

**CDBG-DR 2018 PIGGYBACK PROGRAM
GAP FINANCING LOAN AGREEMENT**

THIS GAP FINANCING LOAN AGREEMENT (this "**Agreement**") is entered into on the _____ day of _____, 2018, (the "**Effective Date**") by and between the **LOUISIANA HOUSING CORPORATION ("LHC")**, whose address is 2415 Quail Drive, Baton Rouge, Louisiana 70808; and _____, a Louisiana [limited partnership/limited liability company], (the "**Borrower**"), whose address is _____.

PRELIMINARY RECITALS:

A. WHEREAS, LHC is providing funds from the United States of America, HUD Community Development Block Grant ("**CDBG-DR**") Program to qualified borrowers, in accordance with the CDBG Piggyback Program (the "**Program**") under the Louisiana Action Plan for the Utilization of Community Development Block Grant Funds in Response to the Great Floods of 2016 ("**Action Plan**"), to address long-term housing needs in parishes impacted by the Great Floods of 2016; and

B. WHEREAS, the Louisiana Housing Corporation ("**LHC**") adopted that certain Qualified Allocation Plan on April 12, 2017, (the "**QAP**"), and LHC issued that certain Notice of Funding Availability and Program Implementation Guidelines for Multifamily Piggyback/CDBG-DR Loan Funding on December 15, 2017 (the "**2018 Piggyback NOFA**"), allowing CDBG-DR funds to be used for Gap Financing Loans, as described in the QAP and the 2018 Piggyback NOFA; and

C. WHEREAS, Borrower has submitted an application to LHC, including, but not limited to, the completed printed application, any written responses to any deficiency letter issued by LHC, and any written attachments, addenda, and amendments pertaining thereto (collectively, the "**Piggyback Application**") to utilize CDBG-DR funds for the development, rehabilitation, replacement, restoration, construction and/or operation of a multifamily residential rental project to be known as " _____ " (the "**Project**") located on certain immovable property located at _____, Parish of _____, Louisiana, as more fully described on **Exhibit A-Property Description** attached hereto (the "**Land**"); and

D. WHEREAS, based on the Piggyback Application, Borrower has been awarded a Gap Financing Loan by LHC as set forth in this Agreement (the "**Gap Financing Loan**"), the proceeds of which shall be used for the Project, as set forth in the Award Acceptance Agreement between the Borrower and LHC, dated _____ (the "**Piggyback Award Agreement**"); and

E. WHEREAS, the parties desire to enter into this Agreement in order to: (i) evidence the terms and conditions of the Gap Financing Loan and the security therefor; and (ii) ensure compliance by Borrower with the CDBG Program requirements, the QAP requirements, and the 2018 Piggyback NOFA requirements; and (iii) govern the disbursement of the Gap Financing Loan, and the use of such funds by the Borrower.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the sufficiency and receipt whereof being hereby acknowledged, LHC and Borrower agree as follows:

Recitals and Defined Terms. The recitals set forth above are true and correct and are incorporated herein and made a part of this Agreement. Notwithstanding any definition to the contrary contained herein, the following additional terms shall have the following meanings:

(a) **Affiliate:** as to any Person: any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual, or other legal entity, controlled by, under common control with, or which has a Controlling Interest in, such Person.

(b) **Award Agreement:** the agreement between LHC and the Borrower rendering the terms and conditions of the Gap Financing Loan, including without limitation the Piggyback Award Agreement.

(c) **Business Day:** Any day other than a Saturday, Sunday or any other day on which Lender is not open for business.

(d) **CDBG Regulatory Agreement:** a regulatory agreement provided in favor of LHC that shall: (i) run with the land; (ii) have a term of thirty-five (35) years from the Effective Date; (iii) survive the repayment of any Gap Financing Loan; and (iv) contain the applicable terms, conditions, restrictions and regulations agreed to in the Application and the Award Agreement, and as required by the QAP and 2018 Piggyback NOFA.

(e) **Construction Costs:** The actual hard and soft costs of the Project, including labor, materials, demolition, improvements, utility installation, architectural and engineering services, and other work to be performed and costs to be incurred in connection with the acquisition, financing, improvement, construction, rehabilitation and/or completion of the Project in accordance with the Plans and Specifications and this Agreement, not to exceed the Total Development Cost.

(f) **"Controlled by", "under common control with", or "controlling interest":** (i) the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial or other interests of a company (or other entity) and includes the definition of "control" in 24 CFR 401.310(a)(2); or (ii) the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company; or (iii) the ability to direct in any manner the election of a majority of a company's (or other entity's) directors, trustees or members; or (iv) the ability to exercise a controlling influence over the company's or entity's management and policies. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership, and a managing member of a limited liability company is presumed to be in control of that limited liability company.

(g) **Debt Service Amounts:** amounts payable under this Agreement, the Note, the Mortgage or any other Loan Document.

(h) **Default Rate:** a rate equal to the lesser of four (4) percentage points above the Interest Rate or the maximum interest rate which may be collected from Borrower under applicable law.

(i) **Disbursement Date:** the date of disbursement of Gap Financing Loan proceeds; it being contemplated by this Agreement that there will be one (1) Disbursement Date [per month during construction, commencing the month after closing of the Gap Financing Loan][, occurring after all requirements in Section ____ have been satisfied] with respect to the Gap Financing Loan.

(j) Eligible Insurance: flood insurance, casualty insurance (including wind and fire) and general liability insurance with respect to completed construction. Eligible Insurance shall not include Builder's Risk Insurance, Worker's Compensation Insurance, health insurance and other employee benefits.

(k) Gap Financing Loan: the gap financing loan to Borrower by LHC pursuant to the Piggyback Award Agreement.

(l) Gap Financing Note: the CDBG Piggyback Program Gap Financing Note, dated of even date herewith, evidencing the Gap Financing Loan.

(m) Guarantor: a person or entity, acceptable to LHC, which has an economic interest in Borrower, or which will otherwise obtain a material financial benefit from the Gap Financing Loan, and which agrees to guaranty certain obligations of Borrower under this Agreement, including but not limited to _____, a _____, and its approved successors and assigns.

(n) Guaranty Agreement: collectively, whether executed in separate agreements or combined, the Completion Guaranty, Nonrecourse Carve-out Guaranty, and Operating Deficits Guaranty executed by Guarantor in favor of LHC.

(o) Identity of Interest: a relationship wherein any officer, director, board member, or authorized agent of any Project team member (consultant, general contractor, supplier, vendor, vendee, attorney, management agent, seller of the land, or any party engaging in a financial transaction with the Borrower):

(i) is also an officer, director, board member or authorized agent of any other Project team member;

(ii) has any control over or any financial interest in any other Project team member's firm or corporation;

(iii) is a business partner of an officer, director, board member, or authorized agent of any other Project team member;

(iv) has a family relationship through blood, marriage or adoption with an officer, director, board member, or authorized agent of any Project team member; or

(v) advances any funds or items of value to the Borrower.

(p) Indebtedness: The principal of, interest on, or any other amounts due at any time under the Note, this Agreement, the Mortgage or any other Loan Document, including late charges, default interest, and advances to protect the security of the Mortgage under the terms of the Mortgage, reasonable attorney's fees and court costs, and other fees and costs due and payable under the Loan Documents.

(q) Investor [Member][Limited Partner]: the entity holding the [limited partnership][non-managing membership] interest of Borrower, including [_____], and its permitted successors and assigns.

(r) **Loan Documents:** this Agreement; the Note; the Mortgage; the Regulatory Agreement; the Guaranty; any Subordination Agreement, if applicable; UCC-Financing Statements covering the fixtures and personal property located at the Project; and such other documents, agreements, instruments or certificates as LHC and its counsel may require, including such documents as LHC in its sole discretion deems necessary or appropriate to evidence or secure the Indebtedness.

(s) **Mortgage:** the Mortgage, Assignment of Leases and Rents, and Security Agreement, which shall (a) constitute a [first][second] lien upon the Project, and (b) constitute a [first][second] lien upon and security interest in all fixtures and personal property relating to or located in the Project, and (c) secures Borrower's obligations to LHC under the Loan Documents.

(t) **[Net Draw Amount:** the draw amount limited to costs actually incurred, less amounts paid from non pari passu sources, and not including contingency amounts or retainage.]

(u) **Non-Operating Expenses:** all expenses and costs of the Borrower other than Operating Expenses. Non-Operating Expenses may not be paid from the operating account until the Annual Installment has been calculated and remitted to LHC. Non-Operating Expenses shall include, without limitation: any and all costs of developing the Project; deferred developer fee; asset management fees and investor service fees (except as expressly stated herein); tax credit adjusters; income taxes of the Borrower; distributions or payments to persons or entities having an Identity of Interest relationship with the Borrower; deposits to reserve accounts and escrow accounts (other than as expressly permitted herein, and otherwise as specifically approved in advance, in writing by LHC); business travel expenses other than for front-line staff of the Project; payments on any loans other than the Senior Loan; repayments of advances or loans, including those to pay Operating Deficits; payments to the management agent (other than the property management fee and other payments specifically approved in advance, in writing by LHC); payments not directly related to, or on behalf of, the Project; and payments to the Borrower (other than payment specifically approved in advance, in writing by LHC).

(v) **Note:** the Gap Financing Note by Borrower payable to LHC evidencing the Gap Financing Loan.

(w) **[Operating Agreement:** the Amended and Restated Operating Agreement of Borrower, dated _____, as amended.]

(x) **Operating Deficit:** for any relevant period, the excess of short term obligations, Operating Expenses (or a portion thereof) over the Borrower's unrestricted cash of every kind from the operation of the Project for such fiscal period (excluding loans made to Borrower for payment of an Operating Deficit, extraordinary cash proceeds and capital contributions, and excluding amounts drawn from a reserve account).

(y) **Operating Expenses:** all cash costs and cash expenses of every kind and character which the Borrower incurs in connection with the operation of the Project (excluding principal and interest due and payable under the Loan and those Loan expenses previously accrued), and all operating costs and expenses of the Project that must be accrued monthly (including property taxes and insurance premiums based upon the completed Project full assessed value). The following costs shall be considered Operating Expenses:

- i. amounts required by LHC to be allocated to any reserve account, including replacement reserve deposits and other LHC permitted or required reserves, to

the extent that LHC has provided its prior written consent to such deposit and as to the amount and use of such reserves (as further detailed herein);

- ii. all capital expenditures (without regard to source of funding), except to the extent that such amounts were withdrawn from a reserve, in which case such withdrawn amounts shall be included as cash in the computation of Surplus Cash;
- iii. deposits to and withdrawals from escrow accounts for the purposes of paying taxes and insurance premiums, provided such deposits do not accrue more than one year of estimated tax or insurance costs;
- iv. casualty proceeds, to the extent that they are used to pay actual costs related to repairs or replacements due to a casualty; however, any proceeds received for casualties shall be included as cash in the computation of Surplus Cash;
- v. the property management fee inclusive of all costs, fees and incentive payments, in an amount not to exceed six percent (6%) of the effective gross income of the Project, unless otherwise approved in writing by the LHC;
- vi. Administrative expenses, utility expenses, operational and maintenance expenses, and taxes and insurance expenses that are reasonable and necessary in order to operate the Project; and
- vii. any construction loan interest accrued prior to the placed in service date shall be considered a development cost and therefore is a Non-Operating Expense. Subsequent to the placed in service date, any new construction loan interest will be considered an Operating Expense. In other words, any accrued and unpaid interest on the construction loan prior to the placed in service date shall not be considered an Operating Expense.

Depreciation, amortization and any other non-cash items shall not be considered Operating Expenses.

(z) [Partnership Agreement: the Amended and Restated Limited Partnership Agreement of Borrower dated as of _____, as amended.]

(aa) Person: for the purposes of this Agreement, a natural person or an entity created by law and recognized as a legal entity having a distinct identity, legal personality, and duties and rights.

(bb) Plans and Specifications: the plans and specifications prepared by _____, dated _____, as approved by all required governmental agencies for construction of the Project.

(cc) Senior Lender: the lender under the Senior Loan, including without limitation, _____, during the construction period, and _____, upon conversion to a permanent loan, and its successors and assigns, as the case may be.

(dd) Senior Loan: as applicable, during the construction period, the construction loan provided to Borrower from Senior Lender, and after conversion to permanent financing, the permanent loan provided to Borrower from Senior Lender, in an amount not to exceed \$[_____], each evidenced by the applicable Senior Note and secured by the Senior Mortgage.

(ee) Senior Mortgage: the [Multifamily Mortgage, Assignment of Rents and Security Agreement] delivered by Borrower to Senior Lender and encumbering the Property to secure the obligations of Borrower under the Senior Note.

(ff) Senior Note: the [Multifamily Note] delivered by Borrower to Senior Lender evidencing the Senior Loan, in the maximum amount of \$[_____], accruing at an interest rate not exceeding [_____] percent ([_____]%), amortized over thirty (30) years, with a maturity date of [_____].

(gg) State: the State of Louisiana.

(hh) Subordination Agreement: the Subordination Agreement of even date herewith between Borrower, Senior Lender and LHC.

(ii) Surplus Cash: any cash (excluding tenant security deposits) remaining at the end of each fiscal year of the Borrower after payment of all accrued Operating Expenses for the Project for such fiscal year.

(jj) Tax Credit Regulatory Agreement: the regulatory agreement provided in favor of LHC in connection with the issuance of the Low Income Housing Tax Credits for the Project.

(kk) Total Development Cost: the maximum allowed cost of the Project, which shall be \$_____, as increased only by the express written consent of LHC.

SECTION 1 LOAN AMOUNT AND USE OF FUNDS

1.1 Amount of Gap Financing Loan. Under the terms and conditions of this Agreement, LHC agrees to make the Gap Financing Loan to Borrower, on the following terms and conditions:

(a) Principal Amount. The principal amount of the Gap Financing Loan is [_____ and 00/100] DOLLARS (\$[_____]), bearing interest at [_____] percent ([_____]%), computed on the basis of a 360-day year, consisting of twelve 30-day months.

(b) Cost Certification. Borrower acknowledges and agrees that the principal amount of the Gap Financing Loan was calculated based upon estimated costs for the development, restoration, replacement, rehabilitation, and/or construction of the Project provided by the Borrower. Borrower agrees to provide LHC with a cost certification audit acceptable to LHC (the "**Cost Certification Audit**"), prepared by an independent third party consulting or accounting firm acceptable to LHC, certifying the actual costs incurred and paid by Borrower in the development, restoration, rehabilitation, replacement and/or construction of the Project, and including such other information as LHC may

require. Borrower agrees to cooperate with LHC and to provide any documentation deemed necessary by LHC for a complete audit. LHC agrees that any accounting firm providing the Low Income Housing Tax Credit Cost Certification acceptable to LHC is an acceptable accounting firm under this Section 1.1(b).

(c) Reduction of Gap Financing Loan. Notwithstanding anything to the contrary contained herein or in the Award Agreement, LHC may reduce the awarded amount of the Gap Financing Loan in the event the Cost Certification Audit or the final subsidy layering analysis of the Project completed by LHC discloses that the actual costs incurred by Borrower in the development, restoration, replacement, rehabilitation, and/or construction of the Project were less than the estimated costs for the development, restoration, replacements, rehabilitation, and/or construction of the Project upon which the calculation of the principal amount of the Gap Financing Loan as set forth in the Award Agreement were based. The principal amounts of the Gap Financing Loan may be reduced based on the actual Project costs incurred by Borrower, the amount of any tax credits awarded to the Project, and the final amount, terms and conditions of the Senior Loan, any subordinate financing, and other funds received or to be received by the Borrower and related to the Project. If the amount of Gap Financing Loan proceeds advanced to Borrower prior to completion of the Cost Certification Audit and final subsidy layering analysis, exceeds the principal amount of the Gap Financing Loan supported by the Cost Certification Audit and final subsidy layering analysis ("**Excess Proceeds**"), LHC may reduce the amount of the final disbursement, and Borrower shall pay LHC the amount of any remaining Excess Proceeds in one lump sum payment within thirty (30) days of receiving written notice from LHC that the Excess Proceeds are due and payable.

1.2 Expenditure of Gap Financing Loan Proceeds. Proceeds from the Gap Financing Loan are to be used solely to support the development, rehabilitation, replacement, restoration, construction and/or operation of the Project as set forth in the Application, and as required by the QAP, the 2018 Piggyback NOFA and the Loan Documents. Borrower shall use the proceeds of the Gap Financing Loan only for the payment of eligible expenses permitted under the CDBG-DR regulations as set forth in 24 CFR Part 570. Borrower shall not use any proceeds from the Gap Financing Loan for prohibited activities as set forth in 24 CFR Section 570.207. Borrower acknowledges that LHC must comply with the provisions of 24 CFR Part 85 as modified by 24 CFR Section 510.502, and OMB Circular A-87, which allow only costs that are necessary, reasonable, and adequately supported to be charged to the Program (all expenses described in this Section 1.6, described herein as "**Eligible Expenses**"). Borrower acknowledges and agrees that any funds not used in accordance with the standard or applicable CDBG-DR regulations must be repaid to LHC by Borrower upon written demand.

1.3 Repayment Terms. The Gap Financing Loan shall be repaid in annual installments solely from Surplus Cash (each, an "**Annual Installment**"), to the extent Surplus Cash is generated from the operation of the Project. Each Annual Installment shall be an amount equal to fifty percent (50%) of Surplus Cash. Surplus Cash shall be calculated as of December 31 of each year and the Annual Installment shall be paid to LHC no later than the following May 1. Notwithstanding the requirement of repayment from Surplus Cash, the Gap Financing Loan shall not be construed as a joint venture, partnership or other association between Borrower and LHC, other than a debtor/creditor relationship. LHC's right to be paid from Surplus Cash shall terminate at such time as the principal and interest amounts due on the Note are paid in full.

(a) Negative Surplus Cash. If Surplus Cash is negative in any year during the Term of the Gap Financing Loan, no annual payment shall be due for that year, but interest shall continue to accrue at the Interest Rate on the principal balance of the Gap Financing Note.

(b) Maturity. The Gap Financing Loan shall mature on the earliest to occur of (i) sale or refinancing of the Project not permitted hereunder; (ii) acceleration following an Event of Default under the Loan Documents that is not cured within any applicable grace or cure period; or (iii) thirty-five (35) years from the Effective Date of the Regulatory Agreement, expected to be May 1, 20__ (the "**Maturity Date**").

(c) Late Charge. If any Annual Installment due hereunder is not received by LHC on or before the tenth (10th) day after such amount is due, or if any other amount payable under this Agreement or under the Note, Mortgage or any other Loan Document is not received by LHC within ten (10) days after the date such amount is due, counting from and including the date such amount is due, Borrower shall pay to LHC, immediately and without demand, a late charge equal to 5 percent (5%) of such Annual Installment or other amount due. Borrower acknowledges that its failure to make timely payments will cause LHC to incur additional expenses in servicing and processing the Loan and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Paragraph represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Agreement, of the additional expenses LHC will incur by reason of such late payment. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 1.3(d).

(d) Default Rate. So long as any Annual Installment or any other payment due under this Agreement remains past due for thirty (30) days or more, interest shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid Annual Installment or other payment due, as applicable, at the Default Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate, until such time as the payment is made. Borrower also acknowledges that its failure to make timely payments will cause LHC to incur additional expenses in servicing and processing the Loan, and that during the time that any Annual Installment or payment is delinquent for more than thirty (30) days, LHC will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on LHC's ability to meet its other obligations and to take advantage of other investment opportunities, and that it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any Annual Installment or other payment due is delinquent for more than thirty (30) days, LHC's risk of nonpayment of this Note will be materially increased and LHC is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable to the Default Rate represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Agreement, of the additional costs and expenses LHC will incur by reason of the Borrower's delinquent payment and the additional compensation LHC is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

1.4 Audit of Surplus Cash.

(a) Determination of Surplus Cash before Loan Disbursement. If the Project is placed in service prior to disbursement of the Loan, LHC shall calculate Surplus Cash based on the last day of the month preceding such disbursement. If Surplus Cash is negative, Borrower must deposit such deficit into the Project's Operating Account so that at the time of disbursement of the Loan, the Project is not operating in a deficit. Borrower may elect to use funds from the operating deficit reserve, or may require the Guarantors to fund such deficit.

(b) Determination of Surplus Cash for Purposes of Calculating Annual Installment.

Beginning with the year in which the first unit in the Project is placed in service, and annually thereafter, within one hundred twenty (120) days after the end of Borrower's fiscal year, Borrower shall provide LHC with an audited schedule of Surplus Cash for the previous fiscal year, certified to be true and correct by Borrower's chief financial officer. Surplus Cash will be computed by the Borrower's accountant (or such other representative of Borrower tasked with such computation), generally in accordance with HUD's requirements for calculating Surplus Cash in HUD's multifamily programs, and will be subject to LHC's review and concurrence. LHC will review Borrower's schedule and will notify Borrower whether it agrees with Borrower's determination or whether it has calculated a different Surplus Cash value, which determination shall be made in LHC's sole but reasonable discretion. LHC shall conduct its determination of Surplus Cash based solely on the Loan Documents without regards to the determination of any other lender. Borrower agrees that for the purposes of the Loan Documents, the definition of Surplus Cash stated herein shall govern, notwithstanding contradicting definitions contained in any other document to which the Borrower is a party.

**SECTION 2
ACCOUNTING REQUIREMENTS**

2.1 Operating Account. The Borrower shall establish an Operating Account for the Project. During the term of the Loan:

(a) All cash received by the Borrower shall be deposited to the Operating Account, except for (1) proceeds of the Senior Loan and all other development period sources of funds (limited, however, to the amounts included in the Borrower's final Cost Certification provided for LHC's subsidy layering review); and (2) tenant security deposits.

(b) All amounts withdrawn from any reserve account or escrow account shall be deposited directly to the Operating Account.

(c) All discounts, rebates, commissions or other payments in connection with the Project shall be credited to the Project and shall be deposited to the Operating Account even if such payments are made to the management agent, the Borrower or any Affiliate.

(d) Prior to the calculation of Surplus Cash, the only expenditures that may be made from the Operating Account are Project Operating Expenses.

(e) Expenditures that may not be made from the Operating Account prior to the calculation of Surplus Cash include, without limitation, Non-Operating Expenses. Non-Operating Expenses may be paid from Surplus Cash remaining in the operating account after determination and payment of the Annual Installment.

Borrower agrees that these requirements shall be binding on the Borrower, and that the Borrower has provided these requirements to all other parties providing funds to the Project. The provisions of these requirements shall apply, notwithstanding any provision to the contrary in the Borrower's organizational documents and notwithstanding any provision to the contrary in the Borrower's agreements with any investor or with any other lender.

2.2 Reserve Accounts. Borrower shall establish and maintain Reserves with a third party financial institution in compliance with the following procedures. Notwithstanding these provisions, Loan proceeds may not be used to fund any reserve accounts.

(a) Replacement Reserves. Borrower shall establish and maintain a reserve ("**Replacement Reserve**") for the payment of costs and expenses incurred by Borrower in connection with fixtures, furniture and equipment, capital improvements, repairs and replacements performed at the Project, including but not limited to, the performance of work to the roofs, chimneys, gutters, downspouts, paving, curbs, ramps, driveways, balconies, porches, patios, exterior walls, exterior doors and doorways, windows, carpets, appliances, fixtures, elevators, and mechanical and HVAC equipment and the replacement of furnishings, fixtures and equipment in the rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities and other public areas accessible by the public or tenants for regular use, and such other items as Lender may approve from time to time in its reasonable discretion (collectively, the "**Repairs**"). Prior to the release of the Loan retainage (the final payment of Loan proceeds), Borrower must produce evidence that Borrower has deposited \$1,000 per unit into the Replacement Reserve as an initial deposit. Commencing on the first month in which the Project is placed in service, and continuing thereafter or the 1st of each month every year of the Project's operation during the term of this Agreement, Borrower shall deposit to the Replacement Reserve \$600 per unit per month, or a total of \$[] per year. So long as no Event of Default has occurred and is continuing and no circumstance exists, which with the giving of notice, or passage of time, or both, would constitute an Event of Default, all sums in the Replacement Reserve shall be held in the Replacement Reserve to pay and/or reimburse Borrower for the costs and expenses of Repairs. As part of its annual Surplus Cash audit, Borrower shall provide an accounting of the initial balance of the Replacement Reserve, all withdrawals and deposits made during such fiscal year, and the ending balance, and after review, LHC shall notify Borrower whether it approves any amounts withdrawn from the Replacement Reserve. If LHC disallows any withdrawal from the Replacement Reserve, it shall provide notice of the amount disallowed and Borrower shall reimburse the Replacement Reserve for such amount within thirty (30) days of such notice. In the event that the amounts on deposit or available in the Replacement Reserve are inadequate to pay the cost of any Repairs, Borrower shall pay the amount of such deficiency.

(b) Operating Deficit Reserves. To the extent required by the Investor [Member][Limited Partner] or Senior Lender, Borrower may establish and maintain a reserve for payment of Operating Deficits ("**Operating Deficit Reserve**"). Initial deposits to the Operating Deficit Reserve must be funded through development costs of the Project (and will not be considered an Operating Expense). Deposits occurring after the placed in service date shall only be made from Surplus Cash remaining after payment of the Annual Installment (regardless of whether the deposit is being made to replenish reserve funds drawn down to pay prior Operating Deficits). The Operating Deficit Reserve may be used to pay any Operating Deficits acknowledged by LHC. No amount may be withdrawn from the Operating Deficit Reserve without LHC's prior written consent. In the event that Borrower breaches this provision, it must reimburse the funds within thirty (30) days of LHC's written notice. When the Operating Deficit Reserve is not required to be maintained under any Permanent Loan Document or under the Borrower's Partnership Agreement, any amounts remaining in the Operating Deficit Reserve shall be applied to the payment of the Gap Financing Loan, or, at LHC's discretion, transferred to the Replacement Reserve.

(c) Other Reserves. LHC will not permit or acknowledge any reserves other than the Replacement Reserves and Operating Deficit Reserves described in this Section 2.2. Separate "lease-up reserves", insurance reserves, marketing reserves, or other reserves intended to cover operating costs of the Project prior to stabilization shall be included in the Operating Deficit Reserve.

(d) **Reserve Balancing.** If, in LHC's discretion, the amounts maintained collectively in the Project's reserve accounts become out of balance with the actual and anticipated needs of the Project, subject to the thresholds required by the [Operating][Partnership] Agreement, LHC may require a reevaluation of such thresholds based on the amounts calculated as necessary for the long-term viability of the Project and require that Borrower rebalance the amounts held in the reserve accounts to fit such determination.

SECTION 3 PROHIBITED TRANSACTIONS

3.1 Restrictions On Identity-of-Interest Relationships. In order to protect LHC's interest in future Surplus Cash, the Borrower must notify LHC in writing prior to contracting with any Identity of Interest entity, and the Borrower must include in its audited annual financial statements a disclosure of all amounts paid to Identity of Interest entities. In addition, LHC will have the right, in its sole and absolute discretion, during the term hereof, to require the cancellation of any contract between the Borrower and any Identity of Interest entity, and all Identity of Interest contracts must permit such cancellation. If LHC approves any existing contract that does not provide for subsequent cancellation, Borrower agrees, upon LHC's request, to cause the contract to be modified to provide for cancellation. All current contracts with Identity of Interest entities are identified on **Schedule 3.1**, attached hereto.

3.2 Due on Sale or Transfer Restrictions.

(a) Subject to the terms of this Section, 100% of the Indebtedness, including without limitation, payment of all principal and accrued and unpaid interest, is due upon sale or refinancing of the Project, absent LHC's written consent. LHC may, in its sole discretion, accept less than 100% of the amounts then due, but such waiver will not constitute forgiveness of any Indebtedness.

(b) Borrower hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project, or any portion thereof, without obtaining the prior written consent of LHC, which consent shall be in LHC's sole discretion. LHC may, in its sole discretion, allow the transferee to assume the remaining Indebtedness.

(c) Notwithstanding the foregoing to the contrary,

- i. the pledge to a [limited partner][member] by a [general partner][managing member] of the [general partner's][managing member's] interest contained in the [Partnership Agreement][Operating Agreement] as security for the performance of all of the [general partner's][managing member's] obligations under the [Partnership Agreement][Operating Agreement] shall not constitute a refinancing for purposes of this Agreement or the Loan Documents;
- ii. a sale, transfer, pledge, encumbrance or other disposition of any Investor [Member][Limited Partner] interests in Borrower shall not require LHC's consent nor constitute a sale of the Project for the purposes of this Section, (A) unless such transaction results in a sale of more than 51% of the Investor [Member][Limited Partner] interests in Borrower; or (B) such transfer of Investor [Member][Limited Partner] interest is to any successor which is an affiliate of such Investor [Member][Limited Partner] entity; and

- iii. the change in the [general partner][managing member] of Borrower as [general partner][managing member] of Borrower in accordance with the terms of the [Partnership Agreement][Operating Agreement] of Borrower shall not require LHC consent nor constitute a sale of the Project for the purposes of this Section;

provided, however, that for purposes of this Section 3.2(c) that (x) Borrower shall provide LHC with notice of any such transfer or change; and (y) any entity replacing the [general partner][managing member] of the Borrower is under direct or indirect common control or management, or has a Controlling Interest in, the Investor [Member][Limited Partner].

SECTION 4 NONRECOURSE LOAN AND REQUIRED GUARANTIES

4.1 Nonrecourse Loan.

(a) Notwithstanding anything to the contrary contained in the Loan Documents, except as set forth in this Section, Borrower shall have no personal liability under the Loan Documents for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Loan Documents, and LHC's only recourse for the satisfaction of the Indebtedness, and the performance of such obligations shall be to exercise its rights and remedies with respect to the Mortgaged Property and any other collateral held by LHC as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair LHC's enforcement of its rights against any Guarantor guaranteeing any indebtedness or obligations of Borrower under this Agreement or under any guaranty executed by Guarantor in favor of LHC with regards to the Project.

(b) Borrower shall become personally liable to LHC for the repayment of any portion of the Indebtedness equal to any loss or damage suffered by LHC as a result of:

- i. failure of Borrower to pay to LHC upon demand during the existence of an Event of Default, all rents, revenues and profits from the operation of the Project to which LHC is entitled under the Mortgage, and the amount of all security deposits collected by Borrower from tenants then in residence;
- ii. failure of Borrower to apply all insurance proceeds and condemnation proceeds as required by the Loan Documents;
- iii. failure of Borrower to comply with the requirements in the Mortgage relating to the delivery of books and records, statements, schedules and reports;
- iv. failure to apply rents, revenues and profits, first, to the payment of reasonable operating expenses (other than Project management fees that are not currently payable) and then to Debt Service Amounts due, except that Borrower will not be personally liable (A) to the extent that Borrower lacks the legal right to direct the disbursement of such sums because of a Senior Mortgage encumbering the Project, or bankruptcy, receivership or similar judicial proceedings, or (B) with respect to Surplus Cash distributed in any calendar year if Borrower has paid all operating expenses and Debt Service Amounts due for that calendar year; or

- v. failure of Borrower to pay all deductibles required under any of the insurance policies required to be maintained under this Agreement.

(c) Borrower shall become personally liable to LHC for the repayment of all of the Indebtedness due upon the occurrence of any of the following Events of Default:

- i. Borrower's acquisition of any property or operation of any business not permitted by the Mortgage;
- ii. fraud or any written material misrepresentation by Borrower or any officer, agent, director, partner, member or employee of Borrower in connection with the Application, the Loan Documents, or any request by LHC;
- iii. misappropriation of Loan proceeds by Borrower; or
- iv. a Transfer that is an Event of Default hereunder or under the Mortgage.

(d) To the extent that Borrower has personal liability under this Section, LHC may exercise its rights against Borrower personally without regard to whether LHC has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any Guarantor, or pursued any other rights available to LHC under the Loan Documents or applicable law.

(e) Notwithstanding the foregoing provisions, one or more Guarantors shall be personally liable to LHC for those obligations for which Borrower is personally liable under this Section 4.1, and shall agree to pay to LHC, or its assigns, on demand, all amounts for which Borrower is personally liable under the Loan Documents, including without limitation Section 4.1(b) and (c). The obligations of each Guarantor shall survive any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the Mortgage. LHC may pursue its remedies against any Guarantor without first exhausting its remedies against the Borrower or the Project. The Guaranty Agreement executed by Guarantor in favor of LHC shall contain a guaranty of these nonrecourse obligations.

4.2 Completion Guaranty. Borrower and Guarantor shall guaranty the full and complete construction of the Project in accordance with the Plans and Specifications. The terms and conditions of such completion guaranty are set forth in the Guaranty Agreement executed by Guarantor in favor of LHC.

4.3 Operating Deficits; Operating Deficit Guaranty. Any Operating Deficits existing as of December 31 of each year must be deposited in the Project's operating account pursuant to the terms of the Guaranty Agreement. Borrower and Guarantor will be required to guaranty annual operating deficits until the Project has generated positive Surplus Cash for two (2) consecutive fiscal years following the date the Loan is advanced in full to Borrower. Operating deficit loans/advances made to the Borrower as required under the Operating Deficit Guaranty shall be considered a Non-Operating Expense. No voluntary operating deficit loans/advances shall be considered an Operating Expense for the purpose of calculating Surplus Cash unless Borrower shall have received approval from LHC of (1) the amount and terms of the voluntary operating deficit loan/advance prior to the time made, and (2) treatment of the voluntary operating deficit loan/advance as Operating Expenses for the purpose of calculating Surplus Cash. The Operating Deficit Guaranty shall become effective the year in which the Project is placed in service. Annual operating deficits shall be funded by the Guarantors

under the Operating Deficit Guaranty on or before the date on which annual audited financial statements for the Project are due to LHC under this Agreement.

SECTION 5 PROJECT REQUIREMENTS

5.1 Regulatory Agreements.

(a) **Tax Credit Regulatory Agreement.** Borrower shall be required to comply with the terms and conditions of the Tax Credit Regulatory Agreement for the duration of its term.

(b) **CDBG Regulatory Agreement.** As a condition to disbursement of proceeds under this Agreement, Borrower will be required to execute and deliver to LHC the CDBG Regulatory Agreement. The CDBG Regulatory Agreement shall be recorded in the real estate records in the Parish where the Project is located, and shall be subordinate only to those liens and encumbrances agreed to by LHC, in its sole discretion.

SECTION 6 CLOSING AND CONDITIONS TO DISBURSEMENT

6.1 **Closing.** As used herein, "Closing" shall mean that day on which all of the Loan Documents are executed and delivered by Borrower, and all of the conditions to funding the Gap Financing Loan have been satisfied, and the Mortgage is filed for record with the appropriate clerk and recorder of the parish where the Project is located.

6.2 **Disbursement of Gap Financing Proceeds.** [Up to 95% of][T]the proceeds of the Gap Financing Loan shall be disbursed at the direction of LHC [in one single disbursement to Borrower,] [during the construction of the Project, on a pari passu basis with Borrower's construction financing, limited to not more than one (1) draw per month. LHC's pari passu share of each Net Draw Amount will be based on LHC's share of funds being advanced over the construction period to pay the sum of all Net Draw Amounts, which percentage shall be [_____]%. The aggregate amount of Loan proceeds advanced during the construction period will be the lesser of: (i) 95% of the Loan amount or (ii) [_____]% of the actual aggregate Net Draw Amounts. LHC shall have the right to withhold retainage from each Draw Request, in the amount equal to 5% of the Draw Request, in LHC's sole and uncontrolled discretion, if the Draw Request does not already take into account retainage of at least 5% of the amount of cumulative Draw Requests to date.] It is understood and agreed that no more than 35% of the cash developer fee may be received during the construction period, from all sources, and no more than half of this limit allowable to be received at the Closing.

6.3 **Conditions to be Met Prior to any Disbursement of Loan Proceeds.** Prior to the disbursement of any Gap Financing Loan proceeds, the following conditions must be satisfied in the sole and absolute discretion of LHC:

(a) LHC shall have received executed originals of all of the Loan Documents (including a Loan disbursement statement), in form and substance acceptable to LHC.

(b) LHC shall have received the audited financial statements of all Guarantors and a certificate from each Guarantor evidencing adequate liquid capital to satisfy LHC that the obligations of the Guarantor hereunder and under the Guaranty Agreement are adequately secured.

(c) LHC shall have received from the Borrower a copy of the construction budget and line item breakdown of Construction Costs, including hard and soft costs, approved by the Senior Lender, along with a sources and uses of funds in the amount of the Total Development Costs, a draw schedule and estimated development timing assumptions.

(d) LHC shall have received certificates of insurance as to Builder's Risk and Hazard Insurance in completed value form with extended coverage in the amount of the full value of the Project, as completed, in compliance with Section 10 of this Agreement, but which shall, in any case, include such insurance coverage sufficient to meet the standards established in Part V, Section 106 of the Fannie Mae U.S. Guide, effective November 3, 2003, as amended from time to time.

(e) LHC shall have received payment and performance bonds from a U.S. Treasury approved surety in the full amount of the general contractor's contract price which lists LHC as a dual obligee.

(f) LHC shall have received a copy of the general contractor's contract, the architect's contract, the development agreement, the management agreement and management plan, the plans and specifications, the site plan and floor plans, an appraisal and market study, utility availability letters, and such other documentation as LHC may reasonably require.

(g) LHC shall have received a copy of the building permit(s) (or written confirmation from the relevant government authorities that the building permits are ready to be obtained subject only to payment of fees) authorizing construction of the Project together with a certificate from the public official issuing the building permit(s) that the Project will conform to existing zoning laws and specified variances, if any, and all other authorizations, permits or approvals, if any, required by any governmental authorities for the construction and operation of the Project, which are presently procurable.

(h) LHC shall have received the vesting deed (act of sale) or ground lease, as applicable, evidencing Borrower's title or interest in the land and a mortgagee's policy of title insurance from a title insurance company or agent acceptable to LHC, insuring LHC's mortgage lien on the Project, with the standard "preprinted" exceptions deleted, and containing only those exceptions acceptable to LHC, in its sole discretion.

(i) LHC shall have received an ALTA Survey of the current condition of the Land, certified to LHC, showing any buildings or other improvements located thereon and platting building setback lines, servitudes, roads, encroachments, any plattable exceptions that are acceptable to LHC in its sole discretion and any other locatable or visible survey or title-related issues affecting the Land together with a statement as to the flood elevation and zoning for the Land and such other requirements and certification as LHC may reasonably require.

(j) LHC shall have received Borrower's tax identification number, and evidence that Borrower has been awarded low income housing tax credits for the Project as well as confirmation that Borrower has received a commitment from the Investor [Member][Limited Partner] to purchase the tax credits pursuant to the [Operating][Partnership] Agreement.

(k) LHC shall have received: (i) An opinion of Borrower's counsel covering such matters as are reasonably required by LHC, including, without limitation, the existence and good standing of Borrower; that the Loan Documents have been duly authorized, executed and delivered by Borrower; the enforceability of the Loan Documents; and the creation and perfection of the liens and encumbrances intended to be created thereby; (ii) certified copies of Borrower's organizational documents; (iii) good standing certificates from the Secretary of State for the State of Louisiana and the applicable states of organization or formation, for Borrower and Borrower's managing entities, and (iv) such resolutions, certificates, and consents as LHC deems necessary or proper to authorize the execution and delivery by Borrower of the Loan Documents.

(l) LHC shall have received federal and state tax lien, judgment, UCC and pending litigation searches for Borrower, and such other parties as LHC shall require for each state and parish (or county) in which such entity was formed, as well as the State and the parish in which the Project is located, in each case, dated not more than sixty (60) days prior to the date of the initial disbursement.

6.4 Conditions to be Met for All Draws. The following are conditions for all draws and must be satisfied in the sole and absolute discretion of LHC (it being understood and agreed that subject to the provisions contained in this Section, LHC may withhold from disbursement any amounts required to fund any reserve required by the terms of the Loan Documents):

(a) Borrower shall supply LHC with a Draw Request in the form provided by LHC requesting disbursement of Loan proceeds for reimbursement of Eligible Expenses. Each Draw Request shall set forth the amount requested (which in no event shall exceed LHC's pari passu share) and shall be accompanied by partial releases of liens from the general contractor and all major subcontractors to the effect that such amount has been paid for labor and materials supplied to the Project for the immediately preceding draw period and that general contractor and the major subcontractors claim no lien on the Project, and such other evidence as may be required by this Agreement or by LHC. By executing and delivering a Draw Request to LHC, Borrower agrees and acknowledges that such execution and delivery shall constitute a reaffirmation that the warranties and representations in the Loan Documents are correct and true in all material respects, that all the covenants, terms, and conditions of this Agreement are being and have been complied with, and that no Event of Default has occurred and is continuing as of the date of the Draw Request. LHC shall have received for its approval the Draw Request for such disbursement, and any other certifications provided for herein or as requested by LHC in its reasonable discretion. For all draw requests submitted for payment of any contractor or supplier with an Identity of Interest relationship with the Borrower, the Borrower's Architect shall submit a certification of cost reasonableness, establishing that such costs are reasonable.

(b) All conditions precedent to the funding of any construction loan shall have been satisfied to the construction lender's satisfaction and there shall be no defaults or events with which the passage of time could serve as the basis for a default under the Senior Loan.

(c) There shall be at all times undisbursed loan funds (collectively held by LHC and the other lenders), which, when combined with any equity amounts to be funded by the Investor [Member][Limited Partner], are sufficient to complete the construction of the Project. Each Draw Request from Borrower shall be deemed to be a certification by Borrower to LHC that, taking into account any retainage, there will be sufficient funds to complete the Project.

(d) LHC shall have received from the Inspector or from Borrower a copy of Inspector's report prior to the date of such Draw Request and such report shall be satisfactory to LHC in its sole discretion.

(e) LHC shall have received an endorsement to the title insurance policy using standard construction loan disbursement endorsements updating the status of title to the date of the current Draw Request and increasing the insurance coverage to an amount equal to the sum of all prior Draw Requests and the current Draw Request, without additional exceptions or objections, except those specifically approved in writing by LHC.

(f) LHC shall have received evidence that all certificates of insurance as to Builder's Risk and Hazard Insurance remain in effect.

(g) The warranties and representations contained in the Loan Documents are correct and true, in all material respects, all the covenants, terms and conditions of the Loan Documents remain satisfied, and no uncured Event of Default, default, or circumstances or events which upon the lapse of time, the giving of notice, or both, could become an Event of Default, have occurred as of the date of the Draw Request under the Loan Documents.

(h) LHC shall have received a certificate of Borrower included with each Draw Request stating that Borrower has satisfied and is in compliance with all of the terms, covenants and conditions contained in the the Application, the 2018 Piggyback Program, and the 2018 Piggyback NOFA, the and all laws, rules, regulations, ordinances and codes applicable to the Project, including without limitation CDBG-DR regulations, to the extent not waived in writing. Such certificate shall state that all of Borrower's representations, warranties and covenants contained in the Application and the Loan Documents are true and correct in all material respects as of the Disbursement Date, and Borrower has performed all of its obligations under the Loan Documents, and no Event of Default, or circumstance or event which with notice or the passage of time, or both would constitute an Event of Default under the Loan Documents shall exist as of the Disbursement Date.

(i) If requested by LHC, Borrower shall furnish copies, certified by Borrower to be true and correct, of all subcontracts and purchase orders for the provision of labor and materials for the construction of the Improvements and statements from each subcontractor and supplier: stating the

amount of its contract and the amount paid to date; and acknowledging full payment (less retainage) of all sums due and payable for all work done and materials supplied.

(j) If requested by LHC, Borrower shall furnish to LHC evidence reasonably satisfactory to LHC that Borrower and general contractor have obtained or can obtain all necessary materials as and when required for the completion of the Project in accordance with the Plans and Specifications.

4.5 Conditions to be Met Prior to the Disbursement of the Final Draw. When the Project has been completed, Borrower shall supply LHC with the following documents and satisfy the following terms and conditions as well as satisfying all of the conditions and supplying all of the information required under the Loan Documents, prior to final disbursement (including any retainage withheld) of Loan proceeds (it being understood and agreed that subject to the provisions contained in this Agreement, LHC may withhold from disbursement any amounts required to fund any reserve required by the terms of the Loan Documents):

(a) Certificates of occupancy for each building and unit in the Project, or its equivalent from the applicable governmental authorities for the State or the Parish in which the Project is located.

(b) Certificate from the Borrower's architect or engineering firm that the Project has been completed in substantial compliance with the plans and specifications for the Project, and with the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157); the Uniform Federal Accessibility Standards, as set forth in 24 CFR Section 570.614; the Americans with Disabilities Act of 1990; for existing properties build prior to 1978, the Lead-Based Paint Poisoning Protection Act (42 U.S.C. §4831(b)) and the Residential Lead based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856) and implementing regulations at 24 CFR Part 35; and Section 504 of the Rehabilitation Act of 1973.

(c) An acceptable environmental assessment of the Project that complies with the CDBG-DR regulations and requirements and has been approved by LHC.

(d) Certificate from LHC's inspector that the Project has been completed in accordance with the Plans and Specifications in a good and workmanlike manner (the "**Certificate of Completion**").

(e) An ALTA "As Built" Survey, certified to LHC, showing the buildings and improvements comprising the Project to be within lot lines and building setback lines, all easements, roads, rights of way and matters affecting title, and any other information required by LHC.

(f) An endorsement to the title insurance policy updating the title insurance policy to the completion date, increasing the insurance coverage to the full amount of the Loan, containing no additional exceptions not previously approved by LHC and evidencing the subordination of any Senior Mortgage to the terms and conditions of the CDBG Regulatory Agreement.

(g) A complete set of signed and sealed "as built" Plans and Specifications.

(h) Satisfaction and compliance with all of the terms, covenants and conditions contained in the Application, the 2018 Piggyback Program, this Agreement and the other Loan Documents.

(i) Compliance with all laws, rules, regulations, ordinances and codes applicable to the Project, including without limitation CDBG-DR regulations, to the extent not waived in writing, applicable to the Project.

(j) LHC shall have received current federal and state tax lien, judgment, UCC and pending litigation searches for Borrower, and such other parties as LHC shall require for each state and parish (or county) in which such entity was formed, as well as the State and the parish in which the Project is located, in each case, dated not more than sixty (60) days prior to the date of disbursement.

(k) LHC shall have approved the Cost Certification Audit from Borrower and shall have completed the final subsidy layering review of the Project costs.

(l) LHC shall have received: (a) current certificates of insurance as required by this Agreement; (b) a copy of the final, executed Permanent Supportive Housing Set-Aside Agreement pertaining to the Project; (c) an estoppel certificate from any other lenders providing financing for the Project stating that no defaults have occurred and that its loan terms are being complied with; (d) updated financial information from Borrower and each Guarantor, including copies of the most recent year's tax returns and audited financial statement, and such other information as LHC deems necessary; (e) a certificate of Borrower evidencing compliance with all Davis-Bacon requirements; (f) a certificate of Borrower summarizing all actions taken to comply with the Housing and Urban Project Act of 1969 (Section 3).

(m) A warranty from the construction contractor, acceptable to LHC in its sole discretion, providing a full guarantee for all workmanship and materials, without regard to whether such work or materials was paid by LHC or other funding sources, for a period of not less than twelve (12) months from the date of the Certificate of Completion. The warranty shall also guarantee any structural work against defect in materials or workmanship for a period of not less than five years from the date of the Certificate of Completion.

(n) Current good standing certificates and certified copies of the Organizational Documents for Borrower, its general partner(s)/managing member(s), Guarantor(s) and such other parties as required by LHC.

(o) Evidence that the Low Income Housing Tax Credits initially awarded to Borrower are still available and committed to Borrower for the Project and evidence of an initial contribution from Investor [Member][Limited Partner] showing an intent to purchase the tax credits.

(p) A certificate of Borrower reaffirming the representations and warranties contained in the Loan Documents.

(q) Lien-free completion of the Project (as evidenced by final lien waivers in form and substance satisfactory to LHC and its counsel from the general contractor and all major subcontractors, and expiration of the lien periods provided by applicable Louisiana law, with no liens being filed against

the Project) and completion of the Project within eighteen (18) months following the actual construction start date.

(r) Any approval required by any governmental authority to the extent that any such approval is a condition to the lawful use and occupancy of the Project.

SECTION 7 FEDERAL, STATE AND LOCAL REQUIREMENTS

7.1 Applicable Laws. Borrower agrees to abide by any and all federal, state, parish and municipal laws, codes, ordinances, rules and regulations applicable to the Project, whether presently existing or hereafter promulgated, including without limitation environmental laws, building codes, land use, and zoning codes. Borrower agrees to comply with all Program requirements, HUD regulations and the provisions of 24 CFR Part 570, as amended from time to time, and all federal regulations and policies issued pursuant to these regulations. Borrower acknowledges the provisions of Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et seq., Code of Governmental Ethics), and agrees to immediately notify the State of Louisiana, Division of Administration, if potential violations of the Code of Governmental Ethics arise at any time during the term of this Agreement.

7.2 Uniform Administrative Requirements. Borrower acknowledges that LHC must comply with the Uniform Administrative requirements set forth in 24 CFR Section 570.502, and the Federal Office of Management and Budget "OMB" Circular A-87 and implementing regulations in 24 CFR Parts 85, A-128 and A-133 and implementing regulations contained in 24 CFR Part 44. Borrower agrees to supply LHC with documentation concerning the Project in order to ensure that LHC is in compliance with its responsibilities therein regarding source documentation for all costs incurred.

7.3 Records. Borrower shall comply with 24 CFR Section 570.506 and 24 CFR Section 85.42 regarding records that must be maintained for the Project. Borrower shall maintain all Project financial records, including source documentation to support how CDBG-DR funds loaned to Borrower hereunder were expended, which includes, but is not limited to, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, and other documentation as may be required by LHC or HUD to support the expenditures for this Project. All supporting documents shall be maintained in accordance with the requirements of 24 CFR Part 85 or for such other period required by LHC or HUD. The records shall be made available to LHC, HUD, the Louisiana Legislative Auditor and/or any of their authorized representatives, who shall have access to and the right to examine any of the Project records during such period. All record keeping requirements set forth in this Agreement or any record keeping requirements mandated by CDBG-DR regulations shall survive termination of this Agreement.

7.4 Monitoring. Borrower will allow on-site monitoring of the Project by LHC or an agent on its behalf, at such times as LHC or HUD deems necessary or required, and LHC and/or HUD shall have the right, but shall be under no obligation, to conduct any reasonable monitoring to determine compliance with the CDBG Regulatory Agreement and this Agreement, including but not limited to the right to enter the Project, to inspect the Project, to inspect the books and records kept regarding the Project, and the right to inquire and receive responses from Borrower regarding the Project and its operation at any time that may be required by LHC or HUD.

7.5 Religious and Political Activities. Borrower is prohibited from using Loan proceeds or personnel employed in the administration of the Program for sectarian or religious activities, lobbying, political patronage and/or nepotism activities. Borrower further agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code (Hatch Act), 24 CFR Section 570.207(a)(3), or 24 CFR Section 570.200(j).

7.6 Section 3 of the Housing and Urban Project Act of 1968. To the extent applicable, Borrower agrees to comply with the provisions of Section 3 of the Housing and Urban Project Act of 1968 (12 U.S.C. §1701u) and implementing regulations contained in 24 CFR Part 135 regarding economic opportunities for low and very low income persons. Borrower shall also keep records demonstrating compliance with the foregoing regulations, including without limitation the provisions of 24 CFR Section 570.506(g)(5).

7.7 Equal Employment Opportunity. Borrower agrees to comply with 24 CFR Section 570.607, Executive Order 11246, as amended by E.O. 11375, the implementing regulations in 41 CFR Part 60.

7.8 Non-Discrimination. Borrower shall not, on the grounds of race, color, religion, national origin, ethnicity, familial status, sexual orientation or gender, exclude any person from participation in, or deny any person the benefits of, or subject any person to discrimination with respect to, any part of the Project. Borrower shall at all times comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, *et seq.*) and implementing regulations in 24 CFR Part 1. Borrower shall also not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §6101, *et seq.*) and the implementing regulations contained in 24 CFR Part 146, or on the basis of disability as provided in Section 504 of the Rehabilitation Act of 1973, and the implementing regulations contained in 24 CFR Part 8.

7.9 Fair Housing Act. Borrower shall comply with the Fair Housing Act (42 U.S.C. §§3601-3620) and Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing) and implementing regulations in 24 CFR Part 107 and keep all records demonstrating compliance with the foregoing.

7.10 Davis-Bacon Act. Borrower is required to comply with 24 CFR Section 570.603, and the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §276(a) to (a-7) as it applies to any construction work financed in whole or in part with CDBG-DR funds.

7.11 Copeland "Anti-Kickback" Act. Borrower agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. §874) as supplemented by the Department of Labor regulations contained in 29 CFR Part 3.

7.12 Contract Work Hours and Safety Standards Act. Borrower agrees to comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §327-333), as supplemented by the Department of Labor regulations contained in 29 CFR Part 5.

7.13 Handicapped Accessibility Requirements. The Project shall be accessible to and usable by individuals with handicaps, in compliance with the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157), the Uniform Federal Accessibility Standards, as set forth in 24 CFR Section 570.614, and the Americans with Disabilities Act of 1990.

7.14 Resident Aliens. Borrower agrees to comply with the requirements set forth in 24 CFR Section 570.613 regarding eligibility restrictions for certain resident aliens.

7.15 Debarment and Suspension. In connection with this Project, Borrower shall comply with the debarment and suspension requirements set forth in 24 CFR Part 5 and 24 CFR Part 24. Borrower shall not enter into a contract with any person, agency or entity that is debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 or 12689. In the event that Borrower has entered into a contract or subcontract with a debarred or suspended party, no CDBG-DR funds will be provided as reimbursement for the work done by that debarred or suspended contractor or subcontractor.

7.16 Environmental Review Requirements. In connection with any construction or improvements to the Project, Borrower must submit an environmental report in form and substance acceptable to LHC, which must provide an environmental assessment of such construction in accordance with 24 CFR Part 58, and be approved by LHC before commencing such work.

7.17 Lead Based Paint Prohibited. For existing properties built prior to 1978, Borrower agrees that it shall not use lead-based paint in the Project and shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §4831(b)), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856) and implementing regulations at 24 CFR Part 35. Borrower shall maintain records demonstrating compliance with the foregoing lead based paint requirements. To the extent that lead-based paint is located in any existing buildings at the Project, Borrower shall provide LHC with a plan for handling such lead-based paint in a safe manner, and in accordance with the foregoing regulations, and comply with the plan during any construction at the Project.

7.18 Historic Preservation. To the extent applicable, Borrower agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the Project. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that are included on a Federal, State, or local historic property list.

7.19 Flood Disaster Protection. Borrower shall obtain a flood zone certificate certifying that the Project is not located in a special flood hazard area ("**Flood Hazard Area**") as identified by Federal Emergency Management Agency ("**FEMA**"), or if located in a Flood Hazard Area, the designation of the Flood Hazard Area in which the Project is located. Borrower shall comply with all requirements listed in the FEMA Special Flood Hazard Area Flood Maps. Borrower agrees to comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. §4106) and implementing regulations in 44 CFR Parts 59 through 79 in regard to the sale, lease or other transfer of land acquired, cleared or improved under the terms of this Agreement, as it may apply to the provisions of this Agreement.

7.20 Permits. Borrower agrees to obtain and maintain all necessary permits for intended improvements or activities for the Project, and for the operation of the Project.

7.21 Displacement, Relocation, Acquisition and Replacement of Housing. Borrower shall comply with 24 CFR Section 570.606 and shall keep all records demonstrating compliance with these requirements including, but not limited to, those records required in 24 CFR Section 570.506. Borrower

must comply with applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (49 CFR Part 24) and Section 104(d) of the Housing and Community Project Act of 1974 as amended. These requirements are explained in HUD Handbook 1378 and specify the procedures for the acquisition of property and the treatment of tenants located in the Project.

7.22 Conflict of Interest. Borrower shall comply with the conflict of interest provisions contained in 24 CFR Section 570.611, Section 84.42 and Section 85.36, as applicable.

7.23 Rehabilitation Act. Borrower shall comply with Section 504 of the Rehabilitation Act of 1973, and the implementing regulations contained in 24 CFR Part 8.

7.24 Program Requirements. Borrower and the Project shall comply with all rules and regulations set forth in the QAP and the 2018 Piggyback NOFA, or applicable to the use of CDBG-DR funds applicable to the Project at all times during the term of this Agreement.

SECTION 8 PROJECT FINANCING

8.1 Senior Loan. LHC acknowledges and agrees that Borrower has entered or will enter into the Senior Loan affecting the Project, in the original principal sum of \$[_____], accruing interest at [_____] % per annum, amortized over [_____] months commencing [_____] and maturing [_____]. The Senior Loan is secured by the Senior Mortgage in favor of Senior Lender, having or which will have a first priority mortgage lien on the Project. The lien of LHC's Mortgage and the Loan Documents (other than the Regulatory Agreements) are and will be subordinate to the Senior Loan documents in all respects.

8.2 Subordinate Loan. LHC acknowledges and agrees that Borrower has entered or will enter into a Subordinate Loan affecting the Project, in the original principal sum of \$[_____] secured by a Subordinate Mortgage in favor of the Subordinate Lender, which will have a third priority mortgage lien on the Project, and evidenced by a Subordinate Note and such other Subordinate Loan Documents as required by the Subordinate Lender. LHC's Mortgage and the Loan Documents shall be senior to the Subordinate Loan documents in all respects.

8.3 Other Debt. No other obligation of the Project shall be secured by a mortgage, lien or other encumbrance on the Project. Any accrued interest on any construction loan or any bridge loan shall be calculated from the date the Project was Placed in Service. Any amount calculated, plus any amounts owed but not paid prior to the Closing Date shall be a subordinate, unsecured loan for the purposes of this Agreement, and shall be payable from Surplus Cash remaining after payment of the Annual Installment to LHC. Any advances or loans made by Borrower or any of its Affiliates shall be unsecured obligations, subordinate to the Gap Financing Loan in all respects.

8.3 Senior and Subordinate Loans. Borrower warrants, and represents and covenants as follows:

(a) Borrower shall comply with all of the terms, covenants and conditions contained in the Senior Loan Documents and the Subordinate Loan Documents.

(b) Borrower shall obtain from the holder of the Senior Mortgage and the Subordinate Mortgage, a subordination of each mortgage to the Regulatory Agreements.

(c) Borrower shall obtain an agreement from the holder of the Senior Note and the Subordinate Note to give LHC written notice of any default by Borrower under the Senior Loan Documents or the Subordinate Loan Documents and, in the case of the Senior Mortgage, an opportunity (but not the obligation) to cure such default on behalf of the Borrower before foreclosing on the Project under the Senior Loan Documents.

SECTION 9 DEFAULTS AND REMEDIES

9.1 Events of Default. The following shall each constitute an event of default under this Agreement (each an "**Event of Default**", and, collectively, "**Events of Default**"):

(a) If Borrower fails to make any payments due to LHC under the Note, or the other Loan Documents as and when due, and such failure continues for a period of ten (10) days following written notice of such failure of payment to Borrower and any Investor [Member][Limited Partner] or Guarantor listed in the Notice section of this Agreement;

(b) If Borrower fails to comply with any regulations governing the award and use of CDBG-DR funds, including, but not limited to, 24 CFR Part 570, or fails to comply with any of the terms and conditions or covenants contained this Agreement applicable to Borrower, and such failure continues for a period of thirty (30) days following written notice thereof to Borrower and any Investor [Member][Limited Partner] or Guarantor listed in the Notice section of this Agreement;

(c) If at any time any warranty or representation made by Borrower in any Loan Document, instrument, agreement, certification or communication submitted by Borrower to LHC is determined by LHC to be false, misleading, or incorrect in any manner;

(d) If any other default occurs under the Loan Documents, and such default is not cured within the applicable cure period set forth in such Loan Document, or if there is no cure period set forth therein, then within thirty (30) days following the date of written notice of such default to Borrower and any Investor [Member][Limited Partner] or Guarantor listed in this Agreement;

(e) If Borrower defaults under any of the Senior Loan Documents or Subordinate Loan Documents and fails to cure the same within the time periods granted in such Senior Loan Documents or Subordinate Loan Documents subject to the terms of the Subordination Agreement; or

(f) If Borrower defaults under any other loan, promissory note, project based rental assistance contract, loan agreement, mortgage, indenture, regulatory agreement, security agreement, assignment or other agreement between Borrower and LHC, and such failure is not cured within any grace or cure period granted therein.

9.2 Cure by Investor, Guarantor or LHC. LHC agrees to provide written notice of an Event of Default to any Investor [Member][Limited Partner] or Guarantor listed in the Notice section of this Agreement and to allow such party the opportunity to cure any default of Borrower on behalf of Borrower and to the same extent as Borrower. Borrower agrees that LHC shall be entitled to rely upon and to accept any offer of cure made by any such Investor [Member][Limited Partner] or Guarantor.

9.3 No Waiver. Failure of LHC to declare an Event of Default under this Agreement shall not constitute a waiver of any rights by LHC. Furthermore, the waiver of any default by LHC or its election to cure any Borrower default shall in no event be construed as a waiver of rights with respect to any other default, past or present.

9.4 Remedies. Upon the occurrence of any uncured Event of Default, LHC shall be entitled to enforce Borrower's obligations pursuant to specific performance or withhold any further funding to Borrower or its Affiliates, and/or exercise all rights and remedies available to it under the terms of this Agreement, the other Loan Documents, and applicable state and federal law, including without limitation the right to accelerate the payment of the Note and the Indebtedness and any other sums secured by the Mortgage, including late fees and default interest, and commence appropriate legal and equitable action to foreclose the Mortgage and collect all such amounts due LHC as a result of the default. LHC may also exercise any one or more of the actions contained in 24 CFR Parts 84.42(a)(1-5), 85.43 and 85.44. All remedies shall be deemed cumulative and, to the extent permitted by law, the election of one or more remedies shall not be construed as a waiver of any other remedy LHC may have available to it.

SECTION 10 INDEMNIFICATION AND INSURANCE

10.1 Environmental Indemnification. Borrower agrees to indemnify and to defend and hold LHC harmless against any claim arising from, or in any way related to, the environmental condition of the Project, including, but not limited to, the cost of investigating, defending, and/or negotiating to a satisfactory conclusion claims made by environmental regulatory agencies, as well as all cleanup and property maintenance requirements imposed by any agency with lawful jurisdiction over the Project. This indemnification shall run from the time of initial discovery of any such adverse environmental condition and shall not be construed to commence only upon realization by LHC of an actual pecuniary loss as a result of such adverse environmental condition. The existence of this indemnification agreement shall not be construed as an indicia of ownership, management, or control of the Project by LHC and Borrower hereby recognizes and acknowledges that LHC is not an owner or manager of the Project and does not exert any control thereupon. Notwithstanding anything herein or in the other Loan Documents to the contrary, this indemnification provision shall survive closing.

10.2 Indemnification from Third Party Claims. Borrower shall indemnify and hold harmless LHC from any liability, claims or losses including attorney's fees and costs, resulting from the disbursement of the proceeds of the Loan to Borrower, whether related to the quality of construction or otherwise, and whether arising during or after the Term of the Loan. This provision shall survive the repayment of the Loan and shall continue in full force and effect so long as the possibility of such liability, claims, or losses exists. The Borrower shall, on demand, pay or reimburse LHC and its assignees and agents for (a) all transfer, documentary, stamp and similar taxes, broker's fees and commissions, surveys, travel expenses, photocopying, secretarial overtime and long distance telephone charges (including but not limited to those imposed by LHC's counsel), abstracting charges, policies and all endorsements therefor, license and permit fees, fees and costs of LHC's inspector and disbursing agent(s), and all recording and filing fees, payable in connection with, arising out of or in any way related to the execution, delivery and performance of the Loan Documents or the making of the Loan, and (b) all of LHC's costs and expenses including fees and disbursements of legal counsel and other experts employed or retained by LHC incurred, and all payments made, and indemnify and hold LHC harmless from and against all losses suffered, by LHC in connection with, arising out of, or in any way related to (i) the negotiation, preparation, execution and delivery of (A) the Loan Documents (whether or not executed), (B) any waiver, amendment or consent thereunder or thereto, (ii) the administration of any

operations under the Loan Documents, (iii) consulting with respect to any matter in any way arising out of, relating to, or connected with, the Loan Documents, including but not limited to the enforcement by LHC of any of its rights thereunder or the performance by LHC of any of its obligations thereunder, (iv) protecting, preserving, exercising or enforcing any of the rights of LHC under the Loan Documents, (v) any appraisals, (vi) any claim (whether asserted by LHC, the Borrower or any other person and whether asserted before or after the payment, performance and observance in full of the Borrower's obligations hereunder, under the Note, or the other Loan Documents) and the prosecution or defense thereof, in any way arising under, related to, or connected with, the Loan Documents or the relationship established hereunder and thereunder, (vii) any governmental investigation arising out of, relating to, or in any way connected with the Loan Documents. The foregoing indemnity shall not be applicable to any loss suffered by LHC to the extent such loss is determined by a judgment of a court that is binding on LHC, final and not subject to review on appeal, to be the result of acts or omissions on LHC's part constituting willful misconduct, knowing violations of law or, in the case only of claims by the Borrower against LHC, LHC's failure to observe any other standard applicable to LHC under any of the other provisions of this Agreement, or the Loan Documents or, but only to the extent not available thereunder, applicable law. Notwithstanding the foregoing, Borrower shall not be liable for any claims related to the intentional misconduct or willful negligence of LHC.

Borrower hereby authorizes LHC to pay any and all expenses or other amounts for which Borrower is obligated under this Section from the proceeds of disbursement under the Loan, and no further authorization for such disbursement and payment shall be required from Borrower or any guarantor, if any. In no event shall LHC be obligated to make any such disbursement or payment and Borrower shall in any event remain unconditionally obligated to pay any and all such amounts. All obligations of Borrower under this Section shall be part of the obligations secured by the Project encumbered by the Mortgage and the other Loan Documents.

10.3 Insurance. Without limiting Borrower's indemnification, it is agreed that Borrower shall maintain in force at all times during the performance of this Agreement all appropriate policies of insurance concerning the Project and the Borrower's operations, as more fully set forth on Exhibit C, attached hereto. Certificates with valid and authorized endorsements, evidencing the maintenance and renewal of such insurance coverage shall be delivered to LHC at the closing of the Loan.

10.4 Additional Indemnification. Borrower will indemnify LHC and hold LHC harmless from any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses of whatever kind or nature which may be imposed on, incurred by or asserted at any time against LHC in any way relating to, or arising in connection with the Loan including any claims that any costs reimbursed by LHC are not Eligible Expenses, as defined herein.

SECTION 11 BORROWER'S REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to LHC, as follows:

11.1 Organization and Standing. Borrower is a [limited partnership][limited liability company] duly organized and validly existing under the laws of the State of Louisiana and duly qualified to do business in Louisiana. Borrower has full corporate power and authority to conduct its business as

presently conducted, and Borrower has the full power and authority to enter into and perform under the Loan Documents and to carry out the transactions contemplated hereby.

11.2 Authority. The execution, delivery and performance by Borrower of the Loan Documents, and the consummation by Borrower of the transactions contemplated by the Loan Documents, have been duly authorized by all necessary limited partnership action by Borrower and its partners. The Loan Documents have been duly executed and delivered by, and constitute valid and binding obligations of Borrower enforceable against it in accordance with their respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting generally the enforcement of creditors' rights and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies.

11.3 Noncontravention. The execution of and performance of the transactions contemplated by the Loan Documents and compliance with the provisions hereof by Borrower will not (a) conflict with or violate any provision of the organizational documents of Borrower, (b) require on the part of Borrower any filing with, or any permit, authorization, consent or approval of, any court, arbitrational governmental authority, administrative agency or commission or other governmental authority, (c) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, security interest or other arrangement to which Borrower is a party or by which Borrower is bound or to which its assets are subject, (d) result in the imposition of any mortgage, lien or security interest upon any assets of Borrower other than in favor of LHC, Permanent Lender, LHC or Construction Lender, or (e) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Borrower or any of its properties or assets.

11.4 Governmental Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any governmental authority is required on the part of Borrower in connection with the execution and delivery of the Loan Documents.

11.5 Title to Project. Subject to and except for the "**Permitted Exceptions**" described on **Exhibit B - Permitted Exceptions**, Borrower has good title to the Project, free and clear of any mortgages, liens, or other security interest other than those in favor of LHC.

11.6 Compliance. Borrower has, in all material respects, complied with all laws, regulations and orders applicable to its present and proposed business and has all material permits and licenses required thereby.

11.7 Tax Returns, Payments and Elections. Borrower has filed all tax returns and reports as required by law. These returns and reports are true and correct in all material respects.

11.8 Disclosure. Neither this Agreement nor any other statements, documents or certificates made or delivered in connection herewith or therewith contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading.

11.9 Construction and Compliance with Laws. To Borrower's knowledge there are no structural defects in the Project and no violation of any applicable zoning, building or any other local,

state or federal laws, ordinances and regulations existing with respect to the use and construction thereof; and Borrower shall obtain all licenses, permits and approvals required by all local, state and federal agencies regulating such construction and use and such licenses, permits and approvals shall remain in good standing; and Borrower is and shall remain in compliance, in all material respects, with all laws, regulations, ordinances and orders of all governmental authorities.

11.10 Financial Statements. The financial statements of Borrower and any Key Principal and/or Guarantor delivered to LHC are true and correct in all material respects, and fairly present the respective financial conditions of the parties thereof as of the respective dates thereof, and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof and no additional borrowings have been made by Borrower since the date thereof other than the borrowing contemplated hereby.

11.11 Priority of Lien on Personality. Except for lien rights of any Senior Mortgage holder or LHC, no chattel mortgage, bill of sale, security agreement, financing statement or other title retention agreement (except those executed in favor of LHC) has been or will be executed with respect to any personal property, chattel or fixture used in conjunction with the construction, operation, or maintenance of the Project as described.

11.12 Pending Litigation. Except as provided on **Schedule 11.12**, there are no actions, suits or proceedings pending against Borrower or the Project, or, to the knowledge of Borrower, circumstances which could lead to such action, suits or proceedings against or affecting Borrower or the Project, or involving the validity or enforceability of any of the Loan Documents, before or by any governmental authority, except actions, suits and proceedings which have been specifically disclosed to and approved by LHC; and to Borrower's knowledge it is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority.

11.13 Hazardous Waste. Borrower is in compliance, in all material respects, with all provisions of the Federal Water Pollution Control Act, Comprehensive Environmental Response, Compensation and Liability ("**Superfund**") Act of 1980, the Environmental Protection Act, the Resource Conservation and Recovery Act ("**RCRA**") and Solid Waste Disposal Act, and other similar federal, state and local statutory schemes imposing liability on Borrower relating to underground tanks and other storage facilities, or the generation, storage, impoundment, disposal, discharge, treatment, release, seepage, emission, transportation or destruction of any sewage, garbage, effluent, asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), toxic, hazardous or radioactive materials, petroleum products, pesticides, smoke, dust, or any other form of pollution as such laws are in effect as of the date of this Agreement and with any rules, regulations and orders issued by any federal, state or local governmental body, agency or authority thereunder and with any orders or judgments of any courts of competent jurisdiction with respect thereto, and no assessment, notice of (primary or secondary) liability or notice of financial responsibility, or the amount thereof, or to impose civil penalties has been received by Borrower. Borrower has paid any environmental excise taxes imposed upon it with respect to the Project pursuant to Sections 4611, 4661 or 4681 of the Internal Revenue Code of 1986, as from time to time amended.

11.14 Other Financing. Other than as disclosed on **Schedule 11.14** attached hereto, the Borrower has not received any other financing for the construction and operation of the Project other than the Loan.

11.15 Use of the Project. To Borrower's knowledge, there is no (a) plan, study or effort by any governmental authority or any non-governmental person or agency which may adversely affect the current or planned use of the Project, or (b) any intended or proposed governmental requirement (including, but not limited to, zoning changes) which may adversely affect the current or planned use of the Project. There is no moratorium or like governmental order or restriction now in effect with respect to the Project and, to Borrower's knowledge, no moratorium or similar ordinance or restriction is now contemplated.

11.16 OSHA Matters. The Borrower has duly complied with, and its properties are in full compliance in all material respects with, the provisions of the Federal Occupational Safety and Health Act, and all rules and regulations thereunder and all similar state and local laws, rules and regulations, and there have been no outstanding citations, notices or orders of noncompliance issued to Borrower relating to its businesses or properties under any such laws, rules or regulations.

11.17 Availability of Utilities. All utility services necessary for the operation of the Project for its intended purpose are available at the boundaries of the Project, including water supply, storm and sanitary sewer facilities, and gas, electric and telephone facilities, and Borrower has obtained all necessary permits and permissions required from governmental authorities for unrestricted access to and use of such services in connection with the construction and use of the Project.

11.18 Availability of Roads. All roads necessary for the full utilization of the Project for its intended purposes have either been completed or the necessary rights of way therefor have either been acquired by the appropriate local authorities or have been dedicated to public use and accepted by such local authorities and all necessary steps have been taken by Borrower and such local authorities to assure the complete construction and installation thereof.

11.19 No Default. There is no default on the part of Borrower under this Agreement, the Loan Documents, or any Senior Loan Documents or Subordinate Loan Documents, and no event has occurred and is continuing which with notice, or the passage of time, or either, would constitute an Event of Default under any provision thereof.

11.20 Continuing Nature of Representations and Warranties. Each of the representations and warranties of Borrower contained in this Loan Agreement shall survive the execution of the Agreement, and shall be continuing until such time as all amounts due LHC under the Loan Documents and the other obligations shall have been fully paid.

SECTION 12 AFFIRMATIVE COVENANTS OF BORROWER

While this Agreement is in effect, Borrower covenants and agrees as follows:

12.1 Taxes. Borrower shall promptly pay, or cause to be paid, when due and payable, any and all taxes relating to all or any part of the Project or to Borrower, or which are or become payable by Borrower, except those taxes which it contests in good faith and for which adequate reserves have been established.

12.2 Changes in Facts or Circumstances. Borrower shall promptly notify LHC of any material change in any fact or circumstance represented or warranted by Borrower in this Agreement or any of the Loan Documents.

12.3 Notice of Default. Borrower shall promptly notify LHC in writing of any condition or event known to Borrower which constitutes an Event of Default under the Note, this Agreement, or any of the other Loan Documents, or which, with or without the giving of notice or the lapse of time or both, would constitute any such Event of Default, and of any litigation or threatened litigation.

12.4 Performance. Borrower shall abide by, perform and be governed and restricted by, each and every one of the terms and provisions of (a) the Loan Documents and any supplement or amendment thereto or any instrument which may, at any time or from time to time, be executed by one or more of the parties hereto, and (b) any Senior Loan Documents and Subordinate Loan Documents.

12.5 Insurance. Borrower shall obtain and maintain all insurance coverage described and required herein, as appropriate.

12.6 No Encumbrances. Borrower shall not create or suffer any lien, encumbrance, mortgage or security interest on the Property or the Project, except those created in favor of LHC, Senior Lender, Subordinate Lender, or contained in the Permitted Exceptions.

12.7 Title to Personality. Borrower will deliver to LHC on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Project or subject to the lien of the Mortgage.

12.8 Correction of Defects and Satisfaction of Conditions. Borrower will, upon demand of LHC, correct any structural defect in the Project, or perform any condition to LHC's obligations hereunder not satisfied or no longer satisfied. Funding the Loan shall not constitute a waiver of LHC's right to require substantial compliance with this covenant with respect to any such defects not theretofore discovered by, or called to the attention of LHC, or with respect to Borrower's failure to satisfy or continue to satisfy any condition under this Agreement, whether or not LHC required performance thereof.

12.9 Financial Statements.

(a) Borrower shall furnish to LHC the following:

- (i) within one hundred and twenty (120) days after the end of each fiscal year of Borrower, and at any other time upon LHC's request, an accounting of all security deposits held pursuant to all leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for LHC to access information regarding such accounts;
- (ii) within one hundred and twenty (120) days after the end of each fiscal year of Borrower, and at any other time upon LHC's request, a statement that identifies all owners of any interest in Borrower and the interest held by each, if Borrower is a corporation, all officers and directors of Borrower, and if Borrower is a limited liability company, all managers who are not members;
- (iii) within one hundred and twenty (120) days of the end of each fiscal year of Borrower, a calculation and certification of Surplus Cash for such fiscal year, in

form and substance acceptable to LHC, and in accordance with LHC's requirements;

- (iv) within one hundred and twenty (120) days after the end of each fiscal year of Borrower, and at any other time upon LHC's request, a statement of income and expenses for Borrower's operation of the Project for that fiscal year, a statement of changes in financial position of Borrower relating to the Project for that fiscal year, and, when requested by LHC, a balance sheet showing all assets and liabilities of Borrower relating to the Project as of the end of that fiscal year, audited at Borrower's expense by independent certified public accountants acceptable to LHC;
- (v) if required by LHC, a statement of income and expenses for the Project for the prior month or quarter;
- (vi) within one hundred twenty (120) days after the end of each fiscal year of Borrower, a statement of reserve activity for each reserve account maintained in accordance with this Agreement, including the opening balance, all deposits and withdrawals, and the ending balance for the fiscal year;
- (vii) upon LHC's request, a monthly property management report for the Project, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by LHC; and
- (viii) such other financial information and schedules as may be requested by LHC from time to time pertaining to the Project, in its reasonable discretion.

(b) Each of the statements, schedules and reports required by this Section shall be certified to be complete and accurate by an individual having authority to bind Borrower, and shall be in such form and contain such detail as LHC may reasonably require. LHC also may require that any statements, schedules or reports as of the end of any fiscal year be audited at Borrower's expense by independent certified public accountants acceptable to LHC.

(c) If Borrower fails to provide in a timely manner the statements, schedules and reports required herein, LHC shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by LHC in order to obtain such statements, schedules and reports, and all related costs and expenses of LHC shall become immediately due and payable and shall become an additional part of the indebtedness due under this Agreement.

(d) If an Event of Default has occurred and is continuing, Borrower shall deliver to LHC upon written demand all books and records relating to the Project or its operation.

(e) Borrower authorizes LHC to obtain a credit report on Borrower at any time.

(f) If an Event of Default has occurred and LHC has not previously required Borrower to furnish a quarterly statement of income and expenses for the Project, LHC may require Borrower to furnish such a statement within forty-five (45) days after the end of each fiscal quarter of Borrower following such Event of Default.

12.10 Borrower to Maintain Bookkeeping System. Borrower shall maintain a bookkeeping system for the Project in form and content sufficient for LHC to conduct reviews, inspections, certifications and reports required by this Agreement. LHC shall have full access during normal business hours to the books, records and contracts pertaining to the Project.

12.11 Further Assurances and Preservation of Security. Borrower will perform all acts and execute all documents for the better and more effective carrying out of the intent and purposes of this Agreement as LHC shall reasonably require from time to time, and will perform such other acts necessary or desirable to preserve and protect the collateral at any time securing or intending to secure the Note as LHC may reasonably require.

12.12 Utilization of Loan Proceeds. Borrower will utilize the proceeds of the Loan solely for the purposes as set forth in this Agreement.

12.13 Project Publications and Publicity. Borrower agrees that any written materials describing or promoting the Project developed by or on behalf of Borrower shall expressly reference the role of the Louisiana Housing Corporation in providing funding to the Project.

SECTION 13 NEGATIVE COVENANTS OF BORROWER

13.1 Until the Indebtedness is paid in full, without the prior written consent of LHC, except for (i) trade debt and accounts payable incurred in the normal course of business, and (ii) indebtedness to LHC contemplated or permitted by this Agreement, and (iii) the Senior Loan and Subordinate Loan, Borrower shall not create, effect, consent to, attempt, contract for, agree to make, suffer or permit:

(a) any conveyance (other than leases for portions of the Project in the ordinary course of business), sale, assignment, or transfer of all or any interest in the Project, unless the purchaser, transferee or assignee assumes all of Borrower's obligations under the Loan Documents, and is approved by LHC, or

(b) any lien, pledge, mortgage, security interest, encumbrance or alienation of, the Project, or any interest in or portion of the Project, or any interest in Borrower, or any partner, shareholder or member of Borrower, or any change of ownership or control of Borrower or any member, partner or shareholder of Borrower, which is effected directly, indirectly, voluntarily, involuntarily, or by operation of law or otherwise, other than the Senior Loan Documents or Subordinate Loan Documents encumbering the Project, and the Permitted Exceptions, or

(c) any consolidation with or merger into any other partnership, limited partnership, corporation or limited liability company, or permit another partnership, limited partnership, corporation or limited liability company to merge into it, or voluntarily or involuntarily fail to maintain its current status, or

(d) any disposition of all or substantially all of its property, accounts, assets or business of Borrower or any Guarantor, or

(e) any change in Borrower's business as presently conducted, or

(f) any modification, amendment, or any other change to the [Partnership Agreement][Operating Agreement] that materially affects LHC's priority in Surplus Cash as provided herein; or

(g) (i) any change in the identity or ownership percentages of the owners of Borrower (except as expressly permitted in Section [_____]), (ii) any change in the identity of the Chief Executive Officer or Chief Financial Officer of Borrower, or (iii) any transfer, encumbrance or pledge of any interest in Borrower, or (iv) any "**change in control**" of Borrower or any subsidiary or Affiliate of Borrower. However, notwithstanding the foregoing, the removal of the [general partner][managing member] of Borrower as [general partner][managing member] of Borrower in accordance with the terms of the [Partnership Agreement][Operating Agreement] of Borrower without LHC consent shall be allowed provided that (1) Borrower shall provide LHC with written notice of any such change and (2) the entity replacing the [general partner][managing member] of Borrower is under direct or indirect common control or management with, or has a Controlling Interest in, the Investor [Member][Limited Partner]; or

(h) any purchase, creation or acquisition of any interest in any other enterprise or entity, or incur any obligation as surety or guarantor other than in the ordinary course of business.

SECTION 14 MISCELLANEOUS PROVISIONS

14.1 Assignment. Borrower shall not assign or transfer any interest in this Agreement without the prior written consent of LHC. Any attempt to do so shall be deemed null and void.

14.2 No Grant of Vested Rights. This Agreement shall not be construed as granting or assuring or vesting any land use, zoning, development approvals, permission or rights with respect to property owned by Borrower.

14.3 No Partnership or Agency. Nothing in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of master/servant, principal/agent, employer/employee or joint venture partner between LHC and Borrower. Borrower agrees and acknowledges that it shall be responsible for and shall pay any and all applicable compensation, insurance and taxes, including but not limited to Federal income taxes and Social Security on the salary of any positions funded in whole or in part with the proceeds of the Loan.

14.4 Severability. This Agreement shall be construed in accordance with the laws of the State of Louisiana. It is agreed by and between the parties that if any covenant, condition, provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenants, conditions or provisions herein contained.

14.5 Entire Agreement/Modification. This Agreement and all attachments supersede all prior agreements between LHC and the Borrower with respect to the Indebtedness, any representations or statements heretofore made with respect to such subject matter, whether written or verbal, are merged herein. This Agreement may only be modified in writing, signed by both of the parties hereto.

14.6 Notices. All notices and other communications to be made or permitted to be made hereunder shall be in writing and shall be delivered to the addresses shown below or to such other addresses that the parties may provide to one another in accordance herewith. Such notices and other communications shall be given by any of the following means: (a) personal service; or (b) national

express air courier, provided such courier maintains written verification of actual delivery. Any notice or other communication given shall be deemed effective upon the date of receipt or the date of refusal to accept delivery by the party to whom such notice or other communication has been sent.

LHC: **Louisiana Housing Corporation**
4515 Quail Drive
Attn:
Baton Rouge, Louisiana 70808

with a copy to:

Baker Donelson
450 Laurel Street, 20th Floor
Chase North Tower
Baton Rouge, Louisiana 70802
Attention: Amanda Spain

Borrower:

with a copy to:

Senior Lender:

with a copy to:

Guarantor:

Investor:

with a copy to:

Any addressee may change its address by giving the other parties hereto notice of such change of address in accordance with the foregoing provisions.

14.7 Performance on Legal Holidays. In any case where the date of maturity of interest on or principal of the Note shall not be a business day, then payment of such interest and principal, need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date of maturity or the date fixed for redemption or purchase, and no interest on such payment shall accrue for the period after such date.

14.8 JURY WAIVER. LHC AND THE BORROWER HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER THE LHC OR THE BORROWER AGAINST THE OTHER WHETHER RELATING OR ARISING OUT OF THIS AGREEMENT, THE LOAN DOCUMENTS, OR OTHERWISE.

14.9 Time is of the Essence. Time is of the essence of this Agreement.

14.10 Counterparts. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

[Signatures on the following pages]

IN WITNESS WHEREOF, LHC has executed this Gap Financing Loan Agreement on this ____ day of _____, 2018, at Baton Rouge, Louisiana, in the presence of the undersigned witnesses and Notary Public after due reading of the whole.

WITNESSES:

LOUISIANA HOUSING CORPORATION

Print Name: _____

By: _____

Name:

Title: Executive Director

Print Name: _____

NOTARY PUBLIC

Print Name: _____

Bar Roll/Notary No.: _____

My Commission Expires: _____

IN WITNESS WHEREOF, Borrower has executed this Gap Financing Loan Agreement on this ____ day of _____, 2018, at _____, _____, in the presence of the undersigned witnesses and Notary Public after due reading of the whole.

WITNESSES:

Print Name: _____

Print Name: _____

BORROWER:

,
a Louisiana

By: _____

NOTARY PUBLIC

Print Name: _____
Bar Roll/Notary No.: _____
My Commission Expires: _____

Schedule 3.1
CURRENT CONTRACTS WITH IDENTITY OF INTEREST ENTITIES

Schedule 11.12
PENDING LITIGATION

1.

**Schedule 11.14
OTHER FINANCING**

| <u>Lender</u> | <u>Original Principal Amount</u> | <u>Interest Rate</u> | <u>Term</u> | <u>Required Payment</u> |
|---------------|--------------------------------------|----------------------|-------------|-------------------------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |

EXHIBIT A
LEGAL DESCRIPTION

{B0633986.5}
CDBG Piggyback Loan Agreement

EXHIBIT B
PERMITTED EXCEPTIONS

EXHIBIT C
INSURANCE REQUIREMENTS