

Prepared by and after recording please return to:

North Dakota Housing Finance Agency
Attn: Planning and Housing Development
PO Box 1535
Bismarck, ND 58502-1535



Return to:

ND HOUSING FINANCE AGENCY
PO BOX 1535

BISMARCK ND 58504

County Recorder
McKenzie County
Watford City ND 58854
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496631

COUNTY RECORDER, MCKENZIE COUNTY, ND

I certify that this instrument was filed and recorded.

496631

Ann M. Johnsrud, County Recorder Fee \$28.00

By Ann M. Johnsrud Oct 31, 2016 02:21 PM



DECLARATION OF LAND USE RESTRICTIVE COVENANTS
HOUSING INCENTIVE FUND
PLANNING AND HOUSING DEVELOPMENT DIVISION

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS ("Declaration") is made this 20th day of October, 2016, by LSS Housing Watford City, LLC, a Limited Liability Company, ("Owner"), with a mailing address of 3911 20th Ave S, Fargo, ND 58103 and is binding upon the Owner's successors and assigns in interest, and is granted to the Industrial Commission of North Dakota acting as the North Dakota Housing Finance Agency ("NDHFA"), an instrumentality of the State of North Dakota, together with any successor to its rights, duties, and obligations, with an address at Post Office Box 1535, Bismarck, North Dakota, 58502-1535, as a condition precedent to the Owner being permitted to participate in the North Dakota Housing Incentive Fund ("HIF").

WHEREAS:

- A. Owner is the owner in fee simple of land and improvements used as a multifamily rental housing project located in McKenzie County, North Dakota, more particularly described on Exhibit A ("Land"), which Exhibit is by this reference made a part hereof at this place as though here fully set forth. The housing project is more commonly referred to as Watford City Apartments ("Project"); and
- B. The Owner applied to NDHFA for a loan of HIF funds, provided under the provisions of North Dakota Century Code chapter 54-17 and the HIF Allocation Plan as amended, and
- C. The HIF as administered by NDHFA, requires that as a condition to the making of the HIF loan requested by the Owner, that the Owner agree to execute, deliver and record with the Recorder of the County in which said Project is located, this Declaration in order to create certain covenants running with the land for the purpose of enforcing certain requirements which regulate and restrict the use, occupancy and transfer of the Project as set forth herein; and
- D. Owner, under this Declaration, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and

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are covenants running with the Project and the Land, for the Period of Affordability stated herein and binding upon all subsequent owners of the Project and the Land for such Period of Affordability, and are not merely personal covenants of the Owner. Therefore, in consideration of the premises, and of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Owner, Owner declares, covenants and agrees as follows:

SECTION 1 - DEFINITIONS

Area Median Income ("AMI") refers to the maximum household income limits as published by the United States Department of Housing and Urban Development and is based on the actual number of persons residing in the household.

Essential Service Worker is an individual employed by a city, county, school district, medical or long-term care facility, the state of North Dakota, or others as determined by NDHFA who fulfills an essential public service.

HIF Loan Documents include the application for HIF funding, the loan agreement, note, mortgage, and any other documents executed by the Owner in an effort to receive funding from HIF.

Period of Affordability is the number of years from the Project completion date as determined by NDHFA, which the Project is subject to this Declaration. Owner, at this place, confirms that the term of the Period of Affordability for this Project is to be a minimum of **Twenty (20)** years from the Project completion date which is defined to be upon issuance of the certificate of occupancy, certificate of substantial completion by an independent third party architect or other evidence of completion deemed acceptable to NDHFA.

SECTION 2- RECORDING AND FILING THESE COVENANTS WHICH RUN WITH THE LAND

Upon execution and delivery of this Declaration by the Owner, NDHFA shall cause this Declaration and any amendments hereto to be forthwith recorded with the County Recorder in McKenzie County, North Dakota, and shall pay all fees and charges incurred in connection therewith.

Owner intends, declares and covenants, on behalf of Owner and all future owners and operators of the Project during the Period of Affordability, that this Declaration and the covenants and restrictions set forth herein which regulate and restrict the use, occupancy and transfer of the Project and the Land shall be and are covenants running with the Project and Land, encumbering the Project and Land for the Period of Affordability hereof, binding upon the Owner's successors in title and all subsequent owners and operators of the Project and the Land, and are not merely personal covenants of the Owner, and shall bind the Owner, and the benefit shall inure to the NDHFA and any past, present or prospective tenants of the Project, and the NDHFA respective successors and assigns during the Period of Affordability hereof. The Owner agrees that any and all requirements of the laws of the State of North Dakota to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to have been satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that these restrictions run with the land. For the Period of Affordability hereof, each and every contract, deed or other instrument hereinafter executed, encumbering or conveying the Project or any portion thereof shall expressly provide that such agreement is subject to this Declaration, provided however, that covenants contained herein shall survive and be effective regardless of whether such document provides that such instrument is subject to this Declaration.

SECTION 3 - REPRESENTATIONS, FURTHER COVENANTS AND WARRANTIES OF THE OWNER



The Owner hereby represents covenants and warrants as follows:

- A. The Owner is a **Limited Liability Company** formed under the laws of the State of **North Dakota** and is qualified to transact business under the laws of North Dakota. That Owner has the power and authority to own its properties and assets and to carry on its business as now being conducted, and has the full legal right, power and authority to execute and deliver this Declaration.
- B. There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by the Declaration) or would materially adversely affect its financial condition.
- C. The Owner agrees to comply fully with the requirements of the HIF as it may from time to time be amended or modified.
- D. During the term of this Declaration, the Owner covenants, agrees and warrants that each Restricted Unit, as defined in Section 4 of this Declaration, is and will remain suitable for occupancy.

SECTION 4 – ESSENTIAL SERVICE WORKERS, TENANT INCOME LIMITS AND RENT LIMITS

HIF requires that a certain number of units in the Project be reserved for households at or below specified income levels, for Essential Service Worker households and that the rents charged for those units ("Restricted Units") be set at or below specified levels. The Owner represents, warrants, and covenants that throughout the Period of Affordability hereof and in order to comply with HIF, that:

- A. **Eight (8)** units in the Project must be occupied by tenants with total household income at or below **30%** of the AMI for the county in which the Project is located, as published by the United States Department of Housing and Urban Development. The maximum rent charged for these units shall be 30% of **30%** of the AMI, calculated based on an assumed 1.5 persons per bedroom. If any utilities are paid directly by the tenant, the maximum rent must be reduced by the applicable utility allowance amount as approved by the Agency.
- B. In addition to the Restricted Units identified in section 4(A) of this Declaration, an additional **Thirty Nine (39)** units in the Project must be occupied by tenants with total household income at or below **140%** of the AMI for the county in which the Project is located, as published by the United States Department of Housing and Urban Development. The maximum rent charged for these units shall be 30% of **80%** of the AMI, calculated based on an assumed 1.5 persons per bedroom. If any utilities are paid directly by the tenant, the maximum rent must be reduced by the applicable utility allowance amount as approved by the Agency.
- C. Of the **Forty Seven (47)** units identified above with rents at or below 140% AMI, **Thirty Nine (39)** must be occupied by Essential Service Worker households as that term is defined in the 2015-17 Housing Incentive Fund Allocation Plan.
- D. Tenant eligibility for Restricted Units will be determined by the Owner at the time of occupancy and re-examined at least annually. Tenants who no longer qualify under the HIF income restrictions and/or Essential Service Worker restrictions (at the time of annual recertification) can still be considered to be occupying a HIF Restricted Unit until replaced by an Essential Service Worker eligible and/or income eligible household in a comparable unit. Rents for the over-income household will be limited to applicable HIF rent limits until the replacement unit is occupied.

SECTION 5 - TERMINATION

The Project will remain affordable for not less than the minimum Period of Affordability provided in Section 1, without regard to the transfer of ownership, except upon foreclosure by NDHFA, or transfer in lieu of foreclosure. In the event of such foreclosure or transfer in lieu of foreclosure the Period of Affordability shall terminate. However, if at any time following the transfer by foreclosure or transfer in lieu of foreclosure, but still during the Period of Affordability the Owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed 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 Project, the Period of Affordability shall be revived according to its original term.

SECTION 6 - DEFAULT

- A. **Enforcement and Remedies.** If Owner defaults in the performance of any of its obligations under this Declaration or breaches any covenant, agreement or restriction set forth herein or in the HIF Loan Documents, and if such default remains uncured for a period of sixty (60) days after notice thereof shall have been given by NDHFA (or for an extended period approved in writing by NDHFA if breach stated in such notice can be corrected but not within such 60 day period, unless Owner does not commence such correction or commences such correction within such 60 day period but thereafter does not diligently pursue the same to completion within such extended period), NDHFA shall be entitled to apply to any court having jurisdiction of the subject matter for specific performance of the Declaration, for an injunction against any violation of the Declaration, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Declaration, or for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's default. NDHFA shall be entitled to its reasonable attorneys' fees in any such judicial action in which NDHFA shall prevail, except where prohibited by N.D.C.C. §28-26-04.
- B. **Remedies Cumulative.** Each right, power and remedy of NDHFA provided for in this Declaration, now or hereafter existing at law or in equity by statute, or in the HIF Loan Documents or other related documents, or otherwise, shall be cumulative and concurrent and shall be in addition to every other right, power remedy provided for in this Declaration, or hereafter existing at law or in equity or by statute or in the HIF Loan Documents or otherwise, and the exercise or beginning of the exercise by NDHFA of any one or more of the rights, powers or remedies provided for in this Declaration or now or hereafter existing at law, in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by NDHFA of any or all such other rights, powers or remedies.

C. SECTION 7 - MISCELLANEOUS

- i. **Successors Bound.** This Declaration and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and NDHFA and their respective grantees, heirs, personal representatives, successors and assigns of all or any of them, or any interest(s) therein for the Period of Affordability as specified herein above in Section 1.
- ii. **Additional Documents.** The Owner shall submit any other information, documents or certifications requested by the NDHFA which NDHFA deems reasonably necessary to substantiate the Owner's continuing compliance with the HIF program.
- iii. **Reasonable Access.** The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Agency, to inspect any books

and records of the Owner regarding the Project with respect to the incomes and rents of tenants in Restricted Units, including physical inspections of the Project to ensure compliance with HUD Housing Quality Standards or other applicable habitability standards.

- iv. Severability. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.
- D. Notices. All notices to be given pursuant to this Declaration 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 herein above set forth, or to such other place as a party may from time to time designate in writing to the other(s).
- E. Applicable Laws. This agreement is governed by the laws of the state of North Dakota.
- F. Assignment or Transfer. Owner may not assign or otherwise transfer or delegate any right or duty without the express written consent of NDHFA.
- G. Waivers. This agreement may not be waived, altered, modified, supplemented, or amended, in any manner, except by written agreements signed by both parties.
- H. Compliance. Owner agrees to comply with all applicable laws, rules, regulations, and policies, including but not limited to those relating to non-discrimination, accessibility and civil rights.
- I. Indemnity. Owner shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this agreement, and shall conduct its activities so as not to endanger any person or property. Owner agrees to indemnify and save and hold harmless the NDHFA, its officers, directors, employees, and agents, and from any and all claims of any nature, including claims of employees or agents of the Owner, resulting from or arising out of the activities of Owner, its subcontractors, agents, officers, or employees.


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Signature pages follow.

County Recorder
McKenzie County
Watford City ND 58854

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IN WITNESS WHEREOF, the Owner has caused this Declaration to be signed by its duly authorized representatives, as of the 20 day of October, 2016.

OWNER: LSS Housing Watford City III, LLC



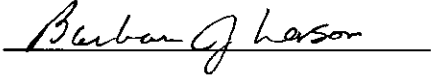
By: Lutheran Social Services Housing, Inc.
Its: Authorized Agent

By: Jessica Thomasson
Its: President

ACKNOWLEDGEMENT

State of North Dakota
County of Cass

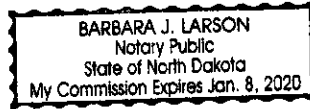
The foregoing instrument was acknowledged before me this 20 day of October, 2016 by Jessica Thomasson, President of Lutheran Social Services Housing, Inc., the Authorized Agent of LSS Housing Watford City III, LLC a North Dakota limited liability company, on behalf of the limited liability company.



(Seal)

Notary Public

My Commission Expires: JAN 8, 2020



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EXHIBIT A

Lots 7, 8, 9, 10, 11, 12 and 17, Block 2, Cherry Creek Second Addition to the City of Watford City, McKenzie County, North Dakota

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Initial

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