

SAMPLE LOAN/DEBT AND SECURITY AGREEMENT

Consortium Grantees

11 Pages

You may modify this sample agreement as necessary to best serve your situation. However, be sure to include all relevant provisions, and be aware that the Agency will approve your draft more quickly if it deviates little from this sample. Be aware also that special provisions may be necessary to carry out the specific provisions of your particular Grant Agreement. You may wish to set forth in a cover letter your reasons for deleting provisions in this sample that are not applicable to your project.

VCDP LOAN/DEBT AND SECURITY AGREEMENT

This Loan and Security Agreement, by and between the Consortium comprised of <NAME ALL TOWNS/CITIES/VILLAGES of <GRANTEES>, Vermont (Lender) and <NAME OF BORROWER, BUSINESS OR nonprofit> (Borrower), <DEFINE BUSINESS OR NON-PROFIT>, with its principal place of business at <GIVE COMPLETE ADDRESS>, is effective this _____ day of _____, <YEAR> _____, the first day on which all parties hereto have executed it.

PART I DEFINITIONS

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

- 1) **"Agency"** means Vermont Agency of Commerce and Community Development.
- 2) **"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. A copy may be found in the VCDP Grants Management Guide; users are encouraged to consult VCDP staff for current language.
- 3) **"Borrower"** means <COMPLETE LEGAL NAME AND DESCRIPTION>.
- 4) **"Collateral"** means <DEFINE COLLATERAL BORROWER IS OBLIGATING>.
- 5) **"Consortium"** means the <NAME ALL TOWNS/CITIES/VILLAGES of GRANTEES>.
- 6) **"Conversion"** means changing the form of financing of a project, e.g. from bridge financing to permanent financing, that does not increase the amount of debt.
- 7) **"Debt"** means the Loan which this document secures, any and all renewals thereof, the indebtedness represented thereby, and any other indebtedness which is now or may hereafter become due and owed from Borrower to Lender.

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8) **"Encumbrances"** means those liens and encumbrances <IF ANY> described in Appendix 1 to this Loan Agreement, listed in the order of their priority. <IF APPLICABLE>

9) **"Grant"** means the Vermont Community Development Program grant awarded to the Consortium, the terms of which are reflected in the Grant Agreement.

10) **"Grant Agreement"** means Grant Agreement # ____/ __IG(__) between the Consortium and the State of Vermont, Agency of Commerce and Community Development, including all attachments and amendments thereto.

11) **"Grantee"** means the Consortium comprised of <NAME ALL TOWNS/CITIES/ VILLAGES OF GRANTEE> that has received the Grant, all of which are jointly and severally liable for the entire Grant.

12) **"HUD"** means the U.S. Department of Housing and Urban Development.

13) **"Lead Grantee"** means the <TOWN/CITY/VILLAGE of LEAD GRANTEE>.

14) **"Lender"** means the Consortium comprised of <NAME ALL TOWNS/CITIES/ VILLAGES of GRANTEES>.

15) **"Loan Agreement"** means this Loan and Security Agreement.

16) **"National Objective"** means the specific goals and purposes of this project set forth in Attachment B of the Grant Agreement, which must address the purposes set forth in Title I, section 101(c) of the Federal Housing and Community Development Act, 42 U.S.C. sections 5301 *et seq.*, and conform to procedures set forth in federal regulations at 24 C.F.R. section 570.483.

17) **"Personal guarantee"** means the guarantee of a principal of Borrower that, in the event of Borrower's default with respect to this Loan, the principal shall repay any overdue installment or installments, or the entire amount of principal and interest, that are due and payable. If the principal of Borrower is married, the principal's spouse shall also sign and be bound by the personal guarantee.

18) **"Personal property"** means the personal property owned or to be acquired by Borrower for the project as described in Appendix 2 hereto and to be described in the UCC-1.

19) **"Project"** means the project as described in Attachment B of the Grant Agreement.

20) **"Real property"** means the real property (including improvements) described in Appendix 3 to this Loan Agreement, subject to the Encumbrances described in Appendix 1 to this Loan Agreement.

21) **"Refinancing"** means the restructuring of all or a portion of a debt.

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22) **"Sale"** means the exchange, transfer or other disposition, in consideration of something of value, or series of related sales, exchanges, transfers or dispositions of all or substantially all of the real property, personal property or both, which transfers title and possession of the property. Sale includes but is not limited to a sale under foreclosure (including a non-judicial foreclosure sale pursuant to 12 V.S.A. section 4531a, et seq.) or a sale in lieu of or transfer pursuant to condemnation by a public authority.

23) **"Secretary"** means the Secretary of the Agency.

24) **"Security Interest"** means the UCC-1, evidencing the interest in the Personal Property, and the mortgage, evidencing the interest in the real property, given to Lender pursuant to this Loan Agreement.

25) **"Senior Debt"** means loan(s) or other financing arrangements for the Project from the Senior Lenders, including, without limitation, construction, bridge and take-out financing(s), which indebtedness will be secured by mortgage and security interests in the Project; the term "Senior Debt" includes, without limitation, any refinancing or other loan made for the Project, the proceeds of which are used to repay or discharge existing Senior Debt.

26) **"Senior lenders"**, if any, means <NAME OR NAMES OF LENDERS>.

27) **"Standby Agreement"** means an agreement signed by Lender, Borrower and all persons who own 20% or more of Borrower, or to whom Borrower owes a debt and who have agreed to forego repayment of that debt without prior written permission of Lender.

28) **"VCDP"** means the Vermont Community Development Program.

<ADD ANY OTHER TERMS APPLICABLE TO THIS DOCUMENT>

PART II CONSORTIUM

A) A VCDP grant to a consortium goes to all member municipalities. Each municipality is jointly and severally liable for performing all of grantees' and lender's obligations under the Grant Agreement and all related documents.

B) For efficiency of management, a lead grantee is named to serve as agent for the consortium. The lead grantee executes documents on behalf of the consortium, maintains the consortium's official files, and otherwise acts on behalf of the consortium.

C) However, the loan is from the grantees as a group; the lender is the consortium, not the lead grantee. The legislative body of each member municipality of the consortium must pass all resolutions required by the VCDP.

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D) The borrower may be located in a municipality different from the lead grantee. All documents related to a VCDP grant to a consortium that must be filed in land records are filed in the land records of the municipality in which the principal place of business, or the particular aided enterprise, of the borrower is located.

PART III CONSIDERATION AND INCORPORATION OF GRANT AGREEMENT

A) Lender makes this Loan to Borrower pursuant to, and as consideration for Borrower's activities as set forth in, the Grant Agreement, which is incorporated herein by reference, and a copy of which Borrower and Lender maintain in their respective files.

B) Borrower agrees to repay the Loan under the terms of Borrower's Promissory Note to Lender in the amount of _____ dollars (\$_____.__) dated _____, <in accordance with the revolving Loan Fund policies and procedures, if applicable>.

PART IV SURVIVAL OF THIS LOAN/DEBT AGREEMENT

A) This Loan Agreement shall survive the closing contemplated hereunder, and all obligations pursuant to this Agreement of each party hereto shall continue until the Loan has been repaid in full.

PART V PURPOSE OF THE LOAN/DEBT

A) The purpose of this loan shall be to support the project and the achievement of the National Objective, as described in Attachment B of the Grant Agreement. The proceeds of this Loan shall be used solely for Borrower's specific activities in connection with the Grant.

PART VI TERMS OF THE LOAN/DEBT

A) This Loan is in the amount of _____ dollars (\$_____.00), at ____% interest per year, compounded <annually, monthly>, for a period of ____ years.

B) Payments of principal and interest in the amount of \$_____.__, payable on the _____ day of each <MONTH/OR IF ANNUAL, ON THE DAY/MONTH OF EACH YEAR>, shall begin on _____, <YEAR>_____, and the Loan shall be fully repaid no later than <DATE>_____.

<C) Deferred payment loan: spell out the exact terms, including:

- 1) whether interest accrues during the period of deferred payments;
- 2) whether there are any payments during period of deferral, such as either principal or interest only, but not both;

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- 3) dates and amounts of payments, including month and year when they begin and end;
- 4) whether, and if so, under what conditions (such as failure to use for original purpose), Lender can unilaterally terminate deferral of loan and/or declare loan to be in default (coordinate with default provisions in Part XV of this Loan Agreement);
- 5) result of termination of deferral, such as total principal and interest due, and any advances by lender, becoming due and payable in full within x period of time.>

PART VII PREPAYMENT

A) Borrower may prepay any portion or all of this Loan at any time without penalty. Any amounts paid in excess of the regular payment due shall be applied to reduce the principal amount of the Loan.

PART VIII SECURITY

A) Borrower hereby grants to Lender as security for this loan:

- 1) <a mortgage deed of approximately even date herewith mortgaging the real property>;
- 2) <a security interest in the personal property>;
- 3) <the personal guarantee of _____ and _____>;
- 4) <a standby agreement if applicable>

PART IX PRIORITY

A) The priority of each security interest set forth above shall be as follows:

<SET FORTH IN ORDER OF PRIORITY ALL SECURITY INTERESTS WITH RESPECT TO THE REAL PROPERTY AND THE PERSONAL PROPERTY, RESPECTIVELY, INCLUDING ALL SENIOR SECURITY INTERESTS AND ALL SECURITY INTERESTS INCIDENT TO THIS PROJECT.>

PART X LENDER'S COVENANTS

A) LOAN: Lender shall, in accordance with the terms and conditions of the Grant Agreement, make this Loan to Borrower.

B) DISBURSEMENTS: Disbursements shall be made up to the loan maximum, upon request by Borrower, outlining the purposes for which the funds shall be used, so long as the request is in accordance with applicable federal and State law, regulation and procedure, and the Grant Agreement.

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C) **PAYMENTS BY LENDER:** Lender shall have the right, in Lender's sole discretion, to make payments to protect this Loan. All such payments shall be added to the principal of this Loan, and interest at the rate of this Loan shall accrue thereon from the date the payment is made.

PART XI BORROWER'S REPRESENTATIONS

A) **VERMONT BUSINESS:** Borrower certifies that, as of the date of execution of this Agreement, Borrower has secured a currently effective certificate of authority to do business in the State of Vermont, a copy of which Borrower has provided to Lender.

B) **OTHER RESOURCES:** Borrower hereby certifies that Borrower has provided to Lender documentation of firm commitments of the Other Resources identified in Attachment B of the Grant Agreement, including the purpose for which they are to be used and any conditions attached to their expenditure.

C) **CERTIFICATIONS:** Borrower hereby makes the following additional certifications, in form satisfactory to Lender, that, as of the date of execution of this Agreement:

1) Borrower is in good standing with respect to, or in full compliance with a plan to pay, any and all federal, state and local taxes.

2) Borrower is current on or is in full compliance with a plan to pay, any and all debt financing.

3) there are no liens, judgments or other encumbrances, other than those recorded in the land records of Grantee, or disclosed to the Agency prior to execution of the Grant Agreement, or disclosed no later than at the execution of this Loan and Security Agreement.

4) Borrower's representations with respect to the financial and operational aspects of the business in the written documents previously provided to the Lender remain accurate and not misleading.

PART XII BORROWER'S COVENANTS

A) **NATIONAL OBJECTIVE:** Borrower commits to achieve the National Objective as identified in Attachment B of the Grant Agreement, and to maintain documentation as may be required by the Grant Agreement and otherwise necessary to clearly demonstrate that Borrower has achieved the National Objective.

B) **NOTICE OF CHANGE:** Borrower, its successors and assigns, for a period of five years from the Completion Date set forth in the Grant Agreement, shall give timely notice to the Grantee and to the Agency should there be the anticipation of a sale of all or a portion of the facility assisted using VCDP funds to any person or entity who will use it for any changed purpose, of discontinuance of operation of all or a portion of the facility, or of material alteration or expansion of its purpose of function. All such actions shall constitute a default, in which case Grantee may exercise all options available at law as may be required to protect or recapture the funds made available through the VCDP.

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C) **INSURANCE:** For the duration of the Loan, or for a period beginning with the execution of this Loan and Security Agreement and continuing for at least 5 years after the Completion Date, whichever is longer, Borrower shall 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 Lender, and shall furnish Lender with the satisfactory evidence of such insurance.

D) **PERMITS:** Borrower shall 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. Borrower has identified all permits necessary for the project, and has secured those necessary to commence activities.

E) **EMPLOYMENT AGREEMENT:** Borrower shall enter into and comply with the terms of an Employment Agreement if required by the Grant Agreement.

F) **REPORTS:** Borrower shall submit financial and operational reports to Lender as Lender may reasonably request, and Lender shall have access to the records of the business during normal business hours or as arranged in advance. Borrower's failure to provide such information as requested within <LENDER SETS TIME FRAME, OR STATES AMOUNT OF TIME CONSISTENT WITH LENDER'S LOAN POLICY, IF ANY> and/or the provision of information that appears to be inaccurate or incomplete, unless remedied within 15 days, shall constitute an event of default.

G) **NO FINANCIAL CHANGE:** Borrower shall make no material change in the financial or operational aspects of the business, specifically including but not limited to the borrowing of additional money, the granting of additional liens significantly altering the plan for capital expenditures, salaries of partners or employees, or Borrower's product or service, without the prior written consent of Lender, except as otherwise provided for in this Loan Agreement.

H) **OTHER LIENS AND ENCUMBRANCES:** Borrower shall use no proceeds of this Loan to discharge any lien or other encumbrance.

I) **REFINANCING:** Borrower shall not refinance the loan or restructure Borrower's debt without the prior written approval of Lender. 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.

J) **TITLE INSURANCE:** Promptly after the closing Borrower shall provide Lender with proof that Borrower has a policy for title insurance in no less than the sum of the full amount of this Loan and the amounts of all mortgages, liens and other encumbrances having a higher priority than this Loan.

PART XIII PASS THROUGH PROVISIONS

A) In addition to binding Borrower, the following provisions shall be included in all contracts between Borrower and any other contractor related to the project, and shall bind all such other contractors.

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B) **CONFLICT OF INTEREST:** Borrower agrees to comply with the requirements of Section XV of the Grant Agreement and *Agency Procedures*, Chapters 9 and 10, Section 10.3.

1) In addition, in order to avoid both a conflict of interest and the appearance of undue influence, no officer of Borrower nor any member of Borrower's Board of Directors employed by Lender or holding any elective or appointive municipal office in Lender shall participate in any discussions with any decision makers of Lender or 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 set forth in the Grant Agreement, or

b) while the loan is outstanding, or

c) during a person's tenure with Lender and for one year thereafter.

2) No person described in paragraph 1 of this section, or 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 1.

C) **RETENTION OF AND ACCESS TO RECORDS:** Borrower agrees to comply with the requirements of Section XX of the Grant Agreement, and the requirements of *Agency Procedures*, Chapter 3.

1) Financial records, supporting documents, statistical records, and all other records pertinent to this VCDP project shall be retained in accordance with *Agency Procedures, Chapter 3*.

2) 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 (or any subrecipients) pertaining to the receipt and administration of Vermont Community Development Program funds, as may be necessary to make audits, examinations, excerpts, and transcripts.

D) **EQUAL OPPORTUNITY:** Borrower agrees to comply with the requirements of Section XVI of the Grant Agreement, Title 21 V.S.A. Chapter 5, Subchapter 6 (495-495h), relating to fair employment practices, and Title 9 V.S.A. Chapter 139, Sections 4503 and 4504, relating to fair housing practices.

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E) INTERPRETATION: This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont and the laws of the United States of America, where applicable.

PART XIV MISCELLANEOUS PROVISIONS

A) REVISIONS AND AMENDMENTS: Revisions and amendments to this Loan Agreement shall only be made pursuant to Section XXV of the Grant Agreement. All amendments to this Loan Agreement shall be reduced to writing and shall be executed by all parties to the document. Borrower acknowledges that the Agency may require an amendment to this Agreement to ensure, or enhance the possibility of, Borrower'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 Subsections VIII of 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) NOTICE ADDRESSES: Borrower and Lender shall give one another notice pursuant to this Agreement at the addresses set forth below for each, and shall keep the other informed in any change of address for notice purposes:

Lender: _____

Borrower: _____

<LIST ANY OTHER CONDITIONS ON THE LOAN OR GENERAL CONDITIONS OR PROVISIONS>

PART XV DEFAULT AND REMEDIES

A) DEFAULT: If any of the following events of default shall occur without being cured within <NUMBER OF DAYS> days from the date that written notice of such default is received by Borrower from Lender, the Debt secured by this Loan Agreement shall immediately become due and payable <LENDER SETS TIME FRAME, OR OTHER LANGUAGE CONSISTENT WITH LENDER'S LOAN POLICY, IF ANY>.

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B) The following events shall constitute events of default:

- 1) failure to comply with all applicable provisions of the Grant Agreement;
- 2) failure to perform any of Borrower's obligations under this Loan Agreement;
- 3) failure to perform as required by any document that secures this Loan.

<ADD ANY OTHER SPECIFIC DEFAULT PROVISIONS HERE.>

C) REMEDIES: If Borrower fails to pay the Debt or cure any breach or default prior to the expiration of the <# DAYS> day notice period, Lender may invoke foreclosure of this Loan Agreement, or any other remedy allowed by the Grant Agreement, this Loan Agreement, or any other document related to this Loan, or by law.

D) REMEDIES CUMULATIVE: All remedies provided in this agreement are distinct and cumulative to any other right or remedy under this agreement, or otherwise at law, and may be exercised concurrently, independently or successively.

E) FORBEARANCE NOT A WAIVER: Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

PART XVI APPROVAL:

A) This Agreement, and all amendments hereto, must be approved by the Agency prior to execution. Performance hereunder is subject to and suspended until such approval.

IN WITNESS WHEREOF this VCDP Loan and Security Agreement is executed in the place and on the date noted for each party.

BY LENDER:

THE <TOWN/CITY VILLAGE> of <LEAD GRANTEE> for the Consortium

Authorized Signature

Place of execution

Typed name and title

Date

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BY BORROWER:

Typed name of business or nonprofit

Authorized Signature

Place of execution

Typed name and title

Date