

HISTORIC PRESERVATION EASEMENT

THIS HISTORIC PRESERVATION EASEMENT, made this 11th day of December, 1991, entered into by and between the VERMONT HOUSING FINANCE AGENCY ("Grantor") and the PRESERVATION TRUST OF VERMONT, INC. ("Trust") and the VERMONT HOUSING AND CONSERVATION BOARD (the "Board"), a public instrumentality of the State of Vermont. The Trust and Board may also be referred to as "Grantees".

W I T N E S S E T H

WHEREAS, the Trust is organized as a non-profit corporation under the laws of the State of Vermont and is a qualified holder ("Qualified Holder") of preservation rights and interests within the meaning of 10 V.S.A. 821.

WHEREAS, under the Vermont Housing and Conservation Trust Fund Act, 10 V.S.A. Chapter 15, the Board was created to improve the quality of life for Vermonters and to maintain for the benefit of future generations the essential characteristics of the Vermont countryside by creating affordable housing for lower income Vermonters, and conserving and protecting the state's agricultural land, historic properties, important natural areas and recreational lands and is a Qualified Holder;

WHEREAS, the Grantor is the owner of certain real property located on Officer's Row, so called, at Dalton Drive, Fort Ethan Allen, in the Towns of Essex and Colchester, Vermont, more particularly described below (the "Property"), including twenty-one (21) structures (the "Buildings");

WHEREAS, two of the Buildings are intended primarily for commercial use and nineteen of the Buildings are intended primarily for owner occupied residential use expected to include seventy-seven individually owned condominium units upon completion of the rehabilitation in accordance with the Plans;

WHEREAS, the Board has provided funds to the Lake Champlain Housing Development Corporation to be used by the Grantor for the rehabilitation and restoration of these historic Buildings and holds a perpetual conservation easement on the Dalton Drive Parade Ground;

WHEREAS, the Grantor and the Board have provided funds to a second mortgage pool administered by the Lake Champlain Housing Development Corporation in order to subsidize the purchase of at least 25 of the condominium units in nineteen of the Buildings so that those units will be affordable to households with gross incomes at or below 85% of Burlington MSA median income;

WHEREAS, the purpose of the second mortgage pool is to maintain the affordability of condominium units in the Buildings to households with gross incomes at or below 85% of Burlington MSA median income in perpetuity;

WHEREAS, for the purposes of this instrument: (A) the term "Plans" means the plans and specifications incorporated into a certain Agreement between Owner and Contractor (the "Construction Contract") dated July 31, 1991, between Engleberth Construction, Inc. and the

Grantor, insofar as the Construction Contract bears on the Facades; (B) the term "Standards" means "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" issued by the Secretary of the United States Department of the Interior, a copy of which is attached hereto as Exhibit I and incorporated herein by reference; and (C) the term "Landscaping Plans" shall mean the as build landscaping plan upon completion of rehabilitation in accordance with the Plans;

WHEREAS, the Buildings are part of a district designated by the State Division for Historic Preservation as being eligible for nomination to the National Register of Historic Places;

WHEREAS, the Grantor and the Grantees recognize the historical, cultural, and aesthetic value and significance of the exterior facades of the Buildings (the "Facades"), and have the common purposes of conserving the aforesaid value and significance of the Facades;

WHEREAS, the grant of a preservation and conservation easement by Grantor to Grantee will assist in preserving and maintaining the architectural, cultural, and historical features of the buildings and will assist in preserving and maintaining the aforesaid value and significance of the Facades;

WHEREAS, to that end, Grantor desires to grant to Grantees, and Grantees desire to accept a preservation easement on the Facades pursuant to 10 V.S.A. Chapter 155.

NOW THEREFORE,

KNOW ALL PERSONS BY THESE PRESENTS, that the Grantor, on behalf of itself and its successors and assigns, in consideration of Ten Dollars and other valuable consideration paid to its full satisfaction, does freely give, grant, sell, convey and confirm unto the PRESERVATION TRUST OF VERMONT, INC. and the VERMONT HOUSING AND CONSERVATION BOARD, and their successors and assigns, as tenants in common, forever, a preservation easement in gross (the "Easement"), more particularly described below, in and to the Facades, being the exterior facades of the Buildings, situated on Officer's Row, so called, at Dalton Drive, Fort Ethan Allen, in the Towns of Essex and Colchester, and being a portion of the same lands and premises described in a deed of University of Vermont and State Agricultural College to Vermont Housing Finance Agency dated July 19, 1990 and recorded in Volume 255, Page 221 of the Essex Land Records and in Volume 170, Page 210 of the Colchester Land Records. This easement is subject to all encumbrances of record.

The Easement hereby conveyed to the Grantees consists of covenants on the part of the Grantor to do and refrain from doing, severally and collectively, the various acts set forth below. It is hereby acknowledged that these covenants shall constitute a servitude upon the land and run with the land. Grantees accept such covenants in order to further the public purpose of preserving the facades, and to help maintain and assure their present and future historic integrity in a manner consistent with the intended use of the Buildings for commercial and residential purposes, including affordable housing

1. Description of Facades. The Facades are the exterior facades of the Buildings generally described above. For a more detailed description and record of the Buildings and the Facades, reference is hereby made to the memorandum entitled "Description of the Facade and Exterior of Buildings on Officer's Row, Fort Ethan Allen", on file with the Grantees, and supplementary series of photographs to be filed with the Grantees upon completion of the Rehabilitation. Grantor also agrees to provide a copy of the Landscaping Plan to Grantees upon completion of Rehabilitation.

2. Grantor's Covenants. The Grantor covenants and agrees to rehabilitate or cause the rehabilitation of the Facades of the nineteen Buildings intended for residential use in accordance with the Plans and the Standards and to maintain or cause the maintenance of all of the Facades in accordance with the Standards. In furtherance of such covenant, the Grantor further agrees as follows:

- (A) Grantor shall not demolish, remove, or raze the Buildings.
- (B) Except in accordance with the Plans and Standards, Grantor shall not undertake any of the following actions:
 - (1) Increase the height of the Facades or the Buildings;
 - (2) Adversely affect the structural soundness of the Facades or the Buildings;
 - (3) Make any changes to the Facades including the alteration, partial removal, construction, remodeling, or other physical or structural change including any change in color or surfacing, with respect to the appearance of the Facades, with the exception of ordinary maintenance pursuant to Paragraph 2(C) below, without the prior written approval of the Grantees, which shall not be unreasonably withheld. The Grantees shall act upon such written request for approval within sixty (60) days of receipt of such request, and shall give notice of any disapproval to the Grantor, together with reasons therefor, in writing. If a request for approval is not denied by the Grantees within sixty (60) days, it shall be deemed granted;
 - (4) Erect anything on the Property or on the Facades which would prevent them from being visible from street level, except for a temporary structure during any period of approved alteration, restoration, or routine maintenance.
 - (5) Permit any significant reconstruction, repair, repainting, or refinishing of the Facades that materially alters their state. This subsection (5) shall not include ordinary maintenance pursuant to Paragraph 2(C) below;
- (C) Grantor agrees at all times to maintain the Facades in good and sound state of repair and to maintain the Facades and the structural soundness and safety of the Buildings, subject to the provisions under the heading "Casualty Damage or Destruction," below. Ordinary and necessary repairs and maintenance not materially affecting the architectural integrity of the Facades shall not be considered as alterations and nothing in these covenants shall be construed to prevent the ordinary

maintenance and repair of the Buildings or the Property.

- (D) No satellite receiving dishes, camping accommodations, or mobile homes not presently on the Property shall be erected or placed on the Property without first obtaining the prior written permission of Grantees.
- (E) No signs shall be displayed or placed on the Property or Buildings without the prior written consent of the Grantees; however, the Grantor may erect reasonable signs as pertain to the history, occupancy, sale, lease, or use of a Building.
- (F) The grounds around the Buildings shall be maintained in a manner consistent with the historical character of the Buildings and no activity shall be permitted thereon which, in the reasonable opinion of the Grantees, is inconsistent with the intent of this Easement, such intent being the protection of the architectural, cultural and historical value of the Facades in a manner consistent with the intended use of the Buildings for commercial and residential purposes, including affordable housing. Grantor shall maintain trees, shrubs and lawn around the Buildings in a good manner and appearance in conformity with good landscaping management and consistent with the Landscaping Plan. Landscaping shall not be substantially changed without the prior written approval of Grantees. Nothing herein shall prohibit the parking on a part of the Property of registered operating motor vehicles in use by the Grantor or visitors to the Property.
- (G) No dumping of ashes, trash, rubbish, or any other unsightly or offensive materials shall be permitted on the Property.

3. Public View. Grantor agrees not to obstruct the substantial and regular opportunity of the public to view the Facades from adjacent publicly accessible areas such as public streets.

4. Standards for Review. In exercising any authority created by the Easement to inspect the Property, the Buildings, or the Facades; to review any construction, alteration, repair, or maintenance; or to review casualty damage or plans for reconstruction of the Buildings following casualty damage, Grantees shall apply the Plans (insofar as applicable) and the Standards. Grantor agrees to abide by the Standards in performing all ordinary repair and maintenance work.

In any case of construction, re-construction after casualty damage, or repair of the Property for which the express prior consent of Grantees is required under the terms of this Easement, Grantor shall reimburse Grantees for the reasonable costs of architectural review incurred in connection therewith in an amount not exceeding the lesser of the actual reasonable cost of such architectural review or the reasonable cost of five hours of architectural time; provided, however, that for each review, such reimbursement shall not exceed the reasonable cost of five hours of architectural time. Costs in excess of that amount shall be paid by the Grantees.

5. Mutual Agreement to Use Amended Standards. Unless otherwise agreed pursuant to this paragraph, the standard for review shall be as set forth in paragraph 4, above. If Grantor and Grantees mutually agree to do so in writing, Grantor and Grantees may use the Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings issued and as may be amended

from time to time by the Secretary of the United States Department of the Interior and/or state or local standards considered appropriate by the Grantor and Grantee for review of work affecting historically or architecturally significant structures or for construction of new structures within historically, architecturally or culturally significant areas ("Amended Standards") instead of the Plans and Standards. Following execution of such an agreement and recording of same in the Land Records of the Towns of Essex and Colchester, respectively, in exercising any authority created by the Easement to inspect the Property, the Buildings, or the Facades; to review any construction, alteration, repair, or maintenance; or to review casualty damage or plans for reconstruction of the Buildings following casualty damage, Grantees shall apply the Plans (insofar as applicable) and the Amended Standards, and Grantor will abide by the Amended Standards in performing all ordinary repair and maintenance work.

6. Casualty Damage or Destruction. In the event that any Facade or part thereof shall be damaged or destroyed by fire or other casualty, the Grantor shall promptly notify the Grantees in writing. No repairs or reconstruction of the Facade, other than temporary emergency work to prevent further damage to the Building and to protect public safety, shall be undertaken by Grantor without the prior written consent of the Grantees, which consent shall not be unreasonably withheld. Except as otherwise provided herein, the Grantor shall be responsible for effecting repairs or reconstruction in accordance with the Standards. As to any Building, this agreement shall terminate and thereafter be null and void in the event of fire or other casualty so serious as to cause repair or reconstruction of that Building to be reasonably adjudged to be impracticable. Such repair or reconstruction shall be deemed to be impracticable for the purposes of this agreement if the first mortgagee of such Building or the first mortgagee of any condominium unit within such Building elects to apply insurance proceeds paid to it as a result of such casualty to the reduction of the mortgage indebtedness rather than to the reconstruction of the Building. Notwithstanding any such termination, this agreement shall continue in full force and effect with respect to any Building that has not suffered such fire or other casualty or as to which no first mortgagee has made the election to apply insurance proceeds to the mortgage indebtedness.

7. Grantees' Review in the Event that Repair or Reconstruction is Impracticable. Where repair, restoration or reconstruction of a Building is impracticable, the Grantor shall continue to comply with the provisions of the Easement and obtain the prior written consent of the Grantees in the event Grantor wishes to construct new improvements on the Property, which consent shall not be unreasonably withheld or denied.

8. Inspection. The Grantor agrees that the Grantees may make reasonable inspections of the Property from time to time during the term of this Easement to insure that the Grantor is in compliance with the Standards.

9. Grantee's Remedies. In the event that a Grantee becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, Grantees shall give notice to Grantor and the other Grantees of such event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action by the Grantor sufficient to abate such event or circumstance of non-compliance and restore the Property to its previous condition.

Failure by the Grantor to cause discontinuance, abatement, or such other corrective action as may be demanded by the Grantee within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle the Grantee to bring an action in a court of competent jurisdiction to enforce the terms of this Easement and to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by the Grantee to corrective action on the Property, if necessary. If the court determines that the Grantor has failed to comply with this Agreement, Grantor shall reimburse the Grantees for any reasonable costs of enforcement, including court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. In the event that a Grantee initiates litigation and the court determines that the Grantor has not failed to comply with this Agreement and that the Grantee has initiated litigation without reasonable cause or in bad faith, then the Grantee or Grantees who commenced the court proceedings shall reimburse Grantor for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees. The parties to this Grant specifically acknowledge that events and circumstances of non-compliance constitute immediate and irreparable injury, loss, and damage to the Property and accordingly entitle Grantees to such equitable relief, including but not limited to injunctive relief, as the Court deems just. The remedies described herein are in addition to, and not in limitation of, any other remedies available to the Grantees at law, in equity, or through administrative proceedings.

10. Grantees Held Harmless. It is agreed that the Grantees in no way assumes any obligation for maintaining, repairing or administering the Facades, the Buildings, or the Property on which they are situated, and that the Grantor will hold the Grantees harmless in that regard. Further, the Grantees shall not be liable to any third party in connection with any business venture, activity or occurrence conducted on the Property in question, and Grantor shall indemnify and save Grantees harmless from any and all such liability, including, but not limited to, any claims arising out of the granting or denial of consent or approval under this Easement and the reporting on or advising as to any condition on the Property. Provided, however, that nothing herein is intended to limit whatever rights Grantor may have to recover of the Grantees the amount of any loss, cost, liability or expense which the Grantor may incur as the result of the unreasonable failure of Grantees, or either of them, to consent to action requiring their approval.

11. Covenants to Run with the Land. The obligations imposed by this Easement shall be effective in perpetuity (except in the event of extinguishment or release as herein provided) and shall be deemed to run as a binding servitude with the Property. This Easement shall extend to and be binding upon Grantor and Grantees, and the words "Grantor" and "Grantees" when used herein shall include all such persons. Anything contained herein to the contrary notwithstanding, a person shall have no obligation pursuant to this instrument where such person shall cease to have an ownership interest in the Property by reason of a bona fide transfer, and the Grantees and its successors in interest shall look only to the person or persons owning the fee interest in the Facades from time to time for satisfaction of the covenants of the Grantor herein contained.

12. Taxes. Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may be a lien on the Property.

13. Insurance. The Grantor shall keep the Property insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage of a type and in such amounts as are reasonable. Upon request, the Grantor shall deliver to the Grantee written confirmation of insurance coverage from the insurer.

14. Plaques. Grantor agrees that Grantee may provide and maintain a plaque on the facade of each Building, which plaque may not exceed four inches by twelve inches in size, giving notice of the significance of the Building or the Property and the existence of this Easement.

Miscellaneous Provisions.

15. Recording. This Easement may be executed in duplicate originals, and shall be recorded in the land Records of the Towns of Essex and Colchester, respectively.

16. Written Notice. Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be mailed postage prepaid by certified mail with return receipt requested, or hand delivered; if to Grantor, then at P. O. Box 408, One Burlington Square, Burlington, VT 05402, and if to Grantees, then to Preservation Trust of Vermont, Inc., P.O. Box 1777, Windsor, Vt. 05089-0021 and the Vermont Housing and Conservation Board, 136½ Main Street, Montpelier, Vermont 05602. Each party may change its address set forth herein by a notice to such effect to the other party. Any notice, consent, approval, agreement, or amendment permitted or required of Grantees under the Easement may be given to the Executive Director of the Grantees or by any duly authorized representative of the Grantee.

17. Eminent Domain. In the event the Easement and restrictions conveyed to the Grantees herein are extinguished by eminent domain or other legal proceedings, Grantees shall be entitled to any proceeds which pertain to the extinguishment of Grantee's rights and interests.

18. Grantor and Grantees Defined. The term "Grantor" shall include the heirs, executors, administrators, successors and assigns of the original Grantor, the Vermont Housing Finance Agency. The term "Grantees" shall include the respective successors and assigns of the original Grantees the Preservation Trust of Vermont and the Vermont Housing and Conservation Board, provided that any assignee of the Grantees shall be a Qualified Holder. Where Grantor is required, as a result of this Easement, to obtain the prior written approval of Grantees before commencing an activity or act, and where Grantees have designated in writing another organization or entity which shall have the authority to grant such approval, the approval of said designee shall be deemed to be the approval of the Grantees.

19. Subsequent Deeds. Grantor shall assure that the first deed conveying all or part of a building delivered after completion of the rehabilitation of that Building pursuant to the Plans shall include the following information:

The exterior facades of the building, the building and the property surround the building (or the building in which the Apartment is located) are subject to the provisions of an Historic Preservation Easement in favor of the Preservation Trust of Vermont, Inc. and

the Vermont Housing and Conservation Board dated
Volume , Page of the Essex/Colchester Land Records.

and recorded in

20. Marketable Title Act. Grantees shall be entitled to rerecord this Easement, or to record a notice making reference to the existence of this Easement in the Land Records of the Towns of Essex and Colchester, respectively, as may be necessary to satisfy the requirements of the Record Marketable Title Act, 27 V.S.A., Chapter 5, Subchapter 7, including 27 V.S.A. §§603 and 605.

21. Grantees' Enforcement. While title is herein conveyed to Grantees as tenants in common, the rights and interests described in this Easement, including enforcement, may be exercised by the Grantees collectively, or by any single Grantee individually, provided that enforcement action by a single Grantee shall foreclose action on the same issue(s) by the other grantees who shall be bound by the final determination.

22. Release. The above covenants may be released, in whole or in part, or a waiver may be granted for a particular purpose, by the Grantees at any time by a notice to such effect duly recorded. The Grantees shall transfer the Easement and restrictions conveyed by Grantor herein only to a Qualified Holder, in accordance with the laws of the State of Vermont and, if applicable, the regulations established by the Internal Revenue Service governing such transfers.

23. Compliance with Applicable Law. IT IS HEREBY AGREED that the construction of any buildings, structures or improvements, or any use of the Property otherwise permitted under this Easement, shall be in accordance with all applicable ordinances, statutes and regulations of the Towns of Essex and Colchester and the State of Vermont.

INVALIDATION of any provision hereof shall not affect any other provision of this Easement.

TO HAVE AND TO HOLD said granted preservation easement, with all the privileges and appurtenances thereof, to the said Grantees, PRESERVATION TRUST OF VERMONT, INC., and VERMONT HOUSING AND CONSERVATION BOARD, their successors and assigns who are Qualified Holders forever, and the said Grantor, VERMONT HOUSING FINANCE AGENCY, for itself and its successor and assigns, does covenant with the said Grantee that until the ensealing of these presents it is the sole owner of the Property and has good right and title to convey this Easement in the manner aforesaid, and that it is free from every encumbrance, except as aforesaid.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal this 11th day of December, 1991.

IN PRESENCE OF:

VERMONT HOUSING FINANCE AGENCY

[Signature]
Witness

By: [Signature]
Executive Director

[Signature]
Witness

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS. At Burlington this 11th
day of December, 1991, ALLAN S. HUNT, executive director, appeared and
acknowledged this instrument by him subscribed, to be his free act and deed and the free act and
deed of Vermont Housing Finance Agency.

Before me,
[Signature]

Notary Public

APPROVED AND ACCEPTED BY THE VERMONT HOUSING AND CONSERVATION
BOARD

[Signature]
Gustave Seelig, Executive Director

12-11-91
Date

APPROVED AND ACCEPTED BY THE PRESERVATION TRUST OF VERMONT, INC.

[Signature]
Paul Bruhn, Executive Director

12-12-91
Date

Vermont Property Transfer Tax
32 V.S.A. Chap. 231
- ACKNOWLEDGMENT -
Return No. 91-513
Signed Rosa Lee Crowder
Date December 12, 1991

Essex, Vermont, Town Clerk's Office
December 12, 1991 at
3 o'clock 50 minutes P M
Received for record and recorded in
book 270 on page 449-457 of
200 records
Attest: Rosa Lee Crowder
Town Clerk

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IN PRESENCE OF:

VERMONT HOUSING FINANCE AGENCY

[Signature]
Witness

By: [Signature]
Executive Director

[Signature]
Witness

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS. At Burlington this 11th
day of December, 1991, ALLAN S. HUNT, executive director, appeared and
acknowledged this instrument by him subscribed, to be his free act and deed and the free act and
deed of Vermont Housing Finance Agency.

Before me,

[Signature]

Notary Public

APPROVED AND ACCEPTED BY THE VERMONT HOUSING AND CONSERVATION
BOARD

[Signature]
Gustave Seelig, Executive Director

12-11-91
Date

APPROVED AND ACCEPTED BY THE PRESERVATION TRUST OF VERMONT, INC.

[Signature]
Paul Bruhn, Executive Director

12-11-91
Date

COLCHESTER, VT.
RECEIVED FOR RECORD
Dec 12 AD. 19 91 AT
2 O'Clock 45 Min. P M.
Recorded in Vol. 188 Page 254/262
of the Land Records
Attest [Signature]
Asst. Town Clerk

Vermont Property Transfer Tax
32 V.S.A. Chap. 231
-ACKNOWLEDGMENT-
Return Rec'd.--Tax Paid--Board of Health Cert. Rec'd.-
Vt. Land Use & Development Plans Act Cert. Rec'd.
Return No. 484-91
Signed [Signature], Clerk
Date 12-12-91