**Multifamily Rental HOUSING**

**Regulatory Agreement**

**Tool #14**

**Description:** Community Development Block Grant Disaster Recovery (CDBG-DR) grantees typically require newly-constructed multifamily rental projects to be affordable (for households at, or below, 80% of the Area Median Income) for a period of time. This sample regulatory agreement provides a template for use by grantees and their partners. It is a recommended practice for grantees to enforce affordability through a regulatory agreement that is recorded in the local land records and that will remain in force if the grantee's loan has been repaid. It is also a recommended practice to structure the regulatory agreement so that it will be binding on any future owners of the property, including a lender who acquires the project by foreclosure.

**How to Adapt this Document:** This document is not represented to be a complete agreement, and CDBG-DR grantees must enter the project details and must reference any grantee-specific or project-specific requirements. Yellow highlight indicates a program feature to be determined by the grantee. Green highlight indicates a project-specific feature. The comments throughout are intended to provide additional guidance and should be deleted prior to finalizing the document.

**Source of Document:** This document was adapted from a document used by the State of Louisiana to secure repayment of gap financing loans made to multifamily rental projects using CDBG funds; it is modeled on the Tax Credit Regulatory Agreement used by the Louisiana Housing Finance Agency.

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.

**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.

U.S. Department of Housing and Urban Development

Community Planning and Development, Disaster Recovery and Special Issues Division

ABOVE SPACE RESERVED FOR

RECORDING PURPOSES ONLY

|  |  |
| --- | --- |
| **CDBG-DR REGULATORY AGREEMENT****OF** **name of Grantee** | **UNITED STATES OF AMERICA****STATE OF \_\_\_\_\_\_\_\_\_\_** |

**BE IT KNOWN**, that on the dates set forth below, before the undersigned notaries, duly commissioned and qualified in and for the County and State set forth below, and in the presence of the undersigned witnesses, personally came and appeared:

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

The name of grantee **(“Grantee”**, which shall, in every instance, include Grantee’s successors and assigns);

**PRELIMINARY RECITALS**

**A. WHEREAS,** Grantee is providing funds from the United State of America, HUD Community Development Block Grant –Disaster Recovery Program **(“CDBG-DR”**) Program to qualified applicants in accordance with Grantee’s CDBG-DR Multifamily Rental Program (the **“Program”**) under describe Grantee’s published CDBG-DR Action Plan; and

**B. WHEREAS,** Owner has applied to Grantee as evidenced by a completed printed application, all written responses, attachments, addenda and amendments pertaining thereto, including the special conditions related to the application attached hereto as **Exhibit A – Property Specific Addendum** and made a part hereof (collectively, the **“Application”**); and

**C.** **WHEREAS**, Grantee has entered into an agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_, 20­ with Owner for the award (the **“Award Agreement”**) of the Gap Financing Loan (as hereinafter defined) for the purpose of developing that certain multifamily residential rental project described in Owner’s Application (the **“Project”**) located in \_\_\_\_\_\_\_\_\_ County, State of \_\_\_\_\_\_\_\_\_\_\_\_\_ on the immoveable property more particularly described in the legal description attached hereto as **Exhibit B** **– Legal Description** and made a part hereof (the **“Land”**) to be occupied by households having incomes, and at levels of affordability, in accordance with Program requirements and as set forth in **Exhibit C** **– Income and Affordability Requirements,** attached hereto; and

**D.** **WHEREAS,** the Owner has agreed to certain commitments regarding number of affordable units, affordability levels, permanent supportive housing, and**,** if applicable, market rate units; and

**E. WHEREAS,** the Program and the Application restrict the use and operation of the Project in certain respects; and

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

**NOW, THEREFORE,** in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantee 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 or in the LIHTC Program (as hereinafter defined).

**(a) CDBG-DR Mortgage:** That certain Mortgage, Assignment of Leases and Rents and Security Agreement by Owner in favor of CDBG-DR Mortgagee, 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) CDBG-DR Mortgagee:** Grantee, its successors and assigns.

 **(c) “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 (or other entity’s) directors or trustees; or (iv) the ability to exercise a controlling influence over the company 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.

**(d) Eligible Household:** 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 (as defined under the LIHTC Program) applicable to the unit within the Project in which such household resides (or, with respect to an applicant household, proposed 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) does not exceed the Affordable Rent (as defined under the LIHTC Program); and

(iii) with respect to an applicant household, is acceptable to the Owner in accordance with the Owner’s nondiscriminatory resident selection criteria.

 **(e) Gap Financing Loan:** the loan to the Owner by Grantee pursuant to the Award Agreement.

**(f) Gap Financing Note:** the Gap Financing Note with the Owner as payor and Grantee as payee thereunder, evidencing the Gap Financing Loan to the Owner pursuant to the Loan Agreement, as may be amended or supplemented from time to time.

**(g) Guaranties:** collectively, the Operating Deficit Guaranty and Completion Guaranty, as applicable, dated as of the date hereof, from the Owner, \_\_\_\_first guarantor\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_any additional guarantor(s)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, for the benefit of Grantee.

**(h) 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, etc.):

(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.

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

**(j) Loan Agreement:** the loan agreement, dated \_\_\_\_\_\_\_, between the Owner and Grantee, as amended and supplemented from time to time.

**(k) Loan Documents:** the Gap Financing Note; this Agreement; the CDBG-DR Mortgage; UCC-Financing Statements covering the fixtures and personal property located at the Project; the Loan Agreement; the Tax Credit Regulatory Agreement; the Operating Deficit Guarantee; the Completion Guarantee; and such other documents, agreements, instruments or certificates as Grantee and its counsel may require, including such documents as Grantee in its sole discretion deems necessary or appropriate to evidence or secure the Gap Financing Loan.

**(l) Project:** the improvements to be constructed or substantially rehabilitated on the Land, and more particularly described in Exhibit B attached hereto, and the Land and all moveable property and fixtures from time to time attached thereto.

 **(m) 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 County in which they are located.

**(n) Special Conditions:** the restrictions or limitations attached as **Exhibit 1** – **Special Conditions** to **Exhibit A** imposed on the Project as a condition to the Loan Agreement.

**(o) State:** the State of \_\_\_\_\_\_\_\_\_, in which the Project is located.

**(p) State Allocating Agency:** name of state LIHTC allocating agency.

**(q) Tax Credit Regulatory Agreement:** any Land Use Restriction Agreement, Tax Credit Regulatory Agreement or similar use and affordability restriction in connection with an award of Low Income Housing Tax Credits under section 42 of the Internal Revenue Code as amended (the “Code”), between the Owner and the State Allocating Agency.

**(r) Term of this Agreement:** the term determined pursuant to Section 9 hereof.

**SECTION 2**

**INCORPORATION BY REFERENCE**

**2.1 Incorporation by Reference.** The terms of the Tax Credit Regulatory Agreement, if any, as they apply to Owner and its obligations thereunder are hereby incorporated by reference herein. Owner agrees that its obligations, covenants, representations and warranties therein are deemed to be made to Grantee, are hereby affirmed to Grantee and are enforceable by Grantee. The term of the Tax Credit Regulatory Agreement shall be deemed to extend throughout the Term of this Agreement.

**SECTION 3**

**REPRESENTATIONS, COVENANTS AND COMMITMENTS**

**3.1 Residential Rental Project**. Grantee 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. To that end, the Owner hereby represents, covenants, commits and agrees as follows:

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

**(b)** The Project consists of the development, rehabilitation, restoration, construction and operation of a multifamily residential rental project on the Land.

**(c)** The Project has been substantially completed in accordance with the Application, as revised by the Financing Certification, and all dwelling units in the Project are available for initial occupancy as of the Placed in Service Date.

**(d)** The Project is in good and habitable condition.

**(e)** There are no defects or deficiencies in the Project other than normal and customary punch list items or incomplete work awaiting seasonal opportunity.

**(f)** 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 paid in accordance with the payment provisions of each contract.

**(g)** The Project has been constructed in all material respects in accordance with applicable zoning, building, housing and other codes, ordinances and regulations.

**(h)** All required certificates of occupancy have been issued by the applicable governmental authority and copies of such occupancy certificates have been provided to Grantee.

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

**(j)** The Owner, its successors or assigns, shall own, manage, and operate the Project exclusively as multifamily rental housing.

**(k)** 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 date on which this Agreement was executed by the Owner.

**3.2 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 State law. The Project shall contain the 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** | **120% AMI** | **Market Rate** | **Total Units** |
| 0 BR |  |  |  |  |  |  |  |  |  |
| 1 BR |  |  |  |  |  |  |  |  |  |
| 2 BR |  |  |  |  |  |  |  |  |  |
| 3 BR |  |  |  |  |  |  |  |  |  |
| 4 BR |  |  |  |  |  |  |  |  |  |
| **Total** |  |  |  |  |  |  |  |  |  |

 **3.3 Prohibited Conversion**. The Owner will not convert the Project to condominium or co-operative ownership.

**3.4 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.

**3.5 Inappropriate Advertising**. The Owner will immediately withdraw from circulation any advertisement determined by Grantee 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.

**3.6 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.

**3.7 Run with the Land or Leasehold Interest**. The Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Agreement, including the Special Conditions. Grantee 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.

**3.8 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.

**3.9 Burden and Benefit**. Grantee 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. Grantee 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 an restrictions, and by furthering the public purposes for which the Program financing was made by Grantee.

**SECTION 4**

**IDENTITY OF INTEREST RELATIONSHIPS**

**4.1 Restrictions on Identity of Interest Relationships**. Owner hereby acknowledges that in order to comply with the Program and Grantee’s rules and regulations thereunder, it must and does hereby covenant and agree that Owner shall notify Grantee in writing prior to contracting with any Identity of Interest entity, and Owner must include in its audited annual financial statements a disclosure of all amounts paid to Identity of Interest entities. In addition, Grantee 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 Grantee approves any existing contract that does not provide for subsequent cancellation such approval shall automatically be conditioned on Owner’s agreement to promptly cause the contract to be modified to provide for cancellation.

**SECTION 5**

**INDEMNIFICATION**

**5.1 Indemnification**. The Owner hereby covenants and agrees that it shall indemnify, hold harmless and defend Grantee 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 Grantee, 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 6**

**CONSIDERATION**

**6.1 Consideration**. In addition to other purposes, Grantee has authorized and made the Gap Financing Loan to the Owner as an inducement to the Owner to operate the Project as set forth in this Agreement. In consideration of the issuance of the Gap Financing Loan by Grantee for the foregoing purposes, Grantee and the Owner have entered into this Agreement.

**SECTION 7**

**RELIANCE**

**7.1 Reliance**. In performing its duties hereunder, Grantee may rely upon statements and certificates of the Owner and tenants of Rental Housing believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Owner pertaining to occupancy of the Project. In addition, Grantee may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection with respect to any action taken or suffered by Grantee in good faith and in conformity with the opinion of such counsel.

**SECTION 8**

**SALE, TRANSFER OR OTHER CONVEYANCE OF INTEREST IN THE**

**OWNER OR OF THE PROJECT**

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

**(a)** Any material change (which includes an addition, removal or withdrawal or substitution of a general partner of a partnership or a managing member of a limited liability company) in the ownership structure of the Owner shall require prior approval of Grantee. Changes to limited partnership interests shall not require prior approval; however, the Owner shall provide Grantee with prior written notice of any such change in a majority of the limited partnership interests.

**(b)** Notwithstanding the foregoing Section 8.1(a) to the contrary,

(i) the pledge to a limited partner by a general partner of the general partner’s interest in a partnership agreement as security for the performance of all of the general partner’s obligations under the partnership agreement shall not constitute a material change for purposes of this Agreement or the Loan Documents;

(ii) a sale, transfer, pledge, encumbrance or other disposition of any investor limited partner/investor member interests in Owner shall not require Grantee’s consent nor constitute a sale of the Project for purposes of this Section 8.1, unless such transaction results in a sale of more than 51% of the investor limited partner/investor member interests in Owner; 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 limited partnership agreement/operating agreement of Owner shall not require Grantee consent;

provided, however that (A) Owner shall provide Grantee with prior written notice of any such change; and (B) any entity replacing the general partner/managing member of the Owner is under direct or indirect common control, or has a Controlling Interest in, the investor limited partner/investor member.

**8.2 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 Grantee, which consent shall be in Grantee's sole discretion.

**(b)** It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 8.2 shall be null, void and without effect, and shall cause a reversion of title to the Owner.

**SECTION 9**

**TERM**

**9.1 Term**. This Agreement shall become effective and shall remain in full force and effect for thirty five (35) years from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the date this Agreement was executed by the Owner, unless earlier terminated pursuant to Section 13. Notwithstanding the immediately preceding sentence, Grantee may terminate this Agreement, and all and several of the terms hereof, and in such event, the terminated provisions shall be of no further force and effect in the event of involuntary non-compliance with the provisions of this Agreement caused by fire, seizure, requisition, foreclosure, change in a Federal law or an action of a Federal agency after the date hereof that prevents Grantee from enforcing the requirements hereof, or condemnation or other similar event. 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 10**

**DAMAGE, DESTRUCTION OR CONDEMNATION OF THE PROJECT**

**10.1 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 mortgagee and the provisions of any mortgage regarding same, the Owner, within sixty (60) days of such event shall deposit with Grantee any insurance proceeds or any condemnation award, and shall within one hundred twenty (120) days of such event commence to rebuild, replace, repair or restore the Project in such manner as is consistent with the Loan Documents. Grantee shall make any such insurance proceeds or condemnation award moneys available to provide funds for such restoration work. In the event that the Owner fails to commence or to complete the rebuilding, repair, replacement or restoration of the Project timely, Grantee shall have the right, in addition to any other remedies granted in the Loan Documents or at law or in equity, to repair, restore, rebuild or replace the Project so as to prevent the occurrence of a default hereunder.

**SECTION 11**

**ENFORCEMENT**

**11.1 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 Grantee to the Owner and the investor limited partner/investor member of the Owner (or for an extended period approved by Grantee if such default stated in such written notice can be corrected, but not within such thirty (30) day period, and if the Owner or the investor limited partner/investor member of the Owner commences such correction within such thirty (30) day period, and thereafter diligently pursues the same to completion within such extended period), then Grantee may terminate all rights of the Owner under this Agreement and may take any other action at law or in equity or otherwise, as may be deemed most effectual by Grantee to enforce the obligations of the Owner with respect to the Project.

**11.2** **Specific Performance.** Notwithstanding any of the foregoing, Grantee will have the right to seek specific performance of any of the covenants and requirements of this Agreement concerning the construction and operation of the Project.

**11.3** **Fees, Costs and Expenses.** All fees, costs and expenses of Grantee incurred in taking any action pursuant to this Section 11 shall be the sole responsibility of the Owner, and the Owner, as security for the payment of any such fees, costs and expenses, hereby grants, bargains, sells and conveys to Grantee a lien on the Project.

**SECTION 12**

**RECORDING AND FILING**

**12.1** **Recording and Filing.** Upon execution and delivery by the parties hereto, the Owner shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the appropriate public conveyance and mortgage records of the county in which the Project is located and in such manner and in such other places as Grantee may reasonably request, and shall pay all fees and charges incurred in connection therewith.

**SECTION 13**

**SUBORDINATION AND FORECLOSURE**

**13.1 Foreclosure**. If a “Related Party” to the Owner as defined in the Internal Revenue Code should purchase the Project following a foreclosure or a deed in lieu of foreclosure, the use restrictions hereunder shall survive transfer of the Project to any such Related Party.

**SECTION 14**

**GOVERNING LAW**

**14.1 Governing Law**. This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State.

**SECTION 15**

**NOTICE AND EFFECT**

**15.1 Notice and Effect**. All notices and other communications to be made or permitted to be made hereunder shall be in writing and shall be delivered to the addresses shown below or to such other addresses that the parties may provide to one another in accordance herewith. Such notices and other communications shall be given by any of the following means: (a) personal service; (b) national express air courier, provided such courier maintains written verification of actual delivery; or (c) facsimile. Any notice or other communication given by the means described in subsection (a) or (b) above shall be deemed effective upon the date of receipt or the date of refusal to accept delivery by the party to whom such notice or other communication has been sent. Any notice or other communication given by the means described in subsection (c) above shall be deemed effective the date on which the facsimile transmission occurs or if such date is not a business day on the business day immediately following the date on which the facsimile transmission occurs.

Grantee:

with a copy to:

Owner:

with a copy to:

Servicer:

Investor:

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 16**

**MISCELLANEOUS**

**16.1 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 State Allocating Agency 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.

**16.2** **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.

**16.3** **Convenience of Reference.** 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.

**16.4** **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.

**16.5** **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.

**16.6 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 county in which the Project is located.

**[COUNTERPART SIGNATURE PAGES TO FOLLOW**]

**COUNTERPART SIGNATURE PAGE FORCDBG-DR REGULATORY AGREEMENT**

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

**WITNESSES: Grantee**

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

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

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

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

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

**NOTARY PUBLIC**

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

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

**COUNTERPART SIGNATURE PAGE FORCDBG-DR REGULATORY AGREEMENT**

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

**WITNESSES: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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

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

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

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

**NOTARY PUBLIC**

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

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

**EXHIBIT A**

**PROPERTY SPECIFIC ADDENDUM**

**EXHIBIT B**

**LEGAL DESCRIPTION**