

## TCAP SECOND MORTGAGE

THIS SECOND MORTGAGE made as of \*\*\* 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 Authority is eligible to receive funding from the U.S. Department of Housing and Urban Development ("HUD") for purposes of the implementation of the Tax Credit Assistance Program ("TCAP") established pursuant to the American Recovery and Reinvestment Tax Act of 2009 (Public Law 111-5).

B. The Mortgagor has applied for and is justly indebted to the Authority for a mortgage loan utilizing TCAP funds in the principal amount of \*\*\*Dollars (\$\*\*\*) (the "TCAP Loan") to assist in the financing of the acquisition and construction or rehabilitation of a certain housing development to be known as \*\*\*, \*\*\*MSHDA Development No\*\*\* (the "Development"), to be secured by this TCAP Second Mortgage (the "Second Mortgage").

C. The Mortgagor is indebted \*\*\* for a first mortgage loan in the amount \*\*\* Dollars (\$\*\*\*) (the "First Mortgage Loan"), evidenced by a mortgage note dated as of \*\*\*even date herewith (the "First Mortgage Note") and secured by a first mortgage on the Development (the "First Mortgage")

D. This TCAP Second Mortgage has a final maturity date of December 1, 2057.

E. The TCAP Note and all of its terms are incorporated in this TCAP Second Mortgage (the "Second Mortgage") by reference and this conveyance shall secure any and all extensions thereof, however evidenced.

F. If the Mortgagor shall fail to comply with terms of the TCAP, as more particularly set forth in the Tax Credit Assistance Program Regulatory Agreement ("the Regulatory Agreement") between the Mortgagor and the Authority, dated of even date herewith, such failure shall cause the Mortgagor to be subject to a recapture requirement (the "Recapture Requirement") for all or part of the TCAP Loan.

D. The Recapture Requirement is also secured by this TCAP Second Mortgage (the "Second Mortgage").

E. The TCAP Note and any future advances (as defined in MCL §565.901 et seq.) made by the Authority (collectively referred to as the "TCAP Loan") are secured by this TCAP Second Mortgage.

NOW, THEREFORE, for the better securing of: (1) the payment of the TCAP Loan and interest thereon; (2) the Recapture Requirement; and (3) the performance of all of the covenants and agreements contained in this Second Mortgage, the TCAP Mortgage Note, and the Regulatory Agreement and all the other documents executed in connection with the TCAP Loan or the First Mortgage Loan (collectively, the "Loan Documents"), the Mortgagor MORTGAGES AND WARRANTS to the Authority, its successors or assigns, and GRANTS A SECURITY INTEREST to the Authority, its successors or assigns in, the real property located in the City/Township of \*\*\*, \*\*\*, Michigan, and described in Exhibit A which is attached and made a part of this Second Mortgage (the "Property").

TOGETHER, with all buildings, improvements and fixtures of every kind and description now or hereafter erected or placed on the Property (the "Improvements"); and TOGETHER, with all building materials and equipment located on the Property and intended to be incorporated into the Improvements, and all goods affixed or to be affixed to the Property or the Improvements, and all machinery, apparatus, equipment, fittings, and articles of personal property of every kind and nature whatsoever, now or hereafter located in or upon the Property or the Improvements or any part thereof and used or usable in connection with any present or future operation of the Development and now owned or hereafter acquired by the Mortgagor, including but not limited to all gas and electric fixtures, heating, lighting, and plumbing fixtures, laundry, incinerating and power equipment, engines and machinery, radiators, heaters, furnaces, steam and hot water boilers, stoves, ranges, refrigerators, elevators, pipes, pumps, ducts, tanks, motors, compressors, conduits, switchboards, fire-prevention, fire-extinguishing, ventilating and communications apparatus, air-cooling and air-conditioning apparatus, bathtubs, sinks, water closets, basins, cabinets, mantels, furniture, shades, awnings, partitions, screens, blinds, curtains, carpeting and other furnishings (the "Personal Property").

The Property, Personal Property and Improvements together comprise and shall be referred to as the Development, and are part and parcel of the Development and appropriated to the use of the Development and, whether affixed or annexed or not, shall be deemed subject to the lien of this Second Mortgage. The Mortgagor agrees to execute, acknowledge and deliver, from time to time, any other documents that are necessary to confirm and perfect the lien of this Second Mortgage on any Personal Property under the provisions of the Uniform Commercial Code. This Second Mortgage shall also serve as a security agreement, and is intended to be effective as a financing statement.

TO HAVE AND TO HOLD the Development, forever, provided that if the Mortgagor makes all payments when due under the TCAP Mortgage Note and performs all of the agreements of the Loan Documents, then this Second Mortgage and the TCAP Mortgage Note shall be null and void; otherwise this Second Mortgage and the TCAP Mortgage Note shall remain in full effect.

And the Mortgagor hereby covenants as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby made a part of this Second Mortgage.

2. **Payment of Note and Performance of TCAP Loan.** The Mortgagor will make all payments required under the TCAP Mortgage Note and perform all other obligations of the Mortgagor as contained in this Second Mortgage and the other Loan Documents at the times and in the manner provided therein. The TCAP Mortgage Note and all of its terms are incorporated herein by reference, and this Second Mortgage shall secure any and all extensions thereof, however evidenced. 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.

3. **Prepayment.** The Mortgagor may prepay the TCAP Loan, or any part thereof prior to January 1, 2013. After that date, it may be prepaid, in full or in part, without penalty or prepayment fee, upon

sixty (60) days written notice to the Authority.

4. **Tax and Insurance Escrow.** As additional security for the repayment of the TCAP Loan and the performance of this Second Mortgage and the Loan Documents, unless paid pursuant to the terms of the First Mortgage, the Mortgagor will pay the Authority on the first day of each month until the indebtedness secured hereby is fully paid, a sum equal to the ground rents, if any, next due, plus the premiums that will next become due and payable on all policies of insurance required by the Authority in connection with the TCAP Loan, taxes, payments in lieu of taxes and assessments next due on the Development (collectively referred to as the "Impositions") as estimated by an Authorized Officer of the Authority), less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when the Impositions will become delinquent. All such sums will be held by the Authority in trust to pay the Impositions.

5. **Application of Payments.** All payments made pursuant to the TCAP Mortgage Note and Section 4 above shall be added together and the aggregate amount thereof shall be paid by the Mortgagor, as required by the TCAP Note, in a single payment to be applied by the Authority to the following items in the order given:

- A. The Impositions, unless paid pursuant to the terms of the First Mortgage.
- B. Accrued interest on the TCAP Loan
- C. Current interest on the TCAP Loan.
- D. Repayment of the principal of the TCAP Loan.

6. **Application of Excess Escrow Funds.** Any excess funds remaining and accumulated after payment of the items mentioned in Section 5 shall be credited to subsequent monthly payments of the same nature; but if any such charges exceed the Authority's estimate therefor, the Mortgagor shall promptly make good the deficiency upon the request of the Authority. Failure to do so within thirty (30) days of the request or before the due date of such item shall be a default hereunder. If the Development is sold in foreclosure or is otherwise acquired by the Authority after default, any excess funds on hand shall be credited to the principal of the TCAP Loan as of the date of commencement of foreclosure proceedings or as of the date the Development is otherwise acquired.

7. **Payment of Taxes and Other Charges.** The Mortgagor will pay, before the same become delinquent or subject to interest or penalties, all of the Impositions and all other charges and encumbrances which now are or may hereafter become a lien upon the Development or any part thereof, and in default thereof the Authority may, without demand or notice, pay the Impositions plus all penalties or late fees, and shall be the sole judge of the amount necessary to be paid therefore.

8. **Insurance.** The Mortgagor will keep the Improvements insured against loss from fire and such other hazards, casualties, and contingencies as may be required by an Authorized Officer of the Authority, and all such insurance shall be evidenced by a standard Fire and Extended Coverage Insurance policy or policies, in amounts not less than necessary to comply with the applicable Coinsurance Clause percentage, but in no event shall the amounts of coverage be less than (a) eighty (80%) percent of the actual cash value of the insurable Improvements and Personal Property at the Development or (b) the unpaid balance of the TCAP Loan when added to the unpaid balance of the First Mortgage Loan, whichever is the greater. In default thereof, the Authority may obtain such insurance as it deems necessary or advisable, and the Mortgagor agrees that it will pay the cost of all insurance to the Authority as provided in Section 4 hereof, or if the Authority expends any sums to obtain the insurance, will promptly reimburse the Authority. All policies shall be endorsed with a standard mortgagee clause with loss payable to the Authority, shall be issued

by companies qualified to do business in the State of Michigan and acceptable to an Authorized Officer of the Authority, shall be in form and amount and with premium charges satisfactory to an Authorized Officer of the Authority, and shall provide that the Authority shall be given thirty (30) days advance written notice of the cancellation, expiration or termination of the policy or any material change in the coverage afforded thereunder. The originals of all insurance policies shall be deposited with the Authority.

9. **Application of Insurance Proceeds.** If the Development or any part of it is damaged by fire or other hazard insured against, and the Authority determines that, as a result of such damage, the Mortgagor is subject to the Recapture Requirement, the amounts paid by any insurance company pursuant to a policy of insurance shall, be paid to the Authority to the extent of the outstanding Recapture Requirement. If the Authority determines that, as a result of such damage, the Mortgagor is not subject to the Recapture Requirement, then, at the option of an Authorized Officer of the Authority, after payment of the First Mortgage Loan the proceeds may be applied first to interest, and then to principal owed under the TCAP Loan or released for the repairing or rebuilding of the Development. No amount applied to the reduction of the principal of the TCAP Loan shall relieve the Mortgagor from making further payments hereunder following the date of receipt of the proceeds; provided, however, the principal balance of the TCAP Loan may be reamortized on terms acceptable to an Authorized Officer of the Authority if a substantial partial prepayment is made from insurance proceeds received as the result of damage to or the partial destruction of the Development, and there is a resulting loss of income from the Development.

10. **Application of Condemnation Awards.** All awards of damages in connection with any condemnation for public use of or injury to any of the Development and the Authority determines that, as a result of such Condemnation, the Mortgagor is subject to the Recapture Requirement, shall, be paid to the Authority to the extent of the outstanding Recapture Requirement. If the Authority determines that, as a result of such condemnation, the Mortgagor is not subject to the Recapture Requirement, then, at the option of an Authorized Officer of the Authority, after payment of the First Mortgage Loan the proceeds may be applied first to interest and then to principal owed under the TCAP Loan, or released for the repairing or rebuilding of the Development. No amount applied to the reduction of the principal of the TCAP Loan shall relieve the Mortgagor from making further payments hereunder following the date of receipt of the proceeds; provided, however, the principal balance of the TCAP Loan may be reamortized on terms acceptable to an Authorized Officer of the Authority if a substantial partial prepayment is made from a condemnation award received as the result of a loss of all or any portion of the Development, and there is a resulting loss of income from the Development. The Authority is hereby authorized in the name of the Mortgagor to execute and deliver valid acquittances for such awards and to appeal such awards.

11. **Waste.** The Mortgagor will not commit nor permit to be committed any waste on the Development and will keep the Improvements and all Personal Property in good repair, and promptly comply with all laws, ordinances, regulations and requirements of any governmental body affecting or regulating the Development. If the Development or any part of it requires inspection, repair, care, or attention of any kind or nature not provided by the Mortgagor, the Authority may, after notice to the Mortgagor, enter or cause entry to be made upon the Development to inspect, repair, protect, care for or maintain the Development, and may effect any repair, protection, care or maintenance, of whatever nature and at whatever cost it may deem necessary or advisable, in its sole and absolute discretion.

12. **No Other Use or Alteration of the Premises.** So long as this Second Mortgage encumbers the Development, no part of the Development shall be used for any purpose nor will the Mortgagor permit or suffer any alteration of or addition to the Development other than as provided in the Regulatory Agreement \*\*\*and the Building Loan Agreement by and between the Mortgagor and the Authority for the construction of the Development (the "Building Loan Agreement"), without the prior written consent of an Authorized Officer of the Authority.

13. **Cost of Title History Upon Default.** If there is a default under this Second Mortgage, an Authorized Officer of the Authority may cause the abstract or abstracts of title, or Title Insurance Policy and the tax histories of the Development to be certified to date, or may procure new abstracts of title or Title Insurance Policies and/or tax histories or title searches in case none were furnished to it, and may pay whatever sums as it may deem to be necessary to obtain them.

14. **Payment of Mortgage Tax.** In the event that there shall become due or shall be levied upon the Development or this Second Mortgage any mortgage tax or similar tax, the Mortgagor shall promptly pay the same, and if unpaid, the Authority may pay the mortgage tax on this instrument, and shall be the sole judge of the amount necessary to be paid therefore.

15. **Payments to be Further Lien.** The Mortgagor shall promptly pay to the Authority all sums of money paid or expended by the Authority pursuant to the provisions of the Loan Documents, together with interest upon all such sums from the date of expenditure until paid at the rate of interest payable on the principal amount of the TCAP Loan, and all unpaid sums shall be a further lien on the Development under this Second Mortgage.

16. **Non-Discrimination Covenant.** The Mortgagor will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the Development on the basis of sex, race, color, religion, creed, national origin, age (unless with respect to a senior citizens housing program), handicap, family status or marital status except as provided by law.

17. **Events of Default and Acceleration.** If the Mortgagor fails to make any payment when due, become liable for the Recapture Requirement or to perform any obligation required under the terms of the TCAP Loan, the Regulatory Agreement, or the Loan Documents, and such payment is not made within thirty (30) days of the due date of such payment, or such obligation is not performed within thirty (30) days of written notice thereof to the Mortgagor by the Authority, then the entire principal balance of the TCAP Loan and any other sums due under any other Loan Document shall, at the option of an Authorized Officer of the Authority and without notice, become immediately due and payable. The failure of the Authority to exercise this option after any default does not waive its right to exercise the option at any time for a continuing or subsequent default.

18. **No Forbearance or Waiver.** No sale of the Development, no forbearance on the part of the Authority, nor extension of the time for the payment of the indebtedness secured by this Second Mortgage shall operate to release, discharge, modify, change or affect the original liability of the Mortgagor herein either in whole or in part. No waiver by the Authority of any right or remedy granted under this Second Mortgage or failure to insist upon strict performance of the Mortgagor's obligations under this Second Mortgage shall affect any other right or remedy of the Authority or the subsequent exercise of the same right or remedy. All rights and remedies of the Authority are cumulative.

19. **NOTICE: THIS MORTGAGE CONTAINS A POWER OF SALE AND UPON DEFAULT MAY BE FORECLOSED BY ADVERTISEMENT AS HEREIN PROVIDED.** Upon default being made in the payment of the sums of money herein agreed to be paid, or in the performance of any of the covenants or agreements herein contained according to the terms hereof or of the TCAP Mortgage Note secured hereby, the holder of this Note is hereby authorized and empowered to sell the Development or cause it to be sold and to convey the same to the purchaser in any lawful manner, including but not limited to that provided in the Act and by Section 49 of the Act entitled "Foreclosure of Mortgage by Advertisement," which permits the mortgage holder to sell the Development without affording the Mortgagor a hearing, or giving it personal notice; the only notice required is to publish notice in a newspaper of general circulation in the county wherein the Development is located and to post a copy of the notice on the mortgaged premises.

**WAIVER:** BY CONFERRING THIS POWER OF SALE UPON THE MORTGAGE HOLDER, THE MORTGAGOR FOR ITSELF, ITS SUCCESSORS AND ASSIGNS HEREBY WAIVES ALL RIGHTS UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES AND UNDER THE CONSTITUTION AND LAWS OF THE STATE OF MICHIGAN BOTH TO A HEARING ON THE RIGHT TO EXERCISE AND THE EXERCISE OF THE POWER OF SALE, AND TO NOTICE EXCEPT AS REQUIRED BY THE MICHIGAN STATUTE WHICH PROVIDES FOR FORECLOSURE BY ADVERTISEMENT. However, the Mortgagor reserves the right to timely contest the exercise of the power of sale by instituting suit against the mortgage holder in the circuit court of the county in which the Development is located or any other court of competent jurisdiction.

The Mortgagor further agrees that the mortgage holder is authorized and empowered to retain out of the sale proceeds such monies as are due under the terms of this Second Mortgage, the costs and charges of such sale, and also the attorney's fee provided by statute or as otherwise provided by a court of competent jurisdiction, rendering the surplus monies (if any there should be) to the Mortgagor. In the event of a public sale, the Property may, at the option of the mortgage holder, be sold in one or more parcels.

20. **Incorporation of Regulatory Agreement.** The Regulatory Agreement executed contemporaneously by the Mortgagor, which is being recorded simultaneously herewith, is incorporated in and made a part of this Second Mortgage. Should any default be made by the Mortgagor in any of the terms, conditions or provisions of such Regulatory Agreement, or default in satisfying the Recapture Requirement, such default shall constitute a default by the Mortgagor under this Second Mortgage, and an Authorized Officer of the Authority may declare the whole of the indebtedness secured hereby to be due and payable and exercise any other rights and remedies provided to the Authority by the provisions hereof in the event of default under this Second Mortgage.

21. **Assignment of Rents; Appointment of Receiver.** The Mortgagor stipulates and agrees that if default shall be made in the payment of the aforesaid principal sum or interest or any other sum secured hereby, or any part thereof, or in the payment of the Impositions at the time and in the manner specified for the payment thereof, or in the performance of any of the covenants and agreements contained in the Loan Documents, the Mortgagor in such case does hereby bargain, sell, assign and set over to the Authority all the rents, income and profits which, whether before or after foreclosure of this Second Mortgage or during the period of redemption, shall accrue and be owing for the use or occupation of the Development and does hereby constitute and appoint the Authority attorney-in-fact of the Mortgagor, irrevocably, with full power and authority to at once enter upon and take full possession of the Development, lease and control the same, and to receive, collect and receipt for all sums due or owing for such use or occupation as the same accrue, and out of the amount so collected to pay all of the Impositions and the payments accrued and accruing on the TCAP Loan or under this Second Mortgage, and the cost of collecting such rents, income and profits so far as the sums so collected by the Authority shall be sufficient for that purpose, paying the surplus from time to time, if any, to the Mortgagor. In any action to foreclose, the Authority shall be entitled to the appointment of a receiver of the Development as a matter of right, and without notice, with power to collect the rents, issues, and profits of the Development, due and becoming due, during the pendency of such foreclosure suit, such rents and profits being hereby expressly assigned and pledged as additional security for the payment of the indebtedness secured by this Second Mortgage, and with power to manage the Development during the pendency of such foreclosure suit. The Mortgagor, for itself and any subsequent owner, hereby waives any and all defenses to the application for a receiver as set forth above and hereby specifically consents to such appointment without notice, but nothing herein contained is to be construed to deprive the Authority of any other right, remedy, or privilege it may now have under the law to have a receiver appointed or to take possession itself.

22. **No Further Liens.** Except for the lien of the First Mortgage, the Mortgagor will not voluntarily create or permit to be created against the Development any lien or liens, whether superior or junior

to the lien of this Second Mortgage, and agrees to keep and maintain the Development free from the claims of all persons supplying labor or materials that will be used in the construction of the Development and the failure of the Mortgagor to keep the Development lien-free shall be a default under this Second Mortgage.

23. **Compliance with Ordinances and Regulations.** The Mortgagor agrees that the Improvements and the Development and all plans and specifications comply with all municipal ordinances and regulations made or promulgated by lawful authority and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the Board of Fire Underwriters having jurisdiction. In the event that the Mortgagor shall at any time fail to comply with such rules, regulations and ordinances which are now or may hereafter become applicable to the Development, after due notice and demand by the Authority, thereupon the principal of the TCAP Loan and all arrearages of interest shall, at the option of an Authorized Officer of the Authority, become due and payable, anything contained herein to the contrary notwithstanding.

24. **Use of Funds.** The funds to be advanced hereunder are to be used for the acquisition cost of the Property, the Personal Property, goods which are to become fixtures in the Development and in the construction of the Improvements and the Development in accordance with the \*\*\* *Loan Document/ Building Loan Agreement* executed by the Mortgagor for the construction or rehabilitation of the Development, which, except such part or parts thereof as may be inconsistent with this Second Mortgage, is incorporated herein by reference to the same extent and effect as is fully set forth and made a part of this Second Mortgage. If the construction of the improvements to be made pursuant to the Building Loan Agreement shall not be carried on with reasonable diligence, or shall be discontinued at any time for any reason other than strikes or lock-outs, after due notice to the Mortgagor or any subsequent owner, the Authority is hereby constituted and appointed the Mortgagor's true and lawful attorney-in-fact with full power of substitution in the premises, and is invested with full and complete authority to enter upon the Property and into the Development. As attorney-in-fact for the Mortgagor the Authority may employ watchmen to protect such improvements from depredation or injury and to preserve and protect the personal property therein, and to continue any and all outstanding contracts for the erection and completion of such building or buildings, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of the Mortgagor, and to pay and discharge all debts, obligations and liabilities incurred thereby. All such sums so advanced by the Authority (exclusive of advances of the principal of the TCAP Loan secured hereby) shall be added to the principal of the TCAP Loan secured hereby and shall be secured by this Second Mortgage and shall be due and payable on demand with interest at the rate in accordance with the TCAP Mortgage Note. The principal of the TCAP Loan and other charges provided for herein shall, at the option of an Authorized Officer of the Authority, become due and payable on the failure of the Mortgagor to keep and perform any of the covenants, conditions, and agreements of such \*\*\* *Loan Document/ Building Loan Agreement*. This covenant shall be terminated upon the completion of the improvements to the satisfaction of the Authority and the making of the final advance of TCAP Loan proceeds as provided in such \*\*\* *Loan Document/ Building Loan Agreement*.

25. **Limitation of Liability.** The covenant of the Mortgagor or any partner or member thereof to pay principal and interest is included in the TCAP Mortgage Note and in this Second Mortgage for the purpose of further establishing and continuing the existence of the indebtedness. However, it is a condition of said covenant that in the event of a default in the payment of the indebtedness secured hereby, the Authority shall take no action against the Mortgagor or any partner or member thereof personally for the payment of the TCAP Loan and interest thereon. Except for the foregoing limitation as to personal liability of the Mortgagor or any partner or member thereof for the payment of the indebtedness secured hereby, the Mortgagor acknowledges and agrees to be bound by all the covenants contained herein. The Mortgagor acknowledges and agrees that the Authority may prosecute any suit necessary to subject to the satisfaction of the indebtedness the property described herein and any improvements, fixtures and equipment located thereon or used or usable in connection with the operation of the Development.

26. **Supremacy of the Act.** The Mortgagor acknowledges and expressly agrees that the Authority must carry out all its duties under the Act to the end that the public purposes of the Act shall be fulfilled, and it is agreed that nothing contained in this Second Mortgage shall be or be deemed to be, a release or impairment of any covenant or agreement of the Mortgagor or any partner thereof, except as set forth in Section 25 above, under the Act, the \*\*\*Agreement of the Mortgagor, *Loan Documents/Building Loan Agreement* or the Regulatory Agreement, and neither the Authority's exercise of its rights under the Act or any of the aforesaid agreements, nor the specific enforceability of any obligation arising out of the Act or the aforesaid agreements, shall be deemed to be prohibited or impaired hereby.

27. **Authorized Officers of the Authority.** Except as otherwise provided herein, 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 Second Mortgage: the Executive Director, the Deputy Director, the Director of Finance, and the Director of Legal Affairs. The term "Authorized Officer of the Authority" refers to the foregoing employees of the Authority when acting within the scope of their authority.

28. **Inspection.** The Authority may make or authorize reasonable entries upon and inspections of the Development, provided that the Authority shall give the Mortgagor notice prior to any inspection specifying reasonable cause therefor related to the Authority's interest in the Development.

29. **Remedies Cumulative.** All remedies provided in this Second Mortgage are distinct and cumulative to any other right or remedy under this Second Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

30. **Cross Default.** In the event of any default in any other obligation, covenant or agreement of the Mortgagor to or with the Authority made in connection with the TCAP Loan or in connection with the First Mortgage Loan, such default shall constitute a default by the Mortgagor under this Second Mortgage, and an Authorized Officer of the Authority may declare the whole of the indebtedness secured hereby to be due and payable and exercise any other rights and remedies provided to the Authority by the provisions hereof in the event of default by the Mortgagor.

31. **Severability.** The invalidity of any clause, part or provision of this Second Mortgage shall not affect the validity of the remaining provisions of this Second Mortgage.

32. **Miscellaneous.** The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural and the singular, and use of any gender shall be applicable to all genders.

33. **Subject to First Mortgage.** This Second Mortgage is subordinate and subject to the First Mortgage. Any insurance proceeds or condemnation awards received pursuant to Sections 9 or 10 above shall first be applied to all amounts due under the First Mortgage Note or secured by the First Mortgage, in the manner described therein. Any proceeds or award remaining shall then be applied to any amounts owing under the TCAP Mortgage Note as described in Sections 9 and 10 above. Upon the repayment in full of the First Mortgage Loan, if any balance of the TCAP Loan is still outstanding, then this Second Mortgage shall become the first and paramount mortgage of the Development.

34. **Compliance with Section 42(h)(6)(E).** The Authority and the Mortgagor agree that the lien of this Second Mortgage shall also be subordinate to Section 6 of the Low Income Housing Tax Credit Regulatory Agreement to be recorded against the Development, which provides that, before the close of the 3-year period following the date of the acquisition of the Development by foreclosure (or instrument in lieu of



foreclosure), the owner of the Development shall not permit (I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or (II) any increase in the gross rent with respect to such unit not otherwise permitted under Section 42 of the Internal Revenue Code of 1986, as amended (the "Code") and regulations promulgated thereunder. The purpose of this section shall be to comply with Section 42(h)(6)(E) of the Code, and it shall survive a foreclosure of the TCAP Loan.

35. **Single Asset Mortgagor.** The Mortgagor is a single-asset, sole purpose borrower, and agrees that it will not own or acquire any assets other than the Development and related assets.

36. **No Modification.** No modification to this Mortgage shall be binding upon the parties unless in writing and signed by both parties.

IN WITNESS WHEREOF, the Mortgagor has caused these presents to be signed by its duly authorized representatives the day and year first above written.

\*\*\* LIMITED DIVIDEND HOUSING ASSOCIATION  
\*\*\*

By: \*\*\*  
Its: \*\*\*

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

STATE OF MICHIGAN        )  
  ) ss.  
COUNTY OF                    )

The foregoing Mortgage was acknowledged before me in \_\_\_\_\_ County, Michigan, this \_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as the \_\_\_\_\_ of \_\_\_\_\_, a Michigan \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ Limited Dividend Housing Association \_\_\_\_\_, a Michigan \_\_\_\_\_, on behalf of the \_\_\_\_\_.

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

DRAFTED BY AND WHEN RECORDED  
PLEASE RETURN TO: