

AGREEMENT RE: DISBURSEMENTS THROUGH TITLE COMPANY

Commitment Condition No. ***

THIS AGREEMENT dated the _____ day of ***, by and between the Michigan State Housing Development Authority (the "Authority"), *** (the "Title Company"), *** Limited Dividend Housing Association Limited Partnership (the "Owner") and *** (the "General Contractor").

R E C I T A L S:

A. The Authority has entered into a Building Loan Agreement with the Owner dated *** with respect to a construction loan by the Authority to the Owner in the principal sum of \$*** (the "Loan"), in connection with the construction of a housing development known as ***, MSHDA Development No. *** (the "Development").

B. The Title Company has issued its ALTA Mortgage Title Insurance Policy No. *** (the "Title Policy") and the Authority desires that the Title Policy insure the Authority, in accordance with the terms contained therein against loss by reason of construction liens for labor or material gaining priority over the lien of Authority's mortgage representing security for the Loan.

C. The Authority desires to utilize the staff and expertise of the Title Company to collect, review and approve lien waivers and other evidence of payment required of the Owner and the General Contractor pursuant to this Agreement, and upon receipt and approval of these lien waivers and other required evidence of payment, to disburse the proceeds of the Loan as agreed below.

NOW, THEREFORE, the parties agree as follows:

1. From time to time, the Authority shall make advances of Loan proceeds for the construction of the Development pursuant to the terms of the Building Loan Agreement and this Agreement to the Title Company. The Title Company shall then disburse the Loan proceeds in accordance with the terms of this Agreement and written instructions from the Authority to the General Contractor, or when due to Subcontractors or Suppliers. In addition, when authorized by the Authority, the Title Company shall disburse Loan proceeds in payment of certain non-construction items to the Owner as approved by the Owner and the Authority.

2. The General Contractor shall furnish to the Title Company its original, executed sworn statement, which the Title Company hereby agrees to deliver a copy of to the Authority, setting forth the names of all subcontractors and material suppliers with whom General Contractor has contracted in connection with the Development. The sworn statement shall be completed in conformance with the requirements of the Construction Lien Act (Act No. 497 of the Public Acts of 1980, as amended).

3. In addition to all of the other terms and conditions of this Agreement, each disbursement of Loan proceeds shall be made in accordance with the procedure set forth in Exhibit A, attached hereto and made a part hereof.

4. Notwithstanding anything herein to the contrary, the Title Company shall not make any disbursements under this Agreement:

a. After an event has occurred which entitles the Authority to exercise one or more of its rights upon default pursuant to the Building Loan Agreement and the Title Company has received written notice of such a default from the Authority; provided, however, that the General Contractor waives none of its rights or remedies by virtue thereof.

b. Until in each instance Title Company receives a disbursement request, signed by the Owner and/or the General Contractor and approved by the Authority.

5. In no event shall the final disbursement be made until all conditions necessary to enable the Title Company to issue a final endorsement to the ALTA Mortgage Title Insurance Policy are satisfied, subject to terms, conditions and exceptions acceptable to the Authority with respect to the final mortgage closing; provided, however, the General Contractor waives none of its rights by virtue thereof.

6. All Loan proceeds will be disbursed through the Title Company except as may be provided pursuant to Exhibit A of this Agreement. If there remain any undisbursed loan proceeds with the Title Company after ten (10) days following an advance of Loan proceeds, the Title Company shall return the funds to the Authority, with the exception of funds escrowed for the purpose of allowing the Title Company to issue a requisite endorsement to the Authority.

7. The Title Company shall have no liability for loss caused by any error in certifications furnished to it pursuant to this Agreement with respect to work in place, unless it has actual knowledge of such error.

8. The Owner, the Title Company and the General Contractor hereby agree that they shall set up and maintain accurate and complete books, accounts and records with respect to the Development. The Authority and its representatives shall have the right to inspect and examine all books and records of the Owner, the Title Company and the General Contractor with respect to the Development, and the Owner, the Title Company and the General Contractor shall, at the request of the Authority, furnish all information that the Authority may reasonably demand.

9. The Authority, the Owner and the General Contractor hereby further agree that this Agreement shall in no way be construed to modify the rights of the parties hereto, as set forth in the Building Loan Agreement and the Construction Contract Documents executed in connection with the Authority's financing of the Development.

10. The Owner and the General Contractor hereby agree to indemnify and hold Title Company harmless for any loss or damage sustained by the Title Company, including but not limited to, attorney fees resulting from any litigation arising from the performance of the Title Company's obligations and services pursuant to this Agreement; provided however, that such litigation is not a result of the Title Company's wrongful act or negligence.

11. This Agreement may be signed in several counterparts and all so executed shall constitute one agreement, binding on all parties hereto.

APPROVED:

MICHIGAN STATE HOUSING
DEVELOPMENT AUTHORITY

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

*** (Title Company)

By: _____

Its:

*** LIMITED DIVIDEND HOUSING
ASSOCIATION LIMITED PARTNERSHIP

By: ***

Its: General Partner

By: _____

Its: ***

By: _____

Its: General Partner

*** (General Contractor)

By: _____

Its:

EXHIBIT A

TO AGREEMENT RE: DISBURSEMENTS THROUGH TITLE COMPANY

PROCEDURES FOR DISBURSEMENT OF FUNDS

1. The Owner shall submit the Application for Disbursement on Form CD 260, signed by the General Contractor, the Supervisory Architect and the Owner, to the Authority for its approval.
2. The Authority shall calculate interest due and the Supervisory Architect's fee for each advance and include those amounts on the Application.
3. Upon Authority approval of the draw, it shall be forwarded to the Title Company.
4. Upon issuance by the Title Company of a construction loan disbursement endorsement to the Title Policy in the amount of the approved draw, increasing its insurance to the total amount disbursed as of that date with no exceptions other than those previously accepted by the Authority, the Authority will issue a check or wire transfer funds to the escrow account of the Title Company for the amount of the approved advance for that disbursement. The Title Company will issue an endorsement to the Title Policy.
5. The Title Company shall issue checks to the General Contractor, Subcontractors, Suppliers, or the Owner in accordance with the terms of this Agreement.
6. In the event that the General Contractor and any Subcontractor or Supplier jointly authorize the Title Company to pay any funds due one to the other, the Title Company may comply with such authorization.