

**NEW MEXICO MORTGAGE FINANCE AUTHORITY
HOUSING TRUST FUND
LAND USE RESTRICTION AGREEMENT**

This Land Use Restriction Agreement (“LURA”) is made and entered into this [_____] day of [_____] 201[____], by and between 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, as Trustee of the Housing Trust Fund (“MFA”), and **[OWNER]**, a New Mexico [limited partnership, limited liability company, etc.] (“Owner”).

Owner has obtained a loan of funds from MFA (the “Loan”) for the [acquisition, rehabilitation, construction, etc.] of affordable housing as defined by the Affordable Housing Act, Sections 6-27-1 et seq. NMSA 1978, on the Property described below. MFA requires Owner to agree to restrict the use of such Property pursuant to the terms hereof as a condition of making the Loan. Therefore, in consideration of the Loan from MFA to Owner, Owner hereby agrees that the real estate located in the County of [_____] , which is commonly known as the [_____] and more specifically described on **Exhibit A** hereto (the “Property”), is subject to the following restrictions:

1. The “Restriction Period” means the period beginning on the date the Project (defined below) is placed in service and ending thirty (30) years thereafter, and will survive repayment of the Loan. The thirty (30) year period consists of: twenty (20) years as required by the Affordable Housing Act and an additional ten (10) years as required by the Lender. For purposes of this LURA, the term “placed in service” means the date on which the last certificate of occupancy required in or for the Project is issued.
2. The Property and the improvements located thereon must be used during the Restriction Period for a [_____] unit apartment project in the City of [_____] , County of [_____] , New Mexico (the “Project”). The Project will contain [_____] affordable rental units that will be leased or rented to income-eligible individuals. The project units will be leased as follows: [_____] units will be leased or rented to income-eligible individuals with incomes at or below [_____] percent (____%) of the area median income and [_____] units will be leased or rented to income-eligible individuals with incomes at or below [_____] percent (____%) of the area median income. The Project will also include [_____] units that will be leased or rented to individuals **at market rate**. The income-eligible percentages are calculated as 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 under the Section 8 Program or as based on the governing program requirements.
3. Owner agrees that, during the Restriction Period, the above mentioned income restricted units will be “Rent Restricted”, which, when applied to any unit, means that the maximum rent for such unit will not exceed thirty (30) percent of the maximum

annual income allowable for persons or families occupying such unit in order to establish that unit's designation as an income restricted unit. If persons or families occupying such units pay for their own utilities, the maximum tenant-paid rent will equal the amount reduced by the amount of the local utility costs approved by Lender. If a unit receives Federal or State project-based rental subsidy and the family pays as a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e. tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

4. Owner will give MFA specific answers in writing to questions upon which information is desired from time to time relative to use, operation, and condition of the Property. At MFA's request, Owner will provide MFA annually with evidence satisfactory to MFA of compliance with the restrictions, covenants and representations contained in this LURA.
5. MFA will have the right to inspect the Property from time to time in order to ensure Owner is adhering to quality housing standards through the end of the Restriction Period.
6. Owner will take such actions required by this LURA and as reasonably requested by MFA to assist MFA in performing its asset management duties relating to the Project, including ensuring that the Project is in compliance with applicable law and that the Project maintains its long-term viability. In consideration of the asset management functions performed by MFA, Owner agrees to pay MFA any reasonable costs or expenses it incurs as asset manager at such times as MFA, in its sole discretion, reasonably requires. Notwithstanding the foregoing, if MFA is charging an asset management fee or receiving reimbursement of asset management costs in relation to the Project pursuant to another loan or loans administered by MFA, MFA will not charge an asset management fee pursuant to this LURA or the Loan contemplated hereby, it being the intent of MFA to charge only one asset management fee for the Project.
7. Except as permitted by the Loan Agreement and Mortgage and Security Agreement dated the same date as this LURA executed in connection with the Loan, Owner will not transfer, assign, or dispose of the Property or any interest in Owner without written approval by the MFA.
8. If Owner defaults in the performance of any of its obligations under this LURA, MFA will be entitled to apply to any court having jurisdiction over the subject matter for specific performance of this LURA; for the appointment of a receiver to take over and operate the Property in accordance with the terms of this LURA; to recover from the Owner the Loan, as well as any other monetary damages, together with the cost and expenses of any proceedings for the collection thereof caused by such default; or for such relief as may be appropriate. MFA also will be entitled to recover its reasonable attorney's fees and costs.
9. MFA will deliver to Owner a release of this LURA only after the Restriction Period

has passed.

10. This LURA will inure to the benefit of, and will be binding upon, the respective successors and assigns in the title to the property.
11. This LURA and its restrictions, covenants and representations will not terminate if, during the Restriction Period, the Property or any improvements located thereon is damaged or destroyed by fire, condemnation or other casualty and the insurance or condemnation proceeds received as a result of such fire, condemnation or other casualty are used for any purpose other than repayment of the Loan. For the duration of the Restriction Period, in the event of an involuntary non-compliance caused by seizure, requisition, foreclosure or transfer of title by deed in lieu of foreclosure, this LURA and its restrictions, covenants, and representations will be binding upon any successor in title to the Owner as a covenant running with the land.
12. This LURA will not be amended, revised or terminated before the end of the Restriction Period except by an instrument in writing duly executed by the MFA and the Owner or their respective successors or assigns and duly recorded.
13. This LURA will be governed by the laws of the State of New Mexico. OWNER AND LENDER WAIVE THEIR RIGHT, TO THE FULLEST EXTENT PERMITTED BY LAW, TO A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS. All actions or proceedings with respect to the Loan Documents may be instituted in any state court sitting in Bernalillo County, New Mexico, or in the county in which the Real Property is located, in the discretion of Lender, provided that any actions or proceedings with respect to the lien of the Mortgage will be instituted in the county in which the Real Property is located. By execution and delivery of this Mortgage, the Owner irrevocably and unconditionally submits to the jurisdiction of such court and irrevocably and unconditionally waives: (a) any objection that Owner may now or hereafter have to the laying of venue in such court; and (b) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum. This provision is not intended to, nor will it be construed to, waive any rights of Lender existing under Section 58-18-23 NMSA 1978, as and if amended.
14. 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 will not in any way be affected, provided the essential purposes of this LURA are not frustrated by severing the unenforceable provision.
15. Notice. All notices will be written and personally delivered or mailed by certified or registered mail, postage prepaid, with return receipt requested, to Owner at:

[_entity name]

Attn:

[_address]

[_city], New Mexico [zip code]

and to Lender at:

New Mexico Mortgage Finance Authority
Attn: Director of Housing Development
344 4th St. SW
Albuquerque, NM 87102

Lender will endeavor to provide a copy of each written notice to Owner's limited partner(s) or investor member(s), as applicable, and Lender will accept a cure from Owner's limited partner(s) or investor member(s), as applicable, as if it were a cure by the Owner. However, failure of Lender to give notice to Owner's limited partner(s) or investor member(s), as applicable, will not delay or prejudice Lender's rights to exercise any of its rights or remedies hereunder.

Notice served by mail is effective on the date on which the notice is deposited in the mail. Owner or Lender may change its address at any time by giving the other ten days notice.

16. This LURA may be simultaneously executed in multiple counterparts; all of which will constitute one and the same instrument and each of which will be deemed to be an original.

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first above written.

LENDER:

NEW MEXICO MORTGAGE FINANCE
AUTHORITY

By: _____
Felipe Rael
Its: Director of Housing Development

OWNER:

[entity name],
a New Mexico limited partnership, limited liability company, etc.

By: GENERAL PARTNER, MANAGER, MEMBER, ETC.,
a New Mexico corporation, limited liability company, etc.,
Its: General Partner, Manager, Member, etc.

By: _____
Its:

ACKNOWLEDGMENT(S) APPEAR ON THE NEXT PAGE(S)

ACKNOWLEDGMENTS

STATE OF NEW MEXICO }
 } ss.:
COUNTY OF BERNALILLO

The foregoing instrument was duly acknowledged before me this ____ day of _____, 20 __, by Felipe Rrael, as Director of Housing Development of the New Mexico Mortgage Finance Authority.

Notary Public

My commission expires: _____

STATE OF NEW MEXICO }
 } ss.:
COUNTY OF _____

The foregoing instrument was duly acknowledged before me this ____ day of _____, 20 __ by _____ as _____ of GENERAL PARTNER/MANAGING MEMBER, ETC., general partner/managing member of OWNER, a New Mexico limited partnership, limited liability company, etc.

Notary Public

My commission expires: _____

EXHIBIT A
(TO LURA)

LEGAL DESCRIPTION

That certain real property located in [] County, New Mexico and more particularly described as follows:

[Legal Description]