The lease purchase resident’s right to purchase the property

The Option Agreement

The Option Agreement is the document that gives a resident the contingent right to purchase his/her home from the Cleveland Housing Network after the fifteen-year compliance period. This Option Agreement is contingent on, 1) CHN taking title to the property, and 2) The resident remaining a tenant in good standing. The Option Agreement provides a framework for how CHN will notify the resident in Year 16, and the amount of time the resident will have to exercise the option.

The Option Agreement provides the resident with a guaranteed maximum purchase price. CHN calculates this guaranteed price based on a careful analysis of all underlying costs (all remaining debt plus exit taxes plus closing costs) plus a “buffer” to mitigate risk (typically $3-5,000) plus $10,000 minus a residency credit of $1,000 per year for up to ten years of residency. The guaranteed maximum purchase price can be increased by any governmentally imposed costs (such as a point-of-sale inspection.)

The Option Agreement is typically signed in Year 6 – A full ten years before the actual transaction will occur.

The following is a discussion of the key business elements of the Option Agreement:

• Guaranteed maximum purchase price: From an owner’s perspective (CHN’s), it is difficult to accurately project a final sale price ten years into the future because the sale price formula contains a number of factors that can change over time. Yet, from a program perspective, residents will be much more committed to maintaining their property and preparing for home ownership if they have a written document. CHN’s solution to this dilemma is to carefully review all loan and partnership documents, conduct a long term capital needs assessment, carefully prepare financial projections through Year 16 (with a special emphasis on determining whether the capital accounts will go negative, and by how much), etc. Then CHN quantifies and creates the worst case scenario for every component of the equation, and adds $5,000 as a “buffer.”

• Residency credit: CHN intends to sell all lease purchase properties to qualified tenants in year 16, regardless of whether the resident’s initial move in date is year 1 or year 14. From a financial perspective, the underlying sale price structure (all remaining debt plus exit taxes) of each home is the same. Yet, CHN’s Resident Advisory Council does not believe it is fair for a one-year resident to realize as much “equity” in his/her home when they take title as a fifteen-year resident. To address this concern, the Option Agreement adds $10,000 to the sale price of each house, and then subtracts $1,000 for each year
of residency up to ten years. Any surplus revenues earned by CHN through this formula will be used to resolve the multiple problems that arise when selling a large portfolio of homes “as is”.

- **Contingency clause:** The resident’s option to purchase his/her home is contingent on CHN acquiring title to the property. This contingency clause is unsettling to a lease purchase buyer. Residents do not want to invest time and money into their home, only to be disenfranchised at the end of fifteen years. Yet, the fact remains that CHN might not be able to exercise its Right of First Refusal to purchase all properties from the partnership in Year 16. For example, what if CHN were to go out of existence, or what if CHN were removed as general partner by the limited partner due to poor performance? CHN decided that, in all fairness, this contingency clause must be included in the Option Agreement. At the request of the Resident Advisory Council, CHN commits itself in the Option Agreement to use its best efforts (a high legal standard) to find a replacement home if a resident is unable to purchase his/her existing home due to CHN’s inability, after exercising its best efforts, to purchase the property from the partnership.

- **Heir rights:** The Option Agreement allows the resident to designate another party to step into his/her shoes, lease the home, and purchase the home at the end of fifteen years if the resident dies. This is a narrow right, in that the designated “beneficiary” must qualify for the home under Section 42, and move into the home within 60 days. This approach was designed to address the compelling concerns of lease purchase buyers without risking Section 42 non-compliance or tying up the house in a protracted probate or legal process.

Attachment: Option Agreement
OPTION AGREEMENT

THIS OPTION AGREEMENT ("Agreement") is entered into as of the _____ day of _____, 2003, by and between CLEVELAND HOUSING NETWORK, INC., an Ohio nonprofit corporation ("CHN") and ___________________________ ("Resident"). with respect to the property located at and known as ___________________________, Cleveland, Ohio (the "Property").

Background Facts

A. CHN was formed and operates for the purpose of coordinating the resources and work of nonprofit organizations in Cleveland who acquire, rehabilitate, lease and sell housing to benefit persons of low and moderate income in the City of Cleveland. Part of CHN’s purpose is to facilitate the purchase of homes by qualified low and moderate income families.

B. A partnership called Cleveland Housing Network Limited Partnership ______ (the "Partnership") was formed for the purpose of acquiring, rehabilitating, owning and leasing residential properties, including the Property. CHN manages rental properties, including the Property, for the Partnership.

C. CHN has an option to purchase the Property from the Partnership pursuant to the terms of a written Right of First Refusal dated __________________ (the "CHN Right of First Refusal").

D. Resident now rents the Property from the Partnership and is currently named as “Resident” under a written lease agreement for the Property dated _________ (which, as amended and/or renewed from time to time, is herein referred to as the “Lease Agreement”). The Property, along with other homes owned by the Partnership, was developed under provisions of the federal Low Income Housing Tax Credit Program (Section 42 of the Internal Revenue Code) which is designed to assist in development and provision of affordable housing for persons with limited income. The Partnership must satisfy certain requirements, one of which is to rent the Property exclusively to qualified persons with limited income for a compliance period of fifteen years, which ends in __________ (the "Compliance Period").

E. CHN desires to provide a future opportunity for the purchase by Resident of the Property at a price below fair market value. In order to prepare for this future opportunity, CHN intends to acquire the dwellings now owned by the Partnership, subject to certain conditions, at the end of the Compliance Period.

F. It is intended that, if CHN successfully acquires the Property, Resident will have the opportunity to purchase the Property from CHN, provided that Resident is renting the Property at the time that CHN acquires the Property.

NOW, THEREFORE, for adequate and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1. **Option to Purchase**. CHN hereby grants to Resident the option to purchase the Property upon the terms and conditions contained in this Agreement.

2. **Purchase Price**. The purchase price will be less than or equal to the Adjusted Maximum Purchase Price shown on Exhibit A of this Agreement plus any governmentally-imposed costs such as point-of-sale repair requirements. The purchase price does not include Resident's

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closing costs and costs associated with Resident obtaining a mortgage. These costs are extra, and will be paid by Resident at closing.

3. **Term.** This Agreement shall begin on the date it is signed by both parties and shall terminate automatically on the occurrence of any of the following events:

   a. Resident fails to exercise the Option within the time provided in this Agreement;

   b. Termination of the Lease Agreement;

   c. Breach of this Agreement by Resident (including Resident Obligations contained in Section 6).

4. **Resident.** The term “Resident” in this Agreement shall mean only the person or persons named as Resident in the opening paragraph of this Agreement, except to the extent that this term is modified by the remainder of this Section 4. If there are two or more persons named as Resident in this Agreement, all such persons must be specifically named as Resident in the Lease Agreement. If a person is no longer named as a Resident in any renewal, amendment or extension of the Lease Agreement, then the rights of that person under this Agreement are automatically terminated, regardless of whether that individual continues to reside in the Property, and the term Resident in this Agreement shall mean the person or persons who continue to be named as Resident in **both** this Agreement and the Lease Agreement.

5. **Notice to Resident: Exercise of Option.** If and when CHN acquires title to the Property, CHN will give Resident a written notice of the Option which shall include a Purchase Agreement stating in detail the Purchase Price in an exact dollar amount and all of the terms and conditions of the offer to sell. This written notice shall give Resident not less than ninety (90) days in which to exercise the Option by executing the Purchase Agreement and returning it to CHN. Once the Purchase Agreement is entered into, it will supersede this Agreement.

6. **Resident Obligations.**

   a. Resident must, as part of the consideration for this Option granted by CHN, fulfill all of the maintenance responsibilities described in Exhibit B attached to this Agreement.

   b. It is anticipated that Resident will need to obtain a loan to complete the purchase of the Property. It is likely that Resident will need to have established acceptable credit in order to qualify for a loan. CHN will use reasonable efforts to assist Resident in obtaining a loan to purchase the Property, but if Resident is unable to do so within the time frame as set out in the Purchase Agreement, the Purchase Agreement will expire, unless extended by sole consent of CHN.

7. **Condition.** All the obligations of CHN described in this Agreement are conditioned upon the ability of CHN to acquire title to the Property. At the present time, CHN believes that it will be successful in acquiring title to the Property. However, there is no assurance that CHN will be able to acquire title to the Property. CHN will use its best efforts to acquire title to the Property. In the event that CHN is unable to acquire title to the Property, CHN will use its best efforts to make other housing and/or home ownership opportunities available to Resident. Additionally, the parties acknowledge that governmental requirements could result in the imposition of use and/or affordability restrictions on the Property.

8. **Reliance; Restrictions on Assignment.** The rights granted in this Agreement are

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personal to Resident and shall not in any manner be transferred, assigned or in any way be allowed to benefit anyone other than Resident. No persons other than Resident may directly or indirectly rely upon or enforce the provisions of this Agreement, whether as a third party beneficiary or otherwise. If there are two or more persons comprising the “Resident”, the Option must be exercised jointly (unless one or more parties have waived their rights in writing on a form supplied by CHN). Notwithstanding the foregoing, Resident shall have the right to designate, by completing the Designation Form available from CHN, someone else to inherit Resident’s rights under this Agreement in the event that Resident dies prior to exercising this Option. The designated person must meet all of the residency criteria relating to low income housing tax credits at the time of the original Resident’s death, must notify CHN of their interest in leasing the Property within 30 days following Resident’s death, and must enter into a lease for and take occupancy of the Property within 60 days following Resident’s death, in which event the new Resident shall enter into the Option Agreement, and the residency credit will take into account the length of residency of the original Resident. If Resident dies without having completed a Designation Form, the Option shall then automatically terminate and CHN will have the right to lease the Property to any other party.

9. Compliance with U.S. Internal Revenue Code. This Agreement is intended to comply with the provisions of the U.S. Internal Revenue Code and any regulations, rulings or announcements promulgated under it (collectively, the “Code”). To the extent that the Code is amended, the parties agree that this Agreement shall be deemed to be amended or terminated as may be necessary to conform to the amended Code.

10. Entire Agreement. This Agreement contains and constitutes the entire understanding between the parties with respect to the Option granted to Resident, and all prior agreements, understandings, representations and statements, oral or written, are replaced by this Agreement. Neither this Agreement nor any provision of it may be waived, modified, amended, discharged or terminated except by a written document signed by Resident and CHN.

IN WITNESS TO THIS AGREEMENT, the parties to it have signed it as of the date stated above.

WITNESS:

Cleveland Housing Network, Inc.

By: Robert S. Curry, Executive Director

Resident
EXHIBIT “A”

PURCHASE PRICE CALCULATION

Name of Resident: _________________________________

Property address: ________________________________

Number of dwelling units: ________________________

Date of Resident’s First Occupancy: ______________

Date of Proposed Sale: ___________________________

Maximum Purchase Price: $ _____________

Less: Residency Credit (equal to $1,000 for each year of occupancy -- up to 10 years): $ _____________

Adjusted Maximum Purchase Price*: $ _____________

* In addition, Resident will be responsible for any governmentally-imposed costs, such as point-of-sale repair requirements, and any amounts that remain owing under Resident’s Lease Agreement. A point-of-sale repair requirement means that the City would require the Seller of property to make certain repairs prior to the sale, in which event the cost of such repairs would be added to the Purchase Price. At the present time, there is no point-of-sale requirement in the City of Cleveland.

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EXHIBIT “B”

RESIDENT MAINTENANCE RESPONSIBILITIES

EXTERIOR

1. Cut grass, trim bushes and shrubs, weed and fertilize, and plant flowers as needed.
2. Maintain front and rear yard (Keep yard free of trash and debris), keep garbage cans covered at all times.
3. Shovel snow in winter. Keep service walks and stairs free from snow and ice at all times.
4. Clean gutters (keep free from leaves and debris) annually.
5. Repair / replace all broken windows (including repair or replacement of damaged door glass). Repair / replace broken screens.
6. Replace mailbox as needed.
7. Replace broken or missing address numbers on house.
8. Repair / replace broken porch lattice work, porch rails, and handrails.
9. Maintain and repair all fences.
10. Other minor exterior maintenance as needed.

INTERIOR

1. Paint all walls, ceilings, floors, trim and any other paintable surfaces as needed. NOTE: Do not scrape, sand or in any other way dislodge or remove paint from existing painted surfaces. Old paint contains lead. Lead is a known health risk. If scraping is needed prior to painting, please contact CHN for guidance and/or assistance.
2. Clean carpet as needed (at least annually).
3. Caulk sink and tub areas as needed.
4. Replace washers / cartridges in kitchen and bathroom faucets as needed.
5. Change furnace filters at least twice per heating season.
6. Replace broken or missing doorknobs.
7. Replace window locks and lifts when broken or missing.
8. Maintain all handrails and rehang when needed.
9. Test smoke detectors monthly, replace batteries every six months or sooner if needed.
10. Other minor interior maintenance as needed.

Report all plumbing leaks and other serious problems to CHN’s Maintenance Department.

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Designation Form

GENERAL INSTRUCTIONS: Resident shall use this form to designate another person to inherit the Resident's rights under the Option Agreement in the event that the Resident (or residents, if more than one person signed the Option Agreement) dies prior to exercising the Option. A copy of the Option Agreement must be attached to this Designation Form. All residents listed in the Option Agreement must sign. Only one person may be listed as Designee. The Designation Form must be on file at CHN and be countersigned by CHN's Executive Director to be valid.

Option Agreement date: ________________

Property address: ________________________________ Cleveland, Ohio

Resident -- List all persons named in the Option Agreement: ________________________________

I (we) the Resident hereby designate ________________________________ (Designee) to inherit my (our) rights under the above-referenced Option Agreement in the event that I (both of us) die prior to exercising the option to purchase under the Option Agreement. I (we) understand that the Designee must be age 21 or older at the time of my (both of our) death(s) in order to inherit my (our) rights under the Option Agreement.

I (we) the Resident understand that the Designee must meet all of the residency criteria relating to low income housing tax credits at the time of my (our) death(s), must notify the Cleveland Housing Network (CHN) of their interest in leasing the Property within 30 days following Resident's death, and must enter into a lease for and take occupancy of the Property within 60 days following the Resident's death, in which event the Designee shall enter into the Option Agreement, and the residency credit will take into account the length of residency of the original Resident.

I (we) the Resident understand that in the event that the Option Agreement has terminated per Section 3 of the Option Agreement prior to my (both of our) death(s), the Designee shall not inherit any rights under the Option Agreement.

________________________  __________________________
Resident                    Date

________________________  __________________________
Resident                    Date

Note: All persons listed on the Option Agreement must sign. Only one person may be listed as Designee.

Designee's name ________________________________

Designee's current address ________________________________

Designee's current phone number ________________________________

CHN countersignature _____________________________

Robert S. Curry, Executive Director  Date signed

03/29/00