

**Standard Closing Conditions
for
ARPA-SFR Housing Projects**

(Revised 3/16/2022)

Standard ARPA-SFR Conditions

1. This project is subject to the requirements of section 602 of the Social Security Act, as added by section 9901 of the American Rescue Plan Act (“ARPA Act”). The ARPA Act established the Coronavirus State Fiscal Recovery Fund (“ARPA” fund). The Grant/Loan Agreement may be amended, and conditions may be added or changed, as necessary to comply with amendments to the ARPA Act, the regulations and/or Treasury guidance.
2. Developer agrees to comply with any prevailing wage requirements associated with an ARPA award, as required by the State of Vermont.
3. Developer shall provide VHCB with copies of all documents relevant to the amount and conditions of this award. Developer shall obtain commitments for all other funds necessary to complete the project, and demonstrate to the satisfaction of VHCB that the committed funds make the project financially feasible. Any changes in the budget for the project must be reviewed and approved by VHCB prior to closing. VHCB reserves the right to reduce or change the terms of this award if other financing terms change or if Developer receives additional funding for the project that was not included in the budget submitted prior to VHCB Board action, or if total development cost is less than anticipated at the time of VHCB Board action. If the VHCB approved budget for the project shows a primary loan from a bank or other lending institution, VHCB will subordinate its interest in the project to documents securing the primary loan, provided that the primary lender shall execute a subordination and priority agreement approved by VHCB.

If community development funds are being provided to the project, VHCB shall review and approve the terms and conditions of such funding, including reviewing and approving the terms of the CDBG Note and Mortgage, so that repayment, if any, is consistent with the VHCB approved budget for the project and the VHCB Housing Subsidy Covenant. In addition to the foregoing, VHCB approval of the terms and conditions of the CDBG Note shall not be unreasonably withheld or conditioned provided that the amount of loan payments to VHCB is greater than or equal to the CDBG loan payments to the municipality. The VHCB Housing Subsidy Covenant and all VHCB Mortgages (including but not limited to HUD EDI Special Purpose; HOME Program; NSP; and Lead Program) shall have priority over any mortgages securing community development or similar public funding for the project.

4. If applicable, Developer shall maintain records that demonstrate compliance with the VHCB Policy Position on Lead-Based Paint and Other Toxic and Hazardous Materials by project completion. Documentation shall be made available to VHCB upon request.

5. Prior to disbursement, Developer shall confirm that the project as proposed complies with all applicable federal, state and local statutes, codes, ordinances and regulations, including those relating to environmental assessment, historic preservation (the Secretary of Interior's Standards for Rehabilitation, 36 CFR Part 67, as well as, archaeology), and access by persons with physical disabilities.
6. Prior to disbursement, Developer shall demonstrate compliance with the VHCBC Policy on the Conservation of Energy and Water in Residential Properties. If an energy audit or analysis has been undertaken, Developer shall indicate that a contact has been made with the energy consultant after issuance of the report to discuss the implementation of findings and recommendations in the report, and shall inform VHCBC staff regarding the result of that conversation.
7. Developer shall establish a written tenant selection policy in compliance with the VHCBC funding requirements and submit a copy to VHCBC prior to closing for staff review and approval. At a minimum the written tenant selection policy shall include, but not be limited to the following criteria:
 - Is consistent with VHCBC's statutory goals of providing perpetual affordable housing;
 - Is reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease;
 - Provides for the selection of tenants from a written waiting list, in so far as is practicable; and,
 - Provides for prompt written notification of rejected applicants with grounds for said rejection.
8. Developer's attorney shall submit a preliminary title opinion or title insurance binder and drafts of all legal documents relating to the project for review by VHCBC counsel. Prior to disbursement, any issues involving the title or legal documents shall be resolved to the satisfaction of VHCBC.
9. At closing, Developer shall execute the VHCBC Housing Subsidy Covenant. This Covenant shall be recorded in the appropriate Land Records and shall have priority over any mortgages securing community development or similar public funding for the project.

NOTE: If this project receives funding from the HOME Program administered by VHCBC, the Housing Subsidy Covenant will also include the HOME Program affordability requirements. To the extent that the HOME requirements are more restrictive than the VHCBC requirements, the HOME requirements shall control for the duration of the HOME affordability period.
10. Within thirty (30) days after closing, Developer shall provide a final, updated title opinion or a title insurance policy reflecting the recording and approved priority of the VHCBC Housing Subsidy Covenant and other recorded documents relating to the project.
11. Any signs erected on the property that list sponsors or funding sources for the project shall include the Vermont Housing and Conservation Board.

12. Developer shall make every reasonable effort to fully fund, on a monthly basis, all replacement and other reserves shown in the pro forma operating budget for the project which has been approved by VHCB. Replacement, operating and any other reserves shown in the development budget or pro forma operating budget which have been approved by VHCB shall not be used for purposes other than the purposes designated in said budgets without the prior consent of VHCB. Project reserves and other project obligations shall be fully funded as required by VHCB prior to the payment of distributions to the Developer, and/or its successors.
13. Refinancing or incurring additional debt on the project shall be prohibited unless authorized by the VHCB Board Chair. In addition, unless Developer obtains the prior written consent of VHCB staff, (a) the property or properties involved in the project funded with this award shall not be cross-collateralized with other property or used as additional collateral for financing involving other property; (b) except as provided in subpart (c), income from the project shall be used exclusively for "Project Costs" as defined in the Housing Subsidy Covenant; and (c) unless all Project Costs have been paid in full, income from the project shall not be used for expenses of other projects or for Developer's organizational expenses.
14. Developer shall follow VHCB Procurement Guidelines and Disbursement Procedures unless an alternative procurement plan is submitted and approved by VHCB staff. Developer shall, upon request, make available to VHCB for review all procurement documentation.
15. This award may be secured by a Mortgage Deed, which will provide that if the Developer at any time does not comply with all provisions of the VHCB Grant conditions and/or VHCB Housing Subsidy Covenant, VHCB shall have the right to require immediate repayment of the award along with a percentage of any appreciation in the value of the property. The Mortgage Deed shall be prepared by VHCB counsel.
16. Prior to the disbursement of funds, Developer shall provide VHCB staff reasonable justification for the property tax estimate carried in the operating pro forma. Developer shall inform VHCB staff regarding the municipality's appraisal practice with regard to properties subject to Housing Subsidy Covenants. In situations where the municipality has no experience with Housing Subsidy Covenants, VHCB staff may require that the Developer discuss with the municipality a post-construction appraisal value of the housing project which considers the effect of the Housing Subsidy Covenant and/or the use of the tax stabilization agreements which fix property taxes so that they are consistent with the affordability and economic viability of the project.
17. Prior to disbursement, Developer shall provide VHCB staff with an updated Operating Budget and 20 year cash flow projection. Such budget and projections shall be completed by the property manager and shall reflect the most realistic operating information and performance assumptions available.
18. Throughout the development process, Developer shall notify and consult with VHCB staff prior to making any major changes to the project including but not limited to project concept and scope, design and amenities, budget, unit breakdown and income targeting.

19. In order to facilitate timely input to design team and maintain VHCB oversight of project design, partially complete design drawings (60% - 90% complete) shall be forwarded for VHCB staff input and approval prior to completion of the design phase of the project. A minimum of two full weeks shall be provided to VHCB staff for this review process. In addition, final 100% design drawings shall also be provided for VHCB staff review and approval at least 2 weeks prior to going out to bid. **VHCB staff will make every effort to expedite the review of final drawings but the length of time involved will depend on the degree to which there are major changes from the 60-90% drawings.**
20. Prior to closing, Grantee shall obtain construction bids that demonstrate to the satisfaction of VHCB that projected construction costs are within the approved budget for the project.
21. Developer shall utilize ARPA funds only for eligible activities. ARPA funds shall be disbursed in accordance with the budget as approved by VHCB.
22. VHCB may withhold a minimum of 10% of funds from all construction contracts pending completion of the work.
23. Developer shall submit written requests for disbursements of ARPA funds, along with a statement or schedule allocating the amount requested among the line items shown in the approved budget. Each request shall include copies of requisitions and invoices for the items covered by the request.
24. At the time of the initial disbursement of ARPA funds, Developer shall provide VHCB copies of the following certifications executed by the Developer: (i) Certification for Contracts, Grants, Loans, and Cooperative Agreements; (ii) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion; and, (iii) Disclosure of Lobbying Activities. If no lobbying has been conducted, this must be written somewhere on the Disclosure of Lobbying form.
25. If applicable, and prior to final disbursement of ARPA funds or upon request by VHCB staff, Developer shall submit a copy of the State or Town/City's certificate of occupancy and/or a copy of the State or Town/City's final building inspection report. If there are any outstanding issues in the report, Developer shall submit documentation that those issues have been adequately addressed.
26. By signing this Agreement, Developer hereby certifies that it is in good standing with respect to all taxes due to the State of Vermont.

***NOTE: IF YOUR PROJECT IS A TAX CREDIT RENTAL HOUSING PROJECT, IN ADDITION TO THE STANDARD CONDITIONS SET FORTH ABOVE, YOU ALSO NEED TO ADDRESS THE FOLLOWING STANDARD CONDITIONS:**

1. The partnership or limited liability company agrees, both jointly and severally with Developer, to comply with and perform all obligations of Developer in connection with this award.
2. If this award consists of or includes a loan, the partnership or limited liability company shall execute an assumption agreement approved by VHCB and VHCB shall release Developer from any obligation to repay the loan.
3. Developer may convey the project to a limited partnership or limited liability company, provided that:
 - (a) Developer or a subsidiary or affiliate controlled by Developer shall be a general partner in the partnership or a manager member of the limited liability company;
 - (b) the partnership or limited liability company shall enter into development services and financial services agreements with Housing Vermont or another syndicator approved by VHCB, which agreements must be approved by and shall be enforceable by VHCB;
 - (c) the partnership or limited liability company shall execute an Addendum to Loan Agreement pursuant to which the owner agrees, both jointly and severally with Developer, to comply with and perform all obligations of Developer in connection with this award;
 - (d) the partnership or limited liability company shall be subject to the VHCB Housing Subsidy Covenant;
 - (e) if this award includes a loan, the partnership or limited liability company shall execute an assumption agreement approved by VHCB and VHCB shall release Developer from any obligation to repay the loan; and
 - (f) the partnership or limited liability company shall execute an option to purchase, the form and content of which must be approved by VHCB, granting to Developer, VHCB and any other optionees approved by VHCB, an option to purchase the project at the end of the tax credit compliance period.
 - (g) VHCB shall review and approve all documents related to the partnership or limited liability company, including, but not limited to, the Partnership Agreement.
4. Developer shall use every reasonable effort at the end of the tax credit compliance period to either exercise its option to purchase the project or cause the option to be exercised by an entity that is qualified and intends to maintain the project as affordable housing in accordance with the VHCB Housing Subsidy Covenant. Upon exercise of the option by Developer or another qualified entity, all replacement, operating and any other reserves set aside for use in connection with the project shall be transferred to the entity that exercises the Option and shall be maintained by such entity for the intended purposes.

5. Prior to disbursement, Developer shall provide a plan for VHCB review and approval detailing (i) how Developer will assemble the funds necessary to purchase the project from the partnership or limited liability company (at the approved option or buyout price); (ii) the effect, if any, on project costs after purchase from the partnership or limited liability company and the Developer's ability to comply with the VHCB Housing Subsidy Covenant; and (iii) whether project funds (including net cash) or reserves can be made available for this purpose.
6. When more than one limited partnership or limited liability company will own the project, all references above to the project budget or final development financial report shall mean a master budget for the project as a whole, as well as, separate budgets for each limited partnership or limited liability company. Budgets shall include sources and uses of funds, rent charts, operating budget, multi-year cash flow, and any other information required or requested by VHCB staff.
7. If all project reserves and other project obligations have been met as required by VHCB and if the Developer, its General Partner/s or their Successors receive for three consecutive years distributions such as incentive management fees, asset management fees, or return-on-equity equal to more than 20% of the operating expenses, plus reserves, plus debt service, then payments of principal on the VHCB Loan shall commence and be in an amount equal to 20% of the distribution paid to the Developer, its General Partner/s and/or their Successors.

REPORTING REQUIREMENTS FOR ALL PROJECTS

The Developer shall submit reports to the Vermont Housing and Conservation Board within one year of the completion of the project and as requested, in subsequent years by the Grantor. The reports shall include the following:

1. A final sources and uses statement for the project;
2. An occupancy report including all the units in the project. The report shall include the following for each unit: the unit number, the gross rent charged for the unit, the household size, the household income and the amount of rental assistance provided, if any, and demographic data on the head of household to include gender, race, ethnicity, and homeless status;
3. An independent financial audit;
4. A Capital Needs Assessment;
5. At least six photographs from 2 or 3 angles and including front view, full frame, from the street and any historical details or accessibility modifications;
6. A complete list of names and addresses of contractors who performed work on the project including appraisers, engineers, surveyors, architects, construction firms, electricians, plumbers, painters and so on.