

**LAND USE RESTRICTION --
INCLUSIONARY ZONING**

RE:

WHEREAS, _____, a Wisconsin resident (“Developer”) has recorded a plat located in the City of Madison, Dane County, Wisconsin, known as _____ (the “Subdivision”); and

WHEREAS, pursuant to Madison General Ordinance Sec. 28.04(25) (the “Ordinance”), the Developer is obligated to restrict Lots _____, within the Subdivision 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.

“Initial Sale” shall mean any conveyance of a Lot to an Owner. “Initial Sale” shall not include:

- (i) Any sale of a Lot by Developer to a builder or contractor who intends to construct improvements on the Lot;
- (ii) Any sale to the Community Development Authority or a non-profit entity; or
- (iii) Any sales or transfers of a Lot between Developer and/or affiliates of Developer.

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

Return to:
Ms. Barbara Constans
Madison CDBG Office
215 Martin Luther King, Jr. Blvd.
Room 280
P.O. Box 2985
Madison, WI 53701-2985

Parcel Identification Number:
See Exhibit “A”

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

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 “Lot” or “Lots”, shall mean and refer to the real property described in Exhibit “B”, including any improvements located thereon, either now or at any time in the future. This Restriction shall be binding upon Developer, and its successors and assigns, and shall be deemed to run with each Lot, 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 a Lot shall be made only to an Owner having an annual income of up to eighty percent (80%) of Area Median Income as to Lots _____. 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 Lot 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, homeowner’s 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 Lot being sold. At the option of the Seller, the sales price for each Lot may be set at the start of the marketing period for the Lot, 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 on the Lot 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 on the Lot, shall be considered as optional amenities. If an Owner of a dwelling unit on a Lot 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 Lot.

5. **Failure to Sell.** If an acceptable offer to purchase for any Lot has not been received by the Seller after a Lot has been marketed for one hundred twenty (120) days (the “**First Marketing**

Period”), the Seller may market the Lot to a family with an AMI that is at or below 90% of AMI. For each additional one hundred twenty (120) day period without a sale, the Seller may market a Lot to a family with an AMI that is at or below an additional ten (10%) percent of AMI. If the Seller has provided notice of the First Marketing Period to the City as provided in Section 6, and if a Lot remains unsold after 240 days, the Seller may sell the Lot at market rate and the City will provide a partial release in recordable form of such Lot from these Restrictions.

6. **Notice to the 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.

B. The size of an Inclusionary Dwelling Unit constructed on a Lot may be different than the size of market rate dwelling units constructed on other lots in the Subdivision, except that the size of the Inclusionary Dwelling Unit to be constructed on a Lot shall not be less than nine hundred fifty (950) square feet.

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. The exterior appearance of any Inclusionary Dwelling Unit to be constructed on a Lot shall be similar in general style to the exterior appearance of market rate dwelling units in the Subdivision.

F. Prior to the issuance of a building permit to construct improvements on a Lot, the Director for the City shall state in writing that the standards set forth in this Section 7 have been met.

8. **Option to City by Owner.** At the time of each Initial Sale of a Lot, the Owner shall grant an exclusive option to purchase the Lot and all improvements thereon to the City (the “Option”) in the form attached hereto as Exhibit “C.” No Lot 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 Lot for which an

Option has not been recorded shall be null and void unless the City has released such Lot 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 has been marketed to an income eligible family for two hundred forty (240) days 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

WITH 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 designate 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.

Dated this ____ day of _____, 2005.

By: _____
Print Name: _____
Print Title: _____

STATE OF WISCONSIN)
 : SS
COUNTY OF DANE)

Personally came before me this ____ day of _____, 2005, the above named _____, to be known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Notary Public, State of Wisconsin
My commission expires: _____

CONSENT OF CITY OF MADISON

The City of Madison by its Department of Planning and Development has reviewed the foregoing Restriction and approves of the same as being in compliance with the City of Madison's Inclusionary Zoning Ordinance.

Dated this ____ day of _____, 2005.

EXHIBIT “A”

Legal Description of the Subdivision

Exhibit B

Map of Inclusionary Zoning Lots