

MISSING MIDDLE REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT (the "Agreement"), made and entered into as of [REDACTED], 2024, between [REDACTED], a Michigan [REDACTED] (the "Grantee"), whose address is [REDACTED], 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 Grantee 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 Grantee has been awarded by the Authority a grant in the amount of \$[REDACTED] (the "MMHP Grant") that will be administered by the Authority using funds allocated as part of the Missing Middle Housing Program (the "MMHP"), authorized by Public Act 53 of 2022, as amended by Public Act 1 of 2023, and originating from appropriations made under the American Rescue Plan Act – State and Local Fiscal Recovery Fund ("ARP-SLFRF") and subject to the rules and regulations promulgated thereunder (together with ARP-SLFRF the "ARP-SLFRF Rules"), to assist in financing the acquisition and construction or rehabilitation of a certain housing development to be known as [REDACTED], located in [REDACTED], [REDACTED] County Michigan (which development, including the Property and all assets of whatever nature owned by the Grantee and used in the business conducted on the Property, is referred to as the "Development").

C. The MMHP Grant is evidenced by a Missing Middle Housing Program Grant Agreement entered into by the Authority and the Grantee on [REDACTED] (the "MMHP Grant Agreement").

D. *Insert if applicable* The Grantee has also obtained a first mortgage loan (the "First Mortgage Loan") from [REDACTED] (the "Bank"), evidenced by a mortgage note (the "First Mortgage Note") and secured by a first priority mortgage of the Development (the "First Mortgage"). The Authority and the Grantee acknowledge that this Agreement is subordinate to the First Mortgage Loan, the First Mortgage, and any documents executed in connection therewith.

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

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

1. **Occupancy Qualifications Based on Income.**

a. MMHP Restrictions. The Grantee agrees to maintain *** units within the Development as attainable housing units (the "MMHP Restricted Units") under the MMHP, by restricting occupancy at these units to the income limits described in Exhibit B as established under the MMHP.

b. Determination of Income. With respect to the occupancy of the MMHP Restricted Units, household income shall be determined pursuant to regulations issued by the U.S. Secretary of the Treasury ("Treasury"), in a manner consistent with the MMHP, the Missing Middle Compliance Policy, and the ARP-SLFRF Rules.

c. Determination of Eligibility. The Grantee 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 their total household income to the Grantee, on forms prescribed or approved by the Authority. The Grantee 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 MMHP. The Grantee must make a determination at least annually on the basis of each tenant's then-current income and family size.

2. **Rental Restrictions.** The Total Housing Expense for the MMHP Restricted Units will be limited to one-twelfth (1/12th) of thirty percent (30%) of the income limits established under the MMHP.

3. **Agreements; Covenants Running with the Land.** The Grantee agrees that the terms of this Agreement are essential to the making of the MMHP Grant, and that the enforcement of these covenants is necessary to preserve the MMHP benefits. These covenants are in addition to any similar or identical covenants contained in the MMHP Grant Agreement. Therefore, the Grantee further agrees as follows:

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

b. Inspections. In order to enable the Authority to monitor the Grantee's compliance with these use and occupancy restrictions, the Grantee 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 Grantee 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, the Tenant Income Certification(s), which Certification(s) shall demonstrate ongoing compliance with these use and occupancy restrictions.

d. Transferees Bound. The Grantee 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 Grantee 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, the MMHP Grant Agreement, and the ARP-SLFRF Rules. To the extent necessary to ensure compliance with the ARP-SLFRF Rules and to prevent a recapture

obligation, 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 Reporting. The Grantee will submit its Annual Owner Certification annually to the Authority on forms prescribed by the Authority evidencing compliance with the requirements of this Section.

g. Treasury Regulations. The Grantee acknowledges that certain of the covenants contained in this Agreement are based upon the regulations of Treasury, including but not limited to the ARP-SLFRF Rules, as they exist on the date hereof (the “Treasury Regulations”) and that the Treasury Regulations may be subsequently modified or interpreted by the federal government in a manner which the Authority believes is inconsistent with the covenants set forth herein. The Grantee agrees to comply with any additional covenants and restrictions which the Authority believes, upon advice of counsel, is necessary to ensure compliance with the ARP-SLFRF Rules and which is communicated in writing to the Grantee, even though such covenants or restrictions are not a part of this Agreement as originally executed; provided, however, that if counsel for the Grantee disagrees with the advice of counsel for the Authority, Grantee shall have the right at its own expense to proceed with obtaining a favorable ruling from Treasury or interpretation from the appropriate court which Grantee deems advisable and in its best interest and the Authority agrees to cooperate fully with Grantee in this connection, so long as Grantee 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.

4. **Development Management.** The Grantee shall provide for the management of the Development in a manner acceptable to the Authority, in its sole discretion, that will assure decent, safe and sanitary housing according to the standards set by the Authority. Any management agent employed by the Grantee at the Development must be approved by an Authorized Officer of the Authority.

5. **Maintenance, Operation, and Unit Inspection.** The Grantee shall maintain and operate the Development so as to provide decent, safe, and sanitary housing and shall provide all services, maintenance and utilities according to standards as required by the Authority and the ARP-SLFRF Rules, and in accordance with state and local codes and ordinances. The Grantee agrees that no unit in the Development shall be occupied prior to the issuance of a Certificate of Occupancy by the appropriate local officials. The Grantee shall retain copies of such certificates for at least ten (10) years.

6. **Inspections.** The Development and all plans, offices, equipment, books, contracts, records, documents, and other papers relating thereto, shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at any reasonable time by the Authority or its authorized agent at the Development site or any other location acceptable to the Authority. The Grantee shall retain copies of all documents relating to the Development for at least ten (10) years, all or any of which may be subject to inspection and examination by the Authority or its authorized agents.

7. **Books, Records, and Financial Reports.** The books, records, and financial statements of the operations of the Development shall be kept in accordance with the MMHP, the MMHP Grant Agreement, and the ARP-SLFRF Rules. Grantee shall provide access to all such documents and shall prepare and deliver all required reports and records in the form and frequency required under the MMHP Grant Agreement and the ARP-SLFRF Rules.

8. **Leases.** All tenants for the MMHP Restricted Units shall be required to execute a lease in a form approved by the Authority.

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

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

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

i. except in compliance with Authority policies and the ARP-SLFRF Rules,
and

ii. unless the party to whom the Development is to be conveyed or transferred agrees to be bound by the terms of this Agreement and the MMHP Grant Agreement.

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

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

d. 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 Grantee 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.

e. 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 Grantee that the qualification for the MMHP Grant was dependent upon compliance with use restrictions arising out of the MMHP, the MMHP Grant Agreement, and the ARP-SLFRF Rules.

11. **Non-Discrimination Covenant.** The Grantee shall not, in the selection of tenants, in the provision of services, or in any other manner, discriminate against any person on the grounds of age, height, weight, marital status, sex (including sexual orientation and gender identity or expression), race, color, religion, or national origin (including limited English proficiency), partisan considerations, or a disability or genetic information, and that all contractors, subcontractors, sub-grantees, and sub-recipients involved must take affirmative action to assure an equal opportunity for employment, without discrimination as to age, height, weight, marital status, sex (including sexual orientation and gender identity or expression), race, color, religion, or national origin, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position, in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's

implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23, the Elliott-Larsen Civil Rights Act, and the Michigan Persons With Disabilities Civil Rights Act. The Grantee agrees to comply with any Authority or Treasury request for submission of data for post-MMHP award compliance reviews.

12. **Default and Remedies.** The violation of any provision of this Agreement by the Grantee shall be a default under this Agreement. The Authority may give written notice of such default to the Grantee, 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 Grantee 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 MMHP Grant Agreement or other document executed in connection with the MMHP Grant, or any other remedy it may have at law or in equity in the event of such a default. The Authority's remedies shall include the right to apply to any court, State or Federal, for the specific performance of the covenants and agreements contained in this Agreement; for an injunction against any violation of such covenants and agreements; for the appointment of a receiver to take over and operate the Development; or for such other relief as may be appropriate, since the injury to the Authority arising from any default under this Agreement would be irreparable and the amount of damage difficult to ascertain. 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.

13. **Insurance.** The Grantee agrees that it will obtain and keep in force such insurance coverage as required by the MMHP Grant Agreement.

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

15. **Personal Liability of Grantee and Partners/Members of Grantee.** Nothing contained in the MMHP Grant Agreement shall be deemed to be a release or impairment of any obligation of the Grantee contained in this Agreement.

Neither the Grantee nor any partner, manager or member of the Grantee assume personal liability for payments and deposits due under the MMHP Grant Agreement, 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 Grantee or its partners, managers or members as set forth in the MMHP Grant Agreement; and

d. For any Recapture Obligation for which the Grantee may be liable under Section 17 hereof.

16. **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, or any person duly appointed and acting in that capacity. The term "Authorized Officer of the Authority" refers to these employees of the Authority when acting within the scope of their authority.

17. **Recapture.** The Grantee is hereby notified and hereby acknowledges that Grantee's failure to comply with:

- a. the ARP-SLFRF Rules,
- b. any mortgage or other agreement that results in the foreclosure of the Development or a deed given in lieu of foreclosure, or
- c. or any other requirements imposed during the Compliance Period shall be a default under this Agreement and the MMHP Grant Agreement, and shall cause the Grantee to be subject to a "Recapture Obligation" for all or part of the MMHP Grant. The Grantee is hereby notified and hereby acknowledges that any amount subject to recapture pursuant to this Section shall become a debt owed to the United States payable to the General Fund of the Treasury, which debt shall be enforceable by all available means against any assets of the Grantee.

18. **Other Federal Requirements.** The Grantee must comply with all requirements imposed upon a subgrantee of funds under ARP-SLFRF. Further, the Grantee has complied or will comply with the Section 504 of the Rehabilitation Act of 1973 and the provisions of the "Anti-Lobbying" Restrictions of 31 USC 1352.

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

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

21. **Termination Date.** On *** (the "Termination Date"), this Agreement shall terminate in full, and upon written notice from the Grantee to the Authority, the Authority shall prepare and cause to be recorded a full or partial discharge of this Agreement (as the case may be) to evidence such termination in the public record.

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SIGNATURES APPEAR ON THE FOLLOWING PAGE(S)

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

***, a Michigan ***

By: ***

Its: ***

By: _____

Its:

STATE OF MICHIGAN)
) ss.
COUNTY OF)

The foregoing Regulatory Agreement was acknowledged before me in _____ County, Michigan, this ____ day of _____, 20***, by ***, as the *** of ***, a Michigan ***, as the *** of ***, a Michigan ***, on behalf of said ***.

Notary Public, _____ County, MI
My Commission Expires:
Acting in the County of

Signatures continue on the following page

MICHIGAN STATE HOUSING
DEVELOPMENT AUTHORITY

By: _____
Geoffrey Ehnis-Clark
Its: Director of In-House Legal Services

STATE OF MICHIGAN)
)ss.
COUNTY OF)

The foregoing Regulatory Agreement was acknowledged before me in _____ County, Michigan, this ____ day of _____, 20***, by Geoffrey Ehnis-Clark, Director of In-House Legal Services of the Michigan State Housing Development Authority, a public body corporate and politic of the State of Michigan.

Notary Public , _____ County, MI
My Commission Expires:
Acting in the County of

DRAFTED BY AND WHEN RECORDED
PLEASE RETURN TO:
John B. Swift II (P73599)
735 E. Michigan Ave.
P.O. Box 30044
Lansing, Michigan 48909

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B

INCOME RESTRICTIONS

Under 2023 PA 1, Section 302(2)(j), the term *missing middle household(s)* is defined as “a household or households as defined by the Authority.^[1] The Authority’s definition must be supported by housing data and comply with rules and regulation established by the American rescue plan act of 2021, Public Law 117-2, specifically all regulations and requirements around the use of the coronavirus state fiscal recovery fund.”

The Authority finds that defining the *missing middle household(s)* as a household with an income level falling between 60% to 120% Area Median Income (AMI) for their county meets the purposes of the Missing Middle Housing Program and is a supportive use of the ARP SLFRF.

The 60% AMI level is the floor income level for a household at move-in and the 120% AMI is the ceiling. After initial eligibility certification, all household income can increase or decrease without effecting eligibility.

¹ “Authority’ means the Michigan state housing development authority created by the state housing development authority act of 1966, 1966 PA 346, MCL 125.1401 to 125.1499c.” 2023 PA 1, Section 302(2)(3).