**SAMPLE VCDP LOAN AND SECURITY AGREEMENT**Single Grantee

[**You may modify this sample agreement as needed, but be sure to include all relevant provisions. Note that additional provisions may be necessary to carry out the specific provisions of your particular Grant Agreement.]**This Loan and Security Agreement, by and between the  of      , Vermont (Lender or Grantee) and the       (Borrower), a organization incorporated under the laws of Vermont, with its principal place of business at      , Vermont, is effective this       day of , , **1. DEFINITIONS.** 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 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 or online at <http://accd.vermont.gov/community-development/funding-incentives/vcdp/grants-management-guide>.
3. **"Collateral"** means <IDENTIFY COLLATERAL BORROWER IS OBLIGATING>.
4. **“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.
5. **"Debt"** means the loan from the Lender to the Borrower made pursuant to this VCDP Loan and Security Agreement and evidence by the Note.
6. **“Grant”** means the Vermont Community Development Program grant awarded to the  of       the terms of which are memorialized in Grant Agreement #     , including all attachments and amendments thereto.
7. **"HUD"** means the U.S. Department of Housing and Urban Development.
8. **“National Objective”** means the specific goals and purposes of this project set forth in Attachment A of the Grant Agreement.
9. **“Note”** means the $\_\_\_\_\_ promissory note executed by the Borrower and delivered to the Lender as evidence of the Debt.
10. **“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.
11. **"Project"** means the project as described in Attachment A of the Grant Agreement.
12. **"Sale"** means the transfer, exchange, or other disposition, in consideration of something of value, 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.
13. **“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.
14. **"VCDP"** means the Vermont Community Development Program.
15. <ADD ANY OTHER TERMS APPLICABLE TO THIS DOCUMENT>

**2. CONSIDERATION AND INCORPORATION OF GRANT AGREEMENT**

1. 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.
2. 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>.

**3. SURVIVAL OF THIS LOAN AGREEMENT.** 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.

**4. PURPOSE OF THE LOAN.** The purpose of this loan shall be to support the Project and the achievement of the National Objective. The proceeds of this Loan shall be used solely for Borrower’s specific activities in connection with the Project.

**5. TERMS OF THE LOAN**

1. This Loan is in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dollars ($\_\_\_\_\_\_\_.00), at \_\_% <simple> interest per year, <or compounded annually, monthly>, for a period of \_\_\_ years.
2. 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> \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
3. 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;

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 XIV 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.>

1. 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.

**6. 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 owned or to be acquired by Borrower for the project, to be described in a UCC-1 >;
3. <the personal guarantee of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_>;

1. <a standby agreement if applicable>

B. The priority of each security interest set forth above shall be as follows:

[List all security interests with respect to the real property and the personal property in order of priority, including all senior security interests and all security interests incident to this project.]

**7. LENDER’S COVENANTS**

1. LOAN: Lender shall, in accordance with the terms and conditions of the Grant Agreement, make this Loan to Borrower.
2. 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.
3. 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.

**8. BORROWER’S REPRESENTATIONS**

1. VERMONT BUSINESS: Borrower certifies that, as of the date of execution of this Agreement, Borrower hasprovided to Lender a copy of a currently effective certificate of authority to do business in the State of Vermont.
2. 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.
3. CERTIFICATIONS: Borrower hereby makes the following additional certifications, in form satisfactory to Lender, that, as of the date of execution of this Agreement:
4. 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;
5. Borrower is current on or is in full compliance with a plan to pay, any and all financial obligations;
6. There are no liens, judgments or encumbrances, other than those of record, 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; and
7. Borrower’s representations with respect to the financial and operational aspects of the business in the written documents previously provided to Lender remain accurate and not misleading.
8. Borrower is not listed in the Exclusions portion of Performance Information in the System for Award Management (“SAM”) at [www.sam.gov](http://www.sam.gov); nor named on the State’s debarment list at <http://bgs.vermont.gov/purchasing-contracting/debarment>.

**9. BORROWER’S COVENANTS**

1. NATIONAL OBJECTIVE: Borrower commits to achieve the National Objective as identified in Attachment B of the Grant Agreement, and to maintain such documentation as may be required by the Grant Agreement and otherwise necessary to clearly demonstrate that Borrower has achieved the National Objective.
2. SECTION 3: If applicable, Borrower shall comply with Section 3 requirements in accordance with 24 CFR 135 to provide economic opportunities in connection with this project, to the greatest extent feasible, to low and very low income persons residing within the area in which the project is located and to Section 3 businesses. Section 3 requirements shall be included in bid documents, and the “Section 3 Clause” shall be attached to all contracts executed in connection with this project. For more information and the Section 3 Clause see [HUD Regulations](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3).
3. 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.
4. 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 or function. All such actions shall constitute a default, in which case Grantee may exercise all options available at lawas may be required to protector recapture the funds made available through the VCDP.
5. ENVIRONMENTAL REVIEW: Borrower shall comply with all conditions set forth in the Environmental Review Release letter for the Project, and shall maintain and/or upload documentation demonstrating compliance, as required by the Grant Agreement.
6. 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.
7. EMPLOYMENT AGREEMENT: If required by the Grant Agreement, Borrower shall enter into and comply with the terms of an Employment Agreement.
8. BENEFIT AND PERFORMANCE AGREEMENT: If required by the Grant Agreement, Borrower shall enter into and comply with the terms of a Benefit and Performance Agreement.
9. CLOSEOUT AGREEMENT: If required by the Grant Agreement, Borrower shall enter into and comply with the terms of a Closeout Agreement.
10. 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.
11. 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.
12. OTHER LIENS AND ENCUMBRANCES: Borrower shall use no proceeds of this Loan to discharge any lien or other encumbrance.
13. 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.
14. 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.

**10. PASS THROUGH PROVISIONS**. 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.

1. CONFLICT OF INTEREST: Borrower agrees to comply with the requirements of Section VII(B) of Attachment D to the Grant Agreement, and *Agency Procedures*, Chapter 9 and Chapter 10, Section 10.3
2. In addition, in order to avoid a conflict of interest or the appearance of undue influence, if any officer of Borrower or a member of Borrower’s Board of Directors is employed by Grantee or holds an elective or appointive municipal office in Grantee, such person shall not participate in any discussions regarding, 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:
	* 1. from the date of execution of this Agreement until five years after the Completion Date set forth in the Grant Agreement, or
		2. during a person’s tenure with Grantee and for one year thereafter.
3. 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.
4. RETENTION OF AND ACCESS TO RECORDS: Borrower shall comply with the requirements of Section XIV of Attachment D to the Grant Agreement and *Agency Procedures,* Chapter 3.
5. 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.

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

1. LABOR and EQUAL OPPORTUNITY: To the extent applicable, Borrower will administer and enforce the Davis‑Bacon Act [40 USC 276a et seq.]; the Federal Fair Labor Standards Act [29 USC 201 et seq.]; and the Contract Work Hours and Safety Standards Act [40 USC 327‑333]. Borrower will comply with the Copeland Anti‑kickback Act of 1934, [18 USC 874 and 40 USC 276c]; Executive Order 11246 (Equal Employment Op­portunities) as amended by Executive Orders 11375 and 12086 and the regulations issued pur­suant thereto [ 41 CFR 60]; and Section 3 of the Housing and Urban Develop­ment Act of 1968 [12 USC 1701u] as amended, (equal employment and business opportunities) and the regulations at 24 CFR 135. Borrower will also comply with the requirements of Section X of Attachment D to the Grant Agreement, and the requirements of 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.
2. ENVIRONMENTAL: Borrower will comply with the Clean Air Act (42 U.S.C. 7401-7671q and the Federal Water Pollution Contract Act (33 U.S.C. 1251-1387), as amended. Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
3. LOBBYING: Borrower shall not use Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352 (Byrd Anti-Lobbying Amendment).
4. 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.

**11. MISCELLANEOUS PROVISIONS**

1. REVISIONS AND AMENDMENTS: Revisions and amendments to this Loan Agreement shall only be made pursuant to Section XIX of Attachment D to 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.
2. ENVIRONMENTAL REVIEW: Pursuant to Subsection III(C) of Attachment D 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.
3. 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.
4. 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]

**12. DEFAULT AND REMEDIES**

1. DEFAULT: If any of the following events of default shall occur without being cured within \_\_ days from the date that written notice of such default is received by Borrower from Lender, the Debt shall immediately become due and payable <LENDER SETS TIME FRAME OR STATES AMOUNT OF TIME CONSISTENT WITH LENDER’S LOAN POLICY, IF ANY>.
2. 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.
	4. <ADD ANY OTHER SPECIFIC DEFAULT PROVISIONS HERE.>
3. 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.
4. REMEDIES CUMULATIVE: All remedies provided in this agreement are distinct and cumulative to any other right or remedy under this agreement, or otherwise available by law, and may be exercised concurrently, independently or successively.
5. 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.

IN WITNESS WHEREOF this Agreement is executed at the place and on the date noted for each party.

BY LENDER:

THE <TOWN/CITY VILLAGE> of <GRANTEE>

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signature Place of execution

Name and title Date

BY BORROWER:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signature Place of execution

Name and title Date