

**NEIGHBORHOOD STABILIZATION AFFORDABILITY**

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
(Resale Requirements)**

**THIS DECLARATION**, is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by **TWIN CITIES HABITAT FOR HUMANITY, INC., a Minnesota non-profit corporation**, having its office at 3001 Fourth Street SE, Minneapolis, MN. 55414, (hereinafter referred to as "Declarant").

**WITNESSETH:**

**WHEREAS**, the Declarant is the owner of certain property in the municipality of St. Paul, County of Ramsey, State of Minnesota, described in **Exhibit A** attached hereto and hereby made a part hereof (the "Mortgaged Property"); and

**WHEREAS**, the Declarant received a forgivable loan in the amount of **\$60,000.00** ("NSP Loan") from the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, (hereinafter referred to as "HRA") for the development of a new residential dwelling located on the Mortgaged Property; and

**WHEREAS**, the source of funds for the NSP Grant from HRA to Declarant was federal grant funds awarded to City by HUD or MHFA for use in accordance with the NSP Regulations under the Wall Street Reform and Consumer Protection Act of 2010, American

Recovery and Reinvestment Act of 2009 and provided under Title III of Division B of the Housing and Economic Recovery Act 2008 (HERA) Section 2301-Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes as the same may be amended and supplemented from time to time, and such additional orders, regulations, rulings interpretations and directives for NSP as may be promulgated or issued by HUD; and

**WHEREAS**, as a condition to and in consideration of the NSP Loan, and for the purpose of satisfying the "affordability" requirements set forth in the regulations contained in 24 CFR Part 92.254 ("Home Regulations") Declarant desires to impose on the Mortgaged Property the covenants, conditions and restrictions set forth herein.

**NOW THEREFORE**, Declarant, as fee owner of the Mortgaged Property, and in consideration of the benefits to be derived from the NSP Loan by the Declarant and its successors and assigns, hereby makes the following Declaration as to the covenants, restrictions, limitations, conditions and uses to which the Mortgaged Property and dwelling units thereon may be put, hereby specifying that this Declaration shall constitute covenants to run with the land and shall be binding upon the Declarant, its successors, heirs or assigns, and all subsequent owners of all or any part of the Mortgaged Property or improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

## **ARTICLE I Definitions**

Section 1. "Declarant" shall mean and refer to Twin Cities Habitat for Humanity, Inc., a Minnesota non-profit corporation, and any successor or assign which is the owner of the Mortgaged Property from time to time.

Section 2. "Fair Return on Investment" shall mean the sales price of the HOME unit (not greater than the appraised value), minus the then current indebtedness and reasonable sales costs including real estate sales commission, but not greater than the "affordable" purchase price to a household with income at 80% of median family income for the area, as determined by HUD, with adjustments for family size, or such other amount which may from time to time, be established by HUD. Provided that if Declarant exercises its repurchase option set forth in its documents with the Original Qualified Homebuyer, then the restrictions imposed by Declarant shall apply as follows:

### 30 Year Affordability:

Declarant incorporates into its second mortgages a home repurchase clause which extends for a fixed 30-year term whereby Declarant has the right to repurchase the home in accordance with a predetermined formula. In order to guarantee 30 years of affordability and still offer first mortgage terms of 20 and 25 years, the second mortgage remains in effect after the first mortgage is fully paid.

### Years 1 through 5 Repurchase Formula:

The home repurchase formula will determine the selling price of the home to Declarant. The

home repurchase price will include all first mortgage payments made to-date plus reasonable costs of Declarant authorized, documented improvements plus the remaining first and second mortgage balances which are then subsequently paid or forgiven. The repurchase formula will grant Declarant 100% of market appreciation during the first 5 years of ownership

Years 6 through 30 Repurchase Formula:

The home repurchase formula will determine the selling price of the home to Declarant. After five years, the home repurchase price will include all first mortgage payments made to-date plus reasonable costs of Declarant authorized, documented improvements plus the remaining first and second mortgage balances which are then subsequently paid or forgiven. Additionally, the owner retains 25% of the market appreciation since purchase. This price formula will be in effect for a fixed 30 year term.

Section 3. "HRA" shall mean and refer to the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, its successors and assigns.

Section 4. "HUD" shall mean and refer to the United States Department of Housing and Urban Development, its successors and assigns.

Section 5. "NSP Units" shall mean the two parcels that constitute the Mortgaged Property.

Section 6. "Original Qualified Homebuyer" shall mean a purchaser whose family's annual income at the time of such purchase does not exceed fifty percent (50%) of the median family income for the area, as determined by HUD, with adjustments for family size, or such other amount which may from time to time, be established by HUD.

Section 7, "Subsequent Qualified Homebuyer" shall mean a purchaser whose family's annual income at the time of such purchase does not exceed fifty percent (50%) of the median family income for the area, as determined by HUD, with adjustments for family size if this resale occurs within the Restricted Period, ~~after the Restricted Period the Subsequent Qualified Homebuyer shall mean a purchaser whose family's annual income at the time of such purchase does not exceed eighty (80%) of the median family income for the area, as determined by HUD, with adjustments for family size, or such other amount which may from time to time, be established by HUD.~~

Section 8. "Restricted Period" shall mean the fifteen (15) year time period commencing at the time that all title transfer requirements and construction work have been performed; project complies with the requirements of NSP regulations (including the property standards under 92.251); the final drawdown has been disbursed for the project; and all project information has been obtained for each dwelling unit on the Mortgaged Property, which date shall be the date shown on the certificate and declaration as to Restricted Period in substantially the same form as Exhibit B attached hereto (the "Certificate") to be executed by the Declarant and HRA.

## **ARTICLE II**

### **Affordability**

Section 1. Declarant does hereby declare for itself, and its successors and assigns, that for the term of the Restricted Period the NSP Units shall be owned and transferred so as to qualify as "affordable housing" under 24 CFR 92.254, and any amendments or additions thereto. To that end, but without limitation of the generality of the foregoing, Declarant further represents, covenants, and agrees as follows:

- A. **Principal Residence.** Except for the ownership of the NSP Units by Declarant, or the HRA, the NSP Units must be at all times occupied by the owner thereof as such owner's principal residence. No rentals are permitted.
- B. **Sale to Original Qualified Homebuyer.** Declarant shall sell and convey each of the NSP Units to an Original Qualified Homebuyer.
- C. **Resale by Original Qualified Homebuyer.** Any resale of the NSP Units, after the original sale, must be to a Subsequent Qualified Homebuyer. The Original Qualified Homebuyer and any Subsequent Qualified Homebuyer shall be entitled to a Fair Return on Investment in any resale.
- D. **Housing Quality Standards.** Declarant shall rehabilitate and/or construct on the Mortgage Property a residential dwelling unit in accordance with all applicable housing quality standards, including but not limited to those housing quality standards specified in 24 CFR 92.251 of the HOME Regulations, Final Rule, Minnesota Housing Financing Agency Neighborhood Stabilization Program Housing Improvement Standards dated April 2, 2009 and all applicable state and local code requirements which were made a part of the Development Agreement executed between HRA and the Declarant on said Mortgage Property.
- E. **Submissions to HRA.** Declarant is responsible for and shall determine that all of the Original Qualified Homebuyers who purchase dwelling units on the Mortgaged Property meet the affordability requirements specified in this Article II at the time such families purchase such dwelling unit. Upon subsequent sales, if Declarant declines to exercise its repurchase rights, the Original Qualified Homebuyers must abide by the Article II affordability requirements and shall submit to HRA for review and approval the income of each prospective purchaser of the Mortgaged Property so that the HRA can verify that the person meets the requirements of the Subsequent Qualified Homebuyer. Upon subsequent sales, if Habitat exercises repurchase rights, then Habitat must abide by the Article II affordability requirements and shall submit to HRA for review and approval the income of each prospective purchaser of the Mortgaged Property so that the HRA can verify that the person meets the requirements of the Subsequent Qualified Homebuyer.

**ARTICLE III**  
**Covenants Running With the Land**

Section 1. During the restrictive period Declarant hereby agrees that it is its express intent that each of the covenants, conditions and restrictions set forth in this Declaration shall be constructed to be, deemed, and are hereby declared to be covenants running with the Mortgaged Property, and that the benefit and burden of such covenants and restrictions shall pass to, and be binding upon Declarant's successors in title, unless terminated or deleted as provided in Article VIII below. Each and every transferee who acquires an interest in the Mortgaged Property shall conclusively be held to have acquired such interest in the Mortgaged Property, or any portion thereof, subject to the obligations of such covenants, conditions and restrictions set forth in this Declaration regardless of whether or not such covenants, conditions, and restrictions are set forth, referred to or specifically agreed to be performed by any such transferee in any contract, conveyance, agreement, or other such instrument by which such transferee acquired its interest in the Mortgaged Property.

**ARTICLE IV**  
**Common Plan**

Section 1. The covenants and restrictions contained in this Declaration are intended to establish a uniform and common plan for the use, development, and improvement of the Mortgaged Property for the common burden and benefit of the Declarant and all subsequent owners and occupants thereof for the Restricted Period.

**ARTICLE V**  
**Covenants Touch and Concern**

Section 1. Declarant hereby agrees that the covenants, conditions and restrictions contained in this Declaration in fact touch and concern the Mortgaged Property in the following respects:

A. Declarant's legal title to the Mortgaged Property has been burdened with the sale, use and resale limitations which provide that such Mortgaged Property will remain affordable in accordance with the requirements contained in 24 CFR Section 92.254 of the Home Regulations for the Restricted Period.

B. Declarant specifically states and agrees that the burdens imposed upon the Mortgaged Property are reasonable, acceptable, and certainly not unconscionable or against public policy in any way, given the other benefits of the transaction to HRA, HUD, Declarant, and the citizens on behalf of whom Declarant and HUD exercise the powers given them by law.

**ARTICLE VI**  
**HRA as Representative of Benefitted Parties**

Section 1. HRA is hereby designated the sole and exclusive representative of any and all other persons or entities also benefitted by such covenants and restrictions set forth in this Declaration insofar as the enforcement, the construction, the interpretation, the amendment, the release, and/or the termination of such covenants and restrictions are concerned. This designation and appointment shall also run with the Mortgaged Property, and is hereby made and agreed to by Declarant, its successors and assigns, and any subsequent transferee of any interest in the Mortgaged Property, or any part thereof for the Restricted Period.

## **ARTICLE VII Remedies and Enforceability**

Section 1. During the Restrictive Period, in the event of a violation or attempted violation of any of the covenants or restrictions set forth in this Declaration, HRA and its successors or assigns or designees (but only HRA and its successors and assigns and designees), may institute and prosecute any proceeding at law or in equity to abate, prevent, or enjoin any such violation, or to specifically enforce the covenants herein set forth, or to recover monetary damages caused by such violation or attempted violation. Monetary damages per NSP unit shall not exceed the amount of NSP dollars funded per NSP Unit, and are only available in the event of a default by Declarant, Original Qualified Homebuyer, or Subsequent Qualified Homebuyer under this agreement that is not cured by 30 days following notice by the HRA. No delay in enforcing the provisions of said covenants and restrictions as to any breach or violation shall impair, damage, or waive the right to enforce the same, or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times. No remedy herein conferred upon or reserved to the HRA is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this agreement or now or hereafter existing at law or in equity or by statute.

## **ARTICLE VIII Amendment, Termination or Deletion of Covenants**

Section 1. The provisions set forth in this Declaration shall not be amended, terminated, or deleted during the Restricted Period except by an instrument in writing duly executed by HRA, and Declarant or their respective successors or assigns. Unless sooner terminated, amended or deleted, as provided in this Article VIII each of the covenants, conditions and restrictions set forth in this Declaration shall continue in full force and effect throughout the Restricted Period, and shall thereupon terminate and be of no further force and effect.

## **ARTICLE IX Recordability of Certificate and Amendments**

Section 1. Upon completion of the construction and/or rehabilitation of each dwelling unit on the Mortgaged Property as determined by HRA in its sole discretion, HRA and Declarant shall enter into the Certificate. Any amendment of covenants and restrictions provided for herein shall all be in such form as will enable them to be recorded with the County Recorder or Registrar of Titles in and for the County in which the Mortgaged Property is situated.



**EXHIBIT A  
LEGAL DESCRIPTION**

**Lots 9 and 10, Block 1, Whitall Townhomes, according to the recorded plat thereof, and situate in Ramsey County, Minnesota.**

**EXHIBIT B  
CERTIFICATE AND DECLARATION  
AS TO RESTRICTED PERIOD**

WHEREAS, the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, a public body corporate and politic, (the "HRA"), has entered into a Development Agreement with Twin Cities Habitat for Humanity, Inc., a Minnesota non-profit corporation ("Habitat") and has executed a Declaration of Covenants, Conditions and Restrictions, which were recorded or filed on \_\_\_\_\_, 20\_\_, in the office of the County Recorder and/or Registrar of Titles in and for the County of Ramsey, State of Minnesota, as Document Nos. \_\_\_\_\_ and \_\_\_\_\_ respectively (the "Instrument"), affecting the described land located in the State of Minnesota, County of Ramsey and described as follow:

**Lot \_\_, Block 1, Whitall Townhomes, according to the recorded plat thereof, and  
situate in Ramsey County, Minnesota.**

**WHEREAS**, the Instrument contains certain covenants, undertaking, and restrictions therein which were intended to run with the land and be binding upon Habitat, its successors and assigns at all times during a Restricted Period, as therein defined; and

**WHEREAS**, under the terms and provision of the Instrument the dates of completion of construction and consequent commencement of the Restricted Period the day thereafter, and termination of said Restricted Period, are to be finally established by an instrument to be executed by Habitat and HRA in substantially the form of this Certificate and Declaration; and

**WHEREAS**, the Declaration will apply only to the NSP Units whose legal description is described above.

**NOW THEREFORE**, the HRA and Habitat do hereby certify and declare that:

1. The day immediately after the date on which the completion of improvements to the NSP Assisted Unit occurred was \_\_\_\_\_, which is the date of commencement of the Restricted Period (the "Commencement Date").
2. The date of termination of the Restricted Period \_\_\_\_\_ (the "End Date") for the NSP Assisted Unit is fifteen (15) years from the Commencement Date.

IN WITNESS WHEREOF, the undersigned have executed this instrument on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.



