

**BK: 2017 PG: 2559**  
**Recorded: 8/16/2017 at 9:31:47.0 AM**  
**Fee Amount: \$27.00**  
**Revenue Tax:**  
**LISA SMITH RECORDER**  
**Madison County, Iowa**

**RESTRICTIVE USE COVENANT**

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**RECORDER'S COVER SHEET**

|                              |                                                                                                                 |
|------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <b>Preparer Information:</b> | USDA, Rural Development<br>511 W. 7 <sup>th</sup> Street<br>Atlantic, IA 50022-1429<br>(712) 243-2107 Ext. 4365 |
| <b>Taxpayer Information:</b> | RD ESW, LLC<br>12289 Stratford Dr.<br>Clive, IA 50325                                                           |
| <b>Return Document To:</b>   | USDA, Rural Development<br>511 W. 7 <sup>th</sup> Street<br>Atlantic, IA 50022-1429<br>(712) 243-2107 Ext. 4365 |
| <b>Grantors:</b>             | Rural Housing Service, USDA                                                                                     |
| <b>Grantees:</b>             | RD ESW, LLC                                                                                                     |
| <b>Legal Description:</b>    | See Page <u>5</u> , Exhibit A                                                                                   |

**RESTRICTIVE-USE COVENANT - TRANSFEREES ASSUMING AGENCY LOANS**  
**(Including loans approved prior to December 21, 1979) (§3560.662(b)(3))**

**WHEREAS**, RD ESW, LLC, 12289 Stratford Dr., Clive, IA 50325 "Owner", or a predecessor in interest, received a loan from the United States of America, acting through the Rural Housing Service in Rural Development (Agency), U.S. Department of Agriculture which was evidenced by an assumption agreement(s) dated August 15, 2017, in the original amount of \$962,603.60 and secured by a certain Deed of Trust or Mortgage dated August 15, 2017, and recorded in the land records for the County of Adair and Madison for the purpose of providing housing in accordance with Section 42 U.S.C. 1484 (Section 514) or 1485 (Section 515), whichever is applicable, and Title V of the Housing Act of 1949, as amended "Program"; and

**NOW, THEREFORE**, in consideration of the restrictions on the Property as further described in Exhibit A, the sum of Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, for themselves and for their respective successors and assigns, hereby covenant and agree as follows:

- (1) Term.** The period of the restriction will be until [date]. [The date used should be the date agreed to in approving the transfer pursuant to 7 CFR 3560.406, which when an equity loan is being provided, must be 30 years in the future.]
- (2) Use Requirement.** The Owner, and any successors in interest, agree to use the Property in compliance with 42 U.S.C. § 1484 or § 1485, whichever is applicable, and 7 CFR part 3560, and any other applicable regulations and amendments, for the purpose of housing program eligible very low-, low-, or moderate-income tenants.
- (3) Enforcement.** The Agency and Program eligible tenants or applicants may enforce these restrictions as long as the Agency has not terminated the Restrictive Use Agreement pursuant to paragraph 7 below.
- (4) Displacement Prohibition.** The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the recipient of housing assistance from the Agency or any other Federal agency.
- (5) Owner's Responsibilities.** The Owners agrees to: set rents, other charges, and conditions of occupancy in a manner to meet the restrictions required by this Restrictive Use Covenant; post an Agency approved notice of these restrictions for the tenants of the property; to adhere to applicable local, State, and Federal laws; and to obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.
- (6) Civil Rights Requirements.** The Owner will comply with the provisions of any applicable Federal, State or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to Agency regulations implementing these authorities, including, but not limited to, 7 CFR 3560.104.
- (7) Release of Obligation.** The Owner will be released from the obligations under this Restrictive Use covenant before the termination period set in paragraph 1 only when the Agency determines that there is no longer a need for the housing or that HUD Section 8 vouchers provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the Owner.

**(8) Violations; the Agency's Remedies.** The parties further agree that upon any default under this covenant, the Agency may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against violation of this covenant or for such other equitable relief as may be appropriate, since the injury to the Agency arising from a violation under any of the terms of this covenant would be irreparable and the amount of damage would be difficult to ascertain.

**(9) Covenants to Run with Land.** The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this covenant. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property throughout the Term. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Agency hereby agrees that, upon the request of the Owner made after the term of this covenant, the Agency shall execute a recordable instrument approved by the Agency for purposes of releasing this covenant of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

**(10) Superiority.** The document hereto constitutes a restrictive covenant that is filed of record, with all other Deeds of Trusts or Mortgages, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

**(11) Subsequent Modifications and Statutory Amendments.** The Agency may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement, to require that any third-party obtain prior Agency approval for any enforcement action concerning preexisting or future violations of this covenant.

**(12) Other Agreements.** The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this covenant and that, in any event, the provisions of this covenant are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

**(13) Binding Effect.** Upon conveyance of the Property during the term, the Owner shall require its successor or assignee to assume its obligations under this covenant. In any event, this covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

**(14) Amendment.** This covenant may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

**(15) Severability.** Notwithstanding anything herein contained, if any one or more of the provisions of this covenant shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this covenant, but this covenant shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

**(16) Headings.** The headings and titles to the sections of this covenant are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

**(17) Governing Law.** This covenant shall be governed by all applicable Federal laws.

IN WITNESS WHEREOF, the parties hereto have caused this Restrictive Use Covenant to be executed and made effective as of the date first above written.

OWNER: RD ESW, LLC,  
An Iowa limited liability company\_\_\_\_\_  
Date: August 15, 2017\_\_\_\_\_  
By: ESW I, LLC, its managing member\_\_\_\_\_  
By: National Affordable Housing Foundation,  
its sole member  
By: \_\_\_\_\_  
Jodi Page, Board President

STATE OF Iowa )  
COUNTY OF Polk ) ss

On this 15<sup>th</sup> day of August, 2017, before me, the undersigned, a Notary Public in and for the said State, personally appeared Jodi Page, to me personally known who, being by me duly sworn, did say that she is President of National Affordable Housing Foundation, an Iowa nonprofit corporation which is the sole member of ESW I, LLC, an Iowa limited liability company which is the managing member of RD ESW, LLC, an Iowa limited liability company, executing the foregoing instrument, that the instrument was signed on behalf of the limited liability company, by authority of the limited liability company, and the said President acknowledged the execution of the instrument to be the voluntary act and deed of the limited liability company.

Kelly Lynn Karns  
Notary Public

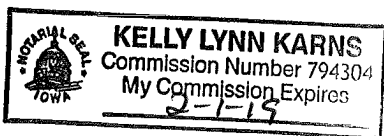


Exhibit A

LEGAL DESCRIPTION

ADAIR COUNTY:

Lot Three (3) of Lot Four (4) of Lot Two (2), except the East 45 feet thereof, in the Southeast Quarter of the Northeast Quarter (SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ) of Section Five (5), Township Seventy-seven (77) North, Range Thirty (30) West of the 5<sup>th</sup> P.M. Iowa, in the Town of Stuart, Adair County, Iowa.

AND

The West 122.5 feet of Lot Three (3) of Lot Two (2) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of the Northeast Quarter (NE  $\frac{1}{4}$ ), and the East 45 feet of the North 209.33 feet of Lot Three (3) of Lot Four (4) of Lot Two (2) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of the Northeast Quarter (NE  $\frac{1}{4}$ ) all in Section Five (5), Township Seventy-Seven (77) North, Range Thirty (30) West of the 5<sup>th</sup> P.M., Adair County, Iowa.

MADISON COUNTY:

Lots Twenty-four (24), Twenty-five (25) and Twenty-six (26), and all that part of Lot Twenty-seven (27) which is West of a line described as commencing at the Northeast corner of Lot Twenty-six (26), and running thence South to the South line of said Lot Twenty-seven (27), all in Northwest Development – Plat 1, to the City of Winterset, Madison County, Iowa, and

An easement property described as follows: Commencing at the Northeast corner of Lot Twenty-six (26), thence South along the Eastern boundary of Lot Twenty-six (26) to a point 50 feet South of the Southeast corner of Lot Twenty-six (26), thence East 50 feet, thence North to and along the Western boundary of Lot Twenty-eight (28) to the Northwest corner of Lot Twenty-eight (28), thence in a Westerly direction to the point of beginning, all in Northwest Development – Plat 1, to the City of Winterset, Madison County, Iowa.

MADISON COUNTY:

A parcel of land in the City of Earlham described as commencing at a point 33 feet North and 932 feet West of the Southeast corner of the Northeast Quarter ( $\frac{1}{4}$ ) of Section One (1), in Township Seventy-seven (77) North, Range Twenty-nine (29) West of the 5<sup>th</sup> P.M., Madison County, Iowa. Thence West 360 feet, thence North  $00^{\circ} 31'$  East 330 feet, thence East 360 feet, thence south  $00^{\circ} 31'$  West 330 feet to the point of beginning.