

**LAND USE RESTRICTION - -
INCLUSIONARY ZONING**

Re: _____, an Apartment development located at _____, City of Madison, Wisconsin

WHEREAS, _____, a Limited Liability Wisconsin Corporation (“Developer”) will record a PLANNED UNIT DEVELOPMENT 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.

Return to:
Barbara Constans,
City of Madison CDBG Office
P.O.Box 2985
Madison Wi 53701-2985

Parcel Identification Numbers:

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 rent to a family with an annual median income at or below the “AMI” specified in this Restriction.

“Income Eligible Family” shall mean a family whose annual income qualifies the family to rent an inclusionary dwelling unit.

“Period of Affordability” shall mean the time, specified in this Restriction, during which an inclusionary dwelling unit shall be rented only to an income eligible family. The period of affordability begins on the date the certificate of occupancy is issued.

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

designated on Exhibit B as “60% of AMI” and the _____ Units designated on Exhibit B as “50% of AMI”, all of 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.

3. **Period of Affordability.** Subject to Par. 6, the Units identified in par. 2 shall be rented only to an income eligible family for not less than fifty (50) years.

4. **Income Restriction on Units.** Subject to Par. 6, each Unit shall be rented to a family with an annual median income of up to fifty percent (50%) or sixty percent (60%) of Area Median Income, as indicated on Exhibit B.

5. **Rental Price.** The monthly rental price for the Units shall include rent and utility costs and shall be no more than thirty percent (30%) of the monthly income for the applicable AMI.

6. **Failure to Rent.** If a Unit is not rented after having been marketed for ninety (90) days, it may be marketed to a family with an AMI that is at or below the next greater ten percent (10%) increment of AMI than that specified in the Restriction on that Unit, as designated on Exhibits B. For each consecutive ninety (90) period without a rental, the Unit may be rented to a family with an AMI that is at or below an additional ten percent (10%) increment of AMI. After one hundred eighty (180) days of marketing without a rental, the Unit may be rented at market rate. When a new family occupies the Unit, it shall be marketed to a family with an AMI at the level required in Par. 4 above. Marketing begins on the date the Director of the Department of Planning and Development receives notice that marketing of a Unit has begun. If the Developer or lessor has provided notice as required, and has extended the marketing period two (2) times, the Unit may be rented at market rate.

7. **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 Unit has begun. The Developer or lessor shall provide written verification to the City of the rental price of each Unit within ten (10) days of the beginning of the marketing period for that Unit.

8. **Standards.**

A. As used herein, the term “Inclusionary Dwelling Unit” shall have the meaning set forth in Par. 1. of this Restriction.

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 and shall be consistent with 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 and shall be consistent with the Inclusionary Dwelling Unit Plan.

D. The inclusionary dwelling units shall be dispersed throughout the development, as specified in Exhibit B, and shall be provided on similar schedules as the market rate dwelling units.

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 or designee shall state in writing that the standards set forth in this Par. have been met.

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. **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.

11. **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 designated to each other in writing from time to time.

12. **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.

A Wisconsin corporation

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.

**CITY OF MADISON
DEPARTMENT OF PLANNING
AND DEVELOPMENT**

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:_____

EXHIBIT A

Legal Description of Development

