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Document: LAND USE RESTRICTIVE COVENANTS AGREEMENT FOR LOW-INCOME HOUSING TAX CREDIT ("LIHTC") PROGRAM – 4% QUALIFIED ALLOCATION PLAN ("QAP")

Preparer Information: Mark Thompson, 2015 Grand Avenue, Des Moines, Iowa 50312 (800) 432-7230

Return Document To: Tax Credit Allocation Division, Dave Vaske, Manager, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, IA 50312

Grantors: RD ESW, LLC

Grantees: Iowa Finance Authority

Legal Description: Exhibit A, Page 20

Book & Page Reference: None

Project: Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Land Use Restrictive Covenant

Low-Income Housing Tax Credit Program

Page 2

Project: Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

**LAND USE RESTRICTIVE COVENANTS AGREEMENT FOR
LOW-INCOME HOUSING TAX CREDIT PROGRAM
4% QUALIFIED ALLOCATION PLAN ("QAP")**

ALLOCATION OF CREDITS TO THIS PROJECT IS BASED ON THE FOLLOWING:

- | | | | |
|-----|--|---|---|
| (1) | <table border="1" style="display: inline-table; vertical-align: middle;"><tr><td style="text-align: center;">x</td></tr></table> | x | Subsidized Project-Based Rental Assistance |
| x | | | |
| (2) | <table border="1" style="display: inline-table; vertical-align: middle;"><tr><td style="text-align: center;">x</td></tr></table> | x | Tax-Exempt Bond Financed Subject to Section 142 |
| x | | | |
| (3) | <table border="1" style="display: inline-table; vertical-align: middle;"><tr><td style="text-align: center;"> </td></tr></table> | | Qualified Census Tract ("QCT") Increase in Eligible Basis |
| | | | |

THIS LAND USE RESTRICTIVE COVENANTS AGREEMENT ("This Agreement"), dated as of September 24, 2018, by and between RD ESW, LLC, a Limited Liability Company, and its successors and assigns (the "Owner"), and the Iowa Finance Authority, a public instrumentality and agency of the State of Iowa ("IFA").

WITNESSETH:

WHEREAS, the Owner is the owner of a seventy nine (79) unit rental housing development that also includes an additional common space manager's unit located at 510 W Mills Street in the City of Winterset, County of Madison, State of Iowa, on the real property described in Exhibit A attached hereto, known as Earlham Stuart Winterset Apartments (ESW Apartments), (the "Project"); and

WHEREAS, IFA has been designated by Iowa Code Section 16.35 as the housing credit agency for the State of Iowa for the allocation of Low Income Housing Tax Credits under Section 42 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder (the "Code"); and

WHEREAS, the Owner has applied to IFA for an allocation of Low-Income Housing Tax Credits for the Project and has made certain representations to IFA in its IFA-approved Low-Income Housing Tax Credit Threshold and 8609 Applications (collectively, the "Application"), concerning, among other things, the number of Low-Income Units (as hereinafter defined) and the term of occupancy restrictions; and

WHEREAS, the Code requires in connection with the allocation of Low-Income Housing Tax Credits that the Owner execute and deliver this Agreement and that this Agreement be recorded in the official land records of the county in which the Project is located in order to create covenants running with the land for the purpose of enforcing certain requirements of Section 42 of the Code and certain additional undertakings of the Owner in connection with its Application by regulating and restricting the use, occupancy and transfer of the Project as set forth herein; and

WHEREAS, based upon such representations, IFA is willing to make an allocation of Low-Income Housing Tax credits to the Project provided that the Owner, by entering into this Agreement, agrees to be regulated by IFA in order that IFA may enforce the occupancy restrictions and other covenants, terms and conditions of this Agreement; and

Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Land Use Restrictive Covenant

Low-Income Housing Tax Credit Program

Page 3

WHEREAS, the Owner, under this Agreement, 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 are covenants running with the Project land for the term stated herein and shall be binding upon all subsequent owners of the Project for such term.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Owner and IFA agree as follows:

Section 1. Recording and Filing: Covenants to Run with the Land.

(a) This Agreement shall be placed of record in the real property records of the county in which the Project is located and, except as otherwise provided herein, the regulatory and restrictive covenants contained herein governing the use, occupancy and transfer of the Project shall run with the land and shall bind the Owner and its successors and assigns, and all subsequent owners of the Project or any interest therein, and the benefits shall inure to IFA and its successors and assigns, for the period prescribed in Section 3 hereof.

(b) The Owner hereby agrees that any and all requirements of the laws of Iowa to be satisfied in order for the provisions of this Agreement to constitute restrictive covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privacy of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the land. During the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective as to successors and/or assigns of all or any portion of the Project, regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.

Section 2. Representations, Covenants, and Warranties of the Owner.

The Owner covenants, represents and warrants as follows:

(a) The Owner is duly organized under the laws of the State of Iowa and is qualified to transact business under the laws of Iowa.

(b) The Owner has:

(i) (Select One)

☒

Sole fee simple title to the premises constituting the Project; or

☐

A leasehold interest in the premises constituting the Project for a term not less than the longer of: (a) the entire period during which the proposed Project will be subject to this Agreement; or (b) 35 years; or

☐

Sole fee simple title to a portion of the premises constituting the Project and a leasehold interest in the remaining portion of the premises constituting the Project; which leasehold interest is for a term not less than the longer of: (a) the entire period during which the

Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Land Use Restrictive Covenant

Low-Income Housing Tax Credit Program

Page 4

proposed Project will be subject to this Agreement; or (b) 35 years, all as described on Exhibit A.

(ii) Good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, any loan document relating to the Project or other permitted encumbrances).

(c) Each building which is the subject of an allocation of Low-Income Housing Tax Credits is, or, by not later than the last day of the first year of the "credit period," as defined in Section 42(f) of the Code ("Credit Period"), will be, a "qualified low-income building" as defined in Section 42(c)(2) of the Code ("Qualified Low-Income Building"), and the Project constitutes or will constitute a "qualified low-income housing project" as defined in Section 42(g) of the Code ("Qualified Low-Income Housing Project").

(d) The Owner shall comply with all local, state, and federal laws concerning or related to discrimination on the basis of race, creed, color, sex, sexual orientation, gender identity, age, religion, national origin, disability or familial status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, and shall neither refuse to lease a unit in the Project, nor give preference to the holder of a certificate of eligibility under Section 8 of the U.S. Housing Act of 1937, as amended, on account of the status of the prospective tenant as such holder. Further, the Owner shall affirmatively market in accordance with the Fair Housing Act and provide an Affirmative Fair Housing Marketing Plan ("AFHMP") to IFA no less than 120 days prior to a building's Placed-in-Service Date. The AFHMP must be submitted on the most recent HUD 935.2A form and reviewed and updated thereafter per the United States Department of Housing and Urban Development ("HUD") 935.2A form instructions.

(e) The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project; or permit the use of any residential rental unit for any purpose other than rental housing.

(f) The Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other provisions in conflict herewith.

(g) If the Owner becomes aware of any situation, event or condition which would result in noncompliance of the Project or the Owner with Section 42 of the Code, the Owner shall promptly give written notice thereof to IFA.

(h) The Owner shall insure that the Low-Income Units (as hereinafter defined) are of comparable quality to other units, if any, in the Project.

(i) If the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, utilizing materials and workmanship as similar as possible to the original construction and of at least as good a quality as the original construction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms hereof.

Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Land Use Restrictive Covenant

Low-Income Housing Tax Credit Program

Page 5

(j) The Owner shall maintain the property in reasonably good repair and as materials, appliances, fixtures and equipment are replaced from time to time, Owner shall cause materials, appliances, fixtures, and equipment of at least as good a quality as the originals to be used for such replacements.

(k) The Owner has obtained or will obtain the consent of any prior recorded lienholder(s) to the recording of this agreement and to the subordination of the lien(s) of such lienholder(s) to this Agreement prior to the issuance of an IRS Form 8609.

(l) Reserved.

(m) All real property described in the Owner's IFA-approved Threshold Application for Low Income Housing Tax Credits under the QAP and identified therein as part of the Project is also described on Exhibit A hereto.

Section 3. Term of Restrictions.

(a) Except as otherwise provided herein, this Agreement, including the occupancy restrictions set forth in Section 5 hereof, shall be in effect for each building which is part of the Project for a period of fifteen (15) taxable years (the "Compliance Period") beginning with the taxable year in which each such building is placed in service or, in connection with the election of the taxpayer under Section 42(f)(1)(B) of the Code, the succeeding taxable year.

(b) In addition to the period described in Subsection (a) above, the Owner shall comply with the occupancy requirements set forth in Section 5 hereof for an additional fifteen (15) years, which, when added to the Compliance Period results in thirty (30) total years, with such total period constituting the "extended use period," as defined in Section 42(h)(6)(D) of the Code ("Extended Use Period"). Accordingly, the occupancy requirements set forth in Section 5 hereof shall remain in place for a period of thirty (30) years, except as described in Paragraph (c) below.

(c) This Agreement and the Extended Use Period for any building which is part of the Project shall terminate:

(i) on the date the Project or the building is acquired by foreclosure or deed in lieu of foreclosure unless the Secretary (hereinafter defined) determines that such acquisition is part of an arrangement with the Owner a purpose of which is such termination; or

(ii) on the last day of the one-year period beginning on the date (after the date which is one (1) year prior to the end of the period described in Subsection (a) above) the Owner submits a written request to IFA to find a person to acquire the Owner's interest in the low-income portion of the building and IFA is unable to present during such period a "qualified contract" as such term is defined in Section 42(h)(6)(F) of the Code. A project must be in compliance with all federal and state requirements and maintain such compliance throughout the qualified contract process.

Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Land Use Restrictive Covenant

Low-Income Housing Tax Credit Program

Page 6

(d) Notwithstanding any termination pursuant to Subsection (c) above, during the period of three (3) years following such termination, provided however, that such three (3) year period shall not extend beyond the end of the Extended Use Period, the Owner shall not evict or terminate the tenancy of an existing tenant of any Low-Income Unit (hereinafter defined) other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such Low-Income Unit.

Section 4. Qualified Low-Income Housing Project.

The Owner shall maintain the Project as a Qualified Low Income Housing Project at all times, commencing not later than the last day of the first year of the Credit Period and continuing throughout the term of this Agreement. To this end, and without limitation, the Owner shall assure that all of the residential units in the Project are available for use by the general public, suitable for occupancy and used on other than a transient basis.

Section 5. Occupancy Restrictions. The Owner covenants and agrees that:

(a) Section 142(d)(1) of the Code states the term "qualified residential rental project" as any project for residential rental property if, at all times, during the qualified project period, such project meets the requirements of subparagraph (A) or (B) below, whichever is elected:

- ☐ (A) 20-50 Test. At least **twenty percent (20%)** of the residential rental units in the Project shall be both rent-restricted (as hereinafter defined) and occupied by individuals or families whose income is **fifty percent (50%)** or less of Area Median Gross Income ("AMI").
- ☒ (B) 40-60 Test. At least **forty percent (40%)** of the residential rental units in the Project shall be both rent-restricted (as hereinafter defined) and occupied by individuals or families whose income is **sixty percent (60%)** or less of AMI.
- ☐ In addition to the occupancy restriction checked above, the Project will also meet the deep rent skewing option as defined in Section 142(d)(4) of the Code; at least **fifteen percent (15%)** of the units occupied by individuals whose income is **forty percent (40%)** or less of AMI and other requirements).

(b) Notwithstanding the election described in Subsection (a) of Section 5 above, the Owner covenants and agrees that the residential units shall be rent restricted and income restricted based on the table below. At least zero (0) of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is thirty percent (30%) or less of AMI, at least zero (0) of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is forty percent (40%) or less of AMI, at least zero (0) of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is fifty percent (50%) or less of AMI and at least seventy nine (79) of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is sixty percent (60%) or less of AMI. All of the residential rent and income restricted units will be distributed by bedroom size as follows:

Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Land Use Restrictive Covenant

Low-Income Housing Tax Credit Program

Page 7

Unit Types by Bedroom Size and AMI Percentage for Rent and Income Restrictions			
Type	AMI % for Rent and Income Eligibility	Bedroom Size	Unit Count
Low Income			
	60	1	70
	60	2	9
Total Units			79

(c) All of the foregoing residential rental units are collectively referred to herein as the "Low-Income Units," and, with respect to all of such Low Income Units, "median gross income" shall be determined in accordance with the Code. The Owner further agrees that additional Units in the Project shall be both rent-restricted and occupied by low-income individuals or families whose incomes meet the requirements of Section 5(b) to the extent necessary to maintain the "applicable fraction," as defined in Section 42(c) (1)(B) of the Code, at not less than the percentage set forth on Exhibit B for each taxable year of the Extended Use Period. A Unit is "rent-restricted" if the gross rent with respect to such Unit does not exceed thirty percent (30%) of the imputed income limitation applicable to such Unit, all as determined in accordance with Section 42(g) of the Code.

(i) The determination of whether an individual or family is a Qualifying Tenant (that is, meets the income requirements of Subsection (a) of this Section 5) shall be made at least annually on the basis of the income of such individual or family. IFA may allow certification on a less frequent basis as permitted by IFA's Compliance Manual. If the income of the occupants of a low-income unit rises above the income limitation applicable under Subsection (a) of this Section 5, the owner shall comply with Section 42(g)(2)(D)(i) and (ii) of the Code.

(ii) As a condition to occupancy, each individual or family who is intended to be a Qualifying Tenant shall be required to sign and deliver to the Owner a fully completed Tenant Income Certification in the form provided from time to time by IFA, and the income and assets of such individual or family must be verified in the manner prescribed by IFA.

(iii) The form of lease to be utilized by the Owner in renting any Unit in the Project to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Income Certification or the failure by such tenant to execute a Tenant Income Certification annually when required by IFA's Compliance Manual.

(d) The Owner further covenants and agrees to the following:

(i) The Project is designated a Older Persons 62 project.

(ii) The Owner agreed to comply with QAP Appendix 1, G-13, in providing a minimum of five percent (5%) of all Units as Fully Accessible Units, as defined in American National Standards Institute Standard 2007 ("ANSI") 117.1, on the building accessible routes which includes all floors if an elevator is provided and ensuring all Units on the accessible routes be adaptable. A minimum of two percent (2%) of all Units supplied shall be adapted for hearing and/or vision impairments as Units with Accessible Communication Features. The two percent (2%) cannot be included in the five percent (5%) of the Fully Accessible Units. Accessible Units shall be dispersed throughout the property and shall be of different bedroom sizes rather than segregated.

(a) The Project shall contain the following number of Fully Accessible Units and Units with Accessible Communication Features:

	0 BR	1 BR	2 BR	3 BR	4+ BR	TOTAL
Fully Accessible	0	8	1	0	0	9
Accessible Communication Features	0	3	0	0	0	3
Additional Accessible Type A	0	0	0	0	0	0
Visitable	0	0	0	0	0	0

(iii) All on-site property management staff will complete Mental Health First Aid training approved by the Iowa Department of Human Services and/or an Olmstead Consumer Taskforce approved Disability awareness training program, such as may be offered by a Center for Independent Living, prior to the issuance of an IRS Form 8609. New/additional on-site property management staff shall be required to complete this training and obtain a Certificate of Training.

(iv) Of the residential rental units which are to be subject to the restrictions of Section 5 hereof at least zero (0) shall be zero-bedroom units, and seventy (70) shall be one-bedroom units, and nine (9) shall be two-bedroom units, and zero (0) shall be three-bedroom units, and zero (0) shall be four-bedroom units.

(v) All buildings that contain residential rental units shall have at least one Low-Income Unit. The LIHTC Available Unit Rule ("AUR") sometimes referred to as the Next Available Unit Rule ("NAUR"), shall apply to all buildings in the Project. Each building's Applicable Fraction shall be maintained throughout the Compliance Period and the Extended Use Period.

(vi) Reserved.

(vii) Reserved.

(viii) Reserved.

(e) Certain features and amenities shall be constructed, equipped, set-aside and made available at the Project as set forth in Exhibit C attached hereto.

Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Land Use Restrictive Covenant

Low-Income Housing Tax Credit Program

Page 9

(f) With the written consent of IFA, the number of property manager-occupied units within the Project may be increased or decreased to improve the efficient operation of the property.

(g) Unless IFA agrees otherwise in writing, the Owner shall notify the appropriate United States Housing and Urban Development (HUD) public housing agency, any rental housing locator service contracted by IFA, and any other agencies as IFA shall direct from time to time, of unit vacancies in the Project.

(h) The Owner shall lease units designated for Persons with Disabilities to tenants requiring the Accessibility feature of such units, as required in HUD regulation 24 CFR 8.27 for Section 504 of the Rehabilitation Act of 1973, as amended. When leasing an Accessible Unit to a tenant who does not require such accessibility features, the Owner must attach an addendum to that tenant's lease; wherein the tenant agrees to move, upon the Owner's request and expense, to a comparable non-Accessible Unit.

(i) The Owner shall develop and make public written tenant selection policies and procedures that include a preference for Persons with a Disability. The written tenant selection policy/plan shall be submitted to IFA at least 120 days prior to the first Unit Placed-in-Service and the plan shall be maintained throughout the Compliance Period and the Extended Use Period.

(j) The Owner and its managers shall comply with Title VI of the 2013 Violence Against Women Act, Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking ("VAWA") and shall use the proscribed U.S. Housing and Urban Development ("HUD") and IFA VAWA forms.

(k) The Project's Qualified Development Team ("QDT") shall comply with all of the requirements set forth in the QAP pertaining to the Qualified Development Team. Each qualifying member of the QDT shall participate in the Project through two-years after the issuance of the IRS Form 8609.

Section 6. Reserved.

Section 7. Owner Certifications and Reports.

(a) Within sixty (60) days of IFA sending the IFA executed 8609 to the Owner; the Owner shall provide a copy of the First Year Certification Part II of IRS Form 8609, as filed or prepared for filing with the IRS and executed by or on behalf of the Owner to IFA.

(b) The Owner shall annually provide to the Secretary of the United States Department of the Treasury (the "Secretary"), or to his or her designee, at such time and in such manner as the Secretary shall prescribe, a certification as to the continuing compliance of the Project with requirements of Sections 42 and 142 of the Code. A copy of such annual certification shall be provided to IFA.

(c) The Owner shall provide to IFA, annually, on March 1 or the next business day, a Certification of Continuing Program Compliance and an Occupancy Report, each in the form provided, from time to time, by IFA, together with a copy, for each building, of the most recently filed IRS Form 8609 Schedule A: Annual Statement.

(d) The Owner shall maintain in its records and provide to IFA copies of any and all notices and correspondence from or with the IRS concerning the Project or the Owner.

(e) In addition to the information provided for in Section 5 herein and in this Section 7, the Owner shall provide any other information, documents or certifications requested, from time to time, by IFA with respect to the Project's physical, operational and financial condition and its residents which IFA reasonably deems necessary to substantiate the Owner's continuing compliance with the provisions of this Agreement and Sections 42 and 142 of the Code.

(f) The Owner shall submit to IFA, within six (6) months from the date IFA sends the IFA executed IRS Form 8609, verification that the Operating and Replacement Reserve accounts have been funded and the terms and conditions have been met.

(g) The Owner shall submit annual audited financial statements for the Project within ninety (90) days of the close of the Project's fiscal year, beginning the year after they receive the IRS Form 8609. IFA may require more frequent financial statements, such as income and expense statements and balance sheets not more than thirty (30) days old. The more frequent financial statements need not be audited. Year-end statements must be certified by a Certified Public Accountant ("CPA").

Section 8. Transfer Restrictions.

(a) The Owner shall not sell, assign, convey, transfer or otherwise dispose of the Project or any building in the Project without the prior written consent of IFA. Such consent shall be given provided that: (i) the Owner is in compliance with the requirements of this Agreement and of Section 42(j)(6) of the Code; (ii) the proposed transferee of the Project evidences, to the reasonable satisfaction of IFA, by its performance with respect to other low-income housing tax credit or government-assisted housing projects and otherwise, its willingness and ability to comply with the terms of this Agreement; and (iii) in no event shall the Owner dispose of any portion of any building in the Project to any person unless all of such building is disposed of to such person. For the purposes of this Subsection, the Owner agrees that a transfer of any interest of a General Partner or principal (other person or entity that holds an ownership interest in the Owner and has power to direct any aspect of the operations of the Owner or is entitled to fifty percent (50%) or more in any of the profits, losses, cash flow or residual value of the Project) shall be deemed a transfer of the Project.

(b) The Owner shall include, verbatim or by incorporation by reference, all requirements and restrictions contained in this Agreement in any deed or other documents transferring any interest in the Project or in any building in the Project to any other person or entity to the end that such transferee has notice of and is bound by such restrictions, and shall obtain the express written assumption of this Agreement by any such transferee. Copies of the aforementioned documentation shall be delivered to IFA.

(c) The consent of IFA to any action, under Section 8(a), shall not constitute a waiver of the necessity of such consent to any subsequent action. The Owner further agrees that IFA may void any sale, assignment, conveyance or transfer of the Project if the successor owner or party thereunder fails to execute and deliver an assumption agreement or if the Owner or party thereunder otherwise acts contrary to this Section.

Section 9. Physical Maintenance/Management/Books/Records/Inspections.

(a) The Owner shall maintain each building in the Project such that all units are suitable for occupancy, taking into account applicable health, safety and building codes, and otherwise in a manner reasonably satisfactory to IFA and in compliance with the uniform physical conditions standards set forth at 24 CFR. part 5, Section 7.03.

(b) The Owner shall provide for the management of the Project in a manner reasonably determined by IFA to assure compliance with this Agreement. Any management contract entered into by the Owner involving the Project shall provide that it shall be subject to termination, without penalty and with or without cause, upon written request by IFA addressed to the Owner. Upon such request the Owner shall immediately terminate the contract within a period of not more than thirty (30) days and shall make arrangements reasonably satisfactory to IFA for continuing proper management of the Project.

(c) The books, contracts, records, computerized data, documents and other papers relating to compliance of the Owner and the Project with Section 42 of the Code, with this Agreement, and the eligibility of the Owner to claim credits with respect to the Project, shall at all times be available for inspection by IFA and the IRS. All of the aforementioned materials shall be in reasonable condition for proper audit and shall be subject to examination and inspection and copying at any reasonable time by IFA or its authorized agents. IFA shall also have the right to enter and inspect the Project at any reasonable time.

(d) Owners shall keep records for each Qualified Low-Income Building in the Project showing the following:

- (i) the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each unit);
- (ii) the percentage of residential rental units in the building that are Low-Income Units;
- (iii) the rent charged on each residential rental unit in the building (including any utility allowance);
- (iv) the number of occupants in each Low-Income Unit;
- (v) the Low-Income Unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
- (vi) the initial and annual student certification of each Qualifying Tenant if Section 42(g)(8) (B) of the Code applies;
- (vii) the annual income certification of each Qualifying Tenant;
- (viii) documentation to support each Qualifying Tenant's income certification;
- (ix) the eligible basis and qualified basis of the building at the end of the first year of the credit period; and

(x) the character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the Project).

(e) Owners shall keep all records for each building for a minimum of six (6) years after the due date (with extensions) for filing the Owner's federal income tax return for any year; provided, that the records for the first year of the credit period must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building.

Section 10. Prohibition Against Actions Described in Section 42(h)(6)(E)(ii)(I) and (II) of the Code.

The Owner covenants and agrees that during the Extended Use Period it (a) will not evict or terminate the tenancy of an existing tenant of any Low-Income Unit other than for good cause, and (b) will not increase the gross rent above the maximum allowed under the Code with respect to such Low-Income Unit.

Section 11. Enforcement.

(a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Sections 42 and 142 of the Code or of this Agreement. Moreover, the Owner covenants to take any lawful action (including amendment of this Agreement) as may be necessary, in the opinion of IFA, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the IRS from time to time pertaining to the Owner's obligations under Sections 42 and 142 of the Code and affecting the Project.

(b) The Owner shall promptly advise IFA as to the date each building in the Project is a Qualified Low-Income Building.

(c) In the event of any failure of the Owner to comply with the provisions of Sections 42 and 142 of the Code and the Treasury Regulation thereunder, or of this Agreement, IFA shall inform the Owner by written notice of such failure and provide the Owner a period of time in which to correct such failure. If any such failure is not corrected to the satisfaction of IFA within the period of time specified by IFA, which shall be at least thirty (30) days after the date any notice to the Owner is mailed, or within such further time as IFA determines is necessary to correct the violation, but not to exceed any limitations set by applicable regulations, without further notice IFA may declare a default under this Agreement effective on the date of such declaration of default, and IFA may (i) apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement; (ii) secure the appointment of a receiver to operate the Project in compliance with this Agreement; or (iii) exercise any other remedies at law or in equity or any such other action as shall be necessary or desirable to correct non-compliance with this Agreement.

(d) The Owner and IFA each acknowledges that the primary purpose of requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with Sections 42 and 142 of the Code and the Treasury Regulations thereunder, **AND BY REASON THEREOF, THE OWNER IN CONSIDERATION OF RECEIVING AN ALLOCATION OF LOW-INCOME HOUSING TAX CREDITS FOR THE PROJECT HEREBY AGREES AND CONSENTS THAT IFA, ANY QUALIFYING TENANT AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE TO THE BUILDING UNDER THE CODE (WHETHER PRESENT, PROSPECTIVE OR FORMER OCCUPANTS OF THE BUILDING) (ANY OR ALL OF THEM) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY COURT, STATE OR FEDERAL, OF COMPETENT JURISDICTION.** The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(e) In the event of the Owner's or Project's failure to comply fully with the Code, the covenants and agreements contained herein or with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the IRS or IFA from time to time pertaining to the obligations of the Owner as set forth therein or herein, IFA, in addition to all of the remedies provided by law or in equity, may notify the IRS of such noncompliance.

Section 12. Return of Unused Credit.

Pursuant to Section 42(h)(3)(C) of the Code and Treasury Regulation §1.42-14(d) thereunder, the housing tax credit dollar amount allocated to the Owner with respect to the Project shall be cancelled and returned to IFA, in whole or in part, if (i) any building in the Project is not a Qualified Low-Income Building within the time period required by Section 42 of the Code, or (ii) the "Qualified Basis" of any building in the Project is less than the Qualified Basis on which the credit amount was allocated by IFA, (iii) IFA and the Owner cancel an allocation of an amount of credit by mutual consent, or (iv) IFA determines under Section 42(m)(2) of the Code that an amount of credit allocated to the Project is not necessary for the financial feasibility of the Project and its viability as a Qualified Low-Income Housing Project throughout the Credit Period.

Section 13. No Reliance.

In issuing the Allocation, IFA has relied upon information provided and representations made by the Owner or the Owner's designee, and the Allocation does not in any way constitute a representation, warranty, guaranty, advice or suggestion by IFA as to the qualification of the Project for the tax credits, or the feasibility or viability of the Project, and may not be relied on as such by any owner, developer, investor, tenant, lender, or other person, for any reason. In addition, IFA's acceptance of the certifications and representations required in connection with Owner's request for the Allocation does not constitute a representation as to the satisfaction of the requirements under Section 42(h)(1)(E) of the Code as binding on the part of the IRS.

Section 14. Release and Indemnification.

Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Land Use Restrictive Covenant

Low-Income Housing Tax Credit Program

Page 14

(a) The Owner agrees to release and forever discharge IFA, its members, employees, agents, officers, successors and assigns, from any and all claims, demands, causes of actions, judgments and executions which the Owner has or may hereafter have against IFA, whether in law or in equity, arising or resulting from, or on account of or pertaining to, whether directly or indirectly, the issuance of an Internal Revenue Service ("IRS") Form 8609 with respect to the Project by IFA.

(b) The Owner, (the "Indemnitor"), hereby agrees to indemnify, hold harmless and defend IFA, its members, officers, agents, employees, successors and assigns (an "Indemnified Party"), from and against any obligation, claim, loss, demand, cost, expense (including the costs of the investigation and settlement of any claim, and including reasonable attorneys' fees), disallowance of tax benefits, or judgment against IFA directly or indirectly arising or resulting from, or on account of or relating to: (i) the financing, acquisition, construction and/or rehabilitation, syndication, sale, management or operation of the Project; (ii) any noncompliance or failure to perform any covenant under this Agreement or any other Project document (whether or not cured); (iii) any breach of a representation, warranty or covenant under this Agreement or in any other Project document; (iv) any other act or omission (whether or not cured) constituting a failure in compliance, or (v) the enforcement by IFA, its successors and assigns of IFA's rights and remedies under this Agreement or any other Project document.

(c) If any such claim is asserted, any Indemnified Party hereunder will give prompt notice to the owner and will cooperate in the investigation and defense of any such claim. The Indemnitor will assume the defense of any such asserted claim by engaging counsel approved by the Indemnified Party (which approval shall not be unreasonably withheld), it being understood and agreed that the Indemnified Party shall have the right to employ its own separate counsel and participate in such proceedings at the Indemnitor's cost and expense if such Indemnified Party is advised in an opinion of counsel rendered in good faith that there may be legal defenses available to such Indemnified Party which are adverse to or in conflict with those available to the Indemnitor.

(d) The obligations of the Indemnitor under this Section 14 shall survive any transfer of the Project (whether voluntary or involuntarily) or termination of this Agreement and any attempted transfer or assignment or termination of the Indemnitor's interest in Owner or the Project; provided, however, the indemnification obligations of the Indemnitor shall not apply with respect to matters first arising after such Indemnitor has disposed of the Indemnitor's interest in the Project or the owner, as applicable, in accordance with the provisions of this Agreement.

Section 15. Miscellaneous.

(a) The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

(b) All notices to be given pursuant to this Agreement shall be in writing and will be deemed given at the time it is actually received; or, within one day in the case of an overnight service such as Federal Express with guaranteed next day delivery; or, within five days after deposited in the U.S. Mail, to the parties at the addresses set forth below:

To IFA:

Iowa Finance Authority

Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Land Use Restrictive Covenant

Low-Income Housing Tax Credit Program

Page 15

2015 Grand Avenue

Des Moines, Iowa 50312

Attention: Director of Compliance

To the Owner:

RD ESW, LLC

12289 STRATFORD DR

CLIVE, Iowa 50325-8167

Attention: Jeffrey Voorhees

(i) Each IFA and Owner may, by notice given pursuant to this Agreement, designate any further or different addresses to which subsequent notices, consents, or other communications shall be sent. Notices regarding compliance and monitoring by IFA may be sent by electronic mail.

(c) Compliance with the Law and Regulations.

(i) The Owner shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement.

(ii) The Owner declares that it has complied with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work to be performed under this Agreement.

(iii) IFA may consider the failure of the Owner to comply with any law or regulation as a material breach of this Agreement subjecting the Agreement to be immediate cancellation.

(d) Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to this Agreement must be fully executed by both parties and recorded in the official land records of the county in which the Project is located.

(e) Choice of Law and Forum.

(i) The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law.

(ii) In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Agreement, the proceeding shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. If however, jurisdiction is not proper in the Iowa District Court, Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division.

Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Land Use Restrictive Covenant

Low-Income Housing Tax Credit Program

Page 16

- (iii) This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to IFA or the State of Iowa.
- (f) **Assignment and Delegation.** The Owner shall not assign, transfer, convey, or otherwise dispose of this Agreement, its duties under this Agreement, or any rights, title, or interest in this Agreement to any other person, corporation, or other entity without the prior written approval of IFA which may be given or withheld in IFA's good faith business judgment.
- (g) **Recovery of Attorneys' Fees.** If IFA shall incur legal fees or other expenses in enforcing its rights and/or remedies, or the Owner's obligations, under this Agreement the Owner shall reimburse IFA for those fees and other expenses within ten (10) days of receipt of written demand therefor.
- (h) **Integration.** This Agreement, including all the documents incorporated by reference, represents the entire Agreement between the parties and neither party is relying on any representation that may have been made which is not included in this Agreement.
- (i) **Headings or Captions.** The paragraph headings or captions are for identification purposes only and do not limit or construe the contents of the paragraphs.
- (j) **Not a Joint Venture.** Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent/principal relationship) between the parties hereto. Each party shall be deemed an independent contractor contracting for services and acting toward the mutual benefits expected to be derived here from. No party, unless otherwise specifically provided for herein, has authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.
- (k) **Waiver.** Any breach or default by either party shall not be waived or released other than by a writing signed by the other party. Failure by either party at any time to require performance by the other party or to claim a breach provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.
- (l) Each party to this Agreement represents and warrants to the other that:
 - (i) It has the right, power and authority to enter into and perform its obligations under this Agreement.
 - (ii) It has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement and this Agreement constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
- (m) **Successors in Interest.** All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.
- (n) **Counterparts.** The parties agree that this Agreement has been or may be executed in several counterparts including facsimile copies, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Land Use Restrictive Covenant

Low-Income Housing Tax Credit Program

Page 17

(o) Miscellaneous. All words and phrases in this Agreement shall have the same meaning as defined in this Agreement, the Code, and the QAP. In the event of a conflict between this Agreement, the Code, and the QAP, the conflict shall be resolved according to the following priority, ranked in descending order:

- (i) the Code;
- (ii) the QAP; and
- (iii) this Agreement.

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[Signature Page Follows]

Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Land Use Restrictive Covenant

Low-Income Housing Tax Credit Program

Page 18

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

Ownership Entity: RD ESW, LLC, an Iowa Limited Liability Company

By: ESW I, LLC, its Managing Member

By: National Affordable Housing Foundation, its Sole Member

By:



Printed Name: Brad Carlson

Title:

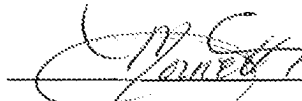
President

STATE OF IOWA }

} ss.

COUNTY OF CLAY }

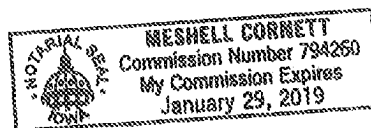
This Agreement was acknowledged before me on this 25th day of September, 2018, by Brad Carlson as President of National Affordable Housing Foundation, an Iowa corporation, the sole member of ESW I, LLC, an Iowa limited liability company, the Managing Member of RD ESW, LLC on behalf of which the record was executed.



Notary Public in and For the State of Iowa

County of CLAY

(Seal/Stamp)



Earlham Stuart Winterset Apartments (ESW Apartments), 17-29
Land Use Restrictive Covenant
Low-Income Housing Tax Credit Program
Page 19

IOWA FINANCE AUTHORITY
2015 Grand Ave, Des Moines, IA 50312
IFA Tax ID # 52-1699886

By:

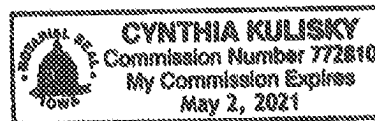
Name: Carolann Jensen

Title: Interim Executive Director

STATE OF IOWA }
 } ss.
COUNTY OF POLK }

This Agreement was acknowledged before me on this 2nd day of October, 2018
by Carolann Jensen as Interim Executive Director of the Iowa Finance Authority.

Cynthia Kulisky
Notary Public in and for the State of Iowa
(Seal/Stamp)



Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Land Use Restrictive Covenant

Low-Income Housing Tax Credit Program

Page 20

EXHIBIT A
LEGAL DESCRIPTION

Parcel 1:

The West 122.5 feet of Lot Three (3) of Lot Two (2) of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ 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 of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$), all in Section Five (5), Township Seventy-seven (77) North, Range Thirty (30) West of the 5th P.M., Iowa.

Parcel 2:

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 5th P.M. in the Town of Stuart, Adair County, Iowa.

Parcel 3:

A parcel of land located in the Southeast Quarter ($\frac{1}{4}$) of the Northeast Quarter ($\frac{1}{4}$) of Section One (1), Township Seventy-seven (77) North, Range Twenty-nine (29) West of the 5th P.M., City of Earlham, Madison County, Iowa, described more particularly as follows, to wit: Commencing at a point 33 feet North and 932 feet West of the Southeast corner of the Northeast Quarter ($\frac{1}{4}$) of said Section One (1), 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.

Parcel 4:

Lots Twenty-four (24), Twenty-five (25) and Twenty-six (26), and all that part of Lot Twenty-seven 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.

Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Land Use Restrictive Covenant

Low-Income Housing Tax Credit Program

Page 21

EXHIBIT B

MINIMUM APPLICABLE FRACTION BY BUILDING

Building Identification Number	Building Address	Minimum Applicable Fraction
IA-17-29001	575 NW 6th, Earlham	100.0000 %
IA-17-29002	575 NW 6th Stree, Earlham	100.0000 %
IA-17-29003	575 NW 6th Street, Earlham	100.0000 %
IA-17-29004	575 NW 6th Street, Earlham	100.0000 %
IA-17-29005	575 NW 6th Street, Earlham	100.0000 %
IA-17-29006	575 NW 6th Street, Earlham	100.0000 %
IA-17-29007	510 W Mills Street, Winterset	100.0000 %
IA-17-29008	510 W Mills Street, Winterset	100.0000 %
IA-17-29009	510 W Mills Street, Winterset	100.0000 %
IA-17-29010	510 W Mills Street, Winterset	100.0000 %
IA-17-29011	510 W Mills Street, Winterset	100.0000 %
IA-17-29012	510 W Mills Street, Winterset	100.0000 %
IA-17-29013	1424 S 6th Street, Stuart	100.0000 %
IA-17-29014	1424 S 6th Street, Stuart	100.0000 %
IA-17-29015	1424 S 6th Street, Stuart	100.0000 %
IA-17-29016	1424 S 6th Street, Stuart	100.0000 %
IA-17-29017	1424 S 6th Street, Stuart	100.0000 %
IA-17-29018	1424 S 6th Street, Stuart	100.0000 %
IA-91-00013	1424 S 6 th Street, Stuart	100.0000 %
IA-91-00014	1424 S 6th Street, Stuart	100.0000 %

Earlham Stuart Winterset Apartments (ESW Apartments), 17-29

Land Use Restrictive Covenant

Low-Income Housing Tax Credit Program

Page 22

EXHIBIT C

The following features and amenities shall be constructed, equipped, set-aside, and made available at the Project:

Exterior Construction Durability:	One hundred percent (100%) fiber cement board siding (excluding window and door areas) and/or nominal 2" thick manufactured stone over ¾" stucco. The Buildings soffit and fascia shall be pre-finished aluminum or fiber cement board. Soffits shall be vented.
Community Bldg:	Sq Ft: 1800
Surface Parking:	Number: 127 - Will rent be charged? No
Laundry Room	
Picnic Area/Tables	
24 Hour On-site Resident Manager	
High Speed Internet Access Per Unit	
High Speed Internet Description:	Provide high speed internet access to each Unit by wiring for broadband, wireless, or digital subscriber (DSL). Service provider is the responsibility of the tenant unless Free Internet Connectivity is listed herein this Exhibit C.
Site Lighting	
Refrigerator	
Microwave	
Range:	Electric
Window Coverings:	Horizontal Mini blinds or Vertical blinds
Flooring:	Carpet Vinyl
Heating:	Electric Heat
Cooling:	Thru-wall A/C unit
Water Heating:	Electric Water Heating