

**AWARD ACCEPTANCE AGREEMENT
LOUISIANA CDBG-NDR 2018 PIGGYBACK PROGRAM**

[_____, 2018]

[Project Owner]

Re: Award of 2018 Piggyback Funding for [Project] LHC Project No. [_____]

Dear Applicant:

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

Pursuant to your application to the LHC, including, but not limited to, the completed printed application submitted by you to the LHC, all written responses to any deficiency letter issued to you by the LHC, and all written attachments, addenda, and amendments pertaining thereto (collectively, the “**Application**”), LHC has agreed, by board action on [_____], to award you the following Gap Financing Loan (the “**Award**”) in accordance with the 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**”), as amended, for the above-referenced project, as described in your Application (the “**Project**”). Applicant acknowledges receipt and review of the Lafourche CDBG-DNR NOFA, as amended, and the legal documents to be executed in connection with the Loan. Any capitalized terms not defined herein shall have the definitions given to them in the Lafourche CDBG-DNR NOFA.

A. GENERAL CONDITIONS TO FUNDING THIS AWARD

LHC’s obligation to perform and fund the Award is conditioned on the following conditions being performed, satisfied, or waived by LHC, in LHC’s sole discretion (collectively, the “**Award Conditions**”):

- 1. LIHTC Credits:** Reservation, commitment and issuance from the LHC to the Applicant for the Project, of not less than \$[_____].00 in Low Income Housing Tax Credits for the Project and compliance by Applicant and the Project with all applicable provisions of Section 42 of the Internal Revenue Code of 1986, as amended.
- 2. Compliance by Applicant:** Compliance with the terms and conditions of the Application, this Award Agreement, the CDBG Program requirements more fully set for below, and with the applicable terms and conditions of the Lafourche CDBG-DNR NOFA.
- 3. Execution and Delivery of Award:** Execution and delivery by the Applicant of documentation acceptable to LHC evidencing and securing the funds provided by LHC under this Award Agreement, including without limitation the Loan Documents.

B. TERMS AND CONDITIONS OF THE AWARD

1. Applicant and Guarantor:

[APPLICANT NAME]

[ADDRESS]

[CITY/STATE][ZIP]

[PROJECT NAME]

[GUARANTOR NAME]

[ADDRESS]

[CITY/STATE][ZIP]

Guarantor will execute and deliver the Guaranty Agreement, which will include a completion guaranty, operating deficit guaranty, and limited personal obligations (non-recourse carve-outs).

Guarantor must be a capitalized person or entity who has an economic interest in Applicant, or who will otherwise obtain a material financial benefit from the Gap Financing Loan, with adequate liquid financial resources to satisfy a demand under the Guaranty Agreement.

2. Program Description:

The purpose of the Program is to provide funds to a qualified applicant for the development of a single, resilient multifamily affordable housing development in Lafourche Parish. Reference is hereby made to the Lafourche CDBG-DNR NOFA for complete Program details and requirements.

3. Project Commitments:

This Award Agreement is based on Applicant’s compliance with certain continuing commitments regarding the Project, as more fully described and as contained in the Regulatory Agreements and the Application, including without limitation the following:

Affordability and Market Rate Commitments: The Project will contain the number of market rate units, and the number of assisted and unassisted units, by type, for each of the following Area Median Income levels, as set forth below and as more fully described in the Regulatory Agreements:

0 BR									
1 BR									
2 BR									
3 BR									
4 BR									

Total								
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Regulatory Agreements. Applicant and the Project will comply with all of the terms, covenants, restrictions, and requirements set forth in the Regulatory Agreements.

4. Gap Financing Loan:

(a) Principal Amount: The principal amount of the Gap Financing Loan is [_____] and 00/100 (\$[_____]) Dollars, bearing interest at the rate of [_____]%, computed on the basis of a 360-day year, consisting of twelve 30-day months, to be repaid in annual installments (each, an “**Annual Installment**”) solely from “**Surplus Cash**”, 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.

“**Surplus Cash**” means any cash remaining at the end of each fiscal year of the Applicant after payment of all accrued Operating Expenses for the Project for such fiscal year.

“**Operating Expenses**” means 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.

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

(b) Maturity: The Gap Financing Loan shall mature on the earliest to occur of: (i) sale or refinancing of the Project not permitted under the Loan Documents; (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.

(c) Security: The Gap Financing Loan shall be secured by a [first][second] priority mortgage lien on the Project to be executed and delivered by Applicant at Closing.

5. General Loan Conditions (a) Funding of Gap Financing Loan:

[LHC will fund the full amount of the Gap Financing Loan, subject to adjustment based on final cost certification and subsidy layering review, as set forth below, in one disbursement following construction of the Project, upon receipt by LHC of final certificates of occupancy (or their equivalents) for all buildings and units comprising the Project and upon compliance with the other conditions to funding set forth in the Loan Agreement.]

[LHC will fund up to 95% of the Gap Financing Loan during the rehabilitation or construction of the Project on a *pari passu* basis with Applicant's other construction funding sources, on terms and conditions acceptable to LHC in its sole and uncontrolled discretion, which conditions shall include without limitation, review and approval of draw requests and payment and reimbursement of additional costs, fees and expenses of LHC. This aggregate amount will be subject to adjustment based on final cost certification and subsidy layering review, as set forth below and any retainage will be funded in one disbursement following construction of the Project, upon receipt by LHC of final certificates of

occupancy (or their equivalents) for all buildings and units comprising the Project and upon compliance with the other conditions to funding set forth in the Loan Agreement. The terms and conditions regarding LHC's funding during construction of the Project shall be negotiated between Applicant, LHC, Applicant's construction lender and LIHTC syndicator prior to closing the Gap Financing Loan, and if the parties are unable to agree upon the terms and conditions governing LHC's obligation to fund during construction of the Project, LHC reserves the right to fund the Project at completion.]

(b) Use of Proceeds: Proceeds from the Gap Financing Loan are to be used solely to support the development, restoration, replacement, rehabilitation, and construction of the Project in accordance with the Application and the terms and conditions of the Loan Documents.

(c) Non-Recourse Loan: The Gap Financing Loan is non-recourse to the Applicant; provided however, the nonrecourse carveouts set forth in the Loan Documents are personal obligations of the Applicant and shall be guaranteed by one or more Guarantors acceptable to LHC under the terms and conditions set forth in the Loan Documents. 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 Applicant or the Project. Additionally, in the event of a default by the borrower under the Gap Financing Loan, LHC may pursue remedies against the borrower under any other loan agreements, grant agreements, or other obligations of the borrower in favor of LHC.

(d) Senior Mortgage Loan: The terms and conditions of Applicant's senior mortgage loan on the Project, if any, **shall be subordinate to the Regulatory Agreement,** shall acknowledge and permit the Gap Financing Loan, and consent to the execution and delivery of the Loan Documents.

(e) Additional Project Debt: Other than the senior mortgage encumbering the Project, if any, without the prior written consent of LHC, no other indebtedness of the Applicant or the Project may have a lien priority senior to that of the Gap Financing Loan; no other indebtedness of the Applicant or any other person or entity may be secured by the Project; and no other unsecured indebtedness of the Applicant (excluding operating expenses for the Project incurred in the ordinary course of business) may be payable except from distributed Surplus Cash.

(f) Cost Certification. Applicant acknowledges and agrees that the principal amounts of the Gap Financing Loan set forth in this Award Agreement were calculated based upon estimated costs for the development, restoration, rehabilitation, and construction of the Project provided by the Applicant. Applicant 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 (“**Audit Firm**”) acceptable to LHC, certifying the costs incurred and paid by Applicant in the development, restoration, replacement, rehabilitation, and construction of the Project, and including such other information as LHC may require. Applicant agrees to cooperate with LHC and to provide any documentation deemed necessary to LHC for a complete audit.

(g) Reduction of Gap Financing Loan. Notwithstanding anything to the contrary contained herein, LHC may reduce the principal 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 Applicant 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 Indebtedness 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 Applicant, the amount of Tax Credits awarded to the Project, and the final amount, terms and conditions of the Applicant’s other financing, if any. If the amount of Gap Financing Loan proceeds advanced to Applicant 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 Applicant 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. **Failure to remit LHC-determined Excess Proceeds in the timeframe stipulated shall be an Event of Default under the Loan Agreement.**

(h) Due on Sale or Transfer Restrictions.

(1) Subject to the terms of this subsection (h), 100% of the amount due under the Gap Financing Loan, including without limitation, payment of all principal and accrued and unpaid interest, is due upon the 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 said waiver will not constitute forgiveness of the amounts due under the Gap Financing Loan.

(2) 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. Notwithstanding the foregoing:

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].

(i) Restrictions on Identity of Interest. Applicant shall be required to notify LHC in writing prior to contracting with any Identity of Interest entity, and shall include in its audited financial statements a disclosure of all amounts paid to any Identity of Interest entity. LHC will have the right, in its sole discretion, to require the cancellation of any contract between Applicant and any Identity of Interest entity, and all such contracts shall permit such cancellation. 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 Applicant):

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

(2) has any financial interest in any other project team member's firm or corporation;

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

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

(5) advances any funds or items of value to the Applicant.

(j) **Insurance Requirements.** Both Applicant and the Project will be required to obtain and maintain, at Applicant's sole cost and expense, the insurance policies with the minimum coverages set forth in the NOFA.

6. Regulatory Agreements: The Project will be encumbered by a regulatory agreement in favor of the LHC in connection with the issuance of the Tax Credits ("**Tax Credit Regulatory Agreement**") and a regulatory agreement related to the obligations hereunder in favor of LHC in connection with the loan of CDBG-NDR funds ("**CDBG-NDR Regulatory Agreement**"). The Tax Credit Regulatory Agreement and the CDBG-NDR Regulatory Agreement are hereinafter sometimes referred to as the "**Regulatory Agreements**".

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

(b) **CDBG-NDR Regulatory Agreement.** As a condition to disbursement of proceeds under the Gap Financing Loan, Applicant will be required to execute and deliver the CDBG-NDR Regulatory Agreement. The CDBG-NDR Regulatory Agreement shall (i) run with the land; (ii) have a term of thirty-five (35) years; (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 as required by the Lafourche CDBG-DNR NOFA. 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.

7. Loan Documents: The Gap Financing Loan will be evidenced and secured by the following (collectively referred to herein as the "**Loan Documents**"):

(a) A Loan Agreement;

(b) Promissory Note evidencing the Gap Financing Loan;

(c) A Mortgage, Assignment of Leases and Rents, and Security Agreement, which Mortgage shall (i) constitute a [first][second] lien upon the Project, and (ii) constitute a [first][second] lien upon and security interest in all fixtures and personal property relating to or located in the Project, and (iii) secure all obligations to LHC under the Loan Documents;

- (d) UCC-Financing Statements covering the fixtures and personal property located at the Project;
- (e) The CDBG-NDR Regulatory Agreement;
- (f) The Guaranty Agreement; and
- (g) 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 effectuate the terms and conditions of this Award Agreement, and to comply with the requirements of §42 of the Internal Revenue Code, the Lafourche CDBG-DNR NOFA, laws and regulations governing the expenditure and use of CDBG funds, and the laws of the State of Louisiana.

Forms of each of the Loan Documents may be found at [INSERT WEBSITE URL]

8. Compliance Requirements:

Applicant agrees to abide by any and all applicable (a) 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, (b) CDBG-NDR program requirements, HUD regulations and the provisions of 24 CFR Part 570, as amended from time to time, and (c) federal regulations and policies issued pursuant to these regulations. These regulations include, but are not limited to:

- (a) the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157);
- (b) the Uniform Federal Accessibility Standards, as set forth in 24 CFR Part 570.614;
- (c) the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973;
- (d) the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §276(a) to (a-7) 24 CFR Part 570.603). Any construction contracts entered into by Applicant shall include a provision for compliance with the Davis-Bacon Act and supporting Department of Labor regulations;
- (e) compliance with the environmental requirements of the Program, which include submitting a 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;
- (f) 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, and 24 CFR Part 570.606; and

(g) for existing properties built 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.

9. Construction of Project: Construction of the Project shall be commenced not later than ninety (90) days after the closing of the construction financing for the Project, or this Award Agreement shall become null, void and of no effect.

Applicant and a Guarantor acceptable to LHC will be required to guarantee completion of the Project under the terms and conditions contained in the Guaranty Agreement.

10. Expenses: Applicant shall pay all costs and expenses incurred in connection with the Gap Financing Loan (including by way of illustration and not limitation): recording fees, title insurance costs, the legal and consulting fees of LHC, legal fees of any attorney or consultant retained by Applicant, escrow fees, flood zone determination fees, survey fees, appraisal costs, environmental and historic property review, and site inspection fees.

11. Nonassignability: This Award Agreement is made exclusively with Applicant and is neither assignable nor transferable voluntarily or involuntarily by Applicant, without the prior written approval of LHC, which may be granted or withheld in its sole discretion. Any such assignment or transfer or attempted assignment or transfer shall be null and void, and shall result in this Award Agreement being automatically terminated, in which event LHC shall have no further obligations to the Applicant under this Award Agreement.

12. Indemnification: Applicant agrees to indemnify and to defend and hold LHC harmless against (a) any brokerage commissions or finder's fees claimed by any broker or other party in connection with the transactions contemplated hereby; (b) any claims related to losses, costs, damages or expenses that LHC may incur, directly or indirectly, including reasonable attorneys' fees, as a result of or in connection with the presence or removal of any environmental contamination or hazardous materials at, on or under the Project or any adjacent or proximate property, and the violation of any applicable federal and state environmental laws at or in connection with the Project. Such indemnities may be contained in the Loan Agreement or in separate indemnity agreements to be executed and delivered by Applicant at Closing.

13. Environmental Assessment: Prior to the execution of any agreement provided for in this Award Agreement, and prior to any demolition or grading of the Project, or other choice-limiting actions, or commencement of construction, Applicant must submit an environmental report in form and substance acceptable to LHC, which must provide for written approval and

environment assessment of the Project in accordance with 24 CFR Part 58. No choice limiting action with respect to the Project may commence until Applicant has received written approval of the environmental assessment from LHC; provided that Applicant may execute construction or building contracts so long as they do not permit construction activity until after approval of the environmental assessment.

14. Breach of Conditions:

LHC hereby reserves for itself, its successors and assigns, the right to pursue all remedies, either at law or in equity, to enforce the conditions of this Award Agreement, including but not limited to, seeking specific performance of Applicant's obligations. LHC may also, prior to closing, and in its sole and absolute discretion, declare this Award Agreement null and void upon an event of default or breach by Applicant of any of Applicant's representations contained in the Application, or any of the terms and conditions in the Program or this Award Agreement, in which event LHC shall have no further obligations to Applicant under this Award Agreement.

16. Closing Date:

The Gap Financing Loan shall close on or before [INSERT DATE THAT IS 120 DAYS FROM THE DATE OF THE AAA], or this Award Agreement may be terminated by LHC, in its sole discretion, by written notice to Applicant, in which event LHC shall no longer have any obligation to make the Gap Financing Loan, and Applicant shall have no further rights under this Award Agreement.

LHC's obligation under this Award Agreement shall be subject to satisfaction of all of the conditions contained herein, or in any document referred to herein. The issuance of this Award Agreement shall not prejudice LHC's rights of review and approval, including without limitation, of all documents and materials heretofore delivered to LHC by or on behalf of Applicant.

The terms of this Award Agreement, both prior to and after acceptance by Applicant, may be waived or modified only by a written instrument signed by LHC and shall survive the execution of the Loan Documents to the extent not inconsistent therewith. **TIME IS OF THE ESSENCE OF THIS AWARD AGREEMENT. LHC MUST RECEIVE AN EXECUTED VERSION OF THIS AWARD AGREEMENT WITHIN TEN BUSINESS DAYS OF THE DATE OF THIS AGREEMENT OR THE AWARD SHALL BE CONSIDERED VOID.**

LOUISIANA HOUSING CORPORATION

By: _____
Name: _____
Title: _____

APPLICANT HEREBY ACCEPTS THE AWARD OF THE GAP FINANCING LOAN AS SET FORTH IN THIS AWARD AGREEMENT:

APPLICANT:

[Project Owner]

By: _____, a _____

Name: _____

Title: _____

GUARANTOR:

By: _____, a _____

Name: _____

Title: _____

THIS AWARD AGREEMENT MUST BE EXECUTED AND RETURNED WITHIN TEN BUSINESS DAYS OF THE DATE HEREOF OR THE AWARD SHALL BE DEEMED VOID.