VERMONT HOUSING FINANCE AGENCY

**HOUSING CREDIT (HC)**

**HOUSING SUBSIDY COVENANT**

This HC Housing Subsidy Covenant (the "Covenant"), dated as of this day of , 2018, is declared, pursuant to 27 V.S.A. § 610, by (“Owner”), a (type of entity), with its principal place of business at (complete mailing address) as a condition of the allocation of Housing Credits by the Vermont Housing Finance Agency, a public instrumentality of the State of Vermont, with its principal offices at 164 St. Paul Street, Burlington, Vermont 05401 ("VHFA" or the "Agency"). Housing Credits are made available pursuant to Section 42 of the Internal Revenue Code of 1986, as amended. The term "Section 42" shall mean Section 42, as the same may be amended, and all applicable rules, rulings, policies, procedures, regulations, or other official statements promulgated or proposed by the Internal Revenue Service heretofore or hereafter enacted or published.

VHFA has been designated by the Governor of the State of Vermont as the State housing credit agency responsible for the issuance of Housing Credits. If VHFA is no longer the State housing credit agency, the term "Agency" will mean any successor to its rights, duties, and obligations.

The Owner holds good and marketable title to property located at (street address), in the Town/City of , County of , State of Vermont, more particularly described in the attached Schedule A and known as (the "Project").

The Owner, in consideration of the receipt of the allocation of Housing Credits for the Project, in the approximate amount of Dollars ($ ), (which amount is subject to change) in the taxable year ending on December 31, 2016, hereby agrees to the following restrictive covenants, which are made in satisfaction of the requirements contained in Section 42(h)(6). This allocation of Housing Credits **is/is not** from the 10% non-profit set-aside.

1. The Owner is and shall continue to be duly organized and qualified under the laws of the State of Vermont as a (type of entity), and is qualified to transact business under the laws of this state, has the power and authority to own its properties and assets and to carry on its business as now being conducted, and has the full legal right, power, and authority to execute and deliver this Covenant. If the Owner desires to change its form from that of a (type of entity) to some other form of entity, it shall provide the Agency with an opinion of Vermont counsel in a form satisfactory to the Agency, that the change in type of entity will not affect the enforceability of this Housing Subsidy Covenant.

2. The Project is and shall remain a qualified low-income housing project as defined in Section 42 for the term of this Covenant. Rental units in the Project intended to be rent restricted units under Section 42 will be rented or available for rental on a continuous basis to members of the general public who qualify as Low Income Tenants under Section 42.

3. Pursuant to Section 42(h)(6)(D), the Owner shall be in compliance with the restrictions contained in this Housing Subsidy Covenant for an initial period of 15 years from the date the project is placed in service (the "Compliance Period"), and an extended use period beginning on the first day of the Compliance Period and **continuing for an additional 15 years from the end of the Compliance Period / extending in perpetuity** (the "Extended Use Period"), unless terminated sooner in accordance with the provisions of Section 42.

4. As a condition and in consideration of the allocation of the Housing Credit, Owner, for itself and all successors in interest to the Project (or the low income portion thereof) shall maintain the applicable fraction for each building of the Project. The term "applicable fraction," as defined in Section 42(c)(1), means the smaller of the unit fraction or the floor space fraction. The applicable fraction shall not be decreased during any taxable year of the Compliance Period or the Extended Use Period except in accordance with the provisions described herein or in Section 42. The applicable fraction for each building of the Project is equal to that shown on Schedule B (also known as Exhibit A from the Carryover Allocation), attached and incorporated into this Covenant by reference.

5. **If subparagraph (ii) does not apply, please delete all highlighted text in this paragraph.** As provided in Section 42(h)(6)(E)(i), the Extended Use Period shall terminate only (i) on the date the building(s) is (are) acquired by foreclosure (or instrument given in lieu of foreclosure). [***This subparagraph (ii) applies only to Projects with detached single-family units;*** or (ii) with respect to each low-income building in the Project, pursuant to IRS Revenue Ruling 95-49 and Section 42(i)(7), on the date that the tenant through a right of first refusal acquires a low-income building. To the extent that the Extended Use Period is terminated with respect to one or more low-income building(s) pursuant to subparagraph (ii) of this paragraph 5, Schedule A of the Covenant will be amended to release the real property associated with the purchased low-income building(s)]. During the Compliance Period and the Extended Use Period, no low income tenant may be evicted or his or her tenancy terminated for other than good cause, nor may the gross rent for low income units be increased beyond that permitted under Section 42. Should the Extended Use Period terminate prior to its full term pursuant to subparagraph (i) or subparagraph (ii) of this Paragraph 5, for a three year period after such termination, no low income tenant may be evicted or his or her tenancy terminated, for other than good cause, nor may the gross rents for low income units be increased beyond that permitted under Section 42.

6. This Covenant shall run with the land, shall be binding upon all successors of the Owner and all subsequent owners of the Project for the term stated, and shall be enforceable in the courts of the State of Vermont by the Agency or its assignees as described in Paragraphs 13 and 14, below, or by any individual(s), whether a prospective, present, or former occupant of a building in the Project, who meets the income limitation under Section 42(g)(1) that is applicable to the particular building in the Project. Said individual(s) are express beneficiaries of this Covenant.

7. If the Owner becomes aware of any situation, event, or condition that would result in the Project not being in compliance with Section 42, Owner shall immediately provide written notice thereof to the Agency.

8. This Covenant may, from time to time, be amended but only with the prior written consent of the Agency. Owner expressly agrees to enter into such amendments as may be necessary to maintain compliance with the provisions of Section 42.

9. In order to enable monitoring of Owner's compliance with the use and occupancy restrictions included in this Covenant, Owner covenants and agrees to maintain documentation sufficient to evidence compliance with the rent and occupancy restrictions of Section 42, and to allow agents and/or employees of the Agency or its assignee to enter Owner's premises during normal business hours and inspect, copy, and audit all books, records, and accounts pertaining to the Project. Owner also agrees to pay the Agency's fees for compliance monitoring, as established by the Agency.

10. Owner covenants and agrees to submit to the Agency a report in form and content acceptable to the Agency, annually or more frequently upon request by the Agency, which shall demonstrate ongoing compliance with this Covenant, specifically, that the income levels of tenants are at or below applicable limits and all low-income units are occupied by eligible tenants in accordance with Section 42. Of a total of \_\_\_ units in the development, \_\_\_\_ units will be income- and rent-restricted (the “Housing Credit Units”). Of the Housing Credit Units, \_\_\_\_\_ shall be occupied by households at or below \_\_\_% of the Area Median Gross income as adjusted by household size (“AMGI”), and \_\_\_ shall be occupied by households at or below 60% of the AMGI. The minimum set-aside election for the project under Section 42(g)(I) of the Internal Revenue Code is the **“20-50” /** **“40-60”** election.

11. Owner covenants and agrees that, in the event it sells or otherwise transfers ownership of the Project, it will notify in writing and obtain the written agreement of the purchaser or transferee to be bound by this Covenant and to the requirements of Section 42 of the Code and applicable regulations as they may be amended or supplemented. The Owner agrees to notify the Agency in writing of any sale, transfer, or exchange of the Project or any low-income portion thereof, and to supply the written agreement of the purchaser or transferee as required herein. No portion of any building to which this Covenant applies shall be disposed of to any person unless all of such building is disposed of to such person.

12. Owner shall not refuse to lease a dwelling unit in the Project on the basis of race, creed, color, gender, age (unless the Project is exempt as housing for elder persons as provided by the Fair Housing Act), handicap, possession of or application for rental assistance under the Section 8 Existing Certificate program or Housing Voucher program (or any other program), marital status, national origin, family status or religion, in the lease, sale, rental, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project or in connection with any improvements to be erected thereon or in connection with maintenance of the Project.

13. This Covenant may be enforced in accordance with its terms by VHFA, or upon assignment of the right of enforcement by a written instrument recorded in the land records of , by any other entity that is an assignee under the recorded assignment and is authorized to enforce the Covenant (the "Enforcing Entity"), or by an express beneficiary of the Covenant as defined in Paragraph 6 of this Covenant, under the provisions of 27 V.S.A. § 610, as the same may be amended, or under any successor statute. At any given time, only one entity, which shall be the most recent assignee of record, in addition to such express beneficiaries, shall be entitled to enforce the provisions of this Covenant.

14. The Owner has executed or will execute a Right of First Refusal in favor of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name). Such Right of First Refusal is recorded in the land records of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

15. Reserved (for Special Needs Conditions of Project, if applicable)/ The Owner shall rent \_\_\_ of the units of housing which are rent restricted under Section 42 to persons with a disability to be referred by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Owner shall give priority for \_\_\_ of the units of housing restricted under Section 42 to clients referred by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

16. The Owner acknowledges that the Project is impressed with a public interest and that money damages to the Enforcing Entity or an express beneficiary in the event of a violation are likely to be difficult or impossible to calculate. Accordingly, but without limitation, this Covenant may be enforced in equity, including a decree of specific performance. No action for enforcement may be brought unless the Enforcing Entity or an express beneficiary has first delivered to the Owner a written notice of violation hereunder, and such violation has not been remedied, or a written plan for remedy satisfactory to the Enforcing Entity or such express beneficiary has not been provided by Owner to the Enforcing Entity and such express beneficiary within sixty days after the delivery of such notice.

17. Except for the more stringent termination requirements described in Paragraph 5 of this Covenant, in the event of any conflict between this Covenant and the requirements of Section 42 the Section 42 requirements shall prevail.

18. The invalidity of any clause, part, or provision of this Covenant shall not affect the validity of the remaining portions of the Covenant.

19. This Covenant and all matters relating thereto shall be governed by and in accordance with the laws of the State of Vermont and, where applicable, the laws of the United States of America.

Owner

By:

Its Duly Authorized Signatory

STATE OF VERMONT

COUNTY, SS:

At in said County and State this day of , 2016, personally appeared , duly authorized agent of (owner), and h acknowledged the foregoing document to be h free act and deed and the free act and deed of the (owner).

Before me,

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

Notary Public

Commission expires 2/10/2019

**SCHEDULE B: VHFA 2016 Low Income Housing Tax Credit Allocation Page of**

Project Name City/Town

Owner

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Building | 1 | 2 | 3 | 4 | 5 | 6 | Total |
| Building Identification Number - B.I.N. |  |  |  |  |  |  | x |
| Building Address or Site Description |  |  |  |  |  |  | x |
| Type of Building (new construct, rehab, acquis)\* |  |  |  |  |  |  | x |
| Expected Placed in Service Date |  |  |  |  |  |  | x |
| Eligible Basis\*\* |  |  |  |  |  |  | x |
| Adjusted Eligible Basis for High Cost Area (130%) |  |  |  |  |  |  | x |
| Applicable Fraction\*\* |  |  |  |  |  |  |  |
| Estimated Qualified Basis |  |  |  |  |  |  |  |
| Maximum Credit Percentage\*\*\* |  |  |  |  |  |  | x |
| Maximum Credit Potential | \*\*\*\* |  |  |  |  |  |  |

\* Required to be provided only if the owner has elected to fix the credit percentage pursuant to Section 42(b)(2)(A)(II)(I).

\*\* If provided, these figures are estimates for computation purposes only. For purposes of the Carryover Allocation, "reasonably expected basis" pursuant to Section 42(h)(1)(E)(II) need not be the same as eligible basis and is computed for an entire project, rather than building-by-building. Also, adjusted for high cost area if applicable.

\*\*\* If the owner has elected to fix the credit percentage pursuant to 42(b)(2)(A)(II)(I), this credit percentage is fixed and binding upon all buildings in the project with respect to which the election is made, and upon the owner and all successors as owners of those buildings in the project. If no such election has been made, this credit percentage is an estimate for purposes of making the Carryover Allocation.

\*\*\*\* If a separate housing credit dollar amount is not identified with respect to each building in the Project, this allocation is made on a project basis pursuant to Section 42(h)(1)(F) of the Code. The "Maximum Credit Potential" equals the maximum credits the Project qualifies for based on the calculation of eligible basis, the applicable fraction, and the high cost adjustment (if applicable). This table is for information only. The actual allocation of credits is shown in paragraph 6(i) of the attached Carryover Allocation; the actual allocation may be less than the "Maximum Credit Potential" pursuant to 42(m)(2).