

**PERFORMANCE BOND - DUAL OBLIGEE**

*(This Bond is issued simultaneously with a Payment Bond in favor of the Owner and is conditioned on the performance of the Contract)*

\_\_\_\_\_, a \_\_\_\_\_ corporation/ limited liability company whose address is \_\_\_\_\_, as Principal (the "Principal") and \_\_\_\_\_, a \_\_\_\_\_ whose address is \_\_\_\_\_, as Surety (the "Surety") are held and firmly bound to \_\_\_\_\_, a Michigan limited \_\_\_\_\_, whose address is \_\_\_\_\_, as Owner (the "Owner"), and to the Michigan State Housing Development Authority, a public body corporate and politic of the State of Michigan, whose address is 735 East Michigan Avenue, Lansing, Michigan 48912, its successors and assigns (the "Authority"), as their respective interests may appear (together the "Obligees"), in the sum of \$ \_\_\_\_\_, for the payment of which the Principal and the Surety firmly bind themselves, their successors and assigns, jointly and severally.

The Principal has entered into a construction contract with the Owner dated \_\_\_\_\_ (the "Contract"), for the construction of a housing development identified as \_\_\_\_\_, MSHDA Development No. \_\_\_\_\_, located in \_\_\_\_\_, Michigan (the "Development"), which Contract, along with all Contract Documents, as defined in the Contract, are incorporated by reference into this Performance Bond.

The Authority has agreed to lend to the Owner a sum of money to be secured by a mortgage on the Development and to be used in making payments under the Contract, and desires protection as its interests may appear, in event of default by the Principal under the Contract.

1. If the Principal (i) faithfully and promptly performs the Contract in accordance with its terms, and corrects all work that is found to be defective or deficient and (ii) fully indemnifies and holds the Obligees harmless from all cost, damage and expense that they may incur in making good any default under the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.
2. The Surety agrees that either of the Obligees may assign any right of action they or it might have under this Bond and that such assignment will in no manner invalidate or qualify this Bond.
3. Any suit, action, or proceeding under this Bond must be instituted before the expiration of two years from the date on which Final Payment, as defined in the Contract, was due to the Principal under the terms of the Contract.
4. No alterations made in the terms of the Contract, or in the scope of the work to be done under it, or any extension of time for the performance of the Contract, or any other forbearance on the part of either the Obligees or the Principal to the other, shall in any way release the Surety or the Principal or diminish their obligations under this Bond. Surety hereby waives notice of any such alteration, extension or forbearance. No default by the Owner shall be held against the Authority nor used as a defense against the Authority in a claim, suit or action on this Bond.

5. The aggregate liability of the Surety under this Bond to the Obligees or their successors and assigns is limited to the sum stated above, and, upon making any payment under this Bond, the Surety shall be subrogated to, and shall be entitled to an assignment of, all rights of the payee, either against the Principal or against any other party liable to the payee in connection with the loss giving rise to the payment.

IN WITNESS WHEREOF, the Principal and Surety have executed this Performance Bond by their duly authorized representatives this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS TO PRINCIPAL:

(Principal)

\_\_\_\_\_

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

Its:

WITNESS TO SURETY:

(Surety)

\_\_\_\_\_

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

Its:

*(Please attach Power of Attorney for Surety to this form)*