



220 Bagley Ave., Ste. 900
Detroit, Michigan 48226
(313) 964-4130
fax (313) 964-1192
www.clronline.org/app



MORTGAGE
(Individual Borrower)

THIS MORTGAGE, made and entered into this ____ day of _____, 200__, by and between

_____, whose address is _____

_____, (the "Borrower"), and _____, whose address is _____ (the "Lender").

RECITALS:

[If applicable: The Borrower is acquiring the property described in this Mortgage pursuant to the Lender's [insert name of homebuyer assistance program].]

[If applicable: The Borrower is indebted to the Lender in the principal sum of _____ and No/100 (\$_____.00) Dollars, evidenced by a Note executed on _____, 200__ (which, together with any and all extensions, amendments, renewals, modifications or restatements of the Note, however evidenced, are referred to as the "Note"). The Note and all of its terms are incorporated in this Mortgage by reference and this Mortgage secures the Note.]

[If applicable: The Borrower has acquired the property described in this Mortgage from the Lender at a subsidized price which is below the fair market value of the property and the parties agree that the amount of this subsidy (the "Subsidy") is _____ and No/100 (\$_____.00) Dollars.]¹

NOW, THEREFORE, the Borrower, to secure the payment of the **[if applicable: Note,] [if applicable: Subsidy]** and other amounts due under this Mortgage and the performance of the covenants and agreements contained in this Mortgage, does by this Mortgage, MORTGAGE AND WARRANT to the Lender, its successors or assigns, the lands, premises and property (the "Property") located in the City/Township of _____, in the County of _____ and State of Michigan, described as follows:

TOGETHER with, and including as part of the Property, the fixtures, improvements, privileges and appurtenances to the same belonging and all of the rents, issues, and profits which may arise or be had therefrom.

AND the Borrower hereby COVENANTS as follows:

¹ Lender will select the applicable recital depending upon its particular "subsidy" program. Throughout the Mortgage there will be further references to either a Note or a Subsidy.



220 Bagley Ave., Ste. 900
Detroit, Michigan 48226
(313) 964-4130
fax (313) 964-1192
www.cflonline.org/app



1. The Borrower will pay the [Note] [Subsidy] at the times and in the manner provided therein or in this Mortgage.
2. The Borrower agrees that if all or any part of its interest in the Property is sold, transferred, mortgaged or otherwise conveyed, voluntarily or involuntarily, either while the Borrower is living or upon the death of the Borrower, or the Property ceases for any other reason to be the Borrower's principal place of residence this act shall be a default and Borrower shall repay the Lender (unless the Lender otherwise agrees in writing not to require repayment) the full amount of the outstanding indebtedness under the [Note][Subsidy], except as otherwise provided in Section 4 below. Any required repayment shall be made to Lender not later than the 30th day following the sale, transfer or other conveyance, or following the date upon which the Property ceases to be the Borrower's principal place of residence.²
3. Promptly after the date of any sale, transfer, mortgage or other conveyance of all or any part of the Borrower's interest in the Property (by deed, land contract, mortgage or other instrument or by other cause) or promptly after the date upon which the Property ceases to be the Borrower's principal place of residence, Borrower, or its heirs, executors, or representatives shall give Lender written notice by certified mail of such event.
4. Notwithstanding anything to the contrary above, upon receipt of notice from the executor of the Borrower's estate given within ninety (90) days of the death of Borrower, Lender shall, unless for good cause shown, consent to a transfer of the Property to one or more of the following possible heirs of Borrower, subject to and with an assumption by such transferee of this Mortgage and the debt and obligations which it secures:
 - a) the spouse of Borrower; or
 - b) the child or children of Borrower; or
 - c) member(s) of Borrower's household who have resided at the Property for at least one year prior to Borrower's death.

Any other person or persons who are heirs, legatees or devisees of Borrower must demonstrate to Lender's reasonable satisfaction that they meet the definition of Income-Qualified Family below, and if any such person is unable to do so, then the transfer to such person shall be a default under this Mortgage as provided in Section 2 above.³

An "**Income-Qualified Family**" means a family whose income does not exceed eighty per cent (80%) of the area median gross income, adjusted for family size. Family income shall be determined in a manner consistent with determinations of lower income families and area median gross income under Section 8 of the U.S. Housing Act of 1937, as amended (the "**Section 8 Program**"). If the Section 8 Program is terminated, determinations under a comparable Federal or State of Michigan program identified by Lender shall be used; and if Lender does not designate a comparable program, then

² This is a due on sale clause, except for specifically permitted sales or transfers as set forth in Section 4.

³ In the event that Borrower dies, this allows Borrower's estate to transfer the Property to a spouse, child or household member whether or not an "Income-Qualified Family." Any other sale or transfer is restricted to an Income-Qualified Family and by a Maximum Purchase Price. Lender may elect to set other parameters for income and/or purchase price.



220 Bagley Ave., Ste. 900
Detroit, Michigan 48226
(313) 964-4130
fax (313) 964-1192
www.cflonline.org/app



determinations shall continue to be made under the Section 8 Program regulations as in effect immediately before termination.

In addition, without it being a default under this Mortgage, Borrower may sell, transfer, or otherwise dispose of its interest in the Property to members of an Income-Qualified Family that assume this Mortgage and that also comply with the Maximum Purchase Price requirements below. Any purported sale, transfer or other disposition to any other person or entity done without meeting the requirements of this Section 4 shall be a default under this Mortgage as provided in Section 2 above.

If Borrower contemplates a sale, transfer or disposition of the Property to a particular third party, then not less than sixty (60) days prior to the contemplated closing thereof, Borrower shall give Lender notice (an "**Intent to Sell Notice**") of the proposed transfer substantially in the form of Exhibit 1 attached. Such notice shall include evidence that the purchase price does not exceed the Maximum Purchase Price, together with the following or comparable items for the proposed buyer: (i) the tax return of the proposed buyer for the immediately preceding year; (ii) a current verification of the proposed buyer's employment; (iii) the pay stubs of the proposed buyer for the three months immediately preceding the month in which notice is given to Lender.

No sale, transfer or other disposition shall be in compliance with this Mortgage unless and until Lender confirms in writing within forty-five (45) days of receipt of such notice and accompanying documentation that the proposed buyer is an Income-Qualified Family and that the purchase price does not exceed the Maximum Purchase Price. If Lender fails to respond in writing within forty-five (45) days of its receipt of such notice, such failure on the part of Lender shall be deemed to constitute a denial of such status.⁴

The Maximum Purchase Price (the "**MPP**" or "**Maximum Purchase Price**") shall be equal to the *lesser* of (1) the current appraisal value of the Property (as determined below) or (2) the sum of (i) the Borrower's Purchase Price (as stipulated below or as established in a closing in compliance with a notice of a as sale provided above), plus (ii) twenty-five percent (25%) of the increase in market value of the Property, if any, calculated in the manner described below.⁵

The parties agree that initial Borrower's Purchase Price for the Property as of the date of this Mortgage is \$_____. Upon the closing of a permitted sale, transfer or disposition of the Property, the selling Borrower shall give Lender notice of the purchase price paid for the Property, which shall be the purchasing Borrower's Purchase Price for purposes of this Mortgage. Upon the closing of a permitted sale, transfer or disposition of the Property, the selling Borrower shall give the purchasing buyer a Buyer's Disclosure and Acknowledgment in the form of attached *Exhibit 2*.

For purposes of calculating the MPP, the "increase in market value of the Property" (if any) shall be determined by subtracting (i) the amount of the appraised value of the

⁴ Lender could instead make the timely failure to respond an approval of the proposed buyer.

⁵ This is just one example of a way to establish a maximum purchase price. Lender could, for example, set it as a percentage of the current appraised value.



220 Bagley Ave., Ste. 900
Detroit, Michigan 48226
(313) 964-4130
fax (313) 964-1192
www.cflr.org/app



Property at the time of the selling Borrower's purchase, as documented by the appraiser's report delivered to Lender in connection with the purchase, from (ii) the amount of the appraised value of the Property as of a date within sixty (60) days of the time of Borrower's Intent to Sell Notice, to be determined as provided below. If the resulting number is negative, there is no "increase in market value of the Property". (The appraised value determined at the time of a selling Borrower's Intent to Sell Notice under clause (ii) shall be the purchasing Borrower's appraised value under clause (i).)

At the time of the giving of the Borrower's Intent to Sell Notice, Borrower shall submit to Lender, at Borrower's expense, an appraisal (the "**Appraisal**") of the Property by a qualified appraiser. Within ten (10) days of receipt of the Appraisal from Borrower, Lender shall either (a) accept the Appraisal as accurately representing the market value of the Property for purposes of calculating the MPP, or (b) commission a second appraisal by a qualified appraiser, at Lender's expense, and submit a copy of this second appraiser's report to Borrower within forty-five (45) days of the giving of Intent to Sell Notice. If a second appraisal is commissioned and results in an appraised value which is not less than 90% nor more than 110% of the amount of the first appraisal, the amount to be used in determining the "increase in market value of the Property" shall be the average of the two appraised values. If the amount of the second appraisal is more than 10% greater or less than the first, the two appraisers shall then select a third qualified appraiser, who shall choose the one of the two prior appraisal amounts that more closely represents the market value of the Property as of the date of the Notice of Intent to Sell. The cost of the third appraiser shall be shared equally by Lender and Borrower.⁶

In addition, Lender, at Lender's option, by (and only by) written notice to Borrower given within forty-five (45) days after Lender receives the Intent to Sell Notice, may elect to purchase the Property at the MPP. In the event that Lender timely exercises this option, the closing on this purchase shall take place within forty-five (45) days after Lender exercises this option. It shall be a cash sale to Borrower, and Borrower shall deliver to Lender at the closing a warranty deed conveying fee simple title to the Property to Lender (or to such other party as Lender may designate in writing) free and clear of all liens and encumbrances (except for the following "permitted exceptions": taxes not then due and payable, utility or other easements of record which do not underlie the improvements or materially, adversely affect use of the Property, covenants, conditions and restrictions of record which do not materially, adversely affect use of the Property, and encumbrances created by Lender). Borrower shall provide Lender at the closing, at Borrower's expense, with an ALTA form extended coverage owner's policy of title insurance for the Property in the full amount of the purchase price insuring Lender's fee simple title subject only to standard policy exceptions and the permitted exceptions. Borrower, at its option, may elect at any time to provide Lender with a written notice offering Lender the option to purchase the Property at the MPP ("Purchase Option Notice"). Lender, at Lender's option, by (and only by) written notice to Borrower given within forty-five (45) days after Lender receives the Purchase Option Notice, may elect to purchase the Property at the MPP. In the event that Lender timely exercises this option, the closing on this purchase shall take place within forty-five (45) days after Lender exercises this option. The terms of the closing shall otherwise be the same as if Lender timely exercised its option to

⁶ Lender may substitute another formula for determining the appraised value. For example, to save time and money Lender may choose to average Borrower's and Lender's appraisals, regardless of the spread, and forgo a third appraisal.

purchase following receipt of the Intent to Sell Notice. If Lender fails to timely exercise its option to purchase following receipt of the Intent to Sell Notice or the Purchase Option Notice, then Lender shall not have the right to exercise these options (and Borrower shall not have to provide Lender with another Intent to Sell Notice or the Purchase Option Notice, as the case may be) as long as Borrower sells (and closes on the sale of) the Property within twelve months after Lender's receipt of the Intent to Sell Notice or the Purchase Option Notice (for which Lender did not exercise its purchase option). Borrower shall, however, comply with all other terms and provisions of this Mortgage in connection with any such sale, even though Lender's purchase option may not apply.⁷

5. The Borrower will pay all ground rents, taxes, assessments, water bills, mortgages and all other charges and encumbrances which now are or shall hereafter be or appear to be a lien upon the said Property or any part thereof, before the same become delinquent or subject to interest or penalties (unless otherwise agreed to in writing by the Lender), and that in default thereof, the Lender may at its option (but without obligation), without demand or notice, pay the said taxes, assessments, water bills, mortgages, charges or encumbrances, and shall be the sole judge of the legality or validity thereof and of the amount necessary to be paid in satisfaction thereof.
6. The Borrower will keep the improvements now existing or hereafter erected on the Property insured against loss by fire and such other hazards, casualties, and contingencies as may be stipulated by the Lender for the full replacement value of the improvements, unless otherwise agreed to in writing by the Lender. The Borrower shall deliver to the Lender the policies evidencing the required insurance with premiums fully paid for one year in advance and with standard mortgagee clauses insuring the Lender's interest in form and content satisfactory to the Lender. Renewals of the required insurance (together with evidence of premium prepayment for one year in advance) shall be delivered to the Lender at least thirty (30) days before the expiration of any existing policies. All policies and renewals shall provide that they may not be canceled or amended without giving the Lender thirty (30) days prior written notice of cancellation or amendment.
7. If the Property or any part of it is damaged by fire or other hazard insured against, the amounts paid by any insurance company pursuant to a policy of insurance shall be paid

⁷ The mortgage by its nature provides limited affordability protection, since Borrower can payoff the Note or Subsidy being secured by the Mortgage and Lender would then discharge the mortgage. Assuming, however, that in many cases a Borrower will need to sell the Property in order to raise the funds to payoff this Mortgage, this purchase option is intended to provide additional affordability protection. The purchase option may be triggered by Borrower either at the time it has a "live" buyer (and presumably Borrower would sign a purchase agreement contingent upon Lender not exercising its purchase option) or Borrower, in order to increase marketability, may elect to give Lender the chance to purchase and, assuming Lender doesn't exercise this purchase option, Borrower has a 12 month period to find a qualified buyer, sign a purchase agreement and close the sale free of the purchase option. If Borrower sells the Property to a buyer in violation of either the income qualifications or the maximum purchase price or in violation of the purchase option, this would be a default. Lender would be able to exercise its foreclosure rights. Whether a court would invalidate the improper sale and allow Lender to buy the Property at the purchase option price is unclear, as it might deem this to "clog the equity of redemption" (e.g. interfere with established rights a borrower has in the event of a default and foreclosure).



220 Bagley Ave., Ste. 900
Detroit, Michigan 48226
(313) 964-4130
fax (313) 964-1192
www.clronline.org/app



to the Lender to the extent of the outstanding indebtedness secured by this Mortgage. At the option of the Lender, the proceeds may be applied to the outstanding indebtedness secured by this Mortgage or released for the repairing or rebuilding of the Property. No amount applied by the Lender towards the indebtedness secured by this Mortgage shall relieve the Borrower from making further payments on the remaining indebtedness as and when required.

8. All awards of damages in connection with any condemnation for public use of or injury to any of the Property shall be paid to the Lender to the extent of the outstanding indebtedness secured by this Mortgage. At the option of the Lender, the proceeds may be applied to the outstanding indebtedness secured by this Mortgage or released for the repairing or rebuilding of the Property. The Lender is hereby authorized in the name of the Borrower to execute and deliver valid acquittances for such awards and to appeal such awards. No amount applied by the Lender towards the indebtedness secured by this Mortgage shall relieve the Borrower from making further payments on the remaining indebtedness as and when required.
9. The Borrower will not permit or commit any waste on the Property and will keep the Property, including without limit the buildings, fixtures and all equipment associated with the Property, if any, in good condition and repair, and promptly comply with all laws, statutes, ordinances, regulations, codes and requirements of any governmental body affecting the Property. Should the Property or any part of the Property require inspection, repair, care, or attention of any kind or nature not provided by, or on behalf of, the Borrower, the Lender may, at its discretion and after notice to the Borrower, enter or cause entry to be made on the Property, and inspect, repair, protect, care for or maintain the Property as the Lender may deem necessary, and may pay such sum of money as the Lender, in its sole discretion, may deem to be necessary for that purpose.
10. The Borrower will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the Property on the basis of sex, race, color, religion, creed, national origin, age (unless with respect to a senior citizens housing program), height, weight, handicap, family status or marital status except as provided by law.
11. The Borrower shall pay the Lender immediately upon the Lender's demand the amounts of all sums of money or expenses which the Lender shall pay, expend or incur pursuant to the provisions of this Mortgage, and such payments or expenses incurred by the Lender shall be a further lien on the Property under this Mortgage.
12. Should any default be made in the payment of any amount due under, or in the performance of any covenant of, this Mortgage then all sums due hereunder shall, at the option of the Lender, without notice, become immediately payable thereafter, although the period above limited for the payment thereof may not have expired, anything to the contrary notwithstanding, and any failure to exercise such option shall not constitute a waiver of the right to exercise the same at any other time with respect to the same default or any subsequent default.
13. No forbearances on the part of the Lender and no extension of the time for the payment of the debt hereby secured, given by the Lender, shall operate to release, discharge, modify, change or affect the original liability of the Borrower herein either in whole or in

part. Immediately upon the occurrence of a default under this Mortgage, the Lender shall have the option to do any or all of the following: (a) Declare the entire unpaid amount of the indebtedness secured by this Mortgage and all other charges payable by the Borrower to the Lender, to be immediately due and payable and, at the Lender's option, (i) to bring suit for the same, or (ii) to take all steps and institute all other proceedings that the Lender deems necessary to enforce payment of the indebtedness and performance under this Mortgage and to protect the lien of this Mortgage; (b) Commence foreclosure proceedings against the Property through judicial proceedings or by advertisement, at the option of the Lender. The commencement by the Lender of foreclosure proceedings shall be deemed an exercise by the Lender of its option to accelerate the Indebtedness, unless such proceedings on their face specifically indicate otherwise. The Borrower grants power to the Lender to sell the Property or to cause the same to be sold at public sale, and to convey the same to the purchaser, in a single parcel or in several parcels at the option of the Lender; (c) Procure new or cause to be updated abstracts, tax histories, title insurance, or title reports; (d) Obtain a receiver to manage the Property and collect the rents, profits and income from it; (e) Contest the amount or validity of any taxes applicable to the Property by appropriate proceedings either in the Lender's name, the Borrower's name or jointly with the Borrower. The Borrower shall execute and deliver to the Lender, upon demand, whatever documents and information the Lender determines may be necessary or proper to so contest the taxes or to secure payment of any resulting refund. The Borrower shall reimburse the Lender for all costs and expenses, including, without limit, attorney fees, incurred in connection with each tax contest proceeding. All refunds resulting from each tax contest proceeding shall belong to the Lender to be applied against the indebtedness secured by this Mortgage with the surplus, if any, to be paid to the Borrower. The Lender and any of its employees is each irrevocably appointed attorney-in-fact for the Borrower and is authorized to execute and deliver in the name of the Borrower those documents deemed necessary or proper by the Lender to carry out any tax contest proceeding or receive any resulting refunds; and/or (f) In the event of any sale of the Property by foreclosure, through judicial proceedings, by advertisement or otherwise, apply the proceeds of any such sale in the following order or such other order as the Lender may elect: to (i) all expenses incurred for the collection of the indebtedness and the foreclosure of this Mortgage including, without limit, reasonable attorney fees; (ii) all sums expended or incurred by the Lender directly or indirectly in carrying out terms, covenants and agreements of or under this Mortgage; (iii) all accrued and unpaid interest and late payment charges upon the indebtedness; (iv) the unpaid principal amount of the indebtedness or other amounts due to the Lender under this Mortgage; and (v) the surplus, if any, paid to the Borrower unless a court of competent jurisdiction decrees otherwise.

14. **NOTICE: THIS MORTGAGE CONTAINS A POWER OF SALE AND UPON DEFAULT MAY BE FORECLOSED BY ADVERTISEMENT AS HEREIN PROVIDED.** Upon default being made in the payment of any amount due under, or in the performance of any covenant of, this Mortgage, the Lender is hereby authorized and empowered to sell the Property or cause it to be sold and to convey the same to the purchaser in any lawful manner, including but not limited to that provided in the Act and by Section 49 of the Act entitled "Foreclosure of Mortgage by Advertisement," which permits the mortgage holder to sell the Property without affording the Borrower a hearing, or giving it personal notice; the only notice required is to publish notice in a newspaper of general circulation in the county wherein the Property is located and to post a copy of the notice on the Property.



220 Bagley Ave., Ste. 900
Detroit, Michigan 48226
(313) 964-4130
fax (313) 964-1192
www.cflonline.org/app



WAIVER: BY CONFERRING THIS POWER OF SALE UPON THE MORTGAGE HOLDER, THE BORROWER FOR ITSELF, ITS SUCCESSORS AND ASSIGNS HEREBY WAIVES ALL RIGHTS UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES AND UNDER THE CONSTITUTION AND LAWS OF THE STATE OF MICHIGAN BOTH TO A HEARING ON THE RIGHT TO EXERCISE AND THE EXERCISE OF THE POWER OF SALE, AND TO NOTICE EXCEPT AS REQUIRED BY THE MICHIGAN STATUTE WHICH PROVIDES FOR FORECLOSURE BY ADVERTISEMENT. However, the Borrower reserves the right to timely contest the exercise of the power of sale by instituting suit against the mortgage holder in the circuit court of the county in which the Property is located or any other court of competent jurisdiction.

The Borrower further agrees that the Lender is authorized and empowered to retain out of the sale proceeds such monies as are due under the terms of this Mortgage, the costs and charges of such sale, and also the attorney's fee provided by statute or as otherwise provided by a court of competent jurisdiction, rendering the surplus monies (if any there should be) to the Borrower.

15. The Borrower will not voluntarily create or permit to be created against the Property any lien or liens, whether superior or junior to the lien of this Mortgage, except for one purchase money mortgage executed on approximately the same date as this Mortgage or any subsequent mortgage given for the purpose of paying off and refinancing the purchase money mortgage or a refinance thereof ("Permitted Prior Mortgage"), and agrees to keep and maintain the Property free from the claims of all persons supplying labor or materials that will be used in the construction, rehabilitation or repair of the Property and the failure of the Borrower to keep the Property lien-free shall be a default under this Mortgage. The Borrower will comply with all terms and conditions of the Permitted Prior Mortgage and with all covenants, restrictions and easements affecting the Property **[Add if applicable:** , including without limit the Affordability Restrictions Agreement dated _____, 20__ between _____ and _____], and a default under the Permitted Prior Mortgage or under any such covenants, restrictions and easements beyond any applicable cure period in the applicable document shall also be a default under this Mortgage.⁸
16. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.
17. The invalidity of any clause, part or provision of this Mortgage shall not affect the validity of the remaining provisions of this Mortgage.
18. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective successors and assigns of the parties hereto.

⁸ It is anticipated that this Mortgage will be a second mortgage, as Borrower will not have sufficient funds to purchase the Property without both a first mortgage and the "subsidy" provided by Lender. However, this Mortgage will work as a first mortgage.



220 Bagley Ave., Ste. 900
Detroit, Michigan 48226
(313) 964-4130
fax (313) 964-1192
www.clronline.org/app



19. THE BORROWER AND THE LENDER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS MORTGAGE OR THE INDEBTEDNESS.

The Borrower has signed and delivered this Mortgage as of the day and year first above written.

-

STATE OF MICHIGAN)

COUNTY OF _____)

On this _____ day of, 200____, before me in _____ County, Michigan, appeared _____, to me personally known, who, being by me duly sworn acknowledged the above instrument to be their free act and deed.

Notary Public; County of _____,
State of Michigan
Acting in the County of _____
My Commission Expires: _____

Drafted by:

WHEN RECORDED RETURN TO:

This document is a product of the Community Legal Resources Affordability Preservation Project. Please check the CLR Affordability Preservation Project website for updates to this document:

www.clronline.org/app

This publication is intended to provide general information, and is not a substitute for legal advice. If you have additional questions about this issue, contact Community Legal Resources at 313/964-4130.

The CLR Affordability Preservation Project was made possible through the generous support of the Michigan State Housing Development Authority.

Printing of the CLR Affordability Preservation Project publications was made possible through the generous support of Comerica Bank.

Sa © 2006 Community Legal Resources