

**NEW MEXICO MORTGAGE FINANCE AUTHORITY
HOME REHABILITATION PROGRAM
AWARD AND RESTRICTIVE COVENANTS AGREEMENT**

Project No. _____
Contract No. _____

THIS AWARD AND RESTRICTIVE COVENANTS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20____.

1. Award of Funds and Restrictions on Property.

(**Homeowner's Name:** _____), residing at (**Homeowner's Street Address:** _____), in consideration of Owner's receipt of funds in the amount of (**Deferred Payment Loan Amount (DPL) HERE:** _____) ("Award") from the **New Mexico Mortgage Finance Authority**, a governmental instrumentality organized and existing under the laws of the State of New Mexico, whose address is 344 Fourth Street, SW, Albuquerque, New Mexico 87102 ("MFA"), does hereby agree to the deed and other restrictions outlined herein and for such consideration paid does hereby mortgage, grant and convey to the MFA all of the Owner's right, title and interest in and to the following described real estate located in County, New Mexico, which has an address of (**Homeowner's Street Address HERE:** _____), and which is more particularly described as follows:

Insert Screenshot of Warranty Deed HERE

together with all improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Agreement; and all of the foregoing together with said property (or the leasehold estate if this Agreement is on a leasehold) are hereinafter referred to as the "Property."

Owner covenants that Owner is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for the encumbrances approved by MFA. Owner covenants that Owner warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

This Agreement secures the performance of the following obligations, with mortgage covenants, and is upon the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law:

- (a) Repayment of the Award, including all renewals and modifications of this Agreement, including any increase in the principal amount of the Award made subsequent to the date of this Agreement, and
- (b) The performance of all of Owner's obligations, covenants, and agreements contained in this Agreement and imposed upon the use of the Property.

This Agreement secures all future advances of funds to Owner by MFA in connection with this Agreement, and the lien of each such advance will relate back to the date of recordation of this

Agreement.

2. **Owner's Promise to Pay; Reduction of Principal.**

Owner promises to pay the Award as follows:

No interest will accrue on the Award. However, Owner shall promptly pay the entire, outstanding principal balance of the Award and any other indebtedness evidenced by this Agreement if at any time Owner sells or transfers the Property to a party ineligible for assistance under the Regulations (defined below); refinances in whole or in part any mortgage against the Property that is superior to this Mortgage; in any manner conveys title to the Property; fails to maintain the Property as Owner-occupied, single-family residential property during the term of the Affordability Period (defined below); or otherwise fails to abide by the Restrictive Covenants and terms of this Agreement. Owner may prepay any part of the outstanding principal amount of the Award at any time prior to maturity without penalty.

Provided that Owner is in compliance with the Restrictive Covenants and other requirements set forth in Paragraph 3 of this Agreement, the Principal balance due on this Award shall be reduced on an annual basis on the anniversary of the date of this Agreement ("Period of Forgiveness") as follows:

- If the original Principal amount of the Award is from \$1 to \$40,000, the Principal balance shall be reduced at a rate of Twenty Percent (20%) per year for five (5) years beginning on the fifth (5th) anniversary of the date of this Agreement.
- If the original Principal amount of the Award is greater than \$40,000, the Principal balance shall be reduced at a rate of Twenty Percent (20%) per year for five (5) years beginning on the tenth (10th) anniversary of the date of this Agreement.

3. **Restrictive Covenants.**

This Agreement restricts the use of the Property and is in consideration of the Award from MFA to Owner as evidenced by this Agreement. The Award has been made to Owner through MFA's HOME Rehabilitation Program, and can be made to Owner only if Owner promises to comply with the restrictions and requirements set forth herein, and those restrictions and requirements set forth under the HOME Investment Partnership Act, 42 USC 12701 et seq., and the federal regulations at 24 CFR Part 92 "HOME Investments Partnership Program," as amended (collectively, the "Regulations").

In consideration of the Award and of the mutual covenants and understandings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MFA and Owner agree as follows:

- A. Affordability/Owner Occupied Requirement.** Owner shall maintain the Property as Owner-occupied, single family residential property for residential purposes only, until the expiration of the Affordability Period (defined in this paragraph) or so long as any or all of the Award is unpaid and outstanding, which ever is later. If the total of the principal amount of the Award is from \$1 to \$40,000, then the Affordability Period is Ten (10) years. If the total of the principal amount of the Award is greater than \$40,000, then the Affordability Period is fifteen (15) years. The Affordability Period will begin to run on the date of this Agreement.

B. Rehabilitation. Owner agrees that the entire amount of the Award will be used to perform the rehabilitation work (the "Work") on the Property. Owner expressly authorizes inspection of the Property by MFA or MFA's agent prior to or following completion of the Work.

C. Owner Occupied. Except as set forth in Paragraph 3E of this Agreement, if, at any time during the Affordability Period or so long as any or all of the Award is unpaid and outstanding, the Property ceases to be the principal residence of Owner, whether through sale of the Property or otherwise, then the entire outstanding amount of the Award will be immediately due and payable to MFA without demand.

D. No Transfer. Owner promises that the Property may not be sold, transferred or title to the Property conveyed, and Owner promises that the entire balance due on the Award will be due and payable upon any such sale or transfer, except as provided for in Paragraph 3E of this Agreement. If Owner fails to pay these sums upon the sale, transfer or conveyance of the Property, MFA may invoke any remedies permitted by law or this Agreement without further notice or demand on Owner.

E. Exception to Transfer Restriction. Notwithstanding any other provision of this Agreement, the Property may be transferred if the transfer is to a person or family ("the Transferee") or Heir who covenants and promises in writing to maintain the Property as the Transferee's or Heir's principal residence for the remainder of the Affordability Period and otherwise to comply with and assume all the terms and conditions of this Agreement; and,

- (i) the transfer is to a Transferee who is a Low Income or Very Low-Income Person, or Family as defined in 24 CFR 92.2, who the MFA has determined qualifies for assistance under section 24 CFR 92.203; or
- (ii) the transfer is the result of the death of the Owner and the transfer is by devise or operation of law to a member of the Owner's immediate family ("Heir"). Immediate family, for the purposes of this Agreement, is defined as a spouse, children (including stepchildren), mother, father, brother, sister, grandparent, mother-in-law, father-in-law, brother-in-law, sister-in-law, aunt, or uncle. Such a transfer upon the death of the Owner will cause an immediate termination of the Affordability Period.

MFA reserves the right to deny approval of a request to assume or transfer this Agreement and the Award.

F. Termination of Affordability Period. Owner understands that the Affordability Period will not terminate prior to the termination date indicated by this Agreement, except under the circumstances indicated in Paragraph 3E (ii) or in the event of foreclosure and sale of the Property pursuant to an order of a court of competent jurisdiction; transfer to MFA in lieu of foreclosure; or assignment of an FHA insured prior or subordinate mortgage to the US Department of Housing and Urban Development. The Affordability Period will continue through any change in ownership, and a Transferee deemed eligible by the MFA pursuant to the terms of this Agreement shall be required to assume in writing the balance of the prior Owner's obligation under this Agreement. MFA's determination that a Transferee is ineligible will cause Owner to be immediately liable for full repayment of the Award

G. Abandonment. If the Owner leaves the Property unoccupied for a continuous period of thirty (30) days or more during the Affordability Period, and fails to pay utilities bills and/or mortgage payments, absent circumstances of the Owner's grave illness or death, the property will be deemed Abandoned for the purposes of this Agreement. Upon MFA's determination that the Property has been Abandoned, MFA will deliver Owner a written Notice of Abandonment, in the manner prescribed in Paragraph 11 of this Agreement, at the Property address and at any other address Owner has provided MFA for receipt of notice. Owner will have thirty (30) days from receipt of MFA's Notice of Abandonment to remedy the utilities and/or mortgage payment deficiencies, or Owner shall become immediately liable for full repayment of the balance of the Award.

4. Prior or Subsequent Mortgages and Deeds of Trust; Charges; Liens. Owner shall perform all of Owner's obligations under any mortgage or encumbrance on the Property, whether superior or junior to this Agreement. Owner shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property, and leasehold payments or ground rents, if any. Any default by Owner under a prior or subordinate mortgage or encumbrance against the Property or by Owner's failure to pay all taxes, assessments and other charges, fines and impositions attributable to the Property shall constitute a default under this Agreement and shall entitle the MFA to all legal and equitable relief as set forth herein.

5. Hazard Insurance. Owner shall keep the improvements now existing or hereafter erected on the Property insured for the full replacement value, against loss by fire, structural collapse, earthquake, lightening, explosion, riot or civil commotion, aircraft or vehicles, wind or hail, and sonic boom. If the Property is in a flood plain, Owner promises to obtain flood insurance for the full replacement value of the improvements to the Property. All insurance policies for the Property, and renewals thereof, shall list the MFA or its designated agent as loss payee on the policies. In the event of loss, Owner shall give prompt notice to the insurance carrier and MFA. MFA may give proof of loss if not promptly provided by the Owner.

If the Property is Abandoned by Owner, or if Owner fails to respond to MFA within 30 days from the date MFA mails notice to Owner that the insurance carrier offers to settle a claim for insurance benefits, MFA is authorized to collect and apply the insurance proceeds at MFA's option either to restoration or repair of the Property, or to the sums secured by this Agreement. Each insurance company concerned is hereby authorized and directed to make payment of such insurance proceeds directly to MFA, as mortgagee, instead of to Owner and MFA jointly.

6. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Owner shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Agreement is on a leasehold. If this Agreement is on a unit in a condominium or a planned unit development, Owner shall perform all of Owner's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

7. Protection of MFA's Security. If Owner fails to perform the covenants and agreements contained in this Agreement, or if any action or proceeding is commenced which materially affects MFA's interest in the Property, then MFA may at its option and upon notice to Owner, make such appearances, disburse such sums, including reasonable attorneys' fees and costs, and take such action as is necessary to protect MFA's interest. Any amounts disbursed by MFA pursuant to this paragraph, including any reasonable attorneys' fees and costs incurred by MFA, with interest thereon, at the statutory rate, shall become additional indebtedness of Owner secured by this

Agreement. Unless Owner and MFA agree to other terms of payment, such amounts shall be payable upon notice from MFA to Owner requesting payment thereof. Nothing contained in this Paragraph 7 shall require MFA to incur any expense or take any action hereunder.

8. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to MFA, subject to the terms of any mortgage, deed of trust or other security agreement with a lien that has priority over this Agreement.

9. **Owner Not Released; Forbearance By MFA Not a Waiver.** Any forbearance by MFA in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

10. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of MFA and Owner, subject to the provisions of Paragraph 3 hereof. All covenants and agreements of Owner shall be joint and several.

11. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Owner provided for in this Agreement shall be given by delivering it or by mailing such notice by certified mail addressed to Owner at the Property Address or at such other address as Owner may designate by notice to MFA as provided herein, and (b) any notice to MFA shall be given by certified mail to MFA's address stated herein or to such other address as MFA may designate by notice to Owner as provided herein. Any notice provided for in this Agreement shall be deemed to have been given to Owner or MFA when given in the manner designated herein.

12. **Governing Law; Severability.** The state and local laws applicable to this Agreement shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Agreement. In the event that any provision or clause of this Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Agreement, which can be given effect without the conflicting provision, and to this end the provisions of this Agreement are declared to be severable.

13. **Owner's Copy.** Owner shall be furnished a conformed copy of this Agreement at the time of execution or after recordation hereof.

14. **Acceleration; Remedies.** Except as provided in Paragraph 3E hereof, upon Owner's breach of any covenant in this Agreement, including the covenants to pay when due any sums secured by and under this Agreement, MFA shall give notice to Owner as provided in Paragraph 11 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date the notice is mailed to Owner, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Agreement, foreclosure by judicial proceeding, and sale of the Property. The notice shall further inform Owner of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the nonexistence of a default or any other defense of Owner to foreclosure. If the breach is not cured on or before the date specified in the notice, MFA, at MFA's option, may declare all of the sums secured by this Agreement to be immediately due and payable without further demand, and may foreclose this Agreement by judicial proceeding. MFA shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorneys' fees, and costs of documentary evidence, abstracts and title

