

Housing Development Fund
HDF REPAYABLE GRANT AGREEMENT
Housing Initiatives Division

HDF Grant # _____

THIS HDF REPAYABLE GRANT AGREEMENT is made effective as of the _____ day of _____, 2019, by and between ***, a Michigan ***, whose address is *** (the "Grantee,"), and the **MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY**, a public body corporate and politic of the State of Michigan, whose address is 735 E. Michigan Avenue, Lansing, Michigan 48912 (the "Authority").

R E C I T A L S:

A. Section 23 of Public Act 346 of 1966, as amended (the "Act"), creates and establishes a housing development fund under the jurisdiction and control of the Authority, and further provides that the Authority may use the monies held in the housing development fund to make grants to local communities, as defined by the Authority in rules promulgated under the Act, or to public or private nonprofit organizations or land banks or local governmental agencies organized to provide assistance to persons and families of low or moderate income, in any amounts as the Authority determines, not to exceed the net costs (exclusive of any federal aid or assistance) incurred by the recipient in planning for or implementing housing assistance or community or housing development.

B. The Authority, as a public body, is charged with the responsibility of regulating the use of funds advanced by it to assure that such funds are being used for purposes and in a manner that are in accordance with the Act and the Authority's General Rules, being R 125.101, *et seq* (the "Rules"), which are incorporated into this Agreement by reference.

C. The Authority adopted the Workforce Attainable Modular Homes Program to assist Michigan communities in addressing a workforce housing shortage through the construction of one or more modular housing units in areas selected in the local community (the "Program").

D. The Grantee is a local community, or a public or non-profit organization, or a local government agency that has identified a service area suitable for workforce housing, and has applied for funding under the Program, as described in the Grantee's proposal submitted to the Authority, which is attached as Exhibit A hereto, and which is incorporated into this Agreement by reference (the "Proposal").

E. Authority staff has reviewed the Grantee's Proposal and determined that it satisfies the Authority's "Amended and Restated Priorities, Evaluation Factors, and Criteria for Allocation of Development Fund Grants" dated January 25, 2012 (the "Evaluation Factors"), which are incorporated into this Agreement by reference, in that Grantee's Proposal is intended to enhance the opportunities for economic development, and/or promote community development, and thereby improve the quality of life of the residents within the service area selected for Grantee's Proposal.

F. Subject to the Grantee's performance of all its obligations under this Agreement and compliance with the requirements of the Program, the Authority has agreed to provide repayable funding to the Grantee in the maximum amount of \$*** (the "Repayable Grant" or the "Grant").

G. This Agreement outlines the additional conditions and terms of the Repayable Grant.

NOW, THEREFORE, the parties agree as follows:

1. **Grantee's Agreement; Eligible Families.** The Grantee agrees to carry out the acquisition and construction of one or more modular homes in accordance with Grantee's Proposal and will not modify the terms of the Proposal in any material way without the prior written consent of the Authority. The Grantee will ensure that any modular home(s) which receives funding from the Repayable Grant is occupied and sold only to a family whose annual household income is at or below 120% of area median income (as determined by HUD, and adjusted for family size), and that the housing will be purchased and occupied as the principal residence of the family. In determining the income eligibility of the family, the Grantee must include the income of all persons living in the household. The Grantee acknowledges and agrees that the Authority's commitment to provide funding to the Grantee is expressly conditioned upon the Authority's acceptance of the Proposal and all other supporting information submitted to the Authority by the Grantee and its accuracy and completeness.

2. **Term of Agreement; Reversion.** This Repayable Grant Agreement will terminate on the earliest of (a) *** [*insert date that is 90 days after date scheduled for completion of unit on Ex. B*], (b) the date on which a family that is not income eligible purchases the modular home from Grantee or begins to reside in the modular unit, (c) in the event of any default of this Agreement by the Grantee that the Grantee fails to cure within thirty (30) days of written notice by the Authority or (d) the date of any other termination by the Authority as provided under this Agreement (the date of any such termination is referred to as the "Termination Date"). The Grant term may only be extended in writing and is binding upon the Authority only if signed by an Authorized Officer of the Authority. After the Termination Date, the Authority will have no further obligation to advance any Grant funds, and all Grant funds in the possession of the Grantee that have not yet been expended shall revert to the Authority and shall be immediately due and payable to the Authority within ten (10) days.

3. **Grant Amount; Use of Grant Funds.** The Authority agrees to provide up to \$*** to the Grantee to carry out and implement Grantee's Proposal, which the Grantee will use within the Grant term for the construction of modular, workforce housing and related costs in the *City/Township/Village of ***/County of ****, and in the service area more specifically identified on Exhibit A (the "Service Area"). A list of benchmarks for completion of the various components of work to be performed and the amount of expenditure for each component with a deadline for expenditure is attached to this Agreement as Exhibit B. The Grantee will make every effort to achieve the benchmarks and expend the Grant funds in accordance with the time frames and deadlines set forth in Exhibit B. The Grantee will submit a monthly narrative progress report to the Authority, the first of which shall be made within thirty (30) days of the initial advance of Grant funds. If the Grantee's efforts to complete the benchmarks and meet deadlines do not, in the Authority's sole discretion, appear to be likely to cause the full utilization of Grant funds within the Grant term, the Authority may suspend the Grant until appropriate measures have been implemented. If the Grantee fails to implement the necessary measures, the Authority may terminate this Agreement, will have no further commitment or obligation for funding and on demand by the Authority, the Grant will become due and payable in full or in part as provided in paragraphs 2 and 20 of this Repayable Grant Agreement.

4. **Repayable Grant; Net Sale Proceeds.** The Grantee agrees to repay the full amount of the Grant proceeds advanced or disbursed under this Repayable Grant Agreement to the Authority within *one (1) year/five (5) years* from the date of the initial advance of funds to the Grantee or within ninety (90) days of the sale of the modular housing unit, whichever occurs first. If the sale results in net sale proceeds to the Grantee that exceed the amount of Grant funds due to the Authority, then Grantee agrees to pay to the Authority simple interest at the rate of three percent (3%) per annum, on the full amount of the Grant advanced to the Grantee from and after the date of each advance, but not to exceed the amount of available

net sale proceeds. Net sale proceeds shall be equal to the gross sales price, less closing costs customarily attributed to the seller in the Service Area, such as transfer tax, property tax proration, title insurance and closing fee, plus customary credits (if any) from the buyer, and less the repayment of Grantee's actual, out-of-pocket investment in land and infrastructure reasonably necessary for the development of the modular, workforce housing unit. If, however, the net sale proceeds are less than the amount of Grant funds due to the Authority, then to the extent that the sale proceeds are insufficient to repay the Repayable Grant in full, the remainder shall be forgiven. Notwithstanding the foregoing, the amount to be forgiven shall not exceed ten percent (10%) of the amount of Grant funds advanced to the Grantee *unless* the Grantee can demonstrate, to the satisfaction of the Authority, that the net sale proceeds could not have been increased through reasonable efforts of the Grantee to maximize the net sale proceeds. Any question relating to the appropriateness of closing costs deducted from the sales price shall be decided by the Authority. After repayment in full of the Repayable Grant and any other sources of funding (but excluding in kind or cash donations or contributions not specifically authorized by this Agreement) to the extent that Grantee retains any net sale proceeds, then the Grantee agrees to expend the remaining proceeds within two (2) years after the sale, on a community development activity that is consistent with no. 5 of the Eligible Activities set forth within the Authority's Evaluation Factors and is approved by the Authority, which approval shall not be unreasonably withheld.

5. **Program Requirements.** The Grantee agrees to comply with all requirements of the Program and will provide the Authority with evidence of such compliance promptly upon request. With the exception of an initial modular home to be used as a model unit for marketing purposes for up to five (5) years if included in Grantee's Proposal, the Grantee agrees that each unit constructed with Grant funds must be completed and sold within one (1) year of the first advance of Grant funds.

6. **Selection of Modular Units; Site Selection; Budget.** The selection of a modular unit, the selection of the home site and the submission of the final budget will be included among the benchmarks listed on Exhibit B. The Grantee agrees that it shall not make any final selection of the modular unit to be purchased, nor the site on which the modular unit will be located without the Authority's prior written approval. In addition, the Grantee shall submit its proposed budget for the purchase, installation, assembly, construction and completion of each home to the Authority for approval, including in the budget a detailed description of all sources and uses, before the budget is finalized. The Authority's approval of the modular unit, the site and the Grantee's budget must be obtained before any Grant funds will be disbursed.

7. **Audited Financial Statement; Auditor's Certification.** During each of the Grantee's fiscal years in which a disbursement of Grant funds is made, the Grantee shall provide a copy of its most recent audited financial statement of its operations to the Authority, or if audited financial statements are not prepared, a certification from the Grantee's auditor for each fiscal year in the form attached as Exhibit C.

8. **Property Standards.** The Grantee will ensure that upon completion of construction, each modular unit acquired or constructed with HDF Grant funds will meet applicable state and local building codes, ordinances and zoning requirements and will be decent, safe and sanitary. The Grantee shall permit the Authority to inspect the property at all reasonable times and at a reasonable frequency to monitor compliance with this section and shall promptly correct (or cause to be corrected) any deficiencies identified. The Grantee will provide the Authority with a copy of the permanent Certificate of Occupancy before the final disbursement of Grant funds will be released.

9. **Disbursement of Grant Funds.** The Grantee may not request the disbursement of any Grant funds until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed and may only be for costs incurred subsequent to this Agreement. No request shall be processed by the Authority unless it is accompanied by supporting documentation such as detailed

invoices or receipts. Advances may be pre-approved by the Authority to pay necessary costs (such as modular unit acquisition), or approved developer fees. All disbursements made under this Agreement shall be made in accordance with Authority established schedules and procedures and will be subject to a ten percent (10%) holdback by the Authority. The ten percent (10%) holdback will not be released to the Grantee until the modular unit has been finally completed, inspected by the Authority and a certificate of occupancy issued by the local building authority. After all activities relating to the Grant have been completed, and prior to the final disbursement of Grant funds, the Grantee shall submit a Final Outcome Report to the Authority for approval. In no event will a disbursement or further disbursements be made after the Grantee violates any of the terms of this Agreement, and the violation has not been corrected to the satisfaction of the Authority. Any advance of funds for a specific purpose that is not used by the Grantee within thirty (30) days of the advance shall be returned to the Authority immediately.

10. **Contractors and Subcontractors.** The Grantee shall be responsible for ensuring that all contractors and subcontractors exercise reasonable precautions at all times for the protection of persons and property. The safety provisions of all applicable laws and building and construction codes shall be observed. The Grantee and its contractors and subcontractors shall secure all necessary certificates and permits from municipal or other public authorities as may be required in connection with the performance of this Agreement. The Grantee and its contractors and subcontractors shall maintain during the term of this Agreement general liability, property damage, and the contractors and subcontractors shall maintain worker's compensation insurance insuring the interests of all parties to this Agreement against any and all claims which may arise out of the Grantee's or contractor's or subcontractor's operations under this Agreement.

11. **Costs; Cost Overruns.** The Grantee shall ensure that all procurement transactions shall be conducted in a manner that provides for maximum open and free competition to maintain costs. The Grantee agrees that payment for services, supplies or materials shall not exceed the amount ordinarily paid for such services, supplies or materials in the area where the services are rendered, or the supplies or materials are furnished. All cost overruns shall be the responsibility of the Grantee and the Authority will have no obligation to increase the amount of Grant funds in the event of a cost overrun.

12. **Records and Recordkeeping; Audit by the Authority.** The Grantee will permit the Authority, at its discretion, to audit the Grantee and its activities for compliance with the terms of this Agreement. The Grantee will maintain sufficient records to enable the Authority to determine whether the requirements of the Program and the Evaluation Factors are met and will make its records available for inspection and copying by the Authority at all reasonable times, and in such places as may be requested by the Authority. All records relating to the Grant will be maintained, at a minimum, for five (5) years commencing from the date that the Grantee's final audit and outcome report are approved by the Authority. Within five business (5) days after written request therefor, the Grantee will furnish all reports and information required by the Authority to document compliance with the Program and the Evaluation Factors.

13. **Non-Discrimination Covenant.** The Grantee shall not, in the selection of families, in the provision of services, in employment, or in any other manner, discriminate against any person on the grounds of race, color, religion, sex, national origin, age, disability, or marital or familial status except as provided by law. This section does not apply, with respect to age and familial status only, to housing meeting the requirements of a federal, state or local program for senior citizens. The Grantee shall not, with respect to employment, discriminate against any person on the basis of height, weight, or arrest record, or request or maintain records regarding arrest, except as provided by law. The Grantee shall comply with all requirements imposed by the Fair Housing Act (42 U.S.C. 3601-3619) and implementing regulations; Title VI of the of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) and implementing regulations; Title VIII of the Civil Rights Act of 1968 (as amended by the Fair Housing Amendments Act of 1988) and

implementing regulations; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations; Title II of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq*); the Elliott-Larsen Civil Rights Act, and the Michigan Persons With Disabilities Civil Rights Act.

14. **Conflicts of Interest.** The Grantee agrees that no person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee may obtain a financial interest or financial benefit from, or have a financial interest in, any contract, subcontract, or agreement with respect to, the activity assisted with Grant funds, or the proceeds from such activity, or own, rent or occupy any property assisted with Grant funds, either for themselves or for those with whom they have business or immediate family ties, during their relationship with the Grantee or for one year thereafter. Those with whom a person is considered to have an immediate family tie includes (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of that person.

15. **Insurance.** The Grantee shall at all times carry adequate property damage and general liability insurance to protect the modular unit and the property on which it is to be located (the "Modular Property"), the Grantee and the Authority from loss or damage (including vandalism) and from claims by other parties. The Authority shall be listed as a mortgagee/loss payee and additional insured on the Grantee's policies of insurance. All insurance policies shall be in amounts and from carriers acceptable to the Authority. The Grantee also agrees to secure the Modular Property against vandalism and other damage

16. **Title; Mortgage Lien as Security.** The Grantee agrees to execute a mortgage in favor of the Authority to be recorded with the county register of deeds, granting a first priority lien on the Modular Property and all fixtures, equipment and supplies located at the Modular Property. Prior to the disbursement of any Grant funds, the Grantee shall provide the Authority with a title policy showing the Grantee as the holder of fee simple title to the Modular Property and insuring the Authority as the holder of a first mortgage lien on the Modular Property. The mortgage will remain as an encumbrance on the Modular Property until the sale to an eligible homebuyer. The Authority will not be responsible for the cost of any of the foregoing (except to the extent such costs are included in the approved budget and paid with Grant funds disbursed to the Grantee for such costs).

17. **Default and Remedies.** In the event the Grantee violates any of the terms of this Agreement, including a failure to achieve the expenditure and completion deadlines set forth in Exhibit B, 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 any properties assisted with the Grant; 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 may also withhold payments, disallow costs, suspend or terminate the Grant, or initiate suspension or debarment proceedings, withhold further awards, or seek any other remedies that may be available. Notwithstanding the forgiveness provisions of Section 4, if the Grantee sells the modular unit to a family that is not income eligible or a family that is not income eligible begins to reside in the modular unit, then the entire Grant shall become immediately due and repayable, plus simple interest at the rate of three percent (3%) per annum from and after the date of each advance. If the Authority terminates the Grant, the Authority will have no further commitment for funding the Grant. 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. The Authority agrees that it will not employ any remedy available to it until the Grantee has failed to cure any default within thirty (30) days of receipt of written notice of the default.

18. **Liability.** The Authority, the State of Michigan, their officers, agents, and employees shall not, in any manner, be liable for any loss or damage connected to or resulting from activities relating to the Modular Property or implemented under this Agreement; nor for any loss or damage to any materials, equipment, or other property that may be used or employed in connection with this Agreement or the Modular Property, or for any injury or damages to any person, whether an employee or contractor of the Grantee or otherwise.

19. **Hold Harmless.** All liability to third parties, loss or damage as a result of claims, demands, costs, or judgments arising out of the activities to be carried out by the Grantee in the performance of this Agreement, including any and all claims and losses occurring or resulting to any person or entity who may be injured or damaged by the Grantee's contractor's or subcontractor's negligence or that of their officers, agents or employees in the performance of this Agreement, shall be the responsibility of the Grantee, and not the responsibility of the Authority, unless due to the gross negligence of the Authority or an act of malfeasance by any of its members or employees. Nothing herein shall be construed as a waiver of any governmental immunity that has been provided to the Grantee or its employees by statute or court decisions.

20. **Early Termination.** The Authority or the Grantee may terminate this Agreement when both parties mutually agree that the continuation of the Proposal is no longer feasible or would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date. The Grantee shall not incur new obligations after the effective date of the termination and shall cancel as many outstanding obligations as possible. The Authority may unilaterally terminate this Grant in the event that funds are no longer available to the Authority, and on reasonable notice to the Grantee, the Authority may suspend the Grant and prevent further electronic funds transfer or prohibit the Grantee from incurring additional obligations of Grant funds, pending a resumption of funding from, or a decision to terminate in accordance with this Agreement. The Authority shall allow all necessary and proper costs which the Grantee could not reasonably avoid following notice of termination.

21. **Reversion.** The Grantee acknowledges that a failure to comply with the terms of this Agreement, or a failure to expend Grant funds before the term of this Grant expires may cause all or part of the Grant to revert to the Authority.

22. **No Assignment.** This Agreement may not be assigned by the Grantee without the written consent of the Authority.

23. **Notices.** All notices, reports and documents required under this Agreement shall be submitted to the parties at the addresses given below. Any notice to a party that is given under this Agreement shall be deemed to have been given (a) on the third business day after sending by first class U.S. Mail, postage prepaid; (b) on the next business day after sending by national overnight courier service; and (c) on the same day if hand delivered to the party's address:

**Housing Initiatives
Director/Address:**

**Gary Heidel
Chief Housing Investment Officer
Michigan State Housing Development Authority
Housing Initiatives Division
735 East Michigan Avenue, PO Box 30044
Lansing, MI 48909**

Grantee/Address:

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

25. **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, after approval by the HI Review Team.

26. **Miscellaneous.** This Repayable Grant Agreement shall be governed by Michigan law. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portion hereof. This Repayable Grant Agreement and Exhibits A and B hereto constitute the entire agreement between the parties.

27. **Authorized Officer of the Authority.** 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 Chief Housing Investment Officer, the Chief Financial Officer, the Director of Legal Affairs and the Deputy Director of Legal Affairs, or any person duly appointed to act in that capacity. The term "Authorized Officer of the Authority" refers to the foregoing employees of the Authority when acting within the scope of their authority.

28. **Corrections.** In the event that any corrections or revisions to the provisions of this Agreement shall be required in order for this Agreement to fully comply with the terms and conditions of the Program, the Authority shall have the right to correct or revise this Agreement as necessary, the Grantee expressly consents to the exercise of such right by the Authority, and the Grantee shall promptly execute any amendments to this Agreement as shall be needed in order to confirm any and all such corrections or revisions.

29. **Recitals Part of Agreement.** The recitals at the beginning of this Agreement are not mere recitals and the terms thereof and the matters referenced therein are made a part of this Agreement.

30. **Acceptance of Grant Agreement.** The Grantee has reviewed and hereby accepts the terms of this Repayable Grant Agreement and acknowledges that the Grant funds to be made available hereunder shall only be used for the purposes and activities set forth in this Agreement.

IN WITNESS WHEREOF, the parties have entered into this HDF Repayable Grant Agreement, each as of the date set forth below beside their signature.

MICHIGAN STATE HOUSING DEVELOPMENT
AUTHORITY

Date: _____

By: _____

Its:

Date: _____

By: _____

Its:

EXHIBIT A

Grantee's Proposal

The Grantee's Proposal is attached to this cover page. Grantee's Proposal should describe the housing needs of the selected service area, the amount of funding requested, the number of modular units to be constructed and an estimated time table for the overall project, the additions and amenities to be offered, the marketing plan, the proposed sources and uses of funds for the unit to be funded with Grant funds, the anticipated fair market value on completion and the likely sales price, etc.

EXHIBIT B

Benchmarks and Expenditure Deadlines

The Grantee's Benchmarks and Expenditure Deadlines are attached to this cover page. The Grantee's Benchmarks and Expenditure Deadlines should look something like the following:

<u>Benchmark</u>	<u>Date</u>	<u>Percent of Grant or Dollar Amount Expended</u>
Selection of Site		
Selection of Modular Unit		
MSHDA Approval of Unit, Design and Budget		
Execution of Necessary Contracts		
Construction Start		
Construction 50% Complete		
Construction 100% Complete/C of O		
Marketing Period		
Initial Unit Sold to Qualified Homebuyer		

The timeframe from site selection to completion of construction should not exceed 150 days. The sale should occur within one year, except for any unit serving as a model for marketing purposes.

EXHIBIT C

Auditor's Certification