

HM136

**NEW MEXICO MORTGAGE FINANCE AUTHORITY
HOME PROGRAM
SINGLE FAMILY DEVELOPMENT
LAND USE RESTRICTION AGREEMENT**

THIS LAND USE RESTRICTION AGREEMENT, is made and entered into effective as of August 31, 2012, between the **New Mexico Mortgage Finance Authority**, a public body politic and corporate constituting a governmental instrumentality (the "Lender"), and **Otero County Habitat for Humanity, Inc.**, a **New Mexico non profit corporation**, (the "Borrower"), owning the real property described in Exhibit A hereto (the "Property").

WITNESSETH:

WHEREAS, the Lender is making a mortgage loan ("Mortgage Loan") to the Borrower which Loan is evidenced by a mortgage note signed by Borrower, as maker and borrower (the "Mortgage Note"), and secured by a mortgage (the "Mortgage") from the Borrower as mortgagor, to Lender, as mortgagee; and

WHEREAS, the Borrower intends to use the proceeds of the Mortgage Loan to assist with the acquisition, rehabilitation or construction of five (5) affordable single family residences on individually subdivided lots located in the cities of Alamogordo, Otero County, New Mexico; and

WHEREAS, the Mortgage Loan is funded from moneys made available under the HOME Investment Partnership Act, 42 USC Section 12701 et sea (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 Borrower on the condition that the Borrower 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 Borrower 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" or "LURA" means this Land Use Restriction Agreement.

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

"HOME Assisted Units" or "Units" means five (5) lots upon which Borrower will construct single family residential housing which will be sold only to Very Low Income Persons or Families in compliance with HOME Program requirements and which may consist of any five (5) Lots of the five (5) total Lots in the Project.

"Loan Agreement" means that certain Loan Agreement dated April 19, 2012, between the Lender, as lender, and the Owner, as borrower.

"Lot" or "Lots" means the five (5) individually subdivided single family residential lots, located on the Property upon each of which Borrower will construct one single family residence.

"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 Property 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 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.

"Project" means the single family residential project to be developed on the Property, the acquisition, and rehabilitation or construction of which is to be financed in part with the proceeds of the Mortgage Loan.

"Property" means five (5) single family residences to be acquired, rehabilitated or constructed by Borrower on five (5) individually subdivided lots in Alamogordo, New Mexico as more particularly described in **Exhibit A** hereto.

"Restriction Period" means the period beginning on the date the Mortgage Loan is closed and ending (i) the first day of the month following the date all HOME Assisted Units are sold to HOME eligible buyers or (ii) the date on which the Mortgage Loan is no longer outstanding, whichever occurs later.

"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 Property is located, to be determined by the 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.

Any other capitalized terms used herein not otherwise defined herein shall have the meaning assigned to such terms and phrases in the Loan Document in which they are defined.

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. Use Restrictions:

During the Restriction Period:

Borrower will acquire, rehabilitate or construct five (5) HOME Assisted Units, and Borrower will sell or convey the HOME Assisted Units to Very Low Income Families who qualify to purchase such residences under 92 CFR § 92.254.

In the event Borrower sells a HOME Assisted Unit to a HOME-eligible home buyer ("Buyer") whose income does not exceed 50% of the median income, and whose first mortgage is either (1) a MortgageSaver Loan made by Lender or (2) a conventional mortgage at a rate that is no greater than the then current rate of a MortgageSaver Loan and on terms acceptable to Lender, Borrower will cause the Buyer to execute and deliver to Lender a note and mortgage ("Replacement Note" and "Replacement Mortgage", respectively), collectively "Replacement Loan", securing to Lender the portion of the Mortgage Loan attributable to such Unit, in an amount not to exceed \$14,999.00 per Unit, with such Replacement Note and Replacement Mortgage to be on terms and conditions acceptable to Lender in Lender's sole discretion.

Upon receipt of the Replacement Note and the Replacement Mortgage from a Buyer whose first mortgage meets the requirements of the preceding paragraph, Lender will deliver a partial release of this Land Use Restriction Agreement releasing the Unit and the Lot from the lien of the Land Use Restriction Agreement.

In the event Borrower must sell a Lot or a Unit which was intended to be a HOME Assisted Unit to a non-HOME-eligible home buyer, Lender will give to Borrower a partial release of mortgage releasing the lien of the Mortgage and of the LURA on such Lot if Borrower pays Lender (i) an amount equal to one-fifth (1/5) of the Loan Amount or (ii) an amount that will reduce the outstanding principal balance of the Note to a level that does not exceed 75% of the lesser of (x) the Acquisition Cost, or (y) the appraised value of the remaining Lots which are or will continue to be encumbered by the Mortgage after such release

Section 4. 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 Property 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 Property 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 Borrower 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 Borrower or any entity that includes the Borrower or those with whom the Borrower 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 5. Uniformity:

The provisions hereof shall apply uniformly to the entire Project.

Section 6. 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 Project shall be voluntarily transferred by the Borrower 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 Borrower 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 Project is located.

Section 7. 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 Borrower in this Land Use Restriction Agreement contained;
or
- (b) An "event of default" (as defined therein) shall have occurred under any other Loan Document.

Section 8. Remedies; Enforceability:

If the Lender becomes aware of an Event of Default under Section 7(a) above, it shall give immediate written notice thereof to the Borrower, directing the Borrower 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 unless Borrower has made a diligent effort to cure the default within such period and is continuing such effort to the reasonable satisfaction of Lender). 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 Borrower to the satisfaction of Lender or if Borrower has not remedied any event of default under Section 7(b) within the time allowed to cure such event of default Lender 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 Lender 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 Lender shall be entitled to enforce 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 Lender and the Borrower 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. Waiver of Jury Trial; Jurisdiction; Venue; Forum:

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 AGREEMENT 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 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 Property is located. By execution and delivery of this Agreement, 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.

Section 12. 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 be deleted and that the remainder of the Agreement remain in force.

Section 13. 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 14. 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 15. Extent of Liability:

A. Borrower and Guarantor(s), if any, are liable for the performance of all Obligations (defined in the Mortgage) and for repayment of the entire outstanding principal balance of and accrued interest on the Mortgage Loan until such time as (i) the construction of the single family residence has been completed and the conditions of Section 3.3 of the Loan Agreement have been met; (ii) Borrower has sold each HOME Assisted Unit to a HOME eligible buyer and provided documentation acceptable to Lender; (iii) Lender is satisfied that each Unit has been constructed in compliance with the Davis-Bacon Act (40 U.S.C. 276a-5), if applicable; and (iv) Replacement Notes and Replacement Mortgages in compliance with the Loan Documents have been delivered to Lender and/or the Debt (defined in the Mortgage) has otherwise been paid in full.

B. Notwithstanding the foregoing, Borrower and Guarantor(s), if any, shall also be liable for and judgment may be sought against Borrower and the Guarantor(s) to the extent necessary to enforce the rights of Lender or other holder in, to or against the Project and the Loan Documents and for: (i) the misapplication of any profits from the Project 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) damages caused by any misappropriation or misapplication of insurance proceeds or condemnation awards, (v) amounts necessary to repair or replace any damage caused by willful or wanton acts or omissions of Borrower, (vi) costs and expenses in the enforcement of this paragraph, and (vii) all amounts Lender is required to repay to HUD pursuant to Section 92.503(b) of the Regulations due to the failure of the Project to meet the affordability requirements or to be completed as required in the Regulations.

[SIGNATURE AND ACKNOWLEDGEMENT PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Lender and the Borrower has each caused this instrument to be signed and attested in its behalf by its duly authorized representatives all as of the August 31, 2012.

LENDER

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

By: [Signature]
**Linda Bridge
Its: Director of Housing Development**

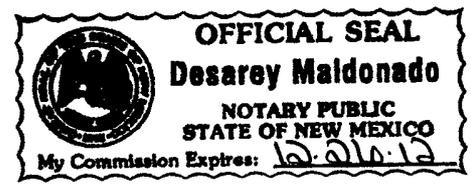
ACKNOWLEDGEMENTS

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

This Instrument was acknowledged before me this 31st day of August ~~June~~ 2012 by Linda Bridge as Director of Housing Development of New Mexico Mortgage Finance Authority.

[Signature]
Notary Public

My commission Expires: Dec. 21. 2012



BORROWER

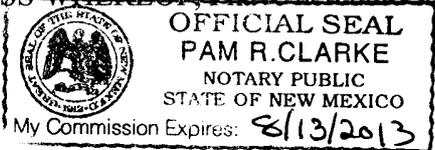
**Otero County Habitat for Humanity, Inc.,
a New Mexico non-profit corporation**

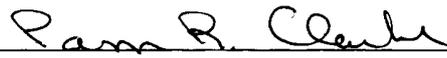
By: 
Norman F. Daviess
Its: Secretary

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

The foregoing instrument was acknowledged before me this 29th day of August, 2012 by Norman F. Daviess as Secretary of Otero County Habitat for Humanity, Inc., a New Mexico non-profit corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.




Notary Public

My commission Expires: 8/13/2013

EXHIBIT A

LEGAL DESCRIPTION

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

Lots 1, 2, 3, 4, 5, Block 9 Haynes Addition, Alamogordo, Otero County, New Mexico recorded in plat Book 5, Page 37, records of Otero County New Mexico.

