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Agreement for Covenants and Restrictions

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Title of Document (on/above line)

**PREPARER INFORMATION:**

Andrew Barden  
City Administrator  
124 W Court Ave, Winterset, Iowa 50273  
*515 462 1422*

**RETURN DOCUMENT TO:**

Andrew Barden  
City Administrator  
124 W Court Ave, Winterset, Iowa 50273  
*515 462 1422*

**AGREEMENT FOR COVENANTS AND RESTRICTIONS**

**Document prepared by, and  
after recording, please return to:**  
Rita C. Grimm, Chief Legal Counsel  
Iowa Economic Development Authority  
1963 Bell Avenue, Suite 200  
Des Moines, Iowa 50315  
(515) 348-6200

GRANTOR AND TAXPAYER: WWSA LLLP, \_\_\_\_\_  
\_\_\_\_\_

GRANTEE: THE CITY OF WINTERSET, \_\_\_\_\_  
\_\_\_\_\_

LEGAL DESCRIPTION:

LOTS 1-8 ACADEMY/ADMBLOCK 32

*Lots One (1) through Eight (8) in Block 32, Original Town of Winterset, Madison  
County, Iowa*

*and  
The alley running east and west through said block Thirty-Two (32)*

**AGREEMENT FOR COVENANTS AND RESTRICTIONS  
(DOWNTOWN HOUSING GRANT PROGRAM)**

THIS AGREEMENT FOR COVENANTS AND RESTRICTIONS ("Agreement"), effective as of \_\_\_\_\_, is between \_\_\_\_\_ The City of Winterset \_\_\_\_\_, (the "City"), and WHSA LLLP \_\_\_\_\_ (the "Owner").

WITNESSETH:

WHEREAS, the City received Downtown Housing Grant Program ("Program") funds from the Iowa Economic Development Authority ("IEDA"); and

WHEREAS, the City utilized the Program funds received from IEDA to assist Owner with its project to be located on the real estate described in **Exhibit A** hereto (the "Property") as identified in the Program application dated June 14<sup>th</sup>, 2022, and the Owner and the City have entered into a Development Agreement relating to the Project, dated June 19<sup>th</sup>, 2021, (the "Development Agreement"); and

WHEREAS, in accordance with the Program contract executed by the City and IEDA dated June 21<sup>st</sup>, 2021 ("the Contract") and the Development Agreement, the Owner is required to develop a housing unit or housing units, and is further required to comply with the requirements and covenants set forth therein; and

WHEREAS, pursuant to 2 C.F.R. 200.310-316, property, supplies, and equipment purchased with Grant Funds, must continue to be used consistent with the purpose for which it was purchased or improved or be subject to disposition procedures specified therein; and

NOW, THEREFORE, in consideration of the premises and for other valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS. As used in this Agreement, the following words and phrases shall have the following meanings unless the context otherwise requires:

"Housing Units" means those units contained on the Property that are occupied as permanent residences.

"Downtown Housing Grant Program" or "Program" means the grant program administered by IEDA to provide financial assistance for projects that support local downtown revitalization through new and renovated housing opportunities in communities under 30,000.

"IEDA" means the Iowa Economic Development Authority.

2. As a condition to receipt of Program Funds, and in order to help ensure compliance by the Owner and any future owner of the Project with the requirements and covenants set forth in the Contract and Development Agreement throughout the required period of time ("Enforcement Period") as set forth in the Contract and Development Agreement thereto, so as to maintain the housing units for which assistance has been provided through the Program and therefore protect the investment of the City and IEDA in the Project, and in order to give the City and IEDA the ability to fulfill its obligations under the Program to ensure such compliance, certain covenants and restrictions enforceable by the City must be placed on the real estate described in **Exhibit A** hereto governing the use of the Project, which covenants and restrictions shall run with the land and be binding on the Owner and its successors or assigns. The Owner, for itself and for its successors or assigns, makes the following covenants as to the use of the Project and the real estate described in **Exhibit A**:

(a) All of the Program Funds shall be spent on Eligible Costs of the Project described in the Contract, in accordance with the Project described in Exhibit A to the Contract;

(b) The Project shall be completed so as to provide the project benefits as required by and specified in the regulations and as referenced in the Contract;

(c) The Project shall constitute an eligible activity in compliance with the Program as described in the Contract, and the Owner shall comply with all of the Program requirements and shall own, operate and manage the Project as an eligible project **throughout the Enforcement Period ending effective December 31, 2031**;

(d) Throughout the Enforcement Period, the Project shall be continuously occupied as a permanent residence, except for reasonable periods required to fill a vacancy between occupants as determined by the city, and shall not be used as a short-term rental of fewer than six months in duration or used as other commercial property;

(e) Throughout the Enforcement Period, the Owner shall allow inspections of the Project to ensure continued compliance with all locally adopted and enforced building codes and standards, or, in the absence of any locally adopted and enforced building codes and standards, the requirements of the current Iowa State Building Code;

(f) Throughout the Enforcement Period, the City and Owner shall comply with all laws, guidance, rules and regulations applicable to the Program and Grant Funds, including but not limited to the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (March 11, 2021), specifically Subtitle M – Coronavirus State and Local Fiscal Recovery Funds, Section 9901 of the Act (“SLFRF”); Section 602(c) of the Social Security Act; all rules and regulations applicable to SLFRF, including but not limited to 2 CFR 200 and all appendices thereto, the Final Rules, and all rules and regulations described in U.S. Department of the Treasury Coronavirus State and Local Fiscal Recovery Fund Award Terms and Conditions attached hereto as Exhibit B; and all applicable Treasury or other federal guidance.

(g) In order to ensure compliance with the covenants in subparagraphs (d), (e), and (f) above, Owner shall submit to the City its annual certification of compliance with such covenant, together with documentation in form and substance satisfactory to the City evidencing compliance with such covenant; and

(h) The Owner shall comply with all the covenants set forth in the Development Agreement.

3. All the covenants herein shall run with the real estate described in **Exhibit A** hereto and the Project thereon and be binding upon the Owner and its successors or assigns for the Enforcement Period. To ensure compliance with the requirements of the Program, this Agreement shall not be terminated before December 31, 2031.

4. Notwithstanding the provisions of Section 3, such covenants shall cease to apply to the Project prior to the end of the Enforcement Period in the event of involuntary noncompliance therewith caused by a fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or action of a federal agency after the date of making of the Loan which prevents the City or its successors or assigns from enforcing the covenants, or condemnation or similar event, but only if, within a reasonable period, amounts received by the Grantor as a consequence of such event are used to provide a project which meets the requirements of the Program.

Notwithstanding the provisions of Section 4, if once the Project has been subject to foreclosure, transfer of title by deed in lieu of foreclosure or similar event, and at any time during the part of the Enforcement Period subsequent to such event, the Grantor or a related person to the Grantor obtains an ownership interest in the Project for tax purposes, the covenants herein shall once again run with the land described in Attachment A hereto and the Project thereon and be binding on the Grantor or such related person and their respective successors or assigns for the remainder of the Enforcement Period.

5. The Owner shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in such manner and in such places as the City may reasonably request, and shall pay all fees and charges incurred in connection therewith.

6. This Agreement may be amended only by an amendment in writing executed by the parties hereto and properly recorded in the County Recorder’s office.

7. Except for the rental of units in the Project to tenants, the Owner hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project or any interest therein without obtaining the prior written consent of the City, which shall be conditioned solely upon receipt of evidence satisfactory to the City that the Owner’s purchaser or transferee (i) has assumed in writing and in full the Owner’s duties and obligations under this Agreement and all related documents thereto; (ii) has the financial capability to carry out such obligations; and (iii) is knowledgeable in the operation and management of facilities similar to the Project facilities. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this paragraph may be ineffective to relieve the Owner of its obligations under this Agreement and all related documents thereto.

8. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Agreement, and if such default remains uncured for a period of 20 Business Days, provided, however, that if a non-monetary default cannot reasonably be cured within 20 Business Days and the Owner commences a cure within 20 Business Days and proceeds in good faith to effect such cure thereafter, the cure period with respect to such breach or default shall be extended for up to an additional 30 Business Days, then the City may declare that the Owner is in default hereunder and may take any one or more of the following steps, at its option:

- (a) temporarily suspend making disbursements of Program Funds under this Agreement pending correction of the deficiency or default by the Owner;
- (b) require the immediate repayment of the Program Funds;
- (c) declare the Owner and its principals “not in good standing” with respect to the City;
- (d) cease making any further payments of Program Funds under this Agreement;

- (e) terminate this Agreement;
- (j) exercise any rights it may have under the Contract or Development Agreement; and
- (k) exercise any other rights and remedies that may be available under law or in equity.

No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage, or waive the right of the City to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

9. This Agreement shall be governed by the laws of the State of Iowa.

10. Any notice required to be given hereunder shall be given by registered or certified mail at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto:

City: 124 W Court Ave  
Winterset, Iowa 50273  
Attention: Andrew Barden

Owner: 1620 Pleasant Street  
Suite 123  
Des Moines, Iowa 50314  
Attention: Ryan Galloway

11. If any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

12. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

13. All the rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed by its duly authorized officers.

**OWNER:**

\_\_\_\_\_  
By: Michael Kiernan

Print Name: Michael Kiernan

Authority: Managing Member, Winterset High School Flats LLC., (the General Partner of WHSA LLLP)

STATE OF IOWA )

COUNTY OF Madison )

On this 26<sup>th</sup> day of June, 2024, in front of the undersigned notary public, in and for the State of Iowa, personally appeared Michael Kiernan, for WHSA LLP, a Limited Liability Limited Partnership organized in the State of Iowa, and that Michael Kiernan, as such officer, acknowledged the execution of said instrument to be the voluntary act of him/her and City of Winterset.



Samuel J. Anker  
Signature of Notary Public

STATE OF IOWA )

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, in front of the undersigned notary public, in and for the State of Iowa, personally appeared \_\_\_\_\_, the \_\_\_\_\_ for \_\_\_\_\_, a \_\_\_\_\_ organized in the State of Iowa, and that \_\_\_\_\_, as such officer, acknowledged the execution of said instrument to be the voluntary act of him/her and \_\_\_\_\_.

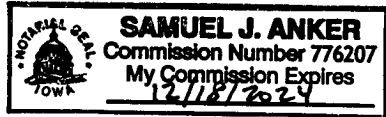
\_\_\_\_\_  
Signature of Notary Public

CITY:

By: [Signature]  
Print Name: Andrew Barden  
Authority: City Administrator, The City of Winterset

STATE OF IOWA )  
 )  
COUNTY OF Madison )

On this 26<sup>th</sup> day of June, 2024, in front of the undersigned notary public, in and for the State of Iowa, personally appeared Andrew Barden, the City Administrator for City of Winterset, a Municipality organized in the State of Iowa, and that Andrew Barden, as such officer, acknowledged the execution of said instrument to be the voluntary act of him/her and WHSA LLP



[Signature]  
Signature of Notary Public

STATE OF IOWA )  
 )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, in front of the undersigned notary public, in and for the State of Iowa, personally appeared \_\_\_\_\_, the \_\_\_\_\_ for \_\_\_\_\_, a \_\_\_\_\_ organized in the State of Iowa, and that \_\_\_\_\_, as such officer, acknowledged the execution of said instrument to be the voluntary act of him/her and \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

**EXHIBIT A**  
**LEGAL DESCRIPTION**

The following described real estate located in the City of Winterset, Madison County, Iowa:

~~LOTS 1-8 ACADEMY/ADMBLOCK 32~~

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*Lots One (1) through Eight (8) in Block 32, Original Town of Winterset,  
Madison County, Iowa*

*and*

*The alley running east and west through said block thirty-two (32)*