

Community Land Trust Homebuyer Assistance Program (CHAP) Declaration of Lien Interest – RESALE Instructions

The **Declaration of Lien Interest** enforces the repayment of the outstanding assistance in the event of a refinance of the first mortgage, sale of the home, or other transfer of title for a time period equal to the period of affordability based on the amount of HOME subsidy provided to the homebuyer.

HOME Down Payment Assistance to Homebuyer	Minimum Affordability Period
Less than \$25,000	5 yrs.
\$25,000 - \$50,000	10 yrs.
More than \$50,000	15 yrs.

Resale during the Affordability Period is subject to the provisions of the Minot Area Community Land Trust (MACLT) Ground Lease, the CHAP Homebuyer Written Agreement and this Declaration of Lien Interest.

MACLT is responsible for the following:

1. Completion of the Declaration of Lien Interest with the required information:
 - a. Date of loan closing
 - b. Buyer name(s) (A non-obligating spouse must execute and be listed as a Buyer.)
 - c. Legal description
 - d. Property address
 - e. Assistance amount
2. Ensuring the Declaration of Lien Interest:
 - a. Is executed at loan closing;
 - b. Is recorded separately from and inferior to the first mortgage, any NDHFA second mortgage, or any other interest originating from an NDHFA Down Payment or Closing Costs Assistance lien;
 - c. **Must be submitted with Mortgage Submission Voucher for first mortgage loan purchase**



DECLARATION OF LIEN INTEREST – RESALE
COMMUNITY HOUSING AND GRANTS MANAGEMENT
SFN 62696 (12/25)

Date	Buyer(s)
------	----------

THIS IS A “DECLARATION OF LIEN INTEREST” (herein “Agreement” or “Declaration”) running with the land with the above-named buyer(s) (“Buyer,” “Homebuyer,” or “Homeowner”) and is binding upon the Buyer’s successors and assigns in interest, and is granted to the North Dakota Industrial Commission acting as the North Dakota Housing Finance Agency located at 2624 Vermont Ave, PO Box 1535, Bismarck, North Dakota 58502 (herein “NDHFA”) on the land and improvements hereinafter described to wit (herein “Residence” or “Property”):

Legal Description			
Property Address	City	State	ZIP Code

WITNESSETH:

WHEREAS, purchase of this Residence was partially funded with a mortgage loan financed with proceeds of mortgage revenue bonds or other resources under the NDHFA home loan program (herein “NDHFA Loan”),

WHEREAS, Minot Area Community Land Trust (MACLT) provided to the Buyer, a MACLT Homebuyer Opportunity Program Loan (herein “Assistance Payment” or “Direct HOME Assistance”) specified below.

Assistance Payment Amount \$
County Recorder

WHEREAS, NDHFA requires that the Buyer, in recognition of its receipt of the Assistance Payment, execute, deliver and record with the County Recorder named above this Declaration of Lien Interest in order to create certain covenants for the purpose of requiring the repayment of all or a portion of the Assistance Payment in the event the NDHFA Loan is repaid in full during the Affordability Period, as set out herein.

SECTION 1 – STATEMENT OF INTENT

- a. Buyer does hereby impose upon the Residence all the covenants, terms, conditions, reservations, charges, and easements set forth in this Agreement and agrees to repay all or a portion of the Assistance Payment in accordance with the terms and conditions hereinafter set forth, all of which shall apply to and run with the Residence and shall be binding upon and a burden upon the Residence and all portions and appurtenances thereof, and upon Buyer and his/her successors and assigns during the term hereof, the benefits of which shall inure to NDHFA and its successors and assigns, until termination hereof pursuant to the provisions contained herein.
- b. Buyer hereby agrees that all of the covenants, terms, conditions, reservations, restrictions, charges, and easements set forth in the Agreement shall survive and be effective as to all transferees of all or any portion of the Residence, regardless of whether or not the contract, agreement or other instrument hereafter executed conveying the Residence provides that such conveyance is subject to this Agreement, and regardless of whether or not any such contract, agreement, or other instrument is in writing, is verbal, or is implied.
- c. Buyer hereby declares Buyer's understanding and intent that (i) the burden of the covenants, terms, conditions, reservations, restrictions, charges, and easements set forth in this Agreement touch and concern the Residence in that the Buyer's legal interest in the Residence is rendered less valuable thereby and (ii) the benefit of such covenants, terms, conditions, reservations, restrictions, charges, and easements touch and concern the Residence by enhancing and increasing the enjoyment and use of the Residence by the Buyer as the intended beneficiary thereof and by furthering the public purposes for which NDHFA has financed the NDHFA Loan and the MACLT provided the Assistance Payment to the Buyer.

SECTION 2 – TERM OF THE AGREEMENT AND AGREEMENT TO REPAY ASSISTANCE PAYMENT

- a. **Term of the Agreement.** This agreement will automatically terminate if the Homebuyer does not close and take title to the Property on or before ABSOLUTE

CLOSING DEADLINE. Otherwise, this Agreement will expire upon the expiration of the Affordability Period (the "Agreement Term").

- b. **Affordability Period.** The Affordability Period for the Property will begin on the Completion date as determined by the MACLT ("**Completion Date**") and shall end ☐ 5 ☐ 10 ☐ 15 years after the Completion Date (the "**Affordability Period**"). As required by the HOME Program, the Completion Date is the date the activity is shown as completed in HUD's Integrated Disbursement and Information System (IDIS). The MACLT will provide a formal written notice to the Homebuyer of the Completion Date and the resulting expiration date of this Affordability Period and this Agreement. Upon issuance of such notice, this Agreement shall be deemed amended to reflect the expiration date of the Affordability Period.
- c. **The Buyer agrees to repay all or a portion of the Assistance Payment upon the occurrence of certain events.** If the Homebuyer sells or transfers ownership of the Property voluntarily or involuntarily, including via foreclosure or deed in lieu of foreclosure, the Affordability Period will end upon the recapture of the full amount of the Direct HOME Assistance by MACLT.
- d. **Recapture/Resale Provisions.** In compliance with the HOME Rule at 24 CFR 92.254(a)(5), if the Homebuyer sells or otherwise voluntarily or involuntarily transfers title to the Property during the Agreement Term, including transfer as a result of foreclosure or deed in lieu of foreclosure, then the outstanding Direct HOME Assistance to the Homebuyer will be subject to recapture by the MACLT.

Resale provisions will be used for transactions in which homebuyers purchase a property owned by the MACLT and the property is subject to a MACLT ground lease.

Resale Provisions

In compliance with the HOME Rule at 24 CFR 92.254(a)(5), if the Homeowner sells or otherwise voluntarily or involuntarily transfers title to the Property during the Agreement Term, including transfer as a result of foreclosure or deed in lieu of foreclosure, resale provisions will be used as the Homebuyer will purchase a property owned by the MACLT and the property is subject to a MACLT ground lease that governs resale in compliance with HOME requirements, which requires that when the Homebuyer sells his or her property voluntarily or involuntarily during the Affordability Period:

- The property must be sold to another low-income homebuyer who will use the property as his or her principal residence.
- The property must be sold at a price that is "affordable to a reasonable range of low-income buyers" which is defined as a household with income that is 70-80% of the area median income paying between 20-28 percent of gross monthly income towards monthly mortgage payments including principal, interest, taxes, property insurance, mortgage insurance (if applicable), and the ground lease payment.
- The original Homeowner(s) will receive a "fair return" on their investment, i.e., the Homeowner will receive a share of the value of the property plus the value of capital improvements made to the house by the Homeowner.

Resales will be administered by the MACLT as follows:

1. Upon receiving a Notice of Intent to Sell from the Homeowner, the MACLT shall commission an appraisal to be performed by a licensed appraiser who is acceptable to the Homeowner. The appraisal will be conducted by analysis and comparison of comparable properties as though the title to the land and home were held in fee simple absolute by a single party, disregarding all of the restrictions of the MACLT Ground Lease on the use, occupancy and transfer of the property.
2. The MACLT will calculate the following:
 - a) **Homeowner's Initial Ownership Interest** – The homeowner's ownership interest at time of original purchase is the percentage of the Initial Appraised Value that the homeowner provided, as defined and calculated below.
 - i) **Homeowner's Base Price:** The price paid by the homeowner upon the execution of the MACLT Ground Lease. (Homeowner's Base Price equals the Homeowner's Ownership Interest at time of purchase.)
 - ii) **Initial Appraised Value of Home and Leased Land:** The fee simple value of the home and the leased land based on an independent appraisal at time of original purchase.
 - iii) **Homeowner's Initial Ownership Interest (%):** The Homeowner's Initial Ownership interest is the ratio of Homeowner's Base Price to Initial Appraised Value, expressed as a percentage.
 - b) **Value of Homeowner's Ownership Interest at Resale** – The ownership interest at time of resale is determined through appraisal to include homeowner's capital improvement credit(s) and the homeowner's share of the appraised value of the property at resale.
 - i) **Appraised Value at Resale:** An independent appraisal determines the appraised value of Home and Leased Land at resale.
 - ii) **Value of Homeowner's Ownership Interest at Resale:** The Appraised Value of the Homeowner's Ownership Interest is calculated by adding:
 - (1) Appraised Value of Homeowner's Ownership Interest at Resale plus
 - (2) Homeowner's Capital Improvement Credit(s), as calculated in MACLT's Qualified Capital Improvements Policy.
 - c) **Formula Resale Price** – The resale price at time of resale is defined and calculated below.
 - i) **Formula Price** equals both:
 - (1) The amount of Homeowner's Base Price plus interest at a rate of two-and-one-half percent (2.5%) compounded annually, plus

(2) Capital Improvement Credit(s), as calculated in MACLT's Qualified Capital Improvements Policy

d) **Purchase Option Price** – The Purchase Option Price will be used if the MACLT elects to exercise the Purchase Option. If elected, the Purchase Option Price is the lesser of:

- i) The Appraised Value of Homeowner's Ownership Interest at Resale.
- ii) The Formula Resale Price.

3. During the Affordability Period, the MACLT may repurchase the home and convey it to an eligible low-income buyer (the "Purchase Option") or permit the homeowner to find an eligible buyer. If the MACLT elects to purchase the home, it may exercise the purchase option by either proceeding to purchase the home directly or assigning the Purchase Option to a HOME-eligible low-income person. If the purchase (by the MACLT or its assignee) is not completed within the timeframe stated in the executed MACLT Ground Lease, the homeowner may sell the home and homeowner's rights to the leased land for a price no greater than the then applicable Purchase Option Price, to any party if that party is a HOME-eligible low-income person.
4. If the MACLT does not exercise its option and complete the purchase of the homeowner's property as described above, and if the homeowner (a) is not then residing in the home and (b) continues to hold the homeowner's property out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one year of the date of the Notice of Intent to Sell, then the MACLT may appoint its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purpose of the MACLT Ground Lease, sell the property, and pay to the homeowner the proceeds of the sale, minus the MACLT's costs of sale and any other sums owed to the MACLT by the homeowner.

SECTION 4 – DEFAULT

- a. **Enforcement and Remedies.** If Buyer defaults in the performance of any of its obligations under this Declaration, the Community Land Trust Homebuyer Assistance Program (CHAP) Homebuyer Written Agreement, or the MACLT Ground Lease or breaches any covenant, agreement or restriction set forth herein or in the NDHFA Loan, and if such default remains uncured for a period of 60 days after notice thereof shall have been given by NDHFA or its successors and assigns (or for an extended period approved in writing by NDHFA or its successors and assigns if the default or breach stated in such notice can be corrected, but not within such 60 day period, unless Buyer does not commence such correction or commences such correction with such 60 day period but thereafter does not diligently pursue the same to completion within such extended period), NDHFA shall be entitled to apply to any court having

jurisdiction of the subject matter for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Residence in accordance with the terms of this Agreement, or for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Buyer's obligations hereunder cannot be adequately compensated by monetary damages in the event of Buyer's default. To the extent not prohibited by N.D.C.C. Section 28-26-04, NDHFA shall be entitled to its reasonable attorneys' fees in any such judicial action in which NDHFA prevails.

- b. **Remedies Cumulative.** Each right, power and remedy of NDHFA provided for in this Agreement now or hereafter existing at law or in equity by statute or in the NDHFA Loan or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by NDHFA of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by NDHFA of any or all such other rights, powers or remedies.

SECTION 5 - MISCELLANEOUS

- a. **Successors Bound.** This Agreement and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Buyer, NDHFA and their respective grantees, heirs, personal representatives, successors and assigns and all subsequent grantees, heirs, personal representatives, successors and assigns of all or any of them, or any interest(s) therein for the Affordability Period specified herein above in Section 2.
- b. **Additional Documents.** The Buyer shall submit any other information, documents or certifications requested by the NDHFA which NDHFA deems reasonably necessary to substantiate the Buyer's continuing compliance with this Agreement.
- c. **Severability.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
- d. **Notices.** All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses herein above set forth, or to such other place as a party may from time to time designate in writing to the other(s).
- e. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.
- f. **Time of the Essence.** Time is of the essence with respect to this Declaration and the Promissory Note and mortgage evidencing the NDHFA Loan to Buyer and the performance of each and every obligation of Buyer to NDHFA herein.

- g. **Agreement Subordinate to Prior Recordings.** The Buyer and NDHFA acknowledge and agree the terms and provisions of this Agreement are subject and subordinate in all respects to the liens, terms, covenants and conditions of the NDHFA Loan. In the event of a foreclosure or a deed in lieu of foreclosure, assignment of an FHA insured mortgage to HUD of the mortgage securing the NDHFA Loan, or repayment of the Assistance Payment, the terms and conditions of this Agreement shall have no further force nor effect with respect to the first lien holder or any bona fide transferee of the Residence therefrom or thereunder.

IN WITNESS WHEREOF, the Buyer has caused this Agreement to be signed as of the date first above written.

Buyer's Signature	Buyer's Signature
-------------------	-------------------

ACKNOWLEDGEMENT

STATE OF NORTH DAKOTA

COUNTY OF _____

This record was acknowledged before me on _____(Date) by

_____(Names of Individuals).

Signature of Notarial Officer