

TAX CREDIT ASSISTANT PROGRAM 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 mortgage loan in the amount of *** Dollars (\$***) (the "TCAP Loan"), to aid the Mortgagor in financing the acquisition and *construction/rehabilitation* of a housing development for persons of low and moderate income, known as ***, MSHDA Development No. *** (which development, including the Property and all assets of whatever nature owned by the Mortgagor and used in the business conducted on the Property, is referred to in this Agreement as the "Development"). The Development is to be constructed in accordance with the drawings and specifications for the Development, as duly approved by the Authority. The TCAP Loan is to be made by the Authority with funds from the Tax Credit Assistant Program ("TCAP") funded by the U.S. Department of Housing and Urban Development ("HUD") under the American Recovery and Reinvestment Tax Act of 2009 (Public Law 111-5).

C. The Authority is unwilling to make the TCAP 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 Mortgage Loan and TCAP Loan and receiving continuing benefits under the Act.

D. The Development is located at the following address:

and contains *** units, of which *** units are Low Income Housing Tax Credit ("LIHTC") Units, *** units are Section 504 accessible units and *** units are of Energy Star qualified units.

E. The Development has received a Reservation for \$*** of LIHTCs, from the *four percent (4%)/nine percent (9%)* credits awarded under Section 42(h) of the Internal Revenue Code of 1986, as amended (the "Code").

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

1. **Payment of Mortgage Loans.** The Mortgagor shall promptly make all payments due under the mortgage note (the "TCAP Note") as set forth in Exhibit B attached hereto, and will perform all

obligations under the mortgage made to the Authority (the "TCAP Mortgage") on the Development of even date therewith, given as security for the TCAP Note which are incorporated herein by reference.

The Mortgagor shall also promptly make all payments due under the mortgage note (the "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 Mortgage Note and TCAP Note which are incorporated herein by reference.

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

a. TCAP Restrictions. *** (***) of the units in this development (*** ***-bedroom and *** ***-bedroom units) (the "Sixty Percent Units") must be occupied or available for occupancy by households whose incomes do not exceed the 60% income limit for Multifamily Tax Subsidy Projects as determined by HUD with respect to projects financed pursuant to Code Section 142(d) as amended by the Housing and Economic Recovery Act of 2008 (P.L. 110-289) ("MTSP Limits"), adjusted for family size. *** (***) of the units in this development (*** ***-bedroom and *** ***-bedroom units) (the "****Percent Units") must be occupied or available for occupancy by households whose incomes do not exceed *[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%]* ****% of area median gross income based upon the MTSP Limits, adjusted for family size. These restrictions shall remain in effect for the longest of the period the TCAP Loan is outstanding, the time required under the Low Income Housing Tax Credit ("LIHTC") Program Regulatory Agreement or fifty (50) years after closing of the TCAP Loan.

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 TCAP, or, in the case of a development that does not participate in the LIHTC Program, for not less than three years. 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.

3. **Rental Restrictions.**

a. TCAP Units. The Total Housing Expense for the Sixty Percent Units will be limited to the lesser of 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 the *** 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%] ***% 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 latest of the period during which the TCAP Loan is outstanding or the compliance period required by the LIHTC regulatory agreement or fifty (50) years after closing of the TCAP Loan.

b. All Units. For the initial lease term of the first household to occupy a unit in the Development, rent may not exceed 105% of the rents approved in the Authority's Staff Mortgage Loan Report dated ***. In addition, for any continuously-occupied unit the total rent may not be increased more than five percent (5%) during any twelve month period. Exceptions to these limitations may be approved by the Director of Asset Management, but only for the specific purpose of paying for extraordinary increases in Development operating expenses (exclusive of limited dividend payments under Section 5). The rental rate for a unit may be increased to the maximum permitted by subsections 3.a. above, at the time a new tenant takes occupancy of that unit.

c. 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. **Additional Agreements; Covenants Running with the Land.** The Mortgagor agrees that the terms of this Agreement are essential to the making of the TCAP Loan, and that the enforcement of these covenants is necessary to preserve the LIHTC Program and the TCAP Loan benefits. 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, or the repayment of the TCAP Loan.

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. HUD Regulations. The Mortgagor acknowledges that certain of the covenants contained in this Agreement are based upon TCAP Regulations and other TCAP requirements developed by HUD, as they exist on the date hereof and that the TCAP Regulations and other TCAP requirements 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 compliance with TCAP 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 HUD 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; and
 - vi. in accordance with the Authority's Multifamily Annual Certified Audit Guidelines, as amended from time to time (the "Audit Guidelines"). Payments for the first year

of the Development's operation, ending on December 31 of the year in which commencement of amortization of the First Mortgage Loan occurs, are limited to 12% of the Mortgagor's equity, as determined by an Authorized Officer of the Authority. The return will not exceed 12% per annum, until the TCAP loan has been fully repaid. The Mortgagor may request to increase the return on equity upon full payment of the TCAP Loan. Once an increase is approved, the return on equity may increase one percent (1%) each year, to a maximum return on equity of 25%. Equity is defined as the total project cost, established by the Mortgagor's cost certification as approved by the Authority, less total indebtedness including the TCAP Loan and less other federal or state project investment, including but not limited to, HOME funds, CDBG, the Federal Home Loan Bank Affordable Housing Program, Rental Rehabilitation loans, Section 1602 program or other sources. All such payments shall be referred to as "Limited Dividend Payments". The Mortgagor's return on equity shall be fully cumulative.

b. No Limited Dividend Payments shall be made prior to Final Closing of the TCAP Loan, or so long as there is any continuing default under this Agreement or under the TCAP Note or the other documents evidencing and securing the TCAP Loan.

c. Limited Dividend Payments shall not be made for any period prior to the date of the TCAP Note, or for any period prior to the commencement of amortization of the First Mortgage Loan.

d. No Limited Dividend Payments shall be made from TCAP 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. **Surplus Cash and Operating Reserve Cash Account.** The Surplus Cash 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 Operating Reserve Cash Account established by the Authority for the Development (the "ORC Account") 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 ORC Account 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 ORC Account, if any, shall remain in the ORC Account and shall be treated and disbursed in the same way as any Surplus Cash or other funds deposited in that account. Disbursements from the ORC Account 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 Operating Reserve Cash. Disbursements from the ORC Account may also be made to fund Limited Dividend Payments permitted under Section 5 of this Agreement. In the event that the TCAP Loan is accelerated after a default in the terms of the TCAP Mortgage, the Authority may, in its sole discretion but is not required to, apply or authorize the application of the balance on deposit in the ORC Account to the amount due on the TCAP 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

commencement of amortization of the permanent mortgage loan. 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 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 TCAP Loan is accelerated after a default in the terms of the TCAP Mortgage, 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 TCAP Loan as accelerated.

8. Operating Assurance Reserve.

a. Establishment of Reserve. At the time of initial disbursement of the TCAP Loan proceeds, , the Mortgagor shall establish an Operating Assurance Reserve (the "OAR") equal to four months' estimated Development operating expenses, payments required under the Mortgage Loan 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. To the extent that any portion of the OAR is used to fund operating shortfalls prior to the Final Closing of the Mortgage Loan, at Final Closing of the TCAP Loan, the Mortgagor must restore the OAR to its original balance.

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) will be returned to the Authority in an amount not to exceed the outstanding balance of and applied against the TCAP Loan, 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 will be will be returned to the Authority in an amount not to exceed the outstanding balance of and applied against the TCAP Loan, 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 for payment of accumulated limited dividends and to pay operating expenses.

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

a. At or prior to TCAP 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 initially disbursed 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. Each month the Authority will withdraw 1/12th of the projected annual deficit for that specific year from the ODR, and will apply it against scheduled debt service payments due that month. This will continue each year until the ODR has been depleted or the TCAP Loan is paid in full.

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 commencement of amortization of the First Mortgage Loan, the Authority will determine the amount sufficient to fund projected operating deficits through the remaining term of the TCAP Loan. 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 TCAP Loan. In the event that the TCAP Loan is accelerated after a default in the terms of the TCAP Mortgage, TCAP Note or Regulatory Agreement, 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 TCAP Loan as accelerated.

e. At such time as the TCAP Loan and all other financial obligations to the Authority are paid in full, the remaining balance of the ODR, including all interest which has accumulated, will be disbursed to the Mortgagor.

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, First Mortgage Loan and TCAP Loan principal and interest and limited dividend payments. If the schedule of rental rates does not comply with applicable Authority limitations or TCAP Regulations and other TCAP requirements 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, and TCAP Regulations and other TCAP requirements, that will assure decent, safe and sanitary housing according to the standards set by the Authority. 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 TCAP 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 TCAP Regulations and other TCAP 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, and the issuance of the Authority's Permission to Occupy. 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 15 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, HUD and the HUD Inspector General, at the Development site or any other location acceptable to the Authority, HUD or the HUD Inspector General,. The Mortgagor shall retain copies of all documents relating to the Development for at least fifteen (15) 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 TCAP and the policies, General Rules and requirements of the Authority, HUD and the HUD Inspector General. Within three (3) business days of a written request by the Authority, HUD or the HUD Inspector General,, the Mortgagor shall furnish copies of or make available for review by the Authority or its authorized agents, HUD or the HUD Inspector General, at the Development site or any other location acceptable to the Authority, HUD or the HUD Inspector General,, 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 , HUD and the HUD Inspector General, from time to time to assure itself of compliance with the Authority's policies and the LIHTC and TCAP Regulations and other TCAP 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 and as may be required by the TCAP Regulations and other TCAP requirements. 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 the TCAP Loan. Additionally, the Mortgagor shall furnish all reports and information required by or in order to document compliance with the TCAP Regulations and other TCAP 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 TCAP Mortgage, for Limited Dividend Payments, for the deposit of Surplus Cash into the ORC Account, or for payments into the Replacement Reserve Fund, 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 also comply with the TCAP Regulations and other TCAP requirements with respect to the TCAP -Assisted 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, transfer, or encumber any of the Development, or permit the conveyance, transfer or encumbrance of all or any portion of the Development, except as provided in the TCAP Mortgage.

b. Assign, transfer, dispose of, or encumber any personal property of the Development, including the Receipts, or pay out any funds, except as permitted in Section 18 above and subparagraph d of this Section.

c. Convey, assign, or transfer the interest of any general partner in the Mortgagor, or any right to manage or receive Receipts or any other form of income from the Development.

d. Remodel, add to, reconstruct, or demolish any part of the Property or subtract from any real or personal property of the Development in excess of \$5,000.00.

e. Engage in any other business activity, including the operation of any other rental housing development, or incur any liability or obligation not in connection with the Development.

f. 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.

g. 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 TCAP Loan is dependent upon compliance with use restrictions arising out of the Code, Regulations of the United States Department of Treasury and TCAP Regulations and other TCAP requirements of HUD.

h. 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.

i. 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.

j. 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. As used in this instrument, the term "Authority" shall be deemed to include any persons to whom the TCAP Mortgage Note and TCAP Mortgage referred to above shall be assigned.

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) and implementing regulations, Title VI of the of the Civil Rights Act of 1964 (42 U.S.C. 2000(d) and implementing regulations, 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) and implementing regulations, the Americans with Disabilities Act and implementing regulations, 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, the TCAP Program Affirmative Fair Marketing requirements set forth in the TCAP Regulations and other TCAP requirements, as to the TCAP-Assisted Units, 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.

25. **Default and Remedies.** The violation of any provision of this Agreement by the Mortgagor shall be a default under this Agreement and the TCAP 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 TCAP Mortgage or other document executed in connection with the TCAP 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, and in the case the Mortgagor violates the provisions of Sections **2, 3, 14, 15, 16, 17, 23, 24, 29, 30, 32, or 35** of this Agreement, the LIHTC or TCAP Regulations and other LIHTC or TCAP requirements the Authority shall, 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 TCAP Mortgage Note and TCAP Mortgage evidencing and securing the TCAP Loan. Further, in the event that the Mortgagor becomes subject to the recapture provisions set forth in Section 30 hereof, the Authority may exercise remedy provided in the TCAP Mortgage or other document executed in connection with the TCAP Loan, or any other remedy it may have at law or in equity in the effectuate such recapture. 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.

If the Mortgagor should violate the provisions of Sections 2, 3, 14, 15, 16, 17, 23, 24, 29, 30, 32, or 35 of this Agreement HUD or any resident in the Development, 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, be designated by the Mortgagor as its legal business address. A copy of all such notices must also be sent to the Authority, to the address stated in this Agreement, or such other address as may subsequently, be designated by the Authority as its legal business address If the default is not corrected to the satisfaction of HUD or the resident in the Development sending such notice of default, within 30 days after the day such notice is mailed or within such further time as HUD or the resident in the Development, sending such notice of default reasonably determines is necessary to correct the default, HUD or the resident in the Development, sending such notice of default, upon further notice to the Mortgagor and Authority may seek any other remedy it may have at law or in equity in the event of such a default. Such 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; or for such other relief as may be appropriate.

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

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

28. **Personal Liability of Mortgagor and Partners/Members of Mortgagor.** Nothing contained in the TCAP Mortgage securing the TCAP Loan shall be deemed to be a release or impairment of any obligation of the Mortgagor contained in this Agreement.

Neither the Mortgagor nor any partner or member of the Mortgagor assume personal liability for payments and deposits due under the TCAP Note and TCAP Mortgage evidencing and securing the TCAP Loan or for matters not under their control, except:

a. For Receipts or other funds or any property of the Development coming into their hands which, by the provisions of this Agreement, they are not entitled to retain;

b. For their own acts and deeds or acts and deeds of others which they have authorized in violation of the provisions of this Agreement;

c. For any obligation, undertaking, or indemnity of the Mortgagor as set forth in the Environmental Indemnification Agreement of the same date as this Agreement, and

d. For any recapture requirement for which the Mortgagor may be liable under section 30 hereof.

29. **TCAP Covenants as to Development.** The Mortgagor covenants and agrees that:

a. It will use the proceeds of the TCAP Loan to provide a residential rental project consisting of a building or buildings that are qualified low-income building(s) under Section 42 of the Code.

b. 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.

c. 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 extended use period as defined in the Section 42(h)(6)(B) of the Code.

d. That:

i. The final sources and uses for the development, including total development costs, total amount of TCAP funds to be used for the development and the total amount of equity to be raised by syndication of the LIHTCs is set forth in Exhibit C attached hereto;

ii. The Development will be *constructed/rehabilitated* pursuant to the schedule attached hereto in Exhibit D attached hereto;

iii. The Mortgagor may not request disbursement of any TCAP funds until the funds are needed for payment of costs eligible for reimbursement pursuant to TCAP Regulations and other TCAP requirements. The Mortgagor must submit all requests for TCAP funds as established in the *Building Loan Agreement/Intercreditor Agreement* and must submit all documentation described in Exhibit E hereto.

iv. The Mortgagor cannot request or receive TCAP funds in excess of actual costs incurred that are eligible for reimbursement pursuant to TCAP Regulations and other TCAP requirements and that there can be no lump sums of TCAP funds advanced or TCAP funds placed in escrow to fund future advances.

e. The Mortgagor covenants that 75% of the costs to be reimbursed by TCAP funds must be incurred by February 16, 2011, all costs to be reimbursed by TCAP funds must be incurred by ***, 2012, all TCAP funds must be disbursed by the Authority by ***, 2012 and must be expended upon a Development which meets all TCAP Regulations and other TCAP requirements and which is placed in service, as defined by Section 42 of the Code, by ***February 12, 2012, or such other date as HUD may require or permit. Any TCAP funds not disbursed by that date shall be forfeited.

30. **Recapture.** The Mortgagor is hereby notified and hereby acknowledges that:

a. If it has received funds for costs ineligible pursuant to TCAP Regulations and other TCAP requirements any TCAP funds used for ineligible costs shall become subject to recapture.

b. If the Mortgagor shall fail:

i. to complete *construction/rehabilitation* of the Development and/or to complete *construction/rehabilitation* of the Development in compliance with all TCAP Regulations and other TCAP requirements and place the Development in service, as defined by Section 42 of the Code, by ***February 12, 2012, or such other date as HUD may require or permit, or

ii. to comply with the requirements imposed upon an Owner under the terms of the 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;

such failure shall cause all TCAP funds to become subject to recapture.

In the event that the Mortgagor shall become liable for the Recapture Requirement, it shall satisfy the Recapture Requirement within the time specified in the written notice thereof to the Mortgagor by the Authority.

31. **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.

32. **Other Federal Requirements:** The Mortgagor has complied or will comply with the provisions of Section 504 of the Rehabilitation Act of 1973 and implementing regulations, the National Environmental Policy Act and related laws and implementing regulations, the Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Davis-Bacon Act and implementing regulations, the "Anti-Lobbying" Restrictions of 31 USC 1352 and implementing regulations, and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) and implementing regulations. The Mortgagor shall post signage for the Development in a manner consistent with criteria established by HUD. Further, the Mortgagor acknowledges that the regulations set forth in 2 CFR Part 2424 "Non-procurement Debarment and Suspension", are applicable.

33. **Asset Management Fee.** The Mortgagor shall pay the Authority an annual asset management fee in the amount of \$***.

34. **Ownership of Reserves.** The Mortgagor hereby agrees and acknowledges that, upon the payment in full of the TCAP Loan, sale of the development or refinancing of the TCAP Loan, all 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, remaining after payment to the Mortgagor of all permissible Limited Dividend Payments, 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. **Restructuring** THE HUD NOTICE STATES THAT THE AGREEMENT MUST DESCRIBE THE ACTIONS THAT MAY BE REQUIRED FOR FINANCIAL RESTRUCTURING OR MANAGEMENT ACTIONS TO ENSURE THE LONG-TERM VIABILITY OF THE PROJECT. THIS LANGUAGE IS BEING DEVELOPED.

36. **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.

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

38. **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.

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

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

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

MICHIGAN STATE HOUSING
DEVELOPMENT AUTHORITY

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

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:

EXHIBIT B
REPAYMENT TERMS OF TCAP LOAN

The TCAP Loan shall bear interest at the rate of three and 00/100 (3.0%) percent per annum. No payments on the TCAP Loan will be required prior to January 1, 2013 or so long as any deferred developer fees due to *** (the "Developer") under the terms of the Mortgagor's Amended and Restated *** Agreement, remain unpaid, but in no event longer than twelve years following the date of amortization of the mortgage Loan from *** (the "Lender") (the "First Mortgage Loan") commences. At the earlier of: the year in which the all developer fees due to the Developer have been paid in full or the 13th year following the date that amortization of the First Mortgage Loan commences, repayment of the TCAP loan will be made from not less than twenty-five percent (25%) of any funds otherwise available to the Mortgagor for distribution ("Surplus Cash"), as determined by the Mortgagor's annual audit of the Development's operations. Such payments shall be applied first to accrued interest, then to current interest and principal, unless the TCAP Note is accelerated. So long as the First Mortgage Loan is outstanding, payments on the TCAP Loan shall be paid to the Authority *** on or before the date on which any Limited Dividend Payment is distributed, but in no event later than April 30th of that year.

If the TCAP Loan is still outstanding, then beginning on the first day of the first month following repayment or acceleration of the First Mortgage Loan and continuing on the first day of every month thereafter, the Mortgagor shall make monthly payments of principal and interest on the TCAP Loan to the Authority equal to the monthly payments previously paid by the Mortgagor on the First Mortgage Loan, until the TCAP Loan is paid in full or accelerated as provided below. Notwithstanding the foregoing, all principal and interest payable under the TCAP Loan shall be paid in full no later than ***.

The TCAP Loan may not be prepaid prior to January 1, 2013. After that date, it may be prepaid, in full or in part, without penalty or fee upon sixty (60) days written notice to the Authority.

EXHIBIT E
REQUIREMENTS FOR DISBURSEMENT OF TCAP FUNDS