

NEW MEXICO MORTGAGE FINANCE AUTHORITY
HOME-ARP PROGRAM
LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT (“LURA” or “Agreement”), effective as of **[INSERT CLOSING DATE] 2022**, is made 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 (“Grantor”) and **Click here to enter text.**, a **[STATE OF FORMATION] Choose an item.** (“Grantee”), owning the real property described in **Exhibit A** hereto (“Property”).

WITNESSETH:

WHEREAS, Grantor is making a Grant (“Grant”) to the Grantee pursuant to a Grant Agreement dated the same date as this Agreement (“Grant Agreement”); and

WHEREAS, Grantee intends to use the proceeds of the Grant to assist it in financing the acquisition and rehabilitation of a **[]** unit, approximately **[]** square-foot multifamily residential rental project located or to be located on the Property in **Choose an item. County, New Mexico** and rehabilitated or constructed in conformance with the Project’s plans and specifications, and containing, among other amenities, **[]** commonly called **[]** (“Project”); and

WHEREAS, the Grant is funded from moneys Grantor has received from the from the United States Department of Housing and Urban Development (“HUD”) under title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721 et seq.) and which were appropriated under Section 3205 of the American Rescue Plan Act of 2021 (Pub. L. 117-2) for the HOME Investment Partnerships Program (“HOME”)(“HOME-ARP Program”). The HOME-ARP Funds must be used by Grantee in accordance with the 24 CFR Part 92 (“HOME Regulations”) and the U.S. Department of Housing and Urban Development Community Planning and Development Notice CPD-21-10 (“CPD Notice”); and

WHEREAS, the Grantor has provided the Grant to Grantee on the condition that Grantee 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, Grantor and Grantee do hereby agree as follows:

Section 1. Definitions:

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

“Closing Date” or “Closing” means the date of this LURA which shall be the date on which the Project’s construction loan(s), grant(s) or other construction financing shall close.

“HOME-ARP-Assisted Units” means **[]** (**[]**%) of the **[]** (**[]**) residential units located in the Project that are restricted to comply with HOME-ARP Program requirements for individuals and families that are **Homeless and At Risk of Homelessness**.

“Low-and Moderate-Income Households”, for purposes of this Grant Agreement, means persons or households whose annual incomes do not exceed 60 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households, except that HUD may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low household incomes.

“Restriction Period” means the period beginning on the date of Project Completion as such term is defined in the Grant Agreement and ending fifteen (15) years later.

Section 2. Term of Agreement:

This Agreement will become effective on the Closing Date. Unless sooner terminated or amended in accordance with the terms hereof, this Agreement will 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-ARP-Assisted Units will be not bear rents greater than:
 - i. 30 percent of the federal poverty line; or
 - ii. 30 percent of the income of a household whose annual income equals 30 percent of the median income for the area, as determined and published annually by HUD, with adjustments for the number of bedrooms in the unit, except that HUD may establish income ceilings higher or lower than 30 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 household incomes.
- (b) In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, Grantee must subtract a monthly allowance for any tenant-paid utilities (excluding optional utilities such as telephone and cable TV). Grantee will utilize HUD's average occupancy per unit assumptions to be used in calculating the maximum rent allowed under this section.
- (c) Grantee will not refuse to lease any unit in the Project 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 tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate, voucher or comparable tenant-based assistance document.
- (d) Units at the Project that are not HOME-ARP-Assisted Units must be occupied by Low-Income Households. Under no circumstance may more than thirty percent (30%) of the units in the Project may be occupied by Low-Income Households.

Section 4. Rent Schedule and Utility Allowances:

The Grantor will review and approve rents proposed by the Grantee for HOME-ARP-Assisted Units and the monthly allowances, proposed by the Grantee, for utilities and services to be paid by the tenant. Any increase in rents is subject to the provisions of outstanding leases. In any event, the Grantee 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-ARP-Assisted Units will 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 Households must pay as rent the lesser of the amount payable by the tenant under State or local law or 30 percent of the household's adjusted monthly income, as recertified annually. The preceding sentence will 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 Project must be approved in advance by Grantor. In addition, all leases must be for a term of not less than one year, unless by mutual agreement between the Grantee and the tenant.

(b) Prohibited lease terms. No form of lease used with respect to the Project may contain any of the following provisions:

(i) Agreement to be Sued:

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

(ii) Treatment of Property:

Agreement by the tenant that the Grantee 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 Grantee may dispose of this property in accordance with state law;

(iii) Excusing Grantee from Responsibility:

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

(iv) Waiver of Notice:

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

(v) Waiver of Legal Proceedings:

Agreement by the tenant that the Grantee 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;

(vi) Waiver of a Jury Trial:

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

(vii) 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

(viii) 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 Grantee against the tenant. The tenant, however, may be obligated to pay fees and costs if the tenant loses.

(c) Termination of Tenancy:

The Grantee 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 Grantee upon the tenant specifying the grounds for the action.

(d) Maintenance and replacement:

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

(e) Tenant selection:

The Grantee must adopt written tenant selection policies and criteria that have been approved in writing by Grantor and that:

(i) Are consistent with the purpose of providing housing primarily for the benefit of individuals and families who are Homeless or At Risk of Homelessness;

(ii) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease; and

(iv) Provide for:

(1) The selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(2) The prompt written notification to any rejected applicant of the grounds for any rejection.

Section 7. Premature Termination:

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 Grant. 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 Grantee as a covenant running with the land.

Section 8. Burden of Agreement:

This Agreement will inure to the benefit of and will be binding upon the legal representatives and permitted successors and assigns of all parties hereto.

Section 9. Events of Default:

Each of the following occurrences is an "Event of Default" under this Agreement:

(a) Failure to perform or observe any of the obligations, covenants, agreements or conditions contained in this Agreement; or

(b) An Event of Default under any of the other Grant Documents .

Section 10. Remedies; Enforceability:

If the Grantor becomes aware of an Event of Default hereunder, Grantor will give written notice thereof to the Grantee, directing the Grantee to remedy the Event of Default within a reasonable specified period of time (not to exceed thirty (30) days after the date of the notice unless Grantee has made a diligent effort to cure the default within such period of time and is continuing such effort to the reasonable satisfaction of Grantor, or its Designee). After the period specified in the notice provided for in the preceding sentence, or if the Event of Default has not been fully remedied by the Grantee to the satisfaction of the Grantor the Grantor, may (i) institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such Event of Default; (ii) compel specific performance hereunder; (iii) 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; (v) require immediate repayment of the Grant as provided for in the Grant Agreement, or (vi) pursue any combination of these remedies. No delay in enforcing the provisions hereof as to any Event of Default will 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 Grantor will be entitled to enforce this Agreement.

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

Section 11. Amendment; Termination:

This Agreement will 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 Grantor and the Grantee or their respective successors or assigns and duly recorded.

Section 12. Governing Law:

This Agreement will be governed by the laws of the State of New Mexico.

Section 13. Waiver of Jury Trial; Jurisdiction; Venue; Forum.

GRANTEE AND GRANTOR WAIVE THEIR RIGHT, TO THE FULLEST EXTENT PERMITTED BY LAW, TO A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR ANY OF THE OTHER GRANT DOCUMENTS. All actions or proceedings with respect to the Grant 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 Grantor.. By execution and delivery of this Agreement, the Grantee irrevocably and unconditionally submits to the jurisdiction of such court and irrevocably and unconditionally waives: (a) any objection that Grantee 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 Grantor, existing under Section 58-18-23 NMSA 1978, as and if amended.

Section 14. Severability:

If any provision of this Agreement is held to be unenforceable, and if the essential purposes of this Agreement are not frustrated by amending or severing the unenforceable provision, then it is the intention of the parties that the provision will be deemed amended to the extent required to render the provision valid and enforceable, or, if such amendment is not possible, that the provision in question be deleted and that the remainder of the Agreement remain in force.

Section 15. Multiple Counterparts:

This instrument 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.

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-ARP 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 will control. In addition, notwithstanding anything in this Agreement to the contrary, the provisions hereof are subordinate to all applicable provisions of HOME Program and Section 42 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder which are applicable to the Project.

Section 17. Recordkeeping; Compliance Review:

The Grantee agrees that HUD, the Grantor or any of their duly authorized representatives will have access to and the right to examine any books, documents, papers, and records of the Grantee involving transactions related to this Agreement. Grantee will retain records of individual tenant income verifications, project rents and project inspections for the most recent five-year period, until five years after the Restriction Period terminates.

Section 18. Asset Management:

The Grantee will take such actions as required by this Agreement and as reasonably requested by the Grantor to assist the Grantor 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 Grantor. Grantee agrees to pay Grantor any reasonable costs or expenses it incurs as asset manager at such times as Grantor in its sole discretion, reasonably requires.

Section 19. Acceptance of Facsimile or Scanned Signature(s).

Subject to applicable laws, this Agreement and the related Grant Documents will be considered signed when the signature of a party is delivered by facsimile transmission or delivered by scanned image as an attachment to electronic mail (email). Such facsimile or scanned signature will be treated in all respects as having the same effect as an original signature.

[SIGNATURE(S) APPEAR ON THE NEXT PAGE(S)]

GRANTOR:

NEW MEXICO MORTGAGE FINANCE AUTHORITY

By: _____

[NAME]

Its: [TITLE]

GRANTEE:

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

DRAFT

ACKNOWLEDGMENTS

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

The foregoing instrument was duly acknowledged before me on _____, 2022, by _____, as _____ of the New Mexico Mortgage Finance Authority.

Notary Public

My commission expires: _____

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was duly acknowledged before me on _____, 2022
by _____

Notary Public

My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION

DRAFT