

NEW MEXICO MORTGAGE FINANCE AUTHORITY
HOME PROGRAM

MULTIFAMILY RENTAL HOUSING
LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT ("Agreement"), is made and entered into effective as of JULY 3, 2002, 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 (the "Lender"), and **Eastern Plains Housing Development Corporation**, a New Mexico nonprofit corporation (the "Owner"), owning the real property described in Exhibit A hereto (the "Property").

WITNESSETH:

WHEREAS, the Lender is making a mortgage loan ("Mortgage Loan") to the Owner pursuant to a Loan Agreement of even date herewith (the "Loan Agreement"), which Loan is evidenced by a mortgage note signed by Owner, as maker and borrower (the "Mortgage Note"), and secured by a mortgage (the "Mortgage") from the Owner as mortgagor, to Lender, as mortgagee; and

WHEREAS, Owner intends to use the proceeds of the Mortgage Loan to assist it in financing the development of five (5) single family rental units located in the Development, consisting of two (2) two-bedroom units, and three (3) three-bedroom units (the "HOME Units" or, a "HOME Unit") located in a multifamily residential rental project on the Property (the "Development"); and

WHEREAS, the Mortgage Loan is funded from moneys made available under the HOME Investment Partnership Act, 42 USC Section 12701 et seq (the "Act") and federal regulations at 24 CFR Part 92 "HOME Investments Partnership Program," as amended (the "Regulations") (collectively, the "HOME Program"); and

WHEREAS, the Lender has provided the Mortgage Loan to the Owner on the condition that the Owner agrees to the restrictions and requirements set forth herein;

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 Lender 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.

"Closing Date" or "Closing" means the date on which the Mortgage Loan and LURA are recorded.

"Development" means the multifamily residential rental project to be developed on the Property, the development of which is to be financed in part with the proceeds of the Mortgage Loan.

"Loan Agreement" means that certain Loan Agreement, dated even herewith, between the Lender, as lender, and the Owner, as borrower.

"Low Income Families" means families whose incomes do not exceed 80% of the median income, as defined by HUD, for the area in which the Development is located, to be determined by the Department of Housing and Urban Development (HUD) with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80% of the median for the area on the basis of HUD findings that such variations are necessary because of construction costs or fair market rents, or unusually high or low family incomes.

"Restriction Period" means the period beginning on the date the Development is placed in service and ending (i) forty (40) years after such date or (ii) the date on which the Mortgage Loan is no longer outstanding, whichever occurs later. For purposes of this Agreement, the term "placed in service" means the date on which a certificate of occupancy is issued for the Development.

"Very Low-Income Families" means families whose incomes do not exceed 50% of the median income, as defined by HUD, for the area in which the Development is located, to be determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50% of the median for the area on the basis of HUD findings that such variations are necessary because of construction costs or fair market rents, or unusually high or low family incomes.

Section 2. Term of Agreement:

This Agreement shall become effective on the Closing Date. 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. Rent Restriction; Occupancy Requirements:

During the Restriction Period:

(a) The HOME Units, five (5) single family rental units located in the Development, consisting of two (2) two-bedroom units, and three (3) three-bedroom apartment units, for which the specific requirements of occupancy are detailed on the attached Exhibit B, shall not bear rents greater than the lesser of:

- (i) The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR Section 888.111, less the monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant; or
- (ii) A rent that does not exceed 30 percent of the adjusted income of a family whose gross income equals 65 percent of the median income for the area, as determined by HUD, with adjustment for number of bedrooms in the unit, except that HUD may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. In determining the maximum monthly rent that may be charged for a HOME Unit that is subject to this limitation, the Owner must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant. HUD will provide average occupancy per HOME Unit and adjusted income assumptions to be used in calculating the maximum rent allowed under this paragraph (a)(ii).

(b) Not less than 20 percent of the HOME Units, or one (1) single family rental unit located in the Development consisting of one (1) two-bedroom unit shall be:

- (i) Occupied by Very Low-Income Families and bearing rents not greater than 30 percent of the annual gross income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustment for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. (In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the Owner must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant. HUD will provide average occupancy per unit assumptions to be used in calculating the maximum rent allowed under this Section. If the rent determined under this paragraph (b) is higher than the applicable rent under paragraph (a) of this Section 3, then the applicable maximum rent for units under this paragraph would be that calculated under paragraph (a) of this section except for units that receive Federal or State project-based rental assistance; or
- (ii) Occupied by Very Low-Income Families whose rent does not exceed 30 percent of the family's adjusted income as determined by HUD. 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.

- (d) Owner shall not refuse to lease any unit in the Development because the prospective tenant is a holder of a certificate or voucher under 24 CFR part 982- Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program or to the holder of a comparable document evidencing participation in a HOME tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate, voucher or comparable HOME tenant-based assistance document.

Section 4. Rent Schedule and Utility Allowances:

The Lender shall review and approve rents proposed by the Owner for HOME Units with "flat rents", i.e., units subject to the maximum rent limitations in Section 3, and, if applicable, must review and approve, for all HOME Units subject to the maximum rent limitations, the monthly allowances, proposed by the Owner, for utilities and services to be paid by the tenant. The Owner must reexamine the income of each tenant household living in low-income HOME Units at least annually. *The maximum monthly rent must be recalculated by the Owner and reviewed and approved by the Lender annually, and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant.* Any increase in rents is subject to the provisions of outstanding leases. In any event, the Owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents. Regardless of changes in fair market rents and in median income over time, the qualifying rents are not required to be lower than those in effect on the date of this Agreement.

Section 5. Increases in tenant income:

HOME Units shall continue to qualify as affordable housing despite a temporary noncompliance with Section 3, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with Section 3 until the noncompliance is corrected. Tenants who no longer qualify as Low-Income Families must pay as rent the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's adjusted monthly income, as re-certified annually. The preceding sentence shall not apply with respect to funds made available for units that have been allocated a low-income tax credit by a housing credit agency pursuant to section 42 of the Internal Revenue Code 1986 (26 U.S.C. 42).

Section 6. Lease Provisions:

- (a) All forms of leases used with respect to the Development must be approved in advance by the Lender. In addition, all leases must be for a term of not less than one year, unless by mutual agreement between the Owner and the tenant.

(b) Prohibited lease terms. The lease may not contain any of the following provisions:

(1) Agreement to be Sued:

Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;

(2) Treatment of Property:

Agreement by the tenant that the Owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The Owner may dispose of this property in accordance with state law;

(3) Excusing Owner from Responsibility:

Agreement by the tenant not to hold the Owner or the Owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) Waiver of Notice:

Agreement of the tenant that the Owner may institute a lawsuit without notice to the tenant;

(5) Waiver of Legal Proceedings:

Agreement by the tenant that the Owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) Waiver of a Jury Trial:

Agreement by the tenant to waive any right to a trial by jury;

(7) Waiver of Right to Appeal Court Decisions:

Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(8) Tenant Chargeable with Cost of Legal Actions Regardless of Outcome:

Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Owner against the tenant. The tenant, however, may be obligated to pay fees and costs if the tenant loses.

(c) Termination of Tenancy:

The Owner may not terminate the tenancy or refuse to renew the lease of a tenant except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; for completion of the tenancy period for transitional housing; or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days written notice served by the Owner upon the tenant specifying the grounds for the action.

(d) Maintenance and replacement:

The Owner must maintain the premises in compliance with all applicable housing quality standards and local code requirements.

(e) Tenant selection:

The Owner must adopt written tenant selection policies and criteria that have been approved in writing by the Lender and that:

- (1) Are consistent with the purpose of providing housing for Very Low-Income and Low-Income Families;
- (2) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;
- (3) Give reasonable consideration to the housing needs of families that would have a preference under 24 CFR Section 960.211 (federal selection preferences for admission to Public Housing); and
- (4) Provide for:
 - (i) The selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
 - (ii) The prompt written notification to any rejected applicant of the grounds for any rejection.

Section 7. Premature Termination:

- (a) This Agreement and the covenants, representations and restrictions set forth herein shall terminate in the event of an involuntary non-compliance caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in federal law or an action of a federal agency after the Closing Date which prevents the Lender from enforcing this Agreement, or condemnation or similar event relating to the Development but only when the Mortgage Loan is paid in full within a reasonable period, not to exceed six months following such fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in federal law or action by a federal agency after the Closing Date which prevents the Lender from enforcing this Agreement.
- (b) However, this Agreement and its restrictions, covenants and representations shall not terminate if, during the Restriction Period, the Development 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 Mortgage Loan in full. So long as the Mortgage Loan is outstanding, in the event of an involuntary non-compliance caused by seizure, requisition, foreclosure or transfer of title by deed in lieu of foreclosure, this Agreement and its restrictions, covenants, and representations shall be binding upon any successor in title to the Owner as a covenant running with the land. 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 Development following such seizure, requisition, foreclosure or transfer of title by deed in lieu of foreclosure.

Section 8. Uniformity:

The provisions hereof shall apply uniformly to the entire Development.

Section 9. 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. No part of the Development shall 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 Lender, assuming all obligations of the Owner hereunder with respect to the transferred property. This Agreement constitutes a covenant "running with the land" in respect to the real property upon which the Development is located.

Section 10. Events of Default:

If any one or more of the following occur, it is hereby defined as and declared to be and to constitute an "Event of Default" under and for purposes of this Land Use Restriction Agreement:

- (a) Default 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 contained; or
- (b) An "event of default" (as defined therein) shall have occurred under the Loan Agreement or the Mortgage.

Section 11. Remedies; Enforceability:

If the Lender becomes aware of an Event of Default hereunder, 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 60 days after the date of the notice unless Owner has made a diligent effort to cure the default within such period of time and is continuing such effort to the reasonable satisfaction of Lender). After the period specified in the notice herein-above provided for, if the Event of Default has not been fully remedied by the Owner to the satisfaction of the Lender, the Lender may (i) institute and prosecute any proceeding at law or in equity 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; (iv) take any other action available to remedy the Event of Default; or (v) 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 Lender shall be entitled to enforce this Agreement.

Section 12. 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 Lender and the Owner or their respective successors or assigns and duly recorded.

Section 13. Governing Law:

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

Section 14. 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.

Clayton LURA

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Section 15. 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.

Section 16. Conflict with HUD Regulations or Low Income Housing Tax Credit Provisions:

Notwithstanding anything in this Agreement to the contrary, the provisions hereof are subordinate to all applicable HUD regulations and related administrative requirements under the HOME Program. In the event of a conflict between the provisions of this Agreement and the provisions of any applicable HUD regulations or HUD administrative requirements, the HUD regulations and related administrative requirements shall control. In addition, notwithstanding anything in this Agreement to the contrary, the provisions hereof are subordinate to all applicable provisions of Section 42 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder which are applicable to the Development.

Section 17. Limitation of Liability:

The following provision (a) only applies if initialed by Borrower and Lender:

- _____ (initial)
- (a) Borrower is personally liable for the performance of all obligations of this Agreement and for repayment of the entire outstanding principal of and accrued interest on the Mortgage Loan until such time as Borrower has closed its permanent financing of the Development from the New Mexico Mortgage Finance Authority and the lien and mortgage of Western Bank of Clovis on the Property have been discharged and released, at which time, except as provided below, the Mortgage Loan and the Obligations of the Mortgage Note are to become non-recourse, in accordance with sub-section (b) below.
 - b) If sub-section (a) above is not initialed, or at such time as the Mortgage Loan and the obligations become non-recourse to Borrower under sub-section (a) above, and except as provided below, Lender shall not have any recourse against the Owner or any corporation formed by Owner, for obligations undertaken by or imposed upon Owner by this Agreement, the Loan Agreement, the Mortgage Note or the Mortgage except for the interest of Owner in the Property or the improvements located thereon. In the event of a default under this Agreement, the Loan Agreement, the Mortgage Note or Mortgage, Lender shall be entitled to collect any amounts due it as a result of such default only from the Property and the improvements located thereon and Owner's interests therein.

Notwithstanding the foregoing, or any other provision of this agreement limiting the liability of the Borrower, it is expressly agreed that a judgment may be sought against Borrower to the extent necessary to enforce the rights of Lender or other holder in, to or against the Property securing the Indebtedness evidenced by the Note and secured by this Mortgage and Related Documents and the sole and exclusive remedy of the Lender or other holder for any default hereunder or under the aforesaid instruments shall be against the Property except that there shall be personal liability

solely for such damages directly caused by and arising directly out of the following circumstances (the "Obligations"): (i) the misapplication of any rents or profits from the Property after occurrence of a default, (ii) any damages, costs, or expenses incurred as a result of fraud, material misrepresentation or bad faith by Borrower, (iii) any liability arising under any agreed upon Environmental Indemnity, (iv) the misapplication of any security deposits paid by tenants, (v) damages caused by any misappropriation or misapplication of insurance proceeds or condemnation awards, (vi) amounts necessary to repair or replace any damage caused by willful or wanton acts or omissions of Borrower, (vii) amounts necessary to pay delinquent real estate taxes and insurance, (viii) damages from Borrower's failure to procure and maintain insurance required by the Mortgage and Related Documents, (ix) costs and expenses in the enforcement of this clause and (x) all accrued and unpaid interest.

IN WITNESS WHEREOF, the Lender 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 27 day of June, 2002.

LENDER:

New Mexico Mortgage Finance Authority
344 4th Street S.W.
Albuquerque, N.M. 87102

By: *Edoardo R. Hernandez*

Its: Director of Program Administration

OWNER:

Eastern Plains Housing Development Corporation
a New Mexico nonprofit corporation

By: *James R. Dawson*

Its: Chairman

REAL ESTATE RECORDS BOOK 32
PAGE ~~844~~ 856 UNION CO., N.M.,
FILED FOR RECORD
July 3, 2002 AT 5:26 P.
GREIDA J. BIRDWELL, County Clerk
Greida J. Birdwell
RECORDER

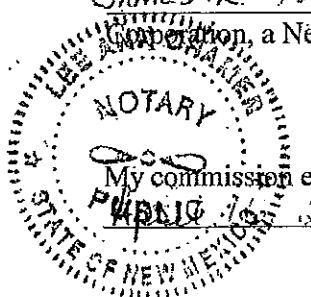


Acknowledgments

STATE OF NEW MEXICO

COUNTY OF CURRY

This instrument was acknowledged before me this 27th day of JUNE, 2002 by JAMES R. TOWNSEN as CHAIRMAN of Eastern Plains Housing Development Corporation, a New Mexico nonprofit corporation.

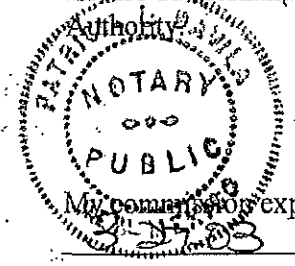


Lee Ann Chamberlain
Notary Public

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

This Instrument was acknowledged before me this 20th day of June, 2002 by Isidoro R. Hernandez as Director of Program Administration of New Mexico Mortgage Finance Authority.



Patricia R. Clark
Notary Public

Land Use Restriction Agreement – Exhibit B

HOME Unit Set Aside for Clayton Affordable Housing

Type of Unit	Total # HOME of units	# at 60% of AMGI	# at 50% of AMGI
		Mid-Low Income excluding Very Low Income	Very Low Income
Studios			
1- bedroom			
2- bedroom	2	1	1
3- bedroom	3	3	
Totals:	5	4	1

AMGI = Area Median Gross Income as determined by HUD under the Section 8 program.

EXHIBIT "A"

- TRACT I:** Lots Sixteen (16) and Eighteen (18) in Block Seven Hundred Fifty-one (751) of the Original Town of Clayton, Union County, New Mexico.
- TRACT II:** Lots Twenty-two (22) and Twenty-four (24) in Block Eleven Hundred Forty-four (1144) of the Original Town of Clayton, Union County, New Mexico.
- TRACT III:** Lot Thirteen (13) in Block Eleven Hundred Forty-five (1145) of the Original Town of Clayton, Union County, New Mexico.
- TRACT IV:** Lots Fifteen (15) and the West Twenty-three Feet (W 23') of Seventeen (17) in Block Eleven Hundred Forty-five (1145) of the Original Town of Clayton, Union County, New Mexico.
- TRACT V:** (V-a) The East Two Feet (E 2') of Lot Seventeen (17) in Block Eleven Hundred Forty-five (1145) of the Original Town of Clayton, Union County, New Mexico.
AND
(V-b) Lots Nineteen (19), Twenty-one (21) and Twenty-three (23) in Block Eleven Hundred Forty-five (1145) of the Original Town of Clayton, Union County, New Mexico.