

**MCKENZIE COUNTY JOB DEVELOPMENT AUTHORITY DECLARATION OF LIEN INTEREST**

Date	Buyer(s)
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THIS IS A "DECLARATION OF LIEN INTEREST" (herein "Agreement") running with the land with the above-named Buyer and is binding upon the Buyer's successors and assigns in interest, and is granted to the McKenzie County Job Development Authority 201 5<sup>th</sup> St NW, Suite 600, Watford City ND 58854 (herein "JDA") on the land and improvements hereinafter described to wit (herein "Residence"):

Legal Description
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Property Address	City	State	ZIP Code
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WITNESSETH:

WHEREAS, purchase of this Residence was partially funded through the JDA's Down Payment Assistance program,

WHEREAS, JDA provided a Down Payment Assistance specified below.

Assistance Payment Amount \$
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WHEREAS, JDA requires that the Buyer, in recognition of its receipt of the Down Payment Assistance, execute, deliver and record with the County Recorder of McKenzie County, this JDA Declaration of Lien Interest in order to create certain covenants for the purpose of requiring the repayment of the Down Payment Assistance as set out herein.

## SECTION 1 – STATEMENT OF INTENT

- a. Buyer 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 Down Payment Assistance 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 Buyer and his/her successors and assigns during the term hereof, the benefits of which shall inure to JDA and its successors and assigns, until termination hereof pursuant to the provisions contained herein.
- b. Buyer 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.
- c. Buyer hereby declares Buyer'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 Buyer'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 Buyer as the intended beneficiary thereof and by furthering the public purposes for which JDA has provided the Down Payment Assistance.

## SECTION 2 – TERM OF THE AGREEMENT AND AGREEMENT TO REPAY DOWN PAYMENT ASSISTANCE

- a. The Residence will remain subject to the restrictions as provided herein for a period of five (5) years (herein "Claw-back Period") from the date hereof. The terms, conditions, obligations, restrictions, covenants, representations, and warranties contained in the Agreement shall be effective upon execution and delivery of this Agreement with respect to the Residence and shall continue in full force and effect throughout the Claw-back Period. This Agreement shall expire of its own terms. The Buyer, on their behalf and of Buyer's transferees, if any, by execution of this Agreement, waive(s) any right to terminate the terms, conditions, obligations, restrictions, covenants, representations and warranties contained herein with respect to the Residence during the Claw-back Period. The homebuyer purchasing the Qualifying House from the Seller shall agree to give a five-year lien to the JDA for the Down Payment Assistance amount. This Agreement will be forgivable as long as the homebuyer uses the Qualifying Home as his or her primary residence for the Claw-back Period. If the homebuyer sells the Residence prior to the end of the term of the Claw-back Period, the homebuyer will have to pay the JDA the difference of that future home sale price and the original home purchase price less the Down Payment Assistance amount, up to the Down Payment Assistance amount less the cost to sell (not to exceed 7% of the sale price and can include realtors' commission and seller's concessions). See table below as for example:
- b.

Future Home Sale Price	Original Purchase Price	Down Payment Assistance Amount	Original Purchase Price Less the Down Payment Assistance Amount	Cost to Sell (not to exceed 7%)	Amount to be Repaid to JDA
\$400,000	\$365,000	\$40,000	\$325,000	\$28,000	\$40,000
\$365,000	\$365,000	\$40,000	\$325,000	\$25,550	\$14,450
\$340,000	\$365,000	\$40,000	\$325,000	\$23,800	\$0

## SECTION 3 – INVOLUNTARY TERMINATION OF THE DECLARATION OF LIEN INTEREST

- a. **Foreclosure.** Upon foreclosure by the JDA or upon a transfer of the Residence in lieu of such foreclosure, this Agreement shall automatically terminate with respect to the Residence.

- b. **Involuntary Noncompliance.** In the event of involuntary non-compliance with respect to the Residence arising as a consequence of natural disaster, seizure, requisition, or condemnation by a governmental authority, the Agreement shall not automatically terminate, but shall be enforceable against the acquiring party, regardless of the circumstances.

#### SECTION 4 - DEFAULT

- a. **Enforcement and Remedies.** If Buyer defaults in the performance of any of its obligations under this Agreement 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 the JDA or its successors or assigns (or for an extended period approved in writing by JDA or its successors and assigns if the default or breach stated in such notice can be corrected, but not within such 60 day period, unless Buyer 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), the JDA 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. To the extent not prohibited by N.D.C.C. Section 28-26-04 the JDA shall be entitled to its reasonable attorneys' fees in any such judicial action in which the JDA shall prevail.
- b. **Remedies Cumulative.** Each right, power and remedy of the JDA provided for in this Agreement now or hereafter existing at law or in equity by statute 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 the JDA 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 the JDA of any or all such other rights, powers or remedies.

#### SECTION 5 - MISCELLANEOUS

- a. **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 Buyer, the JDA 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.
- b. **Additional Documents.** The Buyer shall submit any other information, documents or certifications requested by the JDA which JDA deems reasonably necessary to substantiate the Buyer's continuing compliance with this Agreement.
- c. **Severability.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
- d. **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).
- e. **Governing Law.** This Agreement shall be governed by the laws of the State of North Dakota.
- f. **Time of the Essence.** Time is of the essence with respect to this Declaration evidencing the JDA Loan to Buyer and the performance of each and every obligation of Buyer to JDA herein.
- g. **Agreement Subordinate to Prior Recordings.** The Buyer and JDA acknowledge and agree the terms and provisions of this Agreement are subject and subordinate in all respects to the liens, terms, covenants and conditions of the first mortgage loan. In the event of a foreclosure or a deed in lieu of foreclosure, or repayment of the first mortgage loan the terms and conditions of this Agreement shall have no further force nor effect with respect to the first lien holder or any bona fide transferee of the Residence therefrom or thereunder.

IN WITNESS WHEREOF, the Buyer has caused this Agreement to be signed as of the day and year first above written.

Buyer's Signature	Buyer's Signature
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**ACKNOWLEDGEMENT**

MCKENZIE COUNTY JOB DEVELOPMENT AUTHORITY

This record was acknowledged before me on \_\_\_\_\_(Date) by \_\_\_\_\_  
\_\_\_\_\_(Name(s) of Individuals).

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Signature of Notarial Officer