

## OPTION AGREEMENT

THIS OPTION AGREEMENT (this "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between CITY OF MADISON, a municipal corporation (the "City"), and \_\_\_\_\_ the "Owner".

### WITNESSETH

WHEREAS, the City of Madison has provided incentives to facilitate the availability of affordable housing (Units); and

WHEREAS, the availability of such housing has assisted the Owner in the ability to purchase a unit; and

WHEREAS, the Owner has agreed to grant to the City an Exclusive Option to Purchase the Unit; and

WHEREAS, the capitalized terms used in this Option Agreement shall have the definitions given them in Land Use Restriction Agreement for the Unit.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency is hereby acknowledged, the City and the Owner agree as follows:

## **ARTICLE I** **OPTION TO PURCHASE**

**1.1 Grant of Option.** \_\_\_\_\_ hereby grants to the City the option to purchase (this "Option") the Unit known as \_\_\_\_\_, in the City of \_\_\_\_\_. A legal description of the real property on which the Unit is located is included as Exhibit A. This option shall include the right, title, and interest in the and to the exclusive Unit, including without limitation all buildings, structures, fixtures, equipment and other improvements comprising a portion of the property, and including any and all easements, rights-of-way, and rights appurtenant thereto.

**1.2 Assignment of Option.** The City may assign this Option to the City of Madison Community Development Authority (CDA) or to a non-profit entity designated by the City.

THIS SPACE RESERVED FOR RECORDING DATA

RETURN TO:

Barbara Constans, Grants Administrator  
CDBG Office, Room 280, Madison Municipal Bldg.  
215 Martin Luther King, Jr. Blvd.  
Madison, WI 53701

Tax Parcel No:

**1.3 Exercise of Option.** An Owner shall provide written notice to the Department of Planning and Development of intent to sell a Unit. Within fifteen (15) days of the date that the City receives written notice of the Owner's intent to sell the Unit or of a foreclosure action, the City or Assignee shall determine whether or not to exercise this Option. Notice to the Owner of the City's or Assignee's determination to exercise or decline to exercise this Option shall be deemed timely if personally delivered or postmarked with fifteen (15) days of receipt of Owner's intent to sell. Exercise of this Option requires that the City or Assignee close on the purchase within thirty (30) days of the City's receipt of notice of Owner's intent to sell, or the City's or such Assignee's exercise of the Option shall be null and void. If the initial sale of a Unit is from the CDA or a non-profit entity that has a buy-back provision or a ground lease as part of its specific program operation, the Unit shall not be subject to an exercise of the exclusive option to purchase by the City until such time as the CDA or non-profit entity determines not to buy back the Unit.

**1.4 Termination of Option.** If the City or Assignee does not exercise this Option pursuant to the requirement in Section 1.3 above, or fails to close within thirty (30) days as required therein, this Option shall expire.

**1.5 Purchase Price.** Except as set forth in Article 4.8, the total purchase price to be paid by the City or Assignee for the Unit shall be the appraised value of the Unit at the time the City received notice of intent to sell.

## **ARTICLE II** **PAYMENT OF FEES**

**2.1 Recording Fees.** Owner shall pay all recording fees for recording this Option Agreement, and any recording fees for clearing title to the Unit of any liens or mortgages at the time of transfer. The City or Assignee shall pay all recording fees for recording the deed conveying the Unit to the City or assignee.

**2.2 Transfer Taxes.** The City or Assignee shall pay any transfer taxes payable in connection with the transfer of the Unit to the City or Assignee.

**2.3 Other Closing Costs.** In addition to the above costs, the City shall pay all costs related to any inspections or reports ordered by the City and the premium for any title insurance policy desired by the City.

**2.4 Proration of Costs.** The following items shall be prorated at closing: real estate taxes, rents, private and municipal charges, and owner's association assessments. The proration shall be through the date prior to closing.

## **ARTICLE III**

### **CLOSING**

The closing of the transfer of the Unit to the City shall be as follows:

**3.1 Time and Place.** The closing shall take place at the place designated by the City or Assignee on a date and at a time agreed upon by the parties within the time frame set forth in Section 1.3 above.

**3.2 Owner's Obligations.** At the closing the Owner shall do the following:

(a) Deed. Execute, acknowledge and deliver to the City or Assignee a quit claim deed (the "Deed") conveying title to the Unit.

(b) Wisconsin Transfer Tax Return. Execute and deliver to the City or Assignee a Wisconsin real estate transfer return, if required.

(c) Delivery of Possession. Deliver possession of the Unit to the City or Assignee, subject to the rights of any tenants or other parties with contractual rights to use or occupy all or any part of the Unit under agreements whose terms survive the expiration of the Owner's interest in the Unit.

(d) Other Documents. Execute and deliver to the City or Assignee any other documents necessary to complete the transfer contemplated hereby.

(e) Pay Costs. Pay all liens, encumbrances and other indebtedness affecting the Unit, as well as all fees and costs described in Article II, above, which are the Owner's obligation to pay (collectively the "Costs").

**3.3 City's or Assignee's Duties.** At the closing, the Owner shall not receive the entire Purchase Price for the Unit, but instead shall receive cash at closing in accordance with the following provisions:

The City or Assignee shall pay The Owner in cash a portion of the Purchase Price, determined by the following formula:

The appraised value of the Unit minus an amount equal to the City percentage share of the Unit value<sup>1</sup> times ninety-five percent (95%) of the appraised value minus any costs due under Articles II and III above. (see below)

**Appraised value - [City percentage share of the Unit value x (.95 x Appraised value)] - costs due under Articles II and III above.**

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<sup>1</sup> The City percentage share of Unit value is equal to the percentage represented by the difference the appraised value and the sales prices divided by the appraised value.

**ARTICLE IV**  
**GENERAL PROVISIONS**

**4.1 Entire Agreement.** This document shall inure to the benefit of and shall bind the parties hereto, their respective heirs, executors, successors or assigns.

**4.2 Governing Law.** This Agreement shall be subject to and governed by, and construed in accordance with, the laws of the State of Wisconsin. Nothing herein shall be construed to cause any party hereto to perform any act in violation of law.

**4.3 Notices.** Any notice required hereunder shall be given in writing, signed by the party giving notice, personally delivered or mailed by certified or registered mail, return receipt requested, to the parties' respective addresses as set forth below:

To the City:                   City Clerk  
                                      City of Madison  
                                      Room 103, City-County Building  
                                      210 Martin Luther King, Jr. Blvd.  
                                      Madison WI 53709

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

To Owner:                     \_\_\_\_\_  
                                      \_\_\_\_\_  
                                      \_\_\_\_\_  
                                      \_\_\_\_\_

Notice shall be deemed delivered (a) in the case of personal delivery, on the date when personally delivered; or (b) in the case of certified or registered mail, on the date when delivery is made to the party to whom notice is being given. Either party may change the address to which notice must be given by delivery of written notice thereof to the other party in accordance with this Section.

**4.4 Severability of Provisions.** If any one or more of the provisions contained in this Option Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Option Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained herein.

**4.5 Counterparts.** This Option Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

**4.6 Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Option Agreement.

**4.7 Further Assurances.** The parties each agree, at any time or from time to time at the written request of the other party, to sign and deliver such other instruments, notices, conveyances, agreements or other documents as may be reasonably requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Option Agreement.

**4.8 Judicial Foreclosure, Deed in Lieu of Foreclosure, and Trustee's Sale.** The provisions of Sec. 28.04(25) MGO are subordinate to any deed of trust or mortgage that is granted by the owner and secured in the first priority position by the inclusionary dwelling unit to the extent that any party, successor, or assignee who receives title to the inclusionary dwelling unit through a trustee's sale, judicial foreclosure sale, or deed in lieu of foreclosure with respect to such aforementioned deed of trust or mortgage or any private mortgage company that obtains title to an inclusionary dwelling unit shall receive title free and clear of any resale restrictions of this ordinance. The owner of any inclusionary dwelling unit shall provide notice to the Department of Planning and Development of any foreclosure action that is filed involving the inclusionary dwelling unit within thirty (30) days of the date on which the owner of the unit was served in a foreclosure action. At no time may the City or assignee exercise its option to purchase an inclusionary dwelling unit from the holder of a mortgage or deed of trust in first priority position for less than such holder's debt on the inclusionary dwelling unit. The City or its assignee shall have the right of first refusal that must be exercised within ninety (90) days after the property is listed for sale.

**Signatures appear on following page**

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

\_\_\_\_\_  
Owner

By: \_\_\_\_\_

**The City of Madison**

By: \_\_\_\_\_  
Barbara A. Constans on behalf of the  
CD Grants Supervisor

**ACKNOWLEDGEMENTS**

STATE OF WISCONSIN     )  
  ) SS.  
COUNTY OF DANE         )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2006, the above named \_\_\_\_\_, to me known to be the person who executed the foregoing instrument, and acknowledged the same on behalf of him/herself.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: \_\_\_\_\_

STATE OF WISCONSIN     )  
  ) SS.  
COUNTY OF DANE         )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2006, the above named Barbara Constans, Grants Administrator of the City of Madison, to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of said City.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION**