

**CDBG-DR –0025**  
**DECLARATION OF LAND USE RESTRICTIVE COVENANTS**  
**FOR PARTICIPANTS IN THE HOMEOWNER ASSISTANCE PROGRAM**  
**LAND USE RESTRICTION AGREEMENT**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS/LAND USE RESTRICTION AGREEMENT FOR CITY OF SAN MARCOS DISASTER RECOVERY PROGRAM (this "Declaration"), dated as of **DATE OF LURA**, is made by and between **OWNER** ("Owner") and the **CITY OF SAN MARCOS** ("City"), collectively "Parties," and is given by Owner as a guarantee for terms required under the Policies and Procedures. The Owner acknowledges that the terms of this Land Use Restriction Agreement ("LURA") could potentially impact the sale of the property and may lead to recapture of funds if the terms of the LURA are not met.

**SECTION 1 - DEFINITIONS**

Unless the context otherwise requires, and in addition to those terms defined in the recitals set forth above, capitalized terms used in this Declaration shall have the following meanings:

**Affordable Housing**—Means that the cost to live in the Property would not exceed 30% of the gross income for an LMI family of four or six utilizing the HUD table in place in the year of the sale for LMI income for the San Marcos MSA.

**Anniversary Date**—Means 365 or 366 days from the Effective Date depending on the number of days in calendar year. For purposes of the Deferred Forgivable Loan, owner must live in the property through the anniversary date of year to receive credit for any part of the year. For example, if the Effective Date is June 30 of a year, a single year of compliance period would end June 29 the following year.

**Buyer in Good Faith**—Means a bona fide buyer who is willing and able to buy the Property under the terms and conditions of this LURA.

**City**—Means the City of San Marcos.

**Compliance Monitoring Procedures**—Means those procedures and requirements adopted or imposed by the City and modified by the City from time to time, for the purpose of discharging its responsibilities pursuant to the Grant including, but not limited to the Single Family Owner-Occupied Housing Rehabilitation and Reconstruction Policy.

**Compliance Period**—Means the length of Term required under the Policy as listed below and as indicated in the Note:

<b>Amount of Assistance</b>	<b>Length of Forgivable Loan</b>
Reconstruction/New Construction	30 years

The Compliance Period shall begin on the Effective Date and end after the Term of the Compliance has been met on the Anniversary date.

**Effective Date**—Means the date in the preamble of this LURA.

**Fair Market Price**—Will be established based on the value of three recently sold houses within a four block area surrounding the home less the amount of funding remaining for not completing the Compliance Period on the Promissory Note. If not a sufficient number of homes have been sold in an arms-length transaction within the past year, then at the city's expense, an independent appraiser registered with the State of Texas shall conduct an appraisal on the current value of the home.

**LMI (Low to Moderate Income)**—Will be determined by utilizing HUD's LMI table for the San Marcos MSA at the time of the sale of the property. If it is a two bedroom home, the income levels for a family of four (4) will be utilized more than two bedrooms the income levels for a family of six (6) will be utilized.

**LURA or Declaration**—Means this restrictive covenant when executed by the Parties.

**MSA**—Means HUD Metropolitan Statistical Area that includes San Marcos when a sale event occurs.

**Note**—Means the Note signed between the Owner and the City that sets the length of the Deferred Forgivable Loan and included as Addendum B.

**Policy**—Means the City of San Marcos Single Family Owner Occupied Rehabilitation and Reconstruction Policy as it may be amended from time to time.

**Program**—Means the City of San Marcos Disaster Recovery Program.

**Property**—Means the land associated with the repair, reconstruction or construction including the improvements on the land constructed or repaired by the City.

**Purchase Price**—Means the best available price that allows an LMI person(s) to acquire the Property for an amount that will allow the home to remain as Affordable Housing where the payment (not to include taxes of insurance) of any note or mortgage to not exceed 30% of the gross income of an LMI Family of four (4) for two bedrooms or an LMI Household of six (6) based on the San Marcos MSA in the year of the sale.

**Right of First Refusal**—Means the City has the right to purchase the land and improvements on the land provided by the city for any HAP program prior to sale to the general public. The owner must provide notice to the city at least 120 days prior to offering the property for sale. The City may elect to purchase the home for the Fair Market Price.

**Term**—Means the length of time this Declaration shall remain in effect as set out in Section 4 hereof.

**Transferred Property**—Means the underlying land and improvements or the Manufactured Housing Unit used to establish eligibility for the Program.

## **SECTION 2 – RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND**

(a) The City shall cause this Declaration and all amendments hereto to be recorded and filed in the official real property records in Hays County. Upon recording, the City shall transmit to the Owner a copy of the filed LURA stamped by Hays County to show the date of recordation and the volume and page numbers of record where the recorded document may be found.

(b) The Owner shall obtain the written consent of any existing lienholder of record on the Development to this Declaration and the requirements hereof prior to participation in the program. The Owner represents and warrants to the Department that attached hereto as Addendum A and made a part hereof is an executed and acknowledged "Consent and Subordination of Lienholder" from each existing lienholder, if any, as of the effective date hereof.

### **SECTION 3 – REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER**

The Owner hereby represents covenants and warrants as follows:

- (a) The Owner possesses all legal right, power and authority to execute and deliver this Declaration.
- (b) The Owner has, at the time of execution and delivery of this Declaration, good and indefeasible fee simple title to, or a leasehold interest, free and clear of any lien, charge, or other encumbrance, except those created by any loan documents relating to the Program, or those which are created pursuant to this Declaration for the Transferred Property to be transferred to the City. If a Lien exists it will be extinguished or transferred under program rules before transfer to the City.
- (c) The Owner agrees to notify the City in writing of any sale, transfer, or exchange of the property, and to provide to the City the name(s) and address(es) of such prospective buyer before the sale is complete for City approval. In the case of a First Right of Refusal allowed to the City, the Owner will notify the city prior to listing. If the Owner fails to notice the City prior to a listing for sale, the Owner shall be responsible to any fees due to a party who has signed a contract to assist with the sale and will not be included in the Fair Market Value price.
- (d) The Owner represents, warrants, and agrees they will maintain sufficient casualty and hazard insurance on the Property so that if 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 property to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and to continuously act in accordance with the terms of this Declaration.
- (e) The Owner will continue to maintain the Property in good repair and pay all taxes and assessments due against the Property.
- (f) For the duration of the Compliance Period if the Property was provided to the Owner as part of the Program, the Owner agrees that the sale of this property is subject to the Right of First Refusal by the City at Fair Market Price. In the event the City does not exercise its First Right of Refusal, during the Compliance Period, the Owner must offer the property for sale to LMI person(s) at a Purchase Price that allows the Buyer in Good Faith to occupy the property as Affordable Housing. The Owner has no right to demand the City purchase the Property.
- (g) The Owner will cooperate with the City for annual Compliance Period materials as requested.
- (h) Nothing in this LURA provides a Third Party Right of Action or creates any independent rights for the purchase of this Property by any individual or organization. The City's First Right of Refusal must be exercised on the voluntary sale of the home. In the event of Condemnation or eminent domain, the city policies regarding those governmental action shall control over this LURA.
- (i) No secondary financing instruments may be filed against this property without express authorization from the City. In addition, in the event that the City authorizes a secondary financing instrument, this LURA will remain superior to any subsequent instruments.

#### **SECTION 4 – TERM OF DECLARATION**

- (a) This Declaration, even if not filed in the Property Records until a later date, shall become effective with respect to Property on the Effective Date.
- (b) Notwithstanding subsection (a) above the terms of this agreement shall be modified as applicable in certain limited circumstances described below in section (2), this Declaration shall terminate:
  - (1) If the assisted homeowner continues to occupy the home until the term of the note expires, the owner pays nothing and there are no conditions on the disposition of the property. If the property is sold, transferred or vacated by the assisted homeowner for any single period that exceeds thirty (30) days during the term of the forgivable loan period, the repayment terms of the Note will be enforced. If the assisted homeowner for any reason (other than the cases illustrated in 2. below) ceases to reside in the assisted unit during the City's CDBG-DR contract period, only LMI persons may reoccupy the unit until the contract is administratively closed by the Department or the CDBG-DR contract period expires, whichever is earlier.
  - (2) Accelerated Forgiveness in Certain Cases: In the event of (a) the death, (b) relocation to a managed care facility, or (c) relocation resulting from documented mental or physical incapacitation of the sole remaining assisted homeowner identified in the original application, the City may, at its sole discretion, forgive any remaining loan balance or exercise the City's Right of First Refusal.

#### **SECTION 5– ENFORCEMENT, ADMINISTRATION AND COMPLIANCE**

- (a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of this Declaration or the Policy.
- (b) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Declaration is to assure compliance with the Policy.
- (c) The Owner agrees the City may, at reasonable times and upon adequate notice at any time during the construction, rehabilitation, or post occupation, enter and inspect the Development to evaluate its physical and financial condition, construction, rehabilitation, operation, management, and maintenance.
- (d) The Owner agrees that it will respond to requests for proof of ownership and habitation by the City.

#### **SECTION 6 - MISCELLANEOUS**

- (a) Severability. This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations. If any provision of this Declaration or the Application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Declaration and the Application of such provision to other persons or circumstances

shall not be affected thereby, but rather shall remain in full force and effect and may be enforced to the greatest extent permitted by law and in the manner that best carries out the purposes of this Declaration.

(b) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, delivered by hand, or delivered by any other method permitted by law, 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.

**TO THE CITY:**

City of San Marcos  
630 E. Hopkins Street  
San Marcos, Texas 78666

**TO THE OWNER:**

Owner  
CITY,  
STATE, ZIP  
ATTN:

The City, 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) Amendment. This Agreement may not be amended or modified except by written instrument executed by both Owner and City unless otherwise agreed to herein.
- (d) Governing Law. This Declaration shall be governed by the laws of the State of Texas, and, where applicable, the laws of the United States of America.
- (e) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the rehabilitation, reconstruction, or new construction of the Property.
- (f) Interpretation. The City's interpretation of this Declaration shall be controlling for purposes of determining whether (i) the Compliance Period and (ii) this Declaration has been terminated in accordance with Section 5 hereof.

In Witness Whereof the Owner and the City have Caused this Declaration to be signed by their Duly Authorized Representatives, as of the day and year first written above.

**For Owner:**

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The State of Texas                   §  
  §  
County of Hays                   §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_  
who provided me with government issued photo identification, acknowledged the above information as true  
and correct and fully executed the forgoing instrument.

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

My Commission Expires \_\_\_\_\_

**For City:**

\_\_\_\_\_

The State of Texas                   §  
  §  
County of Hays                   §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_  
who provided me with government issued photo identification, acknowledged the above information as true  
and correct and fully executed the forgoing instrument.

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

My Commission Expires \_\_\_\_\_



**Addendum A to Declaration—Consent and Subordination of Lien Holder**  
**(if necessary for any lien holder)**

The undersigned lien holder hereby consents to the execution to the execution by Owner of the Property located at \_\_\_\_\_ and the Lien Holder hereby subordinates its lien to the Rights and interests Created Pursuant to the Declaration.

Lien Holder acknowledges and agrees that, Pursuant to Section 4(B)(1) of the Declaration will terminate upon foreclosure or deed in lieu of foreclosure upon the recorded declaration but the Declaration may create a limitation on the sale of the home.

Executed to be effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Authorized Signature of Lien Holder

The State of \_\_\_\_\_ §  
County of \_\_\_\_\_ §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_  
who provided me with government issued photo identification, acknowledged the above information as true  
and correct and fully executed the forgoing instrument.

Notary Public

My Commission Expires \_\_\_\_\_



**ADDENDUM B**  
**NOTE SIGNED BY HOMEOWNER**