

Vermont Housing Finance Lender

**RENTAL REVOLVING LOAN FUND  
USE AND OPTION AGREEMENT**

[Project Name, Location]

This **AGREEMENT** dated as of \_\_\_ day of \_\_\_\_\_, 202\_, by and between \_\_\_\_\_, a Vermont \_\_\_\_\_ (hereinafter called “Mortgagor”) and **VERMONT HOUSING FINANCE AGENCY**, a body corporate and politic and an instrumentality of the State of Vermont (hereinafter called “Lender”) created under and pursuant to the provisions of the Vermont Housing Finance Agency Act, Vermont Statutes Annotated, Title 10, Chapter 25, (hereinafter called the “Act”),

W I T N E S S E T H:

WHEREAS, Mortgagor is the Mortgagor of certain property situated in the [City of] [Town of] \_\_\_\_\_ in the County of \_\_\_\_\_, State of Vermont described in Schedule A, attached hereto and incorporated herein; and

WHEREAS, there is or will be upon said real property \_\_\_\_\_ ( ) building[s] containing a total of \_\_\_\_\_ ( ) rental units (hereinafter called the “Development” or the “Project”); and

WHEREAS, Mortgagor has received by letter dated \_\_\_\_\_ (together with any amendments thereto prior to the date hereof, the “Commitment Letter”), a commitment from Lender to make a loan to Mortgagor for the acquisition/rehabilitation/construction of the Development using funds from the Vermont Housing Agency Rental Revolving Loan Fund (the “RRLF Loan”); and

WHEREAS, Lender, as a condition of its commitment, requires that Mortgagor shall, by entering into the terms, conditions and covenants set forth below, consent thereby to be regulated and restricted by Lender as herein provided and as provided by the Act and any rules, regulations, policies and procedures of Lender promulgated thereunder;

NOW, THEREFORE, Mortgagor and Lender agree as follows:

1. Housing Subsidy Covenant.

This Agreement constitutes a Housing Subsidy Covenant pursuant to 27 V.S.A. § 610. The authorizing subsidy is a loan from Vermont Housing Finance Agency, an instrumentality of the State of Vermont.

2. Definitions.

Capitalized terms used herein without definition have the respective meanings ascribed to them under the Rental Revolving Loan Fund Guidelines published by the Lender from time to time (as amended, supplemented or replaced from time to time, the “Guidelines”). As used herein “Max Rent” means the Max Gross Affordable Rent (including Utilities) for a household as set forth in VHFA’s Affordability Matrix referenced in the Guidelines as it may be updated from time to time.

3. Use Requirements.

- (a) A total of \_\_\_ units in the Development are deemed to be “RRLF-Assisted Units”. Each RRLF-Assisted Unit must have the number of bedrooms and be leased at or less than the required relevant Max Rent to a household making not more than the percentage of AMI (adjusted for household size) set forth in Appendix A (Rents Tab for RRLF Use Agreement).
- (b) If a RRLF-Assisted Unit becomes vacant during the year, that unit must be leased to tenants having a qualifying income at a rent not more than the Max Rent for a unit of that size.
- (c) Residents will be given at least 30 days’ prior written notice before the implementation of any rent increase, and even if permitted under VHFA’s Affordability Matrix, annual rent increases on existing tenants in RRLF-Assisted Units shall not exceed 3%, or an amount otherwise authorized by the Agency.
- (d) Mortgagor will have received, upon initial occupancy, tenant income certification and supporting documentation to ensure compliance with subparagraphs (a)-(c) above.
- (e) Any failure by the Mortgagor to comply with this Agreement or the Guidelines shall, among other things, constitute a default under the RRLF Loan.
- (f) Mortgagor may not evict any tenant in an RRLF-Assisted Unit other than for good cause.
- (g) All RRLF-Assisted Units must be available for use by the general public and used on a non-transient basis.
- (h) Each unit in the Development is, or upon completion of the project will be, suitable for occupancy, taking into account state and local health, safety, and building codes.

- (i) The Project must meet all applicable accessibility requirements set forth at [24 CFR part 8](#), which implements section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. 794](#)), and Titles II and III of the Americans with Disabilities Act ([42 U.S.C. 12131-12189](#)) implemented at [28 CFR parts 35](#) and [36](#), as applicable. Multi-family housing, as defined in [24 CFR 100.201](#), must also meet all applicable design and construction requirements set forth in [24 CFR 100.205](#), which implements the Fair Housing Act ([42 U.S.C. 3601-3619](#)).
- (j) The Project must meet all applicable State and local codes, ordinances, or other disaster mitigation requirements (e.g., earthquake, hurricanes, flooding, wild fires), or other requirements as the Department of Housing and Urban Development has established in [24 CFR part 93](#).
- (k) If the remaining useful life of one or more major systems is less than the required period of affordability, Mortgagor has established a replacement reserve and Mortgagor will make monthly payments to the reserve that are adequate to repair or replace the systems as needed. Major systems include: structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; heating, ventilation, and air conditioning.
- (l) Mortgagor shall comply in all respects with requirements of the Violence Against Women Act of 2013.
- (m) Mortgagor shall not refuse to lease a [RRLF-Assisted] unit in the Development based solely on the tenant's status as a holder of a Section 8 voucher.
- (n) Mortgagor shall at all times comply with any Extended Use Agreement or Regulatory Agreement entered into on or about the date hereof with respect to low-income tax credits issued with respect to the Development or other debt obligations owing to Lender with respect to the Development.
- (o) If the Development is comprised in full or in any part by any building or portion thereof constructed before 1978, Mortgagor shall comply in all respects with 24 CFR Part 35.
- (p) All common areas and facilities, such as swimming pools, or other recreational facilities, parking areas, washer/dryer hookups, and appliances will be provided on a comparable basis without charge to all tenants in the Development.
- (q) Mortgagor shall pay all RRLF compliance monitoring fees when due as required under the Guidelines.

4. Post-Closing Compliance.

Mortgagor shall fulfill in all respects are requirements of the RRLF Post-Closing Compliance Guide, including such financial and tenant income reporting as Lender shall require.

5. Lender Approval Required.

Mortgagor may perform one or more of the following acts (exclusive of those mortgages, pledges or other encumbrances listed in any written priority agreement to which Lender is or becomes a party) only with the prior written approval of Lender, which approval will not be withheld unreasonably, upon such conditions as Lender may designate and subject to the approval of any other governmental authority whose jurisdiction includes the regulation of Mortgagor:

- (a) sell, convey, assign, transfer, mortgage, pledge, hypothecate or dispose of all or any part of any legal or beneficial interest in any of the Development property;
- (b) prepay, or seek to prepay, in whole or in part, the RRLF Loan without the prior written consent of Lender;
- (c) permit to be created or suffer to exist any mortgage, lien, security interest, attachment or other encumbrance or charge on any of the Development property;
- (d) assign, transfer, dispose, or encumber any personal property of the Development, including rents (except that disposition is permitted with respect to equipment replaced in the ordinary course of business by equipment of comparable quality and as to which the Lender holds a first priority security interest of record);
- (e) convey, assign, transfer or permit the surrender or relinquishment of any right to receive the rents and profits of the Development;
- (f) substantially remodel, add to, reconstruct, or demolish any part of the Development or substantially subtract from any real or personal property of the Development;
- (g) permit the use of the dwelling accommodations of the Development for any purpose except residential, or permit commercial use greater than that originally approved by Lender;
- (h) incur any liability for the Development, direct or contingent, not in the ordinary course of the business of developing and operating the Development;

- (i) modify or amend Mortgagor’s charter, bylaws, partnership agreement, or other governing instrument or instruments;
- (j) restrict occupancy by reason of the fact that there are children in the family, except in those projects that are designed primarily for elderly persons and comply with the provisions of 9 V.S.A. § 4503, as the same may be amended from time to time; or
- (k) permit any tenant to rent more than one unit at any given time.

6. Compliance with Laws.

Mortgagor shall comply with all applicable federal, State, and local laws prohibiting discrimination in housing on the grounds of race, color, creed, sex, religion, handicap, sexual orientation, age or national origin. In addition, Mortgagor shall comply with all material provisions of any applicable federal or State grant or loan and the provisions of any law governing the same. Further, Mortgagor shall at all times comply with the provisions of any license necessary to the lawful operation of the Development. Failure or refusal to comply with any such provisions shall be a proper basis for Lender to take any corrective action following notice and failure to cure it may deem necessary including, but not limited to, declaring a default under the Mortgage, the rejection of future applications for mortgage loans and the refusal to enter into future contracts of any kind with Mortgagor or its shareholders, trustees, or beneficiaries.

7. Option Agreement.

- (a) For purposes of this Section 6, the following terms shall have the respective meanings ascribed below:

“Fair Market Value” means the fair market value of the Development, taking into account the legal restrictions on rent and occupancy, if any, then imposed on the Development, EXCLUDING restrictions imposed by this Agreement. The Fair Market Value will be determined by a Qualified Appraisal of the Development performed by the Qualified Appraiser.

“Qualified Appraiser” means an appraiser licensed as an appraiser by the State of Vermont Board of Real Estate Appraisers, who has no personal or business affiliation with a party and who holds a MAI or SRPA membership designation (or successor designation) in the Appraisal Institute, or its successor.

“Qualified Appraisal” means a written appraisal report signed by one or more Qualified Appraisers and made in conformity with the Lender’s *Appraisal Guidelines for Affordable Multi-family Housing Properties* applying the market and economic factors then relevant and consistent with the definition of “Fair Market Value” used in this Agreement.

- (b) Mortgagor may not sell or enter into negotiations to sell the Development to any person, other than for an Excepted Transfer (defined below), without prior written consent of the Lender. Upon receipt by the Lender of notice in writing delivered by certified mail, postage prepaid, to the then-current business address of the Lender that the Mortgagor seeks to sell or transfer the Development (the “Option Notice”), the Lender shall be deemed to have an option to purchase the Development subject to the terms and provisions hereof. The option may not be assigned by the Lender without the consent of the Mortgagor (which shall not be unreasonably withheld or delayed), except the Lender may at any time and without Mortgagor’s consent assign the option to any other Lender or instrumentality of the State of Vermont, any Vermont municipality or any non-profit housing sponsor.

Notwithstanding any other provision or implication of this Agreement, it is the intent of the parties that this option shall not apply to a transfer of interests between or within members of the Mortgagor, or the general partner of the Mortgagor or its affiliate, which transfers shall be known as an “Excepted Transfer,” so long as any such transfer is not, in the reasonable judgment of the Lender, an attempt to circumvent the provisions of this Agreement, and provided further that the person or persons who hold the Development as the result of an Excepted Transfer shall be bound by the terms hereof in the event of a subsequent sale of the Development which is not an Excepted Transfer.

- (c) Within thirty (30) business days after receipt of the Option Notice, the Lender or its assignee shall pay \$1,000.00 to the Mortgagor (the date of such payment being the “Option Deposit Payment Date”). Failure by the Lender or its assignee to make such payment shall constitute a waiver of the option. This payment shall be deemed a partial payment of the purchase price for the Development as determined pursuant to Paragraph 4.04 below.
- (d) Within ten (10) business days after the Deposit Payment Date, Lender or its assignee shall notify the Mortgagor of the Qualified Appraiser chosen to provide the Qualified Appraisal (the “Notice of Appraiser”). Mortgagor shall within ten (10) business days after receipt of such notice approve or disapprove of such Qualified Appraiser, it being understood that (i) approval shall not be unreasonably withheld or delayed, (ii) any objection shall be limited to whether the proposed Qualified Appraiser meets the requirements of a Qualified Appraiser set forth above (it being understood that any objection reasonably determined by the Lender or its designee as going beyond such limitation shall be deemed to be a failure to respond) and (iii) failure to respond to the Notice of Appraiser within ten (10) business days after receipt shall constitute approval (the date on which the Qualified Appraiser is agreed to (or deemed to be agreed to) by Mortgagor being the “Appraiser Selection Date”).

- (e) The purchase price to be paid in connection with the exercise of the option (the "Purchase Price") will be the greater of (i) the Fair Market Value of the Development as of the proposed date of purchase or (ii) the outstanding principal balance of all debt secured by the Development as to which Lender was the lender or to which Lender consented at the time such debt was incurred. The cost of the Qualified Appraisal will be the responsibility of the Lender or its assignee.
- (f) The Lender or its assignee may notify the Mortgagor within one hundred fifty (150) days after Appraiser Selection Date of its intent to purchase the Development at the Purchase Price (the "Purchase Notice"). Such notice shall be given in writing and delivered by certified mail, postage prepaid, to Mortgagor at the address specified in its then-current correspondence with the Lender in matters relating to the administration of the Development. Failure to provide such notice within such time shall automatically constitute a waiver of the option. Closing will be held within ninety (90) days of the delivery of the Purchase Notice. Mortgagor will provide the purchaser with a special or limited warranty deed inclusive as to Mortgagor's ownership tenure of the real property, including the Development, and will execute any and all documents reasonably required by purchaser.

8. Agreement to Run with the Land.

This Agreement and the covenants contained herein shall bind, and the benefits shall inure to, respectively, Mortgagor (including each general, special or limited partner or member of Mortgagor, each of whom Mortgagor hereby represents to have authorized Mortgagor to bind by this Agreement, and, to the extent controlled by Mortgagor or any of the foregoing, each person who is "related" to any of the foregoing within the meaning of Section 103 of the Internal Revenue Code), its successors and assigns and all subsequent Mortgagors of the Development or any interest therein, and Lender and its successors and assigns.

9. Termination.

This Agreement and the covenants hereunder shall terminate and be of no further force and effect on the later of (a) the seventh (7<sup>th</sup>) anniversary of the date on which the Development received its final Certificate of Occupancy and (b) the third (3rd) anniversary of the date on which the Rental Revolving Loan Fund Promissory Note entered into in connection herewith is repaid in full.

10. Remedies.

In the event of any failure by the Mortgagor to comply in whole or in part with any requirement hereof, the Lender shall have the benefit of any and all remedies available at law or in equity.

11. No Contradictory Agreements.

Mortgagor warrants that it has not executed, and will not execute, any other agreement that has not been subordinated to this Agreement (except for the Mortgage), with provisions contradictory, or in opposition to the provisions hereof and that in any event the requirements of 10 V.S.A. § 624, as the same may be amended from time to time, are paramount and controlling as to the rights and obligations set forth, and shall supersede any other requirements in conflict therewith.

12. Notices.

Notices shall be deemed delivered when mailed certified mail, return receipt requested, to the Mortgagor at \_\_\_\_\_ with a copy \_\_\_\_\_ and to the Lender at 164 St. Paul Street, P.O. Box 408, Burlington, Vermont 05402-0408, (or to such other place as a party may designate in writing).

13. Severability.

The provisions of this Agreement shall be subject to those substantive restrictions and procedural limitations which may be lawfully imposed pursuant to Title 11, United States Code (The Bankruptcy Code). The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions hereof.

14. Amendments.

Any amendments to this Agreement must be in writing and recorded in the land records of the [City of] [Town of] \_\_\_\_\_.

15. Headings.

Headings used in this Agreement are used for convenience only and shall in no way alter or modify the text of the Agreement.

16. Counterparts.

This document may be executed in any number of counterparts and by the different parties in different counterparts, each of which, when executed, shall be deemed an original, and all of which, when taken together, shall be one and the same document.

NOW THEREFORE, Mortgagor and Lender have executed this Agreement as of the date set above.

**MORTGAGOR:**

\_\_\_\_\_

By: \_\_\_\_\_  
Its Duly Authorized Signatory

STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

At \_\_\_\_\_, in said County, this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally appeared \_\_\_\_\_, duly authorized signatory of \_\_\_\_\_, who acknowledged the above instrument, by him/her sealed and subscribed, to be his/her free act and deed and the free acts and deeds of \_\_\_\_\_.

Before me,

\_\_\_\_\_  
Notary Public State of Vermont  
Name: \_\_\_\_\_  
Commission Number: \_\_\_\_\_  
My commission expires \_\_\_\_\_

**LENDER:**  
VERMONT HOUSING FINANCE AGENCY

By: \_\_\_\_\_  
Its Duly Authorized Signatory

STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

At Burlington, in said County, this \_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared \_\_\_\_\_, duly authorized signatory of Vermont Housing Finance Agency, who acknowledged the above instrument, by him/her sealed and subscribed, to be his/her free act and deed and the free act and deed of Vermont Housing Finance Agency.

Before me,

\_\_\_\_\_  
Notary Public State of Vermont  
Name: \_\_\_\_\_  
Commission Number: \_\_\_\_\_  
My commission expires \_\_\_\_\_