

**MISSING MIDDLE-INCOME HOMEOWNERSHIP  
DEVELOPMENT PROGRAM  
HOUSING SUBSIDY COVENANT**

1. **PARTIES.** The parties to this Covenant are the Declarant(s), \_\_\_\_\_ of \_\_\_\_\_, Vermont (individually and collectively, jointly and severally, "Owner") and the **Vermont Housing Finance Agency** ("VHFA" or "the Agency"), a body politic and corporate and public instrumentality of the State of Vermont with an address of **164 St. Paul St., Burlington VT 05401** (or any successor or assignee thereof). \_\_\_\_\_, ("Lender"), the holder of a Superior Mortgage as defined below, joins in the execution of this Covenant solely for the purpose of acknowledging, for itself, its successors and assigns, its rights and responsibilities as provided herein.

2. **AUTHORIZING STATUTE.** This instrument (the "Covenant") is created as a "housing subsidy covenant" within the meaning of 27 V.S.A. Section 610 (the "Statute") and is to be construed and interpreted in accordance with the Statute.

**ACKNOWLEDGMENT OF PURPOSE AND CONSIDERATION.** Owner hereby acknowledges that this Covenant is entered into in consideration for a subsidy grant and acknowledges receipt of such consideration in the form of a grant from VHFA in the amount of \_\_\_\_\_ **Thousand and no/100 (\$ \_\_,000.00) Dollars (the "Subsidy")**. Owner further acknowledges that receipt of this grant assisted Owner with the purchase of the Property identified below. Owner understands and acknowledges that Owner has been provided this consideration for the purpose of making available to Owner an affordable primary residence. In exchange for the cited consideration, Owner has agreed to the promises contained herein in order to continue to make such residence available on an affordable basis to Eligible Households as defined below.

BY THEIR SIGNATURE THE OWNER ACKNOWLEDGES AND CONFIRMS THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF THEIR CHOICE LICENSED TO PRACTICE LAW IN VERMONT AND THAT THEY HAVE FULLY READ, UNDERSTAND AND AGREE TO THE TERMS HEREOF AND THAT THEY ARE NOT ACTING UNDER DURESS OR UNDUE INFLUENCE IN EXECUTING THIS AGREEMENT.

**\*\*\*\*\* NOTICE \*\*\*\*\***

**THIS COVENANT CONTAINS RESTRICTIONS ON TRANSFER, ENCUMBRANCE AND THE EQUITY INTEREST ACCRUING IN THE PROPERTY. THESE RESTRICTIONS LIMIT THE AMOUNT OF EQUITY AVAILABLE TO THE OWNER UPON TRANSFER, MORTGAGE OR OTHER SUBSEQUENT TRANSACTIONS.**

3. **PROPERTY.** The real property to which this Covenant applies is that certain piece or parcel of land known as \_\_\_\_\_, Vermont together with all improvements now or hereafter located thereon (the "Property"), all as more particularly described in Exhibit A attached hereto and incorporated herein. Owner owns the Property pursuant to a

limited warranty deed of near or even date herewith and recorded or to be recorded herewith in the Land Records of the Town/City of \_\_\_\_\_.

4. **DEFINITIONS.** As used in this Covenant, the following terms shall have the following meanings:

a. "Eligible Household" shall mean a person or group of persons whose Household Income, as of the date of their initial occupancy of the Property, is less than or equal to one hundred twenty percent (120%) of Median Income, adjusted for family size.

c. "Household Income" shall mean annual income determined in accordance with Title 24, Section 5.609 of the Code of Federal Regulations (as modified, supplemented, amended or replaced) as of the time of calculation except limited to "Borrower or Spouse".

d. "Median Income" shall mean median income for (i) the county in which the Property is located or (ii) the State of Vermont Nonmetro, whichever is greater, as of the time of calculation published in the Federal Register by the United States Department of Housing and Urban Development, pursuant to 42 U.S.C. Sec. 1437 et seq., or a substantially similar publication should these regulations no longer exist.

5. **OWNER'S USE OF THE PROPERTY.**

a. Owner agrees that the property shall be used only as a primary residence together with such incidental activities related to residential use as are currently permitted by applicable zoning law. Owner shall occupy the Property for at least eight (8) months of each year. If Owner desires to lease or vacate the property for a period exceeding four (4) months in one year, Owner must seek prior written approval from VHFA. Business use of property must be less than 15%. Occupancy by Owner's family members or dependents shall be deemed occupancy by Owner.

b. Owner shall pay promptly when due, all mortgages, taxes, assessments, service bills and utility fees charged against the Property.

c. Owner shall not further mortgage (or refinance an existing mortgage), pledge or encumber the Property without written consent from VHFA. Requests for consent from VHFA shall be made by Owner at least thirty (30) days in advance and Owner must provide copies of each document to be executed in connection with the transaction. VHFA shall not be required to consent to such mortgage unless: Owner is in compliance with the terms of this Covenant; such mortgage 1) does not contain provisions other than those generally contained in institutional mortgages used for similar transactions in the State of Vermont, 2) does not increase the total indebtedness secured by the Property, and 3) does not provide a line of credit or cash payment to the Owner and; the mortgagee shall agree to provide to VHFA notice of and the right to cure any default by Owner and to incorporate such terms as part of the mortgage in form acceptable to VHFA. VHFA may charge a reasonable fee to Owner for preparation of any documents required by Owner's lender in connection with the subsequent mortgage of the Property.

d. Owner agrees to use the Property in a manner reasonably related to its continued and primary use as a residence. Owner shall maintain the Property in good, safe and habitable condition and in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Property. Owner shall not commit waste upon the property nor allow the extraction of any rights or resources from the Property which would depreciate its value. Owner shall dispose of all refuse and hazardous materials in a safe and sanitary manner.

e. VHFA shall have the right, upon reasonable notice to or consent by Owner, to inspect the Property at reasonable times for any reasonable purpose related to ensuring Owner's compliance with the terms of this Covenant.

6. **TRANSFER TO OWNER'S HEIRS.** Upon the death of Owner (or, if there is more than one, of the last surviving Owner), VHFA shall, unless for good cause shown, consent to a transfer of the Property to one or more of the following possible heirs or devisees: the spouse of Owner; the child or children of Owner; members of Owner's household who have resided upon the Property for at least one year prior to Owner's death. Any other proposed owner or owners must meet the definition of Eligible Household and, if unable to so demonstrate to VHFA's reasonable satisfaction, Owner's executor or administrator must transfer the Property in accordance with the provisions hereof.

7. **SALE OR TRANSFER BY OWNER.**

a. If Owner at any time intends to sell, transfer or otherwise dispose of his or her interest in the Property, except any transfer by foreclosure or in lieu of foreclosure of a Superior Mortgage described in Paragraph 16, Owner shall give written notice of such intent to VHFA. At such time, an appraisal of the fair market value of the Property shall be performed by a mutually acceptable state licensed appraiser (such value, the "Appraised Value"). The appraisal shall be conducted by analysis of comparable properties disregarding the restrictions of this Covenant. The cost of this appraisal shall be the responsibility of the Owner.

b. Upon receipt by VHFA of the appraisal, VHFA shall have a period of ninety (90) days to either (i) give notice to Owner of VHFA's intent to exercise its option to purchase the Property at the Purchase Option Price (defined below) or (ii) obtain from an Eligible Household a binding agreement to purchase the Property from Owner at the Appraised Value. If VHFA exercises its option to purchase the Property, VHFA shall purchase the Property within sixty (60) days of VHFA's notice of election to purchase or the option will expire.

c. If VHFA has waived its option to purchase, or if, at the expiration of said option period, VHFA has neither exercised its option nor obtained from an Eligible Household a binding agreement to purchase the Property, Owner shall have the right to sell the Property but only to an Eligible Household and at a sales price not to exceed the Appraised Value less the Subsidy amount (it being understood that in connection with any such sale to an Eligible Household, Owner shall be required to repay the Subsidy amount).

d. Upon any sale or conveyance of the Property except any transfer by foreclosure or in lieu of foreclosure of a Superior Mortgage, the transferee must either assume the rights and obligations of Owner under this Covenant or enter into a new housing subsidy covenant the terms of which have been approved in writing by VHFA. Any such new housing subsidy covenant shall include similar limits on resale and shall give VHFA an option to purchase the Property prior to any other sale, transfer or disposition thereof.

8. **PURCHASE OPTION PRICE.** VHFA's Purchase Option Price shall be the Appraised Value less the Subsidy amount.

9. **DURATION - BINDING EFFECT.** Unless sooner terminated by reason of the terms and conditions hereof or in accordance with the Statute, this Covenant shall run with the Property, shall be perpetual and shall be binding on Owner's heirs, administrators, executors, successors and assigns.

10. **ENFORCEMENT.** This Covenant may be enforced in accordance with its terms by VHFA, its successors in interest, and, upon assignment of the right of enforcement by instrument duly executed and recorded, by an assignee of VHFA authorized to enforce the same under the provisions of the Statute. This Covenant may be enforced by any remedy available at law or through an equitable decree appropriate to the case. If the enforcing entity prevails in an enforcement action, it shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the defendant.

11. **SUPERIOR MORTGAGES.** This Covenant is subject and subordinate to the lien of a mortgage given by Owner to Lender of even or nearly even date herewith and to be recorded in the Land Records where the Property is located ("Superior Mortgage"). Lender joins in the execution of this Covenant solely for the purpose of acknowledging its rights and obligations as provided herein. If Owner intends to replace or refinance said mortgage, Owner may request VHFA to consent to subordinate this Covenant to any mortgage created subsequent to the date hereof. Requests for consent from VHFA shall be made by Owner at least thirty (30) days in advance and Owner must provide copies of each document to be executed in connection with the transaction. VHFA shall not be required to consent to such mortgage unless: Owner is in compliance with the terms of this Covenant; such mortgage 1) does not contain provisions other than those generally contained in institutional mortgages used for similar transactions in the State of Vermont, 2) does not increase the total indebtedness secured by the Property, and 3) does not provide a line of credit or cash payment to the Owner and; the mortgagee shall agree to provide to VHFA notice of and the right to cure any default by Owner and to incorporate such terms as part of the mortgage in form acceptable to VHFA. VHFA may charge a reasonable fee to Owner for preparation of any documents required by Owner's lender in connection with the subsequent mortgage of the Property. 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 VHFA.

## 12. **LENDER'S OBLIGATIONS**

- a) In the event of a default in any of the Owner's obligations under the Superior Mortgage and/or Mortgage Note, Lender shall notify VHFA in writing of such fact at the same time

notice is given to Owner, and VHFA shall have the right (but shall not have the obligation) within thirty (30) days after the time period provided to the Owner to cure such default in the Owner's name and on the Owner's behalf. Failure to provide such notice shall not be grounds to stay or dismiss a foreclosure action or cancel a foreclosure sale; however, VHFA shall retain the right to cure the default for a period of 30 days after it receives actual notice of the default, regardless of whether a foreclosure action has been commenced prior to expiration of the 30-day cure period.

- (b) Lender acknowledges that this Covenant runs with the land as a matter of law and that VHFA shall have a right of redemption in the event of foreclosure of the Superior Mortgage.
- (c) At any time subsequent to the filing of a foreclosure action by the Lender or service of a notice of non-judicial foreclosure sale, and prior to the expiration of the redemption period granted to Owner, VHFA shall be entitled to purchase the Superior Mortgage and the mortgage Note(s) secured thereby for a price equal to the then-outstanding principal balance of the indebtedness, with all costs, expenses, and interest to date, in which event Lender shall assign the Superior Mortgage and Mortgage Note to VHFA or its designee.
- (d) This Housing Subsidy Covenant shall terminate if the Owner's period of redemption expires and neither VHFA nor any other person exercises a right of redemption granted in the Decree of Foreclosure or provided by 12 V.S.A. 4532(i).

In all other respects, this Housing Subsidy Covenant is subordinate to the Superior Mortgage.

### 13. MISCELLANEOUS PROVISIONS

a. **WAIVER.** The failure of VHFA to take action with respect to any breach of any term or condition herein shall not be deemed to be a waiver of same. VHFA may grant waivers in the terms of this Covenant but such must be in writing and duly executed and will not constitute a waiver of any subsequent breach.

c. **NOTICE.** All notice, demands, or other writings required to be given by the parties pursuant to this Covenant shall be sufficient if mailed certified mail, return receipt requested, and sent to the following address (or such other address as the party may, by written notice, provide):

**VHFA:** Vermont Housing Finance Agency  
164 St. Paul Street  
Burlington, VT 05401

**Owner:** The address of the Property or:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**IN WITNESS WHEREOF**, Owner has executed this Covenant and VHFA and Lender have caused this Covenant to be executed by their duly authorized agents on this \_\_\_\_\_, 20\_\_.

**VERMONT HOUSING FINANCE AGENCY**

By: \_\_\_\_\_  
Its Duly Authorized Agent

**Owner:**

\_\_\_\_\_

\_\_\_\_\_

**Lender:**

\_\_\_\_\_

Name:

Title:

**STATE OF VERMONT  
COUNTY OF [COUNTY], SS**

At \_\_\_\_\_, Vermont on \_\_\_\_\_, 20\_\_, personally appeared [VHFA REPRESENTATIVE NAME], duly authorized agent of the **VERMONT HOUSING FINANCE AGENCY**, and he/she acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed and the free act and deed of said Vermont Housing Finance Agency.

Before me, \_\_\_\_\_  
Notary Public - State of Vermont  
Name:  
Commission Number:  
My Commission Expires: January 31, 20\_\_

**STATE OF VERMONT  
COUNTY OF [COUNTY], SS:**

At \_\_\_\_\_, Vermont on \_\_\_\_\_, 20\_\_, personally appeared [NAME(S) OF OWNER(S)] and he/she/they acknowledged this instrument, by him/her/them sealed and subscribed, to be his/her/their free act and deed.

Before me, \_\_\_\_\_  
Notary Public - State of Vermont  
Name:  
Commission Number:  
My Commission Expires: January 31, 20\_\_

**STATE OF VERMONT  
COUNTY OF [COUNTY], SS:**

At \_\_\_\_\_, Vermont on \_\_\_\_\_, 20\_\_, personally appeared [LENDER REPRESENTATIVE NAME], duly authorized agent of [NAME OF LENDER], and s/he acknowledged this instrument, by her/him sealed and subscribed, to be her/his free act and deed in such capacity and the free act and deed of \_\_\_\_\_.

Before me, \_\_\_\_\_  
Notary Public - State of Vermont  
Name:  
Commission Number:  
My Commission Expires: January 31, 20\_\_