to the south of Building 3. The distance between Building 3 and the property to the north has been increased. The amount of impervious cover on the site and the amount of water discharged off site have been decreased.

Architect Sotheby Chung reviewed the architectural changes to the new buildings. The footprint of Building 3 has been decreased and parking has been added. He described how the exterior design of the buildings has changed. Mrs. Grzelecki expressed a concern that Building 1 will be too large. Mr. Chung assured her that the visual impact of the building will not be as strong as she might think it will be. In response to Mr. Radman's question about the lack of window detail on the end elevations of the new buildings Mr. Chung stated that unit layout and the location of the stairwells resulted in the lack of detail.

Landscape architect Eric Rains described the planting and lighting plan for the site. He stated that the plan is to bring the green element around the edge of the site onto the interior of the property. The new lighting will blend in with the existing lighting.

David McCarthy, project manager, stated that the unit count has been reduced by 18%. He said that a further reduction in the scale of the project would impact the applicant's ability to obtain financing to build the project. Twenty-two families need to be relocated during construction and he wants to relocate them within the project. He said screening would be added to the dumpster area and the fence around the property will be rebuilt.

Scott Hobbs from the New Canaan Housing Authority said that the site is one of the few sites in town available for affordable housing. He noted that relocation of families off site during construction could cause difficulties for some families as it could mean that

children would have to change schools. He said that a further decrease in the number of units would make it more difficult for the Town to qualify for an 8-30g moratorium.

Attorney Hollister said that the Town currently has 133 of the 151 points it needs to qualify for an 8-30g moratorium. The additional 73 units will give the Town between 110 and 145 additional points which are sufficient to qualify for an initial moratorium and are about seventy five percent of the points necessary to qualify for a second four year moratorium.

The public hearing on these matters was closed.

4. Paul B. and Ann-Marie Queally, owners, 43 Lone Tree Farm Road - Special Permit.

Upon application of David J. Rucci Esq., Lampert, Toohey and Rucci, LLC, Authorized Agent, for Paul B. and Ann-Marie Queally, owners, for a Special Permit of Section 3.4.C to construct a 2,600 square foot, 1-story, 8-bay, detached garage. Properties are located in the Two Acre Residence Zone at 43 Lone Tree Farm Road (Map 38 Block 903 Lot 86).

Mr. Flinn recused himself. Attorney David Rucci explained that his clients own three (3) contiguous properties. They want to replace an existing tennis court with an eight (8) car garage to house Mr. Queally's antique car collection. The garage will be heated, have electricity and water for a hose bib. There will be no bathroom. The garage will be located approximately 200 feet beyond the principal residence on land which is at a lower elevation than the road. Attorney Rucci is working with a neighbor to resolve her concerns about screening and a stonewall.

Builder Joe Fossi said that the proposed garage will be primarily a storage building and that cars would not be going in and out of it frequently. It will be painted an earth tone color and will have water for a hose bib but no bathroom.

The public hearing on this matter was continued to the February 24, 2015 public hearing.

5. St Lukes Foundation Inc, owner, 377 North Wilton Road - Special Permit.

Upon application of St Lukes Foundation Inc, owner, for a Special Permit application of Section 6.4.G to result in greater than 1,000 cubic yards of earth materials and soil disturbance greater than 10,000 square feet. The property is located in the Four Acre Residence Zone at 377 North Wilton Road (Map 40 Block 105 Lot 90).

and

7. St Lukes Foundation Inc., owner, 377 North Wilton Road - Site Plan.

Upon application of St Lukes Foundation Inc., owner, for a Site Plan application of Section 8.2.A to construct a new dugout structure with a building coverage of 224 square feet (8'x28") for property in the Four Acre Residence Zone at 377 North Wilton Road (Map 40 Block 105 Lot 90).

Items 5 and 7 were heard together.

Landscape architect Dick Webb described the proposed project as the replacement of a natural grass baseball field with a synthetic turf field and the construction of a new dugout. There will be no increase in athletic programs so there is no need for additional parking. The field will not be lighted and there will be no loudspeakers. The existing backstop will be removed and replaced with one which is the same color and height. The existing 3rd base dugout will remain but the 1st base dugout will be rebuilt in a new location. It will match the 3rd base dugout. A four (4) foot black vinyl chain link fence will surround the field. A scoreboard will be located near the vegetation along North Wilton Road. With respect to drainage, the intent is to replicate the existing drainage pattern.

Haik Kavookjian of 293 North Wilton Road spoke in behalf of himself and several of his neighbors. He stated that they had no objection to the overall plan but suggested the following changes to the plan: 1) that use of the field by for profit organizations be prohibited; 2) that the gate at the entrance to the field be locked when the field is not in use; 3) that the field not be lighted or used for overflow bus parking; 4) that the height of the backstop be lowered; 5) that the screening between the backstop and the neighbors be maintained; and 6) that the parking lot to the left of the main entrance to the school be screened as it is now used for student parking.

The public hearing on this matter was continued to the March 24, 2015 public hearing.

REGULAR MEETING

6. Deliberation and any possible action on a closed public hearing item.

Discussion on Items #2 and #3 - New Canaan Housing Authority, owner, 33, 35, 41, 57 & 65 Millport text amendment and Site Plan.

Mr. Goodwin stated that the project was consistent with the goals contained in the POCD, that it would help the Town achieve its goal of providing more affordable housing, and that the proposed use is appropriate for the location, all of which were encompassed in the draft resolutions.

Upon motion of Mrs. Grzelecki and second of Mr. Papp, the Commission unanimously voted to approve the text amendment effective February 15, 2015.

Town of New Canaan Planning and Zoning Commission

Requests

Upon application of Timothy Hollister, Shipman & Goodwin LLP, Authorized Agent, for New Canaan Housing Authority, owner; such application made pursuant to Connecticut General Statutes Section 8-30g, for a text amendment to the Zoning Regulations, amended through April 14, 2014, to add section 5.7 to the regulations, "Millport Housing Zone" and to amend the Zoning Map dated January 7, 2010, rezoning 33 Millport Avenue (Map R Block 80 Lot 623), 35 Millport Avenue (Map R Block 80 Lot 630) from the B Residence Zone; and 41 Millport Avenue (Map R Block 80 Lot 645), 57 Millport Avenue (Map N Block 80 Lot 644) and 65 Millport Avenue (Map N Block 80 Lot 643) from the Multi-Family Zone to the Millport Housing Zone.

Resolution

WHEREAS, the applications were physically received by the Planning and Zoning Department on October 24, 2014.

WHEREAS, the Planning and Zoning Commission (Commission) opened a hearing on said application on November 18, 2014 and conducted subsequent hearings on December 16, 2014 and January 29, 2015.

WHEREAS, the Commission closed the hearing on the application on January 29, 2015.

WHEREAS, the Commission conducted and concluded deliberations on the closed application on January 29, 2015, at which time they made the following findings:

1. The Commission finds that the proposed regulation amendment is consistent with relevant goals contained within the Plan of Conservation and Development.
2. The Commission finds that the proposed text amendment will help the town in their goal of providing additional affordable housing in and around New Canaan's downtown.
3. The proposed Millport Regulation, which includes minimum acreage, existing multi-family use, recent additional parcel acquisitions by the applicant, and need to coordinate the addition of new multi-family units with existing units all justify

the drafting and adoption of a zoning regulation that is specific to the Millport Avenue site.

4. The proposed regulation contains appropriate standards to control the new development, integrate it with existing site conditions, and ensure a level of quality that is consistent with the surrounding neighborhood and uses.
5. The proposed density is appropriate in light of the site already being used for multi-family residential purposes.
6. The regulation has been drafted in a site-specific way that does not constitute spot zoning, and does not subject other parcels of land in New Canaan to comparable level of development.

THEREFORE, BE IT RESOLVED, that upon a motion made by Ms. Grzelecki and seconded by Mr. Papp, the Commission voted to approve the proposed amendment to the zoning regulations with an effective date of February 15, 2015.

Upon motion of Mr. Flinn and second of Mrs. Grzelecki, the Commission unanimously voted to approve the amendment to the zoning map effective February 15, 2015.

**Town of New Canaan
Planning and Zoning Commission**

Requests

Upon application of Timothy Hollister, Shipman & Goodwin LLP, Authorized Agent, for New Canaan Housing Authority, owner; such application made pursuant to Connecticut General Statutes Section 8-30g, for a text amendment to the Zoning Regulations, amended through April 14, 2014, to add section 5.7 to the regulations, "Millport Housing Zone" and to amend the Zoning Map dated January 7, 2010, rezoning 33 Millport Avenue (Map R Block 80 Lot 623), 35 Millport Avenue (Map R Block 80 Lot 630) from the B Residence Zone; and 41 Millport Avenue (Map R Block 80 Lot 645), 57 Millport Avenue (Map N Block 80 Lot 644) and 65 Millport Avenue (Map N Block 80 Lot 643) from the Multi-Family Zone to the Millport Housing Zone.

Resolution

WHEREAS, the applications were physically received by the Planning and Zoning Department on October 24, 2014.

WHEREAS, the Planning and Zoning Commission (Commission) opened a hearing on said application on November 18, 2014 and conducted subsequent hearings on December 16, 2014 and January 29, 2015.

WHEREAS, the Commission closed the hearing on the application on January 29, 2015.

WHEREAS, the Commission conducted and concluded deliberations on the closed application on January 29, 2015, at which time they made the following findings:

1. The Commission finds that the proposed map amendment is consistent with relevant goals contained within the Plan of Conservation and Development.
2. The Commission finds that the proposed map amendment will help the town in their goal of providing additional affordable housing in and around New Canaan's downtown.
3. Rezoning of 4.8 acres to Millport Zone is appropriate considering the site's location, abutting and neighboring uses, utilities, traffic access, elevations, and topography considering the type of development proposed in the Millport regulation.
4. The site's location near the center of New Canaan makes it an ideal location for expansion of the existing multi-family development.

THEREFORE, BE IT RESOLVED, that upon a motion made by Mr. Flinn and seconded by Ms. Grzelecki, the Commission voted to approve the proposed amendment to the zoning map with an effective date of February 15, 2015.

Upon motion of Mr. Flinn and second of Ms. DeLuca the Commission unanimously voted to approve the site plan with conditions.

**Town of New Canaan
Planning and Zoning Commission**

Requests

Upon application of Timothy Hollister, Shipman & Goodwin LLP, Authorized Agent, for New Canaan Housing Authority, owner; such application made pursuant to Connecticut General Statutes Section 8-30g, for a Site Plan approval to construct 88 residential apartment homes in four new buildings and the demolition of six existing residential buildings for property located at 33 Millport Avenue (Map R Block 80 Lot 623), 35 Millport Avenue (Map R Block 80 Lot 630), 41 Millport Avenue (Map R Block 80 Lot 645) and 57 Millport Avenue (Map N Block 80 Lot 644).

Resolution

WHEREAS, the applications were physically received by the Planning and Zoning Department on October 24, 2014.

WHEREAS, the Planning and Zoning Commission (Commission) opened a hearing on said application on November 18, 2014 and conducted subsequent hearings on December 16, 2014 and January 29, 2015.

WHEREAS, the Commission closed the hearing on the application on January 29, 2015.

WHEREAS, the Commission conducted and concluded deliberations on the closed application on January 29, 2015, at which time they made the following findings:

1. The site's location near the center of New Canaan makes it an ideal location for expansion of the existing multi-family development.
2. The applicant has demonstrated that the proposed site plan complies with the standards contained within the proposed Millport Regulation.
3. The applicant has made several substantial revisions of the site plan, including density, parking, landscaping, and buffering of abutting uses, in response to comments from the Commission and the public.
4. The applicant has also made renovations to the building's architecture to address concerns of the Commission and the public which will result in a project that is in keeping with the high architectural standards of the town.
5. The site plan as proposed will increase New Canaan's multi-family residential housing stock at rents that will be accessible to moderate and low income households and will provide additional economic diversity.

THEREFORE, BE IT RESOLVED, that upon a motion made by Mr. Flinn and seconded by Ms. DeLuca, the Commission voted to approve the proposed Site Plan application with the following conditions.

1. Per Final Site Layout SE1, Alternate "C", Site Grading & Soil Erosion Control Plan SE2, Site Utility Plan SE3 and Construction Notes & Details DT1, 33, 35, 41, 57 & 65 Millport Avenue, Plan dated 1/21/15, prepared by McChord Engineering Associates, on-file with the Planning & Zoning Department.
2. Per Building 1, Typ. Floor Plans (A-101), Building 2, Typ. Floor Plans (A-102), Building 3, Typ. Floor Plans (A-103), Building 4, Typ. Floor Plans (A-104), Per Building 4, Typ. Floor Plans (A-105), Building 4, Typ. Floor Plans (A-106), Building 1, Elevations (A-201), Building 1, Elevations (A-201), Building 2, Elevations (A-202), Building 3, Elevations (A-203), Building 4, Elevations (A-204), Typ. Bldg. 1 Section (A-301), Typ. Bldg. Section, Bldg. 2, 3 & 4 (A-302), dated 1/24/15, prepared by Doh. Chung & Partners, on-file with the Planning & Zoning Department.

3. Per Clubhouse Plans & Elevations, A-107, dated 10/24/15, prepared by Doh. Chung & Partners, on-file with the Planning & Zoning Department.
4. Per Building Typ. 1 Bedroom & Loft Floor Plans (A-501), Typ. 2 Bedroom & Loft Floor Plans (A-502) and Patio Unit Floor Plans (A-503), prepared by Doh. Chung & Partners, on-file with the Planning & Zoning Department.
5. Per Landscape Site Plan, SPL-1.0, Trash Enclosure Planting, SKL-1.0 and Lighting Plan, dated 1/27/15, prepared by Eric Rains Landscape Architect, on-file with the Planning & Zoning Department.

8. Discussion regarding the Philip Johnson Glass House, 842 Ponus Ridge Road, Annual Fundraiser on Saturday, June 13, 2015.

Greg Sages, Deputy Director of the Philip Johnson Glass House, explained that the Philip Johnson Glass House was seeking permission to hold its annual fundraiser on the property on June 13, 2015. He noted that it would have the same format and hours as the last two year's events and that there were no complaints from the neighbors in either of the prior two years.

Upon motion of Mrs. Grzelecki and second of Ms. DeLuca, the Commission unanimously voted to approve the fundraiser.

9. Discussion and consideration of the request of Christopher D. Bristol, Gilbride, Tusa, Last & Spellane LLC, Authorized Agent for John Jr. and Melissa Almeida, owners, to amend their Special Permit granted on October 28, 2014 for 388 West Road, to restore and renovate the barn.

Attorney Bristol stated that when his clients began the renovation of the barn, they discovered that the structural members of the barn were more compromised than expected and that they cannot be salvaged. He asked that the previously granted Special Permit be amended to permit his clients to rebuild those parts of the barn that cannot be salvaged. The footprint of the barn will not change as they believe that they can reuse the existing foundation but most of the rest of the barn will have to be rebuilt. The existing, compromised post and beam frame will be replaced with a conventional frame structure.

Mr. Goodwin noted that the purpose of the regulation under which the Special Permit was granted is to preserve a historic structure. He expressed concern that if the amendment is granted that it could set a precedent.

Mr. Radman expressed the concern that the foundation may not be code compliant and that it can't be reused. He suggested that the applicant do due diligence with respect to the foundation and report back to the Commission next month.

The matter was continued to the February 24, 2015 meeting.

10. Plan Implementation Committee Update.

Mrs. Grzelecki stated that the Conservation Commission is addressing the issue of sustainability. Upon motion of Mrs. Grzelecki and second of Mr. Flinn, the Commission voted unanimously to remove the requirement that the Plan Implementation Committee form a sustainability task force.

11. P&Z Sub-committee Report.

Mr. Ward reported that on January 12, 2015, the committee had a kick off meeting with the consultants who will undertake the Cross and Vitti master neighborhood plan. The scope of services outlined in their contract with the Town is consistent with what the committee wants to accomplish. The committee hopes to have a public meeting on the draft plan in March and complete the task of developing a Cross and Vitti master neighborhood plan by June. Mr. Ward indicated that 'institutional creep' will probably be the next topic the committee addresses.

12. Sign Task Force Report.

- a. Brad & Vandy Reh Fine Jewelry, 123 (125) Elm Street – one wall sign.
- b. Manfredi, 72 Elm Street – one wall sign.

Upon motion of Ms. DeLuca and second of Mr. Flinn, the Commission approved items "a –b".

Mr. Goodwin noted that sandwich board signs need to be addressed.

13. Approve the minutes of the December 16, 2014 Regular Meeting.

Upon motion of Mr. Papp and second of Mrs. Grzelecki, the Commission unanimously voted to approve the minutes of the December 16, 2015 meeting with a modification.

By consensus the Commission agreed to include a discussion of splitting the Business B zones on the agenda of the February 24, 2015 meeting.

14. Adjournment.

Meeting was adjourned at 9:11 p.m.

Jean N. Grzelecki, Secretary

LEGAL ADVERTISEMENT

6A NEW CANAAN ADVERTISER, NEW CANAAN, CONN., THURSDAY, FEBRUARY 5, 2015 &
10A NEW CANAAN ADVERTISER, NEW CANAAN, CONN., THURSDAY, FEBRUARY 5, 2015

TOWN OF NEW CANAAN	Canaan Housing Authority,	from the Multi-Family Zone
PLANNING & ZONING	owner; such application	to the Millport Housing Zone
COMMISSION	made pursuant to Connecticut	is approved.
Notice is hereby given	General Statutes Section 8-	RESOLVED that the application
that the Planning and Zoning	30g, for a text amendment	of Timothy Hollister,
Commission at a special	to the Zoning Regulations,	Shipman & Goodwin LLP,
meeting held on January 29,	amended through April 14,	Authorized Agent, for New
2015 duly adopted the following	2014, to add section 5.7 to the	Canaan Housing Authority,
resolution(s). Approved	regulations, "Millport Housing	owner; such application
Special Permit Applications	Zone" is approved.	made pursuant to Connecticut
become effective upon the filing	RESOLVED that the application	General Statutes Section 8-
of a copy thereof in the	of Timothy Hollister,	30g, for a Site Plan approval
office of the Town Clerk.	Shipman & Goodwin LLP,	to construct 88 residential
RESOLVED that the	Authorized Agent, for New	apartment homes in four new
application of Stephen A. Finn,	Canaan Housing Authority,	buildings and the demolition
Esq., Wofsey, Rosen, Kveskin	owner; such application	of six existing residential
& Kuriansky, LLP, Authorized	made pursuant to Connecticut	buildings for property
Agent, for 3M Capital Trust	General Statutes Section 8-	located at 33 Millport Avenue
LLC, owner, for approval of	30g, to amend the Zoning	(Map R Block 80 Lot 623),
the street's building facade	Map dated January 7, 2010,	35 Millport Avenue (Map R
pursuant to the Special Permit	rezoning 33 Millport Avenue	Block 80 Lot 630), 41 Millport
of Sections granted December	(Map R Block 80 Lot 623),	Avenue (Map R Block 80 Lot
16, 2014. Property is located	35 Millport Avenue (Map	645) and 57 Millport Avenue
in the Business B Zone at 16	R Block 80 Lot 630) from	(Map N Block 80 Lot 644).
Cross Street (Map T Block 71	the B Residence Zone; and	(Continued from November
Lot 720) is approved.	41 Millport Avenue (Map R	18, 2014 meeting) is approved
RESOLVED that the application	Block 80 Lot 645), 57 Millport	with conditions.
of Timothy Hollister,	Avenue (Map N Block 80 Lot	Jean N. Grzelecki
Shipman & Goodwin LLP,	644) and 65 Millport Avenue	Secretary
Authorized Agent, for New	(Map N Block 80 Lot 643)	Dated January 30, 2015

SECTION 5.5. FLOODPLAIN OVERLAY ZONE

A. Purpose

The Floodplain Overlay Zone is intended to provide reasonable notice regarding property that may be subject to the effects of flooding.

B. Standards

Principal and accessory buildings, structures, uses, and activities allowed in the underlying zone are permitted in the Floodplain Overlay Zone provided that they comply with the requirements of the Town Code relating to floodplains and any requirements of the Environmental Commission, acting as the administrator of the floodplain standards.

SECTION 5.6. AQUIFER PROTECTION OVERLAY ZONE

A. Purpose

The purpose of the Aquifer Protection Zone is to preserve the quality and quantity of the groundwater supply by regulating land uses which may cause contamination of designated aquifers and aquifer recharge areas.

B. Standards

Principal and accessory buildings, structures, uses, and activities allowed in the underlying zone are permitted in the Aquifer Protection Overlay Zone provided that they comply with the requirements of the Town Code relating to aquifer protection and any requirements of the Environmental Commission, acting as the administrator of the aquifer protection standards.

SECTION 5.7. MILLPORT HOUSING ZONE

A. Purpose

The Millport Housing Zone is intended to increase economic diversity of housing types in New Canaan by allowing a small, well-designed and landscaped multi-family development.

B. Properties Eligible for Rezoning to Millport Housing Zone

To be eligible for rezoning to Millport Housing Zone, a parcel or parcels to be merged must total at least four (4.0) acres and have no less than 300 feet of frontage on Millport Avenue.

C. Uses Permitted by Site Plan Approval

Multi-family residential dwellings with a maximum of forty (40) units per building, with a total density of not more than thirty (30) units per gross acre.

Section 5.7

5. Exterior lighting shall:
 - a. be provided and maintained at all access points to streets, parking areas, building entrances, and elsewhere where required for the safety of vehicular or pedestrian traffic;
 - b. not be directed into any abutting properties; and
 - c. comply with Section 6.11.
6. Sidewalks shall:
 - a. have a minimum width of four (4) feet;
 - b. be concrete, brick, or other surface acceptable to the Commission; and
 - c. be provided between dwelling units and parking areas, streets, and driveways.
7. Retaining walls shall:
 - a. have a maximum height of fifteen (15) feet;
 - b. when tiered, be separated by at least four (4) feet;
 - c. be no closer to a side property line than five (5) feet;
 - d. have a surface treatment / appearance that is suitable to a residential development; and shall be screened from abutting property by planting or landscaping.
8. Stormwater Management: In addition to compliance with Section 6.4.J of these Regulations, applicant shall use Low Impact Design practices and techniques to the maximum extent possible, including the use of a "green roof" to collect and renovate stormwater.
9. Grading, Excavation, Soil Disturbance.
 - a. Excavating, grading, or soil disturbance, including removal of trees and vegetative ground cover, shall occur only as specifically approved by the Commission as part of site plan approval, and shall be granted only as essential to the construction or alteration of residential and accessory buildings, and installation of driveways, utilities, or amenities.
 - b. The applicant shall provide the Commission, in connection with its site plan application, a calculation and specification of the amount, lateral extent, and depth of earth materials to be excavated; materials to be reused on-site; materials to be imported; and a net cut / fill calculation.
 - c. The application erosion control plan shall specifically address controls tailored to the amount, location, and timetable for cut, fill, excavation, and import / export.
 - d. The applicant shall comply with the provision of Section 6.4.H and 6.4.I of these Regulations.

G. Standards and Regulations for Household Income and Sale / Resale Price Limitations

A development in a Millport Housing Zone shall be either a "set aside development" or "assisted housing" in compliance with General Statutes § 8-30g.

H. Affordable Apartment Home Requirements

The purpose of the Millport Housing Zone is to facilitate a residential community containing household income / price-restricted dwellings that comply with § 8-30g of the General Statutes. The following requirements shall apply:

1. Affordable apartment homes shall be of a construction quality that is comparable to a baseline specification for market-rate homes (if any) within the community. The Affordability Plan shall identify the locations within the community of the affordable apartment homes.
2. Calculation of the maximum monthly payment for affordable apartment homes, so as to satisfy General Statutes § 8-30g, shall utilize the median income data as published by the U.S. Department of Housing and Urban Development in effect on the day a lease is executed.
3. The maximum monthly payment that the owner of an affordable apartment home shall pay shall not be greater than the amount that will preserve such unit as defined in General Statutes § 8-30g.
4. An affordable apartment home shall be occupied only as a principal residence. Sub-leasing of affordable apartment homes shall be prohibited.
5. Notice of availability of the apartment homes shall be provided by advertising such availability in the real estate section of a newspaper of general circulation in the Town of New Canaan, by providing notice to the New Canaan Town Council, the New Canaan Town Clerk, and the New Canaan Planning and Zoning Commission, and through the procedures outlined in the affirmative fair housing marketing plan in the Affordability Plan.
6. Each lease for an affordable apartment home will contain substantially the following provision:

"This apartment home is an affordable housing unit and is therefore subject to a limitation at the date of leasing and occupancy on the maximum annual income of the household that may occupy the apartment home, and is subject to a limitation on the maximum monthly rent. These limitations shall be strictly enforced, and may be enforced by the zoning enforcement authority of New Canaan."
7. The forty (40) year affordability period shall be calculated separately for each affordable apartment home in a Millport Housing Zone, and the period shall begin on the date, as stated in the lease, of occupancy of the affordable apartment home.

8. A violation of the Regulations contained in this Section shall not result in a forfeiture or reversion of title, but the New Canaan Planning and Zoning Commission or its designated agent shall otherwise retain all enforcement powers granted by the Connecticut General Statutes, including the authority under § 8-12 to issue notices of violation, to impose fines, and to seek injunctive relief.

I. Conflicts

Where any provision of this Section conflicts with any other provisions of the New Canaan Zoning Regulations, the provisions of this Section shall govern.

J. Submission Requirements

1. As applicant seeking approval of a site plan for a Millport Housing Zone development shall submit all information required by Section 8.2 of these Regulations.
2. The applicant shall also submit an Affordability Plan explaining how household income and rental price limits will be calculated and administered, and how the development will comply with General Statutes § 8-30g.

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 26th day of May, 2017, by and between MILLPORT PHASE II LIMITED PARTNERSHIP, a Connecticut limited partnership with an office and principal place of business at 57 Millport Avenue, New Canaan, Connecticut 06840 (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 Millport Phase II, and located at 57 - 61 Millport Avenue, New Canaan, Connecticut (the "Property"), which Property is more particularly described on Exhibit A, attached hereto and made a part hereof;

WHEREAS, the Property has qualified for low-income housing tax credits in the annual amount of \$500,000 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");

WHEREAS, Section 42(h)(6)(A) of 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:

-- 1 --

- (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, *provided, however,* in case of individuals and families

occupying at least: (i) eleven (11) Units, individuals and families having an annual income not exceeding fifty percent (50%) of area median gross income at such time, and (ii) seven (7) additional Units, individuals and families having an annual income not exceeding twenty-five percent (25%) of area median gross income at such time.]

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%) or more of the residential units in the Development shall be both rent-restricted and occupied by individuals whose income is fifty percent (50%) or less of area median gross income; or

☒ forty percent (40%) or more of the residential units in the Development shall be both rent-restricted and occupied by individuals whose income is 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:

40/40 (unit fraction)

One Hundred Percent (100%) (floor space fraction)

(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 twenty-five (25) 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 forty (40) Units (one hundred percent (100%) 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 October 1, 2016, 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.

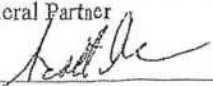
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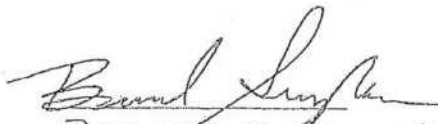
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

OWNER:

MILLPORT PHASE II LIMITED PARTNERSHIP

By: Millport Phase II GP Corporation
Its General Partner

By: 
Scott Hobbs
Its Chairman
Duly Authorized


BERNARD E. SIMAKIRI


DIMITRI TOURNAS

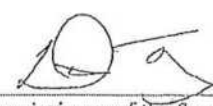
STATE OF CONNECTICUT)

COUNTY OF FAIRFIELD)

ss: Stanford

May 25, 2017

Personally appeared, Scott Hobbs, the Chairman of Millport Phase II GP Corporation, the General Partner of Millport Phase II Limited Partnership, as aforesaid Signer and Sealer of the foregoing Instrument, and acknowledged the same to be his free act and deed as Chairman of Millport Phase II GP Corporation, the General Partner of Millport Phase II Limited Partnership, and the free act and deed of Millport Phase II Limited Partnership, and that said instrument was signed on behalf of and with the authority of said limited partnership, before me.


Commissioner of the Superior Court
Notary Public

CONNECTICUT HOUSING FINANCE AUTHORITY

Mary Bryant
MARY BRYANT

Robert Hicks

By: KKA

Karl Kilduff
Its Executive Director
Duly Authorized

STATE OF CONNECTICUT)

) ss. Rocky Hill

May 24, 2017

COUNTY OF HARTFORD)

Personally appeared, Karl Kilduff, Executive Director 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.

Robert Hicks
Commissioner of the Superior Court
Notary Public

Exhibit A

PROPERTY DESCRIPTION
Millport Leasehold Parcel II

All that certain piece, parcel or tract of land, being a portion of that new consolidated parcel, comprised of portions of former Assessor Lots 630, 644 and 644A, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, being a portion of Parcel 630, 35 Millport Avenue and portion of Parcel 644 and 644A 57 Millport Avenue, shown as PHASE II (SHADED AREA) AREA=64,982+/- SQ. FT. OR 1.4918+/- AC. (LEASEHOLD PARCEL) and designated within shaded area on a map entitled "ALTA/NSPS LAND TITLE SURVEY (PROPERTY SURVEY) 33, 35, 41, 57 & 65 MILLPORT AVENUE DEPICTING LEASE PARCEL II PROPERTY OF HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN NEW CANAAN, CONNECTICUT" Sheets 1 and 2 of 2, dated May 19, 2017, Scale 1"=30', made by William W. Seymour & Associates, P.C., which map is or will be filed in the Office of the Town Clerk of New Canaan, more particularly bounded and described as follows:

Beginning at a point on the division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and land now or formerly of The Housing Authority of The Town of New Canaan, said point lying north 57° 04' 20" west a distance of 92.74 feet and north 50° 38' 00" west a distance of 5.19 feet and north 57° 58' 00" west a distance of 24.93 feet and south 62° 37' 30" west a distance of 5.07 feet and north 45° 58' 50" west a distance of 70.39 feet from the intersection of said division line with the northwesterly line of Millport Avenue and further being the intersection of the easterly line of the herein described parcel (Phase II) with the aforesaid division line;

Thence, running generally southwesterly and in a clockwise direction south 44° 01' 10" west a distance of 100.00 feet and south 45° 58' 50" east a distance of 7.29 feet and south 44° 32' 10" west a distance of 52.74 feet and south 58° 41' 20" west a distance of 115.23 feet to a point;

Thence, running generally northwesterly and continuing in a clockwise direction north 42° 37' 20" west a distance of 137.25 feet to a point on the division line between the herein described parcel (Phase II) and land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue);

Thence, running generally northeasterly and northwesterly and continuing in a clockwise direction along said land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue) north 46° 03' 30" east a distance of 114.08 feet and north 46° 33' 30" west a distance of 127.44 feet to a point and land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street);

Thence, running generally northeasterly and continuing in a clockwise direction along said land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street) and land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue), each in part, north 44° 16' 00" east a distance of 66.35 feet and north 42° 59' 00" east a distance of 115.70 feet to a point, said point being the northwesterly corner of the herein described parcel (Phase II);

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Thence, running generally southeasterly and continuing in a clockwise direction along said land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue) south 47° 24' 00" east a distance of 86.85 feet and south 49° 20' 00" east a distance of 55.50 feet and south 56° 38' 00" east a distance of 13.25 feet to the aforesaid division line between land now or formerly Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II);

Thence, running generally southwesterly and southeasterly and continuing in a clockwise direction along said division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II) south 36° 28' 00" west a distance of 46.84 feet and south 45° 58' 50" east a distance of 123.15 feet to the point of beginning.

the "Leasehold Parcel",

Together with the rights, provisions, terms and conditions set forth in an Easement Agreement by and among the Housing Authority of the Town of New Canaan, NCHA Mill Apartments Limited Partnership, Millport Phase I Limited Partnership and Millport Phase II Limited Partnership, and consented to by the State of Connecticut Department of Housing, People's United Bank, National Association, and Bankwell Bank, dated as of May 26, 2017, which will be recorded in the New Canaan Land Records.

Such easements and rights of way are shown and depicted on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING LEASE PARCELS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7648, as:

"Easement Area Y", more particularly bounded and described as follows:

Beginning at a point on the former division line between properties known as 41 & 57 Millport Avenue, said point being further described as lying north 09°47'00" west a distance of 126.20 feet from the intersection of said former division line between said properties known as 41 & 57 Millport Avenue with the northwesterly line of Millport Avenue;

Thence, running alternately southwesterly and northwesterly south 78°16'50" west a distance of 44.25 feet and north 38°03'00" west a distance of 83.95 feet and south 50°32'40" west a distance of 14.66 feet and 8.41 feet along a tangent arc curving to the right having a radius of 5.00 feet and subtending a delta or central angle of 96°19'30" and 51.51 feet along an arc (compound and tangent) curving to the right having a radius of 107.00 feet and subtending a delta or central angle of 27°34'57" and south 84°15'50" west a distance of 25.00 feet and north 43°56'30" west a distance of 29.54 feet to a point on the division line between land of Housing Authority of the Town of New Canaan and land now or formerly of Gray Stone Condominiums;

Thence, running northerly along said division line between land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue and land now or formerly of Gray Stone Condominiums north 46°03'30" east a distance of 27.34 feet to a point;

Thence, running southeasterly and northeasterly through said land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue south 42°37'20" east a distance of 137.25 feet and north 58°41'20" east a distance of 115.23 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southwesterly along said former division line between properties known as 41 & 57 Millport Avenue south 44°32'10" west a distance of 62.12 feet to a point;

Thence, running southeasterly and southwesterly through said land of Housing Authority of the Town of New Canaan and known as 41 Millport Avenue south 29°09'35" east a distance of 23.65 feet and south 60°50'25" west a distance of 8.32 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southeasterly along said former division line between properties known as 41 & 57 Millport Avenue south 09°47'00" east a distance of 25.08 feet to the point of beginning.

And "Driveway Easement Parcel" shown and depicted as "Proposed Driveway Easement for Phase II" on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING DRIVEWAY EASEMENTS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7649, bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point lying north 78°17'30" east 1.87 feet of the intersection of the former division line between properties known as 65 & 57 Millport Avenue with said northwesterly line of Millport Avenue;

Thence, running northerly and northwesterly a distance of 10.52 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of 20°05'35" and having a chord bearing of north 01°39'42" west and north 11°42'30" west a distance of 69.75 feet and north 38°03'00" west a distance of 103.11 feet and 80.59 feet along an arc curving to the right having a radius of 131.00 feet and subtending a central or delta angle of 35°14'45" to a point;

Thence, running northeasterly along the northerly terminus of the herein described easement north 84°15'50" east a distance of 24.00 feet to a point;

Thence, running southeasterly and southerly a distance of 54.96 feet along an arc curving to the left having a radius of 107.00 feet and subtending a central or delta angle of 29°25'40"

and south $38^{\circ}03'00''$ east a distance of 120.81 feet and south $11^{\circ}42'30''$ east a distance of 67.12 feet and 20.00 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $38^{\circ}11'39''$ and having a chord bearing of south $30^{\circ}48'19''$ east to the aforesaid northwesterly line of Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south $78^{\circ}17'30''$ west a distance of 32.25 feet to the point of beginning.

(hereinafter, the "Easement Parcels").

Together with the rights, provisions, terms and conditions set forth in a Ground Lease from the Housing Authority of the Town of New Canaan to Millport Phase II Limited Partnership, a Notice of which is dated as of May 26, 2017, and recorded, or to be recorded, in the New Canaan Land Records.

All of the above hereinafter referred to as the "Land".

VOL 950 PG0304

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

CT-15-06301 & CT-15-06302

EXTENDED LOW-INCOME HOUSING COMMITMENT

This Extended Low-Income Housing Commitment (the "ELIHC") is made this 27th day of January, 2016, by and between MILLPORT PHASE I LIMITED PARTNERSHIP, a Connecticut limited partnership with an office and principal place of business at 57 Millport Avenue, New Canaan, Connecticut 06840 (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").

WITNESSETH:

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

WHEREAS, the Owner is the owner of property known as Millport Phase I, located at 33-35 Millport Avenue, New Canaan, Connecticut 06840 (the "Property");

WHEREAS, the Property has qualified for low-income housing tax credits in the annual amount of \$323,044 for buildings financed by tax-exempt bonds pursuant to Section 42(h)(4) of the Internal Revenue Code of 1986, as amended (the "Code").

WHEREAS, Section 42(h)(6)(A) of 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:

1. DEFINITIONS

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

- a. "Compliance Period" means, with respect to any building, the period of fifteen (15) taxable years beginning with the first taxable year of the credit period with respect thereto.

-- 1 --



Doc ID: 002549240008 Type: LAN
Book 950 Page 304 - 311
File# 2236

Millport Phase I
CT-15-06301 & CT-15-06302
Extended Low-Income Housing Commitment v1

Book: 950 Page: 304 File Number: 2236 Seq: 1

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b. "Credit Period" means, with respect to any building, the period of ten (10) taxable years beginning with:

- (1) the taxable year in which the building is placed in service, or
- (2) at the irrevocable election of the taxpayer, the succeeding year,

but only if the building is a qualified low-income building as of the close of the first 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, which shall also include the following:

- (1) Components of Development - The Development will consist of 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 Sections 42(g)(7) (relating to scattered site projects) and 42(h)(6)(K) (relating to projects which consist of more than one (1) building) of the Code), which buildings shall be owned by the same person for tax purposes:
 - (i) each containing one 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
 - (ii) all of the units of which will be rented or available for rental on a nontransient basis to members of the general public.

NOTE: Special provisions apply for eligible single room occupancy housing and transitional housing for the homeless.

- (2) Change in Development - The Owner will 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 June 9, 2015, without the prior written consent of the Authority.

-- 2 --

- d. "Extended Use Period" means the period:
- (1) beginning on the first day in the Compliance Period on which such building is part of a qualified low-income housing project; and
 - (2) ending on the later of -
 - (i) the date specified by the Authority in Section 2d of this ELIHC, or
 - (ii) 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 Persons" 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; ←
- 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 the individual dwelling referenced in subsection (1) of subsection (c) of this first section of this ELIHC.

2. THE COMMITMENT

- a. Failure to comply with the provisions of this ELIHC is an event of default and the Authority or its successors may exercise any of the remedies available hereunder. Furthermore, the Authority may seek specific performance of this ELIHC 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.

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- b. The applicable fraction (as defined in Section 42(c)(1)(B) of the Code) for each taxable year in the Extended Use Period shall not be less than 33/33 (Qualified Units/total Units or total floor space of Qualified Units/total floor space of total Units, as applicable).
- 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 of subsections a. and b. of this second section and the prohibitions of (3) and (4) and (1) and (2) of subsections e. and f., respectively, of this second section of this ELIHC and may apply to any State court for specific performance of the provisions of this ELIHC notwithstanding any action which may or may not be taken by the Authority.
- d. The Extended Use Period shall be for an additional twenty-five (25) 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 the Owner a purpose of which is to terminate the Extended Use Period; or (II) the last day of the one-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. 15 + 25
= 40 yrs.

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 subclause (II) hereof therefore does not apply and has no force or effect.

- e. During the Extended Use Period:
- (1) not less than thirty-three (33) units (one hundred percent (100%) of the Units) in the Development shall be occupied or 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);

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- (2) 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;
 - (3) 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); and
 - (4) no rent may be increased for any Qualified Unit beyond the Qualified Rent:
 - (i) at any time during the Extended Use Period; or
 - (ii) as long as it is occupied by the tenant who was occupying the unit at the early termination of the Extended Use Period.
- f. For the 3-year period following an Early Termination of the Extended Use Period:
- (1) 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
 - (2) 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.
- g. The Owner hereby agrees that this ELIHC prohibits (i) the disposition to any person of any portion of the building to which this ELIHC applies unless all of the building to which such ELIHC applies is disposed of to such person; and (ii) 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.
- h. The restrictive covenants of this section shall be binding on all successors and assigns of the Owner and this ELIHC shall be recorded pursuant to Connecticut Law as a restrictive covenant.
- i. The Owner hereby agrees to record this ELIHC promptly on the land records of the town or city where the Property is located prior to the recording of any other lien or restrictions. If any financing liens on the Property have already been recorded on the land records at the time this ELIHC is recorded, the Owner agrees to use its best efforts to obtain an agreement from the holders of such liens, naming the Authority as a party, to subordinate such liens to the lien created by this ELIHC, and to provide the Authority with a copy of such subordination agreement.

3. MISCELLANEOUS

- a. This ELIHC 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 ELIHC shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of the provisions of this ELIHC, 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 C.G.S. Section 53a-157b.

[Intentionally left blank – signature pages to follow]

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

OWNER:

MILLPORT PHASE I LIMITED PARTNERSHIP

By: Millport Phase I GP Corporation
Its General Partner

By: Scott Hobbs
Scott Hobbs
Its Chairman
Duly Authorized

Dimitri Tournier

DIMITRI TOURNIER

Valerie M. Suiz

Valerie M. Suiz

STATE OF CONNECTICUT)

COUNTY OF Fairfield)

ss: Stanford

Jan 26, 2016

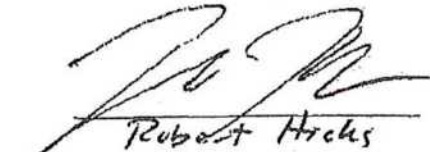

Personally appeared, Scott Hobbs, the Chairman of Millport Phase I GP Corporation, the general partner of Millport Phase I Limited Partnership, as aforesaid Signer and Sealer of the foregoing Instrument, and acknowledged the same to be his free act and deed as Chairman of Millport Phase I GP Corporation, General Partner, and the free act and deed of Millport Phase I Limited Partnership, and that said instrument was signed on behalf of and with the authority of said Owner, before me.

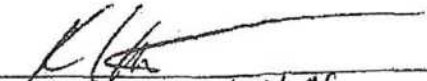
Gayle E. Clarke
Commissioner of the Superior Court
Notary Public

GAYLE E. CLARKE
Notary Public, State of Connecticut
My Commission expires: 1/30/20

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CONNECTICUT HOUSING FINANCE AUTHORITY


Robert Hochs

TINA BROCKETT

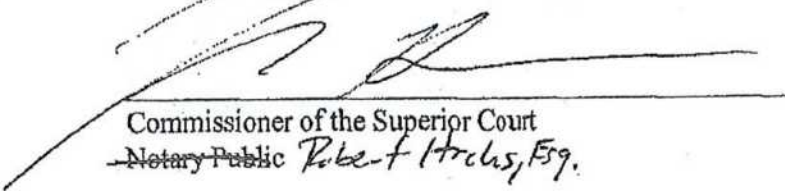
By: 
 Name: Karl Kilduff
 Title: Executive Director
 Duly Authorized

STATE OF CONNECTICUT)
)
 COUNTY OF HARTFORD)

ss. Rocky Hill

January 27, 2016

Personally appeared, Karl Kilduff, Executive Director 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~~ Robert Hochs, Esq.

Received for record on 1-27-16 at 3:33 pm
 and recorded by Claudia A. Weber
 TOWN CLERK

MILLPORT AVENUE

**MILLPORT AVENUE
NEW CANAAN, CONNECTICUT**

**Affordability Plan for Phase II /
73 Apartment Homes**

**Revised Submission Draft
January 2015**

**Submitted by New Canaan Housing Authority
to the New Canaan Planning and Zoning Commission**

PREPARED BY:

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INTRODUCTION

New Canaan Housing Authority ("NCHA") submits this Affordability Plan for Phase II, Millport Avenue, in conjunction with its applications to the Town of New Canaan for approval of a regulation amendment, rezoning, and site plan approval for "Millport Avenue," a residential community located at 33, 35, 41, 57 and 65 Millport Avenue in New Canaan, Connecticut.

Under this Plan, 73 newly-constructed apartment homes will meet or exceed the criteria for affordable housing as defined in Connecticut General Statutes ("C.G.S.") § 8-30g(a). This Affordability Plan for Phase II satisfies the requirements of § 8-30g and describes how affordability restrictions required by C.G.S. § 8-30g will be administered. The Millport Avenue development, when completed in compliance with the land use approvals requested, will consist of Phase I, 40 apartment homes in nine buildings; and Phase II, 73 apartment homes in four buildings. Phase I is already governed by an existing Affordability Plan, which will continue.

This application complies with C.G.S. § 8-30g as amended by Public Act 00-206, as well as the federal and state Fair Housing Acts.

The Town of New Canaan, acting by its Planning and Zoning Commission, shall be a party to this Affordability Plan ("Plan"). As such, the Town of New Canaan shall have the right to monitor said Plan and to enforce the terms and conditions of this Plan.

DEFINITIONS

"Community" or "Millport Avenue" – means Millport Avenue, a residential rental development, approved by the New Canaan Planning and Zoning Commission, whose boundary is described in Schedule A.

"Affordable Apartment Home" – means an apartment home within the Millport Avenue development that is subject to long-term restrictions as set forth in this Plan.

"Developer" – means New Canaan Housing Authority, or its successors and assigns.

AFFORDABILITY PLAN FOR MILLPORT AVENUE

I. Homes Designated as Affordable Apartment Homes.

Within Phase II of Millport Avenue, at least fifteen percent (15%) of the 73 apartment homes (11 apartment homes) will be rented to a household or family whose annual income is equal to or less than sixty percent (60%) of the median income as defined in § 8-30g-1(10) of the Regulations of Connecticut State Agencies. All other apartment homes will be rented to a household or family whose annual income is equal to or less than eighty percent (80%) of the median income as defined in § 8-30g-1(10) of the Regulations of Connecticut State Agencies. Because Phase II of Millport Avenue may be financed through the federal Low Income Housing Tax Credit ("LIHTC") program, the applicant reserves the right, subject to the Planning and Zoning Commission's approval, to conduct leasing at lower / more § 8-30g compliant levels.

II. Forty Year Period.

The Affordable Apartment Homes shall comply with this Plan for a minimum of forty (40) years. The forty (40) year affordability period shall be calculated separately for each Affordable Apartment Home, which calculation shall begin on the first day of occupancy as provided for in the lease for that Apartment Home. The NCHA reserves the right to extend this Affordability Plan without further approvals.

III. Nature Of Construction Of Affordable Apartment Homes.

Within Millport Avenue, Affordable Apartment Homes shall be no less than the square footage set forth in the approved site plan, as on file with the New Canaan Town Planning and Zoning Commission, and shall be, at a minimum, constructed in conformance with the specifications referenced in Schedule B of this Plan.

IV. Entity Responsible For Administration And Compliance.

This Affordability Plan will be administered by the Applicant, the NCHA, or its designees, successors and assigns ("Administrator"). The NCHA represents that its staff has the experience necessary to administer this Plan. The Administrator shall submit a written status report to the New Canaan Planning and Zoning Commission on compliance with this Affordability Plan annually on or before January 31 as per C.G.S. § 8-30h of the following year. The role of Administrator may be transferred or assigned to another entity, provided that such entity has the experience and qualifications to administer this Plan. In the event of any assignment of the role of Administrator, the NCHA as the case may be, or its successors will provide prior written notice to the New Canaan Town Planning and Zoning Commission. The Administrator shall not allow to be recorded on the land records or otherwise imposed on an approved site plan any private restriction or covenant that will or may conflict with any

obligation or procedure stated in this Plan. Such administration shall expressly include but not be limited to oversight and reporting to ensure ongoing compliance with the maximum rental and maximum rental price stated in Section X of this Plan.

V. Notice Of Initial Rental Of Affordable Apartment Homes.

Except as provided in Section IX, the Administrator shall provide notice of the initial availability for rental of each Affordable Apartment Home. Such notice shall be provided, at a minimum, by advertising at least two times in a newspaper of general circulation in the Town of New Canaan ("Town"). The Administrator shall also provide such notice to the Town of New Canaan Housing Authority. Such notice shall include a description of the available Affordable Apartment Home(s), the eligibility criteria for potential tenants / purchasers, the maximum rent (as hereinafter defined), and the availability of application forms and additional information. All such notices shall comply with the federal Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.* and the Connecticut Fair Housing Act, C.G.S. §§ 46a-64b, 64c (together, the "Fair Housing Acts").

VI. Affirmative Fair Housing Marketing Plan.

The rental of Affordable Apartment Homes in Millport Avenue shall be publicized, utilizing all applicable State and Federal regulations for affirmative fair housing marketing programs as guidelines. The Administrator shall also comply with the affirmative fair marketing requirements of the CHFA and the State of Connecticut Department of Housing.

VII. Application Process.

A family or household seeking to rent one of the Affordable Apartment Homes ("Applicant") must complete an application to determine eligibility. The application form and process shall comply with all applicable State and Federal regulations for affirmative fair housing marketing programs. The Administrator shall also assure that the application form and process comply with the applicable affirmative fair marketing requirements.

A. *Application Form.*

The application form shall be provided by the Administrator and shall include an income pre-certification eligibility form and an income certification form. In general, income for purposes of determining an Applicant's qualification shall include the Applicant family's total anticipated income from all sources for the twelve (12) month period following the date the application is submitted ("Application Date"). If the Applicant's financial disclosures indicate that the Applicant may experience a significant change in the Applicant's future income during the twelve (12) month period, the Administrator shall not consider this change unless there is a reasonable assurance that the change will in fact occur. The Applicant's income need not be re-verified after the time of initial purchase / rental. In determining what is and is not to be

included in the definition of family annual income, the Administrator shall use the criteria set forth by HUD and listed on Schedule D, attached.

B. *Applicant Interview.*

The Administrator shall interview an Applicant upon submission of the completed application. Specifically, the Administrator shall, during the interview, undertake the following.

1. Review with the Applicant all the information provided on the application.
2. Explain to the Applicant the requirements for eligibility, verification procedures, and the penalties for supplying false information.
3. Verify that all sources of family income and family assets have been listed in the applicant. The term "family" shall be as defined by the Zoning Regulations of the Town of New Canaan.
4. Request the Applicant to sign the necessary release forms to be used in verifying income. Inform the Applicant of what verification and documentation must be provided before the application is deemed complete.
5. Inform the Applicant that a certified decision as to eligibility cannot be made until all items on the application have been verified.

C. *Verification of Applicant's Income.*

Where it is evident from the income certification form provided by the Applicant that the Applicant is not eligible, additional verification procedures shall not be necessary. However, if the Applicant appears to be eligible, the Administrator shall issue a pre-certification letter. The letter shall indicate to the Applicant and the Administrator that the Applicant is income eligible, subject to the verification of the information provided in the Application. The letter will notify the Applicant that he / she will have thirty (30) days to submit all required documentation.

If applicable, the Applicant shall provide the documentation listed on Schedule E attached hereto, to the Administrator. This list is not exclusive, and the Administrator may require any other verification or documentation, as the Administrator deems necessary.

VIII. Prioritization Of Applicants For Initial Rental.

First priority for the initial (but not subsequent) rental of the 73 new Phase II apartment homes at Millport Avenue shall be afforded to employees of the Town of New Canaan. "Employee of the Town" shall mean a full-time employee of the Town or of the New Canaan Board of Education.

IX. Maximum Rental Price.

Calculation of the maximum rental price ("Maximum Rental Price") for an Affordable Apartment Home, so as to satisfy C.G.S. § 8-30g, shall utilize the lesser of the area median income data for the Town or the statewide median income as published by HUD as in effect on the day a lease is signed by the lessee of the Mixed Income Unit ("Resident"). The Maximum Rent shall be calculated as follows:

ONE BEDROOM AFFORDABLE APARTMENT HOME FOR FAMILY EARNING LESS THAN <u>60 PERCENT</u> OF STATEWIDE MEDIAN INCOME	SAMPLE COMPUTATIONS BASED ON FY 2014 DATA
1. Determine lower of relevant year (2014) area median income for Stamford-Norwalk, CT HMFA (\$125,100) or statewide median income (\$86,400), adjusted for family size (family of 4), as published by HUD	\$86,400
2. Determine adjusted income for a household of 1.5 persons by calculating 75 percent of Item 1	\$64,800
3. Calculate 60 percent of Item 2	\$38,880
4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing	\$11,664
5. Divide Item 4 by 12 to determine maximum monthly housing expense	\$972
6. Compare HUD 2014 Fair Market Rents for Stamford-Norwalk, CT HMFA	\$1,249
7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6)	\$972
8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses)	\$125
9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent	\$847

**ONE BEDROOM AFFORDABLE APARTMENT HOME
FOR FAMILY EARNING LESS THAN 80 PERCENT
OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2014 DATA**

- | | |
|---|----------|
| 1. Determine lower of relevant year (2014) area median income for Stamford-Norwalk, CT HMFA (\$125,100) or statewide median income (\$86,400), adjusted for family size (family of 4), as published by HUD | \$86,400 |
| 2. Determine adjusted income for a household of 1.5 persons by calculating 75 percent of Item 1 | \$64,800 |
| 3. Calculate 80 percent of Item 2 | \$51,840 |
| 4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing | \$15,552 |
| 5. Divide Item 4 by 12 to determine maximum monthly housing expense | \$1,296 |
| 6. Compare HUD 2014 Fair Market Rents for Stamford-Norwalk HMFA (\$1,249) times 120 percent | \$1,499 |
| 7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6) | \$1,296 |
| 8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses) | \$125 |
| 9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent | \$1,171 |

**TWO BEDROOM AFFORDABLE APARTMENT HOME
FOR FAMILY EARNING LESS THAN 60 PERCENT
OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2014 DATA**

1. Determine lower of relevant year (2014) area median income for Stamford-Norwalk, CT HMFA (\$125,100) or statewide median income (\$86,400), adjusted for family size (family of 4), as published by HUD	\$86,400
2. Determine adjusted income for a household of 3 persons by calculating 90 percent of Item 1	\$77,760
3. Calculate 60 percent of Item 2	\$46,656
4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing	\$13,997
5. Divide Item 4 by 12 to determine maximum monthly housing expense	\$1,166
6. Compare HUD 2014 Fair Market Rents for Stamford-Norwalk, CT HMFA	\$1,551
7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6)	\$1,166
8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses)	\$150
9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent	\$1,016

**TWO BEDROOM AFFORDABLE APARTMENT HOME
FOR FAMILY EARNING LESS THAN 80 PERCENT
OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2014 DATA**

1. Determine lower of relevant year (2014) area median income for Stamford-Norwalk, CT HMFA (\$125,100) or statewide median income (\$86,400), adjusted for family size (family of 4), as published by HUD	\$86,400
2. Determine adjusted income for a household of 3 persons by calculating 90 percent of Item 1	\$77,760
3. Calculate 80 percent of Item 2	\$62,208
4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing	\$18,662
5. Divide Item 4 by 12 to determine maximum monthly housing expense	\$1,555
6. Compare HUD 2014 Fair Market Rents for Stamford-Norwalk HMFA (\$1,551) times 120 percent	\$1,861
7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6)	\$1,555
8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses)	\$150
9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent	\$1,405

**THREE BEDROOM AFFORDABLE APARTMENT
HOME FOR FAMILY EARNING LESS THAN
60 PERCENT OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2014 DATA**

- | | |
|---|----------|
| 1. Determine lower of relevant year (2014) area median income for Stamford-Norwalk, CT HMFA (\$125,100) or statewide median income (\$86,400), adjusted for family size (family of 4), as published by HUD | \$86,400 |
| 2. Determine adjusted income for a household of 4.5 persons by calculating 104 percent of Item 1 | \$89,856 |
| 3. Calculate 60 percent of Item 2 | \$53,914 |
| 4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing | \$16,174 |
| 5. Divide Item 4 by 12 to determine maximum monthly housing expense | \$1,348 |
| 6. Compare HUD 2014 Fair Market Rents for Stamford-Norwalk, CT HMFA | \$1,932 |
| 7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6) | \$1,348 |
| 8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses) | \$160 |
| 9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent | \$1,188 |

**THREE BEDROOM AFFORDABLE APARTMENT
HOME FOR FAMILY EARNING LESS THAN
80 PERCENT OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2014 DATA**

- | | |
|---|----------|
| 1. Determine lower of relevant year (2014) area median income for Stamford-Norwalk, CT HMFA (\$125,100) or statewide median income (\$86,400), adjusted for family size (family of 4), as published by HUD | \$86,400 |
| 2. Determine adjusted income for a household of 4.5 persons by calculating 104 percent of Item 1 | \$89,856 |
| 3. Calculate 80 percent of Item 2 | \$71,885 |
| 4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing | \$21,565 |
| 5. Divide Item 4 by 12 to determine maximum monthly housing expense | \$1,797 |
| 6. Compare HUD 2014 Fair Market Rents for Stamford-Norwalk, CT HMFA (\$1,932) times 120 percent | \$2,318 |
| 7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6) | \$1,797 |
| 8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses) | \$160 |
| 9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent | \$1,637 |

X. Principal Residence.

Affordable Apartment Homes shall be occupied only as a tenant's principal residence. Sub-leasing by the tenant shall be prohibited.

XI. Requirement To Maintain Condition.

Applicant is responsible to ensure that all tenants maintain their Apartment Homes. No tenant shall destroy, damage or impair any apartment home, allow any apartment home to deteriorate, or commit waste. When an Affordable Apartment Home is offered again for rental, the Administrator shall cause the Affordable Apartment Home to be inspected.

XII. Change Of Income Or Qualifying Status Of Tenant Of Rental Unit.

If the Administrator becomes aware, at the time of annual income certification or earlier, that an Affordable Apartment Home within 33, 35, 41, 57, and/or 65 Millport Avenue is rented to a tenant whose income exceeds the applicable qualifying maximum, or if the tenant otherwise becomes disqualified, such tenant will continue to be treated as an Affordable Apartment Home tenant. If, however, the tenant's income increases above one hundred and forty percent (140%) of the maximum allowable income, the tenant will be required to vacate the premises at the end of the lease.

XIII. Enforcement.

A violation of this Affordability Plan shall not result in a forfeiture of title, but the New Canaan Town Planning and Zoning Commission shall otherwise retain all enforcement powers granted by the Connecticut General Statutes, including § 8-12, which powers include, but are not limited to, the authority, at any reasonable time, to inspect the property and to examine the books and records of the Administrator to determine compliance of Affordable Apartment Homes with the affordable housing requirements.

**SCHEDULE A
PROPERTY DESCRIPTION**

All that certain piece or parcel of land together with the buildings and improvements thereon, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, and shown on a map or plan entitled, "ZONING LOCATION & TOPOGRAPHIC SURVEY 33, 35, 41, 57 & 65 MILLPORT AVENUE AND A PORTION OF 173 EAST AVENUE PREPARED FOR NEW CANAAN HOUSING AUTHORITY NEW CANAAN, CONNECTICUT SCALE 1" = 20 FT. JANUARY 22, 2013", prepared by William W. Seymour & Associates, P.C. Land Surveyors Zoning & Land Use Consultants 170 Noroton Avenue 203-655-3331 Darien, Conn. Said premises are described as follows:

Beginning at a point on the westerly side of Millport Avenue, said point being the most southeasterly corner of the herein described parcel;

Thence running S 01° 56' 30" W a distance of 38.04 feet.
Thence running S 20° 47' 30" W a distance of 39.35 feet to a point;
Thence running S 45° 52' 30" W a distance of 50.22 feet to a point;
Thence running S 53° 23' 00" W a distance of 13.83 feet to a point;
Thence continuing S 53° 23' 00" W a distance of 43.21 feet to a point;
Thence running S 60° 44' 40" W a distance of 87.17 feet to a point;
Thence running S 62° 40' 20" W a distance of 43.85 feet to a point;
Thence running S 78° 17' 30" W a distance of 181.09 feet to a point;
Thence running S 64° 38' 30" W a distance of 60.10 feet to a point;
Thence running S 58° 58' 00" W a distance of 76.13 feet to a point;
Thence running S 64° 15' 20" W a distance of 62.38 feet to a point;
The last eleven courses being along Millport Avenue.

Thence running along a curve to the right with a delta of 64° 53' 18" a radius of 35.00 feet and a distance of 39.64 feet along the intersection of Lakeview Avenue and Millport Avenue.

Thence running along a curve to the left with a delta of 00° 51' 47" a radius of 1,462.00 feet and a distance of 22.02 feet; Thence running S 51° 43' 09" E a distance of 30.58 feet to a point; the last two courses being along Lakeview Avenue.

Thence turning and running N 48° 09' 40" E a distance of 195.38 feet along land shown as N/F BRUCE J. MAJOR TAX LOT 648 74 Lakeview Avenue and N/F LAWRENCE P. CZASONIS TAX LOT 624 78 Lakeview Avenue, in part by each.

Thence turning and running N 41° 50' 20" W a distance of 116.44 feet along land shown as N/F BRUCE J. MAJOR TAX LOT 648 74 Lakeview Avenue.

Thence turning and running N 45° 42' 50" E a distance of 85.81 feet to a point;
Thence running N 46° 03' 30" E a distance of 202.43 feet to a point;
Thence turning and running N 46° 33' 30" W a distance of 127.44 feet to a point;
The last three courses being along land shown as N/F GRAY STONE CONDOMINIUMS TAX
LOT 647 52-70 Lakeview Avenue.

Thence turning and running N 44° 16' 00" E a distance of 66.35 feet to a point;
Thence running N 42° 59' 00" E a distance of 115.70 feet to a point;
The last two courses being along land shown as N/F ESSEX RIDGE CONDOMINIUM TAX
LOT 642 164-176 Summer Street.

Thence turning and running S 47° 24' 00" E a distance of 86.85 feet to a point;
Thence running S 49° 20' 00" E a distance of 55.50 feet to a point;
Thence running S 56° 38' 00" E a distance of 13.25 feet to a point;
The last three courses being along land shown as N/F OLD FORGE GREEN CONDOMINIUM
TAX LOT 621 141-161 EAST AVENUE.

Thence turning and running S 36° 28' 00" W a distance of 46.84 feet to a point;
Thence turning and running S 45° 58' 50" E a distance of 193.54 feet to a point;
Thence turning and running N 62° 37' 30" E a distance of 5.07 feet to a point;
Thence turning and running S 57° 58' 00" E a distance of 24.93 feet to a point;
Thence running S 50° 38' 00" E a distance of 5.19 feet to a point;
Thence running S 57° 04' 20" E a distance of 92.74 feet to the point and place of beginning. The
last six courses being along land shown as 57, 35 and 33 Millport Avenue, in part by each and a
portion of 173 East Avenue.

SCHEDULE B ARCHITECTURAL NARRATIVE

The style of the buildings is a traditional New England Colonial style. The structure is a four-story wood-frame building which has a gable roof with dormers. There are a certain indentations on the facade of the buildings with subtle surface color variations to break up the building masses and to help to bring down the scale of the buildings. Exterior finishes are a combination of brick on the ground floor with horizontal sidings above with trim boards. Roof is an Asphalt shingle with either weathered wood or slate look finishes.

The first and second floor units are one or two bedroom units, and the third floor units are duplex units with a lofted bedroom above. The living rooms on the first floor have porches with overhangs which become balconies for the second floor living rooms as added amenities.

SCHEDULE C
DEFINITIONS AND ELEMENTS OF ANNUAL FAMILY INCOME

1. Annual income shall be calculated with reference to 24 C.F.R. § 5.609, and includes, but is not limited to, the following:
 - a. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses and other compensation for personal services;
 - b. The net income from operations of a business or profession, before any capital expenditures but including any allowance for depreciation expense;
 - c. Interest, dividends, and other net income of any kind from real or personal property;
 - d. The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, or other similar types of periodic payments;
 - e. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay;
 - f. Welfare assistance. If the welfare assistance payments include an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance to be included as income consists of the following:
 - (1) The amount of the allowance or grant exclusive of the amounts designated for shelter or utilities, plus
 - (2) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities;
 - g. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing with the Applicant (*e.g.*, periodic gifts from family members, churches, or other sponsored group, even if the gifts are designated as rental or other assistance);
 - h. All regular pay, special pay and allowances of a member of the armed forces, except combat pay as in 2.h, below;
 - i. Any assets not earning a verifiable income shall have an imputed interest income using a current average annual savings interest rate.

2. Excluded from the definition of family annual income are the following:
- a. Income from employment of children under the age of 18 (including foster children);
 - b. Payments received for the care of foster children or foster adults;
 - c. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses;
 - d. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
 - e. Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran in connection with education costs;
 - f. Amounts received under training programs funded by HUD;
 - g. Income of a live-in aide, as defined in 24 C.F.R. § 5.403;
 - h. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
 - i. Food stamps;
 - j. Temporary, nonrecurring or sporadic income (including gifts that are not regular or periodic).
 - k. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
 - l. Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
 - m. Adoption assistance payments in excess of \$480 per adopted child;
 - n. Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts;
 - o. Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

- p. Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; and
 - q. Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits.
3. Net family assets for purposes of imputing annual income include the following:
- a. Cash held in savings and checking accounts, safety deposit boxes, etc.;
 - b. The current market value of a trust for which any household member has an interest;
 - c. The current market value, less any outstanding loan balances of any rental property or other capital investment;
 - d. The current market value of all stocks, bonds, treasury bills, certificates of deposit and money market funds;
 - e. The current value of any individual retirement, 401K or Keogh account;
 - f. The cash value of a retirement or pension fund which the family member can withdraw without terminating employment or retiring;
 - g. Any lump-sum receipts not otherwise included in income (*i.e.*, inheritances, capital gains, one-time lottery winnings, and settlement on insurance claims);
 - h. The current market value of any personal property held for investment (*i.e.*, gems, jewelry, coin collections); and
 - i. Assets disposed of within two (2) years before the Application Date, but only to the extent consideration received was less than the fair market value of the asset at the time it was sold.
4. Net family assets do not include the following:
- a. Necessary personal property (clothing, furniture, cars, etc.);
 - b. Vehicles equipped for handicapped individuals;
 - c. Life insurance policies;
 - d. Assets which are part of an active business, not including rental properties; and
 - e. Assets that are not accessible to the Applicant and provide no income to the Applicant.

SCHEDULE D DOCUMENTATION OF INCOME

The following documents shall be provided, where applicable, to the Administrator to determine income eligibility:

1. Employment Income.

Verification forms must request the employer to specify the frequency of pay, the effective date of the last pay increase, and the probability and effective date of any increase during the next twelve (12) months. Acceptable forms of verification (of which at least one must be included in the Applicant file) include:

- a. An employment verification form completed by the employer.
- b. Check stubs or earnings statement showing Applicant's gross pay per pay period and frequency of pay.
- c. W-2 forms if the Applicant has had the same job for at least two years and pay increases can be accurately projected.
- d. Notarized statements, affidavits or income tax returns signed by the Applicant describing self-employment and amount of income, or income from tips and other gratuities.

2. Social Security, Pensions, Supplementary Security Income, Disability Income.

- a. Benefit verification form completed by agency providing the benefits.
- b. Award or benefit notification letters prepared and signed by the authorizing agency. (Since checks or bank deposit slips show only net amounts remaining after deducting SSI or Medicare, they may be used only when award letter cannot be obtained.)
- c. If a local Social Security Administration ("SSA") office refuses to provide written verification, the Administrator should meet with the SSA office supervisor. If the supervisor refuses to complete the verification forms in a timely manner, the Administrator may accept a check or automatic deposit slip as interim verification of Social Security or SSI benefits as long as any Medicare or state health insurance withholdings are included in the annual income.

3. Unemployment Compensation.

- a. Verification form completed by the unemployment compensation agency.

- b. Records from unemployment office stating payment dates and amounts.

4. Government Assistance.

- a. All Government Assistance Programs. Agency's written statements as to type and amount of assistance Applicant is now receiving, and any changes in assistance expected during the next twelve (12) months.
- b. Additional Information for "As-paid" Programs: Agency's written schedule or statement that describes how the "as-paid" system works, the maximum amount the Applicant may receive for shelter and utilities and, if applicable, any factors used to ratably reduce the Applicant's grant.

5. Alimony or Child Support Payments.

- a. Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules.
- b. A letter from the person paying the support.
- c. Copy of latest check. The date, amount, and number of the check must be documented.
- d. Applicant's notarized statement or affidavit of amount received or that support payments are not being received and the likelihood of support payments being received in the future.

6. Net Income from a Business.

The following documents show income for the prior years. The Administrator must consult with Applicant and use this data to estimate income for the next twelve (12) months.

- a. IRS Tax Return, Form 1040, including any:
 - (1) Schedule C (Small Business).
 - (2) Schedule E (Rental Property Income).
 - (3) Schedule F (Farm Income).
- b. An accountant's calculation of depreciation expense, computed using straight-line depreciation rules. (Required when accelerated depreciation was used on the tax return or financial statement.)
- c. Audited or unaudited financial statement(s) of the business.

- d. A copy of a recent loan application listing income derived from the business during the previous twelve (12) months.
- e. Applicant's notarized statement or affidavit as to net income realized from the business during previous years.

7. Recurring Gifts.

- a. Notarized statement or affidavit signed by the person providing the assistance. Must give the purpose, dates and value of gifts.
- b. Applicant's notarized statement or affidavit that provides the information above.

8. Scholarships, Grants, and Veterans Administration Benefits for Education.

- a. Benefactor's written confirmation of amount of assistance, and educational institution's written confirmation of expected cost of the student's tuition, fees, books and equipment for the next twelve (12) months. To the extent the amount of assistance received is less than or equal to actual educational costs, the assistance payments will be excluded from the Applicant's gross income. Any excess will be included in income.
- b. Copies of latest benefit checks, if benefits are paid directly to student. Copies of canceled checks or receipts for tuition, fees, books, and equipment, if such income and expenses are not expected to change for the next twelve (12) months.
- c. Lease and receipts or bills for rent and utility costs paid by students living away from home.

9. Family Assets Currently Held.

For non-liquid assets, collect enough information to determine the current cash value (*i.e.*, the net amount the Applicant would receive if the asset were converted to cash).

- a. Verification forms, letters, or documents from a financial institution, broker, etc.
- b. Passbooks, checking account statements, certificates of deposit, bonds, or financial statements completed by a financial institution or broker.
- c. Quotes from a stock broker or realty agent as to net amount Applicant would receive if Applicant liquidated securities or real estate.
- d. Real estate tax statements if tax authority uses approximate market value.
- e. Copies of closing documents showing the selling price, the distribution of the sales proceeds and the net amount to the borrower.

- f. Appraisals of personal property held as an investment.
 - g. Applicant's notarized statements or signed affidavits describing assets or verifying the amount of cash held at the Applicant's home or in safe deposit boxes.
10. Assets Disposed of for Less Than Fair Market Value ("FMV") During Two Years Preceding Application Date.
- a. Applicant's certification as to whether it has disposed of assets for less than FMV during the two (2) years preceding the Application Date.
 - b. If the Applicant states that it did dispose of assets for less than FMV, then a written statement by the Applicant must include the following:
 - (1) A list of all assets disposed of for less than FMV;
 - (2) The date Applicant disposed of the assets;
 - (3) The amount the Applicant received; and
 - (4) The market value to the asset(s) at the time of disposition.
11. Savings Account Interest Income and Dividends.
- a. Account statements, passbooks, certificates of deposit, etc., if they show enough information and are signed by the financial institution.
 - b. Broker's quarterly statements showing value of stocks or bonds and the earnings credited the Applicant.
 - c. If an IRS Form 1099 is accepted from the financial institution for prior year earnings, the Administrator must adjust the information to project earnings expected for the next twelve (12) months.
12. Rental Income from Property Owned by Applicant.

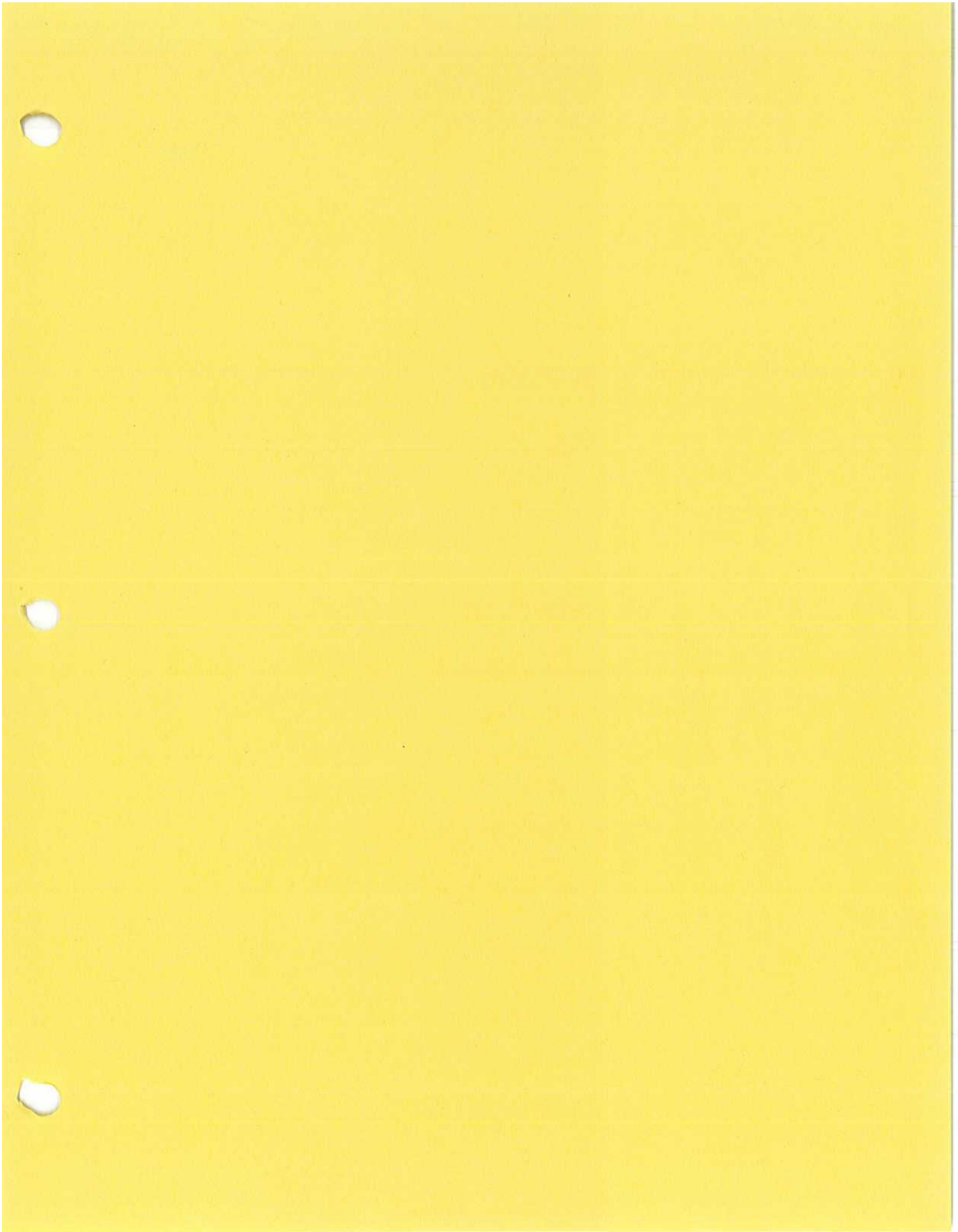
The following, adjusted for changes expected during the next twelve (12) months, may be used:

- a. IRS Form 1040 with Schedule E (Rental Income).
- b. Copies of latest rent checks, leases, or utility bills.
- c. Documentation of Applicant's income and expenses in renting the property (tax statements, insurance premiums, receipts for reasonable maintenance and utilities, bank statements or amortization schedule showing monthly interest expense).

- d. Lessee's written statement identifying monthly payments due the Applicant and Applicant's affidavit as to net income realized.

13. Full-Time Student Status.

- a. Written verification from the registrar's office or appropriate school official.
- b. School records indicating enrollment for sufficient number of credits to be considered a full-time student by the school.



**DOCUMENTATION OF ELIGIBILITY FOR
CERTIFICATE OF AFFORDABLE HOUSING PROJECT COMPLETION**

Project Name and Address:

Millport Apartments
33 & 35 Millport Avenue
New Canaan, CT 06840

Property Owner's Name and Address:

Housing Authority of New Canaan (HANC) *
57 Millport Avenue
New Canaan, NY 06840

**(aka "New Canaan Housing authority" and "NCHA" on several documents)*

Developer / Owner:

Millport Phase I Limited Partnership
57 Millport Avenue
New Canaan, CT 06840

Person or Entity Responsible for Compliance:

WinnCompanies
c/o A. Luisa Rijo
717 Atlantic Street
Stamford, CT 06902

Note: The construction of the Mill Apartments on the adjacent site, formerly occupied by 16 "bungalows" for veterans at 41 & 65 Millport Avenue (a separate section in this Application packet) is referred to in Planning and Zoning files as "Phase I" of the NCHA's Millport Avenue Development. The 40 new Mill Apartments are fully constructed and occupied.

The approval and construction of 73 new units at 33, 35, 57 and 63 Millport Avenue (the "Millport Apartments") was referred to during the P&Z review/approval process as "Phase II" of the NCHA Millport Avenue Developments. However, the financing document pertaining to the commencement of the "Phase II" portion of the property is now referred to as "Phase I" for the purposes of construction of the buildings at 33 and 35 Millport Avenue (totaling 33 new units). The financing for the next phase at 57 and 63 Millport Avenue (demolition of the existing buildings and construction of 40 new units, for a total of 73 units) will be referred to as "Phase II".

**Description of Project: 73 Affordable Family Units (Rental) in 4 Buildings
(\$8-30g, and Financing by ELIHC/CHFA)**

(Note: Only a portion of Building 1 in this development is claimed as part of this Application.)

Millport Apartments are located on property owned by the Housing Authority of New Canaan (HANC) at 33, 35, 57 and 63 Millport Avenue. The Project involves the demolition and re-development of affordable apartment buildings that were built in the 1980's, creating 73 new units of housing to be located in 4 buildings. Six buildings including 22 units are being torn down to make room for the 4 new

DOCUMENTATION OF ELIGIBILITY FOR CERTIFICATE OF AFFORDABLE HOUSING PROJECT COMPLETION

buildings and 73 new units. A two-family house at 33 Millport Avenue (demolished for the new construction) was under separate ownership, it was purchased by HANC, and has been merged with the adjoining HANC land. In the first phase of the construction, two residential structures have been completed to date at 33 Millport Avenue (18 units) and 35 Millport Avenue (15 units), for a total of 33 new units. 40 additional new units will be completed in Phase II of the construction, within the next two years.

A Certificate of Occupancy was issued for Building 1 on 12/9/2016. In addition to the restrictions under the ELIHC program with the CHFA, the income limits for residents are restricted for 40 years under §8-30g income limits, pursuant to the Affordability Plan approved as part of the application to the P&Z Commission.

Only 2 (two) of the 18 family rental units within Building 1 at 33 Millport Avenue are being claimed in this Application; the remaining 16 (sixteen) units in this building and the 15 (fifteen) units in Building 2 at 35 Millport Avenue will be claimed in a future Application.

Pursuant to §8-30g-6(e) of the Regulations of State Agencies, "Documentation of the existence of the housing unit-equivalent points necessary to qualify for a state certificate of affordable housing completion" includes the following:

- (1) A numbered list of all dwelling units that furnish the basis of housing unit-equivalent points being counted toward the qualifying minimum; and
- (2) The address of each such unit.

The address for all of the affordable units in Building 1 is 33 Millport Avenue.

		<u>Certificate of Occupancy</u>
Building 1	18 units	Issued 12/9/2016

- (3) The housing unit-equivalent points and classification claimed for each said unit.

Type of Unit	# of Units	Housing Unit-Equivalent Point Value Per Unit	Total Housing Unit-Equivalent Points
Family units, rented, that are restricted to households with annual income no more than: <ul style="list-style-type: none"> • 80% of (State) median income • 60% of (State) median income • 40% of (State) median income <i>(only 2 of 18 completed units being claimed)</i>	2	1.50 2.00 2.50	3.00
TOTAL Housing Unit-Equivalent Points			3.00

DOCUMENTATION OF ELIGIBILITY FOR CERTIFICATE OF AFFORDABLE HOUSING PROJECT COMPLETION

Documents justifying the claim of 3.00 housing-unit equivalent points for 2 of the 18 family rental units in Building 1 (33 Millport Avenue) are listed in the table that follows, further explained in the bullets below. Restrictions in documents filed in the New Canaan Planning and Zoning Department records ensure that rents for the Millport Apartments are established under "enforceable obligations" that are "binding at the time of application for at least the duration required by section §8-30g at the time of the submission to the commission."

References to the establishment of affordable rents in the financing documents listed in the table refer to "Area Median Gross Income" in the federal regulations, which is defined as, "income determined by the Secretary of the Treasury in a manner consistent with determinations under Section 8 of the United States Housing Act of 1937, as amended..." The Planning and Zoning Commission also approved an Affordability Plan as part of its approval, which states that, "Under this Plan, 73 newly-constructed apartment homes will meet or exceed the criteria for affordable housing as defined in Connecticut General Statutes ("C.G.S.") §8-30g(a)."

The documents listed in the table contain at least the following restrictions:

- The Ground Lease shows that the property has been leased to Millport Phase I Limited Partnership for a period of 90 years.
- The ELIHC Document (Extended Low-Income Housing Commitment) with the CT Housing Finance Authority limits rents to "Qualified Persons" defined as "individuals and families who....are of low income, having annual income not exceeding sixty percent of area median gross income...within the meaning of the [federal] Code..."
- The Land Use Restriction Agreement (for bond financing from the HANC) makes reference to the 90-year period in the Ground Lease, and on page 5 states, "Rental Term" and "Term" means the period commencing on the date of the issuance of the Bonds and ending at 11:59 p.m. on January 1, 2053." Rent rates are to be controlled as per Sec. 2.2 on pages 6-7, showing the restrictions "for the first forty-two (42) years of the Rental Term", referencing Gross Rent to Qualified Tenants of Moderate Income.
- The "Affordability Plan for Phase II / 73 Apartment Homes, Revised Submission Draft January 2015," was submitted to the New Canaan Planning and Zoning Commission as part of the Application for approval of the development, along with a proposed text amendment to the Zoning Regulations for the Millport Housing Zone and an application to amend the Zoning Map. The Site Plan for the development, the text amendment and the zoning map amendment were all adopted by the P&ZC on January 29, 2015.
- Units to be designated as meeting the §8-30g(d) requirements for persons earning less than 60% of the State Median Income, as required by the Affordability Plan, will be located in the second phase of this development within the two new buildings containing 40 total units.

**DOCUMENTATION OF ELIGIBILITY FOR
CERTIFICATE OF AFFORDABLE HOUSING PROJECT COMPLETION**

§8-30g-6(f): Each dwelling unit claimed to provide housing-unit equivalent points toward a state certificate of affordable housing completion by virtue of a deed restriction, recorded covenant, zoning regulation, zoning approval condition, financing agreement, affordability plan or similar mechanism shall be documented as an enforceable obligation(s) with respect to both income qualifications and maximum housing payments *[to prove that the unit qualifies under the terms described in 8-30g, including proof]* that it is binding at the time of application for at least the duration required by section 8-30g at the time of the submission to the commission, by the submission of a copy of one or more of the following:

(Copies of these documents are included in the pages that follow.)

	√	Details (Vol/Page, date of approval, etc.)	Other Notes
Compliance Report Per §8-30h – CGS	√	Completed form by WinnCompanies	Dated 2/7/2017
Deed Restriction	√	Notice of Ground Lease Vol 950 / Pgs 297-303	Pg 950/297 – Term of lease is 90 years
	√	Open-End Leasehold Mortgage Deed Vol 950 / Pgs 503-525	Pg 950/509 - #14 ref. Affordability Plan and §8-30g
Recorded Covenant	√	Land Use Restriction Agreement Vol 950 / Pgs 312-335	Pg 950/317 ref. to "Rental Term" thru 1/1/2053 Vol 950/ Pg 319 ref. to 42 year Rental Term for Moderate Income Restriction
Zoning approval	√	P&ZC Approvals for: • Zoning Text Amendment • Zoning Map Amendment • Site Plan Approval	Adopted 1/29/2015
Zoning Regulation	√	New Section 5.7 - "Millport Housing Zone"	Adopted 1/29/2015
Financing or assistance agreement	√	ELIHC with CHFA Vol 950 / Pgs 304-311	Vol 950/ Pg 306 – f "Qualified Persons" @60% AMI Vol 950/ Pg 307 – "Extended Use Period" for 40 years
Affordability Plan	√	Millport Avenue Affordability Plan for Phase II / 73 Apartment Homes	Dated January 2015



1. The first step in the process is to identify the problem. This involves gathering information about the situation and the people involved. It is important to understand the context and the stakes of the problem.

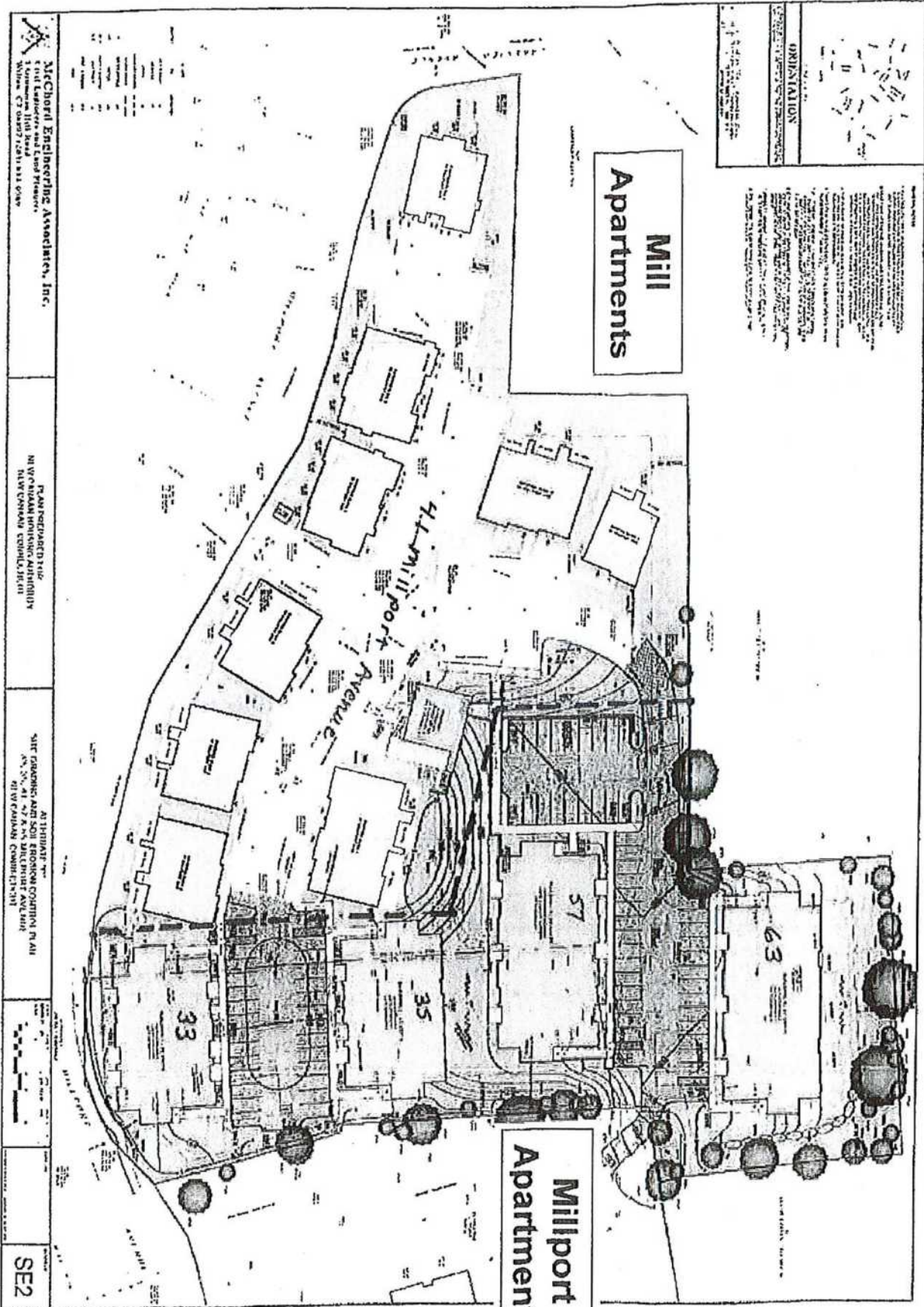
2. The second step is to analyze the problem. This involves breaking the problem down into its components and identifying the underlying causes. It is important to consider the perspectives of all parties involved.

3. The third step is to develop a plan. This involves identifying the goals and objectives of the solution and determining the steps that need to be taken to achieve them. It is important to consider the resources available and the potential risks.

4. The fourth step is to implement the plan. This involves putting the plan into action and monitoring the progress. It is important to communicate with all parties involved and to be flexible in response to changes.

5. The fifth step is to evaluate the results. This involves assessing the effectiveness of the solution and identifying any areas for improvement. It is important to gather feedback from all parties involved and to use this information to make adjustments.

**Millport
Apartments**



 **McChord Engineering Associates, Inc.**
Civil Engineers and Land Planners
3 September 11th Road
Wilton, CT 06097 (203) 683-0740

PLAN PREPARED BY:
NATIONAL HOUSING AUTHORITY
FLORIDA COUNCIL, INC.

AT ITHACA, NY
SALT EXCHANGE AND SOIL EROSION CONTROL IN AIR
AND WATER AT 57 & 58 MILL CREEK AVE. 1980
201 W. COLUMBIA CORNER E-17-201

SE2



Request for Zoning Certificate of Compliance
41 Millport Avenue, New Canaan
Property Owner: Housing Authority of New Canaan
November 24, 2020

ATTACHMENT B

Schedule, Building Permits and Permanent Certificates of Occupancy, **Phase II, Millport Apartments, 41 Millport Avenue** (f/k/a 33, 35, and 57 Millport Avenue; 4 Multi-Family Buildings, 73 Units, and Clubhouse), with copies of salient documents of record at New Canaan Building Department

SCHEDULE

BUILDING PERMITS AND PERMANENT CERTIFICATES OF OCCUPANCY

New Canaan Housing Authority

41 Millport Avenue

(f/k/a 33, 35, and 57 Millport Avenue)

4 Multi-Family buildings, Total 73 Residential Units

Accessory Structures:

Clubhouse

Building #, Unit #	Building Permit # Issue Date	Permanent C.O. Issue Date
Building 1 (18 Units)	#15-01098 – 01/08/2016	12/09/2016
Building 2 (15 Units)	#15-01099 – 01/08/2016	12/09/2016
Building 3 (20 Units)	#17-129 – 06/05/2017	2/14/2018
Building 4 (20 Units)	#17-130 – 06/05/2017	3/28/2018
Accessory Structures	Building Permit # Issue Date	Permanent C.O. Issue Date
Clubhouse	#17-131 – 06/05/2017	2/13/2018

**SCHEDULE
BUILDING PERMITS AND PERMANENT CERTIFICATES OF
OCCUPANCY**

**New Canaan Housing Authority
Phase II - Millport Apartments
41 Millport Avenue
(f/k/a 33, 35, and 57 Millport Avenue)**

4 Multi-Family Buildings, Total 73 Residential Units

**Accessory Structures:
Clubhouse**

Building #, Unit #	Building Permit # - Issue Date	Permanent C.O. Issue Date
Building 1 (18 Units)	#15-01098 – 01/08/2016	12/09/2016
Building 2 (15 Units)	#15-01099 – 01/08/2016	12/09/2016
Building 3 (20 Units)	#17-129 – 06/05/2017	
Building 4 (20 Units)	#17-130 – 06/05/2017	
Accessory Structures	Building Permit # - Issue Date	Permanent C.O. Issue Date
Clubhouse	#17-131 – 06/05/2017	

- END -



Permit # BP-15-01098
M/B/L R-80-623
Date Issued 01/08/2016

**Town of New Canaan
BUILDING PERMIT**

77 MAIN STREET . NEW CANAAN CT . 06840 . PHONE 203 594-3012 . FAX 203 594-3121

Owner	NEW CANAAN HOUSING AUTHORITY	Phone: (203) 966-6006
Address	57 MILLPORT AVE, NEW CANAAN, CT 06840	
Contractor	ENTERPRISE BUILDERS 46 SHEAPRD DRIVE NEWINGTON, CT 06111	
Phone	(860) 466-5188	

Applicant	ENTERPRISE BUILDERS	Phone: (860) 466-5188
Address	46 SHEAPRD DRIVE	

Address: 33 MILLPORT AVE

Tax ID No.

Type Description: RESIDENTIAL NEW TWO FAMILY

Const Type: VB

se/Occupancy: R-2 Residential

Location:

Approx Total Sq. Ft

The undersigned hereby applies for permission to construct the Project in compliance with the laws and building codes and regulations of the State of Connecticut and the Town of New Canaan as set forth in the accompanying drawings and specifications in so far as the same do not conflict with the aforesaid State and Town laws and building regulations.

Approved plans MUST be retained on the job and this card KEPT POSTED until final inspections have been approved. All structures require a Final Inspection. Buildings may not be occupied until approved by the Building Official.

Any & all deviations regardless of size from stamped approved plans must be approved by ALL Land Use Depts. before they are made.

Additional Conditions:

BUILDING 1-PHASE I-FOUR- STORY RESIDENTIAL BUILDING WITH 18 RESIDENTIAL UNITS, ELEVATOR, 30 BEDROOMS, 26 FULL BATHS, 1 1/2 BATH, OPEN DECK AND PATIO 14 ON GRADE PARKING SPACES..

Estimated Cost \$ 585,250.00

Payments
01/14/2016

B-Building Com

\$7,098.00
TOTAL \$7,098.00

PPROVED

NOTE: All inspections must be scheduled with Building Department personnel. No inspection requests will be accepted by voice mail.

Building Official

Permit numbers will be required when requesting any inspections either in person or by telephone with Building Department



CERTIFICATE OF USE AND OCCUPANCY

Town of New Canaan

77 MAIN STREET . NEW CANAAN CT . 06840 . PHONE 203 594-3012 . FAX 203 594-3121

Address 33 MILLPORT AVE
06840

Date Issued: 01/08/2016
Certificate of Occupancy Date: 12/09/2016
Location:

CO# BP-15-01098
M/B/L R-80-623

Tax ID No.

THIS IS TO CERTIFY THAT THE BUILDING LOCATED AT 33 MILLPORT AVE IS COMPLETED IN ACCORDANCE WITH BUILDING PERMIT NUMBER BP-15-01098, AND WAS INSPECTED TO THE BEST OF OUR KNOWLEDGE AND DETERMINED TO SUBSTANTIALLY COMPLY WITH THE CONNECTICUT STATE BUILDING CODE.

Built under 2005 State Building Code
Use Group: RESIDENTIAL NEW TWO FAMILY
Construction Type: VB
Use Group: 600

Permit Issued: 01/08/2016

Additional Conditions:

BUILDING 1-PHASE I--FOUR- STORY RESIDENTIAL BUILDING WITH 18 RESIDENTIAL UNITS, ELEVATOR, 30 BEDROOMS, 26 FULL BATHS, 1 1/2 BATH, OPEN DECK AND PATIO 14 ON GRADE PARKING SPACES.


BUILDING OFFICIAL



Permit # BP-15-01099
M/B/L R-80-630
Date Issued 01/08/2016

**Town of New Canaan
BUILDING PERMIT**

77 MAIN STREET . NEW CANAAN CT . 06840 . PHONE 203 594-3012 . FAX 203 594-3121

Owner	THE NEW CANAAN HOUSING AUTHORITY	Phone: (203) 966-6006
Address	57 MILLPORT AVE, NEW CANAAN, CT 06840	
Contractor	ENTERPRISE BUILDERS 46 SHEAPRD DRIVE NEWINGTON, CT 06111	
Phone	(860) 466-5188	

Applicant	ENTERPRISE BUILDERS	Phone: (860) 466-5188
Address	46 SHEAPRD DRIVE	

Address: 35 MILLPORT AVE

Tax ID No.

Type Description: RESIDENTIAL NEW SINGLE FAMILY

Const Type: VB

Use/Occupancy: R-2 Residential

Location:

Approx Total Sq. Ft

The undersigned hereby applies for permission to construct the Project in compliance with the laws and building codes and regulations of the State of Connecticut and the Town of New Canaan as set forth in the accompanying drawings and specifications in so far as the same do not conflict with the aforesaid State and Town laws and building regulations.

Approved plans MUST be retained on the job and this card KEPT POSTED until final inspections have been approved. All structures require a Final Inspection. Buildings may not be occupied until approved by the Building Official.

Any & all deviations regardless of size from stamped approved plans must be approved by ALL Land Use Depts. before they are made.

Additional Conditions:

BUILDING 2-PHASE I-FOUR STORY RESIDENTIAL BUILDING-15 UNITS-PHASE I-ELEVATOR, 27 BEDROOMS, 23 FULL BATHS, 1 1/2 BTH, OPEN DECKS & PATIO, 14 ON GRADE OPEN PARKING.

Estimated Cost \$ 482,500.00

Payments
01/14/2016

B-Building Com

\$5,865.00
TOTAL \$5,865.00

APPROVED

NOTE: All inspections must be scheduled with Building Department personnel. No inspection requests will be accepted by voice mail.
Building Official

Permit numbers will be required when requesting any inspections either in person or by telephone with Building Department



CERTIFICATE OF USE AND OCCUPANCY

Town of New Canaan

77 MAIN STREET . NEW CANAAN CT . 06840 . PHONE 203 594-3012 . FAX 203 594-3121

Address 35 MILLPORT AVE
06840

Date Issued: 01/08/2016
Certificate of Occupancy Date: 12/09/2016
Location:

CO# BP-15-01099
M/B/L R-80-630

Tax ID No.

THIS IS TO CERTIFY THAT THE BUILDING LOCATED AT 35 MILLPORT AVE IS COMPLETED IN ACCORDANCE WITH BUILDING PERMIT NUMBER BP-15-01099, AND WAS INSPECTED TO THE BEST OF OUR KNOWLEDGE AND DETERMINED TO SUBSTANTIALLY COMPLY WITH THE CONNECTICUT STATE BUILDING CODE.

Built under 2005 State Building Code

Use Group: RESIDENTIAL NEW SINGLE FAMILY

Construction Type: VB

Use Group: 600

Permit Issued: 01/08/2016

Additional Conditions:

BUILDING 2--PHASE I--FOUR STORY RESIDENTIAL BUILDING--15 UNITS--PHASE I--ELEVATOR, 27 BEDROOMS, 23 FULL BATHS, 1 1/2 BTH, OPEN DECKS & PATIO, 14 ON GRADE OPEN PARKING.


BUILDING OFFICIAL



Permit # BP-17-00129
M/B/L N-80-644
Date Issued 06/05/2017

**Town of New Canaan
BUILDING PERMIT**

77 MAIN STREET . NEW CANAAN CT . 06840 . PHONE 203 594-3012 . FAX 203 594-3121

Owner	HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN	Phone: (203) 961-1010
Address	57 MILLPORT AVE, NEW CANAAN, CT 06840	
Contractor	ENTERPRISE BUILDERS 46 SHEAPRD DRIVE NEWINGTON, CT 06111	
Phone	(860) 466-5188	

Applicant	ENTERPRISE BUILDERS	Phone: (860) 466-5188
Address	46 SHEAPRD DRIVE	

Address: 57 MILLPORT AVE

Tax ID No.

Type Description: COMMERCIAL NEW

Const Type:

Use/Occupancy: R-2 Residential

Location:

Approx Total Sq. Ft 24,388

The undersigned hereby applies for permission to construct the Project in compliance with the laws and building codes and regulations of the State of Connecticut and the Town of New Canaan as set forth in the accompanying drawings and specifications in so far as the same do not conflict with the aforesaid State and Town laws and building regulations.

Approved plans MUST be retained on the job and this card KEPT POSTED until final inspections have been approved. All structures require a Final Inspection. Buildings may not be occupied until approved by the Building Official.

Any & all deviations regardless of size from stamped approved plans must be approved by ALL Land Use Depts. before they are made.

Additional Conditions:

BUILDING 3-FOUR-STORY RESIDENTIAL BUILDING WITH 20 RESIDENTIAL APARTMENT UNITS, 1 ELEVATOR, (34 BEDROOMS, 31 FULL BATHS), 24388 SQ FT."

Estimated Cost \$ 1,600,000.00

Payments

06/09/2017	B-Building Res	\$16,065.00
06/09/2017	B-Zoning	\$300.00
06/09/2017	B-PZ DEP State	\$58.00
06/09/2017	B-PZ DEP Town	\$2.00
TOTAL		\$16,425.00

APPROVED

Building Official

NOTE: All inspections must be scheduled with Building Department personnel. No inspection requests will be accepted by voice mail.

Permit numbers will be required when requesting any inspections either in person or by telephone with Building Department personnel

17 Main Street, New Canaan, CT 06840

Building Permit, Plan Review, and Certificate of Occupancy Routing/Sign-Off Sheet

17-129

Job Address: 57 Millport Avenue, New Canaan, CT 06840.

Building 3

Map: 000N

Block: 0080

Lot: 0644

Description of Work to be Done: Four-story residential building with 20 residential apartment units, 1 elevator, 34 bedrooms, 31 full baths, 24,388 SF.

Contact Phone: 860.466.5188

Contractor: Enterprise Builders

Email Address: MMcNaboe@enterprisebuilders.com

Contact Phone: 203-966-6006

Property Owner: Housing Authority of the Town of New Canaan

Email Address: Shobbs@hobbsinc.com

Today's Date: 3/1/2017

Owner's Current Address: 57 Millport Avenue, New Canaan, CT 06940

DEPARTMENT APPROVALS FOR PLAN REVIEW AND BUILDING PERMIT ISSUANCE

CERTIFICATE OF OCCUPANCY APPROVAL

Department Health & Sanitation

Initials Date (for Permit)

Comments or Conditions: OK 3/1/17

Wetlands Agency ☒ Denied ☐ N.A. ☐ K.H. 3/31/17

Comments or Conditions: Wetland Permit 14-72 issued.

Public Works/Engineering ☒ Denied ☐ N.A. ☐ AK 4/9/17

Comments or Conditions: _____

Planning & Zoning Office- ☒ Denied ☐ N.A. ☐ @ 4/18/17

Comments or Conditions: Foundation, drainage cuts, on built to include heights 20' to 25' 5/11/17

Fire Marshal ☒ Denied ☐ N.A. ☐ 5/11/17

Comments or Conditions: _____

Building Dept.- ☒ Denied ☐ N.A. ☐ SLP 5/23/17

Comments or Conditions: See plan review notes from Bruce Spicak

Obtain Certificate of Occupancy from the Building Dept. after final inspection.

for the Health & Sanitation

for Wetlands Agent

for Public Works/Engineering

for Planning & Zoning

for Fire Marshal (not required for 1 and 2-family homes)

for Building Dept.

OFFICE TO PROPERTY OWNERS: It is the owner's advantage to request final approval for the Certificate of Occupancy (C.O.) as early as possible to avoid delays that could cause problems with loan closing, business openings, etc. Placement on the Town's tax rolls is not contingent upon the issuance of a Certificate of Occupancy.

RECEIVED IN BUILDING DEPT. ON 3/1/17



Permit # BP-17-00130
M/B/L N-80-644
Date Issued 06/05/2017

**Town of New Canaan
BUILDING PERMIT**

77 MAIN STREET . NEW CANAAN CT . 06840 . PHONE 203 594-3012 . FAX 203 594-3121

Owner	HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN	Phone: (203) 961-1010
Address	57 MILLPORT AVE, NEW CANAAN, CT 06840	
Contractor	ENTERPRISE BUILDERS 46 SHEAPRD DRIVE NEWINGTON, CT 06111	
Phone	(860) 466-5188	

Applicant	ENTERPRISE BUILDERS	Phone: (860) 466-5188
Address	46 SHEAPRD DRIVE	
Address:	57 MILLPORT AVE	
Tax ID No.		
Type Description:	COMMERCIAL NEW	
Const Type:		
Use/Occupancy:	R-2 Residential	
Location:		
Approx Total Sq. Ft	24388	

The undersigned hereby applies for permission to construct the Project in compliance with the laws and building codes and regulations of the State of Connecticut and the Town of New Canaan as set forth in the accompanying drawings and specifications in so far as the same do not conflict with the aforesaid State and Town laws and building regulations.

Approved plans MUST be retained on the job and this card KEPT POSTED until final inspections have been approved. All structures require a Final Inspection. Buildings may not be occupied until approved by the Building Official.

Any & all deviations regardless of size from stamped approved plans must be approved by ALL Land Use Depts. before they are made.

Additional Conditions:

BUILDING 4-FOUR-STORY RESIDENTIAL BUILDING WITH 20 RESIDENTIAL APARTMENT UNITS, 1 ELEVATOR, (34 BEDROOMS, 31 FULL BATHS), 24388 SQ FT."

Estimated Cost \$ 1,600,000.00

Payments		
06/09/2017	B-PZ DEP State	\$58.00
06/09/2017	B-PZ DEP Town	\$2.00
06/09/2017	B-Building Res	\$16,065.00
06/09/2017	B-Zoning	\$300.00
	TOTAL	\$16,425.00

APPROVED
Building Official

NOTE: All inspections must be scheduled with Building Department personnel. No inspection requests will be accepted by voice mail.

Permit numbers will be required when requesting any inspections either in person or by telephone with Building Department personnel.

**PLANNING AND ZONING COMMISSION
APPLICATION FOR ZONING PERMIT**



SECTION TO BE COMPLETED & SIGNED BY OWNER PRIOR TO REVIEW

ASSESSOR'S MAP: 000N BLOCK: 0080 LOT: 0644 ZONE: MHZ (confirmed by staff) ☒
 OWNER OF RECORD: New Canaan Housing Authority PHONE: 203-966-6006
 PROPERTY ADDRESS: 57 Millport Avenue, New Canaan, CT EMAIL: SHobbs@hobbsinc.com
 CONTRACTOR: Enterprise Builders PHONE: 860.466.5188
 CONTRACTOR'S ADDRESS: 46 Shepard Drive, Newington, CT 06111 EMAIL: MMcNaboe@enterbuilders.com
 CURRENT USE OF PROPERTY: Multifamily
 PROPOSED USE OF PROPERTY: Multifamily
 PROPOSED CONSTRUCTION: four story 20-unit apartment building
 ANY FOOTPRINT EXPANSION? ☒ YES ☐ NO ANY PROPOSED SITE WORK? ☒ YES ☐ NO

PLEASE NOTE, YOU MUST COMPLETE A "FILLING, EXCAVATION AND/OR GRADING PERMIT"

OWNER'S SIGNATURE: [Signature] DATE: 2/28/17

Please note that per §8.3 (f) of the CT General Statutes, you are hereby notified that you may provide notice for either a building permit or certificate of occupancy for this project by publication in the New Canaan Advertiser stating that the certification has been issued. Any such notice shall contain (A) a description of the building, use or structure, (B) the location of the building, use or structure, (C) the identity of the applicant, and (D) a statement that an aggrieved person may appeal to the Zoning Board of Appeals in accordance with the provisions of §8.7 of the CT General Statutes.

SECTION TO BE COMPLETED BY PLANNING & ZONING STAFF

A. ANY OUTSTANDING COMPLAINTS OR VIOLATIONS ON THE PROPERTY? ☐ YES ☒ NO
 B. WITHIN 500 FEET OF ANOTHER MUNICIPALITY? Yes () No ☒ Town of _____
 C. PENDING or PAST VARIANCES or SPECIAL PERMITS GRANTED TO THIS PROPERTY? ☐ YES
☒ NO IF SO, WHEN? _____ NATURE OF VARIANCE or SPECIAL PERMIT: _____

D. TYPE OF LOT: FRONT _____ CORNER* _____ REAR ☒ THROUGH _____
 E. LOT AREA IN SQUARE FEET: _____

F. SETBACKS IN FEET (To Proposed Work):	ALLOWED	EXISTING	PROPOSED
FRONT	_____	_____	_____
*SECOND FRONT (Corner Lots Only)	_____	_____	_____
NEAREST SIDE	_____	_____	_____
FARTHEST SIDE	_____	_____	_____
REAR YARD	_____	_____	_____

G. BUILDING AREA (COVERAGE) IN SQUARE FEET: _____

H. BUILDING HEIGHT (of Proposed Work):
 IN STORIES see plans pre approved
 MID POINT HT IN FEET (Res. only) _____
 TOTAL HEIGHT IN FEET _____
 MAX WALL HEIGHT IN FEET (3.5.F.1) _____
 SIDE YARD BLD HT (3.5.F.4.b) _____
 TOTAL SIDE YARD BLD HT (3.5.F.4.b) _____

I. MAX. FLOOR AREA RATIO (F.A.R.) _____

A Zoning Permit is hereby DENIED: ☒ Reason: _____ Date: _____

A Zoning Permit is hereby GRANTED: ☒ based on the facts and information provided and subject to the following:

- All construction must comply with Building, Health, and Fire Codes, and conditions of any Environmental License.
- Certified foundation location survey prior to framing. ☒ Yes ☐ No
- Certified interim as-built survey of building height & total building height after sheathing but prior to roofing materials being installed (as stated below): ☒ Yes ☐ No
- Certified "steel location" survey required (pools only). ☒ Yes ☐ No
- Certified "As Built" survey when construction is completed. ☒ Yes ☐ No
- Certification of Drainage by P.E. before "C.O.". ☒ Yes ☐ No
- Field check prior to "C.O.". ☒ Yes ☐ No
- Photographs prior to "C.O.". ☒ Yes ☐ No
- Other: foundation, drainage, as built with height prior to CO

Zoning Fee: 300 State Fee: 60.00 Inclusionary Zoning Fee: _____ (Value of NSFD or RADD, will be determined by Bld. Dpt.)

Reviewed By: [Signature] DATE: 4/18/17
 Zoning Inspector

Building Permit Application for Occupancy Review/Sign-off Sheet

7 Main Street, New Canaan, CT 06840

17-130

Block 000 Lot 000

Address: 22 William Street, New Canaan, CT 06840

Location of Work to be Done: *Basement*

Factor: *Interior Renovation*

City/Town: *New Canaan*

Parcel Address: *7 Main Street, New Canaan, CT 06840*

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Parcel Address: *7 Main Street, New Canaan, CT 06840*



Permit # BP-17-00131
M/B/L N-80-644
Date Issued 06/05/2017

**Town of New Canaan
BUILDING PERMIT**

77 MAIN STREET, NEW CANAAN CT. 06840 . PHONE 203 594-3012 . FAX 203 594-3121

Owner	HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN	Phone: (203) 961-1010
Address	57 MILLPORT AVE, NEW CANAAN, CT 06840	
Contractor	ENTERPRISE BUILDERS 46 SHEAPRD DRIVE NEWINGTON, CT 06111	
Phone	(860) 466-5188	
Applicant	ENTERPRISE BUILDERS	Phone: (860) 466-5188
Address	46 SHEAPRD DRIVE	
Address:	57 MILLPORT AVE	
Tax ID No.		
Type Description:	COMMERCIAL NEW	
Const Type:		
Use/Occupancy:	R-2 Residential	
Location:		
Approx Total Sq. Ft	1585	

The undersigned hereby applies for permission to construct the Project in compliance with the laws and building codes and regulations of the State of Connecticut and the Town of New Canaan as set forth in the accompanying drawings and specifications in so far as the same do not conflict with the aforesaid State and Town laws and building regulations.

Approved plans MUST be retained on the job and this card KEPT POSTED until final inspections have been approved. All structures require a Final Inspection. Buildings may not be occupied until approved by the Building Official.

Any & all deviations regardless of size from stamped approved plans must be approved by ALL Land Use Depts. before they are made.

Additional Conditions:

CLUBHOUSE-ONE STORY BUILDING. "ONE-STORY CLUBHOUSE WITH 2 OFFICE, 2 PUBLIC BATHROOMS, 1 KITCHENETTE AND 1 OPEN SPACE, 1,585 SQ FT."

Estimated Cost \$ 238,000.00

Payments		
06/09/2017	B-Zoning	\$300.00
06/09/2017	B-PZ DEP State	\$58.00
06/09/2017	B-PZ DEP Town	\$2.00
06/09/2017	B-Building Com	\$2,931.00
	TOTAL	\$3,291.00

APPROVED
Building Official

NOTE: All inspections must be scheduled with Building Department personnel. No inspection requests will be accepted by voice mail.

Permit numbers will be required when requesting any inspections either in person or by telephone with Building Department personnel.

77 Main Street, New Canaan, CT 06840

Building Permit, Plan Review and Certificate of Occupancy Routing/Sign-Off Sheet

177-151

Job Address: 57 Millport Avenue, New Canaan, CT 06840

Map: 000N

Block: 0080

Lot: 0644

Description of Work to be Done: One story clubhouse with 2 offices, 2 public bathrooms, one kitchenette, and 1 open space.

Contractor: Enterprise Builders

Email Address: MIMcNaboe@enterbuilders.com

Contact Phone: 860.466.5188

Property Owner: Housing Authority of the Town of New Canaan Email Address: Shobbs@hobbsinc.com

Contact Phone: 203-966-6006

Owner's Current Address: 57 Millport Avenue, New Canaan, CT 06940

Today's Date: 3/1/17

INCOMPLETE/UNSIGNED PLANS OR PERMIT APPLICATIONS CANNOT BE ACCEPTED FOR REVIEW*** DO NOT WRITE INSIDE BOXES/OFFICE USE ONLY

DEPARTMENT APPROVALS FOR PLAN REVIEW AND BUILDING PERMIT ISSUANCE.

Department _____ Disposition _____ Initials _____ Date _____ (for Permit)

Health & Sanitation Granted ☐ Denied ☐ N.A. ☐ 3/1/17

Comments or Conditions: _____

Wetlands Agency Granted ☒ Denied ☐ N.A. ☐ 3/31/17

Comments or Conditions: Wetland Permit 14-72 issued.

Public Works/Engineering Granted ☒ Denied ☐ N.A. ☐ 4/1/12

Comments or Conditions: _____

Planning & Zoning Office- Granted ☒ Denied ☐ N.A. ☐ 4/18/17

Comments or Conditions: as built prior to CO

Fire Marshal Granted ☒ Denied ☐ N.A. ☐ 2509 5/11/12

(not required for 1 and 2-family dwelling)

Comments or Conditions: _____

Building Dept- Granted ☒ Denied ☐ N.A. ☐ BLP 5/22/17

pick up and pay for permit here

Comments or Conditions: See plan review notes by Bruce Swietak

CERTIFICATE OF OCCUPANCY APPROVAL

Initials _____ Date _____ (for C.O.)

_____ for the Health & Sanitation

_____ for Wetlands Agent

_____ for Public Works/Engineering

_____ for Planning & Zoning

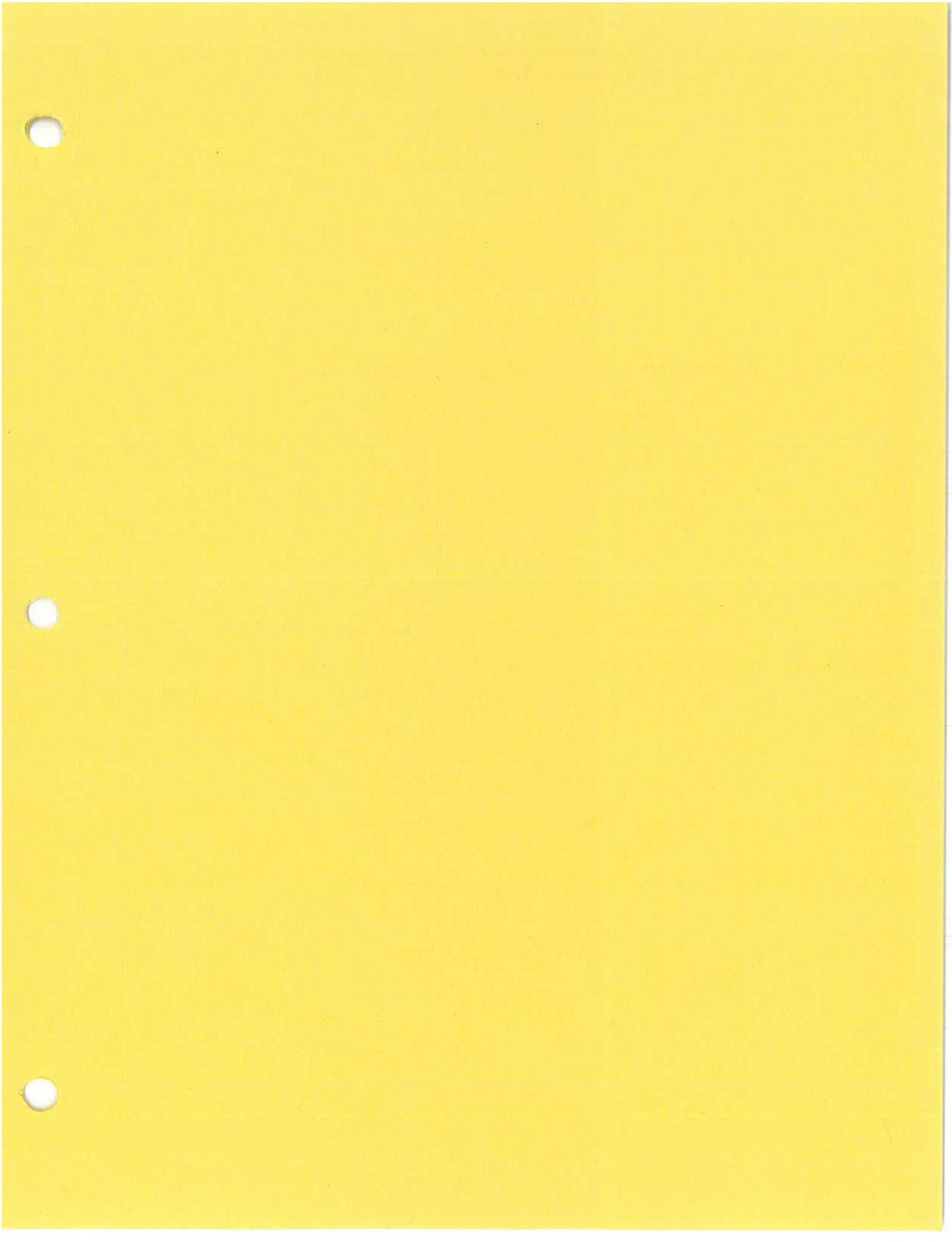
_____ for Fire Marshal- (not required for 1 and 2-family homes)

_____ for Building Dept.

Obtain Certificate of Occupancy from the Building Dept. after final inspection.

NOTICE TO PROPERTY OWNERS: It is the owner's advantage to request final approval for the Certificate of Occupancy (C.O.) as early as possible to avoid delays that could cause problems with loan closing, business openings, etc. Placement on the Town's tax rolls is not contingent upon the issuance of a Certificate of Occupancy.

RECEIVED IN B' TNG DEPT. ON 3/1/17



SPECTRUM SEMINARS, INC.
www.spectrumseminars.com
steve.rosenthal@spectrumseminars.com



SPECTRUM ENTERPRISES, INC.
www.spectrumllc.com
info@spectrumllc.com

September 25, 2020

Mr. Scott Hobbs
Millport Phase II LP
57 Millport Ave.
New Canaan, CT 06840

RE: Monitoring for Low Income Housing Tax Credit (LIHTC) Compliance in Connecticut:
Final Summary Report

Property: **Millport Phase II – CT-16408**

Dear Mr. Hobbs:

Enclosed please find a summary of our monitoring and findings of your property for this monitoring period covering the areas of review as noted in the Owner's Report Letter. We are required to report any findings we discover to the Internal Revenue Service. In instances where revisions have been requested and not received by the execution date of this letter, additional findings may be cited upon their reception and review. **As stated in the Code, Section 1.42-5(g) Liability: Compliance with requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. The Agency's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an owner's non-compliance.**

The results of our monitoring of **Millport Phase II** are as follows:

1. **Owners Certifications:** The Owner's Certifications of Continuing Project Compliance received for **2018 and 2019** were reviewed. The results of that review are as follows:

No issues.

2. **Original Qualifying Basis and Minimum Set-Aside:** As determined by reviewing the first year Status Report database or previously submitted QBTS. The results of that review are as follows:

The 8609s with part II completed by the owner were provided. In addition, the Extended Low-Income Housing Commitment was provided. The applicable fraction of 40/40 or 100% is confirmed. **Issue cleared.**

3. **Status Reports:** The SPECTRUM Status Report database received was reviewed for compliance in **2018 and 2019** using **Stamford-Norwalk MSA** income limits. The results of that review are as follows:

Unit 434 has been vacant since August 2019. Management explained this vacancy is due to applicants failing background screenings and applicants not being income qualified. They were also experiencing some staffing issues. A qualified household moved into this unit on 2/1/2020. **Issue cleared.**

Unit 436 has been vacant since April 2019. Management explained this vacancy is due to applicants failing background screenings and applicants not being income qualified. They were also experiencing some staffing issues. A qualified household moved into this unit on 4/1/2020. **Issue cleared.**

4. **Physical Inspection:** The physical inspection was conducted on TBD. Two buildings (BINs CT-16408-01 to CT-16408-02), all common areas, and sixteen of the LIHTC units were inspected. All CHFA Inspection Standards and Guidelines were adhered to with the following repairs noted/required:

ATTENTION:

Due to the ongoing health crises, CHFA has suspended all physical inspections of LIHTC properties.

5. **Tenant/Administrative File Review:** The file review was conducted on 6/19/2020. Sixteen of the LIHTC files were selected for review. Leases, move-in verifications, certifications, and rents were reviewed. The results of that review are as follows:

Part VII regarding student status is blank on most Tenant Income Certifications. Management reported that this was a software issue and they have manually corrected Part VII on TICs regarding Student Status. **Issue cleared.**

CT-16408-01

Unit 313/Musilli

In accordance with IRS notice 2020-53, the 4/1/2020 annual certification is not required. The 4/1/2019 annual recertification was reviewed during the audit and there were no issues. **Issue cleared.**

Unit 323/Plaza

We requested pay stubs in place of the tax returns for the 6/1/2020 annual certification. Management explained that due to COVID-19, they were unable to obtain the pay stubs. Tenant is well below the income limit. **Issue cleared.**

Unit 325/Moroch

The 2018 initial certification and the 2/1/2020 annual certification were provided as requested. The move-in date was corrected to 2/20/2018. **Issues cleared.**

Unit 332/Lowman

The move-in date was corrected to 2/22/2018 as requested. A Certificate of Zero Income was provided for Hunter. **Issues cleared.**

Unit 335/Vecchini

Signed TICS for 2018 and 2019 were provided as requested. Be sure to add "true and correct" as of the certification date and have tenant initial. In accordance with IRS notice 2020-53, the 4/1/2020 annual certification is not required. **Issues cleared.**

Unit 337/Platt

The 3/1/2020 annual recertification was provided as requested. **Issue cleared.**

CT-16408-02

Unit 421/Brown

The signed 12/1/2019 annual certification was provided as requested, as well as the completed 12/31/2018 move-in certification. **Issues cleared.**

Unit 438/Tatarintseva

A signed 3/1/2020 TIC has been provided as requested. Be sure the tenants add, "True and correct as of 3/1/2020." **Issue cleared.**

FINDINGS:

None.

COMMENTS:

This concludes our LIHTC compliance monitoring for this period. Thank you for your cooperation with our monitoring and special thanks to the management staff for their cordiality and assistance.

If you have any questions, please do not hesitate to contact us at (207) 805-0039.

Sincerely,

Wil Whalen

Wil Whalen, C15P
Compliance Analyst

cc: Andrew Bowden, Spectrum Enterprises
Joe Voccio, Connecticut Housing Finance Authority
Colette Slover, Connecticut Housing Finance Authority

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EXECUTION COPY

When Recorded Return to:
Robinson & Cole LLP
280 Trumbull Street
Hartford, Connecticut 06103
Attn: David M. Panico, Esq.



Doc ID: 002618150023 Type: LAN
Book 973 Page 694 - 716
File# 3290

LAND USE RESTRICTION AGREEMENT

by and between

HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN,
and

MILLPORT PHASE II LIMITED PARTNERSHIP,

Dated as of May 1, 2017

**\$6,950,000 HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN
MULTIFAMILY HOUSING REVENUE BONDS
(MILLPORT PHASE II PROJECT), SERIES 2017**

LAND USE RESTRICTION AGREEMENT

Pertaining to:

**\$6,950,000 HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN
MULTIFAMILY HOUSING REVENUE BONDS
(MILLPORT PHASE II PROJECT), SERIES 2017**

THIS AGREEMENT, together with any amendments or supplements hereto (this "Agreement"), dated as of May 1, 2017, is entered into by the **HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN**, a public body politic and corporate, organized and existing under the laws of the State of Connecticut, and having its principal place of business at 57 Millport Avenue, New Canaan, Connecticut 06840 (the "Authority"), and **MILLPORT PHASE II LIMITED PARTNERSHIP**, a Connecticut limited partnership with its principal place of business located at 57 Millport Avenue, New Canaan, Connecticut 06840 (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the "Borrower");

WITNESSETH:

WHEREAS, pursuant to Chapter 128 of the General Statutes of Connecticut, Revision of 1958, as amended (the "Act") the Authority has authorized the issuance of \$6,950,000 aggregate principal amount of its Multifamily Housing Revenue Bonds (Millport Phase II Project), Series 2017 comprised of \$3,050,000 Housing Authority of the Town of New Canaan Multifamily Housing Revenue Bonds (Millport Phase II Project), Series 2017A (the "Series A Bonds") and \$3,900,000 Housing Authority of the Town of New Canaan Multifamily Housing Revenue Bonds (Millport Phase II Project), Series 2017B (the "Series B Bonds" and together with the Series A Bonds, the "Bonds") under that certain Loan Agreement, dated as of May 1, 2017, by and among Bankwell Bank (the "Purchaser"), the Authority and the Borrower, as supplemented and amended from time to time (the "Loan Agreement");

WHEREAS, the proceeds of the Bonds shall be used to fund a loan to the Borrower pursuant to the Loan Agreement, to provide, in part, financing and refinancing the demolition, construction, renovation, acquisition and equipping of a qualified multifamily residential rental housing project, consisting of 40 units in 3 buildings, located in the Town of New Canaan, Connecticut and known as Millport Apartments located on the real property site described in Exhibit A hereto (as further described herein, the "Project"), to be occupied by tenants meeting the requirements of Section 142(d)(1) of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, the Code and the Treasury Regulations (as hereinafter defined) and rulings promulgated with respect thereto prescribe that the use and operation of the Project (as hereinafter defined) be restricted in certain respects and in order to ensure that the Project will be used and operated in accordance with the Code and the Treasury Regulations, the Authority and the Borrower have determined to enter into this Agreement in order to set forth certain terms and conditions relating to the acquisition, construction, use and operation of the Project;

WHEREAS, the Authority is the owner of the Land (as hereinafter defined) and the Project (as hereinafter defined) as of the date hereof and pursuant to a Ground Lease, dated as of the date hereof, by and between the Authority as lessor and the Borrower as lessee (the "Ground Lease" a Notice of which will be recorded on the New Canaan Land Records immediately subsequent to the recording of this Agreement),

pursuant to which Ground Lease the Authority has leased the Land and transferred the ownership of the Project to the Borrower for a term of ninety (90) years; and

WHEREAS, in order to comply with the Code and the Treasury Regulations, the Borrower hereby subjects the Land and the Project to the terms of this Agreement.

NOW, THEREFORE, in consideration of issuance of the Bonds by the Authority and the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Borrower agree and declare as follows:

SECTION 1. Definitions. When used in this Agreement, the terms defined in this Section 1 shall have the meanings set forth below. All capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

"Act" means Chapter 128 of the Connecticut General Statutes, Sections 8-38 through 8-119yy, as the same may be amended from time to time.

"Adjusted Income" means the anticipated total annual income of the individual or family for the Certification Year, determined in accordance with the criteria prescribed by the Secretary of Housing and Urban Development under Section 8(f)(3) of the United States Housing Act of 1937, as amended, and as set forth in the Income Certification of each Tenant who proposes to live in a Unit after the beginning of the Certification Year and who is considered an occupant of the Unit by the Secretary of Housing and Urban Development. Such determination is not affected by income earned or received during the Certification Year which is not included in the Income Certification.

"Agreement" means this Land Use Restriction Agreement by and between the Authority and the Borrower.

"Area" means the Metropolitan Statistical Area or Authority, as applicable, in which the Project is located, as defined by the United States Department of Housing and Urban Project.

"Area Median Gross Income" means income determined by the Secretary of the Treasury in a manner consistent with determinations under Section 8 of the United States Housing Act of 1937, as amended, including adjustments for family size.

"Authority" means the Housing Authority of the Town of New Canaan.

"Available Units" means residential units in the Project that are actually occupied and residential units in the Project that are vacant and have been occupied at least once after becoming available for occupancy, provided that (a) a residential unit that is vacant on the later of (i) the date the Project is acquired or (ii) the issue date of the Notes, is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after the renovations are completed.

"Bond Counsel" means Robinson & Cole LLP, Hartford, Connecticut, or such other independent legal counsel which may be approved by the Authority and whose opinions are regularly and generally accepted nationally in the field of municipal finance.

"Bonds" means the \$3,050,000 Housing Authority of the Town of New Canaan Multifamily Housing Revenue Bonds (Millport Phase II Project), Series 2017A and the \$3,900,000 Housing Authority of the Town of New Canaan Multifamily Housing Revenue Bonds (Millport Phase II Project), Series 2017B, issued for application by the Borrower to finance the demolition, construction, renovation, acquisition and equipping, and furnishing of the Project.

"Bondholder" means any person who is or was at any time the registered owner of one or more of the Bonds.

"Borrower" means Millport Phase II Limited Partnership, a Connecticut limited partnership with its principal place of business located at c/o the Housing Authority of the Town of New Canaan, 57 Millport Avenue, New Canaan, Connecticut 06840, and its successors and assigns, and shall also mean each of the Borrower's successors in title to the Project.

"Building" means each of the structures to be owned by the Borrower and to be constructed, and comprising the Project in New Canaan, Connecticut, consisting of an independent foundation, outer walls and a roof for 3 buildings, all of which contain in the aggregate 40 Units.

"Business Day" means any day other than a Saturday or a Sunday or a day on which national banking institutions in the State of Connecticut are authorized or obligated by law or executive order to be closed.

"Certification Year" means the twelve (12) month period beginning on the later of (a) the date the Unit is first placed in service or (b) the date on which the person first occupies the Unit on a rental basis or signs a lease with respect to the Unit, whichever occurs first.

"Code" means the Internal Revenue Code of 1986, as amended, each reference to the Code is deemed to include (i) any successor internal revenue law and (ii) the applicable regulations whether final, temporary or proposed under the Code or such successor law. Any reference to a particular provision of the Code is deemed to include any successor provision of any successor internal revenue law and applicable regulations whether final, temporary or proposed under such provision or successor provision.

"Commissioner" means the Commissioner of Economic and Community Development of the State of Connecticut or any successor with jurisdiction with respect to the housing comprising the Project.

"Functionally Related and Subordinate Facilities" means property which is functionally related and subordinate to, and of a character and size commensurate with the Project, including heating and cooling equipment, trash disposal equipment, units for resident managers and maintenance personnel and facilities used by the tenants such as parking areas, common areas and other facilities.

"Gross Income" means the gross income of a person (together with the gross income of all persons who intend to reside with such person in one residential unit) as calculated in the manner prescribed under Section 8 of the Housing Act.

"Gross Rent" means the amount charged a Tenant for occupancy of a Unit for the applicable period, including any payments and any utility allowance provided under Section 8 of the United States Housing Act of 1937, as amended.

"Ground Lease" shall have the meaning ascribed to such term in the Recitals above.

"Housing Act" means Section 8 of the United States Housing Act of 1937, as amended, and the regulations thereunder.

"HUD" means the United States Department of Housing and Urban Development.

"Income Certification" means a Tenant Income Certification and a Tenant Income Certification Questionnaire in a form acceptable to the Authority or as otherwise approved by the Authority.

"Land" means the tract of real property described in Exhibit A attached hereto.

"Loan Agreement" means the Loan Agreement, dated as of May 1, 2017, by and among the Authority, the Borrower, and the Purchaser pursuant to which the Authority shall loan the proceeds of the Bonds to the Borrower.

"Low Income" means Adjusted Income which is fifty percent (50%) or less of Area Median Gross Income, determined at least annually on the basis of the current Adjusted Income of the Qualified Tenant.

"Moderate Income" means Adjusted Income which is 60% or less of Area Median Gross Income, determined at least annually on the basis of the current Adjusted Income of the Qualified Tenant.

"Monitoring Agent" means the Authority or such other person who may be subsequently designated by the Authority to receive and review the documents and certificates to be delivered by the Borrower or person occupying a Unit in the Project pursuant to Section 2.2 hereof, and to perform such audits of the operation of the Project as the Authority may require. Such person shall be knowledgeable and experienced in performing the functions required to be performed by the Monitoring Agent hereunder.

"Mortgage Documents" means the Open-End Construction Leasehold Multifamily Mortgage, Assignment of Leases, Security Agreement, and Fixture Financing Statement, UCC-1 Financing Statement, the Easement Agreement dated as May 26, 2017, by and among the Authority, NCHA Mill Apartments Limited Partnership, Millport Phase I Limited Partnership and the Borrower (the "Easement Agreement"), Assignment of Plans, Specifications, Borrowers Rights and Agreement, the Assignment of Permits, Licenses, Approvals and Contracts delivered from the Borrower to the Purchaser in connection with the issuance of the Bonds.

"Note" means the Note or Notes made and delivered by the Borrower and payable to the order of the Authority in the original principal amount of \$6,950,000 and evidenced by the Bonds.

"Person" means any entity, whether an individual, trustee, association, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, joint stock company, joint venture, trust, estate, unincorporated organization, firm, or government or any agency or political subdivision thereof.

"Project" means the Land, the Building and the Functionally Related and Subordinate Facilities, which are to be used on other than a transient basis by members of the general public as a Qualified Residential Rental Project.

"Qualified Project Period" means the period beginning on the first day on which 10% of the Units in the Project are occupied and ending on the later of: (1) the date which is thirty (30) years after the date on which 50% of the Units in the Project are occupied, (2) the first day on which no tax exempt private activity

bond issued with respect to such Project is outstanding, or (3) the date on which any assistance provided with respect to the Project under the Housing Act terminates.

"Qualified Tenant" means a Tenant of Moderate Income. If a Qualified Tenant was a Qualified Tenant upon the commencement of occupancy of a Unit, such Qualified Tenant shall continue to be considered a Qualified Tenant unless: (1) the Adjusted Income of such Qualified Tenant as of the most recent determination exceeds 140% of the applicable percentage of Area Median Gross Income for such Qualified Tenant and after such determination and prior to the next such determination, any Unit of comparable or smaller size in the Project is occupied by new resident whose Adjusted Income exceeds 60% of Area Median Gross Income.

"Qualified Residential Rental Project" means a residential rental housing project that meets the requirements of Section 142(d) of the Code, applicable Treasury Regulations and this Agreement.

"Related Person" means: (a) Persons having a relationship which would result in a disallowance of losses under Section 267 or 707(b) of the Code, and (b) Persons which are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code except that "more than 50%" shall be substituted for "at least 80%" in each place in which it appears in Section 1563(a)).

"Rental Term" and "Term" means the period commencing on the date of issuance of the Bonds and ending at 11:59 p.m. on May 1, 2054.

"State" means the State of Connecticut.

"Student" means an individual who during each of five calendar months during the calendar year in which the taxable year of the individual begins is either: (a) a full-time student at an educational organization described in Section 170(b)(1)(A)(ii) of the Code; or (b) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in Section 170(b)(1)(A)(ii) of the Code or of a State or political subdivision thereof, or as such term shall be revised and redefined by subsequent regulations or other authority for purposes of federal income taxation.

"Tax Regulatory Agreement" means the Tax Regulatory Agreement, dated as of May 26, 2017, by and between the Authority and the Borrower, as the same may be amended from time to time.

"Tenant" means individuals or families (two or more persons related by blood, marriage, operation of law or deemed to occupy the Unit by the Secretary of Housing and Urban Development) other than individuals all of which are Students and no one of which is entitled to file a joint return under Section 6013 of the Code occupying a Unit.

"Treasury Regulations" means Income Tax Regulations promulgated under Code Sections 42, 103, or 141 through 150 by the Department of the Treasury from time to time.

"Unit" means an accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation located in the Project.

Section 2. Covenants and Agreements.

2.1 Qualified Residential Rental Project. The Borrower hereby declares its understanding and intent and covenants and agrees with the Authority and the Bondholders, and for the benefit of the

Commissioner on behalf of the State, that the Project is to be owned, managed and operated on a continuous basis for the full Rental Term hereof as a Qualified Residential Rental Project. To that end, the Borrower hereby declares, represents, warrants, covenants and agrees, for the full Rental Term with respect to the Project, as follows:

(a) The Project shall be acquired, constructed and equipped for the purpose of providing a Qualified Residential Rental Project, and the Borrower shall own, manage and operate the Project as a Qualified Residential Rental Project comprised of Units and Functionally Related and Subordinate Facilities thereto, in accordance with Section 142(d) of the Code.

(b) All Buildings in the Project shall be located on the Land or be "proximate" to Buildings located on the Land (within the meaning of such term in Treasury Regulations Section 1.103-8(b)(4)(ii)).

(c) Each Building contains and shall contain one or more "similarly constructed" Units (within the meaning of Treasury Regulations Section 1.103-8(b)(4)(i)).

(d) None of the Units shall at any time be utilized on a transient basis, none of the Units shall be occupied at any time except in accordance with a written lease, none of the Units shall ever be leased or rented for a period of less than thirty (30) days, and neither the Project nor any portion thereof shall ever be used as a hotel (other than for purposes of temporary relocation of Unit occupants during rehabilitation or renovation), motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, rest home or trailer park or court.

(e) All of the Units shall be rented or available for rental on a continuous basis to members of the general public, and the Borrower shall not give preference in renting Units to any particular class or group of persons or otherwise discriminate against any person or group of persons on the grounds of race, color, religious creed, gender, age, marital status, sexual orientation, national origin, mental retardation or physical disability except as may be required in order to comply with the restrictions contained in Section 2.2 hereof. Notwithstanding the foregoing, to the extent permitted by applicable law, the Borrower may give preference in renting Units to (i) current Tenants of the Authority being relocated to accommodate the redevelopment or renovation of any other Authority owned, sponsored, or operated residential rental projects; (ii) eligible employees of the Town of New Canaan, Connecticut; and (iii) eligible Tenants qualifying for a preference under a policy adopted by the Authority and approved by HUD.

(f) No part of the Project will at any time during the Qualified Project Period be owned by a cooperative housing corporation, nor shall the Borrower take any steps in connection with a conversion to such ownership or use, and the Borrower will not take any steps in connection with a conversion of the Project to condominium ownership during the Qualified Project Period (except that the Borrower may obtain final map approval and the Final Subdivision Public Report from the Connecticut Department of Real Estate and may file a condominium plan with the Town).

(g) Any Building which contains fewer than five Units will not have a Unit occupied by the Borrower or a Related Person to the Borrower.

(h) The entire Project shall be owned for Federal tax purposes at all times by one Person.

(i) During the Qualified Project Period, the Borrower will comply with all of the provisions of the Tax Regulatory Agreement, the terms and provisions of which are hereby incorporated herein by reference. A violation of any covenant, agreement or restriction of the Tax Regulatory Agreement shall be considered a violation of the restrictions, covenants and provisions hereof and subject to Section 4.1 hereof.

2.2 Rental of Units. In order to satisfy the requirement of Section 142(d) of the Code, the Borrower hereby represents, warrants, covenants and agrees:

(a) For the first forty-two (42) years of the Rental Term ("Initial Term") hereof with respect to the Project as follows:

(i) None of the Units shall be made available for occupancy at or below Gross Rent to Qualified Tenants of Low Income; and

(ii) One hundred percent (100%) of the Units (40) shall be made available for occupancy at or below Gross Rent to Qualified Tenants of Moderate Income.

(b) For the remainder of Rental Term hereof with respect to the Project, one hundred percent (100%) of the Units (40) shall be made available for occupancy at or below Gross Rent to Qualified Tenants of Moderate Income.

(c) Units occupied by each type of Qualified Tenant shall include a reasonably proportionate mixture of the various room sizes (e.g., one, two and three bedroom, etc.) which comprise the Project.

(d) The Units shall have substantially the same equipment and amenities.

(e) The Borrower will at all times during the Term rent or lease the Units in accordance with the requirements of Section 2.2(a) or 2.2(b), as the case may be.

(f) If, at any time the Borrower is unable to rent or lease any Unit in compliance with Section 2.2(a) or 2.2(b), as the case may be, it will hold such unrented Unit vacant and continue to offer it for occupancy until it can be rented in compliance with Section 2.2(a) or 2.2(b).

(g) Before entering into a lease with any Tenant covering a Unit and before permitting any Tenant to occupy any Unit (including, without limitation, occupancy under a lease or a sublease or as a guest in such a Unit for more than thirty days), the Borrower will obtain from each such Tenant an Income Certification. On or before each anniversary date of each Qualified Tenant's first day of occupancy of a Unit, the Borrower shall obtain from such Tenant a new Income Certification. The Borrower shall maintain all such Income Certifications on file for at least three (3) years after the expiration of the Rental Term. Within three (3) Business Days of the end of each month during the Rental Term, the Borrower will deliver a copy of each Income Certification received during such month to the Monitoring Agent.

2.3 Warranties and Covenants with Respect to the Bonds. The Borrower covenants that it will take such action or actions (except actions prohibited by HUD pursuant to the Housing Act), including consenting and agreeing to amendments to this Agreement, the Loan Agreement, the Tax Regulatory Agreement, the Mortgage Documents, the Note and any other documents as may be necessary, in the opinion of Bond Counsel, so that the Borrower, all subsequent owners of the Project and the Project comply fully with, or will come into full compliance with, the Act, Section 103 and related Sections of the Code applicable to the Project, and all applicable rulings, policies, procedures, or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service in order to ensure that the interest on the Bonds is excludable from gross income for purposes of federal income taxation under the Code. The Monitoring Agent will take all action required to ensure such compliance by the Borrower.

2.4 Approval of Form of Lease and Contents of Lease.

(a) The Borrower will not enter into a lease of any Unit unless the form of such lease has been approved in writing by the Monitoring Agent. The Borrower will not permit or enter into any modification or amendment of such lease form without the prior written approval of the Monitoring Agent. Any lease for a Unit which is entered into on a form which has not been approved by the Monitoring Agent shall be voidable at the option of the Monitoring Agent whether or not the lease contains a provision to that effect.

(b) Each lease of a Unit shall contain the following:

(i) a provision to the effect that, in order to protect the exclusion from gross income of interest on the Bonds, of which each person occupying a Unit is a beneficiary, if any Tenant occupying a Unit is subsequently determined by the Borrower or the Monitoring Agent not to have been a Qualified Tenant, as the case may be, at the time occupancy of such Unit commenced, such lease shall be null and void ab initio and of no further force and effect upon the giving of written notice thereof to such Tenant by the Borrower or the Monitoring Agent, and such Tenant shall immediately vacate such Unit;

(ii) a provision to the effect that the Unit leased thereby may not be subleased without the prior written approval of the Borrower and the Monitoring Agent.

(iii) the provision: "The tenant agrees to furnish the information required by the attached Certification/Recertification of Tenant Eligibility at the commencement of occupancy of the unit, each anniversary thereof and such other times as may be requested by the Borrower, the Monitoring Agent or the Commissioner of Economic and Community Development of the State of Connecticut. The tenant agrees that the Borrower, the Monitoring Agent or the Commissioner of Economic and Community Development of the State of Connecticut may request verification of the information submitted by the tenant in such Certification of Tenant Eligibility from the tenant's employer or other source of income."

The form of the Income Certification shall be an attachment to the lease form for any Unit.

(c) The Borrower agrees that it will not approve any sublease if the effect thereof would be to permit occupancy of a Unit by a Tenant who is not a Qualified Tenant. No sublease shall in any manner permit or be contingent upon the receipt by the Tenant or the Borrower of any consideration from the sublessee other than the payment of the rent stipulated under the Tenant's lease with the Borrower.

2.5 Reports and Management Review.

(a) The Borrower will prepare and submit to the Monitoring Agent, within ten (10) days after the end of each month during the Rental Term, a certificate executed by the Borrower, substantially in the form of that attached hereto as Exhibit B, certifying:

(i) each Unit in the Project which is occupied;

(ii) the last name of each Tenant of an occupied Unit;

(iii) vacant Units deemed occupied by a Qualified Tenant by virtue of being previously occupied by a Qualified Tenant and occupied Units deemed occupied by a Qualified Tenant whose actual Adjusted Income exceeds Moderate Income;

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- (iv) the number of occupants of each Unit;
 - (v) the current monthly and annual Gross Rent of each Qualified Tenant;
 - (vi) the percentage of occupied Units occupied by each category (i.e., Moderate Income, Low Income and Very-Low Income) of Qualified Tenant; and
 - (vii) the current (A) Area Median Gross Income, (B) Moderate Income, (C) Low Income, (D) Moderate Income and Low Income adjusted for family size from one occupant to the highest number of occupants of any Unit determined in Subparagraph (iv) above.
- (b) The Borrower shall maintain records regarding the Adjusted Income of each Qualified Tenant in addition to the Income Certification and shall permit representatives of the Monitoring Agent to inspect such records and Income Certifications upon three (3) Business Days written notice delivered to the Borrower by U.S. mail, overnight mail, hand delivery or facsimile.
- (c) Throughout the Rental Term, the Borrower shall maintain current accounting records with respect to the acquisition and construction of the Project and its operation and maintenance once occupied by tenants. The Authority and the Purchaser, or their respective duly authorized agents, shall have the right at any time, upon three (3) Business Days written notice delivered to the Borrower by U.S. mail, overnight mail, hand delivery or facsimile, to enter upon and to examine and inspect any part of the Project and to examine such accounting records.
- (d) Throughout the Rental Term, the accounting records for the Project for each fiscal year of the Borrower shall be audited by a firm of independent certified public accountants selected by the Borrower with the consent of the Authority which consent shall not be unreasonably withheld. Until the entire Project has been placed in service and is ready for occupancy, each such annual audit shall include a schedule or statement, separate from or a part of the audited financial statements, confirming the use of the proceeds of the Bonds as set forth in Section 3.3 of the Tax Regulatory Agreement in a form substantially similar to that of Schedule B to the Tax Regulatory Agreement, or such other form as the Authority and Bond Counsel shall agree upon. A copy of such annual audited financial statements shall be delivered to the Authority within ten (10) Business Days of the date of the accountant's report included in such annual audited financial statements.
- (e) Throughout the Rental Term, the Borrower shall furnish the Authority for its review and comment, prior to approval, the following:
- (i) any proposed management agreements;
 - (ii) any management plans for the Project;
 - (iii) an operating budget not less than thirty (30) days prior to the beginning of each fiscal year of the Borrower setting forth in detail the estimated income and expenses of the Project, including separate documentation of administration expenses, operating expenses, maintenance expenses, utilities, insurance, taxes and assessments, debt service, and deposits to replacement and other reserve funds.

The Borrower shall within ten (10) business days respond in writing to any comments and recommendations of the Authority delivered to the Borrower within ten (10) business days of the Authority's receipt of said management agreements, management plans and operating budgets. Nothing contained herein shall

authorize the Authority to interfere with the Borrower or its management agent in the conduct of business on the premises, or to interfere with the tenants' rights of enjoyment of their Units.

(f) Throughout the Rental Term, until the end of the Qualified Project Period, the Borrower shall furnish the Authority with a copy of Form 8703, Annual Certification of a Residential Rental Project, and Form 8609, Low-Income Housing Credit Allocation Certification, within twenty (20) Business Days of the filing of such forms with the Internal Revenue Service.

2.6 Occupancy Threshold Certificates. The Borrower covenants and agrees that it will record a certificate in the Land Records of the Town of New Canaan, Connecticut, substantially in the form attached hereto as Exhibit C, within thirty (30) days following: (a) the date on which ten percent (10%) of the Units in the Project are occupied and (b) the date on which fifty percent (50%) of the Units in the Project are occupied.

Section 3. Project Restrictions.

3.1 Beneficiaries.

(a) The Borrower acknowledges, represents and warrants that the issuance and sale of the Bonds by the Authority and the use of the proceeds thereof are necessary to induce the Borrower to undertake the acquisition, construction and equipping of the Project and the Borrower would not complete the construction of the Project if the Bonds were not issued.

(b) The Borrower hereby acknowledges that the restrictions, covenants and provisions contained herein are necessary to ensure that the Project will be operated as a Qualified Residential Rental Project within the meaning of Section 142(d) of the Code and that the interest on the Bonds will be exempt from gross income for the holders thereof of purposes of federal income taxation under Section 103 of the Code during the Qualified Project Period. Therefore, the Borrower covenants, agrees and acknowledges that: (i) the Authority and the Bondholders are the beneficiaries of this Agreement; (ii) the Authority has relied on this Agreement in determining to issue and sell the Bonds; and (iii) each and all of the Bondholders have relied on this Agreement in determining to purchase or otherwise become the registered owner or owners of any of the Bonds.

3.2 Limitation Upon Transfer or Other Disposition of Project. During the Rental Term, until the end of the Qualified Project Period the Borrower shall not sell, convey, transfer or otherwise dispose of the Project without obtaining the prior written consent of the Authority, which consent of the Authority shall be conditioned solely upon receipt of an opinion of Bond Counsel addressed and satisfactory to the Authority that the Borrower's purchaser or transferee has assumed in full all of the Borrower's duties and obligations under this Agreement and that such sale, conveyance, transfer or other disposition shall not affect the exclusion from gross income of the interest on the Bonds for federal income tax purposes. The provisions of the foregoing sentence shall not affect in any manner any independent right of consent of the Authority or any other party arising under any other agreement to which the Authority or the Borrower is a party, including the Ground Lease. The Borrower further agrees that any sale, conveyance, transfer or other disposition of the Project in violation hereof shall be null, void and without effect, shall cause a reversion of title to the Borrower and shall be ineffective to relieve the Borrower of its obligations under this Agreement.

It is understood and agreed by the parties hereto and the beneficiaries hereof that nothing contained in this Agreement shall prevent or limit any transferor Borrower from requiring and obtaining an agreement from the purchaser or transferee of the Project to indemnify and hold such transferor Borrower harmless

from and against all loss, liability and damages resulting from a violation of any of the covenants, restrictions or provisions hereof by such purchaser or transferee or its successors and assigns.

3.3 Covenants to Run With Land and Project. The Borrower hereby agrees with the Authority and declares that it is the express intent of the Borrower that each and all of the covenants, restrictions and provisions set forth in this Agreement shall be deemed covenants running with the Land and the Project and an equitable servitude for the benefit of the Authority, the Commissioner on behalf of the State and the Qualified Tenants until the expiration of the Term, and of the Bondholders until the end of the Qualified Project Period, and shall pass to and be binding upon all Borrower's successors in interest to the Land and title to the Project and the improvements with respect thereto and the Borrower's successors and assigns until the expiration of the Rental Term. Each and every contract, deed or other instrument hereafter executed covering or conveying the Land or the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such restrictions, covenants and provisions, regardless of whether or not such restrictions, covenants and provisions or any reference thereto are set forth in such contract, deed or other instrument. Each and every reference to the "Authority" and "Borrower" herein shall include such parties' successors interest to the Land and title to the Project and their respective successors and assigns.

3.4 Term. The Term of this Agreement of this Agreement shall commence upon the date of issuance of the Bonds and shall end at 11:59 p.m. on May 1, 2054, notwithstanding any sooner termination expiration of the Ground Lease, it being the intention that this Agreement shall run as amended in accordance with the land for the entire Term as set forth in Section 3.3 above. The Borrower hereby agrees and acknowledges that except as amended terminated in accordance with Section 5 hereof, this Agreement and the restrictions, covenants and provisions contained herein shall be in full force and effect during the such Term.

Section 4. Remedies; Reimbursement of Expenses of Enforcement.

4.1 Remedies.

(a) In the event of a violation of, noncompliance with or default under any of the restrictions, covenants or provisions hereof during the Term, or of the Tax Regulatory Agreement during the Qualified Project Period, the Monitoring Agent, the Authority, the Commissioner, or, subject to the terms of the Loan Agreement, the Purchaser, may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation, noncompliance or default, or the Monitoring Agent, the Authority or the Commissioner may institute and prosecute any proceeding at law or in equity to recover monetary damages caused by such violation, noncompliance with, or default under any of the restrictions, covenants or agreements of this Agreement. Notwithstanding the foregoing, no Bondholder shall have any right to institute or prosecute any proceeding at law or in equity in the event of a violation of, noncompliance with or default under any of the restrictions, covenants or provisions hereof unless such Bondholder shall have complied with Section 11 of the Loan Agreement.

(b) Without limiting the generality of the foregoing, the Borrower acknowledges and agrees that the remedy of specific performance shall be available to the Monitoring Agent, the Authority, or the Commissioner to enforce compliance with the restrictions, covenants and provisions contained herein, and further, that under the Loan Agreement until the end of the Qualified Project Period, the Authority and the Purchaser shall take all action necessary to assure and enforce compliance with the restrictions, covenants and provisions contained in this Agreement.

(c) Notwithstanding anything herein to the contrary, the Authority agrees that failure of the Borrower to comply with the covenants and restrictions of this Agreement will not constitute an event of default under the Note and that enforcement of this Agreement shall not result in a claim against the property subject to the Note, any proceeds of the Note, any reserve or deposit required as a part of the Note transaction, or any rents or income from the property subject to the Note.

(d) In the event that the violation, non-compliance or default results from the occupancy of any Unit by one or more persons who were not Qualified Tenants in compliance with Sections 2.2(a) or 2.2(b) at the time occupancy of the Unit commenced, the Monitoring Agent may institute and prosecute, or may cause the Borrower to institute and prosecute, an action to evict or otherwise terminate the occupancy of such Unit by such tenants, without regard to the remaining term of such lease and whether or not a provision to that effect is included in any lease of such Unit. During the occupancy of the Unit by such tenant, the Borrower shall identify another Unit in the Project, if any, which may be occupied by such tenant in compliance with Sections 2.2(a) or 2.2(b) hereof.

4.2 Reimbursement of Expenses of Enforcement. The Borrower shall reimburse the Monitoring Agent and their respective officers, employees and agents for all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by them in enforcing or attempting to enforce any of the restrictions, covenants, provisions and remedies contained herein against the Borrower.

Section 5. Amendments.

(a) This Agreement may not be modified, amended, changed, altered or terminated with respect to the Project during the Qualified Project Period except by a written amendment executed by the Borrower and the Authority and receipt of an opinion of Bond Counsel that such modification, amendment, change, alteration or termination will not affect the exemption of interest on the Bonds from gross income for federal income tax purposes. All amendments hereto must be in writing and recorded in the Land Records of the Town of New Canaan, Connecticut. In addition to the provisions herein controlling, the Authority may consent to and execute any such amendment only as provided in the Loan Agreement. Qualified Tenants, Bondholders, tenants, other purported beneficiaries of this Agreement or representatives of benefited persons shall not be required to consent to any amendment as herein provided, and shall be fully bound by such amendment when executed by the Borrower and the Authority without further action.

(b) This Agreement shall remain in full force and effect with respect to the Project for the Term hereof except as otherwise amended during the Qualified Project Period in accordance with an opinion of Bond Counsel to the effect that this Agreement must be amended to assure the continued exclusion of interest on the Bonds from gross income of the holders thereof for purposes of federal income taxation. Upon receipt of such an opinion, this Agreement shall be subject to amendment by the Borrower and the Authority, without any action or consent by the Bondholders. The Borrower recognizes that the issuance of the Bonds on a tax exempt basis is of material benefit to the Borrower and to the Bondholders, and that the intent of this Agreement is to ensure the continued tax exempt status of the interest on the Bonds. To that end, the Borrower agrees that it will cooperate fully with the Authority to the extent necessary, including, without limitation, effecting an amendment to this Agreement pursuant to this paragraph.

Section 6. Miscellaneous.

6.1 Indemnification of the Authority. The Borrower hereby covenants and agrees to indemnify, hold harmless and defend the Authority and the Monitoring Agent and their respective officers, members,

supervisors, directors, officials, agents and employees ("Indemnified Persons") from and against any and all claims, losses, costs, injuries, death, damages, expenses and liabilities of whatsoever nature or kind (including, but not limited to, reasonable attorneys' fees, litigation and court costs) directly and indirectly resulting from, arising out of, or in any way related to the enforcement of the provisions of this Agreement, or the acquisition, design, construction, rehabilitation, installation, operation, use, occupancy, maintenance or ownership of the Project. This indemnification is effective only with respect to any loss incurred by an Indemnified Person which is not due to any unlawful or grossly negligent action or omission or willful misconduct on their part.

6.2 Notices. All notices, certificates or other communications shall be sufficiently given and shall be deemed given when delivered, or when mailed by first-class mail, postage prepaid, addressed as follows:

if to the Authority to:

Housing Authority of the Town of New Canaan
57 Millport Avenue
New Canaan, Connecticut 06840
Attn: Chairperson

if to the Borrower to:

Millport Phase II Limited Partnership
57 Millport Avenue
New Canaan, Connecticut 06840
Attn: Millport Phase II GP Corporation

The Authority and the Borrower may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

6.3 Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

6.4 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

6.5 Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of Connecticut, except to the extent that the laws of the United States may prevail.

6.6 Binding Effect. This Agreement shall inure to the benefit of the Authority and the Bondholders and their respective heirs, personal representatives, successors and assigns and shall be binding upon the Borrower and its successors and assigns.

6.7 Section Headings. Section headings are for descriptive and convenience purposes only and shall not control or limit the interpretation of this Agreement as set forth in the text.

6.8 Impossibility of Performance. The Borrower acknowledges that it is the purpose and intention of this Agreement provide for the continued existence of rental housing for individuals and

families earning less than the income levels as provided herein during the Term. The parties acknowledge, however, that given the length of the Term, the covenants, restrictions and agreements set forth in this Agreement and including Section 2.2(b) may become impossible or impracticable and/or may otherwise require amendment for reasons currently not foreseeable following the Initial Term. In such event the Authority and the Borrower agree that this Agreement shall not terminate or be terminated as a result thereof but that the parties shall cooperate in good faith to amend the affected provisions of this Agreement, including Section 2.2(b) in a manner that is deemed reasonable under the circumstances. In the event that the parties are unable to reach agreement on an appropriate amendment, the matter shall be resolved by an action brought in a court of competent jurisdiction in the State of Connecticut seeking to amend this Agreement because of the impossibility or impracticability of performance; provided, however, if such an action does not lie, then the matter shall be resolved by arbitration in accordance with the provisions of American Arbitration Association. The parties acknowledge their intention that there be no conflict between the uses contemplated by the Ground Lease and those permitted by this Agreement. Accordingly, any proceeding to amend the provisions of this Agreement for the reasons set forth above shall be joined with a proceeding to similarly amend the Ground Lease pursuant to the provision of the Ground Lease which is similar to this Section.

[Signature Pages Follow]

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

WITNESSED BY:

Bernard E. Simpson
Name: BERNARD E. SIMPSON

Darlene M. Saiz
Name: Darlene M. Saiz

AUTHORITY:

HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN,

a public body corporate and politic organized under the laws of the State of Connecticut

By: Scott Hobbs
Name: Scott Hobbs
Title: Chairman

STATE OF CONNECTICUT)

) ss: Stamford

COUNTY OF FAIRFIELD)

I, Margaret L. Bruken, a Notary Public in and for Fairfield County, Connecticut/Commissioner of the Superior Court, do hereby certify that Scott Hobbs, Chairman of the Housing Authority of the Town of New Canaan, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as Chairman and the free and voluntary act of the Housing Authority of the Town of New Canaan, for the uses and purposes therein set forth.

Given under my hand this 25th day of May, 2017

Seal:

Margaret L. Bruken
Notary Public; My Commission expires: /
Commissioner of the Superior Court



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WITNESSED BY:

[Signature]
Name: BARNARD & SIMPSON

[Signature]
Name: Vance M. Saiz

BORROWER:

MILLPORT PHASE II LIMITED PARTNERSHIP,
a Connecticut limited partnership

By: Millport Phase II GP Corporation
a Connecticut corporation
Its: General Partner

By: [Signature]
Name: Scott Hobbs
Title: Director, duly authorized

STATE OF CONNECTICUT)
) ss: Stamford
COUNTY OF FAIRFIELD)

I, Margaret L. Brucken, a Notary Public in and for Fairfield County, Connecticut/Commissioner of the Superior Court, do hereby certify that Scott Hobbs, a Director and an authorized signatory of the Millport Phase II GP Corporation ("General Partner"), which is the Sole General Partner of Millport Phase II Limited Partnership, Borrower named above, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as an authorized signatory and the free and voluntary act of the Borrower named above, for the uses and purposes therein set forth.

Given under my hand this 25th day of May, 2017

Seal:

[Signature]
Notary Public; My Commission expires: _____/
Commissioner of the Superior Court

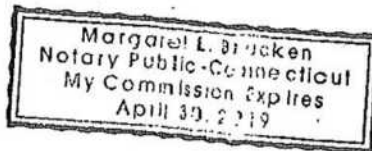


EXHIBIT A

LEGAL DESCRIPTION
Millport Leasehold Parcel II

All that certain piece, parcel or tract of land, being a portion of that new consolidated parcel, comprised of portions of former Assessor Lots 630, 644 and 644A, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, being a portion of Parcel 630, 35 Millport Avenue and portion of Parcel 644 and 644A 57 Millport Avenue, shown as **PHASE II (SHADED AREA) AREA=64,982+/- SQ. FT. OR 1.4918+/- AC. (LEASEHOLD PARCEL)** and designated within shaded area on a map entitled **"ALTA/NSPS LAND TITLE SURVEY (PROPERTY SURVEY) 33, 35, 41, 57 & 65 MILLPORT AVENUE DEPICTING LEASE PARCEL II PROPERTY OF HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN NEW CANAAN, CONNECTICUT"** Sheets 1 and 2 of 2, dated May 19, 2017, Scale 1"=30', made by William W. Seymour & Associates, P.C., which map is or will be filed in the Office of the Town Clerk of New Canaan, more particularly bounded and described as follows:

Beginning at a point on the division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and land now or formerly of The Housing Authority of The Town of New Canaan, said point lying north 57° 04' 20" west a distance of 92.74 feet and north 50° 38' 00" west a distance of 5.19 feet and north 57° 58' 00" west a distance of 24.93 feet and south 62° 37' 30" west a distance of 5.07 feet and north 45° 58' 50" west a distance of 70.39 feet from the intersection of said division line with the northwesterly line of Millport Avenue and further being the intersection of the easterly line of the herein described parcel (Phase II) with the aforesaid division line;

Thence, running generally southwesterly and in a clockwise direction south 44° 01' 10" west a distance of 100.00 feet and south 45° 58' 50" east a distance of 7.29 feet and south 44° 32' 10" west a distance of 52.74 feet and south 58° 41' 20" west a distance of 115.23 feet to a point;

Thence, running generally northwesterly and continuing in a clockwise direction north 42° 37' 20" west a distance of 137.25 feet to a point on the division line between the herein described parcel (Phase II) and land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue);

Thence, running generally northeasterly and northwesterly and continuing in a clockwise direction along said land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue) north 46° 03' 30" east a distance of 114.08 feet and north 46° 33' 30" west a distance of 127.44 feet to a point and land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street);

Thence, running generally northeasterly and continuing in a clockwise direction along said land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street) and land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue), each in part, north 44° 16' 00" east a distance of 66.35 feet and north 42° 59' 00" east a distance of 115.70 feet to a point, said point being the northwesterly corner of the herein described parcel (Phase II);

Thence, running generally southeasterly and continuing in a clockwise direction along said land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue) south 47° 24' 00" east a distance of 86.85 feet and south 49° 20' 00" east a distance of 55.50 feet and south 56° 38' 00" east a distance of 13.25 feet to the aforesaid division line between land now or formerly Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II);

Thence, running generally southwesterly and southeasterly and continuing in a clockwise direction along said division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II) south $36^{\circ} 28' 00''$ west a distance of 46.84 feet and south $45^{\circ} 58' 50''$ east a distance of 123.15 feet to the point of beginning.

the "**Leasehold Parcel**",

Together with the rights, provisions, terms and conditions set forth in an **Easement Agreement** by and among the Housing Authority of the Town of New Canaan, NCHA Mill Apartments Limited Partnership, Millport Phase I Limited Partnership and Millport Phase II Limited Partnership, and consented to by the State of Connecticut Department of Housing, People's United Bank, National Association, and Bankwell Bank, dated as of May 26, 2017, which will be recorded in the New Canaan Land Records.

Such easements and rights of way are shown and depicted on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING LEASE PARCELS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7648, as:

"Easement Area Y", more particularly bounded and described as follows:

Beginning at a point on the former division line between properties known as 41 & 57 Millport Avenue, said point being further described as lying north $09^{\circ} 47' 00''$ west a distance of 126.20 feet from the intersection of said former division line between said properties known as 41 & 57 Millport Avenue with the northwesterly line of Millport Avenue;

Thence, running alternately southwesterly and northwesterly south $78^{\circ} 16' 50''$ west a distance of 44.25 feet and north $38^{\circ} 03' 00''$ west a distance of 83.95 feet and south $50^{\circ} 32' 40''$ west a distance of 14.66 feet and 8.41 feet along a tangent arc curving to the right having a radius of 5.00 feet and subtending a delta or central angle of $96^{\circ} 19' 30''$ and 51.51 feet along an arc (compound and tangent) curving to the right having a radius of 107.00 feet and subtending a delta or central angle of $27^{\circ} 34' 57''$ and south $84^{\circ} 15' 50''$ west a distance of 25.00 feet and north $43^{\circ} 56' 30''$ west a distance of 29.54 feet to a point on the division line between land of Housing Authority of the Town of New Canaan and land now or formerly of Gray Stone Condominiums;

Thence, running northerly along said division line between land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue and land now or formerly of Gray Stone Condominiums north $46^{\circ} 03' 30''$ east a distance of 27.34 feet to a point;

Thence, running southeasterly and northeasterly through said land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue south $42^{\circ} 37' 20''$ east a distance of 137.25 feet and north $58^{\circ} 41' 20''$ east a distance of 115.23 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southwesterly along said former division line between properties known as 41 & 57 Millport Avenue south $44^{\circ} 32' 10''$ west a distance of 62.12 feet to a point;

Thence, running southeasterly and southwesterly through said land of Housing Authority of the Town of New Canaan and known as 41 Millport Avenue south $29^{\circ}09'35''$ east a distance of 23.65 feet and south $60^{\circ}50'25''$ west a distance of 8.32 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southeasterly along said former division line between properties known as 41 & 57 Millport Avenue south $09^{\circ}47'00''$ east a distance of 25.08 feet to the point of beginning.

And "**Driveway Easement Parcel**" shown and depicted as "Proposed Driveway Easement for Phase II" on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING DRIVEWAY EASEMENTS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7649, bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point lying north $78^{\circ}17'30''$ east 1.87 feet of the intersection of the former division line between properties known as 65 & 57 Millport Avenue with said northwesterly line of Millport Avenue;

Thence, running northerly and northwesterly a distance of 10.52 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $20^{\circ}05'35''$ and having a chord bearing of north $01^{\circ}39'42''$ west and north $11^{\circ}42'30''$ west a distance of 69.75 feet and north $38^{\circ}03'00''$ west a distance of 103.11 feet and 80.59 feet along an arc curving to the right having a radius of 131.00 feet and subtending a central or delta angle of $35^{\circ}14'45''$ to a point;

Thence, running northeasterly along the northerly terminus of the herein described easement north $84^{\circ}15'50''$ east a distance of 24.00 feet to a point;

Thence, running southeasterly and southerly a distance of 54.96 feet along an arc curving to the left having a radius of 107.00 feet and subtending a central or delta angle of $29^{\circ}25'40''$ and south $38^{\circ}03'00''$ east a distance of 120.81 feet and south $11^{\circ}42'30''$ east a distance of 67.12 feet and 20.00 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $38^{\circ}11'39''$ and having a chord bearing of south $30^{\circ}48'19''$ east to the aforesaid northwesterly line of Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south $78^{\circ}17'30''$ west a distance of 32.25 feet to the point of beginning.

(hereinafter, the "**Easement Parcels**").

Together with the rights, provisions, terms and conditions set forth in a Ground Lease from the Housing Authority of the Town of New Canaan to Millport Phase II Limited Partnership, a Notice of which is dated as of May 26, 2017, and recorded, or to be recorded, in the New Canaan Land Records.

All of the above hereinafter referred to as the "Land".

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EXHIBIT B

CERTIFICATION OF CONTINUING COMPLIANCE

I. UNIT OCCUPANCY

<u>Unit No.</u>	<u>Unit Code</u>	<u>Last Name</u>	<u>No. of Occupants</u>	<u>Current Gross Rent/ Monthly</u>	<u>Current Gross Rent/Annual</u>
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II. AREA MEDIAN GROSS INCOME FACTORS

<u>Month</u>	<u>AMGI</u>	<u>AMGI</u>	<u>Number of Occupants</u>							
			<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>

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EXHIBIT C

OCCUPANCY THRESHOLD CERTIFICATE

Re: Millport Apartments, located at 57-61 Millport Avenue, New Canaan, Connecticut 06840 and defined as the Project in a certain Land Use Restriction Agreement dated as of May 1, 2017 and recorded in Volume __, Page __ of the New Canaan Land Records (the Agreement").

Pursuant to Section 2.6 of the Agreement, the undersigned, _____ of Millport Phase II Limited Partnership, owner of the Project, hereby certifies that, as of the date of this Certificate, the statements set forth in paragraphs 1 and/or 2 below are true and correct.

1. Ten percent (10%) of the Units (as defined in the Agreement) in the Project are occupied.
2. Fifty percent (50%) of the Units in the Project are occupied.

Dated at _____, this ____ day of _____, 20__.

MILLPORT PHASE II LIMITED PARTNERSHIP,
a Connecticut limited partnership

By: Millport Phase II GP Corporation
a Connecticut corporation
Its: General Partner

By: _____
Name: _____
Title: Director, duly authorized

Received for record on 6-1-17 at 1:39 pm
and recorded by Claudia A. Weber
TOWN CLERK

**Rental Assistance Demonstration
Use Agreement**

**U.S. Department of Housing
and Urban Development**
Office of Housing
Office of Public and Indian Housing

OMB Approval No. 2577-0276 (Exp. 02/29/16)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0276), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This Rental Assistance Demonstration Use Agreement (hereinafter called the "Agreement") made the 18th day of MAY, 2017, by and between the United States of America, Secretary of Housing and Urban Development (hereinafter called "HUD"), and Millport Phase II Limited Partnership, (hereinafter called the "Owner"), and the Housing Authority of the Town of New Canaan (hereinafter called the "Ground Lessor") provides as follows:

Whereas, Rental Assistance Demonstration (hereinafter called "RAD") provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance to achieve certain goals, including the preservation and improvement of these properties through access by Owners to private debt and equity to address immediate and long-term capital needs.

Whereas, Projects funded under the public housing programs may under RAD convert their assistance to long-term, project-based Section 8 rental assistance contracts. Under this component of RAD, Owners may choose between two forms of Section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). No incremental funds are authorized for this component. Owners will convert their assistance at current subsidy levels.

Whereas, Projects shall have a RAD Use Agreement that will be recorded superior to other liens on the property, run for the same term as the initial term of the HAP contract, automatically renew upon each extension or renewal of the HAP contract for a term that runs with each renewal term of the HAP contract, and remain in effect even in the case of abatement or termination of the HAP contract (for the term the HAP contract would have, absent the abatement or termination).

Whereas, HUD has approved the conversion of the "Project" identified as Millport Phase II CT26RD00004 and covering real property as described in Exhibit "A" attached hereto; and that this approval is evidenced by and through the terms of the RAD Conversion Commitment as described in Exhibit "B" attached hereto; and that was previously subject to a public housing Declaration of Trust dated June 17, 2002 and recorded in the Land Records of the Town of New Canaan in Volume 593 at Page 87; and such public housing Declaration of Trust was released on May 18, 2017 and recorded on June 1, 2017 in the Land Records of the Town of New Canaan in Volume 973 at Page 585.

Whereas, pursuant to the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011) and the corresponding PIH Notice 2012-32 published on July 26, 2012 (hereinafter called the "RAD Notice"), which this Use Agreement incorporates, in exchange for HUD's agreement to permit this conversion to PBVs or PBRA, the Owner has agreed to continue to operate the assisted PBV or PBRA units only as rental housing for the initial term, and each renewal term of the HAP Contract, unless otherwise approved by HUD:

Now Therefore, in consideration of the mutual promises set forth herein and of other valuable consideration, the parties hereby agree as follows:

- Definitions.** All terms used in this Agreement have the same meaning as set forth in the definitions in RAD Notice.
- Term.** The initial term shall be 20 years. Unless otherwise approved by HUD, this Agreement shall remain in effect through the initial term, and for an additional period to coincide with any renewal term of the HAP Contract. This Agreement will survive HAP abatement or termination of the HAP Contract unless otherwise approved by HUD.
- Use Restriction and Tenant Incomes.** The HAP-assisted units within this Project shall be used solely as rental housing for tenants meeting the eligibility and income-targeting requirements under the HAP Contract. In the case that the HAP Contract is terminated (due to, e.g.: breach, or non-compliance), new tenants must have incomes at or below 80 percent of the average median income (AMI) at the time of admission for the remainder of the term of the Agreement, applicable to all units

previously covered under the HAP contract. Additionally, rents must not exceed 30% of 80% of median income for an appropriate sized unit. Notwithstanding the foregoing, in the event the Owner is able to demonstrate to HUD's satisfaction that despite the Owner's good faith and diligent efforts to do so, the Owner is unable either (1) to rent a sufficient percentage of Units to Low Income Tenants or Very Low Income Tenants in order to satisfy the restrictions in this paragraph, or (2) to otherwise provide for the financial viability of the Project, HUD may, in its sole discretion, agree to reduce the percentage of units subject to the restriction under this paragraph or otherwise modify this restriction in a manner acceptable to the Owner and HUD. Any such modification of the restrictions listed in this paragraph shall be evidenced by a written amendment to this Agreement executed by each of the parties hereto.

4. **Subordination.** Any mortgage liens will be subject to this Agreement. This Agreement will survive foreclosure and bankruptcy.
5. **Fair Housing and Civil Rights Requirements.** Compliance with all applicable fair housing and civil rights requirements including the obligation to affirmatively further fair housing and the site selection and neighborhood standards requirements set forth in 24 CFR §§ 1.4(b)(3) and 941.202, as applicable, is required.
6. **Federal Accessibility Requirements.** Compliance with all applicable federal accessibility requirements under the Fair Housing Act and implementing regulations at 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8, and Titles II and III of the Americans with Disabilities Act and implementing regulations at 28 CFR Parts 35 and 36, respectively, is required.
7. **Transfer of the Agreement.** HUD has been granted and is possessed of an interest in the above described Project such that the Owner and the Ground Lessor shall remain seized of the title to said Project and refrain from transferring, conveying, encumbering or permitting or suffering any transfer, conveyance, assignment, lease, mortgage, pledge or other encumbrance of said Project or any part thereof without the release of said covenants by HUD. The Owner and the Ground Lessor have constituted HUD as its attorney-in-fact to transfer PBV or PBRA assistance to another entity in the event of default under the HAP Contract. With HUD approval, after 10 years from the effective date of the initial term of the HAP Contract, if the Project is economically non-viable or physically obsolete, assistance may be transferred subject to this Agreement. Any such new Owner shall assume the obligations under this Agreement as a condition of any transfer. This Agreement shall be binding upon the Owners and all future successors and assigns until released by HUD.
8. **Release.** The endorsement by a duly authorized officer of HUD (1) upon any conveyance or transfer made by the Owner of any real or personal property which is determined to be excess to the needs of the Project, or (2) upon any instrument of conveyance or dedication of property, or any interest therein, for use as streets, alleys, or other public rights-of-way, or for the establishment, operation and maintenance of public utilities, or (3) upon any instrument transferring or conveying an interest therein, or (4) upon any instrument of release made by the Owner of the assisted PBV or PBRA units shall be effective to release such property from the restrictive covenants hereby created.
9. **Enforcement.** In the event of a breach or threatened breach of any of the provisions of this Agreement, any eligible tenant or applicant for occupancy within the Project, or the Secretary or his or her successors or delegates, may institute proper legal action to enforce performance of such provisions, to enjoin any acts in violation of such provisions, to recover whatever damages can be proven, and/or to obtain whatever other relief may be appropriate.
10. **Severability.** The invalidity, in whole or in part, of any of the provisions set forth in this Agreement shall not affect or invalidate any remaining provisions.
11. **Impairment of HAP Contract.** The terms and provisions of this Agreement shall continue in full force and effect except as expressly modified herein. Any conflicts between this Agreement and the HAP Contract shall be conclusively resolved by the Secretary.
12. **Execution of Other Agreements.** The Owner and the Ground Lessor agree that it has not and will not execute any other agreement with provisions contradictory of, or in opposition to, the provisions of this Agreement, and that in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other conflicting requirements.
13. **Subsequent Statutory Amendments.** If revisions to the provisions of this Agreement are necessitated by subsequent statutory amendments, the Owner and the Ground Lessor agree to execute modifications to this Agreement that are needed to conform to the statutory amendments. In the alternative, at HUD's option, HUD may implement any such statutory amendment through rulemaking.
14. **No Negotiation.** This Agreement is not subject to negotiation by the Owner, the Ground Lessor, or any lender.

Witness Whereof, HUD and the Owner thereunto duly authorized has caused these presents to be signed in its name and its corporate seal to be hereunto affixed and attested this 18th day of MAY, 2017.

(Seal)

HUD Attest:

Thomas R. Davis

By:

Title:

Date: _____, 2017

District of Columbia)

Before me, Simon TAMALE YABA, a Notary Public in and for said District of Columbia, on this 18th day of MAY, 2017, personally appeared THOMAS R. DAVIS, who is personally well known to me to be the DIRECTOR OFFICE OF RECORD, of HUD, and the person who executed the foregoing instrument by virtue of the authority vested in him by, and I having first made known to him the contents thereof, he did acknowledge the signing thereof to be a free and voluntary act and done on behalf of the Secretary of Housing and Urban Development for the uses, purposes and considerations therein set forth.

Witness my hand and official seal this 18th day of MAY, 2017.

(Seal)

Simon Tamale Yaba

(Notary Public)

Print Name: Simon TAMALE YABA

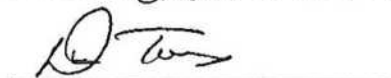

My commission expires 12/14/2020, 2020.

DISTRICT OF COLUMBIA: SS
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 18th DAY OF MAY, 2017
Simon TAMALE YABA
NOTARY PUBLIC
My Commission Expires 12/14/2020



Owner Attest:

Witnesses:


Print Name: BERNARD E. SIMKIN

Print Name: Dimitri TouanasDate: May, 2017**MILLPORT PHASE II LIMITED PARTNERSHIP**
a Connecticut limited partnershipBy: Millport Phase II GP Corporation,
a Connecticut corporation
Its General PartnerBy: 

Name: Scott Hobbs

Title: Chairman, Duly Authorized

State of CONNECTICUT)

County of FAIRFIELD)

ss: Stamford

On this 25th day of May, 2017, before me, duly commissioned and sworn, personally appeared Scott Hobbs as Chairman of **Millport Phase II GP Corporation** as General Partner of **MILLPORT PHASE II LIMITED PARTNERSHIP**, and he did acknowledge the signing thereof to be a free and voluntary act and done on behalf of said **Millport Phase II GP Corporation** as General Partner of **MILLPORT PHASE II LIMITED PARTNERSHIP** for the uses, purposes and considerations therein set forth.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.


Print Name: Dimitri TouanasNotary Public. My commission expires , 20

(Seal)

Ground Lessor Attest:

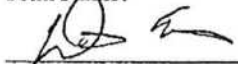
Witnesses:



HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN,
a public body corporate and politic organized and existing
under and by virtue of the laws of the State of Connecticut

BRENAAD E. SIMPKIN

Print Name:



Print Name: Dimitre Todorov

By:



Name: Scott Hobbs

Title: Chairman, Duly Authorized

Date: May 26, 2017

State of CONNECTICUT

)

County of FAIRFIELD

)

ss: Stanford

)

On this 25th day of May, 2017, before me, duly commissioned and sworn, personally appeared Scott Hobbs as Chairman of **HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN**, and he did acknowledge the signing thereof to be a free and voluntary act and done on behalf of said **HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN** for the uses, purposes and considerations therein set forth.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.
(Seal)



Print Name: Dimitre Todorov

Notary Public - My commission expires _____, 20____

(Seal)

EXHIBIT A – Property Subject to this RAD Use Agreement

All that certain piece, parcel or tract of land, being a portion of that new consolidated parcel, comprised of portions of former Assessor Lots 630, 644 and 644A, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, being a portion of Parcel 630, 35 Millport Avenue and portion of Parcel 644 and 644A 57 Millport Avenue, shown as **PHASE II (SHADED AREA) AREA=64,982+/- SQ. FT. OR 1.4918+/- AC. (LEASEHOLD PARCEL)** and designated within shaded area on a map entitled **"ALTA/NSPS LAND TITLE SURVEY (PROPERTY SURVEY) 33, 35, 41, 57 & 65 MILLPORT AVENUE DEPICTING LEASE PARCEL II PROPERTY OF HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN NEW CANAAN, CONNECTICUT"** Sheets 1 and 2 of 2, dated May 19, 2017, Scale 1"=30', made by William W. Seymour & Associates, P.C., which map is or will be filed in the Office of the Town Clerk of New Canaan, more particularly bounded and described as follows:

Beginning at a point on the division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and land now or formerly of The Housing Authority of The Town of New Canaan, said point lying north 57° 04' 20" west a distance of 92.74 feet and north 50° 38' 00" west a distance of 5.19 feet and north 57° 58' 00" west a distance of 24.93 feet and south 62° 37' 30" west a distance of 5.07 feet and north 45° 58' 50" west a distance of 70.39 feet from the intersection of said division line with the northwesterly line of Millport Avenue and further being the intersection of the easterly line of the herein described parcel (Phase II) with the aforesaid division line;

Thence, running generally southwesterly and in a clockwise direction south 44° 01' 10" west a distance of 100.00 feet and south 45° 58' 50" east a distance of 7.29 feet and south 44° 32' 10" west a distance of 52.74 feet and south 58° 41' 20" west a distance of 115.23 feet to a point;

Thence, running generally northwesterly and continuing in a clockwise direction north 42° 37' 20" west a distance of 137.25 feet to a point on the division line between the herein described parcel (Phase II) and land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue);

Thence, running generally northeasterly and northwesterly and continuing in a clockwise direction along said land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue) north 46° 03' 30" east a distance of 114.08 feet and north 46° 33' 30" west a distance of 127.44 feet to a point and land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street);

Thence, running generally northeasterly and continuing in a clockwise direction along said land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street) and land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue), each in part, north 44° 16' 00" east a distance of 66.35 feet and north 42° 59' 00" east a distance of 115.70 feet to a point, said point being the northwesterly corner of the herein described parcel (Phase II);

Thence, running generally southeasterly and continuing in a clockwise direction along said land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue) south 47° 24' 00" east a distance of 86.85 feet and south 49° 20' 00" east a distance of 55.50 feet and south 56° 38' 00" east a distance of 13.25 feet to the aforesaid division line between land now or formerly Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II);

Thence, running generally southwesterly and southeasterly and continuing in a clockwise direction along said division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II) south 36° 28' 00" west a distance of 46.84 feet and south 45° 58' 50" east a distance of 123.15 feet to the point of beginning.

the "Leasehold Parcel",

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Together with the rights, provisions, terms and conditions set forth in an **Easement Agreement** by and among the Housing Authority of the Town of New Canaan, NCHA Mill Apartments Limited Partnership, Millport Phase I Limited Partnership and Millport Phase II Limited Partnership, and consented to by the State of Connecticut Department of Housing, People's United Bank, National Association, and Bankwell Bank, which is or will be recorded in the New Canaan Land Records.

Such easements and rights of way are shown and depicted on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING LEASE PARCELS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7648, as:

"Easement Area Y", more particularly bounded and described as follows:

Beginning at a point on the former division line between properties known as 41 & 57 Millport Avenue, said point being further described as lying north 09°47'00" west a distance of 126.20 feet from the intersection of said former division line between said properties known as 41 & 57 Millport Avenue with the northwesterly line of Millport Avenue;

Thence, running alternately southwesterly and northwesterly south 78°16'50" west a distance of 44.25 feet and north 38°03'00" west a distance of 83.95 feet and south 50°32'40" west a distance of 14.66 feet and 8.41 feet along a tangent arc curving to the right having a radius of 5.00 feet and subtending a delta or central angle of 96°19'30" and 51.51 feet along an arc (compound and tangent) curving to the right having a radius of 107.00 feet and subtending a delta or central angle of 27°34'57" and south 84°15'50" west a distance of 25.00 feet and north 43°56'30" west a distance of 29.54 feet to a point on the division line between land of Housing Authority of the Town of New Canaan and land now or formerly of Gray Stone Condominiums;

Thence, running northerly along said division line between land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue and land now or formerly of Gray Stone Condominiums north 46°03'30" east a distance of 27.34 feet to a point;

Thence, running southeasterly and northeasterly through said land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue south 42°37'20" east a distance of 137.25 feet and north 58°41'20" east a distance of 115.23 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southwesterly along said former division line between properties known as 41 & 57 Millport Avenue south 44°32'10" west a distance of 62.12 feet to a point;

Thence, running southeasterly and southwesterly through said land of Housing Authority of the Town of New Canaan and known as 41 Millport Avenue south 29°09'35" east a distance of 23.65 feet and south 60°50'25" west a distance of 8.32 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southeasterly along said former division line between properties known as 41 & 57 Millport Avenue south 09°47'00" east a distance of 25.08 feet to the point of beginning.

And **"Driveway Easement Parcel"** shown and depicted as "Proposed Driveway Easement for Phase II" on a map entitled

"COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING DRIVEWAY EASEMENTS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7649, bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point lying north $78^{\circ}17'30''$ east 1.87 feet of the intersection of the former division line between properties known as 65 & 57 Millport Avenue with said northwesterly line of Millport Avenue;

Thence, running northerly and northwesterly a distance of 10.52 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $20^{\circ}05'35''$ and having a chord bearing of north $01^{\circ}39'42''$ west and north $11^{\circ}42'30''$ west a distance of 69.75 feet and north $38^{\circ}03'00''$ west a distance of 103.11 feet and 80.59 feet along an arc curving to the right having a radius of 131.00 feet and subtending a central or delta angle of $35^{\circ}14'45''$ to a point;

Thence, running northeasterly along the northerly terminus of the herein described easement north $84^{\circ}15'50''$ east a distance of 24.00 feet to a point;

Thence, running southeasterly and southerly a distance of 54.96 feet along an arc curving to the left having a radius of 107.00 feet and subtending a central or delta angle of $29^{\circ}25'40''$ and south $38^{\circ}03'00''$ east a distance of 120.81 feet and south $11^{\circ}42'30''$ east a distance of 67.12 feet and 20.00 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $38^{\circ}11'39''$ and having a chord bearing of south $30^{\circ}48'19''$ east to the aforesaid northwesterly line of Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south $78^{\circ}17'30''$ west a distance of 32.25 feet to the point of beginning.

(hereinafter, the "Easement Parcels").

Together with the rights, provisions, terms and conditions set forth in a Ground Lease from the Housing Authority of the Town of New Canaan to Millport Phase II Limited Partnership, a Notice of which is or will be recorded in the New Canaan Land Records.

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EXHIBIT B - RAD Conversion Commitment

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VOL 973 PG 0632

OMB Approval 2577-0276 (Expires [xx/xx/xx])

**Rental Assistance Demonstration (RAD)
Conversion Commitment (Public
Housing; First Component)**

**U.S. Department of Housing and
Urban Development
Office of Multifamily Housing**

Complete each box, even if information is duplicative			
Proposed Name and Address of Covered Project: Millport Apartments 57 Millport Avenue New Canaan, CT 06840	Proposed Project Owner: Millport Phase II, Limited Partnership 917-542-3684 dmccarthy@rosecompanies.com Project Owner is controlled by: <input type="checkbox"/> Public body <input type="checkbox"/> Non-profit <input checked="" type="checkbox"/> For-profit (in LIHTC entity)	Proposed Project Owner Notice Address: 57 Millport Ave New Canaan, CT 06840	
Existing Name and Address of Converting Project: MILLPORT APARTMENTS 57 Millport Avenue New Canaan, CT 06840	PHA: New Canaan Housing Authority Contact phone/email: 917-542-3684/dmccarthy@rosecompany PHA is an MTW agency: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	PHA Notice Address: 57 Millport Ave New Canaan, CT 06840	
Dwelling Units in Covered Project (specify total # of dwelling units, and # of RAD, non-RAD income restricted, market, and manager units): Total Units: 40 RAD Units: 18 LIHTC Units: 22 Market Units: 0 Other Affd Units: 0			
PIH Information Center (PIC) removal application number (a/k/a Demolition-Disposition Application Number (DDA#)): DDA0007157			
Converting Project PIC Number(s) <i>(for all items to the right in this row, list data by each AMP # in the cells below):</i>	# of units converting to RAD to be removed from each AMP:	# of non-converting units to be removed from each AMP (e.g., due to a de minimis reduction):	Total # of units to be removed from each AMP (sum of two middle columns):
CT054000001	18	0	18
<input checked="" type="checkbox"/> Project-Based Rental Assistance (PBRA) <input type="checkbox"/> Project-Based Vouchers (PBV). If PBV, list HAP Contract Administrator (PHA or another housing authority): _____		Number of HAP Contracts and Term length of each HAP Contract: 20 years	
Reserve Fund for Replacements Amount of Total Monthly Deposit to Replacement Reserve upon the completion of the Work for all units, including RAD and non-RAD units: <u>\$1,666.67</u>			

Key features of Covered Project:**General:**

- ☐ Ground lease
- ☐ Transfer of Assistance
- ☐ Scattered-site project
- ☐ Major non-dwelling assets (e.g., free-standing buildings, community or commercial facilities or significant unimproved acreage) (explain below).
- ☐ Existing Included in the PIC removal application listed on page 1
- ☐ To be added to the Covered Project
- ☒ PHA's sole project or, together with substantially concurrent conversions, the PHA's last public housing project to convert

Inter-Related Projects:

- ☐ Multi-phase conversion
- ☐ Converting Project is adjacent to public housing units within the same AMP that are not converting (not a full conversion of a contiguous project)
- ☐ Rent Bundling
- ☐ This is a donor property
- ☐ This is a recipient property
(Identify below the associated properties in the rent bundling arrangement and when the other projects have/are expected to close)
- ☐ Conversion is part of a series of interrelated transactions other than multi-phase, partial conversion or rent-bundled transactions (explain below).

Construction:

- ☒ Demolition of current public housing units
- ☒ New Construction. If new construction, is HAP contract to be entered into:
- ☒ at Closing, or
- ☐ upon construction completion

Relocation:

- ☐ Tenants will be Relocated for >12 months
- ☒ Tenants will be Relocated for ≤12 months
- ☐ No relocation anticipated

Financing:

- ☐ FHA-Insured Financing anticipated
If so, date of Firm Commitment: _____
- ☒ Low-Income Housing Tax Credits anticipated
Date of any allocating agency closing deadline: 04/15/2017
- ☒ Conventional financing anticipated
- ☐ No new FHA-Insured, LIHTC or conventional financing
- ☐ Existing debt, such as EPC, CFFP, OFFP or existing mixed-finance debt (list below the type of debt, whether it will remain outstanding post-conversion and, if not, whether it will be paid off prior to or at closing)
- ☒ Public housing funds In Sources and Uses

Unit Configuration:

- ☐ Reduction in units. If checked, 0 (#) units reduced based on the following authority:
- ☐ De minimis associated with this transaction (# of 0 units)
- ☐ De minimis associated with another transaction (# of 0 units) (explain below)
- ☐ Other (explain below)
- ☒ Change in unit configuration (explain below)

If additional information is necessary to clarify the features above and/or if there are other important features of the Transaction not described above, such additional information may be listed here:

The PHA requested HUD approval of a shift in unit mix to "right-size units" for the tenants. This unit mix/configuration will meet the need of the family compositions located at Mill Port Apartments.

UNIT/BEDROOM DISTRIBUTION 0-BR 1-BR 2-BR 3-BR 4-BR 4+BR

Total Current: 18 10 8

Total RAD Conversion: 18 4 10 4

RAD Rehab Assistance Payments:

Per Unit Monthly RAD Rehab Assistance Payment: \$ 219

Maximum # of units eligible for RAD Rehab Assistance Payments: 18 Units

Last date in which RAD Rehab Assistance Payment can be made (completion of Work): 02/28/2018

Choice Mobility:

- ☐ Project Owner will comply with RAD Choice Mobility practices.
- ☒ Project Owner is exempt from implementing the RAD Choice Mobility practices with respect to the RAD units in the Covered Project.

This commitment ('Commitment') to participate in the Rental Assistance Demonstration ('RAD') and convert the assistance of the Converting Project named in the above table is entered into by and among New Canaan Housing Authority, a public housing authority organized and existing under the laws of Connecticut ('PHA'); Millport Phase II, Limited Partnership, a Millport Phase II, Limited Partnership organized and existing under the laws of Connecticut ('Project Owner'); and the United States Department of Housing and Urban Development, acting by and through the Secretary, his or her successors, assigns or designates ('HUD'), as of the date executed by HUD below. If the PHA is to be the owner of the Covered Project, the PHA shall also be identified as the Project Owner.

TERMS AND CONDITIONS:

1. **Applicable HUD Regulations and Requirements.** By converting assistance and entering into the Closing Documents contemplated in this Commitment, the PHA and Project Owner agree, each as and to the extent applicable, to operate the Covered Project in accordance with all applicable law, including without limitation the Consolidated and Further Continuing Appropriations Act of 2012 (Pub. L. 112-55, signed November 18, 2011, as amended) ("RAD Statute"); all applicable program requirements and guidance, including without limitation Notice PIH-2012-32, as amended and revised from time to time (the "RAD Notice") or any successor or additional statutes, regulations or guidance; and the terms and conditions set forth below (collectively, the "Program Requirements"). Any conflicts between this Commitment and any other HUD requirements shall be conclusively resolved by HUD. Any capitalized terms used herein but not defined have the meanings given them in the RAD Notice.
2. **Acceptance of Commitment/Expiration.**
 - a. This Commitment shall terminate thirty (30) days from the date executed by HUD unless the PHA and Project Owner execute and return an unaltered copy of this Commitment to HUD, at the address that appears on the last page of this Commitment.
 - b. This Commitment shall not be effective or enforceable against HUD until all conditions stated herein have been satisfied in HUD's determination.
 - c. Unless all conditions stated herein have been satisfied as determined by HUD and the transactions contemplated by this Commitment (collectively, the "Transaction") are closed within 90 days from the date executed by HUD, this Commitment shall, unless extended by HUD in writing, expire and be of no further force or effect. Upon expiration, all rights and obligations of the respective parties shall cease.
3. **Closing Requirements and HUD Approvals.** As used in this Commitment, "Closing" means execution of all binding legal instruments connected to the transaction contemplated by this Commitment and, if applicable, recordation of such instruments. All requirements set forth in this Commitment must be completed to HUD's satisfaction before the Closing can occur. A Closing checklist ("Closing Checklist") is attached hereto as Exhibit E and incorporated herein. The Closing Checklist lists those items HUD has determined necessary to be submitted to and approved by HUD in order for the Closing of this Transaction to occur. Should HUD determine that any other documents or items (in addition to those listed on the Closing Checklist) are necessary to meet the terms of this Commitment or Program Requirements, the PHA and Project Owner agree to provide such documents or other items in such form and substance as acceptable to HUD or to terminate this Commitment and not proceed to Closing. Unless otherwise agreed by HUD, in the case where the Project Owner differs from the PHA, all post-closing requirements and obligations contained herein will apply to the Project Owner after the Closing. Any determination, approval or decision of HUD pursuant to this Commitment shall be in HUD's sole and absolute discretion. Unless otherwise set forth in writing by HUD prior to Closing, HUD's execution and release of the Closing Documents shall constitute any approvals or decisions required herein and not previously given in writing.
4. **Public Housing Requirements.** The PHA and Project Owner acknowledge that the Converting Project remains subject to the United States Housing Act of 1937, its Consolidated Annual

Contributions Contract and any amendments thereto, and all other pertinent Federal statutory, executive orders, regulations and other guidance, as those requirements may be amended from time to time (collectively the "Applicable HUD Requirements"), and shall not be subject to the HAP Contract, until the effective date of the HAP Contract. Unless HUD gives written instructions otherwise, for so long as the Converting Project remains public housing, the PHA and Project Owner shall take all steps necessary to ensure that:

- a. Fire and other property insurance as required under Applicable HUD Requirements are and shall be maintained in full force and effect;
- b. All ordinary and necessary operating expenses pursuant to Applicable HUD Requirements of the Converting Project are and shall be paid; and
- c. The Converting Project remains in compliance with Applicable HUD Requirements, including without limitation all requirements related to the physical condition of the Converting Project and any remedial agreements between HUD and the PHA and remedial judicial or administrative orders, except as expressly modified by this Commitment and/or the Closing Documents.

Upon the Closing, the PHA shall certify in writing that the foregoing requirements have been met through the date of the Closing.

5. **HUD Review of Project Ownership.** The PHA and Project Owner agree that HUD approval of the ownership and control of the Covered Project is a condition of closing. The PHA shall not transfer any ownership interest in the Converting Project prior to the Closing.
6. **Closing Documents.** The PHA and Project Owner shall execute or cause to be produced, as appropriate, such agreements, instruments, certificates and other documents as HUD may require to complete the Transaction (collectively, the "Closing Documents"), using forms prescribed by or acceptable to HUD and completed, executed, recorded and/or filed in the number of copies and in such manner as directed by HUD. Without limiting the foregoing, the Closing Documents may include:
 - a. If applicable, one or more releases or partial releases of the applicable Declaration(s) of Trust or comparable document;
 - b. a RAD Use Agreement (document HUD-52625);
 - c. a Housing Assistance Payments Contract (for PBRA, documents HUD-52620 and HUD-52618; for PBV, HUD-52530A Parts I and II and HUD-52621), including any required exhibits;
 - d. Certifications and assurances; and
 - e. Any additional documents required by HUD in order to determine whether criteria for Closing have been met.
7. **Use Agreement Priority.** A title report must be provided for the Converting Project and Covered Project. In addition, an owner's pro forma title policy may be requested for the Covered Project involving the addition of financing to be secured by the Covered Project. Unless otherwise approved by HUD, the RAD Use Agreement shall be superior to any and all liens and/or encumbrances against the Covered Project, including, without limitation, the lien evidenced by any and all mortgages, deeds of trust and other financing documents and regulatory documents related to the Covered Project (including any LIHTC use agreement). The Project Owner shall obtain consents or subordination agreements, and have such documents executed, as HUD may determine necessary to establish such priority.
8. **Expenses and Transaction Costs.** Except as otherwise set forth in this Commitment, regardless of whether the Transaction is consummated, HUD shall not be responsible for any expenses or transaction costs incurred by or at the direction of the PHA or Project Owner in connection with the Transaction (including without limitation, fees for consultants, attorneys, environmental contractors, tax advisors and accountants; city, county and/or state taxes and/or fees; recording fees, prepayment penalties and/or premiums; costs for title insurance and title examination; surveys and appraisals).
9. **Tax, Financial, and Legal Consequences.** HUD has not provided, nor shall it provide, any opinions, representations, warranties, or covenants to any party regarding any federal, state and/or local tax consequences, financial consequences, or legal consequences relative to the

Transaction. The PHA and Project Owner acknowledge that funding of the contemplated Housing Assistance Payment Contract (HAP Contract) is subject to appropriations.

10. **Certifications, Representations and Warranties by the PHA and Project Owner.** Any statement, certification, representation or warranty made by the PHA or Project Owner in or pursuant to this Commitment is true and correct when given, and shall remain true and correct at all times through and including the Closing. In the event any such statement, certification, representation or warranty is no longer complete or correct, and without limiting HUD's rights and remedies, the PHA or Project Owner, respectively, shall notify HUD in writing immediately. Without limiting the foregoing, the PHA and Project Owner, respectively, hereby represent and certify to HUD and warrant to maintain the veracity through Closing of the following statements:
- All notices required by Program Requirements relating to the transaction have been timely provided to such persons and in a manner complying with applicable Program Requirements.
 - The PHA and the Converting Project continue to meet all program eligibility requirements as stipulated in the RAD Notice.
 - With the exception of any transfers under the PHA's Admissions and Continued Occupancy Policy or as otherwise approved by HUD, the PHA has not relocated any residents of the Converting Project in connection with the Transaction prior to the date hereof.
 - Except as specifically disclosed to and accepted by HUD in writing, neither the PHA nor the Project Owner (including, but not limited to Board Members, principals and executives of the PHA or Project Owner) is the current subject of, nor has received any pending notice of, any debarment, suspension or other administrative proceeding, audit or investigation by HUD, including without limitation by the Inspector General, the Departmental Enforcement Center, or the Office of Fair Housing and Equal Opportunity, or any other Federal or state government agency, whether or not sanctions have been imposed against such party.
 - No disclosed debarment, suspension or other administrative proceeding, audit or investigation would impact the PHA's or the Project Owner's ability to carry out its obligations as contemplated under this Commitment.

Upon the request of HUD, the PHA shall provide HUD with evidence satisfactory to HUD relating to each of the foregoing certifications. Execution of the Closing Documents by the PHA and the Project Owner, respectively, constitute re-certification to HUD of the foregoing statements.

11. **Successors and Assigns.** This Commitment and its attachments are binding upon the PHA, the Project Owner and the successors and assigns of each. Unless otherwise provided herein, this Commitment may not be assigned, in whole or in part, except upon the prior written consent of HUD.
12. **Corrections.** Notwithstanding anything to the contrary contained in this Commitment, the PHA and Project Owner agree to execute, before or after the Closing, such documents, amendments or modifications as HUD deems necessary or appropriate to effectuate the intent of this Commitment or to complete or consummate the Transaction, including but not limited to instruments necessary to correct this Commitment or any of the Closing Documents.
13. **Changes to This Commitment.** HUD has approved a Financing Plan for this transaction. The PHA and Project Owner shall notify HUD of any changes to the terms set forth in the Financing Plan, or any other business terms submitted to HUD. If HUD determines such changes to be material, HUD may require an amendment to this Commitment or other reviews or approvals as HUD determines necessary to account for the changed terms. The final business terms shall be determined as of the Closing and inserted into the applicable Closing Documents. The PHA's and Project Owner's execution of the Closing Documents shall constitute acceptance of the final business terms reflected therein.

14. Sources of Funds.

- a. HUD must review and approve all debt (secured and unsecured) against the Covered Project prior to Closing.
- b. Development Budget. HUD approval of this Transaction is based on the estimated Sources and Uses attached as Exhibit B. Any changes to this Sources and Uses shall be disclosed to HUD and if HUD determines that such changes are material, HUD may require additional review and approvals and/or amendment to this Commitment. PHA and/or Project Owner shall provide HUD with the final certified Sources and Uses upon Closing.
- c. PHA Funds for Development Budget. Where the Transaction includes public housing funds to be contributed by the PHA for uses other than funding the HAP Contract, these funds must be shown on the Sources and Uses. The PHA certifies that all such funds are available and reserved for the Transaction, are irrevocable, and that the PHA has obtained all consents necessary in order for the PHA to commit such funds to the Transaction.
 - i. Prior to Closing, public housing Capital Funds shown in the Sources and Uses must be moved within the HUD Line of Credit Control System (LOCCS) to the "RAD Investment" Budget Line Item (BLI 1504). These funds must be drawn down out of LOCCS at closing and subject to a General Depository Agreement (GDA, form HUD-51999) until they are disbursed for a use shown in the Sources and Uses.
 - ii. Public housing Operating Reserves shown in the Sources and Uses must be held in an account or sub-account subject to a GDA until such funds are disbursed for a use shown in the Sources and Uses.
 - iii. To the extent such funds must be subject to a GDA as described above, the PHA may use a pre-existing GDA if the PHA is making use of separate or segregated accounting. (For example, a PHA may have a pre-existing account for Operating Fund Reserves subject to a GDA and if the converted funds to be used as shown in the Sources and Uses may be adequately separated or segregated for accounting purposes in a sub-account or otherwise remaining subject to the pre-existing GDA, the requirements of this section are fulfilled.)
 - iv. If shown in the Sources and Uses, such funds may be used to satisfy obligations of the Covered Project, including without limitation, funding reserves (for example, to make an initial deposit for a replacement reserve (IDRR)) or payment of construction or other project costs in accordance with this RCC and other project documents. Methods by which the PHA may choose to disburse such funds in accordance with this section include:
 - In a lump sum as a loan to the Project Owner, subject to a loan agreement or other documentation;
 - Incrementally over time as a loan to the Project Owner, subject to a loan agreement or other documentation;
 - In a lump sum to the Project Owner as a grant or otherwise without the expectation of repayment; and/or
 - Incrementally over time to the Project Owner as a grant or otherwise without the expectation of repayment.
- d. No Additional PHA funds. Except for the amounts identified in the Sources and Uses and amounts identified in the HAP Contract to fund the Covered Project in the calendar year of conversion, no public housing funds may be used as an additional source of funds for the Covered Project. By way of illustration and not limitation, after Closing, no public housing funding (including any funds deemed "project funds" or "program income" under public housing regulations) may be used to pay for any costs for any work (Work or other work) done in connection with the Covered Project.

- e. Upon the conversion of assistance, the Converting Project, including any real or personal property thereof, shall no longer be used for public housing purposes, as originally authorized by the U.S. Housing Act of 1937. This Commitment provides instruction for such conversion and the treatment of the Converting Project. Any proceeds of disposition of the Converting Project (or of any real property or improvements that as of the date of this Commitment are considered public housing) in connection with the conversion of assistance contemplated by this Commitment shall be used for affordable housing purposes as defined in the RAD Notice. Any proceeds of any loans of converted public housing funds made in connection with the conversion of assistance contemplated by this Commitment shall be used for affordable housing purposes. Any uses of converted public housing funds listed in the Sources and Uses attached hereto as Exhibit B shall be considered end uses for purposes of 2 CFR Part 200.
15. **Moving to Work Considerations.** Participation in RAD by a Moving To Work (MTW) agency does not reflect a determination that the agency will remain an MTW agency, only a determination that the Covered Project will continue to be a RAD project under the terms of the RAD program.
16. **RAD HAP Contract Funding in Initial Year.** From the effective date of the HAP Contract through the remainder of the calendar year, the Covered Project will be funded only from available public housing amounts obligated prior to the effective date of the HAP Contract and from any additional public housing amounts that HUD obligates in full or in part, subject to the availability of sufficient appropriations, for the remainder of the calendar year in which the HAP Contract becomes effective. Project Owner acknowledges that this amount for the first year may be less than the contract rent for subsequent years. During such time, the PHA will draw down funds from LOCCS as instructed by HUD and transfer amounts to the Project Owner as payments pursuant to the HAP Contract in its capacity as or on behalf of the Contract Administrator, as applicable.
17. **RAD Rehab Assistance Payments.** It is anticipated that the Covered Project will be eligible for RAD Rehab Assistance Payments pursuant to its HAP Contract to the extent set forth on the second page of this Commitment.
18. **Section 8 Contract Rents.** Exhibit C sets out the monthly Section 8 contract rents that will be specified in the HAP Contract.
19. **Planned Construction and Rehabilitation.** Exhibit D sets forth the planned construction, repairs and/or rehabilitation for the Covered Project, including any repairs that need to be completed before closing, to be funded in accordance with the Sources and Uses (the "Work").

The Project Owner hereby represents, warrants and certifies to HUD and will update such representation, warranty and certification at Closing, in a form and substance acceptable to HUD, that the sources of funds are sufficient to pay for the Work and that all Work will be completed timely and in accordance with applicable RAD Program Requirements, including without limitation:

- a. The Work will be completed in accordance with:
- i. The more stringent of: (1) any applicable national building code, such as Uniform Building Code, Council of American Building Officials Code, or Building Officials Conference of America Code; or (2) applicable state and local laws, codes, ordinances, and regulations;
 - ii. Other applicable Federal requirements including any Federal fire-safety requirements and HUD minimum property standards (e.g., 24 CFR part 200, subpart S for FHA-insured properties);
 - iii. The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-484 6), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-485 6), and implementing regulations at 24 CFR part 35, as applicable;

- iv. Notice PIH 2014-17 / H 2014-09, issued July 14, 2014 (and any amendments, revisions or successor documents), "Relocation Requirements under the Rental Assistance Demonstration (RAD) Program, Public Housing in the First Component," which relocation requirements include, as applicable, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and its implementing regulations at 49 CFR Part 24 with regard to any relocation of residents;
 - v. Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR part 8, including but not limited to accessibility standards, with regard to any "substantial alterations" or other "alterations," each as defined in such regulations, as applicable;
 - vi. The design and construction requirements of the Fair Housing Amendments Act of 1988 and its implementing regulations at 24 CFR Part 100.25, as applicable;
 - vii. Section 3 of the Housing Act of 1968 and its implementing regulations at 24 CFR Part 135 and all of the related regulations, rules and requirements as applicable; and
 - viii. Davis-Bacon prevailing wage requirements, section 12 of the United States Housing Act of 1937, and Contract Work Hours and Safety Standards Act, and all of the related regulations, rules and requirements for any repairs that qualify as "construction" or "rehabilitation" as defined in such regulations, rules and requirements.
- b. Any Work not completed by the final completion date listed on Exhibit D and set forth in the HAP Contract, including any reduction in the scope of Work listed on Exhibit D, unless an extension of such date or such reduction in scope is approved in writing by HUD, constitutes a default of this Commitment and of any HAP Contract entered into with respect to the Covered Project. Upon such default, HUD may terminate this Commitment and/or HUD may take action to terminate the HAP Contract relating to the Covered Project, as provided in the HAP Contract.
 - c. The Project Owner shall not be entitled to earn or receive any cash flow distributions from the Covered Project until after completion of the Work, certification of the actual cost of the Work, and written HUD acceptance of the completed Work.
 - d. To the extent the Work includes new construction or substantial rehabilitation, the PHA and/or Project Owner shall engage a qualified general contractor who shall obtain either (i) a payment and performance bond from a properly licensed surety, which bond and surety shall be acceptable to HUD, or (ii) a letter of credit, acceptable to HUD.
20. **Reserve for Replacements.** The Project Owner shall establish upon Closing a Reserve for Replacements, with an IDRR as set forth in Exhibit B, the Sources and Uses. Monthly deposits into the Reserve for Replacements will be made in the amount set forth on the first page of this Commitment as set forth in the HAP Contract and adjusted annually in accordance with the HAP Contract and Program Requirements.
21. **Counsel.** Closing is conditioned upon review and approval of the Transaction by HUD, including without limitation a legal review and approval of diligence and closing documents. The PHA and Project Owner, if different than the PHA, agree to select competent, independent counsel in connection with this Transaction. Counsel to the PHA and/or Project Owner, as appropriate, must provide a legal opinion with respect to the following matters and any other matters reasonably requested by HUD:
- a. The PHA and Project Owner are each duly organized, validly existing and in good standing under the laws of the applicable jurisdiction(s);
 - b. The PHA and Project Owner each have the requisite power and authority, and have secured all consents required, to consummate the Transaction;
 - c. Each of the Closing Documents executed by or on behalf of the PHA and/or Project Owner in connection with the Transaction is a legally binding obligation of such party, duly executed and delivered on behalf of such party and enforceable in accordance with its terms;
 - d. There is no litigation or other claim pending or threatened against the PHA, Project Owner or the Covered Project other than as disclosed to and consented to by HUD;

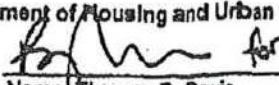
- e. Based upon a pro forma title policy acceptable to HUD and assuming the recordation of documents in the order contemplated by such pro forma title policy, provided counsel has no reason to believe the documents will be recorded in an order other than as listed in such pro forma title policy, the RAD Use Agreement is superior to the lien and/or encumbrance evidenced by any and all mortgages, deeds of trust and other financing documents and regulatory documents of record relating to the Covered Project; and
 - f. All Closing Documents conform with the legal requirements set forth in this RCC and any and all changes to HUD forms or sample language have been disclosed to HUD.
22. **Last public housing unit.** If, upon completion of this RAD conversion and other RAD conversions for which this PHA has an RCC and/or CHAP, the PHA will no longer have residential units in its public housing portfolio, the PHA agrees to comply with additional instructions provided by HUD regarding the close-out of its residential public housing portfolio prior to or after Closing. The PHA acknowledges that failure to comply with HUD instructions may result in withholding Section 8 or other cash payments after Closing pending cure of such violation to HUD's satisfaction.
23. **Non-dwelling assets.** Any non-dwelling assets proposed for removal from PIC in connection with the Transaction must be listed in the PIC removal application (a/k/a Demolition-Disposition Application) identified on the first page of this Commitment and must be approved by HUD.
24. **Special Conditions.** This Commitment is subject to the Special Conditions set forth on Exhibit A.
25. **Exhibits.** The following exhibits are a part of this Commitment and incorporated herein by this reference:
- a. Special Conditions
 - b. Sources and Uses of Funds
 - c. Monthly HAP Contract Rents
 - d. Scope of Work
 - e. Closing Checklist
26. **Entire Agreement; Survival.** The information listed on the chart on the first pages of this Commitment is a part of this Commitment. All prior and contemporaneous oral and written communications are merged herein and superseded hereby, and this Commitment and all exhibits attached constitute the entire agreement between the PHA, Project Owner and HUD with respect to the Transaction. This Commitment, and the responsibilities relating to each respective party, shall survive Closing of the Transaction.
27. **Post-Closing Responsibilities.** The PHA and Project Owner agree to follow the directions of the HUD Closing Coordinator with respect to post-Closing obligations. Without limiting the foregoing, the PHA and Project Owner, as appropriate, will provide evidence of recording of the applicable Closing Documents and copies of any applicable executed HAP contract, recorded Use Agreement, and DOT Release within three (3) business days thereof and will provide copies of the remaining Closing Documents as directed within sixty (60) days of Closing. In addition, the PHA must follow Instructions provided by HUD to remove the Converting Project, or portions thereof, from PIC to effect conversion.
28. **Severability.** Should any provision of this Commitment be held by a court of law to be unenforceable, such determination shall in no way compromise the enforceability of the other provisions.
29. **Counterparts.** This Commitment may be executed in counterparts. Electronic copies of signatures (such as those in portable document format (pdf)) shall be evidence of and treated as original signatures.
30. **Consistency with Federal Law.** Nothing contained in this Commitment shall impose on HUD any duty, obligation, or requirement, the performance of which would be inconsistent with federal statutes, rules, or regulations in effect at the time of such performance.

(signature page follows)

Signature Page to RAD Conversion Commitment

Department of Housing and Urban Development

By:

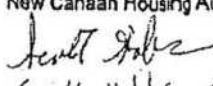

Name: Thomas R. Davis

Title: Director, Office of Recapitalization

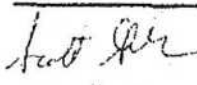
Date:

MAR 17 2017

PHA: New Canaan Housing Authority


Scott Hobbs, Chairman
3/20/17

Project Owner: Millport Phase II, Limited Partnership


March 20, 2017
Scott Hobbs

Date: _____

Return the signed RAD Conversion Commitment to:
RAD Closing Manager and Division Director
Office of Recapitalization – Closing Division
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 6222
Washington, DC 20410

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EXHIBIT A
Special Conditions

N/A

Necessary HUD Approvals

- 2530s/APPS must be approved by HUD prior to closing.
- The PHA's significant amendment to its Annual or Five Year Plan must be approved by HUD prior to closing.
- The PHA is required to submit their Affirmative Fair Housing Marketing Plan to HUD, prior to closing

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Additional Provisions to the RCC

N/A

EXHIBIT B
Sources and Uses

Sources	Amount	Notes (List name of capital source and, for all debt, the amortization period, term and interest rate)
New First Mortgage Loan	\$3,050,000.00	
Public Housing Operating Reserves	\$225,000.00	
Prior Year Public Housing Capital Funds	\$0.00	
Replacement Housing Factor	\$0.00	
Low Income Housing Tax Credit Equity - 4%	\$3,698,465.00	
Low Income Housing Tax Credit Equity - 9%	\$0.00	
HOME	\$0.00	
HOPE 6	\$0.00	
CDBG	\$0.00	
Other Federal Funds	\$0.00	
Other State/Local Funds	\$0.00	
Other Private Funds	\$0.00	
Take Back Financing	\$0.00	
Other: DOH CHAMP 9	\$5,094,478.00	
Other: Town of New Canaan	\$600,000.00	
Other: Deferred Developer Fee	\$350,000.00	
Other: Eversource Rebate	\$66,750.00	
Other:	\$0.00	
Other:	\$0.00	
Total Sources	\$13,084,693.00	

EXHIBIT B
Sources and Uses, Cont'd

Uses	Amount
Acquisition Costs	\$0.00
Building and Land Acquisition	\$0.00
Other Costs	\$0.00
Payoff Existing Loans	\$0.00
Construction Costs	\$10,247,677.00
Relocation Costs	\$230,000.00
Professional Fees	\$0.00
Architecture	\$153,947.00
Engineering	\$126,266.00
Physical Condition Assessment	\$0.00
Borrower's Legal Counsel	\$102,157.00
Lender's Legal Counsel	\$146,043.00
Feasibility Studies	\$25,000.00
Environmental Reports	\$8,250.00
Appraisal / Market Study	\$14,000.00
Accounting	\$20,000.00
Survey	\$15,000.00
Other Costs	\$126,627.00
Loan Fees and Costs	\$0.00
FHA MIP	\$0.00
FHA Application Fee	\$0.00
FHA Inspection Fee	\$0.00
Financing Fee	\$57,375.00
Organizational Costs	\$0.00
Title Insurance/Exam Fee	\$30,600.00
Recordation Fee	\$0.00
Closing Escrow Agent Fee	\$0.00
Prepayment Penalty/Premium	\$0.00
Payables	\$0.00
Construction Interest	\$250,000.00
Construction Loan Fees	\$0.00
Cost of Bond Issuance	\$0.00
Other Costs	\$58,226.00
Reserves	\$0.00
Initial Deposit to Replacement Reserve	\$35,000.00
Initial Operating Deficit Escrow	\$140,000.00
Operating Reserve	\$373,525.00
Tax and Insurance Escrow	\$50,000.00
Other	\$25,000.00
Developer Fees	\$850,000.00
Total Uses	\$13,084,693.00

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EXHIBIT C
Monthly HAP Contract Rents

<u>Number of Contract Units</u>	<u>Number of Bedrooms</u>	<u>Contract Rent</u>	<u>Utility Allowance</u>	<u>Gross Rent</u>
0	0	\$0.00	\$0.00	\$0.00
4	1	\$503.00	\$111.00	\$614.00
10	2	\$625.00	\$160.00	\$785.00
4	3	\$779.00	\$180.00	\$959.00
0	4	\$0.00	\$0.00	\$0.00
0	5	\$0.00	\$0.00	\$0.00
0	6	\$0.00	\$0.00	\$0.00

EXHIBIT D
Scope of Work*(List all work to be done in connection with the Transaction that needs to be completed before Closing)*

Not Applicable

(List all work to be done in connection with the Transaction following Closing)

Work Item	Description of Improvement Work	Budget
3.2.4	Parking and Driveways	\$94,355.00
3.2.9.01	Site Other #1 Concrete	\$482,835.00
3.2.9.02	Site Other #2 Dumpster pad	\$150.00
3.2.9.04	Site Other #4 Aluminum railings	\$828,404.00
3.3.2.2	Exterior Walls	\$85,407.00
3.3.2.3	Insulation	\$260,214.00
3.3.2.4.02	Windows	\$85,400.00
3.3.2.5.01	Exterior Doors	\$139,100.00
3.3.2.9.01	Bldg Envelope Other #1 Vinyl Siding	\$274,190.00
3.3.2.9.02	Bldg Envelope Other #2 Soffit	\$269,826.00
3.4.1.2.01	DHW #1 (Common Area) Electric	\$400.00
3.4.1.2.02	DHW #2 (Dwelling Unit) Electric	\$731,598.00
3.4.2.1.02	HVAC In-Unit Heating	\$319,500.00
3.4.3.1.02	HVAC Common Area Cooling	\$301,500.00
3.4.9.02	M&E Other #1 Clubhouse/Apartments	\$18,000.00
3.5	Elevators	\$158,800.00
3.5.01	Elevators Other #1	\$10,000.00
3.6.03	Life Safety Other #1 Fire Suppression	\$159,780.00
3.7.1.01	Common Area Floor Coverings	\$2,000.00
3.7.1.9.02	Common Area Other #2 Mailboxes	\$8,650.00
3.7.2.1.03	Kitchen Floor Coverings	\$90,594.00
3.7.2.11.01	Dishwashers	\$26,305.00
3.7.2.11.03	Ranges	\$26,305.00
3.7.2.11.04	Refrigerators 1	\$25,805.00
3.7.2.19	Other Appliances- Microwave	\$26,305.00
3.7.2.19.04	Kitchen Other #3 Clubhouse Kitchen	\$500.00
3.7.2.2.01	Bath Counter Tops, Sinks	\$8,000.00
3.7.2.2.02	Bath Floor Covering	\$77,258.00
3.7.2.2.03	Bath Vanities	\$18,000.00
3.7.2.29.01	Bathroom Cabinets	\$8,684.00
3.7.2.3.01	Interior Carpet	\$82,748.00
3.7.2.3.03	Interior Painting	\$117,733.00
3.7.2.39.01	Interior Other #1 Washer/Dryer	\$80,000.00
3.7.2.39.02	Interior Other #2 Apartment Stairway	\$3,000.00
3.7.2.39.03	Fireplace, Signage, Wardrobe	\$37,889.00
3.7.2.4.03	In-Unit Lighting Fixtures	\$882,480.00
3.8.01	General Conditions	\$558,726.00
3.8.02	Landscaping	\$80,000.00
3.8.03	Carpentry and Millwork	\$2,052,541.00
3.8.04	Masonry and Steel	\$80,274.00
3.8.05	Drywall	\$583,486.00
3.8.06	Furnishings	\$118,279.00
3.8.07	GMP Contingency	\$120,000.00
3.8.08	CM P&P Bond	\$89,435.00
3.8.09	CM Fee	\$330,038.00
3.8.10	CM Insurance	\$83,257.00
3.8.11	Hard Cost Contingency	\$487,986.00
	Total	\$10,247,678.00

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Estimated completed date for all Work: 02/28/2018

Final completion deadline for all Work (after which Project Owner is in default): 02/28/2018

**Rider to Use Agreement Relating to Foreclosure
(for PBV and PBRA RAD conversions from Public Housing)**

This rider (Rider), made as of May 26, 2017, is attached to and amends the Rental Assistance Demonstration Use Agreement by and between the United States of America, acting through the Department of Housing and Urban Development (HUD), Millport Phase II Limited Partnership (Owner), and the Housing Authority of the Town of New Canaan (the "Ground Lessor"), dated and/or executed as of substantially even date herewith, as such document may be amended from time to time (Use Agreement).

To the extent any provisions of this Rider conflict with any other provisions in the Use Agreement, the provisions of this Rider shall prevail. Any other terms in the Use Agreement not in conflict with the provisions of this Rider remain in full force and effect.

Notwithstanding any provisions contained in the Use Agreement:

1. Nothing in the Use Agreement prohibits any holder of a mortgage or other lien against the real property described on Exhibit A (Property) from foreclosing its lien or accepting a deed in lieu of foreclosure. Any lien holder shall give HUD, as a courtesy, written notice prior to declaring an event of default and shall provide HUD concurrent notice with any written filing of foreclosure filed in accordance with state law provided that the foreclosure sale shall not occur sooner than sixty days (60) days after such notice to HUD.
2. Notwithstanding any lien holder's foreclosure rights, the Use Agreement survives foreclosure and any new owners of the Property or the Project take ownership subject to the Use Agreement.
3. Transfer of title of the Property or the Project may be grounds for termination of assistance under the HAP contract. However, HUD may permit, with HUD written consent, the new owner of the Property or the Project to assume the HAP contract, subject to the terms included therein, or enter into a new HAP contract. Any HUD consent to continued HAP assistance is subject to PL 112-55 and other RAD program requirements.
4. Each entity interested in purchasing the property in a foreclosure sale administered under state foreclosure law may submit a written request to HUD to continue HAP contract assistance in the event of such entity's successful acquisition at the foreclosure sale. Such request shall be submitted by the latter of ten business days after first publication of the foreclosure sale or 60 days prior to such foreclosure sale.

Signature page follows

Witnesses:

Lisa Wimbush

Print Name:

Dea VembelBeverly Rud

Print Name:

Beverly RudmanDate: May 18, 2017

U.S. Department of Housing and Urban Development

By:

Thomas R. Davis

Print Name: THOMAS R. DAVIS

Title: DIRECTOR, OFFICE OF RECAPITALIZATION

Witnesses:

Bernard E. SimpkinBERNARD E. SIMPKIN

Print Name:

Dimitri Tenen

Print Name: Dimitri Tenen

Date: May 26, 2017

Owner

MILLPORT PHASE II LIMITED PARTNERSHIP

a Connecticut limited partnership

By: Millport Phase II GP Corporation, a
Connecticut corporation

Its: General Partner

By:

Scott Hobbs

Scott Hobbs

Title: Chairman, duly authorized

Witnesses:

Bernard E. SimpkinBERNARD E. SIMPKIN

Print Name:

Dimitri Tenen

Print Name: Dimitri Tenen

Date: May 26, 2017

Ground Lessor:

HOUSING AUTHORITY OF THE TOWN OF
NEW CANAAN

By:

Scott Hobbs

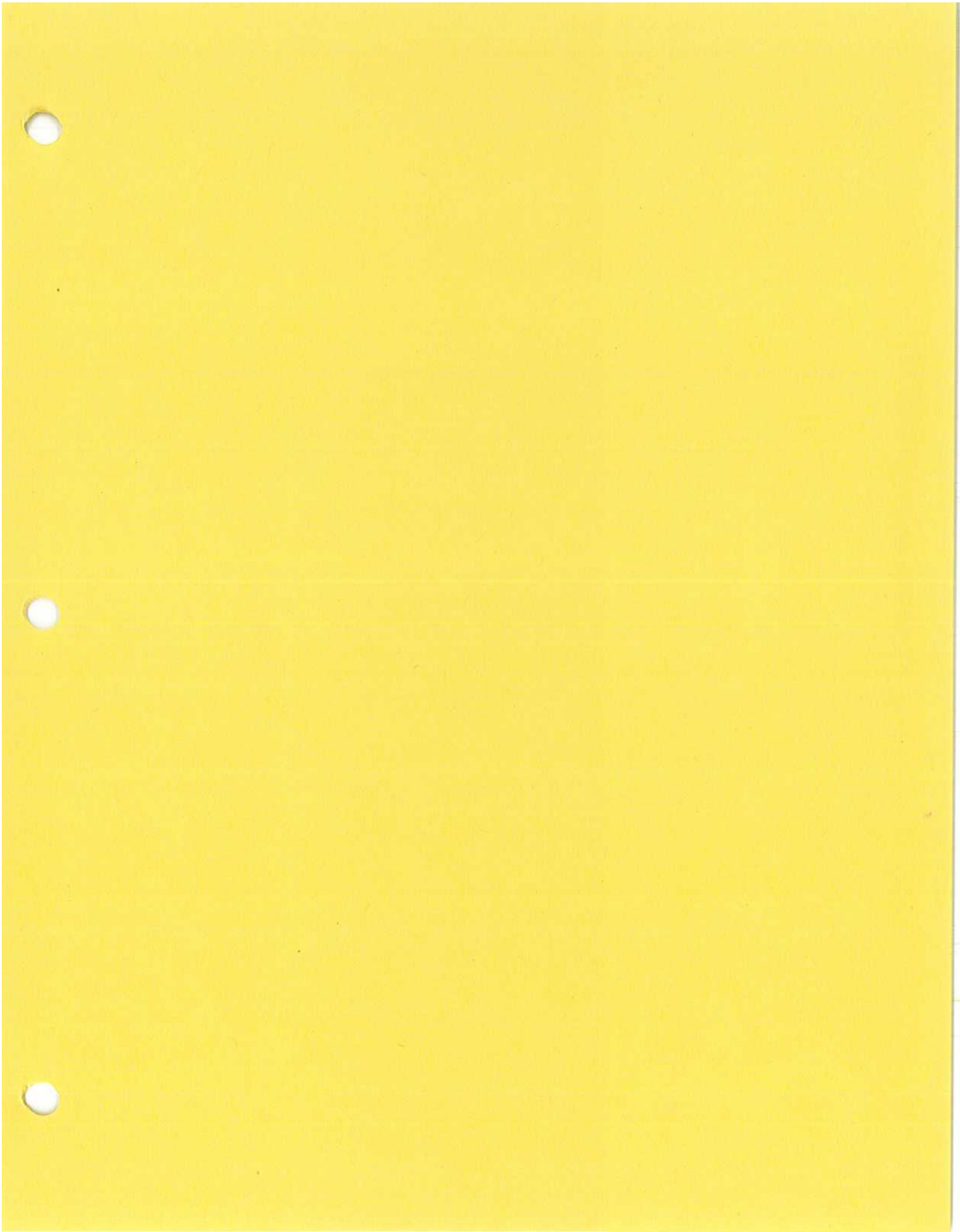
Scott Hobbs

Title: Chairman, duly authorized

Received for record on 6-1-17 at 1:33 pmand recorded by Claudia A. Weber

TOWN CLERK

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RECORDING REQUESTED BY**AND WHEN RECORDED RETURN TO:**

Kirsten M. Vargo
Wiggin and Dana LLP
265 Church Street
New Haven CT 06510-1832



Doc ID: 002618130008 Type: LAN
Book 973 Page 672 - 679
File# 3288

Recorder's Stamp

**AGREEMENT TO SUBORDINATE TO RENTAL ASSISTANCE DEMONSTRATION
USE AGREEMENT**
Millport Phase II

This Agreement to Subordinate to Rental Assistance Demonstration Use Agreement (the "Subordination") is entered into this May 26, 2017, by the **HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN** (the "Lender" or "Agency"), and **MILLPORT PHASE II LIMITED PARTNERSHIP** (the "Project Owner"), **MILLPORT PHASE II GP CORPORATION**, collectively, the "Parties."

WHEREAS, the Parties executed that certain:

1. Land Use Restriction Agreement by and between the Housing Authority of the Town of New Canaan and Millport Phase II Limited Partnership dated and recorded as of substantially even date herewith;
2. Open-End Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing from Millport Phase II Limited Partnership to the Housing Authority of the Town of New Canaan dated and recorded as of substantially even date herewith, and
3. Option and Right of First Refusal Agreement by and among Millport Phase II Limited Partnership, Millport Phase II GP Corporation, and the Housing Authority of the Town of New Canaan, consented to by People's United Bank, National Association, dated and recorded as of substantially even date herewith,

together, the "Subordinate Documents"

WHEREAS, HUD has authorized the conversion of Millport Phase II (the "Project") located upon the real property described on Exhibit "A" attached hereto, from public housing to Section 8 assistance under the Rental Assistance Demonstration ("RAD") program, pursuant to Public Law 112-55; and

WHEREAS, as a condition of the RAD conversion, the Owner executed a Rental Assistance Demonstration Use Agreement together with Rider to Use Agreement Relating to Foreclosure (for PBV and PBRA RAD conversions from Public Housing), both dated and recorded as of substantially even date herewith (together, the "RAD Use Agreement") for the benefit of HUD; and

WHEREAS, HUD requires as a condition of the RAD conversion that the Parties agree to subordinate the Subordinate Documents to the RAD Use Agreement;

NOW THEREFORE, let it be known to all interested parties, that for good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned do hereby agree:

1. So long as the RAD Use Agreement, and all extensions thereto, be in effect, the Subordinate Documents shall in all respects be subordinate.
2. Subordination extends to and continues in effect with respect to any future amendment, extension, renewal, or any other modification of the RAD Use Agreement or the Subordinate Documents.
3. In the event of conflict between/among the Subordinate Documents and the RAD Use Agreement, the RAD Use Agreement controls.
4. The following amendments to the Subordinate Documents require the prior written consent of HUD: Any amendment to any HUD-required provisions in the Subordinate Documents, an increase in the interest rate, an increase of the total indebtedness, an acceleration of the amortization or payment schedule, and any changes that would preclude or impair a reasonable opportunity to cure any defaults by the Project Owner under the Subordinate Documents.
5. This Subordination will survive bankruptcy and foreclosure.
6. This Subordination may be signed in counterparts.
7. The invalidity, in whole or in part, of any of the provisions set forth in this Subordination, shall not affect or invalidate any remaining provisions.
8. This Subordination and every covenant hereof shall be binding upon the Parties and their respective successors and assigns. This Subordination shall not be modified or amended except by a written instrument executed by all parties hereto and approved in writing by HUD.

[SIGNATURE PAGES TO FOLLOW]

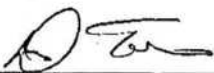
In witness whereof, the parties have executed this Subordination as of the date first written above.

Witnesses:



BARNARD E. SIMAN

Print Name:




Print Name: DIMITRI Tournas

Lender/Agency

HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN,
a public body corporate and politic organized and existing under
and by virtue of the laws of the State of Connecticut

By:



Name: Scott Hobbs

Title: Chairman, Duly Authorized

State of CONNECTICUT)

County of FAIRFIELD)

ss:

Stamford

On this 25th day of May, 2017, before me, duly commissioned and sworn, personally appeared Scott Hobbs as Chairman of the Housing Authority of the Town of New Canaan, and he did acknowledge the signing thereof to be a free and voluntary act and done on behalf of said Housing Authority of the Town of New Canaan for the uses, purposes and considerations therein set forth.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.



Print Name: Dimitri Tournas

Notary Public - My commission expires , 20

[Seal]


Witnesses:

MILLPORT PHASE II LIMITED PARTNERSHIP,
a Connecticut limited partnership



By: Millport Phase II GP Corporation,
a Connecticut corporation
Its General Partner

BARNARD A. SIMPKIN
Print Name:

By: 
Name: Scott Hobbs
Title: Chairman, Duly Authorized


Print Name: DIMITRI TOUNAS

STATE OF CONNECTICUT)


: ss. New Canaan

May 25, 2017

COUNTY OF FAIRFIELD)

On this 25 day of May, 2017, before me, duly commissioned and sworn, personally appeared Scott Hobbs as Chairman of Millport Phase II GP Corporation, a Connecticut corporation, the general partner of Millport Phase II Limited Partnership, a Connecticut limited partnership, and he did acknowledge the signing thereof to be a free and voluntary act and done on behalf of said Millport Phase II GP Corporation, the general partner of Millport Phase II Limited Partnership, for the uses, purposes and considerations therein set forth.

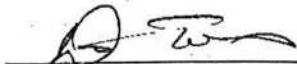
In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.


Print Name:
Notary Public - My commission expires 20
[Seal]

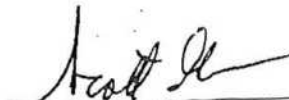
Witnesses:

BERNARD R. SYMKIN

Print Name:

Print Name: DIMITRI TOURNASMILLPORT PHASE II GP CORPORATION,
a Connecticut corporation

By:



Name: Scott Hobbs

Title: Chairman, Duly Authorized

STATE OF CONNECTICUT)

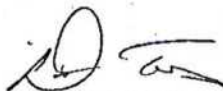
: ss. New Canaan

May 25, 2017

COUNTY OF FAIRFIELD)

On this 25th day of May, 2017, before me, duly commissioned and sworn, personally appeared Scott Hobbs as Chairman of Millport Phase II GP Corporation, a Connecticut corporation, and he did acknowledge the signing thereof to be a free and voluntary act and done on behalf of said Millport Phase II GP Corporation for the uses, purposes and considerations therein set forth.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

Print Name: DIMITRI TOURNAS

Notary Public - My commission expires _____, 20__

[Seal]

EXHIBIT A
PROPERTY DESCRIPTION
Millport Leasehold Parcel II

All that certain piece, parcel or tract of land, being a portion of that new consolidated parcel, comprised of portions of former Assessor Lots 630, 644 and 644A, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, being a portion of Parcel 630, 35 Millport Avenue and portion of Parcel 644 and 644A 57 Millport Avenue, shown as **PHASE II (SHADED AREA) AREA=64,982+/- SQ. FT. OR 1.4918+/- AC. (LEASEHOLD PARCEL)** and designated within shaded area on a map entitled **"ALTA/NSPS LAND TITLE SURVEY (PROPERTY SURVEY) 33, 35, 41, 57 & 65 MILLPORT AVENUE DEPICTING LEASE PARCEL II PROPERTY OF HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN NEW CANAAN, CONNECTICUT"** Sheets 1 and 2 of 2, dated May 19, 2017, Scale 1"=30', made by William W. Seymour & Associates, P.C., which map is or will be filed in the Office of the Town Clerk of New Canaan, more particularly bounded and described as follows:

Beginning at a point on the division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and land now or formerly of The Housing Authority of The Town of New Canaan, said point lying north 57° 04' 20" west a distance of 92.74 feet and north 50° 38' 00" west a distance of 5.19 feet and north 57° 58' 00" west a distance of 24.93 feet and south 62° 37' 30" west a distance of 5.07 feet and north 45° 58' 50" west a distance of 70.39 feet from the intersection of said division line with the northwesterly line of Millport Avenue and further being the intersection of the easterly line of the herein described parcel (Phase II) with the aforesaid division line;

Thence, running generally southwesterly and in a clockwise direction south 44° 01' 10" west a distance of 100.00 feet and south 45° 58' 50" east a distance of 7.29 feet and south 44° 32' 10" west a distance of 52.74 feet and south 58° 41' 20" west a distance of 115.23 feet to a point;

Thence, running generally northwesterly and continuing in a clockwise direction north 42° 37' 20" west a distance of 137.25 feet to a point on the division line between the herein described parcel (Phase II) and land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue);

Thence, running generally northeasterly and northwesterly and continuing in a clockwise direction along said land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue) north 46° 03' 30" east a distance of 114.08 feet and north 46° 33' 30" west a distance of 127.44 feet to a point and land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street);

Thence, running generally northeasterly and continuing in a clockwise direction along said land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street) and land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue), each in part, north 44° 16' 00" east a distance of 66.35 feet and north 42° 59' 00" east a distance of 115.70 feet to a point, said point being the northwesterly corner of the herein described parcel (Phase II);

Thence, running generally southeasterly and continuing in a clockwise direction along said land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue) south 47° 24' 00" east a distance of 86.85 feet and south 49° 20' 00" east a distance of 55.50 feet and south 56° 38' 00" east a distance of 13.25 feet to the aforesaid division line between land now or formerly Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II);

Thence, running generally southwesterly and southeasterly and continuing in a clockwise direction along said division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II) south $36^{\circ} 28' 00''$ west a distance of 46.84 feet and south $45^{\circ} 58' 50''$ east a distance of 123.15 feet to the point of beginning.

the "Leasehold Parcel",

Together with the rights, provisions, terms and conditions set forth in an **Easement Agreement** by and among the Housing Authority of the Town of New Canaan, NCHA Mill Apartments Limited Partnership, Millport Phase I Limited Partnership and Millport Phase II Limited Partnership, and consented to by the State of Connecticut Department of Housing, People's United Bank, National Association, and Bankwell Bank, dated as of May 26, 2017, recorded in the New Canaan Land Records.

Such easements and rights of way are shown and depicted on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING LEASE PARCELS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7648, as:

"Easement Area Y", more particularly bounded and described as follows:

Beginning at a point on the former division line between properties known as 41 & 57 Millport Avenue, said point being further described as lying north $09^{\circ} 47' 00''$ west a distance of 126.20 feet from the intersection of said former division line between said properties known as 41 & 57 Millport Avenue with the northwesterly line of Millport Avenue;

Thence, running alternatingly southwesterly and northwesterly south $78^{\circ} 16' 50''$ west a distance of 44.25 feet and north $38^{\circ} 03' 00''$ west a distance of 83.95 feet and south $50^{\circ} 32' 40''$ west a distance of 14.66 feet and 8.41 feet along a tangent arc curving to the right having a radius of 5.00 feet and subtending a delta or central angle of $96^{\circ} 19' 30''$ and 51.51 feet along an arc (compound and tangent) curving to the right having a radius of 107.00 feet and subtending a delta or central angle of $27^{\circ} 34' 57''$ and south $84^{\circ} 15' 50''$ west a distance of 25.00 feet and north $43^{\circ} 56' 30''$ west a distance of 29.54 feet to a point on the division line between land of Housing Authority of the Town of New Canaan and land now or formerly of Gray Stone Condominiums;

Thence, running northerly along said division line between land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue and land now or formerly of Gray Stone Condominiums north $46^{\circ} 03' 30''$ east a distance of 27.34 feet to a point;

Thence, running southeasterly and northeasterly through said land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue south $42^{\circ} 37' 20''$ east a distance of 137.25 feet and north $58^{\circ} 41' 20''$ east a distance of 115.23 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southwesterly along said former division line between properties known as 41 & 57 Millport Avenue south $44^{\circ} 32' 10''$ west a distance of 62.12 feet to a point;

Thence, running southeasterly and southwesterly through said land of Housing Authority of the Town of New Canaan and known as 41 Millport Avenue south $29^{\circ} 09' 35''$ east a distance of 23.65 feet and south $60^{\circ} 50' 25''$ west a distance of 8.32 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

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Thence, running southeasterly along said former division line between properties known as 41 & 57 Millport Avenue south $09^{\circ}47'00''$ east a distance of 25.08 feet to the point of beginning.

And "**Driveway Easement Parcel**" shown and depicted as "Proposed Driveway Easement for Phase II" on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING DRIVEWAY EASEMENTS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7649, bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point lying north $78^{\circ}17'30''$ east 1.87 feet of the intersection of the former division line between properties known as 65 & 57 Millport Avenue with said northwesterly line of Millport Avenue;

Thence, running northerly and northwesterly a distance of 10.52 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $20^{\circ}05'35''$ and having a chord bearing of north $01^{\circ}39'42''$ west and north $11^{\circ}42'30''$ west a distance of 69.75 feet and north $38^{\circ}03'00''$ west a distance of 103.11 feet and 80.59 feet along an arc curving to the right having a radius of 131.00 feet and subtending a central or delta angle of $35^{\circ}14'45''$ to a point;

Thence, running northeasterly along the northerly terminus of the herein described easement north $84^{\circ}15'50''$ east a distance of 24.00 feet to a point;

Thence, running southeasterly and southerly a distance of 54.96 feet along an arc curving to the left having a radius of 107.00 feet and subtending a central or delta angle of $29^{\circ}25'40''$ and south $38^{\circ}03'00''$ east a distance of 120.81 feet and south $11^{\circ}42'30''$ east a distance of 67.12 feet and 20.00 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $38^{\circ}11'39''$ and having a chord bearing of south $30^{\circ}48'19''$ east to the aforesaid northwesterly line of Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south $78^{\circ}17'30''$ west a distance of 32.25 feet to the point of beginning.

(hereinafter, the "**Easement Parcels**").

Together with the rights, provisions, terms and conditions set forth in a Ground Lease from the Housing Authority of the Town of New Canaan to Millport Phase II Limited Partnership, a Notice of which is dated as of May 26, 2017, and recorded, or to be recorded, in the New Canaan Land Records.

All of the above hereinafter referred to as the "**Land**".

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Received for record on 6-1-17 at 1:37pm
and recorded by Claudia A. Weber
TOWN CLERK

After recording, please return to:
John J. Kindl, Esq.
Pullman & Comley, LLC
90 State House Square
Hartford, CT 06103



Doc ID: 002618200012 Type: LAN
Book 973 Page 939 - 950
File# 3295

AGREEMENT AND ESTOPPEL OF GROUND LESSOR

THIS AGREEMENT AND ESTOPPEL OF GROUND LESSOR ("Agreement") is executed as of the 26 day of May, 2017, by HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, a body corporate and politic of the Town of New Canaan, Connecticut having a mailing address 57 Millport Avenue, New Canaan, Connecticut 06840 ("Lessor") for the benefit of STATE OF CONNECTICUT, acting by and through its DEPARTMENT OF HOUSING, with an office and principal place of business located at 505 Hudson Street, Hartford, Connecticut ("State") and for the benefit of MILLPORT PHASE II LIMITED PARTNERSHIP, a limited partnership organized and existing under the laws of the State of Connecticut and having a mailing address c/o Millport Phase II GP Corporation, 57 Millport Avenue, New Canaan, Connecticut 06840 ("Lessee").

RECITALS:

A. Lessor has or is about to lease certain lands described on Exhibit A attached hereto (hereinafter the "Property") to Lessee pursuant to a certain Ground Lease, by and between the Lessor and the Lessee dated as of [May 26, 2017] a notice of which has been or will be recorded in the Land Records for the Town of New Canaan, Connecticut (hereinafter the "Lease") (capitalized and quoted terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Lease);

B. A true, correct and complete copy of the Lease (including all amendments, supplements, addenda and modifications thereto) has been delivered to the State, and the terms thereof are incorporated herein by this reference; and

C. Lessee is desirous of obtaining from the State a loan in the maximum amount of **Four Million One Hundred Seventeen Thousand Four Hundred Thirty-Eight and 00/100 Dollars (\$4,117,438.00)** (hereinafter the "Loan"). As security for Lessee's obligations under the Loan, Lessee shall execute and deliver a certain Open-End Leasehold Construction Mortgage Deed and Security Agreement (the "Mortgage") and a Declaration of Land Use Restrictive Covenants (the "Declaration") and collectively with the Mortgage, the "Security Instruments") upon Lessee's interest under the Lease;

D. As an accommodation to Lessee, Lessor has agreed to execute this Agreement and the Declaration for the benefit of the State with the understanding that the State is relying on the agreements set forth herein and therein as an inducement to the State in making the Loan to Lessee.

NOW, THEREFORE, for and in consideration of the premises, and for the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged and confessed, the parties hereto hereby represent, covenant and agree as follows:

1. Lessor consents to the execution and delivery by Lessee to the State of the Security Instruments covering Lessee's leasehold interest in and to the Property and the recording of same in the applicable real property records. Lessor also consents to the execution and delivery by Lessee, and the filing and/or recording in the appropriate public records, of such additional documents and instruments as the State may deem necessary or desirable to establish, perfect and maintain a lien upon and against Lessee's leasehold interests, including, but not limited to, Uniform Commercial Code financing statements and such other documents, instruments and agreements as the State may hereafter deem necessary or desirable in connection with the creation, grant, maintenance or enforcement of said lien, including, but not limited to, any such documents and instruments executed in connection with any renewal, extension, increase, refinance, consolidation and/or modification of such lien. Lessor confirms and agrees that the Security Instruments are and shall be permitted liens under the Lease. The State, in addition to all rights, benefits and privileges conferred by this Agreement, is a "Lender" and shall be entitled to all benefits and notices afforded to a Leasehold Mortgagee pursuant to the Lease, and that the Mortgage is and shall be deemed a "Leasehold Mortgage".

2. Lessor hereby certifies and represents as follows to and for the benefit of the State:

(a) Lessor is the fee simple owner of the Property and is the Lessor under the Lease.

(b) The Lease is in full force and effect in accordance with its terms and has not been further assigned, supplemented, modified or otherwise amended except as described in Recital A above. As of the date hereof, all the representations and warranties of Lessor set forth in the Lease are true and correct in all material respects.

(c) To the best of Lessor's knowledge, each of the obligations on Lessee's part to be performed to date under the Lease have been performed.

(d) To the best of Lessor's knowledge, there are no offsets, counterclaims, defenses, deductions or credits whatsoever with respect to the Lease.

(e) There are, with respect to the Lease, no options to renew or extend the Lease, no rights of first refusal, no purchase options and no security deposits or prepaid rent or liens which are not expressly provided for in the Lease.

(f) There are no other agreements (including subordination, non-disturbance and attornment agreements) concerning the Property, whether oral or written between Lessor and Lessee under the Lease (or its predecessors or successors).

(g) The Lease Commencement Date was May 26, 2017. The Expiration Date of the Lease is May 25, 2107.

3. Lessor confirms and agrees:

(a) that the Mortgage is a "Leasehold Mortgage", as such term is defined in the Lease.

(b) that the State is a "Lender", as such term is defined in the Lease.

(c) that the address of the State set forth in Section 12 herein below constitutes sufficient notice and information for purposes of Section 5.2 of the Lease.

(d) that this Agreement satisfies the notice requirements of Section 5.2 of the Lease.

(e) that the Security Instruments are not and shall not be subject or subordinate to any mortgage encumbering the fee estate of the Property.

(f) title to all Improvements, including, but not limited to any structures existing on the Property as of the commencement date of the Lease and any structures thereafter constructed by Lessee and situated on the Property are and shall remain the property of the Lessee throughout the entire term of the Lease.

(g) notwithstanding anything to the contrary in the Lease but subject to the rights of any Leasehold Mortgagee whose Leasehold Mortgage has priority and seniority over the Mortgage, the proceeds of insurance for damage or destruction of the Property or any Improvements thereon and any awards as a result of a taking of all or any portion of the Property shall only be made available to Lessee pursuant to the terms and conditions of the Mortgage. In the event that the Lessee is not entitled to the use of such insurance proceeds or taking awards, the same shall be paid over to the State or any Leasehold Mortgagee whose Leasehold Mortgage has priority and seniority over the Mortgage.

All rights of the State under the Lease and the Security Instruments shall be exercisable by or on behalf of the State. Further, in the event of any default or event of default by Lessee under the Lease, or in the event Lessee shall fail to perform or observe any of the terms, conditions or agreements in the Lease, Lessor shall give written notice thereof to the State at the address indicated above (or such other address as the State may indicate by notice hereafter to Lessor in writing) and the State shall have the right (but not the obligation) to cure such default or fail to cure such default before the later of (i) the time periods set forth in Section 5.3 of the Lease, or (ii) within sixty (60) days following the expiration any applicable periods of grace, notice or cure provided to the Lessee, whichever is later, and Lessor shall not take any action with respect to such failure under the Lease, including, without limitation, any action intended to terminate, rescind or avoid the Lease or Lessee's tenancy or possession thereunder so long as the State is proceeding with such cure. Without limiting the foregoing, Lessor agrees that no default and no termination of the Lease shall be effective unless notice shall first have been given to the State in accordance with the terms of this Agreement. Lessor further agrees that, notwithstanding anything to the contrary contained in the Lease (including, but not limited to, any limitations stated in Section 5.7 therein), where any default under the Lease is not capable of or subject to cure, or in the event of the bankruptcy or insolvency of Lessee, the State shall have the option (upon written notice to Lessor) to enter into a new ground lease with Lessor on substantially the same terms as the Lease for the then remaining term of the Lease following the termination of the Lease by Lessor or the rejection of the Lease by a bankruptcy trustee under applicable laws. Lessor hereby agrees with respect to the new lease referred to in Section 5.7 of the Lease that the provisions of Section 5.7 shall apply to the State even if the Mortgage is not a Leasehold Mortgage having first priority, and further agrees that should the State become the tenant under a new lease pursuant to such Section 5.7, Lessor shall promptly assign to the State all space leases and subleases whose tenants have attorned, with the consent of the State, to Lessor.

4. Lessor consents to the exercise by the State of any and all rights and remedies permitted under the Security Instruments and such other documents as may be executed by Lessee in connection with the Loan, and to the exercise of such additional legal and equitable rights and remedies as may be available to the State, in the event of a default or event of default under the Loan. Furthermore, Lessor expressly agrees that neither the execution, delivery and/or recording of the Security Instruments, nor the execution, delivery and/or recording or filing of any other instrument or agreement by Lessee or the State in connection with the Security Instruments, nor any other matters to which Lessor has given its consent herein, shall ever be deemed to constitute a default or event of default under the Lease.

5. In the event the State shall ever become the owner of the rights and interests of Lessee in and to the Property and Lease by reason of foreclosure (whether by judicial, nonjudicial or power of sale), any conveyance in lieu thereof, or other proceedings brought by the State to enforce its rights under the Security Instruments, or through any other means or manner in connection with the Loan, the State shall be deemed to be Lessee's successor and assignee under the Lease (notwithstanding anything in the Lease prohibiting or restricting assignment by the Lessee or establishing conditions under which an assignment by the Lessee would be permitted) and shall be entitled to all rights, benefits and privileges of the Lessee under the Lease; and Lessor shall be bound to the State under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any renewal or extension period thereof duly exercised as required by the Lease, all without the need to execute any further instruments on the part of Lessor, Lessee or the State to make such succession and assignment effective and binding upon Lessor. Provided, however, that the State or its direct successors or assigns shall not be (i) liable for any past due rent or other expenses due from Lessee under the Lease, (ii) liable for any action or omission of Lessee, or (iii) bound by amendment or modification of the Lease (other than those amendments and modifications permitted pursuant to Section 7 below) made without the State's advance written consent (which consent shall not be unreasonably withheld).

6. Notwithstanding anything to the contrary set forth or contained in the Lease, Lessor hereby waives any contractual and/or statutory liens and any rights of distress with respect to the property of Lessee (or Lessee's sublessees, successors or assigns, including the State) from time to time located within or upon the Property ("**Lessee's Property**"), during the term of the Lease or any extension thereof. It is hereby covenanted and agreed by Lessor that the Lease does not and will not, from and after this date, be construed or deemed to grant a contractual lien or any other security interest to Lessor or in favor of Lessor with respect to Lessee's Property. Lessor agrees to execute and deliver such other instruments as may be reasonably requested by Lessee or the State from time to time to evidence or confirm this waiver by Lessor.

7. So long as the Loan remains unsatisfied, Lessor agrees that no cancellation, surrender, amendment or modification of the Lease, nor any voluntary termination of the Lease by Lessee (including, but not limited to, any termination under Articles 7 or 10 of the Lease) shall be effective unless and until expressly consented to in writing by the State, provided, however, that Lessor and Lessee may make minor and immaterial amendments or modifications to the Lease without the State's prior consent provided that the State shall receive a copy of the proposed modification or amendment instrument at least ten (10) days prior to execution of such amendment or modification. Lessor and Lessee warrant and represent that the copy of the Lease delivered to the State is a true, correct and complete copy of the Lease and that the Lease is in full force and effect and has not been amended or modified. Other than the Lease and a recorded Memorandum of Lease, there are no other agreements, written or oral, between Lessor and Lessee regarding the Lease or the Property. The Lessor has not assigned the Lease or otherwise transferred any interest in or under the Lease. Notwithstanding the terms, provisions and conditions of the Lease, any assignee of Lessee's interest under the Lease effectuated in accordance therewith shall be subject to the transfer restrictions of the Security Instruments.

8. For purposes of this Agreement, the term "**State**" shall include its successors and assigns including, but not limited to, any person who acquires Lessee's interest under the Lease pursuant to a foreclosure of the Mortgage or a conveyance in lieu thereof. All references herein to Lessor and Lessee shall likewise include the respective successors and assigns for each such party (including, without limitation, any person, party or entity to whom either Lessor's and/or Lessee's respective rights and interests in and under the Lease may be assigned). This Agreement shall accordingly be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Without limiting the foregoing, Lessor agrees that notwithstanding any provision in the Lease to the contrary (including, but not limited to, Article 12 therein), if the State becomes the

lessee under the Lease, the State shall have the right to assign its interest in and to the Lease without the consent of Lessor, provided, however, the State shall give Lessor prompt written notice of any such assignment.

9. Lessor represents and warrants to the State: (i) that there is no lien encumbering Lessor's fee interest in the real estate encumbered by the Lease; (ii) that no consent or joinder of any other party is required to Lessor's execution of this Agreement; (iii) that no third party has any option or preferential right to purchase all or any part of the Property; (iv) that Lessor has not received written notice of any pending eminent domain proceedings or other governmental actions or any judicial actions of any kind against Lessor's interest in the Property; and (v) that Lessor has not received written notice that it is in violation of any governmental law or regulation applicable to its interest in the Property and its operation including, without limitation, any environmental laws or the Americans with Disabilities Act, and has no reason to believe that there are grounds for any claim of any such violation.

10. Lessor shall not, except as may otherwise be permitted under this Agreement, disturb the possession, interest or quiet enjoyment of any lessee in any portion of the Property subject to the Lease for any reason, or in any manner, that would materially adversely affect the security intended to be afforded by the Security Instruments.

11. All notices, requests, consents, demands and other communications relating to this Agreement shall be in writing and shall be deemed sufficiently given if (a) sent by certified or registered mail with postage prepaid, return receipt requested, properly addressed to the applicable party at the address set forth below; (b) delivered in person to the address set forth below for the party to whom the notice is given; (c) deposited into the custody of a nationally recognized overnight delivery service such as Federal Express Corporation, UPS, or Airborne, addressed to such party at the address specified below; or (d) sent by facsimile or e-mail provided that receipt of such facsimile or e-mail is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above. Notices shall be effective on the date of delivery or receipt, or, if delivery is not accepted, on the earlier of the date that delivery is refused or five (5) days after the date the notice is mailed. For purposes of this section, the addresses of the parties for all notices are as set forth below (unless changed by similar notice in writing given by the particular person whose address is to be changed). From time to time, any party may designate another address for all purposes by giving the other parties notice of such change of address.

All notices to the State shall be given to it at:

State of Connecticut
Department of Housing
505 Hudson Street
Hartford, Connecticut 06106
Attn: Commissioner

All notices to Lessee shall be given to it at:

Millport Phase II Limited Partnership
57 Millport Avenue
New Canaan, Connecticut 06840
Attn:

All notices to Lessor shall be given to it at:

Housing Authority of the Town of New Canaan
New Canaan, Connecticut 06840
Attn:

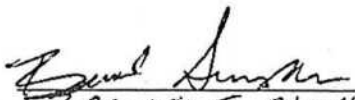
12. This Agreement may not be withdrawn, amended or modified except by a written agreement executed by both Lessor and the State. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

No Further Text On This Page -- Signature Pages Follow

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

Signed, Sealed and Delivered
in the presence of:


BERNARD E. BIMAKIN


DIMITRI TOURKVAS

HOUSING AUTHORITY OF THE TOWN OF
NEW CANAAN

By: 
Scott Hobbs
Its Chairman
Duly Authorized

STATE OF CONNECTICUT)
COUNTY OF Fairfield) ss: Stamford

On this the 25th day of May, 2017, before me, the undersigned officer, personally appeared **Scott Hobbs**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged himself to be the **Chairman** of **HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN**, a housing authority of the Town of New Canaan and that he, as such and being authorized so to do, executed the foregoing instrument as the free act and deed of the housing authority for the purposes contained therein by signing the name of the housing authority by himself as such **Chairman**.

In witness whereof, I hereunto set my hand.




Commissioner of the Superior Court
Notary Public
My Commission Expires:

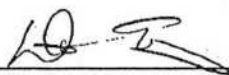
IN WITNESS WHEREOF, the Lessee hereto has set its hand and seal the day and year first written above.

Signed, Sealed and Delivered
in the presence of:

**MILLPORT PHASE II LIMITED
PARTNERSHIP**
a Connecticut limited partnership

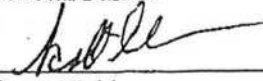


BERNARD E. SIMAKIN



DIMITRI TOURAN

By: Millport Phase II GP Corporation
Its: General Partner


By: 

Scott Hobbs
Its Chairman
Duly Authorized

STATE OF CONNECTICUT)
COUNTY OF Fairfield) ss. Stanford

On this 25th day of May, 2017 before me, the undersigned officer, personally appeared **Scott Hobbs**, the duly authorized Chairman of Millport Phase II GP Corporation, a corporation organized and existing under the laws of the State of Connecticut, the General Partner of **MILLPORT PHASE II LIMITED PARTNERSHIP**, a Connecticut limited partnership, and that he as such Chairman of the General Partner of said limited partnership and being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited partnership by himself as such Chairman of the General Partner of said limited partnership.

In Witness Whereof, I hereunto set my hand.



Commissioner of the Superior Court
Notary Public
~~My Commission Expires:~~

EXHIBIT A
LEGAL DESCRIPTION

All that certain piece, parcel or tract of land, being a portion of that new consolidated parcel, comprised of portions of former Assessor Lots 630, 644 and 644A, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, being a portion of Parcel 630, 35 Millport Avenue and portion of Parcel 644 and 644A 57 Millport Avenue, shown as **PHASE II (SHADED AREA) AREA=64,982+/- SQ. FT. OR 1.4918+/- AC. (LEASEHOLD PARCEL)** and designated within shaded area on a map entitled "**ALTA/NSPS LAND TITLE SURVEY (PROPERTY SURVEY) 33, 35, 41, 57 & 65 MILLPORT AVENUE DEPICTING LEASE PARCEL II PROPERTY OF HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN NEW CANAAN, CONNECTICUT**" Sheets 1 and 2 of 2, dated May 19, 2017, Scale 1"=30', made by William W. Seymour & Associates, P.C., which map is or will be filed in the Office of the Town Clerk of New Canaan, more particularly bounded and described as follows:

Beginning at a point on the division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and land now or formerly of The Housing Authority of The Town of New Canaan, said point lying north 57° 04' 20" west a distance of 92.74 feet and north 50° 38' 00" west a distance of 5.19 feet and north 57° 58' 00" west a distance of 24.93 feet and south 62° 37' 30" west a distance of 5.07 feet and north 45° 58' 50" west a distance of 70.39 feet from the intersection of said division line with the northwesterly line of Millport Avenue and further being the intersection of the easterly line of the herein described parcel (Phase II) with the aforesaid division line;

Thence, running generally southwesterly and in a clockwise direction south 44° 01' 10" west a distance of 100.00 feet and south 45° 58' 50" east a distance of 7.29 feet and south 44° 32' 10" west a distance of 52.74 feet and south 58° 41' 20" west a distance of 115.23 feet to a point;

Thence, running generally northwesterly and continuing in a clockwise direction north 42° 37' 20" west a distance of 137.25 feet to a point on the division line between the herein described parcel (Phase II) and land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue);

Thence, running generally northeasterly and northwesterly and continuing in a clockwise direction along said land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue) north 46° 03' 30" east a distance of 114.08 feet and north 46° 33' 30" west a distance of 127.44 feet to a point and land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street);

Thence, running generally northeasterly and continuing in a clockwise direction along said land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street) and land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue), each in part, north 44° 16' 00" east a distance of 66.35 feet and north 42° 59' 00" east a distance of 115.70 feet to a point, said point being the northwesterly corner of the herein described parcel (Phase II);

Thence, running generally southeasterly and continuing in a clockwise direction along said land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue) south 47° 24' 00" east a distance of 86.85 feet and south 49° 20' 00" east a distance of 55.50 feet and south 56° 38' 00" east a distance of 13.25 feet to the aforesaid division line between land now or formerly Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II);

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Thence, running generally southwesterly and southeasterly and continuing in a clockwise direction along said division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II) south $36^{\circ} 28' 00''$ west a distance of 46.84 feet and south $45^{\circ} 58' 50''$ east a distance of 123.15 feet to the point of beginning.

the "Leasehold Parcel",

Together with the rights, provisions, terms and conditions set forth in an **Easement Agreement** by and among the Housing Authority of the Town of New Canaan, NCHA Mill Apartments Limited Partnership, Millport Phase I Limited Partnership and Millport Phase II Limited Partnership dated as of May 26, 2017, recorded in the New Canaan Land Records.

Such easements and rights of way are shown and depicted on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING LEASE PARCELS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7648, as:

"Easement Area Y", more particularly bounded and described as follows:

Beginning at a point on the former division line between properties known as 41 & 57 Millport Avenue, said point being further described as lying north $09^{\circ} 47' 00''$ west a distance of 126.20 feet from the intersection of said former division line between said properties known as 41 & 57 Millport Avenue with the northwesterly line of Millport Avenue;

Thence, running alternatingly southwesterly and northwesterly south $78^{\circ} 16' 50''$ west a distance of 44.25 feet and north $38^{\circ} 03' 00''$ west a distance of 83.95 feet and south $50^{\circ} 32' 40''$ west a distance of 14.66 feet and 8.41 feet along a tangent arc curving to the right having a radius of 5.00 feet and subtending a delta or central angle of $96^{\circ} 19' 30''$ and 51.51 feet along an arc (compound and tangent) curving to the right having a radius of 107.00 feet and subtending a delta or central angle of $27^{\circ} 34' 57''$ and south $84^{\circ} 15' 50''$ west a distance of 25.00 feet and north $43^{\circ} 56' 30''$ west a distance of 29.54 feet to a point on the division line between land of Housing Authority of the Town of New Canaan and land now or formerly of Gray Stone Condominiums;

Thence, running northerly along said division line between land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue and land now or formerly of Gray Stone Condominiums north $46^{\circ} 03' 30''$ east a distance of 27.34 feet to a point;

Thence, running southeasterly and northeasterly through said land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue south $42^{\circ} 37' 20''$ east a distance of 137.25 feet and north $58^{\circ} 41' 20''$ east a distance of 115.23 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southwesterly along said former division line between properties known as 41 & 57 Millport Avenue south $44^{\circ} 32' 10''$ west a distance of 62.12 feet to a point;

Thence, running southeasterly and southwesterly through said land of Housing Authority of the Town of New Canaan and known as 41 Millport Avenue south $29^{\circ} 09' 35''$ east a distance

of 23.65 feet and south $60^{\circ}50'25''$ west a distance of 8.32 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southeasterly along said former division line between properties known as 41 & 57 Millport Avenue south $09^{\circ}47'00''$ east a distance of 25.08 feet to the point of beginning.

And "Driveway Easement Parcel" shown and depicted as "Proposed Driveway Easement for Phase II" on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING DRIVEWAY EASEMENTS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale $1''=30$ ft., Scale $1''=30$ ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7649, bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point lying north $78^{\circ}17'30''$ east 1.87 feet of the intersection of the former division line between properties known as 65 & 57 Millport Avenue with said northwesterly line of Millport Avenue;

Thence, running northerly and northwesterly a distance of 10.52 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $20^{\circ}05'35''$ and having a chord bearing of north $01^{\circ}39'42''$ west and north $11^{\circ}42'30''$ west a distance of 69.75 feet and north $38^{\circ}03'00''$ west a distance of 103.11 feet and 80.59 feet along an arc curving to the right having a radius of 131.00 feet and subtending a central or delta angle of $35^{\circ}14'45''$ to a point;

Thence, running northeasterly along the northerly terminus of the herein described easement north $84^{\circ}15'50''$ east a distance of 24.00 feet to a point;

Thence, running southeasterly and southerly a distance of 54.96 feet along an arc curving to the left having a radius of 107.00 feet and subtending a central or delta angle of $29^{\circ}25'40''$ and south $38^{\circ}03'00''$ east a distance of 120.81 feet and south $11^{\circ}42'30''$ east a distance of 67.12 feet and 20.00 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $38^{\circ}11'39''$ and having a chord bearing of south $30^{\circ}48'19''$ east to the aforesaid northwesterly line of Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south $78^{\circ}17'30''$ west a distance of 32.25 feet to the point of beginning.

(hereinafter, the "Easement Parcels").

Together with the rights, provisions, terms and conditions set forth in a Ground Lease from the Housing Authority of the Town of New Canaan to Millport Phase II Limited Partnership, a Notice of which is dated as of May 26, 2017, and recorded, or to be recorded, in the New Canaan Land Records.

Received for record on 6-1-17 at 1:44 pm
and recorded by Claudia A. Weber
TOWN CLERK

WHEN RECORDED MAIL TO:
Robinson & Cole LLP
280 Trumbull Street
Hartford, Connecticut 06103
Attn: David M. Panico, Esq.



Doc ID: 002618070006 Type: LAN
Book 973 Page 590 - 595
File# 3232

NOTICE OF GROUND LEASE

Pursuant to Section 47-19 of the Connecticut General Statutes, notice is hereby given of the following lease (the "Lease"):

NAME AND ADDRESS OF LESSOR: HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, a municipal housing authority duly organized and existing pursuant to the laws of the State of Connecticut, having an address at 57 Millport Avenue, New Canaan, Connecticut 06840.

NAME AND ADDRESS OF LESSEE: MILLPORT PHASE II LIMITED PARTNERSHIP, a Connecticut limited partnership having an address at c/o the Housing Authority of the Town of New Canaan, 57 Millport Avenue, New Canaan, Connecticut 06840.

DATE OF LEASE: May 26, 2017.

DEMISED PREMISES: the land and all improvements located at 57-61 Millport Avenue, New Canaan, Connecticut 06840 (the "Property"), which land is more particularly described on Schedule A attached hereto.

TERM: The initial term of the Lease is for ninety (90) years and commences on the Date of the Lease and expires on May 25, 2107.

OPTION TO EXTEND: None.

OPTION TO PURCHASE THE PROPERTY: None.

COPY OF THE LEASE: A complete copy of the Lease is on file at the office of the Lessor set forth above.

EFFECT OF THIS NOTICE OF LEASE: This Notice of Lease is entered into by the parties, and is to be recorded only to set forth the Lease as a matter of record. Nothing contained in this Notice of Lease shall be deemed to modify, amend, alter, limit or otherwise change any of the provisions of the Lease itself or the rights and obligations of the parties thereto as provided therein. All capitalized terms in this Notice of Lease shall have the meaning ascribed in the Lease. In the event of any conflict or ambiguity between the terms of this Notice of Lease and the terms of the Lease, the terms of the Lease shall prevail. Reference is hereby made to the Lease for all of the terms, covenants and conditions thereof.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Notice of Lease as of the Date of the Lease.

WITNESSED BY:

Benedict E. SimariPrint Name: Benedict E. SimariUekeri M. SuirPrint Name: Uekeri M. Suir

LESSOR:

HOUSING AUTHORITY OF THE TOWN OF
NEW CANAAN,a public body corporate and politic organized under
the laws of the State of Connecticut

By:

Scott Hobbs

Scott Hobbs

Title: Chairman, duly authorized

STATE OF CONNECTICUT)

) ss: Stamford

COUNTY OF FAIRFIELD)

I, Margaret L. Bracken, a Notary Public in and for Fairfield County, Connecticut/Commissioner of the Superior Court, do hereby certify that Scott Hobbs, a Chairman and authorized signatory on behalf of the Housing Authority of the Town of New Canaan, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as an authorized signatory and the free and voluntary act of The Housing Authority of the Town of New Canaan, for the uses and purposes therein set forth.

Given under my hand this 25th day of May, 2017

Seal:

Margaret L. Bracken

Print Name:

Notary Public; My Commission expires: ____/

Commissioner of the Superior Court

Margaret L. Bracken
Notary Public-Connecticut
My Commission Expires
April 30, 2019

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WITNESSED BY:

Brendan E. Simpson
 Name: BRENDAN E. SIMPSON

Valerie M. Suiz
 Name: Valerie M. Suiz

LESSEE:

**MILLPORT PHASE II LIMITED
 PARTNERSHIP,**
 a Connecticut limited partnership

By: Millport Phase II GP Corporation
 a Connecticut corporation
 Its: General Partner

By: Scott Hobbs
 Name: Scott Hobbs
 Title: Chairman, duly authorized

STATE OF CONNECTICUT)

) ss: Stamford

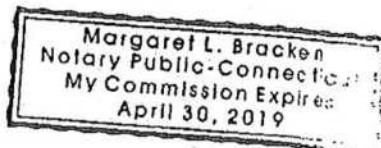
COUNTY OF FAIRFIELD)

I, Margaret L. Bracken, a Notary Public in and for the State of Connecticut/Commissioner of the Superior Court, do hereby certify that Scott Hobbs, a Chairman and authorized signatory on behalf of Millport Phase II GP Corporation, the General Partner of Millport Phase II Limited Partnership, Lessee named above, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act as an authorized signatory and the free and voluntary act of the Lessee named above, for the uses and purposes therein set forth.

Given under my hand this 25th day of May, 2017

Seal:

Margaret L. Bracken
 Print Name:
 Notary Public; My Commission expires: ____/
 Commissioner of the Superior Court



Schedule A

All that certain piece, parcel or tract of land, being a portion of that new consolidated parcel, comprised of portions of former Assessor Lots 630, 644 and 644A, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, being a portion of Parcel 630, 35 Millport Avenue and portion of Parcel 644 and 644A 57 Millport Avenue, shown as **PHASE II (SHADED AREA) AREA=64,982+/- SQ. FT. OR 1.4918+/- AC. (LEASEHOLD PARCEL)** and designated within shaded area on a map entitled **"ALTA/NSPS LAND TITLE SURVEY (PROPERTY SURVEY) 33, 35, 41, 57 & 65 MILLPORT AVENUE DEPICTING LEASE PARCEL II PROPERTY OF HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN NEW CANAAN, CONNECTICUT"** Sheets 1 and 2 of 2, dated May 19, 2017, Scale 1"=30', made by William W. Seymour & Associates, P.C., which map is or will be filed in the Office of the Town Clerk of New Canaan, more particularly bounded and described as follows:

Beginning at a point on the division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and land now or formerly of The Housing Authority of The Town of New Canaan, said point lying north 57° 04' 20" west a distance of 92.74 feet and north 50° 38' 00" west a distance of 5.19 feet and north 57° 58' 00" west a distance of 24.93 feet and south 62° 37' 30" west a distance of 5.07 feet and north 45° 58' 50" west a distance of 70.39 feet from the intersection of said division line with the northwesterly line of Millport Avenue and further being the intersection of the easterly line of the herein described parcel (Phase II) with the aforesaid division line;

Thence, running generally southwesterly and in a clockwise direction south 44° 01' 10" west a distance of 100.00 feet and south 45° 58' 50" east a distance of 7.29 feet and south 44° 32' 10" west a distance of 52.74 feet and south 58° 41' 20" west a distance of 115.23 feet to a point;

Thence, running generally northwesterly and continuing in a clockwise direction north 42° 37' 20" west a distance of 137.25 feet to a point on the division line between the herein described parcel (Phase II) and land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue);

Thence, running generally northeasterly and northwesterly and continuing in a clockwise direction along said land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue) north 46° 03' 30" east a distance of 114.08 feet and north 46° 33' 30" west a distance of 127.44 feet to a point and land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street);

Thence, running generally northeasterly and continuing in a clockwise direction along said land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street) and land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue), each in part, north 44° 16' 00" east a distance of 66.35 feet and north 42° 59' 00" east a distance of 115.70 feet to a point, said point being the northwesterly corner of the herein described parcel (Phase II);

Thence, running generally southeasterly and continuing in a clockwise direction along said land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue) south 47° 24' 00" east a distance of 86.85 feet and south 49° 20' 00" east a distance of 55.50 feet and south 56° 38' 00" east a distance of 13.25 feet to the aforesaid division line between land now or formerly Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II);

Thence, running generally southwesterly and southeasterly and continuing in a clockwise direction along said division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II) south $36^{\circ} 28' 00''$ west a distance of 46.84 feet and south $45^{\circ} 58' 50''$ east a distance of 123.15 feet to the point of beginning.

the "Leasehold Parcel",

Together with the rights, provisions, terms and conditions set forth in an **Easement Agreement** by and among the Housing Authority of the Town of New Canaan, NCHA Mill Apartments Limited Partnership, Millport Phase I Limited Partnership and Millport Phase II Limited Partnership, and consented to by the State of Connecticut Department of Housing, People's United Bank, National Association, and Bankwell Bank, dated as of May 26, 2017, and recorded in the New Canaan Land Records.

Such easements and rights of way are shown and depicted on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING LEASE PARCELS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7648, as:

"Easement Area Y", more particularly bounded and described as follows:

Beginning at a point on the former division line between properties known as 41 & 57 Millport Avenue, said point being further described as lying north $09^{\circ} 47' 00''$ west a distance of 126.20 feet from the intersection of said former division line between said properties known as 41 & 57 Millport Avenue with the northwesterly line of Millport Avenue;

Thence, running alternately southwesterly and northwesterly south $78^{\circ} 16' 50''$ west a distance of 44.25 feet and north $38^{\circ} 03' 00''$ west a distance of 83.95 feet and south $50^{\circ} 32' 40''$ west a distance of 14.66 feet and 8.41 feet along a tangent arc curving to the right having a radius of 5.00 feet and subtending a delta or central angle of $96^{\circ} 19' 30''$ and 51.51 feet along an arc (compound and tangent) curving to the right having a radius of 107.00 feet and subtending a delta or central angle of $27^{\circ} 34' 57''$ and south $84^{\circ} 15' 50''$ west a distance of 25.00 feet and north $43^{\circ} 56' 30''$ west a distance of 29.54 feet to a point on the division line between land of Housing Authority of the Town of New Canaan and land now or formerly of Gray Stone Condominiums;

Thence, running northerly along said division line between land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue and land now or formerly of Gray Stone Condominiums north $46^{\circ} 03' 30''$ east a distance of 27.34 feet to a point;

Thence, running southeasterly and northeasterly through said land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue south $42^{\circ} 37' 20''$ east a distance of 137.25 feet and north $58^{\circ} 41' 20''$ east a distance of 115.23 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southwesterly along said former division line between properties known as 41 & 57 Millport Avenue south $44^{\circ} 32' 10''$ west a distance of 62.12 feet to a point;

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Thence, running southeasterly and southwesterly through said land of Housing Authority of the Town of New Canaan and known as 41 Millport Avenue south $29^{\circ}09'35''$ east a distance of 23.65 feet and south $60^{\circ}50'25''$ west a distance of 8.32 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southeasterly along said former division line between properties known as 41 & 57 Millport Avenue south $09^{\circ}47'00''$ east a distance of 25.08 feet to the point of beginning.

And "Driveway Easement Parcel" shown and depicted as "Proposed Driveway Easement for Phase II" on a map entitled "COMPILATION PLAN 33, 35, 41; 57 & 65 MILLPORT AVENUE MAP DEPICTING DRIVEWAY EASEMENTS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7649, bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point lying north $78^{\circ}17'30''$ east 1.87 feet of the intersection of the former division line between properties known as 65 & 57 Millport Avenue with said northwesterly line of Millport Avenue;

Thence, running northerly and northwesterly a distance of 10.52 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $20^{\circ}05'35''$ and having a chord bearing of north $01^{\circ}39'42''$ west and north $11^{\circ}42'30''$ west a distance of 69.75 feet and north $38^{\circ}03'00''$ west a distance of 103.11 feet and 80.59 feet along an arc curving to the right having a radius of 131.00 feet and subtending a central or delta angle of $35^{\circ}14'45''$ to a point;

Thence, running northeasterly along the northerly terminus of the herein described easement north $84^{\circ}15'50''$ east a distance of 24.00 feet to a point;

Thence, running southeasterly and southerly a distance of 54.96 feet along an arc curving to the left having a radius of 107.00 feet and subtending a central or delta angle of $29^{\circ}25'40''$ and south $38^{\circ}03'00''$ east a distance of 120.81 feet and south $11^{\circ}42'30''$ east a distance of 67.12 feet and 20.00 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $38^{\circ}11'39''$ and having a chord bearing of south $30^{\circ}48'19''$ east to the aforesaid northwesterly line of Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south $78^{\circ}17'30''$ west a distance of 32.25 feet to the point of beginning.

(hereinafter, the "Easement Parcels").

Together with the rights, provisions, terms and conditions set forth in a Ground Lease from the Housing Authority of the Town of New Canaan to Millport Phase II Limited Partnership, a Notice of which is dated as of May 26, 2017, and recorded, or to be recorded, in the New Canaan Land Records.

All of the above hereinafter referred to as the "Land".

251993\3669092.v2

Received for record on 6-1-17 at 1:31 pm
and recorded by Claudia A. Weber
TOWN CLERK

After recording, please return to:
State of Connecticut
Department of Housing
505 Hudson Street
Hartford, CT 06106
Attn: Nathan Karnes



Doc ID: 002618160015 Type: LAN
Book 973 Page 717 - 731
File# 3291

DECLARATION OF LAND USE RESTRICTIVE COVENANT

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANT, (this "Restrictive Covenant") is made as of this 26th day of May 2017 by **HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN**, a body corporate and politic of the Town of New Canaan, Connecticut having a mailing address 57 Millport Avenue, New Canaan, Connecticut 06840 (the "**Owner**") and **MILLPORT PHASE II LIMITED PARTNERSHIP**, a limited partnership organized and existing under the laws of the State of Connecticut and having a mailing address c/o Millport Phase II GP Corporation, 57 Millport Avenue, New Canaan, Connecticut 06840 (the "**Developer**" and collectively with the Owner, the "**Declarants**" and each a "**Declarant**") and is given as a condition precedent to the disbursement to Developer of certain financial assistance in the form of a loan (the "**Loan**") pursuant to the provisions of the Affordable Housing Program as set forth in § 8-37pp of the Connecticut General Statutes ("CGS"), as amended and in effect from time to time (the "**Act**"), as amended, in favor of the **STATE OF CONNECTICUT** (the "**State**"), acting herein by and through its Department of Housing ("**DOH**"), acting by its Commissioner of Housing (the "**Commissioner**").

WITNESSETH:

WHEREAS, the Owner is the owner of a certain parcel (or parcels) of real property commonly known as **57-61 Millport Avenue, New Canaan, Connecticut** and being more particularly described in Schedule A hereto (the "**Land**"), which Land is leased to the Developer pursuant to the Ground Lease (as defined in the Assistance Agreement [as hereinafter defined]); and

WHEREAS, the Developer is the developer of an affordable housing project located on the Land known as "Millport Phase II Project" and identified by the State as Project No. **FX1609001** (the "**Development**" and together with the Land, the "**Premises**"); and

WHEREAS, the Developer has requested financial assistance from the State for the acquisition and/or rehabilitation or construction of the Development, including, without limitation, forty (40) units of residential rental housing (collectively, the "**Units**" and each a "**Unit**"), all of which shall be restricted as affordable housing (each an "**Affordable Unit**" and collectively, the "**Affordable Units**"), and the State has agreed to provide such financial assistance in accordance with the provisions of the Act and that certain agreement for financial assistance of even date herewith between the State and the Developer (the "**Assistance Agreement**"); and

WHEREAS, as a condition to its receipt of financial assistance from the State, the Declarants have covenanted to maintain certain restrictions with respect to the rent to be charged for the Affordable Units and the income eligibility requirements of tenants residing in the Affordable Units, in each case for the period of time as specified in the Assistance Agreement; and

WHEREAS, the State requires as a condition precedent to the disbursement of the Loan proceeds that the Declarants (a) execute, deliver and record this Restrictive Covenant on the official land records of the municipality in which the Land is located (the "**Municipality**") in order to create certain covenants running with the Land for the purpose of enforcing the requirements set forth herein and in the Assistance Agreement regulating and restricting the use, occupancy, operation and transfer of the Development, and providing that such covenants shall be binding upon all subsequent owners of the Development for such term, and are not merely personal covenants of the Declarants and (b) consent to be regulated by the State as provided herein and by any applicable statutes and rules, regulations, policies and procedures of the State.

NOW THEREFORE, in consideration of the disbursement of the Loan proceeds by the State, the Declarants agree as follows:

Section 1 - Definitions

All capitalized terms used herein but not otherwise defined herein shall have the meaning set forth in the Assistance Agreement. In the event of any conflict between the provisions set forth herein and the provisions of the Assistance Agreement, the provisions of the Assistance Agreement shall control.

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

(a) Promptly upon the execution of this Restrictive Covenant by the Declarants, the Declarants shall cause this Restrictive Covenant to be filed on the land records of the Municipality, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Declarants shall immediately transmit to the State a receipt of the same and shall cause the recorded Restrictive Covenant to be returned by the Municipality to the State. Promptly following the full execution of any amendment to this Restrictive Covenant, in each case subject to the terms herein, the Declarants shall cause such amendments to be filed on the land records of the Municipality, shall pay all fees and charges incurred in connection therewith, and upon recording, the Declarants shall immediately transmit to the State a receipt of the same and shall cause the recorded amendment to be returned by the Municipality to the State.

(b) The Declarants intend, declare, and covenant, on behalf of themselves and all future owners and operators of the Land and the Development during the term of this Restrictive Covenant, that this Restrictive Covenant and the covenants and restrictions set forth in this Restrictive Covenant: (1) shall be and are covenants running with the land, encumbering the Land and the Development for the term of this Restrictive Covenant, binding upon Declarants and their respective successors in title and all subsequent owners and operators of the Land and the Development; (2) are not merely personal covenants of the Declarants; and (3) shall bind the Declarants and their respective successors and assigns during the term of this Restrictive Covenant (and the benefits shall inure to the State).

(c) The Declarants hereby agree that any and all requirements of the laws of the State of Connecticut to be satisfied in order for the provisions of this Restrictive Covenant 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 insure that these restrictions run with the Land.

(d) For the term of this Restrictive Covenant, each and every contract, deed or other instrument hereafter executed conveying the Land and/or the Development or any portion(s) thereof shall expressly provide that such conveyance is subject to this Restrictive Covenant, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter executed conveying the Land and/or the Development or any portion(s) thereof provides that such conveyance is subject to this Restrictive Covenant.

(e) The Declarants covenant to obtain the consent of any prior recorded lien holder on the Land and/or Development, as applicable, to this Restrictive Covenant and to furnish a copy of such consent to the State. Such consent(s) shall be furnished to the State on or before the date of this Restrictive Covenant.

Section 3 - Representations, Covenants and Warranties of the Declarant

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

(a) The Developer: (1) is a limited partnership duly organized under the laws of the State of Connecticut and is qualified to transact business under the laws of the State of Connecticut, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (3) has the full legal right, power and authority to execute and deliver this Restrictive Covenant.

(b) The execution and performance of this Restrictive Covenant by the Developer (1) 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, (2) will not violate or, as applicable, has not violated, any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Developer is a party or by which it or the Development is bound, and (3) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Developer will, at the time of execution and delivery of this Restrictive Covenant, have good and valid leasehold interest in and to the Land and good and valid ownership of the Development, free and clear of any lien or encumbrance (except for encumbrances created pursuant to this Restrictive Covenant, or other encumbrances permitted pursuant to the terms of this Restrictive Covenant and/or the Assistance Agreement).

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

(e) All Affordable Units situated within the Development shall remain habitable, safe and sanitary according to all applicable building, fire, and health codes.

(f) Except as may otherwise be allowed herein and/or pursuant to the Assistance Agreement, the Developer shall not convey, transfer, sell or encumber all or any portion of the Premises, or permit the same, without the prior written consent of the State.

(g) Subject to the requirements of the Act, this Restrictive Covenant, the Assistance Agreement and the prior written approval of the State, the Developer may convey, transfer, or sell the entirety of Developer's interest in and to the Premises, provided the Developer shall have notified in

writing the transferee, buyer or other successor in interest acquiring the Premises in advance that such acquisition is subject to the requirements of this Restrictive Covenant and to the requirements of the Act and all applicable regulations. This provision shall not act to modify any other restriction on the conveyance, transfer, or sale of the Premises. The Developer agrees that the State may void any conveyance, transfer, or sale of the Premises if the Developer fails to provide such notice to the transferee, buyer or other successor in interest or if the transferee, buyer or other successor in interest fails to assume in writing the requirements of this Restrictive Covenant and the requirements of the Act.

(h) The Developer shall not demolish, or cause or suffer the demolition of, any portion of the Development, substantially subtract from any real or personal property at, on, or constituting a portion of the Premises, or permit the use of any residential unit situated within the Development for any purpose other than for residential purposes during the term of this Restrictive Covenant unless required by law or unless the State has given its prior written consent.

(i) If the Development, or any part thereof, shall be damaged, destroyed, condemned, or acquired for public use, the Developer will use its best efforts, subject to the rights of any Prior Lien Holder (as defined in the Mortgage), to repair and restore the Development 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 Development to substantially the same condition as existed prior to such condemnation, to the extent feasible, and thereafter to operate the Development in accordance with the terms of this Restrictive Covenant.

(j) The Developer has not and will not execute any other restrictive covenant or other instrument with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Restrictive Covenant are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(k) The Developer covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of the Act and applicable regulations or any provision of this Restrictive Covenant. Moreover, the Developer covenants to take any lawful action (including amendment of this Restrictive Covenant as may be necessary, in the opinion of the State) 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 Developer's obligations under the Act or applicable regulations and affecting the Premises.

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

(l) The Owner: (1) is a municipal housing authority duly organized under the laws of the State of Connecticut and is qualified to transact business under the laws of the State of Connecticut, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (3) has the full legal right, power and authority to execute and deliver this Restrictive Covenant.

(m) The execution and performance of this Restrictive Covenant by the Owner (1) 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, (2) 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 Land is bound, and (3) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(n) The Owner will, at the time of execution and delivery of this Restrictive Covenant, have good and marketable fee simple title in and to the Land, free and clear of any lien or encumbrance (except for encumbrances created pursuant to this Restrictive Covenant, or other encumbrances permitted pursuant to the terms of this Restrictive Covenant and/or the Assistance Agreement).

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

(p) Except as may otherwise be allowed herein and/or pursuant to the Assistance Agreement, the Owner shall not convey, transfer, sell or encumber all or any portion of the Land, or permit the same, without the prior written consent of the State.

(q) Subject to the requirements of the Act, this Restrictive Covenant, the Assistance Agreement and the prior written approval of the State, the Owner may convey, transfer, or sell the entire Land, provided the Owner shall have notified in writing the transferee, buyer or other successor in interest acquiring the Land in advance that such acquisition is subject to the requirements of this Restrictive Covenant and to the requirements of the Act and all applicable regulations. This provision shall not act to modify any other restriction on the conveyance, transfer, or sale of the Land. The Owner agrees that the State may void any conveyance, transfer, or sale of the Land if the Owner fails to provide such notice to the transferee, buyer or other successor in interest or if the transferee, buyer or other successor in interest fails to assume in writing the requirements of this Restrictive Covenant and the requirements of the Act.

(r) The Owner shall not demolish, or cause or suffer the demolition of, any portion of the Development, substantially subtract from any real or personal property at, on, or constituting a portion of the Premises, or permit the use of any residential unit situated within the Development for any purpose other than for residential purposes during the term of this Restrictive Covenant unless required by law or unless the State has given its prior written consent.

(s) If the Development, 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 Prior Lien Holder, to repair and restore the Development 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 Development to substantially the same condition as existed prior to such condemnation, to the extent feasible, and thereafter to operate the Development in accordance with the terms of this Restrictive Covenant.

(t) The Owner has not and will not execute any other restrictive covenant or other instrument with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Restrictive Covenant are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(u) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of the Act and applicable regulations or any provision of this Restrictive Covenant. Moreover, the Owner covenants to take any lawful action (including amendment of this Restrictive Covenant as may be necessary, in the opinion of the State) 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 Owner's obligations under the Act or applicable regulations and affecting the Premises.

Section 4 - Income, Rent, Occupancy and Use Restrictions

The Declarants covenant and agree that following the construction of the Development, notwithstanding any prepayment or other discharge of the Loan, at all times during the Affordability Period, the Affordable Units shall be comprised of the following: eighteen (18) one-bedroom Units, sixteen (16) two-bedroom Units and six (6) three-bedroom Units, and shall be subject to the following affordability restrictions:

- (i) one (1) one-bedroom Affordable Unit shall be restricted to families and persons whose income does not exceed twenty-five percent (25%) of the AMI, and have an initial rental limit of \$615.00 per month;
- (ii) three (3) one-bedroom Affordable Units shall be restricted to families and persons whose income does not exceed fifty percent (50%) of the AMI, and have an initial rental limit of \$1,231.00 per month;
- (iii) fourteen (14) one-bedroom Affordable Units shall be restricted to families and persons whose income does not exceed sixty percent (60%) of the AMI, and have an initial rental limit of \$1,478.00 per month;
- (iv) four (4) two-bedroom Affordable Units shall be restricted to families and persons whose income does not exceed twenty-five percent (25%) of the AMI, and have an initial rental limit of \$738.00 per month;
- (v) six (6) two-bedroom Affordable Units shall be restricted to families and persons whose income does not exceed fifty percent (50%) of the AMI, and have an initial rental limit of \$1,477.00 per month;
- (vi) six (6) two-bedroom Affordable Units shall be restricted to families and persons whose income does not exceed sixty percent (60%) of the AMI, and have an initial rental limit of \$1,773.00 per month;
- (vii) two (2) three-bedroom Affordable Units shall be restricted to families and persons whose income does not exceed twenty-five percent (25%) of the AMI, and have an initial rental limit of \$853.00 per month;
- (viii) two (2) three-bedroom Affordable Units shall be restricted to families and persons whose income does not exceed fifty percent (50%) of the AMI, and have an initial rental limit of \$1,707.00 per month; and
- (ix) two (2) three-bedroom Affordable Units shall be restricted to families and persons whose income does not exceed sixty percent (60%) of the AMI, and have an initial rental limit of \$2,049.00 per month.

The threshold rents set forth above shall be calculated by adding base rent plus a utility allowance for any utilities paid for by the tenant of the applicable Affordable Unit. Any utility allowances for tenant paid utilities must be subtracted from these maximum rents. When DOH amends its rent limits, DOH shall make such information available to the Developer. The Developer shall not adjust rents except in accordance with the rental limits established by DOH under the Program or under the LIHTC Program, as applicable. The Developer shall provide each tenant a minimum of thirty (30) days prior written notice before implementing a rent increase.

Section 5 - Term of Restrictive Covenant

(a) This Restrictive Covenant, and the term of affordability specified herein (the "Affordability Period"), shall be effective immediately upon recordation of this Restrictive Covenant. With respect to any covenants concerning any Affordable Units to be constructed following the recordation of this Restrictive Covenant, the Declarants shall comply with all such covenants immediately upon the completion of the construction of such Affordable Units but in no event later than the Project Completion Date. This Restrictive Covenant shall terminate on the date that is forty (40) years after the Project Completion Date.

(b) Pursuant to the Act, as amended, this Restrictive Covenant shall remain in effect until the expiration of the Affordability Period described in section 5(a) above, without regard to the term of any mortgage (regardless of the seniority of such mortgage relative to the mortgage securing the Developer's obligation to repay the Loan) or other underlying security and without regard to any transfer of ownership of the Premises or any portion thereof or any interest therein.

Section 6 - Enforcement of Restrictions

(a) The Declarants shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the State, to inspect any books and records of the Declarants regarding the Premises, including, without limitation, with respect to the incomes of any tenant of any Affordable Unit situated within the Development or any other information the State shall deem reasonably necessary to substantiate the Declarants' continuing compliance with the covenants, restrictions, and other requirements set forth in this Restrictive Covenant.

(b) The Declarants shall submit any other information, documents, or certifications requested by the State which the State shall deem reasonably necessary to substantiate the Declarants' continuing compliance with the covenants, restrictions, and other requirements set forth in in this Restrictive Covenant.

(c) The Declarants hereby agree that the representations, warranties, and covenants set forth herein may be relied upon by the State. The Developer further agrees, upon request therefor from the State, to submit annual certifications and other reports to the State confirming that the Development is in compliance with the Act, all applicable regulations and the covenants and restrictions set forth in this Restrictive Covenant.

(d) The Declarants acknowledge that the primary purpose for requiring compliance by the Declarants with the covenants, restrictions and other requirements set forth in this Restrictive Covenant is to assure compliance of the Development and the Declarants with the Act, all applicable regulations, and the terms of the Assistance Agreement, and by reason thereof, the Declarants in consideration for receiving the Loan proceeds for the Development, hereby agree and consent that the State shall be entitled, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Declarants of each of their respective obligations under this Restrictive Covenant in a court of competent jurisdiction. The Declarants hereby further specifically acknowledge that the beneficiaries of the Declarants' obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(e) The Declarants agree to take any and all actions reasonably required by the State to substantiate the Declarants' compliance with the occupancy restrictions of the Act as now constituted or subsequently amended and all applicable regulations.

(f) In the event the Declarants fail to satisfy the requirements of this Restrictive Covenant or the Assistance Agreement and legal costs are incurred by the State, such legal costs, including attorney fees and court costs (including costs of appeal), are the responsibility of, and may be recovered from the Declarants (or either of them).

Section 7 - Recordkeeping

(a) At all times during the Affordability Period, the Declarants shall maintain and make available to the State any and all records, documents, and policies necessary which demonstrate compliance with this Restrictive Covenant, the Act and all applicable regulations.

(b) At all times during the Affordability Period, the Declarants shall maintain all records as required by this Restrictive Covenant, the Act and all applicable regulations and shall take any and all actions reasonably required by the State to substantiate the Declarants compliance therewith. This Restrictive Covenant may be enforced by the State or its designee in the event the Declarants fail to satisfy any of the requirements herein.

Section 8 - Miscellaneous

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

(b) **Notices.** All notices to be given pursuant to this Restrictive Covenant 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 below, or to such other place as a party may from time to time designate in writing. The State and the Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

If to State:

Department of Housing
505 Hudson Street
Hartford, Connecticut 06106-7106
Attn: Commissioner of Housing

With a copy to:

Assistant Attorney General - Housing
55 Elm Street
Hartford, Connecticut 06106

If to Owner:

Housing Authority of the Town of New Canaan
New Canaan, Connecticut 06840
Attn:

If to Developer:

Millport Phase II Limited Partnership
57 Millport Avenue
New Canaan, Connecticut 06840
Attn:

or to such other address or person as shall be designated from time to time by notice.

(c) **Amendment.** The Declarants agrees that, at the State's request, it will take all actions necessary to effect amendment of this Restrictive Covenant 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. The State, together with the Declarants, may execute and record any amendment or modification to this Restrictive Covenant provided such amendment or modification is in writing and executed by the Declarants and the State, or their respective successors or assigns. Any such amendment or modification shall be binding on any third-parties granted rights under this Restrictive Covenant.

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

No Further Text on This Page – Signature Page Follows

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:


BERNARD E. SIMPSON

DIMITRA TOURNAS

MILLPORT PHASE II LIMITED PARTNERSHIP
a Connecticut limited partnership


By: Millport Phase II GP Corporation
Its: General Partner

By: 
Scott Hobbs
Its Chairman
Duly Authorized

STATE OF CONNECTICUT)
COUNTY OF Fairfield) ss. Stanford

On this 25th day of May, 2017 before me, the undersigned officer, personally appeared **Scott Hobbs**, the duly authorized Chairman of Millport Phase II GP Corporation, a corporation organized and existing under the laws of the State of Connecticut, the General Partner of **MILLPORT PHASE II LIMITED PARTNERSHIP**, a Connecticut limited partnership, and that he as such Chairman of the General Partner of said limited partnership and being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited partnership by himself as such Chairman of the General Partner of said limited partnership.

In Witness Whereof, I hereunto set my hand.



Commissioner of the Superior Court
Notary Public
~~My Commission Expires:~~

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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:

Basil Simon
Basil E. Simon

Dmitry Tarnas
Dmitry Tarnas

HOUSING AUTHORITY OF THE TOWN OF NEW
CANAAN

By: Scott Hobbs
Scott Hobbs
Its Chairman
Duly Authorized

STATE OF CONNECTICUT)
COUNTY OF Fairfield) ss: Stanford

On this the 25th day of May, 2017, before me, the undersigned officer, personally appeared **Scott Hobbs**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged himself to be the **Chairman** of **HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN**, a housing authority of the Town of New Canaan and that he, as such and being authorized so to do, executed the foregoing instrument as the free act and deed of the housing authority for the purposes contained therein by signing the name of the housing authority by himself as such **Chairman**.

In witness whereof, I hereunto set my hand.

[Signature]

Commissioner of the Superior Court
Notary Public
~~My Commission Expires:~~

Schedule A

Legal Description of Development

All that certain piece, parcel or tract of land, being a portion of that new consolidated parcel, comprised of portions of former Assessor Lots 630, 644 and 644A, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, being a portion of Parcel 630, 35 Millport Avenue and portion of Parcel 644 and 644A 57 Millport Avenue, shown as **PHASE II (SHADED AREA) AREA=64,982+/- SQ. FT. OR 1.4918+/- AC. (LEASEHOLD PARCEL)** and designated within shaded area on a map entitled "**ALTA/NSPS LAND TITLE SURVEY (PROPERTY SURVEY) 33, 35, 41, 57 & 65 MILLPORT AVENUE DEPICTING LEASE PARCEL II PROPERTY OF HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN NEW CANAAN, CONNECTICUT**" Sheets 1 and 2 of 2, dated May 19, 2017, Scale 1"=30', made by William W. Seymour & Associates, P.C., which map is or will be filed in the Office of the Town Clerk of New Canaan, more particularly bounded and described as follows:

Beginning at a point on the division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and land now or formerly of The Housing Authority of The Town of New Canaan, said point lying north 57° 04' 20" west a distance of 92.74 feet and north 50° 38' 00" west a distance of 5.19 feet and north 57° 58' 00" west a distance of 24.93 feet and south 62° 37' 30" west a distance of 5.07 feet and north 45° 58' 50" west a distance of 70.39 feet from the intersection of said division line with the northwesterly line of Millport Avenue and further being the intersection of the easterly line of the herein described parcel (Phase II) with the aforesaid division line;

Thence, running generally southwesterly and in a clockwise direction south 44° 01' 10" west a distance of 100.00 feet and south 45° 58' 50" east a distance of 7.29 feet and south 44° 32' 10" west a distance of 52.74 feet and south 58° 41' 20" west a distance of 115.23 feet to a point;

Thence, running generally northwesterly and continuing in a clockwise direction north 42° 37' 20" west a distance of 137.25 feet to a point on the division line between the herein described parcel (Phase II) and land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue);

Thence, running generally northeasterly and northwesterly and continuing in a clockwise direction along said land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue) north 46° 03' 30" east a distance of 114.08 feet and north 46° 33' 30" west a distance of 127.44 feet to a point and land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street);

Thence, running generally northeasterly and continuing in a clockwise direction along said land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street) and land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue), each in part, north 44° 16' 00" east a distance of 66.35 feet and north 42° 59' 00" east a distance of 115.70 feet to a point, said point being the northwesterly corner of the herein described parcel (Phase II);

Thence, running generally southeasterly and continuing in a clockwise direction along said land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue) south 47° 24' 00" east a distance of 86.85 feet and south 49° 20' 00" east a distance of 55.50 feet and south 56° 38' 00" east a distance of 13.25 feet to the aforesaid division line between land now or formerly Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II);

Thence, running generally southwesterly and southeasterly and continuing in a clockwise direction along said division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II) south $36^{\circ} 28' 00''$ west a distance of 46.84 feet and south $45^{\circ} 58' 50''$ east a distance of 123.15 feet to the point of beginning.

the "Leasehold Parcel",

Together with the rights, provisions, terms and conditions set forth in an Easement Agreement by and among the Housing Authority of the Town of New Canaan, NCHA Mill Apartments Limited Partnership, Millport Phase I Limited Partnership and Millport Phase II Limited Partnership dated as of May 26, 2017, recorded in the New Canaan Land Records.

Such easements and rights of way are shown and depicted on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING LEASE PARCELS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7648, as:

"Easement Area Y", more particularly bounded and described as follows:

Beginning at a point on the former division line between properties known as 41 & 57 Millport Avenue, said point being further described as lying north $09^{\circ} 47' 00''$ west a distance of 126.20 feet from the intersection of said former division line between said properties known as 41 & 57 Millport Avenue with the northwesterly line of Millport Avenue;

Thence, running alternately southwesterly and northwesterly south $78^{\circ} 16' 50''$ west a distance of 44.25 feet and north $38^{\circ} 03' 00''$ west a distance of 83.95 feet and south $50^{\circ} 32' 40''$ west a distance of 14.66 feet and 8.41 feet along a tangent arc curving to the right having a radius of 5.00 feet and subtending a delta or central angle of $96^{\circ} 19' 30''$ and 51.51 feet along an arc (compound and tangent) curving to the right having a radius of 107.00 feet and subtending a delta or central angle of $27^{\circ} 34' 57''$ and south $84^{\circ} 15' 50''$ west a distance of 25.00 feet and north $43^{\circ} 56' 30''$ west a distance of 29.54 feet to a point on the division line between land of Housing Authority of the Town of New Canaan and land now or formerly of Gray Stone Condominiums;

Thence, running northerly along said division line between land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue and land now or formerly of Gray Stone Condominiums north $46^{\circ} 03' 30''$ east a distance of 27.34 feet to a point;

Thence, running southeasterly and northeasterly through said land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue south $42^{\circ} 37' 20''$ east a distance of 137.25 feet and north $58^{\circ} 41' 20''$ east a distance of 115.23 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southwesterly along said former division line between properties known as 41 & 57 Millport Avenue south $44^{\circ} 32' 10''$ west a distance of 62.12 feet to a point;

Thence, running southeasterly and southwesterly through said land of Housing Authority of the Town of New Canaan and known as 41 Millport Avenue south $29^{\circ} 09' 35''$ east a distance

of 23.65 feet and south 60°50'25" west a distance of 8.32 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southeasterly along said former division line between properties known as 41 & 57 Millport Avenue south $09^{\circ}47'00''$ east a distance of 25.08 feet to the point of beginning.

And "Driveway Easement Parcel" shown and depicted as "Proposed Driveway Easement for Phase II" on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING DRIVEWAY EASEMENTS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7649, bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point lying north $78^{\circ}17'30''$ east 1.87 feet of the intersection of the former division line between properties known as 65 & 57 Millport Avenue with said northwesterly line of Millport Avenue;

Thence, running northerly and northwesterly a distance of 10.52 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $20^{\circ}05'35''$ and having a chord bearing of north $01^{\circ}39'42''$ west and north $11^{\circ}42'30''$ west a distance of 69.75 feet and north $38^{\circ}03'00''$ west a distance of 103.11 feet and 80.59 feet along an arc curving to the right having a radius of 131.00 feet and subtending a central or delta angle of $35^{\circ}14'45''$ to a point;

Thence, running northeasterly along the northerly terminus of the herein described easement north $84^{\circ}15'50''$ east a distance of 24.00 feet to a point;

Thence, running southeasterly and southerly a distance of 54.96 feet along an arc curving to the left having a radius of 107.00 feet and subtending a central or delta angle of $29^{\circ}25'40''$ and south $38^{\circ}03'00''$ east a distance of 120.81 feet and south $11^{\circ}42'30''$ east a distance of 67.12 feet and 20.00 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $38^{\circ}11'39''$ and having a chord bearing of south $30^{\circ}48'19''$ east to the aforesaid northwesterly line of Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south $78^{\circ}17'30''$ west a distance of 32.25 feet to the point of beginning.

(hereinafter, the "Easement Parcels").

Together with the rights, provisions, terms and conditions set forth in a Ground Lease from the Housing Authority of the Town of New Canaan to Millport Phase II Limited Partnership, a Notice of which is dated as of May 26, 2017, and recorded, or to be recorded, in the New Canaan Land Records.

Received for record on 6-1-17 at 1:40 pm
and recorded by Claudia A. Weber
TOWN CLERK

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After recording, return to:
Kirsten M. Vargo
Wiggin and Dana LLP
265 Church Street
New Haven CT 06510-1832


Doc ID: 002618230017 Type: LAN
Book 973 Page 951 - 967
File# 3296

OPEN-END LEASEHOLD MORTGAGE DEED
Millport Phase II Limited Partnership

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

KNOW YE, THAT **MILLPORT PHASE II LIMITED PARTNERSHIP**, a Connecticut limited partnership, with a principal place of business at 57 Millport Avenue, New Canaan, Connecticut 06840 ("Grantor"), for One Dollar (\$1.00) and other valuable consideration received to their full satisfaction of the **HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN**, a municipal housing authority duly organized and existing pursuant to the laws of the State of Connecticut, having an address at 57 Millport Avenue, New Canaan, Connecticut 06840 ("Grantee"), does give, grant, bargain sell AND confirm unto the said Grantee, its successors AND assigns forever, with MORTGAGE COVENANTS:

All of its leasehold interests as established under that certain ground lease, more particularly described in **Schedule A** (hereinafter called the "Lease"), in and to all those certain tracts or parcels of land and all improvements now or hereafter thereon situated, lying and being in the Town of New Canaan, the County of Fairfield and the State of Connecticut, and also more particularly described in **Schedule A** attached hereto and made a part hereof (hereinafter called the "Premises").

TOGETHER with all right, title and interest of the Grantor in and to any and all sidewalks, plazas and alleys, and all strips and gores of land adjoining or adjacent to said Premises, and all and singular the tenements, hereditaments, privileges, easements and appurtenances belonging or in any wise appertaining to said Premises, and all the estate, right, title, interest, claim and demand whatsoever, in law or in equity, which the Grantor now has or may hereafter acquire in and to such property;

TOGETHER with all right, title and interest of the Grantor now owned or hereafter acquired, in and to any and all buildings, structures and improvements now or at any time hereafter erected, constructed or situated upon said Premises or any part thereof and all apparatus, fixtures, furniture, furnishings and equipment now or hereafter attached to or used or procured for use in connection with the operation or maintenance of any such building, structure or other improvement, including, but without limiting the generality of the foregoing, all engines, furnaces, boilers, pumps, heaters, tanks, antennae, motors, generators, switchboards, electrical equipment, heating, plumbing, lifting and ventilating apparatus, air-cooling and air-conditioning apparatus, gas and electric fixtures, refrigerating equipment, stoves and clothes washing machines, elevators, escalators, fittings and machinery, awnings, storm and screen windows and doors, window shades and blinds, together with any and all substitutions therefor, replacements thereof and additions thereto, all of which are hereby

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declared and shall be deemed to be fixtures and an accession to the freehold and a part of the realty and to be subject to the lien of this mortgage (this "Mortgage");

TOGETHER with all rights, title and interest, if any, of the Grantor, now owned or hereafter acquired in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining said land, to the center line thereof;

TOGETHER with all rights of the Grantor to modify, amend or terminate any lease now or hereafter relating to the Premises;

All of the foregoing Premises, leasehold estate and property is hereinafter collectively called the "Mortgaged Premises".

TO HAVE AND TO HOLD the above granted and bargained Mortgaged Premises with all the privileges and appurtenances thereof, unto the Grantee, its successors and assigns forever, to its and their proper use and behoof.

AND ALSO the Grantor does for itself, its successors and assigns, covenant with the Grantee, its successors and assigns, that at and until the ensealing of these presents, it has good right to bargain and sell said Mortgaged Premises in manner and form as above written, and that the same is free from all encumbrances whatsoever, except as set forth in said Schedule A.

AND FURTHERMORE, the Grantor does hereby by these presents bind itself and its successors and assigns forever to WARRANT AND DEFEND the above granted and bargained Mortgaged Premises to the Grantee, its successors and assigns, against all claims and demands whatsoever, except as set forth in said Schedule A and Schedule A-1.

THE CONDITION OF THIS DEED IS SUCH THAT,

WHEREAS, the Grantor is justly indebted to the Grantee in the maximum principal amount of up to **Nine Hundred Thousand and No/100 Dollars (\$900,000.00)** (the "Loan"), as evidenced by the Grantor's Promissory Note of even date herewith (hereinafter the "Note"), which Note is attached hereto as Schedule B; and

WHEREAS the Grantee is desirous of securing the prompt payment of the Note together with interest thereon, if any, and any additional indebtedness accruing to it on account of any future payments, advances or expenditures made by it pursuant to the terms hereof (all hereinafter sometimes collectively referred to as the "Indebtedness secured hereby");

NOW, THEREFORE, said Grantor, in order to protect more fully the security of the Grantee hereunder, does hereby covenant and agree with the Grantee that:

1. Grantor shall pay promptly when due, all principal, interest, if any, and all other sums to become due under the terms of the Note.

2. Grantor shall keep the Mortgaged Premises in good condition and repair, reasonable wear and tear excepted; shall not permit nor perform any act which would in any way impair the value of the same; shall not remove any fixture nor remove or demolish any building or improvement located or to be constructed on the above-described Premises without the written consent of the Grantee, which shall not be unreasonably withheld; shall neither commit nor permit waste of the Mortgaged Premises; and shall not, without the Grantee's prior written consent (which consent shall not be unreasonably withheld), commence construction of any buildings or improvements on the Mortgaged Premises the effect of which would be to reduce the value of the Mortgaged Premises; provided, however, that Grantor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such equipment as from time to time may become worn out or obsolete, provided that simultaneously with or prior to such removal any such equipment shall be replaced with other equipment of a value at least equal to that of the replaced equipment and free from any title retention or security agreement or other encumbrance, and by such removal and replacement the Grantor shall be deemed to have subjected such other equipment to the lien of this Mortgage.

3. Grantor shall pay all debts, claims or other charges that may become liens against the Mortgaged Premises or any part thereof for repairs or improvements that may have been, or may hereafter be, made on the Mortgaged Premises and shall not permit any lien or encumbrance of any kind which might become superior or adverse to the title of Grantee or the lien of this Mortgage to accrue or remain on the Mortgaged Premises or any part thereof, except for liens or encumbrances set forth on Schedule A-1. Grantor shall give prompt notice to the Grantee of the imposition or filing of any liens or encumbrances against the Mortgaged Premises.

4. Grantor shall provide, maintain, and deliver to the Grantee a fire and extended coverage insurance policy and such other insurance as the Grantee may from time to time require, including, but not limited to, adequate liability insurance naming the Grantee as an insured and loss of rent insurance in an amount not less than the annual aggregate rental value of the Mortgaged Premises, all such policies to be issued by companies and in form and amounts satisfactory to the Grantee, upon the buildings and improvements now or hereafter situated on the Mortgaged Premises, and shall deliver to the Grantee copies of all insurance policies of any kind or in any amount now or hereafter issued upon the Mortgaged Premises, naming the Grantee as a mortgagee. Grantor shall give immediate notice in writing to the Grantee of any loss or damage to the Mortgaged Premises caused by any casualty. The Grantee is authorized to settle and compromise in good faith any and all claims under any and all policies and to demand, and except as hereinafter provided, to receive and receipt for all moneys becoming payable thereunder and to assign any or all policies to any endorsee of the Note or to any subsequent owner of the Mortgaged Premises in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Premises. In the event of loss under any policy of insurance herein referred to, and if Grantor shall not then be in default hereunder, the proceeds of such policy shall be paid by the insurer to the Grantor and the Grantee, and any checks therefor shall be endorsed by Grantor to the Grantee, to be held as additional collateral hereunder. If Grantor shall fully reconstruct, repair or restore the Mortgaged Premises to as good condition as the same were in immediately prior to the damage or destruction thereof resulting in such loss, the Grantee shall thereafter apply such proceeds, after deducting all costs of collection, toward such reconstruction, repair or restoration of the Mortgaged Premises. Provided that Grantee is assured in its reasonable discretion that: (i) the amount of any insurance proceeds is sufficient to restore the Mortgaged

Premises to its prior condition, and (ii) no leases of the Mortgaged Premises have been or will be terminated as a result of any such damage or destruction to the Mortgaged Premises, Grantee will make advances of the proceeds to Grantor as the restoration progresses to pay for the cost of the restoration. All work shall be completed in accordance with plans and specifications and a schedule for performing the work approved by Grantee in advance, and in accordance with all applicable laws and regulations. Provided, however, that if Grantor shall then be in default hereunder, or if Grantor shall not elect to so reconstruct, repair or restore the Mortgaged Premises, the Grantee may apply such proceeds to the Indebtedness secured hereby, whether or not then due or payable, and in such manner as the Grantee in its sole discretion may see fit, and shall remit the excess, if any, to Grantor. The rights of the Grantee under the provisions of this Section 4 are subject to any such rights of prior mortgagees of record.

5. The rents, income and profits of all and every part of the Mortgaged Premises are hereby specifically pledged to the payment of the Indebtedness secured hereby. If any Event of Default shall occur, the Grantee shall have the right forthwith and without notice to enter into and upon the Mortgaged Premises, take possession thereof, and collect said rents, income and profits with or without the appointment of a receiver, regardless of the value of the Mortgaged Premises. All such net income after payment of the reasonable costs of collection thereof, and management and attorneys' fees, shall be applied toward the payment of any advances made by the Grantee or in reduction of the Indebtedness secured hereby, in such manner or proportion as the Grantee in its sole discretion may elect. The rights of the Grantee under the provisions of this Section 5 are subject to any such rights of prior mortgagees of record.

6. If Grantor shall fail to insure the Mortgaged Premises, pay any taxes or assessments, pay debts, claims or other charges for repairs and improvements, or to keep the Mortgaged Premises in good condition and repair, all as provided herein, the Grantee may, at its option, but shall not be obligated to, procure such insurance, pay such taxes and assessments with any penalty or interest thereon, if any, redeem the property from any tax sale, procure such receipts, or enter upon the Mortgaged Premises and make such repairs as it may deem necessary, and Grantor shall immediately pay to the Grantee all sums which the Grantee may have so paid, together with interest thereon at the rate provided in the Note, if any, and for payment thereof, this Mortgage shall stand as security in like manner and effect as for the payment of the Indebtedness referred to above. The failure of the Grantee to procure such insurance, to pay such taxes and assessments, to redeem the property from any tax sale, or to make repairs shall in no way render Grantee liable to Grantor nor obligate it to make any such payment on Grantor's behalf. If Grantee shall elect to advance insurance premiums, taxes or assessments, or redeem from tax sale, the receipt of the insurance company, or the proper tax official, shall be conclusive evidence of the amount, validity and the fact of payment thereof. No payment by the Grantee under this paragraph shall constitute a waiver of any Event of Default on account of nonpayment by Grantor. The rights of the Grantee under the provisions of this Section 6 are subject to any such rights of prior mortgagees of record.

7. The Grantor shall immediately pay to the Grantee all sums, including costs, expenses and reasonable agent's or attorney's fees, which the Grantee may expend or become obligated to pay in any proceedings, legal or otherwise, to prevent the commission of waste, to establish or sustain the lien of this Mortgage or its priority, or to defend against liens, claims, rights, estates, easements, or

restrictions (other than those set forth on Schedule A-1) asserting priority to this Mortgage in payment, settlement, discharge or release of any asserted lien, claim, right, easement or restriction made upon advice of counsel that the same is superior or adverse to the lien of this Mortgage; for title insurance, abstract of title or extension thereof; or in connection with any suit to enforce or foreclose this Mortgage; or to recover any sums hereby secured. All such sums so paid by the Grantee shall bear interest at the rate of provided in the Note, if any, until paid to the Grantee by the Grantor, and for payment of such sums and interest, if any, this Mortgage shall stand as security.

8. Without the prior written consent of the Grantee which consent shall not be unreasonably withheld, the Grantor shall not suffer or permit any termination, cancellation, amendment, modification, substitution or waiver of any right of the Grantor created under or arising out of the Lease or any rights appurtenant to the Premises that may be created hereafter in addition to or supplementing the aforesaid. Grantee may enter upon the Mortgaged Premises from time to time through its employees and agents to inspect the Mortgaged Premises.

9. If any one or more of the following "Events of Default" shall occur and be continuing:

(i) Default in the payment of the principal of the Note, or in the payment of interest on the Note, if any, or in the payment of any other indebtedness owing by the Grantor to the Grantee under the Note, now existing or hereinafter incurred, for more than ten (10) days from the date when the same shall be due; or

(ii) Failure by the Grantor to observe or perform any covenant contained in this Mortgage or the Note for a period of thirty (30) days after written notice to Grantor and the limited partners of Grantor; or

(iii) Any representation or warranty made by the Grantor herein, or any statement, certificate or other data furnished in connection herewith, proves to be incorrect in any material respect when made; or

(iv) Grantor or any endorser, guarantor, maker or surety of the Indebtedness shall (1) apply for or consent to the appointment of a receiver, custodian, trustee or liquidator of Grantor or any such endorser, guarantor, maker or surety, of all or a substantial part of its assets; (2) file or have filed against it any petition or answer seeking as to itself the liquidation, arrangement, reorganization, or the like under any insolvency or bankruptcy law; or (3) take any action for the purpose of effecting any of the foregoing; or

(v) An order, judgment or decree shall be entered, without the application, approval or consent of Grantor or any endorser, guarantor, maker or surety of the Indebtedness, by any court of competent jurisdiction, approving a petition seeking the liquidation, arrangement or reorganization of any of them or appointing a receiver, trustee or liquidator of any of them or of all or a substantial part of any of their assets, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days; or

(vi) except for the mortgages set forth in Section 13 and the purchase option set forth

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in Section 14 of this Mortgage, Grantor shall convey to any other party a security interest in the Mortgaged Premises, or any part thereof, without the prior written consent of the Grantee, or in the event the Grantor shall sell, transfer or otherwise dispose of the Mortgaged Premises, or any part thereof, or if the legal or equitable title shall become vested in any other person, without the prior written consent of the Grantee; or

(vii) Grantor shall without the prior written consent of Grantee merge into or consolidate with or into any corporation or entity or acquire all or substantially all of the assets of another corporation;

then, upon notice in writing to the Grantor and the limited partners of the Grantor of the occurrence of one or more of the foregoing Events of Default, then, and in any such event, the Grantor and the limited partner of the Grantor shall have ninety (90) days within which to cure such Event of Default, provided, however, that if such Event of Default has not been cured upon the expiration of such ninety (90) day period, the entire Indebtedness secured hereby and all other amounts secured hereby shall, at the option of the Grantee, become immediately due and payable without any demand or notice and the Grantee shall have the immediate right to foreclose this Mortgage.

10. No delay or failure of the Grantee to exercise any right, power, privilege or option herein given to or conferred upon the Grantee shall constitute a waiver of or estop Grantee from afterwards exercising the same or any other right, power, privilege or option at any time, and the payment or contraction to pay by the Grantee of anything the Grantor has herein agreed to pay shall not constitute a waiver of any Event of Default of the Grantor in failing to make any such payment and shall not estop the Grantee from foreclosing this Mortgage on account of such failure of the Grantor.

All rights, powers, privileges, options and remedies herein given to or conferred upon the Grantee shall be cumulative and no one or more of them shall be exclusive of the other or others, or of any right or remedy now or hereafter given or allowed by law.

11. Notwithstanding any taking of all or any part of the Mortgaged Premises by eminent domain by any public or quasi-public authority or corporation or any other injury to or decrease in value of the Mortgaged Premises resulting from any alteration of the grade of any highway or street or any other action by any such public or quasi-public authority or corporation, the Grantor shall be obligated under the Note as provided therein. Any award in payment resulting therefrom, shall be paid to the Grantee to the extent of the Indebtedness secured hereby, and the Grantee may hold such proceeds as additional collateral hereunder. To the extent feasible, the Grantor shall alter, restore or rebuild any part of the Mortgaged Premises which may be altered, damaged or destroyed as a result of any such taking or alteration of grade or other such action by any such public or quasi-public authority or corporation, and if the Grantor is not then in default hereunder, such amount of such award or payment as may be necessary to reimburse the Grantor, without interest, for the cost of any such alteration, restoration or rebuilding by the Grantor may, at the reasonable option of the Grantee, be paid by the Grantee to the Grantor, otherwise, the same may be retained by the Grantee and applied, in the discretion of the Grantee, to the Indebtedness secured hereby. Any excess shall be remitted to the Grantor. If prior to the receipt by the Grantee of such award or payment the Mortgaged Premises shall have been sold on foreclosure of this Mortgage, the Grantee shall have the right to receive said award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon,

whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, together with the reasonable counsel fees, costs and disbursements incurred by the Grantee in connection with the collection of such award or payment. The rights of Grantee under the provisions of this Section 11 are subject to any such rights of prior mortgagees of record.

12. The Grantee shall not be obligated to release, or be prevented from foreclosing or enforcing this Mortgage upon all or any part of the Mortgaged Premises, unless and until all items hereby secured shall have been paid in full; and shall not be required to accept any part or parts of said Mortgaged Premises as distinguished from the entire whole thereof as payment of or upon the Indebtedness secured hereby to the extent of the value of any such part or parts; and shall not be compelled to accept or allow any apportionment of the said debt to or among any separate parts of the said Mortgaged Premises.

13. Notwithstanding anything contained herein to the contrary, this Mortgage and the rights of the Grantee hereunder shall be and are hereby expressly made subject to and subordinate at all times to any use agreement, restrictive covenants, mortgages on the Mortgaged Premises and any assignments of leases and rents and UCC-1 financing statements affecting the Mortgaged Premises from the Grantor in favor of (i) the Department of Housing and Urban Development ("HUD") pursuant to that certain Rental Assistance Demonstration (RAD) Conversion Commitment, executed by HUD on March 17, 2017, including, without limitation, a Rental Assistance Demonstration Use Agreement, together with a Rider to Use Agreement Relating to Foreclosure; (ii) the Connecticut Housing Finance Authority, including that certain Extended Low-Income Housing Commitment, (iii) Bankwell Bank ("Bankwell"), to secure two (2) loans from Bankwell to the Grantor in the respective maximum principal amounts of \$3,050,000 and \$3,900,000; (iv) the State of Connecticut Department of Housing ("DOH"), to secure one (1) loan from DOH to the Grantor in the maximum principal amount of \$4,117,438, as well as any other project financing now or hereafter existing, and to all amendments, modifications, renewals, extensions, consolidations and replacements of the foregoing, and to all advances made or hereafter to be made upon the security thereof. Such subordination(s) shall be automatic and shall require no further action by the Grantor or the Grantee for its or their effectiveness.

14. Notwithstanding anything contained herein to the contrary, this Mortgage, the Mortgaged Premises and the rights of the Grantee hereunder shall be and are hereby expressly made subject to the Affordability Plan, dated January 27, 2015, and Section 8-30g of the Connecticut General Statutes, as amended. In furtherance of the foregoing, the forty (40) new units of housing and associated amenities located on the Premises shall be allocated as follows:

- (a) Eleven (11) units shall be affordable to households earning at or below sixty percent (60%) of the State Median Income; and
- (b) Twenty-Nine (29) units shall be affordable to households earning at or below eighty percent (80%) of the State Median Income.

15. The execution and delivery of a purchase option and right of first refusal agreement described in that certain Amended and Restated Limited Partnership Agreement of the Grantor, dated

as of the date hereof shall not constitute a default under this Mortgage of the Note or accelerate the maturity of the Loan. Any requisite consent of Grantee to (a) the exercise of said purchase option and right of first refusal agreement by the project sponsor identified therein and to (b) the assumption without penalty of Loan obligations by the project sponsor and the release of Grantor from such obligations, shall not be unreasonably withheld. Subject to any such consent requirement, the exercise of rights under such agreement shall not constitute a default or accelerate maturity of the Loan.

16. All provisions and promises in the Note secured hereby and any security agreement given in connection herewith, shall be and hereby are made and adopted as covenants of the Grantor and part of this Mortgage.

17. This mortgage shall constitute a security agreement and financing statement as provided in Section 42a-9-402(6) of the Connecticut General Statutes. Upon and after any default, the Grantee shall have all of the remedies of a secured party under the Uniform Commercial Code.

18. This Mortgage shall not be amended, modified or changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

19. All the covenants, conditions and agreements hereof shall bind the successors and assigns of the Grantor and shall inure to the benefit of and be available to the successors and assigns of the Grantee.

20. This is an "OPEN-END MORTGAGE" made pursuant to and subject to all of the terms and provisions of Section 49-2(c) of the Connecticut General Statutes and the holder hereof shall have all of the rights, powers and protection to which the holder of an OPEN-END MORTGAGE is entitled under Connecticut law. Upon request the Grantee may, in its discretion, make future advances to the Grantor, notwithstanding any repayments or prepayments of the outstanding principal balance of the Note. Any such future advance and the interest payable thereon shall be secured by this mortgage, equally with, and with the same priority over other claims as the original debt secured hereby when evidenced by promissory notes stating that the notes are secured hereby. At no time shall the principal amount of the debt secured by this mortgage exceed the original loan authorized, nor shall the maturity of any future advance secured hereby extend beyond the maturity of the original mortgage debt as set forth in the Note.

NOW THEREFORE, if all the agreements herein contained shall be fully and faithfully performed and said Note shall be well and truly paid in all respects according to its tenor, then this deed shall be void, otherwise to remain in full force and effect.

[SIGNATURE PAGE FOLLOWS]

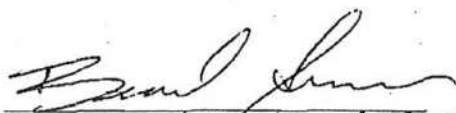
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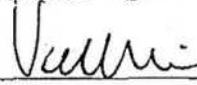
IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly executed and delivered as of the 26th day of May, 2017.

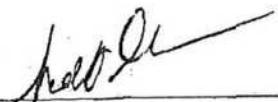
Signed, sealed and delivered
in the presence of:

MILLPORT PHASE II
LIMITED PARTNERSHIP

By: Millport Phase II GP Corporation
Its General Partner


Print Name: BERNARD A SIMPSON


Print Name: Valerie M. Suiz

By: 
Name: Scott Hobbs
Title: Chairman
Hereunto Duly Authorized


STATE OF CONNECTICUT)

: ss. Stamford

May 25, 2017

COUNTY OF FAIRFIELD)

Personally appeared Scott Hobbs, known to me to be the Chairman of Millport Phase II GP Corporation, a Connecticut corporation, the general partner of Millport Phase II Limited Partnership, a Connecticut limited partnership, and that as such signer and sealer of the foregoing instrument acknowledged the execution of the same to be his/her free act and deed as such officer of such corporation, and the free act and deed of said limited liability company and limited partnership, before me.


Print Name: _____
Notary Public
My Commission Expires: _____
Commissioner of the Superior Court

Signature page to Open-End Mortgage Deed

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SCHEDULE A
LEGAL DESCRIPTION

All that certain piece, parcel or tract of land, being a portion of that new consolidated parcel, comprised of portions of former Assessor Lots 630, 644 and 644A, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, being a portion of Parcel 630, 35 Millport Avenue and portion of Parcel 644 and 644A 57 Millport Avenue, shown as **PHASE II (SHADED AREA) AREA=64,982+/- SQ. FT. OR 1.4918+/- AC. (LEASEHOLD PARCEL)** and designated within shaded area on a map entitled **"ALTA/NSPS LAND TITLE SURVEY (PROPERTY SURVEY) 33, 35, 41, 57 & 65 MILLPORT AVENUE DEPICTING LEASE PARCEL II PROPERTY OF HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN NEW CANAAN, CONNECTICUT"** Sheets 1 and 2 of 2, dated May 19, 2017, Scale 1"=30', made by William W. Seymour & Associates, P.C., which map is or will be filed in the Office of the Town Clerk of New Canaan, more particularly bounded and described as follows:

Beginning at a point on the division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and land now or formerly of The Housing Authority of The Town of New Canaan, said point lying north 57° 04' 20" west a distance of 92.74 feet and north 50° 38' 00" west a distance of 5.19 feet and north 57° 58' 00" west a distance of 24.93 feet and south 62° 37' 30" west a distance of 5.07 feet and north 45° 58' 50" west a distance of 70.39 feet from the intersection of said division line with the northwesterly line of Millport Avenue and further being the intersection of the easterly line of the herein described parcel (Phase II) with the aforesaid division line;

Thence, running generally southwesterly and in a clockwise direction south 44° 01' 10" west a distance of 100.00 feet and south 45° 58' 50" east a distance of 7.29 feet and south 44° 32' 10" west a distance of 52.74 feet and south 58° 41' 20" west a distance of 115.23 feet to a point;

Thence, running generally northwesterly and continuing in a clockwise direction north 42° 37' 20" west a distance of 137.25 feet to a point on the division line between the herein described parcel (Phase II) and land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue);

Thence, running generally northeasterly and northwesterly and continuing in a clockwise direction along said land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue) north 46° 03' 30" east a distance of 114.08 feet and north 46° 33' 30" west a distance of 127.44 feet to a point and land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street);

Thence, running generally northeasterly and continuing in a clockwise direction along said land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street) and land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue), each in part, north 44° 16' 00" east a distance of 66.35 feet and north 42° 59' 00" east a distance of 115.70 feet to a point, said point being the northwesterly corner of the herein described parcel (Phase II);

Thence, running generally southeasterly and continuing in a clockwise direction along said land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue) south 47° 24' 00" east a distance of 86.85 feet and south 49° 20' 00" east a distance of 55.50 feet and south 56° 38' 00" east a distance of 13.25 feet to the aforesaid division line between land now or formerly Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II);

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Thence, running generally southwesterly and southeasterly and continuing in a clockwise direction along said division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II) south $36^{\circ} 28' 00''$ west a distance of 46.84 feet and south $45^{\circ} 58' 50''$ east a distance of 123.15 feet to the point of beginning.

the "Leasehold Parcel",

Together with the rights, provisions, terms and conditions set forth in an **Easement Agreement** by and among the Housing Authority of the Town of New Canaan, NCHA Mill Apartments Limited Partnership, Millport Phase I Limited Partnership and Millport Phase II Limited Partnership, and consented to by the State of Connecticut Department of Housing, People's United Bank, National Association, and Bankwell Bank, dated as of May 26, 2017, recorded in the New Canaan Land Records.

Such easements and rights of way are shown and depicted on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING LEASE PARCELS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7648, as:

"Easement Area Y", more particularly bounded and described as follows:

Beginning at a point on the former division line between properties known as 41 & 57 Millport Avenue, said point being further described as lying north $09^{\circ} 47' 00''$ west a distance of 126.20 feet from the intersection of said former division line between said properties known as 41 & 57 Millport Avenue with the northwesterly line of Millport Avenue;

Thence, running alternately southwesterly and northwesterly south $78^{\circ} 16' 50''$ west a distance of 44.25 feet and north $38^{\circ} 03' 00''$ west a distance of 83.95 feet and south $50^{\circ} 32' 40''$ west a distance of 14.66 feet and 8.41 feet along a tangent arc curving to the right having a radius of 5.00 feet and subtending a delta or central angle of $96^{\circ} 19' 30''$ and 51.51 feet along an arc (compound and tangent) curving to the right having a radius of 107.00 feet and subtending a delta or central angle of $27^{\circ} 34' 57''$ and south $84^{\circ} 15' 50''$ west a distance of 25.00 feet and north $43^{\circ} 56' 30''$ west a distance of 29.54 feet to a point on the division line between land of Housing Authority of the Town of New Canaan and land now or formerly of Gray Stone Condominiums;

Thence, running northerly along said division line between land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue and land now or formerly of Gray Stone Condominiums north $46^{\circ} 03' 30''$ east a distance of 27.34 feet to a point;

Thence, running southeasterly and northeasterly through said land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue south $42^{\circ} 37' 20''$ east a distance of 137.25 feet and north $58^{\circ} 41' 20''$ east a distance of 115.23 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southwesterly along said former division line between properties known as 41 & 57 Millport Avenue south $44^{\circ} 32' 10''$ west a distance of 62.12 feet to a point;

Thence, running southeasterly and southwesterly through said land of Housing Authority of the Town of New Canaan and known as 41 Millport Avenue south $29^{\circ}09'35''$ east a distance of 23.65 feet and south $60^{\circ}50'25''$ west a distance of 8.32 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southeasterly along said former division line between properties known as 41 & 57 Millport Avenue south $09^{\circ}47'00''$ east a distance of 25.08 feet to the point of beginning.

And "**Driveway Easement Parcel**" shown and depicted as "Proposed Driveway Easement for Phase II" on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING DRIVEWAY EASEMENTS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7649, bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point lying north $78^{\circ}17'30''$ east 1.87 feet of the intersection of the former division line between properties known as 65 & 57 Millport Avenue with said northwesterly line of Millport Avenue;

Thence, running northerly and northwesterly a distance of 10.52 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $20^{\circ}05'35''$ and having a chord bearing of north $01^{\circ}39'42''$ west and north $11^{\circ}42'30''$ west a distance of 69.75 feet and north $38^{\circ}03'00''$ west a distance of 103.11 feet and 80.59 feet along an arc curving to the right having a radius of 131.00 feet and subtending a central or delta angle of $35^{\circ}14'45''$ to a point;

Thence, running northeasterly along the northerly terminus of the herein described easement north $84^{\circ}15'50''$ east a distance of 24.00 feet to a point;

Thence, running southeasterly and southerly a distance of 54.96 feet along an arc curving to the left having a radius of 107.00 feet and subtending a central or delta angle of $29^{\circ}25'40''$ and south $38^{\circ}03'00''$ east a distance of 120.81 feet and south $11^{\circ}42'30''$ east a distance of 67.12 feet and 20.00 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $38^{\circ}11'39''$ and having a chord bearing of south $30^{\circ}48'19''$ east to the aforesaid northwesterly line of Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south $78^{\circ}17'30''$ west a distance of 32.25 feet to the point of beginning.

(hereinafter, the "Easement Parcels").

Together with the rights, provisions, terms and conditions set forth in a Ground Lease from the Housing Authority of the Town of New Canaan to Millport Phase II Limited Partnership, a Notice of which is dated as of May 26, 2017, and recorded, or to be recorded, in the New Canaan Land Records.

All of the above hereinafter referred to as the "Land".

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SCHEDULE A-1
Encumbrances

AS TO MILLPORT PHASE II LIMITED PARTNERSHIP LEASEHOLD PARCEL

Encumbrances shown on Schedule B of First American Title Insurance Company OWNER
POLICY NO. 5011400-1718609e dated on or about May 26, 2017

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COPY

PROMISSORY NOTE

Up to \$900,000.00

Effective as of May 26, 2017

FOR VALUE RECEIVED, the undersigned, **MILLPORT PHASE II LIMITED PARTNERSHIP**, a Connecticut limited partnership, with a principal place of business at 57 Millport Avenue, New Canaan, Connecticut 06840 (the "Borrower"), unconditionally promises to pay to the order of the **HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN**, a municipal housing authority duly organized and existing pursuant to the laws of the State of Connecticut, having an address at 57 Millport Avenue, New Canaan, Connecticut 06840 (the "Lender"), the maximum principal amount of up to **NINE HUNDRED THOUSAND AND 00/100 DOLLARS (\$900,000.00)**. The Borrower further agrees to pay all taxes levied or assessed upon said principal sum against the payee or holder of this "Note" (except income taxes) and all costs of collection, including reasonable attorneys' fees, incurred by Lender or by the holder of this Note in any action to collect this Note or to enforce the "Mortgage" (as defined below), whether or not suit is brought.

The Borrower agrees to pay interest at a rate of two percent (2%), based on a year of 360 days, which interest shall accrue annually; provided, however, that interest payable on the first and last month shall be based on the number of days actually elapsed during which the principal was outstanding.

The unpaid principal amount hereunder and all interest accrued thereon shall become due and payable forty (40) years from the date hereof (the "Maturity Date"). Subject to Section 4.8 of that certain Loan Agreement (and Security Agreement), dated as of May 1, 2017, by and among the Borrower, the Lender and Bankwell Bank, the Borrower may prepay at any time any part or all of the unpaid principal balance.

Principal is payable in lawful money of the United States of America to the Lender at the address above, or at such other place as the holder of this Note shall from time designate, in immediately available funds.

This Note is secured by a leasehold mortgage dated of even date herewith relating to a leasehold interest in that certain property situated in the Town of New Canaan, the County of Fairfield and the State of Connecticut (the "Mortgaged Premises") as more particularly described in the Open-End Leasehold Mortgage Deed securing this Note (the "Mortgage"), recorded or to be recorded in the Land Records of the Town of New Canaan in the State of Connecticut.

This Note is a nonrecourse obligation of the Borrower. Neither the Borrower, nor the general or limited partners of the Borrower, nor any other party shall have any personal liability for repayment of this Note. The sole recourse of the Lender for repayment of this Note shall be the exercise of its rights under the Mortgage.

Each of the following events or conditions shall be an "Event of Default" under this Note: (a) failure of the Borrower to pay any of its liabilities or obligations to Lender (whether under this Note or the Mortgage) for more than ten (10) days from the date due to be paid; or (b) failure

Sponsor Note

by the Borrower to comply with the terms of, or the occurrence of an Event of Default under the Mortgage, or any other agreement which may secure this Note beyond any applicable grace period.

Upon notice in writing to the Borrower and to the limited partners of the Borrower of the occurrence of an Event of Default specified above, then, and in any such event, the Borrower and the limited partners of the Borrower shall have ninety (90) days within which to cure such Event of Default, provided, however, that if such Event of Default has not been cured upon the expiration of such ninety (90) day period, then, in any such event, and notwithstanding any other provisions of this Note, the entire unpaid principal sum hereof and any late charges, as specified above, shall immediately become due and payable, without the necessity for presentment, protest, demand or other notice of any kind, all of which are expressly waived, at the option of Lender or the holder hereof.

No failure on the part of the Lender or holder of this Note to exercise and no delay in exercising any right, remedy or power hereunder or under any other document or agreement executed in connection herewith shall operate as a waiver thereof, nor shall any single or partial exercise by the Lender or holder of this Note of any right, remedy or power hereunder or under any other document or agreement executed in connection herewith preclude any other or future exercise of any other right, remedy or power.

Any delay on the part of the holder hereof in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted for one occasion shall not operate as a waiver in the event of any subsequent default. It is hereby agreed that any extension or extensions of time of payment of any sum or sums payable hereunder, which may be granted by the holder of this Note before, at or after maturity at the request of the Borrower shall be binding upon the Borrower which shall continue to be bound for all payments under this Note.

This Note is executed and delivered in the State of Connecticut and is to be governed by and construed in accordance with the laws of the State of Connecticut.

THE BORROWER AND THE LENDER SHALL AND THEY HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY THE LENDER OR THE BORROWER AGAINST THE OTHER TO ENFORCE THIS NOTE OR ON ANY OTHER MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS NOTE.

THE BORROWER HEREBY ACKNOWLEDGES THAT THE LOAN EVIDENCED HEREBY WILL BE USED EXCLUSIVELY FOR BUSINESS AND COMMERCIAL PURPOSES AND HEREBY WAIVES PRESENTMENT, PROTEST AND NOTICE OF DISHONOR AND ANY OTHER FORMALITIES WHICH MAY AFFECT OR IMPEDE THE RIGHT OF THE HOLDER OF THIS NOTE TO EXERCISE ITS RIGHTS OR TO COLLECT THE SUMS DUE HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY AND ALL RIGHTS UNDER CHAPTER 903a OF THE CONNECTICUT GENERAL STATUTES, AS THE SAME MAY BE AMENDED, OR UNDER SIMILAR LAWS THAT MAY BE HEREAFTER ENACTED, OR AS OTHERWISE ALLOWED BY ANY STATE OR

FEDERAL LAW WITH RESPECT TO ANY PREJUDGMENT REMEDY WHICH THE LENDER OR THE HOLDER HEREOF MAY USE.

In the event that any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part, or in any respect, or in the event that any one or more of the provisions of this Note shall operate, or would prospectively operate, to invalidate this Note, then, and in any such event, such provision or provisions only shall be deemed null and void and of no force or effect and shall not affect any other provision of this Note, and the remaining provisions of this Note shall remain operative and in full force and effect, shall be valid, legal and enforceable, and shall in no way be affected, prejudiced or disturbed thereby.

The Mortgage and this Note shall be automatically subordinate and subject to any bona fide mortgage, assignment of leases and rents, declaration of restrictive covenants, loan or security agreement, and/or any other collateral or financing instruments recorded or to be recorded on the Mortgaged Premises (and any modifications or amendments thereto in any respect) to be granted in favor of any governmental, quasi-governmental, state, public or federal agency or department or any financial institution or lending organization relating to the acquisition, development, financing and/or construction of a certain 40-unit affordable housing project to be constructed upon the Mortgaged Premises.


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

VAL 973 PG 0967

BORROWER:

MILLPORT PHASE II LIMITED PARTNERSHIP

By: Millport Phase II GP Corporation
Its General Partner

By: 
Name: Scott Hobbs
Title: Chairman
Hereunto Duly Authorized

Received for record on 6-1-17 at 1:45 pm
and recorded by Claudia A. Weber
TOWN CLERK

25199\3\3662227.v5

Sponsor Note



CERTIFICATE OF USE AND OCCUPANCY

Town of New Canaan

77 MAIN STREET . NEW CANAAN CT . 06840 . PHONE 203 594-3012 . FAX 203 594-3121

Address 33 MILLPORT AVE
06840

Date Issued: 01/08/2016

Certificate of Occupancy Date: 12/09/2016

Location:

CO# BP-15-01098
M/B/L R-80-623

Tax ID No.

THIS IS TO CERTIFY THAT THE BUILDING LOCATED AT 33 MILLPORT AVE IS COMPLETED IN ACCORDANCE WITH BUILDING PERMIT NUMBER BP-15-01098, AND WAS INSPECTED TO THE BEST OF OUR KNOWLEDGE AND DETERMINED TO SUBSTANTIALLY COMPLY WITH THE CONNECTICUT STATE BUILDING CODE.

Built under 2005 State Building Code

Use Group: RESIDENTIAL NEW TWO FAMILY

Permit Issued: 01/08/2016

Construction Type: VB

Use Group: 600

Additional Conditions:

BUILDING 1-PHASE I-FOUR- STORY RESIDENTIAL BUILDING WITH 18 RESIDENTIAL UNITS, ELEVATOR, 30 BEDROOMS, 26 FULL BATHS, 1 1/2 BATH, OPEN DECK AND PATIO 14 ON GRADE PARKING SPACES.


BUILDING OFFICIAL



CERTIFICATE OF USE AND OCCUPANCY

Town of New Canaan

77 Main Street, New Canaan CT 06840

PHONE 203 594-3012, FAX 203 594-3121

Address: 35 MILLPORT AVE
NEW CANAAN, CT 06840

Certificate of Occupancy Date: 12/09/2016

CO Number: BP-15-01099
M/B/L: R/80/630

THIS IS TO CERTIFY THAT THE BUILDING LOCATED AT 35 MILLPORT AVE IS COMPLETED IN ACCORDANCE WITH BUILDING PERMIT NUMBER AND WAS INSPECTED TO THE BEST OF OUR KNOWLEDGE AND DETERMINED TO SUBSTANTIALLY COMPLY WITH THE CONNECTICUT STATE BUILDING CODE.

Built under State Building Code
Use Group: Permit Issued:

Permit Project Description

BUILDING 2--FOUR STORY RESIDENTIAL BUILDING-15 UNITS,ELEVATOR, 27 BEDROOMS, 23 FULL BATHS, 1 1/2 BTH, OPEN DECKS & PATIO, 14 ON GRADE OPEN PARKING.

CHIEF BUILDING OFFICIAL



CERTIFICATE OF USE AND OCCUPANCY

Town of New Canaan

77 Main Street, New Canaan CT 06840

PHONE 203 594-3012, FAX 203 594-3121

Address: 57 MILLPORT AVE
NEW CANAAN, CT 06840

Certificate of Occupancy Date: 02/14/2018

CO Number: BP-17-00129

M/B/L: N/80/644

THIS IS TO CERTIFY THAT THE BUILDING LOCATED AT 57 MILLPORT AVE IS COMPLETED IN ACCORDANCE WITH BUILDING PERMIT NUMBER AND WAS INSPECTED TO THE BEST OF OUR KNOWLEDGE AND DETERMINED TO SUBSTANTIALLY COMPLY WITH THE CONNECTICUT STATE BUILDING CODE.

Built under State Building Code

Use Group: Permit Issued:

Permit Project Description

BUILDING 3-FOUR-STORY RESIDENTIAL BUILDING WITH 20 RESIDENTIAL APARTMENT UNITS, 1 ELEVATOR, (34 BEDROOMS, 31 FULL BATHS), 24388 SQ FT."

CHIEF BUILDING OFFICIAL



CERTIFICATE OF USE AND OCCUPANCY

Town of New Canaan

77 Main Street, New Canaan CT 06840

PHONE 203 594-3012, FAX 203 594-3121

Address: 57 MILLPORT AVE
NEW CANAAN, CT 06840

Certificate of Occupancy Date: 03/28/2018

CO Number: BP-17-00130
M/B/L: N/80/644

THIS IS TO CERTIFY THAT THE BUILDING LOCATED AT 57 MILLPORT AVE IS COMPLETED IN ACCORDANCE WITH BUILDING PERMIT NUMBER AND WAS INSPECTED TO THE BEST OF OUR KNOWLEDGE AND DETERMINED TO SUBSTANTIALLY COMPLY WITH THE CONNECTICUT STATE BUILDING CODE.

Built under State Building Code
Use Group: Permit Issued:

Permit Project Description

BUILDING 4-FOUR-STORY RESIDENTIAL BUILDING WITH 20 RESIDENTIAL APARTMENT UNITS, 1 ELEVATOR, (34 BEDROOMS, 31 FULL BATHS), 24388 SQ FT."

CHIEF BUILDING OFFICIAL

After recording, please return to:
John J. Kindl, Esq.
Pullman & Comley, LLC
90 State House Square
Hartford, CT 06103



Doc ID: 002618200012 Type: LAN
Book 973 Page 939 - 950
File# 3295

AGREEMENT AND ESTOPPEL OF GROUND LESSOR

THIS AGREEMENT AND ESTOPPEL OF GROUND LESSOR ("Agreement") is executed as of the 26 day of May, 2017, by **HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN**, a body corporate and politic of the Town of New Canaan, Connecticut having a mailing address 57 Millport Avenue, New Canaan, Connecticut 06840 ("Lessor") for the benefit of **STATE OF CONNECTICUT**, acting by and through its **DEPARTMENT OF HOUSING**, with an office and principal place of business located at 505 Hudson Street, Hartford, Connecticut ("State") and for the benefit of **MILLPORT PHASE II LIMITED PARTNERSHIP**, a limited partnership organized and existing under the laws of the State of Connecticut and having a mailing address c/o Millport Phase II GP Corporation, 57 Millport Avenue, New Canaan, Connecticut 06840 ("Lessee").

RECITALS:

A. Lessor has or is about to lease certain lands described on Exhibit A attached hereto (hereinafter the "**Property**") to Lessee pursuant to a certain Ground Lease, by and between the Lessor and the Lessee dated as of [May 26, 2017] a notice of which has been or will be recorded in the Land Records for the Town of New Canaan, Connecticut (hereinafter the "**Lease**") (capitalized and quoted terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Lease);

B. A true, correct and complete copy of the Lease (including all amendments, supplements, addenda and modifications thereto) has been delivered to the State, and the terms thereof are incorporated herein by this reference; and

C. Lessee is desirous of obtaining from the State a loan in the maximum amount of **Four Million One Hundred Seventeen Thousand Four Hundred Thirty-Eight and 00/100 Dollars (\$4,117,438.00)** (hereinafter the "**Loan**"). As security for Lessee's obligations under the Loan, Lessee shall execute and deliver a certain Open-End Leasehold Construction Mortgage Deed and Security Agreement (the "**Mortgage**") and a Declaration of Land Use Restrictive Covenants (the "**Declaration**") and collectively with the Mortgage, the "**Security Instruments**") upon Lessee's interest under the Lease;

D. As an accommodation to Lessee, Lessor has agreed to execute this Agreement and the Declaration for the benefit of the State with the understanding that the State is relying on the agreements set forth herein and therein as an inducement to the State in making the Loan to Lessee.

NOW, THEREFORE, for and in consideration of the premises, and for the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged and confessed, the parties hereto hereby represent, covenant and agree as follows:

1. Lessor consents to the execution and delivery by Lessee to the State of the Security Instruments covering Lessee's leasehold interest in and to the Property and the recording of same in the applicable real property records. Lessor also consents to the execution and delivery by Lessee, and the filing and/or recording in the appropriate public records, of such additional documents and instruments as the State may deem necessary or desirable to establish, perfect and maintain a lien upon and against Lessee's leasehold interests, including, but not limited to, Uniform Commercial Code financing statements and such other documents, instruments and agreements as the State may hereafter deem necessary or desirable in connection with the creation, grant, maintenance or enforcement of said lien, including, but not limited to, any such documents and instruments executed in connection with any renewal, extension, increase, refinance, consolidation and/or modification of such lien. Lessor confirms and agrees that the Security Instruments are and shall be permitted liens under the Lease. The State, in addition to all rights, benefits and privileges conferred by this Agreement, is a "Lender" and shall be entitled to all benefits and notices afforded to a Leasehold Mortgagee pursuant to the Lease, and that the Mortgage is and shall be deemed a "Leasehold Mortgage".

2. Lessor hereby certifies and represents as follows to and for the benefit of the State:

(a) Lessor is the fee simple owner of the Property and is the Lessor under the Lease.

(b) The Lease is in full force and effect in accordance with its terms and has not been further assigned, supplemented, modified or otherwise amended except as described in Recital A above. As of the date hereof, all the representations and warranties of Lessor set forth in the Lease are true and correct in all material respects.

(c) To the best of Lessor's knowledge, each of the obligations on Lessee's part to be performed to date under the Lease have been performed.

(d) To the best of Lessor's knowledge, there are no offsets, counterclaims, defenses, deductions or credits whatsoever with respect to the Lease.

(e) There are, with respect to the Lease, no options to renew or extend the Lease, no rights of first refusal, no purchase options and no security deposits or prepaid rent or liens which are not expressly provided for in the Lease.

(f) There are no other agreements (including subordination, non-disturbance and attornment agreements) concerning the Property, whether oral or written between Lessor and Lessee under the Lease (or its predecessors or successors).

(g) The Lease Commencement Date was May 26, 2017. The Expiration Date of the Lease is May 25, 2107.

3. Lessor confirms and agrees:

(a) that the Mortgage is a "Leasehold Mortgage", as such term is defined in the Lease.

(b) that the State is a "Lender", as such term is defined in the Lease.

(c) that the address of the State set forth in Section 12 herein below constitutes sufficient notice and information for purposes of Section 5.2 of the Lease.

(d) that this Agreement satisfies the notice requirements of Section 5.2 of the Lease.

(e) that the Security Instruments are not and shall not be subject or subordinate to any mortgage encumbering the fee estate of the Property.

(f) title to all Improvements, including, but not limited to any structures existing on the Property as of the commencement date of the Lease and any structures thereafter constructed by Lessee and situated on the Property are and shall remain the property of the Lessee throughout the entire term of the Lease.

(g) notwithstanding anything to the contrary in the Lease but subject to the rights of any Leasehold Mortgagee whose Leasehold Mortgage has priority and seniority over the Mortgage, the proceeds of insurance for damage or destruction of the Property or any Improvements thereon and any awards as a result of a taking of all or any portion of the Property shall only be made available to Lessee pursuant to the terms and conditions of the Mortgage. In the event that the Lessee is not entitled to the use of such insurance proceeds or taking awards, the same shall be paid over to the State or any Leasehold Mortgagee whose Leasehold Mortgage has priority and seniority over the Mortgage.

All rights of the State under the Lease and the Security Instruments shall be exercisable by or on behalf of the State. Further, in the event of any default or event of default by Lessee under the Lease, or in the event Lessee shall fail to perform or observe any of the terms, conditions or agreements in the Lease, Lessor shall give written notice thereof to the State at the address indicated above (or such other address as the State may indicate by notice hereafter to Lessor in writing) and the State shall have the right (but not the obligation) to cure such default or fail to cure such default before the later of (i) the time periods set forth in Section 5.3 of the Lease, or (ii) within sixty (60) days following the expiration any applicable periods of grace, notice or cure provided to the Lessee, whichever is later, and Lessor shall not take any action with respect to such failure under the Lease, including, without limitation, any action intended to terminate, rescind or avoid the Lease or Lessee's tenancy or possession thereunder so long as the State is proceeding with such cure. Without limiting the foregoing, Lessor agrees that no default and no termination of the Lease shall be effective unless notice shall first have been given to the State in accordance with the terms of this Agreement. Lessor further agrees that, notwithstanding anything to the contrary contained in the Lease (including, but not limited to, any limitations stated in Section 5.7 therein), where any default under the Lease is not capable of or subject to cure, or in the event of the bankruptcy or insolvency of Lessee, the State shall have the option (upon written notice to Lessor) to enter into a new ground lease with Lessor on substantially the same terms as the Lease for the then remaining term of the Lease following the termination of the Lease by Lessor or the rejection of the Lease by a bankruptcy trustee under applicable laws. Lessor hereby agrees with respect to the new lease referred to in Section 5.7 of the Lease that the provisions of Section 5.7 shall apply to the State even if the Mortgage is not a Leasehold Mortgage having first priority, and further agrees that should the State become the tenant under a new lease pursuant to such Section 5.7, Lessor shall promptly assign to the State all space leases and subleases whose tenants have attorned, with the consent of the State, to Lessor.

4. Lessor consents to the exercise by the State of any and all rights and remedies permitted under the Security Instruments and such other documents as may be executed by Lessee in connection with the Loan, and to the exercise of such additional legal and equitable rights and remedies as may be available to the State, in the event of a default or event of default under the Loan. Furthermore, Lessor expressly agrees that neither the execution, delivery and/or recording of the Security Instruments, nor the execution, delivery and/or recording or filing of any other instrument or agreement by Lessee or the State in connection with the Security Instruments, nor any other matters to which Lessor has given its consent herein, shall ever be deemed to constitute a default or event of default under the Lease.

5. In the event the State shall ever become the owner of the rights and interests of Lessee in and to the Property and Lease by reason of foreclosure (whether by judicial, nonjudicial or power of sale), any conveyance in lieu thereof, or other proceedings brought by the State to enforce its rights under the Security Instruments, or through any other means or manner in connection with the Loan, the State shall be deemed to be Lessee's successor and assignee under the Lease (notwithstanding anything in the Lease prohibiting or restricting assignment by the Lessee or establishing conditions under which an assignment by the Lessee would be permitted) and shall be entitled to all rights, benefits and privileges of the Lessee under the Lease; and Lessor shall be bound to the State under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any renewal or extension period thereof duly exercised as required by the Lease, all without the need to execute any further instruments on the part of Lessor, Lessee or the State to make such succession and assignment effective and binding upon Lessor. Provided, however, that the State or its direct successors or assigns shall not be (i) liable for any past due rent or other expenses due from Lessee under the Lease, (ii) liable for any action or omission of Lessee, or (iii) bound by amendment or modification of the Lease (other than those amendments and modifications permitted pursuant to Section 7 below) made without the State's advance written consent (which consent shall not be unreasonably withheld).

6. Notwithstanding anything to the contrary set forth or contained in the Lease, Lessor hereby waives any contractual and/or statutory liens and any rights of distress with respect to the property of Lessee (or Lessee's sublessees, successors or assigns, including the State) from time to time located within or upon the Property ("**Lessee's Property**"), during the term of the Lease or any extension thereof. It is hereby covenanted and agreed by Lessor that the Lease does not and will not, from and after this date, be construed or deemed to grant a contractual lien or any other security interest to Lessor or in favor of Lessor with respect to Lessee's Property. Lessor agrees to execute and deliver such other instruments as may be reasonably requested by Lessee or the State from time to time to evidence or confirm this waiver by Lessor.

7. So long as the Loan remains unsatisfied, Lessor agrees that no cancellation, surrender, amendment or modification of the Lease, nor any voluntary termination of the Lease by Lessee (including, but not limited to, any termination under Articles 7 or 10 of the Lease) shall be effective unless and until expressly consented to in writing by the State, provided, however, that Lessor and Lessee may make minor and immaterial amendments or modifications to the Lease without the State's prior consent provided that the State shall receive a copy of the proposed modification or amendment instrument at least ten (10) days prior to execution of such amendment or modification. Lessor and Lessee warrant and represent that the copy of the Lease delivered to the State is a true, correct and complete copy of the Lease and that the Lease is in full force and effect and has not been amended or modified. Other than the Lease and a recorded Memorandum of Lease, there are no other agreements, written or oral, between Lessor and Lessee regarding the Lease or the Property. The Lessor has not assigned the Lease or otherwise transferred any interest in or under the Lease. Notwithstanding the terms, provisions and conditions of the Lease, any assignee of Lessee's interest under the Lease effectuated in accordance therewith shall be subject to the transfer restrictions of the Security Instruments.

8. For purposes of this Agreement, the term "**State**" shall include its successors and assigns including, but not limited to, any person who acquires Lessee's interest under the Lease pursuant to a foreclosure of the Mortgage or a conveyance in lieu thereof. All references herein to Lessor and Lessee shall likewise include the respective successors and assigns for each such party (including, without limitation, any person, party or entity to whom either Lessor's and/or Lessee's respective rights and interests in and under the Lease may be assigned). This Agreement shall accordingly be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Without limiting the foregoing, Lessor agrees that notwithstanding any provision in the Lease to the contrary (including, but not limited to, Article 12 therein), if the State becomes the

lessee under the Lease, the State shall have the right to assign its interest in and to the Lease without the consent of Lessor, provided, however, the State shall give Lessor prompt written notice of any such assignment.

9. Lessor represents and warrants to the State: (i) that there is no lien encumbering Lessor's fee interest in the real estate encumbered by the Lease; (ii) that no consent or joinder of any other party is required to Lessor's execution of this Agreement; (iii) that no third party has any option or preferential right to purchase all or any part of the Property; (iv) that Lessor has not received written notice of any pending eminent domain proceedings or other governmental actions or any judicial actions of any kind against Lessor's interest in the Property; and (v) that Lessor has not received written notice that it is in violation of any governmental law or regulation applicable to its interest in the Property and its operation including, without limitation, any environmental laws or the Americans with Disabilities Act, and has no reason to believe that there are grounds for any claim of any such violation.

10. Lessor shall not, except as may otherwise be permitted under this Agreement, disturb the possession, interest or quiet enjoyment of any lessee in any portion of the Property subject to the Lease for any reason, or in any manner, that would materially adversely affect the security intended to be afforded by the Security Instruments.

11. All notices, requests, consents, demands and other communications relating to this Agreement shall be in writing and shall be deemed sufficiently given if (a) sent by certified or registered mail with postage prepaid, return receipt requested, properly addressed to the applicable party at the address set forth below; (b) delivered in person to the address set forth below for the party to whom the notice is given; (c) deposited into the custody of a nationally recognized overnight delivery service such as Federal Express Corporation, UPS, or Airborne, addressed to such party at the address specified below; or (d) sent by facsimile or e-mail provided that receipt of such facsimile or e-mail is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above. Notices shall be effective on the date of delivery or receipt, or, if delivery is not accepted, on the earlier of the date that delivery is refused or five (5) days after the date the notice is mailed. For purposes of this section, the addresses of the parties for all notices are as set forth below (unless changed by similar notice in writing given by the particular person whose address is to be changed). From time to time, any party may designate another address for all purposes by giving the other parties notice of such change of address.

All notices to the State shall be given to it at:

State of Connecticut
Department of Housing
505 Hudson Street
Hartford, Connecticut 06106
Attn: Commissioner

All notices to Lessee shall be given to it at:

Millport Phase II Limited Partnership
57 Millport Avenue
New Canaan, Connecticut 06840
Attn:

All notices to Lessor shall be given to it at:

Housing Authority of the Town of New Canaan
New Canaan, Connecticut 06840
Attn:


12. This Agreement may not be withdrawn, amended or modified except by a written agreement executed by both Lessor and the State. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

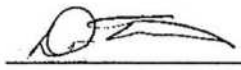
No Further Text On This Page -- Signature Pages Follow

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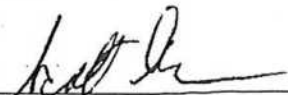
IN WITNESS WHEREOF, the Lessor hereto has set its hand and seal the day and year first written above.

Signed, Sealed and Delivered
in the presence of:


BELKORA E. BIMAKOV


DIMITRI TOURVAS

HOUSING AUTHORITY OF THE TOWN OF
NEW CANAAN

By: 
Scott Hobbs
Its Chairman
Duly Authorized

STATE OF CONNECTICUT)
COUNTY OF Fairfield) ss: Stamford

On this the 25th day of May, 2017, before me, the undersigned officer, personally appeared **Scott Hobbs**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged himself to be the **Chairman** of **HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN**, a housing authority of the Town of New Canaan and that he, as such and being authorized so to do, executed the foregoing instrument as the free act and deed of the housing authority for the purposes contained therein by signing the name of the housing authority by himself as such **Chairman**.

In witness whereof, I hereunto set my hand.



Commissioner of the Superior Court
Notary Public
My Commission Expires:

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

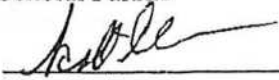
Signed, Sealed and Delivered
in the presence of:


BERNARD E. SIMAKIN

DIMITRI TOUNAS

**MILLPORT PHASE II LIMITED
PARTNERSHIP**
a Connecticut limited partnership

By: Millport Phase II GP Corporation
Its: General Partner

By: 
Scott Hobbs
 Its Chairman
 Duly Authorized

STATE OF CONNECTICUT)
) ss. Stanford
 COUNTY OF Fairfield)

On this 25th day of May, 2017 before me, the undersigned officer, personally appeared **Scott Hobbs**, the duly authorized Chairman of Millport Phase II GP Corporation, a corporation organized and existing under the laws of the State of Connecticut, the General Partner of **MILLPORT PHASE II LIMITED PARTNERSHIP**, a Connecticut limited partnership, and that he as such Chairman of the General Partner of said limited partnership and being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited partnership by himself as such Chairman of the General Partner of said limited partnership.

In Witness Whereof, I hereunto set my hand.

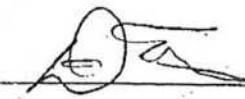

 Commissioner of the Superior Court
 Notary Public
 My Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION

All that certain piece, parcel or tract of land, being a portion of that new consolidated parcel, comprised of portions of former Assessor Lots 630, 644 and 644A, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, being a portion of Parcel 630, 35 Millport Avenue and portion of Parcel 644 and 644A 57 Millport Avenue, shown as **PHASE II (SHADED AREA) AREA=64,982+/- SQ. FT. OR 1.4918+/- AC. (LEASEHOLD PARCEL)** and designated within shaded area on a map entitled "**ALTA/NSPS LAND TITLE SURVEY (PROPERTY SURVEY) 33, 35, 41, 57 & 65 MILLPORT AVENUE DEPICTING LEASE PARCEL II PROPERTY OF HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN NEW CANAAN, CONNECTICUT**" Sheets 1 and 2 of 2, dated May 19, 2017, Scale 1"=30', made by William W. Seymour & Associates, P.C., which map is or will be filed in the Office of the Town Clerk of New Canaan, more particularly bounded and described as follows:

Beginning at a point on the division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and land now or formerly of The Housing Authority of The Town of New Canaan, said point lying north 57° 04' 20" west a distance of 92.74 feet and north 50° 38' 00" west a distance of 5.19 feet and north 57° 58' 00" west a distance of 24.93 feet and south 62° 37' 30" west a distance of 5.07 feet and north 45° 58' 50" west a distance of 70.39 feet from the intersection of said division line with the northwesterly line of Millport Avenue and further being the intersection of the easterly line of the herein described parcel (Phase II) with the aforesaid division line;

Thence, running generally southwesterly and in a clockwise direction south 44° 01' 10" west a distance of 100.00 feet and south 45° 58' 50" east a distance of 7.29 feet and south 44° 32' 10" west a distance of 52.74 feet and south 58° 41' 20" west a distance of 115.23 feet to a point;

Thence, running generally northwesterly and continuing in a clockwise direction north 42° 37' 20" west a distance of 137.25 feet to a point on the division line between the herein described parcel (Phase II) and land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue);

Thence, running generally northeasterly and northwesterly and continuing in a clockwise direction along said land now or formerly of Gray Stone Condominiums (Tax Lot 647, 52-70 Lakeview Avenue) north 46° 03' 30" east a distance of 114.08 feet and north 46° 33' 30" west a distance of 127.44 feet to a point and land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street);

Thence, running generally northeasterly and continuing in a clockwise direction along said land now or formerly of Essex Ridge Condominium (Tax Lot 642, 164-176 Summer Street) and land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue), each in part, north 44° 16' 00" east a distance of 66.35 feet and north 42° 59' 00" east a distance of 115.70 feet to a point, said point being the northwesterly corner of the herein described parcel (Phase II);

Thence, running generally southeasterly and continuing in a clockwise direction along said land now or formerly of Old Forge Green Condominium (Tax Lot 621, 141-161 East Avenue) south 47° 24' 00" east a distance of 86.85 feet and south 49° 20' 00" east a distance of 55.50 feet and south 56° 38' 00" east a distance of 13.25 feet to the aforesaid division line between land now or formerly Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II);

Thence, running generally southwesterly and southeasterly and continuing in a clockwise direction along said division line between land now or formerly of Medical Properties (Tax Lot 622, 173 East Avenue) and the herein described parcel (Phase II) south $36^{\circ} 28' 00''$ west a distance of 46.84 feet and south $45^{\circ} 58' 50''$ east a distance of 123.15 feet to the point of beginning.

the "Leasehold Parcel",

Together with the rights, provisions, terms and conditions set forth in an **Easement Agreement** by and among the Housing Authority of the Town of New Canaan, NCHA Mill Apartments Limited Partnership, Millport Phase I Limited Partnership and Millport Phase II Limited Partnership dated as of May 26, 2017, recorded in the New Canaan Land Records.

Such easements and rights of way are shown and depicted on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING LEASE PARCELS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7648, as:

"Easement Area Y", more particularly bounded and described as follows:

Beginning at a point on the former division line between properties known as 41 & 57 Millport Avenue, said point being further described as lying north $09^{\circ} 47' 00''$ west a distance of 126.20 feet from the intersection of said former division line between said properties known as 41 & 57 Millport Avenue with the northwesterly line of Millport Avenue;

Thence, running alternately southwesterly and northwesterly south $78^{\circ} 16' 50''$ west a distance of 44.25 feet and north $38^{\circ} 03' 00''$ west a distance of 83.95 feet and south $50^{\circ} 32' 40''$ west a distance of 14.66 feet and 8.41 feet along a tangent arc curving to the right having a radius of 5.00 feet and subtending a delta or central angle of $96^{\circ} 19' 30''$ and 51.51 feet along an arc (compound and tangent) curving to the right having a radius of 107.00 feet and subtending a delta or central angle of $27^{\circ} 34' 57''$ and south $84^{\circ} 15' 50''$ west a distance of 25.00 feet and north $43^{\circ} 56' 30''$ west a distance of 29.54 feet to a point on the division line between land of Housing Authority of the Town of New Canaan and land now or formerly of Gray Stone Condominiums;

Thence, running northerly along said division line between land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue and land now or formerly of Gray Stone Condominiums north $46^{\circ} 03' 30''$ east a distance of 27.34 feet to a point;

Thence, running southeasterly and northeasterly through said land of Housing Authority of the Town of New Canaan and known as 57 Millport Avenue south $42^{\circ} 37' 20''$ east a distance of 137.25 feet and north $58^{\circ} 41' 20''$ east a distance of 115.23 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

Thence, running southwesterly along said former division line between properties known as 41 & 57 Millport Avenue south $44^{\circ} 32' 10''$ west a distance of 62.12 feet to a point;

Thence, running southeasterly and southwesterly through said land of Housing Authority of the Town of New Canaan and known as 41 Millport Avenue south $29^{\circ} 09' 35''$ east a distance

of 23.65 feet and south $60^{\circ}50'25''$ west a distance of 8.32 feet to a point on the former division line between properties known as 41 & 57 Millport Avenue;

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Thence, running southeasterly along said former division line between properties known as 41 & 57 Millport Avenue south $09^{\circ}47'00''$ east a distance of 25.08 feet to the point of beginning.

And "Driveway Easement Parcel" shown and depicted as "Proposed Driveway Easement for Phase II" on a map entitled "COMPILATION PLAN 33, 35, 41, 57 & 65 MILLPORT AVENUE MAP DEPICTING DRIVEWAY EASEMENTS PROPERTY OF THE HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, NEW CANAAN, CONNECTICUT" dated December 18, 2015, Scale 1"=30 ft., Scale 1"=30 ft., by William F. Seymour & Associates, P.C., which map is filed in the Office of the Town Clerk of New Canaan as Map #7649, bounded and described as follows:

Beginning at a point on the northwesterly line of Millport Avenue, said point lying north $78^{\circ}17'30''$ east 1.87 feet of the intersection of the former division line between properties known as 65 & 57 Millport Avenue with said northwesterly line of Millport Avenue;

Thence, running northerly and northwesterly a distance of 10.52 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $20^{\circ}05'35''$ and having a chord bearing of north $01^{\circ}39'42''$ west and north $11^{\circ}42'30''$ west a distance of 69.75 feet and north $38^{\circ}03'00''$ west a distance of 103.11 feet and 80.59 feet along an arc curving to the right having a radius of 131.00 feet and subtending a central or delta angle of $35^{\circ}14'45''$ to a point;

Thence, running northeasterly along the northerly terminus of the herein described easement north $84^{\circ}15'50''$ east a distance of 24.00 feet to a point;

Thence, running southeasterly and southerly a distance of 54.96 feet along an arc curving to the left having a radius of 107.00 feet and subtending a central or delta angle of $29^{\circ}25'40''$ and south $38^{\circ}03'00''$ east a distance of 120.81 feet and south $11^{\circ}42'30''$ east a distance of 67.12 feet and 20.00 feet along an arc curving to the left having a radius of 30.00 feet and subtending a central or delta angle of $38^{\circ}11'39''$ and having a chord bearing of south $30^{\circ}48'19''$ east to the aforesaid northwesterly line of Millport Avenue;

Thence, running southwesterly along said northwesterly line of Millport Avenue south $78^{\circ}17'30''$ west a distance of 32.25 feet to the point of beginning.

(hereinafter, the "Easement Parcels").

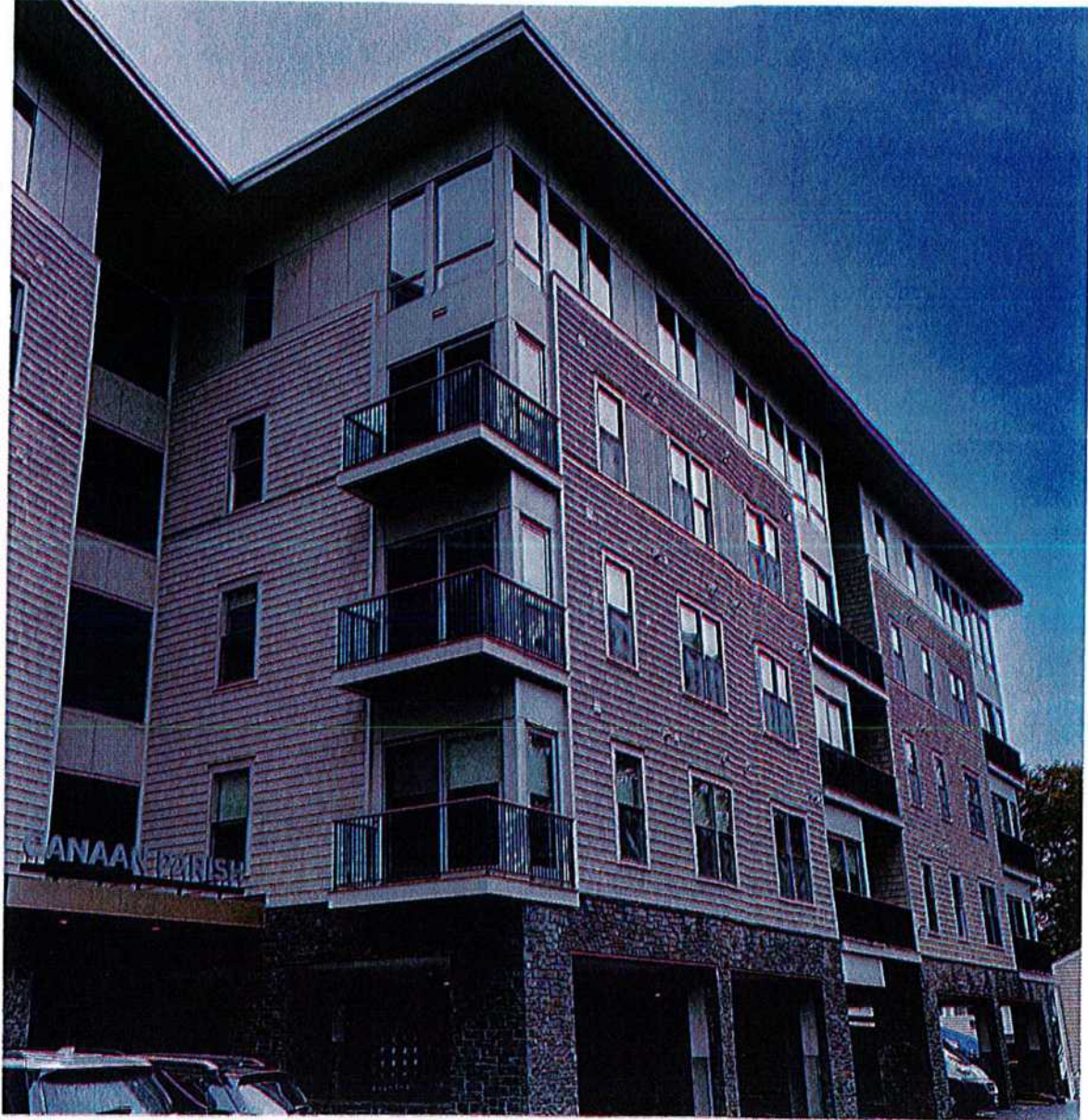
Together with the rights, provisions, terms and conditions set forth in a Ground Lease from the Housing Authority of the Town of New Canaan to Millport Phase II Limited Partnership, a Notice of which is dated as of May 26, 2017, and recorded, or to be recorded, in the New Canaan Land Records.

Received for record on 6-1-17 at 1:44pm
and recorded by Claudia A. Weber
TOWN CLERK

TAB 4

CANAAN PARISH

Building 1 - 60 units, 100% Affordable, Section 8, 8-30g/ELIHC
Completed 2021



**DOCUMENTATION OF ELIGIBILITY FOR CERTIFICATE OF
AFFORDABLE HOUSING PROJECT COMPLETION**

1) PROJECT: Canaan Parish

2) PROJECT TYPE: 60 Family Rentals with Section 8 rental assistance, financing by ELIHC/CHFA

3) PROJECT ADDRESS: 186 Lakeview Avenue
New Canaan, CT 06840

4) PROPERTY OWNER AND ADDRESS:

Town of New Canaan
77 Main Street
New Canaan, CT 06840

5) DEVELOPER/OWNER:

Canaan Parish Redevelopment Ltd Partners*
c/o Canaan Parish Redevelopment Group LLC
57 Millport Avenue
New Canaan, CT 06840

*Canaan Parish Redevelopment Ltd Partners is a collaboration of the Housing Authority of New Canaan and New Canaan Neighborhoods, Inc.

6) PERSON OR ENTITY RESPONSIBLE FOR COMPLIANCE:

Westmount Management
36 Park Place
Branford, CT 06405

7) PROJECT NARRATIVE AND DESCRIPTION:

Canaan Parish is the redevelopment of a 60-unit Section 8 rental apartment complex on 5.02 acres at the intersection of Lakeview Avenue and State Route 123 in New Canaan that was originally built in 1978-1979. The land is owned by the Town of New Canaan and is under a long-term ground lease to New Canaan Neighborhoods, Inc., a local non-profit that originally developed the site. In 2018, Canaan Parish Redevelopment, LLC ("CPR"), which is a joint venture of New Canaan

Neighborhoods, LLC and the Housing Authority of the Town of New Canaan ("HANC"), submitted an application to the Planning & Zoning Commission for a zoning amendment, a rezoning of the property (Map Change) and a site plan approval for Canaan Parish – 100 affordable units in 2 buildings. Building 1, containing 60 Section 8 assisted rental units was completed in October 2021.

Canaan Parish originally developed in 1978-1979 and was a 60 unit complex of 10 two story structures. This 60 unit development was demolished in order to make room for the new 100 unit development.

In addition to the restrictions under the ELIHC program with the CHFA, the income limits for residents are restricted for 40 years under §8-30g income limits, pursuant to the Affordability Plan approved as part of the application to the P&Z Commission. At least 15% of the units will be restricted to households earning less than 60% State median income and the remaining units will be restricted to households earning less than 80% State median income. In building 1, all sixty units will be restricted to 60% AMI.

Only the 16 (sixteen) of the 60 (sixty) units in Building 1 are being claimed in this Application; the remaining 44 (forty-four) units in Building 1 and all 40 (forty) units in Building 2 will be claimed in a future Application.

8) LIST OF ALL UNITS CONTRIBUTING TO HUE POINTS:

186 Lakeview Avenue Building 1 60 units

9) TABLE OF POINTS:

Type of Unit	# of Units	Housing Unit-Equivalency Point Value Per Unit	Total Housing Unit-Equivalency Points
Family units, rented, that are restricted to households with annual income no more than:			
<ul style="list-style-type: none"> 60% of (State) median income <ul style="list-style-type: none"> 1 and 2 BRs 3 BRs 	8 8	2.00 2.25	1618

TOTAL	16		34HUE Points
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4-2

10) LIST OF INCLUDED DOCUMENTATION OF AFFORDABILITY RESTRICTION:

Documents justifying the claim of 34 housing-unit equivalent points for 16 rental units in Building 1 (186 Lakeview Avenue) are listed in the table that follows, further explained in the bullets below. Restrictions in documents filed in the New Canaan Planning and Zoning Department records ensure that rents for the Canaan Parish apartments are established under “enforceable obligations” that are “binding at the time of application for at least the duration required by section §8-30g at the time of the submission to the commission.”

References to the establishment of affordable rents in the financing documents listed in the table refer to “Area Median Gross Income in the federal regulations, which is defined as “income determined by the Secretary of the Treasury in a manner consistent with determinations under Section 8 of the United States Housing Act of 1937, as amended”

The documents listed in the table contain at least the following restrictions:

- The ELIHC (Extended Low-Income Housing Commitment) with the Connecticut Housing Finance Authority limits rents to “Qualified Persons” defined as “individuals and families who ... are of low income, having an annual income not exceeding sixty percent of area median gross income ... within the meaning of the [federal] Code ...”
- The “Affordability Plan for Canaan Parish Redevelopment, Submission Draft July 2018” was submitted to the New Canaan Planning & Zoning Commission as part of the application for approval of the development, along with its application to the Town of New Canaan for approval of a regulation amendment, rezoning, and site plan approval. The Site Plan for the development, the text amendment and the zoning map amendment were all adopted by the P&ZC on August 18, 2018.
- Resolution 21-01 adopted by the Housing Authority of New Canaan titled “Canaan Parish 8-30g Income Limits Commitment” dated 10/6/2021 references the Affordability Plan’s conformance to 8-30g, rental restriction of 40 years and use of State Median Income levels.

Following the table are copies of each document.

Document	Description	Notes
Compliance Certification Affidavit	Canaan Parish 5/19/2022	Ann Werner, Compliance Manager, Westmount Management
Deed Restriction	Notice of Ground Lease Open-End Leasehold Mortgage Deed	
Recorded Covenant	Land Use Restriction Agreement Vol 1022 Pgs 196 - 220	Page 5 reference to Low Income unit as 60% of AMI and the "Qualified Project Period"
Zoning Resolution	P&ZC adopted approvals for: - Zoning Text Amendment - Zoning Map Amendment - Site Plan Approval	Adopted 9/20/2018
Zoning Regulation	New Section 5.9 "Canaan Parish Housing Zone", effective date 9/20/2018	Section 5.9.H references income limitations under 8-30g and the 40-year rental restriction term as zoning requirements

Financing/Assistance Agreement	ELIHC with CHFA Vol 1022 Pgs 221 - 234	<p>Pgs 2 and 3 reference to "Qualified Persons" at 60% and 80% AMI</p> <p>Pg 3 reference to "Extended Use Period" for 40 years</p>
Affordability Plan	July 2018	<p>Page 2 references "assisted housing" that will be rented at 8-30g income levels for a rental term of 40 years</p>

11) ISSUED CERTIFICATES OF OCCUPANCY:

CERTIFICATION OF CERTIFICATE OF OCCUPANCY
New Canaan Application for
State Certificate of Affordable Housing Completion

I hereby certify that a valid Temporary Certificate of Occupancy has been issued and is currently in effect for the following residential development which contains affordable housing units within the Town of New Canaan as per the dates indicated and as shown on the copies of the certificate attached.

Date Issued

186 Lakeview Avenue (Building 1)
60 affordable units
(16 being counted for this application)

10/23/2021

State of Connecticut

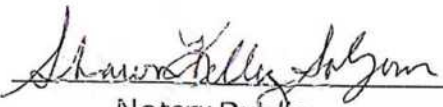
ss: New Canaan

County of Fairfield



Brian Platz, Chief Building Official

Personally appeared Brian W. Platz, signer and sealer of the foregoing instrument and acknowledged the same to be his/her free act and deed before me.



Notary Public

Dated: 21 / 29 / 2022

Town of New Canaan

Building Department
Town Hall, 77 Main Street
New Canaan, CT 06840

Brian W. Platz
Chief Building Official
Director of Land Use
Blight Officer

Tel: (203) 594-3013
Fax: (203) 594-3121
brian.platz@newcanaanct.gov

May 10, 2022

Mr. Scott Hobbs
New Canaan Housing Authority

Re: 186 Lakeview Ave, New Canaan, CT 06840

Dear Mr. Hobbs,

Please be advised that that the residential dwellings units known as "Building One" located at 186 Lakeview Ave in New Canaan CT, consisting of 60 dwelling units constructed under Building Permit #20-495, have been inspected and are deemed to be in substantial compliance with The Connecticut State Building Code (CSBC) and are approved for occupancy. This is a Temporary Certificate of Occupancy issued in accordance with section 111.3 of The International Building Code portion of the CSBC. I am issuing this as a Temporary Certificate of Occupancy given that although the building is complete the site work is part and parcel of a phased project that includes two buildings and building two is incomplete. I cannot issue the full and final C of O until the entire scope of this project has been completed, inspected and approved by all land use departments.

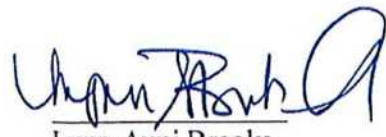
Best regards,



Brian W. Platz
Chief Building Official
Director of Land Use



Paul Payne
Fire Marshal



Lynn Avni Brooks
Town Planner
Senior Enforcement Officer

COMPLIANCE CERTIFICATION AFFIDAVIT
Pursuant to Section 8-30h of the Connecticut General Statutes

Connecticut General Statutes § 8-30h. Annual certification of continuing compliance with affordability requirements. Noncompliance.

On and after January 1, 1996, the developer, owner or manager of an affordable housing development, developed pursuant to subparagraph (B) of subdivision (1) of subsection (a) of section 8-30g, that includes rental units shall provide annual certification to the commission that the development continues to be in compliance with the covenants and deed restrictions required under said section.

If the development does not comply with such covenants and deed restrictions, the developer, owner or manager shall rent the next available units to persons and families whose incomes satisfy the requirements of the covenants and deed restrictions until the development is in compliance.

The commission may inspect the income statements of the tenants of the restricted units upon which the developer, owner or manager bases the certification. Such tenant statements shall be confidential and shall not be deemed public records for the purposes of the Freedom of Information Act, as defined in section 1-200.

To: New Canaan Planning and Zoning Department, 77 Main Street, New Canaan, CT 06840

From: ANN WERNER, Compliance Manager
Westmount Management, 36 Park Place, Branford, CT 06405

Development Name/Address: Canaan Parish – 186 Lakeview Avenue (Building 1)

I hereby certify that the sixty (60) total units in the 100% affordable set-aside development known as Canaan Parish (Building 1) are restricted under a Housing Affordability Plan filed in the office of the Planning and Zoning Department of the Town of New Canaan, and that the units are restricted in compliance with that Plan for a period of 40 years from the date of the issuance of the Certificate of Occupancy for each of the units. I have ascertained to the best of my knowledge and belief that the income limits for tenants required under the Plan and under Connecticut General Statutes § 8-30g have been satisfied at all times since the issuance of the Certificate of Occupancy for each of the units. The occupants have provided the appropriate supporting documentation from which I verified their income.

Therefore, the development continues to be in compliance with the restrictions required under Connecticut General Statutes § 8-30g.

State of Connecticut

ss: Branford

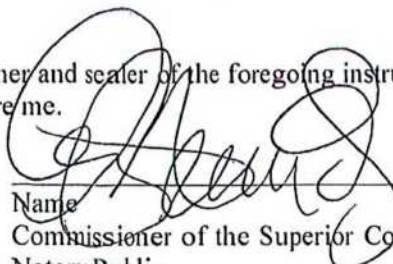


Compliance Manager

County of Fairfield

Personally appeared Ann Werner, signer and sealer of the foregoing instrument and acknowledged the same to be his/her free act and deed before me.

Date: 5/19/2022



Name
Commissioner of the Superior Court or
Notary Public

THIS INSTRUMENT PREPARED BY AND
AFTER RECORDING, RETURN TO:

Bailey Gallagher, Esq.
Hessel, Aluise & O'Leary, P.C.
1730 Rhode Island Ave. NW, Ste. 900
Washington, DC 20036



Doc ID: 002740380008 Type: LAN
Book 1022 Page 83 - 90
File# 810

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

Use Agreement	U.S. Department of Housing and Urban Development Office of Housing Federal Housing Commissioner	OMB Approval No. 2502-0587
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Public Reporting Burden

Public reporting burden for this collection of information is estimated to average .5 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Title V of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 1988 (P.L. 106-65, 111 Stat. 1384) authorizes the FHA Multifamily Housing Mortgage and Housing Assistance Restructuring Program. HUD implemented a statutory permanent program directed at FHA-insured multifamily projects that have project-based Section 8 contracts with above-market rents. The information collection is used to determine criteria eligibility of FHA-insured multifamily properties for participation in the Mark to Market program and the terms on which participation should occur. The purpose of the program is to preserve low-income rental housing affordability while reducing the long-term costs of Federal rental assistance. While no assurances of confidentiality are pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request.

Section 8 Use Agreement

This Section 8 Use Agreement ("Agreement"), made this 27th day of AUGUST, 2020, by and between the United States of America, Secretary of Housing and Urban Development ("HUD") and Canaan Parish Redevelopment Limited Partnership, a Connecticut limited partnership, the "Owner" of Canaan Parish (the "Project"), provides as follows:

WHEREAS, the Owner or a prior owner and the Contract Administrator (HUD or a Public Housing Agency, acting under an Annual Contributions Contract with HUD), previously entered into a project-based Housing Assistance Payments ("HAP") contract pursuant to section 8 of the United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f ("Act"), that has since terminated or expired;

WHEREAS, upon termination or expiration of a project-based section 8 HAP contract, HUD is authorized pursuant to section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, as amended, 42 U.S.C. 1437f note ("MAHRA"), to renew the contract on such terms and conditions as HUD considers appropriate, subject to the requirements of section 524 of MAHRA;

WHEREAS, the Owner and the Contract Administrator have entered or will enter into a renewal contract pursuant to section 524 of MAHRA ("Renewal Contract"); renewing the HAP contract for a term of twenty (20) years, subject to annual appropriations; and

WHEREAS, the Contract Administrator's agreement to enter into the Renewal Contract was conditioned on the requirement that the Owner agree to maintain the Project as affordable housing for low-income families for a period of twenty (20) years, as required in this Agreement.

NOW THEREFORE, in consideration of the mutual promises set forth herein and of other valuable consideration, HUD and the Owner, for itself, its successors and assigns, hereby agree as follows:

1. **Term.** The term of the Agreement shall be twenty (20) years and shall commence on the date reflected in first sentence of the Agreement on page 1.
2. **Governing Authorities.** The project shall be operated in accordance with the requirements of section 8 of the Act, all applicable Federal regulations, the Renewal Contract, and all other applicable HUD requirements.
3. **Use Restriction and Tenant Incomes.** The HAP-assisted units within this Project shall be used solely as rental housing for tenants meeting the eligibility and income-targeting requirements that govern the HAP Contract. In the event that the HAP Contract is terminated (e.g., because of breach or non-compliance by the Owner), for the remainder of the term of the Agreement, new tenants must have incomes at or below 80 percent of the area median income (AMI) at the time of admission, applicable to all units previously covered under the HAP contract.
4. **Subordination.** Any mortgage liens will be subject to this Agreement. This Agreement will survive foreclosure and bankruptcy.

5. **Fair Housing and Civil Rights Requirements.** Compliance with all applicable fair housing and civil rights requirements, including the obligation to affirmatively further fair housing and the site selection and neighborhood standards requirements set forth in 24 CFR §§ 1.4(b)(3) and 941.202, as applicable, is required.
6. **Federal Accessibility Requirements.** Compliance with all applicable federal accessibility requirements under the Fair Housing Act and implementing regulations at 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8, and Titles II and III of the Americans with Disabilities Act and implementing regulations at 28 CFR Parts 35 and 36, respectively, is required.
7. **Execution of Other Agreements.** The Owner agrees that it has not and will not execute any other agreement with provisions contradictory of, or in opposition to, the provisions of this Agreement, and that in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any conflicting requirements.
8. **Subsequent Statutory Amendments.** If revisions to this Agreement are necessitated by subsequent statutory amendments, the Owner agrees to execute modifications to this Agreement that are needed to conform to the statutory amendments. In the alternative, at HUD's option, HUD may implement any such statutory amendment through rulemaking.
9. **Tenant Participation.** The Owner agrees (a) not to impede the reasonable efforts of tenants to organize as detailed in 24 CFR Part 245, and (b) not to unreasonably withhold the use of any community room or other available space appropriate for meetings which is part of the Project when requested by (i) a resident tenant organization in connection with the representational purposes of the organization, or (ii) tenants residing in the Project who seek to organize or to consider collectively any matter pertaining to the operation of the Project.
10. **Conflicts.** Any conflicts between this Agreement and the HAP Contract shall be conclusively resolved by HUD.
11. **Recordation.** The Owner agrees to record this Use Agreement, or to cause it to be recorded, at the Owner's cost and expense in the appropriate land records within sixty (60) days of execution by HUD.
12. **Enforcement.** In the event of a breach or threatened breach of any of the provisions of this Agreement, the Secretary or his or her successors or delegates may institute proper legal action against the Owner or any of its successors or assigns to enforce performance of such provisions, to enjoin any acts in violation of such provisions, to recover whatever damages can be proven, and/or to obtain whatever other relief may be appropriate.

13. **Severability.** The invalidity, in whole or in part, of any of the provisions set forth in this Agreement shall not affect or invalidate any remaining provisions.

14. **Binding Nature of Agreement.** This Agreement shall be binding upon the Owners and all future successors and assigns.

15. **No Negotiation.** This Agreement is not subject to negotiation.

[SIGNATURE PAGES ATTACHED]

Signature Page

As evidenced by the signature below of their authorized representative, the Owner and HUD hereby agree to the terms of this Use Agreement.

Owner

Canaan Parish Redevelopment Limited Partnership

By: Canaan Parish Redevelopment GP, LLC,
Its General Partner

By: Housing Authority of the Town of New Canaan,
Its Managing Member

By: [Signature]
Name: Scott Hobbs
Title: Chairman

WITNESSES

Print: MICHELLE BLANSEY

Print: Susan Thompson

State of Connecticut

County of Fairfield ss. (Town/City)

On this the 22 day of July, 20 20, before me, Monique J. Lema (name of notary), the undersigned officer, personally appeared Scott Hobbs, who acknowledged himself to be the Chairman of the Housing Authority of the Town of New Canaan, the Managing Member of Canaan Parish Redevelopment GP, LLC, the General Partner of Canaan Parish Redevelopment Limited Partnership and that he as such Chairman, being authorized so to do executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Chairman.

In witness whereof I hereunto set my hand.

[Signature]
Signature of Notary Public

Date Commission Expires: 2.28.2025

Monique J. Lema
Printed Name of Notary

MONIQUE J. LEMA
Notary Public, State of Connecticut
My Commission Expires Feb. 28, 2025

HUD:

UNITED STATES OF AMERICA
SECRETARY OF HOUSING
AND URBAN DEVELOPMENT

By: Stacey Ashmore
Name: Stacey Ashmore
Title: Northeast Production
Division Director

WITNESSES:

[Signature]
Print: Bernard Ashmore
[Signature]
Print: Leilan S Robinson

State of ~~Connecticut~~ New Jersey

County of Bergen ss. (Town/City)

On this the 20 day of August, 2020, before me, Leilan S Robinson
the undersigned officer, personally appeared Stacey Ashmore,
known to me (or satisfactorily proven) to be the person whose name is subscribed to
the within instrument and acknowledged that she executed the same for the
purposes therein contained.

In witness whereof I hereunto set my hand.

[Signature]
Signature of Notary Public

Date Commission Expires: 6-8-2025

Leilan S Robinson
Printed Name of Notary

LEILAN S. ROBINSON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 8, 2025
ID # 50017208

EXHIBIT A LEGAL DESCRIPTION

All that certain piece or parcel of land, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, more particularly shown and delineated as "'I' 226,708± SQ. FT. 5.204± ACRES ("Parcel I") on a certain map entitled "MAP SHOWING LANDS OF THE TOWN OF NEW CANAAN TO BE LEASED TO NEW CANAAN NEIGHBORHOODS INC. NEW CANAAN, CONNECTICUT 'B' RESIDENCE ZONE 10.906 ACRES - 475,096± SQ. FT.," which map is filed for record on the New Canaan Land Records as Map No. 5839 ("Map 5839"), reference to Map 5839 being expressly made. Parcel I is more particularly bounded and described as follows:

EASTERLY:	620.57 feet by Connecticut State Highway Route #123 known as New Norwalk Road;
SOUTHEASTERLY:	26.16 feet by the curved intersection of New Norwalk Road with the public highway known as Lakeview Avenue;
SOUTHERLY:	227.21 feet by the public highway known as Lakeview Avenue;
WESTERLY:	30.00 feet, then
SOUTHWESTERLY:	90.00 feet, then again
WESTERLY:	200.00 feet, then again
SOUTHWESTERLY:	310.49 feet by other land of the Town of New Canaan presently being used for the Town Highway Garage, and
NORTHWESTERLY:	540.21 feet by Parcel "'II' 248,388± SQ. FT. 5.702± ACRES" on Map 5839 ("Parcel II").

Said Parcel I is also described as follows:

Beginning at a monument where same is intersected by a stonewall on the westerly side of New Norwalk Road (Route #123) and being the southeasterly corner of land of Anne C. Zavisho; thence running along the westerly side of New Norwalk Road (Route #123) the following course and distance on a curve to the right having a radius of 1870.08 feet for a length of 216.97 feet to the point or place of beginning; thence continuing along the westerly side of New Norwalk Road (Route #123) the following courses and distances on a curve to the right having a radius of 1870.08 feet for a length of 194.05 feet to a monument and:

S 14-23-40 E	426.52 feet
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to a point on the northerly side of Lakeview Avenue; thence turning and running in a generally southwesterly direction along the northerly side of Lakeview Avenue the following courses and distances on a curve to the right having a radius of 20.00 feet for a length of 26.16 feet and on a

SCHEDULE A-CONTINUED

curve to the right having a radius of 620.55 feet for a length of 220.22 feet and

S 80-53-40 W

6.99 feet

to a point being a southeasterly corner of land of the Town of New Canaan; thence turning and running in a generally northwesterly direction along a generally northeasterly boundary of the Town of New Canaan the following courses and distances:

N 14-23-40 W

30.00 feet

N 59-23-40 W

90.00 feet

N 14-23-40 W

200.00 feet

N 49-33-10 W

104.00 feet

and N 61-30-20 W

206.49 feet

to a point on the southeasterly boundary of Parcel II as shown on Map #5839 on file in the New Canaan Land Records; thence turning and running in a generally northeasterly direction along a generally southeasterly boundary of the aforesaid Parcel II the following courses and distances:

N 32-04-20 E

76.00 feet

N 46-39-50 E

100.00 feet

and N 69-40-54 E

364.21 feet

to the point or place of beginning.

The said parcel is leased together with an easement to the occupants of dwelling units located thereon to cross, on foot, the "Conservation Area" shown on a map entitled "Subdivision Map Town of New Canaan New Norwalk Road (Route 123), Lakeview Avenue, Millport Avenue & East Avenue New Canaan, Connecticut Dated December 22, 1998 as revised Sheets 1 and 2" filed as Maps #7057 and #7058 in the office of the New Canaan Town Clerk to reach the area depicted on said Maps as "Access Easement In Favor Of The Town Of New Canaan".

Said premises are also known as 186 Lakeview Avenue, New Canaan, Connecticut (Parcel I).

{S7258195}

Received for Record at New Canaan, CT
On 08/26/2020 At 8:13:33 am

Claudia A. Weber



Doc ID: 002740440014 Type: LAN
Book 1022 Page 221 - 234
File# 816

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

EXTENDED LOW-INCOME HOUSING COMMITMENT

This EXTENDED LOW-INCOME HOUSING COMMITMENT (the "Agreement") is made this 27th day of August, 2020, by and between CANAAN PARISH REDEVELOPMENT LIMITED PARTNERSHIP, a limited partnership with an office and principal place of business at c/o Canaan Parish Redevelopment GP, LLC, 57 Millport Avenue, New Canaan, Connecticut 06840 (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").

WITNESSETH:

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 a leasehold interest in certain real property known as Canaan Parish Redevelopment, and located at 186 Lakeview Avenue, New Canaan, Connecticut (the "Property"), which Property is more particularly described on Exhibit A, attached hereto and made a part hereof;

WHEREAS, the Property has qualified for low-income housing tax credits in the approximate annual amount of \$1,288,667 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");

WHEREAS, Section 42(h)(6)(A) of 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:

-- 1 --

- (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; *provided, however,* in the case of individuals and families occupying at least: (i) twenty (20) Units, individuals and families having an annual

income not exceeding fifty percent (50%) of area median gross income at such time, and (ii) eighty (80) Units, individuals and families having an annual income not exceeding eighty percent (80%) of area median gross income at such time in accordance with Section 42(g)(1)(C) of the Code, and Owner hereby irrevocably elects the "average income test" in accordance therewith.

- (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.

(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:

100/100 (unit fraction)
100% (floor space fraction)

(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 twenty-five (25) 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 100% 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 January 30, 2020 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.

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(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.

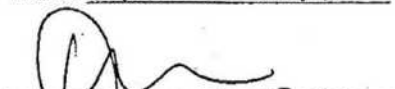
(f) Any notice or other communication in connection with this Agreement shall be in writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as FedEx, 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.

(g) Attached hereto as Exhibit B is a Rider, the terms of which are incorporated into this Agreement.

[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.


Name: Bernard Simpson

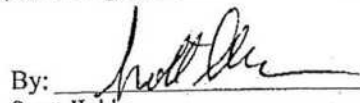

Name: Keisha Palmer

OWNER:

Canaan Parish Redevelopment Limited Partnership

By: Canaan Parish Redevelopment GP, LLC
Its General Partner

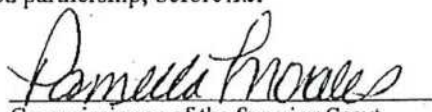
By: Housing Authority of the Town of New Canaan, Its Managing Member

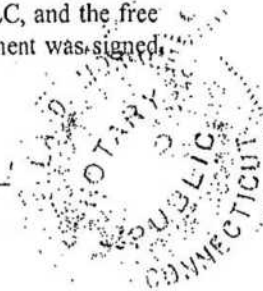
By: 
Scott Hobbs
Chairman

STATE OF CONNECTICUT)
) ss: New Canaan
COUNTY OF FAIRFIELD)

August 18, 2020

Personally appeared, Scott Hobbs, Chairman of the Housing Authority of the Town of New Canaan, the Managing Member of Canaan Parish Redevelopment GP, LLC, the general partner of Canaan Parish Redevelopment Limited Partnership, as aforesaid Signer and Sealer of the foregoing Instrument, and acknowledged the same to be his free act and deed as Chairman of the Housing Authority of the Town of New Canaan, the Managing Member of Canaan Parish Redevelopment GP, LLC, and the free act and deed of Canaan Parish Redevelopment Limited Partnership, and that said instrument was signed on behalf of and with the authority of said limited partnership, before me.


Commissioner of the Superior Court
Notary Public



PAMELLA D. MORALES
Notary Public, State of Connecticut
My Commission Expires Feb 28, 2025

{W3230787;3}

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CONNECTICUT HOUSING FINANCE AUTHORITY

Loane Rinaldi
Loane Rinaldi
Sue Hackett
Sue Hackett

By: Nandini Natarajan
Nandini Natarajan
Chief Executive Officer-Executive Director
Duly Authorized

STATE OF CONNECTICUT)

COUNTY OF HARTFORD)

ss. Rocky Hill

August 20, 2020

Personally appeared, Nandini Natarajan, Chief Executive Officer-Executive Director 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.

Sue Hackett
Notary Public
My Commission Expires 6/30/2021

Sue Hackett
Commissioner of the Superior Court
Notary Public

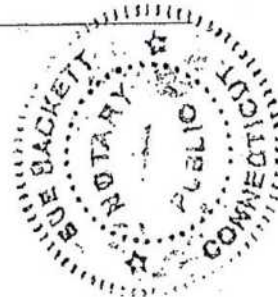


Exhibit A

All that certain piece or parcel of land, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, more particularly shown and delineated as " 'I' 226,708± SQ. FT. 5.204± ACRES ("Parcel I") on a certain map entitled "MAP SHOWING LANDS OF THE TOWN OF NEW CANAAN TO BE LEASED TO NEW CANAAN NEIGHBORHOODS INC. NEW CANAAN, CONNECTICUT 'B' RESIDENCE ZONE 10.906 ACRES - 475,096± SQ. FT.," which map is filed for record on the New Canaan Land Records as Map No. 5839 ("Map 5839"), reference to Map 5839 being expressly made. Parcel I is more particularly bounded and described as follows:

EASTERLY: 620.57 feet by Connecticut State Highway Route #123 known as New Norwalk Road;

SOUTHEASTERLY: 26.16 feet by the curved intersection of New Norwalk Road with the public highway known as Lakeview Avenue;

SOUTHERLY: 227.21 feet by the public highway known as Lakeview Avenue;

WESTERLY: 30.00 feet, then

SOUTHWESTERLY: 90.00 feet, then again

WESTERLY: 200.00 feet, then again

SOUTHWESTERLY: 310.49 feet by other land of the Town of New Canaan presently being used for the Town Highway Garage, and

NORTHWESTERLY: 540.21 feet by Parcel " 'II' 248,388± SQ. FT. 5.702± ACRES" on Map 5839 ("Parcel II").

Said Parcel I is also described as follows:

Beginning at a monument where same is intersected by a stonewall on the westerly side of New Norwalk Road (Route #123) and being the southeasterly corner of land of Anne C. Zavisho; thence running along the westerly side of New Norwalk Road (Route #123) the following course and distance on a curve to the right having a radius of 1870.08 feet for a length of 216.97 feet to the point or place of beginning; thence continuing along the westerly side of New Norwalk Road (Route #123) the following courses and distances on a curve to the right having a radius of 1870.08 feet for a length of 194.05 feet to a monument and:

S 14-23-40 E 426.52 feet

to a point on the northerly side of Lakeview Avenue; thence turning and running in a generally southwesterly direction along the northerly side of Lakeview Avenue the following courses and distances on a curve to the right having a radius of 20.00 feet for a length of 26.16 feet and on a

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curve to the right having a radius of 620.55 feet for a length of 220.22 feet and

S 80-53-40 W 6.99 feet

to a point being a southeasterly corner of land of the Town of New Canaan; thence turning and running in a generally northwesterly direction along a generally northeasterly boundary of the Town of New Canaan the following courses and distances:

N 14-23-40 W 30.00 feet

N 59-23-40 W 90.00 feet

N 14-23-40 W 200.00 feet

N 49-33-10 W 104.00 feet

and N 61-30-20 W 206.49 feet

to a point on the southeasterly boundary of Parcel II as shown on Map #5839 on file in the New Canaan Land Records; thence turning and running in a generally northeasterly direction along a generally southeasterly boundary of the aforesaid Parcel II the following courses and distances:

N 32-04-20 E 76.00 feet

N 46-39-50 E 100.00 feet

and N 69-40-54 E 364.21 feet

to the point or place of beginning.

The said parcel is leased together with an easement to the occupants of dwelling units located thereon to cross, on foot, the "Conservation Area" shown on a map entitled "Subdivision Map Town of New Canaan New Norwalk Road (Route 123), Lakeview Avenue, Millport Avenue & East Avenue New Canaan, Connecticut Dated December 22, 1998 as revised Sheets 1 and 2" filed as Maps #7057 and #7058 in the office of the New Canaan Town Clerk to reach the area depicted on said Maps as "Access Easement In Favor Of The Town Of New Canaan".

Said premises are also known as 186 Lakeview Avenue, New Canaan, Connecticut (Parcel I).

EXHIBIT B
HUD Rider To Restrictive Covenants

This RIDER TO RESTRICTIVE COVENANTS is made as of August 27, 2020, by CANAAN PARISH REDEVELOPMENT LIMITED PARTNERSHIP ("Borrower") and CONNECTICUT HOUSING FINANCE AUTHORITY ("Agency").

WHEREAS, Borrower has obtained financing from ORIX Real Estate Capital, LLC ("Lender") for the benefit of the project known as Canaan Parish ("Project"), which loan is secured by a Multifamily Leasehold Mortgage, Assignment Of Leases And Rents And Security Agreement (Connecticut) ("Security Instrument") dated as of August 27, 2020, and recorded in the Land Records of the Town of New Canaan, Connecticut ("Records") on August 25, 2020 as Document Number 816, and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, Borrower has received an allocation of Low Income Housing Tax Credits from the Agency, which Agency is requiring certain restrictions be recorded against the Project; and

WHEREAS, Borrower entered into that certain Extended Low-Income Housing Commitment ("Restrictive Covenants") with respect to the Project; and

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Agency has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means ORIX Real Estate Capital, LLC, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, except the requirements in 26 U.S.C. 42(h)(6)(E)(ii), to the extent applicable, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In accordance with 26 U.S.C. 42(h)(6)(E)(i)(1), in] In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) above, to the extent applicable, or as otherwise approved by HUD.

(e) Borrower and the Agency acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Agency's reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available surplus cash, if the Borrower is a for-profit entity;

- ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity. [or
- iv. [A HUD-approved collateral assignment of any HAP contract.]

(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

- (i) Notwithstanding anything to the contrary contained herein, it is not the intent of any of the parties hereto to cause a recapture of the Low Income Housing Tax Credits or any portion thereof related to any potential conflicts between the HUD Requirements and the Restrictive Covenants. Borrower represents and warrants that to the best of Borrower's knowledge the HUD Requirements impose no requirements which may be inconsistent with full compliance with the Restrictive Covenants. The acknowledged purpose of the HUD Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of the Restrictive Covenants is to articulate requirements imposed by Section 42 of the Code. In the event an apparent conflict between the HUD Requirements and the Restrictive Covenant arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. It is the primary responsibility of the Borrower, with advice of counsel, to determine that it will be able to comply with the HUD Requirements and its obligations under the Restrictive Covenants.

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Doc ID: 002740440014 Type: LAN
Book 1022 Page 221 - 234
File# 816

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

EXTENDED LOW-INCOME HOUSING COMMITMENT

This EXTENDED LOW-INCOME HOUSING COMMITMENT (the "Agreement") is made this 27th day of August, 2020, by and between CANAAN PARISH REDEVELOPMENT LIMITED PARTNERSHIP, a limited partnership with an office and principal place of business at c/o Canaan Parish Redevelopment GP, LLC, 57 Millport Avenue, New Canaan, Connecticut 06840 (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").

WITNESSETH:

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 a leasehold interest in certain real property known as Canaan Parish Redevelopment, and located at 186 Lakeview Avenue, New Canaan, Connecticut (the "Property"), which Property is more particularly described on Exhibit A, attached hereto and made a part hereof;

WHEREAS, the Property has qualified for low-income housing tax credits in the approximate annual amount of \$1,288,667 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");

WHEREAS, Section 42(h)(6)(A) of 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:

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- (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; *provided, however,* in the case of individuals and families occupying at least: (i) twenty (20) Units, individuals and families having an annual

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income not exceeding fifty percent (50%) of area median gross income at such time, and (ii) eighty (80) Units, individuals and families having an annual income not exceeding eighty percent (80%) of area median gross income at such time in accordance with Section 42(g)(1)(C) of the Code, and Owner hereby irrevocably elects the "average income test" in accordance therewith.

- (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.

(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:

100/100 (unit fraction)
100% (floor space fraction)

(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 twenty-five (25) 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 100% 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 January 30, 2020 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.

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(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.

(g) Attached hereto as Exhibit B is a Rider, the terms of which are incorporated into this Agreement.

[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.


Name: BERNARD SIMPSON



Name: KEISHA PALMER

OWNER:

Canaan Parish Redevelopment Limited Partnership

By: Canaan Parish Redevelopment GP, LLC
Its General Partner

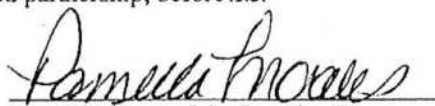
By: Housing Authority of the Town of New Canaan, Its Managing Member

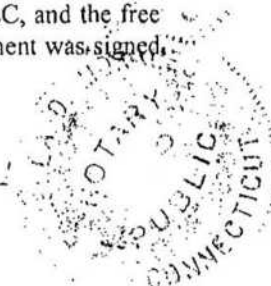
By: 
Scott Hobbs
Chairman

STATE OF CONNECTICUT)
) ss: New Canaan
COUNTY OF FAIRFIELD)

August 18, 2020

Personally appeared, Scott Hobbs, Chairman of the Housing Authority of the Town of New Canaan, the Managing Member of Canaan Parish Redevelopment GP, LLC, the general partner of Canaan Parish Redevelopment Limited Partnership, as aforesaid Signer and Sealer of the foregoing Instrument, and acknowledged the same to be his free act and deed as Chairman of the Housing Authority of the Town of New Canaan, the Managing Member of Canaan Parish Redevelopment GP, LLC, and the free act and deed of Canaan Parish Redevelopment Limited Partnership, and that said instrument was signed on behalf of and with the authority of said limited partnership, before me.


Commissioner of the Superior Court
Notary Public



PAMELLA D. MORALES
Notary Public, State of Connecticut
My Commission Expires Feb 28, 2025

(W3230787;3)

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CONNECTICUT HOUSING FINANCE AUTHORITY

Lorane Rinaldi
Lorane Rinaldi
Hackett
Sue Hackett

By: N. Natarajan
Nandini Natarajan
Chief Executive Officer-Executive Director
Duly Authorized

STATE OF CONNECTICUT)

) ss. Rocky Hill

August 20, 2020

COUNTY OF HARTFORD)

Personally appeared, Nandini Natarajan, Chief Executive Officer-Executive Director 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.

Sue Hackett
Notary Public
My Commission Expires 6/30/2021

Hackett
~~Commissioner of the Superior Court~~
Notary Public



Exhibit A

All that certain piece or parcel of land, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, more particularly shown and delineated as " 'I' 226,708± SQ. FT. 5.204± ACRES ("Parcel I") on a certain map entitled "MAP SHOWING LANDS OF THE TOWN OF NEW CANAAN TO BE LEASED TO NEW CANAAN NEIGHBORHOODS INC. NEW CANAAN, CONNECTICUT 'B' RESIDENCE ZONE 10.906 ACRES - 475,096± SQ. FT.," which map is filed for record on the New Canaan Land Records as Map No. 5839 ("Map 5839"), reference to Map 5839 being expressly made. Parcel I is more particularly bounded and described as follows:

EASTERLY: 620.57 feet by Connecticut State Highway Route #123 known as New Norwalk Road;

SOUTHEASTERLY: 26.16 feet by the curved intersection of New Norwalk Road with the public highway known as Lakeview Avenue;

SOUTHERLY: 227.21 feet by the public highway known as Lakeview Avenue;

WESTERLY: 30.00 feet, then

SOUTHWESTERLY: 90.00 feet, then again

WESTERLY: 200.00 feet, then again

SOUTHWESTERLY: 310.49 feet by other land of the Town of New Canaan presently being used for the Town Highway Garage, and

NORTHWESTERLY: 540.21 feet by Parcel "'II' 248,388± SQ. FT. 5.702± ACRES" on Map 5839 ("Parcel II").

Said Parcel I is also described as follows:

Beginning at a monument where same is intersected by a stonewall on the westerly side of New Norwalk Road (Route #123) and being the southeasterly corner of land of Anne C. Zavisho; thence running along the westerly side of New Norwalk Road (Route #123) the following course and distance on a curve to the right having a radius of 1870.08 feet for a length of 216.97 feet to the point or place of beginning; thence continuing along the westerly side of New Norwalk Road (Route #123) the following courses and distances on a curve to the right having a radius of 1870.08 feet for a length of 194.05 feet to a monument and:

S 14-23-40 E 426.52 feet

to a point on the northerly side of Lakeview Avenue; thence turning and running in a generally southwesterly direction along the northerly side of Lakeview Avenue the following courses and distances on a curve to the right having a radius of 20.00 feet for a length of 26.16 feet and on a

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curve to the right having a radius of 620.55 feet for a length of 220.22 feet and

S 80-53-40 W 6.99 feet

to a point being a southeasterly corner of land of the Town of New Canaan; thence turning and running in a generally northwesterly direction along a generally northeasterly boundary of the Town of New Canaan the following courses and distances:

N 14-23-40 W 30.00 feet

N 59-23-40 W 90.00 feet

N 14-23-40 W 200.00 feet

N 49-33-10 W 104.00 feet

and N 61-30-20 W 206.49 feet

to a point on the southeasterly boundary of Parcel II as shown on Map #5839 on file in the New Canaan Land Records; thence turning and running in a generally northeasterly direction along a generally southeasterly boundary of the aforesaid Parcel II the following courses and distances:

N 32-04-20 E 76.00 feet

N 46-39-50 E 100.00 feet

and N 69-40-54 E 364.21 feet

to the point or place of beginning.

The said parcel is leased together with an easement to the occupants of dwelling units located thereon to cross, on foot, the "Conservation Area" shown on a map entitled "Subdivision Map Town of New Canaan New Norwalk Road (Route 123), Lakeview Avenue, Millport Avenue & East Avenue New Canaan, Connecticut Dated December 22, 1998 as revised Sheets 1 and 2" filed as Maps #7057 and #7058 in the office of the New Canaan Town Clerk to reach the area depicted on said Maps as "Access Easement In Favor Of The Town Of New Canaan".

Said premises are also known as 186 Lakeview Avenue, New Canaan, Connecticut (Parcel I).

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EXHIBIT B
HUD Rider To Restrictive Covenants

This RIDER TO RESTRICTIVE COVENANTS is made as of August 27, 2020, by CANAAN PARISH REDEVELOPMENT LIMITED PARTNERSHIP ("Borrower") and CONNECTICUT HOUSING FINANCE AUTHORITY ("Agency").

WHEREAS, Borrower has obtained financing from ORIX Real Estate Capital, LLC ("Lender") for the benefit of the project known as Canaan Parish ("Project"), which loan is secured by a Multifamily Leasehold Mortgage, Assignment Of Leases And Rents And Security Agreement (Connecticut) ("Security Instrument") dated as of August 27, 2020, and recorded in the Land Records of the Town of New Canaan, Connecticut ("Records") on August 25, 2020 as Document Number 816, and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, Borrower has received an allocation of Low Income Housing Tax Credits from the Agency, which Agency is requiring certain restrictions be recorded against the Project; and

WHEREAS, Borrower entered into that certain Extended Low-Income Housing Commitment ("Restrictive Covenants") with respect to the Project; and

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Agency has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means ORIX Real Estate Capital, LLC, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, except the requirements in 26 U.S.C. 42(h)(6)(E)(ii), to the extent applicable, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In accordance with 26 U.S.C. 42(h)(6)(E)(i)(1), in] In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) above, to the extent applicable, or as otherwise approved by HUD.

(e) Borrower and the Agency acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Agency's reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available surplus cash, if the Borrower is a for-profit entity;

- ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity. [or
- iv. [A HUD-approved collateral assignment of any HAP contract.]

(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

- (i) Notwithstanding anything to the contrary contained herein, it is not the intent of any of the parties hereto to cause a recapture of the Low Income Housing Tax Credits or any portion thereof related to any potential conflicts between the HUD Requirements and the Restrictive Covenants. Borrower represents and warrants that to the best of Borrower's knowledge the HUD Requirements impose no requirements which may be inconsistent with full compliance with the Restrictive Covenants. The acknowledged purpose of the HUD Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of the Restrictive Covenants is to articulate requirements imposed by Section 42 of the Code. In the event an apparent conflict between the HUD Requirements and the Restrictive Covenant arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. It is the primary responsibility of the Borrower, with advice of counsel, to determine that it will be able to comply with the HUD Requirements and its obligations under the Restrictive Covenants.

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THIS INSTRUMENT PREPARED BY AND
AFTER RECORDING, RETURN TO:

Bailey Gallagher, Esq.
Hessel, Aluise & O'Leary, P.C.
1730 Rhode Island Ave. NW, Ste. 900
Washington, DC 20036



Doc ID: 002740380008 Type: LAN
Book 1022 Page 83 - 90
File# 810

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

Use Agreement	U.S. Department of Housing and Urban Development Office of Housing Federal Housing Commissioner	OMB Approval No. 2502-0587
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Public Reporting Burden

Public reporting burden for this collection of information is estimated to average .5 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Title V of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 1988 (P.L. 106-65, 111 Stat. 1384) authorizes the FHA Multifamily Housing Mortgage and Housing Assistance Restructuring Program. HUD implemented a statutory permanent program directed at FHA-insured multifamily projects that have project-based Section 8 contracts with above-market rents. The information collection is used to determine criteria eligibility of FHA-insured multifamily properties for participation in the Mark to Market program and the terms on which participation should occur. The purpose of the program is to preserve low-income rental housing affordability while reducing the long-term costs of Federal rental assistance. While no assurances of confidentiality are pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request.

Section 8 Use Agreement

This Section 8 Use Agreement ("Agreement"), made this 27th day of AUGUST, 2020, by and between the United States of America, Secretary of Housing and Urban Development ("HUD") and Canaan Parish Redevelopment Limited Partnership, a Connecticut limited partnership, the "Owner" of Canaan Parish (the "Project"), provides as follows:

WHEREAS, the Owner or a prior owner and the Contract Administrator (HUD or a Public Housing Agency, acting under an Annual Contributions Contract with HUD), previously entered into a project-based Housing Assistance Payments ("HAP") contract pursuant to section 8 of the United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f ("Act"), that has since terminated or expired;

WHEREAS, upon termination or expiration of a project-based section 8 HAP contract, HUD is authorized pursuant to section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, as amended, 42 U.S.C. 1437f note ("MAHRA"), to renew the contract on such terms and conditions as HUD considers appropriate, subject to the requirements of section 524 of MAHRA;

WHEREAS, the Owner and the Contract Administrator have entered or will enter into a renewal contract pursuant to section 524 of MAHRA ("Renewal Contract"), renewing the HAP contract for a term of twenty (20) years, subject to annual appropriations; and

WHEREAS, the Contract Administrator's agreement to enter into the Renewal Contract was conditioned on the requirement that the Owner agree to maintain the Project as affordable housing for low-income families for a period of twenty (20) years, as required in this Agreement.

NOW THEREFORE, in consideration of the mutual promises set forth herein and of other valuable consideration, HUD and the Owner, for itself, its successors and assigns, hereby agree as follows:

1. **Term.** The term of the Agreement shall be twenty (20) years and shall commence on the date reflected in first sentence of the Agreement on page 1.
2. **Governing Authorities.** The project shall be operated in accordance with the requirements of section 8 of the Act, all applicable Federal regulations, the Renewal Contract, and all other applicable HUD requirements.
3. **Use Restriction and Tenant Incomes.** The HAP-assisted units within this Project shall be used solely as rental housing for tenants meeting the eligibility and income-targeting requirements that govern the HAP Contract. In the event that the HAP Contract is terminated (e.g., because of breach or non-compliance by the Owner), for the remainder of the term of the Agreement, new tenants must have incomes at or below 80 percent of the area median income (AMI) at the time of admission, applicable to all units previously covered under the HAP contract.
4. **Subordination.** Any mortgage liens will be subject to this Agreement. This Agreement will survive foreclosure and bankruptcy.

5. **Fair Housing and Civil Rights Requirements.** Compliance with all applicable fair housing and civil rights requirements, including the obligation to affirmatively further fair housing and the site selection and neighborhood standards requirements set forth in 24 CFR §§ 1.4(b)(3) and 941.202, as applicable, is required.
6. **Federal Accessibility Requirements.** Compliance with all applicable federal accessibility requirements under the Fair Housing Act and implementing regulations at 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8, and Titles II and III of the Americans with Disabilities Act and implementing regulations at 28 CFR Parts 35 and 36, respectively, is required.
7. **Execution of Other Agreements.** The Owner agrees that it has not and will not execute any other agreement with provisions contradictory of, or in opposition to, the provisions of this Agreement, and that in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any conflicting requirements.
8. **Subsequent Statutory Amendments.** If revisions to this Agreement are necessitated by subsequent statutory amendments, the Owner agrees to execute modifications to this Agreement that are needed to conform to the statutory amendments. In the alternative, at HUD's option, HUD may implement any such statutory amendment through rulemaking.
9. **Tenant Participation.** The Owner agrees (a) not to impede the reasonable efforts of tenants to organize as detailed in 24 CFR Part 245, and (b) not to unreasonably withhold the use of any community room or other available space appropriate for meetings which is part of the Project when requested by (i) a resident tenant organization in connection with the representational purposes of the organization, or (ii) tenants residing in the Project who seek to organize or to consider collectively any matter pertaining to the operation of the Project.
10. **Conflicts.** Any conflicts between this Agreement and the HAP Contract shall be conclusively resolved by HUD.
11. **Recordation.** The Owner agrees to record this Use Agreement, or to cause it to be recorded, at the Owner's cost and expense in the appropriate land records within sixty (60) days of execution by HUD.
12. **Enforcement.** In the event of a breach or threatened breach of any of the provisions of this Agreement, the Secretary or his or her successors or delegates may institute proper legal action against the Owner or any of its successors or assigns to enforce performance of such provisions, to enjoin any acts in violation of such provisions, to recover whatever damages can be proven, and/or to obtain whatever other relief may be appropriate.

13. Severability. The invalidity, in whole or in part, of any of the provisions set forth in this Agreement shall not affect or invalidate any remaining provisions.

14. Binding Nature of Agreement. This Agreement shall be binding upon the Owners and all future successors and assigns.

15. No Negotiation. This Agreement is not subject to negotiation.

[SIGNATURE PAGES ATTACHED]

Signature Page

As evidenced by the signature below of their authorized representative, the Owner and HUD hereby agree to the terms of this Use Agreement.

Owner

Canaan Parish Redevelopment Limited Partnership

By: Canaan Parish Redevelopment GP, LLC,
Its General Partner

By: Housing Authority of the Town of New Canaan,
Its Managing Member

By: [Signature]
Name: Scott Hobbs
Title: Chairman

WITNESSES

Print: Michael Beasley

Print: Susan Thompson

State of Connecticut

County of Fairfield ss. (Town/City)

On this the 22 day of July, 20 20, before me, Monique J. Lema (name of notary), the undersigned officer, personally appeared Scott Hobbs, who acknowledged himself to be the Chairman of the Housing Authority of the Town of New Canaan, the Managing Member of Canaan Parish Redevelopment GP, LLC, the General Partner of Canaan Parish Redevelopment Limited Partnership and that he as such Chairman, being authorized so to do executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Chairman.

In witness whereof I hereunto set my hand.

[Signature]
Signature of Notary Public

Date Commission Expires: 2.28.2025

Monique J. Lema
Printed Name of Notary

MONIQUE J. LEMA
Notary Public, State of Connecticut
My Commission Expires Feb. 28, 2025

HUD:

UNITED STATES OF AMERICA
SECRETARY OF HOUSING
AND URBAN DEVELOPMENT

By: Stacey Ashmore
Name: Stacey Ashmore
Title: Northeast Production
Division Director

WITNESSES:

Stacey Ashmore
Print: Stacey Ashmore

L S Robinson
Print: Leilan S Robinson

State of ~~Connecticut~~ New Jersey

County of Bergen ss. (Town/City)

On this the 20 day of August, 2020, before me, Leilan S Robinson, the undersigned officer, personally appeared Stacey Ashmore, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand.

L S Robinson
Signature of Notary Public

Date Commission Expires: 6-8-2025

Leilan S Robinson
Printed Name of Notary

LEILAN S. ROBINSON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 8, 2025
ID # 50017208

EXHIBIT A LEGAL DESCRIPTION

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SOUTHWESTERLY:	90.00 feet, then again
WESTERLY:	200.00 feet, then again
SOUTHWESTERLY:	310.49 feet by other land of the Town of New Canaan presently being used for the Town Highway Garage, and
NORTHWESTERLY:	540.21 feet by Parcel "'II' 248,388± SQ. FT. 5.702± ACRES" on Map 5839 ("Parcel II").

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S 14-23-40 E	426.52 feet
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to a point on the northerly side of Lakeview Avenue; thence turning and running in a generally southwesterly direction along the northerly side of Lakeview Avenue the following courses and distances on a curve to the right having a radius of 20.00 feet for a length of 26.16 feet and on a

SCHEDULE A-CONTINUED

curve to the right having a radius of 620.55 feet for a length of 220.22 feet and

S 80-53-40 W 6.99 feet

to a point being a southeasterly corner of land of the Town of New Canaan; thence turning and running in a generally northwesterly direction along a generally northeasterly boundary of the Town of New Canaan the following courses and distances:

N 14-23-40 W 30.00 feet

N 59-23-40 W 90.00 feet

N 14-23-40 W 200.00 feet

N 49-33-10 W 104.00 feet

and N 61-30-20 W 206.49 feet

to a point on the southeasterly boundary of Parcel II as shown on Map #5839 on file in the New Canaan Land Records; thence turning and running in a generally northeasterly direction along a generally southeasterly boundary of the aforesaid Parcel II the following courses and distances:

N 32-04-20 E 76.00 feet

N 46-39-50 E 100.00 feet

and N 69-40-54 E 364.21 feet

to the point or place of beginning.

The said parcel is leased together with an easement to the occupants of dwelling units located thereon to cross, on foot, the "Conservation Area" shown on a map entitled "Subdivision Map Town of New Canaan New Norwalk Road (Route 123), Lakeview Avenue, Millport Avenue & East Avenue New Canaan, Connecticut Dated December 22, 1998 as revised Sheets 1 and 2" filed as Maps #7057 and #7058 in the office of the New Canaan Town Clerk to reach the area depicted on said Maps as "Access Easement In Favor Of The Town Of New Canaan".

Said premises are also known as 186 Lakeview Avenue, New Canaan, Connecticut (Parcel I).

{S7258195}

Received for Record at New Canaan, CT
On 08/26/2020 At 8:13:33 am

Claudia A. Weber



Doc ID: 002740390009 Type: LAN
Book 1022 Page 91 - 99
File# 811

WHEN RECORDED RETURN TO:
Carmody Torrance et al
707 Summer Street, Suite 300
Stamford, CT 06901
Attn: Ann H. Zucker, Esq.

**RESTRICTIVE COVENANT for
FLOODPLAINS and WETLANDS
DECLARATION OF RESTRICTIVE COVENANT**

This Declaration of Restrictive Covenant ("**Declaration**") is executed as of this 27th day of August 2020 (the "**Effective Date**"), by Canaan Parish Redevelopment Limited Partnership ("**Owner**").

RECITALS

- A. Owner is the owner of that certain parcel of land located in the County of Fairfield, State of Connecticut (the "State"), which is more fully described on Exhibit A hereto (the "**Property**").
- B. That portion of the Property which is described and/or depicted on Exhibit B hereto contains wetlands as defined at 24 CFR 55.2(b)(11) as shown on the survey attached in Exhibit B (said portion of the Property hereinafter referred to as the "**Wetlands**").
- C. In connection with the financing of the Property through a loan from ORIX Real Estate Capital, LLC insured by the United States Department of Housing and Urban Development ("**HUD**"), Owner has agreed to establish certain restrictions with respect to the use of the Wetlands that are intended to run with the land as more fully set forth herein.
- D. The purpose of this Declaration is to provide for permanent preservation of the Wetlands, as set forth herein.

NOW THEREFORE, in consideration of the foregoing premises, the making, receiving and insuring of the loan, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner declares as follows:

1. Use Restrictive Covenant.

- (a) From and after the Effective Date, (i) no new structure, paving, or other improvements shall be constructed on, and no new modifications or landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding or seeding, or other similar activities) shall be carried out within the Wetlands; and (ii) the use of the Wetlands shall be limited solely to passive open or green space.

In addition, from and after the Effective Date, (i) no new construction activities, including draining, dredging, channelizing, filling, diking, impounding, flooding, releasing wastes, and related activities that impact the Wetlands shall be performed; and (ii) no exotic species shall be introduced into the Wetlands, except biological controls preapproved in writing by the Army Corps of Engineers local office or the State environmental office. Provided, that the following are expressly permitted: (i) cumulatively very small impacts associated with hunting (excluding planting or burning), fishing, and similar recreational or educational activities, consistent with the continuing natural condition of the Property; and (ii) restoration or mitigation required under law.

- (b) This Declaration and the covenants set forth herein restricting the use and occupancy of the Wetlands (i) shall be and are covenants running with, touching, and encumbering the Property, binding upon the Owner and all successors in interest or title, transferees, vendees, lessees, mortgagees, and assigns who are owners and/or users of the Property, and (ii) are not merely personal covenants of the Owner.
- (c) Any and all requirements of the laws of the State 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 any requirements or privileges of estate are intended to be satisfied, or in the alternate, an equitable servitude has been created to insure that these restrictions run with the land. Each and every contract, deed, or other instrument hereafter executed conveying the Property or portion thereof (excluding instruments granting security interests) shall expressly provide that such conveyance is subject to this Declaration, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Declaration.
2. Enforcement. In the event of a breach or threatened breach of this Declaration, any party adversely affected by such breach, the county or municipality where the Property is located, the State, or the United States of America shall be entitled to institute proceedings at law or in equity for relief from the consequences of said breach including seeking injunctive relief to prevent a violation thereof. The prevailing party in any such

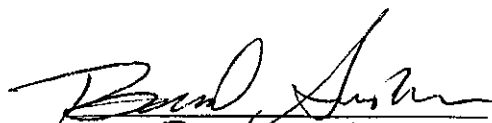
action shall be awarded its costs and expenses, including reasonable attorneys' fees, which shall be deemed to have accrued on the commencement of such action and shall be awarded whether or not such action is prosecuted to judgment.

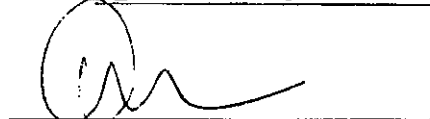
3. Superiority. The charges and burdens of this Declaration are, and shall at all times be, prior and therefore superior to the lien or charge of any mortgage or deed of trust hereafter made affecting the Property or any part thereof, including any improvements now or hereafter placed thereon, and notwithstanding a foreclosure or other voluntary or involuntary transfer of title pursuant to such instrument, shall remain in full force and effect, but are subordinate to the security interests of record on the Effective Date. Provided, however, that a breach of any of the restrictions hereof shall not defeat or render invalid the lien or charge of any mortgage or deed of trust. The charges and burdens of this Declaration are not intended to either create a lien upon the Property, or grant any right of foreclosure, to any person or party.
4. Release. Any person or entity having or acquiring fee or leasehold title to the Property or any portion thereof shall be required to comply with this Declaration only during the period such person or entity is the fee or leasehold owner of the Property, and thereafter shall be released therefrom, except that such person or entity shall continue to be liable for, and shall not be released from liability for, obligations, liabilities or responsibilities that accrue or accrued during said period of ownership. Although persons or entities may be released under this paragraph, the restrictions of this Declaration shall continue to be restrictions upon the Property, running with the land, and shall inure to the benefit of, and be binding upon, their successors and assigns in title or interest.
5. Notices. All notices provided for herein may be delivered in person, sent by Federal Express or other overnight courier service, mailed in the United States mail postage prepaid, or sent by electronic or facsimile transmission, and, regardless of the method of delivery used, shall be considered delivered upon the actual receipt or refusal of receipt thereof. The name, address and other information to be used in connection with such correspondence and notices to Owner shall be the then-current owner's name and address information maintained in the official real property tax records with respect to the Property.
6. Miscellaneous.
 - (a) Headings. The headings in this Declaration are for convenience only and do not in any way limit or affect the terms and provisions hereof.
 - (b) Unenforceability. If any provision of this Declaration is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remainder of such provision or any other provisions hereof.
 - (c) Gender. Wherever appropriate in this Declaration, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain genders shall be deemed to include either or both of the other genders.

- (d) Governing Law. This Declaration shall be construed and enforced in accordance with the laws of the State.
- (e) Intentionally omitted.
- (f) Amendments. This Declaration may be amended or canceled only by written instrument executed by HUD and the then-current owner of the Property.
- (g) No General Public Access. This Declaration does not establish any rights of access in favor of the general public for any purposes whatsoever.
- (h) Entire Agreement. This Declaration constitutes the entire agreement of Owner with respect to the subject matter hereof and supersedes all prior negotiations or discussions, whether oral or written, with respect thereto.

The next page is the signature page.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be signed by its duly authorized representative, as of the day and year first above written.


Name: Benjamin Simola

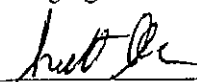

Name: Keisha Palmer

OWNER:

Canaan Parish Redevelopment Limited Partnership

By: Canaan Parish Redevelopment GP, LLC
Its General Partner

By: Housing Authority of the Town of New Canaan, Its Managing Member


By: 
Scott Hobbs
Chairman

STATE OF CONNECTICUT)

)ss. New Canaan

COUNTY OF FAIRFIELD)

On this 18 day of August, 2020, before me, the undersigned officer, personally appeared Scott Hobbs, Chairman of the Housing Authority of the Town of New Canaan, the managing member of Canaan Parish Redevelopment GP, LLC, the general partner of Canaan Parish Redevelopment Limited Partnership, a Connecticut limited partnership, 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 such entities


Notary Public
My Commission Expires: _____

PAMELLA D. MORALES
Notary Public, State of Connecticut
My Commission Expires Feb 28, 2025

SIGNATURE PAGE DECLARATION OF RESTRICTIVE COVENANT (WETLANDS)

EXHIBIT A**(Description of the Property)**

All that certain piece or parcel of land, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, more particularly shown and delineated as " 'I' 226,708± SQ. FT. 5.204± ACRES " ("Parcel I") on a certain map entitled "MAP SHOWING LANDS OF THE TOWN OF NEW CANAAN TO BE LEASED TO NEW CANAAN NEIGHBORHOODS INC. NEW CANAAN, CONNECTICUT 'B' RESIDENCE ZONE 10.906 ACRES - 475,096± SQ. FT.," which map is filed for record on the New Canaan Land Records as Map No. 5839 ("Map 5839"), reference to Map 5839 being expressly made. Parcel I is more particularly bounded and described as follows:

EASTERLY:	620.57 feet by Connecticut State Highway Route #123 known as New Norwalk Road;
SOUTHEASTERLY:	26.16 feet by the curved intersection of New Norwalk Road with the public highway known as Lakeview Avenue;
SOUTHERLY:	227.21 feet by the public highway known as Lakeview Avenue;
WESTERLY:	30.00 feet, then
SOUTHWESTERLY:	90.00 feet, then again
WESTERLY:	200.00 feet, then again
SOUTHWESTERLY:	310.49 feet by other land of the Town of New Canaan presently being used for the Town Highway Garage, and
NORTHWESTERLY:	540.21 feet by Parcel " 'II' 248,388± SQ. FT. 5.702± ACRES" on Map 5839 ("Parcel II").

Said Parcel I is also described as follows:

Beginning at a monument where same is intersected by a stonewall on the westerly side of New Norwalk Road (Route #123) and being the southeasterly corner of land of Anne C. Zavisho; thence running along the westerly side of New Norwalk Road (Route #123) the following course and distance on a curve to the right having a radius of 1870.08 feet for a length of 216.97 feet to the point or place of beginning; thence continuing along the westerly side of New Norwalk Road (Route #123) the following courses and distances on a curve to the right having a radius of 1870.08 feet for a length of 194.05 feet to a monument and S 14-23-40 E 426.52 feet

to a point on the northerly side of Lakeview Avenue; thence turning and running in a generally southwesterly direction along the northerly side of Lakeview Avenue the following courses and distances on a curve to the right having a radius of 20.00 feet for a length of 26.16 feet and on a curve to the right having a radius of 620.55 feet for a length of 220.22 feet and

S 80-53-40 W 6.99 feet

to a point being a southeasterly corner of land of the Town of New Canaan; thence turning and running in a generally northwesterly direction along a generally northeasterly boundary of the Town of New Canaan the following courses and distances:

N 14-23-40 W 30.00 feet

N 59-23-40 W 90.00 feet

N 14-23-40 W 200.00 feet

N 49-33-10 W 104.00 feet

and N 61-30-20 W 206.49 feet

to a point on the southeasterly boundary of Parcel II as shown on Map #5839 on file in the New

Canaan Land Records; thence turning and running in a generally northeasterly direction along a generally southeasterly boundary of the aforesaid Parcel II the following courses and distances:

N 32-04-20 E 76.00 feet

N 46-39-50 E 100.00 feet

and N 69-40-54 E 364.21 feet

to the point or place of beginning.

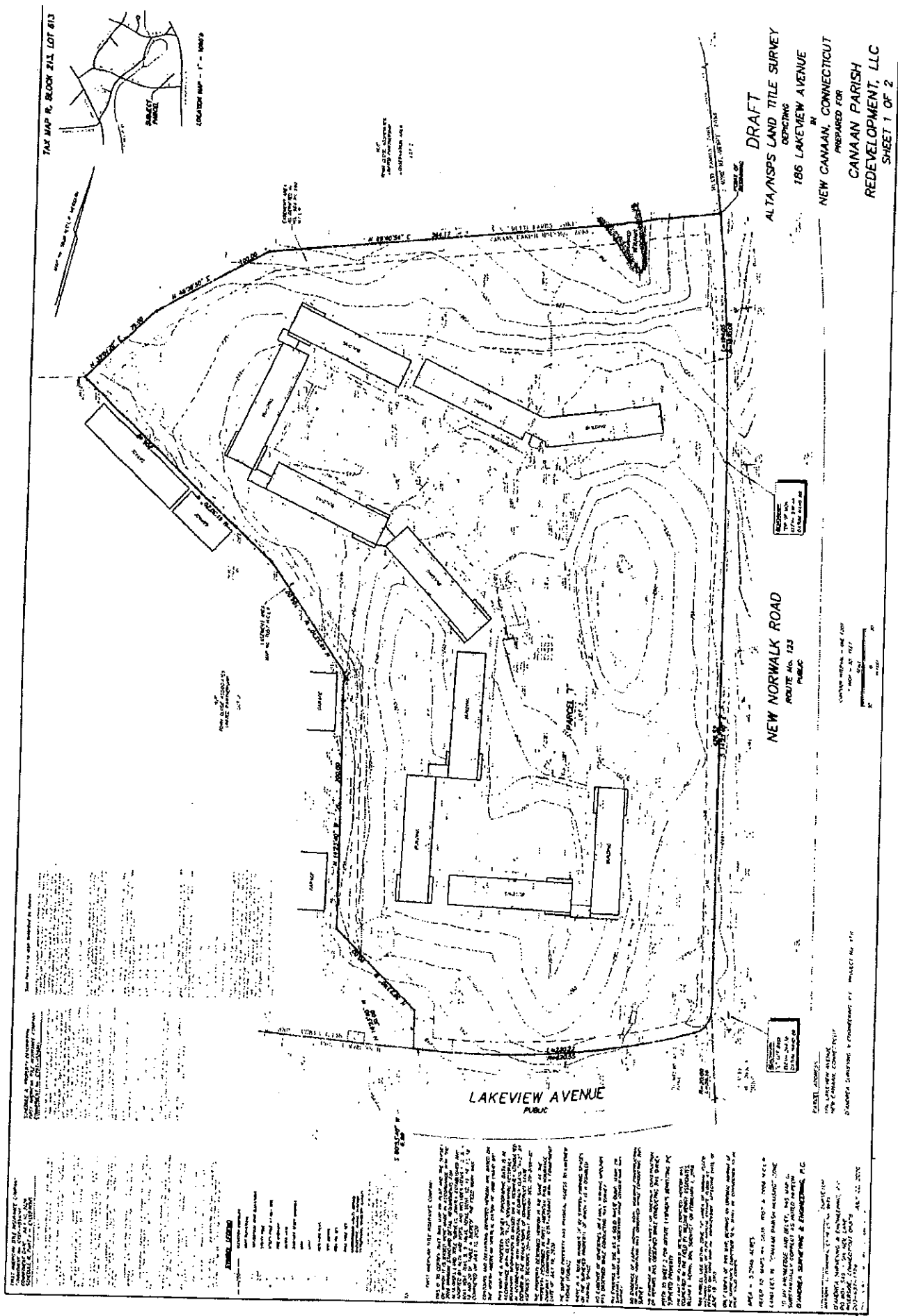
The said parcel is leased together with an easement to the occupants of dwelling units located thereon to cross, on foot, the "Conservation Area" shown on a map entitled "Subdivision Map Town of New Canaan New Norwalk Road (Route 123), Lakeview Avenue, Millport Avenue & East Avenue New Canaan, Connecticut Dated December 22, 1998 as revised Sheets 1 and 2" filed as Maps #7057 and #7058 in the office of the New Canaan Town Clerk to reach the area depicted on said Maps as "Access Easement In Favor Of The Town Of New Canaan".

Said premises are also known as 186 Lakeview Avenue, New Canaan, Connecticut (Parcel I).

EXHIBIT B

(Description and/or Depiction of the Wetlands)

Attached.



Received for Record at New Canaan, CT

On 08/26/2020 At 8:16:46 am

Claudia A. Weber



Doc ID: 002740400052 Type: LAN
Book 1022 Page 100 - 151
File# 812

1

OMB Approval No. 2502-0598
(Exp. 9/30/2021)

Public Reporting Burden for this collection of information is estimated to average .75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

Recording requested by and after recording return to:
Reno & Cavanaugh PLLC
10320 Little Patuxent Parkway
Suite 900
Columbia, Maryland 21044

MULTIFAMILY LEASEHOLD MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS
AND SECURITY AGREEMENT

(CONNECTICUT)

HUD Project No.: 017-35323
HUD Project Name: Canaan Parish

**MULTIFAMILY LEASEHOLD MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS
AND SECURITY AGREEMENT**

THIS MULTIFAMILY LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT, WHICH, FOR AS LONG AS THE LOAN IS INSURED OR HELD BY HUD, SHALL BE DEEMED TO BE THE MORTGAGE AS DEFINED BY PROGRAM OBLIGATIONS ("**Security Instrument**"), is made as of this 27th day of August, 2020, between CANAAN PARISH REDEVELOPMENT LIMITED PARTNERSHIP, a limited partnership organized and existing under the laws of Connecticut, whose address is 57 Millport Avenue, New Canaan, Connecticut 06840, as grantor and borrower (**Borrower**), for the benefit of ORIX REAL ESTATE CAPITAL, LLC, a limited liability company organized and existing under the laws of Delaware, whose address is 1717 Main Street, Suite 900, Dallas, Texas 75201, as Lender.

Borrower, in consideration of the Indebtedness and the security interest created by this Security Instrument, irrevocably mortgages, grants, conveys and assigns to Lender and Lender's successors and assigns, with power of sale, the Mortgaged Property, including a leasehold interest in the Land located in Fairfield County, State of Connecticut and described in Exhibit A attached to this Security Instrument, to have and to hold the Mortgaged Property unto Lender and Lender's successors and assigns.

THIS SECURITY INSTRUMENT IS EXECUTED TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Borrower's Note payable to Lender dated as of the date of this Security Instrument, and maturing on October 1, 2062, in the principal amount of \$34,335,200.00 ("**Loan**"), and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in this Security Instrument and the Note.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered except for easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy issued to Lender contemporaneously with the execution and recordation of this Security Instrument and insuring Lender's interest in the Mortgaged Property. Borrower covenants that Borrower shall warrant and defend generally such title to the Mortgaged Property against all claims and demands, subject to said easements and restrictions.

Covenants. Borrower and Lender covenant and agree as follows:

1. **DEFINITIONS.** The definition of any capitalized term or word used herein can be found in this Security Instrument, and then if not found in this Security Instrument, then found in the Regulatory Agreement between Borrower and HUD, and/or in the Note. The following terms, when used in this Security Instrument (including when used in the above recitals), shall have the following meanings:

(a) **"Borrower"** means all entities identified as "Borrower" in the first paragraph of this Security Instrument, together with any successors and assigns (jointly and severally). Borrower shall include any entity taking title to the Mortgaged Property whether or not such entity assumes the Note. Whenever the term "Borrower" is used herein, the same shall be deemed to include the obligor of the debt secured by the Security Instrument, and so long as the Note is insured or held by HUD shall also be deemed to be the mortgagor as defined by Program Obligations.

(b) **"Building Loan Agreement"** means the HUD-approved form of the agreement between Borrower and Lender setting forth the terms and conditions for a construction loan.

(c) **"Business Day"** is defined in Section 31.

(d) **"Claim"** is defined in Section 48(m).

(e) **"Collateral Agreement"** means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing an account to assure the completion of repairs or Improvements specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account including but not limited to those reserves and escrows required by HUD.

(f) **"Contract of Insurance"** is defined in 24 C.F.R. Part 207, Subpart B.

(g) **"Environmental Inspections"** is defined in Section 48(h).

(h) **"Event of Default"** means the occurrence of any event listed in Section 22.

(i) **"Fixtures"** means all property or goods that become so related or attached to the Land or the Improvements that an interest arises in them under real property law, whether acquired now or in the future, excluding all tenant owned goods and property, and including but not limited to: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, computers, security,

fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposals, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; playground and exercise equipment and classroom furnishings and equipment.

(j) **"Governmental Authority"** means any board, commission, department or body of any municipal, county, state, tribal or federal governmental unit, including any U.S. territorial government, and any public or quasi-public authority, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property, including the use, operation or improvement of the Mortgaged Property.

(k) **"HUD"** means the United States Department of Housing and Urban Development acting by and through the Secretary in the capacity as insurer or holder of the Loan under the authority of the National Housing Act, as amended, the Department of Housing and Urban Development Act, as amended, or any other federal law or regulation pertaining to the Loan or the Mortgaged Property.

(l) **"Impositions" and "Imposition Deposits"** are defined in Section 8(a).

(m) **"Improvements"** means the buildings, structures, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(n) **"Indebtedness"** means the principal of, interest on, and all other amounts due at any time under the Note, this Security Instrument, and any other Loan Document, including prepayment premiums, late charges, default interest, and advances to protect the security of this Security Instrument as provided in Section 13.

(o) **"Indemnitees"** is defined in Section 48(k).

(p) **"Land"** means the estate in realty described in Exhibit A.

(q) **"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including but not limited to proprietary leases, non-residential leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals. (Ground leases that create a leasehold

interest in the Land and where the Borrower's leasehold is security for the Loan are not included in this definition.)

(r) **"Lender"** means the entity identified as "Lender" in the first paragraph of this Security Instrument, or any subsequent holder of the Note, and whenever the term "Lender" is used herein, the same shall be deemed to include the obligee, or the beneficiary of this Security Instrument, and so long as the Loan is insured or held by HUD, shall also be deemed to be the mortgagee as defined by Program Obligations.

(s) **"Lien"** is defined in Section 17.

(t) **"Loan"** is defined in the opening paragraphs of this Security Instrument.

(u) **"Loan Application"** is defined in Section 41.

(v) **"Loan Documents"** means the Note, this Security Instrument, the Regulatory Agreement and all other agreements, instruments and documents which are now existing or are in the future required by, delivered to and/or assigned to Lender and/or HUD in connection with or related to the Loan, as such documents may be amended from time to time.

(w) **"Mortgaged Property"** means all of Borrower's present and future right, title and interest in and to all of the following whether now held or later acquired:

- (1) the Land;
- (2) the Improvements;
- (3) the Fixtures;
- (4) the Personality;
- (5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (6) all insurance policies covering the Mortgaged Property, and all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personality or any other part of the

Mortgaged Property, whether or not Borrower obtained such insurance policies pursuant to Lender's requirement;

- (7) all awards, payments and other compensation made or to be made by any Governmental Authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (8) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (9) all proceeds (cash or non-cash), liquidated claims or other consideration from the conversion, voluntary or involuntary, of any of the Mortgaged Property and the right to collect such proceeds, liquidated claims or other consideration;
- (10) all Rents and Leases;
- (11) all earnings, royalties, instruments, accounts, accounts receivable, supporting obligations, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the Loan and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (12) all Imposition Deposits;
- (13) all refunds or rebates of Impositions by any Governmental Authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Security Instrument is dated);
- (14) all forfeited tenant security deposits under any Lease;
- (15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;

- (16) all deposits and/or escrows held by or on behalf of Lender under Collateral Agreements; and
- (17) all awards, payments, settlements or other compensation resulting from litigation involving the Project.

Notwithstanding items numbered (1) through (17) above or Section 33 below, Borrower may hold non-project funds in separate, segregated accounts, specifically labeled as non-project funds, which are not part of the Mortgaged Property. These accounts may hold those assets owned or received by Borrower, through equity contributions, gifts, or loan proceeds, that were not required by HUD to become part of the Mortgaged Property and were not made a part of the Mortgaged Property by Borrower and funds released from the Mortgaged Property in compliance with Program Obligations (such as Distributions of Surplus Cash and loan repayments, if allowed). ~~[If such accounts already exist, it is acceptable to identify them here, for example: The [name of accounts/reserves] are designated non-project fund accounts.]~~

(x) **"Note"** means the Note executed by Borrower described in this Security Instrument, including all schedules, riders, allonges and addenda, as such Note may be amended from time to time.

(y) **"Notice"** is defined in Section 31.

(z) **"O&M Program"** is defined in Section 48(b).

(aa) **"Personalty"** means all equipment, inventory, and general intangibles. The definition of "Personalty" includes furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible or electronically stored personal property (other than Fixtures) that are owned, leased or used by Borrower now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, choses in action and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all certifications, approvals and governmental permits relating to any activities on the Land. Intangibles shall also include all cash and cash escrow funds related to the Project, such as but not limited to: Reserve for Replacement accounts, bank accounts, Residual Receipts accounts, and investments.

(bb) **"Principal"** is defined in the Regulatory Agreement.

(cc) **"Project"** and **"Project Assets"** mean the Mortgaged Property.

(dd) **"Program Obligations"** means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Security Instrument rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on "HUDCLIPS," at www.hud.gov.

(ee) **"Property Jurisdiction"** is defined in Section 30(a).

(ff) **"Regulatory Agreement"** means the agreement between the Borrower and HUD establishing Borrower's obligations in the operation of the Mortgaged Property and the rights and powers of HUD.

(gg) **"Remedial Work"** is defined in Section 48(i).

(hh) **"Rents"** means all rents (whether from residential or non-residential space), revenues, issues, profits, (including carrying charges, maintenance fees, and other cooperative revenues, and fees received from leasing space on the Mortgaged Property), and other income of the Land or the Improvements, gross receipts, receivables, parking fees, laundry and vending machine income and fees and charges for food and other services provided at the Mortgaged Property, whether now due, past due, or to become due, Residual Receipts, and escrow accounts, however and whenever funded and wherever held.

(ii) **"Residual Receipts"** is defined in the Regulatory Agreement.

(jj) **"Taxes"** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, could become a lien on the Land or the Improvements.

(kk) **"Waste"** means a failure to keep the Mortgaged Property in decent, safe and sanitary condition and in good repair. During any period in which HUD insures this

Loan or holds a security interest on the Mortgaged Property, Waste is committed when, without Lender's and HUD's express written consent, Borrower:

- (1) physically changes the Mortgaged Property, whether negligently or intentionally, in a manner that reduces its value;
- (2) fails to maintain and repair the Mortgaged Property in accordance with Program Obligations;
- (3) fails to pay before delinquency any Taxes secured by a lien having priority over this Security Instrument;
- (4) materially fails to comply with covenants in the Note, this Security Instrument or the Regulatory Agreement respecting physical care, maintenance, construction, abandonment, demolition, or insurance against casualty of the Mortgaged Property; or
- (5) retains possession of Rents to which Lender or its assigns have the right of possession under the terms of the Loan Documents.

2. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

This Security Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash proceeds and non-cash proceeds thereof (collectively, "**UCC Collateral**"), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to file financing statements, continuation statements and amendments, in such form as Lender may require to perfect or continue the perfection of this security interest. Borrower agrees to enter into any agreements, in form as Lender may require, that the Uniform Commercial Code requires to perfect and continue perfection of Lender's security interest in the portion of UCC Collateral that requires Lender control to attain such perfection. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. Except for such UCC filings disclosed to Lender and HUD that are to be released in connection with the financing of the Loan or that are otherwise consented to in writing by Lender and HUD, Borrower represents and warrants to Lender that no UCC filings have been made against Borrower, the Project or the Project Assets prior to the initial or initial/final endorsement of the Note by HUD, and Borrower has taken and shall take no action that would give rise to such UCC filings, except for any UCC filings in connection with the acquisition of any Personality that has been approved in writing by HUD. Borrower also represents and warrants to

Lender that it has not entered into, and will not enter into, any agreement with any party other than Lender in conjunction with the present Loan transaction that allows for the perfection of a security interest in any portion of the UCC Collateral. Borrower will promptly notify Lender of any change in its business or principal location, name, or other organizational change that would require a filing under the UCC to continue perfection of Lender's interest, and hereby authorizes Lender to file, and will assist Lender in filing, any forms necessary to continue the effectiveness of existing financing statements or for perfection of Lender's security interest. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Security Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Security Instrument constitutes a fixture filing financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture and which shall be filed in the local real estate records.

3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only, provided that prior to an Event of Default, Borrower is entitled to Rents. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the Mortgaged Property. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Security Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Security Instrument.

(b) After the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant (whether residential or non-residential) of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents for use in accordance with the provisions of this Security Instrument (and the Regulatory Agreement during the period

of its applicability), to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under this Security Instrument, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Security Instrument, unless otherwise restricted by the terms of the Regulatory Agreement during the period of its applicability. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without Notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, Notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender. No tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a Notice. Any such Notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents, that Borrower has not performed, and Borrower covenants and agrees that it shall not perform, any acts and has not executed, and shall not execute, any instrument that would prevent Lender from exercising its rights under Section 3, and that at the time of execution of this Security Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents (other than collections in connection with transactions as approved by HUD).

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of Waste (but only with the prior written approval of HUD in the event of Covenant Defaults), enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination

of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Security Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior Notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under Section 3 shall not be construed to make Lender a lender-in-possession of the Mortgaged Property so long as Lender, or authorized agent of Lender, has not entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not otherwise be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 13; provided that Lender shall have the right, but no obligation to make any such advances; and provided further that so long as the Loan is insured by HUD, no such advances by Lender shall become an additional part of the Indebtedness unless such advances receive the prior written approval of HUD.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Security Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Security Instrument.

4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the Mortgaged Property. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Security Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Security Instrument.

(b) Until Lender gives Notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Security Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default and throughout its continuation, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a lender-in-possession of the Mortgaged Property so long as Lender, or an authorized agent of Lender, has not entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Security Instrument or to expend any money or to incur any

expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property unless Lender is a lender-in-possession. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (1) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (2) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (3) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Security Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of Notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be acceptable to Lender and shall comply with Program Obligations.

(f) Borrower shall not enter into any Lease for any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender, and Lender's prior written approval of the Lease agreement, consistent with Program Obligations. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Security Instrument) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (i) such Leases are subordinate to the lien of this Security Instrument, except when approved in writing by Lender in accordance with Program Obligations, and (ii) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance.

5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM. Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and this Security Instrument and shall perform, observe and comply with all other provisions of the Note and this Security Instrument. Borrower shall pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.

6. EXCULPATION. Except for personal liability expressly provided for in this Security Instrument or in the Note or in the Regulatory Agreement, the execution of the Note shall impose no personal liability upon Borrower or those parties listed in the Section 50 Addendum to the Regulatory Agreement for payment of the Indebtedness evidenced thereby, and in the Event of Default, the holder of the Note shall look solely to the Mortgaged Property in satisfaction of the Indebtedness and will not seek or obtain any deficiency or personal judgment against Borrower or those parties listed in the Section 50 Addendum to the Regulatory Agreement, except such judgment or decree as may be necessary to foreclose or bar its interest in the Mortgaged Property and all other property mortgaged, pledged, conveyed or assigned to secure payment of the Indebtedness; provided, that nothing in this Section 6 of this Security Instrument and no action so taken shall operate to impair any obligation under the Regulatory Agreement of Borrower or those parties listed in the Section 50 Addendum to the Regulatory Agreement.

7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) Borrower shall pay to and deposit with Lender, together with and in addition to the monthly payments of interest or of principal and interest payable under the terms of the Note on the first day of each month after the commencement of amortization under the Note, and continuing until the debt secured hereby is paid in full, the following sums:

- (1) an amount sufficient to provide Lender with funds to pay the next mortgage insurance premium if this Security Instrument and the Note are insured by HUD, or a monthly service charge, if they are held by HUD, as follows:
 - (i) If and so long as the Note is insured under the provisions of the National Housing Act, as amended, an amount sufficient to accumulate in the hands of Lender one month prior to its due date the annual mortgage insurance premium; or
 - (ii) If and so long as the Note and this Security Instrument are held by HUD, a monthly service charge in an amount

equal to the lesser of the amount permitted by law or the amount set forth in Program Obligations computed for each successive year beginning with the first day of the month following the date of this Security Instrument, or the first day of the month following assignment, if the Note and this Security Instrument are assigned to HUD without taking into account delinquencies or prepayment; and

- (2) a sum equal to the ground rents, if any, next due, plus the premiums that will next become due and payable on policies of fire and other property insurance covering the premises covered hereby, plus water rates, Taxes, municipal/government utility charges and special assessments next due on the premises covered hereby (all as estimated by Lender) less all sums already paid therefore divided by the number of months to the date when such ground rents, premiums, water rates, Taxes, municipal/utility charges and special assessments will become delinquent, such sums to be held by Lender in trust to pay said ground rents, premiums, water rates, Taxes, and special assessments; and
- (3) all payments and deposits mentioned in the two preceding paragraphs of this subsection and all payments to be made under the Note shall be added together and the aggregate amount thereof shall be paid each month in a single payment or deposit to be applied by Lender to the following items in the order set forth:
 - (i) mortgage insurance premium charges under the Contract of Insurance;
 - (ii) ground rents, if Lender has required them to be escrowed with Lender, Taxes, special assessments, water rates, municipal/government utility charges, fire and other property insurance premiums;
 - (iii) interest on the Note; and
 - (iv) amortization of the principal of the Note.

(b) Borrower shall pay to and deposit with Lender all other escrows and deposits, including any Reserve for Replacements.

(c) Borrower shall deposit with Lender such amounts as may be required by any Collateral Agreement and shall perform all other obligations of Borrower under each Collateral Agreement. Collateral Agreement deposits shall be held in an institution

(which may be Lender, if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency and in accordance with Program Obligations.

8. IMPOSITION DEPOSITS.

(a) In the event Borrower fails to pay any sums provided for in this Security Instrument, Lender, at its option, may pay the same. Any excess funds accumulated under Section 7(a) remaining after payment of the items therein mentioned, shall be credited to subsequent monthly payments of the same nature required thereunder; but if any such item shall exceed the estimate therefore, or if Borrower shall fail to pay any other governmental or municipal charge, Borrower shall forthwith make good the deficiency or pay the charge before the same become delinquent or subject to interest or penalties and in default thereof Lender may pay the same. All sums paid or advanced by Lender and any sums which Lender may be required to advance to pay mortgage insurance premiums shall be added to the Indebtedness and shall bear interest from the date of payment at the rate specified in the Note and shall be due and payable on demand. In case of termination of the Contract of Insurance by prepayment of the Indebtedness in full or otherwise (except as hereinafter provided), accumulations under Section 7(a) not required to pay sums due under Section 7(a)(3) shall be credited to Borrower. If the Mortgaged Property is sold under foreclosure or is otherwise acquired by Lender after an Event of Default, any remaining balance of the accumulations under Section 7(a) shall be credited to the principal under the Note as of the date of the commencement of foreclosure proceedings or as of the date the Mortgaged Property is otherwise acquired; and accumulations under Section 7 shall be likewise credited unless required to pay sums due HUD under Section 7(a)(3). The amounts deposited under Section 7 and Section 8 are collectively referred to in this Security Instrument as the "**Imposition Deposits**". The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Security Instrument as "**Impositions**". The amount of the Imposition Deposits shall be sufficient to enable Lender to pay applicable Impositions before the last date upon which such payment may be made without any penalty or interest charge being added. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other obligation of Borrower for which Imposition Deposits are required. Any waiver by Lender of the requirement that Borrower remit Imposition Deposits to Lender may be revoked by Lender, in Lender's discretion, at any time upon Notice to Borrower.

(b) Imposition Deposits shall be held in accounts insured or guaranteed by a federal agency and in accordance with Program Obligations. Lender shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Unless required by Program Obligations, Lender shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits with the exception of the Reserve for Replacement account or Residual Receipts account (if

any). Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits as additional security for all of Borrower's obligations under this Security Instrument and the Note. Any amounts deposited with Lender under Section 7 shall not be trust funds, nor shall they operate to reduce the Indebtedness.

(c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the Imposition from the Imposition Deposits held by Lender. Lender shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Lender. Lender may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits held by Lender (other than the Reserve for Replacement or Residual Receipts, if any) for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender plus one-sixth of such estimate, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably estimated by Lender to be necessary plus one-sixth of such estimate, Borrower shall pay to Lender the amount of the deficiency within 15 days after Notice from Lender.

9. REGULATORY AGREEMENT. Borrower and HUD have executed a Regulatory Agreement, which is being recorded simultaneously with this Security Instrument, and is incorporated in and made a part of this Security Instrument. Upon Default of the Regulatory Agreement and at the direction of HUD, Lender shall declare the whole of the Indebtedness to be due and payable.

10. APPLICATION OF PAYMENTS. If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender must apply that payment to amounts then due and payable in the manner and in the order set forth in Section 7(a)(3). Neither Lender's acceptance of an amount that is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Security Instrument and the Note shall remain unchanged.

11. COMPLIANCE WITH LAWS. Borrower shall comply with all applicable: laws; ordinances; regulations; requirements of any Governmental Authority; lawful covenants and agreements recorded against the Mortgaged Property; so long as the Loan is insured or held by HUD, the Regulatory Agreement, and Program Obligations including lead-based paint maintenance requirements of 24 C.F.R. Part 35, Subpart G, and any successor regulations; including but not limited to those of the foregoing

pertaining to: health and safety; construction of Improvements on the Mortgaged Property; fair housing; civil rights; zoning and land use; Leases; and maintenance and disposition of tenant security deposits; and, with respect to all of the foregoing, all subsequent amendments, revisions, promulgations or enactments. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 11. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property, including those that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise impair the lien created by this Security Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

12. USE OF PROPERTY. Unless permitted by applicable law and approved by Lender, Borrower shall not (a) allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Security Instrument was executed, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property that results in any change in permitted use that was in effect at the time of initial/final endorsement, (d) establish any condominium or cooperative regime with respect to the Mortgaged Property, (e) materially change any unit configurations or change the number of units in the Mortgaged Property, (f) combine all or any part of the Mortgaged Property with all or any part of a tax parcel which is not part of the Mortgaged Property, (g) subdivide or otherwise split any tax parcel constituting all or any part of the Mortgaged Property, or (h) so long as the Note is insured or held by HUD, permit the Mortgaged Property to be used as transient housing or as a hotel in violation of Section 513 of the National Housing Act, as amended.

13. PROTECTION OF LENDER'S SECURITY.

(a) If Borrower fails to perform any of its obligations under this Security Instrument, Note or Regulatory Agreement, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Security Instrument, including eminent domain, insolvency, Waste, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, advance such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (1) payment of fees and out-of-pocket expenses of attorneys (including fees for litigation at all levels), accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance required by Section 19, and (4) payment of amounts which Borrower has failed to pay under Section 16 or any other Section of this Security Instrument.

(b) Any amounts advanced by Lender for taxes, special assessments, or water rates (which are liens prior to the Security Instrument), for insuring the Project, or for mortgage insurance premiums, which amounts are paid after an Event of Default, shall be added to, and become part of the Indebtedness, and shall be immediately due and payable and shall bear interest from the date of the advance until paid at the Interest Rate specified in the Note. So long as the Loan is insured or held by HUD, Lender does not have any obligation to make advances except as required under Program Obligations, and any advance by Lender other than as required by Program Obligations requires prior written HUD approval before such advance can be added to the Indebtedness.

(c) Nothing in Section 13 shall require Lender to incur any expense or take any action to protect its security.

14. INSPECTION. Upon reasonable notice, Lender, its agents, representatives, and designees, may make or cause to be made entries upon and inspections of the Mortgaged Property (including any environmental inspections and tests) during normal business hours, or at any other reasonable time.

15. BOOKS AND RECORDS; FINANCIAL REPORTING.

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Lender's request shall make available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments that affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender.

(b) If an Event of Default has occurred and is continuing, Borrower shall, at Borrower's expense, deliver to Lender upon written demand all books and records relating to the Mortgaged Property or its operation, which shall be maintained at the Mortgaged Property.

(c) Borrower authorizes Lender to obtain a credit report on Borrower, at Borrower's expense, at any time.

(d) Within 120 days after the end of each fiscal year of Borrower, Borrower shall furnish to Lender a statement of income and expenses of Borrower's operation of the Mortgaged Property for that fiscal year, a statement of changes in financial position of Borrower relating to the Mortgaged Property for that fiscal year and, when requested by Lender, a balance sheet showing all assets and liabilities of Borrower relating to the

Mortgaged Property as of the end of that fiscal year. If Borrower's fiscal year is other than the calendar year, Borrower must also submit to Lender a year-end statement of income and expenses within 120 days after the end of the calendar year. Lender also may require that any statements, schedules or reports required to be delivered to Lender under this Section 15 be audited at Borrower's expense by independent certified public accountants acceptable to Lender. If Borrower fails to provide in a timely manner the statements, schedules and reports required by this Section 15, Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness. Notwithstanding the foregoing, however, so long as the Loan is insured or held by HUD, Borrower's obligation under this subsection (d) shall be satisfied by the delivery to Lender, concurrently with its delivery to HUD, of a copy of the annual financial statement required to be delivered to HUD in accordance with the Regulatory Agreement.

(e) Borrower shall deliver to Lender, within 15 days, copies of all operating budgets, capital budgets, and other records or documents concerning the Mortgaged Property or Borrower, reasonably requested by Lender.

16. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 16(c) and Section 16(d), Borrower shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 16(c), Borrower shall pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added.

(c) As long as no Event of Default exists and Borrower has timely delivered to Lender any bills or premium notice that it has received, Borrower shall not be obligated to pay Taxes, insurance premiums or any other individual Imposition to the extent that sufficient Imposition Deposits are held by Lender for the purpose of paying that specific Imposition. If an Event of Default exists, Lender may exercise any rights Lender may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable; provided that so long as the Loan is insured by HUD, Lender's exercise of its rights shall be subject to Program Obligations pertaining to claims for mortgage insurance benefits. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes

due and payable or Borrower has failed to provide Lender with bills and premium notice as provided above.

(d) Borrower, at its own expense, and, so long as the Loan is insured or held by HUD, in accordance with the Regulatory Agreement, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition.

(e) Borrower shall promptly deliver to Lender a copy of all Notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall promptly furnish to Lender receipts evidencing such payments.

17. LIENS; ENCUMBRANCES. (a) Borrower shall not permit the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance ("Lien") on the Mortgaged Property (other than the lien of this Security Instrument, any tax liens which are imposed before payment is due, or any inferior liens which are approved in writing by HUD and Lender), whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Security Instrument. (b) Borrower shall not repay any HUD-approved inferior Lien from proceeds of the Loan nor from Project Assets other than from Surplus Cash (as defined in the Regulatory Agreement) or Residual Receipts, except, with the prior written approval of HUD, in the case of an inferior Lien created in an operating loss loan insured pursuant to Section 223(d) of the Act or a supplement loan insured pursuant to Section 241 of the Act.

18. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY. Borrower (a) shall not commit Waste, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not litigation or insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, (d) shall keep the Mortgaged Property in decent, safe, and sanitary condition and good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, all in accordance with Program Obligations, (e) shall provide for qualified management of the Mortgaged Property by a residential rental property manager, (f) shall give Notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend, any action or proceeding that could impair the Mortgaged Property, Lender's security or Lender's

rights under this Security Instrument, (g) shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property except that Borrower may dispose of obsolete or deteriorated Fixtures or Personalty if the same are replaced with like items of the same or greater quality or value, or make minor alterations which do not impair the Mortgaged Property, and (h) so long as the Loan is insured or held by HUD, shall not expend any Project funds except from permissible withdrawals of Surplus Cash and except for Reasonable Operating Expenses and necessary repairs without the prior written approval of HUD. So long as the Loan is insured or held by HUD, all expenses incurred by Borrower in connection with the Mortgaged Property shall be incurred in compliance with Program Obligations.

19. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the Mortgaged Property insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, builders all-risk and business income coverage. Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any of the Improvements are located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, Borrower shall maintain flood insurance covering such Improvements and any machinery, equipment, Fixtures and furnishings contained therein that are funded, in whole or in part, with Loan proceeds in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended, or its successor statute, whichever is less, provided that the amount of flood insurance need not exceed the outstanding principal balance of the Note, and flood insurance need not be maintained beyond the term of the Note. If Lender determines that flood insurance has not been obtained in the required amount, Lender must notify Borrower of Borrower's obligations to obtain the proper flood insurance. If Borrower does not obtain such insurance within 45 days of the date of this notification, Lender shall purchase such flood insurance on behalf of Borrower and may charge Borrower for the cost of premiums and fees incurred by Lender in purchasing the flood insurance.

(b) All premiums on insurance policies required under Section 19(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in a form approved by Lender, and in favor of Lender (and

HUD, as their interests appear) and shall name as loss payee Lender, its successors and assigns. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 19(a). Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender evidence of continuing coverage in form satisfactory to Lender.

(c) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require, or shall require any appropriate party to maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require or such other insurance coverage as required by Program Obligations.

(d) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require, and shall be issued by insurance companies satisfactory to Lender and in accordance with Program Obligations. Lender shall have the right to effect insurance in the event Borrower fails to comply with this Section.

(e) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Security Instrument requires Borrower to maintain.

(f) In the event of loss, Borrower shall give immediate written Notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. Borrower shall notify Lender of any payment received from any insurer. Lender shall (1) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender, or (2) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. No amount applied to the reduction of the principal amount of the Indebtedness in accordance with this Section 19(f) shall be considered an optional prepayment as the term is used in this Security Instrument and the Note secured hereby, nor relieve Borrower from continuing to make regular monthly payments in the amount required by the Note. To the extent Lender determines to apply insurance proceeds to restoration, Lender shall do so in accordance with Lender's then-current

policies relating to the restoration of casualty damage on similar multifamily properties; provided that so long as the Loan is insured or held by HUD, insurance proceeds shall be applied as approved by HUD and in accordance with Program Obligations pursuant to Section 19(g) below.

(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its discretion, that there will be sufficient funds to complete the restoration; (3) Lender determines, in its discretion, that the rental income from the Mortgaged Property after completion of the restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; and (4) Lender determines, in its discretion, that the restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty. Further, so long as the Loan is insured by HUD, Lender may not exercise its option to apply insurance proceeds to the payment of the Indebtedness without the prior written approval of HUD. In seeking this approval, Lender shall provide evidence acceptable to HUD that there has been a total loss of the Mortgaged Property such that complete restoration is improbable. If HUD fails to give its approval to the use or application of such funds within 60 days after the written request by Lender, Lender may use or apply such funds for any of the purposes specified herein without the approval of HUD.

(h) If the Mortgaged Property is sold at a foreclosure sale or Lender or HUD acquire title to the Mortgaged Property, Lender and HUD, as applicable, shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds of property damage insurance resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

20. CONDEMNATION.

(a) Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect condemnation. Borrower shall appear in and prosecute or defend any action or proceeding relating to any condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation and to settle or compromise any claim in connection with any condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur

any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (1) any condemnation, or any conveyance in lieu of condemnation, and (2) any damage to the Mortgaged Property caused by governmental action that does not result in a condemnation.

(b) All awards of compensation in connection with condemnation for public use of or a taking of any of the Mortgaged Property shall be paid to Lender to be applied (1) to fees, costs and expenses (including reasonable attorneys' fees) incurred by Lender; and (2) to the amount due under the Note secured hereby in (i) amounts equal to the next maturing installment or installments of principal and (ii) with any balance to be credited to the next payment due under the Note. After payment to Lender of all fees, costs and expenses (including reasonable attorneys' fees) incurred by Lender under this Section 20, all awards of damages in connection with any condemnation for public use of or damage to the Mortgaged Property, shall be paid to Lender to be applied to an account held for and on behalf of Borrower, which account shall, at the option of Lender, either be applied to the amount due under the Note as specified in the preceding sentence, or be disbursed for the restoration. No amount applied to the reduction of the principal amount due in accordance with this Section 20(b) shall be considered an optional prepayment as the term is used in this Security Instrument and the Note secured hereby, nor relieve Borrower from making regular monthly payments commencing on the first day of the first month following the date of receipt of the award. Lender is hereby authorized in the name of Borrower to execute and deliver necessary releases or approvals or to appeal from such awards.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.

(a) So long as the Loan is insured or held by HUD, Borrower shall not, without the prior written approval of HUD, convey, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of the Mortgaged Property or any interest therein or permit the conveyance, assignment or transfer of any interest in Borrower (if the effect of such conveyance, assignment or transfer is the creation or elimination of a Principal), unless permitted by Program Obligations. Lender may charge Borrower a fee, in accordance with Program Obligations, for Lender's additional responsibilities related to Borrower's actions in this Section 21. Borrower need not obtain the prior written approval of HUD for: (1) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Security Instrument, (2) inclusion of the Mortgaged Property in a bankruptcy estate by operation of law under the United States Bankruptcy Code, or (3) acquisition of an interest by inheritance or by Court decree.

(b) If the Loan is no longer insured or held by HUD, Borrower shall not convey, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of the Mortgaged Property or any interest therein or permit the conveyance, assignment or

transfer of any interest in Borrower without the prior written approval of Lender in its sole discretion.

22. EVENTS OF DEFAULT. The occurrence of any one or more of the following shall constitute either a Monetary Event of Default or a Covenant Event of Default under this Security Instrument:

- (a) **Monetary Event of Default:** Any failure by Borrower to pay or deposit when due any amount required by the Note or Section 7(a) of this Security Instrument.
- (b) **Covenant Events of Default shall include:**
 - (1) fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, general partners, members, managers or any guarantor in connection with (i) the Loan Application for or creation of the Indebtedness, (ii) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (iii) any request for Lender's consent to any proposed action under this Security Instrument or the Note;
 - (2) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Security Instrument or Lender's interest in the Mortgaged Property;
 - (3) any material failure by Borrower to perform or comply with any of its obligations under this Security Instrument (other than those specified in Section 22(a) and Section 22(b)(1) and (b)(2)), as and when required, which continues for a period of 30 days after Notice of such failure by Lender to Borrower. However, no such Notice shall apply in the case of any such material failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Security Instrument, result in harm to Lender or impairment of the Note or this Security Instrument; and,
 - (4) so long as the Loan is insured or held by HUD, any failure by Borrower to perform any of its obligations as and when required under the Regulatory Agreement, which failure continues beyond the applicable cure period, if any, specified in the Regulatory Agreement; however, Violations under the terms of the Regulatory

Agreement may only be treated as a default under this Security Instrument if HUD instructs Lender to treat them as such.

(c) Lender shall deliver Notice to any Principal(s) of Borrower identified in Section 31, within five (5) Business Days in each case where Lender has delivered Notice to Borrower of an Event of Default, in order to provide such Principal(s) an opportunity to cure either a Monetary Event of Default or a Covenant Event of Default.

23. REMEDIES CUMULATIVE. Each right and remedy provided in this Security Instrument is distinct from all other rights or remedies under this Security Instrument, the Note, or so long as the Loan is insured or held by HUD, HUD's remedies under the Regulatory Agreement or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

24. FORBEARANCE.

(a) So long as the Loan is insured by HUD, Lender shall not without obtaining the prior written consent of HUD, take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Security Instrument or the Note; release anyone liable for the payment of any amounts under this Security Instrument or the Note; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Security Instrument or the Note. However, if the Contract of Insurance has been terminated, Lender may (but shall not be obligated to) agree with Borrower to any of the aforementioned actions in this Section and Lender shall not have to give Notice to or obtain the consent of any guarantor or third-party obligor.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount that is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any right or remedy for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any proceeds or awards under Section 19 and Section 20 shall not operate to cure or waive any Event of Default.

25. LOAN CHARGES. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Loan is interpreted so that any interest or other charge provided for in any Loan Document, whether considered separately or together with other charges provided for in any Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

26. WAIVER OF STATUTE OF LIMITATIONS. To the extent permitted by law, Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce any of the Loan Documents.

27. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Security Instrument and the Note or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Security Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Security Instrument.

28. FURTHER ASSURANCES. Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Security Instrument and the Note.

29. ESTOPPEL CERTIFICATE. Within ten (10) days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (a) that the Note, the Regulatory Agreement (so long as the Loan is insured or held by HUD), and this Security Instrument are unmodified and in full force and effect (or, if there have been modifications, that the Note, the Regulatory Agreement (so long as the Loan is insured or held by HUD), and this Security Instrument are in full force and effect as modified and setting forth such modifications); (b) the unpaid principal balance of the Note; (c) the date to which interest under the Note has been paid; (d) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in the Note, the Regulatory Agreement (so long as the Loan is insured or held by HUD), and this Security Instrument (or, if Borrower is in default, describing such default in reasonable detail); (e) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Note, the Regulatory Agreement (so long as the Loan is insured or held by HUD), and this Security Instrument; and (f) any additional facts requested by Lender.

30. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Security Instrument and the Note, if it does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located ("**Property Jurisdiction**"), except so long as the Loan is insured or held by HUD, and solely as to rights and remedies of HUD, as such local or state laws may be preempted by federal law.

(b) Borrower agrees that any controversy arising under or in relation to the Note or this Security Instrument shall be litigated exclusively in the Property Jurisdiction except as, so long as the Loan is insured or held by HUD and solely as to rights and remedies of HUD, federal jurisdiction may be appropriate pursuant to any federal requirements. The state courts, and with respect to HUD's rights and remedies, federal courts, and Governmental Authorities in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or this Security Instrument. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

31. NOTICE.

(a) All notices, demands and other communications ("**Notice**") under or concerning this Security Instrument shall be in writing. Each Notice shall be addressed to the intended recipients at their respective addresses set forth in this Security Instrument, and shall be deemed given on the earliest to occur of (1) the date when the

Notice is received by the addressee; (2) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 31, the term ("**Business Day**") means any day other than a Saturday or a Sunday, a federal holiday or holiday in the state where the Project is located or other day on which the federal government or the government of the state where the Project is located is not open for business. When not specifically designated as a Business Day, the term "**day**" shall refer to a calendar day. Failure of Lender to send Notice to Borrower or its Principal(s) shall not prevent the exercise of Lender's rights or remedies under this Security Instrument or under the Loan Documents.

(b) Any party to this Security Instrument may change the address to which Notices intended for it are to be directed by means of Notice given to the other party in accordance with this Section 31. Each party agrees that it shall not refuse or reject delivery of any Notice given in accordance with this Section 31, that it shall acknowledge, in writing, the receipt of any Notice upon request by the other party and that any Notice rejected or refused by it shall be deemed for purposes of this Section 31 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any Notice under the Note which does not specify how Notice is to be given shall be given in accordance with this Section 31.

BORROWER:

**Canaan Parish Redevelopment Limited Partnership
57 Millport Avenue
New Canaan, Connecticut 06840**

**Housing Authority of the Town of New Canaan
57 Millport Avenue
New Canaan, CT 06840
Attn: Chairman**

With a copy to:

**Ann H. Zucker, Esq.
Carmody Torrance Sandak & Hennessey LLP
707 Summer Street, Third Floor
Stamford, CT 06901**

PRINCIPALS/RELATED PARTIES:

Canaan Parish Redevelopment Limited Partnership
c/o Canaan Parish Redevelopment Limited Partnership
57 Millport Avenue
New Canaan, Connecticut 06840

LENDER:

ORIX Real Estate Capital, LLC
1717 Main Street, Suite 900
Dallas, Texas 75201

32. SALE OF NOTE; CHANGE IN SERVICER. The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior Notice to Borrower. A sale may result in a change of the loan servicer. There also may be one or more changes of the loan servicer unrelated to a sale of the Note. If there is a sale or transfer of all or a partial interest in the Note or a change of the loan servicer, Lender shall be responsible for ensuring that Borrower is given Notice of the sale, transfer and/or change. Any loan servicer, including any loan servicer resulting from any changes mentioned above, must be approved by HUD in accordance with Program Obligations.

33. SINGLE ASSET BORROWER. Until the Indebtedness is paid in full or unless otherwise approved in writing by HUD so long as the Loan is insured or held by HUD, (a) Borrower shall be a single purpose entity and shall maintain the assets of the Mortgaged Property in segregated accounts and (b) Borrower (1) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property, and so long as the Loan is insured or held by HUD, except pursuant to the Regulatory Agreement and Program Obligations and (2) shall not own or operate any business other than the management and operation of the Mortgaged Property, and so long as the Loan is insured or held by HUD, except pursuant to the Regulatory Agreement and Program Obligations.

34. SUCCESSORS AND ASSIGNS BOUND. This Security Instrument shall bind, and the rights granted by this Security Instrument shall inure to, the respective successors and assigns of Lender and Borrower.

35. JOINT AND SEVERAL LIABILITY. If more than one person or entity signs this Security Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

36. RELATIONSHIP OF PARTIES; NO THIRD-PARTY BENEFICIARY.

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Security Instrument shall create any other relationship between Lender and Borrower. Borrower agrees that it is not a third-party beneficiary to the Contract of Insurance between HUD and Lender, as more fully set forth in 24 C.F.R. Part 207, Subpart B.

(b) No creditor of any party to this Security Instrument and no other person (the term "person" includes, but is not limited to, any commercial or governmental entity or institution) shall be a third-party beneficiary of this Security Instrument, the Note, or so long as the Loan is insured or held by HUD, the Regulatory Agreement. Without limiting the generality of the preceding sentences, (1) any servicing arrangement between Lender and any loan servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such loan servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (2) Borrower shall not be a third-party beneficiary of any servicing arrangement, and (3) no payment by the loan servicer under any servicing arrangement shall reduce the amount of the Indebtedness.

37. SEVERABILITY; AMENDMENTS. The invalidity or unenforceability of any provision of this Security Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Security Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Security Instrument. This Security Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

38. RULES OF CONSTRUCTION. The captions and headings of the Sections of this Security Instrument are for convenience only and shall be disregarded in construing this Security Instrument. Any reference in this Security Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Security Instrument or to a Section of this Security Instrument. All Exhibits attached to or referred to in this Security Instrument are incorporated by reference into this Security Instrument. Use of the singular in this Security Instrument includes the plural and use of the plural includes the singular. As used in this Security Instrument, the term "including" means "including, but not limited to."

39. LOAN SERVICING. All actions regarding the servicing of the Note, including the collection of payments, the giving and receipt of Notice, inspections of the Mortgaged Property, inspections of books and records, and the granting of consents and approvals, may be taken by the HUD-approved loan servicer unless Borrower receives Notice to the contrary. If Borrower receives conflicting Notices regarding the identity of the loan servicer or any other subject, any such Notice from Lender shall govern; provided that so long as the Loan is insured or held by HUD, if Borrower

receives conflicting Notice regarding the identity of the loan servicer or any other subject, any such Notice from Lender shall govern unless there is a Notice from HUD and, in all cases, any Notice from HUD governs notwithstanding any Notice from any other party.

40. DISCLOSURE OF INFORMATION. To the extent permitted by law, Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans.

41. NO CHANGE IN FACTS OR CIRCUMSTANCES. Borrower certifies that all information in the application for the Loan submitted to Lender (the "**Loan Application**") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects and that there has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate. The submission of false or incomplete information shall be a Covenant Event of Default.

42. ESTOPPEL. The Lender is not the agent of HUD. Any action by Lender in exercising any right or remedy under this Security Instrument shall not be a waiver or preclude the exercise by HUD of any right or remedy which HUD might have under the Regulatory Agreement or other Program Obligations.

43. ACCELERATION; REMEDIES. If a Monetary Event of Default occurs and is continuing for a period of thirty (30) days, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Security Instrument or in the Note. Following a Covenant Event of Default, Lender, at Lender's option, but so long as the Loan is insured or held by HUD, only after receipt of the prior written approval of HUD, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Security Instrument or in the Note. Borrower acknowledges that the power of sale granted in this Security Instrument may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including reasonable attorneys' fees (including but not limited to appellate litigation), costs of documentary evidence, abstracts and title reports.

44. FEDERAL REMEDIES. In addition to any rights and remedies set forth in the Regulatory Agreement, HUD has rights and remedies under federal law so long as

HUD is the insurer or holder of the Loan, including but not limited to the right to foreclose pursuant to the Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. Section 3701, *et seq.*, as amended, when HUD is the holder of the Note.

45. REMEDIES FOR WASTE. In addition to any other rights and remedies set forth in the Note and this Security Instrument or those available under applicable law, including exemplary damages where permitted, the following remedies for Waste by Borrower are available to Lender as necessary to give complete redress to Lender for Lender's loss or damage:

(a) the exercise of the remedies available to Lender during the existence of a Covenant Event of Default, as set forth in Section 43 of this Security Instrument;

(b) an injunction prohibiting future Waste or requiring correction of Waste already committed, but only to the extent that Waste has impaired or threatens to impair Lender's security; and

(c) recovery of damages, limited by the amount of Waste, to the extent that Waste has impaired Lender's security. So long as the Loan is insured or held by HUD, any recovery of damages by Lender or HUD for Waste shall be applied, at the sole discretion of HUD, (1) to fees, costs and expenses (including reasonable attorneys' fees) incurred by Lender; (2) to remedy Waste of the Mortgaged Property, (3) to the Indebtedness or (4) for any other purpose designated by HUD.

46. TERMINATION OF HUD RIGHTS AND REFERENCES. At such time as HUD no longer insures or holds the Note, (a) all rights and responsibilities of HUD shall conclude, all mortgage insurance and references to mortgage insurance premiums, all references to HUD, GNMA and Program Obligations and related terms and provisions shall cease, and all rights and obligations of HUD shall terminate; (b) all obligations and responsibilities of Borrower to HUD shall likewise terminate; and (c) all obligations and responsibilities of Lender to HUD shall likewise terminate; provided, however, nothing contained in this Section 46, shall in any fashion discharge Borrower from any obligations to HUD under the Regulatory Agreement or Program Obligations or Lender from any obligations to HUD under Program Obligations, which occurred prior to termination of the Contract of Insurance. The provisions of this Section 46 shall be given effect automatically upon the termination of the Contract of Insurance or the transfer of this Security Instrument by HUD to another party, provided that upon the request of Borrower, Lender or the party to whom the Security Instrument has been transferred, at no cost to HUD, HUD shall execute such documents as may be reasonably requested to confirm the provisions of this Section 46.

47. CONSTRUCTION FINANCING. The Indebtedness represents funds to be used in the construction of certain Improvements on the Land, in accordance with the Building Loan Agreement which is incorporated herein by reference to the same

extent and effect as if fully set forth and made herein (provided, however, that if and to the extent that the Building Loan Agreement is inconsistent herewith, this Security Instrument shall govern). If the construction of the Improvements to be made pursuant to the Building Loan Agreement are not made in accordance with the terms of said Building Loan Agreement, or Borrower otherwise defaults under the Building Loan Agreement, Lender, after due Notice to Borrower, or any subsequent owner, is hereby vested with full and complete authority to enter upon the Land to employ watchmen to protect such Improvements from depredation or injury and to preserve and protect the Personalty therein, to continue any and all outstanding contracts for the erection and completion of said Improvements, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of Borrower, or other owner, and to pay and discharge all debts, obligations, and liabilities incurred thereby. All such sums so advanced by Lender (exclusive of advances of the principal of the Indebtedness) shall be added to the principal of the Indebtedness secured hereby and all shall be secured by this Security Instrument and shall be due and payable on demand with interest at the rate provided in the Note, but no such advances shall be insured unless same are specifically approved by HUD prior to the making thereof. The Indebtedness shall, at the option of Lender or holder of this Security Instrument and the Note, become due and payable on the failure of Borrower, or other owner, to keep and perform any of the covenants, conditions and agreements of the Building Loan Agreement. This covenant shall be terminated upon the completion of the Improvements to the satisfaction of Lender and the making of the final advance as provided in the Building Loan Agreement.

48. ENVIRONMENTAL HAZARDS.

(a) Definitions:

- (1) **"Hazardous Materials"** means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("**PCBs**") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any Governmental Authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of any Hazardous Materials Law.

- (2) **"Hazardous Materials Laws"** means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments that relate to Hazardous Materials and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*, and their state analogs.
- (3) **"Environmental Permit"** means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(b) Except for (1) matters covered by a written program of operations and maintenance approved in writing by Lender ("**O&M Program**"); (2) matters described in subsection (c) of this Section 48; or (3) (for so long as the Loan is insured or held by HUD) matters covered by Program Obligations that may differ from this Section 48 (with respect to lead based paint requirements, for example), Borrower shall not cause or permit any of the following:

- (i) any occurrence or condition on the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or
- (ii) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property.

The matters described in clauses (i) and (ii) above are referred to collectively in this Section 48 as "**Prohibited Activities or Conditions.**"

(c) Prohibited Activities and Conditions shall not include the safe and lawful use and storage of quantities of (1) supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable multifamily properties; (2) cleaning materials, personal grooming items and other items sold in

containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (3) petroleum products used in the operation and maintenance of motor vehicles and motor-operated equipment from time to time located on the Mortgaged Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(d) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Security Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(e) If an O&M Program has been established with respect to Hazardous Materials, Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons encompassed by the O&M Program and present on the Mortgaged Property to comply with the O&M Program. All costs of performance of Borrower's obligations under any O&M Program shall be paid by Borrower, and Lender's out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Borrower's performance shall be paid by Borrower upon demand by Lender. Any such out-of-pocket costs of Lender which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 13; provided that so long as the Loan is insured by HUD, no advances made by Lender under this subsection (e) shall become an additional part of the Indebtedness unless such advances receive the prior written approval of HUD and provided further that unless approved by HUD, Lender shall have no obligation to make any such advances.

(f) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing:

- (1) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;
- (2) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed;
- (3) the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an

underground storage tank located on the Mortgaged Property that has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;

- (4) Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;
- (5) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of Notice would constitute, noncompliance with the terms of any Environmental Permit;
- (6) to the best of Borrower's knowledge after reasonable and diligent inquiry, there are no actions, suits, claims or proceedings, pending or threatened, that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and
- (7) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property that have not previously been resolved legally.

The representations and warranties in this Section 48 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the Loan, until the Indebtedness has been paid in full.

(g) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

- (1) Borrower's discovery of any Prohibited Activity or Condition;
- (2) Borrower's receipt of or knowledge of any complaint, order, notice of violation or other communication from any Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any

other property of Borrower that is adjacent to the Mortgaged Property; and

- (3) any representation or warranty in this Section 48 becoming untrue after the date of this Security Instrument.

Any such Notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Security Instrument, the Note, or any other Loan Document.

(h) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("**Environmental Inspections**") required by Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any transfer under Section 21, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including the fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial (appellate or otherwise) or administrative process or otherwise) which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 13; provided that so long as the Loan is insured by HUD, no advances made by Lender under this subsection (h) shall become an additional part of the Indebtedness unless such advances receive the prior written approval of HUD and provided further that unless approved by HUD, Lender shall have no obligation to make such further advances. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to any party other than Borrower, and so long as the Loan is insured by HUD, to HUD, such results or any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(i) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("**Remedial Work**") is necessary to comply with any Hazardous

Materials Law applicable to the Mortgaged Property or to its use, operation or improvement, Borrower shall, by the earlier of (1) the applicable deadline required by the Hazardous Materials Law or (2) thirty (30) days after Notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. So long as the Loan is insured by HUD, no advances made by Lender under this subsection (i) shall become part of the Indebtedness as provided in Section 13 unless such advances receive the prior written approval of HUD and provided further that unless approved by HUD, Lender shall have no obligation to make any such advances.

(j) Borrower shall cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activity or Condition.

(k) Borrower shall indemnify, if Borrower is located in a State that requires an indemnification agreement separate and apart from this Security Instrument, Borrower shall provide said indemnification agreement to Lender, hold harmless and defend (1) Lender, (2) any prior owner or holder of the Note, (3) the loan servicer, (4) any prior loan servicer, (5) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (6) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, "**Indemnitees**") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including fees and out of pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial (including appellate) or administrative process or otherwise, arising directly or indirectly from any of the following except where the Mortgaged Property became contaminated subsequent to any transfer of ownership which was approved in writing by Lender (and so long as the Loan is insured or held by HUD, by HUD), provided such transferee assumes in writing all obligations of Borrower with respect to Prohibited Activities or Conditions:

- (i) any breach of any representation or warranty of Borrower in this Section 48;
- (ii) any failure by Borrower to perform or comply with any of its obligations under this Section 48;
- (iii) the existence or alleged existence of any Prohibited Activity or Condition;

(iv) the actual or alleged violation of any Hazardous Materials Law.

(l) Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. However, any Indemnatee may elect to defend any claim or legal or administrative proceeding at Borrower's expense.

(m) Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding ("**Claim**"), settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (2) may materially and adversely affect Lender, as determined by Lender in its discretion.

(n) Borrower's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Borrower or any guarantor to receive Notice of or consideration for any of the following:

- (1) any amendment or modification of any Loan Document;
- (2) any extensions of time for performance required by any Loan Document;
- (3) the accuracy or inaccuracy of any representations and warranties made by Borrower under this Security Instrument or any other Loan Document;
- (4) the release of Borrower or any other person, by Lender or by operation of law, from performance of any obligation under any Loan Document;
- (5) the release or substitution in whole or in part of any security for the Indebtedness; and
- (6) Lender's failure to properly perfect any lien or security interest given as security for the Indebtedness.

(o) Borrower shall, at its own cost and expense, do all of the following:

- (1) pay or satisfy any judgment or decree that may be entered against any Indemnatee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 48;

- (2) reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 48; and
- (3) reimburse Indemnitees for any and all expenses, including fees and out-of-pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 48, or in monitoring and participating in any legal (including appellate) or administrative proceeding.

(p) In any circumstances in which the indemnity under this Section 48 applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned), may settle or compromise any action or legal or administrative proceeding. Borrower shall reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, and the fees and out of pocket expenses of such attorneys (including but not limited to appellate litigation) and consultants.

(q) The provisions of this Section 48 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section 48 without regard to whether Lender or that Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one entity, the obligation of those entities to indemnify the Indemnitees under this Section 48 shall be joint and several. The obligation of Borrower to indemnify the Indemnitees under this Section 48 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Security Instrument. Notwithstanding anything in Section 48 to the contrary, so long as the Loan is insured or held by HUD, indemnification costs and reimbursements to Lender or to any or all Indemnitees shall be paid only from the available proceeds of an appropriate insurance policy or from Surplus Cash or other escrow accounts.

(r) So long as the Loan is insured or held by HUD, all references to Lender in this Section 48 shall also be construed to refer to HUD as its interest appears (solely as determined by HUD) and all notifications to Lender must also be made to HUD and all Lender approvals and exercises of discretion by Lender under this Section 48 must first have the prior written approval of HUD, provided, that, so long as the Loan is insured or held by HUD, the reference to Lender as an Indemnitee shall be construed to refer to HUD, and Borrower's obligations to indemnify HUD as an Indemnitee shall remain in

effect in accordance with this Section 48, notwithstanding the termination or expiration of insurance of the Loan by HUD.

(s) To the extent any HUD environmental requirements or standards are inconsistent or conflict with the provisions of this Section 48, the HUD requirements or standards shall control so long as the Loan is insured or held by HUD.

49. FUTURE ADVANCES. In conformance with Connecticut General Statute Section 49-3, whereas buildings on the Land are to be constructed or repaired, the Lender will advance the Loan installments as the work progresses, the time and amount of each advance being as provided in the Building Loan Agreement, so that when all such work has been completed, the full amount of the Loan stated herein will have been advanced (if so provided in the Building Loan Agreement); and the Borrower has agreed to complete the erection or repair of said buildings within the time provided in the Building Loan Agreement.

ATTACHED EXHIBITS. The following Exhibits are attached to this Security Instrument:

- | | | |
|-------------------------------------|--------------------|--------------------------------------|
| <input checked="" type="checkbox"/> | <u>Exhibit A</u> | Description of the Land (required). |
| <input type="checkbox"/> | <u>Exhibit B</u> | Modifications to Security Instrument |
| <input checked="" type="checkbox"/> | <u>LIHTC Rider</u> | Modifications to Security Instrument |

[SIGNATURE APPEARS ON FOLLOWING PAGE]


IN WITNESS WHEREOF, Borrower has signed and delivered this Security Instrument or has caused this Security Instrument to be signed and delivered by its duly authorized representative, as a sealed instrument.

BORROWER:

CANAAN PARISH REDEVELOPMENT LIMITED PARTNERSHIP,
a Connecticut limited partnership

By: Canaan Parish Redevelopment GP, LLC,
a Connecticut limited liability company
Its General Partner


By: Housing Authority of the Town of New Canaan,
Its managing member

By: 
Scott Hobbs
Chairman

STATE OF Connecticut
COUNTY OF Fairfield

On August 18, 2020, before me personally appeared Scott Hobbs, the Chairman of Housing Authority of the Town of New Canaan, the managing member of Canaan Parish Redevelopment GP, LLC, a Connecticut limited liability company, the General Partner of CANAAN PARISH REDEVELOPMENT LIMITED PARTNERSHIP, a Connecticut limited partnership, who is personally well known to me or proven to me through satisfactory evidence of identification, and who executed the foregoing instrument by virtue of the authority vested in him and acknowledged to me that he executed it voluntarily for the purposes stated therein on behalf of Canaan Parish Redevelopment Limited Partnership.

Witness my hand and Notarial Seal this day.


Notary Public:

PAMELLA D. MORALES
Notary Public, State of Connecticut
My Commission Expires Feb 28, 2025



EXHIBIT A LEGAL DESCRIPTION

All that certain piece or parcel of land, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, more particularly shown and delineated as "T 226,708± SQ. FT. 5.204± ACRES ("Parcel I") on a certain map entitled "MAP SHOWING LANDS OF THE TOWN OF NEW CANAAN TO BE LEASED TO NEW CANAAN NEIGHBORHOODS INC. NEW CANAAN, CONNECTICUT 'B' RESIDENCE ZONE 10.906 ACRES - 475,096± SQ. FT.," which map is filed for record on the New Canaan Land Records as Map No. 5839 ("Map 5839"), reference to Map 5839 being expressly made. Parcel I is more particularly bounded and described as follows:

EASTERLY:	620.57 feet by Connecticut State Highway Route #123 known as New Norwalk Road;
SOUTHEASTERLY:	26.16 feet by the curved intersection of New Norwalk Road with the public highway known as Lakeview Avenue;
SOUTHERLY:	227.21 feet by the public highway known as Lakeview Avenue;
WESTERLY:	30.00 feet, then
SOUTHWESTERLY:	90.00 feet, then again
WESTERLY:	200.00 feet, then again
SOUTHWESTERLY:	310.49 feet by other land of the Town of New Canaan presently being used for the Town Highway Garage, and
NORTHWESTERLY:	540.21 feet by Parcel "II" 248,388± SQ. FT. 5.702± ACRES" on Map 5839 ("Parcel II").

Said Parcel I is also described as follows:

Beginning at a monument where same is intersected by a stonewall on the westerly side of New Norwalk Road (Route #123) and being the southeasterly corner of land of Anne C. Zavisho; thence running along the westerly side of New Norwalk Road (Route #123) the following course and distance on a curve to the right having a radius of 1870.08 feet for a length of 216.97 feet to the point or place of beginning; thence continuing along the westerly side of New Norwalk Road (Route #123) the following courses and distances on a curve to the right having a radius of 1870.08 feet for a length of 194.05 feet to a monument and:

S 14-23-40 E 426.52 feet

to a point on the northerly side of Lakeview Avenue; thence turning and running in a generally southwesterly direction along the northerly side of Lakeview Avenue the following courses and distances on a curve to the right having a radius of 20.00 feet for a length of 26.16 feet and on a curve to the right having a radius of 620.55 feet for a length of 220.22 feet and

S 80-53-40 W 6.99 feet

to a point being a southeasterly corner of land of the Town of New Canaan; thence turning and running in a generally northwesterly direction along a generally northeasterly boundary of the Town of New Canaan the following courses and distances:

N 14-23-40 W 30.00 feet

N 59-23-40 W 90.00 feet

N 14-23-40 W 200.00 feet

N 49-33-10 W 104.00 feet

and N 61-30-20 W 206.49 feet

to a point on the southeasterly boundary of Parcel II as shown on Map #5839 on file in the New Canaan Land Records; thence turning and running in a generally northeasterly direction along a generally southeasterly boundary of the aforesaid Parcel II the following courses and distances:

N 32-04-20 E 76.00 feet

N 46-39-50 E 100.00 feet

and N 69-40-54 E 364.21 feet

to the point or place of beginning.

The said parcel is leased together with an easement to the occupants of dwelling units located thereon to cross, on foot, the "Conservation Area" shown on a map entitled "Subdivision Map Town of New Canaan New Norwalk Road (Route 123), Lakeview Avenue, Millport Avenue & East Avenue New Canaan, Connecticut Dated December 22, 1998 as revised Sheets 1 and 2" filed as Maps #7057 and #7058 in the office of the New Canaan Town Clerk to reach the area depicted on said Maps as "Access Easement In Favor Of The Town Of New Canaan".

Said premises are also known as 186 Lakeview Avenue, New Canaan, Connecticut (Parcel I).

RIDER TO SECURITY INSTRUMENT LIHTC PROPERTIES

This Rider ("Rider") is attached to and amends the Security Instrument entered into between **CANAAN PARISH REDEVELOPMENT LIMITED PARTNERSHIP** a **limited partnership** organized and existing under the laws of **Connecticut** and **ORIX REAL ESTATE CAPITAL, LLC**, a **limited liability company** organized and existing under the laws of **Delaware**, dated as of **the 27th day of August, 2020** ("Security Instrument").

To the extent any provisions of this Rider conflict with any provisions in the body of the Security Instrument, the provisions of this Rider shall prevail. Any terms in the body of the Security Instrument not in conflict with the provisions of this Rider remain in full force and effect.

Notwithstanding anything else in the Security Instrument to which this Rider is attached:

1. Definitions.

The following terms shall be added to Section 1 (Definitions) of the Security Instrument:

- (a) Any capitalized terms not defined in this Rider shall have the meaning given in the body of the Security Instrument.
- (b) "Equity Investor" means **People's United Bank, N.A., a national bank.**
- (c) "Borrower's GP/MM" means **Canaan Parish Redevelopment GP, LLC, a Connecticut limited liability company.**

~~2. Removal of Borrower's GP/MM.~~

~~[Include this section 2 only if pre-approval of a special limited partner entity as an interim replacement general partner/managing member has been requested and approved. Use in accordance with separately provided guidance on the pre-approval process.]~~

~~Equity Investor may remove the Borrower's GP/MM in accordance with the terms of the Borrower's organizational documents, subject to the following conditions:~~

- ~~(a) Lender and HUD shall receive prior written notice of any such removal and replacement.~~
- ~~(b) HUD and Lender have approved such organizational documents, including any and all amendments thereto, but only to the extent HUD approval of~~

~~the Borrower's organizational documents is required by Program Obligations.~~

- ~~(c) HUD and Lender have approved the replacement of the Borrower's GP/MM in accordance with Program Obligations. At Borrower's request, HUD and Lender have approved [**SPECIAL LIMITED PARTNER ENTITY**] ("Interim Replacement GP/MM") to act as a temporary replacement general partner/managing member of Borrower, in the event Equity Investor removes Borrower's GP/MM for cause in accordance with Borrower's organizational documents. Approval of such Interim Replacement GP/MM is expressly limited to a period of only 90 days that commences the date of such removal, provided that HUD in its sole discretion may extend such 90-day period by an additional 30 days.~~
- ~~(d) HUD and/or Lender may at any time by written notice to Equity Investor revoke the approvals given in this Section 2 if HUD or Lender becomes aware of any conditions or circumstances that would disqualify or compromise the ability of Interim Replacement GP/MM from acting as an interim general partner/managing member pursuant to Program Obligations.~~
- ~~(e) After such interim period, any proposed permanent replacement for the Borrower's GP/MM is subject to HUD's consent pursuant to Program Obligations, including any applicable procedure for the transfer of physical assets.~~

3. Transfer of Equity Investor.

Equity Investor may transfer all or part of its interests in Borrower upon the following conditions:

- (a) HUD approves any transferee in accordance with Program Obligations, provided that if such transferee is a limited liability investor, as such term is defined in Program Obligations, HUD shall receive the same certifications and organizational charts required by Program Obligations for the admission of a limited liability corporate investor at a transaction's closing.
- (b) HUD and Lender receive prior written notice of such transfer.
- (c) HUD and Lender receive executed copies of (and, to the extent, if at all, required by Program Obligations, have previously approved drafts of), any and all documents necessary to effect such transfer, including any and all amendments to Borrower's organizational documents.

4. Notice.

- (a) Lender agrees that, as long as Equity Investor is a member or partner of Borrower, Lender shall endeavor as a courtesy to Equity Investor to deliver to Equity Investor a copy of any notice of default that is delivered to Borrower. Equity Investor's address for such notice purposes is:

People's United Bank, N.A.
850 Main Street,
Bridgeport, CT 06604
Attention: CRA Officer, 13th Floor

Equity Investor may change the address to which notices intended for it are to be directed by means of written notice given to Lender.

- (b) Any cure of any default by Borrower offered by Equity Investor shall be treated the same as if offered by Borrower.

SIGNATURES APPEAR ON FOLLOWING PAGE

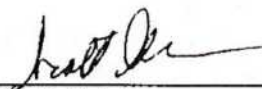
**SIGNATURE PAGE TO RIDER TO SECURITY INSTRUMENT
LIHTC PROPERTIES**

BORROWER:

CANAAN PARISH REDEVELOPMENT LIMITED PARTNERSHIP,
a Connecticut limited partnership

By: Canaan Parish Redevelopment GP, LLC,
a Connecticut limited liability company
Its General Partner

By: Housing Authority of the Town of New Canaan,
Its managing member

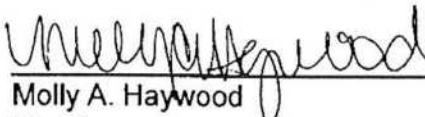
By: 

Scott Hobbs
Chairman

**SIGNATURE PAGE TO RIDER TO SECURITY INSTRUMENT
LIHTC PROPERTIES**

LENDER:

ORIX REAL ESTATE CAPITAL, LLC,
a Delaware limited liability company

By: 
Molly A. Haywood
Director

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.



Doc ID: 002740430025 Type: LAN
Book 1022 Page 196 - 220
File# 815

Record and return to:
Keisha S. Palmer, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103

**REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS**

by and between

HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN

and

CANAAN PARISH REDEVELOPMENT LIMITED PARTNERSHIP

Dated as of August 1, 2020

HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN
MULTIFAMILY HOUSING REVENUE BONDS,
SERIES 2020 (CANAAN PARISH PROJECT)

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REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (as supplemented and amended from time to time, this "Regulatory Agreement") is dated as of August 1, 2020 and entered into as of August 27, 2020 by and among the HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN, a public body, corporate and politic, duly organized and existing under the laws of the State of Connecticut (together with any successor to its rights, duties and obligations, the "Authority"), ZIONS BANCORPORATION, NATIONAL ASSOCIATION, a national banking association as trustee, organized and existing under the laws of the United States of America with its designated corporate trust office located in Salt Lake City, Utah together with any successor trustee under this Indenture and its respective successors and assigns (the "Trustee"), and CANAAN PARISH REDEVELOPMENT LIMITED PARTNERSHIP, a limited partnership, duly organized, validly existing under the laws of the State of Connecticut (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the "Borrower").

WITNESSETH:

WHEREAS, pursuant to Chapter 128 of the General Statutes of Connecticut, Revision of 1958, as amended (the "Act"), the Authority proposes to issue its Multifamily Housing Revenue Bonds, Series 2020 (Canaan Parish Project) (the "Bonds") under that certain Trust Indenture, dated as of August 1, 2020 (the "Indenture"), by and between the Authority and the Trustee, as supplemented and amended from time to time;

WHEREAS, the proceeds of the Bonds will be used to fund one or more loans (the "Loan") to the Borrower pursuant to the Loan Agreement, dated as of August 1, 2020 (the "Loan Agreement"), between the Authority and the Borrower, as supplemented and amended from time to time, to provide, in part, financing for the development, preservation, improvement and equipping of an existing residential rental housing project known as Canaan Parish, located on the real property site described in Exhibit A hereto (as further described herein, the "Project");

WHEREAS, the Loan will be secured, in part, by a lien on and security interest in the Project pursuant to a Multifamily Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement (Connecticut) dated August 27, 2020 (the "Mortgage"), by the Borrower to and for the benefit of the Authority;

WHEREAS, the Authority is unwilling to make the Loan unless the Project qualifies as a qualified residential rental project as defined in Code Section 142 and the Borrower agrees to be regulated in the manner set forth herein, and the Borrower is willing to execute and abide by this Regulatory Agreement as consideration for obtaining the Loan and receiving continuing benefits under the Act, the Code and the Regulations; and

WHEREAS, the Authority as a condition of the Loan requires that the Borrower, by entering into the restrictions, terms, conditions and covenants set forth below, consent to be regulated and restricted in the management and operation of the Project as herein provided and as provided in the Code and the Regulations; and

NOW, THEREFORE, in consideration of the issuance of the Bonds by the Authority and the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, the Authority, the Trustee, and the Borrower hereby agree as follows:

Section 1. Definitions and Interpretation. Unless the context otherwise requires, the capitalized terms used herein shall have the respective meanings assigned to them in the recitals hereto, in this Section 1, or in the Indenture.

"Area" means the Metropolitan Statistical Area or Authority, as applicable, in which the Project is located, as defined by the United States Department of Housing and Urban Project.

"Available Units" means residential units in the Project that are actually occupied and residential units in the Project that are vacant and have been occupied at least once after becoming available for occupancy, provided that (a) a residential unit that is vacant on the later of (i) the date the Project is acquired or (ii) the issue date of the Bonds, is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after the renovations are completed.

"Authority" means the Housing Authority of the Town of New Canaan.

"Bond Counsel" means Robinson & Cole LLP, Hartford, Connecticut, or such other independent legal counsel which may be approved by the Issuer and whose opinions are regularly and generally accepted nationally in the field of municipal finance.

"Certificate of Continuing Program Compliance" means the Certificate to be filed by the Borrower with the Authority, pursuant to Section 4(g) hereof, which shall contain the provisions set forth in Exhibit B hereto and such other provisions as the Authority may reasonably request from time to time.

"Closing Date" means the date that initial Loan proceeds are disbursed under the Indenture, which is expected to be August 27, 2020.

"Code" means the Internal Revenue Code of 1986, as amended, each reference to the Code is deemed to include (i) any successor internal revenue law and (ii) the applicable regulations whether final, temporary or proposed under the Code or such successor law. Any reference to a particular provision of the Code is deemed to include any successor provision of any successor internal revenue law and applicable regulations whether final, temporary or proposed under such provision or successor provision.

"General Partner" means Canaan Parish Redevelopment GP, LLC, a Connecticut limited liability company, the sole general partner of the Borrower.

"Gross Income" means the gross income of a person (together with the gross income of all persons who intend to reside with such person in one residential unit) as calculated in the manner prescribed under Section 8 of the Housing Act of 1937.

"Housing Act" means the United States Housing Act of 1937, as amended, or its successor.

"Income Certification" means a Tenant Income Certification and a Tenant Income Certification Questionnaire in a form acceptable to the Authority or as otherwise approved by the Authority.

"Indenture" means the Trust Indenture, dated as of August 1, 2020, by and between the Authority and the Trustee, as supplemented and amended from time to time.

"Issuer Documents" has the meaning given such term in the Indenture.

"Limited Partnership Agreement" means that certain Amended and Restated Agreement of Limited Partnership of the Borrower dated as of August 1, 2020, as the same may be amended, restated or modified in accordance with its terms.

"Loan Agreement" means the Loan Agreement, dated as of August 1, 2020, between the Authority and the Borrower, as supplemented and amended from time to time.

"Low Income Tenant" means a tenant occupying a Low Income Unit.

"Low Income Unit" means any Available Unit if the aggregate Gross Income of all tenants therein does not exceed limits determined in a manner consistent with determinations of "low-income families" under Section 8 of the Housing Act, provided that the percentage of median gross income that qualifies as low income hereunder shall be sixty percent (60%) of median gross income for the Area, with adjustments for family size. A unit occupied by one or more students shall only constitute a Low Income Unit if such students meet the requirements of Section 142(d)(2)(C) of the Code. The determination of an Available Unit's status as a Low Income Unit shall be made by the Borrower upon commencement of each lease term with respect to such unit, and annually thereafter, on the basis of an Income Certification executed by each tenant.

"Permitted Encumbrances" means any easements, agreements, encumbrances or restrictions listed on the schedule of exceptions in the title insurance policy issued to the Authority as of the date of recordation of this Regulatory Agreement insuring the Authority's interest in the Project, together with the Extended Use Agreement and the liens securing the any subordinate debt (including, without limitation, any regulatory agreements recorded in connection with the Subordinate Debt), if applicable.

"Project" means the 100-unit multifamily residential rental housing project for households with one or more persons located in the Town of New Canaan, Connecticut on the real property site described in Exhibit A hereto, consisting of those facilities, including real property, structures, buildings, fixtures or equipment situated thereon, as may at any time exist, the construction and development of which facilities is to be financed, in whole or in part, from the proceeds of the sale of the Bonds or the proceeds of any payment by the Borrower pursuant to the Loan Agreement, and any real property, structures, buildings, fixtures or equipment acquired in substitution for, as a renewal or replacement of, or a modification or improvement to, all or any part of such facilities.

"Qualified Project Period" means the period beginning on the first day on which at least 10% of the units in the Project are first occupied and ending on the later of the following:

(A) the date that is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied;

(B) the first date on which no Tax-Exempt private activity bonds with respect to the Project are Outstanding;

(C) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates; or

(D) such later date as set forth in this Regulatory Agreement.

"Regulations" means the Income Tax Regulations of the Department of the Treasury applicable under the Code from time to time.

"Regulatory Agreement" means this Regulatory Agreement and Declaration of Restrictive Covenants, as it may be supplemented and amended from time to time.

"Rental Payments" means the rental payments paid by the tenant of a unit, excluding any supplemental rental assistance to the tenant from the State, the federal government, or any other public agency, but including any mandatory fees or charges imposed on the tenant by the Borrower as a condition of occupancy of the unit.

"Tax-Exempt" means with respect to interest on any obligations of a state or local government, including the Bonds, that such interest is excluded from gross income for federal income tax purposes; provided, however, that such interest may be includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating other tax liabilities, including any alternative minimum tax or environmental tax, under the Code.

"Tax Certificate" means the Tax Certificate, dated as of August 27, 2020, executed and delivered by the Borrower with respect to the Bonds.

"Town" means the Town of New Canaan, Connecticut.

"Transfer" means the conveyance, assignment, sale or other disposition of all or any portion of the Project in accordance with the terms of the Mortgage.

"Trustee" means Zions Bancorporation, National Association, a national banking association, organized and existing under the laws of the United States of America with its designated corporate trust office located in Salt Lake City, Utah.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of any gender shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

The parties to this Regulatory Agreement acknowledge that each party and their respective counsel have participated in the drafting and revision of this Regulatory Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Regulatory Agreement or any supplement or exhibit hereto.

Section 2. Representations, Covenants and Warranties of the Borrower.

(a) The Borrower hereby incorporates herein, as if set forth in full herein, each of the representations, covenants and warranties of the Borrower contained in the Tax Certificate and the Issuer Documents relating to the Project.

(b) The Borrower hereby represents and warrants that the Project is located entirely within the Town.

(c) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions contemplated by this Regulatory Agreement; that it is familiar with the provisions of all of the documents and instruments relating to the Bonds to which it is a party or of which it is a beneficiary; that it understands the financial and legal risks inherent in such transactions; and that it has not relied on the Authority for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Authority in any manner except to issue the Bonds in order to provide funds to assist the Borrower in constructing and developing the Project and take the actions required of it under the Issuer Documents and the Mortgage Loan Documents.

Section 3. Qualified Residential Rental Project. The Borrower hereby acknowledges and agrees that the Project is to be owned, managed and operated as a "qualified residential rental project" (within the meaning of Section 142(d) of the Code) for a term equal to the Qualified Project Period and all rehabilitation expenditures shall be made within two years of the date of the issuance of the Bonds. To that end, and for the term of this Regulatory Agreement, the Borrower hereby represents, covenants, warrants and agrees as follows:

(a) The Project will be constructed, rehabilitated, developed and operated for the purpose of providing multifamily residential rental property for households with one or more persons of low and moderate income. The Borrower will ground lease, manage and operate the Project as a project to provide multifamily residential rental property comprised of one or more buildings together with any functionally related and subordinate facilities, and no other facilities, in accordance with Section 142(d) of the Code and Section 1.103-8(b) of the Regulations.

(b) All of the dwelling units in the Project will be similarly constructed units, and each dwelling unit in the Project will contain complete separate and distinct facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink.

(c) None of the dwelling units in the Project will at any time be utilized on a transient basis or rented for a period of less than 30 consecutive days, or will ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or park; provided that the use of certain units for tenant guests on an intermittent basis shall not be considered transient use for purposes of this Regulatory Agreement.

(d) No part of the Project will at any time during the Qualified Project Period be owned by a cooperative housing corporation, nor shall the Borrower take any steps in connection with a conversion to such ownership or use, and the Borrower will not take any steps in connection with a conversion of the Project to condominium ownership during the Qualified Project Period.

(e) All of the Available Units in the Project will be available for rental during the period beginning on the date hereof and ending on the termination of the Qualified Project Period on a continuous, "first-come, first-served" basis to members of the general public; which for purposes of this Regulatory Agreement means the general population, and the Borrower will not give preference to any

particular class or group in renting the dwelling units in the Project, except to the extent that dwelling units are required to be leased or rented in such a manner that they constitute Low Income Units.

(f) The Project consists of a parcel or parcels that are contiguous and all of the facilities of the Project comprise a single geographically and functionally integrated project for residential rental property, as evidenced by the ownership, management, accounting and operation of the Project.

(g) No dwelling unit in the Project shall be occupied by the Borrower; this provision shall not be construed to prohibit occupancy of not more than one dwelling unit by a resident manager or maintenance personnel.

Section 4. Low Income Tenants; Reporting Requirements. Pursuant to the requirements of the Code, the Borrower hereby represents, warrants and covenants as follows:

(a) During the Qualified Project Period, no less than ninety percent (90%) of the total number of completed units in the Project shall at all times be Low Income Units. For the purposes of this paragraph (a), a vacant unit that was most recently a Low Income Unit is treated as a Low Income Unit until reoccupied, other than for a temporary period of not more than 31 days, at which time the character of such unit shall be redetermined.

(b) No tenant qualifying as a Low Income Tenant upon initial occupancy shall be denied continued occupancy of a unit in the Project because, after admission, the aggregate Gross Income of all tenants in the unit occupied by such Low Income Tenant increases to exceed the qualifying limit for a Low Income Unit. However, should the aggregate Gross Income of tenants in a Low Income Unit, as of the most recent determination thereof, exceed one hundred forty percent (140%) of the applicable income limit for a Low Income Unit occupied by the same number of tenants, the next available unit of comparable or smaller size must be rented to (or held vacant and available for immediate occupancy by) Low Income Tenant(s). The unit occupied by such tenants whose aggregate Gross Income exceeds such applicable income limit shall continue to be treated as a Low Income Unit for purposes of the percentage requirement of Section 4(a) hereof unless and until an Available Unit of comparable or smaller size is rented to persons other than Low Income Tenants.

(c) For the Qualified Project Period, the Borrower will obtain, complete and maintain on file Income Certifications for each Low Income Tenant, including (i) an Income Certification dated immediately prior to the initial occupancy of such Low Income Tenant in the unit and a second Income Certification dated one year after the Low Income Tenant's initial move in date, and (ii) thereafter, an annual Income Certification with respect to each Low Income Tenant. The Borrower will also provide such additional information as may be required in the future by the Code, the State or the Authority, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to Tax-Exempt obligations. Upon request of the Authority, copies of Income Certifications for Low Income Tenants commencing or continuing occupation of a Low Income Unit shall be submitted to the Authority, as requested.

(d) The Borrower shall make a good faith effort to verify that the income information provided by an applicant in an Income Certification is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain pay stubs for the three most recent pay periods, (2) obtain an income tax return for the most recent tax year, (3) obtain a credit report or conduct a similar type credit search, (4) obtain an income verification from the applicant's current employer, (5) obtain an income verification from the Social Security Administration and/or any agency of the State

if the applicant receives assistance from such agencies, or (6) if the applicant is unemployed and does not have an income tax return, obtain another form of independent verification reasonably acceptable to the Authority.

(e) The Borrower will maintain complete and accurate records pertaining to the Low Income Units, and will permit any duly authorized representative of the Authority, the Trustee, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units. Such records shall include:

(1) The total number of residential rental units in each building (including the number of bedrooms and the size in square feet of each residential rental unit);

(2) The percentage of residential rental units in each building that are Low Income Units;

(3) The rent charged on each residential rental unit in the Project (including any utility allowance);

(4) The Low Income Unit vacancies in the building and information that shows when, and to whom the next available originally designated Low Income Units were rented;

(5) The annual income certification of each tenant of a Low Income Unit, including an income certification dated within one hundred twenty (120) days of the Closing Date;

(6) Documentation to support the income certification made by each tenant of a Low Income Unit (for example, a copy of the tenant's federal income tax return, Form W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation or other benefits); and

(7) Such other information as the Authority may reasonably request from time to time.

(f) The Borrower shall retain the foregoing records for each building in the Project for at least six years after the end of the Qualified Project Period.

(g) The Borrower will prepare and submit to the Authority, on behalf of the Authority, not less than annually, commencing not less than twelve (12) months after the Closing Date, a Certificate of Continuing Program Compliance executed by the Borrower in substantially the form attached hereto as **Exhibit B**. During the Qualified Project Period, the Borrower shall submit a completed Internal Revenue Code Form 8703 or such other annual certification as required by the Code with respect to the Project, to the Secretary of the Treasury on or before March 31 of each year (or such other date as may be required by the Code) and deliver copies of such forms or certificates to the Authority together with copies of any other IRS Forms submitted in respect to the Project.

(h) For the Qualified Project Period, all tenant leases or rental agreements shall be subordinate to this Regulatory Agreement. All leases pertaining to Low Income Units shall contain clauses, among others, wherein each tenant who occupies a Low Income Unit: (i) certifies the accuracy of the statements made by such tenant in the Income Certification; (ii) agrees that the family income and

other eligibility requirements shall be deemed substantial and material obligations of the tenancy of such tenant, that such tenant will comply promptly with all requests for information with respect thereto from the Borrower, or the Authority and that the failure to provide accurate information in the Income Certification or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the tenancy of such tenant; (iii) acknowledges that the Borrower has relied on the statements made by such tenant in the Income Certification and supporting information supplied by the Low Income Tenant in determining qualification for occupancy of a Low Income Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease or rental agreement; and (iv) agrees that the tenant's income is subject to annual certification in accordance with Section 4(c).

(i) The Borrower further covenants and agrees promptly to notify the Authority and the Trustee on behalf of the Authority, if the Borrower discovers noncompliance with any restriction or covenant hereunder. The Authority and the Trustee on behalf of the Borrower agrees to notify the Borrower if the Authority discovers noncompliance with any restriction or covenant hereunder, but the failure by the Authority or the Trustee on behalf of the Authority, to do so shall not affect the Borrower's obligations hereunder. The rights of the Authority and the Trustee under this subsection shall not be construed to impose upon them any obligation to request or review any such reports or information.

For purposes of this Section 4, no unit occupied by a residential manager shall be treated as a rental unit during the time of such occupation.

Section 5. Tax-Exempt Status of the Bonds. The Borrower and the Authority will not knowingly take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the Tax-Exempt nature of the interest on the Bonds and, if either of them should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof.

Section 6. Reliance. The Borrower hereby recognizes and agrees that the representations and covenants set forth herein may be relied upon by all persons, including but not limited to the Authority interested in the Tax-Exempt status of the interest on the Bonds. The Authority and the Trustee may rely upon statements and certificates of the Low Income Tenants in determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement. The Authority shall not be required to conduct any investigation into or review the operations or records of the Borrower and may rely solely on any written notice or certificate delivered to the Authority or the Trustee by the Borrower with respect to the occurrence or absence of a default hereunder.

Section 7. Transfer of the Project. (a) For the Qualified Project Period, the Borrower shall not Transfer the Project (except Permitted Transfers pursuant to the Mortgage), in whole or in part, without the prior written consent of the Authority. During the Qualified Project Period, the Borrower hereby covenants to include a reference to the requirements and restrictions contained in this Regulatory Agreement in any material documents transferring any interest in the Project to another person so that such transferee has notice of, and is bound by, such restrictions, and to obtain the agreement from any transferee to be bound by and comply with the requirements set forth in this Regulatory Agreement. Further, for the Qualified Project Period, the Borrower shall not: (1) encumber any of the Project or grant commercial leases of any part of the Project (excluding the space not financed with the proceeds of the Bonds), or permit the conveyance, transfer or encumbrance of any part of the Project, except for (A) Permitted Encumbrances, or (B) a Transfer in accordance with the terms of this Regulatory Agreement, in each case upon receipt by the Authority and the Trustee of an opinion of Bond Counsel, if deemed necessary by the Authority, to the effect that such action will not adversely affect the Tax-Exempt status of interest on the Bonds; (2) demolish any part of the Project or substantially subtract from

any real or personal property of the Project, except to the extent that what is demolished or removed is replaced with comparable property or such demolition or removal is otherwise permitted by the Issuer Documents; or (3) permit the use of the dwelling accommodations of the Project for any purpose except rental residences.

(b) In addition to the above restrictions on the Transfer of the Project (or a portion thereof) and except as provided below, the Borrower shall not convey the Project or interests in the ownership of the Project in a manner such that any subcontractor, or any other person to whom proceeds of the Bonds have been paid becomes a related person to the Borrower and the Borrower shall not otherwise become a related person to any subcontractor or such other recipients of proceeds of the Bonds. The preceding sentence shall not apply to prevent the payment of proceeds to a partner of the Borrower or the contractor for the Project provided that the other requirements set forth in this Regulatory Agreement, the Indenture and the Tax Certificate are satisfied. For purposes hereof, "related person" has the meaning ascribed thereto in Section 144(a)(3) of the Code. Notwithstanding anything to the contrary contained herein or in any document evidencing or securing the Loan, (i) the respective limited partner interests of People's United Bank, National Association, a national banking association and its lawful successors and assigns (the "Limited Partner"), in the Borrower may be transferred to or among affiliates thereof or to another nationally recognized entity regularly engaged in the purchase and syndication of low-income housing tax credits, and the general partner of the Borrower may be replaced in accordance with the terms of the Limited Partnership without the consent of the Authority or the Trustee controlled through one or more intermediaries of People's United Bank, so long as the Limited Partner provides the Trustee, upon its reasonable request, with the legal name, address, percentage of ownership, and any such other information required to comply with its "know your customer rules", of all direct partners or members of the entity to which the Limited Partner's interest were transferred, and any other transfers shall be in strict compliance with the Loan Agreement, and (ii) Limited Partner shall be entitled to (but not obligated to) cure any default or event of default hereunder, and any such cure by Limited Partner shall be deemed a cure by Borrower and be accepted or rejected on the same basis as if tendered by Borrower.

Section 8. Term. This Regulatory Agreement and all and several of the terms hereof shall become effective upon its execution and delivery, and shall remain in full force and effect for the period provided herein and shall terminate as to any provision not otherwise provided with a specific termination date and shall terminate in its entirety at the end of the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds and discharge of the Indenture and the Loan Agreement. The foregoing notwithstanding, this Regulatory Agreement and all restrictions hereunder shall terminate: (a) if there is delivered to the Authority, the Borrower and the Trustee an opinion of nationally recognized bond or tax counsel acceptable to the Authority and the Trustee to the effect that failure to comply with this Regulatory Agreement will not cause interest on the Bonds to become includable in the gross income of the owners thereof for federal income tax purposes, or (b) in the event of an involuntary noncompliance caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, condemnation or similar event, or a change in a federal law or an action of a federal agency after the date of issuance of the Bonds that prevents the Authority from enforcing the terms of this Regulatory Agreement, but only if, within a reasonable period, either the Bonds are repaid or amounts received as a consequence of such event are used to provide a residential rental project which meets the terms of this Regulatory Agreement. Notwithstanding the foregoing, such requirements shall continue to apply to the Project subsequent to a foreclosure, transfer of title by deed in lieu of foreclosure or similar event if, at any time subsequent to such event, the obligor on the purpose investment (as defined in Section 1.148-1(b) of the Regulations applicable to the Code) or a Related Person obtains an ownership interest in the Project for federal tax purposes.

Section 9. Covenants to Run With the Land. The Authority and the Borrower hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Borrower's successors in title to the Project; provided, however, that on the termination of this Regulatory Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. The Borrower, at its cost and expense, shall cause this Regulatory Agreement to be duly recorded, filed, re-recorded and refiled in such places, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law in order to establish, preserve and protect the ability of the Trustee to enforce this Regulatory Agreement. At the request of the Borrower, the Authority and the Trustee shall provide the Borrower with an instrument executed in recordable form at such time as the terms of this Regulatory Agreement are no longer applicable and the obligations of the Borrower have been satisfied, releasing the Borrower and the land from this Regulatory Agreement.

Section 10. Default; Enforcement. (a) If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured for a period of 30 days (or longer as provided later in this sentence) after notice thereof shall have been given by the Authority or the Trustee to the Borrower, with a copy of such notice to the others (or for a longer period after such notice if such default is curable but requires acts to be done or conditions to be remedied which, by their nature, cannot be done or remedied within such 30-day period, and if the Borrower commences same within such 30-day period and thereafter diligently and continuously prosecutes the same to completion), then the Authority or the Trustee may declare that the Borrower is in default hereunder and may take any one or more of the following steps, at its option:

(i) by mandamus or other suit, action or proceeding at law or in equity, require the Borrower to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of the Authority or the Trustee hereunder;

(ii) have access to and inspect, examine and make copies of all of the books and records of the Borrower pertaining to the Project;

(iii) take whatever other action at law or in equity may appear necessary or desirable to enforce the obligations, covenants and agreements of the Borrower hereunder; or

(iv) recover any monetary damages suffered by the Authority or the Trustee from time to time as a consequence of any event of default.

(b) The Borrower hereby acknowledges and agrees that money damages will not be an adequate remedy at law for a default by the Borrower arising from a default hereunder, and therefore the Borrower agrees that the remedy of specific performance shall be available to the Authority in any such case, but without prejudice to the availability of monetary damage remedies.

(c) The Trustee shall have the right, but not the obligation, in accordance with this Section and the provisions of the Indenture, without the consent or approval of the Authority, to exercise any or all of the Authority's rights or remedies hereunder, and the Authority hereby irrevocably appoints

the Trustee attorney-in-fact for the purpose of enforcement of this Regulatory Agreement, if the Trustee chooses, at its option, to exercise such rights. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times. The Borrower agrees to pay, indemnify and hold the Authority and Trustee harmless from any and all costs, expenses and fees, including all reasonable attorneys' fees that may be incurred by the Authority and Trustee in enforcing or attempting to enforce this Regulatory Agreement following any event of default of the same on the part of the Borrower, whether the same shall be enforced by suit or otherwise, and the reasonable fees and expenses of counsel in connection with any opinion to be rendered hereunder, excepting any such costs, expenses and fees incurred as a result of Authority's or the Trustee's willful misconduct or gross negligence.

(d) No remedy conferred herein or reserved to the Authority or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

(e) If the Authority or the Trustee has instituted any proceeding to enforce any right or remedy under this Regulatory Agreement and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Authority, then and in every such case the Borrower, the Authority, and the Trustee shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Authority and the Trustee shall continue as though no such proceeding has been instituted.

(f) No delay or omission of the Authority or the Trustee to exercise any right or remedy provided hereunder upon an event of default (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such event of default or acquiescence therein. Every right and remedy given by this Section or by law to the Authority or the Trustee may be exercised from time to time, and as often as may be deemed expedient by the Authority or the Trustee, as the case may be.

Section 11. Indemnification.

The Borrower shall to the fullest extent permitted by law, indemnify and hold harmless the Authority and the Trustee and their officers, directors, employees and agents, from and against (a) any and all claims arising from any cause whatsoever in connection with this Regulatory Agreement; (b) any and all claims arising from any act or omission of the Borrower or any of its agents, servants, employees, or licensees in connection with this Regulatory Agreement; and (c) all costs, counsel fees, expenses, and liabilities incurred in connection with any such claim or proceeding brought with respect to any thereof. The indemnity provided for in this Section shall not extend to matters arising from the willful misconduct or gross negligence of the Authority or the Trustee or any of their respective officers, directors, agents or employees and shall not limit any other indemnity given under any other Issuer Documents. If any action or proceeding is brought against the Authority or the Trustee, as the case may be, or any of their respective officers, directors, agents or employees with respect to which indemnity may be sought hereunder, the Borrower, shall pay the costs of defending such action including the employment of counsel reasonably acceptable to the Authority or the Trustee, as the case may be and shall assume the payment of all expenses related thereto; provided, however, that if the Borrower and any indemnified party or other named party to any such action or proceeding, including an impleaded party, or any person controlling any indemnified party shall have reasonably concluded that there may be one or more conflicting legal defenses available to it which are different from or additional to those available to the Borrower, such indemnified parties or such other party shall have the right to select separate counsel to

assume such legal defenses and to otherwise participate in the defense of such action on behalf of the indemnified party or such other party with respect to such additional or different defenses; provided further, however, that the Borrower shall not, in connection with any one such action or separate but substantially similar or related actions arising out of the same general allegations or circumstances, be liable for the fees and expenses of more than one separate firm of attorneys at any point in time for the indemnified parties and such other parties, unless the Trustee reasonably concludes that representation of both the Borrower and the Trustee would be inappropriate due to actual or potential differing interests between the two.

In performing their duties and obligations hereunder and exercising their rights and remedies hereunder, the Authority and the Trustee may rely upon statements and certificates of the Borrower or tenants of Low-Income Units believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Authority and the Trustee may consult with counsel of their selection, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Authority or the Trustee hereunder in good faith and in conformity with the opinion of such counsel.

The protection and obligations under this Section shall survive the termination or expiration of this Regulatory Agreement as necessary to effectuate its provisions. This indemnity is not a guarantee of any portion of the Borrower's payment obligations under the Loan Agreement.

Section 12. Trustee.

(a) The Trustee shall have no liability under or pursuant to this Regulatory Agreement except for and to the extent of its own gross negligence or willful misconduct in violation of its duties expressly set forth in this Regulatory Agreement. The duties and obligations of the Trustee under or pursuant to this Regulatory Agreement shall be solely those expressly set forth in this Regulatory Agreement, and no implied duties or covenants shall be read into this Regulatory Agreement on the part of the Trustee. Notwithstanding any term hereof (or in any other document) to the contrary, the duties of the Trustee hereunder are purely ministerial in nature and shall not be construed to be those of a fiduciary.

(b) The Trustee shall not be required or under any obligation to monitor or independently investigate the financial condition of the Borrower or to monitor, determine, investigate or compel the Borrower's compliance with or performance under this Regulatory Agreement. The Trustee shall not have any responsibility or other obligation with respect to reports, notices, certificates or other documents filed with it hereunder. In no instance shall the Trustee otherwise be required to examine, review or evaluate the contents of any report, certificate or statement received by it hereunder, the delivery thereof to the Trustee being solely for the purpose of making such materials available for review and use by the Authority.

(c) The Trustee may rely conclusively upon any notice, instruction, certificate, consent, waiver, statement, instrument and other document received and believed by it in good faith to be genuine and presented by the proper person. Without limiting the foregoing, the Trustee shall be entitled to assume in good faith the due authority and genuineness of any signature appearing on any instrument or document it may receive. The Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be within the discretion or powers conferred upon it, or taken by it pursuant to any direction or instruction by which it is governed hereunder (including, without limitation, at the instruction or direction of any governmental body pursuant to the terms hereof), or omitted to be taken by it by reason of the lack of direction or instruction required hereby for such action. The Trustee shall in no event be liable for the application or misapplication of funds by any other person, or for the acts or

omissions of any other person (including, without limitation, any other party to this Regulatory Agreement). The Trustee shall not be bound to make any investigation into the facts or matters stated in any certificate, report or other document. The Trustee may consult with and obtain the advice of counsel, and shall be protected in any action it may take (or refrain from taking, as the case may be) in good faith based upon the advice of such counsel. The Trustee may exercise or carry out any of its duties under this Regulatory Agreement either directly or indirectly through agents or attorneys, and shall not be responsible for any acts or omissions on the part of any such agent or attorney appointed with due care. To the extent permitted by applicable law, the Trustee shall not be required to give any bond or surety in the execution of its duties. No provision of this Regulatory Agreement shall obligate the Trustee to expend or risk its own funds or to take any remedial action which might, in its reasonable judgment, involve or subject it to costs, expenses or liabilities for which it is not adequately indemnified. The Trustee shall not be liable for any indirect, special or consequential damages (included but not limited to lost profits) whatsoever, even if it has been informed of the likelihood thereof and regardless of the form of action. The Trustee shall not be deemed to have, or be charged with, knowledge or notice of any matter unless actually known to a Responsible Officer of the Trustee (as defined below). The Trustee shall not be liable for any action (i) taken by it in good faith and reasonably believed by it to be within the discretion or powers conferred upon it, or (ii) in good faith omitted to be taken by it because reasonably believed to be beyond the discretion or powers conferred upon it, (iii) taken by it pursuant to any direction or instruction by which it is governed under this Regulatory Agreement or (iv) omitted to be taken by it by reason of the lack of direction or instruction required for such action, nor shall it be responsible for the consequences of any error of judgment reasonably made by it. When any consent or other action by the Authority is called for by this Regulatory Agreement, the Trustee may defer such action pending such investigation or inquiry or receipt of such evidence, if any, as it may require in support thereof. No permissive right or power to act granted to the Trustee hereunder shall be construed as a requirement to act; and no delay in the exercise of any such right or power by the Trustee shall affect the subsequent exercise of that right or power.

Section 13. Third Party Beneficiary. The Trustee is a third party beneficiary with full rights to enforce the terms hereof.

Section 14. Binding Effect. This Regulatory Agreement shall be binding upon the parties hereto and their respective successors and assigns, as their interests may appear, except that a foreclosing mortgagee, other foreclosing lien holder, or other owner of the equity, a trustee in bankruptcy or heir of any owner shall be exempt from this Regulatory Agreement, until such time as the foreclosed upon Project, or Project held by a trustee in bankruptcy, or Project taken by devise, is sold, leased or otherwise conveyed, at which time such sale, lease, or conveyance shall be subject to the covenants and restrictions herein.

Section 15. Governing Law. This Regulatory Agreement shall be governed by the laws of the State of Connecticut.

Section 16. Amendments; Waivers. (a) This Regulatory Agreement may be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the Town of New Canaan, Connecticut, and only upon receipt by the Authority and the Trustee, if deemed necessary by the Authority, of an opinion from Bond Counsel that such amendment will not adversely affect the Tax-Exempt status of interest on the Bonds and is not contrary to the provisions of the Housing Act.

(b) Anything to the contrary contained herein notwithstanding, the Authority and the Borrower hereby agree to amend this Regulatory Agreement to the extent required, in the opinion of Bond Counsel, in order that interest on the Bonds remains Tax-Exempt. The parties requesting such

amendment shall notify the other parties to this Regulatory Agreement of the proposed amendment, with a copy of such proposed amendment to Bond Counsel and a request that Bond Counsel render to the Authority and the Trustee an opinion as to the effect of such proposed amendment upon the Tax-Exempt status of interest on the Bonds. This provision shall not be subject to any provision of any other agreement requiring any party hereto to obtain the consent of any other person in order to amend this Regulatory Agreement.

(c) Any waiver of, or consent to, any condition under this Regulatory Agreement must be expressly made in writing.

Section 17. Notices. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, overnight delivery, certified or registered mail, postage prepaid, return receipt requested, in each case to the respective addresses specified in the Indenture, or at such other addresses as may be specified in writing by the parties hereto. Unless otherwise specified by the Authority, the address of the Authority:

Housing Authority of the Town of New Canaan
57 Millport Avenue
New Canaan, CT 06840
Attention: Chairman

The Authority and the Borrower may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Notice shall be deemed given on the date evidenced by the postal or courier receipt or other written evidence of delivery or electronic transmission; provided that any electronic transmission received by any party after 4:00 p.m., local time of the receiving party, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day.

The Borrower shall notify the Authority in writing of any change to the name of the Project or any change of name or address for the Borrower.

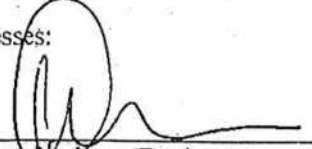
Section 18. Severability. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

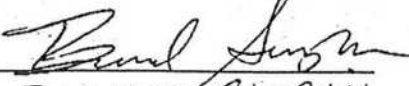
Section 19. Rider. The FHA Rider to Regulatory Agreement attached hereto as Exhibit C is incorporated herein and forms a part of this Regulatory Agreement.

Section 20. Multiple Counterparts. This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

Witnesses:


Kenda Palmer


BARNARD SYMKIN

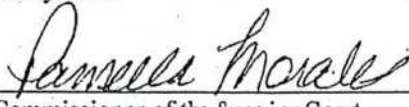
HOUSING AUTHORITY OF THE TOWN
OF NEW CANAAN

By: 
Name: Timothy Welch
Title: Vice-Chairman

STATE OF CONNECTICUT)
)
COUNTY OF FAIRFIELD) ss: New Canaan

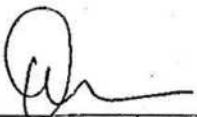
On this the 18 day of August, 2020, before me, the undersigned officer, personally appeared Timothy Welch, known to me (or satisfactorily proven) to be the Vice-Chairman of the **Housing Authority of the Town of New Canaan** and as Vice-Chairman, being authorized so to do, executed the foregoing instrument for the purposes therein contained as his free act and deed.

IN WITNESS WHEREOF, I hereunto set my hand.


Commissioner of the Superior Court
Notary Public
My Commission Expires:



PAMELLA D. MORALES
Notary Public, State of Connecticut
Commission Expires Feb 28, 2025

Witnesses: 
Kelsa Palmer
Bernard Shapiro
BERNARD SHAPIRO

**CANAAN PARISH REDEVELOPMENT
LIMITED PARTNERSHIP**
By: Canaan Parish Redevelopment GP, LLC
Its General Partner
By: Housing Authority of the Town of New
Canaan
Its Managing Member
By: 
Name: Scott Hobbs
Its: Chairman

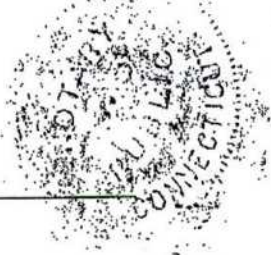
STATE OF CONNECTICUT)
)
COUNTY OF FAIRFIELD) ss: New Canaan

Personally appeared Scott Hobbs, known to me (or satisfactorily proven) to be an Authorized Representative as Chairman of **Housing Authority of New Canaan**, a public body corporate and politic, exercising public and essential governmental functions, duly organized and existing under the laws of the State of Connecticut, managing member of Canaan Parish Redevelopment GP, LLC, the general partner of **Canaan Parish Redevelopment Limited Partnership**, a Connecticut limited partnership, being authorized so to do, executed the foregoing instrument for the purposes therein contained as his free act and deed.

IN WITNESS WHEREOF, I hereunto set my hand.



Notary Public
My Commission Expires:



PAMELLA D. MORALES
Notary Public, State of Connecticut
My Commission Expires Feb 28, 2025

EXHIBIT A
DESCRIPTION OF REAL PROPERTY

All that certain piece or parcel of land, situated in the Town of New Canaan, County of Fairfield and State of Connecticut, more particularly shown and delineated as "I' 226,708± SQ. FT. 5.204± ACRES ("Parcel I") on a certain map entitled "MAP SHOWING LANDS OF THE TOWN OF NEW CANAAN TO BE LEASED TO NEW CANAAN NEIGHBORHOODS INC. NEW CANAAN, CONNECTICUT 'B' RESIDENCE ZONE 10.906 ACRES - 475,096± SQ. FT.," which map is filed for record on the New Canaan Land Records as Map No. 5839 ("Map 5839"), reference to Map 5839 being expressly made. Parcel I is more particularly bounded and described as follows:

EASTERLY:	620.57 feet by Connecticut State Highway Route #123 known as New Norwalk Road;
SOUTHEASTERLY:	26.16 feet by the curved intersection of New Norwalk Road with the public highway known as Lakeview Avenue;
SOUTHERLY:	227.21 feet by the public highway known as Lakeview Avenue;
WESTERLY:	30.00 feet, then
SOUTHWESTERLY:	90.00 feet, then again
WESTERLY:	200.00 feet, then again
SOUTHWESTERLY:	310.49 feet by other land of the Town of New Canaan presently being used for the Town Highway Garage, and
NORTHWESTERLY:	540.21 feet by Parcel "II' 248,388± SQ. FT. 5.702± ACRES" on Map 5839 ("Parcel II").

Said Parcel I is also described as follows:

Beginning at a monument where same is intersected by a stonewall on the westerly side of New Norwalk Road (Route #123) and being the southeasterly corner of land of Anne C. Zavisho; thence running along the westerly side of New Norwalk Road (Route #123) the following course and distance on a curve to the right having a radius of 1870.08 feet for a length of 216.97 feet to the point or place of beginning; thence continuing along the westerly side of New Norwalk Road (Route #123) the following courses and distances on a curve to the right having a radius of 1870.08 feet for a length of 194.05 feet to a monument and:

S 14-23-40 E	426.52 feet
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to a point on the northerly side of Lakeview Avenue; thence turning and running in a generally southwesterly direction along the northerly side of Lakeview Avenue the following courses and distances on a curve to the right having a radius of 20.00 feet for a length of 26.16 feet and on a

curve to the right having a radius of 620.55 feet for a length of 220.22 feet and

S 80-53-40 W

6.99 feet

to a point being a southeasterly corner of land of the Town of New Canaan; thence turning and running in a generally northwesterly direction along a generally northeasterly boundary of the Town of New Canaan the following courses and distances:

N 14-23-40 W

30.00 feet

N 59-23-40 W

90.00 feet

N 14-23-40 W

200.00 feet

N 49-33-10 W

104.00 feet

and N 61-30-20 W

206.49 feet

to a point on the southeasterly boundary of Parcel II as shown on Map #5839 on file in the New Canaan Land Records; thence turning and running in a generally northeasterly direction along a generally southeasterly boundary of the aforesaid Parcel II the following courses and distances:

N 32-04-20 E

76.00 feet

N 46-39-50 E

100.00 feet

and N 69-40-54 E

364.21 feet

to the point or place of beginning.

The said parcel is leased together with an easement to the occupants of dwelling units located thereon to cross, on foot, the "Conservation Area" shown on a map entitled "Subdivision Map Town of New Canaan New Norwalk Road (Route 123), Lakeview Avenue, Millport Avenue & East Avenue New Canaan, Connecticut Dated December 22, 1998 as revised Sheets 1 and 2" filed as Maps #7057 and #7058 in the office of the New Canaan Town Clerk to reach the area depicted on said Maps as "Access Easement In Favor Of The Town Of New Canaan".

Said premises are also known as 186 Lakeview Avenue, New Canaan, Connecticut (Parcel I).

EXHIBIT B

FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

The Borrower shall certify, in each Certificate of Continuing Program Compliance, that to the best of its knowledge:

- (i) The Project met the requirements of the 40/60 test under §142(d) of the Code;
- (ii) The Borrower has received an annual income certification from each tenant of a Low Income Unit and documentation to support that certification;
- (iii) All units in the Project were for use by the general public and are used on a non-transient basis except for the employee's unit;
- (iv) The Project was suitable for occupancy, taking into account local health, safety, and building codes;
- (v) If a Low Income Unit in the Project became vacant during the year, reasonable attempts were or are being made to rent that unit to tenants having a qualifying income;
- (vi) The Project complies with the requirements of the Code applicable to the Bonds; and
- (vii) The Borrower is in compliance with the Regulatory Agreement in all material respects.

EXHIBIT C

HUD RIDER TO RESTRICTIVE COVENANTS

This RIDER TO RESTRICTIVE COVENANTS is made as of August 1, 2020, by Canaan Parish Redevelopment Limited Partnership ("Borrower") and Housing Authority of the Town of New Canaan ("Agency").

WHEREAS, Borrower has obtained financing from ORIX Real Estate Capital, LLC ("Lender") for the benefit of the project known as Canaan Parish ("Project"), which loan is secured by a Multifamily Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement ("Security Instrument") dated August 27, 2020, and recorded in the Town of New Canaan, Connecticut, Fairfield County, ("Records") simultaneously herewith and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, Borrower has received tax-exempt bond financing from the Agency, which Agency is requiring certain restrictions be recorded against the Project; and

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Agency has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means ORIX Real Estate Capital, LLC, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

(c) The provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(e) Borrower and the Agency acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Agency's reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available surplus cash, if the Borrower is a for-profit entity;
- ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity; or
- iv. A HUD-approved collateral assignment of any HAP contract.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.

BORROWER:

**CANAAN PARISH REDEVELOPMENT
LIMITED PARTNERSHIP**

By: Canaan Parish Redevelopment GP, LLC
Its General Partner
By: Housing Authority of the Town of New Canaan
Its Managing Member
By: [Signature]
Name: Scott Hobbs
Its: Chairman

AGENCY:

**HOUSING AUTHORITY OF THE TOWN
OF NEW CANAAN**

By: [Signature]
Name: Timothy Welch
Title: Vice Chairman

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) ss: New Canaan

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this 21 day of August, 2020 **Scott Hobbs**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and the free and voluntary act of **Scott Hobbs** for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



[Signature]
Notary Public
MONIQUE J. LEMA
Notary Public, State of Connecticut
My Commission Expires Feb. 28, 2025

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) ss: New Canaan

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this 21 day of August, 2020 **Timothy Welch**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and the free and voluntary act of **Timothy Welch** for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first



Monique J. Lema

Notary Public

MONIQUE J. LEMA
Notary Public, State of Connecticut
My Commission Expires Feb. 28, 2025

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD

)
) ss: New Canaan
)

Received for Record at New Canaan, CT
On 08/26/2020 At 8:23:21 am

Claudia A. Weber



Doc ID: 002806370025 Type: LAN
Book 1052 Page 176 - 200
File# 1532

HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN

RESOLUTION 21-01

Canaan Parish §8-30g Income Limits Commitment

WHEREAS the Housing Authority of the Town of New Canaan ("HANC") with offices at 57 Millport Avenue is the Managing Member of Canaan Parish Redevelopment GP LLC, which is the Managing Member of Canaan Parish Redevelopment Limited Partnership ("CPRLP").

WHEREAS CPRLP was formed to own and develop the Canaan Parish property at 186 Lakeview Ave, New Canaan, CT 06840.

WHEREAS CPRLP received Special Permit approval effective on September 7, 2018 from the New Canaan Planning and Zoning Commission for the demolition of 60 existing units and construction of 100 new units of multi-family affordable housing at 186 Lakeview Ave., New Canaan, CT, which approval is filed in the New Canaan Land Records in Volume 992, page 481; and

WHEREAS as part of these Special Permit approvals the HANC submitted with the Applications to the Planning and Zoning Commission a "Housing Affordability Plan" in the form of a memorandum dated July 2018 prepared by the HANC, Shipman & Goodwin LLP, and Heritage Housing, Inc., a copy of which is attached hereto; and

WHEREAS the HANC wishes to confirm the Affordability Plan in conformance with §8-30g of the Connecticut General Statutes (CGS) and record it on the New Canaan Land Records. Consistent with §8-30g of the CGS, fifteen percent (15 of the 100 units) shall be rented to persons and families whose income is less than or equal to sixty percent of the median income, and the remainder of the units will be rented to persons and families whose income is less than or equal to eighty percent of the median income; and furthermore the HANC understands that this restriction is in effect for no less than 40 (forty) years; and

WHEREAS the HANC acknowledges that "median income" pursuant to §8-30g(a)(7) of the COS is defined as "the lesser of the state median income or the area median income for the area in which the municipality containing the affordable housing development is located, as determined by the United States Department of Housing and Urban Development."

NOW, THEREFORE BE IT RESOLVED: that the Board of Commissioners of the HANC authorizes the Chairman to immediately file this resolution and the attached, referenced two-page memorandum dated July 2018 prepared by the HANC, Shipman & Goodwin LLP, and Heritage Housing, Inc. on the Land Records of the Town of New Canaan.

Secretary

10/6/21

Date

Claudia A. Weber

HOUSING AUTHORITY OF THE TOWN OF NEW CANAAN

BOOK 1052 PAGE 176

FILE 1532

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Secretary

Date

10/6/21

**CANAAN PARISH
LAKEVIEW AVENUE
NEW CANAAN, CONNECTICUT**

Affordability Plan for Canaan Parish Redevelopment

July 2018

**Submitted by Canaan Parish Redevelopment, LLC
to the New Canaan Planning and Zoning Commission**

PREPARED BY:

Scott Hobbs, Chair
shobbs48@icloud.com
Housing Authority of the Town of
New Canaan
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INTRODUCTION

Canaan Parish Redevelopment, LLC ("CPR"), which is a joint venture of New Canaan Neighborhoods, LLC and the Housing Authority of the Town of New Canaan ("HANC"), submits this Affordability Plan (the "Plan") for the Canaan Parish Redevelopment ("Canaan Parish") at 186 Lakeview Avenue, in conjunction with its application to the Town of New Canaan for approval of a regulation amendment, rezoning, and site plan approval for Canaan Parish, a residential redevelopment of 5.02 acres.

Under this Plan, one hundred (100) newly-constructed apartment homes will meet or exceed the criteria for affordable housing as defined in Connecticut General Statutes ("General Statutes") § 8-30g(a). This Plan satisfies the requirements of § 8-30g and describes how affordability restrictions required by General Statutes § 8-30g will be administered. The Canaan Parish redevelopment, when completed in compliance with the land use approvals requested, will consist of one hundred (100) apartment homes in nine buildings.

This Plan complies with General Statutes § 8-30g as amended by Public Act 00-206, as well as the federal and state Fair Housing Acts.

The Town of New Canaan (the "Town"), acting by its Planning and Zoning Commission (the "Commission"), shall be a party to this Plan. As such, the Town shall have the right to monitor said Plan and to enforce the terms and conditions of this Plan.

DEFINITIONS

"Community" or "Lakeview Avenue" – means Canaan Parish, a residential rental redevelopment, approved by the Commission, whose boundary is described in Schedule A.

"Affordable Apartment Home" – means an apartment home within the Canaan Parish redevelopment that is subject to long-term restrictions as set forth in this Plan.

"Developer" – means Canaan Parish Redevelopment, LLC, or its successors and assigns.

AFFORDABILITY PLAN FOR CANAAN PARISH

I. Homes Designated As Affordable Apartment Homes.

Within Canaan Parish, all apartment homes will qualify as "assisted housing" under General Statutes § 8-30g, and will be rented to a household or family whose annual income is equal to or less than eighty percent (80%) of the median income as defined in § 8-30g-1(10) of the Regulations of Connecticut State Agencies. Because Canaan Parish will be financed at least in part through the federal Low Income Housing Tax Credit ("LIHTC") program, the applicant reserves the right, subject to the Commission's approval, to conduct leasing at lower / more § 8-30g compliant levels. It is the intention of this Plan that all units within Canaan Parish redevelopment will qualify for "moratorium points" within the meaning of General Statutes § 8-30g().

II. Forty Year Period.

The Affordable Apartment Homes shall comply with this Plan for a minimum of forty (40) years. The forty (40) year affordability period shall be calculated separately for each Affordable Apartment Home, which calculation shall begin on the first day of occupancy as provided for in the lease for that Affordable Apartment Home. The HANC reserves the right to extend this affordability period without further approvals.

III. Nature Of Construction Of Affordable Apartment Homes.

Within Canaan Parish, Affordable Apartment Homes shall be no less than the square footage set forth in the approved site plan, as on file with the Commission, and shall be, at a minimum, constructed in conformance with the specifications referenced in Schedule B of this Plan.

IV. Entity Responsible For Administration And Compliance.

This Plan will be administered by CPR or its designees, successors, and assigns ("Administrator"). CPR represents that its staff has the experience necessary to administer this Plan. The Administrator shall submit a written status report to the Commission on compliance with this Plan annually on or before January 31 as per General Statutes § 8-30h of the following year. The role of Administrator may be transferred or assigned to another entity, provided that such entity has the experience and qualifications to administer this Plan. In the event of any assignment of the role of Administrator, CPR as the case may be, or its successors will provide prior written notice to the Commission. The Administrator shall not allow to be recorded on the land records or otherwise imposed on an approved site plan any private restriction or covenant that will or may conflict with any obligation or procedure stated in this Plan. Such

administration shall expressly include but not be limited to oversight and reporting to ensure ongoing compliance with the maximum rental and maximum rental price stated in Section X of this Plan.

V. Notice Of Initial Rental Of Affordable Apartment Homes.

Except as provided in Section IX, the Administrator shall provide notice of the initial availability for rental of each Affordable Apartment Home. Such notice shall be provided, at a minimum, by advertising at least two times in a newspaper of general circulation in the Town. The Administrator shall also provide such notice to the HANC. Such notice shall include a description of the available Affordable Apartment Home(s), the eligibility criteria for potential tenants / purchasers, the maximum rent (as hereinafter defined), and the availability of application forms and additional information. All such notices shall comply with the federal Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.* and the Connecticut Fair Housing Act, General Statutes §§ 46a-64b, 64c (together, the "Fair Housing Acts").

VI. Affirmative Fair Housing Marketing Plan.

The rental of Affordable Apartment Homes in Canaan Parish shall be publicized, utilizing all applicable state and federal regulations for affirmative fair housing marketing programs as guidelines. The Administrator shall also comply with the affirmative fair marketing requirements of the Connecticut Housing Finance Authority and the State of Connecticut Department of Housing.

VII. Application Process.

A family or household seeking to rent one of the Affordable Apartment Homes ("Applicant") must complete an application to determine eligibility. The application form and process shall comply with all applicable state and federal regulations for affirmative fair housing marketing programs. The Administrator shall also assure that the application form and process comply with the applicable affirmative fair marketing requirements.

A. *Application Form.*

The application form shall be provided by the Administrator and shall include an income pre-certification eligibility form and an income certification form. In general, income for purposes of determining an Applicant's qualification shall include the Applicant family's total anticipated income from all sources for the twelve (12) month period following the date the application is submitted ("Application Date"). If the Applicant's financial disclosures indicate that the Applicant may experience a significant change in the Applicant's future income during the twelve (12) month period, the Administrator shall not consider this change unless there is a reasonable assurance that the change will in fact occur. The Applicant's income need not be re-

verified after the time of initial purchase / rental. In determining what is and is not to be included in the definition of family annual income, the Administrator shall use the criteria set forth by HUD and listed on Schedule D, attached.

B. *Applicant Interview.*

The Administrator shall interview an Applicant upon submission of the completed application. Specifically, the Administrator shall, during the interview, undertake the following.

1. Review with the Applicant all the information provided on the application.
2. Explain to the Applicant the requirements for eligibility, verification procedures, and the penalties for supplying false information.
3. Verify that all sources of family income and family assets have been listed in the applicant. The term "family" shall be as defined by the Zoning Regulations of the Town of New Canaan.
4. Request the Applicant to sign the necessary release forms to be used in verifying income. Inform the Applicant of what verification and documentation must be provided before the application is deemed complete.
5. Inform the Applicant that a certified decision as to eligibility cannot be made until all items on the application have been verified.

C. *Verification of Applicant's Income.*

Where it is evident from the income certification form provided by the Applicant that the Applicant is not eligible, additional verification procedures shall not be necessary. However, if the Applicant appears to be eligible, the Administrator shall issue a pre-certification letter. The letter shall indicate to the Applicant and the Administrator that the Applicant is income eligible, subject to the verification of the information provided in the Application. The letter will notify the Applicant that he / she will have thirty (30) days to submit all required documentation.

If applicable, the Applicant shall provide the documentation listed on Schedule E attached hereto to the Administrator. This list is not exclusive, and the Administrator may require any other verification or documentation, as the Administrator deems necessary.

VIII. Prioritization Of Applicants For Initial Rental.

First priority for the initial (but not subsequent) rental of the Affordable Apartment Homes at Canaan Parish shall be afforded to employees of the Town of New Canaan. "Employee of the Town" shall mean a full-time employee of the Town or of the New Canaan Board of Education.

IX. Maximum Rental Price.

As set forth above, it is expected that the Canaan Parish redevelopment will be financed in part through the LIHTC program. As such, the Administrator will administer the units in compliance with the maximum household income, maximum monthly rent, and other program limits and requirements. As to any units not covered by LIHTC rules, the following formula shall be applicable, the intent being that all units will be § 8-30g compliance and will qualify for moratorium points. Calculation of the maximum rental price for an Affordable Apartment Home, so as to satisfy General Statutes § 8-30g, shall utilize the lesser of the area median income data for the Town or the statewide median income as published by HUD as in effect on the day a lease is signed by the lessee of the Affordable Apartment Home. The maximum rental price shall be calculated as follows:

**ONE BEDROOM RENTAL UNIT FOR
FAMILY EARNING LESS THAN 80 PERCENT
OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2018 DATA**

1. Determine lower of relevant year (2018) area median income for Stamford-Norwalk, CT HMFA (\$134,900) or statewide median income (\$96,300), adjusted for family size (family of 4), as published by HUD	\$96,300
2. Determine adjusted income for a household of 1.5 persons by calculating 75 percent of Item 1	\$72,225
3. Calculate 80 percent of Item 2	\$57,780
4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing	\$17,334
5. Divide Item 4 by 12 to determine maximum monthly housing expense	\$1,445
6. Compare HUD 2018 Fair Market Rents for Stamford-Norwalk, CT HMFA (\$1,571) times 120 percent	\$1,885
7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6)	\$1,445
8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses)	\$125
9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent	\$1,320

**ONE BEDROOM RENTAL UNIT FOR
FAMILY EARNING LESS THAN 60 PERCENT
OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2018 DATA**

- | | |
|---|----------|
| 1. Determine lower of relevant year (2018) area median income for Stamford-Norwalk, CT HMFA (\$134,900) or statewide median income (\$96,300), adjusted for family size (family of 4), as published by HUD | \$96,300 |
| 2. Determine adjusted income for a household of 1.5 persons by calculating 75 percent of Item 1 | \$72,225 |
| 3. Calculate 60 percent of Item 2 | \$43,335 |
| 4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing | \$13,001 |
| 5. Divide Item 4 by 12 to determine maximum monthly housing expense | \$1,083 |
| 6. Compare HUD 2018 Fair Market Rents for Stamford-Norwalk, CT HMFA | \$1,571 |
| 7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6) | \$1,083 |
| 8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses) | \$125 |
| 9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent | \$958 |

**TWO BEDROOM RENTAL UNIT FOR
FAMILY EARNING LESS THAN 80 PERCENT
OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2018 DATA**

1. Determine lower of relevant year (2018) area median income for Stamford-Norwalk, CT HMFA (\$134,900) or statewide median income (\$96,300), adjusted for family size (family of 4), as published by HUD	\$96,300
2. Determine adjusted income for a household of 3 persons by calculating 90 percent of Item 1	\$86,670
3. Calculate 80 percent of Item 2	\$69,336
4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing	\$20,801
5. Divide Item 4 by 12 to determine maximum monthly housing expense	\$1,733
6. Compare HUD 2018 Fair Market Rents for Stamford-Norwalk, CT HMFA (\$1,986) times 120 percent	\$2,383
7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6)	\$1,733
8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses)	\$150
9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent	\$1,583

**TWO BEDROOM RENTAL UNIT FOR
FAMILY EARNING LESS THAN 60 PERCENT
OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2018 DATA**

1. Determine lower of relevant year (2018) area median income for Stamford-Norwalk, CT HMFA (\$134,900) or statewide median income (\$96,300), adjusted for family size (family of 4), as published by HUD	\$96,300
2. Determine adjusted income for a household of 3 persons by calculating 90 percent of Item 1	\$86,670
3. Calculate 60 percent of Item 2	\$52,002
4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing	\$15,601
5. Divide Item 4 by 12 to determine maximum monthly housing expense	\$1,300
6. Compare HUD 2018 Fair Market Rents for Stamford-Norwalk, CT HMFA	\$1,986
7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6)	\$1,300
8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses)	\$150
9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent	\$1,150

**THREE BEDROOM RENTAL UNIT FOR
FAMILY EARNING LESS THAN 80 PERCENT
OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2018 DATA**

- | | |
|---|-----------|
| 1. Determine lower of relevant year (2018) area median income for Stamford-Norwalk, CT HMFA (\$134,900) or statewide median income (\$96,300), adjusted for family size (family of 4), as published by HUD | \$96,300 |
| 2. Determine adjusted income for a household of 4.5 persons by calculating 104 percent of Item 1 | \$100,152 |
| 3. Calculate 80 percent of Item 2 | \$80,122 |
| 4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing | \$24,036 |
| 5. Divide Item 4 by 12 to determine maximum monthly housing expense | \$2,003 |
| 6. Compare HUD 2018 Fair Market Rents for Stamford-Norwalk, CT HMFA (\$2,544) times 120 percent | \$3,053 |
| 7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6) | \$2,003 |
| 8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses) | \$150 |
| 9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent | \$1,853 |

**THREE BEDROOM RENTAL UNIT FOR
FAMILY EARNING LESS THAN 60 PERCENT
OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2018 DATA**

1. Determine lower of relevant year (2018) area median income for Stamford-Norwalk, CT HMFA (\$134,900) or statewide median income (\$96,300), adjusted for family size (family of 4), as published by HUD	\$96,300
2. Determine adjusted income for a household of 4.5 persons by calculating 104 percent of Item 1	\$100,152
3. Calculate 60 percent of Item 2	\$60,091
4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing	\$18,027
5. Divide Item 4 by 12 to determine maximum monthly housing expense	\$1,502
6. Compare HUD 2018 Fair Market Rents for Stamford-Norwalk, CT HMFA	\$2,544
7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6)	\$1,502
8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses)	\$150
9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent	\$1,352

X. Principal Residence.

Affordable Apartment Homes shall be occupied only as a tenant's principal residence. Sub-leasing by the tenant shall be prohibited.

XI. Requirement To Maintain Condition.

Applicant is responsible to ensure that all tenants maintain their Affordable Apartment Home. No tenant shall destroy, damage, or impair any apartment home, or allow any apartment home to deteriorate, or commit waste. When an Affordable Apartment Home is offered again for rental, the Administrator shall cause the Affordable Apartment Home to be inspected.

XII. Change Of Income Or Qualifying Status Of Tenant Of Rental Unit.

If the Administrator becomes aware, at the time of annual income certification or earlier, that an Affordable Apartment Home is rented to a tenant whose income exceeds the applicable qualifying maximum, or if the tenant otherwise becomes disqualified, such tenant will continue to be treated as an Affordable Apartment Home tenant. If, however, the tenant's income increases above one hundred and forty percent (140%) of the maximum allowable income, the tenant will be required to vacate the premises at the end of the lease.

XIII. Enforcement.

A violation of this Plan shall not result in a forfeiture of title, but the Commission shall otherwise retain all enforcement powers granted by the General Statutes, including § 8-12, which powers include, but are not limited to, the authority, at any reasonable time, to inspect the property and to examine the books and records of the Administrator to determine compliance of Affordable Apartment Homes with the affordable housing requirements.

**SCHEDULE A
PROPERTY DESCRIPTION**

[PREPARE FROM A-2 SURVEY]

[ARLENE]

SCHEDULE B

MULTI-FAMILY RESIDENTIAL MARKET REPORT AND MINIMUM SPECIFICATIONS FOR AFFORDABLE APARTMENT HOMES

- 100 units, consisting of 30 one bedroom, 42 two bedroom, and 28 three bedroom units
- Unit floor areas:
 - 720 to 765 square feet for 1 bedroom
 - 1,036 to 1,136 square feet for 2 bedroom
 - 1,424 to 1,555 square feet for 3 bedroom

Foundation

- Footings – poured or precast concrete with footing drain
- Frost Walls – poured or precast concrete with waterproofing and foundation coating
- Floors – poured or precast concrete

Exterior

- Framing and Sheathing – as per building code
- Exterior Wall – 2" x 6"
- Interior Wall – 2" x 4"
- 60 mil EPDM
- No-maintenance vinyl siding
- Fiber cement clapboard
- Exterior weather-proof electrical outlet(s)
- Energy efficient aluminum clad wood windows
- Asphalt driveways and walks or equivalent (as specified)
- Insulation as per building code or CHFA requirements; Exterior walls U-Value: 0.051 min.; Roof U-Value: 0.032 min.

Interior

- Energy efficient heating and AC system
- Addressable fire alarm system with heat detection
- Addressable direct wire smoke and CO₂ detectors
- Easy care vinyl clad wire closet shelving
- Pre-wired internet and cable TV outlets
- Common laundry area with washer / dryer
- Ground fault circuits in kitchen and bathrooms
- Solid core wood doors
- 9 foot high ceilings
- 8 foot high windows

Kitchens

- Vinyl plank flooring
- Wood cabinets
- Energy-Star refrigerators, ovens, and dishwashers
- Solid surface countertops
- Stainless steel sink with single lever faucet
- Garbage disposal unit

Bathrooms

- Wide vanity mirrors
- Medicine cabinets
- Single piece acrylic shower surrounds
- Solid surface tops
- Ceramic tile floor with waterproofing membrane

SCHEDULE C

DEFINITIONS AND ELEMENTS OF ANNUAL FAMILY INCOME

1. Annual income shall be calculated with reference to 24 C.F.R. § 5.609, and includes, but is not limited to, the following:
 - a. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses and other compensation for personal services;
 - b. The net income from operations of a business or profession, before any capital expenditures but including any allowance for depreciation expense;
 - c. Interest, dividends, and other net income of any kind from real or personal property;
 - d. The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, or other similar types of periodic payments;
 - e. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay;
 - f. Welfare assistance. If the welfare assistance payments include an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance to be included as income consists of the following:
 - (1) The amount of the allowance or grant exclusive of the amounts designated for shelter or utilities, plus
 - (2) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities;
 - g. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing with the Applicant (*e.g.*, periodic gifts from family members, churches, or other sponsored group, even if the gifts are designated as rental or other assistance);
 - h. All regular pay, special pay and allowances of a member of the armed forces, except combat pay as in 2.h, below;
 - i. Any assets not earning a verifiable income shall have an imputed interest income using a current average annual savings interest rate.

2. Excluded from the definition of family annual income are the following:
- a. Income from employment of children under the age of 18 (including foster children);
 - b. Payments received for the care of foster children or foster adults;
 - c. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses;
 - d. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
 - e. Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran in connection with education costs;
 - f. Amounts received under training programs funded by HUD;
 - g. Income of a live-in aide, as defined in 24 C.F.R. § 5.403;
 - h. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
 - i. Food stamps;
 - j. Temporary, nonrecurring or sporadic income (including gifts that are not regular or periodic).
 - k. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
 - l. Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
 - m. Adoption assistance payments in excess of \$480 per adopted child;
 - n. Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts;
 - o. Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

- p. Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; and
 - q. Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits.
3. Net family assets for purposes of imputing annual income include the following:
- a. Cash held in savings and checking accounts, safety deposit boxes, etc.;
 - b. The current market value of a trust for which any household member has an interest;
 - c. The current market value, less any outstanding loan balances of any rental property or other capital investment;
 - d. The current market value of all stocks, bonds, treasury bills, certificates of deposit and money market funds;
 - e. The current value of any individual retirement, 401 K or Keogh account;
 - f. The cash value of a retirement or pension fund which the family member can withdraw without terminating employment or retiring;
 - g. Any lump-sum receipts not otherwise included in income (*i.e.*, inheritances, capital gains, one-time lottery winnings, and settlement on insurance claims);
 - h. The current market value of any personal property held for investment (*i.e.*, gems, jewelry, coin collections); and
 - i. Assets disposed of within two (2) years before the Application Date, but only to the extent consideration received was less than the fair market value of the asset at the time it was sold.
4. Net family assets do not include the following:
- a. Necessary personal property (clothing, furniture, cars, etc.);
 - b. Vehicles equipped for handicapped individuals;
 - c. Life insurance policies;
 - d. Assets which are part of an active business, not including rental properties; and
 - e. Assets that are not accessible to the Applicant and provide no income to the Applicant.

SCHEDULE D

DOCUMENTATION OF INCOME

The following documents shall be provided, where applicable, to the Administrator to determine income eligibility:

1. Employment Income.

Verification forms must request the employer to specify the frequency of pay, the effective date of the last pay increase, and the probability and effective date of any increase during the next twelve (12) months. Acceptable forms of verification (of which at least one must be included in the Applicant file) include:

- a. An employment verification form completed by the employer.
- b. Check stubs or earnings statement showing Applicant's gross pay per pay period and frequency of pay.
- c. W-2 forms if the Applicant has had the same job for at least two years and pay increases can be accurately projected.
- d. Notarized statements, affidavits or income tax returns signed by the Applicant describing self-employment and amount of income, or income from tips and other gratuities.

2. Social Security, Pensions, Supplementary Security Income, Disability Income.

- a. Benefit verification form completed by agency providing the benefits.
- b. Award or benefit notification letters prepared and signed by the authorizing agency. (Since checks or bank deposit slips show only net amounts remaining after deducting SSI or Medicare, they may be used only when award letter cannot be obtained.)
- c. If a local Social Security Administration ("SSA") office refuses to provide written verification, the Administrator should meet with the SSA office supervisor. If the supervisor refuses to complete the verification forms in a timely manner, the Administrator may accept a check or automatic deposit slip as interim verification of Social Security or SSI benefits as long as any Medicare or state health insurance withholdings are included in the annual income.

3. Unemployment Compensation.

- a. Verification form completed by the unemployment compensation agency.

- b. Records from unemployment office stating payment dates and amounts.

4. Government Assistance.

- a. All Government Assistance Programs. Agency's written statements as to type and amount of assistance Applicant is now receiving, and any changes in assistance expected during the next twelve (12) months.
- b. Additional Information for "As-paid" Programs: Agency's written schedule or statement that describes how the "as-paid" system works, the maximum amount the Applicant may receive for shelter and utilities and, if applicable, any factors used to ratably reduce the Applicant's grant.

5. Alimony or Child Support Payments.

- a. Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules.
- b. A letter from the person paying the support.
- c. Copy of latest check. The date, amount, and number of the check must be documented.
- d. Applicant's notarized statement or affidavit of amount received or that support payments are not being received and the likelihood of support payments being received in the future.

6. Net Income from a Business.

The following documents show income for the prior years. The Administrator must consult with Applicant and use this data to estimate income for the next twelve (12) months.

- a. IRS Tax Return, Form 1040, including any:
 - (1) Schedule C (Small Business).
 - (2) Schedule E (Rental Property Income).
 - (3) Schedule F (Farm Income).
- b. An accountant's calculation of depreciation expense, computed using straight-line depreciation rules. (Required when accelerated depreciation was used on the tax return or financial statement.)
- c. Audited or unaudited financial statement(s) of the business.

- d. A copy of a recent loan application listing income derived from the business during the previous twelve (12) months.
- e. Applicant's notarized statement or affidavit as to net income realized from the business during previous years.

7. Recurring Gifts.

- a. Notarized statement or affidavit signed by the person providing the assistance. Must give the purpose, dates and value of gifts.
- b. Applicant's notarized statement or affidavit that provides the information above.

8. Scholarships, Grants, and Veterans Administration Benefits for Education.

- a. Benefactor's written confirmation of amount of assistance, and educational institution's written confirmation of expected cost of the student's tuition, fees, books and equipment for the next twelve (12) months. To the extent the amount of assistance received is less than or equal to actual educational costs, the assistance payments will be excluded from the Applicant's gross income. Any excess will be included in income.
- b. Copies of latest benefit checks, if benefits are paid directly to student. Copies of canceled checks or receipts for tuition, fees, books, and equipment, if such income and expenses are not expected to change for the next twelve (12) months.
- c. Lease and receipts or bills for rent and utility costs paid by students living away from home.

9. Family Assets Currently Held.

For non-liquid assets, collect enough information to determine the current cash value (*i.e.*, the net amount the Applicant would receive if the asset were converted to cash).

- a. Verification forms, letters, or documents from a financial institution, broker, etc.
- b. Passbooks, checking account statements, certificates of deposit, bonds, or financial statements completed by a financial institution or broker.
- c. Quotes from a stock broker or realty agent as to net amount Applicant would receive if Applicant liquidated securities or real estate.
- d. Real estate tax statements if tax authority uses approximate market value.
- e. Copies of closing documents showing the selling price, the distribution of the sales proceeds and the net amount to the borrower.

- f. Appraisals of personal property held as an investment.
- g. Applicant's notarized statements or signed affidavits describing assets or verifying the amount of cash held at the Applicant's home or in safe deposit boxes.

10. Assets Disposed of for Less Than Fair Market Value ("FMV") During Two Years Preceding Application Date.

- a. Applicant's certification as to whether it has disposed of assets for less than FMV during the two (2) years preceding the Application Date.
- b. If the Applicant states that it did dispose of assets for less than FMV, then a written statement by the Applicant must include the following:
 - (1) A list of all assets disposed of for less than FMV;
 - (2) The date Applicant disposed of the assets;
 - (3) The amount the Applicant received; and
 - (4) The market value to the asset(s) at the time of disposition.

11. Savings Account Interest Income and Dividends.

- a. Account statements, passbooks, certificates of deposit, etc., if they show enough information and are signed by the financial institution.
- b. Broker's quarterly statements showing value of stocks or bonds and the earnings credited the Applicant.
- c. If an IRS Form 1099 is accepted from the financial institution for prior year earnings, the Administrator must adjust the information to project earnings expected for the next twelve (12) months.

12. Rental Income from Property Owned by Applicant.

The following, adjusted for changes expected during the next twelve (12) months, may be used:

- a. IRS Form 1040 with Schedule E (Rental Income).
- b. Copies of latest rent checks, leases, or utility bills.
- c. Documentation of Applicant's income and expenses in renting the property (tax statements, insurance premiums, receipts for reasonable maintenance and utilities, bank statements or amortization schedule showing monthly interest expense).

- d. Lessee's written statement identifying monthly payments due the Applicant and Applicant's affidavit as to net income realized.

13. Full-Time Student Status.

- a. Written verification from the registrar's office or appropriate school official.
- b. School records indicating enrollment for sufficient number of credits to be considered a full-time student by the school.

**CANAAN PARISH
LAKEVIEW AVENUE
NEW CANAAN, CONNECTICUT**

Affordability Plan for Canaan Parish Redevelopment

July 2018

**Submitted by Canaan Parish Redevelopment, LLC
to the New Canaan Planning and Zoning Commission**

PREPARED BY:

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INTRODUCTION

Canaan Parish Redevelopment, LLC ("CPR"), which is a joint venture of New Canaan Neighborhoods, LLC and the Housing Authority of the Town of New Canaan ("HANC"), submits this Affordability Plan (the "Plan") for the Canaan Parish Redevelopment ("Canaan Parish") at 186 Lakeview Avenue, in conjunction with its application to the Town of New Canaan for approval of a regulation amendment, rezoning, and site plan approval for Canaan Parish, a residential redevelopment of 5.02 acres.

Under this Plan, one hundred (100) newly-constructed apartment homes will meet or exceed the criteria for affordable housing as defined in Connecticut General Statutes ("General Statutes") § 8-30g(a). This Plan satisfies the requirements of § 8-30g and describes how affordability restrictions required by General Statutes § 8-30g will be administered. The Canaan Parish redevelopment, when completed in compliance with the land use approvals requested, will consist of one hundred (100) apartment homes in nine buildings.

This Plan complies with General Statutes § 8-30g as amended by Public Act 00-206, as well as the federal and state Fair Housing Acts.

The Town of New Canaan (the "Town"), acting by its Planning and Zoning Commission (the "Commission"), shall be a party to this Plan. As such, the Town shall have the right to monitor said Plan and to enforce the terms and conditions of this Plan.

DEFINITIONS

"Community" or "Lakeview Avenue" – means Canaan Parish, a residential rental redevelopment, approved by the Commission, whose boundary is described in Schedule A.

"Affordable Apartment Home" – means an apartment home within the Canaan Parish redevelopment that is subject to long-term restrictions as set forth in this Plan.

"Developer" – means Canaan Parish Redevelopment, LLC, or its successors and assigns.

AFFORDABILITY PLAN FOR CANAAN PARISH

I. Homes Designated As Affordable Apartment Homes.

Within Canaan Parish, all apartment homes will qualify as "assisted housing" under General Statutes § 8-30g, and will be rented to a household or family whose annual income is equal to or less than eighty percent (80%) of the median income as defined in § 8-30g-1(10) of the Regulations of Connecticut State Agencies. Because Canaan Parish will be financed at least in part through the federal Low Income Housing Tax Credit ("LIHTC") program, the applicant reserves the right, subject to the Commission's approval, to conduct leasing at lower / more § 8-30g compliant levels. It is the intention of this Plan that all units within Canaan Parish redevelopment will qualify for "moratorium points" within the meaning of General Statutes § 8-30g().

II. Forty Year Period.

The Affordable Apartment Homes shall comply with this Plan for a minimum of forty (40) years. The forty (40) year affordability period shall be calculated separately for each Affordable Apartment Home, which calculation shall begin on the first day of occupancy as provided for in the lease for that Affordable Apartment Home. The HANC reserves the right to extend this affordability period without further approvals.

III. Nature Of Construction Of Affordable Apartment Homes.

Within Canaan Parish, Affordable Apartment Homes shall be no less than the square footage set forth in the approved site plan, as on file with the Commission, and shall be, at a minimum, constructed in conformance with the specifications referenced in Schedule B of this Plan.

IV. Entity Responsible For Administration And Compliance.

This Plan will be administered by CPR or its designees, successors, and assigns ("Administrator"). CPR represents that its staff has the experience necessary to administer this Plan. The Administrator shall submit a written status report to the Commission on compliance with this Plan annually on or before January 31 as per General Statutes § 8-30h of the following year. The role of Administrator may be transferred or assigned to another entity, provided that such entity has the experience and qualifications to administer this Plan. In the event of any assignment of the role of Administrator, CPR as the case may be, or its successors will provide prior written notice to the Commission. The Administrator shall not allow to be recorded on the land records or otherwise imposed on an approved site plan any private restriction or covenant that will or may conflict with any obligation or procedure stated in this Plan. Such

administration shall expressly include but not be limited to oversight and reporting to ensure ongoing compliance with the maximum rental and maximum rental price stated in Section X of this Plan.

V. Notice Of Initial Rental Of Affordable Apartment Homes.

Except as provided in Section IX, the Administrator shall provide notice of the initial availability for rental of each Affordable Apartment Home. Such notice shall be provided, at a minimum, by advertising at least two times in a newspaper of general circulation in the Town. The Administrator shall also provide such notice to the HANC. Such notice shall include a description of the available Affordable Apartment Home(s), the eligibility criteria for potential tenants / purchasers, the maximum rent (as hereinafter defined), and the availability of application forms and additional information. All such notices shall comply with the federal Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.* and the Connecticut Fair Housing Act, General Statutes §§ 46a-64b, 64c (together, the "Fair Housing Acts").

VI. Affirmative Fair Housing Marketing Plan.

The rental of Affordable Apartment Homes in Canaan Parish shall be publicized, utilizing all applicable state and federal regulations for affirmative fair housing marketing programs as guidelines. The Administrator shall also comply with the affirmative fair marketing requirements of the Connecticut Housing Finance Authority and the State of Connecticut Department of Housing.

VII. Application Process.

A family or household seeking to rent one of the Affordable Apartment Homes ("Applicant") must complete an application to determine eligibility. The application form and process shall comply with all applicable state and federal regulations for affirmative fair housing marketing programs. The Administrator shall also assure that the application form and process comply with the applicable affirmative fair marketing requirements.

A. *Application Form.*

The application form shall be provided by the Administrator and shall include an income pre-certification eligibility form and an income certification form. In general, income for purposes of determining an Applicant's qualification shall include the Applicant family's total anticipated income from all sources for the twelve (12) month period following the date the application is submitted ("Application Date"). If the Applicant's financial disclosures indicate that the Applicant may experience a significant change in the Applicant's future income during the twelve (12) month period, the Administrator shall not consider this change unless there is a reasonable assurance that the change will in fact occur. The Applicant's income need not be re-

verified after the time of initial purchase / rental. In determining what is and is not to be included in the definition of family annual income, the Administrator shall use the criteria set forth by HUD and listed on Schedule D, attached.

B. *Applicant Interview.*

The Administrator shall interview an Applicant upon submission of the completed application. Specifically, the Administrator shall, during the interview, undertake the following.

1. Review with the Applicant all the information provided on the application.
2. Explain to the Applicant the requirements for eligibility, verification procedures, and the penalties for supplying false information.
3. Verify that all sources of family income and family assets have been listed in the applicant. The term "family" shall be as defined by the Zoning Regulations of the Town of New Canaan.
4. Request the Applicant to sign the necessary release forms to be used in verifying income. Inform the Applicant of what verification and documentation must be provided before the application is deemed complete.
5. Inform the Applicant that a certified decision as to eligibility cannot be made until all items on the application have been verified.

C. *Verification of Applicant's Income.*

Where it is evident from the income certification form provided by the Applicant that the Applicant is not eligible, additional verification procedures shall not be necessary. However, if the Applicant appears to be eligible, the Administrator shall issue a pre-certification letter. The letter shall indicate to the Applicant and the Administrator that the Applicant is income eligible, subject to the verification of the information provided in the Application. The letter will notify the Applicant that he / she will have thirty (30) days to submit all required documentation.

If applicable, the Applicant shall provide the documentation listed on Schedule E attached hereto to the Administrator. This list is not exclusive, and the Administrator may require any other verification or documentation, as the Administrator deems necessary.

VIII. Prioritization Of Applicants For Initial Rental.

First priority for the initial (but not subsequent) rental of the Affordable Apartment Homes at Canaan Parish shall be afforded to employees of the Town of New Canaan. "Employee of the Town" shall mean a full-time employee of the Town or of the New Canaan Board of Education.

IX. Maximum Rental Price.

As set forth above, it is expected that the Canaan Parish redevelopment will be financed in part through the LIHTC program. As such, the Administrator will administer the units in compliance with the maximum household income, maximum monthly rent, and other program limits and requirements. As to any units not covered by LIHTC rules, the following formula shall be applicable, the intent being that all units will be § 8-30g compliance and will qualify for moratorium points. Calculation of the maximum rental price for an Affordable Apartment Home, so as to satisfy General Statutes § 8-30g, shall utilize the lesser of the area median income data for the Town or the statewide median income as published by HUD as in effect on the day a lease is signed by the lessee of the Affordable Apartment Home. The maximum rental price shall be calculated as follows:

**ONE BEDROOM RENTAL UNIT FOR
FAMILY EARNING LESS THAN 80 PERCENT
OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2018 DATA**

1. Determine lower of relevant year (2018) area median income for Stamford-Norwalk, CT HMFA (\$134,900) or statewide median income (\$96,300), adjusted for family size (family of 4), as published by HUD	\$96,300
2. Determine adjusted income for a household of 1.5 persons by calculating 75 percent of Item 1	\$72,225
3. Calculate 80 percent of Item 2	\$57,780
4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing	\$17,334
5. Divide Item 4 by 12 to determine maximum monthly housing expense	\$1,445
6. Compare HUD 2018 Fair Market Rents for Stamford-Norwalk, CT HMFA (\$1,571) times 120 percent	\$1,885
7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6)	\$1,445
8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses)	\$125
9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent	\$1,320

**ONE BEDROOM RENTAL UNIT FOR
FAMILY EARNING LESS THAN 60 PERCENT
OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2018 DATA**

1. Determine lower of relevant year (2018) area median income for Stamford-Norwalk, CT HMFA (\$134,900) or statewide median income (\$96,300), adjusted for family size (family of 4), as published by HUD	\$96,300
2. Determine adjusted income for a household of 1.5 persons by calculating 75 percent of Item 1	\$72,225
3. Calculate 60 percent of Item 2	\$43,335
4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing	\$13,001
5. Divide Item 4 by 12 to determine maximum monthly housing expense	\$1,083
6. Compare HUD 2018 Fair Market Rents for Stamford-Norwalk, CT HMFA	\$1,571
7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6)	\$1,083
8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses)	\$125
9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent	\$958

**TWO BEDROOM RENTAL UNIT FOR
FAMILY EARNING LESS THAN 80 PERCENT
OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2018 DATA**

1. Determine lower of relevant year (2018) area median income for Stamford-Norwalk, CT HMFA (\$134,900) or statewide median income (\$96,300), adjusted for family size (family of 4), as published by HUD	\$96,300
2. Determine adjusted income for a household of 3 persons by calculating 90 percent of Item 1	\$86,670
3. Calculate 80 percent of Item 2	\$69,336
4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing	\$20,801
5. Divide Item 4 by 12 to determine maximum monthly housing expense	\$1,733
6. Compare HUD 2018 Fair Market Rents for Stamford-Norwalk, CT HMFA (\$1,986) times 120 percent	\$2,383
7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6)	\$1,733
8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses)	\$150
9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent	\$1,583

**TWO BEDROOM RENTAL UNIT FOR
FAMILY EARNING LESS THAN 60 PERCENT
OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2018 DATA**

1. Determine lower of relevant year (2018) area median income for Stamford-Norwalk, CT HMFA (\$134,900) or statewide median income (\$96,300), adjusted for family size (family of 4), as published by HUD	\$96,300
2. Determine adjusted income for a household of 3 persons by calculating 90 percent of Item 1	\$86,670
3. Calculate 60 percent of Item 2	\$52,002
4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing	\$15,601
5. Divide Item 4 by 12 to determine maximum monthly housing expense	\$1,300
6. Compare HUD 2018 Fair Market Rents for Stamford-Norwalk, CT HMFA	\$1,986
7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6)	\$1,300
8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses)	\$150
9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent	\$1,150

**THREE BEDROOM RENTAL UNIT FOR
FAMILY EARNING LESS THAN 80 PERCENT
OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2018 DATA**

1. Determine lower of relevant year (2018) area median income for Stamford-Norwalk, CT HMFA (\$134,900) or statewide median income (\$96,300), adjusted for family size (family of 4), as published by HUD	\$96,300
2. Determine adjusted income for a household of 4.5 persons by calculating 104 percent of Item 1	\$100,152
3. Calculate 80 percent of Item 2	\$80,122
4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing	\$24,036
5. Divide Item 4 by 12 to determine maximum monthly housing expense	\$2,003
6. Compare HUD 2018 Fair Market Rents for Stamford-Norwalk, CT HMFA (\$2,544) times 120 percent	\$3,053
7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6)	\$2,003
8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses)	\$150
9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent	\$1,853

**THREE BEDROOM RENTAL UNIT FOR
FAMILY EARNING LESS THAN 60 PERCENT
OF STATEWIDE MEDIAN INCOME**

**SAMPLE
COMPUTATIONS BASED
ON FY 2018 DATA**

1. Determine lower of relevant year (2018) area median income for Stamford-Norwalk, CT HMFA (\$134,900) or statewide median income (\$96,300), adjusted for family size (family of 4), as published by HUD	\$96,300
2. Determine adjusted income for a household of 4.5 persons by calculating 104 percent of Item 1	\$100,152
3. Calculate 60 percent of Item 2	\$60,091
4. Calculate 30 percent of Item 3, representing maximum portion of a family's income that may be used for housing	\$18,027
5. Divide Item 4 by 12 to determine maximum monthly housing expense	\$1,502
6. Compare HUD 2018 Fair Market Rents for Stamford-Norwalk, CT HMFA	\$2,544
7. Use lesser of calculated maximum monthly expense (Item 5) and HUD fair market rent (Item 6)	\$1,502
8. Determine by reasonable estimate monthly expenses for heat and utility costs, excluding telephone and cable television but including any fee required for all tenants (tenant responsible for such expenses)	\$150
9. Subtract reasonable monthly expenses (Item 8) from maximum housing expense (Item 7) to determine maximum amount available for rent	\$1,352

X. Principal Residence.

Affordable Apartment Homes shall be occupied only as a tenant's principal residence. Sub-leasing by the tenant shall be prohibited.

XI. Requirement To Maintain Condition.

Applicant is responsible to ensure that all tenants maintain their Affordable Apartment Home. No tenant shall destroy, damage, or impair any apartment home, or allow any apartment home to deteriorate, or commit waste. When an Affordable Apartment Home is offered again for rental, the Administrator shall cause the Affordable Apartment Home to be inspected.

XII. Change Of Income Or Qualifying Status Of Tenant Of Rental Unit.

If the Administrator becomes aware, at the time of annual income certification or earlier, that an Affordable Apartment Home is rented to a tenant whose income exceeds the applicable qualifying maximum, or if the tenant otherwise becomes disqualified, such tenant will continue to be treated as an Affordable Apartment Home tenant. If, however, the tenant's income increases above one hundred and forty percent (140%) of the maximum allowable income, the tenant will be required to vacate the premises at the end of the lease.

XIII. Enforcement.

A violation of this Plan shall not result in a forfeiture of title, but the Commission shall otherwise retain all enforcement powers granted by the General Statutes, including § 8-12, which powers include, but are not limited to, the authority, at any reasonable time, to inspect the property and to examine the books and records of the Administrator to determine compliance of Affordable Apartment Homes with the affordable housing requirements.

**SCHEDULE A
PROPERTY DESCRIPTION**

[PREPARE FROM A-2 SURVEY]

[ARLENE]

SCHEDULE B

MULTI-FAMILY RESIDENTIAL MARKET REPORT AND MINIMUM SPECIFICATIONS FOR AFFORDABLE APARTMENT HOMES

- 100 units, consisting of 30 one bedroom, 42 two bedroom, and 28 three bedroom units
- Unit floor areas:
 - 720 to 765 square feet for 1 bedroom
 - 1,036 to 1,136 square feet for 2 bedroom
 - 1,424 to 1,555 square feet for 3 bedroom

Foundation

- Footings – poured or precast concrete with footing drain
- Frost Walls – poured or precast concrete with waterproofing and foundation coating
- Floors – poured or precast concrete

Exterior

- Framing and Sheathing – as per building code
- Exterior Wall – 2" x 6"
- Interior Wall – 2" x 4"
- 60 mil EPDM
- No-maintenance vinyl siding
- Fiber cement clapboard
- Exterior weather-proof electrical outlet(s)
- Energy efficient aluminum clad wood windows
- Asphalt driveways and walks or equivalent (as specified)
- Insulation as per building code or CHFA requirements; Exterior walls U-Value: 0.051 min.; Roof U-Value: 0.032 min.

Interior

- Energy efficient heating and AC system
- Addressable fire alarm system with heat detection
- Addressable direct wire smoke and CO₂ detectors
- Easy care vinyl clad wire closet shelving
- Pre-wired internet and cable TV outlets
- Common laundry area with washer / dryer
- Ground fault circuits in kitchen and bathrooms
- Solid core wood doors
- 9 foot high ceilings
- 8 foot high windows

Kitchens

- Vinyl plank flooring
- Wood cabinets
- Energy-Star refrigerators, ovens, and dishwashers
- Solid surface countertops
- Stainless steel sink with single lever faucet
- Garbage disposal unit

Bathrooms

- Wide vanity mirrors
- Medicine cabinets
- Single piece acrylic shower surrounds
- Solid surface tops
- Ceramic tile floor with waterproofing membrane

SCHEDULE C

DEFINITIONS AND ELEMENTS OF ANNUAL FAMILY INCOME

1. Annual income shall be calculated with reference to 24 C.F.R. § 5.609, and includes, but is not limited to, the following:
 - a. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses and other compensation for personal services;
 - b. The net income from operations of a business or profession, before any capital expenditures but including any allowance for depreciation expense;
 - c. Interest, dividends, and other net income of any kind from real or personal property;
 - d. The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, or other similar types of periodic payments;
 - e. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay;
 - f. Welfare assistance. If the welfare assistance payments include an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance to be included as income consists of the following:
 - (1) The amount of the allowance or grant exclusive of the amounts designated for shelter or utilities, plus
 - (2) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities;
 - g. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing with the Applicant (*e.g.*, periodic gifts from family members, churches, or other sponsored group, even if the gifts are designated as rental or other assistance);
 - h. All regular pay, special pay and allowances of a member of the armed forces, except combat pay as in 2.h, below;
 - i. Any assets not earning a verifiable income shall have an imputed interest income using a current average annual savings interest rate.

2. Excluded from the definition of family annual income are the following:
- a. Income from employment of children under the age of 18 (including foster children);
 - b. Payments received for the care of foster children or foster adults;
 - c. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses;
 - d. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
 - e. Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran in connection with education costs;
 - f. Amounts received under training programs funded by HUD;
 - g. Income of a live-in aide, as defined in 24 C.F.R. § 5.403;
 - h. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
 - i. Food stamps;
 - j. Temporary, nonrecurring or sporadic income (including gifts that are not regular or periodic).
 - k. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
 - l. Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
 - m. Adoption assistance payments in excess of \$480 per adopted child;
 - n. Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts;
 - o. Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

- p. Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; and
 - q. Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits.
3. Net family assets for purposes of imputing annual income include the following:
- a. Cash held in savings and checking accounts, safety deposit boxes, etc.;
 - b. The current market value of a trust for which any household member has an interest;
 - c. The current market value, less any outstanding loan balances of any rental property or other capital investment;
 - d. The current market value of all stocks, bonds, treasury bills, certificates of deposit and money market funds;
 - e. The current value of any individual retirement, 401 K or Keogh account;
 - f. The cash value of a retirement or pension fund which the family member can withdraw without terminating employment or retiring;
 - g. Any lump-sum receipts not otherwise included in income (*i.e.*, inheritances, capital gains, one-time lottery winnings, and settlement on insurance claims);
 - h. The current market value of any personal property held for investment (*i.e.*, gems, jewelry, coin collections); and
 - i. Assets disposed of within two (2) years before the Application Date, but only to the extent consideration received was less than the fair market value of the asset at the time it was sold.
4. Net family assets do not include the following:
- a. Necessary personal property (clothing, furniture, cars, etc.);
 - b. Vehicles equipped for handicapped individuals;
 - c. Life insurance policies;
 - d. Assets which are part of an active business, not including rental properties; and
 - e. Assets that are not accessible to the Applicant and provide no income to the Applicant.

SCHEDULE D DOCUMENTATION OF INCOME

The following documents shall be provided, where applicable, to the Administrator to determine income eligibility:

1. Employment Income.

Verification forms must request the employer to specify the frequency of pay, the effective date of the last pay increase, and the probability and effective date of any increase during the next twelve (12) months. Acceptable forms of verification (of which at least one must be included in the Applicant file) include:

- a. An employment verification form completed by the employer.
- b. Check stubs or earnings statement showing Applicant's gross pay per pay period and frequency of pay.
- c. W-2 forms if the Applicant has had the same job for at least two years and pay increases can be accurately projected.
- d. Notarized statements, affidavits or income tax returns signed by the Applicant describing self-employment and amount of income, or income from tips and other gratuities.

2. Social Security, Pensions, Supplementary Security Income, Disability Income.

- a. Benefit verification form completed by agency providing the benefits.
- b. Award or benefit notification letters prepared and signed by the authorizing agency. (Since checks or bank deposit slips show only net amounts remaining after deducting SSI or Medicare, they may be used only when award letter cannot be obtained.)
- c. If a local Social Security Administration ("SSA") office refuses to provide written verification, the Administrator should meet with the SSA office supervisor. If the supervisor refuses to complete the verification forms in a timely manner, the Administrator may accept a check or automatic deposit slip as interim verification of Social Security or SSI benefits as long as any Medicare or state health insurance withholdings are included in the annual income.

3. Unemployment Compensation.

- a. Verification form completed by the unemployment compensation agency.

- b. Records from unemployment office stating payment dates and amounts.
4. Government Assistance.
- a. All Government Assistance Programs. Agency's written statements as to type and amount of assistance Applicant is now receiving, and any changes in assistance expected during the next twelve (12) months.
 - b. Additional Information for "As-paid" Programs: Agency's written schedule or statement that describes how the "as-paid" system works, the maximum amount the Applicant may receive for shelter and utilities and, if applicable, any factors used to ratably reduce the Applicant's grant.
5. Alimony or Child Support Payments.
- a. Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules.
 - b. A letter from the person paying the support.
 - c. Copy of latest check. The date, amount, and number of the check must be documented.
 - d. Applicant's notarized statement or affidavit of amount received or that support payments are not being received and the likelihood of support payments being received in the future.
6. Net Income from a Business.

The following documents show income for the prior years. The Administrator must consult with Applicant and use this data to estimate income for the next twelve (12) months.

- a. IRS Tax Return, Form 1040, including any:
 - (1) Schedule C (Small Business).
 - (2) Schedule E (Rental Property Income).
 - (3) Schedule F (Farm Income).
- b. An accountant's calculation of depreciation expense, computed using straight-line depreciation rules. (Required when accelerated depreciation was used on the tax return or financial statement.)
- c. Audited or unaudited financial statement(s) of the business.

- d. A copy of a recent loan application listing income derived from the business during the previous twelve (12) months.
- e. Applicant's notarized statement or affidavit as to net income realized from the business during previous years.

7. Recurring Gifts.

- a. Notarized statement or affidavit signed by the person providing the assistance. Must give the purpose, dates and value of gifts.
- b. Applicant's notarized statement or affidavit that provides the information above.

8. Scholarships, Grants, and Veterans Administration Benefits for Education.

- a. Benefactor's written confirmation of amount of assistance, and educational institution's written confirmation of expected cost of the student's tuition, fees, books and equipment for the next twelve (12) months. To the extent the amount of assistance received is less than or equal to actual educational costs, the assistance payments will be excluded from the Applicant's gross income. Any excess will be included in income.
- b. Copies of latest benefit checks, if benefits are paid directly to student. Copies of canceled checks or receipts for tuition, fees, books, and equipment, if such income and expenses are not expected to change for the next twelve (12) months.
- c. Lease and receipts or bills for rent and utility costs paid by students living away from home.

9. Family Assets Currently Held.

For non-liquid assets, collect enough information to determine the current cash value (*i.e.*, the net amount the Applicant would receive if the asset were converted to cash).

- a. Verification forms, letters, or documents from a financial institution, broker, etc.
- b. Passbooks, checking account statements, certificates of deposit, bonds, or financial statements completed by a financial institution or broker.
- c. Quotes from a stock broker or realty agent as to net amount Applicant would receive if Applicant liquidated securities or real estate.
- d. Real estate tax statements if tax authority uses approximate market value.
- e. Copies of closing documents showing the selling price, the distribution of the sales proceeds and the net amount to the borrower.

- f. Appraisals of personal property held as an investment.
- g. Applicant's notarized statements or signed affidavits describing assets or verifying the amount of cash held at the Applicant's home or in safe deposit boxes.

10. Assets Disposed of for Less Than Fair Market Value ("FMV") During Two Years Preceding Application Date.

- a. Applicant's certification as to whether it has disposed of assets for less than FMV during the two (2) years preceding the Application Date.
- b. If the Applicant states that it did dispose of assets for less than FMV, then a written statement by the Applicant must include the following:
 - (1) A list of all assets disposed of for less than FMV;
 - (2) The date Applicant disposed of the assets;
 - (3) The amount the Applicant received; and
 - (4) The market value to the asset(s) at the time of disposition.

11. Savings Account Interest Income and Dividends.

- a. Account statements, passbooks, certificates of deposit, etc., if they show enough information and are signed by the financial institution.
- b. Broker's quarterly statements showing value of stocks or bonds and the earnings credited the Applicant.
- c. If an IRS Form 1099 is accepted from the financial institution for prior year earnings, the Administrator must adjust the information to project earnings expected for the next twelve (12) months.

12. Rental Income from Property Owned by Applicant.

The following, adjusted for changes expected during the next twelve (12) months, may be used:

- a. IRS Form 1040 with Schedule E (Rental Income).
- b. Copies of latest rent checks, leases, or utility bills.
- c. Documentation of Applicant's income and expenses in renting the property (tax statements, insurance premiums, receipts for reasonable maintenance and utilities, bank statements or amortization schedule showing monthly interest expense).

- d. Lessee's written statement identifying monthly payments due the Applicant and Applicant's affidavit as to net income realized.

13. Full-Time Student Status.

- a. Written verification from the registrar's office or appropriate school official.
- b. School records indicating enrollment for sufficient number of credits to be considered a full-time student by the school.

TAB 5

Description of Modifications

The Town of New Canaan's Certificate of Housing Completion application was available in the New Canaan Town Clerk's office for review by the public from April 7, 2022 through the date of submission to DOH. During that time New Canaan received a comment from Timothy Hollister of Hinckley Allen. On June 30, 2022 the Town received a letter from the Housing Authority of New Canaan. On July 14, 2022 the Town received correspondence from Canaan Parish Redevelopment GP, LLC.

Subsequent to when the Certificate of Housing Completion application was first available for review in the Town Clerk's office, the Town has modified the application as follows:

- 1) Compliance Certification Affidavit for Millport Apartments dated 5/19/2022 was added;
- 2) Compliance Certification Affidavit for Canaan Parish dated 5/19/2022 was added;
- 3) A table inadvertently included within Tab 3 listing certain Certificates of Occupancy was removed. It pertained to units claimed as part of the 2017 Certificate of Housing Completion that are not claimed in this Application;
- 4) 2022 Income Limits were added to Tab 2 since they became effective on April 18, 2022;
- 5) Certification of the Certificates of Occupancy for Millport was executed by the Building Official on April 29, 2022;
- 6) Certification of Certificate of Occupancy for Canaan Parish was executed by the Building Official on April 29, 2022;
- 7) Certification of No Deductions was executed by the Town Planner on April 29, 2022;
- 8) The date has been changed on the letter from the First Selectman;
- 9) The Attorney Certification Letter has been revised to include further explanation of the HUE points claimed in the application;
- 10) Correspondence received from Timothy Hollister, Hinckley Allen dated April 29, 2022 has been added;
- 11) Correspondence from the Housing Authority of New Canaan, dated June 29, 2022 has been added;
- 12) Correspondence received from Canaan Parish Redevelopment GP, LLC, dated July 14, 2022 has been added;
- 13) Minor editorial changes to the text of the document to add detail and clarity.

Brooks Avni, Lynn

From: Hollister, Timothy S. <thollister@hinckleyallen.com>
ent: Friday, April 29, 2022 12:51 PM
To: Brooks Avni, Lynn
Cc: Nicholas R. Bamonte
Subject: FW: Comment on Moratorium Application
Attachments: Comment on Moratorium Application # 1 62682458.PDF

CAUTION: EXTERNAL EMAIL: This Email Originated from Outside of the Organization. DO NOT Click Links or Open Attachments unless you recognize the sender and know the content is safe.

To Lynn Brooks Avni: Here is our comment on the moratorium application. Thank you for the additional two days. I suspect that this comment will cause some consternation, but I would point out that we chose to comment now so that the Town has the opportunity to address the points made and questions posed before submitting to DOH. So believe it or not, the comment should be viewed as helpful. Have a nice weekend.



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Via Email/PDF to Ms. Brooks Avni

April 29, 2022

Ms. Lynn Brooks Avni
Town Planner
Town of New Canaan
77 Main Street
New Canaan, CT 06840

**Re: Comment On April 2022 Application Of The Town Of New Canaan For
Certificate Of Affordable Housing Completion/Moratorium**

Dear Ms. Brooks Avni:

We are writing to provide preliminary comments on the Town of New Canaan's application for a § 8-30g moratorium. The application, as of the date of this letter, is pending at the municipal/town level, that is, seeking comment prior to submission to the Connecticut Department of Housing (DOH). Based on a delay in Town offices in making a copy of the application available to us, your office extended the deadline for comment to today, April 29, 2022.

In summary, the application is incomplete and unapproveable, and should not be submitted to the Connecticut Department of Housing, for at least several reasons. First, at this time, Canaan Parish's Building 1, for which 16 (of 100 intended) units and 34 HUE points are claimed, has not obtained a permanent certificate of occupancy, which is required for moratorium points. Second, the application does not contain evidence of annual, ongoing compliance with maximum household income and rent requirements, as required by § 8-30g and its regulations, and § 8-30h. In addition, the application does not address the demolition or termination of affordable units as required by General Statutes § 8-30g(l)(b)(8). The application also does not explain the justification for using "holdover" points. Finally, the application copy provided to us on April 19 contains several other deficiencies that must be corrected before submission to DOH.

The § 8-30g Moratorium Process

In 2000, the General Assembly adopted the moratorium process, which grants a town "housing unit equivalent" ("HUE") points when it issues certificates of occupancy – not simply zoning approval – for units that either qualify as "assisted housing" (built with financial help

from a government housing program) or a "set aside development," in which at least 30 percent of the units will be preserved for 40 years or more for low and moderate income households. *See* General Statutes § 8-30g(l)(4)(A). If a town obtains sufficient HUE points, it may apply to DOH for a Certificate of Affordable Housing Completion. *See* General Statutes § 8-30g(l)(1). Both Millport and Canaan Parish are submitted as "assisted housing."

Section 8-30g includes a number of requirements for an application for a Certificate of Affordable Housing Completion. *See* General Statutes § 8-30g(l)(4)(B). These requirements include: (a) a complete application that allows DOH and the public to understand and verify all point total claims; (b) evidence of compliance with notice requirements; (c) public disclosure of all parts of the town's application, to allow for public comment; and (d) evidence not only of § 8-30g intended compliance at the time the development is granted zoning approval, or of compliance when certificates of occupancy are issued, but also evidence of on-going, annual compliance during residential occupancy with maximum household income and maximum rent or sales prices, continuing to the time of the application to the DOH.

The Connecticut § 8-30g regulations impose additional requirements upon an application, including: a letter from the town attorney opining that the application complies with state law "as in effect on the day the application is submitted," Conn. Agencies Regulation § 8-30g-6(c)(2); certification that certificates of occupancy for claimed units are "currently in effect," § 8-30g-6(c)(6); certification that a town has not claimed HUE points for any developments that no longer meet the necessary affordability requirements, § 8-30g-6(c)(7); and a § 8-30h compliance report if a development is less than one year old, § 8-30g-6(f)(3).

Section 8-30g is a remedial statute, adopted to assist property owners in overcoming exclusionary zoning regulations and onerous application processing requirements that result in denials of affordable housing proposals based on insubstantial, unproven, and/or pretextual reasons. As such, requirements for an exemption from § 8-30g, such as a moratorium application, must be strictly construed. *See, e.g., Kaufman v. Zoning Comm'n*, 232 Conn. 122, 139-40 (1995).

Canaan Parish Has Not Received A Permanent Certificate Of Occupancy

In contrast to the units at Millport, for which permanent certificates of occupancy are shown in the application, the Canaan Parish points are based on an October 23, 2021 *letter* from Building Official Platz stating that "the units" in Building 1 (60 units) have been inspected and deemed "in substantial compliance with the Connecticut State Building Code," and "the building in its entirety is approved for immediate use and occupancy." *See* Exhibit A. The application (in two places) contains an unsigned certificate of occupancy form for Canaan Parish. *See* Exhibit B.

The Connecticut State Building Code differentiates between temporary certificates of occupancy, partial certificates of occupancy, and permanent certificates of occupancy. *See* Exhibit C. Under the Building Code, a building official:

may issue a temporary certificate of occupancy before the completion of the entire work covered by the [building] permit, provided such portion or portions shall be occupied safely prior to full completion of the building or structure without endangering life or public welfare. Any occupancy permitted to continue during completion of the work shall be discontinued within 30 days after completion of the work unless a certificate of occupancy is issued by the Building Official.

Thus, a temporary CO may be issued for units (for example, in a phased development) if occupancy will be safe, but a permanent CO may be issued only upon completion of the development. (Whether the October 23, 2021 letter even qualifies as a temporary certificate of occupancy is unclear; the letter does not state that it constitutes even a temporary certificate.) That a permanent CO may only be issued at the completion of a development is also reflected in General Statutes § 8-3(f), which states: “No . . . certificate of occupancy shall be issued for a building, use or structure that is subject to the zoning regulations of a municipality without certification in writing by the official charged with enforcement of such regulations that such building, use or structure is in conformity with such regulations” Obviously, Canaan Parish cannot be certified as being in compliance with its zoning approval, since it is still under construction. In fact, those residing there at this time live at an active construction site, with limited emergency access, and according to the building’s management, are coping with dust, noise, and vibration. *See* Exhibit D, which are photos which were taken April 20, 2022, six months *after* Mr. Platz’s letter. Although the individual units may be occupiable, the development is not nearly complete.

Moratorium points require a completed development with permanent certificate of occupancy. The Town’s claim of points without a permanent certificate of occupancy violates (1) the § 8-30g statute; (2) the § 8-30g regulations; (3) the Affordability Plan; (4) an opinion of the Connecticut Attorney General; (5) New Canaan regulations; and (6) case law regarding certificates of occupancy.¹

1. Statute And Regulations.

The §8-30g statute plainly requires *a completed development for moratorium points*. A town applies to the Department of Housing for a certificate of “affordable housing *project completion*.” *See* General Statutes § 8-30g(l)(1) (emphasis added). A moratorium may be issued only based on a Department of Housing finding that “there has been *completed* within the municipality one or more affordable housing *developments*” *See* § 8-30g(l)(4)(A). (emphasis added). Section 8-30g developments, whether 30 percent set-aside or assisted housing, comply with § 8-30g based on a percentage of the total units being offered for rental or purchase; this requirement cannot be met until the overall development is finished. Moreover, as a matter of common sense, the General Assembly could not have intended to allow moratorium

¹ All of this raises a substantial question about the Town Attorney’s April 5, 2022 opinion letter, contained in the application, which inaccurately states that “Certificates of Occupancy” for the units “were issued in 2021.” The letter contains no discussion of whether the Platz October 2021 letter is a proper basis for moratorium points.

points – *in support of a four-year exemption from a remedial statute* – to be based on incomplete construction or a Building Official's letter that is temporary, of unknown duration, and without a guarantee that a permanent CO will ever be issued. In other words, what would happen if the Town were granted a moratorium and then the development, for whatever reason, did not obtain a permanent CO?

2. Financing And Affordability Documents.

The financing, financing commitment, and affordability agreement documents speak to a completed development. For example, the Extended Low-Income Housing Commitment, contained in the application (New Canaan Land Records, Book 1022, Page 224), says: "During the Extended Use Period; (1) not less than 100% of the [100 intended] Units in the Development shall be occupied (or will be available for occupancy) by Qualified Persons." Here, the Town is claiming moratorium points for only 16 units in the first of two buildings. Likewise, the Regulatory Agreement and Declaration of Restrictive Covenants between the New Canaan Housing Authority and the Canaan Parish Redevelopment Limited Partnership, August 2020 (Land Records, Book 1022, Pages 196-220) defines the "Project" as "the 100 unit multi-family residential rental housing project."

General Statutes 8-30g(l)(9) states: "A newly-constructed unit shall be counted toward a moratorium *when it receives a certificate of occupancy* (emphasis added)." See also subsection (7) ("for which a certificate of occupancy was issued after July 1, 1990"). State Regulations § 8-30g – 6(c)(6) requires that a moratorium application shall include "Certification by the applicant municipality that for each unit for which housing unit – equivalent points are claimed, *a valid certificate of occupancy* has been issued by the building official of such municipality and is currently in effect" Exhibits A and B to this letter attached make it clear that this requirement has not been met. Mr. Platz's letter states that *the units* substantially comply with the state building code, but Canaan Parish does not have a certificate of occupancy even for Building 1 because that requires completion of the development in accordance with the zoning approval.

3. Attorney General Opinion.

This requirement of a permanent CO for moratorium points has been reviewed by the Connecticut Attorney General's Office, Exhibit E. In 2006, the Attorney General Blumenthal advised Commissioner Abromaitis of the Department of Economic and Community Development (which at that time was in charge of the State's housing programs, later transferred to the Department of Housing) that while incomplete construction did not disqualify a development from being called a "set-aside affordable housing development," only "fully-constructed units issued a certificate of occupancy can qualify to receive points toward a moratorium."

In other words, to obtain a permanent certificate of occupancy², a development must comply with the overall site plan, which means not only the interior of individual units, but completion of the overall site: paving, lighting, driveways, drainage, emergency access, fencing, landscaping, etc..

4. Town Ordinances.

At least two New Canaan regulations show that a permanent CO requires a completed development, not just units. New Canaan Ordinances § 54-20(c)(4) (Exhibit F) states: “[w]hen a driveway permit is issued in conjunction with a building permit, no certificate of occupancy shall be issued until the construction of such driveway shall comply with all the requirements for the permit.” In addition, New Canaan’s Drainage Certification Policy Prior to Approval of Permit (Exhibit G) states that final certificates of occupancy can only be issued when “all site work and grading indicated on the approved site plan shall be complete.” Thus, the Town’s own regulations do not allow a permanent CO to be issued to Canaan Parish at this time. It is obvious from the Exhibit D photos that Canaan Parish is not done with driveways, site work, grading, or drainage, and certainly was not in October 2021.

5. Case Law.

In New York, case law makes clear that final certificates of occupancy require not only that units be habitable, but the development must match the site plans under which the work is being performed. *Braunview Assoc. v. Unmack*, 643 N.Y.S. 2d 253 (1996) (construction was only complete and final certificate of occupancy available when construction met the specifications in the site plans submitted to the town). Exhibit H.

This requirement is further exemplified in the New York cases regarding the Loft Law, which regulates the transition of former industrial or commercial spaces into residential units. “The purpose of requiring a final certificate of occupancy under [the New York law] is to insure that residential tenants ... will have the benefit of health and safety regulations applicable to other multiple dwelling.” *300 Bowery Inc. v. Bass & Bass, Inc.*, 471 N.Y.S. 2d 997, 999 (Civ. Ct. 1984). Exhibit I. “Only buildings which have obtained final certificates of occupancy under [New York law] are exempt from [the statute] because only those buildings have achieved compliance with the Multiple Dwelling Law, the goal the new Loft Law seeks to accomplish.” *Id.* Specifically, the Loft Law “exempts buildings with a ‘certificate of compliance or occupancy pursuant to section three hundred one of this chapter,’ not buildings with a ‘temporary certificate of compliance or occupancy.’” See also *Ass’n of Com. Prop. Owners, Inc. v. New York City Loft Bd.*, 505 N.Y.S.2d 110, 113 (1986), *aff’d*, 71 N.Y.2d 915 (1988). Exhibit J.

² It should be noted that this comment letter does not challenge the authority of the Building Official to issue a temporary or partial certificate of occupancy; the problem here is that a four-year moratorium from § 8-30g cannot be based on an incomplete development and a temporary certificate of occupancy.

Another New York case that addresses directly this difference is *Kaplan v. Synergy, Inc.*, 886 N.Y.S. 2d 67 (Civ. Ct. 2009) (Exhibit K) (“[t]he Administrative Code defines both a ‘certificate of occupancy’ and a ‘temporary certificate of occupancy’ so that use of the term ‘certificate of occupancy’ in the lease refers to what is commonly called a ‘final’ or ‘permanent’ certificate of occupancy and not a ‘temporary certificate of occupancy’”).

Indeed, there have been cases of buildings or structures that received temporary certificates of occupancy during construction but were unable to obtain a final certificate of occupancy when construction was complete. See *Assurance Company of America v. Yakemore*, Superior Court, District of Waterbury (May 9, 2005) (Exhibit L) (temporary certificates of occupancy issued twice, but no final certificate of occupancy issued due to structural defects in construction); *Commonwealth v. Marcus*, 690 A.2d 842, 843 (Pa. Commw. Ct. 1997) (Exhibit M) (site developer failed to comply with approved site plan after receipt of temporary certificate of occupancy, so township’s proceeding against developer to enforce approved site plan before issuing permanent certificate of occupancy was justified); see also Seth Press, *Buyer Beware: Temporary Certificates of Occupancy & the Need for Consumer Protection in the New York City Real Estate Market*, 2 BROOK. J. CORP. FIN. & COM. L. 511, 511 (2008) (Exhibit N) (buyers of luxury apartments based on temporary certificates of occupancy, where builder did not follow building code and made misrepresentations to city and buyers were unable to obtain final certificates, leaving them without the ability to either sell or occupy the apartments). Failure to receive a final certificate of occupancy, but allowing occupancy, is a violation of law. See *Howard v. Berkman, Henoch, Peterson & Peddy, P.C.*, 799 N.Y.S. 2d 160 (Civ. Ct. 2004) (Exhibit O) (“[i]n the event the final certificate of occupancy is not obtained within the time set forth in the initial temporary certificate of occupancy ... the occupancy then becomes illegal and therefore all of the [] parties are technically assisting in violation of [city law] by permitting the purchaser to continue occupancy after that date”).

In addition, § 8-30g case law holds that strict compliance with the state building code is necessary for units constructed under § 8-30g. See, e.g., *500 North Avenue, LLC v. Town of Stratford Zoning Comm’n*, Superior Court, District of Hartford, (Aug. 17, 2021) (Exhibit P) (“When the plaintiff reaches the building permit phase and seeks a permit ... [plaintiff must] work with an engineer ... to ensure that all applicable provisions of the building code are followed”).

Put another way, the new tenants of Canaan Parish were promised, and are entitled to, a completed development, with finishes and amenities shown in the approved site plan. The financing documents in the moratorium application require nothing less. If a private developer were to apply for a permanent certificate of occupancy for the Canaan Parish development as it existed in October 2021, or April 2022, that application would certainly be denied. There is no basis to make an exception so that New Canaan may expedite its application for an affordable housing moratorium.

The Town Has Not Submitted Evidence Of On-Going Affordability Compliance Required To Receive Moratorium Points

The issue of evidence of annual, continuing compliance with the maximum income and rent requirements of an approved affordability plan should not be a surprise, as the Town's Attorneys were directly involved in the litigation of this issue in the Town of Westport during 2019-2021.

The documentation for both Millport and Canaan Parish contains detailed requirements for the development's administrator to collect, evaluate, and report compliance with maximum household income and maximum rent requirements. For example, the Canaan Parish Regulatory Agreement, at pages 8-9 of 25, contains a list of data collection, analysis, and reporting requirements.

General Statutes § 8-30h, and the Affordability Plan for each development, require the administrator to file with the town, by January 31 each year, an annual compliance report. For an "assisted housing" development, and in the documents here, this is generally called an Owner's Compliance Report. For Millport, for 2017-2021, the application contains no such documentation. All that is included in the application are letters dated September 2018 and 2020 from a company called Spectrum, which letters (Exhibit Q) appear to be reports in connection with the federal Low Income Housing Tax Credit program and IRS requirements to ensure that the development is compliant with federal financing rules. However, the letters do not address compliance with the Affordability Plan for Millport, and they do not at all cover 2020 or 2021 (the September 2020 letter covers 2018 and 2019). The letters refer to "Owner Compliance" reports, but do not attach them, leaving unknown and unexplained what was reviewed and whether there has been compliance with the Affordability Plan. The Spectrum letters are not evidence of compliance with § 8-30g or the Affordability Plan for Millport. Providing copies of annual, statutorily required compliance reports should be a simple matter of inserting documents, already received by the Town, into the application, making their omission both inexplicable and dubious.

Numerous statutory and regulatory provisions demand continuing compliance with affordability plan oversight, administration, and enforcement obligations. Most important, General Statutes § 8-30h mandates that owners of affordable housing developments containing rental units "provide *annual* certification to the commission that the development *continues to be in compliance* with the covenants and deed restrictions required under" § 8-30g. The requirement is mandatory, and failure to certify would put the development out of compliance with § 8-30g. Section 8-30h provides the municipality with the right to "inspect the income statements of the tenants of the restricted units" so as to verify the development's continuing compliance. This statute also includes a mandatory corrective requirement if a development is out of compliance – rental of the next available unit to an income-eligible household "until the development is in compliance." Section 8-30h thereby assures that the municipality has the capacity both to identify continuing compliance and to confirm that "the development is in compliance." The municipality, therefore, has an oversight obligation. More importantly, *the failure of the development to comply with 8-30h would put the development out of compliance*

with the requirements for an "affordable housing development," and would necessarily preclude the municipality from counting that development in an application for a moratorium. To obtain a moratorium, the burden is on the municipality to prove that developments are and continuously have been compliant. This is a burden which can be easily met by assuring that annual certifications are filed and, if necessary, verifying their accuracy. Thus, the failure to include proof of continuing eligibility precludes the counting of such units to establish eligibility for a moratorium.

State Regulations § 8-30g-6(c)(2) requires a letter from the town attorney opining that the application complies with state law "as in effect on the day the application is submitted." This provision clearly requires evidence that as of the application date, § 8-30h annual reports have been filed and verified. Second, Regulations § 8-30g-6(c)(6) requires certification that certificates of occupancy for claimed units are "currently in effect," which also requires evidence of on-going compliance since occupancy, not just at a past point in time. Third, Regulations § 8-30g-6(c)(7) instructs that a municipality, when applying for an § 8-30g moratorium, must certify that it "has identified and deducted, or otherwise excluded from the total [HUE] points claimed, all units that as a result of action by the municipality, municipal housing authority, or municipal agency, no longer qualify, as of the date of submission of the application, as providing [HUE] points." This too implies a look back and enforcement. Fourth, Regulations § 8-30g-6(f)(3) requires, as one way to provide evidence of currently enforceable affordability obligations, a § 8-30h compliance report if developments are less than one year old.

The application, therefore, is incomplete for failure to provide proof of ongoing compliance with income and rent limits.

The Application Does Not Address Demolition Or Termination Of Affordable Units

General Statutes § 8-30g(l)(B)(8) states that HUE points shall be "[subtracted] applying the formula in subdivision (6) of this subsection [the points awarded for various units] for any affordable dwelling unit which, on or after July 1, 1990, was affected by any action taken by a municipality which caused such dwelling unit to cease being counted as an affordable dwelling unit." The application discusses demolition of affordable units at Millport and Canaan Parish, yet there is no discussion of this statutory provision. There is also no mention of the 2021 end of the affordability period at Avalon New Canaan. The Department of Housing has enforced this provision in prior moratorium application reviews, such as Westport in 2019.

The Application Does Not Explain The Justification For Using "Holdover" Points

General Statutes § 8-30g(l)(3) states that "Eligible units completed *after a moratorium has begun* may be counted toward establishing eligibility for a subsequent moratorium" (emphasis added). The phrase "after a moratorium has begun" is a limiting phrase that would be unnecessary if units completed before a moratorium has begun could count toward a subsequent moratorium – the phrase would be redundant. The evident statutory direction is that sufficient points for a next moratorium must be created while one moratorium is in effect, without holding back units and points.

April 29, 2022

Page 9

The pending application proposes to use units whose CO's were issued in 2016 for a moratorium to take effect in 2022, and to use units completed in 2022 for a moratorium that would begin in 2026, or even 2030.

We raise this issue because New Canaan's own website spotlights it. *See Exhibit R, page 2 of the attachment, which says, "[To] qualify for subsequent moratorium, a municipality must demonstrate that since the last moratorium, it has added enough affordable housing units to meeting [sic] the HUE point requirement."* The memo continues that once a prior moratorium is effective, "[additional] new affordable dwelling units needed to be constructed to be counted toward a second moratorium."

At this time, we take no position on this issue, but the Town, based on the statutory language and the chronology of the issuance of permanent COs for Millport and Canaan Parish relative to the 2017-2021 moratorium and the current application, should explain the justification for its use of holdover points.

Other Application Defects

In addition to addressing the deficiencies explained above (no permanent CO, no affordability compliance evidence, no accounting for deductions, question about use of holdover points), the Town should address the following before submitting to DOH:

- Remove unsigned documents or provide signed copies;
- Remove post-it notes and handwriting on several pages; and
- Number the pages and provide subject matter tabs.

Conclusion

Thank you for your consideration of these comments. Every town that qualifies for a moratorium under the rules and regulations should be granted one, but this application, at this time, does not qualify.

Very truly yours,



Timothy S. Hollister

TSH:kcs

cc: Attorney Bamonte
751 Weed Street, LLC

EXHIBITS

- A. Building Official Platz letter dated October 23, 2021
- B. Unsigned Certification of Certificates of Occupancy form for Canaan Parish
- C. 2018 Connecticut State Building Code, excerpt
- D. Photos of Canaan Parish taken April 20, 2022
- E. Connecticut Attorney General Opinion dated March 22, 2006
- F. New Canaan, Zoning Regulations § 54-20(c)(4)
- G. Drainage Certification Policy of the Town of New Canaan Prior to Approval of Permit
- H. *Braunview Assoc. v. Unmack*, 643 N.Y.S. 2d 253 (1996)
- I. *300 Bowery Inc. v. Bass & Bass, Inc.*, 471 N.Y.S. 2d 997, 999 (Civ. Ct. 1984)
- J. *Ass'n of Com. Prop. Owners, Inc. v. New York City Loft Bd.*, 505 N.Y.S.2d 110, 113 (1986)
- K. *Kaplan v. Synergy, Inc.*, 886 N.Y.S. 2d 67 (Civ. Ct. 2009)
- L. *Assurance Company of America v. Yakemore*, Superior Court, District of Waterbury, Docket No. X01 CV044001224S (May 9, 2005)
- M. *Commonwealth v. Marcus*, 690 A.2d 842, 843 (Pa. Commw. Ct. 1997)
- N. *Buyer Beware: Temporary Certificates of Occupancy & the Need for Consumer Protection in the New York City Real Estate Market*, 2 BROOK. J. CORP. FIN. & COM. L. 511, 511 (2008)
- O. *Howard v. Berkman, Henoch, Peterson & Peddy, P.C.*, 799 N.Y.S. 2d 160 (Civ. Ct. 2004)
- P. *500 North Avenue, LLC v. Town of Stratford Zoning Comm'n*, Superior Court, District of Hartford, Docket No. HHDLNDCV186097370S (Aug. 17, 2021)
- Q. Letters dated September 2018 and 2020 from Spectrum
- R. Information about § 8-30g moratoria, from New Canaan's website

Exhibit A

Town of New Canaan

Building Department
Town Hall, 77 Main Street
New Canaan, CT 06840

Brian W. Platz
Chief Building Official
Director of Land Use
Blight Officer

Tel: (203) 594-3013
Fax: (203) 594-3121

October 23, 2021


Mr. Ryan Sullivan
AP Construction
707 Summer Street, 5th Floor
Stamford, CT 06901

Re: Canaan Paris, 186 Lakeview Ave, New Canaan, CT 06840

Dear Mr. Sullivan,

The residential dwelling units know as Building One located at 186 Lakeview Ave, New Canaan CT. consisting of 60 dwelling units constructed under permit #20-495 have been inspected, and deemed to be in substantial compliance with the CT. State Building Code. Please be advised that this building in its entirety is approved for immediate use and occupancy.

Best regards,


Brian W. Platz
Chief Building Official
Director of Land Use

Cc; Tiger Mann, Director of Public Works
Maria Coplit, Town Engineer
Paul Payne, Fire Marshal
Lynn Brooks Avni, Town Planner
Kathleen Holland, Director of Inland Wetlands
Jennifer Eielson, Director of Environmental Health

Exhibit B

11) ISSUED CERTIFICATES OF OCCUPANCY:

CERTIFICATION OF CERTIFICATES OF OCCUPANCY
New Canaan Application for
State Certificate of Affordable Housing Completion

I hereby certify that valid Certificates of Occupancy have been issued and are currently in effect for the following residential developments which contain affordable housing units within the Town of New Canaan as per the dates indicated and as shown on the copies of the certificates attached.

Date Issued

186 Lakeview Avenue (Building 1)
60 affordable units

10/23/2021

60 TOTAL AFFORDABLE UNITS

State of Connecticut

ss: New Canaan

Brian Platz, Chief Building Official

County of Fairfield

Personally appeared _____, signer and sealer of the foregoing instrument and acknowledged the same to be his/her free act and deed before me.

Notary Public

Dated: _____

Exhibit C

DEPARTMENT OF ADMINISTRATIVE SERVICES

2018 Connecticut State Building Code

**DIVISION OF
CONSTRUCTION SERVICES**
Office of the State Building Inspector
450 Columbus Boulevard
Hartford, CT 06103

MELODY A. CURREY
Commissioner

JOSEPH V. CASSIDY, P.E.
State Building Inspector



Effective
October 1, 2018

AMENDMENTS TO THE 2015 INTERNATIONAL BUILDING CODE

(Amd) **111.1 Use and occupancy.** Pursuant to subsection (a) of section 29-265 of the Connecticut General Statutes, no *building* or structure erected or altered in any municipality after October 1, 1970, shall be occupied or used, in whole or in part, until a certificate of occupancy has been issued by the *building official*, certifying that such *building* or structure or work performed pursuant to the *building permit* substantially complies with the provisions of this code. Nothing in the code shall require the removal, *alteration* or abandonment of, or prevent the continuance of the use and occupancy of, any single-family *dwelling* but within six years of the date of occupancy of such *dwelling* after substantial completion of construction of, *alteration* to or *addition* to such *dwelling*, or of a *building* lawfully existing on October 1, 1945, except as may be necessary for the safety of life or property. The use of a *building* or premises shall not be deemed to have changed because of a temporary vacancy or change of ownership or tenancy.

Exceptions:

1. Work for which a certificate of approval is issued in accordance with Section 111.6.
2. A certificate of occupancy is not required for work exempt from *permit* requirements under Section 105.2.

(Amd) **111.3 Temporary occupancy.** The *building official* may issue a temporary certificate of occupancy before the completion of the entire work covered by the *permit*, provided such portion or portions shall be occupied safely prior to full completion of the *building* or structure without endangering life or public welfare. Any occupancy permitted to continue during completion of the work shall be discontinued within 30 days after completion of the work unless a certificate of occupancy is issued by the *building official*.

(Add) **111.5 Partial occupancy.** The *building official* may issue a partial certificate of occupancy for a portion of the *building* or structure when, in the *building official's* opinion, the portion of the *building* to be occupied is in substantial compliance with the requirements of this code and no unsafe conditions exist in the portion of the *building* not covered by the partial certificate of occupancy.

AMENDMENTS TO THE 2015 INTERNATIONAL RESIDENTIAL CODE

(Amd) **R110.1 Use and occupancy.** Pursuant to subsection (a) of section 29-265 of the Connecticut General Statutes, no building or structure erected or altered in any municipality after October 1, 1970, *shall* be occupied or used, in whole or in part, until a certificate of occupancy has been issued by the *building official*, certifying that such *building*, structure or work performed pursuant to the building *permit* substantially complies with the provisions of this code. Nothing in the code *shall* require the removal, *alteration* or abandonment of, or prevent the continuance of the use and occupancy of, any single-family *dwelling* but within six years of the date of occupancy of such *dwelling* after substantial completion of construction of, *alteration* to or *addition* to such *dwelling*, or of a *building* lawfully existing on October 1, 1945, except as may be necessary for the safety of life or property. The use of a *building* or premises *shall* not be deemed to have changed because of a temporary vacancy or change of ownership or tenancy.

Exceptions:

1. Work for which a certificate of approval is issued in accordance with Section R110.9.
2. A certificate of occupancy is not required for work exempt from *permit* requirements under Section R105.2.

(Amd) **R110.4 Temporary occupancy.** The *building official* may issue a temporary certificate of occupancy before the completion of the entire work covered by the *permit*, provided such portion or portions *shall* be occupied safely prior to full completion of the *building* or structure without endangering life or public welfare. Any occupancy permitted to continue during completion of the work *shall* be discontinued within 30 days after completion of the work unless the *building official* issues a certificate of occupancy.

(Add) **R110.6 Partial occupancy.** The *building official* may issue a partial certificate of occupancy for a portion of the *building* or structure when, in the *building official's* opinion, the portion of the *building* to be occupied is in substantial compliance with the requirements of this code and no unsafe conditions exist in portions of the *building* not covered by the partial certificate of occupancy that are accessible from the occupied portion.

Exhibit D

Photos of Canaan Parish

April 20, 2022







Exhibit E

2006 WL 1280869 (Conn.A.G.)

Office of the Attorney General

State of Connecticut
Opinion No. 2006-008
March 22, 2006

*1 The Honorable James F. Abromaitis
Department of Economic and Community Development
505 Hudson Street
Hartford, CT 06106

Dear Commissioner Abromaitis:

You have requested our opinion with respect to an application by the Town of Trumbull for a temporary moratorium from the affordable housing land use appeals procedure under the provisions of Conn. Gen. Stat. § 8-30g(l).

Conn. Gen. Stat. § 8-30g(l)(1) provides that the affordable housing appeals procedure established under the statute shall not apply to an affordable housing application filed with a local land use commission during the period of a moratorium. Conn. Gen. Stat. § 8-30g(l)(7) governs the awarding of points toward a moratorium for "newly-constructed units in an affordable housing development, as that term was defined at the time of the affordable housing application." Conn. Gen. Stat. § 8-30g(a)(1) defines an "affordable housing development" as a proposed housing development which is, among other things, "a set-aside development."

According to your letter, Trumbull is seeking points for three developments as "affordable housing developments," although you do not believe the information provided in their application clearly demonstrates that they meet the definition of "affordable housing development." This is because all of the units at the three developments have not been completed; therefore the percentage of affordable units at each of the three falls below the percentage necessary to qualify as a "set-aside development."

You indicate that it is your intention to deny the application on that basis, and request our confirmation of your decision.

Our review of the relevant statutes leads us to the conclusion that for a development to qualify as an "affordable housing development," all of the units do not have to be completed, as the definition of an affordable housing development appears to contemplate proposed construction. Conn. Gen. Stat. § 8-30g(a)(1) defines an "affordable housing development" as a *proposed* housing development which is (A) assisted housing, or (B) a set-aside development; § 8-30g(a)(3) defines "assisted housing" as "housing which is receiving, or *will receive*, financial assistance under any government program..."; § 8-30g(a)(6) defines a "set-aside development" as a development in which not less than thirty percent of the dwelling units *will be conveyed* by deeds containing covenants or restrictions..." (Emphasis added.) Therefore, a literal reading indicates that developments appear to qualify as affordable housing developments based upon the development as it is proposed to be fully built out.

On the other hand, only fully constructed units issued a certificate of occupancy can qualify to receive points towards a moratorium. According to Conn. Gen. Stat. § 8-30g(l)(7) "points shall be awarded only for dwelling units which were (A) newly-constructed units in an affordable housing development, as that term was defined at the time of the affordable housing application, for which a certificate of occupancy was issued after July 1, 1990..." Conn. Gen. Stat. § 8-30g(l)(9) provides that "a newly-constructed unit shall be counted toward a moratorium when it receives a certificate of occupancy."

*2 As a final note, a detailed determination must be made in awarding points for units in housing developments. Such a determination requires a detailed factual review of building plans, certificates of occupancy, etc. upon which we cannot opine. Since it involves a factual determination, any ultimate decision must be made by your agency.

Very truly yours,

Richard Blumenthal
Attorney General

2006 WL 1280869 (Conn.A.G.)

End of Document

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Exhibit F

*Town of New Canaan, CT
Tuesday, April 26, 2022*

Chapter 54. Streets and Sidewalks

Article I. General

§ 54-20. Construction and maintenance of private driveways entering highways.

[Amended 3-24-959, effective 3-28-59; 9-17-68, effective 10-19-68; 2-9-83, effective 2-25-83]

- A. Permit required; application and fee for permit; information to be shown in application. Before any driveway which opens on or into any highway or highway right-of-way, whether public or private, shall be constructed and before the location or grade of any existing driveway which opens on or into any such highway or highway right-of-way, whether public or private, is altered, a permit therefor shall be obtained from the Town Engineer. An application for such permit shall be made to the Town Engineer upon a form provided for that purpose, and a fee, in an amount fixed by the Board of Selectmen from time to time, shall be paid to the Town Engineer for the use of the Town with the filing of any such application. Such application form shall make provision for the furnishing of the following information:
- (1) The name of the owner of record of the premises being served or to be served by such driveway and the location of the premises.
 - (2) A plot plan showing:
 - (a) The location of the driveway in respect to the property lines of the premises on which the driveway is located or is to be located and to the highway lines within 100 feet of either side thereof, together with the location of such driveway within the highway right-of-way.
 - (b) The proposed grades of the driveway at its intersection with the traveled portion of the highway and at a point 20 feet therefrom.
 - (c) The actual dimensions of the opening of the driveway which is being constructed or reconstructed onto the highway right-of-way.
 - (3) The proposed disposition of stormwater from the driveway and of stormwater accumulations on the traveled portion of the highway within the highway right-of-way or in any of the gutters thereof as the same may relate to such driveway.
- B. Minimum construction and reconstruction requirements. No permit for the construction or reconstruction of any driveway shall be issued unless the following minimum requirements are complied with:
- (1) It shall not interfere with the proper drainage of the highway, it being understood that, if the grade of the highway shall make it necessary, it may be required that the owner of the premises to be served by such driveway shall install culverts of approved design at his own cost and expense at approved locations.
 - (2) The location and alignment of the driveway shall not create a traffic hazard, danger or nuisance, and the view of the highway at the point where such driveway opens onto the highway shall be unobstructed.
 - (3) The grade of the driveway from its intersection with the traveled portion of the highway and for a distance of 20 feet therefrom shall not exceed 5%.
[Amended 9-16-1998, effective 9-24-1998]
 - (4) If necessary to prevent road drainage from entering the driveway, a berm shall be constructed and maintained at the approved location by the owner of the premises served by such driveway.

- (5) All new driveways shall be paved with a minimum of two inches of blacktop or equivalent in the area of the highway right-of-way between the highway pavement and the property line.
- C. Conditions of permit. Any driveway permit issued under the provisions of this section or any driveway permit issued under any prior bylaw or ordinance of the Town is subject at all times to the following conditions:
- (1) The Town or the owner of the right-of-way in which the highway is located shall have the right, at any time, to extend the width of the traveled way or to change the grade of any portion thereof, to change the manner of disposal of stormwater or to make any other improvements in the highway and, if a driveway is affected thereby, there shall be no obligation on the part of the Town or of the owner of the right-of-way to reimburse the owner of the premises served by such driveway, and such owner shall be liable for the cost of any reconstruction work on such driveway made necessary by reason thereof.
 - (2) Such driveway or driveway opening shall not disturb or interfere with the pavement or finish of the traveled portion of the highway.
 - (3) Such driveway permit may be revoked by the Town Engineer at any time if the requirements of the permit are not met.
 - (4) When a driveway permit is issued in conjunction with a building permit, no certificate of occupancy shall be issued until the construction of such driveway shall comply with all of the requirements of the permit.
 - (5) Any violation of this section, in addition to penalties provided herein, shall be subject to injunctive procedures and to prosecution in accordance with the provisions of § 4-8 of this Code.
- D. Variances. The Board of Building Appeals may vary the strict application of this section if there shall be difficulty or unreasonable hardship in carrying out the same, provided that the spirit thereof shall be observed and the public safety and welfare are secured.

Exhibit G



TOWN OF NEW CANAAN
TOWN HALL, 77 MAIN STREET
NEW CANAAN, CT 06840

TEL: (203) 594-3054
FAX: (203) 594-3129

Adopted: 7/22/99
Last Revised: 11/9/15
Revised: 12/06/19
Effective: 01/01/20

Drainage Certification Policy of the Town of New Canaan
Prior to Approval of Permit (Pre-Development)

1. Prior to obtaining permits for the development of any lot or any construction which increases the impervious surfaces, including gravel, by 500 square feet or more in the 1/2 Acre Zone or smaller or by 1,000 square feet or more in the One Acre Zone or larger, any excavation or other activity that could affect drainage, as determined by the reviewing department, the applicant is required to submit the following:
 - A. Complete drainage information and/or calculations for pre-activity (pre-development) and post-activity (post-development) stormwater runoff from a site, as prepared by a registered professional engineer licensed in the State of Connecticut.
 - B. Documentation that the drainage design will result in a zero increase in the rate or volume of runoff in the post-activity condition, as determined by a registered professional engineer licensed in the State of Connecticut.
 - C. Provide tabulated Directly Connected Impervious Area (DCIA) under pre-development and post-development conditions.

Peak flow rates and runoff volumes shall be determined by using the Rational Method, the Time of Concentration Method, the Tabular Method or the Unit Hydrograph Method and a minimum 25-year 24-hour design storm. Rainfall depth shall be defined by the interactive web-tool Extreme Precipitation in New York and New England (<http://precip.eas.cornell.edu/>), prepared as a joint collaboration between the Northeast Regional Climate Center (NRCC) and the Natural Resources Conservation Service (NRCS).
2. The requested information shall be in a form and contain content acceptable to the Town Engineer for the specific application in question, and shall include the following:
 - a) Pre-Development Conditions Drainage Map (*Topography, DP(s), Tc, CN, USDA Soils*)
 - b) Post-Development Conditions Drainage Map (*Topography, DP(s), Tc, CN, USDA Soils*)
 - c) Existing Flooding Concerns, if any, at property, adjacent off-site properties or off-site drainage infrastructure
 - d) Pre-Development & Post-Development Drainage Summary Tables (*by Subwatershed*)
 - e) Water Quality Analysis (*WQV, WQF, GRV*)
 - f) Water Quantity Analysis (*Peak Flow Control*)
 - g) Stormwater Management Operation & Maintenance Plan

3. All site work must also comply with the standards contained in Sections 6.4, 6.5.B, 6.6 and 6.7 of the New Canaan Zoning Regulations, the Connecticut Department of Energy and Environmental Protection (CTDEEP) Stormwater Quality Manual, as amended, and the Connecticut Department of Transportation (CTDOT) Drainage Manual, as amended.

While not required within the zoning regulations or this policy, the Town of New Canaan encourages the use of Low Impact Development (LID) techniques.

It is to be noted and understood that the Town's review and approval of this submittal is expressly limited to determining compliance and conformance of the completed project as a functioning whole. The Town Engineer reserves the right to review multiple permit applications for a parcel within a five-year time period to evaluate the cumulative effects to stormwater on and off-site. Approval does not relieve the applicant or contributing professionals of their responsibility for all matters relating to design, construction, code compliance, safety aspects of performing the work and for general coordination of the work.

Prior to CO of Final Sign-Off (Post-Development)

1. Prior to final signoff for any subdivision, or final signoff for a certificate of occupancy of any lot or lots or any construction or development which increases the impervious surface by 500 square feet or more in the 1/2 Acre Zone or smaller or by 1,000 square feet or more in the One Acre Zone or larger, excavation or other activity as determined by the reviewing department, the applicant may be required to submit the following:
 - A. Certification/confirmation from a **registered professional engineer, licensed in the State of Connecticut**, that there is a zero increase in the rate or volume of runoff in the post-activity condition.
 - B. Certification/confirmation from a **registered professional engineer, licensed in the State of Connecticut**, that any proposed change in the direction of surface water flow shall not adversely affect any down-gradient or nearby property(s).
 - C. Certification/confirmation from a **registered professional engineer, licensed in the State of Connecticut**, that the final grading is consistent with the approved Site Plan and in conformance with Section 6.4.I.7 and 8 of the New Canaan Zoning Regulations.
 - D. Certification/confirmation from a Connecticut licensed Land Surveyor that any retaining walls constructed as part of site development do not exceed the standards outlined in Section 6.5.B of the New Canaan Zoning Regulations.
 - E. The requested information shall be in a form and contain content acceptable to the Town Engineer for the specific application in question.
2. Prior to final signoff for a certificate of occupancy or confirmation of completion that is required, all site work and grading indicated on the approved site plan shall be complete. There shall be no exposed surfaces. All driveway locations shall be improved with asphalt or other approved medium, proposed hardscapes such as patios shall be complete and lawn and landscaped areas must have established root systems to the satisfaction to the Zoning Inspector. In addition, all sloped areas shall also be stabilized to the satisfaction to the Zoning Inspector. Should the weather at a particular time of year, such as winter or summer heat prevent the establishment of lawns or other plantings required for final sign-off, the applicant can either seek a temporary Certificate of Occupancy (CO) from the Building Department or post a bond in accordance with Section 8.1.K of the zoning regulations.
3. At the discretion of the Zoning Inspector, Chief Sanitarian or Town Engineer, the certification itself may be required to be placed on an "as-built" plan of the site, parcel or lot showing all development, septic system, grading, wetlands and drainage features, and is to be an original signature and live seal.

It is to be noted and understood that the Town's review and approval of this submittal is expressly limited to determining compliance and conformance of the completed project as a functioning whole. Approval does not relieve the applicant or contributing professionals of their responsibility for all matters relating to design, construction, code-compliance, safety aspects of performing the work and for general coordination of the work.

Any questions regarding this policy should be referred to the Zoning Inspector and/or Town Engineer. It should be noted that while certification might not be required at the beginning of a project or activity, it might well be required prior to final signoff as a result of activity or experience during the construction process.

Exhibit H

KeyCite Yellow Flag - Negative Treatment

Distinguished by *Metropolx Harriman Corp v Ruscher*, N.Y.A.D. 2 Dept., August 2, 1999

227 A.D.2d 937

Supreme Court, Appellate Division, Fourth Department, New York.

Matter of BRAUNVIEW ASSOCIATES, a Limited Partnership, Respondent,

v.

David M. UNMACK, IAO, Assessor of Town of Tonawanda, Appellant.

May 31, 1996.

Synopsis

Taxpayer brought Article 78 proceeding for review of assessor's decision denying request for partial exemption from real property tax, for increase in assessed valuation of property that was constructed, altered, installed, or improved for purpose of commercial business or industrial activity. The Supreme Court, Erie County, *Joslin, J.*, denied assessor's motion to dismiss, and assessor appealed. The Supreme Court, Appellate Division, held that: (1) dismissal of prior petition for review did not have res judicata effect; (2) taxpayer was not restricted to single application; (3) requirement that application be filed before appropriate taxable status date did not establish limitations period, but merely determined initial year for which taxpayer was eligible for exemption; and (4) issuance of temporary certificate of occupancy did not establish date of completion of construction.

Affirmed.

Procedural Posture(s): On Appeal; Motion to Dismiss.

West Headnotes (6)

[1] Res Judicata ~~vs~~ Taxation

Dismissal of prior request for judicial review of initial request for partial exemption from real property tax did not have res judicata effect with respect to subsequent petition challenging denial of second application, where dismissal was not on the merits. *McKinney's RPTL § 485-b.*

[2] Res Judicata ~~vs~~ Res Judicata

Doctrine of res judicata is grounded on premise that once person has been afforded full and fair opportunity to litigate particular issue, that person may not be permitted to do so again.

[3] Res Judicata ~~vs~~ Taxation

Provision of real property tax law providing partial, declining ten-year exemption from increase in assessed valuation of real property that is constructed, altered, installed, or improved for purpose of commercial business or industrial activity did not prohibit taxpayer from filing second application for partial exemption, when dismissal of first application was not on merits. *McKinney's RPTL § 485-b.*

[4] Taxation — Time

Requirement of real property tax law that application for partial exemption, for commercial business or industrial improvements, be filed before appropriate taxable status date did not establish limitations period, but merely determined initial year for which taxpayer was eligible for exemption. McKinney's RPTL § 485-b, subd. 3.

1 Cases that cite this headnote

[5] Taxation — Improvements on land

Issuance of temporary certificate of occupancy to taxpayer did not establish date of completion of construction of improvements, for purposes of determining initial year for which taxpayer was eligible for partial exemption for commercial business or industrial improvements; structure had to be finished not only to extent that it could be occupied but also to extent that it met specifications in site plans submitted to municipality, and issuance of temporary certificate of occupancy indicated that construction was not yet completed. McKinney's RPTL § 485-b, subd. 3.

2 Cases that cite this headnote

[6] Taxation — Admissibility

Consideration of taxpayer's submissions opposing assessor's motion to dismiss petition for review of denial of partial property tax exemption was not abuse of discretion, though submissions were served after expiration of deadline to which parties had agreed, where they were served within time originally demanded in assessor's notice of motion and assessor was not prejudiced by delay.

Attorneys and Law Firms

****254** Brown and Kelly, L.L.P. by Lisa Sofferin, Buffalo, for appellant.

Goodman, Costa, Getman and Biryly by Mark Wallins, Buffalo, for respondent.

Before DENMAN, P.J., and PINE, FALLON, BALIO and BOEHM, JJ.

Opinion

***937** MEMORANDUM:

[1] [2] Supreme Court properly denied the motion of respondent, Assessor of the Town of Tonawanda, to dismiss the petition and granted the relief sought therein, directing respondent to accept petitioner's application for a partial tax exemption pursuant to RPTL 485-b and to make a determination thereon. The relief sought by petitioner is not barred by *res judicata*. The doctrine of *res judicata* "is grounded on the premise that once a person has been afforded a full and fair opportunity to litigate a particular issue, that person may not be permitted to do so again" (Matter of Gramatan Home Investors Corp. v. Lopez, 46 N.Y.2d 481, 485, 414 N.Y.S.2d 308, 386 N.E.2d 1328; see, Watts v. Swiss Bank Corp., 27 N.Y.2d 270, 277, 317 N.Y.S.2d 315, 265 N.E.2d 739). Here, respondent denied petitioner's first application in a letter to petitioner, and petitioner sought judicial review of that denial by commencing a CPLR article 78 proceeding. Although that petition was dismissed, the dismissal was not on the merits. Therefore, the present CPLR article 78 proceeding, commenced to challenge respondent's rejection of petitioner's second application, is not barred (see, Miller Mfg. Co. v. Zeiler, 45 N.Y.2d 956, 958, 411 N.Y.S.2d 558, 383 N.E.2d 1152).

[3] The contention of respondent that RPTL 485-b restricts a taxpayer to a single application is without merit. RPTL 485-b (1) gives a taxpayer a partial, declining 10-year exemption from an increase in the assessed valuation of real property that is "constructed, altered, installed or improved * * * for *938 the purpose of commercial, business or industrial activity."

There is nothing in the language of RPTL 485-b that prohibits a taxpayer from filing a second application. Further, such a prohibition may not be inferred where, as here, the dismissal of the first application was not on the merits (*cf.*, **255 *Schulman Master Ltd. Partnership v. Town/Village of Harrison*, 162 A.D.2d 674, 674-675, 558 N.Y.S.2d 78).

[4] [5] We reject the further contention of respondent that petitioner's second application was untimely. Contrary to respondent's contention, the requirement in RPTL 485-b(3) that the application be filed "before the appropriate taxable status date" does not establish a limitations period. It merely determines the initial year for which the taxpayer is eligible for the exemption (*see, Matter of Sitterly Rd. Assocs. v. Board of Assessment Review*, 142 A.D.2d 243, 246, 535 N.Y.S.2d 261). Further, the issuance of a temporary certificate of occupancy to petitioner did not establish "the date of completion" of construction within the meaning of RPTL 485-b(3). To be "complete", a structure must be finished not only to the extent that it may be occupied but also that it meets the specifications in the site plans submitted to the municipality (*see, Matter of Ambald Realty v. Board of Assessors*, 224 A.D.2d 412, 638 N.Y.S.2d 97). The issuance of a temporary certificate of occupancy on November 9, 1993 indicates that, as of that date, construction was not yet completed. This is further borne out by the Town of Tonawanda's zoning law, which provides that, "[u]pon request, the Supervising Building Inspector may issue a temporary certificate of occupancy for a building, structure or premises, or part thereof, before the entire work covered by the building permit shall have been completed" (Tonawanda Town Code § 215-125 [B]). The "date of completion" for purposes of RPTL 485-b(3) is December 21, 1993, when the permanent certificate of occupancy was issued. Thus, petitioner's second application, filed on November 21, 1994, was timely.

[6] Finally, we reject the contention of respondent that the court abused its discretion in considering petitioner's submissions in opposition to the motion to dismiss. Although they were served after expiration of the deadline to which the parties had agreed, they were served within the time originally demanded in respondent's notice of motion and respondent was not prejudiced by the delay (*see, Corbett v. Zedayko*, 151 A.D.2d 941, 545 N.Y.S.2d 216; *see also, Hubbell Elec. v. State of New York*, 153 Misc.2d 810, 813-814, 583 N.Y.S.2d 112).

Judgment unanimously affirmed without costs.

All Citations

227 A.D.2d 937, 643 N.Y.S.2d 253

Exhibit I

122 Misc.2d 985
Civil Court, City of New York.

300 BOWERY INC., Petitioner/Landlord

v.

BASS & BASS, INC., Respondent/Tenant
and

George Grant, Roger Nelson, James Sherry, Sam Tell and Son Inc., Respondents/Undertenants.

Jan. 23, 1984.

Synopsis

Landlord brought holdover proceeding. The Civil Court, City of New York, Helen E. Freedman, J., held that: (1) commercial use requirement of Loft Law was satisfied so as to protect tenants from holdover proceeding, and (2) 1949 certificate of occupancy was not valid, and thus, Loft Law would protect tenants.

Ordered accordingly.

West Headnotes (2)

[1] Landlord and Tenant — Business or commercial space

Commercial use requirement of the Loft Law was satisfied so as to protect tenants from holdover proceeding where first floor had always been commercial and second floor was used for storage or warehousing by ground floor tenant and since second, third and fourth floors formerly constituted the hotel, those floors were to be viewed as an entity and the relevant portion, the second floor, was used commercially. McKinney's Multiple Dwelling Law §§ 280 et seq., 281, 281, subds. 1(i-iii), 2, 286, 301.

1 Cases that cite this headnote

[2] Landlord and Tenant — Occupancy for dwelling purposes

A 1949 certificate of occupancy was of no force or effect; thus, tenants were protected under Loft Law from holdover proceeding, particularly since there was a violation of record indicating that the certificate had lapsed and a new one was required before occupancy could resume. McKinney's Multiple Dwelling Law §§ 280 et seq., 281, 281, subds. 1(i-iii), 2, 286, 301.

2 Cases that cite this headnote

Attorneys and Law Firms

****997 *985** Nathan Ringel, New York City, for petitioner.

Newman, Aronson & Newman by Steven Raison, New York City, for Bass & Bass Inc., respondent.

Lindenbaum & Young by David Pritchard, Brooklyn, for Sam Tell & Son, Inc., respondent.

Vincent P. Hanley, Jr., New York City, for Grant, Nelson and Sherry, respondents.

Opinion

HELEN E. FREEDMAN, Judge.

Does Article 7-C of the Multiple Dwelling Law ("Loft Law") cover premises having the following history? Until 1970 the top three floors of the premises were a Class B lodging house divided into numerous cubicles. For a period thereafter one of those floors was used for storage purposes while the other two were vacant. Currently each of the three floors is a residential loft. The ground floor has been occupied continuously as commercial space. The only certificate of occupancy on record is a 1949 certificate classifying the premises as a Class B lodging house.

Coverage under the Loft Law has been raised as a defense by the residential tenants, Grant, Nelson and Sherry, in a motion to dismiss this holdover proceeding. They claim that the residential portion of the building is an interim multiple dwelling ("IMD"), and that their tenancies are protected by MDL § 286, *986 which provides that qualified tenants are entitled to continued occupancy. In order to qualify for protection the premises must meet the requirements set forth in MDL § 281. It is not disputed that the three floors in question have been used as the residence of three families living independent of one another at least since April, 1980, as required by MDL § 281(1)(iii), and that the building meets the zoning requirements of MDL § 281(2). The two aspects of coverage which are in dispute are whether the relevant **998 portion has been used for commercial purposes as required by MDL § 281(1)(i), and whether the building lacks a certificate of occupancy pursuant to MDL § 301 as specified in MDL § 281(1)(j).

In determining whether respondents' lofts constitute an IMD this Court will consider the underlying policy of the loft legislation and the particular facts of this case in light of the statute. The motions by the commercial tenants will be discussed below.

In enacting the Loft Law the legislature found that "a serious public emergency ... has been created by the increasing number of conversions of commercial and manufacturing loft buildings to residential use without compliance with applicable building codes and laws" and that "in order to prevent uncertainty, hardship, and dislocation, the provisions of this article are necessary and designed to protect the public health, safety and general welfare." MDL § 280. The statute establishes the rights and obligations of owners and tenants and sets forth a schedule for achieving compliance with building standards, leading to issuance of a final residential certificate of occupancy pursuant to MDL § 301.

Realizing that the primary objective of the Loft Law is to protect the safety and welfare of the public in general and of tenants of substandard converted residential lofts in particular, the Court will address the two specific requirements of MDL § 281(1) which bear on this case.

*987 The relevant section of the Loft Law provides in pertinent part:

281(1) ... the term "interim multiple dwelling" means any building or structure or portion thereof, ... which (i) at any time was occupied for manufacturing, commercial, or warehouse purposes; and (ii) lacks a certificate of compliance or occupancy pursuant to section three hundred one of this chapter ...

[1] The first issue is whether the commercial use requirement of Sec. 281(1)(i) has been satisfied. It appears that the first floor has always been commercial and that for some time the second floor was used for storage or warehousing by the ground floor tenant. Petitioner has not disputed the storage use of the second floor, and this Court finds that it clearly comes within the statutory provision requiring commercial use.

Petitioner argues however that even if the second floor was used commercially, that should not protect the third and fourth floors which, it claims, were never used commercially. Rather, petitioner claims that the second, third and fourth floors together comprised the residential hotel. However, records of the Department of Housing Preservation and Development indicate that at least for a period of time the third and fourth floors were vacant, and that they were then used as studios. The last possible time the building functioned as a hotel was 1970. Thus the use of the third and fourth floors during the intervening period at issue is, at best, unclear. The evidence reveals that at some time those floors were no longer used as a hotel, that the partitions were removed, and that the space remained vacant for a certain period. There was clearly a time gap between the hotel use and the current residential use.

Under these peculiar circumstances the second, third and fourth floors should be viewed as an entity, since those floors together constituted the hotel. The use of one of those floors for commercial purposes qualifies as commercial use of the relevant "portion" and satisfies Sec. 281(1)(i).¹ The fact of prior residential use is of no significance on the issue of whether MDL § 281(1)(i) is *988 satisfied because that section specifically states that commercial use "at any time" is sufficient.

****999 [2]** The second question presented here is whether the 1949 certificate of occupancy is still valid as petitioner claims. If, as petitioner urges, the certificate is considered valid, the Loft Law would not protect the respondents. On the other hand, if the certificate is found insufficient for purposes of MDL § 281(1)(ii) then respondents' lofts would be covered. "Given the choice of two interpretations of the Loft Law, one restricting coverage and one broadening it, the remedial nature of the legislation forcefully argues for the adoption of the latter course." *Ancona v. Metcalf*, 120 Misc.2d 51, 55, 465 N.Y.S.2d 661 (Civ.Ct.NY Cty.1983).

For the following reasons this Court finds that the 1949 certificate of occupancy is of no force or effect. The purpose of requiring a final certificate of occupancy pursuant to MDL § 301 is to insure that residential tenants of converted lofts will have the benefit of health and safety regulations applicable to other multiple dwellings. Such a certificate is an official statement that the premises meet the many standards of light, air, safety etc. mandated by law. Only buildings which have obtained final Certificates of Occupancy under MDL Sec. 301 are exempt from Art. 7-C because only those buildings have "achieved compliance with the Multiple Dwelling Law, the goal the new Loft Law seeks to accomplish."² *Ancona, supra* at 54, 465 N.Y.S.2d 661.³ To allow the petitioner to rely on and benefit from this outdated certificate of occupancy, and on its own failure to comply with an order to obtain a new certificate, would contravene the intent of Article 7-C.

Moreover, the particular facts of this case warrant the conclusion that the 1949 Certificate of Occupancy is of no use in avoiding MDL § 281(1)(ii). There is a violation of record indicating that the Certificate of Occupancy had lapsed, and that a new one was required before *989 occupancy could resume. The nature and character of the residential use described in the certificate is totally different from the current use. A hotel with numerous cubicles on each of the three floors differs substantially from a residential loft. After a period of commercial use the three floors are now the residences of three separate families living independent of one another. This is precisely the type of tenancy the Loft Law was designed to protect.

Inasmuch as the requirements of MDL § 281(1)(i) and (ii) have been met, the petition is dismissed as to respondents Grant, Nelson and Sherry.

The commercial tenants have also moved to dismiss the petition. Petitioner brought this holdover proceeding against its prime tenant Bass and Bass Inc. ("Bass") claiming that the lease was properly terminated when, after due notice, Bass failed to correct certain violations. It argues that the subtenancy of Sam Tell and Son Inc. ("Tell") was therefore terminated as a matter of law.

Respondent Tell has moved to dismiss claiming that neither Tell nor Bass ever received notice of the alleged violations because petitioner's principal was the agent of record who received such notices; that Tell was not given an opportunity to cure Bass'

default and assume the obligations of the prime lease; and that the proceeding is brought in bad faith in order to avoid the provisions of the Loft Law.

Respondent Bass joins in the motion adding that the violations are so old that petitioner has waived its right to seek Bass' **1000 eviction for failure to cure violations. Bass claims that petitioner simply wants to regain possession of the building because its value has substantially increased.

The motions of the commercial tenants are denied because there are issues of fact requiring a trial. The nature of the violations, notice of them, and responsibility for cure should be determined at a plenary hearing.

With respect to Tell's motion to quash petitioner's notice to produce, respondent Tell is directed to produce any and all leases between Tell and Bass.

Petitioner's motion to strike Tell's jury demand is granted, inasmuch as the sublease is derived from the main lease which contains a valid jury waiver clause.

*990 In view of the considerable time that has elapsed since submission of this motion, petitioner is hereby permitted to accept and deposit rent, unless and until the trial court orders otherwise. The residential tenants are of course subject to a nonpayment proceeding pursuant to § 285 of the Loft Law should they fail to pay rent.

Matter adjourned as to Bass and Tell to Part 52 for trial on February 2, 1984.

All Citations

122 Misc.2d 985, 471 N.Y.S.2d 997

Footnotes

- 1 The commercial use of the ground floor does not render the upper three floors an IMD inasmuch as the ground floor always was, and continues to be used exclusively for commercial purposes.
- 2 Further evidence of the goals of the loft legislation may be found in the Rules and Regulations of the Loft Board, promulgated pursuant to the statute, which in Sec. I(B) provides that only final residential certificates of occupancy qualify for exemption and then only if the certificate of occupancy has not been revoked.
- 3 Similarly in *Ancona* the Court refused to exempt buildings with temporary certificates of occupancy issued pursuant to Admin.Code D26-50.0.

Exhibit J

118 A.D.2d 312

Supreme Court, Appellate Division, First Department, New York.

Application of ASSOCIATION OF COMMERCIAL PROPERTY OWNERS,

INC., Aaron Gelbwacks and Eliahu Lipkis, Petitioners-Respondents,

For a judgment under Article 78 of the CPLR

v.

The NEW YORK CITY LOFT BOARD, Carl Weisbrod, Chairman of the Loft Board, Charles Delaney, Thomas Berger, Stewart Litvin, Robert S. Robin, James E. Robinson, Lee Ann Miller, Robert Esnard, and Amalia Petanzos, Members of the Loft Board, and The City of New York, Respondents-Appellants.

July 17, 1986.

Synopsis

Commercial property owners brought Article 78 petition challenging loft board regulation exempting certain loft units from Loft Law coverage. Treating petition as declaratory judgment action, the Supreme Court, Special Term, New York County, Maresca, J., declared regulation invalid. Loft board appealed. The Supreme Court, Appellate Division, Sandler, J., held that regulation was consistent with Loft Law and, therefore, valid.

Reversed.

Kassal, J., dissented and filed opinion.

Procedural Posture(s): On Appeal.

West Headnotes (1)

[1] Landlord and Tenant — Administrative regulations

Loft board regulation exempting from coverage under Loft Law any otherwise eligible loft unit that had been issued temporary residential certificate of occupancy prior to June 21, 1982, unless TCO lapsed for any reason on or after that date, was consistent with language and purposes of Loft Law, and therefore, was valid. McKinney's Multiple Dwelling Law §§ 280, 281, subd. 1, 282, 284, 301, subds. 1, 4.

3 Cases that cite this headnote

Attorneys and Law Firms

****110 *313** Mordechai Lipkis, of counsel (William H. Morris, with him on brief, Morris, Graham, Stephens & McMorrow, Westbury, attys.), for petitioners-respondents.

Kristin M. Helmers, of counsel (Stephen J. McGrath, with her on brief, Frederick A.O. Schwarz, Jr., New York City, atty.), for respondents-appellants.

Before SANDLER, J.P., and ASCH, KASSAL, ELLERIN and WALLACH, JJ.

Opinion

SANDLER, Justice.

The respondent New York City Loft Board appeals from an order and judgment entered October 2, 1984 by Special Term (Orest V. Maresca, J.) which, *inter alia*, declared null and void a regulation which in substance exempted from coverage under the Loft Law (Multiple Dwelling Law §§ 280-287) any otherwise eligible loft unit that had been issued a temporary residential certificate of occupancy (TCO) prior to June 21, 1982, unless the TCO lapsed for any reason on or after that date. We disagree with Special Term's determination because there has been a complete failure to demonstrate that the regulation, adopted after careful and thoughtful consideration by a body with special competence in the area, is inconsistent with either the language or the purposes of the Loft Law.

The regulation here at issue, adopted by the Loft Board on July 20 and filed with **111 the City Clerk on August 2, 1983, reads as follows:

I.B.2. Registration as an IMD [interim multiple dwelling] with the Loft Board shall be required of:

b. Any building, structure or portion thereof which meets the criteria for an IMD set forth in Section 281 and these regulations, for all residentially-occupied units which obtained a temporary, but not final, residential certificate of occupancy issued pursuant to Section 301 of the Multiple Dwelling Law prior to June 21, 1982. Issuance of a temporary residential certificate of occupancy for such units prior to June 21, 1982, will not be the basis for exemption from Article 7-C coverage *314 if on or after June 21, 1982 a period of time of any length existed for whatever reason whatsoever during which a temporary or final certificate of occupancy issued pursuant to Section 301 of the Multiple Dwelling Law was not in effect for such units.

Petitioner Eliahu Lipkis is the owner of three loft buildings which had been issued TCO's for some or all of their residential units at some time prior to June 21, 1982, but did not have TCO's in effect on or after that date, and so would be deemed interim multiple dwellings under the regulation. The other two petitioners, a not-for-profit corporation whose membership consists of owners of loft buildings in New York City, and that corporation's president, were removed by Special Term as parties, but the papers submitted on their behalf were treated as submissions *amicus curiae*.

Special Term converted the petitioners' article 78 proceeding to a declaratory judgment action and granted all the relief requested in an order and judgment which (1) declared regulation I.B.2(b) null and void; (2) declared that article 7-C of the Multiple Dwelling Law does not apply to any building issued a temporary certificate of occupancy at any time on or prior to June 21, 1982, regardless of any lapses in such TCO, unless the Department of Buildings revoked the TCO *nunc pro tunc* for willful fraud or refused to renew it on the ground that the conditions on which the TCO had been initially issued were not satisfied; (3) prohibited the Loft Board from attempting to exercise jurisdiction over said buildings unless the Department of Buildings revoked or refused to renew the TCO's on the grounds described above; and (4) declared that article 7-C does not apply to any residential units in three buildings owned by petitioner Eliahu Lipkis for which TCO's had been issued before June 21, 1982.

The order and judgment should be reversed to the extent appealed from (one building, not among the three mentioned above, was held subject to article 7-C), the Regulation should be declared valid, and the three loft buildings owned by petitioner Lipkis should be declared subject to article 7-C and the jurisdiction of the Loft Board.

The fundamental test to be applied in such matters is that "where the rules or regulations of an administrative agency are in conflict with the provisions of the statute or inconsistent with its design and purpose, they are to be held invalid." Connolly v. O'Malley, 17 A.D.2d 411, 417, 234 N.Y.S.2d 889. In *315 Ostler v. Schenck, 41 N.Y.2d 782, 786, 396 N.Y.S.2d 335, 364

N.E.2d 1107, the Court of Appeals summarized succinctly the standards governing the application of this test by a reviewing court in determining the validity of a challenged regulation:

The function of a reviewing court is a limited one. The challenger of a regulation must establish that the regulation "is so lacking in reason for its promulgation that it is essentially arbitrary." (*Matter of Marburg v. Cole*, 286 NY 202, 212 [36 N.E.2d 113].) The interpretation given a statute by the administering agency "if not irrational or unreasonable, should be upheld." (*Matter of Howard v. Wyman*, 28 NY2d 434, 438 [322 N.Y.S.2d 683, 271 N.E.2d 528].) As was observed in *Mississippi Val. Barge Co. v. United States* (292 US 282, 286-287 [54 S.Ct. 692, 694, 78 L.Ed. 1260]), "[t]he judicial function is exhausted when there **112 is found to be a rational basis for the conclusions approved by the administrative body."

Article 7-C of the Multiple Dwelling Law (the Loft Law) was enacted by the New York State Legislature by Chapter 349 of the Laws of 1982. The legislation, entitled "Legalization of Interim Multiple Dwellings," was declared effective June 21, 1982. As here pertinent, MDL § 280 ("Legislative Findings") states that a serious public emergency, "created by the increasing number of conversions of commercial and manufacturing loft buildings to residential use without compliance with applicable building codes and laws and without compliance with local laws regarding minimum housing maintenance standards," necessitated intervention by state and local governments to effectuate legalization.

Article 7-C, by its own terms, applies to "interim multiple dwellings." MDL § 284 requires the owner of each interim multiple dwelling to adhere to a timetable for obtaining a final residential certificate of occupancy. MDL § 281(1) defines an interim multiple dwelling, in pertinent part, as "any building or structure or portion thereof located in a city of more than one million persons which ... (ii) lacks a certificate of compliance or occupancy pursuant to section three hundred one of this chapter."

MDL § 301(1) describes a certificate of compliance or occupancy (CO) as a "certificate by the department [of buildings] that said dwelling conforms in all respects to the requirements of this chapter [the Multiple Dwelling Law], to the building code and rules and to all other applicable law...." MDL § 301(4) permits the department to issue a temporary certificate of compliance or occupancy (TCO) for a period of 90 days or less, renewable for similar periods at the discretion of the department, but not *316 beyond two years from the date of original issuance. A TCO certifies that the dwelling complies with the requirements of the Multiple Dwelling Law and that temporary occupancy will not jeopardize life, health or property, i.e. the dwelling need not also comply with the building code and rules and all other applicable law, as required for issuance of a CO.

MDL § 282 establishes a special loft unit known as the Loft Board (the primary respondent in this action) consisting of representatives of the public, the real estate industry, loft residential tenants, and commercial or manufacturing loft interests, all appointed by the Mayor. Among its varied and important responsibilities, and particularly pertinent to this appeal, the Loft Board is specifically empowered by MDL § 282 to "[determine] interim multiple dwelling status and other issues of coverage pursuant to this article", and to issue and enforce rules and regulations governing housing maintenance standards and compliance with article 7-C.

In accordance with the statutory duties granted to it, the Loft Board and its staff addressed the issue of whether, and under what circumstances, the existence of a TCO for a loft unit should constitute an exemption from interim multiple dwelling status. The Loft Board and its staff analyzed and debated the issue over a period of months, during which period a draft regulation exempting only buildings possessing a CO (as opposed to a TCO) on or prior to June 21, 1982, was published in the *City Record*, with an invitation to the public to submit written comments. Public testimony on the proposed regulation was also received at a public hearing held on February 28, 1983.

In their written and oral comments, tenants urged that only buildings possessing a final CO on or before June 21, 1982 should be exempt from the Loft Law, since a TCO does not include a certification of conformity with the building code and rules and

to all other applicable law, and buildings lacking such certification are specifically mentioned in MDL § 280 as among those intended to be governed by article 7-C. Landlords urged that any loft building that had been issued a TCO prior to June 21, 1982 was basically "legal," that lapsed TCO's were routinely renewed without reinspection by the Buildings Department, **113 and so the lapsing of a TCO was meaningless unless it had been revoked for cause.

*317 Preliminarily, it should be observed that there are meaningful distinctions between a CO and a TCO, and that article 7-C read as a whole may reasonably be interpreted as contemplating that a loft building shall remain under the jurisdiction of the Loft Board until a final CO is obtained. Moreover, MDL § 281(1)(ii) exempts buildings with a "certificate of compliance or occupancy pursuant to section three hundred one of this chapter," not buildings with a "temporary certificate of compliance or occupancy." Accordingly, a strong argument could be made that as a matter of statutory construction the Loft Board would have been justified in promulgating the draft regulation, which was significantly less favorable to landlords, exempting from article 7-C only buildings that had a CO on June 21, 1982. However, we need not determine that hypothetical issue since regulation I.B.2(b), as promulgated, conditionally exempts from registration any building issued a TCO effective prior to June 21, 1982, the only condition being that the TCO remained in effect on and after that date.

At least with regard to two of petitioner Lipkis' buildings (47 and 49 Walker Street), the TCO's for which lapsed prior to June 21, 1982 and were not in effect on that date, the challenged regulation unquestionably complies with the meaning of MDL § 281(1)(ii) by including those buildings within the jurisdiction of the Loft Board. Certainly there is no authority that permits a court to strike down as null and void a regulation that enforces compliance with the plain meaning of a statute.

The only question that may be deemed even arguable is the regulation's reasonableness and conformity with the statutory purpose insofar as it applies to petitioner Lipkis' building at 71-73 Franklin Street, which had a TCO in effect on June 21, 1982, but not at various times thereafter. We see no basis for concluding that the Loft Board, which pursuant to MDL § 282 is specifically delegated the duty to determine interim multiple dwelling status and other issues of coverage under article 7-C, unreasonably construed the statute as appropriately embracing such buildings within its scope.

The record discloses conflicting opinions as to the significance of the lapsing of a TCO and whether lapsed TCO's are routinely renewed without reinspection. In this regard Irving E. Minkin, Deputy Commissioner of the Department of Buildings of the City of New York and a member of the Loft Board, *318 stated under oath and without contradiction that any applicant for a TCO renewal, whose loft unit would have been exempted from article 7-C but for the lapse in its TCO due to a department backlog or some other factor not in the applicant's control, could apply to the Borough Superintendent and, if denied, appeal to the Commissioner to reinstate the TCO *nunc pro tunc*. There is no basis for presuming that such an application would be arbitrarily denied, and in any event such denial would be reviewable in an article 78 proceeding.

Special Term's order and judgment would effectively require the Department of Buildings to determine on a case by case basis the conditions existing in any building with a lapsed TCO at the time of such lapse, in order to declare whether the building at the time in question satisfied the conditions on which the TCO had originally been issued. We do not believe that the statute or its underlying purpose can fairly be construed to require such a procedure in the face of what appears to be a reasonable determination by the Loft Board that a building that "lacks" a CO or TCO on or after June 21, 1982 is an interim multiple dwelling as defined in MDL § 281(1)(ii) even if it had an effective TCO at some prior time.

Article 7-C, being remedial legislation, should be liberally construed to spread its beneficial effects as widely as possible. "Given the choice of two interpretations of the Loft Law, one restricting coverage and one broadening it, the remedial nature of the legislation forcefully argues for the adoption of the latter course * * * To the extent the Loft Law is restricted in its **114 coverage, the purpose of the law is defeated." *Ancona v. Metcalf*, 120 Misc.2d 51, 55-56, 465 N.Y.S.2d 661; see, also, *300 Bowery, Inc. v. Bass & Bass*, 122 Misc.2d 985, 988, 471 N.Y.S.2d 997; *Pilgreen v. 91 Fifth Ave. Corp.*, 91 A.D.2d 565, 566, 457 N.Y.S.2d 48.

Since there clearly exists a rational basis for the regulation in light of the statutory language that it effectuates and the canons of statutory construction applicable to remedial legislation, the order and judgment (one paper) of Special Term (Orest V. Maresca, J.), entered October 2, 1984, should be reversed to the extent appealed from, on the law, without costs, the regulation should be declared valid, and the three loft buildings owned by petitioner Lipkis should be declared subject to article 7-C and the jurisdiction of the Loft Board.

All concur except KASSAL, J., who dissents in an opinion.

KASSAL, Justice (dissenting).

The enactment of Article 7-C of the Multiple Dwelling Law, effective June 21, 1982 (the Loft Law), was *319 designed to "bring order to a chaotic and legally vague process of conversion of loft space formerly used for manufacturing, warehousing, and commercial purposes", to foster conversion to residential use, thus ensuring compliance with the Multiple Dwelling Law and applicable building codes (McKinney's Session Laws of N.Y., 1982, *Memorandum of Legislative Representative of City of New York*, p. 2484). Section 281 of the Multiple Dwelling Law created a new category of building to be known as an "interim multiple dwelling" and defined the term as "any building or structure or portion thereof * * * which (i) at any time was occupied for manufacturing, commercial, or warehouse purposes; and (ii) lacks a certificate of compliance or occupancy pursuant to section three hundred one of this chapter; and (iii) on December first, nineteen hundred eighty-one was occupied for residential purposes since April first, nineteen hundred eighty as the residence or home of any three or more families living independently of one another." (Multiple Dwelling Law § 281(1)).

The issue in this proceeding, appropriately converted by Special Term to an action for a declaratory judgment, concerns the construction of subdivision (1)(ii) of Multiple Dwelling Law § 281. Specifically, it relates to the application of the statute to certain buildings or units which had been issued a temporary residential certificate of occupancy (TCO) prior to June 21, 1982, but which TCO had expired either before renewal or issuance of a final certificate of occupancy, under the terms of a regulation adopted by the Loft Board on July 20, 1983. The regulation provided that the issuance of a TCO prior to June 21, 1982, would not be the basis for exemption from coverage under Article 7-C if, on or after that date, there was any period of time during which a temporary or final certificate of occupancy issued under Multiple Dwelling Law § 301 was not in effect, "for any reason whatsoever."

Each of the three buildings involved in this action had been issued a TCO prior to June 21, 1982, pursuant to Multiple Dwelling Law § 301. Since there also had been compliance with the other statutory requirements, these buildings were exempt from the provisions of Article 7-C. At the time this proceeding was commenced on December 2, 1983, each building had been covered by a TCO which had expired during the period in which petitioner's applications for renewal were pending, but had not been acted upon by the Department of Buildings. The record does not disclose the basis for such failure to renew. Applying the 1983 regulation, which is *320 herein challenged, the Loft Board held that the lapse in the TCO rendered the units and the buildings subject to coverage under Article 7-C. Accordingly, petitioner brought this action to annul the regulation and to declare these buildings exempt from coverage under the Loft Law.

We agree with Special Term that the Loft Board exceeded its statutory authority **115 in adopting the regulation. In defining an interim multiple dwelling, the Legislature provided in Multiple Dwelling Law § 281(1), as one of the critical determinants, that the building or unit "lacks a certificate of compliance or occupancy" issued pursuant to Multiple Dwelling Law § 301. While recognizing that there are clear differences between a permanent certificate of occupancy and a temporary certificate, it is significant that both are issued under Multiple Dwelling Law § 301 and the statutory provision, defining an interim multiple dwelling, makes no distinction between the two. Had the Legislature intended coverage to be dependent upon the continued existence of a valid TCO, without any lapse for any period of time and irrespective of the reason, it would have expressly so stated. However, Multiple Dwelling Law § 281(1), couched in the present tense, refers only to the existence of a certificate

of occupancy, not to a subsequent lapse. Although we recognize that deference in interpreting regulations is to be accorded to the Loft Board in its broad administrative power, the Board's authority does not extend to declaring legislative policy but rather, only to applying the statutory standard in an administrative capacity (cf. *Axelrod Co. v. Dixon Studio*, 122 Misc.2d 770, 471 N.Y.S.2d 945).

In enacting the Loft Law, the Legislature expressly recognized the need to alleviate the serious public emergency in housing. There was concern regarding the increase in the conversion of lofts in commercial and manufacturing buildings to residential use without compliance with building codes and rules, but with the further objective of assuring that minimum standards for health, safety and fire protection be maintained. As a result, the statute legalized residential loft tenancies, thereby affording needed safety and housing to tenants who were permitted to reside there, under the aegis of rent stabilization. At the same time, it provided aid to the owners who, without this enactment, could not legally collect rents through the use of summary proceedings in the absence of residential certificates of occupancy.

Special Term, however, found that the challenged regulation failed to promote these legislative purposes in that lapses *321 in TCOs may occur for a variety of administrative reasons, without any bearing upon the health and safety criteria which the Legislature determined to be critical. Furthermore, the record reflects that TCOs have been routinely renewed by the Department of Buildings without reinspection even where the owner inadvertently failed to file for renewal until after expiration of the 90-day period during which a TCO is in effect. Thus, Special Term took into account the real possibility that lapses do result from bureaucratic delay and failure in processing renewal applications which would subject the building to the coverage of the Loft Law under the regulation.

In our view, as held at Special Term, it is necessary to consider the reason for such lapse. Thus, the court limited the imposition of loft regulation to those situations where there was a lapse as a result of a revocation of the TCO on a finding of fraud or where renewal was denied because the owner did not satisfy the conditions upon which the temporary certificate had originally been issued. We agree with that interpretation.

As applied here, absent a showing of fraud or noncompliance with any conditions required at the time of issuance of the temporary certificates, Special Term properly declared that Article 7-C of the Multiple Dwelling Law did not apply to petitioner's three buildings. While mindful of the laudable purpose underlying the Board's adoption of the regulation, we find its promulgation to be legislative in scope and beyond the limited administrative powers which the Legislature has entrusted to the Loft Board. We so conclude, no matter how "careful and thoughtful" the promulgation of this rule may have been, as characterized by the majority. This is especially so when we note that the primary administrative jurisdiction over buildings in **116 terms of lapsed temporary certificates is entrusted to the Department of Buildings, as the agency responsible for enforcing building codes and rules, not the Loft Board.

Accordingly, the order and judgment appealed from (one paper), Supreme Court, New York County (Orest Maresca, J.), entered October 2, 1984, which, *inter alia* (1) declared invalid a July 20, 1983 regulation of the loft board, directing that certain buildings and individual units which had been issued temporary residential certificates of occupancy ("TCO") on or before June 21, 1982, were, nonetheless, subject to the provisions of Article 7-C of the Multiple Dwelling Law, if there existed a period of time of any length, for any reason whatsoever, *322 during which a temporary or final certificate of occupancy issued pursuant to

Multiple Dwelling Law § 301 was not in effect; (2) declared that Article 7-C of the Multiple Dwelling Law did not apply to any building or unit issued a TCO on or before said date, regardless of any subsequent lapse in such TCO unless the TCO was revoked, *nunc pro tunc*, by the City Department of Buildings upon a finding of wilful fraud or where the Department refused to renew the TCO on the ground that the conditions on which the temporary certificate of occupancy had been initially issued had not been satisfied; (3) prohibited the Loft Board from exercising jurisdiction over such buildings unless the Department of Buildings had revoked or refused to renew the TCO on said grounds; and (4) declared that Article 7-C did not apply to residential units in three specific buildings owned by petitioner Eliahu Lipkis, located at 47 and 49 Walker Street and 71-3 Franklin Street, should be affirmed.

Order and judgment (one paper), Supreme Court, New York County, entered on October 2, 1984, reversed to the extent appealed from, on the law, without costs and without disbursements, the judgment vacated, the regulation declared valid, and the three loft buildings owned by petitioner Lipkis declared subject to article 7-C and the jurisdiction of the Loft Board.

All Citations

118 A.D.2d 312, 505 N.Y.S.2d 110

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Exhibit K

23 Misc.3d 1123(A)
Unreported Disposition

NOTE: THIS OPINION WILL NOT BE PUBLISHED IN A PRINTED
VOLUME. THE DISPOSITION WILL APPEAR IN A REPORTER TABLE.

Civil Court, City of New York,
Richmond County.

Steve KAPLAN and Kapwest Corp., Petitioner(s), Plaintiff(s),

v.

SYNERGY, INC. d/b/a Synergy Fitness NYC Ltd. and Synergy Fitness Forest Avenue, Inc., Respondent(s), Defendant(s).

No. L & T 53951/08.

|

April 28, 2009.

Attorneys and Law Firms

Condon & Forsyth LLP, New York, for Petitioner.

Rosenfeld & Kaplan, LLP, New York, for Respondent.

Opinion

PHILIP S. STRANIERE, J.

*1 Petitioners, Steve Kaplan and Kapwest Corp., commenced this commercial summary proceeding against the respondents, Synergy Inc.(Synergy) d/b/a Synergy Fitness NYC Ltd.(Synergy NYC) and Synergy Fitness Forest Avenue, Inc. (Synergy Forest), alleging that the respondents failed to pay rent due and owing. A trial was held on March 11, 2009. Both sides were represented by counsel.

PRIOR LITIGATION:

In October 2006, petitioners commenced a summary proceeding against these respondents in Civil Court, Richmond County (L & T 53241/06), alleging that the respondents had failed to pay rent for the period August through October 2006. Thereafter the respondents commenced an action in Supreme Court, New York County (Index No. 115449/06) seeking damages for petitioners alleged breach of the terms of the lease. On September 5, 2007, the parties entered into a settlement agreement resolving both litigation matters. In that agreement the respondents acknowledged that the petitioners were due rent in the amount of \$100,000.00 for the period August 2006 through February 2007. Petitioners agreed to accept \$40,000.00 in full settlement of the rent arrearage claim. Respondents were to keep the monthly rent current and to pay the \$40,000.00 arrearage in eight monthly payments of \$5,000.00. Provided there were no defaults under the terms of the lease and the settlement agreement, the petitioners agreed to reduce the monthly base rent to \$14,000.00 and defer an additional \$2,000.00 a month in rent beginning September 2007 so that the current rent would be \$12,000.00 a month. The abatement was negotiated between the parties because they had anticipated that "mezzanine" space at the premises would be available for the respondents' use. It was agreed that the respondents would undertake to complete the process necessary to legalize the space and obtain all approvals from the appropriate municipal agencies, including filings with the Board of Standards and Appeals (BSA).

Petitioners allege that the respondents' payment of \$12,000.00 a month in July 2008 and August 2008 did not comply with the terms of the settlement agreement in that the payment due should have been \$17,000.00 with \$12,000.00 for the then current abated rent and an additional \$5,000.00 to be applied to the monthly arrearage payment. Petitioner applied \$5,000.00 of the

\$12,000.00 received towards the monthly arrearage and the balance of \$7,000.00 against the current rent leaving a shortfall in payments under the terms of the settlement agreement.

The settlement agreement was personally guaranteed by Anthony Reonegro in the event the respondents vacated the premises prior to the term of the Lease or failed to perform the financial obligations under the lease and settlement agreement. The agreement provided that "if the vacatur is caused by the failure to obtain BSA approval, this Agreement Guaranty is null and void."

Thereafter the petitioners agreed to accept surrender of the premises and terminate the respondents' lease obligation. The parties agreed to have the court decide the issue of whether the respondents had diligently pursued obtaining BSA approvals so as to relieve the guarantor of responsibility for the personal monetary obligations. Petitioners claim they are entitled to the money because the respondents never completed the BSA application process. Respondents allege that they did all that could be reasonably done and that the application process was abandoned because it became obvious that the approvals could not reasonably be obtained.

CHRONOLOGY:

*2 Site Plan Prepared by Tamborra Design and Consultants—May 30, 2003

Written Lease Between Steve Kaplan (Landlord) and Synergy, Inc. (Tenant)—July 16, 2003

Synergy Fitness Forest Avenue Inc. incorporated in New York State—July 23, 2003

Kapwest Corp. incorporated in New York State—July 29, 2003

Building Plans Filed by Tamborra Design and Consultants for Medical Group—November 15, 2003

Settlement Agreement between Steve Kaplan as President of Kapwest and Synergy Fitness Forest Avenue, Inc., Brett Holzer as President of Synergy Fitness NYC, Ltd.—September 5, 2007

Personal Guaranty of Anthony Reonegro—September 5, 2007

A search of the New York State Division of Corporations records shows Synergy Fitness NYC, Ltd. having been incorporated on May 9, 2002. The records also show no entity as "Synergy, Inc." being incorporated with a search of that name referring the inquiry to SEVB, Inc. a corporation filed February 1, 1995, but now listed as an "inactive" corporation. There is no evidence of an assignment of the lease to Kapwest or to Synergy NYC or Synergy Forest.

DISCUSSION:

The parties have agreed that the only issue remaining outstanding between them is whether the petitioners may enforce the "personal guaranty" signed by Anthony Reonegro on September 5, 2007 guaranteeing the payment of \$40,000.00 to petitioners "if the Tenant: (1) vacates the Premises located at 1268 Forest Avenue, Staten Island, New York prior to the term of the Lease, or (2) fails to perform its financial duties and obligations under the Settlement Agreement and Lease. If vacatur is caused by the failure to obtain BSA approval, this Agreement Guaranty is null and void."

A. Is There a Valid Lease?

On July 16, 2003 there was a written lease that listed Steve Kaplan as the landlord and Synergy, Inc., as tenant, but was signed by Kaplan on behalf of Kapwest, Corp. as the owner and Brett Holzer on behalf of Synergy, Inc. as tenant. The purpose of the lease was for the premises 1268 Forest Avenue, Staten Island, New York, "to be used and occupied by the Tenant as a gym and exercise facility. Not more than twenty percent (20%) of space may be allocated for use as a juice bar and grill-provided tenant obtains necessary permit and Certificate of Occupancy for said usage." After the date of the lease, the petitioners had

filed for a certificate of occupancy for a medical facility, while the lease was for use as gym so in the words of Shakespeare's Hamlet "Ay, there's the rub."¹

The agreement at paragraph 36 of the Rider to Lease provided for a commencement of the lease term "upon the issuance of a certificate of occupancy for premises known as 1268 Forest Avenue, Staten Island, New York (the Commencement Date)...Tenant's obligation to pay base annual rent and additional rent shall commence on the Commencement Date." The lease also required the petitioner to deliver "approximately ten thousand square (10,000) feet consisting of basement and three (3) floors and access to parking lot."

*3 One of the named petitioners at some point acquired this property. The date of the purchase is not part of the record, nor has a copy of the deed been submitted as an exhibit. On September 10, 2002, Kaplan filed plans with the Buildings Department to do an alteration of the then currently existing structure. Parenthetically, that application for alteration was not officially withdrawn until July 26, 2006 a date sometime after the now existing structure was constructed and began to be used by the respondents as a gym. Thereafter petitioners abandoned these renovation plans and filed for a demolition permit on August 5, 2003. The existing building was demolished. Petitioners then filed plans with the Buildings Department to construct a new building to house medical offices and consisting of a cellar storage area, the first floor designated as medical offices with a second floor designated as for offices only. None of these plans included a third floor or a mezzanine. The total square footage of the building filed with the Buildings Department was less than 6,000 square feet. In addition, the premises was to have eleven parking spaces to be served by "paid parking attendants." Attendant parking was needed so as to maximize the entire parking area, without such a filing, there would be insufficient parking spaces for the size of the building constructed.

The Buildings Department issued its first temporary certificates of occupancy for the period August 1, 2006 through August 10, 2006. There were subsequent temporary certificates of occupancy issued August 9, 2006 through November 7, 2006; November 6, 2006 to February 4, 2007; May 18, 2007 to August 16, 2007 and February 27, 2008 to April 27, 2008. There is no explanation as to why there are gaps in the time periods covered by the temporary certificates of occupancy which leads to the conclusion that the building was being used for periods of time without the existence of even current temporary certificates of occupancy. Each of these temporary certificates authorized the medical use. There was never any indication in the Buildings Department filings that a gym or "physical culture establishment" was being operated at the premises or that the parties even contemplated such a use. These plans were filed on behalf of Kaplan and Kapwest. At no time did the Buildings Department ever issue a final or permanent certificate of occupancy for any use. Taking all of these factors into account, it must be concluded there was never a valid lease between the parties.

First, who are the parties to the lease? The opening paragraph designates Steve Kaplan as the landlord and Synergy, Inc., as the tenant, yet the signature block on the preprinted lease is signed only by Holzer on behalf of Synergy, Inc. There is no signature on behalf of the landlord. There is what is purported to be a twelve page "Rider to Lease" which is dated July 17, 2003, the day after the preprinted lease is dated. The Rider to Lease is also between Kaplan and Synergy, Inc., but this document is signed by Kapwest Corp. as the owner and Synergy, Inc., as the tenant. As stated above, Synergy, Inc., is not recognized as an active registered corporation in New York and there is no evidence of an assignment of the lease to either Synergy Fitness NYC or Synergy Fitness Forest Avenue.

*4 Second, the lease terms required the landlord to deliver a premises of ten thousand square feet of space on a basement and three floors, yet the only approved plans for the premises and the ones which led to the issuance of the temporary certificates of occupancy are for a premises of less than six thousand square feet on two floors and a cellar. It should be pointed out there under the Multiple Dwelling Law there is a difference between a basement-a story partly below the curb level but having at least one-half of its height above curb level (MDL § 4(38)) and cellar-an enclosed area having more than one-half of its height below curb level (MDL § 4(37). A similar definition exists in the NYC Administrative Code § 27-232 where the description of cellar and basement is not limited solely to residential buildings. Based on the initial plans which were filed after the lease

was signed, the petitioners were certifying to the Buildings Department an intent to construct a premises inconsistent with what they had contracted to deliver to the respondents for legal occupancy.

This entire transaction is suspect. The lease, July 16, 2003, predates the initial building department filing of November 15, 2003 by four months. The petitioners already had contracted to deliver a premises capable of being used for "gym and exercise facility" in July 2003 yet petitioners commenced obtaining approvals for a structure designated as a "medical facility." All that can be concluded is that the petitioners deliberately embarked on a plan to circumvent the building code. Based on the testimony at trial and the subpoenaed records, it seems that the intent of the petitioners and by implication, the respondents, was to go into occupancy at the premises and use it as a gym and exercise facility, a "physical culture establishment" under the building code, in complete violation of the approved plans and any applicable building code regulations. The parties sought to operate an illegal health club at the site, which respondents have been doing for a period of time, and then seek either an approval of the changed use from the Buildings Department, or a variance from the Board of Standards and Appeals. This procedure apparently is not that uncommon on Staten Island and may explain why certain buildings seem to exist in unusual locations out of context with the surrounding neighborhood.

Third, the lease required the petitioner to deliver a certificate of occupancy for the gym and exercise use while the tenant was to provide the certificate of occupancy for a juice bar and grill at the premises. In addition, the tenant's obligation to pay rent does not accrue until a certificate of occupancy is issued (Rider paragraph 36). No certificate of occupancy was ever issued for any purpose, let alone the leased use. What was issued were five temporary certificates of occupancy for a medical building, neither the petitioners nor the respondents were ever able to deliver a final certificate of occupancy for a medical facility—the building which was filed, or a temporary certificate of occupancy for the gym and exercise facility. As such, no rent was ever due and owing under the terms of the lease.

*5 The Administrative Code defines both a "certificate of occupancy" and a "temporary of certificate" so that use of the term "certificate of occupancy" in the lease refers to what is commonly called a "final" or "permanent" certificate of occupancy and not a "temporary certificate of occupancy." If the parties wanted the rent obligation to be triggered upon the occupancy by the respondents, the lease should have said so.

Giving the parties the benefit of the doubt that they were acting in good faith, then there never was a valid lease due to "mutual mistake of fact," that is, the belief the gym could legally be operated at the site. Analyzing the situation from a more cynical and perhaps more realistic viewpoint, the parties were engaged in an illegal bargain to construct a building that could neither legally be built on the site at all, nor legalized by amending the plans which were filed. They knowingly signed a lease for a physical culture establishment (PCE) and then embarked on a program of filings with the Buildings Department for a structure which could not accommodate the purpose of the lease. Their actions, if not illegal, are at best in defiance of public policy and should not be tolerated by this or any other court. By operating a gym in a building not constructed for that purpose they placed the safety of the general public at risk.

The parties entered into a written agreement to lease the premises as a gym and fitness center, a use inconsistent with the current zoning. The premises is in a C2-1/R3-2 zoning district. Under this zoning classification, a physical culture establishment cannot be legally occupied or operated as of right. An application must be made to the BSA to for a variance. With this zoning and the lease in place, the petitioner commenced construction of medical offices which could be built as of right. They received approvals for such a building and then several temporary certificates of occupancy. Petitioners did this rather than seeking approval from the BSA prior to construction, apparently hoping to construct the medical offices and then apply for and obtain a variance.

The New York City Administrative Code (N.Y.CAC) treats building safety as a priority and has criminalized many activities. NYCAC § 26-125 in regard to the Building Code provides: "every person who shall violate any of the provisions of any laws, rules or regulations enforceable by the department or who shall knowingly take part or assist in any such violation shall be guilty of an offense...."

In addition, NYCAC § 26–126 states: “The owner, lessee, or occupant of any building in which a violation of the zoning resolution has been committed or shall exist, or the agent, architect, builder, contractor, or any other person who commits, takes part or assists in any such violation or who maintains any building in which any such violation shall exist, shall be guilty of a misdemeanor, ...”

While NYCAC § 27–147 provides: “No building construction or alteration work ... shall be commenced, ... until a permit therefor shall have been issued by the commissioner.”

*6 The requirement of a certificate of occupancy is set forth in NYCAC § 26–222. This statute states:

It shall be unlawful to occupy or use any building erected or altered ... unless and until a certificate of occupancy shall have been issued by the commissioner, certifying that such building conforms substantially to the approved plans and the provisions of the building code and other applicable laws and regulations. Nothing herein contained, however, shall be deemed to prohibit the commissioner from permitting the temporary occupancy and use of a building on accordance with and subject to the provisions of the building code....

It is abundantly clear that the parties to this lease agreement are in violation of the NYCAC and are subject to punishment by the appropriate authorities. The occupancy during the entire period of this agreement has been contrary to law.

The Rider to the Lease at paragraph 37 sets forth as “Owner's Work....”

4. In the basement, the men's room shall include, three (3) showers, three (3) stalls, and three (3) urinals, three (3) under mount sinks (including fixtures) 5. In the women's lockers, three (3) showers, five (5) toilets (up to code) and three (3) under mount sinks (including fixtures) ... 7. In both locker rooms the Landlord is allotting ... 9. Locker room bathroom shall be handicapped accessible

These are not alterations typical for a medical facility. All of this work is specialized renovations so that the premises may be used as a PCE. Petitioners contracted in the lease to make renovations which were wholly inconsistent with the plans subsequently filed with the Buildings Department. Petitioners' unclean hands extend not only beyond their wrists but are past their elbows approaching their shoulders.

The Rider to the Lease at paragraph 56(J) provides:

Tenant covenants that Tenant will not use ... the Premises for any unlawful purpose....Tenant further covenants to comply with all applicable laws, resolutions, codes, rules and regulations of any department, bureau, agency or any governmental authority having jurisdiction over the operation occupancy, maintenance and use of the Premises for (emphasis in original) the purposes set forth herein.

How did the parties contemplate that the Tenant was going to be able to comply with the law when the occupancy from its inception was in violation of the law?

Added to the court's skepticism as to the “good faith” of the parties is the fact that the copies of the lease submitted to the court contains a major discrepancy. Paragraph 53 of the Rider to Lease is labeled “53. Changes in Building Facilities:” but contains

no such language. It is followed by a paragraph dealing with the rights of the parties to arbitrate "any matter in dispute wherein arbitration is expressly provided in this Lease...." This is followed by paragraph "55, No Broker." There is no paragraph 54 and there certainly is no language in regard to "Changes in Building Facilities:" anywhere in the copies of the lease submitted to the court.

*7 Based on the foregoing it must be concluded that there never was a legally enforceable lease.

B. Is There a Valid Settlement Agreement?

The settlement agreement dated September 5, 2007 contains the following language: "Whereas, Synergy Forest Avenue understands that, pursuant to the terms of the Lease, the Tenant is responsible and obligated to obtain the necessary documentation with the appropriate governmental agencies of the City of New York to obtain proper authority to operate a gym facility at the Premises and, because of the failure to do so, a notice of default dated January 11, 2007 was served; ..."

As pointed out above, the written lease agreement does not make it clear that this was the responsibility of the tenant, especially considering that the language of the Rider indicated rent was not due and owing until a certificate of occupancy was issued. If the tenant is responsible for obtaining the certificate of occupancy, then the tenant could operate the facility without a final certificate of occupancy and have no obligation to pay rent. Something that does not make any sense.

Synergy Forest is not a party to the lease, yet it is undertaking to perform the tasks of the tenant under that agreement. There is no assignment of the lease obligations to the Synergy Forest in evidence. In spite of this, Synergy Forest at some point went into possession of the premises, began operating its "gym" business and began paying rent. All of this was clearly in violation of the law because there was never any final certificate of occupancy issued for any purpose nor was there a temporary certificate of occupancy which permitted the PCE use. The only permitted use was as a medical facility, yet the parties knowingly went into an unlawful operation and entered into a lease for a PCE prior to embarking on the Buildings Department application process.

The issue remains can the "settlement agreement" cure this. The answer is no. Merely substituting one tenant for another does not correct the fundamental problem with the lease. The lease purpose was in violation of the building code. The parties knew it and continued to flaunt the law until it became apparent that obtaining the necessary approvals was going to be more costly than envisioned.

The "settlement agreement" provides:

Synergy Forest Avenue and Tenant and their agents and representatives shall diligently and in good faith pursue completion of the BSA application process, including all commercially reasonable efforts to obtain approval from the BSA for a cultural establishment at the Premises. Any violations for use and occupancy of the Premises without appropriate BSA and any other requirements of government authority applicable shall be borne by Synergy Forest Avenue and Tenant.

There are a few problems with this clause. First is the reference to "Synergy Forest Avenue and Tenant." The "tenant" on the lease is Synergy, Inc., a non-existent corporation. So who is to perform along with Synergy Forest? Second, the clause requires Synergy Forest to obtain "approval" as a "cultural establishment." This is obviously an error because the application should be for a "physical culture establishment" and not a museum, art gallery or concert hall. The zoning regulations permit the BSA to approve this PCE use only in certain circumstances. Third, Synergy Forest is in "good faith" is to "pursue completion of the BSA application process" which is to include "all commercially reasonable efforts to obtain approval from the BSA." Synergy Forest contends that they have met this criterion and petitioner alleges that they did not do so. The requirement of a "good faith"

clause in any agreement between these parties is ludicrous in light of the fact they were perfectly willing for several years to flaunt the building code and operate without a viable certificate of occupancy.

*8 This court has previously extended the prohibitions in regard to illegal residential occupancies (MDL 302) to commercial settings and held that no rent or use and occupancy can be collected while the premises lacks a valid certificate of occupancy (995 Manor Road LLC v. Island Realty Holdings, LLC 15 misc32d 1147(A) (2007)). Because the logic for this monetary penalty is to insure that the building is safe for occupancy for its intended use, why would a court permit the public to frequent an illegal commercial establishment where the potential is for injury to a greater number of persons than in a residential situation? The Building Code establishes safety standards and it must be complied with in all situations. There was no valid certificate of occupancy for this location. The use is illegal and no rent or use and occupancy may be obtained.

The above being the case, Synergy Forest could still contract to obtain the BSA approvals. It is just that no rent may be collected during the period if the gym is being operated without a valid certificate of occupancy. Synergy Forest and the tenant could agree to pay rent and not use the premises, but that would not make any business sense.

C. Is There a Valid Guarantee?

On September 5, 2007, Anthony Reonegro signed a document entitled "Agreement of Guaranty" ... between Steven Kaplan and Kapwest Corp. ("Landlord") and Synergy Forest Avenue Inc. and Synergy Fitness NYC Limited. It should be pointed out that neither Synergy Forest nor Synergy NYC is designated as "Tenant" in this agreement. There is no record of any assignment of the lease to either of these entities. The only "tenant" is Synergy, Inc., an inactive corporation, so whose performance is being guaranteed? The personal guarantee is only effective "if the Tenant: (1) vacates the Premises located at 1268 Forest Avenue, Staten Island, New York prior to the term of the Lease, or (2) fails to perform its financial duties and obligations under the Settlement Agreement and Lease. If vacatur is caused by the failure to obtain BSA approval, this Agreement Guaranty is null and void."

Having the guaranty triggered by the tenant vacating the premises prior to the term of the lease, by which it must be concluded is meant, prior to the termination date of the lease, under these facts at a minimum violates public policy. As pointed out above, the occupancy is illegal and in violation of the certificate of occupancy. Had the court been asked to decide only this issue, it would have determined that the lease was illegal and unenforceable and ordered that the tenant vacate the premises because of that fact. Therefore it must be concluded that if whatever entity is occupying the premises for use other than that permitted in the temporary certificate of occupancy vacates the premises, there can be no breach of the agreement. The "tenant" had no legal right to occupy the premises and must vacate. Vacating under these circumstances cannot trigger liability for rent. It should be pointed out that the petitioners have agreed to accept surrender of the premises and only litigate the issue of the personal guarantee.

*9 As to the other ground for enforcing the guaranty, the failure to perform financial duties and obligations under the Settlement Agreement, the court likewise finds there is no legal basis for this. There is no valid lease, the premises cannot be legally occupied, the landlord cannot collect rent or use and occupancy so long as the premises is being occupied in violation of the certificate of occupancy. The illegal purpose of the lease makes it null and void. Likewise the tenant or any other occupant who has paid money to the landlord cannot recover such payments. The court will not resolve the disputes arising from the illegal agreement.

The guaranty is unenforceable. Neither party may use the court to seek redress of any claims in regard to the terms of the lease.

CONCLUSION:

The lease agreement is null and void. The occupancy is illegal. Neither party may use the court to enforce any claims under the terms of that agreement. The settlement agreement is null and void as is the guarantee. In addition, as a matter of public policy, neither party may enforce any claims under these agreements.

Kaplan v. Synergy, Inc., 23 Misc.3d 1123(A) (2009)

886 N.Y.S.2d 67, 2009 N.Y. Slip Op. 50902(U)

All claims and counterclaims between the parties are dismissed. Neither party may recover any monies from the other. A warrant of eviction is issued forthwith. There is no stay of execution.

All Citations

23 Misc.3d 1123(A), 886 N.Y.S.2d 67 (Table), 2009 WL 1309790, 2009 N.Y. Slip Op. 50902(U)

Footnotes

1 Hamlet, Act III, Scene 1.

End of Document

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Exhibit L

50 Conn.Supp. 28
Superior Court of Connecticut,
Complex Litigation Docket at Waterbury.

ASSURANCE COMPANY OF AMERICA et al.

v.

Andrew M. YAKEMORE et al.

No. X01 CV-04 4001224S.

I

May 9, 2005.

Synopsis

Background: Commercial tenant and tenant's insurer brought suit against landlord, town, fire district, fire officials, and others, alleging negligence, reckless conduct, and violation of Connecticut Unfair Trade Practices Act (CUTPA) in connection with fire that damaged building in which tenant leased space. Defendants moved to strike various counts.

Holdings: The Superior Court, Sheedy, J., held that:

- [1] landlord's actions amounted to a continuous course of conduct, so as to toll negligence statute of limitations;
- [2] tenant did not sufficiently allege claim against landlord for "willful, wanton and reckless" conduct;
- [3] tenant's allegations did not state CUTPA claim;
- [4] fire chief's and fire marshal's decisions were discretionary decisions for which they were immune from liability; and
- [5] tenant's allegations were sufficient to state claim against town for reckless disregard of public safety.

Motion granted in part and denied in part.

West Headnotes (29)

[1] **Pleading** ⇌ Application and proceedings thereon

A motion to strike challenges the legal sufficiency of a pleading, and, consequently, requires no factual findings by the trial court. Practice Book 1998, § 10-39(a).

[2] **Pleading** ⇌ Insufficient allegations or denials

A motion to strike tests whether the complaint states a claim upon which relief can be granted. Practice Book 1998, § 10-39(a).

failing to install sprinkler system, obtain a permanent certificate of occupancy from the town, and correct construction deficiencies so as to comply with applicable building codes was "willful, wanton and reckless conduct;" assertions in complaint were stated "upon information and belief," allegations were subject to verification, and some remedial construction in building had occurred.

[11] **Negligence** \Leftarrow Reckless conduct

In order for a person's conduct to rise to the level of "recklessness," there must be a realization by that person that his conduct involves a risk so substantial that his conduct goes beyond negligence.

[12] **Negligence** \Leftarrow Heightened degrees of negligence

While it is so that a reckless state of mind, for purposes of proving "willful, wanton and reckless conduct," can be inferred from a person's conduct, for the inference to be drawn, there must be something more than a failure to exercise a reasonable degree of watchfulness to avoid danger to others or to take reasonable precautions to avoid injury to them.

[13] **Negligence** \Leftarrow Heightened degrees of negligence

Simply using the word reckless or recklessness is not enough to allege cause of action for "willful, wanton and reckless conduct."

[14] **Limitation of Actions** \Leftarrow Consumer protection; unfair trade practices

Commercial landlord's continuous course of conduct, in failing to design, construct, operate, or maintain property in accord with basic building and fire codes, and permitting premises to be occupied without valid certificate of occupancy, tolled statute of limitations for tenant's Connecticut Unfair Trade Practices Act (CUTPA) claim against landlord for damages resulting from fire in building; above facts supported tolling of negligence statute of limitations, and there was no reason to assume the same did not apply to CUTPA statute of limitations. C.G.S.A. §§ 42-110g(f), 52-584.

2 Cases that cite this headnote

[15] **Antitrust and Trade Regulation** \Leftarrow Particular cases

Commercial tenant's allegations, in suit against landlord for damages resulting from fire in tenant's building, that landlord violated fire safety and building codes did not state Connecticut Unfair Trade Practices Act (CUTPA) claim, in the absence of allegations indicating that violations were "immoral," "unethical," "oppressive," "unscrupulous," or inimical to public policy. C.G.S.A. § 42-110a et seq.

2 Cases that cite this headnote

[16] **Antitrust and Trade Regulation** \Leftarrow Real property in general

Duties of commercial landlord to tenant were irrelevant to tenant's Connecticut Unfair Trade Practices Act (CUTPA) claim against landlord for damages resulting from fire in tenant's building; existence of a duty was not a prerequisite for the finding of a CUTPA violation, and declining to do what one was not required to do did not violate public policy. C.G.S.A. § 42-110a et seq.

Fire chief's decisions as to whether to increase water supply or pressure in fire hydrant adjacent to commercial building, whether to require that a fire hydrant be installed on the subject property, and whether to advise tenant in building of the absence of required hydrant on the premises were discretionary decisions for which he was immune from liability under Connecticut Tort Reform Act (CTRA), in tenant's negligence suit arising from fire on the premises, absent showing that his acts were willful or wanton; there was no statute or regulation that created duties to perform such actions. C.G.S.A. §§ 29-298(b), 52-557n(a)(2)(B).

[25] **Municipal Corporations** ⇌ Failure to protect private property against fire

Fire marshal's decisions as to whether to inspect commercial building for code compliance, to increase water supply or pressure in fire hydrant adjacent to building, or to take enforcement action against landlord that operated building, were discretionary decisions for which he was immune from liability under Connecticut Tort Reform Act (CTRA), in tenant's negligence suit arising from fire on the premises, absent showing that his acts were willful or wanton; there was no statute or regulation that created duties to perform such actions. C.G.S.A. §§ 29-298(b), 52-557n(a)(2)(B).

[26] **Municipal Corporations** ⇌ Failure to protect private property against fire

Statute governing liability of political subdivisions for damages to person or property permitted commercial tenant to bring direct cause of action against fire department and fire district for their alleged negligence in connection with fire in tenant's building without specifically referencing agents or employees, regardless of fact that agents or employees had immunity for their discretionary acts. C.G.S.A. § 52-557n.

[27] **Municipal Corporations** ⇌ Actions

Municipal Corporations ⇌ Application of principle of agency to municipalities

Causes of action under statute permitting direct cause of action against municipality, and under statutes requiring municipality to indemnify municipal employees under certain circumstances, are independent and are not mutually exclusive. C.G.S.A. §§ 7-308, 7-465, 52-557n.

[28] **Municipal Corporations** ⇌ Failure to protect private property against fire

Commercial tenant failed, in its complaint against fire department and fire district for damages resulting from fire in tenant's building, to provide notice to department and district of statutory basis of tenant's claim that department and district were not immune from suit; complaint did not reference statute abrogating governmental immunity, but instead referred to statutes providing for the indemnification of municipal employees, and the indemnification statutes were inapplicable because the sued fire officials were immune from liability for their discretionary decisions. C.G.S.A. §§ 7-308, 7-465, 52-557n.

[29] **Municipal Corporations** ⇌ Failure to protect private property against fire

Commercial tenant's allegations that town failed to enforce code provisions, permitted occupancy of building without permanent certificate of occupancy, and permitted fire hydrant to be without an adequate water supply, were sufficient to state claim against town for reckless disregard of public safety, in tenant's suit for damages resulting from fire in the building, where town's building department retained engineer who discovered code violations, issued stop work order on basis of violations, and issued temporary certificate of occupancy without violations having been cured.

Yakemore revocable trust, Richard Paquette as building official for the town, the town itself for indemnification of its employees as well as for its own recklessness, Michael Juda as fire chief of the Simsbury fire department, the Simsbury fire department, Kevin Kowalski as fire marshal for the Simsbury fire district, and the Simsbury fire district. All the defendants have moved to strike certain of the counts to which the plaintiffs have objected. The parties have fully briefed the issues and have waived oral argument in consenting to the court's adjudication of each of the three motions on the papers.

APPLICABLE LAW

[1] [2] [3] [4] [5] [6] [7] [8] "A motion to strike challenges the legal sufficiency of a pleading, and, **782 consequently, requires no factual findings by the trial court." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003). It tests whether the complaint states a claim upon which relief can be granted. Practice Book § 10-39(a); *Vacco v. Microsoft Corp.*, 260 Conn. 59, 65, 793 A.2d 1048 (2002). The trial court's role is to examine the complaint and construe it in favor of the pleader. *Suffield Development Associates Ltd. Partnership v. National Loan Investors, L.P.*, 260 Conn. 766, 772, 802 A.2d 44 (2002). Specifically, the court must "assume the truth of both the specific factual allegations and any facts fairly provable *32 thereunder" and "read the allegations broadly, rather than narrowly." *Craig v. Driscoll*, 262 Conn. 312, 321, 813 A.2d 1003 (2003). The requirement of favorable construction does not extend, however, to legal opinions or conclusions stated in the complaint but only to factual allegations and the facts "necessarily implied and fairly provable under the allegations." (Internal quotation marks omitted.) *Forbes v. Ballaro*, 31 Conn.App. 235, 239, 624 A.2d 389 (1993). The motion is to be tested by the allegations of the pleading, which cannot be enlarged by the assumption of any facts not alleged therein. *Alarm Applications Co. v. Simsbury Volunteer Fire Co.*, 179 Conn. 541, 549-50, 427 A.2d 822 (1980). "If any facts provable under the express and implied allegations [of the] complaint support a cause of action ... the complaint is not vulnerable to a motion to strike." *Bouchard v. People's Bank*, 219 Conn. 465, 471, 594 A.2d 1 (1991). "A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." *Fidelity Bank v. Krenisky*, 72 Conn.App. 700, 720, 807 A.2d 968, cert. denied, 262 Conn. 915, 811 A.2d 1291 (2002); *Donar v. King Associates, Inc.*, 67 Conn.App. 346, 349, 786 A.2d 1256 (2001).

FIRST, SECOND, FOURTH, TWENTIETH, TWENTY-SECOND, TWENTY-THIRD, TWENTY-FIFTH AND TWENTY-EIGHTH COUNTS (MOTION TO STRIKE FILED BY DEFENDANTS ANDREW AND EDITH YAKEMORE)

[9] Counts one and twenty-two assert causes of action in negligence¹ against the named defendant by his failure to design, construct, operate or maintain the property in accord with basic building and fire codes and by permitting the premises to be occupied without a *33 valid certificate of occupancy. The named defendant and his wife claim that the allegations are legally insufficient because they are beyond General Statutes § 52-584, the applicable statute of limitations. Section 52-584, applicable to both the negligence and recklessness claims, provides in pertinent part that an action must be brought "within two years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered, and except that no such action may be brought more than three years from the date of the act or omission complained of" The defendants argue that, because the negligent acts complained of occurred between the years 1983 and 1986 and because the present action was not brought until May 25, 2004, the negligence causes of action are time barred. The plaintiffs object, claiming that the named defendant engaged in a continuous course of conduct and that, **783 therefore, the statute was tolled under *Johnson v. North Branford*, 64 Conn.App. 643, 781 A.2d 346, cert. denied, 258 Conn. 926, 783 A.2d 1028 (2001). Our Supreme Court, in *Witt v. St. Vincent's Medical Center*, 252 Conn. 363, 370, 746 A.2d 753 (2000), enunciated a three-prong

twenty-nine of the first count and paragraph twenty-seven of the twenty-second count (incorporated in counts two and twenty-three) make clear that noncombustible fire walls *were* constructed, although they may, in fact, have been inadequate. Counts two and twenty-three do not assert conduct sufficiently different in degree from the negligent conduct elsewhere asserted to support a conclusion that the named defendant made a conscious choice to do as he did either with knowledge of the serious danger that conduct posed to others or with knowledge of such facts that would disclose to any reasonable person the serious danger to others. The motion to strike counts two and twenty-three is, therefore, granted.

[14] The defendants next argue that the Connecticut Unfair Trade Practices Act (CUTPA) claims asserted in counts four, twenty, twenty-five, and twenty-eight should be stricken because first, they are time barred by the three year *37 statute of limitations of General Statutes § 42-110g(f), and, second, the third prong of the "cigarette rule" is not met here. As to the first argument, the defendants correctly cite language in Fichera v. Mine Hill Corp., 207 Conn. 204, 541 A.2d 472 (1988), to the effect that the language of this statute "precludes any construction thereof delaying the start of the limitation period until the cause of action has accrued or the injury has occurred." **785 Id., at 212, 541 A.2d 472.³ The problem for this court is that Fichera was decided on the basis of that court's analysis in 1988 of the legislative intent in enacting the personal injury statute of limitations contained in § 52-584. Citing Kennedy v. Johns-Marville Sales Corp., 135 Conn. 176, 62 A.2d 771 (1948), the Fichera court noted our Supreme Court had previously held that "even where the wrongful act could not reasonably have been discovered until after the statute had run, any action seeking damages for such an 'act or omission' was barred." Fichera v. Mine Hill Corp., *supra*, at 213, 541 A.2d 472. The court concluded any difference in language in the textual context of § 52-584 and § 42-110g(f) was of no consequence there and found that there was no tolling of the statute under the circumstances presented there. Id. That ignores, however, our Supreme Court's holding in Witt, that, under certain conditions, the statute of limitations in § 52-584 may be tolled. Moreover, since this court has concluded earlier that the facts asserted permit a finding of a continuous course of conduct with regard to the negligence claims and since no reason exists to conclude that the same is not applicable to a *38 CUTPA claim, the court rejects the defendants' first argument.

[15] [16] [17] [18] [19] [20] [21] [22] [23] Under this state's "cigarette rule," recognized by the Federal Trade Commission in enforcing the federal statute on which CUTPA is modeled, courts must consider: "(1) [W]hether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise-whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; [and] (3) whether it causes substantial injury to consumers [competitors or other businessmen]." (Internal quotation marks omitted.) Jacobs v. Healey Ford-Subaru, Inc., 231 Conn. 707, 725, 652 A.2d 496 (1995). The defendants focus on the third strand of this test for "unfairness" in arguing that, to satisfy this third prong of the inquiry, the injury must not only be substantial but "also must not be outweighed by any countervailing benefits to consumers or competition that the practice produces" (Internal quotation marks omitted.) Williams Ford, Inc. v. Hartford Courant Co., 232 Conn. 559, 592, 651 A.2d 212 (1995). The argument fails to recognize that "[a]ll three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three." (Internal quotation marks omitted.) Fink v. Golenbock, 238 Conn. 183, 215, 680 A.2d 1243 (1996). They alternatively claim, however, that no determination with regard to these CUTPA counts can be made here because, in no one of these counts do the plaintiffs set forth how or in what respect the alleged activities are "immoral" or "unethical" or "oppressive" or "unscrupulous" nor do any of these counts assert in what way(s) the defendants' actions *39 are inimical to this state's **786 public policy. The purpose of a pleading is to put the defendant on notice of the specific claims to be argued at trial. The pattern established in the revised complaint is the assertion, in the negligence counts, of various violations of this state's Fire Safety and Basic Building Codes and then to assert, in subsequent counts, the same violations-without more-as both recklessness and CUTPA violations. Allegations of negligence alone are insufficient to support a CUTPA claim. See A-G Foods, Inc. v. Pepperidge Farm, Inc., 216 Conn. 200, 214-17, 579 A.2d 69 (1990); Thames River Recycling, Inc. v. Gallo, 50 Conn.App. 767, 784-86, 720 A.2d

be held personally liable for any damage to persons or property that may result from any action that is required or permitted in the *42 discharge of his official duties while acting for a municipality or fire district.... No such fire marshal, deputy fire marshal, fire inspector or other inspector or investigator may be held responsible for or charged with the costs of any such legal proceeding. Any officer of a local fire marshal's office, if acting without malice and in good faith, shall be free from all liability for any action or omission in the performance of his official duties."

Section 7-308(b) provides in pertinent part: "Each municipality of this state ... shall pay on behalf of any paid or volunteer fireman ... of such municipality all sums which such fireman ... becomes obligated to pay by reason of liability imposed upon such fireman ... by law for damages to person or property, if the fireman ... at the time of the occurrence ... was performing fire ... duties and if such occurrence ... was not the result of any wilful or wanton act of such fireman ... in the discharge of such duties"

Section 7-308(b) further provides that "[n]o action for personal injuries or damages ... shall be maintained against such municipality and fireman unless ... commenced within one year after the cause of action therefor arose and notice of the intention to commence such action ... has been filed ... [with the] municipality and with the fireman within six months after [the] cause of action has accrued.... Governmental immunity shall not be a defense in any action brought under this section...."

At common law, a municipality was generally immune from liability for its tortious acts. **788 *Conway v. Wilton*, 238 Conn. 653, 672, 680 A.2d 242 (1996). General Statutes § 52-557n both codified and modified the common law of municipal and municipal employee liability and immunity as part of the original Connecticut Tort *43 Reform Act. Section 52-557n(a)(2)(B) provides in relevant part that, except as otherwise provided by law, a political subdivision of the state shall not be liable for damages to person or property caused by "negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law." See also *Elliott v. Waterbury*, 245 Conn. 385, 411, 715 A.2d 27 (1998). The traditionally employed distinction is as between "governmental" acts, which are performed wholly for the direct benefit of the public and are supervisory or discretionary in nature, and "ministerial" acts, which are performed in a prescribed manner without the exercise of judgment or discretion as to the propriety of the action. *Hammon v. Waterbury*, 106 Conn. 13, 17, 136 A. 876 (1927); *Kolaniak v. Board of Education*, 28 Conn.App. 277, 280, 610 A.2d 193 (1992).

[24] Negligence in failing to enforce properly applicable statutes, regulations, and/or codes, to make reasonable and proper inspections of a multi-family rental unit for fire safety hazards, and to prescribe remedial action to be taken by owners were "acts ... [that] required in some measure the exercise of judgment by a municipal employee" and "were not ministerial." *Evon v. Andrews*, 211 Conn. 501, 507, 559 A.2d 1131 (1989). While it is so that statutes, regulations, and policies *can* create ministerial duties, when they relate to fire, police, or other public safety services, they are most often held to create discretionary duties. See, e.g., *Evon v. Andrews*, *supra*, at 505, 559 A.2d 1131; *Gordon v. Bridgeport Housing Authority*, 208 Conn. 161, 169—70, 544 A.2d 1185 (1988); *Shore v. Stonington*, 187 Conn. 147, 153, 444 A.2d 1379 (1982); *Sestito v. Groton*, 178 Conn. 520, 527, 423 A.2d 165 (1979); *Stiebitz v. Mahoney*, 144 Conn. 443, 446, 134 A.2d 71 (1957); *Alexander v. Vernon*, Superior Court, Complex Litigation Docket at Tolland, Docket No. X07 CV-02 0078935S, 2004 WL 1098773 (May 3, 2004) (Sferrazza, J.). Thus, governmental *44 immunity attaches absent an applicable exception to the qualified immunity of municipal agents engaged in discretionary acts. While the plaintiffs here do not claim an exception, they argue the acts at issue are ministerial under *Kolaniak v. Board of Education*, *supra*, 28 Conn.App. at 277, 610 A.2d 193. The court concluded there that the determination as to when to clear a sidewalk was ministerial—not discretionary—based upon a bulletin previously issued to school custodians and maintenance persons that school walkways were to be inspected and kept clean on a daily basis and, further, that while on duty, it was the duty of those maintenance personnel and custodians to keep the walkways clear of ice and snow. There was no evidence that the subject walkway had been shoveled, salted or sanded prior to the student's fall. The court rejected the

immunity because that is a defense available only to the municipal employee in the exercise of his or her governmental duties.

Id., at 37, 818 A.2d 37.

[28] There is here, however, an anomaly. The plaintiff in *Spears* (as these plaintiffs) failed to cite in her complaint a statute which abrogated governmental immunity; in her memorandum in opposition to the motion for summary judgment, however, she argued on the basis of § 52-577n. Although only in passing, the plaintiffs here reference § 52-577n in their memorandum—but they do so only as a statement of the court's holding in *Spears*. No analysis or argument that § 52-577n is applicable here is advanced. Were these facts the only facts available, it would be a closer call regarding whether counts fifteen and seventeen should survive a motion to strike. Yet, not only does the complaint not reference § 52-577n, but it specifically references §§ 7-308 and 7-465; statutes providing for the indemnification of municipal employees. The inclusion of those statutory references, together with the plaintiffs' failure to argue on the basis of § 52-577n, require the conclusion that there is not any notice to the defendants that the plaintiffs intended to rely on § 52-577n here. Further, the inclusion of those references support the defendants' *48 argument that, because a municipality or political subdivision can act only through its agents or employees, and because this court has determined that the specific conduct asserted as to Juda and Kowalski constitute discretionary acts, these counts are legally insufficient. Counts fifteen and seventeen are, therefore, stricken.

Count sixteen asserts that the Simsbury fire department was reckless in the ways alleged in count fifteen and discussed previously; count eighteen alleges that the Simsbury fire district was reckless in the ways asserted in count seventeen and discussed previously. For the reasons stated herein with regard to counts fifteen and seventeen and for the reasons herein advanced with regard to counts two and twenty-three directed to codefendant Yakemore, counts sixteen and eighteen are stricken. In order to infer recklessness, **791 "there must be something more than a failure to exercise a reasonable degree of watchfulness to avoid danger to others or to take reasonable precautions to avoid injury to them.... [S]uch ... conduct tends to take on the aspect of highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger is apparent." (Internal quotation marks omitted.) *Elliott v. Waterbury*, 245 Conn. 385, 415, 715 A.2d 27(1998). These defendants' motion to strike is, therefore, granted in its entirety.

COUNTS SIX, SEVEN, EIGHT, AND TWENTY-ONE (MOTION TO STRIKE FILED BY DEFENDANTS PAQUETTE AND THE TOWN)

Paquette is identified only as a "building official" employed by the town of Simsbury. Count six of the revised complaint alleges his negligence in failing to: enforce certain provisions of this state's Building and Fire Safety Codes; failing to require the named defendant to install a fire hydrant on the premises so as to ensure an adequate flow of water from the street fire hydrant *49 to this property; failing to inspect (or inadequately inspecting) the property at issue when he had notice of violations of the referenced codes; and, failing to cure those violations. The complaint further alleges his negligence in permitting the named defendant to operate and lease the premises that Paquette knew were in violation of the codes and without a permanent certificate of occupancy, in permitting work to continue on the property when a stop work order had issued, and in creating a high risk of harm to these plaintiffs by failing to enforce the referenced codes. Count seven alleges that the town of Simsbury is liable to indemnify Paquette for his alleged negligent acts under § 7-465.

The defendants have moved to strike these counts as beyond the statute of limitations and/or repose of § 52-584. The plaintiffs have objected and claim that the statute is tolled because a continuous course of conduct is pleaded. An examination of the allegations of negligence in paragraph thirty-five of count six makes clear that the allegations of negligence relate back to at least as early as 1985 and continued until April 23, 2003, when the fire occurred. Incorporated herein is this court's analysis provided with regard to adjudication of counts one and twenty-two as directed to the named defendant. Assuming as it must the truth of the factual allegations of paragraph thirty-five of count six and construing them broadly for the purpose of this motion, the court must deny the defendants' motion to strike counts six and seven. ⁶

- 4 Neither party has raised the issue of the internal statute of limitations imposed by General Statutes § 7-308(b) and the court finds it unnecessary to address that issue given the adjudication regarding these counts.
- 5 Our Supreme Court, in Spears v. Garcia, 263 Conn. 22, 32, 818 A.2d 37 (2003), in recognizing a direct action against a municipality, concluded a cause of action under § 52-557n and a cause of action (for indemnity) under §§ 7-308 or 7-465 were independent causes of action and not mutually exclusive.
- 6 These defendants have also chosen not to file a reply to the plaintiffs' memorandum in opposition despite the governing case management order permitting them to do so.

End of Document

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Exhibit M

KeyCite Yellow Flag - Negative Treatment
Called into Doubt by Lower Southampton Twp v Dixon Pa.Cmwth., July 17, 2000

690 A.2d 842
Commonwealth Court of Pennsylvania.

COMMONWEALTH of Pennsylvania
v.
Norman and Susan MARCUS, Appellants.

Argued June 13, 1996.

I
Decided March 10, 1997.

Synopsis

Landowners appealed from order of the Court of Common Pleas, Montgomery County, No. 07085-92, Tressler, J., imposing fine for their failure to comply with terms and conditions of approved building permit and site plan. The Commonwealth Court, No. 2467 C.D. 1995, Mirarchi, Jr., Senior Judge, held that: (1) trial court had authority to take judicial notice of relevant provisions of Building Official and Code Administrators (BOCA) Building Code; (2) township was authorized to enforce terms and conditions of properly approved permitted site plan before issuing permanent certificate of occupancy; (3) grading and erosion control measures required under site plan could be enforced after completion of construction; and (4) zoning ordinance requiring all work to conform to building permit and site plan was not constitutionally vague as applied.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (13)

[1] Zoning and Planning - Review

Commonwealth Court's scope of review of trial court's decision in zoning enforcement proceeding is limited to determining whether trial committed abuse of discretion or error of law.

2 Cases that cite this headnote

[2] Evidence - Local laws and ordinances

Trial court had authority in zoning enforcement proceeding to take judicial notice of relevant provisions of Building Official and Code Administrators (BOCA) Building Code that had been adopted by township ordinance, where counsel for Commonwealth submitted trial memorandum to trial court at beginning of hearing setting forth sections of BOCA Code adopted by township. 42 Pa.C.S.A. § 6107(a).

3 Cases that cite this headnote

[3] Evidence - Local laws and ordinances

Statute permitting municipal ordinances to be judicially noticed is intended to remove any discretion of court in determining whether to take judicial notice for ordinance and provide court with authority to take whatever steps it deems necessary to apply ordinance. 42 Pa.C.S.A. § 6107(a).

[4] Municipal Corporations \Rightarrow Evidence

To prove violation of ordinance, municipality need only offer evidence of facts establishing that violation occurred.

1 Cases that cite this headnote

[5] Evidence \Rightarrow Proceedings for Taking Judicial Notice

Counsel has obligation under statute governing notice of municipal ordinances to take initiative in requesting judicial notice of ordinance by making ordinance available to court. 42 Pa.C.S.A. § 6107(a).

1 Cases that cite this headnote

[6] Criminal Law \Rightarrow Trial de novo

Rules of Criminal Procedure governing omnibus pretrial motions are inapplicable to de novo summary appeal. Rules Crim.Proc., Rule 306, 42 Pa.C.S.A.

2 Cases that cite this headnote

[7] Zoning and Planning \Rightarrow Power and duty to enforce

Township was authorized to enforce terms and conditions of properly approved permitted site plan before issuing permanent certificate of occupancy under standards set forth in ordinance adopted after building permit and site plan were approved, where landowners failed to comply with permit and site plan even after they were directed to do so by township in temporary certificate of occupancy and subsequent enforcement notice. 53 P.S. § 10617.

[8] Zoning and Planning \Rightarrow Mode of enforcement and proceedings in general

Defendants in zoning enforcement proceeding are afforded same protection as criminal defendants under Pennsylvania Rules of Criminal Procedure. 53 P.S. § 10617.2.

2 Cases that cite this headnote

[9] Zoning and Planning \Rightarrow Power and duty to enforce

Grading and erosion control measures required under site plan could be enforced after completion of construction, where landowners' failure to seed or sod exposed areas resulted in erosion and sedimentation; landowners' duty under site plan did not disappear, but continued until they complete required measures.

[10] Zoning and Planning \Rightarrow Validity of regulations in general

When constitutionality of zoning ordinance is challenged, there is presumption that ordinance is valid.

1 Cases that cite this headnote

[11] Zoning and Planning *vs* Regulations in general

Party challenging validity of zoning ordinance has heavy burden of proving that ordinance is unconstitutional.

1 Cases that cite this headnote

[12] Constitutional Law *vs* Zoning, planning, and land use

Zoning ordinance is unconstitutionally vague when persons of common intelligence must guess its meaning.

1 Cases that cite this headnote

[13] Constitutional Law *vs* Zoning, planning, and land use

Zoning and Planning *vs* Maps, plats, and plans; subdivisions

Zoning ordinance requiring all work to conform to building permit and site plan was not unconstitutionally vague as applied to landowners who failed to pave driveway and stabilize all exposed areas with sod, seeding and soil supplements, as required by site plan. Abington Township (PA) Ordinance 113.3.

Attorneys and Law Firms

*843 Michael J. McCaney, Jr., Blue Bell, for appellants.

R. Rex Herder, Jr., Willow Grove, for appellee.

Before PELLEGRINI and FRIEDMAN, JJ., and MIRARCHI, Jr., Senior Judge.

Opinion

MIRARCHI, Jr., Senior Judge.

Norman and Susan Marcus (Marcuses) appeal from an order of the Court of Common Pleas of Montgomery County imposing a fine for their failure to comply with the terms and conditions of the approved building permit and site plan.

The Marcuses are the owners of the property located at 1696 Stocton Road, Abington Township (Township), Montgomery County. On July 28, 1987, the Marcuses submitted an application for a building permit to construct a single-family dwelling on their property. In the site plan attached to the application, the Marcuses set forth fourteen items of grading and erosion measures. Item No. 12 of those measures stated:

Paved [sic] proposed driveway and stabilize all exposed areas with sod and/or seeding and soil supplements, PennDOT Formula B. Protect seeded areas with hay or mulch covering. Slopes greater than 3 to 1 shall be peg sodded, hydroseeded and/or seeded and protected with Erosion Control Netting.

On July 31, 1987, the Township approved the application and the site plan, subject to conditions that "soil erosion devices" must be used during construction and that "Contractor's Notes" attached to the permit must be carefully followed. Paragraph 4 of the Contractor's Notes stated: "At the completion of construction, the pervious areas of the property must be planted with

grass seed, sod or a suitable vegetative cover to prevent erosion and sedimentation.... The contractor is responsible to provide erosion control devices."

The Marcuses began the construction in the summer of 1989. On October 19, 1990, the Township issued a temporary certificate of occupancy, setting forth four items to be completed before a permanent certificate of occupancy can be issued: (1) driveway paving; (2) removal of all dead trees and wood; (3) patching of fireplaces with cement; and (4) grading and landscaping. On June 13, 1991, the Township Code enforcement officer sent the Marcuses an enforcement notice by certified mail, stating that they must complete the items noted in the temporary certificate of occupancy by June 30, 1991, and that upon their failure to do so, the Township would issue a citation for violating the various provisions of the Township Code. The *844 Marcuses did not respond to the enforcement notice. Nor did they appeal the notice to the Township Zoning Hearing Board, as advised in the notice.

On October 3, 1991, the Code enforcement officer issued a second enforcement notice, directing the Marcuses to complete the items noted in the temporary certificate of occupancy by October 31, 1991. The notice stated that they must pave the driveway and seed or sod the property pursuant to the approved site plan. In a letter dated October 18, 1991, the Marcuses responded that they were not required to seed or sod because the grading and erosion control measures under the site plan are the items to be done only during construction.

When the Marcuses failed to complete the work as directed despite one more extension of the deadline, the Township on May 15, 1992 issued a citation for their failure to grade and seed or sod the property as required by the permit and the site plan in violation of Sections 111.6, 113.3, 113.4, 113.5 and 119.1 of the BOCA Basic/National Building Code/1984, Ninth Edition (BOCA Code) adopted by the Township Ordinance 1629 (Ordinance).¹

Under Section 111.6, an applicant for a building permit must submit a site plan showing to scale the size and location of a new construction and all existing structures, street grades and proposed finished grades. Further, "[a]ll work shall conform to the approved application and plans for which the permit has been issued and any approved amendments thereto." Section 113.3. Finally, a certificate must be obtained from the Township before using or occupying a new building or structure. Section 119.1.

[1] On July 2, 1992, the Township filed with the district justice the citation issued on May 15, 1992.² Following a hearing, the district justice found that the Marcuses violated the Ordinance as charged and imposed a fine in the amount of \$1000 and costs. On appeal, the trial court found, after a de novo trial, that the Marcuses failed to seed or sod the exposed areas as required by the permit and the site plan in violation of Section 113.3 of the Ordinance and imposed a fine in the amount of \$3900: \$1000 for the first day of violation, plus \$100 for each additional day of violation for twenty-nine days. The Marcuses' appeal to this Court followed.³

[2] The Marcuses first contend that the trial court did not have authority to take judicial notice of the relevant provisions of the BOCA Code because the Commonwealth failed to submit a copy of the provisions of the Ordinance and authenticate it at the hearing.

[3] Section 6107(a) of the Judicial Code, 42 Pa.C.S. § 6107(a), provides that "[t]he ordinances of municipal corporation of this Commonwealth shall be judicially noticed." (Emphasis added.) Further, "[t]he tribunal may inform itself of such ordinances in such manner as it may deem proper and the tribunal may call upon counsel to aid it in obtaining such information." 42 Pa.C.S. § 6107(b). Section 6107 of the Judicial Code is intended to remove any discretion of the court in determining whether to take judicial notice of an ordinance and provide the court with the authority to take whatever steps it deems necessary to apply an ordinance. *Dream Mile Club, Inc. v. Tobyhanna Township*, *845 *Board of Supervisors*, 150 Pa.Cmwlth. 309, 615 A.2d 931 (1992).

[4] [5] To prove a violation of an ordinance, the municipality need only offer evidence of facts establishing that the violation occurred. *Providence Builders, Inc. v. Commonwealth*, 89 Pa.Cmwlth. 316, 492 A.2d 488 (1985). However, counsel has an obligation under Section 6107 to take the initiative in requesting judicial notice of an ordinance by making the ordinance available to the court. *Dream Mile*.

In *Providence*, this Court noted that the ordinance was brought to the trial court's attention when the counsel had it marked as an exhibit and authenticated it by the zoning officer. However, the method used in *Providence* is not the only way of aiding the court in obtaining the relevant ordinance under Section 6107, as the Marcuses seem to suggest.

In the matter *sub judice*, the counsel for the Commonwealth submitted a trial memorandum to the trial court at the beginning of the hearing, setting forth Sections 111.6, 113.3, 113.4, 113.5, and 119.1 of the BOCA Code adopted by the Township and Section 117.4 of the Ordinance. Thus, the counsel fulfilled his obligation to aid the trial court in obtaining the relevant provisions of the Ordinance. Hence, the trial court properly took judicial notice of the Ordinance with the aid of the counsel, pursuant to Section 6107 of the Judicial Code.

[6] The Marcuses next contend that the imposition of the fine should be vacated because the BOCA Code was adopted on May 14, 1989 after they obtained the Township's approval of the building permit and site plan on July 31, 1987. The Commonwealth contends, on the other hand, that the Marcuses waived the issue because they failed to raise it before the trial court. Although the issue was not raised by the Marcuses in their trial memorandum and during the trial, we will address the issue because the trial court in its opinion disposed of the issue.⁴

[7] The Marcuses argue that the Commonwealth failed to establish the *standards* applicable when the Township approved their application for the building permit and the site plan. In so arguing, however, the Marcuses do not dispute that they were required to obtain the Township's approval of the permit and the site plan under the specific standards set forth in the Ordinance then in effect. Further, they do not challenge the terms and conditions of the approved permit and site plan or their obligation to comply with them. Thus, the relevant issue is not whether the Township may impose new *standards* under the ordinance enacted after the issuance of the permit, but whether the Township was authorized to enforce the terms and conditions of the properly approved permit and site plan before issuing a permanent certificate of occupancy under the applicable ordinance.

[8] Under Section 617 of the Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. § 10617, the municipality may institute *any* appropriate action or proceeding to prevent, correct or abate a building constructed in violation of any ordinance. *Township of Little Britain v. Lancaster County Turf Products, Inc.*, 146 Pa.Cmwlth. 211, 604 A.2d 1225 (1992).⁵ Under Section 117.4 of the Ordinance, which was last amended on November *846 10, 1988 before the Marcuses began the construction, any person who constructs a building in violation of an approved permit or plan is liable for fines and penalties not exceeding \$1000 for each day of the violation.

It is undisputed that the Marcuses failed to comply with the permit and the site plan even after they were directed to do so by the Township in the temporary certificate of occupancy issued in October 1990 and the subsequent enforcement notices. The Township was therefore authorized to commence a proceeding to enforce the terms and conditions of the approved permit and site plan before issuing a permanent certificate of occupancy.

[9] The Marcuses nonetheless argue, based on their own interpretation of the site plan, that the grading and erosion control measures were only temporary measures to be taken during the construction, and that the Township therefore may not enforce them after completion of the construction. The purpose of the measures set forth in Item No. 12 of the site plan was to "stabilize all exposed areas." The trial court found that their failure to seed or sod the exposed areas resulted in the erosion and sedimentation. As the trial court aptly stated, the Marcuses' duty under the site plan "does not disappear, but continues" until they complete those measures. Trial Court's Opinion, p. 5.

[10] [11] [12] The Marcuses further contend that the relevant provisions of the Ordinance are unconstitutionally vague. When the constitutionality of a zoning ordinance is challenged, there is a presumption that the ordinance is valid. *St. Margaret Memorial Hospital v. Borough Council of Borough of Aspinwall*, 163 Pa.Cmwlth. 595, 641 A.2d 1270 (1994). The party challenging the validity of the ordinance has a heavy burden of proving that the ordinance is unconstitutional. *Id.* An ordinance is unconstitutionally vague when persons of common intelligence must guess its meaning. *Farley v. Zoning Hearing Board of Lower Merion Township*, 161 Pa.Cmwlth. 229, 636 A.2d 1232 (1994), *appeal denied*, 539 Pa. 658, 651 A.2d 544 (1994).

[13] The trial court found that the Marcuses violated Section 113.3 of the Ordinance requiring that all work must conform to the approved building permit and site plan. It is undisputed that the Marcuses were aware that the site plan specifically required them to pave the driveway and stabilize all exposed areas with sod, seeding and soil supplements, PennDOT Formula B. Therefore, we reject the Marcuses' contention that the requirements set forth in the Ordinance are unconstitutionally vague.

Finally, the Marcuses contend that the evidence in the record does not establish any erosion and sedimentation occurred on their property. However, the question of whether any erosion or sedimentation has actually occurred is not determinative of the issue of the Marcuses' failure to comply with the permit and the site plan. Moreover, the trial court accepted as credible the testimony of the Marcuses' neighbor and the photographs presented by the Commonwealth and found that the erosion and sedimentation actually took place on their property.

Accordingly, the order of the trial court is affirmed.

ORDER

AND NOW, this 10th day of March, 1997, the order of the Court of Common Pleas of Montgomery County in the above-captioned matter is affirmed.

All Citations

690 A.2d 842

Footnotes

- ¹ The BOCA Code is published by the Building Officials and Code Administrators International, Inc. Most part of the 1984 version of the BOCA Code was adopted by Ordinance 1629 on May 14, 1989, replacing the 1978 version of the BOCA Code from the Township Code. Section 2 of Ordinance 1629 lists the deletion, addition and other changes made to the Township Code. Sections 111.6, 113.3, 113.4, 113.5 and 119.1 are not among the changes made to the Township Code.
- ² After the issuance of the citation, the Township and the Marcuses reached an agreement, under which the Marcuses agreed to complete ground covering and landscaping by June 30, 1992. When the Marcuses failed to complete the work by the deadline, the Township filed the citation with the district justice.
- ³ This Court's scope of review of the trial court's decision in a zoning enforcement proceeding is limited to determining whether the trial court committed an abuse of discretion or an error of law. *Baker v. Commonwealth*, 135 Pa.Cmwlth. 597, 581 A.2d 1019 (1990).
- ⁴ The trial court held that the Marcuses waived the issue due to their failure to raise it in an omnibus pretrial motion. In a criminal case, a claim that an indictment or an information is defective is waived, if not raised in an omnibus pretrial motion filed pursuant to Pa. R.Crim.P. 306. *Commonwealth v. Gemelli*, 326 Pa. Superior Ct. 388, 474 A.2d 294 (1984). However, the Pennsylvania Rules of Criminal Procedure governing omnibus pretrial motions are inapplicable to a de

novo summary appeal. *Department of Environmental Resources v. Blosenski Disposal Services*, 110 Pa.Cmwlth. 194, 532 A.2d 497 (1987), *aff'd*, 523 Pa. 274, 566 A.2d 845 (1989).

- 5 Under Section 617.2 of the MPC, added by Section 62 of the Act of December 21, 1988, P.L. 1329, 53 P.S. § 10617.2, a zoning enforcement proceeding is now civil rather than criminal. However, the defendants in such proceeding are afforded the same protection as the criminal defendants under the Pennsylvania Rules of Criminal Procedure.

Commonwealth v. Harchelroad, 154 Pa.Cmwlth. 259, 623 A.2d 878 (1993), *appeal denied*, 535 Pa. 649, 633 A.2d 153 (1993).

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Exhibit N

2 Brook. J. Corp. Fin. & Com. L. 511

Brooklyn Journal of Corporate, Financial & Commercial Law
Spring, 2008

Note

Seth Pruss^{al}

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***511 BUYER BEWARE: TEMPORARY CERTIFICATES OF OCCUPANCY & THE NEED FOR CONSUMER PROTECTION IN THE NEW YORK CITY REAL ESTATE MARKET**

INTRODUCTION

Seventy-two people thought that they were buying a piece of the American dream in Brooklyn, New York.¹ They had found brand new luxury apartments at prices low enough to make homeownership a reality.² But their American dream soon turned upside-down. Due to building code violations and certain misrepresentations to the New York City Department of Buildings (the Department of Buildings), the developer who sold the units with temporary Certificates of Occupancy (TCOs) was unable to acquire the necessary final Certificates of Occupancy for any of the buildings.³ The new homeowners found themselves unable to sell or refinance their units, but staying in the building meant violating New York law and being subject to a vacate order from the City.⁴

Most of these homebuyers had probably never heard of a Certificate of Occupancy, which is a document issued by the local building department that declares a building is habitable and complies with all local and state building codes.⁵ Many municipalities, including New York City, issue TCOs so that homebuyers can move into their new homes while the developer completes the cosmetic details of construction.⁶ However, TCOs are only valid for a short period of time, and if the developer does not obtain the final Certificate of Occupancy or extend the TCO before it expires, occupying the building becomes a violation of the New York City Administrative Code (NYCAC) and any occupants are subject to a vacate order.⁷ If these homebuyers were like most people, when and if their attorneys explained to them the possible repercussions of buying real estate with a TCO, their eyes probably glazed over as they thought, "that is the developer's responsibility, not mine." Even if they understood the possible consequences of purchasing a home with a TCO, it is likely that there was *512 still very little they could do about it, other than walk away from their dream apartments.

This note proposes the need for consumer protection to guarantee that real estate developers secure final Certificates of Occupancy for homebuyers. The Department of Buildings must ensure that developers who breach their contracts with homebuyers by allowing TCOs to lapse are restricted from receiving new building permits without first obtaining any outstanding final Certificates of Occupancy.

Part I of this note provides a brief overview and history of final Certificates of Occupancy and TCOs in New York City. Part II explores how and why homebuyers can be stranded without a final Certificate of Occupancy. Part III looks at the current liabilities of the mortgage lender, the homebuyer's attorney, and the developer and also examines the appropriateness and repercussions of increasing those liabilities. Finally, Part IV analyzes some possible solutions to the problem and proposes the suspension of the issuance of permits to offending developers.

I. CERTIFICATES OF OCCUPANCY AND TEMPORARY CERTIFICATES OF OCCUPANCY

Many states and municipalities, including New York City, require building owners to keep a Certificate of Occupancy on file with the local buildings department.⁸ A Certificate of Occupancy is a document that states that the property is habitable and complies with all local and state building codes.⁹ The Department of Buildings defines a Certificate of Occupancy as "[t]he key document used to certify the legal use and occupancy of a building [that] describes how a building may be occupied, for example, a two-family home, a parking lot, a 40-unit multiple dwelling, or a store."¹⁰ According to a spokesperson for the Department of Buildings, the City enacted the Certificate of Occupancy requirement in 1938, and buildings built before then may not have one.¹¹ However, even buildings built before 1938 need a Certificate of Occupancy if there has been any post-1938 construction that resulted in a "change of use, egress, or occupancy."¹²

Under the New York City Administrative Code, a building can not be legally occupied without a Certificate of Occupancy, and the City does not issue final Certificates of Occupancy until a building "conforms substantially to the approved plans and the provisions of [the] code and *513 other applicable laws and regulations."¹³ Because of these regulations, a lag time developed between when a residential building or house was safe for occupancy and when the sale could close and the building be legally occupied.¹⁴ Some of the requirements for obtaining a Certificate of Occupancy were deemed "cosmetic" rather than safety related and could be delayed by things as trivial as the weather.¹⁵ In many cases, "[t]he only items that remained to be completed might be things like sodding of the lawn or pavement of the street to the curb in front of the house."¹⁶ In 1985 the New York City Council decided that it was "not fair to postpone the closing owing to items beyond control of the parties."¹⁷ To solve the problem, the City Council amended the Administrative Code to permit the issuance of TCOs when occupancy would "not endanger public safety, health, or welfare."¹⁸

According to the Department of Buildings, a TCO "means that while the Buildings Department has determined that the house or apartment building is safe to occupy, the approval is only temporary and is subject to expiration."¹⁹ TCOs are issued for an initial period of either 90 or 180 days.²⁰ The Department of Buildings will renew a TCO three times before inquiring into why the required "open" items have not yet been resolved.²¹ An expired TCO makes it very difficult, if not impossible, for buyers to renew homeowner's insurance, sell, or refinance their homes.²² Additionally, occupancy of a building without a final certificate of occupancy or a TCO is illegal, leaving the new owner subject to a vacate order from the Department of Buildings.²³

At the inception of New York City Administrative Code (NYCAC) § 27-218, the problem of expiring TCOs was not accorded much weight by the New York City Council, as it was "predicated on the belief that the builder would act in good faith and a timely manner to secure the final certificate of occupancy" and the section was only expected to be used sporadically.²⁴ However, since the Department of Buildings began issuing *514 TCOs, it has become common practice in New York real estate deals to close on a property before the final Certificate of Occupancy has been issued.²⁵ According to Judge Straniere of the New York Civil Court, "it is more likely that you will see a yeti crossing the West Shore Expressway wearing a Mets Hat than a final certificate of occupancy at a closing."²⁶ In fact, many New York real estate sale contracts contain a provision that states that while the seller agrees to deliver a final Certificate of Occupancy, the contract will not be voidable because of a failure to do so.²⁷ These provisions have relieved developers of any contractual pressure to obtain final Certificates of Occupancy prior to closing. Some developers thus simply move on to new projects without completing the necessary work to obtain the final Certificates of Occupancy for their buyers.

For this reason, the Department of Buildings "strongly recommends" that homebuyers negotiate their closings "based on a final [Certificate of Occupancy], not a TCO."²⁸ It warns that the buyer bears the legal obligation of obtaining the final Certificate of Occupancy and a failure to do so could result in the issuance of a vacate order.²⁹ In order to create an incentive for the developer of property to obtain the final Certificate of Occupancy after the sale, the Department of Buildings suggests buyers obtain "written assurance and sufficient escrow"³⁰ to ensure any outstanding work is completed and the final Certificate of Occupancy is obtained.³¹ The amount held in escrow for this purpose in a "standard real estate contract" is \$2,500.³² But this amount is typically arbitrary and has nothing to do with the cost of completing the items listed as "open" on the TCO, and is very rarely negotiated by the parties for reasons that are discussed below.³³

II. REASONS FOR THE CURRENT PROBLEM WITH THE TCO SYSTEM

This section looks at some of the reasons for the failings of the TCO system. Part A discusses the buyer's lack of bargaining power in insisting on a final Certificate of Occupancy at the closing. Part B looks at the insufficiency of the standard Certificate of Occupancy escrow. Part C *515 explores how building code and zoning violations can lead to the city withholding final Certificates of Occupancy. Finally, Part D examines the Department of Building's self-certification process, which allows developers to issue TCOs to themselves, and how this process can lead to buildings that do not satisfy the building or zoning code receiving TCOs.

A. BUYER'S LACK OF BARGAINING POWER IN NEGOTIATING TO CLOSE WITH A FINAL CERTIFICATE OF OCCUPANCY

If the real estate market is strong, the buyer typically has very little bargaining power compared to the seller and the mortgage lender. In fact, a strong real estate market is often referred to as a "seller's market."³⁴ The buyer has less bargaining power than the seller because there could be multiple potential buyers trying to purchase a single property.³⁵ In addition, the buyer has less bargaining power than the mortgage lender because the lender typically brings a greater amount of money to the table.³⁶

When there are multiple offers on a property, the seller can easily replace a "difficult" buyer with one who is more cooperative.³⁷ This forces potential homebuyers to accept the contract terms as presented by the seller, with little opportunity to negotiate.³⁸ Therefore, there is little incentive for sellers to negotiate with a potential buyer who insists on waiting for the final Certificate of Occupancy if there are many other buyers who are willing to close with a TCO.³⁹ Likewise, a potential buyer will be less likely to insist on (and even less likely to receive) a higher escrow from the seller when there are multiple potential buyers, many of which will not make the same demand.⁴⁰

Buyers have less bargaining power than mortgage lenders in real estate transactions because the lenders typically have more money at stake in the *516 transaction than the buyers.⁴¹ According to Judge Straniere, "there is said to be a 'golden rule' in real estate; that is, 'he who has the gold, makes the rules.'"⁴² In a typical residential real estate purchase, the homebuyer makes a down payment, which is traditionally about 20% of the purchase price.⁴³ The mortgage lender provides the difference between that amount and the price of the property.⁴⁴ Since the mortgage lender provides the majority of the purchase money, they have greater bargaining power and the buyer is unlikely to be able to negotiate out of contract terms that are beneficial to the lender.⁴⁵

B. INSUFFICIENCY OF THE CERTIFICATE OF OCCUPANCY ESCROW

The escrow amount of \$2,500 used in the standard real estate agreement,⁴⁶ which is intended to ensure that the developer obtains the final Certificate of Occupancy, is so low that in many instances it is more profitable for the developer to not complete the work.⁴⁷ In these instances, homebuyers are left with the responsibility of completing the necessary work and obtaining the Certificate of Occupancy themselves.⁴⁸ The New York Civil Courts have had at least one case where the homebuyer completed the work and obtained the Certificate of Occupancy himself.⁴⁹ However, when the buyer tried to have the escrow released to cover the cost, the developer brought an action because the escrow agreement was silent as to whether the buyer was entitled to the money if the developer failed to obtain the Certificate of Occupancy.⁵⁰

If the buyer has closed on the property with a TCO, and the open items left to complete will cost more than the \$2,500 escrow amount, the *517 developer will actually lose money by completing the work and releasing the escrow.⁵¹ Also, even if the work to be completed will cost the developer less than the \$2,500, the amount he would receive in the end is negligible compared to the money he could make by using his resources to start new projects.⁵² Therefore, the standard escrow amount of \$2,500 is too low to serve its intended purpose, which is to ensure that the developer/seller obtains the final Certificate of Occupancy for the buyer.

C. BUILDING CODE AND ZONING VIOLATIONS

Another scenario that has led to homebuyers being stranded without final Certificates of Occupancy occurs when a developer receives a TCO from the Department of Buildings, even though the building does not meet the building or zoning codes.⁵³ Buyers then get mortgages and purchase the property, only to find that the City will not issue a final Certificate of Occupancy due to those building code or zoning violations.⁵⁴

An example of this occurred in late 2002 and early 2003, when a group of developers submitted plans to the City for four adjoining buildings and a fifth down the block on Spencer Street in Bedford Stuyvesant, Brooklyn.⁵⁵ The plans called for constructing these buildings to more than twice the height that the zoning in that area would typically allow.⁵⁶ The developers took advantage of a zoning "provision that permits bigger structures for certain community-friendly uses."⁵⁷ They claimed that the buildings would be faculty housing for the Beth Chana School for Girls in Williamsburg.⁵⁸ However, when the developers filed their application at the Department of Buildings for faculty housing, they simultaneously submitted papers to the New York State Attorney General's office stating that the apartments were to be sold as condominiums on the open market.⁵⁹

The units, priced from \$280,000 to \$445,000, quickly sold out.⁶⁰ In the summer of 2004, while the buildings had a TCO, buyers began to obtain financing, close on their units, and move into the first four buildings.⁶¹ However, extensive delays in the completion of the fifth building eventually *518 caught the attention of the Department of Buildings and the Attorney General's office.⁶² Officials from the Department of Buildings looked into the development and realized that the oversized buildings were not being used as faculty housing.⁶³ "After discovering the zoning violations," the Department of Buildings conducted a more thorough inspection of the buildings and discovered other design flaws that would have to be corrected before occupancy of the buildings could be legal.⁶⁴ As a result, the Department of Buildings said that the buildings did not qualify for final Certificates of Occupancy and that the City would not renew the buildings' TCOs.⁶⁵ The City has kept that promise, and the Spencer Street condos' most recent TCO expired in May 2005.⁶⁶

The negative effects of the situation have fallen mainly on the buyers. Although the City has not issued vacate orders to the buyers of the units even though occupancy without a Certificate of Occupancy is technically illegal, the buyers could not sell their units or refinance without Certificates of Occupancy.⁶⁷ To make matters worse, many of them had adjustable-rate mortgages⁶⁸ with rising rates.⁶⁹ The Department of Buildings recognized that the buyers should not have to suffer for the developer's mistakes, but they also wanted to send a message to developers who think they can violate the code and escape unscathed.⁷⁰ However, that is exactly what seems to have happened, since while the violations at Spencer Street were still outstanding,⁷¹ the city granted the developers permits to begin other projects throughout the city.⁷²

*519 D. SELF-CERTIFICATION

Considering the building code and zoning violations in the Spencer Street condominiums, one would find it surprising that the developers received TCOs in the first place. However, the Department of Buildings issues tens of thousands of building permits each year, though the city employs relatively few inspectors.⁷³ In order to expedite the building process and lessen the burden on the inspectors, the Department of Buildings revised its certification procedure in order to allow "licensed architects and engineers hired by builders to self-certify that their plans and documents ... comply with all zoning and building code requirements."⁷⁴ Under this procedure, the Department of Buildings checks self-certified applications for completeness, but does not subject them to a rigorous examination.⁷⁵

While the self-certification process has served the purpose of expediting the development process, it has also raised many questions of accountability. For example, during a 1997 investigation of one developer in Staten Island, former Richmond County District Attorney William L. Murphy stated:

It's certainly the case that [the developer] was self-certifying his plans and the department wasn't checking. If you look at the process, accountability doesn't seem to be one of its high points The builder is saying, "I'm told by these people--the licensed electrician, the plumber--that the work has been done, so I'm applying for the temporary certificate." It allows development to take place without the protections of a permanent certificate, and the homeowner is left holding the bag. There are hundreds, probably thousands, of temporary C. of O.'s issued.⁷⁶

As Mr. Murphy alluded, when the problem of a dubious self-certification arises, the process allows each party involved to shift the blame to someone else; the Department of Buildings blames the developer for not giving proper information in the application, and the developer blames the contractors who supposedly assured him that the work has been properly completed.⁷⁷

The self-certification process has been subject to numerous challenges,⁷⁸ and the Department of Buildings itself has admitted that it is *520 not yet 100% satisfied with the current process.⁷⁹ Due to building code violations that the Department of Buildings did not catch because the parties self-certified, the self-certification process has been blamed as the "cause of collapsed buildings, cascading facades, chronic corruption and homeowners left stranded with slipshod construction and no permanent certificates of occupancy."⁸⁰ However, the process is unlikely to be changed.⁸¹ Supporters of self-certification argue that the time-saving process has greatly helped New York City complete much needed additional construction.⁸² The process also saves tax dollars and helps the Department of Buildings perform more efficiently.⁸³ Additionally, the Department of Buildings is currently drafting "Rule 21" which would enable the Department to

revoke self certification privileges of architects who show ignorance of the building laws, submit plans that were not prepared under their own supervision, demonstrate incompetence, knowingly make false or misleading statements, falsify any application or form, are convicted of a criminal offense which arose out of their professional occupation, or show poor moral character.⁸⁴

While Rule 21 may not eliminate all self-certification abuses, it gives the Department of Buildings the authority to respond to those abuses.⁸⁵

Despite the myriad reasons for and scenarios in which homebuyers end up stranded without final Certificates of Occupancy, there remain few proposed solutions to mitigate these problems. A major issue in this respect is that there is a real debate as to who should be liable for failure to obtain a final Certificate of Occupancy. The following section examines this and concludes that when a final Certificate of Occupancy is not obtained, the developer should bear the liability.

III. LIABILITY OF THE MORTGAGE LENDER, THE HOMEBUYER'S ATTORNEY, AND THE DEVELOPER

Currently, when homebuyers are left without final Certificates of Occupancy, they are subject to vacate orders and are unable to sell, *521 refinance, or even renew homeowner's insurance.⁸⁶ When this occurs, there are three parties that could face possible liability: the mortgage lender, the homebuyer's attorney, and the developer. By exploring these parties' current liabilities, this section demonstrates that it is inappropriate to hold the mortgage lender or homebuyer's attorney liable for the developer's failure to obtain a final Certificate of Occupancy. This section also shows that the current liabilities faced by the developer are not enough and too difficult to prosecute to be an effective remedy.

A. LIABILITY OF THE MORTGAGE LENDER

Some courts have discussed placing liability for a homebuyer being stranded without a final Certificate of Occupancy on the mortgage lender.⁸⁷ However, the New York Supreme Court, Appellate Division's decision in *Myers v. L & M Developers*⁸⁸ held that lenders have no duty to ensure that a Certificate of Occupancy is issued to the buyer, even when there is a provision in

the lender's commitment stating that they would not close without a final Certificate of Occupancy.⁸⁹ The court found that the provision in the commitment was solely for the protection of the lender, and did not provide the buyer with a cause of action.⁹⁰

But the issue of mortgage lender liability was recently resurrected by the New York City Civil Court's opinion in *Howard v. Berkman, Hensch, Peterson & Peddy, P.C.*⁹¹ According to *Howard*, a mortgage lender can face liability if it closes on property without a Certificate of Occupancy, knowing that the buyer intends to occupy the premises.⁹² Most lenders *522 know of the borrower's intention because borrowers are required to complete a form stating whether they intend to use the premises as a primary residence within thirty days of the closing.⁹³ *Howard* posited that if the lender closes on a property without a Certificate of Occupancy, it cannot plead ignorance and demand payments from a borrower who cannot occupy the premises.⁹⁴

Howard attaches liability to mortgage lenders by looking beyond the NYCAC to the New York Banking Law (the Banking Law).⁹⁵ Section 589 of the Banking Law requires all mortgage lenders to be licensed in order to protect consumers and "ensure that the mortgage lending industry is operating fairly, honestly and efficiently, free from deceptive and anti-competitive practice."⁹⁶ The Banking Law also provides that a lender's license can be revoked for violating any provision of the Banking Law or "any other law, rule or regulation of this state or the federal government."⁹⁷ *Howard* found that "any other law, rule or regulation" includes NYCAC § 27-214 (which creates the Certificate of Occupancy requirement).⁹⁸ Considering the legislative purpose behind the lender license requirements, and that the Banking Law permits licenses to be revoked upon any violation, *Howard* concluded that "lenders in the State of New York have the obligation to insure that a final certificate of occupancy is delivered on any building purchases they finance."⁹⁹

Under the *Howard* analysis, when closing with a TCO, the lender is not in violation unless the developer fails to obtain the final Certificate of Occupancy.¹⁰⁰ Therefore, according to *Howard*, if a lender closes with a *523 TCO and the developer breaches the contract and fails to obtain the final Certificate of Occupancy, then the lender has violated § 589 of the Banking Law¹⁰¹ despite entering the deal in good faith.

The *Howard* court justifies placing this affirmative duty on lenders by stating that, as the wealthiest party in real estate purchases, the lender

has the ability, if not the best opportunity to insure that no closing takes place in the absence of a final certificate of occupancy or if a temporary certificate of occupancy is produced, that sufficient money is withheld at the closing and placed in escrow to insure that there is a fund available to remedy any violations that would prevent the issuance of a certificate of occupancy.¹⁰²

The problem with this rationale is that even if lenders have the necessary leverage to require higher escrows, it seems inequitable to hold them liable for the actions of an independent third party.

Despite the *Howard* court's recent challenge to the *Myers* notion that lenders are not liable for a developer's failure to obtain a final Certificate of Occupancy, it is highly unlikely that lenders will go out of their way to increase pressure on developers to ensure final Certificates of Occupancy are obtained.¹⁰³ This is not only because there have not been any appeals confirming the Civil Court's opinion, but also because lenders could actually benefit from homebuyers being stranded without Certificates of Occupancy. A brief explication of the basics of refinancing helps explain this latter point.

Mortgage lenders loan money to purchasers of real estate, and in return, the borrower repays the principal of the loan plus interest over a set period of time, or the "term" of the loan.¹⁰⁴ When interest rates drop, many borrowers look to replace their existing high-interest debt by paying off their existing loans with new loans at the lower interest rate; this is called "refinancing."¹⁰⁵ However, when a borrower pays off a loan before the date of maturity,¹⁰⁶ the lender does not get the full amount of interest that it was *524 expecting at the outset of the loan.¹⁰⁷ For this reason, many mortgage loans either prohibit prepayment or impose charges when a borrower wants to prepay.¹⁰⁸

One way that mortgage loans restrict prepayment is by having a "lock-in" period, which prohibits prepayment for a certain period of time.¹⁰⁹ When homebuyers' TCOs expire and they have not received final Certificates of Occupancy, they are not able to sell or refinance.¹¹⁰ Therefore, no matter how lenient the prepayment clause in the mortgage note is, borrowers will not be able to refinance to take advantage of any declines in the interest rate until they obtain final Certificates of Occupancy.¹¹¹ Therefore, the lack of a Certificate of Occupancy creates an artificial lock-in period with real effects, preventing the borrower from prepaying the loans and assuring the lender that it will receive the rate of return anticipated upon entering the mortgage contract (at least until the homebuyer gets a final Certificate of Occupancy). Despite these incentives for the mortgage lender to not put pressure on the developer to raise the escrow or actually acquire the final Certificate of Occupancy, the lender is not necessarily acting in bad faith. Therefore, absent an agency relationship, when the contractual responsibility to obtain the final Certificate of Occupancy is the developer's, and he fails to do so, it is inappropriate to place liability on the lender for that developer's negligence or malevolence.¹¹²

B. LIABILITY OF THE HOMEBUYER'S ATTORNEY

Another party who could face possible liability when a homebuyer is left without a final Certificate of Occupancy is the homebuyer's attorney who represented the buyer in the closing.¹¹³ In Judge Straniere's opinion in *Howard*, he stated, "[i]t is malpractice [for an attorney] to permit a client to purchase a premises without a valid certificate of occupancy or under the current questionable system without a valid temporary certificate of occupancy."¹¹⁴ *Howard* also raised the possibility that an attorney could *525 face malpractice liability even if there was a valid TCO at the time of closing.¹¹⁵ Since a TCO is issued for only a limited time,¹¹⁶ if that time expires without a final Certificate of Occupancy being acquired or without the TCO being extended, the homebuyer's attorney may face liability for "assisting" in the violation of the NYCAC.¹¹⁷

Under this interpretation, whenever an attorney's client closes with a TCO, that attorney has the ongoing responsibilities of monitoring whether or not the buyer obtains a final Certificate of Occupancy and advising the client of the certificate's current status.¹¹⁸ If no final Certificate of Occupancy is obtained before the TCO expires, the attorney must alert the client to the possibility of receiving a vacate order and facing potential civil or criminal penalties.¹¹⁹ Whether not upholding those duties constitutes malpractice depends on if the attorney did not "render professional services with the skill, prudence, and diligence that an ordinary and reasonable lawyer would use under similar circumstances."¹²⁰ Typically, real estate lawyers' responsibilities include things such as helping the client understand the contract, clarifying mortgage terms, and ensuring valid title transfer.¹²¹

It is not typically the responsibility of the real estate lawyer to ensure that the parties uphold their future obligations under the contract.¹²² Since ongoing monitoring of the real estate contract is not typically the responsibility of the real estate attorney, the attorney should not be subject to malpractice litigation for failing to do so. Additionally, attorneys are already legally obligated to act in their clients' best interests,¹²³ and homebuyers' attorneys are obligated to inform their clients of the possible *526 consequences of buying a home with a TCO.¹²⁴ Imposing additional responsibilities and liabilities on the attorney because the developer failed to satisfy his contractual obligations seems illogical.

C. LIABILITY OF THE DEVELOPER

Similar to the lenders and attorneys discussed above, a developer who fails to obtain a final Certificate of Occupancy for a homebuyer could be subject to liability under NYCAC §§ 26-125 and 26-248.¹²⁵ However, if the developer was the party contractually obligated to obtain the final Certificate of Occupancy, it is logical that he should be the party held accountable for the failure to do so.

In *Washington v. Culotta*,¹²⁶ the plaintiff/homebuyers had each contracted with the defendant/developer for the purchase of homes.¹²⁷ The plaintiffs' contracts with the developer each contained a fairly common Certificate of Occupancy clause stating

Seller agrees to deliver a permanent Certificate of Occupancy for the dwelling but title shall not be adjourned for lack of same. It being understood and agreed that a sum not to exceed \$2,500.00 from the Seller's money will be held in escrow by the lending institution or the Seller's Attorney pending production and delivery of such permanent certificate. No closing will occur, however, without Seller first obtaining a temporary Certificate of Occupancy.¹²⁸

Seven years after signing the contract, the developer still had not obtained the final Certificate of Occupancy for the homebuyers.¹²⁹ However, the court held that "[n]either the above cited 'Certificate of Occupancy' escrow paragraph[] nor any other clause of the agreement creates a cause of action in favor of the plaintiffs in the event there is a failure of the seller to procure the final Certificate of Occupancy."¹³⁰ A further complication exists because the injury caused by "the failure to deliver a final Certificate of Occupancy is ... nebulous,"¹³¹ and was therefore deemed too speculative for a court to award damages.¹³²

*527 The court in *Culotta* stated that the homebuyers would have to complete the work and obtain the final Certificates of Occupancy themselves before the court would be able to determine the proper damages.¹³³ The court proposed one "remedy":

Perhaps the proper remedy is for the plaintiffs to elect to declare that a forfeiture has occurred which would make the contract a nullity and entitle them to a refund of all the monies expended for the purchase and for occupying the premises since the date of the closing and all foreseeable expenses arising from that occupancy.¹³⁴

However, requiring homebuyers to give up their homes in order for developers to feel the backlash of their actions could be viewed as more of a punishment for the homebuyer than for the developer.

One ray of light from the homebuyers' perspective was the *Culotta* court's statement that when a developer ignores a contractual obligation and makes no effort to procure the final Certificate of Occupancy, the developer's actions might be "so egregious" that they could warrant punitive damages.¹³⁵ But it is not enough that a homebuyer stranded without a final Certificate of Occupancy can only recover from a breaching developer if the developer's actions were so egregious as to warrant punitive damages. Though the measure of damages may be debatable, the liability should still rest on the developer since the developer is the party who breaches the contractual duty to obtain a final Certificate of Occupancy for the buyer. Unfortunately, the current system of liabilities makes it very difficult for homebuyers to recover damages from a developer without giving up their homes.¹³⁶

IV. SOLUTIONS

This section discusses three possible ways to prevent homebuyers from being stranded without final Certificates of Occupancy: elimination of the TCO system in its entirety, statutory enforcement of higher escrows, and restriction of the issuance of permits to offending developers. The section concludes that the option that would most effectively solve the problem presented is restriction of the issuance of permits to offending developers.

A. ELIMINATION OF TEMPORARY CERTIFICATES OF OCCUPANCY

One solution, presented by Judge Straniere of the New York City Civil Court, is to eliminate the TCO system in its entirety.¹³⁷ This solution is *528 overbroad. While it is true there have been protracted legal issues due to misuse of the system, possible legal and contractual problems caused by the TCO system do not outweigh the benefits that the system creates.

The New York City Council created the TCO system because it determined that it was unfair to postpone closings when the items left for completion were not dangerous and the building could be safely occupied.¹³⁸ The fact that the City Council found

it was not "fair" to postpone closings implies that it believed that there are benefits to expediting the process.¹³⁹ Indeed, there are possible benefits of closing earlier for all of the parties involved. The homebuyer is able to secure their newly acquired asset and begin benefiting from the advantages of homeownership earlier.¹⁴⁰ The lender is able to collect mortgage payments and interest sooner.¹⁴¹ And, the developer is able to get a return on his investment earlier and have the opportunity to reinvest in future projects. The problems that arise from the TCO system are mainly due to bad faith actions on the part of a small number of actors. Eliminating the entire system by retracting NYCAC § 27-218 is far too overbroad, and would punish countless potential homebuyers, lenders, and developers for the actions of a few.

B. ENFORCEMENT OF HIGHER ESCROWS

Another possible solution is the introduction of legislation mandating that higher escrows be put aside to ensure that the developer fulfills its contractual obligation and obtains the final Certificate of Occupancy. One method of achieving this would be amending NYCAC § 27-218 to require that upon the issuance of a TCO the developer create an escrow equal to twice the projected cost of completing the open items, as determined by an independent appraiser.¹⁴² The *Howard* court suggested an even more substantial escrow requirement, making the developer put aside 10% of the sale price or the amount that represents the entire profit margin on the *\$29 sale.¹⁴³ While this solution appears logical, it interferes with the parties' freedom of contract, and might not be effective in all situations or might be unduly restrictive on developers.

Freedom of contract is important to retain in mortgages because the needs of every homebuyer are different. While homebuyers are required by law to have Certificates of Occupancy in order to occupy their homes, some may prefer to contract for different terms than the ones set out above. Perhaps it is beneficial for some homebuyers and developers to have the homebuyers complete the open items on the TCO themselves in exchange for something else, such as a lower base price or upgraded appliances. Though there are often imbalances of power in real estate negotiations, it is imperative that the parties are not restricted to government-mandated contract terms, and are allowed to create a contract that is as beneficial as possible to all parties.

Another issue with a possible escrow amendment is that the "twice-the-cost escrow" would not always be effective and the "profit-margin escrow" could be too detrimental to developers. If the developer is one who would abandon his contractual duties in order to pursue a new development with greater income potential, it might not matter to him whether he loses \$2,500 or \$5,000. The amendment would cause such developers to lose more money than they otherwise would have, but it is not a sufficient deterrent to stop developers who are willing to act in bad faith in order to make the most money possible in the shortest period of time. However, the escrow requirement suggested by the *Howard* court could be destructive to the livelihood of many developers. Many developers survive financially by being able to work on multiple projects simultaneously, using the income from one as the capital for another.¹⁴⁴ That means, if developers were required to obtain a final Certificate of Occupancy before receiving any profit from a project, it could make it difficult for them to begin new projects before completing previous ones.¹⁴⁵ Withholding developers' entire profit margins, or even 10%, until their projects are complete could seriously hinder developers' income streams and could slow down the entire development industry. Also, like the elimination of the TCO system altogether, this solution is overbroad, restricting all developers because of the actions of a few.

*530 C. RESTRICTING THE ISSUANCE OF PERMITS TO OFFENDING DEVELOPERS

The best way to deter developers from breaching their obligations to obtain final Certificates of Occupancy is to suspend delinquent developers' ability to obtain any new building permits from the city once they have let a TCO lapse. This is a variation of a solution proposed by the *Howard* court which would preclude developers from receiving any new permits until all of their current projects have received final Certificates of Occupancy and require that permits only be issued to individuals, not corporations.¹⁴⁶

The problem with the *Howard* proposal is that it is overbroad and the restriction on corporations would put developers at an undue risk of personal liability. Not allowing developers to receive permits until all previous projects have received final Certificates of Occupancy would have the same negative effects on all developers as requiring the escrow to equal the profit margin.¹⁴⁷ It would greatly decrease the profitability of being a developer and could slow the whole development industry. Forcing developers to receive permits as individuals, as opposed to as corporations, would have the desired effect of opening the developer up to personal liability for stranding the homebuyer without a Certificate of Occupancy. However, it would also make

developers personally liable for any of the myriad of issues that could arise during development. Such heavy legal responsibility could be too much of a burden on any individual to make it worthwhile to be a developer.

Simply suspending developers' ability to receive new building permits until they correct any lapses in TCOs for which they are responsible addresses both of those problems. First, this does not affect all developers, but only those that abandon homebuyers without final Certificates of Occupancy. Developers could continue beginning new projects while previous ones still have TCOs. However, if a developer allows a TCO to expire and has not yet obtained the final Certificate of Occupancy, the developer will be restricted from obtaining any future permits until the final Certificate of Occupancy is obtained. This solution would require the homebuyer to remain vigilant as to whether the necessary work is completed and the Certificate of Occupancy is delivered. If it is not, it would be the homebuyer's responsibility to report the developer's indiscretion to the Department of Buildings.¹⁴⁸ The Department of Buildings would then be responsible for placing an alert on the offending *531 developer's name, disallowing any permits from being issued to that developer by self-certification or any other means.

Second, instead of disallowing the issuance of permits to any corporations, the principal officers of the corporations need to be held responsible for the corporation's actions. Under NYCAC §27-151, if a corporation applies for a building permit, all of the principal officers' names must be listed on the application.¹⁴⁹ Therefore, if a homebuyer reports the expiration of a TCO where the developer was a corporation, the restriction on permits would apply not only to that corporation, but to all of the principal officers as individuals, and to any other corporations in which those principle officers are members.

This solution is optimal not only because it only punishes the offenders and does not interfere with freedom of contract, but also because it justly distributes different responsibilities to the parties that are most likely to fulfill them. Developers are responsible for obtaining the final Certificate of Occupancy (unless they contract out of that duty) and their livelihood is put on hold if they do not fulfill that responsibility. Homebuyers are responsible for monitoring whether the work is completed, as they are in the best position to observe the progress (or lack thereof), and are subject to a possible vacate order if it is not. The Department of Buildings is responsible for checking the records when a complaint is reported by a homebuyer and placing the developer/corporation's officers on a "no-permit" list until the final Certificate of Occupancy is recorded. It is in the best position to do so since it maintains the files and is responsible for the issuance of permits. It would also be the responsibility of the Department of Buildings to maintain records of offending developers and report repeat offenders to the Attorney General for possible revocation of their license.

CONCLUSION

TCOs are beneficial to everyone involved in a real estate transaction. They allow people to take advantage of the benefits of homeownership earlier, and they help put money into the continued development of land by providing for earlier returns for developers and for lenders. But, despite all of the benefits brought by the issuance of TCOs, they also open the door for some bad actors to leave homebuyers stranded in desperate situations, unable to sell, refinance, or insure their homes. To quell this problem, the New York City Department of Buildings should effectuate a restriction on all offending developers, preventing them from receiving new building permits, as individuals or as corporations, until they have rectified their actions and received the final Certificates of Occupancy that they are contractually obligated to obtain.

Footnotes

²¹ The George Washington University, B.A.; Brooklyn Law School, J.D. (expected 2008). I would like to thank my parents and my in-laws for all of their love, support, and guidance. I would also like to thank my wonderful wife, who truly is lovely and stubborn and brave.

¹ See William Neuman, *Caught in the Twilight Zone*, N.Y. TIMES, Aug. 28, 2005, § 11, at 1.

² See *id.*; see also The Developer's Group, *Developments: The Spencer*, <http://www.thedevelopersgroup.com/buildings/building.aspx?buildingid=1005&> (last visited Apr. 7, 2008).

³ Neuman, *supra* note 1.

- 4 N.Y. City Dep't of Bldgs., Certificates of Occupancy: Temporary and Final -- Fact Sheet (Jan. 10, 2006), *available at* http://www.nyc.gov/html/dob/downloads/pdf/co_factsheet.pdf; *see* N.Y. CITY ADMINISTRATIVE CODE § 27-214 (2007); *Washington v. Culotta*, No. 034230/02, 2005 WL 2171189, at *4 (N.Y. Civ. Ct. July 21, 2005).
- 5 New York City Real Estate Glossary, Certificate of Occupancy, <http://www.new-york-new-york-real-estate.com/c2.html> (last visited Apr. 7, 2008).
- 6 N.Y. CITY ADMINISTRATIVE CODE § 27-218 (2007); *see Howard v. Berkman, Henoch, Peterson & Peddy, P.C.*, No. 034411/04, 2004 WL 2732245, at *11 (N.Y. Civ. Ct. Nov. 5, 2004).
- 7 N.Y. CITY ADMINISTRATIVE CODE §§ 27-218, -214 (2007); N.Y. City Dep't of Bldgs., *supra* note 4.
- 8 *See, e.g.*, N.Y. CITY ADMINISTRATIVE CODE § 27-214.
- 9 New York City Real Estate Glossary, *supra* note 5.
- 10 N.Y. City Dep't of Bldgs., Certificates of Occupancy, <http://www.nyc.gov/html/dob/html/certificates/certificates.shtml> (last visited Apr. 7, 2008).
- 11 *Q & A: When a Building Must Install Ramps*, N.Y. TIMES, Sept. 29, 2002, § 11, at 8; *see* N.Y. City Dep't of Bldgs., *supra* note 4.
- 12 N.Y. City Dep't of Bldgs., *supra* note 4.
- 13 N.Y. CITY ADMINISTRATIVE CODE § 27-214.
- 14 *Howard v. Berkman, Henoch, Peterson & Peddy, P.C.*, No. 034411/04, 2004 WL 2732245, at *11 (N.Y. Civ. Ct. Nov. 5, 2004).
- 15 *Id.*
- 16 *Id.*
- 17 *Id.*
- 18 N.Y. CITY ADMINISTRATIVE CODE § 27-218 (2007).
- 19 N.Y. City Dep't of Bldgs., *supra* note 4.
- 20 N.Y. CITY ADMINISTRATIVE CODE § 27-218.
- 21 Sebastian M. D'Alessandro, *The ABC's of the 'C. of O.'*, GOTHAM CITY INSPECTOR, Spring 2005, at 3, *available at* http://www.accuratebuilding.com/publications/inspector/gotham_inspector_spring_2005.pdf.
- 22 N.Y. City Dep't of Bldgs., *supra* note 4.
- 23 *See, e.g.*, *Washington v. Culotta*, No. 034230/02, 2005 WL 2171189, at *4 (N.Y. Civ. Ct. July 21, 2005).
- 24 *Howard v. Berkman, Henoch, Peterson & Peddy, P.C.*, No. 034411/04, 2004 WL 2732245, at *11-12 (N.Y. Civ. Ct. Nov. 5, 2004).
- 25 *Id.* at *12.
- 26 *Id.*
- 27 *See, e.g.*, *Culotta*, 2005 WL 2171189, at *1 (Real estate sale agreement stated, "Seller agrees to deliver a permanent Certificate of Occupancy for the dwelling but title shall not be adjourned for lack of same No closing will occur,

however, without Seller first obtaining a temporary certificate of occupancy.”); *Divita v. Decker & Decker, P’ship*, No. SCR1192/04, 2004 WL 3178287, at *1 (N.Y. Civ. Ct. Nov. 24, 2004); *Howard*, 2004 WL 2732245, at *1.

²⁸ N.Y. City Dep’t of Bldgs., *supra* note 4.

²⁹ *Id.*; see *Culotta*, 2005 WL 2171189, at *4.

³⁰ N.Y. City Dep’t of Bldgs., *supra* note 4.

³¹ *Id.*

³² *Howard*, 2004 WL 2732245, at *12.

³³ *Id.*

³⁴ A “seller’s market” is defined as a “[a] market which has more buyers than sellers. High prices result from this excess of demand over supply.” InvestorWords.com, Seller’s Market Definition, http://www.investorwords.com/4470/sellers_market.html (last visited Apr. 8, 2008).

³⁵ See Tracie Rozhon, *Housing Market Heats Up Again in New York City*, N.Y. TIMES, Feb. 19, 2007, at A1 (looking at an increased number of bidding wars on condos, co-ops, and townhouses as an indication of a strengthening real estate market).

³⁶ Homebuyers often provide 20% or less of the purchase price of a home, with the lender providing the remaining money to the seller. See Yahoo! Finance, The Down Payment Hurdle, <http://loan.yahoo.com/m/finance8.html> (last visited Apr. 7, 2008).

³⁷ See Blanche Evans, *Multiple Offers: How Can You Compete?*, REALTY TIMES, Mar. 31, 1999, http://realtytimes.com/rtpages/19990331_multipleoffers.htm (“In a hot market, there are more buyers than homes for sale” and “[m]ultiple offers mean that the seller has his/her pick of offers”).

³⁸ See Marty Latz, *Buyers Must Strategize in Today’s Seller’s Market*, NEGOTIATIONS.COM, <http://www.negotiations.com/articles/real-estate/> (stating that “[i]t’s not easy” to “negotiate the best possible deals as a buyer in a seller’s market”) (last visited Apr. 8, 2008).

³⁹ See Evans, *supra* note 37 (stating that in a strong real estate market “[t]he seller will only accept terms which meet his/her own needs, so [prospective buyers should] keep contingencies to a minimum”).

⁴⁰ *Id.*; see also discussion *infra* Part II.B.

⁴¹ See Yahoo! Finance, *supra* note 36.

⁴² *Divita v. Decker & Decker, P’ship*, No. SCR1192/04, 2004 WL 3178287, at *7 (N.Y. Civ. Ct. Nov. 24, 2004).

⁴³ Mortgage lenders have typically required borrowers to provide a down payment of 20% of the property’s purchase price. However, there are now mortgage companies that will lend to borrowers who put down as little as zero to three percent, as long as the buyer takes out private mortgage insurance. Yahoo! Finance, *supra* note 36; see also Jay Romano, *Ending Mortgage Insurance*, N.Y. TIMES, Mar. 9, 1997, § 9, at 3.

⁴⁴ See generally NexTag, Mortgage Basics, <http://www.nextag.com/home-mortgage/0/Mortgage-Basics.html> (“A larger down payment on a property will result in a smaller loan”) (last visited Apr. 7, 2008).

⁴⁵ See RESTATEMENT (THIRD) OF PROPERTY: MORTGAGES, § Introduction (1997) (“Protection [of borrowers] is amply justified because it serves to restrain the often oppressive bargaining power lenders exercise over borrowers.”).

⁴⁶ See *Howard v. Berkman, Henoch, Peterson & Peddy, P.C.*, No. 034411/04, 2004 WL 2732245, at *12 (N.Y. Civ. Ct. Nov. 5, 2004).

- 47 *Id.* ("This escrow number is so artificially low that on many occasions the seller never completes the work, forfeits the \$2,500.00 and leaves the homeowner the task of obtaining the certificate of occupancy.").
- 48 *Irardy v. Decker & Decker*, SCR 1279/04, 2005 N.Y. Misc. LEXIS 3268 (N.Y. Civ. Ct. Mar. 2, 2005); *Howard*, 2004 WL 2732245, at *12.
- 49 *Howard*, 2004 WL 2732245, at *12.
- 50 *Id.*
- 51 For example, if the cost of completion is \$3,000 and the escrow is \$2,500, then it will cost the developer \$3,000 to receive the \$2,500, leaving him with \$500 less than he would have if he did not complete the work.
- 52 See Christine Haughney, *Manhattan Apartment Prices Hit Record High Despite Slump*, N.Y. TIMES, Apr. 2, 2008, at B1 ("The average price of a Manhattan apartment in the first three months of [2008] was \$1.7 million").
- 53 Neuman, *supra* note 1.
- 54 *Id.*
- 55 *Id.*
- 56 *Id.*
- 57 *Id.*
- 58 *Id.* Faculty housing is now no longer one of the permitted uses.
- 59 Neuman, *supra* note 1.
- 60 *Id.*
- 61 *Id.*
- 62 *Id.*
- 63 *Id.*
- 64 William Neuman, *At Spencer Street. A Solution Meets Skepticism*, N.Y. TIMES, July 9, 2006, § 11, at 2. These flaws included "a failure to meet standards for access by people with disabilities and a fire-safety problem: the apartment doors open directly onto the buildings stairwells."
- 65 Neuman, *supra* note 1.
- 66 N.Y. City Dep't of Bldgs., Temporary Certificate of Occupancy, 191 Spencer Street, available at <http://a810-cofo.nyc.gov/cofo/B/301/399000/B301399840T2.PDF>.
- 67 N.Y. City Dep't of Bldgs., *supra* note 4.
- 68 Black's Law Dictionary defines "adjustable-rate mortgage" as: "A mortgage in which the lender can periodically adjust the mortgage's interest rate in accordance with fluctuations in some external market index." BLACK'S LAW DICTIONARY (8th ed. 2004).
- 69 Neuman, *supra* note 1.
- 70 *Id.*
- 71 After much negotiation, a settlement was reached between the developers, the city, and the homebuyers, but the contents of that settlement are not available to the public. Interview with a Spencer Street buyer's attorney, in New York, N.Y. (Oct. 15, 2006). However, as of the publication of this note, a search of the Department of Buildings' Buildings Information

System indicates that the final Certificate of Occupancy has yet to be issued to the Spencer Street Condominiums. See N.Y. City Dep't of Bldgs., Building Information Search, <http://a810-bisweb.nyc.gov/bisweb/bispi00.jsp> (select borough "Brooklyn," enter House No. "191" and Street "Spencer Street") (last visited Apr. 7, 2008).

- 72 William Neuman, *Under the Radar in Brooklyn*, N.Y. TIMES, Sept. 4, 2005, § 11, at 2.
- 73 See Dennis Hevesi, *When Builders Are Inspectors*, N.Y. TIMES, Dec. 3, 2000, § 11, at 1.
- 74 *Id.*
- 75 *Id.*
- 76 *Id.*
- 77 See *id.*
- 78 Most recently, Mayor Bloomberg has proposed two bills that would require the Department of Buildings to conduct more complete examinations of plans and applications and enforce the suspension or revocation of self-certification privileges of architects or engineers who "knowingly or negligently certify false or non-compliant building permit applications or plans." Press Release, N.Y. City Office of the Mayor, Mayor Bloomberg Signs Two Bills Targeting Abuse of City's Self-Certification System for Engineers and Architects (Feb. 15, 2007), available at http://www.ci.nyc.ny.us/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%CCC2F%CCC2Fwww.ci.nyc.ny.us%CCC2Fhtml%CCC2Fom%CCC2Fhtml%CCC2F2007a%pr054-07.html&cc=unused1978&rc=1194&ndi=1.
- 79 Hevesi, *supra* note 73.
- 80 *Id.*
- 81 *Id.*
- 82 David Mandl, *Professional Certification Program a Great Success*, REAL EST. WKLY., May 24, 2006, at 3C(1).
- 83 See *id.*
- 84 *Id.*; see also Press Release, N.Y. City Dep't of Bldgs., Buildings Commissioner Launches Safety Outreach Campaign (Oct. 18, 2006), available at http://home2.nyc.gov/html/dob/html/news/pr_construction_safety_101806.shtml.
- 85 See Press Release, N.Y. City Dep't of Bldgs., *supra* note 84.
- 86 N.Y. City Dep't of Bldgs., *supra* note 4.
- 87 See *Myers v. L. & M Developers*, 569 N.Y.S.2d 301 (N.Y. App. Div. 1991); *Divita v. Decker & Decker, P'ship*, No. SCR1192/04, 2004 WL 3178287 (N.Y. Civ. Ct. Nov. 24, 2004); *Howard v. Berkman, Henoch, Peterson & Peddy, P.C.*, No. 034411/04, 2004 WL 2732245 (N.Y. Civ. Ct. Nov. 5, 2004).
- 88 *Myers*, 569 N.Y.S.2d 301.
- 89 *Id.*
- 90 *Id.*
- 91 *Howard*, 2004 WL 2732245, at *10.
- 92 *Id.* ("A [lender] who loans money knowing that the mortgagor intends to occupy the premises as a primary residence cannot close the loan knowing full well that legal occupancy is prohibited."). New York City Administrative Code § 26-125(a) New York City Administrative Code § 26-125(a) states:
[E]very person who shall violate any of the provisions of any laws, rules or regulations enforceable by the department or who shall knowingly take part or assist in any such violation shall be guilty of an offense and upon conviction thereof shall be punishable by a fine of not more than five thousand dollars. Such person shall also be subject to the payment

of a penalty of not more than five thousand dollars to be recovered in a civil action brought in the name of the city in any court of record in the city.

N.Y. CITY ADMINISTRATIVE CODE § 26-125(a) (2007) (emphasis added). Additionally, New York City Administrative Code § 26-248(a) New York City Administrative Code § 26-248(a) reiterates:

[T]he owner of any structure, or part thereof, or land, where any violation of this subchapter or chapter one of title twenty-seven of the code shall be placed, or shall exist, and any person who may be employed or assist in the commission of any such violation, and any and all persons who shall violate any of the provisions of this subchapter or chapter one of title twenty-seven of the code or fail to comply therewith, or any such requirement thereof, ... shall severally, for each and every such violation or non-compliance, respectively, be punished by a fine of not more than five thousand dollars. N.Y. CITY ADMINISTRATIVE CODE § 26-248(a) (2007) (emphasis added).

93 Howard, 2004 WL 2732245, at *10.

94 *Id.* ("If the lender wants to close, ignoring the law in regard to occupancy status, then it should be precluded from collecting the mortgage payments due it during that period of time.").

95 *Id.* at *10-11.

96 N.Y. BANKING LAW § 589 (McKinney 2007).

97 N.Y. BANKING LAW § 595(1)(a).

98 Judge Straniere points out that the New York State Constitution Article IX and the Municipal Home Rule Law (10) (1) both grant local governments the power to regulate the use of property within their own locality. Since these local regulations are authorized by the state constitution and statute, they must be treated as state laws within their own locality. Howard, 2004 WL 2732245, at *11.

99 *Id.*

100 *Id.* The court stated:
[O]nce the lender is aware that there is an escrow being held until a final certificate of occupancy is issued by the municipality, the lender has an obligation to insure that the final certificate of occupancy is issued or, in the City of New York, that the temporary certificate of occupancy is extended until the final certificate of occupancy is issued.
Id.

101 *See supra* note 96 and accompanying text.

102 Howard, 2004 WL 2732245, at *11.

103 Likewise, until there is further support from the higher courts in New York, *Howard* is unlikely to deter mortgage lenders from continuing to collect payments from borrowers, whether or not they have final Certificates of Occupancy.

104 *See Mortgage for Beginners, Mortgage Basics*, [http:// www.forbeginners.info/mortgage/mortgage-basics.htm](http://www.forbeginners.info/mortgage/mortgage-basics.htm) (last visited Apr. 8, 2008).

105 STEVEN W. BENDER ET AL., MODERN REAL ESTATE FINANCE AND LAND TRANSFER: A TRANSACTIONAL APPROACH 241 (3d ed. 2004).

106 Black's Law Dictionary defines "date of maturity" as "[t]he date when a debt falls due, such as a debt on a promissory note or bond." BLACK'S LAW DICTIONARY (8th ed. 2004).

107 BENDER ET AL., *supra* note 105, at 241.

108 *Id.*

109 *Id.*

110 *See* N.Y. City Dep't of Bldgs., *supra* note 4.

- 111 *See, e.g.*, ¹¹¹ Washington v. Culotta, No. 034230/02, 2005 WL 2171189, at *4 (N.Y. Civ. Ct. July 21, 2005).
- 112 An agency relationship “exists only if there has been a manifestation by the principal to the agent that the agent may act on his account, and consent by the agent so to act.” RESTATEMENT (SECOND) OF AGENCY § 15 (1958). In other words, unless the mortgage lender has given permission to the developer to act on the lender's behalf, and the developer consents, there is no agency between the parties.
- 113 *See* Divita v. Decker & Decker, P'ship, No. SCR1192/04, 2004 WL 3178287, at *7 (N.Y. Civ. Ct. Nov. 24, 2004); Howard v. Berkman, Henoch, Peterson & Peddy, P.C., No. 034411/04, 2004 WL 2732245, at *3 (N.Y. Civ. Ct. Nov. 5, 2004).
- 114 Howard, 2004 WL 2732245, at *3.
- 115 *Id.* at *6.
- 116 N.Y. CITY ADMINISTRATIVE CODE § 27-218 states:
[T]he temporary certificate of occupancy shall be issued initially for a period between ninety and one hundred eighty days, in the case of all buildings classified in occupancy group J-3 or three-family homes, and ninety days for all other buildings, subject to renewal for additional ninety-day periods at the discretion of the commissioner.
N.Y. CITY ADMINISTRATIVE CODE § 27-218 (2007). Occupancy group J-3 includes “buildings occupied as one-family or two-family dwellings, or as convents or rectories.” N.Y. CITY ADMINISTRATIVE CODE § 27-266 (2007).
- 117 Howard, 2004 WL 2732245, at *6.
- 118 *Id.*
- 119 *Id.*
- 120 BLACK'S LAW DICTIONARY (8th ed. 2004) (defining “legal malpractice”).
- 121 Lending Tree, The Role of Real Estate Lawyers, [http:// www.lendingtree.com/smartborrower/Finding-a-listing-agent/ The-role-of-real-estate-lawyers.aspx](http://www.lendingtree.com/smartborrower/Finding-a-listing-agent/The-role-of-real-estate-lawyers.aspx) (last visited Apr. 7, 2008).
- 122 *See id.* Real estate lawyers' responsibilities typically include aiding clients up to and through closing, but do not typically include post-closing, ongoing tasks.
- 123 NEW YORK CODE OF PROF'L RESPONSIBILITY EC 7-9 (2002).
- 124 NEW YORK CODE OF PROF'L RESPONSIBILITY EC 7-8 (2002) (“A lawyer should exert best efforts to ensure that decisions of the client are made only after the client has been informed of relevant considerations.”).
- 125 Howard v. Berkman, Henoch, Peterson & Peddy, P.C., No. 034411/04, 2004 WL 2732245, at *5-6 (N.Y. Civ. Ct. Nov. 5, 2004).
- 126 ¹¹¹ Washington v. Culotta, No. 034230/02, 2005 WL 2171189, at *1 (N.Y. Civ. Ct. July 21, 2005).
- 127 *Id.*
- 128 *Id.* at *1-2.
- 129 *Id.* at *2.
- 130 *Id.*
- 131 *Id.* at *3.
- 132 ¹¹¹ Culotta, 2005 WL 2171189, at *4.
- 133 *Id.* at *5.

¹³⁴ *Id.* at *4.

¹³⁵ *Id.*

¹³⁶ *See id.*

¹³⁷ *See Divita v. Decker & Decker, P'ship*, No. SCR1192/04, 2004 WL 3178287, at *8 (N.Y. Civ. Ct. Nov. 24, 2004) (suggesting that "[p]erhaps the solution is to eliminate [the TCO] system"); *Howard v. Berkman, Henoch, Peterson & Peddy, P.C.*, No. 034411/04, 2004 WL 2732245, at *3 (N.Y. Civ. Ct. Nov. 5, 2004) (referring to the TCO system as "questionable, if not absurd").

¹³⁸ *See Howard*, 2004 WL 2732245, at *11; *see also* N.Y. CITY ADMINISTRATIVE CODE § 27-218 (2007).

¹³⁹ *See Howard*, 2004 WL 2732245, at *11.

¹⁴⁰ *See* Habitat for Humanity, Benefits of Homeownership, available at <http://www.habitatnyc.org/pdf/Toolkit/homewonership.pdf> (last visited Apr. 7, 2008).

¹⁴¹ Mortgage Professor, Mortgage Closing Date: Does it Matter? http://www.mtgprofessor.com/A%20-%20Options/closing_date.htm ("The interest clock on your loan starts ticking on the closing date, because the lender expects to be paid beginning the day the funds are disbursed.") (last visited Apr. 7, 2008).

¹⁴² Therefore, if it would cost the developer an additional \$2,500 to complete a project and obtain the final Certificate of Occupancy, the developer would be required to create an escrow of \$5,000 that can only be released upon obtaining the final Certificate of Occupancy.

¹⁴³ *Howard*, 2004 WL 2732245, at *12.

¹⁴⁴ Answers.com, Real Estate Developer: The Economics of Real Estate Development, <http://www.answers.com/topic/real-estate-developer-1> (one common form of real estate development financing is equity financing, the "use of cash flows from other projects owned by the developer") (last visited Apr. 7, 2008).

¹⁴⁵ *See id.*

¹⁴⁶ *Howard*, 2004 WL 2732245, at *12.

¹⁴⁷ *See* discussion *supra* Part IV.B.

¹⁴⁸ This would also require the homebuyer's attorney to make the homebuyer aware of these responsibilities when purchasing a home with a TCO. The homebuyer could also contract for the attorney to monitor whether the filing of the Certificate of Occupancy occurs and report any failure to the Department of Buildings.

¹⁴⁹ N.Y. CITY ADMINISTRATIVE CODE § 27-151 (2007).

2 BKNJCFCL 511

Exhibit O

5 Misc.3d 1020(A)
Unreported Disposition
(The decision of the Court is referenced in a table in the New York Supplement.)
Civil Court, City of New York,
Richmond County.

Michael HOWARD, Plaintiff,
v.
BERKMAN, HENOCH, PETERSON & PEDDY, P.C., Defendant.

No. 034411/04.

Nov. 5, 2004.

Attorneys and Law Firms

Munzer & Saunders, LLP, New York, attorney for plaintiff.

Joseph E. Macy, Esq., Berkman, Henoch, Peterson & Peddy, P.C., Garden City, attorney for defendant.

Opinion

PHILIP S. STRANIERE, J.

*1 Plaintiff, Michael Howard, commenced this action against the defendant, Berkman, Henoch, Peterson & Peddy, P.C. alleging that owing to the defendant's legal malpractice the plaintiff has suffered damages. Currently before the Court is a motion for partial summary judgment only on the issue of liability. Defendant opposes the motion. Both sides are represented by counsel, although the defendant is representing itself.

Certain facts are not in dispute. Plaintiff retained defendant law firm to represent him in regard to the purchase of the premises 40 Union Court, Staten Island, New York. Plaintiff apparently selected the defendant as his counsel since defendant was part of a referral list maintained by the labor union of which the plaintiff was a member. A written contract was entered into between plaintiff and the seller TPZ Corporation on July 26, 2001. The contract had an anticipated closing date of September 15, 2001. Paragraph 13 of the rider to the contract provided: "The seller agrees to deliver a final Certificate of Occupancy for the premises. However, the purchaser agrees to close with a Temporary Certificate of Occupancy or without any Certificate of Occupancy if Seller has not yet obtained same by the scheduled closing date." This paragraph was amended in writing at the time of contract to say: "The seller agrees to deliver a final certificate of occupancy for the premises and any improvements as they exist. However, the purchaser agrees to close with a Temporary Certificate of Occupancy by the scheduled closing date." The paragraph went on to provide that the sum of \$2,500.00 would be deposited by the seller in escrow to guarantee the delivery of a final certificate of occupancy. It should be pointed out that the paragraph does not specify who would be the escrow agent under this agreement.

A review of the contract submitted as an exhibit by the plaintiff reveals that the first few pages of the rider are not included, as the rider starts at the middle of paragraph 11. Also the contract does not contain a legal description. There is no metes and bounds description attached and the spot for the block and lot number contains a block but no lot. The rider to contract at paragraph 12 and part of paragraph 11 points out in detail that the property being sold is a foreclosure property acquired by the seller and that there may be title and certificate of occupancy problems that are not resolvable. Paragraph 12 gives the purchaser the right to cancel the contract and receive a refund of any down payment in those situations.

In September 2001 the purchaser's attorney asserts that he was orally notified by the seller's attorney that they had a temporary certificate of occupancy and that a closing could be scheduled. Defendant admits that it never received a copy by facsimile

transmission, regular mail or overnight mail. Defendant states that based on this representation a closing was set. It should be pointed out that neither party has produced an affirmation from the seller's attorney to confirm this fact. In any case, the closing took place on September 26, 2001 at seller's attorney's office. It is unclear whether the closing took place at the Staten Island, New York office or the Sparta, New Jersey office of the seller's attorney since no RESPA statement (HUD -1) is attached as an exhibit.

*2 No temporary or final certificate of occupancy was produced at the closing, yet the matter closed. Seller's attorney agreed to hold \$2,500.00 in escrow as provided by the contract. The purchaser apparently waived any right to cancel the transaction that existed under the terms of the contract when he agreed to accept title without either a temporary or final certificate of occupancy. It should be pointed out that the failure to have a certificate of occupancy is not an objection to title and does not affect the marketability or insurability of title. The issue of whether a premises can be legally occupied is not a title issue. Although this status is provided in most title reports, it is provided for "information purposes only."

On July 31, 2002 an inspection of the premises by the New York City Department of Buildings led to the issuance of a notice of violation against Michael Howard and Jean Howard. The violation was described as follows: "Building occupied without a valid certificate of occupancy. Noted: Department of Buildings records shows that this building have (sic) no C of O. Remedy: Obtain valid certificate of occupancy." The notice of violation alleged that the premises was in violation of New York City Administrative Code section 27-214. The section states: "New buildings: sidewalk requirements. a. Except as permitted under the provisions of section 27-218 of this article, no building hereafter constructed shall be occupied or used, in whole or in part, unless and until a certificate of occupancy shall have been issued certifying that such building conforms substantially to the approved plans and the provisions of this code and other applicable laws and regulations." Paragraph "c" of that section provides: "No certificate of occupancy or temporary certificate of occupancy (excluding amendments to previously issued certificates of occupancy) shall be issued on or after April First, Nineteen Hundred Eighty-Seven for any existing building which has not fully complied with all requirements of this code applicable to such existing building." Since neither side presented any information as to when the premises was originally constructed, when it was foreclosed and its status when it was foreclosed, it is impossible to determine if on the date the plaintiff purchased the premises it even qualified for a temporary certificate of occupancy; the age of the building may have made issuance of a final certificate of occupancy as the only option upon compliance with all of the requirements of the building code for an existing premises.

On the return date of the violation at the Environmental Control Board, the notice of violation was dismissed because Michael Howard produced gas, electric and water bills for several months prior to the date of the notice of violation which showed that no one was living in the building since the usage was billed at a minimum rate.

On March 6, 2003, the Building Department issued a final certificate of occupancy for the premises.

*3 Plaintiff commenced this action for damages incurred alleging that because he had not received a temporary or final certificate of occupancy he could not occupy this premises and rent his then current home. He alleges that he had to make payments for mortgage principal and interest, taxes and insurance and utility bills at the premises in question but could not occupy it. He is seeking these items as damages directly flowing from the defendant's legal malpractice.

This is just another example of the problems created for homeowners, attorneys, lenders and ultimately the Court system because of the questionable, if not absurd system, of allowing temporary rather than final certificates of occupancy to be issued in the City of New York and especially on Staten Island. An analysis of the system leads to the conclusion that if a rational basis existed for its initial imposition, that reasoning has long ago disappeared into a morass of problems that would have never existed had the City of New York devoted sufficient resources to the Department of Buildings so that final certificates of occupancy issued at the closing of title would be the rule and not the exception. It is incomprehensible that an industry such as the building industry which generates so much revenue for the City should be treated as if it were a victim of a natural disaster in need of eleemosynary relief. If more personnel is needed and the current system does not generate enough income to hire sufficient staff, then the Buildings Department should raise the fees; a cost that would ultimately be passed along to the home buyer. The real

"malpractice" in this and other similar actions is the failure of the City of New York to abide by its statutory obligation to protect the consumer, attorneys, lenders and the building industry by issuing timely certificates of occupancy. It is incomprehensible that practically every other municipality in this state and perhaps the United States has figured this out, yet the greatest city in the world cannot do so. In fact, some places even have the ability to inspect premises on resale and issue certificates of continuing occupancy.

LEGAL ISSUES PRESENTED:

A. Is It Malpractice To Close Without A Certificate of Occupancy?

There can only be one answer to this question. It is malpractice to permit a client to purchase a premises without a valid certificate of occupancy or under the current questionable system without a valid temporary certificate of occupancy. To represent a client in the purchase of residential real property to be occupied by that person as a dwelling place and to permit that client to enter into title without a certificate of occupancy is a clear breach of an attorney's obligation to that client. Blanche DuBois in Tennessee Williams' "Streetcar Named Desire" may be able to depend on the "kindness of strangers;" however, such a standard does not apply to our adversarial system, especially when it comes to representing clients in the purchase and sale of real property, the biggest investment most persons ever make in their lives. The failure to have a certificate of occupancy makes occupancy of the premises illegal. Whether it is a final certificate of occupancy or a temporary one, if such a standard is permitted under local building codes, the failure to have that document means that any subsequent occupancy violates the law and attorneys cannot be engaged in practices that lead to the violation of statutes.

*4 Certificates of occupancy are not issued as items to be framed for wall decoration; they are issued to insure that the wall is sturdy enough to support the hanging of such an ornamentation. Without the issuance of a certificate of occupancy, it is impossible to determine if a structure is built to code and safe for human habitation. As stated above, it is designed to insure that "such building conforms substantially to the approved plans and the provisions of this code and other applicable laws and regulations" (N.Y.CAC 27-214(a)). The lack of a certificate of occupancy leads to the presumption that the premises is not constructed in conformity with the applicable code. A Court faced with this issue only knows that the certificate has not been issued. It is impossible to determine if the reason for that is the failure of the builder to pay the architect, a ministerial error, or that the premises is about to collapse faster than the Yankees in the 2004 American League Championship Series.

Although the state legislature has never specifically addressed the necessity of certificates of occupancy in the construction of one and two family homes, it has found that they are required for multiple dwellings (Multiple Dwelling Law Article 8), that is, residential dwellings of three or more units (MDL 4(7)). The certificate of occupancy rules under the NYCAC cover all dwellings from one family to multiple dwellings and because, under the Municipal Home Rule Law, the legislature has given the authority to local government to set these standards, these local regulations have the same weight as a state statute. The MDL states that: "It shall be unlawful to commence the construction or alteration of a multiple dwelling ... until the issuance of a permit by the department upon compliance with all of the following requirements: ..." (MDL 300). It also provides: "No multiple dwelling shall be occupied in whole or in part until the issuance of a certificate by the department that said dwelling conforms in all respects to the requirements of this chapter, to the building code and rules and to all other applicable law, ..." (MDL 301). The clear thrust of these statutes is that certificates of occupancy are designed to insure the safety of the inhabitants of dwellings in this state and to protect them from unsafe structures.

There is one instance where it would not be malpractice to close in this situation and that is if the client or anyone else was not going to occupy the premises because the premises was either going to be demolished or renovated. However, that is not the situation in this case. The facts establish that the plaintiff was purchasing either for his own personal use or for use as a rental property. The fact that there was neither a temporary nor permanent certificate of occupancy makes the actions of the defendant in allowing the closing to take place, negligence. The defendant cannot deny it had this knowledge since it asserts that the plaintiff only qualified for representation under the union legal services plan if the purchase was for personal residential use. It should be pointed out that neither side has submitted a copy of this agreement as an exhibit.

*5 If, in fact, the plaintiff-client insisted that the closing take place, then, in order that it not be malpractice the defendant would have to have had the plaintiff execute a detailed release informing the plaintiff of the law, the legal implications of closing without a certificate of occupancy, that the closing was going forward against the advice of counsel, and advising the client to consult another attorney. In this case such a course would seem to have been almost mandatory by the defendant since paragraph 12 of the contract of sale served as notice to the plaintiff-purchaser that the seller could convey title without a certificate of occupancy and that in such case the plaintiff could either accept or reject title. The contract provided that if the purchaser rejected title, damages would be limited to a refund of the deposit; but if the purchaser, as he did in this situation, accepted title, the purchaser would be taking title "as is" without any further remedies against the seller. Acceptance of title with these restrictions is of such import that in order to not commit legal malpractice, defendant would have to produce some documentation that the plaintiff was fully aware of the implications of closing with this cloud on his right to occupancy. No such documentation has been produced. In fact the defendant has not produced any documentation to indicate whether a temporary certificate of occupancy was ever issued to this premises or if one were issued and expired, what were the open items that prevented the issuance of the permanent certificate of occupancy.

B. Does The NYCAC Address The Issue Of Closing Without A Certificate of Occupancy?

A review of the NYCAC reveals that the plaintiff, defendant, seller, counsel to the seller, the lender and counsel to the lender all face potential liability under the law.

NYCAC 26-125(a) provides:

every person who shall violate any provisions of any laws, rules, or regulations enforceable by the department or who shall knowingly take part or assist in any such violation shall be guilty of an offense and upon conviction thereof shall be punishable by a fine of not more than five thousand dollars. Such person shall also be subject to the payment of a penalty of not more than five thousand dollars to be recovered in a civil action brought in the name of the city in any court of record in the city.

In addition, NYCAC 26-248(a) provides:

the owner of any structure, or part thereof, or land, where any violation of this subchapter or chapter one of title twenty-seven of the code shall be placed, or shall exist, and any person who may be employed or assist in the commission of such violation, and any and all persons who shall violate any of the provisions of this subchapter or chapter one of title twenty-seven of the code or fail to comply there with, or any such requirement thereof, ... shall severally, for each and every such violation of non-compliance, respectively, be punished by a fine of not more than five thousand dollars.

*6 Occupying a premises without a certificate of occupancy is a violation of NYCAC 27-214 which is a section included in Chapter One of Title Twenty-Seven. This means that not only is the plaintiff-owner subject to liability, but defendant as counsel to the purchaser has "assisted" in committing the violation by permitting the plaintiff to close title with an intent to occupy the premises in violation of the administrative code. Applying these statutes to the practice of real estate law, can only lead to the conclusion that when an attorney permits a client to close title and enter into possession of a premises that lacks a valid certificate of occupancy reflecting the actual use of the premises, that attorney is assisting in violating the NYCAC. Likewise, a lender or lender's counsel that closes knowing that the premises either lacks a valid certificate of occupancy or has an actual use, not in conformity with the valid certificate of occupancy, is also in violation of the statute.

The existence of the temporary certificate of occupancy not only complicates the process but also exposes sellers, purchasers, attorneys and lenders to liability. This is because the NYCAC 27-218 states that in regard to the J-3 occupancy group a temporary certificate is issued for a period between 90 and 180 days and it may be renewed for additional 90 day periods. In the event the final certificate of occupancy is not obtained within the time set forth in the initial temporary certificate of occupancy or any extension thereof, the occupancy then becomes illegal and therefore all of the above parties are technically assisting in violation of the NYCAC by permitting the purchaser to continue occupancy after that date. What is the obligation of each party to continue to check the Buildings Department records? An argument can be made that a purchaser's attorney who permits the closing to go forward with a temporary certificate of occupancy has a continuing obligation to monitor the situation; advise the client that no final certificate of occupancy has been obtained; and that the client is not only subject to being evicted by the Buildings Department but also potentially to civil and criminal penalties. Although this obligation is not spelled out in the statute and perhaps the necessary follow through is not done by many attorneys in actual practice, the current system of issuing temporary certificates of occupancy is a trap for the unwary and a potential source of liability for malpractice if strictly interpreted.

It should however, be pointed out that there will be no additional liability attaching to the defendant since the plaintiff was successful in getting the violation dismissed at the Environmental Control Board hearing on September 18, 2002 by establishing that although plaintiff intended to occupy the premises, he had not in fact done so. If the plaintiff-owner is not liable, then the defendant cannot also be liable.

C. Is It A Violation Of The Code Of Professional Responsibility To Close With A Temporary Certificate Of Occupancy?

*7 Since this action involves an allegation of legal malpractice, it is important to examine the Code of Professional Responsibility to see if the system of issuing temporary certificates of occupancy in general, or the facts of this case specifically, lead to a violation of the Code.

Ethical Consideration 6-4 provides:

Having undertaken representation, a lawyer should use proper care to safeguard the interests of the client. If a lawyer has accepted employment in a matter beyond the lawyer's competence but in which the lawyer expected to become competent, the lawyer should diligently undertake the work and study necessary to be qualified. In addition to being qualified to handle a particular matter, the lawyer's obligation to the client requires adequate preparation for and appropriate attention to the legal work, as well as promptly responding to inquiries from the client.

Disciplinary Rule 6-101 provides:

A. A lawyer shall not: 1. Handle a legal matter which the lawyer knows or should have known that he or she is not competent to handle without associating with a lawyer who is competent to handle it. 2. Handle a legal matter without preparation adequate in the circumstances. 3. Neglect a legal matter entrusted to the lawyer."

Ethical Consideration 7-8 states:

A lawyer should exert best efforts to insure that decisions of the client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision-making process if the client does not do so. Advice of a lawyer ought not be confined to purely legal considerations. A lawyer should advise the client of the possible effect of each legal alternative. A lawyer should bring to bear upon this decision-making process the fullness of his or her experience as well as the lawyer's objective viewpoint. In assisting the client to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible. The lawyer may emphasize the possibility of harsh consequences that might result from assertion of legally permissible positions. In the final analysis, however, the lawyer should always remember that the decision whether to forego legally available objectives or methods because of non-legal factors is ultimately for the client and not the lawyer. In the event that the client, in a non-adjudicatory matter, insists upon a course of conduct that is contrary to the judgment and advice of the lawyer, but not prohibited by Disciplinary Rules, the lawyer may withdraw from the employment.

Ethical Consideration 7-9 states:

In the exercise of the lawyer's professional judgment on those decisions which are for the lawyer's determination in the handling of a legal matter, a lawyer should always act in a manner consistent with the best interest of the client. However, when an action in the best interest of a client seems to the lawyer to be unjust, the lawyer may ask the client for permission to forego such action.

*8 Disciplinary Rule 7-101 states: "A. A lawyer shall not intentionally: ... 3. Prejudice or damage the client during the course of the professional relationship..."

Although enforcement of the Code of Professional Responsibility is beyond the jurisdiction of this Court, it is obvious that in addition to all the other problems caused by the system of issuing temporary certificates of occupancy, exposure to a grievance is one of the possible results. In this case, the problem of course is: did the defendant give proper advice to the plaintiff so that the plaintiff could make his own decision in regard to closing without the existence of the temporary or final certificate of occupancy? At a minimum, the defendant was required to inform the plaintiff of all the potential problems that could occur by closing in this situation beyond monetary concerns, including being prohibited from occupying the premises, and facing civil and criminal penalties. By closing without even a temporary certificate of occupancy, the plaintiff, if going into occupancy, would be violating the applicable law. How does an attorney give such advice without being able to document that all disclosures were given to the client and that the client elected to close in spite of and against the advice of counsel? If never having received a temporary certificate of occupancy, how can the attorney advise the client as to whether or not a final certificate of occupancy will ever be issued since a temporary certificate of occupancy would list all items considered incomplete by the Buildings Department?

What is troubling about Ethical Consideration 7-8 is the sentence "advice of a lawyer to the client need not be confined to purely legal considerations." Does this mean the client can expect the lawyer to give financial advice, serve as a structural engineer, accountant, physician, spiritual advisor, home improvement contractor and auto mechanic? I am sure that the attorney's malpractice insurance carrier would be happy to cover an attorney who was sued for giving improper non-legal advice (please note the sarcasm). For instance, when a seller when faced with having to complete the Property Disclosure Act Statement (Real Property Law Article 14) notifies the attorney that he or she has no idea how to answer the questions, the attorney not only can advise the client how to complete the questions but might be expected or even required to do so under this ethical consideration.

Would this not make the attorney a defendant in any suits that arose concerning defects in the premises arising after closing?

Or, if the attorney advises the client not to complete the form but to give the \$500.00 credit (RPL 465) and the seller later gets sued, would the attorney also be a proper party? I would think that bar associations around this state may want to re-word this Ethical Consideration so that it does not have this potential for mischief.

D. Is The Plaintiff Entitled To Damages?

*9 Plaintiff is only seeking partial summary judgment on the issue of liability, however, a summary judgment motion permits the Court to search the record and examine the sufficiency of the complaint (CPLR 3212). One problem is that the plaintiff has not produced a copy of the deed which would establish that the plaintiff is the owner of the premises. This may be an issue since the notice of violation is issued in the name of "Michael and Jean A. Howard." The contract and the pleadings are only in the name of Michael Howard. Although not admitted in the answer, defendant apparently is not challenging that the closing took place and that the plaintiff is the only proper party.

Although the issue of damages is not specifically raised in this motion, there are certain aspects of that portion of the case that require analysis and comment. Defendant asserts that initially the plaintiff stated that he intended to rent 40 Union Court and that because it could not be occupied he lost rental income. Defendant claims that when the plaintiff realized this, he changed his allegation to the fact that he attempted to move into the premises but could not do so because there was no certificate of occupancy and that if that was his intention defendant would not have represented him under the legal service plan agreement. Plaintiff later was successful in defeating the violation that was issued at the ECB hearing by establishing that no one was occupying the premises. If no one was in the premises one must question why a notice of violation was issued in the first place. According to the contract, this was a foreclosure property. If it was empty, why a violation? The mere fact that title changed would not have caused a violation to be issued. The history of the property would lead to the conclusion that no certificate of occupancy was in effect and the premises was unoccupied since the building was first constructed, so why was a notice of violation issued? Interestingly, nowhere in the summons and complaint is the address of the plaintiff listed. On the summons the plaintiff's address is "care of" his attorney's office. When this is taken into account with a letter to defendant from plaintiff's prior attorney claiming lost "rent" of \$1,300.00 a month along with other charges incurred at the premises, one must question what was the plaintiff's true intent concerning the premises. If his claim is for rent lost at the premises, then he cannot collect it as a matter of law. A landlord cannot collect rent from a premises being rented in violation of a certificate of occupancy (MDL 302). Although this statute applies only to multiple dwellings, this Court has consistently held it applies to all illegal occupancies. The Court will not permit a landlord to benefit financially from the rental of a premises being occupied in violation of the law. The law will not enforce an illegal contract.

Plaintiff is claiming that the assertion that he intended to rent the premises is not correct. He is claiming that he intended to rent his current home and occupy 40 Union Court. This claim is questionable. Plaintiff's address in the contract of purchase is listed as 40 Union Court; the premises to be purchased. There is no proof of ownership of any other premises, nor is there an explanation of why he has not revealed any other address, although the checks he submitted as an exhibit have 10 Union Court as his address. This is possibly an adjacent property making the defendant's contention that the plaintiff knew he was closing without a certificate of occupancy and knowingly waived any objection to that fact more believable. This, of course, would not relieve the defendant of its malpractice and its failure to take any steps to reduce this understanding and waiver to a writing, but it might be relevant to the issue of damages if it can be established that the plaintiff was aware of the risk.

*10 If plaintiff is claiming that he lost income from the premises he currently lives in and could not rent because he could not move out, he is going to have to prove ownership, a valid certificate of occupancy, either a lease to a tenant which he could not honor, or expert testimony as to the fair market rental value of the premises.

It should also be pointed out that an argument can be made that the mortgagee for 40 Union Court, ABN AMRO Mortgage Group, Inc., should be precluded from collecting principal and interest payments during the period there was no certificate of occupancy. A mortgagee who loans money knowing that the mortgagor intends to occupy the premises as a primary residence

cannot close the loan knowing full well that legal occupancy is prohibited. The lender would know the borrower's intent from the application submitted and would have the borrower execute a document at closing indicating that the borrower intended to occupy the premises as his primary residence within thirty days of closing, and if that does not occur the lender can call the loan. Such a form, if not a federally required one, is standard for almost all lenders. The lender should have known the occupancy status from the title search where a municipal search in this regard would have been provided for "information only." If this lender is "out of state" and not familiar with local practices, it should either hire local counsel to protect its position or not lend money in New York City. The lender cannot plead ignorance and place a borrower in a situation where they owe the money and cannot live in the premises. If the lender wants to close, ignoring the law in regard to occupancy status, then it should be precluded from collecting the mortgage payments due it during that period of time.

The State of New York has found it necessary to license lenders including mortgage bankers (Banking Law Article 12-D). Banking Law 589 sets forth the legislative purpose for licensing. It states:

The activities of lenders and their agents offering financing for residential real property have a direct and immediate impact upon the housing industry, the neighborhoods and communities of this state, its homeowners and potential homeowners. The legislature finds that it is essential for the protection of the citizens of this state and the stability of the state's economy that reasonable standards governing the business practices of mortgage lenders and their agents be imposed. The legislature further finds that the obligations of lenders and their agents to consumers in connection with making, soliciting, processing, placing or negotiating of mortgage loans are such as to warrant the uniform regulation of the residential mortgage lending process, including the application, solicitation, making and servicing of mortgage loans. Consistent with the purposes of promoting mortgage lending for the benefit of our citizens by responsible providers of mortgage loans and services and avoiding requirements is consistent with legitimate and responsible business practices in the mortgage lending industry, the purpose of this article is to protect New York consumers seeking a residential mortgage loan and to ensure that the mortgage lending industry is operating fairly, honestly and efficiently, free from deceptive and anti-competitive practices.

*11 In light of this legislative purpose and the fact that Banking Law 595(1)(a) permits the superintendent of banking to revoke a license if a licensee violates "any other law, rule or regulation of this state or the federal government" it can only be concluded that lenders in the State of New York have the obligation to insure that a final certificate of occupancy is delivered on any building purchases they finance. The New York State Constitution Article IX grants to local governments certain powers including the power to regulate the use of property within that local subdivision. The Municipal Home Rule Law (10)(1) permits local governments, like the City of New York, to enact local laws concerning property. Since these local laws are authorized by the state constitution and statute, these local regulations become a "law, rule or regulation of the state" to which the licensed lender must adhere. The failure of a lender to insure that a mortgagor borrowing money so as to purchase a residential property for human occupancy, becomes an act that may lead the superintendent of banking to revoke that lender's license. Likewise, once the lender is aware that there is an escrow being held until a final certificate of occupancy is issued by the municipality, the lender has an obligation to insure that the final certificate of occupancy is issued or, in the City of New York, that the temporary certificate of occupancy is extended until the final certificate of occupancy is issued. As a licensee, a lender cannot advance the money for purchase and then stick its head in the sand and ignore the strong public purpose of the State of New York to provide safe housing and consumer protection.

There is said to be a "golden rule" in real estate; that is, "he who has the gold, makes the rules." As the mortgagee is the entity that is providing the most "gold" when it comes to the purchase of residential, or for that matter, any improved real estate, it has the ability, if not the best opportunity to insure that no closing takes place in the absence of a final certificate of occupancy

or if a temporary certificate of occupancy is produced, that sufficient money is withheld at the closing and placed in escrow to insure that there is a fund available to remedy any violations that would prevent the issuance of the certificate of occupancy.

It must be concluded that lenders issuing mortgage loans in New York have a legal obligation not to close the loan unless there is a final certificate of occupancy or, if a temporary certificate of occupancy is in effect, that enough money is held in escrow to insure the outstanding work can be completed and paid for within the time set forth in the temporary certificate of occupancy.

If the plaintiff intends to seek damages, the plaintiff must deal with the issues set forth above.

E. What Is The Function Of A Temporary Certificate Of Occupancy?

In 1985 the New York City Council amended the NYCAC to add section 27-218 which provides for the issuing of a "temporary certificate of occupancy." Initially, it was enacted to end the crisis that had occurred in the construction of residential housing because of the Department of Buildings' inability to issue timely final certificates of occupancy. In many cases it was argued that the premises had been constructed in accordance with all regulations and was safe for human occupancy. The only items that remained to be completed might be things like sodding of the lawn or pavement of the street to the curb in front of the house. It was felt that since such items were more "cosmetic" than safety related and completion of them might be delayed because of adverse weather conditions, especially in the winter, it was not fair to postpone the closing owing to items beyond the control of the parties. The temporary certificate of occupancy was advocated, developed and subsequently enacted to permit occupancy when only "cosmetic" items remained to be completed. It was predicated on the belief that the builder would act in good faith and a timely manner to secure the final certificate of occupancy.

*12 What was anticipated to be a sporadically used procedure has become the rule rather than the exception. In new construction cases, real estate attorneys and lenders in Richmond County can probably count on their hand the number of times they have closed title with a final certificate of occupancy. In fact, it is more likely that you will see a yeti crossing the West Shore Expressway wearing a Mets Hat than a final certificate of occupancy at a closing. This has resulted in an aggregate of "agita" for attorneys who represent these parties, primarily purchasers, at the closing of title. The standard real estate contract calls for the sum of \$2,500.00 to be held in escrow at closing to insure the seller produce a final certificate of occupancy. On Staten Island this is the "accepted" amount to be held; it often is totally unrelated to the actual cost of completing the items the Buildings Department lists as open on the temporary certificate of occupancy and is almost never negotiated by the purchaser or lender. As a result of this practice hundreds of attorneys are holding millions of dollars in escrow accounts awaiting the seller or someone else to produce a final certificate of occupancy.

One must question whether or not such an amount (\$2,500.00) is enough to compel a seller to complete the work, especially when fully attached houses in 2004 are selling for close to \$300,000.00. This escrow number is so artificially low that on many occasions the seller never completes the work, forfeits the \$2,500.00 and leaves the homeowner the task of obtaining the certificate of occupancy. This Court has even had cases when the purchaser having obtained the final certificate of occupancy seeks to have the escrow released to him or her and the seller opposes that because the escrow agreement does not clarify that the purchaser is entitled to the money if the seller fails to obtain the document. Usually, the seller completes the house or the housing development; does not deliver the final certificates of occupancy and moves on to another project. Since the seller is probably a corporation that ceases to exist after the last home is sold, buyers are often left to fend for themselves in obtaining the final certificate of occupancy, and may find themselves without a real legal remedy. This apparently is the situation in this case. The buyer might even face a vacate order from the Buildings Department because the temporary certificate of occupancy has not been issued. In order to correct the situation the buyer will have to expend time and money: money to complete the work, money for architects, money for lawyers, money for expeditors to process the papers through the appropriate City agencies, etc.

There are several remedies to this situation. First, if there is going to be a system of temporary certificates of occupancy, then require an amount be held in escrow that will compel the seller to obtain the document, such as ten percent of the sale price, or a number that represents the profit margin on the sale. The amount being held has to be enough to force the seller to live up to its contractual obligation. Second, do not permit corporations to receive building permits. Have the permits issued to

individuals and preclude that individual from obtaining any new permits until all of the houses in previously approved projects have received a final certificate of occupancy. The actual construction could be done by a corporation so that the individuals would not have unlimited personal liability.

*13 Another problem with this system is the amount of litigation that is produced. These actions can be a purchaser suing the seller for the costs incurred in obtaining the final certificate of occupancy, in which the attorney holding the money is named as a stakeholder; or they can be an attorney bringing a stakeholder action asking the Court to decide who should be paid the escrow; or it can be the seller seeking to have the funds released having produced the final certificate of occupancy albeit a substantial time after the date set forth in the escrow agreement, the release of which is opposed by the purchaser. All of this litigation would be unnecessary if the City of New York would do its job and protect its residents with a rational policy.

There is an additional reason for abandoning this system of temporary certificates of occupancy; that is, that the language of the statute does not create a standard that is readily determinable by reading the statute and provides no guidance from which it can be determined whether or not the commissioner has abused his or her discretion.

NYCAC 27-222 "Issuance of certificates of occupancy" has been part of the NYCAC since 1968. It provides:

(a) All applications for certificates of occupancy and accompanying papers shall be examined promptly after their submission. If the building is entitled to a certificate of occupancy applied for, the application shall be approved and the certificate of occupancy issued by the commissioner within ten calendar days after submission of the application. Otherwise, the application shall be rejected and written notice of rejection, stating the grounds of rejection, shall be given to the applicant within ten calendar days of the submission of the application....

NYCAC 27-214 "New buildings; sidewalk requirements" provides:

no building hereafter constructed shall be occupied or used, in whole or in part, unless and until a certificate of occupancy shall have been issued certifying that such building conforms substantially to the approved plans and the provisions of this code and other applicable laws and regulations.

NYCAC 27-218 "Temporary occupancy" states::

The commissioner may, upon request, issue a temporary certificate of occupancy for a part or parts of a building before the entire work covered by the permit shall have been completed, provided that such part or parts may be occupied safely prior to completion of the building and will not endanger public safety, health, or welfare, ...

A comparison of these sections leads to the conclusion that a standard is in existence for the issuance of a final certificate of occupancy, that is, substantial conformity to the approved plans and the provisions of the code, law and regulations (N.Y.CAC 27214(a)) whereas there is no such requirement for a temporary certificate of occupancy since one can be issued if the commissioner determines that occupancy will not be unsafe or endanger the public. The statute provides no standard for the commissioner to follow and no minimum requirements are set forth to govern his determination. The wording of the statute

means that the commissioner has the sole discretion as to whether or not a final certificate can be issued. The commissioner alone determines what is meant by a safe building. There is no requirement to certify compliance with the plans or the law before requesting a temporary certificate of occupancy equivalent to those that exist for a final one. There is no definition of what constitutes a "safe" building. This difference in requirements is also set forth in NYCAC 26-645(d) and (f). It should also be pointed out that the term "conform substantially to the approved plans" used for issuance of a final certificate of occupancy is nebulous at best. Since Judge Cardozo created the doctrine of "substantial performance" in Jacobs & Youngs v. Kent, 230 N.Y. 239, the real estate construction industry has never been the same. It too is problematical, but it is more guidance than exists for issuance of temporary certificates of occupancy.

*14 All of these issues lead to the conclusion that the continued practice of issuance of temporary certificates of occupancy must be ended.

CONCLUSION:

The plaintiff has established that it is entitled to a judgment in its favor on the issue of liability. Defendant has committed legal malpractice in closing without the benefit of either a temporary or final certificate of occupancy.

Judgment for plaintiff on the issue of liability. Upon the payment of the appropriate fees and the filing of the necessary papers, the matter will go forward on the issue of damages only.

Pursuant to the grant of jurisdiction in regard to the enforcement of provisions of the multiple dwelling law, housing maintenance code, building code and the health code given to the Civil Court in the Civil Court Act 110(c) and 203(k)through 203(o), the Department of Buildings, the Building Industry Association of NYC, Inc., and the Richmond County Bar Association will appear before this Court in Part 56 on Monday November 29, 2004 at 9:30 AM at the Courthouse, 927 Castleton Avenue, Staten Island, New York and show cause why an order should not be issued permanently enjoining the Department of Buildings from issuing temporary certificates of occupancy; directing the Department of Buildings to hire enough personnel to issue only permanent certificates of occupancy for new construction; requiring that a system be put into place which prohibits the issuance of new building permits to any individual or entity which has not obtained final certificates of occupancy on prior permits.

The foregoing constitutes the decision and order of this Court.

Court attorney to notify all parties and added parties.

All Citations

5 Misc.3d 1020(A), 799 N.Y.S.2d 160 (Table), 2004 WL 2732245, 2004 N.Y. Slip Op. 51470(U)

Exhibit P

2021 WL 4895248

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Hartford at Hartford.

500 NORTH AVENUE, LLC

v.

TOWN OF STRATFORD ZONING COMMISSION et al.

HHDLNDCV186097370S

I

August 17, 2021

Opinion

Hon. Rupal Shah, J.

*1 The plaintiff commenced this appeal on May 30, 2018, pursuant to General Statutes § 830g, regarding the denial of its affordable housing application (application) by the Town of Stratford Zoning Commission (commission) for the development of 795 James Farm Road in Stratford. The court allowed the plaintiff to be substituted by the new owner of 795 James Farm Road, JRB Holding Company LLC, and to continue this appeal. After a hearing on November 21, 2019, the court issued its decision remanding the matter back to the commission. In its memorandum of decision, dated January 29, 2020, the court found that the commission failed to meet the requirement that it issue a collective statement on the record and engage in the four-part test required under § 8-30g(g). The commission reconsidered the application and provided notice to the court. The court heard argument on October 16, 2020, regarding the commission's denial of the application on remand. A supplemental record was filed on November 9, 2020. On May 17, 2021, the court heard supplemental argument concerning the plaintiff's appeal.¹ After consideration, the court reverses the commission's decision, and approves the plaintiff's application with modifications and conditions.

I

STATEMENT OF FACTS

The plaintiff's first application in 2015 concerned the construction of a seventy-two unit affordable housing development pursuant to § 8-30g on a 4.6 acre portion of 795 James Farm Road. To accomplish this, the plaintiff filed three separate submissions with the commission. The proposal, in part, called for a 700 feet by 20 plus feet high retaining wall to be built at the base of a steep hill to retain 35,000 cubic yards of fill. The first application was denied by the commission causing the plaintiff to file a modified application. The modified application was also denied, causing the plaintiff to appeal to the Superior Court, which was dismissed on July 16, 2018. See *500 North Avenue, LLC v. Zoning Commission*, Superior Court, judicial district of Fairfield, Docket No. CV-16-6061118-S (July 16, 2018, Radcliffe, J.) (*500 North I*), cert. denied, Appellate Court, Docket No. PAC-18-0004 (October 31, 2018). The court, Radcliffe, J., found that in addition to other reasons, there could be no reasonable modification to the retaining wall, which required a "recommended distance, twice the height of the wall or forty (40) feet, contained in the manufacturer's specifications and recommendations (ROR 110)." *Id.*

*2 In November 2017, the plaintiff filed a new application with the commission, seeking approval of a § 8-30g project on the same land located at 795 James Farm Road. The plaintiff submitted an application for an affordable housing development, which included the following: (1) a proposal to amend the zoning regulations to add a new section 28 for an affordable housing development known as Julia Ridge Apartment Zone (JRAZ) at 795 James Farm Road, consisting of fifteen acres, which complied with § 8-30g; (2) a petition to change the zone from RS-1 to JRAZ; and (3) an affordability plan for Julia Ridge for a set aside development consisting of 116 units. This application was similar to the earlier applications filed by the plaintiff and included a 700 feet long by 28 to 30 feet tall gravity block retaining wall, requiring approximately 35,000 cubic yards of fill.

The commission conducted a public hearing on the application on February 27, March 28, and April 25, 2018. (Return of Record [ROR], Exhibit [Exh.] 57.a, 57.b and 57.c, pp. 591-713.) The sessions consisted of a presentation by the plaintiff and its experts; a presentation by the defendants² and their experts; and, finally, a rebuttal by the plaintiff. Expert testimony and documentary evidence were introduced in support of and in opposition to the application, which consisted of at least four engineers, three soil scientists, an architect, and police and fire experts. After concluding the public hearing, on May 9, 2018, the individual members of the commission discussed the application and denied it, without providing a collective statement on the record for the denial. (ROR, Exh. 57d, pp. 714-30.)

On remand, the commission held a special meeting to reconsider the plaintiff's application for the development of 795 James Farm Road. (Second Supplemental Return of Record, Docket Entry No. 166 [November 9, 2020].) The commission's members voted to affirm its May 9, 2018 denial of the application for a special case approval to construct a 116-unit affordable housing project, pursuant to § 8-30g, on a property located in a RS-1 zone. The denial letter, dated September 24, 2020,³ provided the following reasons, which include a specific citation to the record for each reason and the names of commissioners who ascribed to the particular reasons, as follows:

1. The applicant has not submitted a completed Special Case application, per § 5.4 of the Zoning Regulation, for a complete review to be conducted by the Zoning Commission. The applicant has chosen to ignore this provision that outlines the affordable housing application process in the Town of Stratford.

Evidence:

ROR page 97-101. Zoning Commission Planning Staff Review by J. Habansky

In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick

2. The application is incomplete, as the petitioner has not submitted the application for a Special Case application.

Evidence:

ROR pages 97-101. Zoning Commission Planning Staff Review by Jay Habansky

In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick

3. The proposed development is inconsistent with the Town of Stratford's 2013 Plan of Conservation and Development.

Evidence:

ROR pages 97-101. Zoning Commission Planning Staff Review by Jay Habansky

ROR pages 108. Planning Commission Unfavorable Recommendation Letter

In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick

4. The proposed development is inconsistent with the Forest Management Plan for the Town of Stratford's Roosevelt Forest.

ROR page 329. Written testimony of Steven Danzer, Ph.D, Soil Scientist/Professional Wetland Scientist

5. The proposed development would be detrimental to the public health and safety for residents and the surrounding ecosystem/wetlands. Evidence: ROR pages 656-60. Testimony of Sigrun Gadwa, Soil Scientist/Professional Wetland Scientist, Rema Ecological Services

6. The proposed development would do irreversible damage to the surrounding wetlands and the flora and fauna within that ecosystem.

ROR pages 577-81. Written testimony of George T. Logan, MW, PWS, CSE and Sigrun N. Gadwa, Rema Ecological Services

7. The applicant has not submitted an application to the Inland Wetlands and Watercourses Commission (IWWC) for a review of potential impacts on surrounding wetlands.

ROR pages 682-83. Remarks by Attorney / Senator Kevin C. Kelly citing legal opinion by Assistant Town Attorney John Florek and *Green v. Ridgefield Planning and Zoning Commission*.

8. The proposed development would create irreversible, long-term degradation of the Roosevelt Forest, Cemetery Brook and the surrounding wetlands.

ROR pages 577-581. Written testimony of George T. Logan, MW, PWS, CSE and Sigrun N. Gadwa, MS, PWS of Rema Ecological Services

ROR pages 656-61. Testimony of Sigrun Gadwa, Soil Scientist/Professional Wetland Scientist, Rema Ecological Services

9. The magnitude of the proposed development would create traffic issues, which would impede emergency response times, impede access to local properties, and disrupt local traffic flows. This would pose as a risk to public health and safety.

ROR page 621. Testimony of Robert Smith.

ROR page 631-37. Testimony of Lieutenant David Gugliotti, Stratford Police Department Traffic Division

10. The applicant has failed to satisfy the Special Case criteria identified in § 20 of the Zoning Regulations.

Evidence:

ROR 97-101. Zoning Commission Planning Staff Review by Jay Habansky

In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick

11. The proposed development, more specifically the 30' tall retaining wall, would present a clear public danger to residents, children and emergency first responders. This danger would be increased in the event of inclement weather.

Evidence:

ROR page 297-301. Engineering Review by STY Incorporated

*4 *In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick*

12. It is questionable whether the proposed retaining wall would support any large equipment, including fire apparatus responding to emergencies on site.

Evidence:

ROR page 284-90. Engineer's Report by Rene Basulto, PE of Robson Forensic

In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick

13. There is concern regarding the availability of sufficient water to fight fires in the event there is a fire on site.

Evidence:

ROR page 291. Map of Fire Hydrants

ROR page 615. Testimony of Brian Lampart, Fire Marshal

ROR page 684. Testimony of Thomas Velky

In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick

14. The stormwater retention system is located too close to the structural components of the proposed retaining wall, compromising the structure integrity of the entire site. Evidence: ROR page 650. Testimony of Tim Casey, PE of STV Incorporated. *In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick*

15. The applicant has provided insufficient information regarding the entire stormwater control system, which will create unsafe conditions that will compromise the structural integrity of the entire site.

Evidence:

ROR page 653. Testimony of Tim Casey, PE of STY Incorporated.

In reviewing the decision of May 9, 2020, Commissioners added additional reasons for denial enumerated below:

16. The site lacks adequate sidewalks, there is no access to public transportation, and there are no current plans by transportation providers to serve the site. The Commission felt that the traffic study was unreasonable in its assumptions and projected volume of traffic.

Evidence:

ROR pages 505-07. Letter to Attorney Joseph Kubic from Greater Bridgeport Transit Authority (GBTA) *In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick*

17. There are no easements in the plan that would allow access or apparatus to the foot of the retaining wall for purposes of maintenance, repair or rescue.

Evidence:

ROR page 563. Map denoting Eversource easement

ROR page 681. Discussion between Attorney Joseph Kubic and Commissioner Silhavey

In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick

18. In order to provide enough fill and material to build up the site, a multi-month long process of constantly trucking in material would be required creating massive traffic and potentially damaging James Farm Road. Estimate was 36,000 cubic yards of fill requiring 7,200 dump truck arrivals and departures from the site.

Evidence:

ROR page 678-80. Testimony of Richard Ezyk, Professional Engineer

In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick

19. The dangerous grade of 10% that exceeds the International Building Code maximum of 5%.

Evidence:

ROR page 188. Transcript of *500 North Avenue, LLC v. Gary Lorenston*, Planning and Zoning Administration, et al before Hon. Dale Radcliffe, Judge. ROR page 284-90. Engineer's Report by Rene Basulto, PE of Robson Forensic

**5 In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick*

20. If approved, the development would only add a small number of affordable units to Stratford's housing stock while actually decreasing the total percentage in town. Stratford has a significant amount of "naturally affordable" housing, although it may not meet the statutory definition for various reasons.

Evidence:

ROR pages 662-64. Statement of Attorney/Senator Kevin C. Kelly.

In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick

21. This application if approved would constitute spot zoning.

Evidence:

ROR page 717. Discussion by Commissioner Henrick.

In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick

22. Punctures in the geosynthetic fabric would compromise the structural integrity and allow water to seep through. Evidence: ROR 652-55. Testimony of Tim Casey PE STV Incorporated.

ROR 297-301. Engineering Review by STV incorporated

In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick

23. Hydrostatic pressure (build up of water behind the wall) could compromise the wall's structural integrity.

Evidence:

ROR 642-55. Testimony of Tim Casey PE STV Incorporated

ROR 297-301. Engineering Review by STV Incorporated

In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick

24. Evidence in the record from 2018 is sufficient to support the above findings.

Evidence:

ROR Entire Record.

In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick

25. The potential risks to public health and safety outweigh the need for affordable housing in Stratford.

Evidence:

ROR Entire Record. ROR pages 662-64. Statement of Attorney/ Senator Kevin C. Kelly.

In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick

26. Emergency access to the site could be impeded should firetrucks need to be rerouted. Response time was estimated to grow from 1:47 to 4:23.

Evidence:

ROR Pages 523-31

In Concurrence: Commissioners Fredette, Manos, Voccola, Silhavey, and Henrick

27. The project had been given an unfavorable recommendation by the Stratford Planning Commission.

Evidence:

ROR pages 97-101. Zoning Commission Planning Staff Review by Jay Habansky

ROR page 108. Planning Commission finds Text Amendment inconsistent with POCD

In Concurrence: Commissioners Fredette, Manos, Voccola, Whavey, and Henrick

The text amendment denial letter incorporated six of the reasons provided above. The denial letter for the petition for a zone change incorporated all twenty-seven reasons provided above and also indicated: "The proposed [t]ext [a]mendment and [s]pecial [c]ase applications have been denied, thus [JRAZ] does not exist in the [zoning regulations] of the Town of Stratford, and the application is thereby rendered moot." The denial letter concerning sediment and erosion control plans provided the following: "The proposed [t]ext [a]mendment, [z]one [c]hange and [s]pecial [c]ase applications have been denied, thus no application for a [r]eview of [e]rosion and [s]ediment [c]ontrol shall be considered at this time."

*6 In this appeal, the town of Stratford (town), Judith Kurmay, Cathleen Martinez, and Concerned Citizens Group of Stratford, Inc. (CCGS) (collectively, intervening defendants), have all appeared as intervening defendants pursuant to General Statutes § 22a-19. Kurmay, Martinez, and CCGS raise the additional defense of collateral estoppel, which shall be considered after all the overlapping reasons for the denial are considered by the court.

II

LEGAL STANDARD

Section 8-30g(f) provides, in relevant part: “[A]ny person whose affordable housing application is denied, or is approved with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units in a set-aside development, may appeal such decision pursuant to the procedures of this section ...” Additionally, § 8-30g(g) provides, in relevant part: “Upon an appeal taken under subsection (f) of this section, the burden shall be on the commission to prove, based upon the evidence in the record compiled before such commission, that the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record. The commission shall also have the burden to prove, based upon the evidence in the record compiled before such commission, that (1)(A) the decision is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider; (B) such public interests clearly outweigh the need for affordable housing; and (C) such public interests cannot be protected by reasonable changes to the affordable housing development ... If the commission does not satisfy its burden of proof under this subsection, the court shall wholly or partly revise, modify, remand or reverse the decision from which the appeal was taken in a manner consistent with the evidence in the record before it.”

In an application made under § 8-30g, the traditional burden of proof is shifted to the land use board to show that its determination is supported by sufficient evidence in the record. In denying an affordable housing application, the board must show that its decision was (1) based upon the protection of one or more substantial public interests; (2) that the cited public interest clearly outweighs the need for affordable housing in the municipality; and (3) that there are no reasonable modifications that could be made to the proposal that would permit the application to be granted. Quarry Knoll II Corp. v. Planning & Zoning Commission, 256 Conn. 674, 727, 780 A.2d 1 (2001) (*Quarry Knoll*). The zoning commission cannot rely on general concerns, but must point to evidence showing a quantifiable probability that a specific harm would result if the application is granted.

AvatonBuy Communities, Inc. v. Zoning Commission, 130 Conn.App. 36, 58, 21 A.3d 926, cert. denied, 303 Conn. 909, 32 A.3d 962 (2011).

“[S]ufficient evidence standard is not a burden of persuasion, which ordinarily requires the finder of fact to have a specific level of certainty, but, instead, is a standard of judicial review, the function of which is to allocate decisionmaking authority between the decision maker and the reviewing court ... [T]he zoning commission remains the factfinder, as in a traditional zoning case ... Thus ... the burden of proving facts is not imposed on a finder of fact ... [A]lso ... the sufficient evidence standard of judicial review applie[s] to all four prongs of [§ 8-30g(g)].” (Citations omitted; emphasis omitted; footnote omitted; internal quotation marks omitted.) River Bend Associates, Inc. v. Zoning Commission, 271 Conn. 1, 23-24, 856 A.2d 973 (2004).

*7 Our Supreme Court “has defined ‘sufficient evidence’ in this context to mean less than a preponderance of the evidence, but more than a mere possibility ... [T]he zoning commission need not establish that the effects it sought to avoid by denying the application are definite or more likely than not to occur, but that such evidence must establish more than a mere possibility of such occurrence ... Thus, the commission [i]s required to show a reasonable basis in the record for concluding [as it did]. The record, therefore, must contain evidence concerning the potential harm that would result if the [application was granted] ... and concerning the probability that such harm in fact would occur.” (Citation omitted; internal quotation marks omitted.)

Christian Activities Council, Congregational v. Town Council, 249 Conn. 566, 585, 735 A.2d 231 (1999) (*Christian Activities Council*). “Notably, [the court in *Christian Activities Council*] also has indicated that the sufficient evidence standard imposes a lesser burden than the substantial evidence standard.” (Internal quotation marks omitted.) *Brenmor Properties, LLC v. Planning & Zoning Commission*, 162 Conn.App. 678, 696, 136 A.3d 24 (2016), (*Brenmor*), *aff’d*, 326 Conn. 55, 161 A.3d 545 (2017).

“The substantial evidence standard has been described as one that is highly deferential and permits less judicial scrutiny than a clearly erroneous or weight of the evidence standard of review ... Because the sufficient evidence standard applicable to affordable housing appeals impose a *lesser* burden than substantial evidence, that burden is minimal. A land use agency simply must establish that something more than a mere theoretical possibility of harm to the public interest exists.” (Citations omitted; emphasis in original; internal quotation marks omitted.) *Id.*

“[T]he trial court must conduct a plenary review of the court ... and make an independent determination that denial of the affordable housing application (A) ... is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider; (B) such public interests clearly outweigh the need for affordable housing; and (C) such public interests cannot be protected by reasonable changes to the affordable housing development ... Thus ... these are not factual determinations, but mixed factual and legal determinations, the legal components of which are subject to plenary review ... In other words ... the commission remains the finder of fact and any facts found are subject to the sufficient evidence standard of judicial review ... [A]pplication of the legal standards set forth in § 8-30g(g)(1)(A), (B) and (C) to those facts is a mixed question of law and fact subject to plenary review.” (Citations omitted; internal quotation marks omitted.) *River Bend Associates, Inc. v. Zoning Commission, supra*, 271 Conn. 24-25.

“Where a zoning [commission] has stated its reasons for its actions, the court should determine only whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations ... The zone change must be sustained if even one of the stated reasons is sufficient to support it.” (Internal quotation marks omitted.) *West Hartford Interfaith Coalition, Inc. v. Town Council*, 228 Conn. 498, 513, 636 A.2d 1342 (1994) (*Interfaith*); see also *MacKowski v. Planning & Zoning Commission*, 59 Conn.App. 608, 618, 757 A.2d 1162 (Lavery, C. J., dissenting), cert. granted, 254 Conn. 949, 762 A.2d 902 (2000). “[O]ur Supreme Court has cautioned against exalting form over substance in contemplating the adequacy of such decisions ... Rather, we must recognize that the commission is composed of laymen whose procedural expertise may not always comply with the multitudinous statutory mandates under which they operate ... We must be scrupulous not to hamper the legitimate activities of civic administrative boards by indulging in a microscopic search for *technical infirmities* in their actions ... Affording a degree of latitude is particularly appropriate in the context of affordable housing appeals, where—unlike traditional zoning appeals—the reviewing court is not empowered to scour the record in search of a proper basis for the agency’s decision.” (Citations omitted; emphasis in original; internal quotation marks omitted.) *Brenmor, supra*, 162 Conn.App. 692.

*§ “In summary ... in conducting its review in an affordable housing appeal, the trial court must first determine whether the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record ... Specifically, the court must determine whether the record establishes that there is more than a mere theoretical possibility, but not necessarily a likelihood, of a specific harm to the public interest if the application is granted. If the court finds that such sufficient evidence exists, then it must conduct a plenary review of the record and determine independently whether the commission’s decision was necessary to protect substantial interests in health, safety or other matters that the commission legally may consider, whether the risk of such harm to such public interests clearly outweighs the need for affordable housing, and whether the public interest can be protected by reasonable changes to the affordable housing development.” (Citation omitted; internal quotation marks omitted.) *River Bend Associates, Inc. v. Zoning Commission, supra*, 271 Conn. 26.

In short, “the court first determines whether the [c]ommission has met its burden of proof that the decision is supported by sufficient evidence in the record. Having done this, the court not the [c]ommission, then weighs whether the [c]ommission has met its burden of proof, that the decision is necessary to protect substantial public interests which clearly outweigh the need

for affordable housing and which cannot be protected by reasonable changes to the affordable housing development.” (Internal quotation marks omitted.) *Quarry Knoll, supra*, 256 Conn. 723-24.

III

DISCUSSION

A

AGGRIEVEMENT

“Standing is established by showing that the party claiming it is authorized by statute to bring an action, in other words, statutorily aggrieved, or is classically aggrieved ... [Statutory] [s]tanding concerns the question [of] whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.” (Internal quotation marks omitted.) *Handsome, Inc. v. Planning & Zoning Commission*, 317 Conn. 515, 525, 119 A.3d 541 (2015). “Standing is not a technical rule intended to keep aggrieved parties out of court ... Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented.” (Internal quotation marks omitted.) *R&R Pool & Rome, Inc. v. Zoning Board of Appeals*, 43 Conn.App. 563, 569-70, 684 A.2d 1207 (1996).

“[T]he fundamental test for determining [classical] aggrievement encompasses a well-settled twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the decision ...” (Internal quotation marks omitted.) *New England Cable Television Assn., Inc. v. Dept. of Public Utility Control*, 247 Conn. 95, 103, 717 A.2d 1276 (1998).

The court finds that JRB Holding is an aggrieved party as the current property owner. See *Quarry Knoll, supra*, 256 Conn. 705. None of the parties dispute that JRB Holding is the current property owner, although the defendants argue that the manner in which it became the owner (by foreclosure) should have some significance. The court has found no distinction between an owner through foreclosure or any other means and finds that JRB Holding is both statutorily and classically aggrieved as the owner of the property at issue.

B

PROCEDURAL DISPUTE AND IMPROPER REASONS FOR DENIAL

1. Failure to Comply with Zoning Regulations and Special Case Regulation

*9 On remand, the letter from the commission provided its collective reasons with citations to the record, including the plaintiffs' failure to submit a completed special case application for a complete review by the commission. The plaintiff contends a special case application is not required and specifically indicated to the commission that it was not submitting a final site plan

under the town's special case regulations. The commission argues that the plaintiff must comply with all its regulations for a special case application. This stated reason by the commission is misplaced.

As a § 8-30g affordable housing application, the standards for approval or denial are clearly provided and governed by the statute. "Section 8-30g does not allow a commission to use its traditional zoning regulations to justify a denial of an affordable housing application, but rather forces the commission to satisfy the statutory burden of proof ... Instead of simply questioning whether the application complies with [the affordable housing subdivision] regulations ... the commission considers the rationale behind the regulations to determine whether the regulations are necessary to protect *substantial* public interests in health, safety or other matters." (Emphasis in original.) *Wisiowski v. Planning Commission*, 37 Conn.App. 303, 317-18, 655 A.2d 1146 (1995). In other words, "[e]ssentially, every subdivision application must be approved unless there is a justifiable reason to deny the application. The commission must look at the rationale behind its regulations to determine if there is a substantial interest, outweighing the need for affordable housing, that must be protected by the denial of an application." *Id.*, 318.

"Failing to comply with a zoning regulation that is directed to protect public health and safety may satisfy the sufficient evidence requirement under § 8-30g(g) ... The commission, however, must still demonstrate that denying an application on the basis of a failure to comply with a certain zoning ordinance is necessary under § 8-30g(g) ... Noncompliance with a zoning regulation alone is not enough to support a commission's denial of an affordable housing development application under § 8-30g(g)." (Citations omitted; emphasis omitted.) *Autumn View LLC v. Planning & Zoning Commission*, 193 Conn.App. 18, 39, 218 A.3d 1101, cert. denied, 333 Conn. 942, 218 A.3d 1048 (2019).

In the present case, the commission had affordable housing regulations and special case regulations in effect at the time of the plaintiff's application. It maintains that failure to comply with those regulations requires denial of the plaintiff's affordable housing application. The court holds that the plaintiff's failure to comply with the town's regulations is still insufficient to meet the commission's burden under § 8-30g(g). Specifically, the record is devoid of any evidence that a specific harm to the public interest would occur if the commission granted the plaintiff's application despite the plaintiff's noncompliance with the town's zoning regulations. Moreover, even if the commission was able to show that compliance with its special case regulations was necessary, the record does not establish how compliance was necessary to protect an identified public interest and that such public interest outweighed the need for affordable housing, or that the public interest could not be protected by reasonable changes. Accordingly, those reasons pertaining to the plaintiff's noncompliance with the town's special case regulations⁴ are inadequate bases to support the commission's denial of the plaintiff's application.

2. Naturally Affordable Housing and the Town's Lack of Need of Affordable Housing

*10 The commission stated the following as a reason to deny the plaintiff's application: "If approved, the development would only add a small number of affordable units to [the town's] housing stock while actually decreasing the total percentage in town. [The town] has a significant amount of 'naturally affordable' housing, although it may not meet the statutory definition for various reasons." The plaintiff argues that the town provided the same reason in *Thompson v. Zoning Commission*, Superior Court, judicial district of Fairfield, Docket No. CV-99-0494184-S (January 11, 2000, Mottolese, J.) (26 Conn. L. Rptr. 318), which was rejected by the court.

The defendant in *Interfaith*, *supra*, 228 Conn. 498, proffered similar argument as the commission in the present case. "The defendant [in *Interfaith*] argue[d] that under [§ 8-30g(g)]⁵ when weighing the need for affordable housing in [the municipality] against the substantial public interests advanced by the defendant as reasons for denying the plaintiff's application, the trial court should have considered evidence of existing housing that did not meet the statutory definition of 'affordable housing' but was, nevertheless, 'affordable.'" (Footnote added.) *Id.*, 520. Rejecting the defendant's argument, the court reasoned: "[T]here is no support in the [affordable housing] statute or its legislative history for the defendant's position. Section 8-30g(a) explicitly limits

the definition of 'affordable housing [development]' to 'assisted housing' or ['a set-aside development']. Further, [§ 8-30g(k) and (l)] provide specific exemptions from the statute's appeals procedure. Because the 'evidence' proffered by the defendant does not comport with the statutory definition of 'affordable housing,' it satisfies neither statutory exemption. Consequently, when weighing the need for affordable housing, the trial court correctly refused to consider the defendant's evidence of low cost housing ..."] *Id.*, 520-21.

Similarly, the reason provided by the commission in the present case regarding "naturally affordable" housing in denying the plaintiff's application does not exempt the town from the requirements of § 8-30g. "Section 8-30g applies if less than 10 percent of the dwelling units in the municipality meet the statutory criteria for affordable housing." *Garden Homes Management Corp. v. Planning & Zoning Board*, Superior Court, judicial district of Hartford, Land Use Docket, Docket No. CV-15-6059519-S (April 8, 2016, Berger, J.); see *General Statutes § 8-30g(k)*. Here, the 2017 Affordable Housing Appeals List has the town listed under its nonexempt municipalities category with only 6.21 percent of the town's housing stock qualified as affordable housing. (ROR, Exh. 56.b.4, pp. 134-37.) Therefore, the town fails to meet the 10 percent threshold and is subject to the provisions of § 8-30g.⁶ Because the evidence proffered [commission] does not comport with the statutory definition of 'affordable housing' (internal quotation marks omitted); *Interfaith, supra*, 228 Conn. 521; the town is not eligible for an exemption under either § 8-30g(k) or (l). Accordingly, the commission has failed to prove that its decision is supported by sufficient evidence in the record.

3. Inconsistencies with the POCD and FMP

*11 The commission pointed to the proposed affordable housing development's inconsistencies with the town's Plan of Conservation and Development (POCD) and with the Forest Management Plan for the town's Roosevelt Forest (FMP), as reasons to deny the plaintiff's application. The plaintiff contends that the court can require multifamily use irrespective of the POCD and that the proposed development does not have to be consistent with the surrounding area. A town plan of development, sometimes referred to as a master plan, is adopted pursuant to *General Statutes § 8-23*. *AvalonBay Communities, Inc. v. Orange*, 256 Conn. 557, 573, 775 A.2d 284 (2001). Our Supreme Court "repeatedly has recognized that a town plan is merely advisory ... The purpose of the [town] plan is to set forth the most desirable use of land and an overall plan for the town ... The development plan is the planning commission's recommendation on the most desirable uses of all land within the community, including all public and private uses from street layouts to industrial sites ... Because the overall objectives contained in the town plan must be implemented by the enactment of specific regulations, the plan itself can operate only as an interpretive tool." (Citations omitted; internal quotation marks omitted.) *Id.*, 574-76.

"Enjoying such status, the plan constitutes a public interest which deserves to be protected and promoted ... However, § 8-30g is a remedial statute which must be liberally construed in favor of those whom the legislature intended to benefit ... Moreover, if an affordable housing application may not be denied because it does not comply with the underlying zoning of the area [as held in *Wisniewski v. Planning Commission, supra*, 37 Conn.App. 312], a fortiori, the application cannot be denied because it is not consistent with a plan of development and conservation ..." (Citations omitted; emphasis omitted.) *Dakota Partners, Inc. v. Plan & Zoning Commission*, Superior Court, judicial district of Hartford, Docket No. CV-18-6103767-S (August 28, 2019, Mottoliese, J.T.R.) [70 Conn. L. Rptr. 480]. In the present case, the court relied on the planning and zoning office staff comments, dated January 10, 2018. (ROR, Exh. 32, pp. 97-101.)⁷

The FMP is similar to the POCD, and it appears to be merely advisory. The defendants do not offer any basis to find otherwise. Because the record does not contain a copy of the FMP, the court is precluded from properly reviewing this reason for denial. Therefore, insufficient evidence supports the commission's decision to deny on the basis of inconsistencies with the FMP.

4. Unfavorable Recommendation from the Stratford Planning Commission

The commission cites to an unfavorable recommendation from the Stratford Planning Commission (planning commission) as a reason to deny the plaintiff's application. The record contains a copy of the planning and zoning office staff comments, dated January 10, 2018 and a copy of the February 21, 2018 recommendation letter from the planning commission to the zoning commission. The commission, however, fails to prove how the planning commission's unfavorable recommendation requires the commission to deny the plaintiff's application "to protect substantial public interests in health, safety or other matters which the commission may legally consider." General Statutes § 8-30g(g)(1)(A). The court cannot find any provision in the town's zoning regulations or anywhere else in the record that precludes the commission from approving an affordable housing land use application without a favorable recommendation from the planning commission. Moreover, the record does not establish that "there is more than a mere theoretical possibility ... of a specific harm to the public interest if the application is granted." *River Bend Associates, Inc. v. Zoning Commission*, *supra*, 271 Conn. 26.

5. Spot Zoning

*12 The commission asserts that the plaintiff's application, if approved, would constitute spot zoning. The plaintiff again points to *Thompson v. Zoning Commission*, *supra*, 26 Conn. L. Rptr. 318, to maintain that the defendant's argument on such basis was unsuccessful in that case. The court first notes the purpose of zoning, including in the affordable housing context. "The purpose of zoning is to serve the interests of the community as a whole, and one of those interests is to provide adequate housing. A change of zone predicated on such an interest, if otherwise consistent with the accepted principles of zoning, is a reasonable exercise of the board's discretionary powers." *Malafrente v. Planning & Zoning Board*, 155 Conn. 205, 212, 230 A.2d 606 (1967). "The zoning power of a municipality may properly be exercised to achieve the goal of access to affordable housing in order to meet present and prospective needs." *Brennick v. Planning & Zoning Commission*, 41 Conn. Sup. 593, 598, 597 A.2d 346 (1991).

Our appellate courts have spoken on the applicability of the general rule on uniformity in the affordable housing context. “A general rule requiring uniform regulations serves the interests of providing fair notice to applicants and of ensuring their equal treatment ... It is not necessary to apply such a rule [when] the interests served by the rule would not be adversely implicated by granting the zone change on the condition that the new zone be used only for affordable housing.” (Citations omitted.)

Kaufman v. Zoning Commission, 232 Conn. 122, 147, 653 A.2d 798 (1995). "The requirement of uniformity of § 8-2 does not militate against the grant of a specific exception to a general zoning requirement so long as the exception is reasonable and for the general community benefit rather than for the benefit of a single landowner ... Clearly, affordable housing legislation is for the benefit of the entire community, as well as for that of the state." (Citation omitted; footnote added; internal quotation marks omitted.) *Wisniewski v. Planning Commission*, *supra*, 37 Conn.App. 315.

“The very *same* reasoning applies to the principle of spot zoning.” *Thompson v. Zoning Commission*, *supra*, 26 Conn. L. Rptr. 320. *Thompson v. Zoning Commission*, *supra*, 26 Conn. L. Rptr. 320. “[S]pot zoning is the reclassification of a small area of land in such a manner as to disturb the tenor of the surrounding neighborhood ... Two elements must be satisfied to constitute spot zoning ... First, the zone change must concern a small area of land. Second, the change must be out of harmony with the comprehensive plan for zoning adopted to serve the needs of the community as a whole.” (Citation omitted; internal quotation marks omitted.) *Konigsberg v. Board of Aldermen*, 283 Conn. 553, 591-92, 930 A.2d 1 (2007).

In the present case, even if the fifteen-acre parcel in question meets the first element, the plaintiff's proposed development cannot be deemed to constitute spot zoning as a matter of law. Not only is the proposed development in an area where approximately 123 developed properties exist, albeit producing a substantially greater density than that found in the area; (ROR, Exh. 26, 5614, pp. 337, 582); but "providing affordable housing does not just benefit an applicant, it benefits a town, a region, a state." *TCR*

New Canaan, Inc. v. Planning & Zoning Commission, Superior Court, judicial district of Hartford, Docket No. CV-384353 (March 5, 1992, Berger, J.) (6 Conn. L. Rptr. 91, 102) (TCR). The court is further persuaded by the following proposition from TCR: "Zoning changes affording special treatment to encourage the construction of multifamily residences in cities with housing shortages promote the public welfare and do not constitute spot zoning." (Internal quotation marks omitted.) *Id.* The commission has failed to prove sufficiency of evidence that a specific harm to a substantial public interest would occur if it approved the application. Even if the court could determine that sufficient evidence exists—which it cannot—the commission has yet to prove that denying the plaintiff's application is necessary to protect substantial public interests in health and safety that clearly outweigh the need for affordable housing and that cannot be protected by reasonable modifications to the proposed development.

6. Inadequate Sidewalks and Lack of Access to Public Transportation

*13 The commission provides the following as bases to deny the plaintiff's application: inadequate sidewalks and public transportation accessibility issues. "A commission is not entitled to reject an application on the basis of the mere possibility of harm or generalized concerns." *Garden Homes Management Corp. v. Town Plan & Zoning Commission*, 191 Conn.App. 736, 755, 216 A.3d 680, cert. denied, 333 Conn. 933, 218 A.3d 594 (2019). Moreover, "[s]uch generalized concerns cannot support a determination that the commission's decision was necessary to protect the public interest or that the harm outweighed the town's documented need for affordable housing." *Brenmor*, *supra*, 162 Conn.App. 706. Here, the record is devoid of any evidence as to the specificity, severity, and probability of harm that would result if no public sidewalks were constructed or if no public transportation were to serve the area. Even if sufficient evidence supported the commission's decision, the commission has yet to satisfy its burden on the other three prongs of § 8-30g(g).

7. Sufficient Evidence to Support Findings; Potential Risks Outweigh Need for Affordable Housing

The court briefly notes that reasons 24⁸ and 25⁹ in the commission's September 24, 2020 letter are improper. Reason 24 merely paraphrases the first prong of § 8-30g(g), which provides: "[T]he burden shall be on the commission to prove, based upon the evidence in the record compiled before such commission, that the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record." Likewise, reason 25 merely paraphrases § 8-30g(g)(1)(B), which provides in relevant part: "The commission shall ... have the burden to prove, based upon the evidence in the record compiled before such commission, that [substantial public interests in health, safety or other matters which the commission may legally consider] clearly outweigh the need for affordable housing ..." It is inadequate for the commission to merely state its burden of proof; the commission must satisfy its burden. Furthermore, reasons 24 and 25 are legally insufficient because they merely recite legal conclusions. *Cf. Office of Chief Disciplinary Counsel v. Miller*, 335 Conn. 474, 509, 239 A.3d 288 (2020) (legal conclusions unsupported by factual allegations are insufficient to plead proper special defense). Accordingly, reasons 24 and 25 are improper grounds for denial.

C

FAILURE TO WEIGH IDENTIFIED PUBLIC INTERESTS AGAINST NEED FOR AFFORDABLE HOUSING AND WHETHER REASONABLE CHANGES COULD NOT BE MADE

The decision of the commission and the various reasons provided shows no indication that the commission engaged in the kind of contemplation required in the last two critical steps under § 8-30g(g). In reviewing the commission's decision on

remand, there is an absence of evidence of consideration of how any of the identified public interests outweigh the need for affordable housing or whether the identified public interest could be protected by reasonable changes. In the September 24, 2020 denial letter, the commission adds as a reason that "[t]he potential risks to public health and safety outweigh the need for affordable housing in [the town]." In support, the commission cites to the entire record. The municipal planning and zoning commission, rather than the affordable housing land use applicant bears the burden of proving that no reasonable modifications to a proposed development exist. *Quarry Knoll, supra*, 256 Conn. 733. The plain language of § 8-30g(g) requires that the municipal planning and zoning commission consider reasonable changes: "The commission shall ... have the burden to prove, based upon the evidence in the record compiled before such commission, that ... such public interests cannot be protected by reasonable changes to the affordable housing development ..." (Emphasis added.) *General Statutes* § 8-30g(g). "To fulfill its burdens under [§ 8-30g(g)(1)(C)] ... the commission was required to show only that, on the basis of evidence in the record, it reasonably could have concluded that the public interests could not be protected by reasonable changes to the size of the zone, the density of the zone or the specific designs presented." (Internal quotation marks omitted.) *Kaufman v. Zoning Commission, supra*, 232 Conn. 137 n.11.

*14 Courts that have addressed the requirement of the commission to consider reasonable modifications have set forth guidelines to be followed by the commission. The court in *River Bend Associates, Inc. v. Zoning Commission*, Superior Court, judicial district of New Britain, Docket No. CV-00-505223-S (December 27, 2002, Shortall, J.), rev'd in part by 271 Conn. 1, 856 A.2d 973 (2004), determined that it was not sufficient for the commission to make generalized statements that reasonable changes could not be made to the affordable housing development plan. The court explained that it is necessary for the commission to explain why the public interest cannot be protected by reasonable changes. *Id.* Furthermore, the court in *Hillcrest Orchards, supra*, Superior Court, Docket No. CV-08-4016248-S [47 Conn. L. Rptr. 337], concluded that the commission failed to sustain its burden under § 8-30g with respect to a proposed stormwater management system. The court remanded the plaintiff's modified affordable housing application to the commission because there was never a discussion in the record by the commission as to whether reasonable changes could be made to the grading of the system nor as to why a recommendation by the town engineer to construct an additional berm to contain stormwater runoff could not have been added as a reasonable condition to approval. The court in *Novella v. Planning & Zoning Commission*, Superior Court, judicial district of New Britain, Docket No. CV-00-050146-S (May 9, 2001, Axelrod, J.), stated that "except in the case of a site specific reason for the substantial public interest that would be harmed by the proposed affordable housing development, the commission must also address in writing subsection [(C) of § 8-30g(g)(1)] as to why the public interest cannot be protected by reasonable changes to the affordable housing development." In *T&N Associates v. Planning & Zoning Commission*, Superior Court, judicial district of New Britain, Docket No. CV-98-0492236-S (November 9, 1999, Holzberg, J.), the court remanded the plaintiff's applications to the commission and specifically found that "the commission has failed to demonstrate that there is sufficient evidence in the record to support a finding that the substantial public interests in adequate water, sewer and drainage systems cannot be protected by reasonable changes in the plan." See also *Rinaldi v. Zoning & Planning Commission*, Superior Court, judicial district of Hartford, Docket No. CV-94-533603-S (January 4, 1995, Leheny, J.) (remanding for consideration of reasonable changes under what is now § 8-30g(g)(1)(C)); see also *Nucera v. Zoning Commission*, Superior Court, judicial district of Hartford, Docket No. CV-97-0568039-S (August 3, 1998, Axelrod, J.) (concluding that public interest can be protected by conditioning approval upon plaintiff receiving approval from city's water pollution control authority to connect into city's sewage and storm drainage system).

"[T]he key purpose of § 8-30g is to encourage and facilitate the much needed development of affordable housing throughout the state." *Interfaith, supra*, 228 Conn. 511. While "[t]he action of the commission should be sustained if even one of the stated reasons is sufficient to support it"; (internal quotation marks omitted) *DeBeradimis v. Zoning Commission*, 228 Conn. 187, 199, 635 A.2d 1220 (1994); the court cannot find that the commission engaged in the full analysis required with respect to each reason provided. Similar to the modified proposal in *Hillcrest Orchards*, the proposal in the present case is for a larger project at the same property and as in *Hillcrest Orchards*, there simply was no discussion of whether reasonable modifications

would address the concerns. Instead, there was a clear indignation expressed that the plaintiff submitted a modified proposal that included more units, and the commission seemed to infer lack of reasonableness of the proposal due to its size. The scale of a project can be an appropriate factor in considering the effects on the other public interests involved. However, that naturally raises the question of whether the commission considered whether a smaller scale development would address the concerns expressed while still allowing the development to proceed. Here, the record is absent of any such discussion or analysis.

1. Traffic Concerns and the Magnitude of the Construction's Effect on Traffic, Including on Emergency Access

The defendants' concerns that the magnitude of the development and the increase in traffic on roads with additional cars on the site could potentially decrease the ability of emergency service providers to provide adequate service to the town residents, "could not support a denial of the plaintiff's application because these concerns established only a theoretical possibility, not necessarily a likelihood, of harm to the public interest." *CMB Capital Appreciation, LLC v. Planning & Zoning*, 124 Conn.App. 379, 399, 4 A.3d 1256 (2010) (*CMB*), cert. granted, 299 Conn. 925, 11 A.3d 150 (2011).¹⁰ "[C]ourts have rejected town concerns regarding traffic generated by a proposed development where those concerns are based on potential safety issues or concerns." *Landworks Development, LLC v. Planning & Zoning Commission*, Superior Court, judicial district of New Britain, Docket No. CV-00-0505525-S (February 14, 2002, Eveleigh, J.). "Furthermore, while traffic problems and related safety concerns can be a valid reason for a denial ... there must be more than a traffic increase, and either traffic congestion or an unsafe road design at or near the entrances and exits from the site." (Internal quotation marks omitted.) *CMB*, *supra*, 399. "The mere fact that a proposal will generate increased traffic volume is not, in itself, an indication that such traffic will result in undue hazard ... or congestion; to determine whether the proposal will result in undue hazard ... or congestion, [the court] review[s] the record as to the proposal's projected impact on traffic conditions." (Internal quotation marks omitted.) *American Institute for Neuro-Integrative Development, Inc. v. Town Plan & Zoning Commission*, 189 Conn.App. 332, 343, 207 A.3d 1053 (2019). "[T]he significance of the impact should not be measured merely by the number of additional vehicles but by the effect that the increase in vehicles will have on the existing use of the roads. An increase of 100 vehicles per hour may have a negligible impact at one time or location and a ruinous impact at another time or location." *Cambodian Buddhist Society of Connecticut, Inc. v. Planning & Zoning Commission*, 285 Conn. 381, 434, 941 A.2d 868 (2008).

*15 The record indicates that traffic issues are already a town-wide concern, not specific to the proposed development in question. A traffic operations engineer stated: "I observed long queues and significant traffic delays at some of [the major intersections] during a weekday peak hour of traffic, which indicate existing traffic deficiencies at the locations." (Emphasis added.) (ROR, Exh. 56.d.48, pp. 519-20; see also ROR, Exh. 56.d.51, p. 529 [fire department noting its test drives were not performed during rush hour traffic, "which does provide higher density traffic back-ups" at certain intersections].) Some town residents expressed similar concerns regarding traffic delays at various points of intersection. (ROR, Exh. 57.a, pp. 624-25.) In fact, one town resident observed that [t]raffic on James Farm road is already horrific ... (ROR, Exh. 49, p. 117.) Also, a traffic study showed that motor vehicles near the proposed development already far exceed the posted speed limit of 25 miles per hour (MPH). (ROR, Exh. 56.d.18, p. 280.) On the basis of the foregoing evidence, the court "conclude[s] that the commission's denial of the plaintiff's ... application on the basis of traffic and safety concerns is not supported by sufficient evidence." *CMB*, *supra*, 124 Conn.App. 398.

Our Appellate Court, in an affordable housing case, has held: "[W]ith respect to concerns about emergency response time to the development, the evidence in the record reveals that there is no state standard for emergency response time and that any potential problem with emergency response time is not specific to the development in question, but rather was a town-wide concern ... The length of emergency response time, which was a town-wide concern, was not a valid basis for the commission's denial of the plaintiff's application." *CMB*, *supra*, 124 Conn.App. 398. In the present case, the record is absent as to any evidence on the state standard for emergency response time. Although the evidence shows that one's chance of survival decreases with every passing minute, such evidence does not establish that the supposed increase in response time violates any law or fails to meet any standard.

Although the evidence shows that one's chance of survival could depend on the emergency response time; (ROR, Exh. 57, p. 555); the fire department's drive test evaluation unnecessarily assumed that emergency vehicles cannot access the direct route because of added vehicles on the road, contributed by the development. (ROR, Exh. 56.d.51, pp. 528-29.) As discussed previously, the evidence shows that interruptions in traffic flows are already an existing concern in the town and that any potential traffic increases caused by the development are speculative. Moreover, the plaintiff has addressed the issue of fire department's access to the development by modifying its plan to provide two driveways, instead of one, including a fire department access road, on James Farm Road. (ROR, Exh. 58.a, p. 732.) While there was evidence regarding the weight limitation for the heaviest fire truck to be supported and possible insufficient turning radius, the commission's concerns can be properly addressed by approving the application on the condition that the plaintiff receives the fire marshal's approval that all fire trucks in the town fire department's possession can be maneuvered freely on any road on the site. (ROR, Exh. 56.f.5, pp. 583, 694.)

2. The Danger and Structural Integrity of the Retaining Wall and Lack of Safety

*16 As to reason 17,¹¹ the court finds insufficient evidence, as the record is devoid as to why an easement would be necessary. Analyzing a very similar issue, the court in *Nizza v. Planning & Zoning Commission*, Superior Court, judicial district of Hartford, Docket No. CV-93-0526193-S (August 2, 1994, Leheny, J.), held: "There was no evidence provided as to what maintenance of the retaining wall would involve nor of the type of equipment required to maintain the wall. No commission member expressed sufficient knowledge about retaining walls to contribute any expertise ... The commission could have suggested or asked for reasonable changes to the plan under [§ 8-30g(g)(1)(C)]." (Citation omitted.) Moreover, the commission failed to discuss or seek reasonable modifications, according to the record before the court.

As to reasons 11,¹² 12,¹³ 22,¹⁴ and 23,¹⁵ sufficient evidence supports the commission's denial of the plaintiff's application. An engineering review of the development displays concerns that settlement and stormwater discharge will weaken and deteriorate the retaining wall (wall). (ROR, Exh. 56.d.23, pp. 299-300.) There is ample evidence of experts predicting a high likelihood of failure of the wall. (See, e.g., ROR, Exh. 56.d.20, pp. 289-90.) The evidence indicates that steep slopes of certain driveways in conjunction with the wall's proximity to the fire department access road led some experts to doubt whether and how the wall will support the weight of fire apparatus. (ROR, Exh. 56.d.20, 56.d.50, pp. 286-90, 524.) Given the discussion surrounding the geosynthetic fabric of the wall; (ROR, Exh. 57.b, 57.d, pp. 650, 671-72, 725); and the height of the wall; (ROR, Exh. 56.d.50, p. 524); the commission's decision is, all in all, supported by sufficient evidence to satisfy the first prong of § 8-30g.

While some experts indicated that the wall, as designed, would fail, there was no consideration of the ability to design it so it would not fail or not cause the issues that were raised. The court in *Novella v. Planning & Zoning Commission*, *supra*, Superior Court, Docket No. CV-00-050146-S, found that an inadequate design of a retaining wall that lacks supporting calculations or construction sequence, is not a valid reason for denial. Our Supreme Court has held: "To fulfill its burdens under [§ 8-30g(g)(1)(C)] ... the commission was required to show only that, on the basis of evidence in the record, it reasonably could have concluded that the public interests could not be protected by reasonable changes to the size of the zone, the density of the zone or the specific designs presented." (Emphasis added; internal quotation marks omitted.) *Kaufman v. Zoning Commission*, *supra*, 232 Conn. 137 n.11.

In the present case, the plaintiff's civil engineer explained that certain tasks had not been completed yet because they were typically done during the building permit process. (ROR, Exh. 44, 56.b.11, 56.f.5, 57.c, pp. 111, 239, 585, 696.) Such tasks include conducting borings, testing structural fill, and submitting a final wall design. (ROR, Exh. 56.f.5, 57.c, pp. 585, 696; Plaintiff's Brief, Docket Entry No. 120, pp. 18-19 [February 15, 2019].) When the plaintiff reaches the building permit phase and seeks a permit, borings and the final wall design will be done at that time. (ROR, Exh. 56.f.5, 57.c, pp. 585, 696.) The

plaintiff's retaining wall manufacturer described in detail its plan to work with an engineer to properly install the wall and to ensure that all applicable provisions of the building code are followed. (ROR, Exh. 57.c, pp. 702-04.) Moreover, grade level would have to conform to the requirements under the state building code, as will be discussed subsequently in this memorandum in a section titled "Dangerous Grade Level."

*17 In its brief, the plaintiff admits that the town engineer would have to approve the retaining wall's design before a building permit is issued. (Plaintiff's Brief, Docket Entry No. 160, p. 8 (October 13, 2020)). It further acknowledges that the wall design would have to be designed and certified by a structural engineer. (*Id.*; see also ROR, Exh. 57.c, pp. 700, 705.). The town's engineer, in fact, indicated that certain steps would have to be taken in order to ensure that the retaining wall is properly designed and built to avoid any structural issues. (ROR, Exh. 56.d.23, pp. 298-301.) Accordingly, it is reasonable for the court to order the commission to conditionally approve the application, especially in light of the plaintiff's admissions and suggestions. As suggested in its brief, the plaintiff should perform test borings, and an independent engineer's approval of the structural fill used is required. The plaintiff should obtain approval from the town engineer, a certification from a structural engineer, and any other structurally related and necessary approvals, permits, and certifications in accordance with the state regulations, the town regulations, and applicable codes.

3. Stormwater Retention System and Hydrostatic Pressure Impacting Wall

The defendant indicates that the storm water retention system is inadequate and that it will cause the wall to fail. Yet, the town's own expert provided that some changes could alleviate the concerns. The engineering review by STY indicates that certain studies should be done to ensure the wall is properly built—not that the wall could not be safely built. (ROR, Exh. 56.d.23, pp. 298-301.) The report provides that "[p]reliminary [b]orings should be performed to provide subsurface information to supplement the design of the wall regarding the bearing capacity, settlement estimates, and stability analysis for the foundation of the wall." (ROR, Exh. 56.d.23, p. 299.) The manufacturer of the wall suggested that a way to reduce the effect of water on the wall system was to place any infiltration systems away from the wall by a distance of at least twice the height of the wall. (ROR, Exh. 56.d.31, p. 461.) Although the evidence is sufficient to support the commission's decision as to the first two prongs of § 8-30g(g), the commission does not satisfy its burden of proof under § 8-30g(g)(1)(C) because there was no discussion or consideration of reasonable changes by the commission.

After reviewing the record, the court remands the matter back to the commission to approve the application with the following conditions: (1) approval from the town engineer with regard to the structural walls is required. (Plaintiff's Brief, Docket Entry No. 160 [October 13, 2020].); and (2) an independent engineer shall be hired and paid for by the plaintiff. (ROR, Exh. 57.c, p. 692; Plaintiff's Brief, Docket Entry No. 120, p. 22 [February 15, 2019].) The independent engineer should oversee the construction process to ensure that the plaintiff maintains proper soil and erosion control and that the stormwater management system is adequate to protect Roosevelt Forest. While overseeing the construction process, the engineer should give consideration to all suggestions, recommendations, and concerns expressed in the record, including but not limited to, the environmental concerns caused by a potential release or toxins and other harmful particles into protected lands or waters.

4. Water Sufficiency in the Case of Fires

The deputy chief of the Stratford Fire Department testified about the fire hydrant locations and that the closest hydrant would be one third of a mile away from the site. (ROR, Exh. 57.a, 57.b, pp. 614-15, 643.) In response, the plaintiff's engineering expert testified that additional fire hydrants will be placed on or near the site because the fire marshal's approval is required. (ROR, Exh. 57.c, pp. 694-95.) The expert also discussed how he will work with the water company to determine the fire hydrants' water pressure and that he will put a fire pump if the pressure is inadequate. The fire marshal even agreed with the plaintiff's experts that one-hour fire-rated walls with a full sprinkler system would be sufficient. (ROR, Exh. 57.a, pp. 611-14.) Under such

circumstances as here, conditional approval is reasonable. The commission shall approve the application with the condition that the plaintiff obtains approval from the fire marshal that the development is in compliance with all applicable regulations, ordinances, and codes, including fire codes.

5. Increased Risk of Fire

*18 The commission argues in its March 5, 2019 reply brief that the development will increase the risk of fire to Roosevelt Forest. (Commission's Reply Brief, Docket Entry No. 123, pp. 4-5 [March 5, 2019].) It relies on evidence in the memorandum prepared by CCGS's expert. The comments by CCGS's expert on increased risk of fire due to "the inherent" time lag involved in containing structural fire, and an increase in human activities near the forest (ROR, Exh. 56.d.26, 57.b, pp. 328, 666), are speculative and raise nothing more than a theoretical possibility of harm. See *Brenmor*, *supra*, 162 Conn.App. 696. Moreover, the fire marshal testified that it would be unlikely that a fire at the development would get out of control and spread to Roosevelt Forest. (ROR, Exh. 57.b, p. 648.) Therefore, the commission has failed to meet the first prong of § 8-30g(g).

6. Dangerous Grade Level

The experts offer conflicting evidence as to the actual proposed grade of the development. The defendants' experts were concerned that the proposed grade exceeds 5 percent, which the record suggests is a standard followed by the town pursuant to the state's building code, at least on parts of the site. (ROR, Exh. 56.d.20, 57.b, pp. 288, 290, 638.) The plaintiff's experts disputed this fact and maintained that the grade does not exceed 5 percent anywhere on the site. (ROR, Exh. 56.15, 57.a, 57.c, pp. 583, 611, 694.) The cited reason is supported by sufficient evidence in the record. Also, the commission's concerns are supported by sufficient evidence as to steep grade's potential adverse impact on substantial public interests of health and safety of the community. (ROR, Exh. 57.b, pp. 648, 680, 683.)

After conducting a review of the record, the court, however, determines that the commission has failed to meet its burden of proof that such substantial public interests cannot be protected by reasonable conditions on the development. The record lacks any evidence that the commission considered reasonable changes or conditions to the plan to comply with the building code. Because the plaintiff's experts expressed confidence that the project is feasible without exceeding 5 percent grade throughout the site, it would be reasonable for the court to require approval with a condition that the grade of the slope not exceed a 5 percent maximum. (See Commission's Brief, Docket Entry No. 116, p. 15 [(January 22, 2019)].)

7. Effect on Wetlands, Cemetery Brook and Roosevelt Forest

The commission's collective statement provides the following reasons: (1) The proposed development would be detrimental to the public health and safety for residents and the surrounding ecosystem/wetlands; (2) The proposed development would do irreversible damage to the surrounding wetlands and the flora and fauna within that ecosystem; (3) The applicant has not submitted an application to the Inland Wetlands and Watercourses Commission of the Town of Stratford (IWWC) for a review of potential impacts on surrounding wetlands; and (4) The proposed development would create irreversible, long-term degradation of Roosevelt Forest, Cemetery Brook and the surrounding wetlands.¹⁶ All of the reasons here presume failure of the retaining wall as provided in the plaintiff's proposal, which would cause irreversible damages to the wetlands, Cemetery Brook, Roosevelt Forest and the surrounding area. The issues of the retaining wall were already discussed. With respect to the detrimental effect on the wetlands, considerable evidence in the record is devoted to potential harm to the wetlands to satisfy the first prong of

§ 8-30g(g).

In discussing the vote on the plaintiff's application, one of the commissioners specifically acknowledged that "[i]t has not gone for review for the inland/wetlands commission, inland/wetlands and watercourses commission ... And without that input it is nearly impossible for the zoning commission to determine what impacts or threats the proposed development may have on the surrounding ecosystem and public interest." (ROR, Exh. 57.d, p. 729.) Such sentiment was shared by CCGS' expert: "The wetland boundary submitted on the survey lacks sufficient detail to be verifiable ... [A]ny conclusions regarding the limits of the [u]pland [r]eview [a]rea are ... premature." (ROR, Exh. 56.d.26, p. 326.)

*19 The plaintiff asserts in its brief that it does not need to submit an application to the IWWC because the site does not contain wetlands and no "regulated activity" within the meaning of General Statutes § 22a-38(13)¹⁷ would occur at the site. (Plaintiff's Brief, Docket Entry No. 160, p. 6 [October 13, 2020].) It argues that the IWWC's jurisdiction is limited to the upland review area. (ROR, Exh. 56.b.5, 57.a, pp. 151-52, 592.) The plaintiff's proposed textual amendment to the zoning regulations even contains a section titled "Wetlands review," which provides: "Zoning Regulation 3.14 [which deals with waterbody, watercourse, wetland and coastal resource protection] shall not be applicable to the [development site] since there is no development within the upland review area." (ROR, Exh. 24, p. 16.)

"[Inland wetlands commissions] may regulate activities outside of wetlands, watercourses and upland review areas only if those activities are likely to affect the land which comprises a wetland, the body of water that comprises a watercourse or the channel and bank of an intermittent watercourse." (Emphasis added; internal quotation marks omitted.) *Unistar Properties, LLC v. Conservation & Inland Wetlands Commission*, 293 Conn. 93, 108 n.13, 977 A.2d 127 (2009). Our Supreme Court held that the municipal conservation and inland wetlands commission in *River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission*, 296 Conn. 57, 74, 848 A.2d 395 (2004), was required to carefully consider "the precise impact that the plaintiffs' proposed activities will have on the wetlands and watercourses on the site and surrounding area." "Determining what constitutes an adverse impact on a wetland is a technically complex issue ... Inland wetlands agencies commonly rely on expert testimony in making such a finding." (Citation omitted.) *Id.*, 78. Section 2.26 of the Stratford Inland Wetlands and Watercourses Regulations (wetlands regulations) provides in relevant part: "[IWWC] may rule that any other activity located within such upland review area or in any other non-wetland or non-watercourse area is likely to impact or affect wetlands or watercourses and is a regulated activity." (Emphasis added.) Stratford Inland Wetlands & Watercourses Regs., § 2.26. Because the IWWC has authority to determine what constitutes an adverse impact on wetlands and watercourses—including brooks¹⁸—outside of upland review areas, the plaintiff's argument is without merit,¹⁹ and the section on wetlands review in the plaintiff's proposed textual amendment to the zoning regulations is invalid.

With respect to Roosevelt Forest, as mentioned in a preceding paragraph, the reasons presumed that the retaining wall would weaken or fail. The court has already discussed the conditions that the commission may add to ensure the wall's safety. As to the reasons that relate to the flora and fauna, specifically Eastern Box Turtles, within the forest, the court finds insufficient evidence in the record to pass muster of the first prong of § 8-30g(g). Particularly notable is CCGS's expert relying on the letter from the state department of environmental protection to support his position that the turtles have been spotted in the area. (ROR, Exh. 56.d.26, 57.b, pp. 329, 666-67.) The letter, however, merely states that a survey could be conducted to see if the turtles are present. (ROR, Exh. 56.d.26, p. 336.)

*20 In sum, the section on wetlands review in the plaintiff's proposed textual amendment shall be deleted in its entirety. The application should be approved on the condition that the plaintiff submit an application to and obtain approval from the IWWC with respect to its proposed activities on the site.

COLLATERAL ESTOPPEL CLAIM

The intervening defendants claim that the denial or the plaintiff's prior application warrants the denial of the current application on the basis of the principle of collateral estoppel.²⁰ It has been firmly established that the denial of one application does not necessarily bar a party from filing a second application regarding the same property. *Vine v. Zoning Board of Appeals*, 102 Conn.App. 863, 869-70, 927 A.2d 958 (2007). Additionally, a zoning board may grant a second application that has been substantially changed to obviate the objections raised in the original application. *Rocchi v. Zoning Board of Appeals*, 157 Conn. 106, 111, 248 A.2d 922 (1968). Moreover, "[d]espite the enhanced level of review that a court undertakes in an affordable housing appeal, as opposed to other administrative appeals, the court's role remains to assess the evidence in the record. Collateral estoppel, sometimes referred to as issue preclusion, prevents relitigation of issues or facts actually litigated and necessarily determined in a prior action ... Furthermore, [t]o invoke collateral estoppel the issues sought to be litigated in the new proceeding must be identical to those considered in the prior proceeding ... The facts and issues actually litigated and necessarily determined in the prior judicial appeals were the sufficiency of the records in those cases to sustain the commission's prior decisions. The court here must determine the adequacy of the evidence on a different record." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Landmark Development Group, LLC v. Zoning Commission*, Superior Court, judicial district of New Britain, Docket No. CV-064016813-S (October 31, 2011, Frazzini, J.).

The present application differs from the prior application in that this proposal concerns a fifteen acre parcel with 85 percent open space proposed. This application provides an additional access point into the property and changes the slope of the driveway from 10 percent to 5 percent. While the plaintiff proposes a large retaining wall again, the Versa-Lok Retaining Walls of New England representative testified that there are numerous walls of similar type product as that proposed for the retaining wall here, constructed throughout New England. The design of the building is different, and it allows fire trucks to have a bigger turning radius and flat level ground around the building itself. Overall, this application is sufficiently different from the earlier application, which was denied, and would not bar this appeal on the basis of collateral estoppel or res judicata. See *Landmark Development Group v. Zoning Commission*, Superior Court, judicial district of New Britain, Docket No. CV-05-4002278-S (February 2, 2008, Prescott, J.) (45 Conn. L. Rptr. 63, 68).

Some of the same concerns exist here as there were in *500 North I*, and evidence in the present record supports the defendants' concerns with these enumerated public interests. Nevertheless, the present record is absent of discussion regarding weighing each of these identified interests against the need for affordable housing and determining whether reasonable changes could protect the public interests, yet still allow the development to move forward. In fact, some expert testimonies upon which the commission relied, mentioned changes that could be made to make the development feasible and that further tests were needed, such as preliminary boring tests. Unlike *500 North I*, in which the commission clearly engaged in determining the ability to make reasonable changes to address the specific public interest in the wetlands, the decision and the record here contain no such analysis. See *500 North I*, *supra*, Superior Court, Docket No. CV-16-6061118-S. The court, therefore, concludes that the plaintiff is not precluded from filing the present application.

IV

CONCLUSION

*21 For the foregoing reasons, the court sustains the plaintiff's appeal and reverses the commission's denial of the plaintiff's application for conditional approval with the following modifications and conditions:

The plaintiff shall seek and obtain the fire marshal's approval that all fire trucks in the town fire department's possession can be maneuvered freely on any road on the site.

The plaintiff shall seek and obtain approval from the fire marshal that the development complies with all applicable regulations, ordinances, and codes, including fire codes.

The plaintiff shall comply with the slope of the site, which shall not exceed the 5 percent grade maximum and compliance with all applicable codes shall be met.

As to the retaining wall, the plaintiff shall seek and obtain approval from the town engineer with regard to the structural walls; a certification from a structural engineer; and any other structurally related and necessary approvals, permits, and certifications in accordance with the state regulations, the town regulations, and applicable codes. An independent engineer, hired and paid for by the plaintiff, shall oversee the construction process to ensure that the plaintiff maintains proper soil and erosion control and that the stormwater management system is adequate to protect Roosevelt Forest. While overseeing the construction process, the engineer shall give consideration to all suggestions, recommendations, and concerns expressed in the record, including but not limited to, the environmental concerns caused by a potential release of toxins and other harmful particles into protected lands or waters. Additionally, an independent engineer's approval of the structural fill used shall be required.

Section 28.16 in the plaintiff's proposed textual amendment to the zoning regulations shall be deleted in its entirety. (ROR, Exh. 24, p. 16.) Inasmuch as the commission has raised the issue of an impact to the neighboring wetlands (even if there is none on-site), a submittal to the IWWC would be appropriate. See General Statutes § 8-3(g).

So ordered.

All Citations

Not Reported in Atl. Rptr., 2021 WL 4895248

Footnotes

- 1 At the May 17, 2021 hearing, the court asked for the parties to clarify the record. (ROR, Exh. 57.c, p. 712.) Plaintiff's counsel also explained that it had not submitted its application under the defendant's special case regulations and that any reference to special case was meant to refer to meeting agenda items that listed its application as a special case application. Plaintiff's counsel for the first time indicated it was submitting a final site plan, which contradicts the counsel's prior references to the site plan as a "conceptual site plan," including in its e-mail dated November 17, 2017. (ROR, Exh. 26, p. 87.) While there was much discussion of whether the site plan submitted was conceptual or final, the court treats the application as a conceptual site plan given the proposed amendment requires a final site plan to be submitted after a zone change approval. (ROR, Exh. 24, p. 14); cf. *Landmark Development Group, LLC v. Zoning Commission*, Superior Court, judicial district of New Britain, Docket No. CV-06-4016813-S (October 31, 2011, Frazini, J.) (court remanding application to zoning commission to approve conceptual site plan conditioned upon applicant subsequently demonstrating in its preliminary or final site plan under amended regulations that zoning commission's concern regarding public water and sewers can be met). The court has evaluated this application as it was submitted: (1) a petition for a zone change; (2) a proposed textual amendment to the town's zoning regulations; and (3) an affordability plan.
- 2 All references to the defendants are to the commission and the intervening party defendants, which consists of the town of Stratford (town), Judith Kurmay, Cathleen Martinez, and Concerned Citizens Group of Stratford, Inc. (CCGS).

- 3 The denial letters as to the proposal for a text amendment, the petition for a zone change from RS-1 to JRAZ, "the
special case application," and the application for review of erosion and sediment control plans, all dated September 24,
2020, are contained in a Notice of Compliance filed by the commission on September 29, 2020. (Docket Entry #159.)
- 4 Specifically, they are numbered as reasons one, two, and ten in the defendant's September 24, 2020 letter to the plaintiff's
counsel titled "RE: 795 James Farm Road—Special Case Application." (Commission's Notice of Compliance, Docket
Entry No. 159, pp. 7-10 [September 29, 2020].)
- 5 Throughout this paragraph, because the affordable housing statute contemplated by the court in *Interfaith* is not the
current statutory language and the subsection numberings are different, such discrepancies were modified to reflect the
current statutory language.
- 6 The commission does not offer any basis to exempt the town from the definitions under § 830g. In fact, pages 662
through 664 of the return of record, which it cites as support for its assertion, shows that the town concedes that it does
not meet the municipality requirement of 10 percent for affordable housing under § 8-30g.
- 7 The record does not contain a copy of the POCD thereby preventing the court from evaluating whether and how the
application is inconsistent with the POCD. See *Hillcrest Orchards, LLC v. Conservation Commission*, Superior Court,
judicial district of New Britain, Docket No. CV-084016248-S (March 6, 2009, Prescott, J.) [47 Conn. L. Rptr. 337]
(*Hillcrest Orchards*). Even if the record included a copy of the POCD and the evidence was sufficient to meet the
first prong of § 8-30g(g), a plenary review of the record shows insufficient evidence to prove that "the decision
is necessary to protect substantial public interests which clearly outweigh the need for affordable housing and which
cannot be protected by reasonable changes to the affordable housing development." (Internal quotation marks omitted.)
Quarry Knoll, supra, 256 Conn. 724.
- 8 Reason 24 provides: "Evidence in the record from 2018 is sufficient to support the [commission's] findings."
- 9 Reason 25 provides: "The potential risks to public health and safety outweigh the need for affordable housing in [the
town]."
- 10 The appeal was withdrawn after the Supreme Court granted certification.
- 11 Reason 17 provides: "There are no easements in the plan that would allow access or apparatus to the foot of the retaining
wall for purposes of maintenance, repair or rescue."
- 12 Reason 11 provides: "The proposed development, more specifically the 30 [feet] tall retaining wall, would present a
clear public danger to residents, children and emergency first responders. This danger would be increased in the event
of inclement weather."
- 13 Reason 12 provides: "It is questionable whether the proposed retaining wall would support any large equipment,
including fire apparatus responding to emergencies on site."
- 14 Reason 22 provides: "Punctures in the geosynthetic fabric would compromise the structural integrity and allow water
to seep through."
- 15 Reason 23 provides: "Hydrostatic pressure (build up of water behind the wall) could compromise the wall's structural
integrity."
- 16 Because the intervening defendants filed verified pleadings pursuant to § 22a-19, the commission was required to
consider environmental issues pursuant to the statute's subsection (b).
- 17 General Statutes § 22a-38(13) provides: " 'Regulated activity' means any operation within or use of a wetland or
watercourse involving removal or deposition of material, or any obstruction, construction, alteration or pollution, of
such wetlands or watercourses, but shall not include the specified activities in [General Statutes § 22a-40]."
- 18 Section 2.35 of the wetlands regulations defines "[w]atercourses" to include brooks. Stratford Inland Wetlands &
Watercourses Regs., § 2.35.
- 19 The court notes that the commission has failed to prove that more than a theoretical possibility exists that there may be
a specific harm to substantial public interests in Cemetery Brook. The court, however, recognizes that when the IWWC
evaluates the site, it may evaluate the impact that the plaintiff's activities may have on Cemetery Brook, as brooks are
within the IWWC's purview.
- 20 The commission did not take the position that the present application was barred on the basis of the principle of collateral
estoppel.

End of Document

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Exhibit Q

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October 5, 2018

Mr. Scott Hobbs
Millport Phase I LP
33-35 Millport Ave.
New Canaan, CT 06840

RE: Monitoring for Low Income Housing Tax Credit (LIHTC) Compliance in Connecticut:
Final Summary Report Letter

Property: Millport Phase I – CT - 15063

Dear Mr. Hobbs:

Enclosed please find a summary of our monitoring and findings of your property for this monitoring period covering the areas of review as noted in the Owner's Report Letter. We are required to report any findings we discover to the Internal Revenue Service. In instances where revisions have been requested and not received by the execution date of this letter, additional findings may be cited upon their reception and review. As stated in the Code, Section 1.42-5(g) Liability: Compliance with requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. The Agency's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an owner's non-compliance.

The results of our monitoring of Millport Phase I are as follows:

1. **Owner's Certifications:** The Owner's Certification of Continuing Project Compliance received for 2017 was reviewed. The results of that review are as follows:

No issues.
2. **Original Qualifying Basis and Minimum Set-Aside:** As determined by reviewing the first year Status Report database or previously submitted QBTS. The results of that review are as follows:

No issues.

3. **Status Reports:** The SPECTRUM Status Report database received was reviewed for compliance in 2017 using Stamford-Norwalk MSA income limits. The results of that review are as follows:

No issues.

4. **Physical Inspection:** The physical inspection was conducted on 7/9/2018. Two (2) buildings (BINs CT-15063-01 through CT-15063-02), all common areas, and 20% of the LIHTC units were inspected. All CHFA Inspection Standards and Guidelines were adhered to with the following repairs noted/required:

CT-15063-02

Unit 233

The kitchen countertop was not installed correctly and is loose. Management clarified that the contractor has been alerted and a plan of action is being developed. Due to the fact that this is not a life/safety issue it will be marked as cleared as a plan of action is being taken. Issue cleared.

5. **Tenant/Administrative File Review:** The file review was conducted on 7/9/2018. 20% of the LIHTC files were selected for review. Leases, move-in verifications, certifications, and rents were reviewed. The results of that review are as follows:

No issues.

FINDINGS:

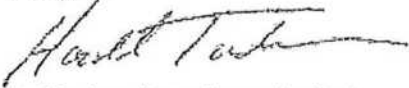
None.

COMMENTS:

This concludes the monitoring for this compliance period.

If you have any questions, please do not hesitate to contact us at (207) 805-0035.

Sincerely,



Harold Tucker, Compliance Analyst
Spectrum Enterprises

cc: Andrew Bowden, Spectrum Enterprises
Joe Voccio, Connecticut Housing Finance Authority
James Welter II, Connecticut Housing Finance Authority

Enclosures

SPECTRUM SEMINARS, INC.
www.spectrumseminars.com
shobbs@spectrumenterprises.com



SPECTRUM ENTERPRISES, INC.
www.spectrum180.com
info@spectrum180.com

September 25, 2020

Mr. Scott Hobbs
Millport Phase II LP
57 Millport Ave.
New Canaan, CT 06840

RE: Monitoring for Low Income Housing Tax Credit (LIHTC) Compliance in Connecticut:
Final Summary Report

Property: **Millport Phase II – CT-16408**

Dear Mr. Hobbs:

Enclosed please find a summary of our monitoring and findings of your property for this monitoring period covering the areas of review as noted in the Owner's Report Letter. We are required to report any findings we discover to the Internal Revenue Service. In instances where revisions have been requested and not received by the execution date of this letter, additional findings may be cited upon their reception and review. As stated in the Code, Section 1.42-5(g) **Liability: Compliance with requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. The Agency's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an owner's non-compliance.**

The results of our monitoring of **Millport Phase II** are as follows:

1. **Owners Certifications:** The Owner's Certifications of Continuing Project Compliance received for 2018 and 2019 were reviewed. The results of that review are as follows:

No issues.

Unit 323/Plaza

We requested pay stubs in place of the tax returns for the 6/1/2020 annual certification. Management explained that due to COVID-19, they were unable to obtain the pay stubs. Tenant is well below the income limit. **Issue cleared.**

Unit 325/Moroch

The 2018 initial certification and the 2/1/2020 annual certification were provided as requested. The move-in date was corrected to 2/20/2018. **Issues cleared.**

Unit 332/Lowman

The move-in date was corrected to 2/22/2018 as requested. A Certificate of Zero Income was provided for Hunter. **Issues cleared.**

Unit 335/Vecchini

Signed TICS for 2018 and 2019 were provided as requested. Be sure to add "true and correct" as of the certification date and have tenant initial. In accordance with IRS notice 2020-53, the 4/1/2020 annual certification is not required. **Issues cleared.**

Unit 337/Platt

The 3/1/2020 annual recertification was provided as requested. **Issue cleared.**

CT-16408-02

Unit 421/Brown

The signed 12/1/2019 annual certification was provided as requested, as well as the completed 12/31/2018 move-in certification. **Issues cleared.**

Unit 438/Tatarintseva

A signed 3/1/2020 TIC has been provided as requested. Be sure the tenants add, "True and correct as of 3/1/2020." **Issue cleared.**

FINDINGS:

None.

COMMENTS:

This concludes our LIHTC compliance monitoring for this period. Thank you for your cooperation with our monitoring and special thanks to the management staff for their cordiality and assistance.

Exhibit R

HOME MORE NEWS INFORMATION ABOUT 751 WEED STREET

INFORMATION ABOUT 751 WEED STREET

Explanation Regarding 8-30g Moratorium Application

Karp Associates has filed applications with the Water Pollution Control Authority (WPCA) and with the Planning & Zoning Commission regarding a proposed multi-family development at 751 Weed Street.

For information about the WPCA application [click here](#).

Sewer Connection Application with the WPCA withdrawn as of March 25, 2022.

Revised and Dated April 14, 2022 [Application for allocation of sewer capacity and approval to reconnect a multi-family development](#)

Click here for [Application](#) with Planning & Zoning and the related legal memo [8-30g Memo](#)

[Moratorium FAQ's](#)

What is 8-30g?

"8-30g" is a reference to Section 8-30g in Chapter 126a of the Connecticut General Statutes. The law, which is sometimes referred to as the "Affordable Housing Land Use Appeals Act," establishes unique standards that must be satisfied for a municipality to deny a proposed affordable housing development. If 10% of a municipality's total housing units are affordable, the municipality is exempt from these standards.

In addition, the law establishes a process for a municipality to apply to the State Department of Housing (DOH) for a "a certification of affordable housing project completion" that would result in a 4-year "moratorium," during which the Town is not required to accept or act upon new applications for proposed affordable housing developments. A municipality becomes eligible to apply for this moratorium once it can prove that a certain number of affordable housing units exist within the municipality.

What dwelling units get counted as affordable housing?

Affordable housing has very specific definitions under Section 8-30g. Generally, affordable housing refers to housing that is occupied by persons and/or families who have an annual income that does not exceed 80% of the median income. These dwelling units also must be deed restricted for a period of 40 years.

How do municipalities obtain a moratorium?

A municipality must demonstrate to the State that it has the requisite number of affordable housing units for a moratorium. The total number of affordable housing units required for a moratorium is calculated using a "Housing Unit Equivalent" (HUE) point system that provides more points for certain types of affordable housing units and less for others. The number of HUE points required to apply for a moratorium (and subsequent moratoria) is 2% of all the dwelling units in the municipality, and so each municipality will have different HUE point requirements based upon the evolving housing stock of each municipality.

How many dwelling units are there in New Canaan?

In the 2010 US Census there were 7,551 dwelling units in New Canaan. In the 2020 US Census there were 7,502 dwelling units in New Canaan.

How many HUE points does New Canaan need to qualify for a moratorium?

It is a simple math problem: $7551 \times .02 = 151.02$ HUE points. Currently, municipalities must utilize the 2010 US Census numbers because the 2020 US Census has not yet been finalized.

How do you calculate HUE points?

HUE points are calculated by the type of unit (rental or ownership) and by the income demographic of the family/persons for whom the unit is dedicated. The state

regulations that implement Section 8-30g outline what type of units garner the most points. For instance, a family unit which is rented and restricted to households which makes 80% or less of median income garners 1.50 points while the same apartment rented and restricted to households which makes 40% of median income would garner 2.50 points.

What is median income?

State Median Income is \$102,600

Area Median Income is \$151,800

Do all affordable housing units count towards a moratorium?

Naturally occurring affordable housing (NOAH) is housing found in a community which is unsubsidized and is not deed restricted and is considered affordable to persons/families that earn 80% or less of AMI. NOAH does not count towards HUE points nor a moratorium. Generally, the affordable housing needs to be new construction and deed restricted.

Once a municipality attains a moratorium, is the municipality guaranteed another moratorium?

No, in order to qualify for subsequent moratoria, a municipality must demonstrate that since the last moratorium, it has added enough affordable housing units to meet the HUE point requirement. Affordable dwelling units previously counted towards a moratorium may not be used for subsequent moratoria.

When was the last time New Canaan applied for a moratorium?

New Canaan first applied to the State DOH for a moratorium on March 30, 2017. The DOH approved the moratorium effective June 6, 2017.

How long was the moratorium in effect?

The moratorium was in effect for four years, until June 5, 2021.

Was New Canaan eligible to apply for a new moratorium on June 5, 2021 when the moratorium expired?

No. At that time, New Canaan did not have enough HUE points to submit an application for a second moratorium. Once the first moratorium became effective on June 5, 2017, additional new affordable dwelling units needed to be constructed to be counted towards a second moratorium.

Was Canaan Parish under construction during the first moratorium?

Yes, Canaan Parish was under construction; however, the units need to have received a Certificate of Occupancy before the dwelling units could be used for HUE points. Work anticipated to occur at Canaan Parish had been delayed by approximately 10 months due to difficulties obtaining financial assistance from the State in 2018-2019, and then COVID-19 and resulting supply chain disruptions caused an additional several months of delay.

When did Canaan Parish receive its Certificate of Occupancy?

Canaan Parish received a Temporary Certificate of Occupancy in late October 2021.

Who submits the moratorium application?

Under Section 8-30g, the Chief elected official of any municipality may apply for a state certificate of affordable housing completion once the extensive application and documentation requirements have been satisfied.

If New Canaan had applied for a moratorium immediately upon the completion of Canaan Parish in late October, 2021, would the second moratorium have gone into effect prior to the current application for an affordable housing development at 751 Weed Street?

No. Section 8-30g sets an approximately 4-month timeline between the expiration of a moratorium and the approval of a subsequent moratorium. Specifically, the Town must first publish newspaper notice that it intends to apply for a new moratorium and the application must be made available to the public for 20 days. A public hearing may also be necessary if requested by petition during that time. At that point, the application may be submitted to DOH for review, and DOH has 90 days to decide.

Is New Canaan in the process of applying for a moratorium?

Yes, the Town is and has been actively preparing an application for a second moratorium.

Because the statutory requirements for the moratorium application are complex and involve a substantial number of supporting documents, and due to the ongoing volume of applications and responsibilities pending with the Planning and Zoning Department, the Town has hired a consultant for the preparation of the application. Significant progress has been made and the Town anticipates completion of its application on or before April 1, 2022.

HOUSING AUTHORITY OF NEW CANAAN
57 Millport Ave.
New Canaan, CT 06840

June 29, 2022

State of Connecticut Department of Housing
Attn: Michael Santoro
505 Hudson St
Hartford, CT 06106

RE: New Canaan 8-30g Moratorium

Dear Mr. Santoro,

This letter is to express the Housing Authority of the Town of New Canaan's (HANC) support for the Town of New Canaan's request to the Department of Housing (DOH) for a 4-year moratorium from applications filed under CGS 8-30g.

The HANC has implemented a decade-long project to replace New Canaan's aging and obsolete affordable housing stock with modern, high-quality and more affordable units. This effort has been held up as a model for other towns to simultaneously improve and expand their affordable housing. When we began this initiative in 2009, the HANC only owned and operated 34 obsolete affordable housing units. We have now replaced those units with 113 modern and more affordable units and we are currently replacing the aging 60-unit Canaan Parish property with 100 modern and more affordable units in partnership with a local not-for-profit. The end result is 213 modern and deeply affordable units.

One key aspect of the HANC's program is a dramatic change in the affordability level of the HANC's affordable housing. The existing units at Mill Apartments, Millport Apartments and Canaan Parish were all restricted to 80% of Area Median Income. The Stamford-Norwalk MSA's 2022 area median income for a family of four is \$180,900. The HANC's new units have all been restricted to 60% and 80% of State Median Income. The 2022 state median income for a family of four is \$112,600. This means that the new units are at least 38% more affordable than the units they replaced.

In his memo to the Town of New Canaan, Attorney Tim Hollister asserted that Section 8-30g(k)(8) means that units listed on the Appeals List as of 1990 that are demolished should be deducted from the moratorium points calculation. Ostensibly, this is to ensure that a town does not simply earn moratorium points by demolishing and rebuilding the same units without increasing the town's affordable housing stock. However, applying this interpretation of Section 8-30g(k)(8) to New Canaan's application falls short in two very important regards:

1. The HANC demolished 78 units that were listed on the 1990 Appeals List since its last moratorium (60 at Canaan Parish and 18 at Millport Apartments). These units were previously restricted to 80% of Area Median Income. The new units that replaced them are restricted to 80% of State Median Income or lower. As described earlier, this is a substantive difference in affordability level and the demolished units were not the equivalent of the new units.
2. The language in Section 8-30g(k)(8) refers specifically to the demolition of "affordable dwelling units" as qualifying for a deduction of moratorium points. This term is used throughout the 8-30g statute exclusively to refer to units that are restricted to 80% of State Median Income or lower.

None of the units that the HANC demolished met this definition at the time they were demolished.

Attorney Hollister has also asserted in a recent public meeting that New Canaan has made "relatively little progress" towards meeting the state's 8-30g goals. We prepared a comparison between the 2021 Appeals List and the 2002 Appeals List and found that, in that time, New Canaan added 109 Government Assisted and Deed Restricted units or 86% of its affordable housing stock*. This ranked New Canaan #15 of the 138 Non-Exempt towns and #4 among municipalities in Fairfield County in terms of new affordable units. The HANC is proud of its accomplishments and objects strongly to Attorney Hollister's factually incorrect statement in the public record.

We believe that the HANC's affordable housing modernization and expansion program over the past decade has succeeded in improving the quality, quantity and affordability of New Canaan's affordable housing. The attendees at our recent groundbreaking and ribbon cutting events celebrating these achievements, including Governor Dan Malloy and DOH Commissioner Evonne Klein, reiterated this message. Attorney Hollister's attempt to convince DOH to apply the provisions of Section 8-30g(k)(8) to dramatically reduce the Town of New Canaan's moratorium points will have the effect of penalizing the Town of New Canaan for this successful approach to developing affordable housing in a suburban community. It will also disincentivize other towns from seeking to redevelop their own aging affordable housing. Finally, this interpretation of 8-30g(k)(8) runs contrary to public policy: it doesn't support towns that are seeking to comply with 8-30g and it fails to improve the affordable housing situation for the very people the program is designed to help.

We appreciate your consideration of our thoughts on this matter and welcome any questions or comments you might have in response to our letter.

Sincerely,



Scott Hobbs, Chairman

* We included the 40 new Canaan Parish units that are under construction and will be completed this year in this analysis.

CANAAN PARISH REDEVELOPMENT GP, LLC
186 Lakeview Ave.
New Canaan, CT 06840

July 14, 2022

State of Connecticut Department of Housing
Attn: Michael Santoro
505 Hudson St
Hartford, CT 06106

RE: New Canaan 8-30g Moratorium

Dear Mr. Santoro,

This letter is to express Canaan Parish Redevelopment GC, LLC's (CPGP) support for the Town of New Canaan's request to the Department of Housing (DOH) for a 4-year moratorium from appeals filed under CGS 8-30g.

CPGP was formed in 2018 as a partnership between the Housing Authority of the Town of New Canaan (HANC) and New Canaan Neighborhoods, Inc. (NCN), a 501(c)3 not-for-profit corporation formed in 1978 to promote affordable housing in New Canaan. The CPGP owns and is redeveloping the Canaan Parish redevelopment project, which is converting 60 small and obsolete affordable housing units built in 1979 into a best-in-class affordable housing community containing 100 units.

In his memo to the Town of New Canaan, Attorney Tim Hollister made several assertions regarding the Canaan Parish project, including stating that the project was not eligible for a certificate of occupancy at the completion of the first building in October, 2021 and that the demolished Canaan Parish units should be deducted from the Town's moratorium calculation according to CGS Section 8-30g(k)(8). This surprised us, considering that in 2018-2019 Attorney Hollister prepared our 8-30g Affordability Plan, prepared the zoning amendments to enable the redevelopment to happen, and represented us in public presentations before the Planning and Zoning Commission.

During his representation of us, Attorney Hollister created an entirely different presentation of our project's contribution to an 8-30g moratorium than what he described in his memo to the Town of New Canaan:

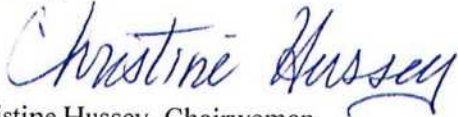
- First, Attorney Hollister developed 8-30g moratorium point calculations and presented them in meetings and hearings with the Planning and Zoning Commission that clearly showed he believed that the demolished Canaan Parish units would **not** be deducted from the moratorium point calculation. Presumably, this is because Attorney Hollister understood that the old Canaan Parish units were restricted to 80% of Area Median Income and that eligibility for moratorium points is limited to units that are restricted to 80% of State Median Income, which is a much stricter definition of affordability in New Canaan.
- Second, Attorney Hollister understood and described a phased development of the Canaan Parish project. He participated in many team meetings where the phasing was planned in detail. He presented an 8-30g moratorium calculation showing that the first building of Canaan Parish would qualify the Town of New Canaan for an 8-30g moratorium. He never once raised a

concern about whether a temporary certificate of occupancy met the requirements for completion in the 8-30g statute.

We ask the DOH to consider Attorney Hollister's assertions about our project with the knowledge that three years ago, when Attorney Hollister represented CPGP, Attorney Hollister apparently believed that the Canaan Parish project should qualify the Town of New Canaan for an 8-30g moratorium.

We appreciate your consideration of our thoughts on this matter and welcome any questions or comments you might have in response to our letter.

Sincerely,

A handwritten signature in blue ink that reads "Christine Hussey". The signature is written in a cursive, flowing style.

Christine Hussey, Chairwoman
New Canaan Neighborhoods, Inc.