

## 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 **SUMMIT DEVELOPMENT, LLC**, a Vermont limited liability company with its principal place of business in South Burlington, Vermont (“Subgrantee”).

### Background

1. The Grantee is the recipient of a Community Partnership for Neighborhood Development Grant in the amount of One Hundred and Seventy-Five Thousand and 00/100 Dollars (\$175,000.00) (the “Award”) from the Vermont Agency of Commerce and Community Development, Department of Housing and Community Development (the “Agency”). The Award is subject to certain terms and conditions set forth in the Grant Agreement 07110-CPND-2024-07 by and between the Grantee and the Agency dated February 14, 2024 (the “DHCD 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 DHCD Grant Agreement.

### 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.

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

“Completion Date” means the “Award End Date” set forth in the DHCD Grant Agreement.

“DHCD” means the Department of Housing and Community Development.

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

“Federal Requirements” refers to federal regulations OMB Guidance – 2 CFR Chapter I, Chapter II, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, commonly referred to as “Uniform Guidance”, in addition to any other applicable federal requirements. This guidance can be found at: [https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl). Further information regarding the applicability of Uniform Guidance to specific ARPA SFRS Revenue Loss funds are available via U.S. Treasury at: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>.

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

“Project” mean Stonecrop Meadows in Middlebury, VT, a master planned, smart-growth, mixed-income, energy-efficient neighborhood immediately adjacent to downtown Middlebury in close proximity to Town amenities and services, as described in Attachment A of the DHCD Grant Agreement.

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

“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.

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, 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.

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

- (a) This Subgrant is in the amount of One Hundred and Seventy-Five Thousand and 00/100 Dollars (\$175,000.00).
- (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.

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

- (a) Subgrantee represents and warrants that it is a limited liability corporation incorporated in the State of Vermont in good standing.
- (b) 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.
- (c) Subgrantee is current on or is in full compliance with a plan to pay, any and all financial obligations.

- (d) 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 DHCD Grant Agreement, or disclosed no later than at the execution of this Subgrant Agreement.
- (e) 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.

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

- (a) **Insurance.** During the term of this Subgrant Agreement, Subgrantee, at its expense, shall maintain in full force and effect the insurance coverages set forth in the Vermont State Insurance Specification in effect at the time of incorporation of this Subgrant Agreement. The terms of the Vermont State Insurance Specification are hereby incorporated by reference into this Subgrant Agreement as if fully set forth herein. A copy of the Vermont State Insurance Specification is available at: <https://aoa.vermont.gov/Risk-Claims-COI>.
- (b) **Closeout Agreement.** At the completion of the Project, Subgrantee shall enter into and comply with the terms of a Closeout Agreement.
- (c) **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.
- (d) **Other Liens and Encumbrances.** Subgrantee shall use no proceeds of this Subgrant to discharge any lien or other encumbrance.
- (e) **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.
- (f) **Federal Requirements.** Subgrantee covenants and agrees to comply with the Federal Requirements.

Section 8. **Pass Through Provisions.** Subgrantee shall be bound by the following provisions originally included in Attachment C to the DHCD Grant Agreement:

- (a) **False Claims Act:** Any liability to the State under the Vermont False Claims Act (32 V.S.A. § 630 et seq.) shall not be limited notwithstanding any agreement of the State to otherwise limit Subgrantee's liability.
- (b) **Whistleblower Protections:** The Subgrantee shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority, or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Subgrantee shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Subgrantee or its agents prior to reporting to any governmental entity and/or the public.

(c) **Use and Protection of State Information:**

- (i) As between the State and Subgrantee, “State Data” includes all data received, obtained, or generated by the Subgrantee in connection with performance under this Agreement. Subgrantee acknowledges that certain State Data to which the Subgrantee may have access may contain information that is deemed confidential by the State, or which is otherwise confidential by law, rule, or practice, or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315et seq. (“Confidential State Data”).
- (ii) With respect to State Data, Subgrantee shall:
  - (A) take reasonable precautions for its protection;
  - (B) not rent, sell, publish, share, or otherwise appropriate it; and
  - (C) upon termination of this Agreement for any reason, Subgrantee shall dispose of or retain State Data if and to the extent required by this Agreement, law, or regulation, or otherwise requested in writing by the State.
- (iii) With respect to Confidential State Data, Subgrantee shall:
  - (A) strictly maintain its confidentiality;
  - (B) not collect, access, use, or disclose it except as necessary to provide services to the State under this Agreement;
  - (C) provide at a minimum the same care to avoid disclosure or unauthorized use as it provides to protect its own similar confidential and proprietary information;
  - (D) implement and maintain administrative, technical, and physical safeguards and controls to protect against any anticipated threats or hazards or unauthorized access or use;
  - (E) promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for Confidential State Data so that the State may seek an appropriate protective order; and
  - (F) upon termination of this Agreement for any reason, and except as necessary to comply with subsection (c)(ii)(C) above in this section, return or destroy all Confidential State Data remaining in its possession or control.
- (iv) If Subgrantee is provided or accesses, creates, collects, processes, receives, stores, or transmits Confidential State Data in any electronic form or media, Subgrantee shall utilize:
  - (A) industry-standard firewall protection;

- (B) multi-factor authentication controls;
  - (C) encryption of electronic Confidential State Data while in transit and at rest;
  - (D) measures to ensure that the State Data shall not be altered without the prior written consent of the State;
  - (E) measures to protect against destruction, loss, or damage of State Data due to potential environmental hazards, such as fire and water damage;
  - (F) training to implement the information security measures; and
  - (G) monitoring of the security of any portions of the Subgrantee's systems that are used in the provision of the services against intrusion.
- (v) No Confidential State Data received, obtained, or generated by the Subgrantee in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the United States, except with the express written permission of the State.
  - (vi) Subgrantee shall notify the State within twenty-four hours after becoming aware of any unauthorized destruction, loss, alteration, disclosure of, or access to, any State Data.
  - (vii) State of Vermont Cybersecurity Standard Update: Subgrantee confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with State of Vermont Cybersecurity Standard Update in effect at the time of incorporation of this Attachment C into this Agreement. The State of Vermont Cybersecurity Standard Update prohibits the use of certain branded products in State information systems or any vendor system, and a copy is available at: <https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>
  - (viii) In addition to the requirements of this subsection (c), Subgrantee shall comply with any additional requirements regarding the protection of data that may be included in this Agreement or required by law or regulation.
- (d) **Fair Employment Practices and Americans with Disabilities Act:** Subgrantee agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable, and shall include this provision in all subcontracts for work performed in Vermont. Subgrantee shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Subgrantee under this Agreement.
  - (e) **Taxes Due to the State:** Subgrantee certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Subgrantee is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
  - (f) **Child Support:** *Intentionally Omitted*

- (g) **No Gifts or Gratuities:** Subgrantee shall not give title or possession of anything of substantial value (including property, currency, travel, and/or education programs) to any officer or employee of the State during the term of this Agreement.
- (h) **Certification Regarding Debarment:** Subgrantee certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Subgrantee nor Subgrantee's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds. Subgrantee further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Subgrantee is not presently debarred, suspended, nor named on the State's debarment list at: <https://bgs.vermont.gov/purchasing-contracting/debarment>.
- (i) **State Facilities:** If the State makes space available to the Subgrantee in any State facility during the term of this Agreement for purposes of the Subgrantee's performance under this Agreement, the Subgrantee shall only use the space in accordance with all policies and procedures governing access to, and use of, State facilities, which shall be made available upon request. State facilities will be made available to Subgrantee on an "AS IS, WHERE IS" basis, with no warranties whatsoever.
- (j) **Certification Regarding Use of State Funds:** If Subgrantee is an employer and this Agreement is a State-funded grant in excess of \$1,000, Subgrantee certifies that none of these State funds will be used to interfere with or restrain the exercise of Subgrantee's employee's rights with respect to unionization.
- (k) **Sub-Agreements:** Party shall not assign, subcontract, or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), as amended by Section 17 of Act No. 142 (2010) and by Section 6 of Act No. 50 (2011).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Confidentiality and Protection of State Information"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

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 cease payment of any portion of the Award, or other funds due Grantee under any other agreement, until the breach is cured. If Subgrantee does not cure the break at the completion of the correction period, then Grantee may withhold any additional Award funds and/or immediately terminate this Subgrant Agreement by giving written notice to the Subgrantee, specifying the effective date thereof.
- (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 has failed to comply with all applicable provisions of the DHCD Grant Agreement; or
  - (ii) Grantee’s determination that Subgrantee has failed to perform any of Subgrantee’s obligations under this Subgrant Agreement.
- (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 DHCD 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. 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) **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.
- (c) **No Waiver.** The waiver by the Grantee 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.

- (d) 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

*[Additional Signature Follows]*

SUMMIT DEVELOPMENT, LLC

By:   
Duly Authorized Agent