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## USE AGREEMENT

Department of Consumer and Industry Services  
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY  
735 East Michigan Avenue  
Lansing, Michigan 48912

THIS USE AGREEMENT (the "Use Agreement"), made and entered into as of April 6, 2004, by and among \_\_\_\_\_, a Michigan nonprofit corporation (the "Nonprofit"), whose address is \_\_\_\_\_; \_\_\_\_\_ (the "Homeowner") whose address is \_\_\_\_\_; and the MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY, a public body corporate and politic of the State of Michigan (hereinafter called the "Authority") whose address is 735 East Michigan Avenue, Lansing, Michigan 48912.

### RECITALS:

The Authority, as the Participating Jurisdiction for HOME Investment Partnership Program ("HOME") funds made available by the U.S. Department of Housing and Urban Development ("HUD") subject to the requirements of Section 24, Part 92 of the Code of Federal Regulations (24 CFR 92.1 et. seq.), has awarded HOME funds to the Nonprofit.

The Nonprofit will use the HOME funds to acquire and/or develop a certain housing unit (the "Unit") on real property (the "Property") located at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ County, Michigan, and more fully described as:

As a result of the Nonprofit's receipt and use of HOME fund to acquire and/or develop the Unit on the Property, the Homeowner is receiving the benefit of the HOME funds.

The Nonprofit will convey the use of the Property to the Homeowner through a ground lease, a memorandum of which is being recorded with this Use Agreement, and will sell the Unit placed upon the Property to the Homeowner.

The requirements of Section 24, Part 92 of the Code of Federal Regulations (24 CFR 92.1 et seq.) require that certain use restrictions be imposed upon the Property, as a condition for the Homeowner's receipt of the HOME assistance.

The Authority is required to impose the terms and conditions set forth in this Use Agreement as a result of the Nonprofit's receipt of HOME funds and the Homeowners receipt of HOME assistance in the lease of the Property and the acquisition of the Unit

THEREFORE, it is hereby agreed by and between the parties hereto as follows:

1. **Grant of HOME funds.** The Authority has granted the Nonprofit \$\_\_\_\_\_ of HOME funds. The Nonprofit shall use the HOME funds to assist Homeowner in its acquisition of the Unit and its leasehold interest in the Property. The Homeowner **shall acquire the Unit on or before** \_\_\_\_\_. For so long as the Homeowner holds any ownership interest in the Unit or leasehold interest in the Property, it shall remain the Homeowner's principal residence.

**2. Use Restriction**

a. The Nonprofit and the Homeowner agree that Property is dedicated for use by a homeowner whose gross household income, as defined by the Department of Housing and Urban Development (HUD) in 24 CFR 5.609, does not exceed eighty percent (80%) of the Area Median Income at the time the homeowner initially occupies the Property. Such a homeowner shall be known as an Eligible Homeowner.

b. The use restriction set forth in this section 2 shall continue to be in effect for a period of not less than fifteen (15) years following the later of the date that the Homeowner initially occupies the Unit or leases the Property (the "Affordability Period"), and shall continue without regard to any transfer of ownership by the Homeowner or the term of any mortgage. This use restriction may terminate upon foreclosure or transfer in lieu of foreclosure, unless the owner of record, before the foreclosure, or anyone with business or family ties to the owner, obtains an ownership interest in the property.

c. If the Property shall not continue to be the principal residence of the Homeowner for the entire duration of the Affordability Period, the Property may be made available for subsequent purchase, only to an Eligible Homeowner who will use the Property as the Eligible Homeowner's principal residence.

d. The restrictions and requirements of this Use Agreement shall be monitored by the Nonprofit, subject to the audit and review of the Authority.

e. In the event that the Nonprofit should fail to assure compliance with the restrictions and requirements of this Use Agreement, the Authority shall have the right to do so as set forth in this Use Agreement.

**3. Covenants that Run with the Land.** The Nonprofit and the Homeowner acknowledge and agree that the restrictions set forth in this Use Agreement shall be covenants that run with the land, pursuant to Act No. 346 of the Public Acts of 1966, as amended (the "Act"), and therefore binding on all successors and assigns of the Nonprofit, the Homeowner and the Authority. The restrictions and requirements of this Use Agreement shall be binding and shall remain in effect for the Affordability Period.

**4. Applicability of Nonprofit Ground Lease.** The Homeowner also agrees to abide by the terms of the Ground Lease between Homeowner and Nonprofit, including any right of the Nonprofit to purchase the Property. The Homeowner also agrees that the Property shall be subject to any provisions of the Ground Lease between Homeowner and Nonprofit establishing the price at which the Nonprofit may purchase the Property (the "Resale Price"), provided however, that the Resale Price shall provide the Homeowner a "fair return on investment", as defined by 24 C.F.R. 92.254(a)(5)(i) and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers.

**5. Default and Remedies.** The violation of any provision of this Use Agreement by the Homeowner shall be a default under this Use Agreement. Either the Nonprofit or the Authority may give written notice of such default to the Homeowner, addressed to the address stated in this Use Agreement. If the default is not corrected to the satisfaction of both the Authority and Nonprofit within 90 days, without further notice, either the Nonprofit or the Authority

may avail itself of any remedy available at law or in equity in the event of such a default. The Nonprofit's and 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 Use Agreement; for an injunction against any violation of such covenants and agreements; or for such other relief as may be appropriate, since the injury arising from any default under this Agreement would be irreparable and the amount of damage difficult to ascertain. The Nonprofit's or 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 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. In the event that the Nonprofit should pursue any remedy with to enforce the terms of this Use Agreement, the Authority shall have the right to do exercise any remedy set forth in this Use Agreement.

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

7. **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 Use Agreement: the Executive Director, the Deputy Director/Chief Underwriter, the Director of Finance, and the Director of Legal Affairs. The term "Authorized Officer of the Authority" refers to these employees of the Authority when acting within the scope of their authority.

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

9. **Modification.** This Agreement may not be altered, modified or amended except in writing signed by the Homeowner and an authorized agent or representative of the Nonprofit and the Authority.

IN WITNESS WHEREOF, the parties have caused this Use Agreement to be executed by their duly authorized representatives as of the day and year shown above.

(Homeowner)

By: \_\_\_\_\_

By: \_\_\_\_\_

STATE OF MICHIGAN        )  
   )ss.  
 COUNTY OF                    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
 by \_\_\_\_\_, the Homeowner.



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Detroit, Michigan 48226  
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www.clronline.org/app



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

\*\*\*  
(Nonprofit)

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its:

STATE OF MICHIGAN        )  
  )ss.  
COUNTY OF                 )

The foregoing instrument was acknowledged before me \_\_\_\_\_  
by \_\_\_\_\_, the \_\_\_\_\_, on behalf of \_\_\_\_\_ a Michigan  
Nonprofit Corporation, on behalf of said corporation.

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

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