

**CDBG PIGGYBACK PROGRAM  
PROJECT BASED RENTAL ASSISTANCE CONTRACT**

**THIS PROJECT BASED RENTAL ASSISTANCE CONTRACT** (this “**PBRA Contract**”) is entered into on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by and between the **STATE OF LOUISIANA, DIVISION OF ADMINISTRATION, OFFICE OF COMMUNITY DEVELOPMENT (“OCD”)**, whose address is \_\_\_\_\_, Baton Rouge, Louisiana \_\_\_\_\_; and \_\_\_\_\_, a \_\_\_\_\_, (the “**Owner**”), whose address is declared to be \_\_\_\_\_, \_\_\_\_\_, Louisiana \_\_\_\_\_, both of whom agreed as follows:

**PRELIMINARY RECITALS:**

**A. WHEREAS**, OCD is providing funds from the United States of America, HUD Community Development Block Grant (“**CDBG**”) Program to qualified applicants, in accordance with the CDBG Piggyback Program (the “**Program**”) under the Louisiana Recovery Authority (“**LRA**”) Action Plan known as “*The Road Home*”, to provide needed residential rental property assistance for qualified projects to remedy the loss of such residential rental property due to the damage caused by Hurricane Katrina and/or Hurricane Rita; and

**B. WHEREAS**, Louisiana Housing Finance Authority (“**LHFA**”) adopted that certain Qualified Allocation Plan on September 16, 2006, (the “**QAP**”), and OCD and LRA adopted that certain CDBG Piggyback Program description on September 28, 2006 (the “**Piggyback Program Description**”), allowing CDBG funds to be used for Gap Financing Loans, and project based rental assistance (“**PBRA**”), as described in the QAP and the Piggyback Program Description; and

**C. WHEREAS**, Owner submitted its application to the LHFA, including, but not limited to, the completed printed application, any written responses to any deficiency letter issued by the LHFA or OCD, and any written attachments, addenda, and amendments pertaining thereto (collectively, the “**Application**”) to utilize CDBG funds for the development, rehabilitation, replacement, restoration, construction and/or operation of a multifamily residential rental project (the “**Project**”) located on certain immovable property more fully described on **Exhibit A – Property Description** attached hereto (the “**Land**”); and

**D. WHEREAS**, based on the Application, Owner has been awarded funds to provide Rental Assistance Payments (as defined herein) on behalf of Eligible Households (as defined herein), the proceeds of which shall be used for the Project, as set forth in the Award Acceptance Agreement between the Owner and OCD, dated \_\_\_\_\_, 200\_ (the “**Award Agreement**”); and

**E. WHEREAS**, the parties desire to enter into this PBRA Contract in order to (i) evidence the terms and conditions of the PBRA funding; (ii) ensure compliance by Owner with the CDBG Program requirements, the QAP requirements, and the Piggyback Program Description requirements; and (iii) govern the disbursement of PBRA funds and the use of such funds by the Owner.

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

**SECTION 1  
GENERAL CONDITIONS**

**1.1 Recitals and Defined Terms.** The recitals set forth above are true and correct and are incorporated herein and made a part of this PBRA Contract. Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the QAP, the Piggyback Program Description, or the Application, as applicable. Notwithstanding any definition to the contrary contained herein, the following additional terms shall have the following meanings:

(a) **Affiliate:** 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, Owner.

(b) **Award Agreement:** the agreement between OCD and the Owner rendering the terms and conditions of the Gap Financing Loan and/or PBRA Contract.

(c) **Affordable Rent:** the Area Median Income for the Imputed Household Size, multiplied by the Affordability Percentage with respect to a Contract Unit, divided by twelve (12), multiplied by 30%, and rounded to the nearest dollar. The Affordable Rent shall be calculated without making any adjustment for tenant-paid utilities. For example: for a two-bedroom unit affordable at 20% AMI, if the annual area median income for a three person household is \$45,000, the Affordable Rent would be  $\$45,000 \times 20\% = \$9,000 \div 12 = \$750 \times 30\%$ , rounded to the nearest dollar = \$225.

(d) **Area Median Income:** 100% of the annual median income level, by household size, most recently published by the LHFA for the Parish in which the Project is located.

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

(f) **CDBG Regulatory Agreement:** a regulatory agreement provided in favor of OCD that shall: (i) run with the land; (ii) have a term of thirty-five (35) years from the date of execution; (iii) survive (A) the expiration of any PBRA Contract, and (B) 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 Piggyback Program Description.

(g) **Contract Units:** Project units described in Exhibit B – Contract Units attached hereto.

(h) **“Controlled by”, “under common control with”, or “controlling interest”:** (i) the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial or other interests of a company (or other entity) and includes the definition of “control” in 24 CFR 401.310(a)(2); or (ii) the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company; or (iii) the ability to direct in any manner the election of a majority of a company (or other entity’s) directors, trustees or members; 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.

(i) **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 applicable to the Contract Unit in which such household resides (or, with respect to an applicant household, proposes to reside); and
- (ii) whose lease (or, with respect to an applicant household, proposed lease) with the Owner specifies a rent that (when increased by the amount of any applicable Utility Allowance) does not exceed the Affordable Rent; and
- (iii) with respect to an applicant household, is acceptable to the Owner in accordance with the Owner's nondiscriminatory resident selection criteria; and
- (iv) who does not receive rental assistance from other rental assistance programs (e.g., Housing Choice Voucher and HOME programs).

(j) **Guarantees:** collectively, the Operating Deficit Guaranty and the Completion Guaranty.

(k) **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.

(l) **Imputed Household Size:** (i) in the case of a Contract Unit that does not have a separate bedroom, one (1) individual; (ii) in the case of a Contract Unit that has one or more separate bedrooms, 1.5 individuals for each separate bedroom.

(m) **Income Limit:** the Affordability Percentage (set forth in **Exhibit B** attached hereto) with respect to a Contract Unit, multiplied by the annual Area Median Income applicable to the actual household size of an applicant or resident.

(n) **Key Principal:** a person or entity acceptable to OCD, which may include the general partner of Owner's limited partnership or the managing member of Owner's limited liability company, or other Affiliate of Owner, which has an economic interest in Owner, or which will otherwise obtain a material financial benefit from the Gap Financing Loan and/or the PBRA Contract.

(o) **LIHTC Program:** the LHFA's Low Income Housing Tax Credit Program, wherein low income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended (the, "Code"), are awarded by the LHFA under its QAP, to qualified projects.

(p) **PSH Agreement:** any Permanent Supportive Housing Set-Aside Agreement entered into between Owner and the Louisiana Department of Health and Human Services with respect to the Project.

(q) **Regulatory Agreements:** the Tax Credit Regulatory Agreement and the CDBG Regulatory Agreement.

(r) **Rental Assistance Payments:** project based rental assistance payments with respect to each Contract Unit to be made pursuant to this PBRA Contract in an amount equal to the difference between the Payment Standard then in effect and the Affordable Rent then in effect.

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

(t) **Tax Credit Regulatory Agreement:** the regulatory agreement provided in favor of LHFA in connection with the issuance of the GO Zone Credits for the Project.

(t) **Utility Allowance:** the estimated monthly tenant-paid utilities associated with a Contract Unit, established in accordance with applicable Louisiana Housing Finance Agency requirements.

**1.2 Maximum PBRA Contract Commitment Amount.** The maximum amount of Rental Assistance Payments which may be made available under the PBRA Contract to Owner hereunder is \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00) (the “**Maximum PBRA Contract Commitment Amount**”).

**1.3 Construction Start Date.** Construction of the Project shall begin not later than \_\_\_\_\_, \_\_\_\_\_ [Construction Start Date in Application plus 90 days].

**1.4 Contract Units.**

(a) This PBRA Contract governs the operation of the Contract Units.

(b) Except as may be required under any PSH Agreement, the Owner shall offer Eligible Households a choice among available Project units having the appropriate number of bedrooms, subject to the maximum number of Contract Units available. Accordingly, OCD and the Owner expect that the specific number of Project units serving as Contract Units will change over time depending on the number of Eligible Households occupying Project units. The Owner shall maintain records identifying which units within the Project are Contract Units.

**1.5 Effective Date and Term.**

(a) OCD shall execute this PBRA Contract not later than twenty (20) days after receipt of the executed PBRA Contract from Owner and receipt of written notice and evidence satisfactory to OCD from Owner that 90% of Contract Units in the Project are occupied by Eligible Households (the “**Execution Date**”). The effective date of the PBRA Contract shall be the first day of the month in which the Execution Date falls (the “**Effective Date**”).

(b) This PBRA Contract shall terminate on the earliest of (a) the date upon which the Maximum PBRA Contract Commitment Amount has been paid out, or (b) when funds are no longer available to OCD for payment under the Program or this PBRA Contract, or (c) the date upon which other project-based rental assistance payments (*e.g.*, Housing Choice Voucher, and HOME programs) for all of the Contract Units have been agreed to by Owner and the program administrators, or (d) the last day of the last month of the 15th year following the Effective Date, or (e) in the event of casualty damage or

destruction to the Project (which is not repaired, restored or replaced by Owner), or the expropriation or condemnation of all or any portion of the Project by a governmental body with powers of expropriation or condemnation, or (f) at the option of OCD, upon a default by Owner hereunder which is not cured within any applicable grace or cure period.

(c) OCD has not assumed, and does not now assume, any obligation for the amount of rent payable by any Eligible Household or the satisfaction of any claim by the Owner against any Eligible Household. The financial obligation of OCD is limited to making the Rental Assistance Payments on behalf of Eligible Households in accordance with this PBRA Contract.

(d) The Owner agrees that, if OCD so requests, the Owner will accept any offer of other project-based rental assistance from other programs (e.g., Housing Choice Vouchers, and Home programs), and will agree to a corresponding reduction in the number of Contract Units based on the number of Contract Units covered by the other project-based rental assistance and in the Maximum PBRA Contract Commitment Amount.

## **SECTION 2 ELIGIBLE HOUSEHOLDS**

**2.1 Occupancy of Eligible Households.** The Contract Units are to be leased by the Owner only to Eligible Households for occupancy as their principal place of residence. OCD hereby agrees to make Rental Assistance Payments on behalf of Eligible Households for the Contract Units to enable the Eligible Households to lease housing pursuant to the Program.

## **SECTION 3 PAYMENT STANDARD TERMS**

**3.1 Payment Standard.** The payment standard with respect to a Contract Unit shall be \_\_\_\_% multiplied by the annual Area Median Income for the Imputed Household Size, divided by twelve (12), multiplied by 30%, and rounded to the nearest dollar (the “**Payment Standard**”). Such Payment Standard shall be calculated without making any adjustment for any Utility Allowance. Example: for a two bedroom unit and 55% AMI payment standard, if the annual area median income for a three person household is \$45,000, the Payment Standard would be  $55\% \times \$45,000 = \$24,750 \div 12 = \$2062.50 \times 30\%$  housing cost ratio = \$618.75 rounded to the nearest dollar = \$619.

**3.2 Annual Adjustment in Payment Standard.** The Payment Standard for each Contract Unit shall be subject to annual adjustment according to the annual change in the Area Median Income for an Imputed Household Size of four (4) persons for the Parish in which the Project is located. However, in the event that such Area Median Income decreases, the adjusted Payment Standard shall not be less than the Payment Standard in effect as of the Effective Date.

## **SECTION 4 RENTAL ASSISTANCE PAYMENTS ON BEHALF OF ELIGIBLE HOUSEHOLDS; LIMITATIONS AND REDUCTIONS**

**4.1 Rental Assistance Payments.** Subject to the limitation set forth in Section 4.2 below, and except as otherwise described herein, the Owner shall be entitled to receive monthly Rental Assistance Payments from OCD under and pursuant to the terms of this PBRA Contract. Following the Execution Date, the first Rental Assistance Payment will be paid on or before the fifteenth (15<sup>th</sup>) day of the first month following the Effective Date, retroactive to the Effective Date.

#### **4.2 Limitation on Rental Assistance Payments.**

(a) On each anniversary of the Effective Date, OCD or its agent shall determine the maximum amount of the total Rental Assistance Payments available to be paid during such PBRA Contract year (the “**Maximum Annual Amount**”), subject in any event to the Maximum PBRA Contract Commitment Amount. The Maximum Annual Amount shall be the sum of (a) any Rental Assistance Payment available but not paid in the prior year(s) (the “**Carryover Amount**”); and (b) twelve (12) times the maximum Rental Assistance Payment set forth in **Exhibit B** with respect to such PBRA Contract year. Notwithstanding the then applicable Payment Standard, the Owner shall not be entitled to any Rental Assistance Payment in excess of the Maximum Annual Amount, or to any Rental Assistance Payments in the aggregate in excess of the Maximum PBRA Contract Commitment Amount. The Maximum Annual Amount shall be reduced commensurately with any reduction in the number of Contract Units or in the Payment Standard or pursuant to any other provisions of this PBRA Contract. At expiration or termination of this PBRA Contract, any remaining Carryover Amount shall be released from this PBRA Contract, and shall not be due and payable to Owner.

(b) The Maximum PBRA Contract Commitment Amount for the Project is based on the annual Area Median Income as of the Effective Date, and an assumption that inflation will be 5.0% annually over the life of the PBRA Contract. The level of Rental Assistance Payments will adjust from year by year based on actual changes in the annual Area Median Income and inflation. However, actual expenditures (on a cumulative basis since the Effective Date) may not exceed the budgeted expenditures (based on the 5.0% inflation estimate). Notwithstanding anything to the contrary contained herein, the aggregate Rental Assistance Payments due hereunder shall never exceed the Maximum PBRA Contract Commitment Amount.

### **SECTION 5 MAINTENANCE, OPERATION AND INSPECTION**

**5.1 Maintenance and Operation.** Owner agrees to maintain and operate the Project in accordance with LHFA requirements under its LIHTC Program, and in compliance with all applicable laws, rules, regulations, codes and requirements imposed by any governmental body exercising any power or authority over the Project, or any portion thereof, whether now or hereafter enacted or enforced.

**5.2 Access and Inspection.** Owner shall comply with all inspection requirements under the LIHTC Program. The Owner shall permit OCD or any of its duly authorized representatives to have reasonable access to the Project and to any books, documents, papers and records of the Owner that are pertinent to compliance with this PBRA Contract, including the verification of information pertinent to the Rental Assistance Payments. OCD expressly reserves the right, although this reservation shall not be construed to waive any of OCD’s other rights, to enter and inspect the Project, and to present to Owner any reasonable inquiry regarding the Project, its operations and other matters pertinent to this PBRA Contract, which inquiries shall be responded to by Owner in a reasonable manner.

**5.3 Overcrowded and Underoccupied Units.** Owner agrees to comply with all applicable rules under the LIHTC Program regarding overcrowded or underoccupied units.

**SECTION 6**  
**SUBMISSION OF ANNUAL REPORT; FINANCIAL AND OPERATING STATEMENTS**

**6.1 Financial Statements.** Owner shall furnish to OCD the following financial statements:

(a) within one hundred and twenty (120) days after the end of each fiscal year of Owner, and at any other time upon OCD's request, a rent schedule for the Project showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by OCD;

(b) within one hundred and twenty (120) days after the end of each fiscal year of Owner, and at any other time upon OCD's request, an accounting of all security deposits held pursuant to all leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for OCD to access information regarding such accounts;

(c) within one hundred and twenty (120) days after the end of each fiscal year of Owner, and at any other time upon OCD's request, a statement that identifies all owners of any interest in Owner and the interest held by each, if Owner is a corporation, all officers and directors of Owner, and if Owner is a limited liability company, all managers who are not members;

(d) within one hundred and twenty (120) days of the end of each fiscal year of Owner, a calculation and certification of Surplus Cash for such fiscal year, in form and substance acceptable to OCD, and in accordance with OCD's and LHFA's requirements;

(e) within one hundred and twenty (120) days after the end of each fiscal year of Owner, and at any other time upon OCD's request, a statement of income and expenses for Owner's operation of the Project for that fiscal year, a statement of changes in financial position of Owner relating to the Project for that fiscal year, and, when requested by OCD, a balance sheet showing all assets and liabilities of Owner relating to the Project as of the end of that fiscal year, audited at Owner's expense by independent certified public accountants acceptable to OCD;

(f) if required by OCD, a statement of income and expenses for the Project for the prior month or quarter;

(g) upon OCD's request, a monthly property management report for the Project, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by OCD; and

(h) such other financial information and schedules as may be requested by OCD from time to time pertaining to the Project, in its reasonable discretion.

(i) Each of the statements, schedules and reports required by Section 6.1 shall be certified to be complete and accurate by an individual having authority to bind Owner, and shall be in such form and contain such detail as OCD may reasonably require. OCD also may require that any statements, schedules or reports be audited at Owner's expense by independent certified public accountants acceptable to OCD.

(j) If Owner fails to provide in a timely manner the statements, schedules and reports required by Section 6.1, OCD shall have the right to have Owner's books and records audited, at Owner's expense, by independent certified public accountants selected by OCD in order to obtain such statements, schedules and

reports, and all related costs and expenses of OCD shall become immediately due and payable and shall become an additional part of the indebtedness due under this PBRA Contract.

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

(l) Owner authorizes OCD to obtain a credit report on Owner at any time.

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

## **6.2. Owner's Reports to OCD.**

(a) Owner must report to OCD any change in the identification of Contract Units for reporting purposes as such change in the units identified as Contract Units occurs.

(b) With respect to each fiscal year of Owner during which any part of the term of this PBRA Contract falls, the Owner will include in its annual audited financial statements a certified audited report including the following information (the “**Annual Report**”):

- (i) For each Contract Unit, for each tenant occupying such Contract Unit during such fiscal year: the unit number / address and unit type, such tenant's name, initial occupancy date, income at initial occupancy, most recently recertified income, move-out date (if applicable), and number of days occupancy during such fiscal year.
- (ii) Certification that no tenant of Contract Unit has received any other form of rental assistance for any portion of such tenant's occupancy period.
- (iii) The average physical occupancy rate for all Contract Units during such fiscal year.
- (iv) The number of Contract Units at the beginning and end of such fiscal year, by unit type and level of affordability.
- (v) A certification by the Owner that to the best of its knowledge and belief (i) each Contract Unit was in compliance with applicable physical standards for the condition of the Contract Unit on each Household's initial occupancy date; (ii) as of such fiscal year end date, all occupied Contract Units were in compliance with applicable physical standards for the condition of the Contract Units; (iii) the amount of Rental Assistance Payments received by the Owner during such fiscal year did not exceed the Maximum Annual Amount or the Maximum PBRA Contract Commitment Amount; (iv) during such fiscal year, the Owner did not receive with respect to any Eligible Household, from all sources including the Eligible Household itself, other than this PBRA Contract, more than the difference between the then applicable Affordable Rent and the then applicable Utility Allowance. If the Owner cannot truthfully make this certification, the Annual Report shall include an explanation of any exceptions.

- (vi) If OCD so requests, the Owner shall submit the Annual Report in any electronic format specified by OCD. In addition, the Annual Report must meet any other requirements imposed by OCD.

**6.3 Compliance.** Owner agrees to comply with the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. §§7501-7507) and OMB Circular A-133.

## SECTION 7 MARKETING AND LEASING OF UNITS

**7.1 Compliance with Equal Opportunity Requirements.** Owner shall comply with all fair housing and equal opportunity requirements of the LIHTC Program.

**7.2 Security Deposits.** Owner agrees to comply with applicable regulations, instructions, procedures, and other requirements, as revised from time to time, regarding tenant security deposits and to comply with all federal, state, parish and municipal laws, codes and ordinances applicable to tenant security deposits.

**7.3 Selection and Admission of Eligible Households.**

(a) The Owner shall be responsible for determination of eligibility of applicants, selection of Eligible Households from among those determined to be eligible, computation of total Eligible Household contributions and recordkeeping in accordance with applicable LIHTC Program regulations and requirements and any applicable OCD regulations and requirements.

(b) No Eligible Household shall be charged any amount in excess of the Affordable Rent.

(c) Should the waiting list for a particular income tier be exhausted, the Owner may fill a Contract Unit with an applicant in the next higher income tier; provided, however, the Affordable Rent charged to the Eligible Household shall not increase.

(d) Owner must lease the Contract Units to Eligible Households with adjusted incomes not to exceed the limits set forth in **Exhibit B** attached hereto. Owner agrees to participate in any referral programs of LRA/OCD, the LHFA, any local public housing authority, the Local Lead Agency and the Louisiana Family Recovery Corp., as such terms are described or defined in the QAP.

(e) Any lease entered into between the Owner and each selected Eligible Household shall comply with any applicable standards that OCD may, from time to time, require.

(f) The Owner shall reexamine each Eligible Household's income, composition, and the extent of medical or other unusual expenses incurred by the Eligible Household in accordance with LIHTC Program requirements.

(g) Six months after an Eligible Household's income reaches or exceeds 60% AMI, the Eligible Household may remain and pay the 60% AMI rent, and the Owner will convert the next available similar LIHTC unit to a Contract Unit at the applicable level of affordability. If the Eligible Household's income continues to rise, the LIHTC Program's "**Next Available Unit**" rule (RIN 1545-AT60, Federal Register, September 26, 1997) will apply.

(h) The Owner shall comply with all otherwise applicable requirements regarding confidentiality of information relating to applicants and Eligible Households, including those of the LIHTC Program.

(i) Until September 30, 2010, Owner must admit, ahead of all other qualified applicants, qualified applicants who were displaced by Hurricane Katrina or Hurricane Rita.

(j) Owner may apply additional non-discriminatory resident selection criteria not inconsistent with the PBRA Contract, provided that the same resident selection criteria are applied consistently to all applicants for other units within the Project.

**7.4 Processing of Applications and Complaints.** The Owner shall process applications for admission, notifications to applicants, and complaints by applicants in accordance with applicable OCD and LIHTC Program requirements and shall maintain such records, including copies or other information as may be required by OCD.

## **SECTION 8 TERMINATION OF OCCUPANCY BY OWNER; TENANT NOTICE**

**8.1 Termination of Occupancy.** Owner agrees not to terminate the occupancy of an assisted Eligible Household except in accordance with the LIHTC Program requirements and all OCD regulations and other requirements in effect at the time of the termination (including applicable requirements of and any federal, state, parish or municipal laws, codes and ordinances).

**8.2 Notice Requirement.** Owner shall provide to each affected Eligible Household no less than ninety (90) days' written notice prior to the expiration of Rental Assistance Payments with respect to the Eligible Household's unit. Expiration of Rental Assistance Payments prior to the end of the Eligible Household's lease term shall not terminate or otherwise affect the terms of the lease. If the lease term ends or would otherwise terminate prior to the end of the ninety (90) day notice period, the Owner agrees to extend the lease to the end of the ninety (90) day notice period required hereunder.

## **SECTION 9 PBRA CONTRACT COMPLIANCE REQUIREMENTS**

**9.1 General.** Owner shall not, in the selection of Eligible Households, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, gender, handicap, familial status, ethnicity or national origin.

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

**9.3 Uniform Administrative Requirements.** Owner acknowledges that OCD must comply with the Uniform Administrative requirements set forth in 24 CFR Section 570.502, and the Federal Office of Management and Budget "OMB" Circular A-87 and implementing regulations in 24 CFR Parts

85, A-128 and A-133 and implementing regulations contained in 24 CFR Part 44. Owner agrees to supply OCD with documentation concerning the Project in order to ensure that OCD is in compliance with its responsibilities therein regarding source documentation for all costs incurred.

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

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

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

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

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

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

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

**9.11 Davis-Bacon Act.** Owner agrees to comply with 24 CFR Section 570.603, and the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §276(a) to (a-7) as it applies to any construction work financed in whole or in part with CDBG funds. All contracts and subcontracts for construction shall include a provision for compliance with the Davis-Bacon Act and supporting Department of Labor regulations. Owner shall maintain documentation and records which demonstrates compliance with hour and wage requirements, including contract provisions and payroll records.

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

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

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

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

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

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

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

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

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

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

**9.22 Displacement, Relocation, Acquisition and Replacement of Housing.** Owner shall comply with 24 CFR Section 570.606 and shall keep all records demonstrating compliance with these requirements including, but not limited to, those records required in 24 CFR Section 570.506. Owner must comply with applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (49 CFR Part 24) and Section 104(d) of the Housing and Community Project Act of 1974 as amended. These requirements are explained in HUD Handbook 1378 and specify the procedures for the acquisition of property and the treatment of tenants located in the Project.

**9.23 Conflict of Interest.** Owner shall comply with the conflict of interest provisions contained in 24 CFR Section 570.611, Sections 84.42 and Section 85.36, as applicable.

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

**9.25 Program Requirements.** Owner and the Project shall comply with all rules and regulations set forth in the QAP and the Piggyback Program Description, or applicable to the use of CDBG funds applicable to the Project at all times during the terms of this PBRA Contract.

## **SECTION 10 INSURANCE**

**10.1** Without limiting Owner’s indemnification, it is agreed that:

(a) Owner shall maintain in force at all times during the performance of this PBRA Contract all appropriate policies of insurance hereinafter described concerning the Project and the Owner’s operations. Certificates with valid and authorized endorsements, evidencing the maintenance and renewal of such insurance coverage shall be delivered to OCD prior to the Execution Date. OCD shall be given notice in writing at least thirty (30) calendar days in advance of cancellation or modification of any policy of insurance. OCD shall be named as a “loss payee”, or as an additional named insured on all policies of

liability insurance. The amount of the deductible in each policy of insurance shall be for an amount acceptable to OCD.

(b) All policies of insurance shall be in a company or companies authorized by law to transact insurance business in the State of Louisiana, reasonably acceptable to OCD. In addition, such policies shall provide that the coverage shall be primary for losses arising out of Owner's performance of the PBRA Contract. Neither OCD nor any of its insurers shall be required to contribute to any such loss. All insurance policies shall include a standard mortgagee clause (without contribution) in favor of and acceptable to OCD, subject only to the claims of any mortgage holder.

(c) At least thirty (30) calendar days prior to the expiration of any of the insurance policies reference in this Section 10.1, Owner shall provide OCD with evidence of the renewal of all such insurance policies in a form satisfactory to OCD.

(d) To the extent Owner is required to maintain insurance under any mortgage, such insurance policies, to the extent Owner complies with the provisions of Section 10.1 (a), (b) and (c) above with respect to such policies, shall be deemed to have satisfied the following insurance obligations of Owner under this PBRA Contract.

(e) The policies of insurance which must be secured under this PBRA Contract are as follows:

- (i) **Public Liability Insurance.** Owner must secure public liability insurance to include, but not be limited to, public liability and property damage coverage. The policy's limit liability amount shall not be less than Two Million and 00/100 (\$2,000,000.00) Dollars per person/ per occurrence for bodily injury to, or death to, one or more than one person and not less than One Million and 00/100 (\$1,000,000.00) Dollars per occurrence for property damage.
- (ii) **Workers' Compensation Coverage.** All employees of Owner must be included under such policy in an amount and with coverage to meet all requirements of Louisiana law.
- (iii) **Flood Insurance.** If the Project is located in a Special Flood Hazard Area under the FEMA Flood Maps, any dwelling on any part of the Project shall be insured under a policy of flood insurance in the amount equal to the lesser of (a) 100% of the insurable value of the improvements as determined by the Project insurer, or (b) the maximum amount of flood insurance coverage available under the National Flood Insurance Program.
- (iv) **All Risk Insurance.** Owner shall obtain and maintain All Risk insurance coverage, which coverages and risks insured meet the standards established in Part V, Section 106 of the Fannie Mae D.U.S. Guide, effective November 3, 2003, as amended from time to time, to the extent available at commercially reasonable rates and satisfactory to OCD, on the Project, and all movable and immovable property securing the Indebtedness.
- (v) **Other Insurance.** Owner shall maintain such other insurance as may be required by OCD from time to time, insuring such risks and in such amounts as determined by OCD in its sole discretion, to the extent available at commercially reasonable rates.

**SECTION 11**  
**ASSIGNMENT, SALE OR FORECLOSURE**

**11.1 Assignment or Transfer of PBRA Contract.**

(a) Owner agrees that it has not made and will not make any sale, assignment, or conveyance or transfer in any fashion, of this PBRA Contract or any part of it or any of its interest in the PBRA Contract, without the prior written consent of OCD, which consent shall be at OCD's sole and absolute discretion, including, without limitation, OCD approval of the assignee; provided, however, that in the case of an assignment as security for the purpose of obtaining financing of the Project, OCD shall consent in writing if OCD has approved the terms of the financing and the form and substance of the assignment.

(b) Owner agrees that it has not made and will not make any sale, assignment, or conveyance or transfer in any fashion, of the Project or any part of it or any of its interest in the Project, without the prior written consent of OCD, which consent shall be at OCD's sole and absolute discretion, including, without limitation, OCD approval of the assignee.; provided, however, that in the case of an assignment as security for the purpose of obtaining financing of the Project, OCD shall consent in writing if OCD has approved the terms of the financing and the form and substance of the assignment.

**11.2 Prohibited Transfers.** Owner shall not do any of the following without the prior written consent of OCD, which may be granted or withheld in its sole discretion:

- (a) Transfer a Controlling Interest in Owner; or
- (b) Transfer a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Owner; or
- (c) If Owner is a trust, terminate or revoke the trust; or
- (d) Convert Owner from one type of legal entity into another type of legal entity, whether or not there is a transfer of any Controlling Interest.

**11.3 Permitted Transfers.** The following transfers are permitted under this PBRA Contract:

- (a) a transfer to which OCD has consented; and
- (b) a transfer that occurs by devise, descent, or by operation of law upon the death of a natural person.
- (c) 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;
- (d) a sale, transfer, pledge, encumbrance or other disposition of any investor limited partner/investor member interests in Owner, unless such transaction results in a sale of more than 51% of the investor limited partner/investor member interests in Owner; and
- (e) 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;

provided, however that (A) Owner shall provide OCD with 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 management, or has a Controlling Interest in, the investor limited partner/investor member.

**11.4 Continuation of PBRA Contract.** Unless otherwise provided by OCD, this PBRA Contract shall continue in effect and Rental Assistance Payments will continue in accordance with the terms of the PBRA Contract in the event:

- (a) of a Transfer of the Project or a Transfer the PBRA Contract in accordance with Sections 11.2 or 11.3;
- (b) of foreclosure, including foreclosure by OCD;
- (c) deed in lieu of foreclosure or *dation en paiement*;
- (d) OCD takes over possession, operation or ownership of the Project;

provided the purchaser, transferee or assignee assumes and adopts all conditions and requirements of this PBRA Contract.

## **SECTION 12 REPRESENTATIONS AND WARRANTIES BY OWNER**

Owner represents and warrants to OCD, as follows:

**12.1 Compliance with Standards.** Owner warrants and represents that the Contract Units are in good and tenantable condition and meet and comply with all current and will meet and comply with future applicable OCD and LIHTC Program standards, as they may be modified from time to time.

**12.2 Organization and Standing.** Owner is a corporation/limited liability company/partnership/limited partnership duly organized and validly existing under the laws of the State of \_\_\_\_\_, and duly qualified to do business in Louisiana. Owner has full corporate/limited liability company/partnership/limited partnership power and authority to conduct its business as presently conducted, and Owner has the full power and authority to enter into and perform under this PBRA Contract and to carry out the transactions contemplated hereby.

**12.3 Authority.** The execution, delivery and performance by Owner of the PBRA Contract, the Regulatory Agreements or the Guarantees, and the consummation by Owner of the transactions contemplated herein have been duly authorized by all necessary corporate/limited liability company/partnership/limited partnership action by Owner and its directors/members/partners. The PBRA Contract, the Regulatory Agreements or the Guarantees have been duly executed and delivered by, and constitute valid and binding obligations of Owner enforceable against it in accordance with their respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting generally the enforcement of creditors' rights and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies.

**12.4 Noncontravention.** The execution of and performance of the transactions contemplated by the PBRA Contract, the Regulatory Agreements or the Guarantees and compliance with the provisions hereof by Owner will not (a) conflict with or violate any provision of the organizational documents of

Owner, (b) require on the part of Owner any filing with, or any permit, authorization, consent or approval of, any court, arbitrational governmental authority, administrative agency or commission or other governmental authority, (c) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, security interest or other arrangement to which Owner is a party or by which Owner is bound or to which its assets are subject, (d) result in the imposition of any mortgage, lien or security interest upon any assets of Owner other than in favor of OCD or (e) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Owner or any of its properties or assets.

**12.5 Governmental Consents.** No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any governmental authority is required on the part of Owner in connection with the execution and delivery of the PBRA Contract, the Regulatory Agreements or the Guarantees.

**12.6 Title to Project.** Subject to and except for the “Permitted Exceptions” described on **Exhibit C - Permitted Exceptions**, Owner has good title to the Project, free and clear of any mortgages, liens, or other security interest other than those in favor of OCD.

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

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

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

**12.10 Construction and Compliance with Laws.** To Owner’s knowledge there are no structural defects in the Project and no violation of any applicable zoning, building or any other local, state or federal laws, ordinances and regulations existing with respect to the use and construction thereof; and Owner shall obtain all licenses, permits and approvals required by all local, state and federal agencies regulating such construction and use and such licenses, permits and approvals shall remain in good standing; and Owner is and shall remain in compliance, in all material respects, with all laws, regulations, ordinances and orders of all governmental authorities.

**12.11 Financial Statements.** The financial statements of Owner and any Key Principal delivered to OCD are true and correct in all material respects, and fairly present the respective financial conditions of the parties thereof as of the respective dates thereof, and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof and no additional borrowings have been made by Owner since the date thereof.

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

**12.13 Pending Litigation.** There are no actions, suits or proceedings pending against Owner or the Project, or, to the knowledge of Owner, circumstances which could lead to such action, suits or proceedings against or affecting Owner or the Project, or involving the validity or enforceability of any of the PBRA Contract, the Regulatory Agreements or the Guarantees, before or by any governmental authority, except actions, suits and proceedings which have been specifically disclosed to and approved by OCD; and to Owner's knowledge it is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority.

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

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

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

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

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

**12.19 No Default.** There is no default on the part of Owner under this PBRA Contract, any mortgage, the Regulatory Agreements, or the Guarantees, and no event has occurred and is continuing which with notice, or the passage of time, or either, would constitute an Event of Default-Owner under any provision thereof.

**12.20 Continuing Nature of Representations and Warranties.** Each of the representations and warranties of Owner contained in this PBRA Contract shall survive the execution of the PBRA Contract, and shall be continuing until the end of the Term.

### **SECTION 13 EXPENSES**

**13.1 Expenses.** Owner shall pay all costs and expenses incurred in connection with this PBRA Contract, including but not limited to: recording fees, title insurance costs, escrow fees, flood zone determination fees, survey fees, appraisal costs, environmental and historic property review, and site inspection fees, and any and all other costs incurred by OCD in connection with this PBRA Contract.

### **SECTION 14 EVENTS OF DEFAULT-OCD**

**14.1 Events of Default-OCD.** The occurrence of any of the following events shall constitute an “Event of Default-OCD” by OCD under this PBRA Contract, as long as an Event of Default-Owner (as hereafter defined has not occurred):

- (a) Failure by OCD to perform or observe any material term or condition of this PBRA Contract;
- (b) This PBRA Contract being judged to be void, voidable, or ultra vires by a proper governmental authority with competent jurisdiction to make such a judgment; or
- (c) An assertion or claim by OCD that the PBRA Contract is not binding upon it, which assertion or claim is judged to be without merit by a proper governmental authority with competent jurisdiction to make such a judgment.

**14.2 Notice of Event of Default-OCD.** If the Owner believes that an Event of Default-OCD has occurred, Owner shall, within 30 days of the initial occurrence of the Event of Default-OCD:

- (a) Notify OCD of the occurrence of the Event of Default-OCD; and
- (b) Provide supporting evidence of the Event of Default-OCD and provide supporting evidence that an Event of Default-Owner has not occurred.

**14.3 Curing of Event of Default-OCD.** OCD, after a reasonable opportunity to take corrective action, or to demonstrate that an Event of Default-OCD has not occurred, and if OCD determines that an Event of Default-OCD has occurred, OCD shall take appropriate action to cure the default. OCD shall continue to make Rental Assistance Payments with respect to the Contract Units in accordance with this PBRA Contract during the pendency of any Event of Default-OCD.

**14.4 Enforcement by Owner.** With the written approval of OCD, the provisions of this Section 14 will be deemed made for the benefit of the Owner and any first mortgage lender of Owner, or any other assignees of Owner, if any, who have been specifically approved by OCD prior to the

assignment. These provisions of this Section 14 shall be enforceable by these parties against OCD by suit at law or in equity.

## **SECTION 15 EVENTS OF DEFAULT-OWNER**

**15.1 Events of Default-Owner.** The occurrence of any of the following events shall constitute an “**Event of Default-Owner**” by Owner under this PBRA Contract:

(a) Owner has violated or failed to comply with any provision of, or obligation under, this PBRA Contract, including failure to correct any deficiencies identified by OCD in connection with any inspection; or

(b) Owner has asserted or demonstrated an intention not to perform some or all of its obligations under this PBRA Contract; or

(c) Owner has violated or failed to comply with the regulations issued for this PBRA Contract, the Program, the CBDG Regulatory Agreement or the LIHTC Program; or

(d) Owner has filed any false statement or misrepresentation with OCD; or

(e) The Project’s occupancy rate (by Eligible Households) is less than 90% for the Contract Units for two out of any five consecutive years.

**15.2 Determination of Event of Default-Owner.** Upon a determination by OCD that an Event of Default-Owner has occurred, OCD shall notify the Owner and any Key Principal listed in Section 19 of:

(a) the nature of each Event of Default-Owner;

(b) the actions required to be taken and the remedies to be applied on account of the Event of Default-Owner (including actions by the Owner or any Key Principal to cure the Event of Default-Owner);

(c) the time within which the Owner or any Key Principal shall respond with a showing that all the required actions have been taken.

**15.3 Corrective Actions.** If the Owner or Key Principal fails to respond or take action to cure the Event of Default-Owner to the satisfaction of OCD, OCD shall have the right, in its sole and absolute discretion, to take any or all of the following corrective actions to achieve compliance, or to terminate this PBRA Contract, in whole or in part:

(a) Bring any action necessary to enforce any rights of the Owner arising out of the Project operation, including any remedies pursuant to the CBDG Regulatory Agreement, and operate the Project in accordance with the terms of this PBRA Contract until such time as OCD determines that the Owner is again in a position to operate the Project in accordance with this PBRA Contract. If OCD takes possession, Rental Assistance Payments shall continue in accordance with the PBRA Contract;

(b) Apply to any Louisiana court with proper jurisdiction, state or federal, for specific performance of this PBRA Contract, for an injunction against any violation of the PBRA Contract, for the appointment of a receiver to take over and operate the Project in accordance with the PBRA Contract, or

for such other relief as may be appropriate. These remedies are appropriate since the injury to OCD arising from a default under any of the terms of this PBRA Contract could be irreparable and the amount of damage would be difficult to ascertain.

(c) In connection with Owner's failure to achieve a 90% occupancy rate, OCD may abate the Rental Assistance Payments for some or all units (that is, reduce the number of units receiving Rental Assistance Payments). Should OCD choose to abate the Rental Assistance Payments, for the remaining term of this PBRA Contract, the abated units must be occupied by Eligible Households with incomes at or below 40% AMI, at a rent (when increased by any applicable Utility Allowance) does not exceed the Affordable Rent. Abatement shall not terminate this PBRA Contract. OCD may also impose other applicable penalties, in its sole and uncontrolled discretion.

(d) Notwithstanding subparagraph (c), OCD may, in its sole discretion, agree to amend this PBRA Contract, as appropriate, to provide for subsequent restoration of any abatement made pursuant to subparagraph (c); provided, however, that the number of Contract Units will not exceed the number reflected in **Exhibit B** attached hereto for such time period, the term of the PBRA Contract may not be extended, and Owner shall not be entitled to receive any Rental Assistance Payments due under this PBRA Contract which were abated pursuant to subparagraph (c).

(e) OCD may recover any overpayments of Rental Assistance Payments.

**15.4 Rehousing.** Upon the occurrence of an Event of Default-Owner, in addition to the abatement remedy set forth in 15.3(c), OCD may reduce or suspend Rental Assistance Payments, even if the Eligible Household continues to occupy the unit. If, however, the Eligible Household wishes to be rehoused in another dwelling unit with rental assistance and OCD does not have other funds for such purposes, OCD may use the abated payments to rehouse the Eligible Household in another dwelling unit. If the Eligible Household continues to occupy the unit, it will do so in accordance with the terms of its lease, including the termination date and amount of rent payable by the Eligible Household.

**15.5 Notification of Abatement.** Any reduction or suspension of Rental Assistance Payments shall be effective as provided in written notification to the Owner. The Owner shall promptly notify the Eligible Household of any such abatement. If Rental Assistance Payments are abated with respect to an occupied Contract Unit hereunder, the rent may not be increased until the later of (a) expiration of the Eligible Household's lease; and (b) expiration of a 90-day notice period.

**15.4 Remedies Not Exclusive and Non-Waiver of Remedies.** The availability of any remedy under this PBRA Contract shall not preclude the exercise of any other remedy under this PBRA Contract or under any provisions of applicable law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

## SECTION 16 OTHER AGREEMENTS

**16.1 Tax Credit Regulatory Agreement.** Owner shall be required to comply with the terms and conditions of the Tax Credit Regulatory Agreement for the duration of its term. OCD will be considered a third party beneficiary of the Tax Credit Regulatory Agreement and shall be entitled to enforce its terms against the Owner to the fullest extent as if a party thereto.

**16.2 CDBG Regulatory Agreement.** As a condition to disbursement of proceeds under the PBRA Contract, Owner will be required to execute and deliver to OCD the CDBG Regulatory Agreement

attached hereto as **Exhibit D - CDBG Regulatory Agreement**. The CDBG Regulatory Agreement shall be recorded in the real estate records in the Parish where the Project is located, and shall be subordinate only to those liens and encumbrances agreed to by OCD, in its sole discretion.

**16.3 Operating Deficit Guaranty.** Owner and a Key Principal acceptable to OCD will be required to guarantee annual operating deficits by executing an operating deficit guaranty (the “**Operating Deficit Guaranty**”) until the Project has generated positive Surplus Cash for two (2) consecutive fiscal years. Provided, however, if a Key Principal 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 Key Principal’s obligations under any Operating Deficit Guaranty shall (i) not extend more than five (5) years from the date that the Project first achieves “break-even operations”, and (ii) 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. The Operating Deficit Guaranty shall become effective on the first day of the first full fiscal year for the Borrower following completion of construction of the Project. Annual operating deficits shall be funded by the Key Principals under the Operating Deficit Guaranty on or before the date on which annual audited financial statements for the Project are due to OCD under Section 8.9 of this PBRA Contract. The form of the Operating Deficit Guaranty is attached hereto as **Exhibit E-Operating Deficit Guaranty**.

**16.4 Completion Guaranty.** Owner and a Key Principal acceptable to OCD have agreed or will agree to be bound by that guarantee of completion of the Project under the terms and conditions contained in the executed Completion Guaranty dated as of \_\_\_\_\_, and attached hereto as **Exhibit F-Completion Guaranty** (the “**Completion Guaranty**”).

## SECTION 17 INDEMNIFICATION

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

**17.2 Indemnification from Third Party Claims.** Owner shall indemnify and hold harmless OCD from any liability, claims or losses including attorney’s fees and costs, resulting from the disbursement of the Rental Assistance Payments to Owner, whether arising during or after the Term of the PBRA Contract. This provision shall survive the Term and shall continue in full force and effect so long as the possibility of such liability, claims, or losses exists. The Owner shall, on demand, pay or reimburse OCD and its assignees and agents for (a) all transfer, documentary, stamp and similar taxes, broker’s fees and commissions, surveys, travel expenses, photocopying, secretarial overtime and long

distance telephone charges (including but not limited to those imposed by OCD's counsel), abstracting charges, policies and all endorsements therefore, license and permit fees, fees and costs of OCD's inspector and disbursing agent(s), and all recording and filing fees, payable in connection with, arising out of or in any way related to the execution, delivery and performance of the PBRA Contract, and (b) all of OCD's costs and expenses including fees and disbursements of legal counsel and other experts employed or retained by OCD incurred, and all payments made, and indemnify and hold OCD harmless from and against all losses suffered, by OCD in connection with, arising out of, or in any way related to (i) the negotiation, preparation, execution and delivery of (A) the PBRA Contract, or the Regulatory Agreements or the Guarantees (whether or not executed), (B) any waiver, amendment or consent thereunder or thereto, (ii) the administration of any operations under the PBRA Contract, the Regulatory Agreements or the Guarantees, (iii) consulting with respect to any matter in any way arising out of, relating to, or connected with, the PBRA Contract, the Regulatory Agreements or the Guarantees, including but not limited to the enforcement by OCD of any of its rights thereunder or the performance by OCD of any of its obligations thereunder, (iv) protecting, preserving, exercising or enforcing any of the rights of OCD under the PBRA Contract, the Regulatory Agreements or the Guarantees, (v) any appraisals, (vi) any claim (whether asserted by OCD, the Owner or any other person and whether asserted before or after the performance and observance in full of the Owner's obligations under PBRA, the Regulatory Agreements or the Guarantees) and the prosecution or defense thereof, in any way arising under, related to, or connected with, the PBRA Contract, the Regulatory Agreements or the Guarantees or the relationship established hereunder and thereunder, (vii) any governmental investigation arising out of, relating to, or in any way connected with the PBRA Contract, the Regulatory Agreements or the Guarantees, except that the foregoing indemnity shall not be applicable to any loss suffered by OCD to the extent such loss is determined by a judgment of a court that is binding on OCD, final and not subject to review on appeal, to be the result of acts or omissions on OCD's part constituting willful misconduct, knowing violations of law or, in the case only of claims by the Owner against OCD, OCD's failure to observe any other standard applicable to OCD under any of the other provisions of this PBRA Contract, the Regulatory Agreements or the Guarantees or, but only to the extent not available thereunder, applicable law. Notwithstanding the foregoing, Owner shall not be liable for any claims related to the intentional misconduct or willful negligence of OCD.

## **SECTION 18 CONDITIONS TO INITIAL PAYMENT**

**18.1 Required Documents Prior to Initial Payment.** Prior to issuance of the initial Rental Assistance Payment due under this PBRA Contract, Owner shall submit to OCD:

- (a) Evidence that the insurance required under this PBRA Contract has been obtained;
- (b) Certified copy of Owner's Articles of Organization, Operating Agreement, Articles of Incorporation, Bylaws, or partnership agreement, as applicable, Certificate of Good Standing from the Secretary of the State of Owner's organization (and certificates of qualification and/or authority to transact business in Louisiana, if different than the State of Organization), and resolutions authorizing the actions required of Owner under this PBRA Contract
- (c) Owner's/general partner's/managing member's federal tax identification number;
- (d) Owner's title insurance policy, updated to the Effective Date, showing Owner as the owner of fee simple title to the Project, and containing only those exceptions to title acceptable to OCD in its sole discretion;

(e) Federal and state tax lien, judgment, UCC and pending litigation searches for Owner, and such other parties as OCD shall require for each state and parish in which such entity was formed as well as the parish in which the Project is located – in each case, dated not more than sixty (60) days prior to the Effective Date; and

(f) Final Certificates of Occupancy for each unit in the Project.

## **SECTION 19 MISCELLANEOUS PROVISIONS**

**19.1 Assignment.** Owner shall not assign or transfer any interest in this PBRA Contract without the prior written consent of OCD. Any attempt to do shall be deemed null and void.

**19.2 No Grant of Vested Rights.** This PBRA Contract shall not be construed as granting or assuring or vesting any land use, zoning, development approvals, permission or rights with respect to property owned by Owner.

**19.3 No partnership or agency.** Nothing in this PBRA Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of master/servant, principal/agent, employer/employee or joint venture partner between OCD and Owner. Owner agrees and acknowledges that it shall be responsible for and shall pay any and all applicable compensation, insurance and taxes, including but not limited to Federal income taxes and Social Security on the salary of any positions held with Owner.

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

**19.5 Joint and Several Liability.** If Owner consists of more than one natural persons and/or entities, the liability of each of them for Owner's obligations under the PBRA Contract, the Regulatory Agreements or the Guarantees shall be joint and several, and in solido.

**19.6 Entire Agreement/Modification.** This PBRA Contract, all attachments and the Regulatory Agreements supersede all prior agreements between OCD and the Owner with respect to the Rental Assistance Payments, any representations or statements heretofore made with respect to such subject matter, whether written or verbal, are merged herein. This PBRA Contract may only be modified in writing, signed by both of the parties hereto.

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

**OCD:**

with a copy to:

**Owner:**

with a copy to:

**Key Principal:**

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

19.8 JURY WAIVER. OCD AND THE OWNER HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER THE OCD OR THE OWNER AGAINST THE OTHER WHETHER RELATING OR ARISING OUT OF THIS PBRA CONTRACT, THE REGULATORY AGREEMENTS OR THE GUARANTEES, OR OTHERWISE.

19.10 Time is of the Essence. Time is of the Essence of this PBRA Contract.

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

**WITNESSES:**

**OWNER:**

\_\_\_\_\_

\_\_\_\_\_

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

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

\_\_\_\_\_

**Its:** \_\_\_\_\_

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

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

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

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

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

**IN WITNESS WHEREOF**, OCD has executed and delivered this PBRA Contact on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, Louisiana, in the presence of the undersigned witnesses and Notary Public, after due reading of the whole.

**WITNESSES:**

**STATE OF LOUISIANA, DIVISION  
OF ADMINISTRATION, OFFICE OF  
COMMUNITY DEVELOPMENT**

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

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

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

**Its:** \_\_\_\_\_

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

**Print Name:** \_\_\_\_\_  
**Bar Roll/Notary No.:** \_\_\_\_\_  
**My Commission Expires:** \_\_\_\_\_

**EXHIBIT A  
PROPERTY DESCRIPTION**

**Project Name:**

**Street Address:**

**City, Parish and State:**

**PBRA Contract Number:**

**LFHA Project Number:**

**EXHIBIT B**  
**IDENTIFICATION OF UNITS (“CONTRACT UNITS”)**  
**BY SIZE AND APPLICABLE PAYMENT STANDARDS**

**EXHIBIT C**  
**PERMITTED EXCEPTIONS**

**EXHIBIT D**  
**CDBG REGULATORY AGREEMENT**

**EXHIBIT E**  
**OPERATING DEFICIT GUARANTY**

**EXHIBIT F**  
**COMPLETION GUARANTY**