

LAND USE RESTRICTION AGREEMENT
FOR LOW-INCOME HOUSING TAX CREDIT

Return to: GENERAL COUNSEL
WHEDA
PO BOX 1728
MADISON WI 53701-1728

PIN: _____

Drafted By: Mickey N. Conrad, General Counsel
Wisconsin Housing and Economic
Development Authority
P.O. Box 1728
Madison, WI 53701-1728

SAMPLE

(Borrower's Name)
(Project Name)
(Project Address)
(City, Town, Wisconsin Zip)
LIHC #

THIS LAND USE RESTRICTION AGREEMENT (the "Agreement") dated as of _____, _____, is by and between _____, a Wisconsin _____ (the "Owner") and the WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY, a public body corporate and politic, located at 201 West Washington Avenue, Suite 700, P. O. Box 1728, Madison, Wisconsin 53701-1728 (the "Authority").

WITNESSETH:

WHEREAS, the Owner is or shall be the owner of a ___()-unit rental housing development (consisting of one (1) manager's unit which has been excluded by the Owner from eligibility for tax credit under IRS ruling 92-61, _____ () tax credit units, and _____ () market-rate-rent units). The development is located on lands in the City of _____, County of _____, State of Wisconsin, more particularly described in Exhibit A hereto, known as _____ (LIHC # _____ and BINs: _____, and _____) (the "Project"); and

WHEREAS, the Project consists of the following buildings:

WHEREAS, the Authority has been designated by the Governor of the state of Wisconsin as the housing tax credit agency for the state of Wisconsin for the allocation of low-income housing tax credits; and

WHEREAS, the Owner has applied to the Authority for an allocation of low-income housing tax credits to the Project; and

WHEREAS, the Owner and the Project must continuously comply with Section 42 and other applicable sections of the Internal Revenue Code of 1986, as amended (the "Code") and the Treasury Regulations thereunder or under the Internal Revenue Code of 1954 as in effect on the date of enactment of the Code; and

WHEREAS, compliance by Owner and the Project with Section 42 of the Code is in large part within the control of the Owner; and

WHEREAS, the Authority is unwilling to allocate low-income housing tax credits to the Project unless the Owner shall, by entering into this Agreement, consent to be regulated by the Authority in order that the Authority may enforce the occupancy restrictions and other covenants, terms and conditions of this Agreement in accordance with the Code and the regulations promulgated thereunder; and

WHEREAS, the Owner has represented to the Authority in the Owner's Low-Income Housing Tax Credit Application (the "Application") that Owner shall lease certain units in the Project to individuals or families whose income meets certain specified requirements as determined in accordance with the Code.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Owner and the Authority agree as follows:

1. Definitions. All words and phrases used in this Agreement, defined in the Code or the regulations promulgated thereunder, and not defined herein, shall have the meanings assigned to such words and phrases by the Code or such regulations.

2. Representations, Covenants and Warranties of the Owner. Owner makes the following representations and warranties to induce the Authority to enter into this Agreement and further represents, warrants and covenants that:

a. The Owner has the full legal right, power and authority to execute and deliver this Agreement and to perform all the undertakings of the Owner hereunder.

b. The Owner has good and marketable title to the Project.

c. The Project constitutes and will constitute residential rental property, as defined in Section 42 of the Code and the regulations promulgated thereunder, the rental units of which will be rented or available for rental on a continuous basis to members of the general public. The Project consists of one or more proximate buildings or structures containing one or more similarly constructed accommodations containing separate and complete facilities for living, sleeping, eating, cooking and sanitation which are to be used on other than a transient basis and facilities which are functionally related and subordinate to such accommodations. No actions will be taken by the Owner which will in any way impair the use of the Project therefor.

d. The Owner will not knowingly take or permit to be taken any action, which would have the effect, directly or indirectly, of causing the Project to be in noncompliance with Section 42 of the Code and the regulations promulgated thereunder.

e. The Owner shall comply with all federal and state fair housing laws as now or hereafter in effect and shall not discriminate upon any basis prohibited by law in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

f. The Owner shall not:

(i) demolish any part of this Project or substantially subtract from any real or personal property of the Project; or

(ii) permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement.

(iii) refuse to lease a unit to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.

g. The Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

h. If the Owner becomes aware of any situation, event or condition, which would result in noncompliance of the Project or the Owner with Section 42 of the Code or the regulations thereunder, the Owner shall promptly give written notice thereof to the Authority.

i. All units of the Project occupied by Qualifying Tenants shall be of comparable quality to other units in the Project.

j. Owner represents that the "applicable fraction" (as defined in Section 42(c) of the Code) for the Project is, as of the date hereof, _____%, and covenants that the applicable fraction shall not fall below such percentage while the occupancy restrictions set forth in Section 4 of this Agreement are in effect.

k. Owner warrants that the Project complies in all respects with Section 42 of the Code and the regulations promulgated thereunder and covenants that the Project shall continue, during the term of this Agreement, to comply in all respects with such Section and regulations. Owner warrants that all information heretofore supplied by Owner to the Authority in connection with Owner's Application is true and correct in all respects. The Owner's Application and accompanying attachments are incorporated herein by reference and made a part hereof.

l. The tax identification number of Owner is _____.

m. The Project was placed in service (as defined in Section 42 of the Code) on the following dates:

Building 1: _____, 199__; and
Building 2: _____, 199__.

n. The Owner covenants that it shall not dispose to any person any portion of the Project unless all of the Project is disposed of to such person.

o. The Owner covenants that it shall neither (i) evict or terminate the tenancy (other than for good cause) of an existing tenant of any low-income unit or (ii) increase the gross rent with respect to any such unit not otherwise permitted by Section 42 of the Code.

p. The Owner covenants and agrees that the Owner shall pay all reasonable monitoring fees established by the Authority from time to time pursuant to the Authority's responsibility for monitoring compliance with this Agreement and the Code.

3. Term of Restrictions.

a. The term of the occupancy restrictions set forth in Section 4 of this Agreement shall:

(i) commence upon the first day of the taxable year in which the Project is placed in service (or, if Owner has elected under Section 42(f)(1)(B) of the Code to have the credit period begin in the succeeding taxable year, then upon the first day of such succeeding taxable year); and

(ii) end on the earlier of: (a) the last day of the twenty-ninth (29th) taxable year following the taxable year described in Section 3.a.(i); or (b) the date the Project is acquired by foreclosure or instrument in lieu of foreclosure. If, however, the Project is acquired by foreclosure or instrument in lieu of foreclosure, and at any time subsequent to such event during the period ending upon the last day of the twenty-ninth (29th) taxable year following the taxable year described in Section 3.a. above the Owner or a related person (as defined in the Code) of the Owner acquires an ownership interest in the Project, then the occupancy restrictions shall be revived for the period of time in which the Owner or such related person continues to hold such interest. The requirements of this Section 3.a. shall be deemed to be "more stringent requirements" within the meaning of the last sentence of Section 42(h)(6)(E)(i) of the Code.

b. Notwithstanding the termination of occupancy restrictions and this Agreement under Section 3.a.(ii)(b), Owner agrees that no such termination shall be construed to permit, before the close of the three (3)-year period following such termination, either the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or any increase in the gross rent with respect to such unit. The covenants set forth in this Section 3.b., and the right granted to the Authority and those persons identified in Section 5.f. hereof hereunder to enforce the same, shall survive termination of this Agreement for such three (3)-year period.

c. If the Owner is proposing a lease-purchase project, and wishes to sell the low-income unit(s) to Qualifying Tenant(s) (as applicable, according to the minimum set-aside requirement election chosen by Owner on IRS Form 8609 and elections made in Section 4 of this Agreement) at the end of the 15-year compliance period the statement, below should be checked:

 N/A Yes, the Owner is proposing a lease-purchase project and will follow the guidelines prescribed in Section 42(i)(7) of the Code.

The Authority will approve such proposal, and the Owner's waiver committed to above will terminate upon sale of the unit(s) to a Qualifying Tenant. The Owner must continue to rent the unit(s), however, according to their commitment above, if the Owner cannot sell the unit(s) to a Qualifying Tenant for any reason at the end of the 15-year compliance period.

4. Occupancy Restrictions. The Owner represents, warrants and covenants that:

a. Pursuant to the Code, units in the Project shall be occupied (or treated as occupied as provided herein) by individuals or families whose income is the percent or less of area median gross income (including adjustments for family size) (collectively, the "Qualifying Tenant"), as follows: _____ **units @ 30%**; _____ **units @ 40%**; _____ **units @ 50%**; and _____ **units @ 60%**. Said units (the "Low-Income Units") shall be rent restricted as provided in Subsection 4.e. hereof. The determination of whether an individual or family is a Qualifying Tenant shall be made at least annually on the basis of the current income of such Qualifying Tenant(s). Any unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as if occupied by a Qualifying Tenant if such unit continues to be rent restricted; provided that should such Qualifying Tenant's income subsequently exceed 140% of the applicable income limit, such tenant shall no longer be a Qualifying Tenant, if after such

determination of income, but prior to the next determination, any residential unit of comparable or smaller size is rented to a tenant who is not a Qualifying Tenant.

b. As a condition to occupancy, each person who is intended to be a Qualifying Tenant shall be required to sign and deliver to the Owner an Income Certification in a form provided by the Authority, which form may change from time to time (the "Income Certification"). In addition, such person shall be required to provide whatever other information, documents or certifications are deemed necessary by the Authority to substantiate the Income Certification.

c. The form of lease to be utilized by the Owner in renting any units in the Project to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Income Certification or the failure by such tenant to execute an Income Certification annually.

d. Income Certifications will be maintained and accessible to the Authority with respect to each Qualifying Tenant who resides in a Project unit, and the Owner will, promptly upon request, file a copy thereof with the Authority.

e. All low-income units shall be "rent restricted" units within the meaning of Section 42(g)(2) of the Code, and shall satisfy the requirements of Section 42(i)(3) of the Code.

5. Enforcement.

a. The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Authority to inspect any books and records of the Owner regarding the Project and with respect to the incomes of Qualifying Tenants which pertain to compliance with the provisions of this Agreement and Section 42 of the Code, and the regulations promulgated thereunder.

b. Owner shall submit any other information, documents or certifications requested by the Authority which the Authority shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of this Agreement and Section 42 of the Code, and the regulations promulgated thereunder, or reasonably necessary to assist the Authority in carrying out its responsibilities as a "housing credit agency" under Section 42 of the Code or the regulations promulgated thereunder or pursuant to any agreement between the Authority and the United States Department of the Treasury with respect thereto.

c. The Owner covenants that it will not knowingly take or permit any action that would result in a violation of this Agreement or of the requirements of the Code or the regulations promulgated thereunder. Moreover, Owner covenants to take any lawful action (including amendment of this Agreement as may be necessary, in the opinion of the Authority) to cause the Project to comply with the Code and the regulations promulgated thereunder.

d. If any violation of this Agreement by Owner is not corrected to the satisfaction of the Authority within the period of time specified by the Authority, which shall be at least thirty (30) days after the date notice of default to the Owner is mailed, or within such further time as the Authority determines is necessary to correct the violation, but in any case not to exceed any limitations set by the Code or the regulations promulgated thereunder, then the Authority shall have the right, without further notice, to declare a default under this Agreement, in which case the Authority shall have the right to apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement or any other remedies at law or in equity or any such other action as shall be necessary or

desirable so as to correct noncompliance with this Agreement. Owner hereby acknowledges that the Authority and the other beneficiaries of this Agreement hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

e. Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the Authority and all persons interested in Project compliance under Section 42 of the Code and the regulations promulgated thereunder. The Authority may conclusively rely upon statements, certificates and other information provided by the Owner and the Qualifying Tenants, and upon audits of the books and records of the Owner or the Project.

f. In addition to the rights granted hereunder to the Authority to enforce the terms of this Agreement, all individuals who meet the income limitations applicable to Qualifying Tenants as set forth either in Section 4.a. hereof or in Section 42(g) of the Code, whether prospective, present or former occupants of the Project, shall have the right to enforce in any Wisconsin court the requirements set forth either in Section 2.j. hereof or in Section 42(h)(6)(B)(i) of the Code.

g. To the extent that any provision of this Agreement conflicts with or is more or less restrictive than any provision of the Code or the regulations promulgated thereunder that applies to the Project, the more restrictive provision shall control.

6. Covenants Run With the Land; Successors Bound. This Agreement shall be recorded in the real property records of the county where the Project is located. This Agreement shall run with the land and bind the Owner and its successors and assigns and all subsequent owners of the Project and all holders of any other interest therein.

7. Interpretation. Any terms not defined in this Agreement shall have the same meaning as terms defined in Section 42 of the Code and the regulations promulgated thereunder. As used in this Agreement, references to "the Code and the regulations promulgated thereunder" shall refer to the Code, all regulations, revenue rulings, revenue procedures and interpretative opinions or rulings promulgated or issued thereunder, now in effect or as the same may be in the future amended, promulgated or issued from time to time.

8. Amendment. This Agreement may be amended only in writing as mutually agreed by the Owner and the Authority. Notwithstanding the foregoing, all provisions of Code Section 42(h)(6), as amended from time to time, which must be included in this Agreement in order to cause this Agreement to be an "extended low-income housing commitment" under Section 42 of the Code, are and shall be expressly incorporated herein by this reference. Any such provision shall be enforceable, in state court or otherwise, only by those persons who must have the right to enforce such provision in order to cause this Agreement to be an "extended low-income housing commitment" under Section 42.

9. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof. All provisions of this Agreement shall be construed wherever possible in a manner that does not conflict with the Code. To the extent any such conflict exists, the Code shall prevail.

10. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, 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 Authority: Wisconsin Housing and Economic
 Development Authority

ATTENTION: General Counsel
201 West Washington Avenue, Suite 700
P.O. Box 1728
Madison, Wisconsin 53701-1728

To the Owner:

The Authority, 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. If the address of the Owner has changed from that given above or subsequently designated under the previous sentence, the Authority may conclusively presume that the address of the Owner for purposes of this Section 10 is the address to which property tax bills for the Project are delivered.

11. Governing Law. This Agreement shall be governed by the laws of the state of Wisconsin and, where applicable, the laws of the United States of America.

12. Project Noncompliance. If the Owner or the Project fails to comply with this Agreement or with the Code, and the regulations promulgated thereunder beyond any applicable cure period, the Authority may, in addition to all of the remedies provided under this Agreement or by law or in equity, request the Internal Revenue Service to find the Project ineligible for low-income housing tax credits and to immediately commence recapture of the tax credits heretofore allocated to the Project.

13. Release. Owner hereby releases the Authority from any claim, loss, demand or judgment arising out of the allocation of low-income housing tax credits to the Project, the recapture of such credits under the Code, the decertification of the Project, or the exercise in good faith by the Authority of any rights or remedies granted to the Authority under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized representatives, as of the day and year first written above.

By: _____

WISCONSIN HOUSING AND ECONOMIC
DEVELOPMENT AUTHORITY

By: _____
Mickey N. Conrad, General Counsel and
Assistant Secretary

EXHIBIT A

Legal Description

SAMPLE

COPY