

**LAND USE RESTRICTION - -
INCLUSIONARY ZONING**

Re: A Condominium development located at _____, City of Madison, Wisconsin

WHEREAS, _____, a Wisconsin limited liability company (“Developer”) will record a condominium plat located in the City of Madison, Dane County, Wisconsin, known as the “Development”; and

WHEREAS, pursuant to Madison General Ordinance Sec. 28.04(25) (the “Ordinance”), the Developer is obligated to restrict certain units within the Development as set forth in this Land Use Restriction Agreement (the “Restriction”) in order to meet the inclusionary zoning requirements of the City of Madison.

NOW, THEREFORE, Developer does hereby declare and impose upon the property described herein, the following restrictions and covenants.

1. **Definitions.** In addition to the terms defined elsewhere herein, the following terms shall have the meanings set forth below for the purposes hereof:

“Area Median Income” or “AMI” shall mean the median annual income figures, adjusted for family size, calculated annually by the U.S. Department of Housing and Urban Development for the metropolitan area that includes the City of Madison.

"Inclusionary Dwelling Unit" shall mean a dwelling unit for a family with an annual income at or below the "AMI" specified in this Restriction.

“Initial Sale” shall mean any conveyance of a Unit to an Owner. “Initial Sale” shall not include any sale of a Lot by Developer to a builder or contractor who intends to construct improvements on the Lot , or any sale of a lot or Unit to the Community Development Authority or a non-profit entity.

“Owner” shall mean any person or persons, if more than one, who owns, or proposes to own, a Unit described herein, in fee, or as a vendee under a land contract, and occupies or intends to occupy a Unit, and the Owner’s lawful heirs, successors and assigns.

“Seller” shall mean any person or entity who owns a Unit and intends to make an Initial Sale of a such Unit to an Owner.

Return to:

Barbara Constans
CDBG Office
P.O. Box 2985
215 Martin Luther King Jr. Blvd, #280
Madison, WI 53701-2985

Parcel Identification Numbers:

2. **Property Subject to Restriction.** The real property subject to this Restriction is legally described in Exhibit A, attached hereto and incorporated herein by reference. Reference herein to a “Unit” or “Units”, shall mean and refer to the inclusionary dwelling units shown on Exhibit B, which are improvements located on the real property described in Exhibit A. This Restriction shall be binding upon Developer, and its successors and assigns, and shall be deemed to run with each Unit, as a benefit and a burden for the entire term of this Restriction, unless released or terminated earlier as provided herein.

3. **Income Restriction on Sales.** Subject to Section 5, each Initial Sale of ____ of the Units shall be made only to an Owner having an annual income of up to eighty percent (80%) of Area Median Income and Subject to Section 5, each Initial Sale of ____ of the Units shall be made only to an Owner having an annual income of up to seventy percent (70%) of Area Median Income. Seller shall be required to document the income eligibility of the Owner. The method for calculation of income eligibility will involve the use of gross income from the previous tax year or the projected income for the current tax year based upon current earnings. Documentation shall be collected that includes a copy of the filed income tax forms from the previous year, or three current wage receipts.

4. **Initial Sales Price.** The sales price of a Unit at the time of an Initial Sale shall be calculated based on a monthly payment that includes property taxes, homeowner’s insurance, private mortgage insurance, condominium association fees (if applicable) and the payment of principal and interest on a fixed rate thirty (30) year mortgage. The monthly payment shall not exceed thirty percent (30%) of the monthly income for the applicable AMI, based on an Owner’s family size and the number of bedrooms per Unit being sold. At the option of the Seller, the sales price for each Unit may be set at the start of the marketing period for the Unit, rather than at the time a building permit is issued. The applicable interest rate for establishing the initial sales price shall be that interest rate which is determined quarterly by the City of Madison, Department of Planning and Development, that is available as of the date on which the building permit for the dwelling unit to be constructed is issued or the commencement of the marketing period, based on the choice of the Seller. With the exception of a refrigerator and stove, major appliances for the dwelling unit in question, and landscaping of the Unit, shall be considered as optional amenities. If an Owner of a Unit wishes to finance these optional amenities as part of the home mortgage, their cost should not be considered part of the purchase price of the Unit.

5. **Failure to Sell.** If an acceptable offer to purchase for any Unit has not been received by the Seller after an 80% Unit has been marketed for one hundred twenty (120) days, the Seller may market the Unit to a family with an AMI that is at or below 90% of AMI and for a 70% Unit which has been marketed for one hundred twenty (120) days, the Seller may market the Unit to a family with an AMI that is at or below 80% of AMI. For each additional one hundred twenty (120) day period without a sale, the Seller may market a Unit to a family with an AMI that is at or below an additional ten percent (10%) of

AMI. If the Seller has provided notice of the marketing period to the City as provided in Section 6, and if a Unit remains unsold after 240 days, the Seller may sell the Unit at market rate.

6. **Notice to City.** For the purposes of Sec. 28.04(25)(e)(6), MGO, the First Marketing Period shall begin on the date the Director of the Department of Planning and Development (“Director”) receives notice that marketing of the Lot has begun. The Seller shall provide written verification to the City of the sales price of each Unit within ten (10) days of the beginning of the marketing period.

7. **Standards.**

A. As used herein, the term “Inclusionary Dwelling Unit” shall have the meaning set forth in Section 28.04(25)(b) of the Ordinance, and paragraph 1.

B. The size of an Inclusionary Dwelling Unit may be different than the size of market rate dwelling units in the development, except that the size of the Inclusionary Dwelling Units to be constructed shall not be less than those sizes specified in Sec. 28.04(25)(g)1a. of the ordinance, as shown in the Inclusionary Dwelling Unit Plan.

C. The mix of dwelling units, based on number of bedrooms, shall be similar for inclusionary and market rate dwelling units, as shown in the Inclusionary Dwelling Unit Plan.

D. The inclusionary dwelling units shall be dispersed throughout the development and shall be provided on similar schedules as the market rate dwelling units, as shown on the Inclusionary Dwelling Unit Plan.

E. Prior to the issuance of a building permit to construct a unit, the Director of the Department of Planning and Development for the City shall state in writing that the standards set forth in this Paragraph 7 have been met.

8. **Option to City by Owner.** At the time of each Initial Sale of a Unit, the Owner shall grant an exclusive option to purchase the Unit and all improvements thereon to the City (the “Option”). No Unit shall be voluntarily conveyed by a Seller unless simultaneously therewith the Owner enters into an Option with the City in substantially the same form attached hereto as Exhibit C or in such other form as may be approved by the City Attorney. The Option shall be recorded in the Office of the Dane County Register of Deeds prior to the recording of any other documents except for a deed or land contract from the Seller. Any Initial Sale of a Unit for which an Option has not been recorded shall be null and void unless the City has released such Unit from this Restriction.

9. **Benefitted Parties.** This Restriction is intended to benefit the City of Madison and Developer. The City Department of Planning and Development is designated as the enforcement agency for the City. This Restriction is not intended to benefit any other person or entity. Enforcement of the terms, covenants and conditions of this Restriction is limited strictly to the City and Developer. This

Restriction is not intended to create any rights or cause of action against Developer or City by the general public or any other person or entity.

10. **Termination.** Unless terminated sooner pursuant to the terms hereof, or by action of the City specifically referencing this Restriction, or unless terminated by the terms of the Ordinance or any subsequent law, rule regulation or ordinance, this Restriction shall terminate as to each Unit on the date of the Initial Sale and recording of the Option, or if, pursuant to Sec. 28.04 (25) (e) 6, MGO, the Unit is sold at market price, after having been marketed to an income eligiblle family for two hundred forty days (240) without a sale. Upon termination of the Restriction on any Unit, the City will provide a partial release in recordable form of such Unit from this restriction.

11. **Resolution of Conflicts.** In the event of any conflict between the terms, covenants and conditions contained in this Restriction, and the terms of the Ordinance, the terms of the Ordinance in effect as of the date this Restriction is recorded in the office of the Dane County, Wisconsin Register of Deeds, shall control.

12. **Notices and Demands.** A notice, demand or other communication under this Restriction by any party to any other party shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally to:

CITY: Director of Planning and Development
PO Box 2983
215 Martin Luther King Jr. Blvd., LL-100
Madison, WI 53701-2983

Copy to: Department of Planning and Development
CDBG Unit, Room 280, Madison Municipal Bldg.
215 Martin Luther King, Jr. Blvd.
Madison WI 53703

WITH COPY TO: City Attorney
City County Building, Room 401
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

DEVELOPER:

Or such other addresses as the parties may designated to each other in writing from time to time.

13. **Miscellaneous.** This Restriction shall be governed by and construed in accordance with the laws of the State of Wisconsin. In the event any part of this Restriction is held illegal or unenforceable by a court of competent jurisdiction, said part shall be severed from the remainder and the remainder shall be fully enforced in accordance with all applicable laws, rules and regulations. This Restriction is binding upon and accrued to the benefit of the Developer, and the Developer's successors and assigns.

EXHIBIT A

Legal Description of Property

Exhibit B

IZ Unit Map