

HOUSING TRUST FUND  
SINGLE FAMILY HOUSING  
LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT, is made and entered into effective as of [\_\_\_\_\_, 20\_\_], between \_\_\_\_\_, a New Mexico nonprofit corporation (the "Seller"), and \_\_\_\_\_, [a[single person/husband and wife], (the "Owner"), owning the real property described in **Exhibit A** hereto (the "Property").

WITNESSETH:

WHEREAS, the Seller is [nonprofit] the developer of the Property which is a single family residence that was constructed as part of a \_\_\_\_ (\_\_\_\_) unit affordable housing project known as \_\_\_\_\_, in \_\_[City]\_\_\_\_, New Mexico (the "Project"); and

WHEREAS, the Owner [is/are] [an Eligible Homebuyer/Eligible Homebuyers] as defined in this Agreement who will occupy the Property as a primary single family residence; and

WHEREAS, the Project was funded in part from moneys made available by the New Mexico Mortgage Finance Authority Housing Trust Fund from funds provided in part from the State of New Mexico; and

WHEREAS, as a condition to Owner acquiring the Property, the laws of the State and the regulations of the Housing Trust Fund require that the ownership of the Property be restricted to Eligible Homebuyers as defined in this Agreement for a period of five (5) years following the acquisition of the Property from the earlier of the date acquired by the Owner or the date on which a prior Eligible Homebuyer acquired the Property from Seller (the "Restriction Period"); and

WHEREAS, Owner, as a condition to acquiring the Property, agrees not to transfer the Property to any person other than an Eligible Homebuyer during the Restriction Period;

NOW, THEREFORE, in consideration of the mutual covenants and understandings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and the Owner do hereby agree as follows:

Section 1. Definitions:

In addition to terms defined elsewhere herein, unless otherwise expressly provided herein, the following terms shall have the respective meanings set forth below for the purposes hereof:

"Agreement" means this Land Use Restriction Agreement.

“AMI” means the product of (i) the gross median income for the area in which such person or family resides or the U.S. Median Income and (ii) the family size adjustment factor for such person or family, as determined by the U.S. Department of Housing and Urban Development (“HUD”) under the Section 8 Program or as based on the governing program requirements.

“Authority” means the New Mexico Mortgage Finance Authority, a public body politic and corporate, separate and apart from but constituting a governmental instrumentality of the State of New Mexico, and Trustee of the Housing Trust Fund.

“Closing Date” or “Closing” means the date on which the Property was first acquired by an Eligible Homebuyer.

“Eligible Homebuyer” means a person or persons whose income is no more than **Eighty Percent (80%)** of Adjusted Median Income (“AMI”) as determined by HUD.

“Project” means the affordable single family residential project known as \_\_\_\_\_, located in \_\_\_\_\_, New Mexico upon which the Property is located.

“Property” means the real property described in Exhibit A hereto .

“Restriction Period” means the period beginning on the Closing Date and ending the fifth (5<sup>th</sup>) anniversary of the Closing Date.

## Section 2. Term of Agreement:

This Agreement shall become effective on the date Owner acquires the Property. Unless sooner terminated or amended in accordance with the terms hereof, this Agreement shall continue in full force and effect until the expiration of the Restriction Period.

## Section 3. Use Restrictions:

During the Restriction Period Owner will not transfer the Property to any person or persons who are not Eligible Homebuyers.

## Section 4. Premature Termination:

(a) This Agreement and the covenants, representations and restrictions set forth herein shall terminate in the event of an involuntary transfer of the Property caused by seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in state law or an action of a state agency after the which prevents the Seller from enforcing this Agreement, or condemnation or similar event relating to the Property.

(b) If this Agreement or its restrictions, covenants and representations are terminated under paragraph (a) above, they will be automatically reinstated according to the original terms if, during the Restriction Period, the Owner or any entity that includes the Owner or those with whom

the Owner has, or had, family or business ties, obtains an ownership interest in the Property or the Project following such seizure, requisition, foreclosure or transfer of title by deed in lieu of foreclosure.

Section 5. Burden of Agreement:

This Agreement shall inure to the benefit of and shall be binding upon the legal representatives, successors and assigns of all parties hereto. The Property shall not be voluntarily transferred by the Owner prior to expiration of the Restriction Period unless prior thereto or simultaneously therewith the transferee enters into an agreement, in form acceptable to the Seller, assuming all obligations of the Owner hereunder with respect to the Property. This Agreement constitutes a covenant "running with the land" in respect to the Property.

Section 6. Events of Default:

The failure in the performance or observance of any of the covenants, agreements or conditions on the part of the Owner in this Land Use Restriction Agreement shall constitute an Event of Default.

Section 7. Remedies; Enforceability:

If the Seller becomes aware of an Event of Default under Section 6 above, it shall give immediate written notice thereof to the Owner, directing the Owner to remedy the Event of Default within a reasonable specified period of time (not to exceed sixty (60) days after the date of the notice ). After the period specified in the notice provided for in the preceding sentence, Seller may institute and prosecute any proceeding at law or in equity (i) to abate, prevent or enjoin any such Event of Default; (ii) to compel specific performance hereunder; (iii) to recover monetary damages, together with the cost and expenses of any proceedings for the collection thereof caused by such Event of Default, including reasonable attorneys fees; or Seller may take any other action available to remedy the Event of Default or pursue any combination of these remedies. No delay in enforcing the provisions hereof as to any Event of Default shall impair, damage or waive the right of any party entitled to enforce the same or to obtain relief against or recover for the continuation or repetition of such Event of Default or any similar Event of Default thereof at any later time or times. No person other than the Seller shall be entitled to enforce this Agreement.

Section 8. Conditional Assignment of Seller's Rights.

In the event Seller ceases to exist, or fails to fulfill its obligations to administer this Agreement or to enforce the remedies for breach or default by Owner under this Agreement, the Authority may, but shall not be required to, exercise all Seller's rights under this Agreement on behalf of Seller and to the extent necessary all such rights shall be assigned to the Authority so long as is reasonably required to administer and enforce the terms of this Agreement.

Section 9. Amendment; Termination:

This Agreement shall not be amended, revised or terminated prior to the termination of covenants,

representations and restrictions provided for herein except by an instrument in writing duly executed by the Seller and the Owner or their respective successors or assigns and duly recorded.

Section 10. Governing Law:

This instrument shall be governed by the laws of the State of New Mexico.

Section 11. Severability:

If any provision hereof is determined to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining portions shall not in any way be affected.

Section 12. Multiple Counterparts:

This instrument may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the Seller and the Owner has each caused this instrument to be signed and attested in its behalf by its duly authorized representatives all as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SELLER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

OWNER:

[name of Owner]

[name of Co-owner]

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[signature]

**Acknowledgments**

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me this [date] by [\_\_\_\_\_] [and \_\_\_\_\_] [a single person/husband and wife].

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_

This Instrument was acknowledged before me this [date] by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION