

SECTION 1602 REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, made and entered into on this ____ day of _____, 2009, between *** LIMITED DIVIDEND HOUSING ASSOCIATION ***, a Michigan *** (the "Mortgagor"), whose address is ***, and the MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY, a public body corporate and politic of the State of Michigan (the "Authority"), whose address is 735 East Michigan Avenue, P.O. Box 30044, Lansing, Michigan 48909.

R E C I T A L S:

A. The Mortgagor is the owner in fee simple of the real property described in Exhibit A attached to and made a part of this Agreement (the "Property"),

B. The Mortgagor has applied to the Authority for a loan (the "Section 1602 Loan") under the Grants in Lieu of Low Income Housing Tax Credits ("Section 1602") program, which grant will be made by the Authority with funds from the Section 1602 program (funded by the U.S. Department of Treasury under Section 1602 of the American Recovery and Reinvestment Tax Act of 2009 (Public Law 111-5) to assist in the financing of the acquisition and construction or rehabilitation of a certain housing development to be known as ***, located in ***, *** County, Michigan (the "Development").

C. *Insert if applicable* Mortgagor has made good faith efforts to obtain investment commitments for the Low Income Housing Tax Credits but has been unsuccessful in such attempts due to current economic conditions.

D. *Insert if applicable* Mortgagor has agreed to return all or the majority of its allocation of Low Income Housing Tax Credits to the Authority pursuant to Section 1602 in order to obtain the Section 1602 Loan.

E. The Authority is unwilling to make the Section 1602 Loan unless the Mortgagor agrees to be regulated in the manner set forth in this Agreement, and the Mortgagor is willing to execute and abide by this Agreement as a condition of obtaining the Section 1602 Loan.

NOW, THEREFORE, it is agreed by and between the parties to this Agreement as follows:

1. **Payment of Mortgage Loan.** Mortgagor shall promptly make all payments due under the mortgage note (the "First Mortgage Note") given to *** (the "Lender") "First Mortgage Note") given to *** (the "Lender") evidencing a mortgage loan (the "First Mortgage Loan") and will perform all obligations under the mortgage made to the Lender (the "First Mortgage") on the Development of even date therewith, given as security for the First Mortgage Note, the mortgage note (the "Section 1602 Mortgage Note") given to the Authority and will perform all obligations under the mortgage made to the

Authority (the "Section 1602 Mortgage") on the Development of even date therewith, given as security for the Section 1602 Mortgage Note, which are incorporated herein by reference.

2. **Occupancy Qualifications Based on Income.**

a. Section 1602 Loan Restrictions. The Mortgagor agrees to maintain the Development as qualified affordable housing under the Section 1602 Program, by restricting occupancy at the Development in *** Section 1602 Restricted Units to the 60% income limit for Multifamily Tax Subsidy Projects as determined by HUD with respect to projects financed pursuant to Section 142(d) of the Internal Revenue Code of 1986, as amended (the "Code") as amended by the Housing and Economic Recovery Act of 2008 (P.L. 110-289) ("MTSP Limits"), adjusted for family size. *** of the Section 1602 Restricted Units [*if other units are at 50% of median income*] to the MTSP Limits Very Low Income limit, adjusted for family size [*if the limit is other than 50%*] *** Section 1602 Restricted Units to less than ***% of area median gross income based upon the MTSP Limits adjusted for family size. These restrictions shall apply until the end of the extended use period as defined in the Section 42(h)(6)(B) of the Code and the regulations thereunder, as may be set forth in the Low Income Housing Tax Credits ("LIHTC") Program Regulatory Agreement between the Mortgagor and the Authority (the "Extended Use Period").

b. Determination of Income With respect to the occupancy of these units, household income shall be determined pursuant to regulations to be issued by the Secretary of the Treasury, in a manner consistent with determinations of lower income families and area median gross income under Section 8 of the U.S. Housing Act of 1937, as amended (the "Section 8 Program"); and, if the Section 8 Program is terminated, under the Section 8 Program regulations as in effect immediately before termination. Until the Secretary of the Treasury publishes these regulations, the income of individuals shall be determined in accordance with the Section 8 Program regulations.

c. Determination of Eligibility. The Mortgagor shall be responsible for the determination of eligibility of persons and families and for the selection from among those determined to be eligible, and shall further be responsible for assuring that tenants have certified total household income to the Mortgagor, on forms prescribed or approved by the Authority. The Mortgagor must obtain written evidence substantiating the information given on all certifications of income and will retain such evidence in its files for the period prescribed by the LIHTC Program and the Section 1602 program. The Mortgagor must make a determination at least annually on the basis of each tenant's then-current income and family size.

d. Cessation of Eligibility. A tenant whose household income met the foregoing limits at the beginning of the tenant's occupancy of a unit in the Development shall cease to be treated as meeting the limits if the tenant's household income increases to exceed one hundred forty (140%) percent of the required limit, and after such event any vacant unit in the Development of comparable or smaller size is rented to a new tenant whose income does not meet the limits as described above.

e. Low Income Housing Tax Credit. The Mortgagor must agree to subject the Development to the extended low income use commitment required by Section 42 of the Code, pursuant to a Low Income Housing Tax Credit Regulatory Agreement.

3. **Rental Restrictions.**

a. Section 1602 Units. The Total Housing Expense for *** Section 1602 Restricted Units will be limited to one-twelfth (1/12th) of thirty percent (30%) of the of the MTSP Limits 60% limit, adjusted for family size, as established by HUD. The Total Housing Expense for *** Section

1602 Restricted Units will be limited to one-twelfth (1/12th) of thirty percent (30%)*[if other units are at 50% of median income]* the MTSP Limits Very Low Income limit, adjusted for family size. *[if the limit is other than 50%]* The Total Housing Expense for *** Section 1602 Restricted Units will be limited to one-twelfth (1/12th) of thirty percent (30%) ***% of area median gross income based upon the MTSP Limits, adjusted for family size. These restrictions are based on incomes for an imputed family size, assuming occupancy by one and one-half persons per bedroom (fractions rounded up). These restrictions shall apply until the end of the Extended Use Period.

b. Income and Eligibility Determinations. The income of individuals, their eligibility and area median gross income shall be determined as indicated in Section 2.b. above.

4. **Agreements; Covenants Running with the Land.** The Mortgagor agrees that the terms of this Agreement are essential to the making of the Section 1602 Loan, and that the enforcement of these covenants is necessary to preserve the LIHTC Program and the Section 1602 program benefits and, if applicable, the tax-exempt status of the bonds financing the Development. These covenants are in addition to any similar or identical covenants contained in the Low Income Housing Tax Credit Regulatory Agreement which has been or will be entered into by the parties to this Agreement. Therefore, the Mortgagor further agrees as follows:

a. Covenants Running With the Land. It is the intent of the Mortgagor and the Authority that the terms of this Agreement shall be covenants that run with the land, pursuant to the Act, and therefore binding on all the successors and assigns of the Mortgagor and the Authority. These covenants shall survive a sale, transfer, or other disposition of the Development by the Mortgagor.

b. Inspections. In order to enable the Authority to monitor the Mortgagor 's compliance with these use and occupancy restrictions, the Mortgagor covenants and agrees that the Authority and its agents or employees shall be allowed access to the Development and leasing or business offices during normal business hours and inspect and audit all books and records pertaining to the Development.

c. Status Reports. The Mortgagor covenants and agrees to complete and send to the Authority an annual, or at any greater frequency that may be requested by an Authorized Officer of the Authority, status report(s) in form and content acceptable to the Authority, which status report(s) shall demonstrate ongoing compliance with these use and occupancy restrictions.

d. Transferees Bound. The Mortgagor covenants and agrees that in the event it sells or otherwise transfers ownership of the Development, it will enter into such agreements with the purchaser or transferee as may be prescribed by the Authority which have the effect of causing such purchaser or transferee to be bound by these use and occupancy restrictions, as they may be amended or supplemented.

e. Necessary Actions. The Mortgagor agrees to evict any tenant or take such other corrective action as is determined necessary by an Authorized Officer of the Authority necessary to comply with the covenants contained in this Agreement. To the extent necessary to preserve the tax exempt status of the Authority's notes and bonds issued to finance the Development, the Authority shall also have the right to take any and all action which it deems appropriate in order to enforce compliance with the covenants of this Agreement.

f. Annual Budget. The Mortgagor will submit with its annual budget a written report and certification evidencing compliance with the requirements of this Section.

g. Treasury Regulations. The Mortgagor acknowledges that certain of the covenants contained in this Agreement are based upon the Treasury Regulations of the United States Department of Treasury as they exist on the date hereof and that the Treasury Regulations may be subsequently modified or interpreted by the federal government in a manner which the Authority believes is inconsistent with the covenants set forth herein. The Mortgagor agrees to comply with any additional covenants and restrictions which the Authority believes, upon advice of counsel, is necessary to insure the compliance with the Section 1602 Regulations and other Section 1602 requirements and which is communicated in writing to the Mortgagor, even though such covenants or restrictions are not a part of this Agreement as originally executed; provided, however, that if counsel for the Mortgagor disagrees with the advice of counsel for the Authority, Mortgagor shall have the right at its own expense to proceed with obtaining a favorable ruling from the Internal Revenue Service or interpretation from the appropriate court which Mortgagor deems advisable and in its best interest and the Authority agrees to cooperate fully with Mortgagor in this connection, so long as Mortgagor bears the Authority's expense in obtaining such ruling. In such event, such additional covenants or restrictions shall be considered a material part of this Agreement as if they had been originally included herein.

5. **Distributions by the Mortgagor.** The Mortgagor shall not make, nor shall any partner or owner of the Mortgagor or any person or entity having a beneficial interest in the Mortgagor, receive or retain any distribution of any assets or any income of any kind of the Development, without complying with the following conditions:

- a. All distributions shall be made only:
 - i. with the approval of an Authorized Officer of the Authority;
 - ii. as of or after the end of a calendar year of operation upon submission and review by the Authority of an annual audit;
 - iii. after compliance with all terms of this Agreement;
 - iv. upon the Mortgagor 's written certification that it has complied with all applicable requirements of the Authority's Office of Asset Management;
 - v. as permitted by the laws of the State of Michigan;
 - vi. in accordance with the Authority's Multifamily Annual Certified Audit Guidelines, as amended from time to time (the "Audit Guidelines"); and
 - vii. payments, are limited to fifty percent (50%) of the funds otherwise available to the Mortgagor for distribution ("Surplus Funds"), as determined by the Mortgagor's annual audit of the Development's operations, as approved by an Authorized Officer of the Authority. All such payments shall be referred to as "Limited Dividend Payments". Limited Dividend Payments may begin for the year in which the Mortgage Cutoff Date, as determined by the Authority, occurs. The balance of any Surplus Funds shall be deposited into a Sustainability Reserve Account (SRA) pursuant to section 6 below.

b. No Limited Dividend Payments shall be made prior to, or so long as there is any continuing default under this Agreement or under the Section 1602 Note, Section 1602 Mortgage or the other documents executed in connection with the Section 1602 Loan (collectively, the " Loan Documents").

c. Limited Dividend Payments shall not be made for any period prior to the date of the Mortgage Note, or for any period or for any period prior the Mortgage Cutoff Date, as determined by the Authority.

d. No Limited Dividend Payments shall be made from Mortgage Loan proceeds or any other borrowed funds.

Any funds of the Development distributed to a party not entitled to receive them under this Agreement, as determined by an Authorized Officer of the Authority, shall be deemed to be held in trust for the benefit of the Authority.

6. **Sustainability Reserve Account.** The Surplus Funds from the operation of the Development shall be calculated and determined annually by Certified Audit conducted in accordance with the Audit Guidelines. The Mortgagor shall deposit that portion of Surplus Cash that is required to be submitted under the Audit Guidelines into the Sustainability Reserve Account established by the Authority for the Development (the "SRA") within 120 days after the end of each calendar year, unless this requirement is waived in writing by an Authorized Officer of the Authority. Funds on deposit in the SRA shall be invested and reinvested by the Authority's Office of Finance in accordance with the Act, and shall at all times be under the control of the Authority. Interest earned on funds on deposit in the SRA, if any, shall remain in the SRA and shall be treated and disbursed in the same way as any other funds deposited in that account. Funds in the SRA may only be used, after all other Development reserves have been exhausted. Disbursements from the SRA shall be made for Development expenses, such as payments for real estate taxes, other taxes, maintenance, fuel, legal, audit, the payment of amounts owed to the Authority, and required reserve deposits and other requirements to maintain the physical and fiscal integrity of the Development, upon the written request of the Mortgagor and the approval of an Authorized Officer of the Authority. No disbursement will be approved unless the Mortgagor and the proposed use of the funds are in compliance with the Authority's then-current policies on the disbursement of the SRA. Funds in the SRA shall not be included when calculating Surplus Funds and may not be used to fund Limited Dividend Payments permitted under Section 5 of this Agreement. In the event that the Section 1602 Loan is accelerated after a default in the terms of the Section 1602 Regulations and other Section 1602 requirements resulting in the Mortgagor becoming liable for a Recapture Obligation pursuant to section 30 below, the Authority may, in its sole discretion but is not required to, apply or authorize the application of the balance on deposit in the SRA to the amount due on the Section 1602 Loan as accelerated.

7. **Replacement Reserve Fund.** The Mortgagor shall establish and maintain a Replacement Reserve Fund by depositing monthly installments with the Authority, beginning with the Mortgage Cutoff Date, as determined by the Authority. For the first year, the annual payment to the Replacement Reserve Fund shall be \$***, payable in monthly installments of \$***. Subsequent to the first year of operation, monthly installments shall increase to an amount which is the greater of 3% higher than the deposit for the prior year be made based upon or an amount equal to 1/12 of ***% of the gross annual rent potential (including tenant contributions and subsidies) for the Development as indicated in the most recent annual budget prepared by the management agent of the Mortgagor and approved by the Authority's Director of Asset Management ("Gross Rent Potential"), unless a different payment schedule or amount is approved or directed in writing by an Authorized Officer of the Authority. The Authority agrees to consult with the Mortgagor regarding any increase in the funding of the Replacement Reserve Fund which is higher than the required funding formula specified in this Agreement; provided, however, that the decision concerning any increase in the funding shall be solely within the discretion of the Authority. Funds on deposit in the Replacement Reserve Fund shall be invested and reinvested by the Authority's Office of Finance in accordance with the Act, and shall at all times be under the control of the Authority. Interest earned on this Fund, if any, shall become a part of this Fund and shall be treated and

disbursed in the same way as any other deposits to the Fund, in accordance with the Authority's policy regarding the use of Replacement Reserve Funds. Disbursements from this Fund shall be made only for the replacement of eligible items which have exhausted their useful life, or in emergency situations to protect the health, safety and welfare of the tenants residing at the Development, and all disbursements shall be made in accordance with the Authority's written Replacement Reserve Fund policy, as amended from time to time, and only upon the written direction of an Authorized Officer of the Authority. In the event that the Section 1602 Loan is accelerated after a default in the terms of the in the terms of the Section 1602 Regulations and other Section 1602 requirements resulting in the Mortgagor becoming liable for a Recapture Obligation pursuant to section 31 below, the Authority may, in its sole discretion but is not required to, apply or authorize the application of the balance on deposit in this Fund to the amount due on the Section 1602 Loan as accelerated.

8. Operating Assurance Reserve.

a. Establishment of Reserve. At the time of initial disbursement of the Section 1602 Loan proceeds, the Mortgagor shall establish an Operating Assurance Reserve (the "OAR") equal to four months' estimated Development operating expenses, scheduled debt service payments, deposits to reserves and other anticipated Development expenses (estimated to be \$***), to cover operating shortfalls incurred at the Development. The OAR must be either (i) fully funded with cash, or (ii) funded with a combination of cash and an irrevocable, unconditional letter of credit acceptable to the Authority, in an amount that may not exceed 50% of the OAR requirement. The Mortgagor may not draw funds out of the OAR prior to the Mortgage Cutoff Date, as determined by the Authority.

b. Disbursements. Funds shall be held and disbursed from the OAR in accordance with the Authority's written policy on the use of the Operating Assurance Reserve, as amended from time to time. Amounts on deposit in the OAR shall be invested and reinvested by the Authority's Office of Finance in accordance with the Act, and shall at all times be under the control of the Authority. Interest earned on funds in the OAR, if any, shall become a part of the OAR and shall be treated and disbursed in the same way as other monies in the OAR. Depreciation shall not be considered an expense in calculating the Development's operational results. The OAR will be held by the Authority for a minimum fifteen (15) years. In the tenth year of operation, the OAR will be used to fully fund the replacement reserve needs identified by an independent capital needs analysis and to fully fund any other escrow accounts. If the amount required to fund escrows is represented by a letter of credit, the letter of credit will be drawn upon. The Director of Asset Management may approve a 50% reduction/release in the remaining OAR, based on a review of the development's operations. All reductions or releases from the OAR (in connection with this or any future release) may, in the Authority's discretion, be returned to the Authority to be applied against any obligations that the Mortgagor owes the Authority, including any Recapture Obligation pursuant to section 30 below, and any remainder of the reduction or release, will be deposited into the development's operating account. If the amount to be released is represented by a letter of credit, the letter of credit will be drawn upon for the amount to be released. Following the fifteenth full year of operation, the Mortgagor may again request approval of a reduction in the OAR and a release of the excess cash or letter of credit. Any funds still remaining in the OAR (including accumulated interest) after the end of the fifteenth year may, in the Authority's discretion, be returned to the Authority to be applied against any obligations that the Mortgagor owes the Authority, including any Recapture Obligation pursuant to section 30 below, and any remainder that are not needed for funding of the replacement reserve, or other escrows, will be available for release to the development's operating account. Any sums transferred to the operating account will be treated as Development funds, available to pay operating expenses.

9. *** *Insert if required* **Operating Deficit Reserve.**

a. At or prior to Section 1602 Loan closing the Mortgagor must enter into an agreement to establish an Operating Deficit Reserve (ODR) with the Authority in the initial amount of \$***. The ODR shall be funded in cash, held and controlled by the Authority and will be invested and reinvested by the Authority's Office of Finance. Interest earned on this reserve, if any, shall become part of this reserve and shall be treated and disbursed in the same way.

b. Disbursements from the ODR may begin at the request of the Mortgagor, in the first year in which the projected budget deficit is shown on the cash flow analysis on Attachment A to the Agreement Regarding Operating Deficit Reserve. The amount disbursed annually from the ODR will be the annual projected budget deficit as shown on Attachment A to the Agreement Regarding Operating Deficit Reserve. In each subsequent year, the annual disbursement will be the amount called for in the Development's operating budget as approved by the Office of Asset Management, but not to exceed the amount projected for that year on Attachment A. This will continue each year until the ODR has been depleted *or the First Mortgage Loan is paid in full and the Extended Use Period has expired.*

c. In the event that the development experiences an operating deficit that is greater than that projected in Attachment A to the Agreement Regarding Operating Deficit Reserve, the Mortgagor may request that the Authority increase the amount drawn from the ODR. The Director of Asset Management must approve the request. However, the Mortgagor shall not be entitled to receive a Limited Dividend payment for any year in which the amount drawn from the ODR is greater than the amount identified in Attachment A for that year, until the balance of the ODR is restored to the appropriate level.

d. At the earlier of the time when 80% of the ODR has been depleted or during the 18th year after the Mortgage Cutoff Date, as determined by the Authority, the Authority will determine the amount sufficient to fund projected operating deficits through the remaining term of the Extended Use Period. The Mortgagor must deposit this amount into the ODR, which will be held by the Authority and disbursed as noted above. Failure to replenish the ODR, when required by MSHDA, constitutes a default under the Section 1602 Loan. In the event that Section 1602 Loan is accelerated after a default in the terms of the Section 1602 Regulations and other Section 1602 requirements resulting in the Mortgagor becoming liable for a Recapture Obligation pursuant to section 30 below, the Authority, in its sole discretion, may, but is not required to, apply any funds on deposit in the ODR, to the amount due on the Section 1602 Loan as accelerated.

e. At such time as the *First Mortgage Loan* and all other financial obligations to the Authority are paid in full, and the Mortgagor has satisfied all obligations under the Section 1602 Loan, the remaining balance of the ODR, including all interest which has accumulated, will be disbursed into the SRA.

10. **Operating Budget and Annual Adjustment of Rental Rates.** Not less than 60 days prior to the beginning of each fiscal year of the Mortgagor, the Mortgagor shall submit a proposed schedule of rental rates and a proposed operating budget for that next fiscal year to the Authority for its review and approval. All proposed and final schedules and budgets shall be in a format acceptable to the Authority. The proposed operating budget shall set forth the estimated income of the Development and a detailed estimate of expenses, which will include separate documentation of administration expenses, operating expenses, maintenance expenses, utilities, hazard insurance, taxes and assessments, Mortgage Loan principal and interest, limited dividend payments. If the schedule of rental rates does not comply with applicable program limitations or the operating budget is not acceptable as proposed, the Mortgagor

shall resubmit such revised schedules and budgets as may be required until approved in final form by the Authority's Director of Asset Management.

11. Development Management.

a. Management Agent and Fees. The Mortgagor shall provide for the management of the Development in a manner acceptable to the Authority, in its sole discretion, that will assure decent, safe and sanitary housing according to the standards set by the Authority, LIHTC and Section 1602 Regulations and other Section 1602 requirements,. Any management agent employed by the Mortgagor at the Development must be approved by an Authorized Officer of the Authority, and shall enter into a written management agreement in the form prescribed by the Authority. The management fee allowed to be paid to any management agent by the Mortgagor shall be limited as provided for in the compensation section of the Authority's form management agreement. The terms of the management agreement shall be incorporated in and made a part of this Agreement. No disbursements shall be made out of the Development's operating funds for management fees other than as set forth in the form of management agreement approved by the Authority for the Development.

b. Termination of Management Agent. The management agreement shall provide that the management agent may be terminated at the end of any calendar month, with or without cause, by either the Authority or the Mortgagor, in the following manner: If by the Authority, by sending thirty (30) days written notice to the Mortgagor and the management agent; if by the Mortgagor, by sending thirty (30) days written notice to the management agent. In addition, the management agent may be terminated immediately, without notice, by either the Authority or the Mortgagor for good cause, including, but not limited to, the voluntary or involuntary bankruptcy of the management agent; the commission of fraud or other malfeasance by the management agent or its employees or agents; the intentional commission of (or omission leading to) a material default under this Regulatory Agreement or the Mortgage by the management agent or its employees or agents; or the commission of criminal acts or the threat of criminal acts on the part of the management agent or its employees or agents. In the event of an immediate termination, notice of the termination shall be sent promptly to all parties. Upon termination of the management agent, the Mortgagor shall make arrangements satisfactory to an Authorized Officer of the Authority for continuing the management of the Development.

12. Maintenance, Operation, and Unit Inspection. The Mortgagor shall maintain and operate the Development so as to provide decent, safe, and sanitary housing and shall provide all services, maintenance and utilities according to standards as required by the Authority and the LIHTC and Section 1602 Regulations and other Section 1602 requirements, and in accordance with state and local codes and ordinances. The Mortgagor agrees that no unit in the Development shall be occupied prior to the issuance of a Certificate of Occupancy by the appropriate local officials. Prior to occupancy of any unit, the Mortgagor and the tenant shall inspect the unit and both shall certify that they have inspected the unit and have determined it to be decent, safe, and sanitary. The Mortgagor shall retain copies of such certificates for at least 3 years.

13. Goods and Services. The cost of all goods and services obtained for the benefit of or used at the Development must be comparable and competitive with the cost of comparable goods and services that could reasonably be made available to the Development, and shall not exceed the amount ordinarily paid for comparable goods and services in the area where the services are rendered or the goods are furnished. All goods and services costing in excess of \$1,000 can only be rendered or provided by means of a written contract or detailed invoice which precisely describes the goods or services, and the amount to be paid. Furthermore, any goods or services purchased or obtained from or through, directly or indirectly, a person or entity with whom an Identity of Interest exists between the Mortgagor or its management agent must be purchased or obtained in compliance with Rules 201 through 204 of the

Authority's General Rules (R125.201-204 of Michigan's Administrative Code of 1979, as amended) and the Authority's written policies on Identity of Interest transactions.

14. **Inspections.** The Development and all plans, offices, equipment, books, contracts, records, documents, and other papers relating thereto, shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at any reasonable time by the Authority or its authorized agent at the Development site or any other location acceptable to the Authority. The Mortgagor shall retain copies of all documents relating to the Development for at least three years, all or any of which may be subject to inspection and examination by the Authority or its authorized agents.

15. **Books and Records.** The books and records of the operations of the Development shall be kept in accordance with the regulations and requirements of the LIHTC and Section 1602 programs and the policies, General Rules and requirements of the Authority. Within three (3) business days of the Authority's written request, the Mortgagor shall furnish copies of or make available for review by the Authority or its authorized agents at the Development site or any other location acceptable to the Authority, all books, records, papers, and documents relating to the Development and the Mortgagor, including all contracts and records of the Mortgagor relating to the Development and income from the Development, that may be required by the Authority from time to time to assure itself of compliance with the Authority's policies, and the LIHTC and Section 1602 Regulations and other Section 1602 requirements, and the Authority's General Rules and requirements.

16. **Financial Reports.** Within 120 days following the end of each calendar year of operation, the Authority shall be furnished with a financial statement for the Development audited by an independent Certified Public Accountant in a form approved by the Authority. This report shall be certified to by the Mortgagor.

17. **Other Reports.** The Mortgagor shall furnish monthly occupancy reports and financial reports relating to the operation of the Development in accordance with an Authority-approved reporting format, and within established Authority time-frames. At the request of the Authority, its agents, employees, or attorneys, the Mortgagor shall promptly answer with specificity all questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, and condition of the Development, its tenants and status of Section 1602 Loan. Additionally, the Mortgagor shall furnish all reports and information required by or in order to document compliance with the LIHTC Section 1602 Regulations and other Section 1602 requirements.

18. **Receipts From Operations.** All rents and other income and receipts of the Development (the "Receipts") shall, upon receipt, immediately be deposited in an account in the name of the Mortgagor or the Development with an institution with regular banking offices located in Michigan whose deposits are insured by an agency of the United States Government and shall not be commingled with any other funds. Any person or entity receiving Development Receipts who fails to deposit them as required by this Agreement shall hold the Receipts in trust. The Receipts shall be withdrawn only in accordance with the provisions of this Agreement for the payment of expenses of the Development, including all payments and escrow deposits required by the Section 1602 Mortgage, for Limited Dividend Payments, for the deposit of Surplus Cash into the ORC Account, all as provided in this Agreement.

19. **Preference for Occupancy.** Among low income or moderate income persons, preference shall be given to the elderly, and persons displaced by urban renewal, slum clearance, or other governmental action.

20. **Leases.** All tenants shall be required to execute a lease in a form approved by the Authority. The Mortgagor shall comply with the Section 1602 program Regulations and other Section 1602 program requirements with respect to the Section 1602 Restricted Units.

21. **Children.** Except for a development specifically designated for the elderly, in selecting tenants the Mortgagor shall not discriminate against any tenant or family because any of its members are children.

22. **Prohibited Activities Without Approval.** The Mortgagor agrees that it shall not, without the prior written approval of an Authorized Officer of the Authority:

a. Convey or transfer, any portion of the Development, or permit the conveyance transfer or encumbrance of all or any portion of the Development:

i. except in compliance with the LIHTC program and the Section 1602 program

ii. unless the party to whom the Development is to be conveyed or transferred agrees to be bound by the terms of this Regulatory Agreement and ****the LIHTC Program Regulatory Agreement;*

b. Require, as a condition of occupancy or leasing of any unit in the Development, any consideration or deposit other than the prepayment of the first month's rent and a security deposit as allowed under the laws of the State of Michigan. Any funds collected as a security deposit shall be kept separate and apart from all other funds of the Development, in an interest bearing trust account with a bank or other regulated financial institution located within the State of Michigan, whose deposits are insured by an agency of the United States Government. The amount of funds in this account shall at all times be equal to or exceed the aggregate of all security deposits held for current and former tenants, unless the Mortgagor elects to provide a bond which complies with Michigan law to guarantee payment of the security deposits. The use of a tenant's security deposit shall be governed by the Management Agreement and Michigan law.

c. Permit the use of the units of the Development for any purpose except the use which was originally intended, it being understood and acknowledged by the Mortgagor that the qualification for the Section 1602 Loan dependent upon compliance with use restrictions arising out of the Code and Treasury Regulations of the United States Department of Treasury, LIHTC and Section 1602 Regulations and other Section 1602 requirements.

d. Pay any compensation, directly or indirectly, including wages or salaries, or incur any obligations to any of the Mortgagor's officers, directors, stockholders, members, trustees, partners, beneficiaries under a trust, or to any of their nominees.

e. Enter into any contract or contracts for supervisory or managerial services to the extent compensation paid under the contract(s) is to be paid from Development Receipts.

f. Transfer, assign, or pledge any right or interest in, or title to, any funds deposited by the Mortgagor with the Authority, or reserved by the Authority for the Mortgagor.

23. **Non-Discrimination Covenant.** The Mortgagor shall not, in the selection of families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, height, weight, sex, age (except for a Development specifically designed for elderly

occupants), national origin, handicap, or marital or familial status except as provided by law. The Mortgagor shall comply with all requirements imposed by the Fair Housing Act (42 U.S.C. 3601-19) Title VI of the of the Civil Rights Act of 1964 (42 U.S.C. 2000(d), Title VIII of the Civil Rights Act of 1968 (as amended by the Fair Housing Amendments Act of 1988), the Age Discrimination Act of 1975, (42 U.S.C. 6101-07) the Americans with Disabilities Act, the Elliott-Larsen Civil Rights Act, and the Michigan Handicappers Civil Rights Act.

24. **Marketing.** The Mortgagor shall conduct the marketing of all units and the selection of families in accordance with the Authority approved Affirmative Fair Marketing Plan, and the applicable minimum set aside requirements of the Code, including any regulations published pursuant thereto, for very low income persons. Compliance with the foregoing requirements shall be monitored by the Authority's Departments of Asset Management and EEO/Fair Housing.

25. **Default and Remedies.** The violation of any provision of this Agreement by the Mortgagor shall be a default under this Agreement and the Section 1602 Mortgage. The Authority may give written notice of such default to the Mortgagor, by registered or certified mail, addressed to the address stated in this Agreement, or such other address as may subsequently, upon appropriate written notice thereof to the Authority, be designated by the Mortgagor as its legal business address. If the default is not corrected to the satisfaction of an Authorized Officer of the Authority within 30 days after the day such notice is mailed or within such further time as an Authorized Officer of the Authority reasonably determines is necessary to correct the default, without further notice the Authority may avail itself of any remedy provided in the Section 1602 Mortgage or other document executed in connection with the Section 1602 Loan, or any other remedy it may have at law or in equity in the event of such a default. The Authority's remedies shall include the right to apply to any court, State or Federal, for the specific performance of the covenants and agreements contained in this Agreement; for an injunction against any violation of such covenants and agreements; for the appointment of a receiver to take over and operate the Development; or for such other relief as may be appropriate, since the injury to the Authority arising from any default under this Agreement would be irreparable and the amount of damage difficult to ascertain. Despite anything in the foregoing to the contrary, the Authority may take possession of the Development, bring any action necessary to enforce the rights of the Mortgagor growing out of the Development's operation, and collect the rents and operate the Development in accordance with the terms of this Agreement until such time as the Authority in its discretion, determines that the Mortgagor is again in a position to operate the Development in accordance with the terms of this Agreement and in compliance with the requirements of the Section 1602 Mortgage, or the Section 1602 Mortgage Note evidencing the Section 1602 Loan. The Authority's election to pursue any one or more of the above remedies shall not be construed to preclude or be a waiver of the Authority's right to pursue any of the other remedies with respect to the default for which such remedy was pursued or with respect to any default prior or subsequent to such remedy.

26. **Insurance.** The Mortgagor agrees that it will obtain and keep in force such insurance coverage as required by the *First Mortgage and* Section 1602 Mortgage.

27. **Binding on Assigns.** This instrument shall be binding upon the parties to this Agreement and their respective successors and assigns.

28. **Section 1602 Covenants as to Development.** The Mortgagor covenants and agrees that:

a. The Development will be a residential rental project consisting of a building or buildings that are qualified low-income building(s) under Section 42 of the Code.

b. Each building in the Development will remain a qualified low-income building as defined in Section 42 of the Code for the longer of the fifteen year "Compliance Period", as defined in Section 42(i)(1) of the Code or, the end of the (the "Extended Use Period").

c. It shall pay or incur at least thirty percent (30%) of the Mortgagor's total adjusted basis in land and depreciable property that is reasonably expected to be part of the Development by December 31, 2010, all conditions for disbursement must be met and all Section 1602 funds must be disbursed by the Authority by ***,2011 and that any Section 1602 funds not disbursed by that date shall be forfeited.

29. **Actions on Behalf of the Authority.** Except as otherwise provided in this Agreement, the following officers of the Authority are authorized to give any approval or notice or take any action on behalf of the Authority in connection with the administration of this Agreement: the Executive Director, the Deputy Director, the Director of Finance, and the Director of Legal Affairs. The Director of Asset Management is authorized to approve the distribution of Limited Dividend Payments, monthly and annual reports of operations, and the appointment and termination of the management agent for the Development. The term "Authorized Officer of the Authority" refers to these employees of the Authority when acting within the scope of their authority.

30. **Recapture**

a. The Mortgagor is hereby notified and hereby acknowledges that, Mortgagor's failure to comply with:

- i. the terms of Sections 2 and 3 of this Agreement,
- ii. or any other requirements imposed upon an Owner under the terms of Section 42 of the Code, and the regulations thereunder.

for the entire fifteen year "Compliance Period", as defined in the Section 42(i)(1) of the Code, and the regulations thereunder, shall cause the Mortgagor to be subject to a "recapture" requirement for all or part of the Section 1602 Loan. The Mortgagor is hereby notified and hereby acknowledges that any amount subject to recapture pursuant to this Section 31.a. shall both constitute an event of default on the Section 1602 Mortgage and shall become a debt owed to the United States payable to the General Fund of the Treasury, which debt shall be enforceable by all available means against any assets of the **Mortgagor??**.

b. The Mortgagor is further notified and acknowledges that, Mortgagor's failure to comply with:

- i. the terms of Sections 2 and 3 of this Agreement,
- ii. or any other requirements imposed upon an Owner under the terms of the Section 42 of the Code, and the regulations thereunder.

during the Extended Use Period, shall constitute an event of default under this Agreement

31. **Other Federal Requirements.** The Mortgagor must comply with all requirements imposed upon a subawardee of funds under Section 1602 of the American Recovery and Reinvestment Tax Act of 2009 (Public Law 111-5). Further, the Mortgagor has complied or will comply with the Section 504 of the Rehabilitation Act of 1973 and the provisions of the "Anti-Lobbying" Restrictions of 31 USC 1352.

32. **Asset Management Fee.** The Mortgagor shall pay the Authority an annual asset management fee. Beginning in the year in which the Mortgage Cutoff Date, as determined by the Authority, occurs, the asset management fee shall be ***. \$10,000 The Authority may increase the asset management fee in subsequent years, if it determines such an increase is required, however, the asset management fee shall not increase by more than ***% above that charged for the prior year.

33. **Applicants with Section 8 Vouchers.** The Mortgagor agrees that it shall not refuse to accept an applicant for tenancy in the Development who has a portable Section 8 voucher, if such applicant otherwise qualifies for tenancy under the Mortgagor's approved tenant selection criteria and satisfies the applicable income restrictions.

34. **Ownership of Reserves.** The Mortgagor hereby agrees and acknowledges that, upon the earliest of the expiration of the Extended Use Period, a default under the Section 1602 Regulations or other Section 1602 requirements resulting in the Mortgagor becoming liable for a Recapture Obligation as pursuant to section 30 above, or sale of the Development *or refinancing of the First Mortgage Loan*, amounts in the Development escrow and reserve accounts, or other accounts relating to the Development, other than amounts in the tax and insurance escrow accounts not required for payments of taxes, payments in lieu of taxes and insurance premiums, shall be the property of the Authority, and the Mortgagor shall have no right to those moneys. All unnecessary amounts remaining in the tax and insurance escrow accounts shall be the property of the Mortgagor.

35. **Severability.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions of this Agreement.

36. **Modification.** This Agreement may not be altered, modified or amended except in writing signed by an authorized agent or representative of the Mortgagor and an Authorized Officer of the Authority.

IN WITNESS WHEREOF, the parties by their duly authorized representatives, have executed this Regulatory Agreement as of the date stated above.

*** LIMITED DIVIDEND HOUSING ASSOCIATION
***, a Michigan ***

By: ***

Its: ***

By: _____

Its:

STATE OF MICHIGAN)
) ss.
COUNTY OF)

The foregoing Regulatory Agreement was acknowledged before me in _____ County, Michigan this ____ day of _____, 2009, by ***, as the *** of ***, a Michigan ***, as the *** of *** Limited Dividend Housing Association ***, a Michigan ***, on behalf of said ***.

Notary Public
County of
State of Michigan
My Commission Expires:
Acting in the County of

MICHIGAN STATE HOUSING
DEVELOPMENT AUTHORITY

By _____
Christopher L. LaGrand
Its: Director of Legal Affairs

STATE OF MICHIGAN)
) ss.
COUNTY OF)

The foregoing Regulatory Agreement was acknowledged before me in _____ County, Michigan this ____ day of _____, 2009, by Christopher L. LaGrand, Director of Legal Affairs of the Michigan State Housing Development Authority, a public body corporate and politic of the State of Michigan.

Notary Public
County of
State of Michigan
My Commission Expires:
Acting in the County of

DRAFTED BY AND WHEN RECORDED
PLEASE RETURN TO: