

# SAMPLE

## LOW INCOME HOUSING TAX CREDIT LAND USE RESTRICTION AGREEMENT

ALLOCATION OF CREDITS TO THIS PROJECT IS BASED ON THE FOLLOWING:

- Credits from Set-Aside for Projects involving Qualified Non-Profit Organizations
- Points Given for Participation by Qualified Non-Profit Organization
- Special Needs Household Set-Asides [Section 6]
- Additional Low-Income Targeting [Section 5(a)]
- Extended term of Occupancy Restriction [Section 3(a)]

THIS LAND USE RESTRICTION AGREEMENT, dated as of \_\_\_\_ 200\_\_, is by and between «Owner\_Name», a «Owner\_Entity\_Type», and its successors and assigns (the "Owner"), and the New Mexico Mortgage Finance Authority, a body politic and corporate constituting a governmental instrumentality of the State of New Mexico ("MFA").

W I T N E S S E T H:

WHEREAS, the Owner is the owner of a «**Project\_Total\_Units**» («**Project\_Total\_Units1**») unit rental housing development located on lands in the City of «**Project\_City**», County of «**Project\_County**», State of New Mexico, more particularly described in Exhibit A hereto, known as «**Project\_Name**» (the "Project"); and

WHEREAS, MFA is the Housing Credit Agency for the State of New Mexico (the "State") for the allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder (the "Code"); and

WHEREAS, the Owner has applied to MFA for an allocation of low-income housing tax credits to the Project and has made certain representations to MFA in its Rental Project Application (as the same may have been amended or supplemented by the Owner's Carryover Allocation Application, if any, progress reports and the Owner's Final Allocation Application, collectively, the "Application") about the Project, including representations as to the number of Low-Income Units (hereinafter defined) and the term of occupancy restrictions, upon which representations MFA relied in considering the Application and making a reservation and allocation of credits; and

WHEREAS, the Code requires in connection with the allocation of low-income housing tax credits that the Owner execute and deliver this land use restriction agreement (this "Agreement") and that this Agreement be recorded in the official land records of the county in which the Project is located in order to create covenants running with the land for the purpose of enforcing certain requirements of Section 42 of the Code and certain additional undertakings of the Owner in connection with its Application by regulating and restricting the use and occupancy of the Project

as set forth herein including Owner's agreement to maintain the Project in accordance with the Occupancy Restrictions and other requirements of this Agreement during the entire Extended Use Period; and

WHEREAS, based upon the Owner's representations, MFA is willing to allocate low-income housing tax credits to the Project provided that the Owner, by entering into this Agreement, consents to be regulated by MFA in order that MFA may enforce the occupancy restrictions and other covenants, terms and conditions of this Agreement; and

WHEREAS, the Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use and occupancy of the Project shall be and are covenants running with the Project land for the term stated herein and shall be binding upon all subsequent owners of the Project for such term.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Owner and MFA agree as follows:

1. Recording and Filing; Covenants to Run with the Land.

(a) This Agreement shall be placed of record in the real property records of the county in which the Project is located and, except as otherwise provided herein, the covenants contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and its successors and assigns, and MFA and its successors and assigns, and all subsequent owners of the Project or any interest therein, for the period prescribed in Section 3 hereof.

(b) The Owner hereby agrees that any and all requirements of the laws of the State to be satisfied in order for the provisions of this Agreement to constitute restrictive covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the land. During the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective as to successors and/or assigns of all or any portion of the Project, regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.

2. Representations, Covenants and Warranties of the Owner. The Owner covenants, represents and warrants as follows:

(a) The Owner is duly organized under the laws of the State of \_\_\_\_\_, and is qualified to transact business under the laws of the State.

(b) The Owner has good and marketable title to the premises constituting the Project.

- (c) Each building which is the subject of an allocation of low-income housing tax credits is, or, by not later than the last day of the first year of the "credit period," as defined in Section 42(f) of the Code ("Credit Period"), will be, a "qualified low-income building" as defined in Section 42(c)(2) of the Code ("Qualified Low-Income Building"), and the Project constitutes or will constitute a "qualified low-income housing project" as defined in Section 42(g) of the Code ("Qualified Low-Income Housing Project").
- (d) Owner will maintain each building which is the subject of an allocation of low-income housing tax credits as a Qualified Low-Income Building and will maintain the project as a Qualified Low-Income Housing Project during the compliance period as defined in Section 42(i)(1) of the Code ("Compliance Period") and during any extended use period as defined in Section 42(h)(6)(D) of the Code ("Extended Use Period") to the extent required in Section 3(b) of this Agreement.
- (e) The Owner shall not discriminate on the basis of race, creed, color, sex, age, marital status, national origin, disability or familial status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, and shall neither refuse to lease a unit in the Project, ***nor give preference*** to the holder of a voucher or certificate of eligibility under Section 8 of the U.S. Housing Act of 1937 on account of the status of the prospective tenant as such holder.
- (f) The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project; or permit the use of any residential rental unit for any purpose other than rental housing.
- (g) The Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other provisions in conflict herewith.
- (h) If the Owner becomes aware of any situation, event or condition that would result in noncompliance of the Project or the Owner with Section 42 of the Code, the Owner shall promptly give written notice thereof to MFA.
- (i) The Owner shall insure that the Low-Income Units (as hereinafter defined) shall be of comparable quality to other units, if any, in the Project.
- (j) If the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms hereof.
- (k) The Owner has obtained or will obtain the consent of any prior recorded lienholder(s) to the recording of this agreement and to the subordination of the lien(s) of such lienholder(s) to this Agreement.

(l) A "qualified nonprofit organization," as defined in Section 42(h)(5)(C) of the Code, shall own an interest in the Project and shall "materially participate," within the meaning of Section 469(h) of the Code, in the development and operation of the Project throughout the Compliance Period. ***{Delete this section if no Non-Profit involvement}***

3. Term of Restrictions.

(a) Except as otherwise provided herein, this Agreement, including the occupancy restrictions set forth in Sections 5 and 6 hereof, shall be in effect for each building which is part of the Project during the Compliance Period.

(b) In addition, the Owner shall comply with the occupancy requirements set forth in Sections 5 and 6 hereof at all times during the Extended Use Period, ending on the date which is «**Additional\_Years1**» («**Additional\_Years**») years after the close of the Compliance Period.

(c) This Agreement and the Extended Use Period for any building which is part of the Project shall terminate:

(i) on the date the Project or the building is acquired by foreclosure or deed in lieu of foreclosure unless the Secretary (hereinafter defined) determines that such acquisition is part of an arrangement with the Owner a purpose of which is such termination; or

(ii) on date after the last day of the Extended Use Period. Owner waives the right to submit a written request to MFA to find a person to acquire the Owner's interest in the low-income portion of the buildings and to terminate this Agreement if MFA is unable to present a "qualified contract" in accordance with Section 42(h)(6)(E)(i)(II) of the Code.

(d) Notwithstanding any termination pursuant to subsection (c) above, during the period of three (3) years following such termination, the Owner shall not evict or terminate the tenancy of an existing tenant of any Low-Income Unit (hereinafter defined) other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such Low-Income Unit.

4. Qualified Low-Income Housing Project. The Owner shall maintain the Project as a Qualified Low-Income Housing Project at all times, commencing not later than the last day of the first year of the Credit Period and continuing throughout the term of this Agreement. To this end, and without limitation, the Owner shall assure that all of the residential units in the Project are available for use by the general public, suitable for occupancy and used on other than a transient basis.

5. Occupancy Restrictions.

Minimum Federal Set-Aside Election:

(a) For the purpose of Section 42(g)(1) of the Code, the Owner elects that at least \_\_\_\_\_ percent (\_\_\_\_%) of the residential rental units in the Project

shall be both rent-restricted (as hereinafter defined) and occupied by individuals or families whose income is \_\_\_\_\_ **percent** (\_\_\_\_%) or less of area median gross income.

Total Set-Aside:

(b) Notwithstanding the election described in subsection (a) above, the Owner covenants and agrees that, commencing not later than the last day of the first year of the Credit Period and continuing throughout the term of this Agreement, at least \_\_\_\_\_ (\_\_\_\_\_) of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is \_\_\_\_\_ **percent** (\_\_\_\_%) or less of area median gross income, at least \_\_\_\_\_ (\_\_\_\_\_) of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is \_\_\_\_\_ **percent** (\_\_\_\_%) or less of area median gross income and at least an additional \_\_\_\_\_ (\_\_\_\_\_) of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is \_\_\_\_\_ **percent** (\_\_\_\_%) or less of area median gross income. All of the foregoing residential rental units are collectively referred to herein as the "Low-Income Units", and, with respect to all of such Low Income Units, "median gross income" shall be determined in accordance with the Code. The Owner further agrees that additional units in the Project shall be both rent-restricted and occupied by low-income individuals or families whose incomes meet the requirements of this subsection (b) to the extent necessary to maintain the "applicable fraction," as defined in Section 42(c)(1)(B) of the Code, at not less than percentage(s) shown on Exhibit B hereto for each taxable year of the Extended Use Period. A unit is "rent-restricted" if the gross rent with respect to such unit does not exceed thirty percent (30%) of the imputed income limitation applicable to such unit, all as determined in accordance with Section 42(g) of the Code.

(c) The determination of whether an individual or family is a Qualifying Tenant (that is, meets the income requirements of subsection (b) of this Section 5) shall be made at least annually on the basis of the income of such Qualifying Tenant(s). Any unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as a Low-Income Unit during such occupancy notwithstanding an increase in the income of such individual or family above the income limitation applicable under subsection (b) of this Section 5 provided that, if such Qualifying Tenant's income subsequently exceeds one hundred forty percent (140%) of the applicable income limit, such unit shall no longer be a Low-Income Unit if after the determination of such increase, but prior to the next determination, any residential unit of comparable or smaller size is rented to a tenant who is not a Qualifying Tenant.

(d) As a condition to occupancy, each individual or family who is intended to be a Qualifying Tenant shall be required to sign and deliver to the Owner a fully completed Tenant Income Certification in the form provided from time to time by MFA, and the income and assets of such individual or family must be verified in the manner prescribed by MFA.

(e) The form of lease to be utilized by the Owner in renting any unit in the Project to any person who is intended to be a Qualifying Tenant shall provide for

termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Income Certification or the failure by such tenant to execute a Tenant Income Certification annually.

6. Additional Owner Agreements. The Owner further covenants and agrees that not later than the last day of the first year of the Credit Period, as defined in Section 42(f) of the Code:

(a) At least **«Nbr\_of\_Target\_Unit\_1» («Nbr\_of\_Target\_Unit\_1»)** of the residential rental units in the Project shall be constructed, equipped, set aside and made available for occupancy on a priority basis to **«Target\_Units\_1»** at all times during the term of this Agreement, and the Owner shall provide evidence to MFA of any license, permit or other governmental approval required for such occupancy.

(b) Of the residential units which are to be subject to the restrictions of Section 5 hereof, at least \_\_\_\_\_ (\_\_\_\_) shall be \_\_\_\_\_-bedroom units and at least \_\_\_\_\_ (\_\_\_\_) -bedroom units.

7. Compliance Monitoring; Fees.

(a) The Owner acknowledges that Section 42 of the Code requires MFA to monitor the compliance by the Owner and the Project with the requirements of said Section 42, and agrees to strictly comply, at all times, with MFA Tax Credit Monitoring and Compliance Plan, as amended from time to time, (the "Compliance Plan"), the terms and provisions of which are by this reference incorporated in this Agreement and made a part hereof. In the event of any conflict between the provisions of this Agreement and the provisions of the Compliance Plan, this Agreement shall control.

(b) In addition to its specific agreements and undertakings in this Agreement, the Owner shall take or cause to be taken all other and further actions required of the Owner by MFA in order to satisfy such monitoring requirement, which actions shall be designated in writing by MFA to the Owner not less than sixty (60) days (or such other period as may be required by law) prior to the date by which such actions must first be taken.

(c) The Owner agrees to pay to MFA such fees in such amounts and at such times as MFA shall, in its sole discretion, reasonably require the Owner to pay in order to reimburse MFA for the costs of such monitoring.

8. Owner Certifications and Reports.

(a) Within ninety (90) days of the end of the first year of the Credit Period, the Owner shall provide to MFA a copy of the First Year Certification Part II of IRS Form 8609, as filed or prepared for filing with the Internal Revenue Service and executed by or on behalf of the Owner.

(b) The Owner shall annually provide to the Secretary of the United States Department of the Treasury (the "Secretary"), or to his or her designee, at such time and in such manner as the Secretary shall prescribe, a certification as to the continuing compliance of the Project with requirements of Section 42 of the Code. A copy of such annual certification shall be provided to MFA.

(c) The Owner shall provide to MFA, annually, on January 31st, or the next business day, a Certification of Continuing Program Compliance and an Occupancy Report, each in the form provided, from time to time, by MFA, together with a copy, for each building, of the most recently filed Schedule A, Annual Statement, IRS Form 8609.

(d) The Owner shall maintain in its records and provide to MFA copies of any and all notices and correspondence from or with the Internal Revenue Service concerning the Project or the Owner.

(e) In addition to the information provided for in Section 7 and in this Section 8, the Owner shall provide any other information, documents or certifications requested, from time to time, by MFA with respect to the Project's physical, operational and financial condition and residents which MFA reasonably deems necessary to substantiate the Owner's continuing compliance with the provisions of this Agreement and Section 42 of the Code.

9. Transfer Restrictions.

(a) The Owner shall not sell, assign, convey, transfer or otherwise dispose of the Project or any building in the Project without the prior written consent of MFA. Such consent shall be given provided that: (i) the Owner is in compliance with the requirements of this Agreement and of Section 42(j)(6) of the Code; (ii) the proposed transferee of the Project evidences, to the reasonable satisfaction of MFA, by its performance with respect to other low-income housing tax credit or government-assisted housing projects and otherwise, its willingness and ability to comply with the terms of this Agreement; and (iii) MFA shall be paid a transfer fee, as determined, from time to time, by MFA but not to exceed \$2,000. In no event shall the Owner dispose of any portion of any building in the Project to any person unless all of such building is disposed of to such person. For the purposes of this subsection, transfer of fifty percent (50%) or more of the ownership interests in Owner shall be deemed a transfer of the Project.

(b) The Owner shall include, verbatim or by incorporation by reference, all requirements and restrictions contained in this Agreement in any deed or other documents transferring any interest in the Project or in any building in the Project to any other person or entity to the end that such transferee has notice of and is bound by such restrictions, and shall obtain the express written assumption of this Agreement by any such transferee.

10. Physical Maintenance/Management/Books/Records/Inspections.

- (a) The Owner shall maintain each building in the Project such that all units are suitable for occupancy, taking into account applicable health, safety and building codes, and otherwise in a manner reasonably satisfactory to MFA.
- (b) The Owner shall provide for the management of the Project in a manner reasonably determined by MFA to assure compliance with this Agreement. Any management contract entered into by the Owner involving the Project shall provide that it shall be subject to termination, without penalty and with or without cause, upon written request by MFA addressed to the Owner. Upon such request the Owner shall immediately terminate the contract within a period of not more than thirty (30) days and shall make arrangements reasonably satisfactory to MFA for continuing proper management of the Project.
- (c) The books, contracts, records, computerized data, documents and other papers relating to compliance of the Owner and the Project with Section 42 of the Code and with this Agreement and to the eligibility of the Owner to claim credits with respect to the Project shall at all times be maintained at the Project, or at the Owner's principal place of business in the State of New Mexico, in reasonable condition for proper audit and shall be subject to examination and inspection and copying at any reasonable time by MFA or its authorized agents. MFA shall also have the right to enter and inspect the Project at any reasonable time.
- (d) Owners shall keep records for each Qualified Low-Income Building in the Project showing the following:
  - (i) the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each unit);
  - (ii) the percentage of residential rental units in the building that are Low-Income Units;
  - (iii) the rent charged on each residential rental unit in the building (including any utility allowance);
  - (iv) the number of occupants in each Low-Income Unit;
  - (v) the Low-Income Unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
  - (vi) the annual income certification of each Qualifying Tenant;
  - (vii) documentation to support each Qualifying Tenant's income certification;
  - (viii) the eligible basis and qualified basis of the building at the end of the first year of the credit period; and
  - (ix) the character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code (e.g., tenant facilities that are available on a comparable basis to all tenants



and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the Project).

Owners shall keep all records for each building for a minimum of six years after the due date (with extensions) for filing the Owner's federal income tax return for any year; provided, that the records for the first year of the credit period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

11. Enforcement.

(a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code or of this Agreement. Moreover, the Owner covenants to take any lawful action (including amendment of this Agreement) as may be necessary, in the opinion of MFA, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated by the United States Department of the Treasury or the Internal Revenue Service from time to time pertaining to the Owner's obligations under Section 42 of the Code and affecting the Project.

(b) The Owner shall promptly advise MFA as to the date each building in the Project is a Qualified Low-Income Building.

(c) In the event of any failure of the Owner to comply with the provisions of Section 42 of the Code or of this Agreement, MFA shall inform the Owner by written notice of such failure and provide the Owner a period of time in which to correct such failure. If any such failure is not corrected to the satisfaction of MFA within the period of time specified by MFA, which shall be at least thirty (30) days after the date any notice to the Owner is mailed, or within such further time as MFA determines is necessary to correct the violation, but not to exceed any limitations set by applicable regulations, without further notice MFA may declare a default under this Agreement effective on the date of such declaration of default, and MFA may (i) apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement; (ii) secure the appointment of a receiver to operate the Project in compliance with this Agreement; or (iii) exercise any other remedies at law or in equity or any such other action as shall be necessary or desirable to correct non-compliance with this Agreement.

(d) The Owner and MFA each acknowledges that the primary purpose of requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with Section 42 of the Code and the Treasury Regulations thereunder, **AND BY REASON THEREOF, THE OWNER IN CONSIDERATION OF RECEIVING AN ALLOCATION OF LOW-INCOME HOUSING TAX CREDITS FOR THE PROJECT HEREBY AGREES AND CONSENTS THAT MFA, ANY QUALIFYING TENANT AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE TO THE BUILDING UNDER THE CODE (WHETHER PRESENT, PROSPECTIVE OR FORMER OCCUPANTS OF THE BUILDING) (ANY OR ALL OF THEM) SHALL BE ENTITLED, FOR ANY BREACH OF**

**THE PROVISIONS HEREOF, AND IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY COURT, STATE OR FEDERAL, OF COMPETENT JURISDICTION,** the Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(e) In the event of the Owner's or Project's failure to comply fully with the Code, the covenants and agreements contained herein or with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated by the United States Department of the Treasury or the Internal Revenue Service or MFA from time to time pertaining to the obligations of the Owner as set forth therein or herein, MFA, in addition to all of the remedies provided by law or in equity, shall notify the Internal Revenue Service of such noncompliance.

12. Issuance of Form 8609. MFA shall prepare and file with the Internal Revenue Service ("IRS") IRS Form 8609 with respect to each building in the Project, evidencing MFA's allocation of low-income housing tax credits with respect to the Project. MFA shall issue Form 8609(s) to the Owner when the following conditions have been met:

(a) Each building in the Project for which a Form 8609 is issued is a Qualified Low-Income Building.

(b) The Owner and the Project are in compliance with the terms of this Agreement, including particularly, but without limitation, Sections 4 and 5 hereof.

(c) The Owner shall have provided, on form(s) approved by MFA, a certification of each building's "eligible basis" as defined in Section 42(d) of the Code and MFA shall have made its final determination of the credit amount and its final determination pursuant to Section 42(m)(2) of the Code.

(d) The Owner shall have provided a copy of the executed partnership or operating agreement.

(e) The Owner shall have provided evidence satisfactory to MFA of the consent of any prior recorded lienholder to the recording of this agreement and to the subordination of the liens of such lienholder to this Agreement.

(f) The Owner shall have paid the first year's compliance monitoring fee.

13. Return of Unused Credit. Pursuant to Section 42(h)(3)(C) of the Code and Treasury Regulation §1.42-14(d) thereunder, the housing tax credit dollar amount allocated to the Owner with respect to the Project shall be canceled and returned to MFA, in whole or in part, if (i) any building in the Project is not a Qualified Low-Income Building within the time period required by Section 42 of the Code, or (ii) the "Qualified Basis" of any building in the Project is less than the qualified basis on which the credit amount was allocated by MFA.

14. Release and Indemnification. The Owner acknowledges that, in issuing Internal Revenue Service Form 8609 with respect to the Project, MFA is relying or will rely upon information and representations given by or on behalf of the Owner and has made or will make no independent investigation and does not and will not have independent knowledge of the basis for such information and representations. Accordingly, to induce MFA to issue the Form 8609, the Owner agrees as follows:
- (a) The Owner agrees to release and forever discharge MFA, its members, employees, agents, officers, successors and assigns of and from any and all claims, demands, causes of actions, judgments and executions which Owner has or may hereafter have against MFA, whether in law or in equity, arising or resulting from, or on account of or pertaining to, whether directly or indirectly, the issuance of a Form 8609 with respect to the Project by MFA.
- (b) The Owner hereby agrees to indemnify, save harmless and defend MFA, and its members officers, agents, employees, successors and assigns from any obligation, claim, loss, demand, cost, expense (including the costs of the investigation and settlement of any claim, and including reasonable attorney's fees) or judgment against MFA arising or resulting from, or on account of or pertaining to, whether directly or indirectly, MFA's issuance of a Form 8609 with respect to the Project. If any such claim is asserted, any indemnified party hereunder will give prompt notice to the Owner and will cooperate in the investigation and defense of any such claim. The Owner will assume the defense of any such asserted claim by engaging counsel approved by the indemnified party (which approval shall not be unreasonably withheld), it being understood that the indemnified party shall have the right to employ its own separate counsel and participate in such proceedings at its own cost and expense.
- (c) If the indemnification provided in subsection (b) is, for any reason, either unavailable to MFA or any of the other persons intended to be indemnified thereby or insufficient to hold it or any of them harmless, then the Owner hereby agrees to contribute to all amounts paid or payable by MFA and such other persons as a result of any such obligation, claim, loss, demand, cost, expense, or judgment. The amount to be contributed by the Owner shall be the amount that is appropriate to reflect both the relative benefits received by the Owner, on the one hand, and by MFA and such other persons, on the other hand, and the relative degrees of fault of the Owner, on the one hand, and of MFA and such other persons, on the other hand.
15. Miscellaneous.
- (a) The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
- (b) All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

Land Use Restriction Agreement  
«Project\_Name»

To MFA:           New Mexico Mortgage Finance Authority  
                      344 4th Street SW  
                      Albuquerque, New Mexico 87102  
                      Attention: Housing Tax Credit Program

To the Owner:       **«Owner\_Name»**  
                          **«Owner\_Address\_1»**  
                          **«Owner\_City», «Owner\_State» «Owner\_Zip\_Code»**  
                          **Attention: «Owner\_Contact»**

MFA and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

(c)       This Agreement shall be governed by the laws of the State of New Mexico and, where applicable, the laws of the United States of America.

IN WITNESS WHEREOF, the parties have caused this agreement to be signed by their respective duly authorized representatives, as of the day and year first written above.

«Owner\_Name»

[SEAL]

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

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

STATE OF \_\_\_\_\_, CITY OF \_\_\_\_\_ )  
\_\_\_\_\_, COUNTY OF \_\_\_\_\_ ) ss.

This instrument acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2004,  
by \_\_\_\_\_ as \_\_\_\_\_  
of \_\_\_\_\_.

My Commission expires: \_\_\_\_\_.

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

**NEW MEXICO MORTGAGE FINANCE AUTHORITY**

[SEAL]

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

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

STATE OF NEW MEXICO, CITY OF \_\_\_\_\_ )  
\_\_\_\_\_) ss.  
ALBUQUERQUE, COUNTY OF BERNALILLO )

This instrument acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2004, by  
\_\_\_\_\_ as \_\_\_\_\_ of New Mexico Mortgage Finance Authority.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_

Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION**

(See attached Warranty Deed)

**EXHIBIT B**

**Minimum Applicable Fraction by Building**

Building Identification Number: Fraction « <b>BIN_Appl_Fraction</b> »%	« <b>Building_Number</b> »	Minimum Applicable
Building Identification Number: Fraction « <b>BIN_Appl_Fraction</b> »%	« <b>Building_Number</b> »	Minimum Applicable
Building Identification Number: Fraction « <b>BIN_Appl_Fraction</b> »%	« <b>Building_Number</b> »	Minimum Applicable
Building Identification Number: Fraction « <b>BIN_Appl_Fraction</b> »%	« <b>Building_Number</b> »	Minimum Applicable
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Building Identification Number: Fraction « <b>BIN_Appl_Fraction</b> »%	« <b>Building_Number</b> »	Minimum Applicable
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Building Identification Number: Fraction « <b>BIN_Appl_Fraction</b> »%	« <b>Building_Number</b> »	Minimum Applicable
Building Identification Number: Fraction « <b>BIN_Appl_Fraction</b> »%	« <b>Building_Number</b> »	Minimum Applicable
Building Identification Number: Fraction « <b>BIN_Appl_Fraction</b> »%	« <b>Building_Number</b> »	Minimum Applicable