**Vermont Housing Finance Agency (VHFA)**

# Housing Credit Program – Year 15 Policy

Rev. January 2018

# Contents



Vermont Housing Finance Agency (VHFA) has developed this document as guidance for development owners on their options at the end of the 15-year compliance period of affordable housing properties.

## Part One

## Introduction

The Housing Credit Program has provided a mechanism for financing the construction, acquisition and rehabilitation of affordable rental housing since 1987. Affordability requirements and terms have been amended over the years, reflecting a public policy that endorses perpetual affordability. Housing developments that were allocated Housing Credits (HC) prior to 1990 were required to be maintained for low-income use for a period of 15 years. Developments that received HC allocations from 1990 through 1998 have Extended Use Period requirements that lengthen the initial 15-year Compliance Period by another 15 years. Developments that received HC allocations of “ceiling" (also known as “9%” or “allocated” but hereinafter referred to as “ceiling”) credit from 1998 until present have Extended Use Period requirements in perpetuity. After 2002, all developments receiving Housing Credit allocations have no “opt out” provisions.

Beginning in the 14th year, owners of developments that received HC allocations from 1990 through 2002 should be considering the options available to them. These options include: (1) maintaining a development as affordable housing for the Extended Use Period (15 years past the original 15 year Compliance Period or in perpetuity under the terms of the original Housing Subsidy Covenant) with modified (more relaxed) compliance monitoring procedures; (2) selling or transferring the development to an entity that is exercising a Right of Refusal; or (3) selling the development through the Qualified Contract process (defined on page 27).

### (1) Maintaining the Development as Affordable Housing

For owners desiring to maintain their developments as affordable housing and continue the low-income restrictions for the Extended Use Period, and for purchasers of HC developments by exercising a right of first refusal, there are modified compliance monitoring procedures, as set out in Part Two of this policy. Also, in the event a project makes it through the Qualified Contract process and is acquired without a new allocation of HC, these modified compliance monitoring procedures in Part Two will apply.

### (2) Right of Refusal

For owners who originally provided a Right of Refusal to a nonprofit entity or entities, there is a price formula defined in the Qualified Allocation Plan, as follows:

The Right of Refusal price must be the higher of: 1) the same terms and considerations contained in an offer of a third party; 2) the minimum purchase price as described in Section 42(i)(7)(B) of the Internal Revenue Code[1]; or 3) the target return provided in the Limited Partnership Agreement, or other document provided to the allocating agency in a satisfactory form. The Right of Refusal can allow the holder of the Right to make the offer on the property that triggers the Right of Refusal. VHFA staff will review documentation regarding the purchase price of a development being transferred through a Right of Refusal. HC restrictions will remain with the development during the Extended Use Period, however the compliance monitoring provisions will be modified as described in Part Two of this policy. Owners who purchase a development through the Right of Refusal after the initial 15 year Compliance Period are not eligible to then sell the development under the Qualified Contract process.

### (3) Qualified Contract Process

Owners who are no longer interested in owning or retaining the affordable use restrictions on a development may elect to “opt out” of the HC program. After the end of the 14th year of the Compliance Period, the owner must notify VHFA in writing that they want to pursue the qualified contract process, with a complete application (See Qualified Contract Notification Letter). Owners are strongly encouraged to contact their legal counsel and accountant to determine if they are eligible and to be advised as they proceed through the qualified contract process. **Owners are allowed only one opportunity to pursue this process** per development, so it is recommended they be familiar with the process, and to utilize legal and accounting expertise.

VHFA will have one year to present a purchaser for a development pursuant to a Qualified Contract, and if VHFA is unable to do so, the Extended Use Period will terminate and the development will no longer be subject to the low-income restrictions.[1] The one-year period consists of twelve months beginning on the date VHFA receives a

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[1] IRC §42(i)(7)(B) Minimum Purchase Price –For purposes of subparagraph (A), the minimum purchase price under this subparagraph is an amount equal to the sum of – the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and all Federal, State and local taxes attributable to such sale. Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii).

complete application from the owner. The closing under a Qualified Contract is not the responsibility of VHFA and is not required within the one-year period.

The following items make up a complete application:

## Qualified Contract Application Requirements:

- Cover letter indicating owner's intentions (see form included in application)
- Completed application & certification (attached)
- Application fee of $2,500
- Qualified Contract Price (using Worksheets A-E attached - to document price) and evidence that the price has been reviewed/verified by a certified public accountant
- Written description of property & amenities
- Current rent & income restrictions from all funding sources (summary description and documentation)
- Most recent 12 month operating expenses (including comparison of actual vs. projected) and a current operating budget
- Last three years of audited financial statements
- Description of owner paid utilities, copy of property tax bill, information on any special assessments
- Records of capital improvements
- Current tenant rent roll
- Sample tenant lease
- Land lease, if applicable
- Copy of most recent title insurance policy
- Copy of most recent Capital Needs Assessment
- Sale provisions anticipated by seller
- Copy of most recent appraisal (or calculated market price utilizing most recent year end net operating income and market-derived cap rate). The appraisal(s) must meet VHFA Appraisal Standards.

Upon transfer of the property, the seller will be required to pay the Agency 0.25% of the Qualified Contract price. In addition, there may be third party costs for: marketing, appraisals, and capital needs assessments. Reports (appraisal, capital needs assessment, etc.) must be commissioned from firms acceptable to VHFA, using methodologies acceptable to VHFA, and all third party costs shall be covered by the seller, including those paid by VHFA as part of its application review.

### The Process

VHFA will review the information submitted (per the application requirements list above) and determine in its sole discretion when an application is complete. VHFA reserves the right to request additional information. VHFA will have one year from the submittal of a complete application to present a Qualified Contract.

By submitting the application, the owner grants VHFA the authority to market the development and to provide development information to interested parties. The owner shall provide VHFA with the names of any parties contacted by the owner within twelve months prior to submitting the application who have expressed an interest in acquiring the property. The owner shall provide a summary of the results of those discussions and will work with VHFA if follow up is appropriate.

VHFA shall use its best judgement as to how best to market the property. VHFA and the owner will work with a real estate agency local to the property and whenver possible one familiar with marketing properties that are subject to Housing Subsidy Covenants. The owner will provide access to the property for site visits and inspections. VHFA will contact the owner when an interested party is requesting financial information on the development. The owner will be responsible for allowing access to the property and to the tenant files, and for keeping VHFA informed of potential purchasers and offers to purchase. Lack of owner cooperation will cause the process to cease and the owner will be required to comply with the low-income requirements for the remainder of the Extended Use Period. In the event of a sale any commissions, dues, or expenses incurred shall be deducted from the sale proceeds at time of closing.

In the event that no buyer is found willing to pay the Qualified Contract Price, the owner and VHFA shall focus marketing efforts in such a manner as to find a buyer who will continue to operate the property as affordable housing or that will utilize the property in a manner that meets a public purpose to the benefit of the community in which the property is located. The final sale price must be consistent with the appraised value of property for its final use. If the final sale price is insufficient to pay-off all property related debt (after sales commission and other closing releated expenses) the owner shall contact all lienholders prior to acceptance of a purchase and sale agreement to determine final amounts due and how those shall be paid.

The owner is not required to accept the first or any of the purchase offers presented, however, if the owner rejects an offer at or above the Qualified Contract Price that has been presented by the Agency, the development will remain as affordable (retain the Housing Credit program restrictions as outlined in the Housing Subsidy Covenant) for the remainder of the Extended Use Period. The owner may accept less than the Qualified Contract Price, but cannot require a higher price. Within one year, if the owner does not accept an offer at the Qualified Contract Price presented by the Agency, then the development will remain as affordable housing for the remainder of the Extended Use Period.

If a Qualified Purchaser is not found by the end of the one-year period, VHFA will allow the owner to cease its obligations under the HC programs (by discharging all but one provision of the Housing Subsidy Covenant), and the development will no longer be restricted to low-income requirements and compliance. Per IRC § 42 (h)(6)(E)(ii), for a three-year period following the termination, the owner will not be able to evict or displace tenants or terminate their tenancy for reasons other than good cause and will not be permitted to raise rents beyond the maximum HC rents. The owner will need to certify annually to VHFA for the three-year period that these requirements are met. This restriction will apply to any subsequent owner during this three-year period. This would be the only provision of the Housing Subsidy Covenant to remain for an additional three years.

VHFA will provide notice to the current tenants should the low-income restrictions be terminated, informing them of their protections during the three-year period. The owner shall provide VHFA with the names and mailing addresses of all affected tenants to be contacted.

## Purchaser Characteristics & Responsibilities

A qualified purchaser may be a nonprofit or for-profit entity that agrees to maintain the affordable housing units and fulfill all requirements of the HC Housing Subsidy Covenant during the Extended Use Period. The owner is responsible for providing VHFA with a copy of any proposed purchase and sale agreement. VHFA must be satisfied that the purchaser is familiar with and prepared to comply with the requirements of the HC Program. VHFA may reject any purchaser who has failed to demonstrate proficiency or compliance with the HC Program, or other government sponsored programs. VHFA will require an attorney's opinion that the purchaser is in good standing with the respective Secretary of State, prior to transfer of the development. The purchaser will be required to fulfill the requirements during the remainder of the Extended Use Period, and will be subject to compliance monitoring as described in this policy.

The purchaser may be eligible for new HCs. The purchaser should contact VHFA early in the process to investigate eligibility of the property for HC as well as HC availability. The purchaser may also want to investigate other sources of funding for acquisition and rehabilitation of the property including but not limited to: Vermont Housing & Conservation Board, HOME, and Vermont Community Development Program.

## Application Form

### I. Owner Information

Owner ____________________________________________________________

Mailing Address ____________________________________________________

City/Town ________________________ State ____________ Zip Code _________

Contact Person _____________________________________________________

Phone # ________________________ Fax # _________________________________

Email Address ______________________________________________________

Taxpayer Identification Number _______________________________________

Principal(s) involved (e.g. general partners, controlling shareholders, etc.)

| Name(s) | Phone | Type of Ownership | % Ownership |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

### II. Development Information

Development (Project) Name __________________________________________

Address (street, town/city, zip) ______________________________________

_____________________________________________________________________

Management Company _______________________________________________

Contact Name & phone number ________________________________________

Housing Credit Allocation Year ______________

Minimum Set-aside (check one)

__ 20% units at 50% area median income

__ 40% units at 60% area median income

__ Applicable Fraction

______ Total # units in the development; Total square footage of all units: __________
______ # HC units in the development; Total square footage of all HC units _______

___ # 0-Br ______ # 1-Br ______ #2-Br ______ # 3-Br ______ # 4-Br

Source of Rental Assistance ________________________________________________________

Term (expiration date) of Rental Assistance ____________________________________________

Will it be continued? ______ Yes ______ No ______ Uncertain

___ # Handicapped Accessible units
___ # Resident Manager units

Type of Housing
______ General Occupancy (individuals or families) Senior
______ Single Family
______ Congregate Care
______ Assisted Living
______ Special Needs; Describe:_____________________________________________________

Type of Units Apartments
______ Townhouses
______ Single Room Occupancy

Elevator: ______ Yes ______ No ______ Number of stories

Targeting of Units (indicate # units)
______ Families ______ Frail Seniors
______ Seniors ______ Homeless
______ Individual with Special Needs

Support Services Provided to Residents ______ Yes ______ No
If yes, are they included in the rent? ______ Yes ______ No

Please describe all services provided ________________________________________________________

_____________________________________________________________________________________

Amenities – please describe all amenitites offered to residents ____________________________________

_____________________________________________________________________________________

Utilities – please indicate below utilities paid by the tenant:

| Type | Cost | Type | Cost |
|---|---|---|---|

| | | | | | |
|---|---|---|---|---|---|
| Heating | ______ | $_____ | Hot Water | ______ | $_____ |
| Air Conditioning | ______ | $_____ | Water | ______ | $_____ |
| Cooking | ______ | $_____ | Sewer | ______ | $_____ |
| Lighting | ______ | $_____ | Trash | ______ | $_____ |

Utility Allowance by Bedroom Size

$_____0-Br $_______1-Br $_______2-Br $_______3-Br $______4-Br

Applicant Acknowledgment and Certification

The undersigned acknowledges that:

1. This application form and all of its sections is provided by VHFA for purposes of better understanding the development for the Qualified Contract process, and any CFR or Code requirements cited are offered by VHFA as general guidelines and not as legal authority;

2. The undersigned is responsible for ensuring that all required documentation has been submitted, that there is no material misrepresentation with respect to the development, and the applicant will in all respects satisfy the applicable requirements of federal tax law and any other requirements imposed upon it by VHFA;

3. This application form is submitted to VHFA by the undersigned for purposes of marketing the development and identifying a Qualified Purchaser;

4. For purposes of reviewing the application and marketing the development, VHFA is entitled to rely upon the representations of the undersigned and is not warranting the development's compliance with the CFR and/or the Code requirements;

5. VHFA may request or require changes in the information submitted and may substitute actual figures for any estimated figures provided by the undersigned; and

6. VHFA has the authority to market the development based on the information provided in the application and supporting documentation and to release financial information to interested parties upon receipt of an executed release of information form from the applicant when necessary.

1. The applicant shall not, in the provision of services, or in any other manner, discriminate against any person on the basis of race, color, creed, religion, sex, national origin, age, familial status, or handicap;

2. To the best of the undersigned's knowledge and belief, all factual information provided herein or in connection herewith is true and correct and all estimates are reasonable and can be obtained from any source named herein;

3. The undersigned will at all times indemnify and hold harmless VHFA against all losses, costs, damages, expenses, and liabilities of any nature or indirectly resulting from arising out of or relating to VHFA's

acceptance, consideration, approval, or disapproval of this request and the sale or non-sale of the development; and

4. That it provides VHFA the right to exchange information with federal and other state agencies, or other parties as deemed appropriate.

IN WITNESS WHEREOF, the undersigned, being duly authorized, has caused this document to be executed in its name on this _________________day of _____________, 20__.

I declare and affirm under the penalties of perjury that the application and accompanying information has been examined by me, and to the best of my knowledge and belief, is true and correct.

_______________________________________
Legal Name of Owner

_______________________________________
Signature

_______________________________________
Title

## Qualified Contract Notification Letter

Vermont Housing Finance Agency
P.O. Box 408
Burlington, VT 05402-0408

Re: (Development Name and Location) Dear VHFA:

On behalf of (Development Owner), we hereby request that VHFA present a Qualified Contract for the purchase of (Development Name) ("the Development"). This request is made pursuant to Section 42(h)(6)(E)(i)(II) of the Internal Revenue Code. We understand that VHFA will have a One-Year Period from its receipt of this letter and the Complete Application to present a Qualified Contract for the purchase of the Development. *We hereby request to extend this period an additional __ months.*

We have enclosed with this request the following documents and information required by VHFA:

- Completed application & certification
- Application fee of $2,500
- A completed "Calculation of Qualified Contract Price", including Worksheets A-E. This form was completed by an independent accountant for the Development, (Accountant's Name)
- Written description of property & amenities
- Current rent & income restrictions from all funding sources (summary description and documentation)
- Most recent 12 month operating expenses (including comparison of actual vs. projected) and a current operating budget
- Three years of audited financial statements
- Description of owner paid utilities, copy of property tax bill, information on any special assessments
- Records of capital improvements
- Current tenant rent roll
- Sample tenant lease
- Land lease, if applicable
- Copy of most recent title insurance policy
- Copy of most recent Capital Needs Assessment
- Sale provisions anticipated by seller
- Copy of most recent appraisal (or calculated market price utilizing most recent year end net operating income and market-derived cap rate)

We understand that the above information may be shared with prospective purchasers, real estate brokers, and agents of VHFA, and information about the development may be posted on VHFA's website.

We will reasonably cooperate with VHFA and its agents with respect to VHFA's efforts in marketing and finding a Qualified Purchaser for the Qualified Contract and the purchase of the Development. In this regard, we understand that prior to the presentation of a Qualified Contract, we may need to share project "due diligence" with VHFA and prospective purchasers, including but not limited to, additional rent rolls, project tax returns, income certifications and other Section 42 compliance records, records with respect to repair and maintenance of the Development, operating expenses and debt service, reserve account balances; provided, however, that before information is shared with a prospective purchaser, we may require that such prospective purchaser enter into a commercially reasonable form of nondisclosure agreement.

We shall provide VHFA the documents and other information that were used to prepare the enclosed Calculation of Qualified Contract Price, including Worksheets A-E.

We also agree to allow VHFA, its agents and prospective purchasers, upon reasonable prior written notice, to visit and inspect the Development, including representative apartment units.

We also understand that if VHFA finds a Qualified Purchaser willing to present an offer to purchase the Development for an amount equal to or greater than the Qualified Contract Price, we agree to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the project which will allow the prospective purchaser a reasonable period of time to undertake additional customary due diligence prior to closing the purchase.

We further state our willingness (non-willingness) to amend the sale price to $______________________ based on current market conditions and other pertinent considerations.

Sincerely,

Attachments

## INSTRUCTIONS FOR CALCULATION OF QUALIFIED CONTRACT PRICE

The following "Calculation of Qualified Contract Price" will establish the minimum price at which VHFA will market your development and present an offer for its purchase. To complete the Calculation Form, you must complete Worksheets A through D and, if the project has market rate units, Worksheet E. The results of Worksheets A through E are transferred to the Calculation Form to determine the Qualified Contract Price for the property.

The Calculation Form is derived from a statutory formula set forth in Section 42(h)(6)(F) of the Internal Revenue Code. The statutory formula divides the purchase price between the low- income portion of the project and the market rate portion of the project, if any. Qualified Contract Price for the low-income portion of the project is equal to the sum of project indebtedness (Worksheet A), investor equity –see definition of Investor Equity on page 27 (Worksheet B), and other capital contributions (Worksheet C) reduced by the total cash that has been distributed, or is available for distribution – (see definition of Distributions on page 27), from the project (Worksheet D). If the project has any market rate units, the Qualified Contract Price is increased by the fair market value of those units (Worksheet E).

Please remember that the One-Year Period for finding a buyer will not commence until the Calculation Form and Worksheets A-E are completed and returned to VHFA with the notification letter and other required materials listed in the application. The Calculation Form must be prepared or reviewed and approved by an independent third-party CPA who is not an employee of the owner.

**Calculation of Qualified Contract Price**
**Pursuant to Section 42(h)(6)(F) of the Internal Revenue Code**
**As of __________________, 2__.**

**A. Calculation of Low-Income Portion of Project:**

(i) Outstanding Indebtedness secured by, or with respect to the Buildings (from Worksheet A) $___________

(ii) Adjusted Investor Equity (from Worksheet B) $___________

(iii) Other Capital Contributions not reflected in (i) or (ii) from (Worksheet C) $___________

(iv) Total of Lines (i), (ii), and (iii) $___________

(v) Cash Distributions from, or available from, the Project (Worksheet D) $___________

(vi) Line (iv) reduced by Line (v) $___________

(vii) Applicable Fraction (as set forth in the Housing Subsidy Covenant) ____________%

(viii) Low-Income Portion of Qualified Contract Price (Line (vi) multiplied by Line (vii)) $____________

**B. Fair Market Value of Non Low-Income Portion of Building**
(Worksheet E) $____________

**C. Fair Market Value of Land**
**(under existing and continuing restrictions)** $____________

**Qualified Contract Price** $____________

[Sum of Line A (viii) and Line B and Line C]

## WORKSHEET A

**Outstanding Indebtedness With Respect to Low-Income Building(s)**
**Code Section 42(h)(6)(F)(i)(I)**

**Instructions**

The Qualified Contract Price includes the unpaid balance of all secured and unsecuredindebtedness with respect to the low-income buildings. Worksheet A requires you to set forth certain information with respect to each mortgage loan and other project indebtedness. The name of the lender, the unpaid principal balance, the accrued interest, the maturity date, and other relevant information.

In the section marked "Other Information" (subsection (e) with respect to each loan), please set forth any information with respect to the loan that may be relevant to VHFA's efforts to market the project. Examples of relevant information include whether the loan has a "due-on-sale" clause or if any portion of the loan is payable from net cash flow (i.e. soft debt). Please also attach to the worksheet an amortization schedule for each loan, if available.

In addition to mortgage indebtedness, you should also list any unsecured, long-term debt the proceeds of which were used directly in the construction, rehabilitation, or operations of the project. If there are more than six loans, please attach a schedule with the additional loans.

The unpaid principal balance and accrued interest for each loan set forth on this worksheet should be totaled and that total should be transferred to Line A(i) of the Calculation Form.

**Worksheet**

1. First Mortgage Loan:
   a. Lender: ______________________________
   b. Principal Balance $______________________________
   c. Accrued Interest $______________________________
   d. Maturity Date ______________________________
   e. Other Information ______________________________
   Attach amortization schedule, if available

   Subtotal (add b and c) $______________________________

2. Second Mortgage Loan:
   a. Lender: ______________________________
   b. Principal Balance $______________________________
   c. Accrued Interest $______________________________
   d. Maturity Date ______________________________
   e. Other Information ______________________________
   Attach amortization schedule, if available

   Subtotal (add b and c) $______________________________

3. Other Loan:
   a. Lender: ______________________________
   b. Principal Balance $______________________________
   c. Accrued Interest $______________________________
   d. Maturity Date ______________________________
   e. Other Information ______________________________
   Attach amortization schedule, if available

Subtotal (add b and c) $______________________________

4. Other Loan:
a. Lender: ______________________________
b. Principal Balance $______________________________
c. Accrued Interest $______________________________
d. Maturity Date ______________________________
e. Other Information ______________________________
Attach amortization schedule, if available

Subtotal (add b and c) $______________________________

5. Other Loan:
a. Lender: ______________________________
b. Principal Balance $______________________________
c. Accrued Interest $______________________________
d. Maturity Date ______________________________
e. Other Information ______________________________
Attach amortization schedule, if available

Subtotal (add b and c) $______________________________

6. Other Loan:
a. Lender: ______________________________
b. Principal Balance $______________________________
c. Accrued Interest $______________________________
d. Maturity Date ______________________________
e. Other Information ______________________________
Attach amortization schedule, if available

Subtotal (add b and c) $______________________________

**Total Indebtedness with respect to Low-Income Portion of Building(s) Sums of 1-6 subtotals above):**
**$______________________________**

**Initial Cost of Land:** **$______________________________**

**Total Indebtedness less Land:** **$______________________________**

## WORKSHEET B

**Calculation of Adjusted Investor Equity in the Low-Income Building(s)**
**Code Section 42(h)(6)(F)(i)(II)**

**Instructions**

The Qualified Contract Price includes the sum of the "Adjusted Investor Equity" with respect to the project. "Adjusted Investor Equity" means, with respect to each calendar year, the aggregate amount of cash that taxpayers invested with respect to the low-income buildings, increased by the applicable cost-of-living adjustment, if any.

Not all capital contributions with respect to the project qualify as “Adjusted Investor Equity.” Specifically, **cash invested in the project should be included in this Worksheet B only if each of the following is true**:

(i) The cash is contributed as a capital contribution and not as a loan or advance;

(ii) The amount is reflected in the adjusted basis of the project (until there is further guidance from the Internal Revenue Service, VHFA will interpret this to mean cash contributions used to directly fund adjusted basis and cash contributions used to pay off a construction or bridge loan, the proceeds of which directly funded adjusted basis); and

(iii) There was an obligation to invest the amount as of the beginning of the credit period (until there is further guidance from the Internal Revenue Service, VHFA will interpret this to include cash actually invested before the beginning of the credit period and cash invested after the beginning of the credit period for which there was an obligation to invest at the beginning of the credit period).

With respect to Worksheet B, subsection (a) for each calendar year requires you to set forth the identity of the investor. Typically, this will be the tax credit investor (i.e. the investor limited partner); however, it may include a general partner if the cash investment by a general partner otherwise satisfies the requirements set forth above.

Subsection (b) requires you to set forth the amount of qualifying cash equity that was invested in the project for that calendar year. This amount should include only cash that was actually contributed to the project that year; it should not include amounts for which there was a mere obligation to invest.

Subsection (c) sets forth how the cost-of-living adjustment for each calendar year will be applied. Investment amounts qualifying as investor equity are entitled to a cost-of-living adjustment. Pursuant to Sections 1(f) and 42(h)(6)(G)(ii) of the Code, the CPI adjustment is calculated for each 12-month period ending August 31.

For each calendar year, the amount of “Adjusted Investor Equity” is the sum of the qualifying investment amount and the cost-of-living adjustment. After calculating the investment amount and cost-of-living adjustment, if any, per year, these amounts must be totaled and set forth in line #15 of the worksheet. This total is then transferred to Line A(ii) of the Calculation Form.

**Worksheet B, Cont'd**

1. Year 1 _____________ Adjusted Investor Equity
   a. Investor: ______________________________________________
   b. Investment Amount $__________________________
   c. Cost-of-living Adjustment (_____%) $__________________________
   Subtotak (b) plus (c) $___________________

2. Year 2 _____________ Adjusted Investor Equity
   a. Investor: ______________________________________________
   b. Investment Amount $__________________________
   c. Cost-of-living Adjustment (_____%) $__________________________
   Subtotal (b) plus (c) $___________________

3. Year 3 _____________ Adjusted Investor Equity
   a. Investor: ______________________________________________
   b. Investment Amount $__________________________
   c. Cost-of-living Adjustment (_____%) $__________________________
   Subtotal (b) plus (c) $___________________

4. Year 4 _____________ Adjusted Investor Equity
   a. Investor: ______________________________________________
   b. Investment Amount $__________________________
   c. Cost-of-living Adjustment (_____%) $__________________________
   Subtotal (b) plus (c) $___________________

5. Year 5 _____________ Adjusted Investor Equity
   a. Investor: ______________________________________________
   b. Investment Amount $__________________________
   c. Cost-of-living Adjustment (_____%) $__________________________
   Subtotal (b) plus (c) $___________________

6. Year 6 _____________ Adjusted Investor Equity
   a. Investor: ______________________________________________
   b. Investment Amount $__________________________
   c. Cost-of-living Adjustment (_____%) $__________________________
   Subtotal (b) plus (c) $___________________

7. Year 7 _____________ Adjusted Investor Equity
   a. Investor: ______________________________________________
   b. Investment Amount $__________________________
   c. Cost-of-living Adjustment (_____%) $__________________________
   Subtotal (b) plus (c) $___________________

8. Year 8 _____________ Adjusted Investor Equity

a. Investor: ______________________________________________

b. Investment Amount $__________________________

c. Cost-of-living Adjustment (_____%) $__________________________

Subtotal (b) plus (c) $___________________

9. Year 9 _____________ Adjusted Investor Equity

a. Investor: ______________________________________________

b. Investment Amount $__________________________

c. Cost-of-living Adjustment (_____%) $__________________________

Subtotal (b) plus (c) $___________________

10. Year 10 _____________ Adjusted Investor Equity

a. Investor: ______________________________________________

b. Investment Amount $__________________________

c. Cost-of-living Adjustment (_____%) $__________________________

Subtotal (b) plus (c) $___________________

11. Year 11 _____________ Adjusted Investor Equity

a. Investor: ______________________________________________

b. Investment Amount $__________________________

c. Cost-of-living Adjustment (_____%) $__________________________

Subtotal (b) plus (c) $___________________

12. Year 12 _____________ Adjusted Investor Equity

a. Investor: ______________________________________________

b. Investment Amount $__________________________

c. Cost-of-living Adjustment (_____%) $__________________________

Subtotal (b) plus (c) $___________________

13. Year 13 _____________ Adjusted Investor Equity

a. Investor: ______________________________________________

b. Investment Amount $__________________________

c. Cost-of-living Adjustment (_____%) $__________________________

Subtotal (b) plus (c) $___________________

14. Year 14 _____________ Adjusted Investor Equity

a. Investor: ______________________________________________

b. Investment Amount $__________________________

c. Cost-of-living Adjustment (_____%) $__________________________

Subtotal (b) plus (c) $___________________

**15. Total Adjusted Investor Equity (Sum of 1-14 subtotals above): $___________________**

## WORKSHEET C

**Other Capital Contributions**
**Code Section 42(h)(6)(F)(i)(III)**

**Instructions**

The Qualified Contract Price includes the amount of other capital contributions made with respect to the project. For this purpose, “other capital contributions” are not limited to cash (at least until there is contrary guidance from the Internal Revenue Service) and, therefore, include “in-kind” contributions, such as, land. If you include any non-cash contributions in this worksheet, please describe in detail the type of contribution, the value you have assigned to the contribution, and your justification for assigning that value.

Do not include in this Worksheet C any amounts included in Worksheets A or B. Further, all amounts included in this worksheet must constitute contributed capital and not be a debt or advance.

After setting forth the required information with respect to each contribution, please total the contribution amounts and then transfer the total to Section A(iii) of the Calculation Form.

**Worksheet**

1. Investment Amount $______________________________
    a. Name of Investor ______________________________
    b. Date of Investment ______________________________
    c. Use of Contributions/Proceeds: ______________________________________________________
    d. Other Information: ______________________________________________________

2. Investment Amount $______________________________
    a. Name of Investor ______________________________
    b. Date of Investment ______________________________
    c. Use of Contributions/Proceeds: ______________________________________________________
    d. Other Information: ______________________________________________________

3. Add as Needed

**Total of Other Capital Contributions $___________________________________**

## WORKSHEET D

**Cash Distributions From or Available From the Project**
**Code Section 42(h)(6)(F)(ii)**

**Instructions**

The Qualified Contract Price is reduced by the total of all cash distributions from, or available from, the project. To assist in this calculation, Worksheet D has been divided into three sections.

In Section A, set forth all cash distributions with respect to the project for fourteen consecutive calendar years. Generally, this will include all cash payments and distributions from net operating income (i.e. "below the line" distributions and payments, after the payment of operating expenses, debt service, and reserves). Distributions set forth in Section A of the worksheet will include, but are not limited to: (i) amounts paid to partners or affiliates as fees (including investor fees, partnership management fees, incentive management fees and guaranty fees) and (ii) amounts distributed to partners as a return of capital or otherwise. Until guidance is provided by the Internal Revenue Service, VHFA will not reduce the Qualified Contract Price by payments of deferred Developer Fee to the extent the amount of fee was within VHFA's guidelines. We require, however, that you list all payments and distributions from net cash flow. If you believe any portion of a payment or distribution should be excluded from the calculation (such as deferred Developer Fee), please identify such payments or distributions and provide an explanation of why it should be excluded.

Section A of the worksheet provides for up to five types of distributions of net operating income for each year (items (a) – (e)). If there were more in any calendar year, you will need to attach an addendum to the worksheet setting forth the recipient, characterization and amount of such distribution.

The Qualified Contract Price is reduced not only by cash distributions made with respect to the project but also all cash that is available for distribution. In Section B you are required to set forth amounts held in reserve and other project accounts and the amounts thereof that are available for distribution. Until such time as guidance is provided by the Internal Revenue Service, VHFA will interpret "available for distribution" to mean all cash held in project accounts the distribution of which is not prohibited by mortgage restrictions, regulatory agreements or similar third-party contractual prohibitions. An amount currently held in a project account that will become unrestricted and available for distribution on or before the expiration of the one-year period should be listed as available for distribution in Section B.

Finally, Section C requires the disclosure and description of all non-cash distributions that have been made with respect to the project. Absent unusual circumstances, the amount of "non-cash distributions" will not be applied to reduce the Qualified Contract Price (until contrary guidance from the Internal Revenue Service).

To complete Worksheet D, please total the qualifying cash distributed for all calendar years under Section A and the cash available (or that will be available) for distribution in Section B. The total of Sections A and B should be transferred to Section A(v) of the Calculation Form.

## Worksheet D – Section A

Year 1 ______ (actual year)

a. Recipient _____________ Description ______________ Amount $__________
b. Recipient _____________ Description ______________ Amount $__________
c. Recipient _____________ Description ______________ Amount $__________
d. Recipient _____________ Description ______________ Amount $__________
e. Recipient _____________ Description ______________ Amount $__________

Year 2 ______ (actual year)

a. Recipient _____________ Description ______________ Amount $__________
b. Recipient _____________ Description ______________ Amount $__________
c. Recipient _____________ Description ______________ Amount $__________
d. Recipient _____________ Description ______________ Amount $__________
e. Recipient _____________ Description ______________ Amount $__________

Year 3 ______ (actual year)

a. Recipient _____________ Description ______________ Amount $__________
b. Recipient _____________ Description ______________ Amount $__________
c. Recipient _____________ Description ______________ Amount $__________
d. Recipient _____________ Description ______________ Amount $__________
e. Recipient _____________ Description ______________ Amount $__________

Year 4 ______ (actual year)

a. Recipient _____________ Description ______________ Amount $__________
b. Recipient _____________ Description ______________ Amount $__________
c. Recipient _____________ Description ______________ Amount $__________
d. Recipient _____________ Description ______________ Amount $__________
e. Recipient _____________ Description ______________ Amount $__________

Year 5 ______ (actual year)

a. Recipient _____________ Description ______________ Amount $__________
b. Recipient _____________ Description ______________ Amount $__________
c. Recipient _____________ Description ______________ Amount $__________
d. Recipient _____________ Description ______________ Amount $__________
e. Recipient _____________ Description ______________ Amount $__________

Year 6 ______ (actual year)

a. Recipient _____________ Description _______________ Amount $__________
b. Recipient _____________ Description _______________ Amount $__________
c. Recipient _____________ Description _______________ Amount $__________
d. Recipient _____________ Description _______________ Amount $__________
e. Recipient _____________ Description _______________ Amount $__________

Year 7 ______ (actual year)

a. Recipient _____________ Description _______________ Amount $__________
b. Recipient _____________ Description _______________ Amount $__________
c. Recipient _____________ Description _______________ Amount $__________
d. Recipient _____________ Description _______________ Amount $__________
e. Recipient _____________ Description _______________ Amount $__________

Year 8 ______ (actual year)

a. Recipient _____________ Description _______________ Amount $__________
b. Recipient _____________ Description _______________ Amount $__________
c. Recipient _____________ Description _______________ Amount $__________
d. Recipient _____________ Description _______________ Amount $__________
e. Recipient _____________ Description _______________ Amount $__________

Year 9 ______ (actual year)

a. Recipient _________________ Description _______________ Amount $__________
b. Recipient _________________ Description _______________ Amount $__________
c. Recipient _________________ Description _______________ Amount $__________
d. Recipient _________________ Description _______________ Amount $__________
e. Recipient _________________ Description _______________ Amount $__________

Year 10 ____________ (actual year)

a. Recipient _____________ Description _______________ Amount $__________
b. Recipient _____________ Description _______________ Amount $__________
c. Recipient _____________ Description _______________ Amount $__________
d. Recipient _____________ Description _______________ Amount $__________
e. Recipient _____________ Description _______________ Amount $__________

Year 11 ____________ (actual year)

a. Recipient _____________ Description _______________ Amount $__________
b. Recipient _____________ Description _______________ Amount $__________
c. Recipient _____________ Description _______________ Amount $__________
d. Recipient _____________ Description _______________ Amount $__________
e. Recipient _____________ Description _______________ Amount $__________

Year 12 ____________ (actual year)

a. Recipient _____________ Description _______________ Amount $__________
b. Recipient _____________ Description _______________ Amount $__________
c. Recipient _____________ Description _______________ Amount $__________
d. Recipient _____________ Description _______________ Amount $__________
e. Recipient _____________ Description _______________ Amount $__________

Year 13 ____________ (actual year)

a. Recipient _____________ Description _______________ Amount $__________
b. Recipient _____________ Description _______________ Amount $__________
c. Recipient _____________ Description _______________ Amount $__________
d. Recipient _____________ Description _______________ Amount $__________
e. Recipient _____________ Description _______________ Amount $__________

Year 14 ____________ (actual year)

a. Recipient _____________ Description _______________ Amount $__________
b. Recipient _____________ Description _______________ Amount $__________
c. Recipient _____________ Description _______________ Amount $__________
d. Recipient _____________ Description _______________ Amount $__________
e. Recipient _____________ Description _______________ Amount $__________

**Total Amount of Distributions** **$______________________**

## Worksheet D - Section B

**Cash Available for Distribution**

1. Amount Held in Replacement Reserve Account(s) $__________________
   a. Amount Available for Distribution $__________________
2. Amount Held in Operating Reserve Account(s) $__________________
   a. Amount Available for Distribution $__________________
3. Amount Held in Other Reserve Account(s) $__________________
   (Identify each account, the terms and amount in each) __________________

   __________________

   __________________
4. Amount Held in Partnership Account(s) $__________________
   a. Amount Available for Distribution $__________________

**Total Amount Available for Distribution (Sum of Lines 1a, 2a, 3a, 4a) $__________________**

**Total Cash Distributed and Available for Distribution $__________________**
**(Sum of Sections A & B) Enter this total in Section A(v) of the Calculation Form**

## Worksheet D - Section C

**List of all Non-Cash Distributions (identify asset distributed, recipient value, and characterization of distribution)**

1. Asset Distributed: ______________________________
   a. Recipient ______________________________
   b. Date of Distribution ______________________________
   c. Estimated Value of Asset when Distributed $______________________
   d. Reason for and/or Characterization of Distribution: ______________

      ______________________________________________

2. Asset Distributed: ______________________________
   a. Recipient ______________________________
   b. Date of Distribution ______________________________
   c. Estimated Value of Asset when Distributed $______________________
   d. Reason for and/or Characterization of Distribution: ______________

      ______________________________________________

3. Asset Distributed: ______________________________
   a. Recipient ______________________________
   b. Date of Distribution ______________________________
   c. Estimated Value of Asset when Distributed $______________________
   d. Reason for and/or Characterization of Distribution: ______________

      ______________________________________________

**WORKSHEET E**

Fair Market Value of Non-Low-income Portion of Building(s)

The fair market value of the non-low-income portion of the project building(s) is $____________

Please attach the appraisal, study, methodology proof or other support for the fair market value of the non-low-income portion of the building(s). The fair market value set forth above should be transferred to Section B of the Calculation Form.

Note: The appraisal(s) must meet VHFA Appraisal Standards.

## Definitions of Key Terms:

### Distributions

Includes:

(1) All cash payments and distributions from net operating income (i.e. below the line distributions and payments, after the payment of operating expenses, debt service and reserves). This includes but is not limited to: (a) amounts paid to partners or affiliates as fees (asset management fees, investor service fees, partnership management fees, incentive management fees, guaranty fees), and (b) amounts distributed to partners as a return of capital or otherwise. Asset Management fees taken "above the line" may be excluded from this calculation; however, the portion of asset management fees taken "below the line" (per VHFA policy which limits the asset management fee to be taken "above the line") will be included in the calculation. VHFA will not include payment of deferred development fees as a distribution to the extent the fee was within VHFA guidelines. Owner shall identify all payments and distributions from net cash flow. If an owner believes any portion of a payment or a distribution should be excluded from this calculation, please list it and the rationale for Agency review; and

(2) Cash available for distribution – this includes all cash held in project accounts the distribution of which is not prohibited by mortgage restrictions, regulatory agreements, or similar third-party contractual prohibitions. An amount currently held in a project account that will become unrestricted and available for distribution on or before the expiration of the one-year period should be listed as available for distribution. The owner may list third party payables separately and derive a 'cash available for distribution net of payables'.

### Investor Equity

Refers to all capital contributions (not loans or advances), reflected in the adjusted basis of the project (includes cash contributions funding adjusted basis and cash contributions used to pay off construction or bridge loans), and for which there was an obligation to invest as of the beginning of the credit period. "Adjusted investor equity" is defined at IRC Section 42(h)(6)(G).

### Qualified Contract

*IRC § 42 (h)(6)(F) Qualified Contract –*

*For purposes of subparagraph (E), the term "qualified contract" means a bona fide contract to acquire (within a reasonable period after the contract is entered into) the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of*

*(i) the sum of –*

*(I) the outstanding indebtedness secured by, or with respect to, the building,*

*(II) the adjusted investor equity in the building, plus*

*(III) other capital contributions not reflected in the amounts described in sub-clause (I) or (II), reduced by*

*(ii) cash distributions from (or available for distribution from) the project. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including regulations to prevent the manipulation of the amount determined under the preceding sentence.*

## Part Two

### Compliance Monitoring After Year 15
### FACT SHEET

Major focus is to ensure that these properties remain affordable and that physically they are maintained appropriately during the extended use period.

Owner's Certificate of Extended Use Period Compliance

- Must submit the Owner's Certificate annually indicating that the number of restricted units (as reflected in the VHFA Housing Credit Subsidy Covenant) have been rented to income eligible tenants at initial occupancy only. Annual recertifications are no longer required.
- Rents must not exceed tax credit maximums throughout the extended use period.
- The new certification includes the required good cause eviction and gross rent compliance language required under Section 42.
- The applicable fraction is calculated using the total number of restricted unit method (do not use the square footage method) and is now applied on a project-wide basis.
- The Student and Next Available Unit rule will no longer be enforced.

Extended Use Project Tenant Data Submission

- Tenant data is to be submitted electronically on VHFA's Web Compliance Management System (WCMS). This can be done by either manually entering data or by sending an electronic file for all new move-ins that occurred during the fiscal year. The WCMS link can be found here: http://www.vhfa.org/WebCompliance/Login/Login?ReturnUrl=%2fWebCompliance

Audits and Physical Inspections

- Annual desk audits will continue to be performed by reviewing the above annual submissions.
- An on-site physical inspection will be done every five years along with tenant file reviews on a limited number of units and files (20% of low-income units).

Rent Schedule

- Rent will be calculated based on bedroom size during extended use period.

Compliance Monitoring Fees

- Fees for monitoring will be $4 per unit per month. The $4 fee will be assessed only to the number of restricted units.

## OWNER'S CERTIFICATE OF EXTENDED USE PERIOD COMPLIANCE

To: **Vermont Housing Finance Agency** P.O. Box 408 Burlington, VT 05402

| **Certification Dates:** | **From:** **January 1, 20_______** | | **To:** **December 31, 20_______** |
|---|---|---|---|
| **Project Name:** | | | |
| **Project Address:** | | **City:** | **Zip:** |
| **Tax ID # of Ownership Entity:** | | | |

The undersigned____________________________________________________________on behalf of ___________________________________________________________________(the "Owner"), hereby certifies that:

1. The project meets the minimum requirements of: (check one)
   - ☐ 20 – 50 test (20% of the units at 50% of area median income)
   - ☐ 40 – 60 test (40% of the units at 60% of area median income)

2. During the Extended Use Period, the **applicable fraction** requirement is calculated on a project-wide basis and uses the number of unit's method as specified in the original allocation of credits. (Applicable fraction is no longer calculated using square footage method.)

3. Based on the project-wide applicable fraction, the following number of units must be rented to income qualified residents _____.

4. Rules are applied on a project-wide basis during the Extended Use Period.

5. The owner has received a Tenant Income Certification from each low-income resident and documentation to support that certification at their initial occupancy only.
   ☐ **YES** ☐ **NO**

6. Each low-income unit in the project has been rent-restricted:
   ☐ **YES** ☐ **NO**

7. All low-income units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless):
   ☐ **YES** ☐ **NO** ☐ **HOMELESS**

8. No finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court:
   ☐ **NO FINDING** ☐ **FINDING**

Each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project:

☐ **YES** ☐ **NO**

If "**No**", state nature of violation on page 3 and attach a copy of the violation report and any documentation of correction.

10. If the income of tenants of a low-income unit in any building increased above the area median income limit, the rent remained restricted in order to maintain the unit as low-income:

    ☐ **YES** ☐ **NO**

11. An extended low-income housing commitment as described in section 42(h)(6) is in effect, including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment:

    ☐ **YES** ☐ **NO** ☐ **N/A**

12. During the preceding 12-month period no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and that no tenants had an increase in the gross rent with respect to a low- income unit not otherwise permitted under Section 42 of the Code.

    ☐ **YES** ☐ **NO**

13. There has been no change in the ownership or management of the project:

    ☐ **NO CHANGE** ☐ **CHANGE**

    If "**Change**", complete page 3 detailing the changes in ownership or management of the project.

**Note: Failure to complete this form in its entirety could jeopardize future allocations of housing credits. In addition, any individual other than an owner or general partner of the project is not permitted to sign this form, unless permitted by the state agency.**

The project is otherwise in compliance with the Extended Use Period requirements, the applicable State Allocation Plan, and all other applicable laws, rules and regulations. This Certification and any attachments are made UNDER PENALTY OF PERJURY.

___________________________________
(Ownership Entity)

By: ___________________________________

Title: ___________________________________

Date: ___________________________________

**<u>PLEASE EXPLAIN ANY ITEMS THAT WERE ANSWERED "NO", "CHANGE" OR "FINDING" ON QUESTIONS 1-12</u>**

| **Question #** | **Explanation** |
|---|---|
| | |
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**CHANGES IN OWNERSHIP OR MANAGEMENT** (complete **ONLY if "CHANGE"** marked for question above)

<u>TRANSFER OF OWNERSHIP</u>

| | |
|---|---|
| Date of Change: | |
| Taxpayer ID Number: | |
| Legal Owner Name: | |
| General Partnership: | |
| Status of Partnership (LLC, etc.): | |

**CHANGE IN OWNER CONTACT**

| | |
|---|---|
| Date of Change: | |
| Owner Contact: | |
| Owner Contact Phone #: | |
| Owner Contact Fax #: | |
| Owner Contact Email: | |

**CHANGE IN MANAGEMENT CONTACT**

| | |
|---|---|
| Date of Change: | |
| Management Company Name: | |
| Management Address: | |
| Management City, State, Zip: | |
| Management Contact: | |
| Management Contact Phone #: | |
| Management Contact Fax #: | |
| Management Contact Email: | |

# VHFA Housing Credit Extended Use Period Status Report

For Year Ending ____________________

Project Name ____________________ Owner Name ____________________ Management Agent ____________________

Location ____________________ Owner Address ____________________ Management Adress ____________________

County _ ____________________ Owner Phone # ____________________ Management Phone # ____________________

Unit Type: HC = Housing Credit; Mkt = Market Unit; MU = Manager's Unit

Subsidy Type: N/A = Not Applicable; RD = Rural Development; PBA = Project Based Assistance (Section 8) TBA = Tenant Based Assistance (Section 8); HOME; HOPWA

**Address:**

| **Unit #** | **# BRs** | **Tenant Name** | **Initial # in Hshld** | **Move-In Date** | **Move-In Income** | **Tenant Rent** | **Utility Allow** | **Gross Rent** | **Sub Type** | **Unit Type** | **Move-Out Date** |
|---|---|---|---|---|---|---|---|---|---|---|---|
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