

TITLE 4 CULTURAL RESOURCES
CHAPTER 10 CULTURAL PROPERTIES AND HISTORIC PRESERVATION
PART 2 HISTORIC PRESERVATION LOAN FUND

4.10.2.1 ISSUING AGENCY: Office of Cultural Affairs, State Historic Preservation Division.
[7/16/97; 4.10.2.1 NMAC - Rn, 4 NMAC 10.2.1, 1/1/08]

4.10.2.2 SCOPE: The historic preservation division, the state historic preservation officer, cultural properties review committee, owners of property listed in the state register of cultural properties or the national register of historic places who apply and/or are interested in participating in the loan fund, lending institutions and federal agencies or non-profit organizations with funds available for making loans to owners of registered historic properties. These regulations have been promulgated primarily to govern projects jointly funded by the state historic preservation division through its loan fund and lending institutions such as commercial banks, savings and loans, and credit unions. Entities other than lending institutions, e.g., non-profit organizations, may also contribute funding to the rehabilitation, restoration, or repair of registered cultural property.
[7/16/97; 4.10.2.2 NMAC - Rn, 4 NMAC 10.2.2, 1/1/08]

4.10.2.3 STATUTORY AUTHORITY: The Historic Preservation Loan Act, Section 18-6-21, authorizes the historic preservation division to administer the historic preservation loan fund and establish a program to contract with one or more lending institutions for deposits to be used for the purpose of making or subsidizing loans, and Section 18-6-22(B) and (C) direct the division to adopt rules and regulations governing the application procedures, requirements for making or subsidizing loans, and the deposits with lending institutions for making loans or loan subsidies under the act.
[7/16/97; 4.10.2.3 NMAC - Rn, 4 NMAC 10.2.3, 1/1/08]

4.10.2.4 DURATION: Permanent.
[7/16/97; 4.10.2.4 NMAC - Rn, 4 NMAC 10.2.4, 1/1/08]

4.10.2.5 EFFECTIVE DATE: July 16, 1997, unless a later date is cited at the end of a section or paragraph.
[7/16/97; 4.10.2.5 NMAC - Rn, 4 NMAC 10.2.5, 1/1/08]
[Note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

4.10.2.6 OBJECTIVE: The objective of Part 2 of Chapter 10 is to establish regulations and describe the procedures for loans and loan subsidies made to property owners for the repair, rehabilitation, restoration and preservation of registered cultural properties. The regulations describe the eligibility requirements for property owners and their property for loans or loan subsidies. The regulations describe the procedures that are followed and the documentation required and entered into by the state of New Mexico, historic preservation division and lending institutions or other entities that participate in the loan, and property owners, including descriptions of the preliminary loan application, the loan participation agreement, and the development agreement and preservation covenants and deed restrictions. The regulations also describe the terms and conditions contained in the required documentation and agreements entered into between the division, lending institution or other entity, and the borrower.
[7/16/97; 4.10.2.6 NMAC - Rn, 4 NMAC 10.2.6, 1/1/08]

4.10.2.7 DEFINITIONS:

- A. "Acquisition" means the acquiring of a fee simple interest or of a lesser interest by appropriate mechanism, including but not limited to easement or lease, in a prehistoric or historic site.
- B. "Development agreement and preservation covenants and deed restrictions" means the agreement entered into between the division and the property owner/borrower.
- C. "Committee" or "CPRC" means the cultural properties review committee created pursuant to the Cultural Properties Act, Section 18-6-4 NMSA 1978
- D. "Division" means the historic preservation division of the New Mexico office of cultural affairs.
- E. "Historic preservation loan fund" or "HPL fund" means the revolving loan fund established by Section 18-6-21(A) of the Historic Preservation Loan Act, consisting of funds appropriated by the legislature of the

state of New Mexico, funds available from federal agencies, non-profit organizations, and private funds made available for purposes of the Historic Preservation Loan Act and receipts from the repayment of loans or loan subsidies made pursuant to the Historic Preservation Loan Act.

F. "HPL contributions" means the amount of funds from the historic preservation loan fund deposited into the loan pool.

G. "Lending institution" means a commercial bank, savings and loan, or credit union.

H. "Loan pool" means an account established and administered by a lending institution that contains contributions from the HPL fund, funds from participating lending institution(s), and may include funds from private and federal agencies.

I. "Loan participation agreement" means the agreement entered into between the division and a lending institution.

J. "Non-profit organization" means an organization who has received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

K. "State historic preservation officer" or "SHPO" means the state official designated by the Cultural Properties Act, Section 18-6-8 NMSA 1978, to serve as the director of the state historic preservation division and administer the Cultural Properties Act.

L. "Secretary's standards" means the current standards developed by the secretary of the interior, standards for rehabilitation and guidelines for rehabilitating historic buildings or standards for historic preservation projects, 36 CFR Part 68.

M. [Reserved]
[7/16/97; 4.10.2.7 NMAC - Rn, 4 NMAC 10.2.7, 1/1/08]

4.10.2.8 HPL CONTRIBUTIONS TO THE LOAN POOL AND THE LOAN POOL:

A. HPL funds are contained in the historic preservation loan fund. Funding of restoration, rehabilitation, repair and preservation of a registered cultural property is accomplished by the division contributing an amount of HPL funds into the loan pool.

B. For each approved project, the division and the lending institution shall establish a schedule for disbursement of loan funds to the borrower. The schedule shall be included in the loan participation agreement as provided for in 4.10.2.13 NMAC of these regulations, and indicate the stages of work progress and the anticipated dates of disbursements and amount of HPL contributions to be directed toward each stage of work progress. The period during which all disbursements of the HPL contributions for a project shall not exceed a period of twelve months from the date the first disbursement of loan funds was made to the borrower or a period otherwise agreed to by the parties in the loan participation agreement. In either event, such period shall not exceed two years from the date of project loan approval by the division. The disbursement schedule for the HPL funds from the loan pool shall be based upon the planned restoration, rehabilitation, repair and authorized use of HPL funds.

C. Prior to the date of a scheduled disbursement of HPL Funds, the lending institution shall notify the division that a deposit of a specified amount of HPL funds into the loan pool is necessary. The division shall make an appropriate request to the New Mexico state treasurer's office to effect the deposit of the specified amount of HPL funds into the loan pool for disbursement to the borrower by the lending institution. An HPL contribution that is not disbursed to the borrower as provided in Subsection B of 4.10.2.8 NMAC herein shall be returned by the lending institution to the division.

D. The division shall only deposit HPL funds into the loan pool to pay the costs of completed rehabilitation, restoration, or repair work, or for reimbursement of payment of approved materials delivered to the project site, including eligible costs approved by the division.

E. In addition to HPL funds, the funds in the loan pool may include other funds from other sources that are available for loans or loan subsidies made pursuant to the Historic Preservation Loan Act.

F. HPL funds contributed into and disbursed from the loan pool shall be used in accordance with these regulations.

G. Non-HPL contributions in the loan pool may be available for costs of land acquisition, purchase, or other costs for which HPL funds cannot be used.

H. Use of non-HPL contributions in the loan pool shall be governed by any applicable restrictions, requirements, terms or conditions of the lending institution or other funding entity.

[7/16/97; 4.10.2.8 NMAC - Rn, 4 NMAC 10.2.8, 1/1/08]

4.10.2.9 ELIGIBILITY OF PROPERTY:

A. An eligible property is any property individually listed in the state register of cultural properties or the national register of historic places or officially designated as contributing to a historic district listed in the state register or the national register.

B. Eligible properties may be restored, rehabilitated, repaired, and preserved with a loan or loan subsidy using HPL contributions to the loan pool.

[7/16/97; 4.10.2.9 NMAC - Rn, 4 NMAC 10.2.9, 1/1/08]

4.10.2.10 ELIGIBILITY OF PROPERTY OWNERS:

A. An eligible property owner is a sole owner, joint owner, owner in partnership, corporate owner or owner of a leasehold interest of a term not less than nineteen years, of any eligible property as described in Subsection A of 4.10.2.9 NMAC of these regulations.

B. A loan or loan subsidy from the loan pool shall be made only to eligible property owners who agree:

(1) to repay the loan and maintain the registered cultural property as restored, rehabilitated or repaired for a period of not less than seven years; and

(2) that the property owner's failure to so maintain the property in conformity with Paragraph (1) of Subsection B of 4.10.2.10 NMAC of these regulations shall constitute a default of the loan or loan subsidy promissory note and mortgage agreement and shall be cause for acceleration of the unpaid loan or subsidy balance and exercise of foreclosure remedies against the collateral by the lending institution; and

(3) to execute a development agreement and preservation covenants and deed restrictions with the division and other loan agreements or documentation that may be required by the lending institution; and

(4) to rehabilitate, restore or repair a registered cultural property, including rehabilitation of a portion of its front facade, in compliance with the secretary's standards as determined and agreed upon by the division; and

(5) to maintain complete and proper financial records regarding the registered cultural property and to make such records available to the division upon request; and

(6) to complete the proposed rehabilitation, repair or restoration work on the registered cultural property within two years from the date the loan or loan subsidy is approved by the division and closed by the lending institution; and

(7) provide sufficient collateral security interest in the registered cultural property to the state of New Mexico in accordance with 4.10.2.16 NMAC of these regulations; and

(8) to meet the division and CPRC's criteria for priority ranking of loans or subsidies made from the HPL contributions to the loan pool.

[7/16/97; 4.10.2.10 NMAC - Rn, 4 NMAC 10.2.10, 1/1/08]

4.10.2.11 HPL CONTRIBUTIONS - ELIGIBLE COSTS: Costs which can be paid with HPL contributions to the loan pool are architectural, engineering, planning services, project inspection, contracted restoration, rehabilitation, repair and costs necessary for code compliance. The division or the lending institution with the prior approval of the division, may use the HPL contributions to the loan pool to pay costs associated with enforcement of the obligations of the borrower under the promissory note, mortgage or loan agreement.

[7/16/97; 4.10.2.11 NMAC - Rn, 4 NMAC 10.2.11, 1/1/08]

4.10.2.12 HPL CONTRIBUTIONS - INELIGIBLE COSTS:

A. HPL contributions to the loan pool shall not be used to pay costs of land acquisition, legal costs, fiscal agents' fees, loan origination fees, points, or other charges incurred by the borrower or which may be imposed by the lending institution or other lending entity, including fees described in 4.10.2.17 NMAC of these regulations and costs that are not expressly permitted in 4.10.2.11 NMAC of these regulations.

B. The borrower shall not apply HPL funds contributions to the loan pool toward the acquisition or purchase of property.

[7/16/97; 4.10.2.12 NMAC - Rn, 4 NMAC 10.2.12, 1/1/08]

4.10.2.13 DIVISION PROCEDURES:

A. Loan participation agreement: The division shall enter into a loan participation agreement (see attachment "A" attached hereto) 4.10.2.22 NMAC with one or more lending institutions, a federal entity, or other funding entity, to make HPL funds available for deposit into the loan pool for purposes of the Historic Preservation Loan Act.

B. The loan or loan subsidy from the HPL contributions to the loan pool for a repair, restoration or rehabilitation project, shall be governed by the terms of the loan participation agreement.

C. The loan participation agreement shall contain the following:

(1) the names and addresses of all parties participating in the project by making a contribution of funds to the loan pool; and

(2) recitals of the project, definitions, and

(3) a statement specifying the parties' respective percentages of financial participation or "share" in the loan pool, such participation shall be described as a "sale of participation" in the loan or loan subsidy by each party; and

(4) a statement describing the manner in which HPL funds will be contributed to the loan pool; the lending institution shall notify the division that according to the schedule for disbursements of loan funds to the borrower, a contribution of HPL funds into the loan pool is necessary; the division shall make an appropriate request to the department of finance and administration and the state treasurer's office to effect a contribution of HPL funds into the loan pool; and

(5) a statement that upon deposit of the HPL contribution to the loan pool, the HPL contribution shall accrue interest at the rate of three percent per annum; and

(6) a statement that the lending institution shall disburse loan funds to the borrower in at least five separate installments and as provided in Subsection B of 4.10.2.8 NMAC herein; and

(7) a statement that the division shall establish an inspection schedule relating to the purposes and goals of the Historic Preservation Act, authorized uses of the HPL contributions, and compliance with the development agreement and preservation covenants and deed restrictions and the secretary's standards; and

(8) a statement that provides that the lending institution shall establish an inspection schedule relating to construction progress; and

(9) a statement that provides that HPL contributions that are not disbursed to the borrower, as provided in Subsection B of 4.10.2.8 NMAC herein, shall be returned by the lending institution to the division; and

(10) a statement describing the rates of interest charged to the borrower for the loan or loan subsidy attributable to each party who contributed to the loan pool, including the rate charged on the HPL contribution as stated in Section 18-6-23 NMSA 1978, and other rates charged on funds contributed by the lending institution; and

(11) a statement indicating the combined interest rate of the loan or loan subsidy; and

(12) a statement describing the administration of the loan pool by the lending institution, including that the lending institution shall:

(a) receive and deposit the HPD contributions into the loan pool and, within five working days after receipt of a payment from the borrower, transfer to the division its share of any collections, including interest due to the division; and

(b) service and manage the loan or loan subsidy and collateral according to customary and prudent lending practices;

(c) be responsible for all aspects of loan origination, servicing, collections, and security; and

(d) document the loan or loan subsidy in the form a promissory note, loan agreement, mortgage and other security agreements(s) that may be required by the lending institution; and

(e) require that the promissory note, mortgage and other loan documents provide that events of default include the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the secretary's standards, or comply with the development agreement and preservation covenants and deed restrictions; and

(f) ensure that the original priority of the mortgage extends to each subsequent disbursement of loan proceeds to the borrower; and

(g) provide the division with copies of all documents pertaining to the loan or loan subsidy; and

(h) monitor the borrower's maintenance of any insurance required on the collateral, payment of all taxes, fees and other charges assessed or otherwise imposed upon the collateral; and

(i) promptly notify the division of any event of default existing for more than thirty days, and of other significant information relating to the loan; and

(j) upon notification of a default, consult with the division as to the appropriate course of action and take such agreed upon action with the prior written approval of the division; and

(13) a statement that the lending institution shall execute and deliver satisfactions, endorsements, receipts, discharges or releases as may be necessary in the proper serving and collection of the loan or loan subsidy; the lending institution shall not modify or supplement any documents associated with the loan or loan subsidy, agree to any extension of time or waiver or forgiveness of debt, take or permit any action that will release the borrower or

any guarantor from any obligation or liability with regard to the loan, or impair the validity or priority of the lending institution's or division's interest in the collateral unless the lending institution obtains the division's prior written consent; and

(14) a statement permitting payment of charges related to loan origination, closing, and other service charges incurred by the lending institution in its administration of the loan pool, to be paid from loan funds contributed by the lending institution; and

(15) a statement describing the division's right to have access to loan or loan subsidy records in the possession of the lending institution; and

(16) a statement describing all terms of the loan or loan subsidy issued from the loan pool, including:
(a) a detailed description of all repair, restoration or rehabilitation for the project as approved by the division and any modifications, exhibits or additional documents as approved by the division and the lending institution; and

(b) a statement that the restoration, rehabilitation, or repair must be completed within two years from the date the loan is approved by the division and closed by the lending institution; and

(c) a statement that the term of the loan or loan subsidy shall be five years and interest and principal shall be paid in equal installments no less than annually with the first installment due within one year of the date the loan is closed by the lending institution; this statement shall also provide that the loan shall be amortized over a period not to exceed twenty years, with a balloon payment due at the end of the five year term; in lieu of a balloon payment, the lending institution may purchase the remaining loan amount due to the division; and

(d) a statement that the loan or loan subsidy shall be secured by the collateral; and

(e) a statement that all restoration, rehabilitation, or repair shall be completed in conformity with the secretary's standards as determined by the division; and

(f) a statement that failure by the borrower to comply with the secretary's standards shall be an event of default under the promissory note and the mortgage; and

(g) a statement that the division shall notify the borrower of any noncompliance with the secretary's standards, that the borrower has a specific period of time to cure the noncompliance, and if the default is not cured the division shall notify the lending institution of the default and the lending institution shall pursue appropriate remedies as stated in the loan participation agreement, promissory note or mortgage; and

(h) a statement that the lending institution shall condition the closing of the loan or loan subsidy upon the borrower's execution of a development agreement and preservation covenants and deed restrictions, as described in Subsection D of 4.10.2.13 NMAC of these regulations, with the historic preservation division; and that if the loan is repaid prior to the expiration of seven years from the date the loan or loan subsidy is closed by the lending institution, the covenants and deed restrictions shall not be extinguished and shall remain in effect until the termination date of the development agreement and preservation covenant and deed restriction; and a requirement that this provision be contained in the mortgage and all other documents evidencing security for the loan or loan subsidy; and

(i) a statement that the promissory note, mortgage, and any other documents pertaining to security for the loan or loan subsidy shall include provisions stating that the borrower's default in connection with any loan, loan subsidy or other obligation secured by a lien superior to the mortgage or development agreement and covenants and deed restrictions shall constitute an event of default of the mortgage and loan agreement; the division and the lending institution shall have the right (but not the obligation) to cure any default in connection with superior liens and charge the costs of curing to the borrower; and

(j) a statement requiring that a construction sign acknowledging the assistance of the division and the lending institution, or other participating party, shall be displayed prominently at the project being restored, rehabilitated or repaired; and

(k) a statement requiring the lending institution to require the borrower to maintain financial records regarding the project throughout the term of the loan or loan subsidy and shall make such records available to the lending institution and the division upon request; and

(17) a statement regarding the lending institution's transfer of payments to the division, including any interest, in conformity with the division's share of participation in the loan pool; and

(18) a statement regarding quarterly reports to the participating parties from the lending institution concerning the project's financial and restoration, rehabilitation or repair status; and

(19) a statement identifying the name and address of individuals to whom written notice of matters concerning the project shall be addressed and directed; and

(20) a statement describing the applicable law that governs the loan participation agreement; and

(21) a statement providing for severability, non-assignability, amendment of the loan participation agreement, and

(22) a statement regarding execution of the loan participation agreement in counterparts; and duly witnessed signatory lines of the parties.

D. Development agreement and preservation covenants and deed restrictions: The division shall enter into a development agreement and preservation covenants and deed restrictions (see attachment "B" attached hereto) 4.10.2.23 NMAC with the property owner/borrower to govern the restoration, rehabilitation, or repair of a project. The development agreement and preservation covenants and deed restrictions shall contain the following:

(1) the names and addresses of the parties, including the property owner's heirs, successors and assigns and the date the agreement is executed; and

(2) recitals, including a statement that all covenants and deed restrictions shall run with the land for no less than a period of seven years, shall bind all future owners and occupants of the property during that time, and be recorded; and

(3) covenants applicable to the property owner and that pertain to the owner's obligations to do or refrain from doing specified activities that affect the condition of the restoration, rehabilitation or repaired property; and

(4) a statement that nothing in the development agreement prohibits the owner from obtaining financial assistance from sources other than the division, provided that the lien of the preservation covenants and deed restrictions shall not be made subordinate to any mortgage or other lien interest made in connection with other financial assistance without the division's approval; and

(5) a statement that the standard of review for compliance with the covenants and deed restrictions or review of construction, alteration, repair, maintenance, or casualty damage, shall be the secretary's standards and any applicable state or local standards; and

(6) a statement that the division determines the applicability of the secretary's standards and the application of alternative standards that the division determines to be reasonable; and

(7) a provision regarding casualty damage or destruction to the property; and

(8) covenants applicable to the division and that pertain to conveyance, assignment or transfer of its interest in the development agreement; and

(9) a provision regarding inspection of the property; and

(10) a provision describing the division's remedies to correct violations of the development agreement and preservation covenants and deed restrictions; and

(11) a provision regarding notice from the owner to the division in the event the owner proposes to sell the property; and

(12) a requirement that as long as the covenants and deed restrictions run with the land, the owner shall insert the covenants and deed restrictions in any subsequent deed or other legal instrument by which the owner divests itself of either the fee simple title to, or its possessory interest in the property; and

(13) a provision regarding recording of the development agreement and preservation covenants and deed restrictions; and

(14) provisions regarding subordination of subsequent mortgages and the rights of the division with respect to senior liens, which shall require that:

(a) the preservation covenants and deed restrictions shall have priority over all mortgages, other rights affecting the property including tax liens, which are granted after execution and recording of the development agreement;

(b) the preservation covenants and deed restrictions shall not be extinguished or terminate upon a mortgagee taking title to the property within seven years of the date of closing of the loan, as a result of foreclosure or otherwise;

(c) that the borrower's default in connection with any loan or other obligation secured by a lien superior to the mortgage or lien of the covenants and deed restrictions shall constitute an event of default of the covenants and deed restrictions, and that the division or lending institution shall have the right to cure any such default and charge the costs of curing to the borrower;

(d) if a mortgage grants to a mortgagee the right to receive proceeds of a condemnation proceeding arising from an exercise of eminent domain as to any part of the property or the right to receive insurance proceeds as a result of any casualty, hazard or accident occurring to or about the property, the mortgagee shall have a superior claim to the insurance and condemnation proceeds and entitled to the same in preference to the division until the mortgage is paid off and discharged, notwithstanding that the mortgage is subordinate in priority to the preservation covenants and deed restrictions; and

(e) if a mortgagee has received an assignment of the leases, rents and profits of the property as security or additional security for a loan, the mortgagee shall have a superior claim to the leases, rents and profits of the property and shall be entitled to receive same in preference to the division until said mortgagee's debt is paid off, notwithstanding that the mortgage is subordinate to the preservation covenants and deed restrictions and

(f) until a mortgagee or purchaser at foreclosure obtains ownership of the property following foreclosure of its mortgage or deed in lieu of foreclosure, the mortgagee or purchaser shall have no obligation, debt or liability under the preservation covenants and deed restrictions; and

(15) a statement of the name and address of the individuals to whom written notice is to be directed; and

(16) a requirement that upon the request of the division, the owner shall provide evidence of compliance with terms of the development agreement and preservation covenants and deed restrictions; and

(17) provisions regarding evidence of compliance, and interpretation and enforcement of the development agreement and preservation covenants and deed restrictions; and

(18) an expiration date of the development agreement and preservation covenants and deed restrictions, and duly witnessed and notarized signature lines of the owner and the division.

E. Promissory note:

(1) A promissory note signed by the borrower and evidencing the loan or loan subsidy may be required by the lending institution. With the inclusion of the requirement of Paragraph (2) of Subsection E of 4.10.2.13 NMAC below, the form of the note and its terms shall be determined by the lending institution using customary and prudent lending practices by lending institutions in New Mexico.

(2) The promissory note shall include a provision that events of default include without limitation, the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the secretary's standards, or comply with the development agreement and covenants and deed restrictions.

F. Mortgage:

(1) A mortgage evidencing the security interest for the loan or loan subsidy may be required by the lending institution. With the inclusion of the requirement in Paragraph (2) of Subsection F of 4.10.2.13 NMAC below, the form of the mortgage and its terms shall be determined by the lending institution using customary and prudent lending practices for lending institutions in New Mexico.

(2) The mortgage shall include a provision that events of default include without limitation, the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the secretary's standards, or comply with the development agreement and covenants and deed restrictions.

G. Loan agreement:

(1) A loan agreement evidencing the loan or loan subsidy may be required by the lending institution. With the inclusion of the requirement in Paragraph (2) of Subsection G of 4.10.2.13 NMAC below, the form of the agreement and its terms shall be determined by the lending institution using customary and prudent lending practices for lending institutions in New Mexico.

(2) The mortgage shall include a provision that events of default include without limitation, the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the secretary's standards, or comply with the development agreement and covenants and deed restrictions.

[7/16/97; 4.10.2.13 NMAC - Rn, 4 NMAC 10.2.13, 1/1/08]

4.10.2.14 PRIORITY RANKING OF HISTORIC PRESERVATION PROJECTS AND PRELIMINARY LOAN APPLICATION FORM:

A. The division in consultation with the CPRC shall annually review the division's system for priority ranking of criteria applied to loan applications in a regular public meeting of the CPRC.

B. The division shall provide annual public notice of the availability of loans or loan subsidies from the historic preservation loan fund and the availability of a historic preservation preliminary loan application form (see attachment "C" attached hereto) 4.2.10.24 NMAC from the division.

C. A historic preservation preliminary loan application form shall consist of photographs, drawings, plans and cost estimates of the property to be rehabilitated, restored, or repaired.

[7/16/97; 4.10.2.14 NMAC - Rn, 4 NMAC 10.2.14, 1/1/08]

4.10.2.15 LENDING INSTITUTION'S PROCEDURES:

A. After approval by the division of a preliminary loan application form and identification of a lending institution, the designated officer of the lending institution will advise the property owner of any additional documentation required by the lending institution.

B. Applicants will be notified in writing by the lending institution regarding its determination to approve or disapprove a loan for a project. The designated officer of the lending institution will advise the borrower of the amount, terms and conditions of the loan.

C. Approval of a loan or loan subsidy from the loan pool will be made in accordance with the lending institution's customary and prudent lending practices.
[7/16/97; 4.10.2.15 NMAC - Rn, 4 NMAC 10.2.15, 1/1/08]

4.10.2.16 PROPERTY OWNER'S COLLATERAL SECURITY INTEREST:

A. The sufficiency of the collateral security interest in a registered cultural property whose repair, rehabilitation or restoration is to be funded with funds from the historic property loan fund and lending institution(s) shall be determined by the participating lending institution(s) in accordance with the customary and prudent lending practices.

B. The offer of collateral security in the form of an assignment to the state of New Mexico, historic preservation division, of a first mortgage, second mortgage, or assignment of lease, shall be commensurate with risk and approved by the division in consultation with the lending institution.
[7/16/97; 4.10.2.16 NMAC - Rn, 4 NMAC 10.2.16, 1/1/08]

4.10.2.17 LENDING INSTITUTION'S LOAN PROCESSING FEES AND RELATED CHARGES:

Recording, title, credit report fees and costs charged by the lending institution(s) participating in the loan for a project shall not be paid with HPL contributions to the loan pool.
[7/16/97; 4.10.2.17 NMAC - Rn, 4 NMAC 10.2.17, 1/1/08]

4.10.2.18 HPL LOAN AMOUNT AND REPAYMENT BY PROPERTY OWNER:

A. The amount of HPL funds contributed to the loan pool shall not exceed two hundred thousand dollars (\$200,000) for any one project.

B. The property owner of an approved project will repay the loan or loan subsidy in monthly installments. Payment on the interest and principal shall be in accordance with Subparagraph (c) of Paragraph (16) of Subsection C of 4.10.2.13 NMAC of these regulations.
[7/16/97; 4.10.2.18 NMAC - Rn, 4 NMAC 10.2.18, 1/1/08]

4.10.2.19 [RESERVED]

4.10.2.20 COMPLIANCE WITH SECRETARY'S STANDARDS, INSPECTION AND REPORTING REQUIREMENTS:

A. All rehabilitation, restoration, repair and preservation of projects funded by a loan or loan subsidy from the historic preservation loan fund shall be governed by the secretary's standards as applicable.

B. The division may require professional design, architectural or engineering services for any rehabilitation, restoration, repair and preservation projects funded by a loan or loan subsidy from the historic preservation loan fund.

C. All plans and specifications shall be approved by the division and the SHPO prior to commencement of rehabilitation, restoration, repair and preservation of a project. The CPRC or its architectural subcommittee may also review project plans and specifications.

D. The division may review a project in progress at any time upon notice to the property owner and may require correction of any work not conforming to the secretary's standards or approved plans and specifications. The division will review all completed projects to ensure conformity with the secretary's standards and approved plans and specifications.

E. Quarterly written progress reports on projects undergoing rehabilitation, restoration, repair and preservation shall be submitted by the property owner to the division. Quarterly reports shall include a detailed description of progress to date, a status report for the entire project and a financial summary.
[7/16/97; 4.10.2.20 NMAC - Rn, 4 NMAC 10.2.20, 1/1/08]

4.10.2.21 AGREEMENT PROVISION VARIANCES: The requirements described in any section of these regulations may be subject to variance in accordance with the agreement and negotiations of the parties. Changes or divergence from the provisions described therein are within the discretion of the division and the CPRC.
[7/16/97; 4.10.2.21 NMAC - Rn, 4 NMAC 10.2.21, 1/1/08]

4.10.2.22 ATTACHMENT A: HISTORIC PRESERVATION LOAN FUND: LOAN

PARTICIPATION AGREEMENT: THIS LOAN PARTICIPATION AGREEMENT, is made this ____ day of _____, between [the participating lending institution, and/or other participating parties and address(es)] and the Historic Preservation Division, Office of Cultural Affairs, State of New Mexico, a government entity with its principal office at 228 East Palace Avenue, Santa Fe, New Mexico, 87501 (the "division").

A. RECITALS:

(1) The division has been working cooperatively with lending institutions and/or [other participating parties] to support the rehabilitation, restoration and preservation of historic commercial and/or residential buildings and historic sites in New Mexico.

(2) [Borrower] has applied to the division for assistance for a project involving the rehabilitation of [property], a historic property located at [address], New Mexico.

(3) To promote the shared goals of historic preservation in New Mexico, the lending institution has agreed to join with the division in providing a loan to [borrower] for this project. The lending institution has further agreed to coordinate the administration of these funds in accordance with the terms and conditions of this loan participation agreement.

B. THE PARTIES HEREBY AGREE AS FOLLOWS: AGREEMENT: Definitions:

(1) "Account" - The account at the lending institution or at one or more other lending institutions into which the division contribution is deposited pending disbursement to borrower and into which the collections are deposited pending delivery to the division.

(2) "Application" - Borrower's application for assistance from the division, in the form of the New Mexico historic preservation preliminary loan application, dated ____ and approved on ____.

(3) "Borrower" - [name and address]

(4) "Collateral" - The property, which is subject to the mortgage and such other collateral as shall be accepted by the lending institution and HPD as security for the loan, and in which the lending institution shall hold a security interest on behalf of the lending institution and HPD in proportion to the respective amounts loaned by the lending institution and HPD.

(5) "Collections" - All moneys received by the lending institution as principal or interest on and for the account of the loan or as proceeds of the collateral.

(6) "Covenants and deed restrictions" - The historic preservation covenants and deed restrictions which shall be entered into by the borrower/owner and HPD which shall remain in effect for a minimum period of seven (7) years (the "deed restriction period") and which shall be recorded.

(7) "Division contribution" - The amount of ____ dollars (\$ ____), representing the share of the loan purchased by the division.

(8) "Event of default" - The occurrence of any of the events of default defined in the loan documents, which shall include, without limitation, a violation of the development agreement preservation covenants and deed restrictions, the secretary's standards, the mortgage or the loan documents.

(9) "Loan" - The loan in the principal amount of ____ dollars (\$ ____) from the lending institution to borrower, the proceeds of which are to be used for the project.

(10) "Loan documents" - The loan agreement, promissory note, mortgage, development agreement and preservation covenants and deed restrictions, any guaranty agreements, all other security documents and any other documents executed by borrower, the division and the lending institution, evidencing, securing or relating to the loan or loan subsidy.

(11) "Mortgage" - The mortgage covering the collateral granted to the lending institution as security for the loan.

(12) "Project" - The rehabilitation of the property for use as [description].

(13) "Property" - The real property consisting of [property description].

(14) "Secretary's standards" - The secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings or the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR part 68).

C. Sale of participation:

(1) The lending institution hereby sells to the division, and the division hereby purchases, a participation of ____ dollars (\$____) of the loan.

(2) The percentage shares of the parties in the loan will be as follows:

(a) lending institution - __ percent

(b) division - __ percent

(c) [other participating parties] - __ percent

- (3) The division's participating share shall include a proportional interest in the collateral.
- D. Delivery and deposit of the contributions:
- (1) Following the execution of this loan participation agreement by all parties, the lending institution will notify HPD at least _____ business days before each release of loan funds to borrower is scheduled to occur.
- (2) HPD shall deposit with the lending institution HPD's portion of the loan amount to be released at least 24 hours prior to the release date indicated in the lending institution's notification to HPD.
- (3) Such funds shall be held by the lending institution on behalf of and as trustee for the division, to be disbursed at the times and in the manner provided in this loan participation agreement.
- (4) In the event HPD's portion of the loan is not disbursed to the borrower within 24 hours from the time HPD transfers its loan contribution to the lending institution, the division contribution shall accrue interest at the rate of three percent per annum. Such interest will be paid to the division in accordance with the provisions of the payments to the division section below.
- E. Disbursement of loan funds to borrower:
- (1) The lending institution will be responsible for disbursing the proceeds of the loan to borrower in accordance with the terms of this loan participation agreement.
- (2) The loan will be disbursed in at least five (5) installments, based on work progress, during a period of [_____]. The [_____] period shall commence on the date the first disbursement of loan funds is made to the borrower.
- (3) The division will be responsible for establishing and carrying out a schedule of inspections relating to the historic preservation objectives and standards applicable to the project.
- (4) The lending institution will be responsible for carrying out inspections necessary to monitor construction progress.
- (5) Based on the HPD's and lending institution's inspections and upon the receipt of such certifications as the division may require from the architect for the project, the division will notify the lending institution that an installment may be disbursed.
- (6) The lending institution will advise the division promptly of each disbursement.
- (7) Any portion of the division contribution not disbursed to borrower at the end of the [_____] period shall promptly be remitted to the division by the lending institution by wire transfer to an account to be designated by the parties.
- F. Interest on loan:
- (1) The interest rate to be charged on the lending institution's portion of the loan shall be [rate].
- (2) The interest rate to be charged on the division's portion of the loan shall be [rate]. The interest rate charged to borrower on the division's portion of the loan shall not exceed the maximum allowable interest rate stated in Section 18-6-23 NMSA 1978.
- (3) The interest rate to be charged on the [other participating party] portion of the loan shall be [rate].
- (4) The combined interest rate of the loan as a whole shall be _____.
- G. Administration of loan:
- (1) The lending institution shall receive the division contribution, the collections and collateral and hold the division's proportional share in trust for the division.
- (2) The lending institution shall service and manage the loan and the collateral in the ordinary course of its business and will exercise the same care as is customary for prudent lending practices by lending institutions in New Mexico and as it customarily exercises in the case of similar loans in which it alone is interested.
- (3) The lending institution shall be responsible for all aspects of loan origination, servicing, collections, security and other administrative tasks except as otherwise provided in this agreement.
- (4) The lending institution will document the loan in accordance with sound lending practices, evidencing the loan with a promissory note and loan agreement and securing the loan with the mortgage and other necessary security documents.
- (a) The promissory note, mortgage and other loan documents documenting the Loan shall include provisions that events of default include, without limitation, (i) the borrower's failure to make timely payments of amounts due under the loan, (ii) the borrower's failure to comply with the secretary's standards, and (cc) violation of the covenants and deed restrictions, each of which shall constitute an independent and sufficient basis for acceleration of all amounts due under the loan and foreclosure on the collateral.
- (b) The lending institution will provide the division with copies of the loan documents.
- (c) The lending institution will be the lender and secured party of record, but shall hold the division's share of collections and collateral in trust for the benefit of the division. The mortgage and any other recorded documents evidencing security for the loan shall expressly disclose that the state of New Mexico, acting

through the division, and the lending institution are secured parties of record. The lending institution will ensure that the original priority of the mortgage extends to each subsequent disbursement of loan proceeds.

(5) The lending institution will collect, and will receive on behalf of the division all collections, apply the same promptly to borrower's account, and remit the portion of the collections allocable to the division in accordance with the provisions of payments to division section herein.

(6) The lending institution will monitor the borrower's maintenance of any insurance required on the collateral and the payment of all taxes, fees and other charges assessed, levied or otherwise imposed upon the collateral and required to be paid by borrower pursuant to the loan documents.

(7) The lending institution will promptly advise the division of any event of default existing for more than thirty (30) days and of any other information bearing upon the loan which it considers important.

(8) Following notification of an event of default, the lending institution shall consult with the division as to the appropriate course of action, and shall take action to cure the default or commence foreclosure action or other legal proceedings after obtaining written approval of the division.

(a) After receiving the division's approval, the lending institution shall have full power and authority, subject to the provisions of Paragraph (9) of Subsection G of 4.10.2.22 NMAC below, to enforce the loan and foreclose upon the collateral on its own behalf and on behalf of the division in accordance with the provisions of administration of loan section above.

(b) Any loss ultimately incurred with respect to the loan will be allocated pro rata in accordance with the respective percentage participations of the parties, as set forth in sale of participation section above.

(9) The lending institution shall execute and deliver such satisfactions, endorsements, receipts, discharges or releases as may be necessary in the proper servicing and collection of the loan. Notwithstanding any other provision of this loan participation agreement, however, the lending institution shall not, without the prior written consent of the division (i) modify or supplement any of the loan documents; (ii) agree to any extension of time or waiver or forgiveness of debt; (iii) take any action or permit any action to be taken which will release borrower or any guarantor from any obligation or liability with respect to the loan, or impair the validity or priority of lending institution's or division's interest in the collateral.

H. Allocation of costs: The lending institution may charge its usual and customary fees for loan origination, closing and other service charges, but only with respect to the share of the loan extended by the lending institution.

I. Access to records: The division shall have the right to examine any of the documents or records of the lending institution pertaining to the loan during normal business hours.

J. Terms of the loan: The loan shall be made subject to the following terms, each of which shall be reflected or incorporated, as appropriate, in the loan documents:

(1) The proceeds of the loan may be used only for rehabilitation costs allowable as determined by reference to the preliminary loan application. The project shall be completed in accordance with the preliminary loan application, or such modifications, exhibits, or additional documents as have been approved by the lending institution and the division. Costs which may be paid from the proceeds of the loan are the following: [list of eligible costs]

(2) The project must be completed within two (2) years of the closing of the loan.

(3) The loan shall be for a term of five (5) years. Interest and principal shall be paid in equal installments no less than annually with the first installment due within one year of the date the loan is closed by the lending institution. The loan shall be amortized over a period not to exceed twenty years, [with a balloon payment due at the end of the five year term or in lieu of a balloon payment, the lending institution may purchase the remaining loan amount due to the division.]

(4) The loan shall be secured by the collateral.

(5) The project and any other rehabilitation, restoration, or construction work undertaken with respect to the property during the time any portion of the loan is outstanding shall conform with the secretary's standards. Prior to commencement of the project, written approval of all plans and specifications for interior and exterior work shall be obtained from the division, together with the division's schedule of inspections of work in progress. Any substantial changes to the plans and specifications shall be approved in advance in writing by the division. Upon completion, the division shall inspect the property to ensure that the project was completed substantially in accordance with the approved plans and specifications.

(6) Noncompliance with the secretary's standards shall be an event of default under the promissory note and mortgage. The division shall be responsible for determining compliance with the secretary's standards, shall notify the borrower of any noncompliance and shall include in its notification the statement that the borrower

has ____ days to cure the noncompliant condition. In the event of an uncured default by the borrower, the division shall notify the lending institution of that event of default. The lending institution shall then promptly undertake the remedies provided by the loan documents for events of default.

(7) The lending institution shall include in the loan documents the provision that the borrower execute a development agreement and preservation covenants and deed restrictions with the state of New Mexico as a condition of closing the loan, in a form and substance substantially similar to the attached development agreement and preservation covenants and deed restrictions, or otherwise in a form satisfactory to the division (the "covenants and deed restrictions").

(a) The covenants and deed restrictions shall be recorded and shall run with the land for the deed restriction period, and shall not be extinguished at the time that the loan is repaid.

(b) The mortgage and all other documents evidencing security for the loan shall include provisions clarifying that satisfaction of the loan does not extinguish the lien of the covenants and deed restrictions and that the covenants and deed restrictions shall continue in full force and effect for the deed restriction period.

(8) The mortgage and all other documents evidencing security for the loan shall include provisions specifying that borrower's default in connection with any loan or other obligation secured by a lien superior to the mortgage or the lien of the covenants and deed restrictions shall constitute an event of default pursuant to the mortgage and loan agreement, and that the division and/or the lending institution shall have the right (but not the obligation) to cure any default in connection with superior liens and charge the costs of curing such defaults to borrower.

(9) A construction sign will be displayed prominently at the property acknowledging the assistance of the lending institution and the division.

(10) Borrower shall maintain complete financial records regarding the project throughout the term of the loan and shall make these available to the lending institution and the division upon request.

K. Payments to the division: The lending institution shall immediately transfer to the division its share of the collections, including any interest, within five working days or less after receipt of a payment from borrower, in conformity with the division's share designated in sale of participation section above, and the interest rate provided in the section on interest on loan, above.

L. Reports:

(1) The lending institution will submit reports to the division quarterly (together with payments required pursuant to the payments to the division section above, containing the following information:

(a) a financial summary with respect to the loan, including a copy of the promissory note and repayment schedule;

(b) calculation of the quarterly payments, including a statement of the account which sets forth that portion of the payment attributable to interest paid by borrower, that portion of the payment attributable to interest earned on the account, and that portion of the payment which is payment of principal; and

(c) report on lending institution's inspections necessary to monitor construction progress; and any other information reasonably requested by the division with respect to the loan.

(2) The first report will be due two (2) weeks after the end of the quarter in which this loan participation agreement is executed. Thereafter, reports will be due on April 15, July 15, October 15, and January 15.

M. Notices: Any notices required in connection with this loan participation agreement shall be in writing and shall be deemed to have been properly given if transmitted by certified mail, return receipt requested, or by national overnight courier service, directed to the party at its address below or at such other address of which the other parties have been notified.

(1) To the lending institution: [name and address]

(2) To the division: Historic Preservation Division, Office of Cultural Affairs, State of New Mexico 228 East Palace Avenue, Santa Fe, New Mexico 87503, Attn: State Historic Preservation Officer

N. Applicable law: This agreement shall be governed by and construed in accordance with the laws of the state of New Mexico.

O. Severability: If any provision of this loan participation agreement shall for any reason be held to be illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other provision of this loan participation agreement, but this agreement shall be construed as if such illegal, invalid or unenforceable provision had not been contained herein.

P. Nonassignability: No party shall sell, pledge, assign, or otherwise transfer its respective interest in this loan participation agreement, the loan, or the collateral without the prior written consent of the other parties.

Q. Amendment: This loan participation agreement may be amended only in writing signed by all of the parties.

R. Counterparts: This loan participation agreement may be executed in any number of counterparts, all of which together shall comprise one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this loan participation agreement to be executed, in each case by an officer thereunto duly authorized, as of the date first above written.

[lending institution]

By: _____ Date: ____ [name and title]

[other participating parties]

By: _____ Date: ____

STATE OF NEW MEXICO

By: _____ Date: ____

[name]

state historic preservation officer

[7/16/97; 4.10.2.22 NMAC - Rn, 4 NMAC 10.2.22, 1/1/08]

4.10.2.23 ATTACHMENT B: DEVELOPMENT AGREEMENT AND PRESERVATION

COVENANTS AND DEED RESTRICTIONS: THIS DEVELOPMENT AGREEMENT AND PRESERVATION COVENANTS AND DEED RESTRICTIONS, is entered into this ____ day of ____, ____, by and between [owner], its heirs, successors and assigns and the Historic Preservation Division, Office of Cultural Affairs, State of New Mexico ("the division"), a public agency.

A. RECITALS:

(1) The division is a public agency organized under the laws of the state of New Mexico.

(2) The division has established a program under the Section 18-6-22 NMSA 1978 to contract with lending institutions for the purpose of making loans to owners of registered cultural properties for the restoration, rehabilitation or repair of those properties in accordance with the Historic Preservation Loan Act (Sections 18-6-18 through 18-6-23 NMSA 1978).

(3) The division has established, through a loan participation agreement dated [____, ____], with the [lending institution], a loan consisting of funds of the division and of the lending institution(s).

(4) The owner is the owner in fee simple of [description/address of property], in ____, New Mexico, (hereinafter referred to as the "property" and more fully described in [____]), to this agreement, hereby incorporated into and made a part of this agreement) a property entered on the state register of cultural properties and/or in the national register of historic places.

(5) [Lending institution] by the authority of the loan participation agreement has approved a loan from [participating parties] in the amount of [loan amount] to owner for the purpose of restoring, rehabilitating and repairing the property.

(6) The restoration, rehabilitation and repair to be performed by means of the referenced loan are more fully described in [____] to these covenants and deed restrictions, hereby incorporated into and made a part of these covenants and deed restrictions; and

(7) Section 18-6-23(A)(1) NMSA 1978 requires the maintenance of the property as restored, rehabilitated and repaired for not less than seven years. Consistent with Section 18-6-23 (A)(1) NMSA 1978, the terms of the loan section of the loan participation agreement (attachment A) requires that at the time of approval of a loan the owner/borrower and the division shall execute and record covenants and deed restrictions running with the land for a term of not less than seven years to ensure that the historic and architectural value of the property will be preserved.

(8) In consideration of the loan provided to owner by the division and other valuable considerations, the receipt and adequacy of which is hereby acknowledged, the owner hereby agrees that the property shall be subject to the restrictions provided in the covenants set forth below (the "covenants"), that the covenants shall run with the land for the seven-year period specified below and shall bind all future owners and occupants of the

property during that period, and that this agreement shall be recorded so that the covenants shall constitute a deed restriction with respect to the property.

B. AGREEMENT: Owner's covenants: Owner hereby covenants to do and to refrain from doing, as the case may be, each of the following activities upon the property:

(1) without the prior written permission of the division, signed by a duly authorized representative thereof, owner shall not undertake any of the following actions:

(a) construction, alteration, remodeling, ground disturbance or other modification of the property affecting the condition of the property

(b) construction, alteration, remodeling ground disturbance or other modification of the property affecting the view to the property or encroaching upon the open space of the property.

(2) Owner shall at all times maintain the property in a good and sound state of repair. Subject to the casualty provisions of casualty damage or destruction section below, this obligation shall require repair, rebuilding and reconstruction whenever necessary to maintain the property in good and sound condition.

(3) No buildings or structures not presently on the property shall be erected or placed on the property during the term of these covenants and deed restrictions except for temporary structures required for the repair and maintenance of the property.

(4) Nothing in this instrument shall be deemed to prohibit owner from seeking any financial assistance available to him from any source for the maintenance and repair of the property; provided, however, that the lien of the covenants and deed restrictions set forth in this agreement shall not be made subordinate to any mortgage or other lien interest in connection with other financial assistance without the division's prior written approval.

C. Standards for review: In exercising any authority created by the covenants and deed restrictions to inspect the property, to review any construction, alteration, repair or maintenance, or to review casualty damage or to approve reconstruction of the property following casualty damage, the division shall apply the standards for rehabilitation and guidelines for rehabilitating historic buildings, issued and as may be issued from time to time by the secretary of the interior (hereinafter the "standards") and/or state or local standards considered appropriate by the division for review of work affecting historically or architecturally significant structures or for construction of new structures within historically, architecturally or culturally significant areas. Whenever the division receives notice that the standards have been amended, it shall notify the owner of the amendment. Owner agrees to abide by the standards in performing all ordinary repair and maintenance work. In the event that the standards are abandoned or materially altered or otherwise become, in the sole judgment of the division, inappropriate for the purposes set forth above, the division may apply alternative standards which, in the division's sole discretion, it determines are reasonable in light of the purposes of the Historic Preservation Loan Fund Act and other relevant circumstances, and shall notify the owner of the substituted standards.

D. Casualty damage or destruction:

(1) In the event that the property or any part thereof shall be damaged or destroyed by casualty, the owner shall notify the division in writing within one (1) day of learning of the damage or destruction, such notification including what, if any emergency work has already been completed.

(2) For purposes of this instrument: [description of insurance coverage].

(3) No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the property and to protect public safety, shall be undertaken by the owner without the division's prior written approval of the work.

(4) Within four (4) weeks after learning of the date of damage or destruction, the owner shall submit to the division a written report prepared by a qualified restoration architect or other licensed architect (acceptable to owner and the division) which shall include the following:

(a) an assessment of the nature and extent of the damage;

(b) a determination of the feasibility of the restoration of the property and/or reconstruction of damaged or destroyed portions of the property; and

(c) a report of such restoration/reconstruction work necessary to return the property to the condition existing prior to casualty. If in the opinion of the division, after reviewing such report, the purpose and intent of the covenants and deed restrictions will be served by such restoration/reconstruction, the owner shall within eighteen (18) months after the date of such report complete the restoration/reconstruction of the property in accordance with plans and specifications consented to by the division and shall be obligated to utilize all casualty insurance proceeds for that purpose, if necessary, as determined by the division, in its sole discretion.

E. The division's covenants: The division may, at its discretion and without prior notice to owner, convey, assign or transfer its beneficial interest in these covenants and deed restrictions to a unit of federal, state or

local government or to a similar local, state or national organization whose purposes, inter alia, are to promote preservation or conservation of historical, cultural, or architectural resources, and which at the time of conveyance, assignment or transfer is a qualified organization under the Internal Revenue Code, provided that any such conveyance, assignment or transfer requires that the preservation and conservation purposes for which the covenants and deed restrictions were granted will continue to be carried out. The division shall exercise reasonable judgment and care in performing its obligations and exercising its rights under the terms of these covenants and deed restrictions.

F. Inspection: Representatives of the division shall be permitted at all reasonable times to inspect the exterior and interior of the property. Representatives of the division shall be permitted to enter and inspect the interior of the property to ensure maintenance of structural soundness and safety; inspection of the interior will not, in the absence of evidence of deterioration, take place more often than annually, and may involve reasonable testing of interior structural condition. Inspection of the interior will be made at a time mutually agreed upon by owner and the division, and owner covenants not to withhold unreasonably its consent in determining a date and time for such inspection.

G. The division's remedies: The division has the following legal remedies to correct violation of any covenant, stipulation or restriction herein, in addition to any remedies now or hereafter provided by law:

(1) The division, may following reasonable written notice to owner, institute suit(s) to enjoin any violation of this instrument by ex parte, temporary, preliminary and /or permanent injunction, including prohibitory and /or mandatory injunctive relief, and to require the restoration of the property to the condition and appearance required under this instrument.

(2) The division shall also have available all other legal and equitable remedies to enforce owner's obligations hereunder.

(3) In the event that owner is found to have violated any of its obligations, owner shall reimburse the division for any costs or expenses incurred in connection therewith, including all reasonable court costs and attorney's, architectural, engineering and expert witness fees.

(4) Exercise by the division of any remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect or waiving or limiting the use of any other remedy or the use of such remedy at another time.

H. Notice of proposed sale: Owner shall promptly notify the division in writing of any proposed sale of the property and provide the opportunity for the division to explain the terms of the covenants and deed restrictions to potential new owners prior to sale closing.

I. Covenants and deed restrictions run with the land: The obligations imposed by these covenants and deed restrictions shall be effective for seven (7) years from the date first written above and shall be deemed to run as a binding servitude with the property. These covenants and deed restrictions shall extend to and be binding upon owner and the division, their respective successors in interest and all persons hereafter claiming under or through owner or the division, and the words "owner" and "the division" when used herein shall include all such persons. Owner agrees that these covenants and deed restrictions shall be inserted in any subsequent deed or other legal instrument by which owner divests itself of either the fee simple title to or its possessory interest in the property or any part thereof.

J. Recording: Owner shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the lands records of [county] , New Mexico. This instrument is effective only upon recording in the land records of [county], New Mexico.

K. Subordination of subsequent mortgages; division's rights in connection with senior liens: The covenants and deed restrictions shall have lien priority over all mortgages and other rights affecting the property granted after execution and recording of the covenants and deed restrictions.

(1) Before exercising any right or remedy due to breach of these covenants and deed restrictions except the right to enjoin a violation hereof, the division shall give all mortgagees of record written notice describing the default, and the mortgagees shall have sixty (60) days thereafter to cure or cause a cure of the default.

(2) Nothing contained in the above paragraphs or in these covenants and deed restrictions shall be construed to give any mortgagee the right to extinguish these covenants and deed restrictions by taking title to the property by foreclosure or otherwise.

(3) Borrower's default in connection with any loan or other obligation secured by a lien superior to the mortgage or the lien of the covenants and deed restrictions shall constitute an event of default pursuant to these covenants and deed restrictions. The division and/or the lending institution shall have the right (but not the obligation) to cure any default in connection with superior liens and charge the costs of curing such defaults to borrower.

(4) The following provisions apply to all mortgagees now or hereafter holding a mortgage on the property.

(a) If a mortgage grants to a mortgagee the right to receive the proceeds of condemnation proceedings arising from any exercise of the power of eminent domain as to all or any part of the property or the right to receive insurance proceeds as a result of any casualty, hazard or accident occurring to or about the property, the mortgagee shall have a superior claim to the insurance and condemnation proceeds and shall be entitled to same in preference to the division until the mortgage is paid off and discharged, notwithstanding that the mortgage is subordinate in priority to these preservation covenants and deed restrictions.

(b) If a mortgagee has received an assignment of the leases, rents and profits of the property as security or additional security for a loan, the mortgagee shall have a superior claim to the leases, rents and profits of the property and shall be entitled to receive same in preference to the division until said mortgagee's debt is paid off, notwithstanding that the mortgage is subordinate to these preservation covenants and deed restrictions.

(c) Until a mortgagee or purchaser at foreclosure obtains ownership of the property following foreclosure of its mortgage or deed in lieu of foreclosure, the mortgagee or purchaser shall have no obligation, debt or liability under these preservation covenants and deed restrictions.

L. Written notice:

(1) Any notice which either owner or the division may desire or be required to give to the other party shall be in writing and shall be mailed postage prepaid by registered or certified mail with return receipt requested, or hand delivered; if to owner, then at [address], and if to the division, then to [address].

(2) Each party may change its address set forth herein by a notice to such effect to the other party. Any notice, consent, approval, agreement, or amendment permitted or required of the division under these covenants and deed restrictions may be given by the director of the historic preservation division or by any duly authorized representative of the division.

M. Evidence of compliance: Upon request by the division, owner shall promptly furnish the division with evidence of its compliance with any obligation of owner contained herein.

N. Interpretation and enforcement: The following provisions shall govern the effectiveness, interpretation and duration of the covenants and deed restrictions.

(1) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of property shall not apply in the construction or interpretation of this instrument, and this instrument shall be interpreted broadly to effect its preservation and conservation purposes and the transfer of right and the restrictions on use herein contained.

(2) This instrument shall extend to and be binding upon owner and all persons hereafter claiming under or through owner, and the word "owner" when used herein shall include all such persons, whether or not such persons have signed this instrument or then have an interest in the property. Any right, title or interest herein granted to the division also shall be deemed granted to each successor and assign thereof, and the work "the division" shall include all such successors and assigns.

(3) This instrument may be executed in counterparts, each page of which (including exhibits) shall be initialed by owner and the division for purposes of identification. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern. Except as provided above, each counterpart shall be held by each of owner and the division. One counterpart shall be recorded as provided above and may be returned to the division, and one counterpart shall be stored as a matter of public record at the [county] courthouse.

(4) Except as expressly provided herein, nothing contained in this instrument grants nor shall be interpreted to grant to the public any right to enter on the property.

(5) To the extent that the owner owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the property may be developed to use more intensive (in terms of height, bulk, or other objective criteria regulated by such ordinances) than the property is devoted to as of the date hereof, such development rights shall not be exercisable on, above, or below the property during the term of these covenants and deed restrictions, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the preservation and conservation purposes of these covenants and deed restrictions.

(6) For purposes of furthering the preservation of the property and of furthering the other purposes of this instrument, and to meet changing conditions, owner and the division are free to amend jointly the terms of this instrument in writing without notice to any party; provided however, that no such amendment shall limit the duration or interfere with the preservation and conservation purposes of the donation. Such amendment shall become effective upon recording among the land records of [county], New Mexico.

(7) The terms and conditions of these covenants and deed restrictions shall be referenced in any transfer of the property by the owner, his heirs, successors and assigns.

(8) The invalidity of any statute of the state of New Mexico or any part thereof shall not affect the validity and enforceability of this instrument according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and their assigns for the duration of these covenants and deed restrictions to each term of this instrument whether this instrument be enforceable by reason of any statute, common law or private agreement either in existence now or at any time subsequent hereto. This instrument may be re-recorded at any time by any person if the effect of such re-recording is to make more certain the enforcement of this instrument or any part thereof. The validity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any agreement relating to the subject matter thereof.

(9) Nothing contained herein shall be interpreted to authorize or permit owner to violate any ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, owner shall promptly notify the division of such conflict and shall cooperate with the division and the applicable governmental entity to accommodate the purposes both of this instrument and of such ordinance or regulation.

(10) This instrument reflects the entire agreement of owner and the division. Any prior or simultaneous correspondence, understandings, agreements and representations are null and void upon execution hereof, unless set out in this instrument.

O. Expiration: This easement shall expire and be void and of no force on the ____ day of _____, _____.

IN WITNESS WHEREOF, of the date first written above, owner has caused this development agreement and conservation easement to be executed, sealed and delivered; and the division has caused this instrument to be accepted, sealed and executed in its name by its authorized representative.

Owner:
_____ Date _____
[name]

State of New Mexico
Office of Cultural Affairs
Historic Preservation Division

By: _____ Date _____
[name]
state historic preservation officer

STATE OF NEW MEXICO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____.

NOTARY PUBLIC

(SEAL)
my commission expires:

[7/16/97; 4.10.2.23 NMAC - Rn, 4 NMAC 10.2.23, 1/1/08]

4.10.2.24 ATTACHMENT C: PRELIMINARY LOAN APPLICATION:
A. PROPERTY INFORMATION

property name: _____
property address: _____

LOCATION
county: _____ Town/City: _____

historic district: _____
rural: _____

APPLICANT

Name: _____
lessee: _____ building/site owner: _____
address: _____
phone: _____
social security #: _____

CO-APPLICANT

name: _____ lessee: _____ building/site owner: _____
address: _____
phone: _____

OWNERSHIP

public _____ private _____ non-profit _____
name of owner (if different from above): _____
mailing address: _____
phone: _____
taxpayer ID number: _____
owned/leased for _____ years
Does the lease state anything about improvements? (if yes, describe)

PROTECTION

Is the property under legal protection such as easements or a local historic district ordinance?
Yes _____ No _____

PHOTOGRAPHS OF EACH SIDE OF THE BUILDING

Provide photographs to show all sides of the building(s) adequately. Closeup photographs showing details of the building are also recommended. Photographs must be glossy black and white, no smaller than 5 X 7 inches.

REGISTRATION

	Yes	No
1. Is the property individually listed in the national register of historic places?	_____	_____
2. Is the property listed as contributing to a historic district listed in the national register of historic places?	_____	_____
3. Has the property been officially determined by the keeper of the register to be eligible for listing in the national register of historic places?	_____	_____

If you answered "No" to 1, 2, and 3 above, please answer the following questions:

Is the property individually listed in the state register of cultural properties? _____

Is the property listed as contributing to a historic district listed in the

state register of cultural properties? _____

If you answered "No" to 1, 2, and 3 above, complete ONLY the owner's signature section below. Do not complete the remainder of this application. The historic preservation division will inform you if your property is eligible for the loan program. Please submit the completed portion of this form to the historic preservation division.

B. DESCRIPTION OF REHABILITATION/PRESERVATION WORK: In the blocks provided, provide a detailed description of the project. The block titled "description of work and impact on feature" should be used to describe in detail the work on a specific feature. Describe each feature, including a description of its present condition followed by a description of the proposed work and its impact on the feature. Attach labeled and numbered photographs (glossy black and white, no smaller than 5" X 7") of each feature. Use as many blocks as necessary to describe the entire project. Examples of features are stairways, windows, doors, roofing, chimneys, floors, exterior and interior finishes, major spaces, etc. Attach copies of additional blocks if necessary.

architectural feature #_____; description of feature and its present condition

photo no. _____ drawing no. _____

description of work and impact on feature:

architectural feature #_____; description of feature and its present condition

photo no. _____ drawing no. _____

description of work and impact on feature:

architectural feature #_____; description of feature and its present condition

photo no. _____ drawing no. _____

description of work and impact on feature:

COST ESTIMATE OF PROPOSED WORK:

To the best of your knowledge, provide an estimate of the proposed work. Itemize separate costs as nearly as possible according to the features described in the description of rehabilitation/preservation work section above.

Itemized:

total estimated project cost: _____

ESTIMATED PROJECT STARTING DATE: _____

ESTIMATED COMPLETION DATE: _____

OWNER'S SIGNATURE

I hereby apply for participation in the state historic preservation loan program and I attest the information I have provided is, to the best of my knowledge, correct.

_____ date: _____
owner's signature

C. CERTIFICATION (for state use only)

The historic preservation division has reviewed this preliminary loan application and _____ approves the preliminary loan application as submitted.

_____ approves the preliminary loan application with the provisions stated below:

_____.

_____ rejects the preliminary loan application because the proposed work does not conform to the standards set forth in regulations pursuant to this program.

_____ tables the preliminary loan application and requests the following additional information before the application will be reviewed:

_____.

_____ date: _____
division staff reviewer

_____ date: _____
state historic preservation officer
[7/16/97; 4.10.2.24 NMAC - Rn, 4 NMAC 10.2.24, 1/1/08]

HISTORY OF 4.10.2 NMAC:

Pre-NMAC History: None.

History of Repealed Material: [RESERVED]

NMAC History:

4 NMAC 10.2, Historic Preservation Loan Fund, renumbered, reformatted and replaced by 4.10.2 NMAC, Historic Preservation Loan Fund, effective 1/1/08.