

ATTENTION: You MUST HAVE DHCD PERMISSION to sell/transfer this property. This property MUST BE RENTED to approved tenants at or below Fair Market Rent for the term of this Covenant.

VERMONT HOUSING IMPROVEMENT PROGRAM 2.0 RENT STABILIZATION COVENANT

1. **OWNER AND DECLARANT.** The owner and declarant hereunder is _____ [insert owner name or business], a Vermont _____ [insert company type or simply landlord] with an address of _____ [insert address] (the "Owner").

2. **AUTHORIZING STATUTE.** This instrument (the "Covenant") is created as a "housing subsidy covenant" within the meaning of [27 V.S.A. § 610](#). The Vermont Rental Housing Improvement Program is enabled under [10 V.S.A. § 699](#), subject to any future amendments.

3. **PROPERTY DESCRIPTION.** The real property to which this Covenant applies and the use of which are hereby restricted are those certain rental units located at _____

_____ [insert addresses and unit numbers of specific rental units encumbered], all in the City/Town of _____ [insert City/Town], County of _____ [insert County] and State of Vermont, as more particularly described in Schedule A (containing the deed description of the rental unit property) attached hereto and incorporated herein by reference, together with all improvements now or hereafter located thereon (the "Property").

4. **AUTHORIZING SUBSIDY.** This Covenant is created as a condition of \$ _____ in Grant funding provided to _____ [insert owner name or company], a Vermont _____ [insert business type or simply "landlord"] with an address of _____ [insert Landlord/business address] Vermont, _____ [insert zip code] (known herein as _____ [insert "shortened name"]) by the _____ ("HOC") a Vermont 501(c)3 non-profit organization, and the **Vermont Department of Housing and Community Development** ("DHCD"). This Covenant is a condition of _____ Grant Agreement # _____ [insert Grant Agreement Number] for construction and related expenses of rehabilitating the Property and bringing it up the applicable to rental code standards. If, upon completion to the project and prior to the start of the Compliance Period, the actual amount of the grant differs from the amount listed above, Owner and HOC shall execute a "VHIP Final Award Amount Amendment" form as provided by DHCD to amend the total award amount. HOC and Owner agree to record the amendment in the land records of the Town in which the property is located, and provide a recorded copy to DHCD.

5. **RECORDING IN THE LAND RECORDS.** Owner hereby agrees to execute this Covenant prior to receiving Grant funds. Owner further agrees to allow HOC to record this Covenant in the Land Records of the Town/City of _____ [insert town/city where unit(s) are located] County of _____ [insert County], Vermont. HOC will provide a certified copy of this Covenant to Owner and DHCD within 30 days of recording.

6. **RESTRICTIONS.** Subject to the terms and conditions hereof, and pursuant to 27 V.S.A. §610(b), and 10 V.S.A. §699: (a) the dwelling units situated on the Property shall be used exclusively to provide residential housing; and (b) conveyance of the Property shall be restricted in accordance with Section 8 below. Nothing herein shall be construed to prevent the imposition by Owner of such additional restrictions on rents and occupancy as may be required from time to time

in order to comply with any applicable governmental requirements.

7. **DEFINITIONS.** The following terms, as used in this Covenant, shall have the following meanings:

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

"Coordinated Entry (CE) Lead Organization" means organizations that assist with Coordinated Entry and are associated with the Vermont Coalition to End Homelessness. This process helps people experiencing housing crises by referring and connecting individuals to housing assistance based on their needs.

"Compliance Period" means the period of five (5) years beginning on the date that the Property and/or Unit(s) are placed in service, as a low-income housing unit in accordance with the Vermont Housing Improvement Program enacted in 10 V.S.A. §699, and the applicable sections of 27 V.S.A. § 610. The "placed in service" date is the effective lease date.

"Refugee Resettlement Organization" means a nonprofit organization recognized by the State Refugee Office of the Vermont Agency of Human Services that provides resettlement services to refugees entering Vermont.

"Unit" means the specific apartment, house, or property which the Owner has made available for rent via the Vermont Housing Improvement Program funds, and which is subject to this Covenant. If a Unit is encumbered within a larger structure with multiple units, the Unit shall include the interior living space and any shared or common spaces and structures necessary for the function of the Unit.

"Qualifying Organization" means an organization approved by DHCD to provide tenant referrals to VHIP Grant participants, including but not limited to CE Lead Organizations and Refugee Resettlement Organizations.

8. **RENTS AND AFFORDABILITY.** The following rent restrictions and affordability requirements shall apply to the Property:

- (a) Owner shall target and make every reasonable effort to lease units to persons exiting homelessness and referred to the Owner by the local Coordinated Entry ("CE") Lead Organization, Refugee Resettlement Organization, or other organization designated by DHCD. This engagement shall continue at unit turnover for a minimum of 5 years from the date the unit(s) are put into service. If the Owner fails to comply with this provision, the Grant Compliance Period may be extended to account for the non-compliant period.
- (b) A waiver from DHCD may be provided for a property owner to seek tenants outside of the Qualifying Organization referrals if the Qualifying Organization fails to provide suitable tenant option within 4 weeks of project completion (property owners are strongly encouraged to begin communication with Qualifying Organizations prior to project completion) or 3 weeks after the unit has been vacated during the 5-year compliance period. It is the responsibility of the property owner to provide and maintain documentation showing communications with the Qualifying Organization. If a tenant from a Qualifying Organization is not available, the Property Owner shall rent to tenants attesting their household income is at or below 80% area median income.
- (c) For the duration of the five (5) year affordability period, the annualized rent charged for each such unit shall not exceed HUD fair market rent for the area as defined and published in the HUD Fair Market Rent Documentation System: <https://www.huduser.gov/portal/datasets/fmr.html>, unless:
 - (i) the tenant pays the property owner via a housing voucher which exceeds said fair market rent. The Property Owner shall apply any excess voucher proceeds above HUD fair market rent to defray the cost of utilities or other charges as applicable.

9. **CONVEYANCE OF THE PROPERTY.** If Owner at any time intends to sell, transfer, or otherwise convey its interest in the Property, Owner shall:

- (a) deliver to the Commissioner of DHCD, or their designee, written notice of such intent, along with the name and contact information of the proposed transferee, and the terms of the proposed conveyance; and a Purchase and Sale Agreement with the Covenant attached and with acceptance of the covenant terms as a condition of sale. Notice may be sent via U.S. mail or electronically and must be signed electronically or physically.
- (b) provide a copy of this Covenant to transferee.

Owner shall not convey the Property or any interest therein without the prior written consent of DHCD, which consent shall not be unreasonably withheld if the proposed transferee will maintain the eligible use and rent restrictions under this covenant, and the associated grant(s).

Any consent to a conveyance of the Property shall be subject to the condition that:

- (a) the transferee assumes the obligations of Owner under this Covenant; or
- (b) the transferee converts the Grant into a Forgivable Loan and complies with the requirements of the VHIF Forgivable Loan program; or
- (c) the Owner repays the original amount of the Grant pro-rated at 20% of the total of the original Grant amount per year of compliance with the program parameters upon sale; or
- (d) the Owner and/or the Transferee enters into an otherwise approved release or restructuring of the covenant or other written agreement with DHCD in DHCD's sole discretion.

10. **DURATION.** Unless sooner terminated by reason of the terms and conditions hereof, this Covenant shall endure for a period of five (5) years from the date that the Property or unit is first placed in service (the start of the first rental period) and shall run with the Property. The Compliance Period shall be paused if the Owner fails to comply with the Covenant requirements and shall begin again once compliance resumes.

11. **RELEASE.** This covenant may be released upon completion of the performance period, restructuring of the covenant, conversion to an affordable loan, or repayment of the funds, with written permission from DHCD.

12. **ENFORCEMENT.** This Covenant may be enforced in accordance with its terms by the State of Vermont, acting through DHCD or the Office of the Attorney General, or HOC or, upon assignment of the right of enforcement by instrument duly recorded in the appropriate land records, by any other entity that is an assignee under such recorded assignment and is authorized to enforce the same. Owner acknowledges that the Property is impressed with a public interest and that money damages to DHCD or HOC in the event of a violation are likely to be difficult or impossible of calculation. Accordingly, but without limitation, this Covenant may be enforced through an equitable decree appropriate to the case, including a decree of specific performance. No action for enforcement may be brought unless DHCD has first delivered to Owner a written notice of a violation hereof, and such violation has not been remedied or a written plan for remedy reasonably satisfactory to DHCD has not been provided by Owner to DHCD within thirty (30) days after the date of delivery of such notice. In the event that DHCD shall take action to enforce this Covenant, DHCD and/or HOC shall be awarded its costs and expenses incurred in connection with such action, including reasonable attorney fees, from Owner. If the Property Owner defaults on the terms of the Covenant DHCD may require repayment of the Grant Award amount, or a pro-rated amount in DHCD's discretion. If an Owner in Default requests to sell the Property, DHCD may elect to receive repayment from the proceeds of the Sale or allow the new owner to assume the requirements of the Covenant.

13. **MONITORING OF COMPLIANCE.** In the ordinary course of its business of managing the Property, Owner shall maintain documentation sufficient to evidence compliance with the rent and programmatic restrictions hereof.

- (a) Owner shall annually submit the lease agreement (redacted to exclude any sensitive personal tenant information) and the Vermont Housing Improvement Program Owner Compliance Certification to DHCD, via email at shaun.gilpin@vermont.gov or via mail to:

Attn: Vermont Rental Housing Improvement Program
Department of Housing and Community Development
Vermont Agency of Commerce and Community Development
1 National Life Dr., Deane C. Davis Bldg, 6th Floor
Montpelier, VT 05620

- (b) From time to time, upon request of DHCD, Owner shall provide copies of other such documentation. Further, Owner shall notify DHCD of any report, inspection, or instrument which may affect the habitability or occupancy of the unit(s), including but not limited to: [Town Health Officer Rental Housing Inspection Report](#); and, any [Notice of Violation](#) issued. In addition, Owner shall deliver to DHCD copies of any notice of default or enforcement proceedings from any holder of a mortgage or any other lien or security interest affecting title to the Property, within thirty (30) days of the date of such notice.

14. SUPERIOR MORTGAGES. Except as hereinafter provided the applicability of this Covenant shall not be affected by any mortgages on the Property.

- (a) To the extent that DHCD expressly agrees in writing to subordinate this Covenant to a mortgage held by a lender providing financing for the Property, such lender's mortgage shall be a "Superior Mortgage" for the purposes hereinafter set forth.
- (b) If Owner intends to replace or refinance any Superior Mortgage, it may request DHCD to consent to subordinate this Covenant to any mortgage created subsequent to the date hereof or not listed above, which consent shall not be unreasonably withheld if Owner demonstrates that such financing is necessary to preserve or maintain the physical integrity of the Property, to preserve the Property as affordable housing in accordance with this Covenant, or otherwise will not conflict with this Covenant and associated grant requirements.
- (c) The property shall not be cross-collateralized with other property or used as additional collateral for financing involving other property without the prior written consent of DHCD.
- (d) This Covenant shall terminate automatically and shall be without further force or effect upon: (i) entry of judgment of foreclosure in favor of the holder of a Superior Mortgage and nonredemption by either Owner or any other party entitled to exercise the right to redeem; or (ii) transfer of Owner's title to the Property, in lieu of foreclosure, to the holder of a Superior Mortgage, provided that DHCD has been given notice of the default, as required by section 11 of this Covenant and notice of Owner's intent to transfer title at least thirty (30) days prior to the date of transfer. However, if any of the parties described in subsection (i) of this paragraph exercise the right to redeem, then this Covenant shall remain in full force and effect.
- (e) Notwithstanding the foregoing, if at any time following a foreclosure or deed in lieu of foreclosure, but during the original Affordability Period of this Covenant, the owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Property, the affordability restrictions shall be revived according to the provisions of this Covenant.

15. DIVISION OF AUTHORITY BETWEEN HOC AND DHCD.

- (a) HOC shall be responsible for enforcement of this Covenant until project completion, which occurs when a lease is effective for the unit that meets the program requirements and the final payment is made. This is the date the Compliance Period begins. Owner shall interface with HOC during the construction of the unit(s) and until the Compliance Period begins. If enforcement is required prior to the start of the Compliance Period, HOC shall consult with DHCD prior to enforcement actions as detailed in this agreement.
- (b) DHCD shall be responsible for enforcement of this Covenant during the Compliance Period. Owner shall interface with DHCD once the Compliance Period begins.

16. SUCCESSORS AND ASSIGNS. This Covenant shall be binding upon Owner and Owner's successors in interest. This Covenant shall be enforceable by the State of Vermont, its successors, and HOC its successors, and, in accordance with the provisions hereof.

[Owner/business] has caused this Covenant to be executed by their duly authorized agents on this

____[insert date] Day of _____[insert month], ____[insert year].

Property Owner [printed]

By: _____

Duly Authorized Signatory

Date

Vermont Notary Acknowledgment

State of Vermont, County of _____ ss. On this ____[insert date] day of _____[insert month], 20____, before me personally appeared _____[insert name of person acknowledging] to me known to be the person who executed the foregoing instrument, and he (she) thereupon duly acknowledged to me that he (she) executed the same to be his (her) free act and deed.

Notary Public Signature

Notary License Number

My commission expires

SCHEDULE A

[THE BELOW IS AN EXAMPLE]:

Being a parcel of land consisting of 2.70 acres, more or less, being all and the same land and premises conveyed to _____ Apartments Limited Partnership by Warranty Deed from _____, LLC dated February __, 20__ and recorded in Book __ at Page ____ of the Bennington land records and being a portion of the land and premises conveyed to _____, LLC by Warranty Deed from Hawks Associates, LLP dated November 23, 2005 and recorded in Book 427 at Page 117 of the Bennington land records.

Being further described on a survey entitled "ALTA Survey Prepared for Monument View Apartments LP and Housing Vermont, Inc. 426 South Street, To\3/411 of Bennington, County of Bennington, State of Vermont" prepared by MSK Engineering and Design, Inc. dated May 16, 2018 to be recorded simultaneously herewith in the Bennington map records.

EXCEPTING AND RESERVING a parking easement _____ Association by Monument View Apartments Limited Partnership dated May __, 20__ to be recorded simultaneously herewith in the Bennington land records.

Reference is hereby made to the above-described deeds and the records thereof, and to all prior deeds and their records, for a more particular description of the land and premises hereby conveyed.