

LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT (this “LURA”) is made and entered into as of the _____ day of _____, _____ by and between **VMW PROPERTY OWNER, LLC** a Wisconsin LLC, 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”).

RETURN TO:

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

Tax Parcel No.:

This document was drafted by:
Matthew D. Robles, Assistant City Attorney,
City of Madison

RECITALS:

WHEREAS, Owner is the fee simple owner of the real property legally described on **Exhibit A**, which is attached hereto and incorporated by reference (the ***“Property”***); and

WHEREAS, as a university city, the City of Madison has a need for low-cost student housing; and

WHEREAS, the Owner intends to construct a mixed-use student housing development on the Property, which will include approximately 118 residential units and commercial space, as described in the Land Use Application and Letter of Intent from Owner to the City of Madison in Legistar File Number 90381 (the ***“Building”***). Pursuant to Section 28.071(2)(a)2.c. of the Madison General Ordinances (the ***“Downtown Height Ordinance”***), the Owner will include low-cost student housing in the Building, which will allow Owner to add additional stories to the Building; and

WHEREAS, the additional stories allow for additional rentable student housing, which provides a financial benefit that can be used by Owner to subsidize the low-cost student housing in the Building; and

NOW THEREFORE, in consideration of the LURA, the terms and conditions of this LURA, 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. Term. The Term of this LURA shall be Forty (40) years from the date of issuance of the certificate of occupancy for the Building, or that portion of the Building containing the housing. The restrictions described in this LURA 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 LURA. The construction of the Building and the receipt of a certificate of occupancy shall be preconditions to the Owner's obligations under this LURA. The Owner shall not be obligated to fulfill its obligations until both the construction of the Building is complete and a certificate of occupancy is duly issued.

2. Affordability.

A. Provision of Beds. Owner shall provide 34 of the Building's approximately 467 total beds to be rented subject to the Student Discount defined below (the ***“Low-Cost Beds”***). Low-Cost Beds shall be located in four-bedroom units leased to four individuals.

B. Student Discount. Low-Cost Beds shall be leased at a rent that is forty-five percent (45%) less than the market rate for a comparable bed in the Building, calculated as of the date a Qualified Student submits a completed rental application (the ***“Student Discount”***). For purposes of this Section, “market rate for a comparable bed in the Building” means the rent that the Owner is charging for a comparable bed at the time the Qualified Student submits a completed rental application. The Student Discount applies only to rent for a bed and shall not apply to any other

fees, costs, or charges under the rental agreement, including but not limited to application fees, parking, default rates, or damages.

C. **Equal Treatment.** Except for the Student Discount and the related modifications described herein, Qualified Students shall enter into the standard 12-month Project lease with the same terms, obligations, rights, amenities, and roommate options as market-rate tenants (i.e. Qualified Students may rent a Low-Cost Bed in a unit shared with market-rate tenants, and Owner may not limit Qualified Students to leasing only with other Qualified Students). If a Qualified Student relocates to another unit, the Student Discount shall continue to apply, and such student shall continue to count toward the Low-Cost Bed requirement. Notwithstanding the foregoing, the Owner shall not be required to lease a Low-Cost Bed to a Qualified Student if the Owner does not have an available bed in a unit that accommodates the Qualified Student's desired roommate group size and configuration; provided that any such limitation shall be applied in the same manner to market-rate applicants and is based solely on unit and bed availability.

D. **Eligibility Determination.**

- (i) The University of Wisconsin's Office of Student Financial Aid ("**UWOSFA**") and the City have entered into a Memorandum of Understanding ("**MOU**"), which is attached to this LURA as Exhibit B. Owner is not a party to the MOU, but shall comply with its terms by following UWOSFA's guidelines for determining an individual's eligibility to lease a Low-Cost Bed based on household income or other criteria (each individual determined to be eligible referred to herein as a "**Qualified Student**" and collectively the "**Qualified Students**") and by accepting Qualified Students referred to the Owner by UWOSFA. In the event UWOSFA ceases to provide referral services, Owner shall independently apply the same eligibility rules contained in the MOU at its own expense. If any provision of this LURA conflicts with or is inconsistent with any provision of the MOU, the terms of this LURA shall control and govern.
- (ii) A Qualified Student must (1) be enrolled at UW-Madison and (2) demonstrate financial need.
- (iii) UWOFSA shall provide the Student Need Certification for each student who consents in writing to such disclosure. Owner may rely on these certifications without further investigation.

E. **Application Requirements.** Qualified Students must meet all Project rental application requirements applicable to other tenants, except that (i) the guaranty requirement shall be waived, and (ii) the income requirement shall be proportionately adjusted to correspond to the Student Discount.

F. **Availability and Allocation.** Low-Cost Beds shall be made available to Qualified Students on a first-come, first-served basis. Owner shall use good faith efforts to market the availability of the Low-Cost Beds. Provided a sufficient number of Qualified Students are identified for housing at the Project, Owner shall be obligated to provide the required

number of Low-Cost Beds for each Lease Year. If, during any Lease Year, Owner fails to rent all of the Low-Cost Beds to Qualified Students because an insufficient number of Qualified Students who otherwise meet the rental application requirements have sought to rent the Low-Cost Beds (***“Insufficient Demand”***), and Owner has otherwise complied with the terms and conditions of the LURA, then Owner shall be deemed to have satisfied the Student Discount obligation at the Project, and shall be permitted to rent the remaining Low-Cost Beds to non-Qualified Students without application of the Student Discount during such Lease Year. In the event that in any Lease Year during the Term of this MOU, Owner is unable to satisfy its obligation to provide the Student Discount as a result of its failure to make good faith efforts to satisfy its obligations, the City shall be entitled to require Owner to add the deficient number of Low-Cost Beds (the ***“Make-Up Low-Cost Beds”***) to the number of Low-Cost Beds required for the next Lease Year.

G. **Continuing Eligibility.** Any Qualified Student who leases a Low-Cost Bed shall remain eligible for the Student Discount for the full lease term.

4. **Compliance.** Owner shall provide the Annual Report to the City (defined and described in Exhibit B) and shall comply with all obligations described in Exhibit B, Section 3, entitled “Property Owner Obligations.”

The City shall have the right, but not the obligation, to audit the Annual Report in a commercially reasonable manner as it chooses (the ***“Audit”***), but with the understanding that the City shall not create public records of student names as a result of during the Audit.

5. **Default.** In the first event of a default under the LURA, and subject to the provisions of Sections 8 and 9, due to the failure to provide sufficient Low-Cost Beds, Owner shall pay to the City an amount equal to the Student Discount multiplied by the deficient number of Low-Cost Beds (***“Low-Cost Bed Deficiency”***). Any repeated Low-Cost Bed Deficiency, or other form of Default, shall result in the City having the option to seek specific performance, or liquidated damages as provided herein.

6. **Liquidated Damages.** The City and Owner agree that the approval of the additional stories under Downtown Height Ordinance will result in the authorization to construct a Building that has additional stories and rentable space that is not otherwise allowed by the City’s ordinances. The harm to the City for failing to comply with City’s ordinances and the LURA would be difficult if not impossible to calculate, and, therefore, the parties agree that liquidated damages for willful uncured default shall be Eight Million Dollars (\$8,000,000). In the event Owner pays the liquidated damages set forth in this Section 6, this LURA shall automatically terminate upon such payment and a release, in form and substance sufficient to remove the land use restrictions set forth in this LURA, shall be recorded promptly thereafter. The City’s rights under this paragraph shall be in addition, and not cumulative, to all other rights and remedies at law or equity.

7. **Indemnification.** The Owner shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of

damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Owner's and/or its subcontractor's acts or omissions in the performance of this LURA, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees.

8. Meet and Confer. Whenever, during the term of the LURA, in advance of the payment of Liquidated Damages, and optionally upon any other default, any disagreement or dispute arises between the parties as to the interpretation of this LURA, or any rights or obligations arising hereunder, such matters shall be resolved, whenever possible, by meeting and conferring. The Owner shall produce, at the City's reasonable request, documents related to Qualified Students and Low-Cost Beds. Any party may request such a meeting by giving notice to the other; in which case such other party shall make itself available within seven (7) business days thereafter. If such matters cannot be so resolved within no more than ten (10) business days after the giving of such notice to confer, either party may proceed under any applicable remedy at law or in equity.

9. Opportunity to Cure. In the event Owner defaults in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Owner, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Owner, including expressly the specific enforcement hereof, recover the Liquidated Damages defined in Section 6. The City shall extend the cure period if the City determines, in its sole discretion, that the Owner has begun to cure the default and diligently pursues such cure, or, without further written notice to the Owner, declare the Owner in default. The cure period shall in no event be extended more than ninety (90) days.

10. Notices. Any notice, consent, waiver, request or other communication required or provided to be given under this LURA shall be in writing and shall be sufficiently given and shall be deemed given when delivered personally or when mailed by certified or registered mail, return receipt requested, postage prepaid, or when dispatched by nationally recognized overnight delivery service, in any event, addressed to the party's addresses below. If electing to utilize electronic mail, said emails shall be sent to the email addresses provided below with an active read receipt and shall include a statement that the electronic mail constitutes notice under the terms of this LURA.

If to City: City of Madison
 Office of Real Estate Services
 Economic Development Division
 PO Box 2983
 Madison, WI 53703
 ores@cityofmadison.com

with copy to:
 City Attorney
 City County Building, Room 401
 210 Martin Luther King, Jr. Blvd.
 Madison, WI 53703
 mroble@cityofmadison.com;
 and attorney@cityofmadison.com

If to Owner: _____

or to such party at such other address as such party, by ten (10) days prior written notice given as herein provided, shall designate, provided that no party may require notice to be sent to more than two (2) addresses. Any notice given in any other manner shall be effective only upon receipt by the addressee.

11. Application of Funds. Any funds received by the City pursuant to this LURA, shall be applied toward programs supporting housing initiatives 80% of which shall be allocated into the City's Affordable Housing Fund.

12. Compliance with Applicable Law. Owner shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including, without limitation, the Fair Housing Act (42 U.S.C. §§ 3601–3619) and the Americans with Disabilities Act (42 U.S.C. §§ 12101–12213).

13. No Third-Party Rights or Beneficiaries. This LURA is entered into solely for the benefit of the parties hereto and their respective successors and permitted assigns. Nothing in this LURA, express or implied, is intended to confer upon any other person or entity, including but not limited to employees of either of the parties, any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this LURA.

14. Miscellaneous.

A. **Modification.** No modification of any provision of this LURA will be binding upon the parties except as expressly set forth in a writing.

B. **Time is of the Essence.** Time is of the essence with respect to all payment provisions of this LURA.

C. **Binding Effect.** This LURA benefits the City, its successors and assigns, and binds Owner, its successors and assigns.

D. **Severability.** In the event any provision of this LURA is determined by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, this LURA and such provision shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this LURA, which shall remain in full force and effect.

E. **Governing Law, Venue, and Forum Selection.** This LURA shall be interpreted, construed, and enforced according to the laws of the State of Wisconsin, without regard to conflict of law principles. For any claim or suit or other dispute relating to this LURA that cannot be mutually resolved informally, the venue shall be Dane County, Wisconsin, and the parties agree

to submit themselves to the jurisdiction of a court of competent jurisdiction in said venue, to the exclusion of any other forum that may have jurisdiction over such a dispute according to any law.

F. **Counterparts.** This LURA may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this LURA may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this LURA may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this LURA may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this LURA, fully executed, shall be as valid as an original.

IN WITNESS WHEREOF, the Parties hereto have caused this LURA to be executed as of the date first written above.

[Signature Pages Follow]

OWNER:
VMW PROPERTY OWNER, LLC
a Wisconsin LLC

By: _____
(signature)

Name: _____
(print name and title)

State of _____)
)ss.
County of _____)

Personally came before me this _____ day of _____, 2025, the above named _____(name), _____(title) of **VMW Property Owner LLC**, a Wisconsin limited liability company, known to me to be the person who executed the above and foregoing instrument and acknowledged that they executed the foregoing instrument.

Notary Public, State of _____

(print name of notary)

My Commission expires: _____

[Owner Signature Page to LURA]

CITY OF MADISON
a Wisconsin municipal corporation

By: _____
Satya Rhodes-Conway, Mayor

By: _____
Lydia A. McComas, City Clerk

AUTHENTICATION

The signatures of Satya Rhodes-Conway, Mayor, and Lydia A. McComas, Clerk, of the City of Madison, are hereby authenticated on this _____ day of _____, 2025.

By: _____
Matthew Robles
Member of the Wisconsin Bar

Execution of this LURA by the City of Madison is authorized by Resolution Enactment No. RES-_____, File I.D. No. 90968, adopted by the Common Council of the City of Madison on _____.

[City signature page to LURA]

EXHIBIT A

Legal Description

[Legal description to be added]

EXHIBT B

MOU with UW Office of Financial Aid

[on following pages]