

AGREEMENT

Mr. and Mrs. Homeowner _____, whose address is _____
_____ ("**Buyers**"), and **Mr. Investor**
_____, whose address is _____
_____ ("**Investor**"), enter into this Agreement (the "Contract") on _____, 2001,
subject to the following terms and conditions:

Background Facts

The intent of the parties is as follows: Concurrent with this **Agreement**, the **Buyers** are **purchasing** the Property (described below) which they intend to occupy for up to five years as their primary residence. **Investor** is a private investor who is **acquiring an equitable interest in** the Property, in order to realize appreciation. The **Buyers** will occupy the Property during the five year (or shorter) term of this Agreement. **In return for the equitable interest, the Investor shall provide the Buyer with an amount of money equal to that required for the down payment necessary for the Buyer to purchase the Property from the Property's current owners.** At the Maturity Date of this **Agreement** (five years, or sooner as provided below), the Buyer will sell the Property. After the **Investor** recovers the amount of its investment (i.e., the down payment), the Buyer and **Investor** will share equally the appreciation value (if any) in the Property.

This Agreement uses the following defined terms:

“**Acquisition Price**” shall mean the amount paid by the **Buyers** to acquire the Property on the date of this **Agreement** from its current owner.

“**Down Payment**” shall mean the amount required to be paid by the **Buyer (from the Investor)** to the current owner of the Property to acquire the Property.

“**Mortgage Loan**” shall mean the mortgage given to the **Buyers by** _____ Bank to finance their acquisition of the Property from its current owners.

“**Resale Price**” shall mean the gross sales price (before deducting any commissions, closing costs, transfer taxes, etc.) received by the Buyer upon the Buyer's resale of the Property to an unaffiliated third party on the Maturity Date of this **Agreement** (i.e., five years from the date of this contract, or sooner as provided below).

“**Appreciation Amount**” shall mean the excess (if any) of the Resale Price over the Acquisition Price.

“**Cure Payments**” shall mean all amounts paid by **Investor** to pay or perform obligations which **Buyers** have agreed to pay or perform under this **Agreement**, plus any costs incurred by **Investor** to enforce its rights under this Agreement (including reasonable attorney fees), together with interest on such sums accruing at the rate of interest set forth in the Mortgage Loan.

Agreement

1. **Description of Property.** Buyer shall purchase a single family home whose address is: _____, which is more particularly described on the attached Exhibit A (the “Property”).

2. **Terms of Payment.** The **Investment Repayment** to be paid by Buyer to **Investor** shall be:

- (a) the Down Payment; plus
- (b) Cure Payments; plus
- (c) 50% of the Appreciation Amount.

Example: Assume that the Property is sold by the Buyer in five years for a Resale Price of \$160,000; the Acquisition Price of the Property today is [**\$100,000**] and the **Buyer has** provided a Down Payment of [**\$20,000**] (using the **Investor’s** funds) to acquire the Property; the **Buyer’s** obtained a Mortgage Loan [**\$80,000**] to acquire the Property (**which** in this example, has been paid down to \$65,000 five years from the date of this **Agreement**). Upon resale of the Property by the Buyer for \$160,000, the **Investment Repayment** from Buyer to **Investor** in this example would be \$50,000 (consisting of a return of the Buyer’s **\$20,000** Down Payment, plus \$30,000 (one half of the Appreciation Amount of the Property). In this example, the Buyer’s net proceeds are **\$45,000** (the difference between the \$160,000 Resale Price, less the **\$65,000 Mortgage payoff** and the **\$50,000 Investment Repayment**).

The **Investment Repayment** shall be paid without interest.

The **Investment Repayment** shall be paid by Buyer to **Investor** by cashier’s check or by wire transfer as follows:

- (a) On the date of this **Agreement**, **Investor** shall pay to **Buyers** the Down Payment; and,
- (b) the balance of the **Investment Repayment** shall be paid in full on the Maturity Date.

If any liens filed against the **Buyers'** interest are not satisfied by the date required for the final payment under this contract, the **Investor** may pay the liens and offset the amount of all the **Investor's** costs to discharge the liens against the final payment. However, if the **Buyers** are contesting the lien at that time, the **Investor** must deposit the offset amount in an interest-bearing joint account in the names of the Buyer and the **Investor**. The amount deposited and accrued interest shall be paid to the **Buyer** when the **Investor** discharges the liens or returned to the **Investor** when the liens become enforceable pursuant to a court action.

The "Maturity Date" of this **Agreement** shall be the earlier to occur of the following:

- (a) At the option of the Investor, an uncured Event of Default by **Buyers** under this **Agreement**.
- (b) At the option of the Investor, the date on which **Buyers** cease their continuous occupancy of the Property as their primary residence.
- (c) At the option of the Investor, the entry of a judgment of divorce affecting **Buyers** (if Sellers are husband and wife).
- (d) At the option of the Investor, a bankruptcy petition filed by or against **Buyers**.
- (e) At the option of the Investor, upon damage to the Property which is not promptly repaired.
- (f) Five (5) years from the date of this Agreement.

The Closing of the purchase shall take place at a **location and** time to be mutually agreed upon by the parties. **Buyers** shall be obligated to pay all state and county real estate transfer taxes and any other taxes and fees required for the recordation of the Warranty Deed for the Property.

On the Maturity Date (or as soon after the Maturity Date as is practicable), Buyer shall sell the Property to an unaffiliated third party. Buyer agrees to consult with **Investor** regarding Buyer's proposed plans to sell the Property and to keep **Investor** advised of such sales efforts (including the receipt of offers, etc.). **Investor** and Buyer agree that it is in their mutual best interest to obtain the maximum resale price possible; accordingly, **Buyers** hereby recognize that the decision to accept or reject any offer from a third party shall be made by **Investor** in its sole discretion. **Buyers** may submit an offer to **Investor** to repurchase the Property themselves, and **Investor** may accept or reject **Buyers** offer in its sole discretion. Buyer may list the Property for sale, place "for sale"

signs on the Property and show the Property to prospective purchasers in advance of the Maturity Date.

3. **Sellers' Duty to Convey.** Upon payment in full of all sums owing under this contract, **Investor** shall deliver to Buyer (or Buyer's designee) on the Maturity Date a Warranty Deed conveying to Buyer fee simple title to the Property, subject to all easements, encumbrances and restrictions of record, zoning laws and ordinances affecting the Property, and any liens and encumbrances that have accrued or attached since the date hereof through the acts or omissions of anyone other than **Investor**, their employees, agents and assigns.

Investor and Buyer shall enter into an escrow agreement, pursuant to which a warranty deed in the form required by this **Agreement** shall be fully executed by the **Investor** and deposited with a third party escrow agent, with instructions to deliver such Warranty Deed to the Buyer upon presentation by the Buyer to the Escrow Agent of an Affidavit of Buyer certifying that the Maturity Date under this **Agreement** has occurred.

4. **Right To Possession.**

(a) **Buyers** shall have the continuous right to occupy the Property as their primary residence, notwithstanding this **Agreement**, until the Maturity Date. **Buyers'** right of occupancy shall cease upon the earlier to occur of:

(i) **Buyers** no longer occupy the Property as their primary residence; or,

(ii) The Maturity Date of this **Agreement**.

(b) **Prohibited Uses.** **Buyers** shall not permit anything to be done on the Property which will reduce the insurability of the Property. **Buyers** shall not allow any nuisance or waste upon the Property and shall not use the Property in violation of any law. **Buyers** shall not use the Property for any business purpose.

(c) **Maintenance.** **Buyers** shall (at their sole expense) maintain the Property in good condition. **Buyers** shall repair any damage to the Property, whether or not such damage is covered by insurance. At the termination of this Agreement, the Property must be in its present condition, normal wear and tear excepted. **Buyers** shall be responsible for the full cost of any repairs or replacements to any appliances, heating and air conditioning equipment, plumbing systems, electrical systems, or any other aspect of the Property.

(d) Entry by Investor. **Investor** (or its agents) may enter the Property in the following cases (and only in the following cases):

- (i) In case of emergency;
- (ii) To cure defaults by **Buyers** of their obligations under this Agreement;
- (iii) To make semi-annual inspections of the Property;
- (iv) When **Buyers** have abandoned or surrendered the Property; or,
- (v) Pursuant to court order.

Except in cases of emergency or when **Buyers** have abandoned the Property, or if it is impracticable to do so, **Investor** shall give **Buyers** reasonable notice of its intent to enter and shall enter only during normal business hours. Twenty four (24) hours shall be presumed to be reasonable notice.

5. Insurance.

(a) **Buyers** shall (at their sole expense) continuously keep in force:

(i) Comprehensive public liability insurance covering the Property, insuring against the risks of bodily injury, property damage, and personal injury liability with respect to the Property with policy limits of not less than \$500,000.00 per occurrence (or higher limits if required under the Mortgage Loan); and,

(ii) Fire insurance with extended coverage endorsements upon all buildings and improvements located on the Property to not less than one hundred percent (100%) of the full replacement cost thereof from time to time.

(b) The right and authority to adjust and settle any loss with the insurer shall be exercisable only by the Buyer and **Investor** acting jointly. The insurance proceeds received in the event of a casualty shall be used to pay for the repair and reconstruction of buildings on the Property to the extent necessary and to the extent sufficient proceeds (together with any amounts deposited by **Buyer**) exist to complete such repairs. If excess proceeds remain after repairs are completed (or, if repairs are not undertaken because proceeds are insufficient) then such proceeds shall be held in an interest bearing escrow account and shall be deemed to be part of the Resale Price upon the Maturity Event..

(c) **Buyers** shall fully comply with the terms of the insurance policies and shall deliver copies of the policies to **Investor**. Both **Investor** and Buyer shall be

named insureds under all policies of insurance (with the insurance company agreeing to send copies of all notices to both **Investor** at its address, and **Buyers** at the Property address).

6. **Eminent Domain**. If the Property is taken under the power of eminent domain (a “taking”), any award resulting from such taking shall be made available to the **Buyers** for the purposes of restoration of the Property, provided that such proposed restoration is in all respects acceptable to the **Investor** in its sole discretion. If such restoration is not effected with such condemnation proceeds (either because such proceeds are insufficient to complete such restoration, or because the restoration plans are not acceptable to the **Investor**), then the condemnation proceeds shall be held in an interest-bearing account and shall be deemed to be part of the Resale Price on the sale of the Property at the Maturity Date.

7. **Payments of Ownership and Operating Costs**. **Buyers** shall make timely payments of the Mortgage Loan installments, real property taxes, insurance, fees to homeowner or condominium associations, and other costs of ownership and operation of the Property.

8. **Utilities**. **Buyers** shall pay for all water, gas, heat, light, power, telephone service and all other utilities supplied to the Property.

9. **Alterations**. **Buyers** shall not make any alterations, additions or improvements to the Property without the written consent of **Investor** (which consent may be granted or withheld in the **Investor's** sole discretion), except that any alteration, addition or improvement costing less than \$200.00 shall not require **Investor's** consent and shall be deemed to be made as part of **Buyers'** obligation to maintain the Property. Nothing in this Paragraph shall impair **Buyers'** obligations to maintain and repair the Property (irrespective of the cost thereof).

10. **Liens**. **Buyers** shall keep the Property free from any tax liens, and liens arising out of any work performed, materials furnished or obligations incurred by **Buyers**.

11. **"As Is" Condition**. **Buyers** make no warranty as to the condition of the Property and **any purchase of the Property shall be** in its “as-is” condition. However, this shall not excuse **Buyers'** duty to maintain the Property during the term of this Agreement or to deliver the Property to Buyer in its present condition on the Maturity Date.

12. **Investor's Default**. If **Investor** fails to **pay the amount of money equal to that required for the down payment**, then Sellers shall be entitled to exercise any and all remedies available at law or in equity, including, without limitation:

- (a) The **Buyers** may give the **Investor** a written notice informing the **Investor** that if **down payment** is not paid within fifteen (15) days after service of the notice, the **Buyers** will, without further notice, declare the entire balance due and payable and proceed to foreclose on the contract or

obtain a money judgment against the Buyer under the law of the state where the Property is located.

(b) The **Buyers** may declare a forfeiture as a consequence of the nonpayment of any money required to be paid under this contract or any other breach of this contract. If the **Buyers** elect to proceed under this subparagraph, the **Buyers** shall give the **Investor** a written notice of forfeiture specifying the balance due and shall give the Buyer fifteen (15) days after service of the notice of forfeiture to pay the balance .

In addition to these remedies, if the **Buyers** invoke any of the **Buyers'** remedies to enforce this contract after an Event of Default by the **Investor**, the **Buyers** may demand payment from the **Investor** for all expenses, including title searches and the **Buyers'** attorney fees, in connection with the **Buyers'** enforcement of the Sellers' rights under this contract.

13. **Buyers' Default.** The occurrence of any of the following events shall be deemed **Buyers'** Event of Default hereunder:

- a. the breach by **Buyers** of any covenant, representation or warranty made by them in this **Agreement**; or
- b. any act or omission which, with the receipt of any required notice and the passage of any cure period, would constitute a default under any indebtedness to which the Property is subject; or,
- c. the imposition of any lien, mortgage, deed of trust, or other encumbrance upon the Property (except for that certain Mortgage of the Property granted by **Buyers** contemporaneously herewith to finance **Buyers'** purchase of the Property, but only so long as the balance due under such Mortgage is not increased over the amount due as of the date of this **Agreement**), or any change in the legal or equitable title to the Property or in the beneficial ownership of the Property in whole or in part, or any transfer, assignment, lease or sublease of any interest in the Property.
- d. **The failure by the Buyer to make the Investment Repayment at the Maturity Date of this Agreement.**

Upon the occurrence of any **Buyers'** Event of Default hereunder, interest shall accrue on the unpaid principal balance hereof at the rate of 18% per annum and interest shall accrue on any past due installment of interest at the rate of 10% per annum.

Further, upon any Event of Default under this **Agreement**, then, at the option of the **Investor**, without notice to the Buyer, the entire indebtedness evidenced hereby shall become immediately due and payable. Buyer further promises to pay any and all costs of collecting the amount due hereunder, including reasonable attorney fees. No delay on the part of the **Investor** in the exercise of any of the aforesaid rights or remedies shall operate as a waiver thereof, and no single or partial exercise of any right or remedy by the **Investor** shall preclude the exercise of any other right or remedy. Any remedy provided hereunder shall be in addition to all other remedies available to **Investor** and such remedies shall be cumulative.

14. **Non-Recourse Agreement.** Notwithstanding anything to the contrary in this **Agreement**, **Investor's** liability for failure to pay the **down payment** shall be limited to **Investor's** interest in the Property. **Investor** shall have no personal liability for payment of the balance of the **down payment**.

15. **Not Assignable By Buyer.** **Buyer** shall not assign or transfer their interest under this **Agreement** or in the Property without the prior written consent of the **Investor**, which consent may be withheld in such party's absolute discretion. **Investor** may assign its rights under this **Agreement** upon written notice to **Buyers**.

16. **Notices.** Any notice to be given or served upon any party to this **Agreement** must be in writing and shall be deemed to have been given: (i) upon receipt in the event of personal service by actual delivery (including by telecopy or delivery service); (ii) the first business day after posting if deposited in the United States mail with proper postage and dispatched by certified mail, return receipt requested; or (iii) upon receipt if notice is given other than by personal service or by certified mail. All notices shall be given to the parties at the addresses set forth above.

17. **Entire Agreement.** This instrument constitutes the entire agreement between the parties hereto with respect to the transaction herein contemplated. Any modification or amendment to this **Agreement** shall be effective only if in writing and executed by each of the parties hereto.

18. **Waiver of Claims.** **Investor** shall not be liable to **Buyer** and **Buyers** hereby waive any claims against **Investor** for any injury or damage to any person or property on the Property from any cause whatsoever.

19. **Attorney's Fees.** If any party brings legal action, to enforce any of the provisions of this **Agreement**, the party which does not prevail in such legal action agrees to pay the costs and reasonable attorney's fees of the prevailing party in such legal action.

20. **Federal Income Tax Provisions.**

(a) **Allocation of Deductions.** As between the Buyer and the **Investor**, the parties agree:

(i) Any deductions for federal and/or state income tax purposes generated by payment of closing costs for acquisition of the Property, including loan fees, shall be claimed by **the party having paid those costs**; and,

(ii) Any deductions for federal and/or state income tax purposes for mortgage interest and property taxes (except taxes prorated at closing), interest expense on the Mortgage loan, shall be deducted by the **Buyers** (because they will have paid those costs).

(b) **Not a Shared Equity Agreement.** The parties acknowledge that it is not their intent to create a Shared Equity Financing Agreement as that term is defined in the Internal Revenue Code. The **Investor** agrees that no rent is to be paid or implied by this Agreement and that depreciation and other investment deductions are not available and will not be claimed. The **Investor's** sole return on the investment will be a portion of the profits, if any, upon sale of the Property.

18. **Miscellaneous.**

(a) **Governing Law.** This **Agreement** shall be interpreted and construed in accordance with the laws of the State of Michigan.

(b) **Counterparts.** The parties hereto may execute this **Agreement** in counterparts, each of which, when executed and delivered by the parties herein, shall have the force and effect of an original, but all such counterparts shall constitute one and the same Contract.

(c) **No Partnership.** Notwithstanding anything to the contrary contained in this **Agreement**, the relationship of the parties hereunder is that of **Investor** and Buyer, and nothing contained in this **Agreement** is intended or shall be deemed to create a partnership or joint venture relationship between **Investor** and Buyer.

(d) **Time of the Essence.** Time shall be of the essence in regard to this **Agreement** and Buyer's and **Investor's** obligations hereunder.

(e) **Binding Effect.** This **Agreement** shall bind the heirs, personal representatives, successors and permitted assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this **Agreement** the day and year first written above.

Sellers:

Buyer:
