

## **TAX CREDIT AGREEMENT**

**THIS TAX CREDIT AGREEMENT**, (this “**Agreement**”) made and entered into this     day of                     , 2024, by and among **THE LOFTS AT SPENCER’S CORNER, LLC**, a Connecticut limited liability company with offices located at 99B Durham Road, Madison, Connecticut 06443 (hereinafter the “**OWNER**”) and the **TOWN OF ESSEX**, a municipal corporation, with offices located at 29 West Avenue, Essex Connecticut 06426, and acting herein by Norman Needleman, its First Selectman, duly authorized (hereinafter the “**TOWN**”).

### **W I T N E S S E T H**

**WHEREAS, OWNER** is the fee simple owner of the four (4) Residential Units containing 17 affordable apartment dwellings, located in the Spencer’s Corner Condominium, 90 Main Street, in the Village of Centerbrook, Town of Essex, County of Middlesex and State of Connecticut, (hereinafter referred to as the “**Project**” and “**Development**”); and

**WHEREAS, HOPE Partnership** (Housing Opportunities for People Everywhere), Inc., (“**HOPE**”) a Connecticut non-profit 501c (3) membership corporation, is the sole member of the **OWNER**; and

**WHEREAS, C.G.S. § 12-81bb** provides that a municipality may, by ordinance, provide property tax credits to owners of residential property who place long term, binding affordable housing deed restrictions on residential property in accordance with the provisions of C.G.S. § 12-81bb; and

**WHEREAS, the four (4) Residential Units** at Spencer’s Corner containing the 17 apartment dwellings were approved by the Essex Zoning Commission as a long term affordable housing development under C.G.S. § 8-30g; and

**WHEREAS**, said four (4) Residential Units containing the 17 apartment dwellings are deed restricted as affordable dwellings under 8-30g as more fully set forth in two Declarations of Land Use Restrictive Covenant, both dated May 1, 2020 and recorded in Essex Land Records, Volume 334, Page 0004 and Essex Land Records, Volume 334, Page 0014, which Declarations restricted the 17 apartment dwellings located in condominium units known as R-Unit 1, R-Unit 2, R-Unit 3 and R-Unit 4 of the Spencer's Corner Condominium existing pursuant to that certain Amended and Restated Declaration dated January 21, 2020 and recorded in Essex Land Records, Volume 332, Page 208, to which Declarations reference is hereby made; and

**WHEREAS**, said Declarations restricted said 17 apartment dwellings collectively as "Affordable Units" under the provisions of CGS §8-30(g) for a period of 30 years after the project completion date, which date was March, 2022; and

**WHEREAS**, the **TOWN** deems it desirable to adopt an Ordinance authorizing the **TOWN** by its First Selectman to enter into this Agreement providing real property tax credits for the said four (4) Residential Units containing the 17 affordable apartment dwellings for a period of thirty (30) years from said project completion date, which termination date is February 29, 2052, under the terms and conditions hereof, to assure that said tax credit amounts are expended for the purpose of the maintenance, repair, replacement, upgrading or rehabilitation of the four (4) Residential Units, the 17 affordable apartment dwellings therein and of the buildings in which they are located.

**NOW, THEREFORE**, the **TOWN** and the **OWNER** now enter into this Agreement in order to set forth the terms and conditions under which the **OWNER** will be provided such tax credits and mutually agree as follows:

1. **TAX CREDIT TO BE PROVIDED:** The **OWNER** and the **TOWN** agree

that commencing with the October 1, 2023 Grand List, for which real property taxes are due and payable on July 1, 2024 (first half) and January 1, 2025 (second half), the **OWNER** shall be provided a tax credit of 70% of the real property taxes then due on the four (4) Residential Units containing the 17 affordable apartment dwellings. Said tax credit shall continue under the terms and conditions of this Agreement for the October 1, 2024 Grand List and each of the following Grand Lists through and including the Grand List of October 1, 2050, subject to compliance with the terms of this Agreement.

2. **USE OF TAX CREDITS:** The **OWNER** and **TOWN** agree that the entire 70% tax credit provided to the **OWNER** under this Agreement shall be used exclusively to fund the following:

A. To pay for expenses for the maintenance, repair, replacement, upgrading or rehabilitation of the Residential Units and the 17 affordable apartment dwellings located therein. These payments **shall** include a payment of at least \$7225 to the Replacement Reserve account in the **OWNER'S** Budget, commencing with its 2024 calendar fiscal year, and annually thereafter, and payments made under the Repairs and Maintenance category of the **OWNER'S** Budget for the elevator, plumbing, HVAC, fire system repairs and other general repairs relating to the four (4) Residential Units.

B. To pay for the maintenance, repair, replacement, upgrading or rehabilitation of the four buildings of the Condominium within which the Residential Units and the 17 affordable apartment dwellings are located, by payment to the Condominium Capital Reserve Account for a line item specifically designated for this purpose.

C. Fire or casualty payments as may be required under Paragraph 5.

3. **REPORTING REQUIREMENTS:** For so long as the **OWNER** shall be receiving the tax credits under this Agreement, upon the request of the **TOWN**, the **OWNER** shall provide the **TOWN** at the offices of the First Selectman, copies of the **OWNER'S** Operating Budget demonstrating compliance with the provisions of Paragraph 2 and evidence of payments made pursuant the provisions of Paragraph 2.

4. **FIRE OR OTHER CASUALTY:** The **OWNER** shall maintain adequate property damage insurance in commercially reasonable amounts, with commercially reasonable deductibles, and shall provide the **TOWN** evidence of such insurance upon request.

In the event the Development, or any part thereof, is damaged or destroyed by fire or other casualty during the Tax Credit Period, the tax credit amounts may be used by the **OWNER** to repair the damage to said four (4) Residential Units and the 17 apartment dwellings therein not covered by insurance.

5. **DEFAULT:** For the purposes of this Paragraph, the term "Default" is defined as follows:

A. The failure of the **OWNER** to perform any of its material obligations under this Agreement, or to commit or allow any material breach of the covenants hereunder.

B. The failure of the **OWNER** to pay the real property taxes, personal property taxes, or Spencer's Corner Condominium common charges, including any special assessments as may be applicable, for the four (4) Residential Units containing the 17 affordable apartment dwellings.

C. The failure of the **OWNER** to fulfill its payment and other obligations required under the mortgages and Declarations of Land Use Restrictive Covenant referenced

above.

D. The failure of the **OWNER** to fulfill its obligations under the CGS 8-30g Special Exception granted by the Essex Zoning Commission, permitting the creation of the four (4) Residential Units and the 17 affordable apartment dwellings located therein.

E. Any change in the membership of the **OWNER** from the existing sole member being **HOPE**, without the prior written consent of the **TOWN**, which will not be unreasonably withheld, provided there shall be no default under this Agreement.

F. Any change in the two Declarations of Land Use Restrictive Covenant, both dated May 1, 2020 and recorded in Essex Land Records, Volume 334, Page 0004 and Essex Land Records, Volume 334, Page 0014, in the Amended and Restated Declaration dated January 21, 2020 and recorded in Essex Land Records, Volume 332, Page 208, or in the terms and provisions of the approval by the Essex Zoning Commission of all four (4) Residential Units and all 17 rental apartments therein as a long term affordable housing development under C.G.S. § 8-30g, which would alter or adversely affect the development as a long term affordable housing development, without the prior written consent of the Town, which consent will not be unreasonably withheld.

In the event of a default hereunder, and such default shall not have been cured or remedied, as may be appropriate, within thirty (30) days after written Notice thereof shall have been given to the **OWNER** by the **TOWN**, or such longer period of time as the **TOWN** may allow in writing, the **TOWN** shall have the right to terminate this Agreement in whole or in part, by revocation of such credit in whole or in part, or to suspend providing said tax credit, in whole or in part, until said default of the terms and provisions of this Agreement are remedied to the reasonable satisfaction of the

**TOWN.** Any such revocation in whole or in part, or such suspension shall be applicable beginning with the next occurring tax payment date.

In addition to the foregoing default remedies, the TOWN maintains the right to enforce the terms and provisions hereof by actions at law or suits in equity or other proper proceedings to cure or remedy defaults or breaches of covenants and conditions of this Agreement.

Any such action by the **TOWN** shall be initiated by the Board of Selectmen only after the **OWNER** shall have been given said written Notice of the claimed default or breach of this Agreement and shall have been provided an opportunity to be heard with respect to the claimed default at a meeting of the Board of Selectmen called for that purpose.

**6. TOWN ACQUISITION:** In the event that the **OWNER** wishes to sell or otherwise transfer the **Development**, or **HOPE** wishes to sell or transfer its membership interest in **OWNER**, the **OWNER** or **HOPE**, as the case may be, shall notify the **TOWN** of its wish to sell or transfer by written communication to the Board of Selectmen of the **TOWN**. If the Board wishes to consider the terms of any such sale or transfer for the acquisition thereof by the **TOWN** or its Housing Authority, it shall place the item on the agenda of a regular or special Board of Selectmen's meeting to be held within two weeks of receipt of said written communication, and said item shall only be considered in Executive session, during which **OWNER** or **HOPE**, as the case may be, will disclose acceptable terms of said sale or transfer. Time is of the essence in the scheduling of such a meeting. If the Board fails or declines to hold the meeting, the obligations of **OWNER** and **HOPE** hereunder shall cease and terminate.

At the conclusion of the meeting, the parties may proceed further by mutual

agreement, but neither party is obligated to proceed further. In the absence of such agreement, the terms disclosed in executive session shall remain confidential and the obligations of **OWNER** and **HOPE** hereunder shall cease and terminate. **HOPE** has been made a signatory to this Agreement for the purposes of this paragraph.

**7. DOCUMENTS:** The parties agree that, consistent with the terms of this Agreement, such documents that may be necessary and appropriate to execute the terms of this Agreement shall be provided upon written request of the other party and within a reasonable time, but in no event shall the operation of this provision impose any additional obligation upon any party other than those provided for in this Agreement.

**8. ENTIRE AGREEMENT; MODIFICATIONS:** This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof. No modification or amendment to this Agreement shall be made or claimed by any party; and no change, modification or amendment made or claimed by any party shall have any force or effect whatsoever unless they are in writing and signed by all parties. The Board of Selectmen are hereby authorized to change, modify or amend this Agreement on behalf of the **TOWN**; provided however, that any change to the amount of the tax credit under Paragraph 1, and any extension of the duration of the tax credit term, shall require approval of the legislative body of the **TOWN** by amendment to the enabling Ordinance.

**9. PARAGRAPH HEADINGS:** The Paragraph headings in this Agreement are for convenience and for reference only and in no way define or limit the scope of this Agreement or in any way affect its provisions.

**10. SEVERABILITY:** The invalidity of any one or more phrases, sentences, clauses,

or paragraphs of this Agreement shall not affect the remaining portions of this Agreement or any part of it, all of which are inserted conditionally on being held valid in law. In the event that one or more of the phrases, sentences, clauses, or paragraphs contained in this Agreement should be invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, and paragraph or paragraphs had not been inserted, provided the basic purposes of this Agreement are achieved through the remaining provisions.

**11. APPLICABLE LAW:** This Agreement shall be interpreted and enforced in accordance with the laws of the State of Connecticut.

**12. LEGAL VENUE:** Legal venue shall lie exclusively in the Judicial District of Middlesex at Middletown in the State of Connecticut.

**13. EFFECTIVE DATE:** This Agreement shall be effective upon its approval by the legislative body of the Town of Essex.

*Remainder of page intentionally blank. Signature pages follow.*





