

**SANTA FE COUNTY**  
**HOUSING AUTHORITY BOARD RESOLUTION No. 2013-07HB**

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**A RESOLUTION OF THE SANTA FE COUNTY HOUSING AUTHORITY BOARD ADOPTING A RENT-TO-OWN PROGRAM AND POLICY AND DELEGATING SIGNATURE AUTHORITY FOR TRANSACTIONS VALUED AT TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) AND BELOW TO THE COUNTY MANAGER FOR THE NEGOTIATION, SALE AND LEASE OF HOMES UNDER THE RENT-TO-OWN PROGRAM**

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**WHEREAS**, on December 14, 2010, the Board of County Commissioners and the Housing Authority Board approved Resolution No. 2010-241 and Resolution No. 2010-19HB approving the Foreclosure Prevention Program and Policy; and

**WHEREAS**, on July 31, 2012, the Board of County Commissioners and the Housing Authority Board approved Resolution No. 2012-83 and Resolution No. 2012-21HB which rescinded the 2010 resolutions and implemented a new Foreclosure Prevention Program and Policy; and

**WHEREAS**, one of the actions authorized under the Foreclosure Prevention Program and Policy calls for the acquisition of homes that are in default or foreclosure and which were purchased under the County affordable housing program;

**WHEREAS**, Santa Fe County Housing Authority has purchased 5 homes and sold 3 homes, with a fourth under contract, under the Foreclosure Prevention Program and Policy and has discovered that a strong first-time homebuyers market exists for homes priced, after subsidy, under \$155,000; and

**WHEREAS**, it is difficult for new homes to be produced and offered at a purchase price, after subsidy, of under \$155,000 and that most of the existing homes purchased under the County affordable housing program and now available for purchase and sale can be acquired for an after-subsidy price of below \$155,000;

**WHEREAS**, many first-time homebuyers who have sufficient income to qualify for an affordable home purchase find it difficult to purchase homes because of low credit scores, high debt levels and little money saved for down payment; and

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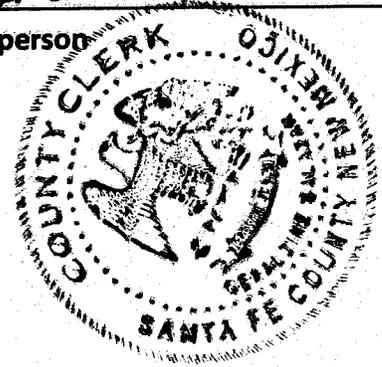
WHEREAS, a rent-to-own program provides income qualified households with the opportunity, time and incentive to repair credit, reduce debt and increase savings necessary for down payment on an affordable home; and

NOW, THEREFORE, BE IT RESOLVED that the Santa Fe County Housing Authority Board hereby adopts the Rent-to-Own Program and Policy attached hereto as Exhibit "A".

APPROVED, ADOPTED AND PASSED this 27<sup>th</sup> day of August, 2013.

SANTA FE COUNTY HOUSING AUTHORITY BOARD

Kathy Holian  
Kathy Holian, Chairperson



Geraldine Salazar  
Geraldine Salazar, County Clerk 8-27-2013

APPROVED AS TO FORM:

Stephen C. Ross  
Stephen C. Ross, County Attorney



COUNTY OF SANTA FE ) HOUSING RESOLUTION  
STATE OF NEW MEXICO ) ss PAGES: 11  
I Hereby Certify That This Instrument Was Filed for  
Record On The 29TH Day Of August, 2013 at 12:40:19 PM  
And Was Duly Recorded as Instrument # 1716575  
Of The Records Of Santa Fe County  
Witness My Hand And Seal Of Office  
Geraldine Salazar  
Deputy Maxwell Dejesus County Clerk, Santa Fe, NM

## EXHIBIT A

# Santa Fe County Rent-to-Own Program The Santa Fe County Housing Authority

### Activity Description

Through its continuing purchases of affordable homes authorized under the Foreclosure Prevention Program and Policy, the SFCHA would make available homes for rent and purchase by low income households with incomes under eighty percent (80%) of Area Median Income. Upon selection, the household would execute both a rental lease agreement and an option to purchase agreement. The household would use the time during the rental period to work with trained homebuyer counselors of a local non-profit housing counseling organization using standard counseling curriculum to repair credit, reduce debt and build savings to be used as part of a down payment for purchase of the subject home. The purchase price of the home would be set at or above the appraised value of the Property in effect at the time of execution of the Option to Purchase agreement. Fifty (50) percent of the monthly rent paid, including housing choice voucher payments, would be applied as a credit against the purchase price, along with the required option consideration set at one (1) percent of the purchase price.

The Option to Purchase agreement gives the household the right to purchase the property within a designated term. To exercise this right, the household must execute a notice of intent to purchase which would specify a closing date for the purchase. If closing does not occur within twenty-four months after execution of the Option to Purchase agreement, and Lease Agreement, and within six months after execution of the written notice of intent to purchase, the agreement would be terminated, unless SFCHA, in its sole discretion, chooses to extend the term of the option to purchase agreement and the rental lease agreement.

### Eligibility Requirements

The first step in the review process is to review all received applications for completeness. If an application is deemed complete, then it is date and time stamped and placed on the official waiting list. Incomplete applications are returned to the applicant, along with a written list of deficiencies which must be corrected and resubmitted for the application to be deemed complete. Complete applications are then reviewed to determine if threshold requirements of the program are met.

HUD sets forth minimum and maximum requirements for households purchasing property under a homeownership program, including lease to purchase, with some flexibility in setting such requirements reserved for the SFCHA. The following summarizes the threshold requirements of the program.

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Maximum and Minimum Income Requirement

An applicant for the program must have a maximum household income at or under 80% of Santa Fe Area Median Income (AMI) for the applicable household size, and a minimum household income greater than 50% of AMI for the applicable household size, as set forth by HUD. Any subsidy amount, including housing choice vouchers that the applicant is currently receiving would be included as income for the purposes of determining minimum and maximum income. An applicant may have income lower than this minimum level if they have been pre-approved for financing in an amount necessary to purchase the desired home. An income qualification would be performed as part of the application review process and an annual income recertification would be performed by staff to insure continued eligibility for the program. The income recertification would be performed twelve months after execution of the Option to Purchase Agreement or at the time of Buyer/Tenant delivery of the written notice of intent to purchase, whichever is less.

Minimum and Maximum Assets Requirement

There are no minimum and maximum asset requirements for this program, although income from assets would be imputed according to HUD rules and the applicant would need to demonstrate sufficient funds to meet the down payment requirement described below.

Down Payment Requirement

The applicant must contribute from their own resources a minimum of one percent (1%) of the purchase price, after subsidy, in down payment funds. The applicant must illustrate that these funds are available. If the applicant does not have these funds available at the time of application, a savings plan must be presented with the application which demonstrates how the funds will be accumulated prior to closing on the home purchase. The applicant may apply for assistance under the County down payment assistance program prior to executing its written notice of intent to purchase. If down payment assistance is granted, closing must occur and funds must be expended within six months after the date of the commitment letter for the down payment assistance award.

Housing Cost/Income Ratio

To determine applicant's financial capacity to purchase a particular home in the program, SFCHA staff will calculate the applicant's estimated monthly payments for mortgage principal, interest, taxes, insurance, homeowners' association fees, and utilities for the preferred housing type. The estimated total housing cost must not exceed thirty five percent (35%) of the applicant's adjusted income, plus any subsidy that will be available for such payments. Staff will review an application for a particular home using the stated purchase price of the home, available subsidy package, applicant monthly income, current interest rates for a thirty year term mortgage, estimated down payment, and other factors to determine the applicant's estimated housing cost ratio. If staff determines that the applicant can meet this requirement, and all other minimum program requirements are met, then staff will work with the applicant to execute the Lease Agreement and the Option to Purchase agreement.

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own program. Self-employment in a business is allowed. This employment requirement does not apply to an elderly or disabled household.

#### Residency

Applicant must be a United States citizen or national.

#### No Prior Default on Mortgage

The applicant must certify that they have not defaulted on a mortgage securing debt for a home for which they received homeownership assistance under a previous public housing authority homeownership program, or under another government program in which they received other financial assistance which enabled the home purchase.

#### Denial of Application

The SFCHA will deny the application if any household member is currently engaged in, or has engaged in drug-related criminal activity or violent criminal activity, as defined by HUD, within the past five years. In addition, the SFCHA will deny the application if, within the past five years, the applicant has displayed a pattern of unsuitable performance in meeting financial obligations, including rent; has a pattern of disturbance of neighbors, destruction of property or poor housekeeping habits at prior residences which may have adversely affected the health, safety or welfare of other tenants; has been evicted from housing or been terminated from residential programs; owes rent to any public housing authority or landlord; misrepresents or does not provide complete information related to eligibility, including income, expenses, family composition or rent; has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program; or has engaged in or threatened violent or abusive behavior toward SFCHA personnel.

#### Selection Process

Applications for the lease and purchase of these homes would be invited during an open enrollment period advertised on the SFCHA and County websites, press releases, fliers, local newspapers and through advertised open houses. All advertising would be performed in compliance with HUD fair housing requirements. A pre-submittal meeting would be held to review all submittal requirements. These requirements would be clearly articulated in the application and on the websites. Applicants who submit a complete application with all required attachments will be placed on a waiting list in the order that their applications were received, by date and time. Incomplete applications would be returned to applicants, along with an itemized list of corrections and/or additions that need to be made. The open enrollment period would be closed when staff determines that there is an adequate applicant pool of households to be considered.

In the application, the applicant would be asked to identify preferences for the housing which is advertised as available, subject to the minimum household size requirements of the program. The minimum household size for a two bedroom unit is one; the minimum household size for a three

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bedroom unit is two; and the minimum household size for a four bedroom unit is three. Staff would work with the first complete applications in the order that they had been received and will review these applications for compliance with all minimum requirements, as set forth elsewhere in this narrative. If all minimum requirements are met, SFCHA staff would work to execute a rental lease agreement and an option to purchase agreement with the applicants for their preferred homes. Both of these agreements would need to be executed together.

If an applicant's preferred home had been selected by someone higher on the waiting list, then another home would be considered, or if this is not desired by the applicant, then the next applicant on the waiting list would be selected. If the SFCHA and applicant cannot execute the agreements for a particular home, then the SFCHA would move on to the next person on the waiting list who expressed a preference for, and qualifies for, a particular home.

The rental lease agreement would be an adaptation of a standard HUD lease agreement, with terms as set forth in this narrative. An Option to Purchase agreement would be presented for signature at the same time as the rental Lease Agreement. An Option to Purchase agreement would be in a separate form, with terms described in this narrative. The Buyer/Tenant would exercise this right to purchase by providing the SFCHA with a written notice of intent to purchase. This notice initiates the purchase process and specifies a closing date at which time the property would transfer. The closing date must be no later than six months after execution of the notice of intent to purchase and no later than twenty four months after execution of the lease agreement and the option to purchase agreement.

### **Summary of Rental Lease Agreement Terms**

An adaptation of a model HUD public housing authority rental lease agreement will be used for this program. The most critical terms of the rental lease agreement are summarized below.

#### **Monthly Rent**

Buyer/Tenant rent is calculated by taking the lesser of the payment standard established by SFCHA for the particular housing type and 30% of the Buyer/Tenant's monthly adjusted income, then subtracting the HUD approved utility allowance for the utilities that the Buyer/Tenant is responsible for paying. Any existing housing choice voucher amount that the Buyer/Tenant currently receives would also be collected as rent in addition to the 30% of Buyer/Tenant's monthly adjusted income, subject to the maximum Fair Market Rent limit, less the utility allowance. SFCHA would contract with an independent entity to determine rent reasonableness in accordance with HUD standards. This independent entity would also be available to assist the Buyer/Tenant in negotiating the contract rent when the Buyer/Tenant requests assistance. Rent is recalculated as part of an annual recertification process with the Buyer/Tenant, to be performed twelve months after execution of this Agreement or at the time of Buyer/Tenant delivery of the written notice of intent to purchase, whichever is less. In addition, SFCHA must recalculate rent if its payment standards change and if a Buyer/Tenant reports a change in income, allowances or family composition.

Lease Term

The lease term shall be for a period of one year, after which time it may be extended on a month to month basis for up to an additional year at the sole discretion of the Buyer/Tenant, provided that the Buyer/Tenant is in full compliance with all provisions of the Lease Agreement and the Option to Purchase Agreement, and provided that the Buyer/Tenant has executed a written notice of its intent to purchase with a closing date specified at a date no later than six months after the execution of the written notice of intent to purchase. If the Buyer/Tenant has not provided such notice of intent to purchase by the end of the one year lease term, then the lease may be extended on a month to month basis with the mutual consent of the Buyer/Tenant and SFCHA. In any case, the SFCHA shall have no obligation to extend the Lease Agreement beyond the twenty four month anniversary date of the execution of the Lease Agreement and Option to Purchase Agreement.

Security Deposit

Buyer/Tenant agrees to pay an amount equal to one month's contract rent as a security deposit. The deposit will be held in escrow, with the Buyer/Tenant earning whatever the bank is paying in interest on the funds. Upon termination of the Lease Agreement, the SFCHA may retain the security deposit in its sole discretion, to pay for the cost of any damage or required repairs to the Property.

Utilities

The Buyer/Tenant is responsible for paying all utilities, although the monthly rent paid by the Buyer/Tenant is adjusted downward by the amount of a HUD approved utility allowance. Failure of Buyer/Tenant to promptly pay all utility bills, resulting in a service disconnection notice, shall be a breach of the Lease Agreement and the Option to Purchase Agreement and may result in termination of the both agreements.

Buyer/Tenant Obligation to Provide True and Correct Information

Buyer/Tenant promises to provide SFCHA with accurate information about family composition, age of family members, income of all family members, assets and all related information necessary to determine eligibility, annual income, adjusted income and monthly rent.

Seller/Landlord Obligation to Provide Unit in Decent, Safe and Sanitary Condition

At the beginning of the lease period, the SFCHA shall deliver to the Buyer/Tenant a unit that is in good and safe working order and condition in regard to electrical, plumbing, sanitary, heating, ventilating and other facilities and appliances. SFCHA shall perform an HQS inspection prior to execution of the Lease Agreement and shall make all necessary repairs that had been identified during the inspection. In addition, Buyer/Tenant is responsible for commissioning an independent home inspection prior to the execution of the Lease Agreement and Option to Purchase Agreement. The home inspection would identify items that may require repair prior to the move-in. SFCHA and the Buyer/Tenant would review the report and the SFCHA may agree, at its option, to make the identified repairs. If the SFCHA does not agree with the conclusions of the home inspection report and does not make the recommended repairs,

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the Buyer/Tenant is under no obligation to execute the Lease Agreement and the Option to Purchase Agreement.

#### Buyer/Tenant Obligation to Maintain Unit in Decent, Safe and Sanitary Condition

Prior to move-in and as a condition of SFCHA's execution of the agreements, Buyer/Tenant must accept the Property "as is" on the date of execution of the agreements, after any improvements that the SFCHA made in response to the independent home inspection and HQS inspection. During the lease term, the Buyer/Tenant shall be responsible for all repairs, maintenance and improvements upon the property, both interior and exterior. SFCHA may inspect the Property monthly, at its discretion, and may provide the Buyer/Tenant with a list of required repairs, improvements and maintenance items. Buyer/Tenant shall have the right to make such repairs, maintenance and improvements with the prior written consent of the SFCHA. Buyer/Tenant shall pay the costs of all such repairs, maintenance and improvements. Any repairs, maintenance and improvements that do not pass the inspection of the SFCHA may be performed again by Buyer/Tenant or repaired by the SFCHA, at Buyer/Tenant's expense. In the event that the need for a significant repair arises and the Buyer/Tenant does not have sufficient funds to pay for such repair, the SFCHA has the option to make the necessary repairs at Buyer/Tenant's expense, which may take the form of a reduced rent credit, reduced option consideration or increase in the purchase price, or it may terminate the Lease Agreement and the Option to Purchase Agreement. This section does not apply to Housing Choice Voucher holders, for whom the maintenance responsibility is assigned to the SFCHA.

#### Inspections

SFCHA may perform property inspections a minimum of every month to insure that Buyer/Tenant is maintaining the unit in the condition at which the unit was delivered at the beginning of the agreements. Any areas of deferred maintenance or excessive wear and tear requiring repairs, maintenance or improvements that are identified by SFCHA shall be corrected by Buyer/Tenant within thirty (30) days, or the SFCHA may make such repairs at Buyer/Tenant's expense, as set forth above, or may terminate the agreements.

#### Renters' Insurance

The Lease Agreement shall stipulate that the Buyer/Tenant shall be required to obtain renters insurance with coverage limits acceptable to the SFCHA, enabling the SFCHA to recover the cost of damages to the Property from the renters' insurance policy.

#### Termination

The Lease Agreement may be terminated for serious violations of material terms of the lease, including but not necessarily limited to the following: failure to pay rent when due; failure to pay utility bills when due; misrepresentation of family income, assets or composition; failure to supply in a timely fashion, any information on family income or composition needed to process annual recertification; failure to maintain the unit in the condition at which the Property was delivered to Buyer/Tenant and/or to

correct deficiencies within thirty days as identified by SFCHA in any of its inspections; criminal activity by Buyer/Tenant or guest, including offensive weapons or illegal drugs seized on premises by a law enforcement officer. In the event of termination of the Lease Agreement, the SFCHA would also terminate the Option to Purchase Agreement and may retain the full amount of the security deposit, the option consideration, rent credit and improvements and repairs that had been made by the Buyer/Tenant during the course of the Lease Agreement. Also, the Buyer/Tenant would be prohibited from receiving other County housing assistance, including but not limited to down payment assistance, other subsidy loans, and rental vouchers.

### **Summary of Option to Purchase Terms**

The most critical terms of the Option to Purchase Agreement which must be executed along with the rental lease agreement are summarized below.

#### **Determination of Purchase Price**

All homes would be sold at or above appraised value. The appraised value would be determined by an appraisal performed by a certified residential appraiser selected by SFCHA and with offices in Santa Fe. The appraisal would be completed and the purchase price set prior to advertising the availability of the home for this rent-to-own program.

#### **Recapture of Subsidies and Appreciation Control**

The Buyer/Tenant must agree to sign a note and mortgage at closing which provides for SFCHA sharing in the appreciation from home sale, if the home is sold within a five (5) year period after closing. The appreciation share to be realized by the SFCHA is calculated by dividing the total subsidy provided to the homeowner by the contract sales price. After this five year period expires, the homeowner would no longer be required to share any appreciation from home sale with the SFCHA.

In addition, the Buyer/Tenant would be required to sign a note and mortgage at closing which allows the County or SFCHA to recapture any assistance that it provided to the homebuyer in the form of down payment assistance or other subsidy loan.

#### **Term of Option to Purchase Agreement**

The option term shall be for a period of twelve months, after which time it may be extended on a month to month basis at the sole discretion of the Buyer/Tenant, provided that the Buyer/Tenant is in full compliance with all provisions of the Lease Agreement and the Option to Purchase Agreement, and provided that the Buyer/Tenant has executed a written notice of its intent to purchase with a closing date specified no later than six (6) months after the execution of the notice of intent to purchase. If the Buyer/Tenant has not provided such notice of intent to purchase by the end of the option term or has not closed by the date specified in the written notice of intent to purchase, then the option term may be extended on a month to month basis with the mutual consent of the Buyer/Tenant and the SFCHA. After the twenty four month anniversary date of the execution of the agreements, the Option to Purchase

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Agreement and the Lease Agreement may be terminated, at the sole discretion of the SFCHA, and the SFCHA may retain the full option consideration paid for the option to purchase, and all rent credit amounts. Any violation of the Lease Agreement that would cause that agreement to be terminated would also result in termination of the Option to Purchase agreement and retention of the security deposit, option consideration and rent credit amounts.

#### Option Consideration

The non-refundable consideration paid by the Buyer/Tenant to the SFCHA for entering into the Option to Purchase agreement would equal one percent of the purchase price of the home. The option consideration would be paid at the time the Buyer/Tenant executes the Option to Purchase agreement. The option consideration would be credited to the purchase price at closing under the conditions set forth in the Option to Purchase agreement.

#### Rent Credit

The rent credit is the amount of the Buyer/Tenant's monthly rent, including any housing choice rental voucher payment, that is credited toward the Purchase Price. The amount of monthly rent credit would be calculated by taking the actual monthly rent paid by the Buyer/Tenant, including any housing choice rental voucher payment, and multiplying that amount by 0.5. The amount of the rent credit may be decreased to compensate the SFCHA for the cost of any property repairs which it makes during the term of this agreement.

#### Signatory Authority

The Santa Fe County Manager has the authority to execute rental lease agreements, option to purchase agreements with a sale price of Two Hundred Fifty Thousand Dollars (\$250,000) or below and all closing documents necessary to complete the sale of a home pursuant to this program. At his or her sole discretion, the County Manager may delegate this responsibility to the Executive Director of the County Housing Authority. The County Manager may also delegate to the Executive Director of the County Housing Authority and staff the responsibility for administering the selection process for participants in this program.

#### Budget

The Foreclosure Prevention Program and Policy established a budget for the acquisition of homes to be leased and sold under this program. Any required operational expenditures under this program would be taken from lease revenue generated.