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April 3, 2024

**Via Email/PDF to Mr. Santoro and Ms. Watson,
with two hard copies hand-delivered to Ms. Watson**

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

Michael Santoro, Director
Policy Research and Housing Support
Department of Housing
505 Hudson Street
Hartford, CT 06106-7106

Laura Watson, Agent
Department of Housing
505 Hudson Street
Hartford, CT 06106-7106

Re: Comment On Town Of New Canaan's 2024 Revised Application For Certificate Of Affordable Housing Completion and § 8-30g Moratorium

Dear Commissioner Mosquera-Bruno, Mr. Santoro, and Ms. Watson:

We are writing to provide comments on the Town of New Canaan's revised application for a § 8-30g moratorium, based on the notice published in the *Connecticut Law Journal* on March 5, 2024. We represent several entities whose § 8-30g applications were denied by the New Canaan Planning and Zoning Commission in 2023, which denials have been appealed to and are pending in Superior Court. Though these applications and appeals are ostensibly grandfathered from any moratorium that might result from the Town's current application to the Department, the court process is not over and could result in further local proceedings, and thus our clients have a substantial interest in the Department's review of New Canaan's application. In addition, as you know, our clients have been permitted to intervene in the Town's Superior Court appeal from the Department's May 2023 denial of a moratorium.

In summary, the revised application is (still) riddled with factual errors and legal misstatements, and is incomplete and unapprovable, as explained below.

First, 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, by General Statutes § 8-30h, and by various financing documents and agreements for both Millport and Canaan Parish.¹

Second, the application addresses the statutorily-required deduction of points for affordable units that were demolished at Millport and Canaan Parish by asserting, *without any statutory or regulatory basis*, that New Canaan is exempt from the deduction process because the units demolished were “less affordable” than the units now built, and would not have qualified for moratorium points under current § 8-30g set-aside development criteria if constructed today. This is an absurd position.

Third, with respect to both Millport and Canaan Parish, the Town continues to assert a right to so-called “holdover” points. This claim also violates the statute, as the Department has previously ruled.

The § 8-30g Moratorium Process

In 2000, in Public Act 00-206, 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(1)(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(1)(1). *Both Millport and Canaan Parish are “assisted housing, not set-aside developments.”*

Section 8-30g includes a number of requirements for an application for a Certificate of Affordable Housing Completion. See General Statutes § 8-30g(1)(4)(B). These requirements include: (a) a complete application that allows town residents, and then DOH and the public, to understand and verify all point total claims; and (b) evidence of on-going, annual compliance during residential occupancy with maximum household income and maximum rent or sales prices.

¹ Simultaneously with filing these comments, our clients have filed with the Town, its Planning and Zoning Commission, and its Housing Authority a Freedom of Information Act request for a copy of the annual/periodic affordability/compliance reports that are required by state law or the financing programs for Millport and Canaan Parish, none of which – inexplicably – has been filed with the current moratorium application.

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 any exemption from § 8-30g, such as a moratorium application, must be strictly construed against the applicant municipality. See, e.g., Kaufman v. Zoning Comm'n*, 232 Conn. 122, 139-40 (1995).

A Brief History Of New Canaan's Pursuit Of § 8-30g Moratorium

The chronology relevant to the Department's consideration of New Canaan's revised 2024 application is as follows:

1. In May 2017, the Department granted New Canaan a four-year moratorium based on Housing Unit Equivalent points awarded for Avalon at New Canaan; the Schoolhouse Apartments; the New Canaan Group home; the Mill Apartments; and two of (then) 33 newly-constructed units at Millport Apartments, 33 and 35 Millport Avenue.
2. The 2017 moratorium expired in May 2021.
3. In April 2022, New Canaan applied for a second moratorium. Our office provided extensive comments in April 2022. The application was withdrawn and resubmitted in July 2022. Our office again submitted extensive comments, on August 30, 2022, pointing out that the revised application (1) had made major changes but then bypassed the local public hearing required by State Regulations; (2) was based on temporary certificate of occupancy for Canaan Parish,² in violation of § 8-30g moratorium rules, the development's financing documents, several Town ordinances, and several Connecticut court cases; (3) the application did not contain evidence of ongoing annual compliance reporting with affordability rules; (4) the application asserted an illegal basis for not deducting moratorium points for the units demolished at Millport and Canaan Parish; (5) the application relied on holdover points from Millport Phase I; and (6) the application was accompanied by an opinion letter from the Town Attorney that claimed compliance with all legal requirements, but either did not address the issues listed above or analyzed them incorrectly.³

² We note that the units at Canaan Parish, though first occupied in October 2021 and claimed for moratorium points in April and July 2022, did not receive permanent certificates of occupancy until June 2023. Occupying under a temporary CO for almost two years is a clear violation of the Building Code, which limits temporary certificates to 60 days.

³ In May 2022, the Town adopted an Affordable Housing Plan as required by General Statutes § 8-30j. That plan clearly states the Town's objective of approving and constructing affordable housing for the purpose of achieving a continuing § 8-30g moratorium, and avoiding all other aspects of § 8-30g.

4. In October 2022, the Department denied the July 2022 application, rejecting the use of holdover points from Millport Phase I. This ruling also contained an incorrect position regarding deduction of points for the units demolished at Millport and Canaan Parish; it stated that the demolished units “would not have qualified for any housing unit equivalent points” had they been built in 2022 – which is not the correct standard for demolished units (see pp. 7-8, below).

5. In response to the October 2022 denial, New Canaan filed a Uniform Administrative Appeals Act (UAPA) appeal in Superior Court, and a declaratory ruling petition with the Department. A Superior Court judge dismissed the UAPA appeal as procedurally improper in July 2023. In January 2023, the Department agreed to issue the requested declaratory ruling, to consider the holdover points issue and to reconsider its October 2022 denial in light of the holdover points claim.

6. In February and March 2023, our office petitioned, on behalf of our New Canaan clients, for party status to the declaratory ruling, which was denied, and then for intervenor status, which was granted.

7. On March 28, 2023, our office submitted extensive comments about the declaratory ruling petition, explaining why the Department was correct to deny the Town’s proposed use of holdover points.

8. On May 19, 2023, the Department issued a Declaratory Ruling, confirming the illegality of the Town relying on holdover points, stating in part:

The inability to use holdover points does not create an absurd or unworkable result for municipalities; rather, it supports the policy rationale underlying section 8-30g that, in order to benefit those in need of affordable housing, a municipality should continually develop affordable housing over time and should not be permitted to use a single development to justify successive moratoria over the course of many years.

Department Declaratory Ruling, May 19, 2023, at 6.

9. In June 2023, New Canaan appealed the Department’s ruling to Superior Court.

10. In August 2023, our office filed a motion to allow our New Canaan clients to intervene, which was granted in October 2023.

11. In January 2024, our office’s intervenor clients filed an Answer to the Town’s appeal and stated Alternative Grounds, in addition to the Town’s improper use of holdover points, on which to uphold the Department’s May 2023 Declaratory Ruling. These alternative grounds include failure to prove ongoing compliance with affordability requirements, and failure

to deduct points for demolished units.

12. In December 2023, with its court appeal of the May 2023 Declaratory Ruling proceeding under a court-ordered schedule, the Town initiated this revised moratorium application, which should effectively supersede the July 2022 application that is the basis of the pending Superior Court appeal, but has not been withdrawn yet.⁴

The Town Has Not Submitted Evidence Of On-Going Affordability Compliance Required To Receive Moratorium Points

Numerous statutory and regulatory provisions, and the documents and agreements that govern the financing of Millport and Canaan Parish, require proof of continuing compliance with affordability plan oversight, administration, and enforcement obligations.

General Statutes § 8-30h mandates that owners of affordable housing developments containing rental units "provide *annual* certification [by January 31] to the commission that the development *continues to be in compliance* with the covenants and deed restrictions required under" § 8-30g (emphasis added). 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 assumes 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 *ongoing oversight* obligation.

As a result, 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 should necessarily preclude the municipality from counting that development in an application for a moratorium.

Ongoing compliance is also required by other parts of the § 8-30g statute and state regulations. 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

⁴ At various parts of its moratorium application, the Town puts itself on the back for its affordable housing track record. To the contrary, in their January 12, 2024 appeal brief in *751 Weed Street LLC v. New Canaan Planning and Zoning Comm'n*, No. HHD-LND-CV23-6168549-S, at pp.4-6, our clients have documented how New Canaan's Zoning Regulations "are among the most exclusionary in Connecticut."

certificates of occupancy for claimed units are "currently in effect," which also requires evidence of on-going compliance since the start of 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.

It is important to note that proof of ongoing compliance is a burden which can be easily met by assuring that annual certifications are filed and, if necessary, verifying their accuracy.

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 to the Town, of New Canaan, as its 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 numerous, detailed requirements for the development's administrator, *in addition to filing § 8-30h reports* with the Planning and Zoning Commission, to collect, evaluate, and report compliance with maximum household income and maximum rent requirements. Tab 3, pages 85, 102-108, 114-18, and 122-23 (Millport); Tab 4, pages 73-80 and 96 (Canaan Parish); and attached Exhibits F, G, H, I, M, and N of the application all contain reporting requirements for Millport and Canaan Parish regarding ongoing compliance with maximum household income and maximum monthly rent limits. If the town, Town staff, and the Planning and Zoning Commission, and the New Canaan Housing Authority have been complying with these reporting requirements, then all of the reports should be readily available and public records. *Yet the Town's moratorium application contains none of this information.* The Department, on this fact alone, should declare the application incomplete and require the Town to provide these reports.

Instead, what the Town has filed are Exhibits E (Millport) and J and L (Canaan Parish). Both are titled to the Certificates of Compliance with General Statutes § 8-30h, quoted above. *Yet a cursory examination of each exhibit shows that these are not § 8-30h reports.* First, these exhibits are not § 8-30h reports that were filed annually with the Planning and Zoning Commission. Exhibits E and L are dated December 2023; they do not state what years they cover (and covering more than one year in a filing would violate the statute); they incorrectly state that Millport and Canaan Parish are § 8-30g "set aside" developments, which is incorrect because they are "assisted housing"; and each states that "to the best of my knowledge...the required income limited for tenants have been met" – *but not the maximum rent!*⁵

⁵ If the Town's concern is public disclosure of tenant income, please note that § 8-30h provides for exempting such data from FOIA disclosure.

For Millport, for 2017-2023, the application contains no § 8-30h reports. All that is included in the application is a “Compliance Certification” dated December 2023 (Exhibit E) from a company called Westmount Management. The certification states as to § 8-30h (emphasis added):

I/We hereby certify that forty (40) units in the 100% affordable “set-aside” development are restricted under an Affordability Plan...and the units are restricted in compliance with that Plan for a period of 40 years from the date of the issuance of a Certificate of Occupancy for each of the units. Therefore, the development continues to be in compliance with the restriction required under Connection General Statutes § 8-30g. I have ascertained to the best of my knowledge and belief that the income limits for tenants have been met. The occupants have provided appropriate supporting documentation from which I verified their income.

Exhibit L is an identical claim for Canaan Parish. But the Town’s application contains no documents — not even a summary — to support this claim. *From the affidavit, we do not know Westmount’s qualifications; whether they used the correct income limits and calculated the income limit and rent correctly for the units; for what years it conducted the review; and whether it followed § 8-30g requirements or the financing, program, or both, or something else.*⁶

Providing copies of annual, statutorily-required or financing-required compliance reports should be a simple matter of attaching documents already received by the Town into the Moratorium application, making their omission inexplicable, and begging the question of why they have not been provided.

The Town’s moratorium application, therefore, is incomplete for failure to provide proof of ongoing compliance with income and rent limits.

The Application Makes A Baseless Claim Regarding Exemption From Deduction Of Points For Demolished Units

General Statutes § 8-30g(1)(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.” It should be noted that this provision contains exactly two requirements: (1) units in existence and treated as affordable units after July 1, 1990; and (2) affected by any action taken

⁶ Both Millport (Tab 3) and Canaan parish (Tab 4) were constructed with various forms of government financial assistance.

by a municipality (“that cause the unit to cease being counted”). The application at Tab, p.4 concedes demolition at both developments.

The moratorium application is accompanied by a statement from the New Canaan Town Planner (Exhibit D). This statement is erroneous in asserting that the town has taken “no action” resulting in cessation of counting affordable units — the Town plainly has. In addition, the Town Planner’s statement is a statutory interpretation and a legal conclusion that she is not qualified to make.

Town Attorney Bamonte states in his Tab 1 opinion letter, Exhibit A, that the demolition deduction provision is not applicable to the current application because the units that were demolished at Canaan Parish, and Millport before it, “were not ‘affordable dwelling as contemplated by § 8-30g’” because their maximum household incomes and maximum rents were based on area median income, not the lesser of the statewide or area median income *as currently required* by § 8-30g for “set-aside developments.” (Emphasis added.) Attorney Bamonte goes on to concede that the Town of New Canaan, for many years before the demolition, claimed these units as part of the Department’s § 8-30g Ten Percent List (see Exhibit O), yet asserts that this has no relevance at this time.

Attorney Bamonte’s letter is mistaken in several respects. First and foremost, the statute makes no exception based on the level of affordability of the demolished units, and under no principle of statutory interpretation can such an exception be added or implied, especially to a remedial statute. Second, the letter is based on a fundamental misunderstanding of assisted v. set-aside housing under § 8-30g. At Tab 2, p.1, the application states that “‘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.” This sentence is confusing at best, otherwise incorrect. A residential unit that was built with some government financial assistance qualifies as assisted housing and moratorium points if it meets the rules of its financial program (for example, federal Low Income Housing Tax Credits), even if the financing program does not also meet the set-aside rules. This is why, for example, some assisted housing programs only require 20 percent affordable units, but are counted as § 8-30g compliant. In other words, Attorney Bamonte’s implication that an assisted housing development only qualifies for HUE points if it also meets set-aside housing rules, is incorrect. (Also, as explained below, the further implication that demolished units do not need to be deducted if they do not meet current (2024) set-aside rules is also incorrect.)

Yet another misunderstanding is that *area median income is in fact commonly recognized by §8-30g as an affordability metric*. The statutory definition of “set-aside” development in § 8-30g refers to “median income” as defined in subsection (a)(7), *but the definition of “assisted housing” contains no such definition or reference*. If units are built with any form of governmental financial assistance, then the units are counted as affordable if the relevant regulatory/financing program dictates use of area median income. Indeed, here, all of the

federal-level financing documents refer to area median.⁷ In addition, in federal Low Income Housing Tax Credit program developments, 60 percent or less of area median is a common income limit.⁸ In fact, the Canaan Parish 2018 Affordability Plan, § IX, Maximum Rental Price, refers use of the affordability level specified by the federal Low Income Housing Tax Credit Program, which is generally 60 percent of area median, with other units not covered by the LIHTC restriction being calculated based on the statewide median income. *So Attorney Bamonte's reasoning for no deduction is based on the incorrect assertion that area median income is never part of § 8-30g affordability.*

It should be noted that § 8-30g used area median income as its calculation starting point when it was adopted in 1990, and this continued until 1995, when the lesser of State or area median was adopted. Since then, in its Ten Percent Lists and moratorium reviews, the Department has consistently, legally, and logically grandfathered all affordable developments that were approved based on the rules in place at this time of approval. The Town Attorney's position here seems to be that the Department should abandon this practice and judge all affordable housing by whether it meets today's § 8-30g statute and regulations.

Moreover, as the Bamonte letter concedes, the Town itself counted the 60 units at Canaan Parish that it demolished in 2020 as "assisted housing" units since the first Ten Percent List in 1992, and since. See Exhibit O. So the Town took credit for the units in the past, but now disavows them?

It seems to not have occurred to Town officials that when the Town determined that Canaan Parish (and Millport previously) should be maintained as a location for affordable units, *the Town had a choice as to whether to demolish units and rebuild on the same site, which would require deduction of the demolished units; or to rehabilitate the Canaan Parish and then create more affordable units on other sites. The latter approach would have added points. The Town chose the former.* Thus, the Town is required to deduct the demolished units from its point total.

The Town improperly wants to have its moratorium cake and eat it too. It's patently incorrect position regarding no deduction for demolished units. This is a second basis for denial of this revised application.

The Application Again Improperly Proposes "Holdover" Points

⁷ It is also important to recognize that use of area vs. state median is only part of the affordability equation. A restriction of a unit to "60% or less of AMI" in most cases will be lower than 80% of SMI, and will be counted. The Department has recognized this in evaluating prior moratorium applications.

⁸ This reference to 60 percent of median prompts us to point out an apparent calculation error/inconsistency regarding Millport: At Tab 3, page 3 the narrative refers to 60 percent units, but the HUE points calculation on p. 4 does not refer to any 60 percent units.

The application does not rely on *per se* holdover points, but says that 51 of 100 units at Canaan Parish are reserved for a future moratorium.

It will be helpful to define precisely the issue presented by New Canaan’s declaratory ruling petition regarding carryover points. The question is whether a municipality may apply for a four-year moratorium from § 8-30g by counting some, but not all, of the Housing Unit Equivalent (“HUE”) points generated by one or more that have been completed as of the time of a moratorium application; obtain a moratorium; and then, at some time in the future, apply for another moratorium, using points that were not claimed in the first/prior application. New Canaan’s July 2022 moratorium application (and its April 2022 predecessor) proposed to use HUE points from units that received their certificate of occupancy in 2016 (at the Millport development), but were not claimed in the Town’s 2017 moratorium application; and to use some but not all of the points from the Canaan Parish development, which first became partially occupied in 2022, for the Town’s second moratorium, and saving unused Canaan Parish points for a possible third moratorium, to be sought in 2026 or after.

General Statutes § 8-30g(1)(3) states that “Eligible units completed after a moratorium has begun may be counted toward eligibility for a subsequent moratorium.”⁹ “Eligible units” are those that qualify to generate HUE points. *See* General Statutes § 8-30g (1)(6). “Completed” means issued a permanent certificate of occupancy. *See* General Statutes § 8-30g(1)(9). “After a moratorium has begun” means at a date after the Commissioner of Housing has granted a Certificate of Affordable Housing Completion in compliance with General Statutes § 8-30g(1). *See* General Statutes § 8-30g(1)(4)(B). “Counted” means recognized and accepted as providing HUE points as of the date of a moratorium application. *See* General Statutes § 8-30g(1)(6).

Under General Statutes § 1-2(z), known as the “plain meaning rule,” the meaning of a statute “[shall], in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes.” *See Bysiewicz v. Dinardo*, 298 Conn. 748, 765 (2010), (“[W]e seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. Under the rules of statutory interpretation, where the text of a statute is clear, no further analysis is necessary or warranted. *See Id.* (“If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered”).

Here, § 8-30g(1)(3) states an unequivocal requirement and a clear timeframe: units that are eligible for points by virtue of being subject to maximum rent or sale price restrictions for the minimum 40-year time frame required by § 8-30g; and that are completed (certificate of occupancy issued) *after* a moratorium has begun; “may” be considered for HUE points toward a

⁹ The undersigned was a member of the 1999 Blue Ribbon Commission that recommended to the legislature adoption of the moratorium program and this subsection.

subsequent moratorium. This means that units that are completed – issued a certificate of occupancy – *before* a moratorium begins cannot be counted toward a subsequent moratorium.

In its 2022 petition, the Town offered an absurd statutory interpretation of subsection (1)(3), asserting that it *allows* units completed after one moratorium has begun to be counted, but does not *prohibit* counting units completed before a moratorium begins. This interpretation entirely eliminated the express statutory limitation and makes subsection (1)(3) superfluous. It reduced a statutory requirement to a mere suggestion. The phrase “after a moratorium has begun” is a limiting phrase that would be entirely unnecessary if units completed before a moratorium has begun could count toward a subsequent moratorium; the phrase would be entirely redundant. The plain meaning of the statute is that the Department “may,” but is not required to, attribute points to a unit completed after a moratorium begins, but not that the Department may count units completed before a moratorium begins. The Town submits that anything other than its interpretation leads to disincentives to the ongoing creation of affordable housing and situations where towns will “lose credit” for already-built affordable units. The Town’s interpretation violates the rule that where the plain text is clear, the analysis need go no further.

The purposes of the statute’s prohibition on carryover points are (1) to require towns that want another moratorium to approve and assert the construction and occupancy one or more developments sufficient to generate sufficient HUE points *during* the four-year moratorium; (2) to avoid towns from using one or more developments to claim a moratorium that effectively exceeds the statutorily-specified four years; (3) to prohibit HUE points, if and when created, from being used many years later for a moratorium, when conditions, markets, and a town’s housing stock may have changed significantly; and (4) to prevent the moratorium provisions from being used to undermine the remedial purposes of § 8-30g. In other words, the moratorium provisions are intentionally specific and prescriptive in directing towns when to approve and assist construction and occupancy of units, so moratorium are consistent with the purpose of § 8-30g, which are to overcome exclusionary rules and practices and get affordable units built and occupied.

The moratorium process was never intended to allow a non-exempt town to obtain a moratorium for the purpose of blocking future affordable housing development for many years. The prohibition on carryover points explains why § 8-30g(1)(7) allows towns to count only affordable units built after 1990 under the then-existing § 8-30g standard. This was certainly not so that non-exempt towns could use construction in the 1990s at the 80 percent-20 percent/20-year standard to obtain extended moratoria beyond an initial moratorium. To the contrary, the post-1990 rule was intended to enable a first moratorium only, so that towns that had development in the 1990s, when § 8-30g contained no moratorium provision, would not be left out. *Once a town achieves a first moratorium, however, a new moratorium requires new affordable development.*

Conclusion

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.

Finally, we are constrained to note that if this application is granted, our clients will likely seek an injunction in Superior Court.

Very truly yours,



Timothy S. Hollister

TSH:afz

cc: Attorney Nicholas Bamonte (via email)
751 Weed Street, LLC
51 Main Street, LLC

EXHIBITS

- A. Attorney Bamonte's February 22, 2024 cover/opinion letter to moratorium application
- B. Application Tab 2, p.6: HUD maximum income data
- C. Application Tab 2, p.7: HUD maximum income data
- D. Certificate of No Deductions, January 25, 2024, signed by Town Planner Sarah Carey (Tab 2, p.10)
- E. Tab 3, p. 12: Section 8-30h Compliance Certificate, December 4, 2023, signed by Frederick Ross of Westmount Management
- F. Tab 3, p. 25: Except from Millport Affordability Plan, 2017, Section IV.
- G. Tab 3, pp. 95, 102-03: Excerpt, Land Use Restriction agreement, Millport Phase 3
- H. Tab 3, pp. 114-115: Form of Certification of Continuing Compliance, Millport Phase II
- I. Tab 3, pp. 122-123: Excerpt, Millport, Income, Rent, Occupancy and Use Restrictions
- J. Tab 3, pp. 149-150: Letter, October 23, 2023 from Spectrum Compliance re: Millport Phase II
- K. Tab 4, p. 10: Certification of Certificate of Occupancy for Canaan Parish, June 2023
- L. Tab 4, p. 11: Compliance Certification Affidavit, December 4, 2023, Westmount Management
- M. Tab 4, pp. 73, 78-79: Excerpt, Regulatory Agreement and Declaration of Restrictive Covenants, Canaan Parish
- N. Tab 4, p. 91: Form of Certificate of Continuing Program Compliance, for Canaan
- O. Excerpt, § 8-30g Ten Percent Lists, 1993, 2000, 2010, 2022, for New Canaan, reflecting units counted as affordable "assisted housing."

A



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Robert L. Berchem
Marsha Belman Moses
Stephen W. Studer
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- * - Also Admitted in FL
o - 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

TAB 1
75 Broad Street
Milford, CT 06460
T: 203.783.1200
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1221 Post Road East
Westport, CT 06880
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February 22, 2024

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 – 59 and 61 Millport Avenue (40 of 73 total units claimed = 68.5 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, and another 31 units were not granted any HUE points in the Town’s last application in 2022, only 40 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 claimed units were issued in 2018.

Commissioner Seila Mosquera-Bruno

February 22, 2024

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2. Canaan Parish – 186 Lakeview Avenue
(49 of 100 total units claims = 82.25 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. Only 49 of the 100 total units in Canaan Parish are claimed in the present application; the remainder would be eligible for additional HUE points but are not necessary to meet the HUE point total required to award a Certificate of Affordable Housing Completion at this time. The property is owned by the Town of New Canaan and operated by the New Canaan Housing Authority and Canaan Parish Redevelopment LP. Permanent Certificates of Occupancy for the units were issued in 2023.

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.

For purposes of a Certificate of Affordable Housing Completion, Section 8-30g awards HUE points for dwelling units in newly constructed “affordable housing developments,” which include both government “assisted housing” and private “set-aside developments.” The law expressly requires that dwelling units in a set-aside development be 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 2023-24 estimated AMI for a family of four in the Stamford-Norwalk Metro Area is \$171,300 (see figures in Tab 2). The 2022 SMI for a family of four is \$119,500 (see Tab 2). Therefore, to constitute an “affordable dwelling unit” eligible for HUE points and subject to the broader protections of Section 8-30g, assisted housing or set aside developments 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

Commissioner Seila Mosquera-Bruno
February 22, 2024
Page 3 of 3

than the pre-existing units and cannot be considered comparable replacements to the deteriorated pre-existing units formerly at Canaan Parish and Millport Apartments. 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 new units in similar developments but applied no deductions. In addition, even though DOH ultimately denied the Town's recent application in 2022, points had been awarded for the units claimed from these same developments that were CO'ed after the Town's 2017 Moratorium approval. In other words, DOH has never interpreted the types of units claimed in this Application as replacement units subject to points deductions under C.G.S. § 8-30g(1)(8).

Moreover, none of the units claimed in this Application were CO'ed prior to the Town's 2017 Moratorium. Therefore, even under DOH's current interpretation of § 8-30g that provided the basis for denial of the Town's Application in 2022, all the units claimed now may be validly considered for HUE points.

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 black ink, appearing to read 'NB' followed by a stylized flourish.

Nicholas R. Bamonte

B



FY 2023 INCOME LIMITS DOCUMENTATION SYSTEM

[HUD.gov](https://www.hud.gov) [HUD User Home](#) [Data Sets](#) [Fair Market Rents](#) [Section 8 Income Limits](#) [MTSP Income Limits](#) [HUD LIHTC Database](#)

FY 2023 Income Limits Summary

FY 2023 Income Limit Area	Median Family Income Click for More Detail	FY 2023 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
Stamford-Norwalk, CT HUD Metro FMR Area	\$171,300	Very Low (50%) Income Limits (\$) Click for More Detail	60,000	68,550	77,100	85,650	92,550	99,400	106,250	113,100
		Extremely Low Income Limits (\$)* Click for More Detail	36,000	41,150	46,300	51,400	55,550	59,650	63,750	67,850
		Low (80%) Income Limits (\$) Click for More Detail	75,750	86,550	97,350	108,150	116,850	125,500	134,150	142,800



FY 2023 INCOME LIMITS DOCUMENTATION SYSTEM

[HUD.gov](https://www.hud.gov) [HUD User Home](#) [Data Sets](#) [Fair Market Rents](#) [Section 8 Income Limits](#) [MTSP Income Limits](#) [HUD LIHTC Database](#)

FY 2023 State Income Limits

Connecticut

Median Family Income
\$119,500

Very Low-Income Limit (VLIL) 50% of Median*							
1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
\$41,700	\$47,700	\$53,650	\$59,600	\$64,400	\$69,150	\$73,900	\$78,700

Extremely Low-Income Limit (ELIL) 30% of Median*							
1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
\$25,050	\$28,600	\$32,200	\$35,800	\$38,650	\$41,500	\$44,350	\$47,250

Low-Income Limit (LIL) 80% of Median*							
1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
\$66,250	\$75,750	\$85,200	\$94,650	\$102,250	\$109,800	\$117,400	\$124,950

C

STATE:CONNECTICUT -----FY2023 SECTION 8 INCOME LIMITS-----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Bridgeport-Stamford-Norwalk, CT MSA								
Bridgeport, CT HMFA								
FY 2023 MFI: \$117,400 EXTR LOW INCOME	24650	28200	31700	35200	38050	40850	45420	50560
VERY LOW INCOME	41100	47000	52850	58700	63400	68100	72800	77500
LOW-INCOME	65750	75150	84550	93900	101450	108950	116450	123950
Danbury, CT HMFA								
FY 2023 MFI: \$148,800 EXTR LOW INCOME	28850	32950	37050	41150	44450	47750	51050	54350
VERY LOW INCOME	48050	54900	61750	68600	74100	79600	85100	90600
LOW-INCOME	66700	76200	85750	95250	102900	110500	118150	125750
Stamford-Norwalk, CT HMFA								
FY 2023 MFI: \$171,300 EXTR LOW INCOME	36000	41150	46300	51400	55550	59650	63750	67850
VERY LOW INCOME	60000	68550	77100	85650	92550	99400	106250	113100
LOW-INCOME	75750	86550	97350	108150	116850	125500	134150	142800
Hartford-East Hartford-Middletown, CT MSA								
Hartford-West Hartford-East Hartford, CT HM								
FY 2023 MFI: \$118,100 EXTR LOW INCOME	24850	28400	31950	35450	38300	41150	45420	50560
VERY LOW INCOME	41350	47250	53150	59050	63800	68500	73250	77950
LOW-INCOME	66150	75600	85050	94500	102100	109650	117200	124750
Southern Middlesex County, CT HMFA								
FY 2023 MFI: \$145,300 EXTR LOW INCOME	27800	31750	35700	39650	42850	46000	49200	52350
VERY LOW INCOME	46300	52900	59500	66100	71400	76700	82000	87300
LOW-INCOME	66300	75750	85200	94650	102250	109800	117400	124950

U.S. DEPARTMENT OF HUD STATE:CONNECTICUT ----- 2023 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Bridgeport, CT HUD Metro FMR Area								
30% LIMITS	24650	28200	31700	35200	38050	40850	43650	46500
VERY LOW INCOME	41100	47000	52850	58700	63400	68100	72800	77500
60% LIMITS	49320	56400	63420	70440	76080	81720	87360	93000
LOW INCOME	65750	75150	84550	93900	101450	108950	116450	123950
Danbury, CT HUD Metro FMR Area								
30% LIMITS	28850	32950	37050	41150	44450	47750	51050	54350
VERY LOW INCOME	48050	54900	61750	68600	74100	79600	85100	90600
60% LIMITS	57660	65880	74100	82320	88920	95520	102120	108720
LOW INCOME	66700	76200	85750	95250	102900	110500	118150	125750
Stamford-Norwalk, CT HUD Metro FMR Area								
30% LIMITS	36000	41150	46300	51400	55550	59650	63750	67850
VERY LOW INCOME	60000	68550	77100	85650	92550	99400	106250	113100
60% LIMITS	72000	82260	92520	102780	111060	119280	127500	135720
LOW INCOME	75750	86550	97350	108150	116850	125500	134150	142800

D

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, Sarah Carey, 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

Sarah Carey
Sarah Carey, Town Planner

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

Claudia A. Weber
Notary Public
my commission expires
4-30-2025

Dated: January 25, 2024

E

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

Connecticut General Statutes. Sec. 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
From: Frederick Ross, Compliance Manager
Westmount Management, 36 Park Place, Branford, CT 06405

Development Name/Address: Millport Apartments Phase II - 59 & 61 Millport Avenue

I/We hereby certify that the forty (40) units in the 100% affordable "set-aside" development (see **detailed information on the attached sheets**), are restricted under an Affordability Plan filed in the office of the Planning & Zoning Department, 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, and that, therefore, the development continues to be in compliance with the restrictions required under Connecticut General Statutes Section 8-30g.


I have ascertained to the best of my knowledge that the required income limits for tenants have been met. The occupant(s) have provided the appropriate supporting documentation from which I verified their income.

State of Connecticut
ss New Canaan
County of Fairfield



Compliance Manager

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



(Name)
Commissioner of the Superior Court
(or Notary Public)

Dated: 12/4/2023

My Commission Expires
2/29/24

F

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

G

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),

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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

H

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>

I

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.

J

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



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

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

October 23, 2023

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:
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. **Owner's Certifications:** The Owner's Certifications of Continuing Project Compliance received for **2020, 2021, and 2022** were reviewed. The results of that review are as follows:

The Utility Allowance was provided. The correct UAs are in place. **Issue cleared.**

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

No issues.

3. **Status Reports:** The SPECTRUM Status Report database received was reviewed for compliance in **2020, 2021, and 2022** using **Stamford-Norwalk MSA** income limits. The results of that review are as follows:

Unit 311 was vacant from 8/31/2022 to 12/31/2022. This unit was occupied on 1/1/2023. The cause of the extended vacancy was that the tenant slated to transfer into this unit on 10/15/2022, had to put their transfer on hold due to a family issue, so management transferred another qualified tenant into the unit on 1/1/2023. **Issue cleared.**

Unit 323 Unit 323 was vacant from 5/31/2022 to 12/31/2022. This unit was occupied on 8/1/2022. The move-in was recorded in the EOY Database/Unit History Report. It has been corrected. **Issue cleared.**

Unit 328 was vacant from 8/4/2022 to 12/31/2022. This unit was occupied on 3/1/2023. The cause of the extended vacancy was the previous tenant was evicted and left the unit in a state of disarray as well as left all of their furniture in the unit. It was during this time that maintenance performed the necessary repairs, to include moving the furniture out of the unit. **Issue cleared.**

Unit 425/Almasan

At the 1/1/2019 move-in, this three-person household had an annual income of \$74-100. At the first annual certification on 1/1/2020, this three-person household had an annual income of \$91,182. The applicable limit was \$77,940. At the move-in the co-head of household was employed, but the head of household was not. The head of household obtained employment at the end of 2019. This could not have been anticipated at the 1/1/2019 move-in. **Issue cleared.**

4. **Physical Inspection:** The physical inspection was conducted on 8/14/2023. Two buildings (BINs CT-16408-01 to CT-16408-02), all common areas, and the designated number of the LIHTC units were inspected. All CHFA Inspection Standards and Guidelines were adhered to with the following repairs noted/required:

No issues.

5. **Tenant/Administrative File Review:** The file review was conducted on 8/14/2023. The designated number 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.

K

CERTIFICATION OF CERTIFICATES OF OCCUPANCY
New Canaan Application for
State Certificate of Affordable Housing Completion

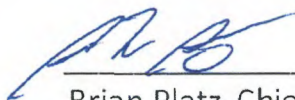
I hereby certify that valid Certificates of Occupancy have been issued and are currently in effect for the following residential developments which contain affordable housing units within the Town of New Canaan as per the dates indicated and as shown on the copies of the certificates attached.

	Date Issued
<u>186 Lakeview Avenue (Building 1)</u> 60 affordable units (49 being counted for this application)	06/08/2023
<u>186 Lakeview Avenue (Building 2)</u> 40 affordable units	06/08/2023

State of Connecticut


ss: New Canaan

County of Fairfield



Brian Platz, Chief Building Official

Personally appeared Brian 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: December 5, 2023

L

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

Connecticut General Statutes. Sec. 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
From: Frederick Ross, Compliance Manager
Westmount Management, 36 Park Place, Branford, CT 06405

Development Name/Address: Canaan Parish – 186 Lakeview Avenue Buildings 1 & 2

I/We hereby certify that the one hundred (100) units in the 100% affordable “set-aside” development (see **detailed information on the attached sheets**), are restricted under an Affordability Plan filed in the office of the Planning & Zoning Department, 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, and that, therefore, the development continues to be in compliance with the restrictions required under Connecticut General Statutes Section 8-30g.

I have ascertained to the best of my knowledge that the required income limits for tenants have been met. The occupant(s) have provided the appropriate supporting documentation from which I verified their income.

State of Connecticut
County of Fairfield
ss New Canaan



Compliance Manager

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

Michelle M. Hill
(Name)
Commissioner of the Superior Court
(or Notary Public)

Dated: 12/4/2023

My Commission Expires
2/29/24

M

**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

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

N

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.

O



STATE OF CONNECTICUT
DEPARTMENT OF HOUSING

WELL P. WEICKER, JR.
GOVERNOR

HENRY S. SCHERER, JR.
COMMISSIONER

To: All Interested Parties
From: Patricia Downs, *Patricia Downs* Director of Policy and Planning
Date: April 12, 1994
Subject: Affordable Housing Appeals Procedure
Percentages of Assisted Housing Units

The current list of percentages of assisted housing by municipalities is attached.

The units counted for this list are: (1) **assisted housing units** - housing which is receiving financial assistance under any governmental program for the construction or substantial rehabilitation of low and moderate income housing which was occupied by September 30, 1993, and any housing occupied by persons receiving rental assistance under Chapter 138a or Section 142f of Title 42 of the United States Code; (2) **Ownership Housing** - currently financed by Connecticut Housing Finance Authority mortgages or (3) **Deed Restricted Property** - deeds containing covenants or restrictions which require that such dwelling units be sold or rented at or below prices which will preserve the units as affordable housing, as defined in Section 8-39a, for persons and families whose incomes are less than or equal to eighty percent of the area median income.

Some municipalities may notice a change in the total number of family and elderly assisted housing rental units. These changes were caused by (1) towns indicating that projects were double counted, (2) a shift in the number of family/elderly Section 8 certificates/vouchers, and (3) shifts in the geographic location of Rental Assistance certificates. For future lists, DOH has requested from HUD clarification of the Section 8 family/elderly certificates and vouchers because of the difficulty in ensuring the consistency of data received from a variety of sources. Some towns provide a breakdown of the Section 8 family/elderly certificates and vouchers and the breakdowns do not remain the same from year to year. Other towns do not provide breakdowns. These inconsistencies do not affect the totals, but make it difficult to distinguish between the number of family and elderly units.

The 1993 Estimated Housing Units column has been updated by using the 1990 Census and adding the number of building permits issued since the Census was taken. It should be noted that because not all permits issued become units, some municipalities may notice decreases in the total number of units as permit figures are revised from one year to the next.

If you have any questions about this information, please call Gail Perotti at 566-4180.

Deaf and hearing impaired individuals may use a TDD by calling 566-4180. Questions, concerns, complaints, or requests for information in alternative formats must be directed to Marcia Bonitto, ADA (504) Coordinator at 566-5315. Department of Housing programs are administered in a nondiscriminatory manner, consistent with equal employment opportunities, affirmative action, and fair housing requirements.



AFFORDABLE HOUSING APPEALS PROCEDURE LIST

1993 Est. Assisted Rental C H F A Deed
 Housing Units Family Elderly Mortgages Restricted Percentages

TOWNS WHICH ARE EXEMPT UNDER SECTION 1(f) OF P.A. 89-311

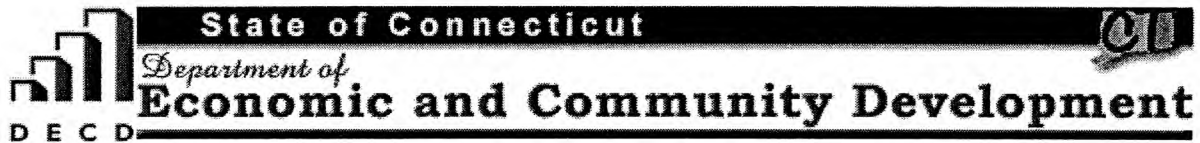
Ansonia	7,616	940	164	132		16.23%
Bloomfield	7,995	215	406	286		11.34%
Bridgeport	56,930	7,087	3,380	2,068	42	22.09%
Bristol	25,310	1,262	993	869	24	12.44%
Brooklyn	2,464	102	109	57		10.88%
East Hartford	21,357	1,665	872	653		14.94%
East Windsor	4,151	370	124	77		13.76%
Enfield	16,734	847	377	748	7	11.83%
Groton	16,784	2,745	489	312		21.13%
Hartford	56,081	13,044	3,257	1,733		32.16%
Manchester	22,006	1,555	393	596		11.56%
Meriden	24,888	2,069	838	869		15.17%
Middletown	18,424	2,130	796	393		18.01%
Naugatuck	12,158	500	326	391		10.01%
New Britain	32,315	3,135	1,201	1,001		16.52%
New Haven	54,228	7,993	4,179	1,715	60	25.72%
New London	11,962	1,188	577	369		17.84%
Norwich	16,508	1,307	835	494		15.97%
Plainfield	5,449	219	175	181		10.55%
Putnam	3,826	277	225	63		14.77%
Stamford	44,947	3,911	1,626	395		13.20%
Torrington	15,445	710	509	516		11.23%
Vernon	12,788	1,229	570	279		16.25%
Waterbury	47,548	4,875	2,027	1,921		18.56%
Winchester	5,129	336	166	101		11.76%
Windham	8,772	1,304	427	167	13	21.79%

TOWNS WHICH ARE NOT EXEMPT UNDER SECTION 1(F) OF P.A. 89-311

Andover	1,023	0	24	35		5.77%
Ashford	1,655	1	0	37		2.30%
Avon	5,841	2	39	17		0.99%
Barkhamsted	1,373	14	0	21		2.55%
Beacon Falls	2,063	4	0	25		1.41%
Berlin	6,481	7	70	81		2.44%
Bethany	1,645	1	0	5		0.36%
Bethel	6,512	36	124	92		3.87%
Bethlehem	1,304	0	24	4		2.15%
Bolton	1,741	2	0	27		1.67%
Bozrah	900	1	0	18		2.11%
Branford	13,336	157	172	102		3.23%
Bridgewater	755	0	0	1		0.13%
Brookfield	5,470	1	35	58		1.72%
Burlington	2,576	18	0	26		1.71%
Canaan	593	5	0	6		1.85%
Canterbury	1,607	53	24	37		7.09%
Canton	3,370	7	114	29		4.45%
Chaplin	813	3	0	9		1.48%
Cheshire	8,859	20	148	39		2.34%
Chester	1,442	1	23	11		2.43%
Clinton	5,489	18	78	58		2.81%
Colchester	4,557	40	88	102		5.05%

AFFORDABLE HOUSING APPEALS PROCEDURE LIST

	1993 Est. Housing Units	Assisted Rental Family	Rental Elderly	C H F A Mortgages	Deed Restricted	Percentages
Colebrook	632	1	0	12		2.06%
Columbia	1,832	0	24	35		3.22%
Cornwall	855	0	0	2		0.23%
Coventry	4,128	4	80	184		6.49%
Cromwell	5,155	2	147	94		4.71%
Danbury	26,258	1,128	963	404	24	9.59%
Darien	6,709	53	30	1		1.25%
Deep River	1,839	8	26	17		2.77%
Derby	5,330	261	167	40		8.78%
Durham	2,053	0	24	21		2.19%
East Granby	1,759	0	72	23		5.40%
East Haddam	3,484	2	36	52		2.58%
East Hampton	4,351	4	70	74		3.40%
East Haven	10,846	320	120	330		7.10%
East Lyme	7,049	95	94	98		4.07%
Eastford	636	0	0	3		0.47%
Easton	2,278	0	0	0		0.00%
Ellington	4,674	217	42	139		8.52%
Essex	2,789	2	36	20		2.08%
Fairfield	20,417	140	223	52		2.03%
Farmington	8,966	169	131	54	6	4.02%
Franklin	683	1	0	12		1.90%
Glastonbury	11,432	247	307	73		5.48%
Goshen	1,326	0	0	4		0.30%
Granby	3,584	18	81	23		3.40%
Greenwich	23,718	519	513	2	33	4.50%
Griswold	4,296	79	60	166		7.10%
Guilford	7,969	19	90	21		1.63%
Haddam	2,679	2	22	14		1.42%
Hamden	22,776	862	561	247	2	7.34%
Hampton	621	0	0	9		1.45%
Hartland	709	12	0	7		2.68%
Harwinton	1,917	0	20	19		2.03%
Hebron	2,655	2	25	45		2.71%
Kent	1,452	5	24	4		2.27%
Killingly	6,665	265	165	89		7.79%
Killingworth	1,995	1	0	2		0.15%
Lebanon	2,541	2	24	51		3.03%
Ledyard	5,318	9	30	239		5.23%
Lisbon	1,439	2	0	69		4.93%
Litchfield	3,513	21	78	17		3.30%
Lyme	1,029	0	0	5		0.49%
Madison	6,798	1	90	5		1.41%
Mansfield	5,311	123	144	69		6.33%
Marlborough	1,970	1	0	22		1.17%
Middlebury	2,394	0	0	13		0.54%
Middlefield	1,620	0	30	18		2.96%
Milford	20,704	252	471	182		4.37%
Monroe	5,824	1	30	13		0.76%
Montville	6,546	16	80	291		5.91%
Morris	1,119	0	20	3		2.06%
New Canaan	6,990	94	0	0		1.34%
New Fairfield	5,193	0	0	54		1.04%
New Hartford	2,389	6	0	28		1.42%
New Milford	9,733	37	102	147		2.94%



Affordable Housing Appeals Program

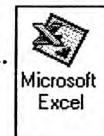
TO: All Interested Parties

FROM: Thomas J. Ciccalone, Jr., Executive Director, Public Affairs and Strategic Planning Division

DATE: April 11, 2000

SUBJECT: Affordable Housing Appeals Procedure Percentages of Assisted Housing Units

The current list of percentages of assisted housing by municipalities is attached.



The units counted for this list are: (1) Assisted Housing Units-housing which is receiving financial assistance under any governmental program for the construction or substantial rehabilitation of low and moderate income housing which was occupied or under construction by September 30, 1999, and any housing occupied by persons receiving rental assistance under Chapter 138a of the Connecticut General Statutes (State Rental Assistance) or Section 142f of Title 42 of the United States Code (Section 8); (2) Ownership Housing – currently financed by Connecticut Housing Finance Authority and/or Farmer's Home Administration mortgages or (3) Deed Restricted Properties- deeds containing covenants or restrictions which require that such dwelling units be sold or rented at or below prices which will preserve the units as affordable housing as defined in C.G.S. 8-39a for persons and families whose incomes are less than or equal to eighty percent of area median income.

Changes in the number of units counted toward the ten percent are caused by several factors including the relocation of households using Section 8 or RAP certificates, the expiration of deed restrictions or refinancing of mortgages, demolition of buildings and the addition of units completed or under construction during the 1998-1999 program year.

The data comes from different sources and programs, federal, state and local which make it difficult for the state to ensure complete accuracy. Of particular importance to data accuracy is local administrative review of and input on the street addresses of units and projects, and information on deed restricted units. The response to requests for this information varies widely from community to community.

The 1999 Estimated Housing Units column has been updated by using the 1990 Census and adding the number of building permits issued since the Census was

taken. It should be noted that, because not all permits issued become dwelling units, some municipalities may notice decreases in the total number of units as permit figures are revised from one year to the next. In 1996, the Census Bureau eliminated the demolition category on the reporting forms.

If you have any questions or wish to discuss this information, please call Annette Sirois at 860-270-8165.

Department of Economic and Community Development programs are administered in a nondiscriminatory manner, consistent with equal employment opportunities, affirmative action, and fair housing requirements. Questions, concerns, complaints, or requests for information in alternative formats must be directed to Marcia Bonitto, ADA Coordinator, at 860-270-8025.

100	Monroe	6,446	37	19		56	0.87%
101	Montville	6,797	107	266		373	5.49%
102	Morris	1,171	21	5		26	2.22%
103	Naugatuck	12,485	860	378		1,238	9.92%
104	New Canaan	7,245	136	1		137	1.89%
105	New Fairfield	5,481	1	61		62	1.13%
106	New Hartford	2,553	11	29		40	1.57%
107	New Milford	10,471	168	178		346	3.30%
108	Newington	12,176	468	418		886	7.28%
109	Newtown	8,855	131	31	11	173	1.95%
110	Norfolk	928	37	2		39	4.20%
111	North Branford	5,098	63	56		119	2.33%
112	North Canaan	1,502	135	7		142	9.45%
113	North Haven	8,894	179	77		256	2.88%
114	North Stonington	2,061		27		27	1.31%
115	Old Lyme	4,734	70	13		83	1.75%
116	Old Saybrook	5,325	67	36		103	1.93%
117	Orange	4,742	87	11		98	2.07%
118	Oxford	3,443	39	7		46	1.34%
119	Plymouth	4,839	180	210		390	8.06%
120	Pomfret	1,499	35	19		54	3.60%
121	Portland	3,510	182	54		236	6.72%
122	Preston	1,853	40	39		79	4.26%
123	Prospect	3,011	1	28		29	0.96%
124	Redding	3,186	1	0		1	0.03%
125	Ridgefield	8,880	146	11		157	1.77%
126	Rocky Hill	7,841	242	146		388	4.95%
127	Roxbury	1,028	3	1		4	0.39%
128	Salem	1,434		22		22	1.53%
129	Salisbury	2,560	38	5		43	1.68%
130	Scotland	553		24		24	4.34%
131	Seymour	6,291	203	98		301	4.78%
132	Sharon	1,665	21	5		26	1.56%
133	Shelton	14,478	391	84	82	557	3.85%
134	Sherman	1,616		2		2	0.12%
135	Simsbury	8,749	211	56		267	3.05%
136	Somers	3,003	56	33		89	2.96%
137	South Windsor	8,997	92	191		283	3.15%
138	Southbury	7,553	58	20		78	1.03%
139	Southington	15,685	798	385		1,183	7.54%
140	Sprague	1,155	27	29		56	4.85%
141	Stafford	4,617	226	194		420	9.10%
142	Sterling	1,061	9	74		83	7.82%
143	Stonington	8,550	247	128		375	4.39%
144	Stratford	20,543	1273	415		1,688	8.22%
145	Suffield	4,912	118	59	4	181	3.68%
146	Thomaston	2,995	110	79		189	6.31%
147	Thompson	3,849	182	112		294	7.64%
148	Tolland	4,588	34	127		161	3.51%
149	Trumbull	12,109	228	19		247	2.04%
150	Union	325		6		6	1.85%
151	Voluntown	1,030	21	45		66	6.41%
152	Wallingford	17,338	542	445	2	989	5.70%

Amended* 2010 Affordable Housing Appeals List

2010 Affordable Housing Appeals List - Exempt Municipalities							
	Town	2000 Census Housing Units	Governmentally Assisted Units	CHFA Mortgages	Deed Restricted Units	Total Assisted Units	Percent
1	Ansonia	7,937	1,040	109	9	1,158	14.59%
2	Bloomfield	8,195	698	299	0	997	12.17%
3	Bridgeport	54,367	9,013	943	8	9,964	18.33%
4	Bristol	26,125	2,508	1,034	0	3,542	13.56%
5	Brooklyn	2,708	244	65	0	309	11.41%
6	Danbury	28,519	2,526	297	223	3,046	10.68%
7	Derby	5,568	562	61	0	623	11.19%
8	East Hartford	21,273	2,245	907	0	3,152	14.82%
9	East Windsor	4,356	604	96	14	714	16.39%
10	Enfield	17,043	1,536	545	7	2,088	12.25%
11	Groton	16,817	3,312	338	10	3,660	21.76%
12	Hartford	50,644	17,428	1,431	0	18,859	37.24%
13	Killingly	6,909	658	248	0	906	13.11%
14	Manchester	24,256	2,603	916	38	3,557	14.66%
15	Mansfield	5,481	576	80	0	656	11.97%
16	Meriden	24,631	2,725	1,046	4	3,775	15.33%
17	Middletown	19,697	3,679	613	0	4,292	21.79%
18	New Britain	31,164	4,322	1,163	0	5,485	17.60%
19	New Haven	52,941	13,775	1,128	453	15,356	29.00%
20	New London	11,560	1,980	452	42	2,474	21.40%
21	Norwalk	33,753	3,114	236	553	3,903	11.56%
22	Norwich	16,600	2,634	517	0	3,151	18.98%
23	Plainfield	5,676	597	254	0	851	14.99%
24	Putnam	3,955	450	98	0	548	13.86%
25	Stamford	47,317	5,342	299	1,143	6,784	14.34%
26	Torrington	16,147	1,375	631	17	2,023	12.53%
27	Vernon	12,867	1,875	371	0	2,246	17.46%
28	Waterbury	46,827	7,590	2,369	378	10,337	22.07%
29	West Haven	22,336	2,280	425	0	2,705	12.11%
30	Winchester	4,922	560	120	0	680	13.82%
31	Windham	8,926	2,150	438	0	2,588	28.99%
Total Exempt Municipalities		639,517	100,001	17,529	2,899	120,429	

Source: DECD, OHDF

2010 Affordable Housing Appeals List: Non-Exempt Municipalities

Town	2000 Census Housing Units	Governmentally Assisted Units	CHFA Mortgages	Deed Restricted Units	Total Assisted Units	Percent
Fairfield	21,029	422	32	111	565	2.69%
Farmington	9,854	574	120	152	846	8.59%
Franklin	711	0	16	0	16	2.25%
Glastonbury	12,614	626	130	0	756	5.99%
Goshen	1,482	2	6	0	8	0.54%
Granby	3,887	89	34	5	128	3.29%
Greenwich	24,511	1,195	2	54	1,251	5.10%
Griswold	4,530	198	142	0	340	7.51%
Guilford	8,724	172	29	0	201	2.30%
Haddam	2,822	23	16	0	39	1.38%
Hamden	23,464	1,165	457	4	1,626	6.93%
Hampton	695	0	17	0	17	2.45%
Hartland	759	2	5	0	7	0.92%
Harwinton	2,022	24	21	0	45	2.23%
Hebron	3,110	62	28	0	90	2.89%
Kent	1,463	25	4	24	53	3.62%
Killingworth	2,283	0	5	5	10	0.44%
Lebanon	2,820	31	46	0	77	2.73%
Ledyard	5,486	39	161	4	204	3.72%
Lisbon	1,563	2	36	0	38	2.43%
Litchfield	3,629	144	11	29	184	5.07%
Lyme	989	0	0	7	7	0.71%
Madison	7,386	92	5	29	126	1.71%
Marlborough	2,057	24	13	0	37	1.80%
Middlebury	2,494	79	9	8	96	3.85%
Middlefield	1,740	30	11	0	41	2.36%
Milford	21,962	1,101	219	107	1,427	6.50%
Monroe	6,601	36	19	1	56	0.85%
Montville	6,805	111	183	0	294	4.32%
Morris	1,181	20	0	0	20	1.69%
Naugatuck	12,341	762	319	0	1,081	8.76%
New Canaan	7,141	146	3	31	180	2.52%
New Fairfield	5,148	0	23	13	36	0.70%
New Hartford	2,369	12	39	15	66	2.79%
New Milford	10,710	248	103	0	351	3.28%
Newington	12,264	478	392	36	906	7.39%
Newtown	8,601	138	18	15	171	1.99%
Norfolk	871	28	3	0	31	3.56%
North Branford	5,246	69	59	0	128	2.44%
North Canaan	1,444	101	7	0	108	7.48%