Homeowner Rehabilitation Declaration of Lien Interest Instructions

The Declaration of Lien Interest enforces the repayment of the outstanding assistance in the event of a sale or transfer, or contract to sell or transfer, the Residence, or any part thereof, whether voluntary or involuntary to any person without the prior written approval of NDHFA; or use the Residence as an investment property; or use the Residence as a recreational home or “second” home; or change the use of the Residence, or any part thereof, to a use other than for single-family occupancy, for a time period equal to the period of affordability based on the amount of HOME subsidy provided to the homeowner.

HOME Homeowner Rehab Assistance to Homeowner

- Any Amount

NDHFA Required Period of Affordability

- 5 years

For sales during the Affordability Period, recapture of HOME funds will be calculated as outlined in Section 7 (Recapture of Direct HOME Assistance) of the Homeowner Written Agreement.

Subrecipient is responsible for the following:

1. Complete the Declaration of Lien Interest with the required information:
    a. Date of homeowner agreement
    b. Homeowner name(s), (A non-obligating spouse must sign and be listed as a homeowner).
    c. Legal description
    d. Property address
    e. Assistance amount
2. Declaration of Lien Interest:
    a. Is executed prior to work beginning on rehab project, but not before signing the Homeowner Written Agreement.
3. **Do not record this instructions page.** Please remember to remove this page prior to recording the Declaration of Lien interest.

DECLARATION OF LIEN INTEREST

HOME HOMEOWNER REHABILITATION
COMMUNITY HOUSING AND GRANTS MANAGEMENT
SFN 61384 (07/26)

Date	Homeowner(s)

THIS IS A "DECLARATION OF LIEN INTEREST" (herein "Agreement") running with the land with the above-named Homeowner(s) and is binding upon the Homeowner's successors and assigns in interest, and is granted to the Industrial Commission of North Dakota acting as the North Dakota Housing Finance Agency, 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, rehabilitation of this Residence was partially or fully funded with a HOME grant under the NDHFA owner-occupied rehabilitation program (herein "HOME Grant"),

WHEREAS, the Subrecipient provided to the Homeowner, a HOME homeowner rehabilitation grant (HOME Grant) specified below.

Grant Amount
$

WHEREAS, NDHFA requires that the Homeowner, in recognition of its receipt of the HOME Grant, execute, deliver and record with the County Recorder named below, 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 HOME Grant in the event the Residence is transferred, sold, leased, or goes into estate, either voluntarily or by operation of law, during the Affordability Period, as set out herein.

County

SECTION 1: FORM, AMOUNT AND USE OF ASSISTANCE

Homeowner 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 Homeowner 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.

Homeowner 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.

Homeowner hereby declares Homeowner’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 Homeowner’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 Homeowner as the intended beneficiary thereof and by furthering the public purposes for which NDHFA has provided the HOME Grant and the Subrecipient provided the Assistance Payment to the Homeowner.

SECTION 2: AGREEMENT TERM

This Agreement will expire upon expiration of the Affordability Period defined in Section 3 or upon satisfaction of this Declaration of Lien Interest.

SECTION 3: AFFORDABILITY PERIOD

The Homeowner agrees that if the subject home and property is transferred, sold, leased, or goes into estate, either voluntarily or by operation of law, within five (5) years from the date of project completion (herein “Affordability Period”), that the HOME assistance shall be recaptured by Subrecipient, provided however that the Recapture Amount is only payable from “Net Proceeds” (sales price for the property reduced by loan repayment and seller closing costs). Transfer of the subject property shall not apply to a transfer from the Owner to his/her spouse, but if transferred to said spouse, all provisions for this Agreement shall run with the land and, thereafter, be applicable to any transfer made by said spouse if within the Affordability Period.

If the Homeowner 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 the Subrecipient as described in Section 7 below.

The Affordability Period for the Property will begin on the completion date as determined by the NDHFA (“Completion Date”) and shall end five (5) years after the Completion Date (the “Affordability Period”). Project Completion is defined by 24 CFR §92.2 as the date upon which all of the following have been satisfied: (a) all requirements for the completion of rehabilitation have been performed; (b) the property complies with all applicable HOME requirements, including the property standards contained in 24 CFR

§92.251; (c) the final draw of HOME Funds has been disbursed for the project; and (d) project completion information has been entered in the Integrated Disbursement and Information System ("IDIS") established by HUD. The Subrecipient will provide a formal written notice to the Homeowner 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.

SECTION 4: HOMEOWNER REPRESENTATIONS

By signing this Agreement, the Homeowner attests to the following:

a. The Homeowner warrants that all information and documentation provided to the Subrecipient is true and correct. The Homeowner has fully disclosed all income and assets to the Subrecipient and warrants that the Homeowner’s household or financial situation has not changed materially since the application for HOME Assistance was made. The Homeowner acknowledges that any material discrepancies or misstatements may result in the Homeowner's disqualification from participation in the program and shall be deemed a breach of this Agreement and the Loan, and the Homeowner will be required to repay the entire HOME investment amount.

b. The Homeowner has agreed to rehab the dwelling unit so that it meets HOME Program requirements, including Program property standards.

c. The Homeowner understands and agrees to the requirements stated in this Agreement for the Agreement Term.

SECTION 5: HOMEOWNER RESPONSIBILITIES

The Homeowner agrees to the following to meet the requirements of this assistance:

a. The Homeowner will occupy the property as the principal residence as described in Section 6 for the Affordability Period.

b. The Homeowner will maintain the property, maintain hazard insurance, and pay all required taxes during the term of this Agreement as described in Section 8.

c. The Homeowner will provide information as required by the Subrecipient and/or NDHFA to monitor compliance with Program requirements.

d. In the event of sale of the property during the Agreement Term, the Homeowner will notify the Subrecipient and NDHFA and will comply with recapture requirements in Section 7.

SECTION 6: PRINCIPAL RESIDENCE

During the Affordability Period, barring a sale or transfer of title to the Property, which shall be governed by Section 7 below, the Homeowner shall at all times maintain the Property as his/her principal residence. Should the Homeowner cease to maintain the Property as his/her principal residence, rent the residence to another party, or convert the Property to a non-residential use, the Homeowner will be in breach of this Agreement and subject to the Default and Enforcement provisions under Section 10.

SECTION 7: RECAPTURE OF DIRECT HOME ASSISTANCE

Recapture of HOME Program assistance shall be computed from the project completion date and be paid back as listed below (0% interest). The Recapture Amount due and owed and to be paid to Subrecipient will be reduced pro-rata based on the number of full months the Owner has occupied the Residence compared to the required affordability period. Upon sale or transfer of the residence, the Owner will provide Subrecipient with verification of Owner's remaining proceeds, and their claim thereto, after satisfaction of the First Mortgage indebtedness and payment of reasonable seller closing costs. An estimated settlement statement, acceptable to Subrecipient, will fulfill the Owner's verification requirement. Subrecipient will make the final determination and computation of the Net Proceeds, and the sum to be repaid, and its determination will be final.

Table 1: HOME Program recapture based on month.

Month	Recapture	Month	Recapture	Month	Recapture	Month	Recapture	Month	Recapture	Month	Recapture
1	100%	11	83.3%	21	66.6%	31	50.0%	41	33.3%	51	16.6%
2	98.3%	12	81.6%	22	65.0%	32	48.3%	42	31.6%	52	15.0%
3	96.6%	13	80.0%	23	63.3%	33	46.6%	43	30.0%	53	13.3%
4	95.0%	14	78.3%	24	61.6%	34	45.0%	44	28.3%	54	11.6%
5	93.3%	15	76.6%	25	60.0%	35	43.3%	45	26.6%	55	10.0%
6	91.6%	16	75.0%	26	58.3%	36	41.6%	46	25.0%	56	8.3%
7	90.0%	17	73.3%	27	56.6%	37	40.0%	47	23.3%	57	6.6%
8	88.3%	18	71.6%	28	55.0%	38	38.3%	48	21.6%	58	5.0%
9	86.6%	19	70.0%	29	53.3%	39	36.6%	49	20.0%	59	3.3%
10	85.0%	20	68.3%	30	51.6%	40	35.0%	50	18.3%	60	1.6%

Direct HOME Subsidy is defined as the amount of HOME Assistance, including any program income, that enabled the Homeowner to rehabilitate the unit.

Net Proceeds are defined as the sales price minus superior loan repayment and any closing costs incurred by the seller.

The Homeowner will provide notice to the Subrecipient of any anticipated transfer of title, including but not limited to a sale or foreclosure, and will not proceed with such action until Subrecipient has been notified and has determined the actions allowed by this Agreement.

Noncompliance with Recapture Provisions – Pro-Rata Repayment Required

During the Affordability Period, the Homeowner will be deemed noncompliant if the homeowner:

a. Does not occupy the home as his/her/their primary residence without a sale.

b. Vacates the home.

c. Sublets and rents the home to another household without Subrecipient approval.

If noncompliance is not cured within the time allowed under Section 10, the Subrecipient will enforce full repayment of the original amount of the direct home subsidy in accordance with Section 9 of this Agreement.

Foreclosure or Transfer in Lieu of Foreclosure. Should the Homeowner default on any outstanding senior loans and the senior lender foreclose, the Subrecipient will work with the lender to ensure the Affordability Period survives the foreclosure. Any proceeds to the homeowner from the foreclosure or transfer in lieu of foreclosure are subject to the recapture provisions of this Agreement.

SECTION 8: INSURANCE AND TAXES

At all times during the term of this Agreement, the Homeowner shall maintain a valid and current hazard insurance policy on the Property. Failure to maintain a valid and current insurance policy will be considered a breach of this Agreement, and the Subrecipient will have the right to secure insurance for the Property and charge such costs to the Homeowner or to foreclose on its Declaration of Lien Interest, if necessary, to protect the HOME program investment.

If the Property is in a 100-year floodplain, the Homeowner shall maintain a current and valid flood insurance policy on the Property. Evidence of insurance must be provided to the Subrecipient prior to signing this agreement.

At all times during the term of this Agreement, the Homeowner shall pay property taxes.

SECTION 9: SUBRECIPIENT RESPONSIBILITIES

As the HOME Participating Jurisdiction’s Subrecipient, the Subrecipient is ultimately responsible to NDHFA and HUD for compliance with all HOME requirements.

a. The Subrecipient has determined the Homeowner to be eligible under the HOME Program’s income limits and other eligibility requirements and will review any changes to eligibility if the funding commitment does not occur within 6 months of the original income determination for the program.

b. The Subrecipient has determined the property to be eligible under the HOME Program’s requirements, including Program homeownership value limits and property standards.

c. The Subrecipient has submitted the required information to NDHFA and NDHFA has completed the environmental review required by 24 CFR Part 58 and determined that the property and assistance meet federal requirements.

d. The Subrecipient has determined the amount of Homeowner's assistance to be reasonable and in compliance with Program requirements.

e. The Subrecipient will provide the Direct HOME Subsidy payments to the contractor as need throughout the rehabilitation process.

f. The Subrecipient will record the Declaration of Lien Interest and retain this Agreement and the Declaration for the Agreement Term.

g. The Subrecipient will review any requests to refinance or sell the property during the Affordability Period.

h. The Subrecipient will review, monitor, or seek to confirm the Homeowner's ongoing compliance with the terms of this Agreement and the Loan, including but not limited to principal residency. The Subrecipient will enforce the other provisions of this Agreement and the recorded documents.

The Subrecipient may issue notices of violation, require corrective action, or seek performance using any and all legal remedies available.

As State administrator of the HOME Program, NDHFA will have the right to enforce any of the provisions of this Agreement.

SECTION 10: DEFAULT AND ENFORCEMENT

If Homeowner defaults in the performance of any of its obligations under this Agreement or the Declaration of Lien Interest, or breaches any covenant, agreement or restriction set forth herein, and if such default remains uncured for a period of sixty (60) days after notice thereof shall have been given by Subrecipient or its successors and assigns (or for an extended period approved in writing by Subrecipient or it successors and assigns if the default or breach stated in such notice can be corrected, but not

within such 60 day period, unless Homeowner 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), Subrecipient 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 Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's default. Subrecipient shall be entitled to its reasonable attorneys' fees in any such judicial action in which Subrecipient shall prevail.

Each right, power and remedy of Subrecipient provided for in this Agreement now or hereafter existing at law or in equity by statute 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 Subrecipient 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 Subrecipient of any or all such other rights, powers or remedies. Failure to exercise any such right, power or remedy shall not be deemed to waive any default or violation nor to waive the future exercise of any such right, power or remedy.

SECTION 11: MISCELLANEOUS

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 Owner and Subrecipient 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 Term specified herein above in Section 2.

a. **Additional Documents.** The Owner shall submit any other information, documents or certifications requested by the Subrecipient which Subrecipient deems reasonably necessary to substantiate the Owner’s continuing compliance with the HOME Program.

b. **Severability.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

c. **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).

d. **Governing Law.** This Agreement shall be governed by the laws of the State of North Dakota, and the HOME Program, not inconsistent therewith.

e. **Time of the Essence.** Time is of the essence with respect to this Agreement evidencing the NDHFA HOME Grant to Owner and the performance of each and every obligation of Owner to Subrecipient.

f. **Forgiveness.** Subrecipient may forgive all or part of the NDHFA HOME Grant only with written permission of NDHFA. Subrecipient and NDHFA shall provide written notice to the other upon forgiving all or part of the NDHFA HOME Grant.

Satisfaction or Release. NDHFA hereby authorizes Subrecipient to act as its agent to sign a satisfaction or release upon the Owner's meeting all obligations under this Agreement.

IN WITNESS WHEREOF, the Homeowner(s) has caused this Agreement to be signed as of the date first above written.

Homeowner's Signature	Homeowner'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