

[Name of City or Nonprofit Organization]
OWNER OCCUPIED REHABILITATION AGREEMENT

This Agreement is entered into by and between the *[Name of City, County or Organization]*, hereafter referred to as “[_____],” and _____, hereafter referred to as “the Owner.”

WHEREAS, *[Name of Administering Entity]* has received HOME Investment Partnerships Program, hereafter referred to as “HOME,” funding from the U.S. Department of Housing and Urban Development for use in the rehabilitation of residential property; and

WHEREAS, the Owner holds title to and occupies, or will upon rehabilitation occupy, residential property which is currently not in compliance with the applicable City housing code standards and minimum housing quality standards; and

WHEREAS, if HOME funds are made available to the Owner by *[Name of Administering Entity]*, the residential property can be renovated in compliance with the applicable (city name) _____ City Code housing standards and occupied by the Owner.

WHEREFORE, in consideration of the mutual covenants, conditions and the commitments of the parties set forth herein, the City and the Owner agree as follows:

1. OWNERSHIP. Owner represents and agrees that the Owner is the owner(s) of residential property located in the City of _____, Arkansas with a street address of _____ – _____, Arkansas, hereafter referred to as “the Property.”

2. CONDITION OF PROPERTY. The Property is presently in violation of various housing standards of the ____ (city name) _____ Code and is in need of the repairs, improvements and alterations, hereafter referred to as the “Project,” set forth and described in the Description of Work which is attached hereto as Exhibit A and made a part hereof. The work, material, and equipment installed shall meet standards described in the ADFHA HOME Program General Specifications, which the Owner has examined and a copy of which has been given to the Owner’s contractor.

(a) The affordable housing developed with HOME funds provided under this Agreement shall, upon completion, meet all applicable minimum housing code standards, as established by the City of _____, and all state and local housing, zoning, fire, and building codes, as amended. In addition, the housing assisted under this Agreement shall be maintained in compliance with all applicable minimum housing code standards, as established by HUD, and all state and local housing, zoning, fire, and building codes, as amended, for the duration of the Agreement and the full term of the required affordability period.

(b) The *[Name of Administering Entity]*, shall establish and maintain records for the assisted housing unit to ensure adherence to all applicable minimum housing code standards, as established by the City of _____, and all state and local housing, zoning, fire and building codes, as amended. The *[Name of Administering Entity]*, shall provide, upon completion of all rehabilitation work to be performed under this Agreement, a certificate (if applicable) issued by the City of _____ ensuring compliance with the minimum housing code established by the City of _____.

(c) The *[Name of Administering Entity]*, City and ADFA reserve the right to inspect at any time during normal business hours any and all construction accomplished under this Agreement to assure adherence to applicable Housing Quality Standards, minimum housing codes, as established by the City of _____, and all state and local housing, zoning, fire, and building codes, as amended.

3. FUNDS TO BE PROVIDED. Upon the execution of this Agreement by all parties, *[Name of Administering Entity]*, will set-aside and designate in the name of the Owner the total sum of _____ Dollars (\$_____) in HOME funds, hereafter referred to as the “designated funds,” for the use pursuant to the terms of this Agreement, subject to Owner's full and continued compliance with this Agreement. ADFA will make distributions from the designated funds to *[Name of Administering Entity]* in accordance with this Agreement if the Owner is in compliance with all of the provisions of this Agreement. On the date this Agreement is executed by Owner, the Owner will also execute a mortgage conveying ADFA a mortgage interest in the Property, hereafter referred to as “the Mortgage,” and a promissory note payable to ADFA in the amount of the designated funds, hereafter referred to as “the Note”. The Mortgage and Note are attached as Exhibit B and C, respectively, and are made a part hereto and incorporated herein by reference. This Agreement, the Mortgage, the Note, the Contract For Rehabilitation, the Description of Work, the ADFA HOME Program General Specifications, and any warranty documents form the contract documents for this Project.

4. DISBURSEMENT OF FUNDS. ADFA will make disbursements to the *[Name of Administering Entity]* for payment to contractor from the designated funds as follows:

(a) *[Name of Administering Entity]* shall make a written request to ADFA for disbursement in accordance with the appropriate disbursement schedule provided in this Agreement, and shall provide such documentation and evidence of expenditures as to clearly establish that the amount of the disbursement requested has been spent only on the Project.

(b) ADFA or its designee will inspect the Project and determine if sufficient work has been completed and is acceptable to justify the disbursement requested. The *[Name of Administering Entity]* will contact ADFA for inspection of the property to verify work is acceptable for disbursement of HOME funds.

(c) If insufficient work has been completed, the work completed has not been done in a manner acceptable, ADFA shall have the right to refuse the disbursement in whole or, at its sole discretion, to make a disbursement in a lesser amount as supported by the documentation.

(d) Disbursements from the designated funds will be made to the *[Name of Administering Entity]* within **ten (10) days** after acceptable documentation has been received and verified by inspection evidencing that sufficient work has been completed and is acceptable to ADFA.

(e) Subject to *[Name of Administering Entity]* compliance with this Agreement and the contract documents, where the total Contract for Rehabilitation amount is less than Twenty-Five Thousand Dollars (\$25,000), the *[Name of Administering Entity]* may request multiple disbursements, consisting of progress disbursements and a final disbursement. The first progress disbursement from the designated funds may be requested after _____ percent (____%) of the Contract for Rehabilitation amount has been earned, and the second progress disbursement may be requested after _____ percent (____%) of the Contract for Rehabilitation amount has been earned. The third and disbursement may be requested upon completion of _____ percent (____%) the Contract has been earned. The fourth disbursement may be requested upon _____ percent (____%) completion. Not more than ninety percent (90%) of designated funds will be disbursed before the final request for the retainage amount. The final ten percent (10%) for retainage will be released 30 days after the fourth draw request and after submission all applicable project completion documents. The ADFA Inspector shall determine, in consultation with the *[Name of Administering Entity]* and Contractor, the percentage of project completion, subject to appeal to the ADFA HOME Program Manager.

5. PAYMENT OF LOAN. ADFA will forgive each monthly payment of principal and interest required by the Mortgage and Note on each due date if the Owner is determined to be in compliance with all of the provisions of this Agreement prior to said date. It is agreed and understood that ADFA may not be aware of each breach of the Agreement by the Owner on each due date and may not discover such until several months after the breach or failure to comply. It is expressly agreed that payments are not forgiven on a due date unless the Owner is in fact in full compliance with this Agreement, and the lack of notice or knowledge by ADFA of such noncompliance on a due date shall not relieve the Owner of liability for such payments, and such shall not be construed as forgiveness of a payment.

6. ADDITIONAL DOCUMENTATION. ADFA shall have the right to demand and receive full documentation, explanation and verification of all expenditures related to the Project.

7. GENERAL CONTRACTOR. Owner agrees to enter into a the Contract for Rehabilitation attached hereto and incorporated herein as Exhibit E, with a qualified general contractor for the Project who is acceptable to ADFA and who is experienced in the type of work required by the Project. The *[Name of Administering Entity]* and Owner shall delegate to the general contractor full responsibility for the acquisition, supervision, control, payment, and release of liens for all materials, services, and labor for the Project. All subcontractors and

material suppliers utilized on the Project shall be experienced in the type of work required by the Project, reputable, qualified and shall be acceptable to *[Name of Administering Entity]* and ADFA.

9. PROJECT COMPLETION. Time is of the essence regarding this Agreement and this Project. The Contractor shall have the Project complete and acceptable to the Owner, *[Name of Administering Entity]*, and ADFA within _____(____) days after the date of the Notice to Proceed. Failure to complete the Project within this time period, or any extensions granted by ADFA in writing, shall be cause for ADFA to terminate this Agreement.

10. INSPECTION OF WORK. Owner shall allow *[Name of Administering Entity]* and ADFA, at reasonable times and intervals, to inspect the work and any contracts, material, equipment, records, documents and conditions of employment pertaining to the Project.

11. AFFORDABILITY, OCCUPANCY AND OWNERSHIP. The Owner shall comply with applicable provisions of 24 C.F.R. Part 92, specifically 24 C.F.R. § 92.254(b), all as may be amended. Housing that is currently owned by a family qualifies as affordable housing only if:

(a) The estimated value of the property, after rehabilitation, does not exceed ninety-five percent (95%) of the median purchase price for the area, described in 24 C.F.R. § 92.254(a)(2)(iii), as amended; and

(b) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing.

The ownership in the housing assisted under 24 C.F.R. § 92.254 shall meet the definition of “homeownership” in 24 C.F.R. § 92.2, as amended.

The Owner agrees to retain fee title and personally occupy the property continuously as a principal residence from the date of completion of the Project for a period of _____ (____) years, as specified in the Note.

12. CONFLICTS OF INTEREST. The Borrower agrees not to pay any bonus, commission, or fees for the purpose of influencing or obtaining *[Name of Administering Entity]* and/or ADFA’s approval of the Project, or HOME funds provided pursuant hereto, or regarding any other approval or concurrence required by ADFA or its designee. Further, Owner shall not enter into any contract, Agreement, or relationship with any member of the Board of Directors of *[Name of Administering Entity]* and/or ADFA, and shall not enter into any contract, agreement or relationship with employees or agents of *[Name of Administering Entity]* and/or ADFA, to have any interest, direct or indirect, in the HOME funds provided on behalf of Owner pursuant to this Agreement or concerning this Project.

13. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Contract, all contractors and subcontractors on the Project must abide by Federal and local regulations pertaining to equal employment opportunity. ADFA will ensure that any contractors and subcontractors on the Project comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

14. NONDISCRIMINATION CLAUSE. Under Section 109 of the Housing and Community Development Act of 1974, as amended, no person in the United States shall, on the grounds of race, color, national origin, religion or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or part with funds available under this title.

15. AGE DISCRIMINATION ACT OF 1975. No qualified person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program of activity which receives or benefits from Federal financial assistance.

16. SECTION 504 OF THE REHABILITATION ACT OF 1973. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied, the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

17. CIVIL RIGHTS. The Owner shall comply with all requirements of Title VII of the Civil Rights Act of 1964, not to discriminate upon the basis of race, color, creed, or national origin in the sale, rental, use, or occupancy of the property.

18. TERMINATION OF AGREEMENT. The Owner understands and acknowledges that, should the Owner fail to comply and fulfill each and every condition and provision of this Agreement, *[Name of Administering Entity]*, at its option, terminate this Agreement and take any and all legal action, including, but not limited to, the right to retain all designated funds which have not been disbursed on behalf of the Owner and apply those funds to the balance due under the Note and Mortgage, and foreclosure of the Mortgage and recovery of all money due pursuant to the Note.

19. INSURANCE. Owner shall at all times maintain sufficient insurance to discharge the outstanding balance on the Note and Mortgage in the event of loss or destruction of the Property. The Owner shall provide *[Name of Administering Entity]* with a current Certificate of Insurance naming the Mortgagee as the Certificate Holder. The *[Name of Administering Entity]* shall receive thirty (30) days prior written notice of cancellation of said insurance coverage. If ADFA's Mortgage is not a first mortgage, or is subordinated to other mortgages or liens, then Owner shall maintain sufficient insurance to assure that ADFA's Mortgage and Note will be paid in full. If the Property is destroyed, then the balance on ADFA's Mortgage and Note shall be immediately due and payable and any insurance proceeds received shall be paid to ADFA on such debt, unless otherwise agreed in writing by ADFA.

20. MERGER. This Agreement, the Note, the Mortgage, Deed Restriction, the Contract for Rehabilitation, and the warranty documents constitute the entire agreement between the parties regarding the subject herein. There are no other agreements between the parties hereto, and any changes, additions or amendments hereto must be writing and signed by both parties to be effective. In the event that any provisions contained in this Agreement conflict with the provisions of the promissory note and Mortgage, then the provisions of the Note or Mortgage shall control unless specifically provided herein.

21. NOTICES. Communication and details concerning this contract shall be directed to the following persons:

[Name of Administering Entity]

Contact Person:

Address

City, Arkansas, Zip

Owner:

Name _____

Address _____

City, State, zip

22. LEGALLY BINDING CONTRACT. This is a legally binding contract when signed by the parties to the contract and should be read carefully. An attorney should be consulted before signing if the any party does not understand the effect of any part of this contract.

23. HOLD HARMLESS. The Contractor and Owner jointly and severally shall protect *[Name of Administering Entity]* and ADFA and hold the *[Name of Administering Entity]* and ADFA harmless from any and all responsibility for any and all damage or injury of any kind or nature whatever, including death resulting, to all persons and to all property, caused by, resulting from, arising out of, incident to or occurring in connection with, directly or indirectly, the performance by the Contractor or by any person acting for the Contractor or for whom the Contractor is or is alleged to be in any way responsible whether such claim may be based upon contract, tort - including alleged active or passive negligence or participation in the wrong - or upon any alleged breach of any duty or obligation on the part of the Owner or Contractor, their agents, servants and employees or otherwise. The provisions of the preceding sentence shall include any claims based on alleged damage to the business of any claimant and shall include any and all losses, damages, injuries, settlements, decrees, awards, fines, penalties, judgments, claims cost and expenses, including expenses incurred by the *[Name of Administering Entity]* and/or ADFA, its agents and employees, in connection with investigating any claim or defending any action, and including reasonable attorney's fees, by reason of the assertion of any claim against the *[Name of Administering Entity]*, ADFA, or its agents, or employees.

24. MISCELLANEOUS.

(a) Modification. Any modification to this Agreement shall be in writing, signed by all parties to the Agreement.

(b) Governing Law. This Agreement is governed by the laws of the State of Arkansas.

(c) Severability Clause. If any provision of this Agreement or the referenced contract documents shall be declared illegal, void or unenforceable by a court of competent jurisdiction, the other provisions shall not be affected.

(d) Authority to Execute Agreement. The officials who have executed this Agreement hereby represent and warrant that they have full and complete authority to act on behalf of the Owner and the *[Name of Administering Entity]*, of _____, respectively, and that their signatures below, the terms and provisions hereof, constitute valid and enforceable obligations of each.

(e) Copies Same as Original. This Agreement shall be executed in the original, and any number of copies. Any copy of this Agreement so executed shall be deemed an original, and shall be deemed authentic for any other use.

(f) Indemnity Clause. The Owner agrees that it shall indemnify and save harmless the *[Name of Administering Entity]*, its officers, agents, and employees from:

(1) Any claims or losses for services rendered by any subcontractor, person or firm performing or supplying services, materials or supplies in connection with the performance of this Agreement or Project; and

(2) Any claims or losses resulting to any person or firm injured or damaged by the erroneous, willful or negligent acts or omissions, including disregard of federal, state, and local statutes or regulations, by the Owner, and the Owner's employees or subcontractors, in the performance of this Agreement or Project.

(g) No Waiver of Enforcement of Contract Provisions. Failure of the *[Name of Administering Entity]* to enforce at any time any of the provisions of the contract documents, or to require at any time performance by the Owner of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this Agreement or any part thereof, or the right of the *[Name of Administering Entity]* to thereafter enforce each and every such provision.

[Signatures on Next Page]

Date

Owner

ATTEST:

BY:

LENDER: *[Name of Administering Entity]*
