

December 8, 2021

**PITTSFIELD CHARTER TOWNSHIP AFFORDABLE HOUSING AGREEMENT FOR CLARK
AND GOLFSIDE MULTIPLE FAMILY PUD**

This Affordable Housing Agreement (“Agreement”) is entered into as of _____, 2021, by and between Lockwood Development, LLC, a Michigan limited liability company for itself and an entity to be formed by the Developer for purposes of owning that certain multi-family housing development to be known as Clark and Golfside, 27777 Franklin Road, Suite 1410, Southfield, MI 48034 (the “Developer”), and Pittsfield Charter Township, a Michigan municipal corporation, 6201 West Michigan Avenue, Ann Arbor, Michigan 48108 (the “Township”). The Developer or the Township may be referred to individually as a “Party” or collectively as “Parties” as the context may require.

This Agreement applies to the development of the real property commonly known as “Apartments on Clark”, a multifamily planned unit development (“PUD”) located on Clark and Golfside in Pittsfield Township, Washtenaw County, State of Michigan (“Property”), more particularly described in Exhibit A.

RECITALS

WHEREAS, the Township Board, on August 8, 2021, approved Zoning Ordinance Amendment #21-216 which approved the Clark and Golfside Multiple Family Development PUD;

WHEREAS, as part of the PUD, Lockwood Development, LLC agreed to provide 295 dwelling units in the proposed development on the Property as affordable housing, as defined below and by all applicable statutes, codes, regulations, and ordinances;

WHEREAS, the provision of affordable housing on the Property by Lockwood Development, LLC was a material inducement for Township’s approval of the Clark and Golfside Multiple Family Development PUD and is consistent with the Township’s policies and goals of increasing the supply of affordable housing throughout the Township;

WHEREAS, the Washtenaw County Office of Community and Economic Development (Washtenaw County) has agreed to assist Pittsfield Township in the administration of these provisions;

AGREEMENT

In consideration of the promises made and the benefits received by the parties, the sufficiency of which is hereby acknowledged, the Township and Developer agree as follows:

1. Definitions

As used in this Agreement, the following capitalized terms shall have the following meanings, and shall include the plural as well as the singular:

- A. “Affordable Dwelling Unit” means a rental apartment that shall be leased to a Qualified Tenant.
- B. “Annual Household Income” means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR 5.609 and as otherwise determined by HUD.
- C. “Area Median Income” or “AMI” means the Area Median Income reported annually for single persons and households of various sizes by HUD for the metropolitan statistical area that includes Pittsfield Township.
- D. “Township” means Pittsfield Township or its designee for administrative functions related to affordable housing. The Township retains the right to conduct its activities described under this Agreement through a contract with another entity. (The Township’s affordable housing programs are currently administered by the Washtenaw County Office of Community and Economic Development.)
- E. “Certification of Income” means a certification made that verifies that the Annual Household Income of a Qualified Tenant is less than or equal to either 40 or 60% of AMI.
- F. “Certification of Residency” means a certification made by a tenant of an Affordable Dwelling Unit that states that the tenant occupies the Affordable Dwelling Unit as the tenant’s primary residence.
- G. “Household” means the lessee and all persons who occupy the Affordable Dwelling Unit, subject to the rules and regulations applicable to the Property.
- H. “HUD” means the United States Department of Housing and Urban Development, or a superseding or subsequent agency or division of the United States Government responsible for supporting homeownership for underserved populations and for providing affordable housing.
- I. “Market-Rate Dwelling Unit” means a rental apartment that is not an Affordable Dwelling Unit.
- J. “Qualified Tenant” means a Household that (i) has an Annual Household Income, less than or equal to 40 or 60% of the AMI at the time of initial occupancy, (ii) occupies the Affordable Dwelling Unit as its principal residence during its lease of such Affordable Dwelling Unit, (iii) does not permit exclusive occupancy of the Affordable Dwelling Unit by any other person, (iv) uses and occupies the Affordable Dwelling Unit as an Affordable Dwelling Unit subject to the Affordability Requirement and this Agreement. Notwithstanding the anything to the contrary herein, this is subject to LIHTC and Tax-Exempt Bond requirements, including, but not limited to, the so-called “good cause eviction” requirement (§42(h)(6)(E)(ii)(I)).
- K. “Washtenaw County” means the Washtenaw County Office of Community and Economic Development, or any successor entity contracted by the Township to conduct its activities described under this Agreement, except where the context is clear that only Washtenaw County is meant.

2. Term

The term of this Agreement for the Property shall be ninety-nine (99) years from the date of issuance of the first residential certificate of occupancy for that Phase. One hundred percent (100%) of the total units are subject to the requirements of 26 U.S.C. Section 42 (“LIHTC”) and 26 U.S.C. Section 142 (“Tax-Exempt Bond(s)”) of the Internal Revenue Code of 1986, as amended.

3. Compliance with Laws

The Developer agrees to comply with all federal, state and local laws and regulations applicable to the Affordable Dwelling Units and the services required by this Agreement, including but not limited to any applicable Township Codes, as amended or replaced from time to time.

4. Affordability Requirement

Developer shall construct, reserve, maintain and lease two-hundred ninety-five (295) Affordable Dwelling Units to Qualified Tenants on the Property in accordance with this Agreement at a rental rate at or below the Maximum Monthly Rent as defined in Section 8 of this Agreement.

5. Affordable Dwelling Number

The number shall be as follows:

284 units at 60% AMI or below

11 units at 40% AMI or below

The affordable dwelling percentages may be amended after the initial fifteen-year tax credit compliance period if the Property development receives a new allocation of low-income housing tax credits and the percentages meet one of the required minimum set-asides.

6. Rental Process and Determination of Tenant Eligibility

Rejection of Applicants. In connection with the leasing of an Affordable Dwelling Unit, Developer may reject any applicant if, after diligent review of such applicant’s application, the Developer determines in good faith that the applicant or those persons that will reside with the applicant do not meet the Developer’s criteria to lease or occupy an Affordable Dwelling Unit, provided such criteria does not violate applicable local, state, or federal laws. In the event any rejected applicant raises an objection or challenges Developer’s rejection of such applicant, the Developer shall be solely responsible for ensuring that its rejection of such applicant is not in violation of local, state, or federal law. The parties acknowledge that review of criminal history and credit scores, and rejection for negative information in these categories is permitted as allowed by law.

7. Initial Lease Year / Income Determination

- A. Lease Term. The initial term of any Affordable Dwelling Unit lease agreement shall be for a period of one year.
- B. Income Determinations. In order to be eligible for an Affordable Dwelling Unit, the Annual Household Income of a Household shall be less than or equal to 40 or 60% of AMI, depending on unit type as sated in Section 5. A prospective tenant who is not income eligible at the time of application shall be denied and will not be allowed to revise their work status or Annual Household income in order to qualify for an Affordable Housing Unit, or to reapply for an Affordable Housing Unit for a period of six months, with the exception that an involuntary change in income shall not disqualify the prospective tenant from becoming income eligible.

8. Establishment of Maximum Monthly Rent.

The units in the Development shall be occupied or available for occupancy by households whose incomes do not exceed the 60% income limits respectively for Multifamily Tax Subsidy Projects as determined by HUD with respect to projects financed pursuant to Section 142(d) of the Internal Revenue Code of 1986, as amended (the "Code"), as amended by the Housing and Economic Recovery Act of 2008 (P.L. 110-289) ("MTSP Limits"), adjusted for family size (the "Affordable Units"). These restrictions shall remain in effect and shall not terminate so long as the Affordable Units remain subject to the income and rent restrictions as stated above."

9. Subsequent Lease Years

- A. Rent Calculation. The Developer shall use the Maximum Monthly Rent to determine the rental amount for Affordable Dwelling Units in each lease year.
- B. Renewal by Household. For each Household that intends to renew its lease, no more than ninety days and no less than thirty days before each anniversary of the first day of a residential lease, Developer shall use its best efforts to obtain a Certification of Residency from each Household. Developer shall not permit a renewal of an Affordable Dwelling Unit lease unless the Developer has received these documents for the Affordable Dwelling Unit prior to the end of the lease term.
- C. Annual Recertification of Tenants. Upon receipt of a Household's renewal documents at annual recertification, the Developer shall determine if the Household is still a Qualified Tenant and shall notify the Household of the same within fifteen days prior to the expiration of the then-current lease term. Any Household whose Annual Household Income remains less than or equal to 40 to 60% of the AMI, depending on unit, will be eligible to remain in the Affordable Dwelling Unit and to renew the lease at the then-current lease rate for the particular Affordable Dwelling Unit.
- D. Annual Recertification of Over-Income Tenants. Upon annual recertification, if a Household's Annual Household Income is determined to exceed the 40 or 60%, depending on unit, of the AMI (such tenant, an "Over-Income Tenant"), then Developer shall have the right to elect not to renew the lease consistent with the terms of the lease. At the discretion of Landlord, the Over-Income Tenant may remain in the rental unit and pay the market rate rent for that rental unit. Notwithstanding anything to the contrary herein, this section is subject to LIHTC and Tax-Exempt Bond requirements, including, but not limited to, the so-called "next available unit" requirement (§42(g)(2)(D)).

- E. Rent from Subsidies. Nothing herein shall prevent the Developer from collecting rent from a subsidy or rent subsidy provider, such as a HUD rent voucher or require Developer to do so.
- F. Additional Income During Lease Term. An increase of Annual Household Income greater than the 40 or 60% of the AMI, depending on unit, at some point in time after a lease is signed for an Affordable Dwelling Unit, shall not be a basis to require the Developer to immediately terminate the tenancy and rent the Affordable Dwelling Unit to a Qualified Tenant.

10. No Subleasing of Affordable Dwelling Units

An Affordable Dwelling Unit tenant may not sublease any portion of the Affordable Dwelling Unit or assign its lease to any other person.

11. Representations of Affordable Dwelling Unit Tenant

By execution of a lease for an Affordable Dwelling Unit, each Affordable Dwelling Unit tenant shall be deemed to represent and warrant to Washtenaw County and Developer, each of whom may rely thereon, that the Affordable Dwelling Unit tenant meets, and will continue to meet, all eligibility requirements contained in this Agreement for the rental of an Affordable Dwelling Unit.

12. Representations of Developer

By execution of a lease for an Affordable Dwelling Unit, the Developer shall be deemed to represent and warrant to Washtenaw County, which may rely on the following, that: (i) based solely upon tenant and Washtenaw County supplied information, the Household is a Qualified Tenant, and (ii) the Developer is not charging the Affordable Dwelling Unit tenant more than the Maximum Allowable Rent.

13. Annual Reporting Requirements

Beginning with the first occupancy of any Affordable Dwelling Unit, the Developer shall provide an annual report ("Annual Report") to Washtenaw County regarding the status of the Affordable Dwelling Units during the previous calendar year, which shall be submitted on March 1 of each year, or other date as agreed to by the Township Supervisor or designee and the Developer. The Annual Report shall include the following:

- A. The unit number and bedroom count of each Affordable Dwelling Unit that is occupied;
- B. For each Affordable Dwelling Unit that is vacant or that was vacant for a portion of the reporting period, the manner in which the Affordable Dwelling Unit became vacant (e.g. eviction or voluntary departure) and the progress of and activities directed to having the unit re-occupied;
- C. For each occupied Affordable Dwelling Unit, the names and ages of all persons in the Household, the date of initial occupancy, Annual Household Income as of the date of the most recent Certification of Income, and the monthly rental rate of the lease;
- D. Copies of all forms, policies, procedures, leases, and other documents reasonably requested by the Township and Washtenaw County related to the Affordable Dwelling Units.

The Annual Reports shall be retained by the Developer for a minimum of five years after submission and shall be available, upon reasonable notice, for inspection by the Township and Washtenaw County. Notwithstanding anything contained herein to the contrary, in the event that the Developer is providing a report with content substantially similar to the content of the Annual Reports described in this section, subject to the Township Supervisor's prior written approval, then the reporting requirements under this section shall be satisfied upon Developer's delivery of such report to the

Township and Washtenaw County. Developer shall also maintain copies of all initial and renewal leases for Affordable Dwelling Units for three years from the date of execution. Within fifteen (15) days after receiving notice of any error in the amount of rent being charged for an Affordable Dwelling Unit, Developer shall either: correct the error, in which event, corrections shall be retroactive to the date of the error within the annual lease period; or provide written notice to the Township and Washtenaw County that Developer disputes the error, in which event, the Township and Washtenaw County and Developer shall work cooperatively to reconcile the error over the next fifteen (15) days.

14. Confidentiality

Except as may be required by applicable law, including, without limitation and applicable only to the Township and Washtenaw County, the *Michigan Freedom of Information Act (MCL 15.231 et. seq.)*, the Developer and the Township and Washtenaw County shall not disclose to third parties the personal information of the Households, including the identity of the Households, submitted as a part of the Annual Report. Notwithstanding this Section 14, Developer shall be permitted to disclose its lease files for the Property in the ordinary course of business, including, but without limitation, to the management company for the Property, to any lender that may or does provide financing to the Developer with regards to the Property, to any prospective buyer of all or a portion of the Property, and as necessary to enforce Developer's rights in court or any administrative proceedings.

15. Inspection Rights

Upon reasonable advance notice to the Developer, and subject to a tenant's privacy rights, the Township shall have the right to inspect the Affordable Dwelling Units during normal business hours. If the Developer receives such notice, the Developer shall, in turn, give reasonable advance notice of the inspection to the tenant occupying an Affordable Dwelling Unit. The Township shall have the right to inspect a random sampling of the Affordable Dwelling Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and as otherwise permitted under this Agreement. The Township shall have the right to conduct audits of a random sampling of the Affordable Dwelling Units and associated files and documentation to confirm compliance with the requirements of this Agreement. Developer acknowledges that the Township has a Property Maintenance Ordinance and Developer is required to maintain current Certificates of Compliance for each rental unit.

16. Default

The Developer, and each subsequent owner, hereby grants and assigns to the Township and Washtenaw County the right to review and enforce compliance with this Agreement. Compliance may be enforced by the Township and Washtenaw County at its discretion by any lawful means, including without limitation: (a) requiring that Developer meet any unmet obligations to provide an Affordable Dwelling Unit in a subsequent year after notice and opportunity to cure as provided in this Section 17, (b) seeking specific performance of the Developer's obligations under this Agreement, (c) requesting the option to lease as provided in this section, and (d) seeking money damages. The prevailing Party in any litigation between Developer and Township and Washtenaw County with regard to this Agreement shall be entitled to recover its costs, fees and expenses (including actual attorney fees) incurred as a result of the litigation.

If a default occurs under this Agreement, the Township or Washtenaw County shall provide the Developer and the Michigan State Housing Development Authority ("MSHDA") with written notice setting forth with particularity the alleged violation and shall provide 45 days to cure the violation, prior to exercising its remedies. The Township Supervisor may extend the cure period in his or her sole discretion, which shall not be unreasonably withheld, if a cure cannot be reasonably obtained or achieved by the Developer within 45 days of the written notice of default.

17. Indemnification

To the fullest extent permitted by law, Developer shall indemnify, defend, and hold the Township and Washtenaw County, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by Developer or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the Townships and Washtenaw County negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement. This provision is not intended, and shall not be construed, to waive or limit any immunity defense which the Township and Washtenaw County may have including but not limited to governmental immunity.

18. Insurance

Developer shall secure and maintain insurance policies, including those stated below, as will protect the Developer, any of its subcontractors and, unless otherwise specified, the Township from all claims for bodily injuries, death or property damage which may arise under this Agreement; whether the actions are made by the Developer or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:

- A. Worker's Compensation Insurance under the provisions of the Michigan Worker's Compensation Act and all applicable state and federal statutes.
- B. General Liability Insurance in an amount not less than \$1,000,000 for each occurrence as respect to bodily injury liability, property damage liability, or both combined. The Pittsfield Township shall be named as an additional insured for General Liability Insurance.
- C. Property Insurance for the Property and improvements on the Property

Insurance certificates shall be provided to the Township and Washtenaw County upon request.

19. Recording. This Agreement will be recorded with the Washtenaw County Register of Deeds after the MSHDA mortgages and corresponding tax-exempt bond regulatory agreement, so that MSHDA's bond requirements are in first position. If this Agreement is not recorded in its entirety, the Township may record an affidavit or other document referencing this agreement and providing information to the public where a complete copy of the agreement may be obtained. The Township will maintain a copy of this Agreement in accordance with its policies.

20. Miscellaneous

- A. Recital clauses listed above constitute an integral part of this Agreement and are incorporated by reference.
- B. Each Affordable Dwelling Unit is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, and occupied subject to the terms, conditions, restrictions and limitations of this Agreement. All of the stated terms, conditions, restrictions and limitations of this Agreement are intended to run with the land and shall be binding upon the successors and assigns of the Property, including mortgagees and purchasers at foreclosure sale.

- C. Any buyer or transferee of the Property, or of any portion of or interest in the Property, by acceptance of a deed thereto, shall be deemed to have consented to and accepted the terms, conditions, restrictions and limitations set forth in this Agreement and the grantor of such deed shall be released from its obligations under the Agreement.
- D. Notices to the Developer shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the Developer at the address set forth below, or such other address designated by the Developer by like notice:

Lockwood Development, LLC,
27777 Franklin Road, Suite 1410
Southfield, MI 48034

- E. Notices to MSHDA shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to MSHDA's Director of Legal Affairs at the address set forth below, or such other address designated by MSHDA by like notice:

Michigan State Housing Development Authority
Attention: Director of Legal Affairs
735 E. Michigan Avenue
Lansing, Michigan 48909

- F. Notices to the Township shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the Township at the address set forth below, or such other address designated by the Township by like notice:

Pittsfield Charter Township
Supervisor's Office
6201 West Michigan Avenue
Ann Arbor, Michigan 48108

And

Washtenaw County Office of Community and Economic Development
415 W. Michigan Avenue
Ypsilanti, MI 48197

- G. If any provision of this Agreement is held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or enforceability shall not in any way be affected or impaired thereby.
- H. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and the either Party's failure to assert any right or provision of this Agreement shall not be deemed a waiver of such right or provision.
- I. Relief from any of the terms and conditions of the Agreement may be granted upon a written request to the Township and approval of the Township Supervisor. Approval shall be in the Township's sole and reasonable discretion.
- J. If the Property is subdivided for the purpose of the sale of individual dwelling units that are classified as Affordable Dwelling Units, such sales shall be subject to this Agreement.

- K. This Agreement shall be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. The Parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The Parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience. Notwithstanding anything to the contrary in this Agreement, nothing herein shall be interpreted so as to require the Township to contravene applicable law including making a loan of credit.
- L. Neither Party to this Agreement will be liable to the other Party for failure to perform any of its obligations under this Agreement to the extent such performance is hindered, delayed or prevented by Force Majeure (except for failure to make payments hereunder). If a party to this Agreement is unable, in whole or in part, to carry out its obligations under this Agreement due to Force Majeure must provide notice to the other Party. Initial notice may be given orally; however, written notification with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. A Party under this Agreement claiming Force Majeure will diligently use all reasonable efforts to remove the cause, condition, event or circumstance of such Force Majeure, will promptly give written notice to the other Party of the termination of such Force Majeure, and will resume performance of any suspended obligation as soon as reasonably possible after termination of such Force Majeure. For purposes of this Agreement, "Force Majeure" will mean causes, conditions, events or circumstances which are beyond the reasonable control of the Party claiming Force Majeure. Such causes, conditions, events and circumstances will include acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, arrests and restraints of the Government, either federal or state, inability of any Party hereto to obtain necessary materials or supplies at market costs or permits due to existing or future rules, orders and laws of governmental authorities (both federal and state), interruptions by government or court orders, present and future orders of any regulatory body having proper jurisdiction, civil disturbances, explosions, sabotage, partial or entire loss of market.

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IN WITNESS THEREOF, the Parties here to have executed this Agreement on the date first set forth above.

SIGNED:

Mandy Grewal, Supervisor
Pittsfield Charter Township

Michelle L. Anzaldi, Clerk
Pittsfield Charter Township

Subscribed and sworn to me on this _____ day of _____, 2021.

Notary Public
_____ County, Michigan
My Commission expires: _____
Acting in Washtenaw County

Mark Lockwood,
Developer

Subscribed and sworn to me on this _____ day of _____, 2021.

Notary Public
_____ County, Michigan
My Commission expires: _____
Acting in _____ County

Prepared By: Pittsfield Charter Township
Return To: Pittsfield Charter Township
6201 Michigan Avenue
Ann Arbor, MI 48108

EXHIBIT A – Legal Description

Exhibit B - Maximum Monthly Rent Example

Maximum Monthly Rent 2020 40% AMI

	2020 Fair Market Rent	5% Utility Allowance Rent	10% Utility Allowance Rent
1 bedroom	\$	\$	\$
2 bedroom	\$	\$	\$
3 bedroom	\$	\$	\$

Maximum Monthly Rent 2020 60% AMI

	2020 Fair Market Rent	5% Utility Allowance Rent	10% Utility Allowance Rent
1 bedroom	\$	\$	\$
2 bedroom	\$	\$	\$
3 bedroom	\$	\$	\$

Fair Market Rents include the cost of all utilities paid by the tenant, except telephone, cable/satellite television or internet.