**Multifamily Rental HOUSING**

**Project-Specific Award Agreement**

**Tool #8**

**Description:** This component of the Multifamily Rental Toolkit is intended for a Community Development Block Grant Disaster Recovery (CDBG-DR) grantee to adapt and issue to a developer who successfully applied for CDBG-DR assistance. This sample Project-Specific Award Agreement assumes that the grantee has designed its multifamily rental program in accordance with the recommended practices that are discussed in the sample Project-Specific Request for Proposals (RFP). This document is not represented to be a complete agreement, and CDBG-DR grantees must enter project details and reference any grantee-specific or project-specific requirements.

**How to Adapt this Document:** First, a grantee should adapt the template document to its CDBG-DR multifamily rental program, by replacing yellow highlighted fields with program-wide parameters from its RFP. Once the document has been adapted for the grantee’s CDBG-DR multifamily rental program, it should delete the comments that relate to the yellow highlighted fields and remove any remaining yellow highlights. The resulting template (which will now contain green highlights and associated comment boxes) can then be used in connection with each of the grantee’s awarded projects, by filling in the green-highlighted fields with project-specific information. The grantee may choose whether to retain the comment boxes associated with the green highlighted fields (they will be useful if the grantee posts the template document as part of its RFP process). Once the document has been adapted for the specific project, all remaining comment boxes and all remaining green highlights should be deleted.

This document is not an official HUD document and has not been reviewed by HUD counsel. It is provided for informational purposes only. Any binding agreement should be reviewed by attorneys for the parties to the agreement and must conform to state and local laws.

U.S. Department of Housing and Urban Development

**For More Information**

This resource is part of the *Community Development Block Grant Disaster Recovery (CDBG-DR) Toolkits*. View all of the Disaster Recovery Toolkits here: <https://www.onecpd.info/resource/2853/cdbg-dr-toolkits>.

*Community Development Block Grant Disaster Recovery (CDBG-DR) Toolkits are designed to provide general guidance across all types of disasters (e.g. hurricanes, f****l****oods; tornadoes; earthquakes; etc.).  CDBG-DR Toolkits are NOT disaster specific.  CDBG-DR grant funding for a disaster or group of disasters is governed by CDBG requirements and any modifications contained in one or more Federal Register Notices (FRN) applicable to the disaster.  Grantees subject to the Disaster Relief Appropriations Act of 2013 (Public Law 113-2) should review all footnotes for additional applicable citations and guidance.  In addition to the FRN, Toolkit users should review applicable Federal cross-cutting requirements. The FRN, as well as cross-cutting requirements, are available on the Department’s website.*

For additional information about disaster recovery programs, please see your HUD representative.

Community Planning and Development, Disaster Recovery and Special Issues Division

**PROJECT SPECIFIC AWARD AGREEMENT**

**Name of Grantee CDBG-DR PROGRAM**

Yellow highlight indicates a program feature to be selected by the grantee.

Green highlight indicates a project-specific feature.

**Distinction Between Project Specific and Non-Project Specific Sub Programs.** This project specific document is a written agreement between grantee and developer, for a specific project on one or more specific sites, for which the developer has site control, and for which the developer has secured (at least conditionally) all non-CDBG-DR funding, in response to the project specific request for proposals (RFP). This Toolkit also includes a non-project specific request for qualifications (RFQ) and written agreement that conditionally reserve funding for one or more selected developers for projects to be presented for the grantee’s approval in the future. In effect, a non-project specific written agreement is a letter of intent that is intended to result in a future Project Specific Award Agreement.

**Companion Documents.** This document is designed to be used in conjunction with the other template documents that are included in the CDBG-DR Multifamily Rental Toolkit.

**Program Design Decisions by Grantee.** See the sample Project Specific RFP which discusses a variety of program features that the grantee will decide (for example, whether to offer funding during construction and whether to require guaranties). This sample Project Specific Award Agreement assumes that the grantee has designed its multifamily rental program in accordance with the recommended practices that are discussed in the sample Project Specific RFP.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20­­\_\_

[Insert Name of Applicant]  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Re: [Project Description]**

Dear Applicant:

Name of Grantee (“**Grantee**”) is providing funds from the United States of America, HUD Community Development Block Grant – Disaster Recovery program (“**CDBG-DR**”) to qualified applicants, in accordance with the describe the Grantee’s CDBG-DR Action Plan (the **“Action Plan”**).

Pursuant to your application to Grantee, including, but not limited to, the completed printed application submitted by you, all written responses to any deficiency letter issued to you by Grantee, and all written attachments, addenda, and amendments pertaining thereto (collectively, the “**Application**”), Grantee has agreed to award you the following Gap Financing Loan (the **“Loan”**), for the above-referenced project (the “**Project**), as described in your Application (the “**Award**”).

This Project Specific Award Agreement (the “**Award Agreement**”) is subject to the Special Conditions as noted on **Exhibit 1 - Special Conditions** attached hereto, which shall be incorporated into the Loan Documents (defined below). Any conflicts or inconsistencies between this Award Agreement and the Special Conditions shall be resolved in favor of the Special Conditions.

**A. GENERAL CONDITIONS TO FUNDING THIS AWARD**

Grantee’s obligation to perform and fund the Award is subject to the following conditions being performed, satisfied, or waived by Grantee, in Grantee’s sole discretion, prior to the Closing Date (defined below):

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **1.** | **Project Financing** | Applicant warrants and represents that the Project financing described in the Application has not materially changed, and that Applicant has obtained sufficient financing (including the Loan proceeds) to complete the construction or rehabilitation of the Project. Any modifications to the financing described in the Application must be described in an attachment to this Award Agreement. |
| **2.** | **Evidence of Site Control** | In its Application, Applicant provided evidence of site control, in the form of either a fully executed purchase agreement, an option to purchase, a lease or option to lease, or a valid title in the name of the taxpayer or developer. Prior to or simultaneous with the Closing Date, Applicant must complete the acquisition of the site(s). |
| **3.** | **Compliance by Applicant** | Compliance with the terms and conditions of the Application, this Award Agreement, the CDBG-DR Program requirements more fully set forth below, and with the applicable terms and conditions of the Action Plan. |

**B. TERMS AND CONDITIONS OF THE AWARD**

|  |  |  |  |
| --- | --- | --- | --- |
| **1.** | **Applicant and Proposed Guarantor(s)** | [Applicant to insert name and address/email/phone no.]          Applicant shall also complete one Exhibit 4 for each proposed Guarantor, listing the name and address/email/phone no. of the proposed Guarantor. Each proposed Guarantor(s) must meet the conditions described in Section 7 below. | |
| **2.** | **Program Description** | The purpose of the Program is to provide funds to qualified applicants for the acquisition, restoration, rehabilitation, replacement, construction, development and operation of residential rental properties. Reference is hereby made to the Action Plan 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 in the Application and as shall be contained in the NSP Regulatory Agreement, including without limitation the following:  **Affordability Commitments**: The Project will contain the number of market rate and affordable rental units, by number of bedrooms, for each of the following Area Median Income (“**AMI**”) levels, as set forth below and as more fully described in the CDBG-DR Regulatory Agreement:   |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | | **Unit Type** | **Market Rate** | **20% AMI** | **30% AMI** | **40% AMI** | **50% AMI** | **60% AMI** | **80% AMI** | **120% AMI** | | 0 BR |  |  |  |  |  |  |  |  | | 1 BR |  |  |  |  |  |  |  |  | | 2 BR |  |  |  |  |  |  |  |  | | 3 BR |  |  |  |  |  |  |  |  | | 4 BR |  |  |  |  |  |  |  |  | | **Total** |  |  |  |  |  |  |  |  | | |
| **4.** | **Gap Financing Loan:** | The Applicant should note that AMIs are published annually and accordingly that the maximum rents will be adjusted up or down annually in accordance with the new AMIs.  **(a)** **Principal Amount:** The principal amount of the Loan is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and 00/100 ($\_\_\_\_\_\_\_\_\_\_\_.00) Dollars, bearing interest at the rate of describe rate, computed on the basis of a 360-day year, consisting of twelve 30-day months, to be repaid in annual installments on May 1 of each fiscal year solely from “**Surplus Cash”** (defined below) or from proceeds from any permitted sale or refinance. Payment from Surplus Cash, to the extent Surplus Cash is generated from the operation of the Project, shall be made as follows: the sum of thirty-three and one-third percent (33.33%) of Surplus Cash.  “**Surplus Cash”** means any cash remaining at the end of each fiscal year of the Applicant after: (A) payment of all Operating Expenses for such fiscal year; (B) payment of all sums due or currently required to be paid under the terms of any Permanent Loan Mortgage encumbering the Project and the promissory note secured by such Permanent Loan Mortgage; and (C) payment of all amounts required to be deposited into any reserve fund for the payment of operating expenses, any reserve for replacements to the Project, or any other special reserve funds required to be maintained by the Project under the Loan Documents. Grantee’s right to be paid from Surplus Cash shall terminate at such time as the principal and interest amounts due on the Gap Financing Note are paid in full. Notwithstanding the requirement of repayment from Surplus Cash, the Loan shall not be construed as a joint venture, partnership or other association between Applicant and Grantee, other than a debtor/creditor relationship.  **“Operating Expenses”** means, for any fiscal year, the current obligations of the Applicant related to the operation of the Project; provided however, Operating Expenses shall not include any non-cash expenses such as depreciation or amortization, nor shall it include any investor service fees, credit tax adjusters, asset management fees or any similar expenditures not approved by Grantee as of the Closing Date. Payment of the Loan shall be the first priority distribution of Surplus Cash. Grantee shall not allow any payments to Identity of Interest entities (other than payments pursuant to a contract approved in advance in writing by Grantee) to be paid as operating expenses or to be paid out of Surplus Cash prior to payment on the Loan.  **(b) Maturity:** The Loan shall mature on the earliest to occur of: (i) sale or refinancing of the Project except as expressly permitted in 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) the Maturity Date, which shall be thirty-five (35) years from the date of the Loan Documents.  **(c) Security:** Payment of the Loan shall be evidenced by a Promissory Note ;and secured by a Mortgage, Assignment of Leases and Rents, and Security Agreement, which Mortgage shall (i) constitute a first priority lien upon the Project, and (ii) constitute a first lien upon and security interest in all fixtures and personal property relating to or located in the Project, and (iii) secure all obligations to Grantee under the Loan Documents; and UCC-Financing Statements covering the fixtures and personal property located at the Project; each of which is to be executed and delivered by Applicant at Closing. Upon written approval from Grantee, Grantee may agree to subordinate its lien position to a permanent loan by a private lender, according to the terms and conditions of a Subordination Agreement between such lender, Applicant and Grantee. | |
| **5.** | **General Loan Conditions**    **APPLICABLE:**  **[\_\_\_\_\_]**  **NOT APPLICABLE**  **[\_\_\_\_\_]**  (check one)  **APPLICABLE:**  **[\_\_\_\_\_]**  **NOT APPLICABLE**  **[\_\_\_\_\_]**  (check one) | **(a) Funding of Gap Financing Loan:**  **(i) Completion:**  Grantee will fund the full amount of the 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 Grantee 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; **OR**  **(ii)** ***Pari Passu* Funding during construction**:  Grantee will fund up to 95% of the Loan during the construction of the Project on a ***pari passu*** basis with Applicant’s other construction period financing, on terms and conditions acceptable to Grantee 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 Grantee. The terms and conditions regarding Grantee’s funding during construction of the Project shall be negotiated between Applicant, Grantee, and Applicant’s other construction period finance providers prior to closing the Loan, and if the parties are unable to agree upon the terms and conditions governing Grantee’s obligation to fund during construction of the Project, the Loan will be funded at completion.  The remaining 5% of the Loan, along with any amounts held back as retainage, shall be released upon receipt by Grantee of final certificates of occupancy (or their equivalents) for all buildings and units comprising the Project, completion of Grantee’s subsidy layering review, and upon compliance with the other conditions to funding set forth in the Loan Agreement.  Gross draw amounts are limited to costs actually incurred, less amounts paid from non *pari passu* sources, and shall not include contingency amounts or retainage (**“Net Draw Amount”**).  Additionally, Grantee limits the cash developer fee amount that may be received during the construction period, from all sources, to a maximum of thirty-five percent (35%) of the cash developer fee[[1]](#footnote-1), with no more than half of this limit allowable to be received at the Closing Date.  Grantee’s *pari passu* share of each Net Draw Amount will be based on Grantee’s share of funds being advanced over the construction period to pay the sum of all Net Draw Amounts, which percentage shall be calculated by Grantee prior to the Closing Date using Applicant’s monthly sources and uses statement. Grantee will fund its *pari passu* share of the Net Draw Amount at each draw during construction with the balance, if any, paid as provided below.  Each lender providing construction financing shall execute an intercreditor agreement to document the understandings between the lenders as to *pari passu* funding of the Project.  **(b) Use of Proceeds**: Proceeds from the Loan are to be used solely to support the acquisition, development, restoration, replacement, rehabilitation, and/or construction of the Project in accordance with the Application and the terms and conditions of the Loan Documents. The Loan shall be used solely to reimburse actual costs already expended on Eligible Expenses.  **(c) Non-Recourse Loan:** The 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 Guarantor(s)s acceptable to Grantee under the terms and conditions set forth in the Loan Documents. The obligations of each Guarantor(s) 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. Grantee may pursue its remedies against any Guarantor(s) without first exhausting its remedies against the Applicant or the Project.  **(d) Permanent Mortgage Loan:** Applicant has/does not have a Permanent Loan commitment for the Project. The terms and conditions of Applicant’s permanent mortgage loan on the Project, if any, shall acknowledge and permit the Loan, shall be subject to the CDBG-DR Regulatory Agreement, and shall consent to the execution and delivery of the Loan Documents. The Permanent Lender and any other permitted lender described in subsection (e) below holding a lien on the Project shall enter into a subordination agreement whereby each lender agrees to subordinate its lien to the CDBG-DR Regulatory Agreement.  **(e)** **Additional Project Debt**: Other than the permanent mortgage encumbering the Project, if any, without the prior written consent of Grantee, no other indebtedness of the Applicant or the Project may have a lien priority senior to that of the Loan; no other indebtedness of the Applicant or any other person or entity may be secured by the Project; and, other than Operating Expenses, no indebtedness of the Applicant (whether secured or unsecured) may be payable except from Surplus Cash distributed to Applicant.  **(f)** **Cost Certification.** Applicant acknowledges and agrees that the principal amount of the 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 Grantee with a cost certification audit acceptable to Grantee (the **“Cost Certification Audit”**) prepared by an independent third party consulting or accounting firm **(“Audit Firm”)** acceptable to Grantee, 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 Grantee may require. Applicant agrees to cooperate with Grantee and to provide any documentation deemed necessary to Grantee for a complete audit.  **(g)** **Reduction of Gap Financing Loan**. Notwithstanding anything to the contrary contained herein, Grantee may reduce the principal amounts of the Loan in the event the Cost Certification Audit or the final subsidy layering analysis of the Project completed by Grantee 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 Loan as set forth in the Award Agreement were based. The principal amounts of the Loan may be reduced based on the actual Project costs incurred by Applicant, the amount of any tax credits awarded to the Project, amount of any bond proceeds and the final amount, and the terms and conditions of any of the Applicant’s other financing. If the amount of Loan proceeds advanced to Applicant, prior to completion of the Cost Certification Audit and final subsidy layering analysis, exceeds the principal amount of the Loan supported by the Cost Certification Audit and final subsidy layering analysis **("Excess Proceeds"),** Grantee may reduce the amount of the final disbursement, and Applicant shall pay Grantee the amount of any remaining Excess Proceeds in one lump sum payment within thirty (30) days of receiving written notice from Grantee that the Excess Proceeds are due and payable.  **(h) Due on Sale or Transfer Restrictions.**  (1) Subject to the terms of this subsection (h), and absent Grantee’s written waiver, 100% of the amounts due under the Loan are due upon the sale or refinancing of the Project, including without limitation, payment of all principal and accrued and unpaid interest. Grantee 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 Loan.  (2) The Applicant 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 Grantee, which consent shall be in Grantee's sole discretion. Notwithstanding the foregoing: (A) the pledge to a limited partner/member by a general partner/managing member of the general partner’s/managing member’s interest in a limited partnership/operating agreement as security for the performance of all of the general partner’s/managing member’s obligations under the limited partnership/operating agreement shall not constitute a refinancing for purposes of this Award Agreement or of the Loan Documents; (B) a sale, transfer, pledge, encumbrance or other disposition of investor limited partner/investor member interests in Applicant shall not require Grantee’s consent unless such transaction results in a sale of more than 51% of the investor limited partner/investor member interest in Applicant; and (C) the change in the general partner/managing member of Applicant by the investor limited partners/investor members as general partner/managing member of Applicant in accordance with the terms of the limited partnership agreement/operating agreement of Applicant shall not require Grantee’s consent; provided, however that (i) Applicant shall provide Grantee with notice of any such change; and (ii) the entity replacing the general partner/managing member of the Applicant is under direct or indirect common control or management with the investor limited partner/investor member. Grantee will allow transfers by an identified investor member/limited partner to an affiliate of such entity, upon review by Grantee of the terms of such transfer.  **(i) Restrictions on Identity of Interest.** Applicant shall be required to notify Grantee 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. Grantee will have the right, in its sole discretion, to require the cancellation of any contract between Applicant and any Identity of Interest entity at any time during the term of the contract, 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 (including any consultant, general contractor, supplier, vendor, vendee, attorney, management agent, seller of the land, etc.):  (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. | |
| **6.** | **Regulatory Agreements:** | **(a) CDBG-DR Regulatory Agreement**. As a condition to disbursement of proceeds under the Loan, the Project will be encumbered by a regulatory agreement in favor of Grantee **(“CDBG-DR Regulatory Agreement”**). The CDBG-DR Regulatory Agreement shall (i) run with the land; (ii) have a term of thirty-five (35) years; (iii) survive the repayment of the Loan; and (iv) contain the applicable terms, conditions, restrictions and regulations agreed to in the Application, and as required by the Action Plan. The CDBG-DR Regulatory Agreement shall be recorded in the real estate records in the county in which the Project is located, and shall be subordinate only to those liens and encumbrances agreed to by Grantee, in its sole discretion.  **(b) Other Regulatory Agreements.** Additionally, if the Project is subject to a Low Income Housing Tax Credit program Land Use Restriction Agreement with the name of State LIHTC allocating agency, Grantee will be considered a third party beneficiary of such regulatory agreement and shall be entitled to enforce its terms against the Applicant to the fullest extent as if a party thereto. No other regulatory agreements or property restrictions shall be permitted on the Project except with the prior written consent of Grantee. | |
| **7.** | **Guarantees:** | **(a) Proposed Guarantors.** Attached as **Exhibit 2** are Grantee’s requirements regarding Guarantor(s) for the Award. Attached as **Exhibit 3** is the form of certificate required from each Guarantor regarding its financial statements. Note that Grantee requires that each individual or entity that will provide a guaranty to any other party with regard to the Project must be offered to Grantee as a proposed Guarantor. Note that Grantee’s requirements in Exhibit 2 may require additional Guarantors, over and above those who will give guaranties to other parties.  Complete one Agreement of Proposed Guarantor (attached as **Exhibit 4**) for each proposed Guarantor, and have each proposed Guarantor execute its Exhibit 4. Return each executed Exhibit 4 with Applicant’s acceptance of this Award Agreement. Failure to include an executed Exhibit 4 for each proposed Guarantor on or before the deadline for acceptance will be deemed a non-acceptance of the Award Agreement.  **(b) Non-Recourse Carve-Outs.** Applicant and the accepted Guarantor(s) will be required to guarantee certain personal obligations under the Loan Agreement, Note and Mortgage.  **(c) Operating Deficit Guaranty.** Each accepted Guarantor will be required under the terms and conditions contained in the Operating Deficit Guaranty to fund annual operating deficits until the Project has generated Surplus Cash for two (2) consecutive fiscal years. The Operating Deficit Guaranty shall guarantee the reimbursement of deficits beginning from the date the Project begins operations. The annual operating deficit shall be fully paid and funded by the Guarantor(s) under the Operating Deficit Guaranty on or before the date on which annual audited financial statements for the Project are due to Grantee under the Loan Agreement.  **(d) Completion Guaranty.** In addition to guarantying the obligations described in Paragraphs 7(b) and 7(c) above, for *pari passu* funding, each accepted Guarantor will also be required to guarantee completion of the Project under the terms and conditions contained in the Completion Guaranty.  **(e) Limitation for Nonprofit Guarantors.** Notwithstanding the foregoing, if a Guarantor is an organization exempt from payment of federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (**“Code”)**, as an entity organized under Section 501(c)(3) of the Code, the Guarantor(s)’s obligations under the Operating Deficit Guaranty shall (A) not extend more than five (5) years from the date that the Project first achieves “break-even operations”, and (B) be capped at an amount equal to “six (6) months” of operating expenses. For purposes of this section, “break-even operations” mean the date upon which (i) the Project achieves 95 percent occupancy, and (ii) the revenues received from the normal operation of the Project equal all accumulated operational costs of the Project for a period of three (3) consecutive months after completion of construction computed on a cash basis and in accordance with the Project and Loan Documents. | |
| **8.** | **Compliance Requirements:** | Applicantagrees to abide by any and all applicable (a) federal, state, county 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-DR 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). If the Award is funded *pari passu*, 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 Grantee, which must provide an environmental assessment of such construction in accordance with 24 CFR Part 58, and be approved by Grantee before taking any choice limiting actions such as, without limitation, purchasing the Project site, or starting construction. Also see paragraph 15 of this Award Agreement;  **(f)** the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 19070 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;    **(g)** for buildings and other improvements 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;  **(h)** Compliance 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; and  **(i)** Add any grantee-specific compliance requirements here. | |
| **9.** | **Construction Contract** | Applicant must enter into a binding contract for the construction of all improvements making up the Project subject to approval by Grantee. |
| **10.** | **Execution and Delivery of Award documentation** | Execution and delivery by the Applicant of documentation acceptable to Grantee evidencing and securing the Award, including without limitation the CDBG-DR Loan Agreement; the Gap Financing Note; the Mortgage; the Subordination Agreement; the CDBG-DR Regulatory Agreement, the Performance and Completion Guaranty, Intercreditor Agreement (for *pari passu* loans), the Borrower’s Certificate, and such other documents as Applicant and Grantee shall execute to evidence the loan (collectively, “**Loan Documents**”). Template Loan Documents can be found describe where template loan documents can be obtained. |
| **11.** | **Construction of Project:** | Construction of the Project shall be commenced not later than ninety (90) days after of the Construction Start Date listed in the Application, but in no event later than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, or this Award Agreement shall be come null, void and of no effect, except for such obligations of Applicant as are expressly stated to survive termination hereof**.** Applicant shall apply in writing for an extension of the terms of this Award Agreement, stating the reason for the delay and the anticipated construction start date. Extension of this Award Agreement shall be in Grantee’s sole discretion. | |
| **12.** | **Expenses:** | Applicant shall pay all costs and expenses incurred in connection with this Award and the Loan, whether or not the Closing occurs, including by way of illustration and not limitation: recording fees, title insurance costs related to the title policy in favor of Grantee, attorney fees of Grantee, escrow fees, flood zone determination fees, survey fees, appraisal costs, environmental and historic property review, and site inspection fees. This obligation shall survive any termination, avoidance or cancellation of this Award Agreement. | |
| **13.** | **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 Grantee, 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 neither Applicant nor Grantee shall have any further rights or obligations to the other under this Award Agreement except for such obligations of Applicant as are expressly stated to survive termination hereof. | |
| **14.** | **Indemnification:** | Applicant agrees to indemnify and to defend and hold Grantee 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 Grantee 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. This indemnity shall survive cancellation, termination or avoidance of this Award Agreement. | |
| **15.** | **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 Grantee, 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 Grantee. Violation of this requirement shall result in delay, postponement or cancellation of any payment of Loan proceeds. | |
| **16.** | **Joint and Several Liability:** | If Applicant consists of more than one natural persons and/or entities, the liability of each of them for Applicant’s obligations under this Award Agreement and any associated documents including, without limitation, the Loan Documents, shall be joint and several, and *in solido*. | |
| **17.** | **Breach of Conditions:** | Grantee 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. Grantee 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 of the Program or this Award Agreement, in which event neither Applicant nor Grantee shall have any further rights or obligations under this Award Agreement, except for such obligations of Applicant that are expressly stated to survive termination hereof. | |
| **18.** | **Closing Date:** | The Loan shall close on or before \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, if the funding shall be made *pari passu*, and \_\_\_\_\_\_\_\_\_\_, 20\_\_, if the funding is to be provided at completion (in either case, the **“Closing Date”**).  If a *pari passu* Loan has not closed on or before the Closing Date, **and** construction has not started by the Construction Start Date stated in Paragraph 11 above, this Award Agreement may be terminated by Grantee, in its sole discretion, by written notice to Applicant, in which event Grantee shall no longer have any obligation to make the Loan, and Applicant shall have no further rights under this Award Agreement.  If a funding at completion Loan has not closed on or before the Closing Date, this Award Agreement may be terminated by Grantee, in its sole discretion, by written notice to Applicant, in which event Grantee shall no longer have any obligation to make the Loan, and Applicant shall have no further rights under this Award Agreement. | |

Grantee’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 Grantee’s rights of review and approval, including without limitation, of all documents and materials heretofore delivered to Grantee 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 Grantee and shall survive the execution of the Loan Documents to the extent not inconsistent therewith. **TIME IS OF THE ESSENCE OF THIS AWARD AGREEMENT**.

**GRANTEE**

By:

Name:

Title:

**List of Exhibits:**

**Exhibit 1 – Special Conditions**

**Exhibit 2 – Requirements Regarding Guarantors**

**Exhibit 3 -- Form of Financial Certificate From Guarantor**

**Exhibit 4 -- Agreement of Proposed Guarantor**

**APPLICANT**:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**By:** **, a** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Name:**   
**Title:**

**EXHIBIT 1: SPECIAL CONDITIONS**

Attach Property Specific Addendum for the Project

**EXHIBIT 2: GRANTEE’S REQUIREMENTS REGARDING GUARANTORS**

Borrowers must submit the following information as part of the pre-closing due diligence:

* An organization chart of the borrower entity.
* A listing of all Affiliates of the borrower entity.
* A listing of the borrower's key personnel (individuals who are officer or directors of any Affiliate, plus partners or LLC members holding 10% or greater ownership interest in any Affiliate).
* A description of all guaranties that will be given to any party other than Grantee, identifying the guarantors, beneficiaries of the guaranties, and the amounts guarantied.
* Identify the proposed Guarantor(s) (see below for requirements).

Each proposed Guarantor must be a person or entity who has an economic interest in Applicant, or who will otherwise obtain a material financial benefit from the Loan.

**Which Affiliates Must Be Offered as Guarantors?**

Borrowers must offer the following as guarantors under the Operating Deficit Guaranty and – for projects receiving funding during construction – under the Guaranty of Completion:

* Each entity that is offering a guaranty to any other party in the transaction.
* Each capitalized entity (corporations, partnerships, and LLCs with more than *de minimis* net worth) that is an Affiliate of the borrower.
* If there is no capitalized entity in the Affiliate pool, the proposed Guarantors must include individuals who directly or indirectly in the aggregate hold controlling interest in the borrower.
* For each project, the proposed Guarantors must include at least one high net worth individual ($1 million net worth or above) from the key personnel pool. For example, if the developer parent entity is a corporation, the individual offered would normally be either the CEO or the majority shareholder. If the developer parent entity is an LLC, the individual offered would normally be the managing member.

**“Affiliate”** means any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which has a controlling interest in Applicant; and (b) **“controlled by”**, **“under common control with”**, or which has a **“controlling interest**” means (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.

**Financial Statements to be Provided for Each Proposed Guarantor**

Each proposed guarantor must provide financial statements for review that:

* + Are current.
    - For this purpose, “current” means as of no earlier than 90 days prior to the date of submission.
    - Financial statements must be updated immediately prior to closing to confirm that no material adverse change has occurred.
  + Are certified to Grantee using the form of certificate in Exhibit 3.
  + Include a schedule of actual and threatened litigation against the proposed Guarantor.
  + Include a schedule of guaranties and other contingent liabilities of the proposed Guarantor.

**EXHIBIT 3:FORM OF GUARANTOR CERTIFICATE**

**REGARDING FINANCIAL STATEMENTS**

**Made to Name of CDBG-DR Grantee**

Re: Gap Financing Loan (“**Loan**”) being made to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the **“Borrower”**) by name of CDBG-DR grantee (**“Grantee”**) pursuant to the terms and conditions of that certain Gap Financing Loan Agreement by and between Borrower and Grantee (“**Loan Agreement**”).

The undersigned, **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Guarantor**”), hereby certifies to Grantee, its successors and assigns, as follows:

1. Guarantor holds a direct or indirect interest in Borrower as a result of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [**INSERT AND IDENTIFY RELATIONSHIP TO BORROWER**].
2. Attached hereto as **Exhibit A** are true and correct copies of Guarantor’s financial statements dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which are the most recent financial statements prepared by or for the undersigned (the “**Financial Statements**”). Guarantor shall provide audited financial statements if available.
3. There has been no material adverse change in the information disclosed in the Financial Statements and/or the financial condition of Guarantor since the date of the most recent of the Financial Statements.
4. Attached hereto as **Exhibit B** are true, correct and complete disclosures of all contingent liabilities of Guarantor, including, without limitation, any unpaid taxes, existing guaranties, pending or threatened litigation, together with the potential maximum amounts of each contingent liability.
5. Other than as disclosed on **Exhibit A** and **Exhibit B**, Guarantor has no contingent liabilities outstanding for which Guarantor is or may at a future date be liable, including, without limitation, unpaid taxes, existing guaranties, or pending or threatened litigation.
6. There exist no defaults under any obligation or agreement in connection with which Guarantor has provided any existing guaranty. No party to any existing guaranty has demanded Guarantor’s performance thereunder or has provided Guarantor with notice that such performance may be required of Guarantor.
7. The real estate listed in the Financial Statements is solely owned by Guarantor and/or Guarantor holds the percentage interests therein set forth on **Exhibit C** attached hereto, which further sets forth the current estimated market value of said real estate valued as of the date of this certificate.

This Certificate Regarding Financial Statements is being made and given by Guarantor in order to induce Grantee to enter into the Loan Agreement with Guarantor’s knowledge that Grantee is relying upon the within certification in entering the Loan Agreement and in making the Loan to Borrower and accepting a guaranty from Guarantor in connection with the Loan.

IN WITNESS WHEREOF, Guarantor has executed this Certificate Regarding Financial Statements as of this \_\_\_ day of \_\_\_\_\_\_\_\_\_, 2010.

|  |  |
| --- | --- |
|  | **GUARANTOR:** |
|  | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**,  a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title: |

**EXHIBIT 4: AGREEMENT OF PROPOSED GUARANTOR**

The proposed Guarantor whose signature appears below agrees to provide the Operating Deficit Guaranty to Grantee in the form attached hereto as Exhibit 4A without modification on or before the date of the closing of the Loan described in the Award Agreement (“Award Agreement”) issued date by name of Grantee (“Grantee”) to name of Borrower (“Borrower”) for the project located at address of Project (“Project”).

(Delete this paragraph if the Project will not receive funding during construction). The proposed Guarantor agrees to provide the Completion Guaranty to Grantee in the form attached hereto as Exhibit 4B without modification on or before the date of the closing of the Loan described in the Award Agreement.

The proposed Guarantor agrees to execute the Loan Agreement between Grantee (as lender) and Borrower (as borrower) regarding the Project, in the form attached hereto as Exhibit 4C, as guarantor of certain personal obligations of Borrower (“Non Recourse Carve-Outs”).

**GUARANTOR:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

**a** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**Name:**   
**Title:**

Attachments:

* Exhibit 4A: Form of Operating Deficit Guaranty
* Exhibit 4B: Form of Completion Guaranty

1. The cash developer fee is the total developer fee minus the amount projected to be deferred. [↑](#footnote-ref-1)