

ABOVE SPACE RESERVED FOR  
RECORDING PURPOSES ONLY

**CDBG-NDR 2018 REGULATORY  
AGREEMENT  
OF THE  
LOUISIANA HOUSING CORPORATION**

**UNITED STATES OF AMERICA  
STATE OF LOUISIANA**

**BE IT KNOWN**, that dated as of [\_\_\_\_\_, 20\_\_], but effective as of the date on which the projected tax credit compliance period commences (“**Effective Date**”), before the undersigned notaries, duly commissioned and qualified in and for the Parish and State set forth below, and in the presence of the undersigned witnesses, personally came and appeared:

[\_\_\_\_\_, a Louisiana [\_\_\_\_\_] , whose address is  
[\_\_\_\_\_],

the owner (the “**Owner**”) of the herein defined Project; and

**THE LOUISIANA HOUSING CORPORATION**, a public body of the State of Louisiana, whose address is 2415 Quail Drive, Baton Rouge, Louisiana 70808 (“**LHC**”), which shall, in every instance, include LHC’s successors and assigns);

**PRELIMINARY RECITALS:**

**A. WHEREAS**, LHC is providing funds from the United States of America, HUD Community Development Block Grant - National Disaster Resilience (“**CDBG-NDR**”) Program to qualified borrowers, in accordance with the CDBG-NDR Piggyback Program (the “**Program**”) under Louisiana’s Strategic Adaptations for Future Environments initiative; and

**B. WHEREAS**, the Louisiana Housing Corporation (“**LHC**”) issued that certain Notice of Funding Availability and Program Implementation Guidelines for Availability of CDBG-NDR Program Funds for Lafourche Parish Multifamily Rental Housing Program published Friday, December 14, 2018 (the “**Lafourche CDBG-NDR NOFA**”), allowing CDBG-NDR funds to be used for Gap Financing Loans, as described therein; and

C. **WHEREAS**, Owner 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-NDR funds for the development of a single, resilient multifamily affordable housing development in Lafourche Parish to be known as " \_\_\_\_\_ " (the **“Project”**) located on certain immovable property located at \_\_\_\_\_, \_\_\_\_\_, Parish of Lafourche, Louisiana, as more fully described on **Exhibit A-Property Description** attached hereto (the **“Land”**); and

D. **WHEREAS**, based on the Piggyback Application, Owner 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 Owner and LHC, dated \_\_\_\_\_ (the **“Piggyback Award Agreement”**); and

E. **WHEREAS**, in order to receive the Gap Financing Loan, the Owner has agreed to certain commitments regarding the number of affordable units, affordability levels, and permanent supportive housing units; and

F. **WHEREAS**, to insure that the Project will be constructed, used and operated in accordance with these requirements, the Owner and LHC have agreed to enter into this CDBG-NDR Regulatory Agreement (this **“Agreement”**).

**NOW, THEREFORE**, in consideration of the Loan and the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LHC and the Owner hereby contract and agree as follows:

## **SECTION 1 DEFINITIONS**

**1.1 Definitions and Interpretations.** Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall have the respective meanings set forth below for purposes of this Agreement. Capitalized terms appearing herein but not defined in this Agreement have the meanings assigned to them in the Loan Agreement.

(a) **CDBG-NDR Mortgage:** that certain Mortgage, Pledge of Leases and Rents and Security Agreement by Owner in favor of LHC, dated the date hereof, granting a mortgage lien on and interest in the Land (or if Owner's interest is as lessee pursuant to a long term lease, in its leasehold interest), the buildings and equipment constituting the Project and the rents and income therefrom and securing the obligations of the Owner under the Gap Financing Loan, as amended and supplemented from time to time.

(b) **“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 (25%) 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 or trustees; 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.

(c) **Eligible Household:** (for purposes of this Agreement only) (1) with respect to market rate units, means any household, and (2) with respect to the remaining units, means a resident household or applicant household, which, at the time of the initial lease:

- (i) has an adjusted income (as defined under the LIHTC Program) not greater than the Income Limit applicable to the unit in which such household resides (or, with respect to an applicant household, proposes to reside); and
- (ii) whose lease (or, with respect to an applicant household, proposed lease) with the Owner specifies a rent that (when increased by the amount of any applicable Utility Allowance) is Rent Restricted as defined in the Tax Credit Regulatory Agreement; and
- (iii) with respect to an applicant household, is acceptable to the Owner in accordance with the Owner's nondiscriminatory resident selection criteria.

(d) **Guaranty:** the Guaranty Agreement dated as of the date hereof from the Owner and [\_\_\_\_\_] (the "**Guarantor**"), for the benefit of LHC.

(e) **Identity of Interest:** An identity of interest relationship exists if 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 Owner):

- (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 Owner.

(f) **LIHTC Program:** the Low Income Housing Tax Credit Program under Section 42 of the Internal Revenue Code of 1986, as amended.

(g) **Loan Agreement:** the Gap Financing Loan Agreement, dated of even date herewith between the Owner and LHC, as amended and supplemented from time to time.

(l) **Loan Documents:** the Gap Financing Note; this Agreement; the CDBG-NDR Mortgage; UCC-Financing Statements covering the fixtures and personal property located at the Project; the Loan Agreement; the Subordination Agreement; the Operating Deficit Guaranty; 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 Gap Financing Loan.

(m) **Project:** the improvements to be constructed or substantially rehabilitated on the Land, and the Land and all moveable property and fixtures from time to time attached thereto.

(n) **Rental Housing:** housing units made available for rental, and not ownership, to Eligible

Households who are members of the general public, each of which units shall contain complete living facilities that are to be used other than on a transient basis and facilities that are functionally related and subordinate to the living facilities. The housing units shall at all times be constructed or substantially rehabilitated and maintained in substantial accordance with applicable building code standards of the Parish.

(o) **State:** the State of Louisiana.

(p) **Tax Credit Regulatory Agreement:** the Tax Credit Regulatory Agreement of the Louisiana Housing Corporation executed in connection with the issuance of housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”).

(q) **Term of this Agreement:** thirty-five (35) years from the date on which the projected tax credit compliance period commences.

## SECTION 2 REPRESENTATIONS, COVENANTS AND COMMITMENTS

**2.1 Resilient Residential Rental Project.** LHC and the Owner hereby declare their understanding and intent that, during the Term of this Agreement, the Project is to be owned, managed and operated according to the terms and conditions of the Program, this Agreement, and the Loan Documents, as applicable. To that end, the Owner hereby represents, covenants, commits and agrees as follows:

a. The Owner has completed the acquisition, and has or will complete the renovation or construction of the Project in accordance with the information contained in the Application, including any and all supplements, amendments, conditions and deletions thereto or therefrom.

b. The Project consists of the development, construction and operation of a multifamily residential Rental Housing on the Land.

c. The Project has been or will be substantially completed in accordance with the Application, and all dwelling units in the Project are or will be available for initial occupancy as of the placed in service date.

d. The Project is or will be in good and habitable condition after completion of construction.

e. The Project has been constructed in a manner to satisfy the resiliency requirements of the LHC, including, but not limited to: constructing the finished floor elevations of each unit in the Project at no less than three feet (3') above the base flood elevation; constructing stormwater infrastructure sufficient to capture stormwater at a volume greater than would be experienced in a 25 year flood event; and complying with the green energy standards imposed by the LHC's 2018 Qualified Allocation Plan.

f. After completion of construction, there are and will be no defects or deficiencies in the Project other than normal and customary punch list items or incomplete work awaiting seasonal opportunity.

**g.** All labor and material bills of every kind and character incurred by the Owner in connection with the construction, equipping and completion of the Project have been or will be paid in accordance with the payment provisions of each contract.

**h.** The Project has been or will be constructed in all material respects in accordance with applicable zoning, building, housing and other codes, ordinances and regulations.

**i.** All required certificates of occupancy have been or will be issued by the applicable governmental authority and copies of such occupancy certificates have been or will be provided to LHC.

**j.** Owner has provided or will provide final lien waivers from the general contractor and all major subcontractors, and the lien periods provided by applicable law have or will have expired, with no liens being filed against the Project.

**k.** The Owner, its successors or assigns, shall own, manage, and operate the Project exclusively as multifamily Rental Housing, and no commercial or retail space will be located at the Project.

**l.** The representations, warranties, covenants and commitments under this Agreement, are in effect for a period of not less than thirty-five (35) years from the Effective Date.

**2.2 Certain Owner Commitments and Agreements.** At all times during the Term, Owner shall comply and cause the Project to comply with the following commitments, which commitments shall be considered covenants running with the Land (or if Owner's interest is as lessee pursuant to a long term lease, with the leasehold interest) under Louisiana law:

**(a) Affordability and Market Rate Commitments.** The Project must be considered a "Mixed Income" Project; meaning that no less than 20% of the units must be available for rent to market households at market rents, and at least 51% of the units must be affordable and reserved for occupancy by households with incomes at or below 80% AMI. Owner has agreed to impose the following number of units, by type, for each of the following Area Median Income ("AMI") levels and market rates:

Unit Type	20% AMI	30% AMI	40% AMI	50% AMI	60% AMI	80% AMI	Market Rate	Total Units
0 BR								
1 BR								
2 BR								
3 BR								
4 BR								
<b>Total</b>								

**2.3 Prohibited Conversion.** The Project shall remain Rental Housing throughout the Term. The Owner will not convert the Project to condominium or co-operative ownership, and will not offer any units for sale or "lease to own".

**2.4 Prohibited Discrimination.** The Owner shall not discriminate on the basis of race, religion, color, sex, familial status, national origin or disability in the lease, use or occupancy of the Project. Age discrimination and discrimination against minor dependents, except when units are specifically being held for the elderly, are also not permitted.

**2.5 Inappropriate Advertising.** The Owner will immediately withdraw from circulation any advertisement determined by LHC to violate or be inconsistent with its policies, with respect to promoting Rental Housing for persons and families of very low-income, and consents to the remedy of specific performance.

**2.6 Rent Controls.** Rent controls shall not be allowed on any unit in the Project except as required by this Agreement and in conjunction with the issuance of tax-exempt bonds or federal low-income housing tax credits.

**2.7 Run with the Land or Leasehold Interest.** The Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Agreement. LHC and the Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land (or if Owner's interest is as lessee pursuant to a long term lease, with its leasehold interest) to the extent permitted by law and shall pass to and be binding upon the Owner's successors in title to the Project throughout the term of this Agreement. Each and every contract, deed, mortgage or other instrument hereafter executed affecting or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

**2.8 Compliance with Laws.** The Owner and its successors in interest shall at all times operate the Project in conformity with all federal, state and local laws, rules, regulations, ordinances and orders that may be applicable to the Project, including but not limited to the Federal Fair Housing Act as implemented by 24 CFR Part 100, Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR Part 35 and Section 504 of the Rehabilitation Act of 1973, as implemented by 24 CFR Part 8.

**2.9 Burden and Benefit.** LHC and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land and, if appropriate, Owner's leasehold interest, in that the Owner's legal interest in the Project is rendered less valuable thereby. LHC and the Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land, or, if appropriate, the leasehold interest, by enhancing and increasing the enjoyment and use of the Project by Eligible Households, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Loan was made by LHC.

### **SECTION 3 IDENTITY OF INTEREST RELATIONSHIPS**

**3.1 Restrictions on Identity of Interest Relationships.** Owner hereby acknowledges that in order to comply with the Program' and LHC's rules and regulations under the Loan Agreement, it must and does hereby covenant and agree that Owner shall notify LHC in writing prior to contracting with any Identity of Interest entity (other than as previously disclosed to LHC in writing), and Owner 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 Owner 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, Owner agrees, upon LHC's request, to cause the contract to be modified to provide for cancellation.

### **SECTION 4 INDEMNIFICATION**

**4.1 Indemnification.** The Owner hereby covenants and agrees that it shall indemnify, hold harmless and defend LHC and its directors, officers, members, officials, employees and agents from and against (a) any and all claims arising from any act or omission of the Owner or any of its agents, contractors, servants, employees or licensees in connection with the Loan Documents or the Project, or arising out of the construction, operation and/or management of the Project or the granting of the Gap Financing Loan to the Owner; and (b) all reasonable costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon as such fees, costs, expenses or liabilities become due. In the event that any action or proceeding is brought against LHC, or any of its directors, officers, members, officials, employees, or agents with respect to which indemnity may be sought hereunder, the Owner, upon written notice from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. This provision shall survive the termination of this Agreement. The indemnified party shall have the right to participate in the investigation and defense thereof and may employ separate counsel with or without the approval and consent of the Owner.

**SECTION 5**  
**SALE, TRANSFER OR OTHER CONVEYANCE OF INTEREST IN THE**  
**OWNER OR OF THE PROJECT**

**5.1. Sale, Transfer or Other Conveyance of Interests in the Owner.**

(a) Owner agrees that any transfer of [membership][partnership] interests in the ownership entity holding ownership of the Project shall be a default hereunder and shall result in LHC being permitted to declare all of the Indebtedness due and payable under the terms of the Loan Agreement.

(b) 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 Owner 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 Owner; 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 Owner as [general partner][managing member] of Owner in accordance with the terms of the [Partnership Agreement][Operating Agreement] of Owner 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 5.1(b) that (x) Owner shall provide LHC with notice of any such transfer or change; and (y) any entity replacing the [general partner][managing member] of the Owner is under direct or indirect common control or management, or has a Controlling Interest in, the Investor [Member][Limited Partner].

## **5.2 Sale or Transfer of the Project.**

(a) The Owner 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. One hundred percent (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) It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 5.2 shall, at LHC's option, be null, void and without effect, and shall cause a reversion of title to the Owner.

## **SECTION 6 TERM**

**6.1 Term.** This Agreement shall become effective and shall remain in full force and effect for thirty-five (35) years from the Effective Date. Notwithstanding the immediately preceding sentence, LHC may terminate this Agreement, and all and several of the terms hereof, in the event of involuntary non-compliance with the provisions of this Agreement caused by fire, seizure, requisition, condemnation or other similar event, change in a federal law or an action of a federal agency after the date hereof that prevents LHC from enforcing the requirements hereof, and in such event, the terminated provisions shall be of no further force and effect. Upon the termination of all and several of the terms of this Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Agreement in accordance with its terms.

## **SECTION 7 DAMAGE, DESTRUCTION OR CONDEMNATION OF THE PROJECT**

**7.1 Damage, Destruction or Condemnation of the Project.** In the event that the Project is damaged or destroyed or title to the Project, or any part thereof, is taken by any governmental body through the exercise or the threat of the exercise of the power of eminent domain, subject to the rights of any first priority mortgagee and the provisions of any first priority mortgage regarding same, the Owner, within sixty (60) days of actual receipt of any insurance proceeds or any condemnation award shall deposit such proceeds or award with LHC. LHC, in its sole discretion, shall have the option of making any such insurance proceeds or condemnation award moneys available to provide funds for restoration work required to restore the Project to the same condition as prior to the event, or to apply such funds to the outstanding Indebtedness. In the event that LHC allows Owner to restore the Project, if the Owner fails to commence or to complete the rebuilding, repair, replacement or restoration of the Project timely, LHC shall have the right, in addition to any other remedies granted in the Loan Documents at law or in equity, to repair, restore, rebuild or replace the Project.

## **SECTION 8 ENFORCEMENT**

**8.1 Enforcement.** If the Owner defaults (by its action or inaction) in the performance of its obligations under this Agreement or breaches any covenant, agreement or warranty of the Owner set forth in this Agreement, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by LHC to the Owner and the investor limited partner/investor member of



**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.

## **SECTION 11 MISCELLANEOUS**

**11.1 Compliance with Low-Income Housing Tax Credit Requirements.** Nothing in this Agreement shall modify or affect any agreement to set-aside units in the Project that the Owner has made or may make with the LHC in any application for low-income housing tax credits under the Code with respect to such tax credits or in any Extended Low Income Housing Agreement executed or to be executed in connection therewith. In the event of any conflict, the Program and this Agreement shall control with respect to the requirements of the Program, and Section 42 of the Code and any such Extended Low Income Housing Agreement shall control with respect to the requirements of the eligibility for tax credits.

**11.2 Construction.** Unless the context clearly requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

**11.3 Convenience of Reference.** The terms and phrases used in the recitals of this Agreement have been included for convenience of reference only and the meaning, construction and interpretation of all such terms and phrases for purposes of this Agreement shall be determined by references to Section 1 of this Agreement. The titles and headings of the sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any questions of intent shall arise.

**11.4 Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

**11.5 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.

**11.6 Amendments.** This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the conveyance and mortgage property records of the Parish.

**11.7 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State, both substantive and governing remedies.

**[COUNTERPART SIGNATURE PAGES TO FOLLOW]**

**COUNTERPART SIGNATURE PAGE FOR  
CDBG-NDR REGULATORY AGREEMENT**

**IN WITNESS WHEREOF**, LHC has executed this 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:** \_\_\_\_\_

**COUNTERPART SIGNATURE PAGE FOR  
CDBG-NDR REGULATORY AGREEMENT**

**IN WITNESS WHEREOF**, Owner has executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2018, at \_\_\_\_\_, \_\_\_\_\_, in the presence of the undersigned witnesses and Notary Public after due reading of the whole.

**WITNESSES:**

**BORROWER:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

a

By:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
**NOTARY PUBLIC**

**Print Name:** \_\_\_\_\_

**Bar Roll/Notary No.:** \_\_\_\_\_

**My Commission Expires:** \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**