



PUERTO RICO DEPARTMENT OF HOUSING CDBG-DR PROGRAM GUIDELINES

CDBG-DR GAP TO LOW-INCOME HOUSING TAX CREDIT (LIHTC)

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1 Overview/Background

Puerto Rico faces a sharply increased need for rental housing stock in the aftermath of hurricanes Irma and María. The substantial reduction in available housing units caused by the storms' destruction, combined with the increased number of displaced residents (both on and off the Island) in need of housing, represents a major hindrance to long-term recovery. Incentives are needed to spur development and replenish the current inventory of new, resilient, and affordable rental housing. Effective utilization of the Low-Income Housing Tax Credit (**LIHTC**) leverages such an incentive.

2 Description

The Puerto Rico Department of Housing (**PRDOH**) will partner with the Puerto Rico Housing Finance Authority (**PRHFA** or **AFV**, for its Spanish acronym), to utilize CDBG-DR to provide gap funding to augment other public and private financing methods for the construction of affordable rental housing units under the LIHTC program administered by PRHFA. Under a typical LIHTC program, a Developer (**Developer**) secures a construction and/or permanent loan from a private lender or public agency, gap financing from a public or private source, and equity from private investors in exchange for LIHTC's. This CDBG-DR funding will serve to meet any capital shortfalls (gaps) and speed the new construction/rehabilitation of qualified projects that are otherwise shovel-ready.

The LIHTC program, described by HUD as “the most important resource for creating affordable housing in the United States today,”¹ allows individuals and legal entities to claim federal income tax credits in exchange for delivering affordable rental housing. LIHTC offers two forms of tax credits, namely, 9%/4% for new construction/rehabilitation, and 4% for new construction/rehabilitation projects that are partially financed with tax-exempt obligations. According to the Internal Revenue Code (**IRC**), over a 10-year period, the respective applicable tax credit percentages are those that yield credits with a present value equal to 70% and 30% of the qualified basis of a project. See 26 U.S.C. §42(b)(1)(B).

Puerto Rico receives millions of dollars each year in LIHTC's. PRDOH intends to optimize the use of CDBG-DR funds by providing gap funding and if needed, interim and permanent loans, to leverage available LIHTC's to create/rehabilitate affordable rental housing.

¹ <https://www.huduser.gov/portal/datasets/lihtc.html>.

3 National Objective

Activities under the CDBG-DR Gap to LIHTC Program meet the national objective of benefitting low- and moderate-income persons through housing (**LMI**). See 24 C.F.R. §570.483(b)(3). The national objective will be achieved when a completed LIHTC project is occupied by at least 51% of low- and/or moderate-income households.

4 Program Criteria

The LIHTC program responds to the need for safe, quality, and affordable rental housing in Puerto Rico, which was a significant need prior to the hurricanes and which expanded dramatically because of them. A recorded 345,333 renter households applied for the Federal Emergency Management Agency Individual Assistance (**FEMA IA**) as a result of hurricanes Irma and Maria.² The number of units with confirmed damage may increase as assessment of damage and inspections for code compliance post-storm continues. In the rental market recovery, there is a strong need to formalize the Island-wide rental market reporting and housing standard compliance. Aging buildings impacted by the storms will need to be addressed with a focus on resilience. More than 76% of the Island's rental stock was constructed before 1990. Before the hurricanes, there were 25,000 persons on the public housing waiting list and 7,955 (as of June 2014) on the Section 8 waiting list. There are more than 14,500 tenant households and more than 13,300 owned homes that are overcrowded by one (1) or more persons.³

This CDBG-DR Gap to LIHTC Program will create rental housing stock to address rental housing needs at affordable rents. In addition, this Program will participate in eligible activities such as housing construction, acquisition, implementing Green Building Standards, and supplementing the existing LIHTC program. Refer to the 2016 Qualified Allocation Plan (**2016 QAP**) hereby attached as Exhibit B. See stand-alone document also published at www.cdbg-dr.pr.gov. The 2016 QAP and its annexes are also posted on www.afv.pr.gov. The 2016 QAP may be amended to reflect any future assistance.

CDBG-DR Gap to LIHTC Program responds to the affordable housing needs in Puerto Rico that were impacted by the hurricanes. Currently, 935 units are in the existing 9% LIHTC pipeline and are expected to be completed within 24 months of each project start. CDBG-DR funds with 9% LIHTC will be leveraged to stretch both funding sources and to create projects that accomplish several goals.

² FEMA IA data – FIDA 31621 as of April 2, 2018.

³ Puerto Rico Builder's Association Housing Study, February 2018.

Projects funded through the CDBG-DR Gap to LIHTC Program must maintain affordable housing in accordance with the 20-year affordability period outlined in the Federal Register Volume 83, Issue 28 (February 9, 2018), 83 FR 5844, or the affordability period required by LIHTC, whichever is longer.

5 CDBG-DR – Implementation Plan

5.1 Description of Competitive Selection Criteria

Eligible projects include rental housing developments that have been awarded/reserved 2018, 2019, 2020, and 2021 LIHTC's from the 2016 QAP cycle, Notice of Funds Availability 2016 (**NOFA-2016**). PRDOH will allocate CDBG-DR grants and/or loans to fill any existing financial gaps. Should any CDBG-DR funds remain after those projects' financial needs are satisfied, applications of 4% LIHTC's can be received and reviewed for CDBG-DR funding needs. See 26 U.S.C. §142.

For CDBG-DR purposes, the term *Award of LIHTC's* means the date of execution of the *Binding Commitment for a Certificate of Reservation for a Low-Income Housing Tax Credit Allocation and/or Carryover Allocation Agreements*.

Selection criteria and weightings appear on the herby attached as Exhibit B. See stand-alone document also published at www.cdbg-dr.pr.gov. The 2016 QAP and its annexes are also posted on www.afv.pr.gov.

The CDBG-DR written agreement cannot be executed until the environmental clearance for the project, demonstrating compliance with the National Environmental Policy Act and HUD regulations at 24 C.F.R. Part 58, is certified; compliance with the Uniform Relocation Act (**URA**) is confirmed; and Section 3 Plan is approved.⁴

As part of the LIHTC application, the Developer must submit, if applicable, a relocation plan that complies with URA. The relocation plan will be reviewed by PRHFA with the assistance of PRDOH and HUD, as needed. Prior to disbursement of CDBG-DR funds, HUD must approve the relocation plan submitted by the Developer. No construction may begin prior to HUD approval of the relocation plan for the project.

Projects under construction and *shovel ready* (those able to begin construction once the CDBG-DR written agreement is signed) will have priority. Readiness to proceed will be validated by the PRHFA-Inspector technical evaluation of plans,

⁴ Please refer to the Cross-Cutting Guidelines found at www.cdbg-dr.pr.gov.

studies, permits and governmental endorsements, among other documents, that the Developers will provide.

As required by 83 FR 5844, all new construction of residential buildings and all replacement of substantially damaged residential buildings must comply with a HUD-approved Green Building Standards. LIHTC projects that meet criteria for new construction or replacement of substantially damaged buildings, must meet Energy Star standards, at a minimum. Although Energy Star is the minimum standard, all Developers are encouraged to incorporate green building standards to the greatest extent possible. For rehabilitation of non-substantially damaged structures, Developers must incorporate Green Building standards to the extent possible.

5.2 Commitment and Expenditure Deadlines

CDBG-DR funds may not be used in conjunction with PRHFA's HOME Program. Projects may receive HOME funds from other Participating Jurisdictions.

CDBG-DR awards must meet LIHTC's rent, income, use and compliance monitoring limitations, as well as any other existing or future regulatory requirements.

- a. Underwriting and Subsidy Layering Review will be performed according to the dispositions of the 2016 QAP on its section 5.2- *Development and Pro Forma Assumptions Review*; and section 5.3- *Underwriting and Financial Feasibility Analysis*.
- b. Allocations will be based on equity gaps determined for each submitted application, once the project is evaluated as per the 2016 QAP requirements and applicable underwriting guidelines, with updated sources and uses budget and any additional financial information PRHFA may require.
- c. CDBG-DR funds will be awarded first to projects that received a LIHTC award during or prior to NOFA-2016.

Funds will be disbursed on a random draw basis. No disbursements are allowed unless the CDBG-DR written agreement is signed and dated by both parties (PRHFA and project Developer). Refer to *Responsibilities of the Developer* hereby attached as Exhibit A for a detailed description of the Developer's duties before the execution of the agreement, during construction and after completion of construction.

5.3 Process for the Disbursement of Funds

1. The process for disbursement of funds requires that:

- a. Submissions of certifications for payment will be allowed once a month.
- b. The Developer must prepare a folder/binder with all the invoices and supporting documents of the Monthly Certification for Payment (**Certification**). The folder must include an original Application for Payment, dated and signed by the authorized person identified in the CDBG-DR written agreement.

The Developer is responsible to verify each invoice prior to its submittal. Invoices must be in original, include employer social security number or Employer Identification Number (**EIN**), signed by the person who provided the service and contain the following Nullity Clause:

Español

“Bajo pena de nulidad absoluta certifico que ningún servidor público de la Autoridad para el Financiamiento de la Vivienda de Puerto Rico, sus subsidiarias y afiliadas, es parte o tiene algún interés en las ganancias o beneficios producto del contrato objeto de esta factura, y de ser parte o tener interés en las ganancias o beneficios producto del contrato, ha mediado una dispensa previa. La única consideración para suministrar los bienes o servicios objeto del contrato ha sido el pago acordado con el representante autorizado de la agencia. El importe de esta factura es justo y correcto. Los trabajos de construcción se han realizado, los productos han sido entregados (los servicios prestados) y no han sido pagados”.

English

“We certify under penalty of nullity that no public servant of the Puerto Rico Housing Finance Authority, its subsidiaries or affiliates, will derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received

in exchange for the delivery of goods or for services provided is the agreed-upon price that has been negotiated with an authorized representative from the agency. The total amount shown on this invoice is true and correct. The construction works have been realized, the products have been delivered, the services have been rendered, and no payment has been received."

- b. The invoice for hard construction costs must be submitted in the format provided by The American Institute of Architects (**AIA**) Document AIA G702, Application and Certificate for Payment, and be completed in all its parts.
 - i. Does not have to be notarized.
 - ii. Must include an itemized breakdown of all construction items and quantities to be paid duly approved by the General Contractor, the Developer and the PRHFA-Inspector.
 - c. Certifications and invoices (folder) will be received through the PRHFA-Inspector. Additional invoices will not be accepted when the Certification is already in process to be paid.
 - d. In order to process the Certification, all computations and quantities must be correct. Any Certification containing errors in its computations will be returned to the Developer.
 - e. Every vendor must include with their invoice their Total/Partial Waiver Certificate from Withholding at Source for Services Rendered by Corporations and Partnerships (*Certificado de Relevo Total/Parcial de la Retención en el Origen Sobre Pagos Por Servicios Prestados por Corporaciones y Sociedades*) issued by the Puerto Rico Department of Treasury, if available. Otherwise, they will be subject to the tax withholding required by the laws of Puerto Rico.
 - f. After PRHFA approves the Certification, it will be delivered to the PRDOH. The latter will issue the required payment(s).
 - g. The term for payment of the Certification is **ten (10) working days** from the moment PRHFA approves it for payment.
 - h. Any applicable interest will be capitalized monthly.
2. Only costs associated with an eligible CDBG-DR cost are eligible for payment by the program. The development budget will identify the

payment source of each line item. Developers must ensure that only CDBG-DR eligible costs are included in invoices submitted to the program. The PRHFA-Financing Officer in charge of each project will also verify this task. CDBG-DR funds may be used for capital investment in eligible LIHTC projects. Capital investment means costs that are included in the eligible basis of a project under the IRC. See 26 U.S.C. § 42. on Low-income housing credit.

3. Accounting of disbursements and projects expenditures will be ongoing to ascertain that funds are expended according to the terms of the CDBG-DR written agreements. This process will help identify those projects that do not comply with deadlines. Quarterly, PRHFA will track and report to PRDOH fund commitments and expenditures, and beneficiary information when available. This task will be a combined effort between the PRHFA Financing and Tax Credit Department and their Accounting/Pre-Audit Department.
4. CDBG-DR awardees will commit to a development funding plan, acceptable to PRHFA, confirming that:
 - a. Development of the qualified rental property will be constructed and placed in service by the date stipulated in the LIHTC Carryover Allocation Agreement.
 - b. Developers will be required to file a monthly report providing confirmation of progress toward meeting these expenditure deadlines. The assigned PRHFA Financing Officer will review it and enforce its compliance. A form will be designed and provided to each Developer.
5. A Project that is not completed in accordance with the terms and conditions of the CDBG-DR written agreement will be considered terminated prior to completion and all CDBG-DR funds must be repaid by the Developer.
6. The CDBG-DR written agreements will set forth all CDBG-DR program and crosscutting federal grant requirements. These will be enforceable through the recordation of a restriction binding on all Developers and successors. In Puerto Rico, it is achieved with a public deed recorded at an appropriate Property Registry.
7. Depending on each project's percentage of completion and an assessment of whether any project delays will affect meeting CDBG-DR deadlines, project Developers will be responsible for any equity

gap they may face, unless prevailing circumstances merit any reconsideration of PRHFA's determination.

8. PRHFA reserves the right to exercise its prudent discretion when the circumstances so warrant it. PRHFA and PRDOH will recapture funds not expended within the terms stipulated in the CDBG-DR written agreements. Recaptured funds will be returned to the program for future use.

6 Accountability and Transparency Requirements

1. Selection criteria and weightings appear on 2016 QAP herby attached as Exhibit B. See stand-alone document also published at www.cdbg-dr.pr.gov. The 2016 QAP and its annexes are also posted on www.afv.pr.gov.
2. PRHFA will report to PRDOH as stipulated in each CDBG-DR agreement. All Information reported will be available, as part of PRDOH's Quarterly Performance Reports (**QPR's**), at www.cdbg-dr.pr.gov. Reported data will be, but is not limited, to the following:
 - a. Total amount of CDBG-DR funds received;
 - b. Amount of CDBG-DR funds expended or obligated to projects or activities, and unobligated balance;
 - c. List of projects or activities that expended or obligated CDBG-DR funds:
 - i. Name of project;
 - ii. Description of project;
 - iii. Evaluation of completion status of project;
 - iv. Information on beneficiaries served, when available.
3. Since CDBG-DR funds are federal financial assistance, recipients under this Program are be subject, but not limited, to abide with the following laws:⁵
 - a. Federal Funding Accountability and Transparency Act of 2006 (**FFATA**), as amended.
 - i. 2 C.F.R. Part 170 (REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION).
 - b. Fair Housing Act of 1968 (**FHA**), as amended, 42 U.S.C. §3601 *et seq.*;
 - i. 24 C.F.R. Part 100 (DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT);

⁵ Please refer to the Cross-Cutting Guidelines found at www.cdbg-dr.pr.gov.

- ii. 24 C.F.R. Part 107 (NONDISCRIMINATION AND EQUAL OPPORTUNITY IN HOUSING UNDER EXECUTIVE ORDER 11063).
- c. Title VI of Civil Rights Act of 1964, as amended, 42 U.S.C. §2000(d), *et seq*: prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.
 - i. 24 C.F.R. Part 1 (NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT - EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964).
- d. Age Discrimination Act of 1975, 42 U.S.C. §6101 *et seq*.
 - i. 24 C.F.R. Part 146 (NONDISCRIMINATION ON THE BASIS OF AGE IN HUD PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE).
- e. Affirmative Fair Housing Marketing Plan. PRHFA will work in conjunction with the PRDOH and municipalities to:
 - i. Inform the public, Developers and potential tenants about Federal fair housing law and PRHFA's affirmative marketing policy;
 - ii. Establish requirements and practices each Developer must follow to carry out PRHFA's requisites; and
 - iii. Implement and help Developers with procedures to inform and solicit applications from individuals in the housing market not likely to apply for housing without special outreach, such as:
 - 1) Translation of marketing material for English deficient persons;
 - 2) Placement of translated marketing material in minority owned media; and
 - 3) Meaningful access concerning the project (*i.e.*, translations of application procedures, tenancy and other project amenities).
 - iv. Create records that describe what PRHFA and Developers did to affirmatively market units and records to assess the results of those actions; and
 - v. Annually assess the success of affirmative marketing steps and what corrective measures will take place if these marketing requirements are not met.
- f. Rehabilitation Act of 1973, 29 U.S.C. §701 *et seq*.

- i. Section 504, 29 U.S.C. §794 (NONDISCRIMINATION UNDER FEDERAL GRANTS AND PROGRAMS).
- ii. 24 C.F.R. Part 8 (NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT).
- iii. In compliance with the above-mentioned dispositions, the Conciliation Agreement and Voluntary Compliance Agreement (**VCA**), approved by HUD on June 21, 2017 (with an effectiveness term of five (5) years), and PRDOH and PRHFA commitment with the disabled community, all recipients, contractors and sub-contractors must comply with:
 - 1) 12% of the total ground floor and/or elevator-serviced unit inventory will be made fully mobility-accessible under the 2010 ADA Standards and, wherever applicable, the Uniform Federal Accessibility Standards (UFAS).
 - 2) 3% of the total unit inventory will be made sensory-accessible under the 2010 ADA Standards and, wherever applicable, the Uniform Federal Accessibility Standards (UFAS).
 - 3) Certification of compliance with accessibility requirements of the FHA and, wherever applicable, the 1991 or 2010 American with Disabilities Act (**ADA**) standards and the Uniform Federal Accessibility Standard (**UFAS**) subject to the following:
 - i. If a housing project and/or program office is determined to be fully accessible, housing owners, managers, and/or, if applicable, management agents, shall submit within **one hundred and twenty (120) days** of Respondents' notice, a copy of the above required Accessibility Self-Evaluation;
 - ii. If a housing project and/or program office does not comply with the accessibility requirements of the FHA and/or ADA, housing owners, managers, and/or, if applicable, management

agents shall submit no later than **one hundred and fifty (150) days** of Respondents' notice of transition plan for converting such projects and/or offices. The transition plan must identify physical obstacles at each project and/or offices. The transition plan must identify physical obstacles at each project and/or office and provide a retrofitting schedule for such areas' conversion.

- 4) Designer and/or builder parties are bound by the following design and construction obligations:
 - i. Preliminary drawings of the proposed new construction and/or rehabilitation, including a site plan, building elevations and unit floor plans must be provided. The project architect shall certify that the development will comply with the accessibility requirements of FHA and, wherever applicable, the 2010 ADA standards and UFAS.
 - ii. Prior to designing any new construction and/or rehabilitation activity, the project architect must furnish proof of the professional liability insurance covering negligent acts, accessibility errors and/or omissions under the FHA and, wherever applicable, the 2010 ADA standards and UFAS. This professional liability insurance must be for an amount not less than 10% of the estimated construction cost.
 - iii. Prior to commencement of new construction and/or rehabilitation activities at any LIHTC site, the project builders and contractors must furnish proof of a performance or surety bond for no less than 50% value of the construction contract.
- 5) Appointment of an ADA Coordinator by contracted housing providers with fifty (50) or more employees, or 504 Coordinator when

such providers have fifteen (15) or more employees.

- 6) Adherence to the reasonable accommodations and reasonable modifications policies created by both PRDOH and PRHFA and made available at www.cdbg-dr.pr.gov and www.afv.pr.gov.
- 7) Within **one hundred and fifty (150) days** of the signatory execution of the abovementioned VCA, Respondents PRDOH and PRHFA will officially adopt and disseminate the above-required policy and tracking log in the following manner:
 - i. The updated reasonable accommodation and modification policy will be publicly posted and displayed in prominent locations of Respondents' respective websites (www.vivienda.pr.gov and www.afv.pr.gov), and on-site at all regional and main offices where information for federally and/or state funded housing programs is made available to the general public.
- 8) Adherence to the agency-wide civil rights policy created by both PRDOH and PRHFA.
 - i. Respondents PRDH and PRHFA agree that within **one hundred and fifty (150) days** after the date of entry of this VCA they will both have created and established an agency-wide civil rights compliance policy. This compliance policy will be distributed internally among Respondents' employees, including contractors, sub-contractors, and project owners. It shall be based on the provisions of the FHA, Title II of the ADA and *Olmstead v. L.C.*, 527 U.S. 581 (1999), and will explain that compliance with its requirements is a federal obligation which supersedes any other conflicting duty under local law,

regulations and/or contracts. Respondents' policy shall include any and all appropriate enforcement provisions deemed necessary to effect full compliance with federal civil rights.

9) Accessible occupancy rules:

- i. All new and existing LIHTC project with fully accessible units for occupancy by individuals with mobility and/or sensory impairments shall provide a preference for those accessible units as follows:
 1. Firstly, preference will be given to the occupant of another unit within the same project having disabilities requiring accessibility features of the vacant unit and who is occupying a unit lacking such features. If no such occupant exists, then;
 2. Secondly, to an eligible qualified applicant on the waiting list having disabilities requiring the accessibility features of the vacant unit.
 3. If the unit is offered to an applicant without disabling conditions needing of the unit's accessibility features, then the owner and/or manager shall require the applicant to agree (and shall incorporate this VCA to the lease) to move to a non-accessible unit whenever it becomes available and within **thirty (30) days** of delivery of a written notification in this regard.
- ii. Owners and managers shall adopt suitable means to ensure the information regarding the availability of accessible units reaches eligible individuals with disabilities and shall undertake reasonable nondiscriminatory steps to

maximize the utilization of such units by eligible individuals.

10) Creation and implementation of reasonable accommodations and reasonable modifications policies tracking log.

i. No later than **one hundred (100) days** of the signatory execution of this VCA and throughout its duration thereafter Respondents, including, its project owners, will create and maintain a reasonable accommodations and modifications log which shall track the following information: (1) date and time of the accommodation/modification inquiry or request, (2) nature of the inquiry or request, (3) action taken, (4) whether the request was rejected or a change was made to the originally requested accommodation(s), and (5) documentation reflecting the final disposition of each request.

11) ADA discussions with contractors and/or subcontractors, including project owners:

i. No later than one **hundred (100) days** of this VCA, Respondents PRDH and PRHFA, including project owners, shall require contractors and/or subcontractors to discuss their contractual duties with any of the ADA-designated employees required above to ensure that activities will be performed in an ADA-compliant manner. This requirement shall be effected by including a clause in all contracts with contractors and/or subcontractors requiring them to, as minimum meet the ADA-designated employee in the following two instances: prior to executing contracted activities and when contracted activities are nearing 90% completion.

g. National Environmental Policy Act of 1969 (**NEPA**), as amended, 42 U.S.C. §4321 *et seq.*

- i. 24 C.F.R. Part 58 (ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES).
 - h. Lead-Based Paint Poisoning Prevention Act of 1971, 42 U.S.C. § 4831 *et seq.*
 - i. Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851 *et seq.*
 - j. Davis-Bacon Act of 1931 (**DBA**), as amended, 40 U.S.C. § 3141 *et seq.*
 - k. Anti-Lobbying Restrictions:
 - i. 31 U.S.C. §1352 (LIMITATION ON USE OF APPROPRIATED FUNDS TO INFLUENCE CERTAIN FEDERAL CONTRACTING AND FINANCIAL TRANSACTIONS);
 - ii. 24 C.F.R. Part 87 (NEW RESTRICTIONS ON LOBBYING).
 - l. Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 81.
 - i. 41 U.S.C. §701 (DRUG-FREE WORKPLACE REQUIREMENTS FOR FEDERAL CONTRACTORS).
 - ii. 24 C.F.R. Part 21 (GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)).
 - m. Flood Insurance Requirements as found in the National Flood Insurance Reform Act of 1994, as amended, 42 U.S.C. §5154a.
 - i. LIHTC projects located in a Special Flood Hazard Area (also known as the 100-year floodplain) that receive assistance under CDBG-DR will be required to obtain and maintain flood insurance in perpetuity for all such property for which financial assistance is received. See Flood Insurance Requirements of the Cross Cutting Guidelines found at www.cdbg-dr.pr.gov.
 - n. OMB Regulations and Circulars applicable to PRHFA:
 - i. 2 C.F.R. Part 200 (UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS);
 - ii. 2 C.F.R. Part 2424 (NON-PROCUREMENT DEBARMENT AND SUSPENSION).

7 Project Closeout

Projects will be closed out through standard procedures. Though HUD record retention requirements generally apply to a period beginning three (3) years after closeout, PRHFA's compliance monitoring plan requires retention of records for at least six (6) years after the due date for filing the federal income tax return for that year. Additionally, records for the first year of the credit provided must be kept for at least six (6) years beyond the due date for filing the federal income tax return for the last year of the compliance period of the building.

As required by 83 FR 5844, records will also be safeguarded to demonstrate that the rents charged on the set-aside units are restricted and income-eligible households occupy the units for at least:

1. Fifteen (15) years for rehabilitation or reconstruction of multi-family rental projects with eight (8) or more units, or a Section 42 of the IRC extended use period; or
2. Twenty (20) years for new construction of multi-family rental projects with five (5) or more units, or a Section 42 of the IRC extended use period. See 26 U.S.C. § 42. on Low-income housing credit.

Authorized representatives of PRHFA will monitor projects assisted with CDBG-DR funding. As deemed necessary, PRDOH will provide oversight.

8 Exhibits

Exhibit A: Responsibilities of the Developer

Exhibit B: Qualified Allocation Plan 2016

Exhibit A: Responsibilities of the Developer

I. Before Execution of the CDBG-DR Agreement

1. As a condition of PRHFA to execute the CDBG-DR written agreement, the Developer shall file the following certificates (these documents shall form an integral part of the agreement):
 - a. Certificate of Filing of Income Tax Returns (Form SC 6088) for the past five (5) years;
 - b. Certificate of Debt (Form SC 6096) stating its tax status with the Puerto Rico Treasury Department;
 - c. Copy of Merchant (Wholesaler) Registry Certificate (Form SC 2918) issued by the Puerto Rico Treasury Department;
 - d. Certificate of Filing of Personal Property Tax Returns of the Municipal Revenue Collection Center (CRIM for its Spanish acronym);
 - e. CRIM Debt Certificate for All Concepts;
 - f. Certificate of Labor Department Registry as Employer and Debt for Unemployment and Disability Insurances;
 - g. Certificate of Labor Department Registry as Employer and Debt for Public Transporters Social Security Insurance;
 - h. Department of State Good Standing Certificate;
 - i. Department of State Certificate of Existence or Authorization to Do Business in Puerto Rico;
 - j. Certificate of Compliance for Employers issued by the Child Support Administration (ASUME for its Spanish acronym);

It is expressly acknowledged that if any of these certifications are incorrect for any cause attributable to Developer, PRHFA shall have just cause for terminating the agreement immediately, and Developer shall reimburse PRHFA any sums of money received under the agreement. If an error in any certification was caused solely by any governmental agency, then Developer shall only be required to submit a correct certification and pay any amounts due.

2. The items to be received and/or approved by PRHFA prior execution of the CDBG-DR written agreement shall be:
 - a. Current Financial Statements of the Developer, and the Contractor and such other financial data as PRHFA shall reasonably require;

- b. Advice from the PRHFA's Inspector to the effect that: (i) the Plans have been received and have been approved by all pertinent Governmental Authorities; (ii) the Improvements as shown by the Plans will comply with all applicable zoning and construction laws, ordinances and regulations; (iii) the Construction Contract is in effect and satisfactorily provides for the construction of the Improvements; (iv) all roads and utilities necessary for the full utilization of the Improvements for their intended purposes have been completed or are contemplated within the Improvements or the presently installed and proposed roads and utilities will be sufficient for the full utilization of the Improvements for their intended purpose; and (v) the construction of the Improvements theretofore performed, if any, was performed in accordance with the Plans and will be finished along with all necessary roads and utilities on or before the Construction Completion Date;
- c. Copy of the Construction Contract, certified by Developer to be true and complete, together with a copy of Developer's agreement with Developer's Architect so certified. The terms and conditions of such agreements must be acceptable to PRHFA;
- d. The Project Cost Statement;
- e. A requisition for the initial disbursement, together with the documents required to be submitted therewith;
- f. Evidence satisfactory to PRHFA that all taxes and other levies imposed upon the Premises or on Developer's Interest in the Premises and/or Improvements are fully paid and current;
- g. A progress schedule showing the interval of time over which each item of Direct Cost and Indirect Cost is projected to be incurred and paid and a breakdown of all Direct Costs to be incurred for the construction of the Improvements;
- h. A copy of the public instrument (deed, lease agreement, sales contract, option agreement, among others) relating to Developer's acquisition of Developer's Interest in the Premises and all documents related therewith;
- i. A report by the PRHFA's Inspector to PRHFA indicating that the Direct Costs, as disclosed by Developer to PRHFA, have been estimated on a reasonably accurate basis;
- j. Evidence acceptable to the PRHFA that all conditions imposed upon Developer by its LIHTC-Operating Agreement as of the date of the Initial Advance with respect to making the capital contributions have been complied with to the extent applicable.
- k. Approved Request for Release of Funds (**RROF**) and Finding of No Significant Impact (**FONSI**), if applicable.

3. The items to be received and reviewed by the PRHFA's Inspector prior to execution of the agreement shall be:
 - a. Copies of a soil-engineer's report prepared by a firm acceptable to the PRHFA, which in all instances shall be certified by the same party who conducted the inspection, a site plan (showing all necessary approvals, utility connections and site improvements) and the Plans;
 - b. Copies of the items required by paragraphs (d), (e), (f), (h), (i) and (l) of item 2 hereof and by paragraphs (c), (d), (e) and (f) of item 4 hereof;
 - c. Copies of any inspection and test records and reports made by or for Developer's Architects;
 - d. Copies of all documents listed as exceptions to title in the title policy required by paragraph (b) of item 4 hereof; and
 - e. A construction schedule for the Improvements.

4. The items to be received and reviewed, on PRHFA's behalf, by PRHFA's Counsel prior to execution of the agreement shall be:
 - a. The Loan Documents and any other document reasonably required by PRHFA;
 - b. Paid title insurance policy in the amount of the Mortgage, in form approved by PRHFA, issued by the Title Insurer, which shall insure the Mortgage to be a valid first lien on the Mortgaged Property, free and clear of all defects, liens, claims and encumbrances except those previously approved in writing by PRHFA, and which shall contain a reference to a survey, but no survey exceptions, except those theretofore approved in writing by PRHFA;
 - c. Copies of any and all authorizations including plot plan and subdivision approvals, zoning variances, sewer, building, flood and all other permits required by Governmental Authorities for the construction, use, occupancy and operation of the Premises and/or Improvements for the purposes contemplated by the Plans in accordance with all applicable building, environmental, ecological, landmark, flood, subdivision and zoning codes, laws, ordinances and regulations;
 - d. Agreements from Developer's Architects and the Contractors in form and substance acceptable to PRHFA's Counsel;
 - e. A survey of the Premises certified by a civil engineer or surveyor acceptable to PRHFA and the Title Insurer showing:

- i. The location of the perimeter of the Premises by courses and distances;
 - ii. All easements, rights-of-way, and utility lines referred to in the title policy required by the agreement or which actually service or cross the Premises;
 - iii. The lines of the streets abutting the Premises and the width thereof, and any established building lines;
 - iv. Encroachments and the extent thereof upon the Premises;
 - v. The Improvements to the extent constructed, and the relationship of the Improvements by distances to the perimeter of the Premises, established building lines and street lines; and
 - vi. If the Premises are described as being on a filed map, a legend relating the survey to said map;
 - f. Endorsements from local utility companies or Governmental Authorities including the U.S. Environmental Protection Agency, where applicable, stating that electric power, sanitary and storm sewer and water facilities and all other utilities will be available to and servicing the Premises upon completion of construction of the Improvements;
 - g. Copy of the operating agreement of the Developer, as amended, and a copy of the organization documents of the Managing Member of the Developer, and the appropriate legal authorizations of Developer issued by agencies of the Commonwealth of Puerto Rico and/or the state of incorporation (to the extent required); and
 - h. An opinion of Developer's counsel covering, among other matters, the organization and existence of Developer, the power of Developer to enter into the Loan Documents and to perform all transactions contemplated by the agreements referred to therein, and the due execution, validity and enforceability of the Loan Documents, Note(s), Security Agreement and all other documents and instruments pertaining to the Loan.

II. After Execution of the Agreement, but Prior to Initial Disbursement

1. Payment and performance bonds and labor and materials payment bonds, each for penal sums equal to the amount of the Construction Contract, and a Wage Payment Bond for 20% of such amount, or as otherwise provided by law, each naming PRHFA as co-obligee, with a company having a rating of A or better and a financial size of V or better with Best Rating Service and acceptable to PRHFA, the Workman's Compensation Fund and other insurance policies (together with evidence

of the payment of premiums) required hereunder and/or under any other Loan Document, and all documents related to construction, including without limitation, the Construction Contract, and agreements with and from the Contractor and Developer's Architect.

III. After the Agreement

1. Promptly comply with all applicable laws, ordinances, orders, rules, statutes and regulations of Governmental Authorities and promptly furnish PRHFA with reports of any official investigations made by Governmental Authorities and any claims of violations thereof received by Developer.
2. Allow PRHFA, its representatives and the PRHFA's Inspector, during normal business hours, to enter upon the Premises, inspect the Improvements and all materials to be used in the construction thereof and examine all detailed plans and shop drawings which are or may be kept at the construction site; cooperate and cause the Contractor to cooperate with PRHFA's Inspector.
3. Pay all Direct Costs and Indirect Costs and expenses required for completion of the Improvements and the satisfaction of the conditions of the agreement, including without limitation:
 - a. All document and stamp taxes, recording and filing expenses and fees, in connection with the transactions contemplated hereby,
 - b. All taxes, insurance premiums, liens, security interests or other claims or charges against the Premises, Developer's Interest in the Premises or Improvements; and
 - c. All costs of completion of the work to be performed by Developer in space to be occupied in the Improvements (including public space outside the property boundaries) to permit the lawful occupancy thereof for the purposes contemplated by the agreement.
4. Commence construction no later than **forty five (45) days** from the execution of the CDBG-DR Agreement; cause the construction thus begun to be prosecuted with diligence and continuity in a good and workmanlike manner in accordance with the Plans except during the existence of delays -for not more than **sixty (60) days-** caused by events beyond Developer's control; use only materials, fixtures, furnishings and equipment in connection with construction of the Improvements that are not used or obsolete; and complete construction of the Improvements, and the installation of all necessary roads and utilities, in accordance with the Plans,

on or before the Construction Completion Date, as the same may be extended under the Construction Contract, and as consented to by PRHFA, free and clear of defects and liens or claims for liens;

- a. In the event the Developer is determined to have engaged in any proscribed conduct or otherwise is in default as to any applicable term, condition, or requirement of the CDBG-DR Agreement, at any time following the execution of the CDBG-DR Agreement, PRHFA may impose sanctions against the Developer for any such default, as per Art. XII, Section 2(a) of the Procurement Manual and Contract Requirements for CDBG-DR⁶; 2 C.F.R. §200.326 (Contract Provisions) and 24 C.F.R. §570.489(g) (Program Administrative Requirements);
 - b. If the Developer fails to comply with federal statutes, regulations or the terms and conditions of the CDBG-DR Agreement, PRHFA may take one or more of the following actions:
 - i. Temporarily withhold cash payments pending correction of the deficiency by the Developer.
 - ii. Disallow all or part of the cost of the activity or action not in compliance.
 - iii. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 (OMB GUIDELINES TO AGENCIES ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)).
 - iv. Withhold further Federal awards for the project or program.
 - v. Take other remedies that may be legally available.
 - c. Developer will be subject to liquidated damages as related to their timeframes of performance under the Program. Timeframes of performance will be established in the CDBG-DR Agreement. Developers shall pay to PRHFA, as liquidated damages, the amounts set forth on the CDBG-DR Agreement for each calendar day that the completion of works is late until deemed in compliance. Said sums, in view of the difficulty of accurately ascertaining the loss that PRHFA will suffer because of delay in the completion works requested, will be fixed as the liquidated damages that PRHFA will suffer because of such delay.
5. Promptly following the execution of the Agreement, at PRHFA's request, place a sign on the Premises at a location reasonably satisfactory to PRHFA indicating, and otherwise conforming to PRHFA's sign specifications, and conforming to all applicable laws and regulations.

⁶ This Manual can be found at www.cdbg-dr.pr.gov.

6. Obtain, maintain, preserve and renew all rights, powers, licenses, permits, privileges and franchises necessary for the proper conduction of the business of Developer and the construction of the Improvements.
7. Indemnify, defend and hold PRHFA and PRDOH harmless from all losses, liabilities, costs, expenses (including reasonable attorneys' fees) that PRHFA and PRDOH may suffer as a result of any claims or suits brought by any broker, finder, agent or similar entity claiming through or as a result of dealings with Developer relative to the acquisition of Developer's Interest in the Premises or in connection with the execution hereof or the consummation of the transactions contemplated hereby and Developer's obligations herein shall survive the expiration or termination of the agreement and the payment of the Loan.
8. If requested by PRHFA, deliver to PRHFA or the PRHFA's Inspector copies of all contracts, bills of sale, statements, receipted vouchers or agreements under which Developer claims title to any materials, fixtures or articles incorporated in the Improvements or subject to the lien of the Mortgage or under which it has incurred costs for which it is entitled to CDBG-DR funds, and deliver to PRHFA such other data or documents in connection with the Improvements as PRHFA may from time to time reasonably request.
9. Upon demand of PRHFA or the PRHFA's Inspector, correct any defects (including structural) in the Improvements or any departures from the Plans not approved by PRHFA.
10. Not permit the performance of any work pursuant to Change Orders or amendments to the Plans until PRHFA and the PRHFA's Inspector shall have given specific written approval thereof; it being understood that approval of any amended Plan or Change Order will not obligate PRHFA to increase the amount of CDBG-DR funding on account of any such amended Plan or Change Order, provided however that PRHFA in its sole but reasonable discretion, may disburse funds from the Contingency line item, subject however to prior notice to the company issuing the payment and performance Bonds, and the increase in the coverage of said Bonds. Developer shall be solely responsible for any additional amounts not contemplated in the original construction costs.
11. Require covenants from the Contractor to the same effect as the covenant made by Developer in the immediately preceding paragraph; use its best efforts to provide in the Construction Contract: (i) that the Contractor will

deliver to PRHFA copies of all major subcontracts, Change Orders, and any other contract, purchase order, or subcontract covering labor, materials, equipment or furnishings to or for the Improvements, and the names of all persons with whom the Contractor contracts for the construction of the Improvements or the furnishings of labor or materials therefore and (ii) that Developer acknowledges that 10% from each construction payment will be withheld and that said retainage will be paid subject to the terms of the Agreement, the Bonds, and the Construction Contract. All such subcontractors to be utilized by the Contractor in the development and construction of the Improvements shall be reasonably acceptable to PRHFA.

12. Employ suitable means to protect from theft or vandalism all portions of the Improvements and all tools and building materials stored in the Premises.
13. Comply with all restrictions, covenants and easements affecting the Premises, Developer's Interest in the Premises, or the Improvements and cause the satisfaction of all material conditions of the agreement.
14. Promptly notify PRHFA of any claim, suit, proceeding or matter brought against, or to the knowledge of Developer, which if adversely determined or otherwise would have a material adverse effect upon the Premises, Developer's Interest in the Premises, the Improvements, or financial condition or business affairs of Developer.
15. Maintain the Premises, Developer's Interest in the Premises, and the Improvements free and clear of any and all liens, charges, claims, defects and encumbrances except the Mortgage, PRHFA's restrictive covenants, and such others as shall have been previously approved in writing by PRHFA.
16. Pay and discharge all taxes, assessments and governmental charges and levies imposed upon it or upon its income or profits, or upon any property belonging to it, on or prior to the date in which penalties attached thereto, provided that Developer shall not be required to pay any such tax, assessment, charge, levy or claim, the payment of which is being contested in good faith, by the proper proceeding and such non-payment will not create a lien on the Premises, on Developer's Interest in the Premises, or the Improvements.
17. Until the Date of conversion to permanent financing, submit monthly reports to PRHFA indicating the state of completion of the Improvements, the costs

of said Improvements compared to estimates, and such other information as PRHFA may reasonably request, which reports shall be in form and substance reasonably acceptable to PRHFA.

18. Promptly supply PRHFA with such information and authorizations concerning its affairs and property as PRHFA may reasonably request from time to time hereinafter, including visiting its properties and discussions with officers.
19. Maintain a standard and modern system of accounting of its dealings and business affairs in accordance with generally accepted accounting principles, and permit PRHFA or any of its agents or representatives to have access to and to examine all of its books and records at any time or times hereafter during business hours and copy from any and all of said books and records; cause its books to be audited annually by a reputable accounting firm licensed in Puerto Rico.
20. Furnish PRHFA: (i) within **one hundred twenty (120) days** after the end of its fiscal year, audited Financial Statements of Developer without any qualification or exception reasonably deemed material by PRHFA, and (ii) as often as may be reasonably requested by PRHFA, but not more than once monthly, unaudited Financial Statements of Developer signed by its Managing Member.
21. Upon request of PRHFA, the Developer may need to execute, deliver, obtain and furnish -at their own expense- such documents as may be necessary:
 - a. to perfect and maintain the Mortgage and the pledge and security interest hereunder and the other Loan Documents; and to
 - b. fully consummate the transactions contemplated under the agreement, and maintain the principal amount of the Mortgage and the additional credits thereunder in amounts -which in the sole, but reasonable, discretion of PRHFA- will fully secure the payment and performance of all indebtedness, liabilities and obligations under the agreement and the other Loan Documents.

IV. After Construction Completion Amounts Retained by Developer from the Contractor

1. The amounts retained or held back from the Contractor in accordance with the terms of the Construction Contract, shall only be paid by

Developer to the Contractor upon compliance with the agreement, the Construction Contract and the Bonds. To that effect, the amount retained from the Contractor under the Construction Contract for the Improvements as set forth in the Project Cost Statement, will be released to the Contractor upon receiving the Use Permit ("Permiso de Uso") for the Improvements and the release from the bonding company that issued the Bonds, in addition to the following:

- c. Advice from the PRHFA's Inspector to the effect that construction of the Improvements has been completed, and any necessary utilities and roads have been finished and made available for use, substantially in accordance with the Plans and that PRHFA's Inspector has received satisfactory evidence of the approval and issuance of permits by all Governmental Authorities of the Improvements in their entirety for permanent occupancy, and of the contemplated uses thereof, to the extent any such approval is a condition of the lawful use and occupancy thereof;
- d. If requested by PRHFA, a current final "as built" or "completion" survey of the Premises, certified to PRHFA and the Title Insurer, showing the completed Improvements;
- e. Architect's certificate, confirming that the Improvements have been completed substantially in accordance with the Plans and acknowledging payment in full for the Architect's services;
- f. Developer's certificate, accepting as completed the Improvements;
- g. Final releases of payment from all persons who supplied material services, labor or materials for the Improvements and certificates from the Contractor and the sub-contractors acknowledging such payments, including an affidavit; and
- h. Such other evidence or documents as PRHFA may deem reasonably necessary.

Exhibit B: 2016 Qualified Allocation Plan

See stand-alone document also published at www.cdbg-dr.pr.gov.

The 2016 QAP and its annexes are also posted on www.afv.pr.gov.