

**Schedule D – Restrictive Covenant**

After recording, please return to:  
State of Connecticut  
Department of Economic Community Development  
Office of Housing Development and Finance - NSP  
505 Hudson Street  
Hartford, CT 06106

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS – RENTAL HOUSING**

**THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS**, (this "Declaration") is made as of \_\_\_\_\_ 200\_ by \_\_\_\_\_, acting by \_\_\_\_\_, its successors and assigns (the "Owner") and is given as a condition precedent to the award of Neighborhood Stabilization Program funds ("NSP") pursuant to Title I of the Housing and Community Development Act of 1974, as amended, 24 CFR Part 570 of the regulations of the United States Department of Housing and Urban Development, as the same may be amended from time to time, Title III of Division B of the Housing and Economic Recovery Act of 2008 (P.L. 110-289) as amended by the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), and 73 FR 58330 (October 6, 2008), and 24 CFR Part 92 of the regulations of the United States Department of Housing and Urban Development (the HOME Investment Partnerships Program), as amended, (collectively, the "Authority"), as amended, by the State of Connecticut (the "State"), acting by its Commissioner of Economic and Community Development, (the "Commissioner") to \_\_\_\_\_ [name of entity that received the NSP Funds] (the "Third Party").

**WITNESSETH:**

**WHEREAS**, the Owner is the owner of a rental housing development located in the City/Town of \_\_\_\_\_, Connecticut, more particularly described in **Schedule A** hereto, known as \_\_\_\_\_ and identified by the State as Project No. \_\_\_\_\_ (the "Development"); and

**WHEREAS**, the Owner, has received financial assistance from the Third Party for the purpose of acquisition and/or rehabilitation/construction of units of rental housing within the Development, pursuant to the provisions of the Authority ; and

**WHEREAS**, [number in words] ([number]) of the units situated in the Development, as more particularly itemized on **Schedule B** hereto, have been designated by the Owner as NSP-assisted units (the "NSP-Assisted Units"); and

**WHEREAS**, the Owner has represented to the Third Party and the State certain rent restrictions it will maintain for the period of time as specified in the agreement for financial assistance of even date herewith from the State to the Third Party (the "Assistance Agreement") knowing and understanding that the State is relying on such representations; and

**WHEREAS**, the United States Department of Housing and Urban Development (“**HUD**”) requires as a condition precedent to the awarding of NSP Funds, that the Owner execute, deliver and record this Declaration on the official land records of the municipality in which the Development is located in order to create certain covenants running with the land for the purpose of enforcing the requirements of 24 CFR 92.252 , the Authority, and the use restrictions found in Section 4 of this Declaration, by regulating and restricting the use, occupancy and transfer of the Development, as set forth herein; and

**WHEREAS**, the regulatory and restrictive covenants set forth herein governing the use, occupancy, operation, and transfer of the Development shall be and are covenants running with the land thereon for a term which, except as otherwise is expressly provided in Section 5 of this Declaration, shall terminate [number in words] ([number]) years after the date of the recording of this Declaration and are binding upon all subsequent owners of the Development for such term, and are not merely personal covenants of the Owner; and

**WHEREAS**, the Third Party/State as a condition of its willingness to extend the financial assistance, requires that the Owner shall, by entrance into the terms, conditions and covenants set forth below, consent thereby to be regulated and restricted by the State as provided herein and by any applicable statutes and rules, regulations, policies and procedures of the State and HUD.

**NOW THEREFORE**, in consideration of the award of the NSP Funds by the State, the Owner agrees as follows:

**Section 1 - Definitions**

All the words and phrases used in this Declaration shall have the same meaning as when used in 24 CFR Part 92, the Authority and other applicable HUD regulations, unless the context requires otherwise.

**Section 2 - Recording Filing, Covenants To Run With the Land**

(a) Upon execution of this Declaration by the Owner, the Owner shall cause this Declaration and all amendments hereto to be filed on the land records of the municipality in which the Development is located, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the State a receipt of the same and shall cause the recorded Declaration to be returned by the municipality to the State.

(b) The Owner intends, declares, and covenants, on behalf of itself and all future owners and operators of the Development during the term of this Declaration, that this Declaration and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Development (1) shall be and are covenants running with the land, encumbering the Development for the term of this Declaration, binding upon the Owner's successors in title and all subsequent owners and operators of the Development; (2) are not merely personal covenants of the Owner; and (3) shall bind the Owner (and the benefits shall inure to the State and any past, present or

prospective tenant of the Development) and its respective successors and assigns during the term of this Declaration.

(c) The Owner hereby agrees that any and all requirements of the laws of the State of Connecticut to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Development.

(d) For the term of this Declaration, each and every contract, deed or other instrument hereafter executed conveying the Development or portion thereof shall expressly provide that such conveyance is subject to this Declaration, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter executed conveying the Development or portion thereof provides that such conveyance is subject to this Declaration.

(e) The Owner covenants to obtain the consent of any prior recorded lien holder on the Development to this Declaration and to furnish a copy of such consent to the State. Such consent(s) shall be furnished to the State on or before the date of this Declaration.

**Section 3 - Representations, Covenants And Warranties Of The Owner**

The Owner hereby represents, covenants, and warrants as follows:

(a) The Owner (1) is a \_\_\_\_\_ duly organized under the laws of the State of \_\_\_\_\_ and is qualified to transact business under the laws of the State of Connecticut, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (3) has the full legal right, power and authority to execute and deliver this Declaration.

(b) The execution and performance of this Declaration by the Owner (1) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (2) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Development is bound, and (3) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Owner will, at the time of execution and delivery of this Declaration, have good and marketable title to the premises constituting the Development, free and clear of any lien or encumbrance (except for encumbrances created pursuant to this Declaration, or other encumbrances permitted pursuant to the terms of the Assistance Agreement).

(d) There is no action, suit, proceeding at law or in equity, or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which if adversely determined,

would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.

(e) The Development constitutes or will constitute NSP-Assisted Units or an NSP-assisted development, as applicable, as defined in 24 CFR Part 92, the Authority and other applicable regulations.

(f) All NSP-Assisted Units or the NSP-assisted development is and will remain habitable according to HUD Section 8 Housing Quality Standards or local codes, whichever is more stringent.

(g) The Owner shall not convey, transfer, sell or encumber all or any portion of the Development, or permit the same, without the prior written consent of the State.

(h) Subject to the requirements of 24 CFR Part 92, the Authority, and this Declaration; and with the prior approval of the Third Party/State, the Owner may sell, transfer, or exchange the entire Development at any time, but the Owner shall notify in writing any buyer or successor in interest or other person acquiring the Development or any interest therein that such acquisition is subject to the requirements of this Declaration, and to the requirements of 24 CFR Part 92, the Authority and other applicable regulations. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the Development or any portion of the Development constituting NSP-Assisted Units. The Owner agrees that the Third Party/State may void any sale, transfer, or exchange of the Development if the buyer or successor in interest or other person fails to assume in writing the requirements of this Declaration and the requirements of 24 CFR Part 92 and the Authority.

(i) The Owner shall not demolish any part of the Development, substantially subtract from any real or personal property of the Development, or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Declaration unless required by law or unless the State has given its prior written consent.

(j) If the Development, or any part thereof, shall be damaged, destroyed, condemned, or acquired for public use, the Owner will use its best efforts, subject to the rights of any mortgagee, to repair and restore the Development to substantially the same condition as existed prior to the event causing such damage or destruction, and in the case of a partial condemnation, to restore the Development to substantially the same condition as existed prior to such condemnation, to the extent feasible, and thereafter to operate the Development in accordance with the terms of this Declaration.

(k) The Owner has not and will not execute any other declaration with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

#### **Section 4 -Income, Rental, Occupancy and Use Restrictions**

The determination of whether a tenant meets the income requirement for NSP-Assisted Units shall be made by the Owner or his designated agent at least annually on the basis of the current

income of said tenant, not to exceed 120% of area median income, as determined by HUD. The Owner represents, warrants, and covenants throughout the term of this Declaration and in order to satisfy the requirements of 24 CFR 92.252 and the Authority, that the NSP-Assisted Units shall meet the following requirements:

a. *Rental Limits.* The [number in words] ([number]) NSP-Assisted Units in the Development, consisting of:

- [number in words] ([number]) bedroom units,
- [number in words] ([number]) bedroom units, and
- [number in words] ([number]) bedroom units,

to be acquired, rehabilitated, constructed or any combination thereof will bear a maximum rent that is (A) less than the fair market rent for existing housing for comparable units in the [city], [state] area as established by HUD under 24 CFR, Part 888.111 less the monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant, or (B) if the unit receives federal or state project-based rental subsidy, and the family pays, as a contribution toward the rent, not more than thirty percent (30%) of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

b. *Initial Rents.* Threshold rents are calculated by adding base rent plus utility allowance for utilities (excluding telephone) paid by the tenant. HUD amends these rent limits periodically.

c. *Rent Increases.* When HUD provides the Third Party/State with amended Fair Market rent limits, the Third Party/State shall forward such information to the Owner. The Owner shall not adjust rents except in accordance with 24 CFR 92.252 and existing leases. Owner shall provide tenants a minimum of thirty (30) days prior written notice before implementing a rent increase.

d. *Income Limits.* The NSP-Assisted Units shall be occupied by income-eligible tenants at all times during the Affordability Period.

e. *Number of Units Applicable to Tenant Income Requirements.*  
**Include if applicable; otherwise, "Intentionally Deleted"**

(i) [number in words] ([number]) NSP-Assisted Units will provide housing for tenants with incomes at or below fifty percent (50%) of median income; and

(ii) [number in words] ([number]) NSP-Assisted Units will provide housing for tenants with incomes at or below sixty percent (60%) of median income.

(iii) [number in words] ([number]) NSP-Assisted Units will provide housing for tenants with incomes at or below eighty percent (80%) of median income.

**Section 5 - Term of Declaration**

(a) This Declaration, and the term of affordability specified herein (the "**Affordability Period**"), applies to the Development immediately upon recordation of this Declaration, and the Owner shall comply with all restrictive covenants herein not later than the Project Completion Date (as said term is defined in the Assistance Agreement). This Declaration shall terminate [number in words] ([number]) years after the date of its recording. Notwithstanding this stated term limit, the duration of this Declaration also shall extend for [number in words] ([number]) years following the date (1) any new construction at the Development is certified for occupancy, or (2) any rehabilitation activity at the Development is approved in writing by a local building inspector after final inspection. The Owner shall cooperate with the Third Party/State in executing and filing any documents necessary to effectuate such an extension. Further, if the Development is not completed by [date], the Owner shall cooperate with the Third Party/State in executing and filing any documents necessary to extend the term of these covenants for a period ending [number in words] ([number]) years following the actual date the Development is completed.

(b) Pursuant to 24 CFR, Part 92.252, as amended, and the Authority, this Declaration and the term of affordability shall remain in effect for not less than the Affordability Period described in section 5 (a) above without regard to the term of any mortgage or other underlying security and without regard to any transfer of ownership.

**Section 6 - Enforcement Of Restrictions**

(a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Third Party/State, to inspect any books and records of the Owner regarding the Development with respect to the incomes of tenants of NSP-Assisted Units which pertain to compliance with the restrictions specified in this Declaration.

(b) The Owner shall submit any other information, documents, or certifications requested by the Third Party/State which the Third Party/State shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the restrictions specified in this Declaration.

(c) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the Third Party/State and all persons interested in Development compliance under 24 CFR Part 92, the Authority, and other applicable regulations. The Owner further agrees to submit annual certifications and other reports to the Third Party/State confirming that the Development is in compliance with 24 CFR Part 92, the Authority, and the restrictions specified in this Declaration.

(d) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of 24 CFR Part 92, the Authority, and other applicable regulations of this Declaration. Moreover, the Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary, in the opinion of the Third Party/State) to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed and published by HUD from time to time pertaining to the Owner's obligations under 24 CFR Part 92 and the Authority, and affecting the Development.

(e) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Declaration is to assure compliance of the Development and the Owner with 24 CFR Part 92, the Authority, and other applicable regulations, and by reason thereof, the Owner in consideration for receiving NSP Funds for this Development, hereby agrees and consents that the Third Party/State and any tenant who meets the income limitations applicable under the Authority (whether prospective, present or former occupant) shall be entitled, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Owner of its obligations under this Declaration in a court of competent jurisdiction. The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(f) The Owner agrees to take any and all actions reasonably required by the State to substantiate the Owner's compliance with the occupancy restrictions of 24 CFR Part 92 and the Authority as now constituted or subsequently amended.

(g) This Declaration shall be deemed a contract enforceable by one or more tenants of the Development as third-party beneficiaries of this Declaration and the Assistance Agreement. In the event the Owner fails to satisfy the requirements of this Declaration or the Assistance Agreement and legal costs are incurred by the State, one or more of the tenants of the Development, or beneficiaries, such legal costs, including attorney fees and court costs (including costs of appeal), are the responsibility of, and may be recovered from the Owner.

#### **Section 7 - Record Keeping**

(a) During the term of this Declaration, the Owner shall maintain and make available to the State any and all records, documents, and policies necessary which demonstrate compliance with 24 CFR Part 92 and the Authority.

(b) The Owner shall maintain all records as required by 24 CFR 92.508 and the Authority as applicable and shall take any and all actions reasonably required by the State to substantiate the Owner's compliance. This Declaration and the Assistance Agreement of which it is a part may be enforced by the Third Party/State or its designee in the event the Owner fails to satisfy any of the requirements herein.

#### **Section 8 - Miscellaneous**

(a) **Severability.** The invalidity of any clause, part, or provision of this Declaration shall not affect the validity of the remaining portions thereof.

(b) **Notices.** All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing. The State, and the Owner, may, by notice given hereunder, designate any.

further or different addresses to which subsequent notices, certificates or other communications shall be sent.

If to State:

Department of Economic and Community Development  
505 Hudson Street  
Hartford, Connecticut 06106-7106  
Attn: Commissioner of Economic and Community Development

With a copy to:

Assistant Attorney General - Housing  
55 Elm Street  
Hartford, Connecticut 06106

If to Owner[Name and address]

With a copy to: [Name and address]

If to Third Party [Name and address]

With a copy to: [Name and address]

or to such other address or person as shall be designated from time to time by notice.

(c) **Amendment.** The Owner agrees that it will take all actions necessary to effect amendment of this Declaration as may be necessary to comply with 24 CFR Part 92, the Authority, and any and all applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to the NSP assistance. The Third Party/State, together with Owner, may execute and record any amendment or modification to this Declaration and such amendment or modification shall be binding on third-parties granted rights under this Declaration.

(d) **Governing Law.** This Declaration shall be governed by the laws of the State of Connecticut and, where applicable, the laws of the United States of America.

**Signature Page Follows**



**Schedule A**  
**Legal Description of Development**

**Schedule B**

**List of NSP-Assisted Units**