

LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT the (“Agreement”) is made and entered into as of the (date) day of (Month), 2024 by and between _____, a Wisconsin Limited Liability Company, and its successors and assigns (“Owner”), as Owner of the Property, in favor and for the benefit of the CITY OF MADISON, a Wisconsin municipal corporation, and its successors and assigns (the “City”).

W I T N E S S E T H :

WHEREAS, Owner owns the real property legally described on Exhibit A which is attached hereto and incorporated by reference (the “Property”), and located at _____, Madison, WI.

RETURN TO:

Community Development Division
215 Martin Luther King Jr. Blvd., Suite 300
Madison, WI 53703
P.O. Box 2627
Madison, WI 53701-2627

Tax Parcel No.:

WHEREAS, certain of the expenses to be incurred in acquiring and/or constructing the Property as residential housing are to be financed from funds loaned by the City under the Madison Affordable Housing Fund, as identified in the City of Madison Capital Budget as it exists on the date hereof (the “Loan”); and

WHEREAS, as a condition of the Loan, the City has required the Owner to restrict the use of the Property as hereinafter described (the “Restrictions”) and the Owner agrees to such Restrictions.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby covenants and agrees on behalf of itself as Owner of the Property and its successors, assigns, grantees and lessees, as follows:

1. The Restrictions set forth herein shall be applicable to ____ units of multi-family residential rental housing located in the Property (the “AHF Units”). The AHF Units shall be set aside for occupancy by households whose income is in compliance with Section 42 of the Internal Revenue Code and whose units shall have rent, including utilities, that is in compliance with Section 42 of the Internal Revenue Code, as more particularly described in Exhibit 1 to that certain Loan Agreement between the Owner and City dated as of the date hereof (the “Loan Agreement”).

2. The Owner shall, at all times, maintain the Property in accordance with all applicable local, state and federal laws and comply with all other requirements with respect to the Property, as set forth in the Loan Agreement.

3. The Restrictions shall run with the land, shall be appurtenant to the Property and shall be binding upon all future owners of the Property during the term of this Agreement. This

Agreement shall become effective on the date hereof. Unless sooner terminated or amended in a written document signed by the City and the Owner, this Agreement shall continue in full force and effect **permanently** and without expiration, provided, however, that from and after the 30th anniversary date of Project Completion, as defined in the Loan Agreement, and notwithstanding anything in this Agreement or the Loan Agreement to the contrary, the Restrictions shall be amended and restated as reflected in Exhibit B to this Agreement.

Notwithstanding the foregoing, this Agreement shall terminate upon foreclosure or deed in lieu of foreclosure of the First Mortgage lien on the Property (as defined in the Loan Agreement). This Agreement shall be revived according to the original terms if, the owner of record before foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Property.

4. Liquidated Damages. In the event the Owner fails to comply with the Restrictions and such violation is not cured within the time frames set forth under Section 42 of the Internal Revenue Code, Owner shall be liable, as liquidated damages, for violating the requirements of Madison General Ordinance 20.08(2)(d)(3), which provides for an exemption of park impact fees for the AHF Units, (subsequently the Permanently Affordable Units, as defined in Exhibit B), and shall pay **[FULL Loan Amount]** Dollars and _____/100 (_____) plus 3% interest compounded annually from the date of execution to the date of violation. In the event liquidated damages are paid pursuant to this paragraph, the City shall allocate to the City of Madison Parks Division that portion of any liquidated damages paid equal to the value of the exempted fee in the amount of _____ Dollars and _____/100 (_____) plus 3% interest compounded annually from the date of execution to the date of violation. The City and Owner agree that notwithstanding anything to the contrary in Madison General Ordinances 20.08 and 4.22, this paragraph shall apply **permanently**, and beyond the 30th anniversary of this Agreement. The City and Owner agree that this paragraph is necessary because actual damages that result from such a breach would be extremely difficult to determine due to the societal impact and need for affordable housing.

5. Event of Default. The failure in the performance or observance of any of the covenants, agreements or conditions on the part of the Owner, that is not cured within thirty (30) days of written notice to Owner and Investor Member by the City, in this Agreement shall constitute an Event of Default. If an Event of Default cannot be cured within thirty (30) days, the cure period shall be extended for so long as is reasonably necessary to effectuate the cure, so long as the cure is timely commenced within the initial thirty (30) day period and is diligently prosecuted to completion. The City shall permit the Investor Member, if it elects to do so, to cure any Event of Default.

6. Enforcement. In addition to the remedy provided in Paragraph 4, above, upon the occurrence of an Event of Default, the City shall give written notice to the Owner directing the Owner to remedy the Event of Default within thirty (30) days. If, after such period, the Event of Default continues, then the City may institute any proceeding at law or equity (i) to abate, prevent or enjoin any such Event of Default; (ii) to compel specific performance hereunder; (iii) to recover monetary damages, together with the cost and expenses of any proceedings for the collection thereof caused by such Event of Default, including reasonable attorneys fees; or City may take any other action available to remedy the Event of Default or pursue any combination of these remedies. No delay in enforcing the provisions hereof as to any Event of Default shall impair, damage or waive the right of any party entitled to enforce the same or to obtain relief against or recover for the continuation or repetition of such Event of Default or any

similar Event of Default thereof at any later time or times. No person other than the City shall be entitled to enforce this Agreement.

7. Severability. It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Agreement remain in full force and effect.

8. Notices. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, transmitted by facsimile, delivered by a recognized overnight carrier, or delivered personally to the following addresses:

FOR THE CITY: , Community Development Specialist
CD Office, 215 Martin Luther King, Jr. Blvd., Suite 300
Mail to: P.O. Box 2627
Madison, WI 53701-2627

WITH COPY TO: City Attorney
City County Building, Room 401
210 Martin Luther King Jr. Blvd.
Madison, WI 53703
Phone: 608-266-4511
Fax: 608-267-8715

FOR THE OWNER: , [Title]

WITH COPY TO
INVESTOR MEMBER:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

By: A Wisconsin Limited Liability Company

By:

Its: Managing Member

By:

Its: Manager

By:

Its:

By: _____
_____, President

STATE OF WISCONSIN)
);SS
COUNTY OF DANE)

Personally came before me this _____ day of _____, 20____, the above named, _____, to me known to be the _____, and to me known to be the person who executed the foregoing instrument and acknowledge the same.

[SEAL]

Notary Public, State of Wisconsin

Print or Type Name
My Commission Expires: _____

This instrument was drafted by the CD Division. After recording, it should be returned to _____, City of Madison Community Development Division, 215 Martin Luther King Jr. Blvd., Suite 300, Madison, WI 53703; Mail to: P.O. Box 2627, Madison, WI 53701.

EXHIBIT A

ADDRESS:

LEGAL DESCRIPTION:

PARCEL #:

SAMPLE

EXHIBIT B

Restrictions for Permanently Affordable Units

1. At least () units on the Property (the "Permanently Affordable Units") shall be set aside for occupancy by individuals whose income is consistent with Paragraph 5 of this Exhibit B.
2. The Period of Affordability (POA) for the Permanently Affordable Units is **permanent** as set forth in this Agreement, therefore, the Restrictions applicable to the Permanently Affordable Units described below in this Exhibit B shall be permanent. Owner agrees that although the property may no longer be subject to the Section 42 requirements, as an inducement for the City providing a loan to Owner, the Owner has agreed to permanently comply with certain provisions of Section 42 as outlined in this Exhibit B.
3. Gross annual income is based on the Section 42 definition of annual income. The Owner, or designee, shall perform income verifications to certify income eligibility according to the Section 42 requirements.
4. The Owner will be responsible for obtaining and maintaining the most up-to-date information on Section 42 Income and Rent Limits.
5. The maximum rent (including utilities) and income levels for the Permanently Affordable Units may be no more than allowed by Section 42 of the Internal Revenue Code, including, but not limited to, rent limits allowed by the Section 8 voucher program. The unit mix shall be as detailed below. The unit mix must be maintained in accordance with Section 42 of the Internal Revenue Code **permanently**.

ADDRESS #1:							Projected Monthly Unit Rents, Including Utilities				
		# of Bedrooms									
% of County Median Income (CMI)	Total # of units	# of Studios	# of 1 BRs	# of 2 BRs	# of 3 BRs	# of 4+ BRs	\$ Rent for Studios	\$ Rent for 1 BRs	\$ Rent for 2 BRs	\$ Rent for 3 BRs	\$ Rent for 4+ BRs
≤30%	0	0	0	0	0	0					
40%	0	0	0	0	0	0					
50%	0	0	0	0	0	0					
60%	0	0	0	0	0	0					
Affordable Sub-total	0	0	0	0	0	0					
80%	0	0	0	0	0	0					
Market*	0	0	0	0	0	0					
Total Units	0	0	0	0	0	0	Notes/Utility Allowance Assumptions:				

*40% = 31-40% CMI; 50% = 41-50% CMI; 60% = 51-60% CMI; 80% = 61-80% CMI; Market = >81% CMI.

- a. The following utilities and/or amenities are included in rent: ☐ Water/Sewer ☐ Electric ☐ Gas ☐ Free Internet In-Unit ☐ Washer/Dryer ☐ Other: _____
- b. Utility Allowance Source:
☐ CDA ☐ DCHA ☐ HUSM (HUD HOME)
- c. Total utility allowance per bedroom size:

Unit Size (Number of Bedrooms)	Total Monthly Utility Allowance (\$)
Efficiency	
1-Bedroom	
2-Bedroom	
3-Bedroom	
4-Bedroom	

6. After initial occupancy, the Owner will use commercially reasonable efforts to limit annual contract rent increases on lease renewals to 2% per year, excluding parking or utility charges. This applies to lease renewals and not new lease agreements. Notwithstanding the foregoing, the Owner and its Property Manager may increase rents no more than once per year in accordance with the lease agreement.

After initial occupancy, in the event the rent increase is greater than 2%, then such rent increase shall be limited as follows:

- i. Contract rents for renewed leases of Permanently Affordable Units may not increase by greater than 5% over the previous year's contract rent.
 - ii. Exceptions: City shall grant an exception under the paragraph if Owner can demonstrate that the limits would do the following: (a) Result in the debt coverage ratio below an investor- or lender-required level; or (b) violate WHEDA, first lien lender, or investor requirements. The City's determination under this exception shall be reasonable and Owner's evidence shall be viewed in a light most favorable to Owner. City and Owner shall cooperate in setting new limits if necessary based on market conditions.
7. Additional fees not included in the Total Monthly Rent (i.e., application, parking, laundry, pets, etc.) may not be a barrier to low income households accessing the affordable units. All fees, including parking, must be consistent with the submarket in which the Property is located, and are subject to City approval.
8. The Owner shall do the following:
- i. Ensure that all Permanently Affordable Units are occupied by income-eligible households in accordance with this Exhibit.
 - ii. Ensure that the rents, including utilities or a utility allowance, do not exceed rent limits in accordance with Section 42 of the Internal Revenue Code, including, but not limited to, rent limits allowed by the Section 8 voucher program.
 - iii. Maintain the Permanently Affordable Units and property as an attractive, decent, and safe living environment in compliance with all state and local building codes and requirements.
 - iv. Maintain the following security deposit standards:
 - a. Security deposits may be equal to no more than one-half month's rent for all prospective tenants, except as provided in section b below;
 - b. For prospective tenants with conditional credit, limited rental histories, or other limiting factors that would negatively affect such tenant's ability to rent, security deposits may be equal to one-half month's rent with a cosigner, or, if no cosigner, a security deposit may equal no more than one month's rent;
 - c. For units and/or tenants with rental payments guaranteed through an operating subsidy (e.g. Housing Choice Vouchers, VASH Vouchers, or Project-Based

Vouchers), a security deposit equal to a maximum of one-half month's rent may be required, regardless of conditional credit, limited rental history, or other limiting factors that would negatively affect such relevant tenant's ability to rent; a cosigner shall not be required for such units and/or tenants.

- v. Submit a signed affidavit certifying Owner's Certificate of Continuing Compliance with this Agreement, or comparable report acceptable to the City, to the CDD by February 10th of each year for desk review and approval.

The City may require additional reporting to demonstrate ongoing compliance with the requirements of this Agreement.

SAMPLE