

## SUBGRANT AGREEMENT

This Subgrant Agreement (the “Agreement”) is made by and between the **TOWN OF MIDDLEBURY**, a municipality in the County of Addison, Vermont (“Grantee”) and **ASCEND HOUSING ALLIES INCORPORATED**, a Vermont nonprofit corporation with its principal place of business in South Burlington, Vermont (“Subgrantee”).

### Background

1. The Grantee is the recipient of an award of Vermont Community Development Program funds in the amount of One Million Two Hundred Fifty Thousand and 00/100 Dollars (\$1,250,000.00) (the “Award”) from the Vermont Agency of Commerce and Community Development (the “Agency”). The Award is subject to certain terms and conditions set forth in the Grant Agreement entitled “07110-IG-2022-Middlebury-14; Stonecrop Meadows” by and between the Grantee and the Agency dated \_\_\_\_\_ (the “VCDP Grant Agreement”).

2. The Grantee has made a subgrant of the Award (the “Subgrant”) to the Subgrantee pursuant to the terms and conditions of this Agreement and the VCDP Grant Agreement.

3. The Subgrantee intends to lend the proceeds of the Subgrant to Stonecrop Development, LLC, a Vermont limited liability company (the “Developer”) or its affiliated entities to complete certain aspects of the residential planned unit development project (the “Project”), with the current address of 77 Seminary Street Extension, in Middlebury, Vermont (the “Property”). “Phase One” of the Award shall be used to for the construction of infrastructure to support six (6) units of affordable income units (limited to infrastructure for Lots 5, 7, 8, 9, 10, 11). “Phase Two” of the Award shall be used for the construction of twenty-eight (28) low- and moderate-income rental units located on Lot 12.

### N O W , T H E R E F O R E ,

In consideration of the foregoing and the mutual covenants and agreements herein set forth, the parties hereby agree as follows:

#### Section 1. Definitions.

(a) As used in this document, the words and phrases set forth below shall have the following meanings:

“Agency” has the meaning set forth in the Background.

“Agency Procedures” means the procedures of the Agency described as Agency procedures for the Vermont Community Development Program, as they may be amended from time to time, as set forth at the following website: <http://accd.vermont.gov/community-development/funding-incentives/vcdp/grants-management-guide>.

“Award” has the meaning set forth in the Background.

“Completion Date” means the “Award End Date” set forth in the VCDP Grant Agreement, or June 30, 2026.

“Developer” means Stonecrop Development, a Vermont limited liability company and the developer of the Project.

“HUD” means the U.S. Department of Housing and Urban Development.

“National Objective” means in Phase One construction of water, wastewater and road and stormwater infrastructure to serve six (6) affordable homeownership units, and Phase Two will contribute to the construction of twenty-eight (28) low and moderate income rental units as described in Attachment A to the VCDP Grant Agreement.

“Phase One” has the meaning set forth in the Background.

“Phase Two” has the meaning set forth in the Background.

“Project” means the residential planned unit development project (the “Project”), containing natural wetlands, stormwater facilities, and common green spaces in Middlebury, Vermont as described in Paragraph B of Attachment A of the VCDP Grant Agreement.

“Project Budget” means the project budget set forth in Attachment B of the VCDP Grant Agreement.

“Property” means the building with the address of 77 Seminary Street Extension in Middlebury, Vermont.

“Secretary” means the Secretary of the Agency.

“Subgrant” has the meaning set forth in the Background.

“Subgrant Agreement” means this Agreement between Grantee and Subgrantee.

“Subgrantee” has the meaning set forth in the Background.

“VCDP” means the Vermont Community Development Program.

“VCDP Grant Agreement” has the meaning set forth in the Background.

Section 2. **Consideration and Incorporation of Grant Agreement.** Grantee makes this subgrant to Subgrantee pursuant to, and as consideration for Subgrantee’s activities as set forth in the Grant Agreement, which is incorporated herein by reference, and a copy of which Subgrantee and Grantee maintain in their respective files.

Section 3. **Survival of this Subgrant Agreement.** This Subgrant Agreement shall survive any closing contemplated hereunder. All obligations pursuant to this Agreement shall continue until the Agency has determined that the National Objective has been achieved.

Section 4. **Purpose of the Subgrant.** The purpose of this Subgrant shall be to support the Project and the achievement of the National Objective, as described in Attachment A of the Grant Agreement. The proceeds of the Award shall be used solely for Subgrantee’s specific activities in connection with the Subgrant, including, without limitation, making a loan of the proceeds of the Subgrant to the Developer for the purpose of acquiring the Property.

Section 5. **Terms of the Subgrant.**

- (a) This Subgrant is in the amount of One Million Two Hundred Fifty Thousand and 00/100 Dollars (\$1,250,000.00).
- (b) The Subgrantee, as agent of the Grantee, must satisfy all of the federal and state laws, regulations and procedures that apply to the Grantee.
- (c) If the Agency determines and informs Grantee in writing that the Developer has not achieved the National Objective, that the Agency has determined that Developer is unlikely to do so, and that therefore Grantee may be required to reimburse the Agency for all or a portion of the Grant funds, Grantee may require reimbursement of all or a portion of the Subgrant funds from Subgrantee.

Section 6. **Subgrantee's Representations.** As of the date of this Agreement:

- (a) Subgrantee represents and warrants that it is a nonprofit corporation incorporated in the State of Vermont in good standing.
- (b) Subgrantee hereby certifies that Subgrantee has provided to Grantee documentation of firm commitments of the "Other Resources" identified in the Project Budget, including the purpose for which they are to be used and any conditions attached to their expenditure.
- (c) Subgrantee is in good standing with respect to, or in full compliance with a plan to pay, any and all federal, state and local taxes, to the extent Subgrantee is subject to taxation, if at all.
- (d) Subgrantee is current on or is in full compliance with a plan to pay, any and all financial obligations.
- (e) There are no liens, judgments or other encumbrances on the Property involved in the Project, other than those of record, or disclosed to the Agency prior to the execution of the Grant Agreement, or disclosed no later than at the execution of this Subgrant Agreement.
- (f) Subgrantee's representations with respect to the financial and operational aspects of the business in the written documents previously provided to the Grantee remain accurate in all material respects.
- (g) Subgrantee has obtained a Unique Entity Identification (UEI) number from the SAM.gov UEI Request Service at <https://sam.gov/content/entity-registration>, has registered the System for Award Management ("SAM") at [www.sam.gov](http://www.sam.gov), is not listed in the Exclusions portion of Performance Information in the System for Award Management at [www.sam.gov](http://www.sam.gov); nor named on the State of Vermont's debarment list at <http://bgs.vermont.gov/purchasing-contracting/debarment>.

Section 7. **Subgrantee's Covenants.**

- (a) **National Objective.** Subgrantee commits to achieve the National Objective of the Project and shall cause the Developer to commit to the same, and to maintain documentation as may be required by the Grant Agreement and otherwise necessary to clearly demonstrate that Subgrantee has achieved the National Objective.
- (b) **Insurance.** For a period beginning with the execution of this Subgrant Agreement and continuing for at least 5 years after the Completion Date, Subgrantee shall cause the Developer to take out, pay for and keep in full force, insurance on the Collateral against such risks, in such amounts, with such insurance carrier, and with such loss payable clause as shall be satisfactory to Grantee, and shall furnish Grantee with the satisfactory evidence of such insurance.
- (c) **Notice of Change.** For a period of five years from the Completion Date, Subgrantee and its successors and assigns shall provide notice of any of the following (a "Change of Use"): (i) any proposed sale or transfer of all or any part of the Project to any person or entity who will use it for any purpose other than the provision of affordable housing; (ii) the discontinuation by the Developer of the use or operation of all or part of the Project; or (iii) any material alteration or expansion of the Project and its purpose. The parties acknowledge and agree that a Change of Use shall constitute an event of default under this Agreement and, in the event of such default, Grantee shall have all options available at law as may be required to protect or recapture the funds made available through the VCDP.
- (d) **Environmental Review.** Subgrantee shall cause the Developer to comply with all conditions set forth in the Environmental Review Release letter for the Project, and shall maintain and/or upload documentation demonstrating compliance, as required by the Grant Agreement.
- (e) **Permits.** Subgrantee shall cause the Developer to secure all federal, state and local permits that are necessary, and shall comply with any conditions related to the disbursement of funds imposed by agencies requiring them. Subgrantee represents and warrants that the Developer has identified all permits necessary for the project, and has secured those necessary to commence activities.
- (f) **Closeout Agreement.** At the completion of the Project, Subgrantee shall enter into and comply with the terms of a Closeout Agreement.
- (g) **Reports.** Subgrantee shall submit financial and operational reports to Grantee as Grantee may reasonably request, and Grantee shall have access to the records of the Subgrantee during normal business hours or as arranged in advance. Subgrantee's failure to provide such information as requested, and/or the provision of information that appears to be inaccurate or incomplete, unless remedied within fifteen (15) days, shall constitute an event of default.
- (h) **No Material Changes.** As a condition of lending the Subgrant funds to the Developer, Subgrantee shall require that Developer covenant that it shall not make any material change in the financial or operational aspects of its business, specifically including but not limited to the borrowing of additional money (except as described in the Project Budget), the granting of additional liens significantly altering the plan for capital expenditures, salaries

of partners or employees, or Subgrantee's product or service, without the prior written consent of Grantee, except as otherwise provided for in this Subgrant Agreement.

- (i) **Other Liens and Encumbrances.** Subgrantee shall use no proceeds of this Subgrant to discharge any lien or other encumbrance.
- (j) **Refinancing.** Subgrantee shall not use the Subgrant as collateral for any other debt without the prior written approval of Grantee. VCDP funds shall not be used to restructure debt in any way, except where the project involves the use of VCDP funds to convert temporary bridge or construction financing to permanent financing.
- (k) **Title Insurance.** Promptly after the closing Subgrantee shall provide Grantee with proof that Subgrantee has a policy for title insurance in no less than the sum of the full amount of this Subgrant and the amounts of all mortgages, liens and other encumbrances having a higher priority than this Subgrant.
- (l) **Uniform Relocation Act Compliance.** Subgrantee shall provide documentation demonstrating compliance with the Uniform Relocation Act and the URA Plan upon request of the Grantee and if applicable.
- (m) **Program Management.** Subgrantee shall perform or oversee all program management activities as many be necessary or appropriate for the Project, which shall include, without limitation, any necessary environmental reviews, clerk of the works services, compliance with the Davis-Bacon Act and any applicable permits, and engineering, architectural, legal and other professional services, including General Administration (Activity #5013) and Program Management (Activity #3013) of the Grant set forth in a Subgrant and Administrative Services Program Management Agreement..
- (n) **Project Budget.** Subgrantee covenants and agrees that any additional funds required to complete the Project shall be the responsibility of Subgrantee and its partners and affiliates, and not be the responsibility of Grantee.

Section 8. **Pass Through Provisions.** In addition to binding Subgrantee, the following provisions shall be included in all contracts between Subgrantee and any other contractor related to the Project, and shall bind all such other contractors:

- (a) **Conflicts of Interest.** Subgrantee agrees to comply with the requirements of Section VII(B) of Attachment D to the VCDP Grant Agreement, and Agency Procedures, Chapter 9 and Chapter 10, Section 10.3.
  - (i) In addition, in order to avoid a conflict of interest or the appearance of undue influence, if any officer of Subgrantee or a member of Subgrantee's Board of Directors is employed by Grantee or holds an elective or appointive municipal office in Grantee, such person shall not participate in any discussions regarding, attend any public hearing concerning, vote upon or take any action with respect to any matter involving this Agreement or the Project for the longer period of:
    - (A) From the date of execution of this Agreement until five years after the Completion Date; or
    - (B) During a person's tenure with Grantee and for one year thereafter.

- (ii) No person described in paragraph (i) of this section, nor any person with whom such a person has family or business ties, may participate in a decision-making process or gain inside information with regard to the activities funded by VCDP, obtain a financial interest in or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, for the applicable time period set forth in paragraph (i).
  - (iii) A loan may be made by Subgrantee to an officer, director or employee of Grantee, Subgrantee, or a sub-recipient of the Subgrant, but only if the prospective borrower is one of the low or moderate income persons intended to be the beneficiaries of the assisted activity, providing the loan will permit such prospective borrower to receive generally the same interest or benefit being made available or provided to the intended beneficiaries, and the prospective borrower engages in no activities prohibited by paragraph (i), above, with respect to the prospective borrower's loan.
- (b) **Retention of and Access to Records.** Subgrantee shall comply with the requirements of Section XIV of Attachment D to the VCDP Grant Agreement and Agency Procedures, Chapter 3:
  - (i) Financial records, supporting documents, statistical records, and all other records pertinent to the Project shall be retained in accordance with Agency Procedures, Chapter 3 including completion of a Subgrantee Financial Monitoring Worksheet that complies with Subrecipient Monitoring per the Uniform Guidance and upload documentation to GEARS.
  - (ii) Authorized representatives of the Secretary of the Agency, the Secretary of HUD, the Inspector General of the United States, or the U.S. General Accounting Office shall have access to all books, accounts, records, reports, files, papers, things, or property belonging to, or in use by, the Grantee, Subgrantee or any sub-recipient of the Subgrant pertaining to the receipt and administration of Vermont Community Development Program funds, as may be necessary to make audits, examinations, excerpts, and transcripts.
- (c) **Labor and Equal Opportunity.** To the extent applicable, Subgrantee will administer and comply with the reporting requirements of the Davis-Bacon Act [40 USC 276a et seq.]; the Federal Fair Labor Standards Act [29 USC 201 et seq.]; and the Contract Work Hours and Safety Standards Act [40 USC 327-333]. Subgrantee will comply with the Copeland Anti-kickback Act of 1934, [18 USC 874 and 40 USC 276c]; Executive Order 11246 (Equal Employment Opportunities) as amended by Executive Orders 11375 and 12086 and the regulations issued pursuant thereto [ 41 CFR 60]; and Section 3 of the Housing and Urban Development Act of 1968 [12 USC 1701u] as amended, (equal employment and business opportunities) and the regulations at 24 CFR 135. Subgrantee will also comply with the requirements of Section X of Attachment D to the Grant Agreement, and the requirements of Title 21, V.S.A. Chapter 5, Subchapter 6, (495-495h), relating to fair employment practices, Title 9 V.S.A Chapter 139, Sections 4503 and 4504, relating to fair housing practices and Section 3 requirements set forth in 24 CFR 75, Subpart C to provide economic opportunities in connection with this project, to the greatest extent feasible, to low and very low-income persons residing within the area in which the project is located— Section 3 requirements shall be included in bid documents and attached to all contracts executed in connection with the project.

- (d) **Environmental**. Subgrantee will comply with the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Contract Act (33 U.S.C. 1251-1387), as amended. Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (e) **Lobbying**. Subgrantee shall not use Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352 (Byrd Anti-Lobbying Amendment).
- (f) **All Other Matters**. Subgrantee covenants and agrees that to the extent that the Grant Agreement sets forth obligations of Subgrantee, as recipient of the Award, not otherwise expressly set forth in this Agreement, Subgrantee shall comply with all such obligations and shall undertake any reporting, management or administrative obligations required thereunder.

Section 9. **Default and Remedies**.

- (a) **Default**. If any of the following events of default shall occur without being cured within thirty (30) days from the date that written notice of such default is received by Subgrantee from Grantee, Grantee, in its sole discretion, may exercise its rights under a certain Assignment of Loan Documents between Grantee and Subgrantee dated of near or even date herewith and convert this Subgrant into a Loan. The Assignment of Loan Documents includes the Mortgage Deed from the Developer to Subgrantee, which will be uploaded to the Agency's on-line grants management (GEARS) system.
- (b) An "**Event of Default**" shall be deemed to occur under this Agreement in the event that any of the following occurs and the Subgrantee fails to cure such event within thirty (30) days' of Notice from the Grantee:
  - (i) The Agency's determination that Subgrantee or the Developer has failed to achieve the National Objective;
  - (ii) The Agency's determination that Subgrantee has failed to comply with all applicable provisions of the Grant Agreement;
  - (iii) Grantee's determination that Subgrantee has failed to perform any of Subgrantee's obligations under this Subgrant Agreement;
  - (iv) Grantee's determination that the Developer has failed to perform any of the Developer's obligations under the Loan Documents, including violation of any term, condition or representation contained in the Grant Agreement, the Note, the Mortgage or any other document delivered to Grantee by Subgrantee.
- (c) **Repayment**. In the Event of Default, Grantee may demand repayment of all or a portion of the Grant or invoke any other remedy allowed by the Grant Agreement, this Subgrant Agreement, or any other document related to this Subgrant, or by law.

Section 10. **Miscellaneous Provisions**.

- (a) **Revisions and Amendments.** All amendments to this Subgrant Agreement shall be reduced to writing and shall be executed by all parties to the document. Subgrantee acknowledges that the Agency may require an amendment to this Agreement to ensure, or enhance the possibility of, Subgrantee's achieving the National Objective. A copy of any amendment to this document shall be submitted to the Agency for its approval prior to execution of the amendment. Any amendment to this Agreement shall survive the closing with respect thereto.
- (b) **Environmental Review.** Pursuant to Subsection III (C) of Attachment D to the Grant Agreement, there shall be no reimbursement using VCDP funds for any expenses incurred for activities commenced prior to the date the Agency issues the Notice of Release of Funds.
- (c) **Paragraph Titles.** The titles to the paragraphs of this Agreement are used solely for purposes of identification, and are not to be construed as affecting the meaning of the language of the paragraphs.
- (d) **No Waiver.** The waiver by the Lender of a breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or of any subsequent breach of the same or any other term, covenant or condition. No covenant, term or condition of this Agreement shall be deemed to have been waived or modified by the Lender, unless such waiver or modification is in writing and executed on behalf of the Lender against whom such waiver or modification is to be enforced.
- (e) **Remedies.** All remedies provided in this agreement are distinct and cumulative to any other right or remedy under this agreement, or otherwise available by law, and may be exercised concurrently, independently or successively.

*[Signature Page Follows]*



IN WITNESS WHEREOF, the parties, as evidenced by the signatures of their Duly Authorized Agents, do hereby execute this Subgrant Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2024.

TOWN OF MIDDLEBURY

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

ASCEND HOUSING ALLIES  
INCORPORATED

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