

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW-INCOME HOUSING CREDITS  
2017 ALLOCATION YEAR**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (this “Agreement”, dated as of \_\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_, and its successors and assigns (the “Owner”), is given as a condition precedent to the allocation of low-income housing credits by the Minneapolis/Saint Paul Housing Finance Board, a joint power entity under Minnesota law, together with any successor to its rights, duties and obligations (the “Board”), c/o the Housing and Redevelopment Authority of the City of Saint Paul, 25 West Fourth Street, Suite 1300, Saint Paul, Minnesota 55012 (the “HRA”).

**RECITALS**

A. The Owner is or shall be the owner of a \_\_\_\_\_-unit rental housing project located on real property located in the City of [Minneapolis / Saint Paul], County of [Hennepin / Ramsey], State of Minnesota, legally described in **Exhibit A** attached hereto (the “Project Land”), known as or to be known as \_\_\_\_\_ (the “Project”).

B. The Board has been designated by the Legislature of the State of Minnesota as the housing credit agency for the location of the Project for the allocation of low-income housing credits.

C. The Owner has applied to the Board for an allocation of low-income housing credits to the Project, and the Board has determined that the Project will support annual low-income housing credits in the amount of \$\_\_\_\_\_ (the “Credits”).

D. Section 42 of the Internal Revenue Code of 1986, as amended (“Section 42” and the “Code”, respectively) requires as a condition precedent to the allocation of the Credits that the Owner execute, deliver and record this Agreement in the official land records of the county in which the Project is located in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 and the Additional Restrictions found in Section 5 hereof and **Exhibit C** attached hereto by regulating and restricting the use, occupancy and transfer of the Project as set forth herein.

E. 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 Land for such term, and are not merely personal covenants of the Owner.

NOW, THEREFORE, in consideration of the promises and covenants set forth herein and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner agrees as follows:

## SECTION 1 - DEFINITIONS

All words and phrases not otherwise defined in this Agreement that are defined in Section 42 or by the United States Department of Treasury (“Treasury”), the Internal Revenue Service (the “IRS”), or the Department of Housing and Urban Development (“HUD”) in rules and regulations pertaining thereto shall have the same meanings in this Agreement.

## SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

- (a) Upon execution and delivery by the Owner, the Owner shall cause this Agreement and all amendments thereto to be recorded in the office of the County Recorder or Registrar of Titles, as applicable, of the county in which the Project Land is located and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the Board an executed original of the recorded Agreement, or a duly certified copy of the executed original, showing the date and document numbers of record. The Owner agrees that the Board will not issue an IRS Form 8609 constituting final allocation of Credits for the Project unless the Board has received the recorded executed original, or a duly certified copy, of this recorded Agreement.
- (b) The Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Project Land and the Project during the term of this Agreement, that this Agreement and the covenants and restrictions set forth herein and in the exhibits hereto regulating and restricting the use, occupancy and transfer of the Project Land and the Project (i) shall be and are covenants running with the Project Land and the Project, encumbering the Project Land and the Project for the term of this Agreement, binding upon the Owner’s successors in title and all subsequent owners and operators of the Project Land and the Project, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner (and the benefits shall inure to the Board and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Agreement. The Owner hereby agrees that all requirements of the laws of the State of Minnesota to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges 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. For the longer of the period that the Credits are claimed or the term of this Agreement, every contract, deed, or other instrument hereafter executed conveying the Project Land or the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement; provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter executed conveying the Project Land or the Project or portion thereof provides that such conveyance is subject to this Agreement.
- (c) The Owner covenants to obtain the consent of any prior recorded lien holder for the Project to this Agreement, and such consent shall be a condition precedent to the Board’s issuance of the IRS Form 8609 constituting final allocation of Credits for the Project.

### SECTION 3 – REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner hereby represents, covenants, and warrants as follows:

- (a) The Owner (i) is a \_\_\_\_\_ duly organized under the laws of \_\_\_\_\_ and is qualified to transact business under the laws of the State of Minnesota, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.
- (b) The execution and performance of this Agreement by the Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) At the time of execution and delivery of this Agreement, the Owner has 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 documents relating to the Project or other permitted encumbrances).
- (d) 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 that, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.
- (e) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in Section 42 and any applicable regulations.
- (f) Each unit in the Project contains complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless), which are to be used on other than a transient basis.
- (g) All units subject to Section 42 shall be leased and rented or made available to members of the general public who qualify for occupancy thereof under the applicable election specified in Section 42(g)(1) of the Code (“Low-Income Tenants”).
- (h) The Owner shall comply fully with the requirements of the Fair Housing Act as it may from time to time be amended.

- (i) The Owner shall not refuse to lease a unit to the holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.
- (j) Each low-income unit is and will remain suitable for occupancy.
- (k) Subject to the requirements of Section 42 and this Agreement, the Owner may sell, transfer or exchange the entire Project, at any time, but the Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Agreement and to the requirements of Section 42 and any applicable regulations. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the Project or any low-income portion of the Project. The Owner agrees that the Board may void any sale, transfer or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Agreement and the requirements of Section 42.
- (l) The Owner shall notify the Board in writing of any sale, transfer, or exchange of the entire Project or any low-income portion of the Project. The Owner shall obtain all required the Board approvals of the sale, transfer, or exchange as described in the Board's then-applicable Low Income Housing Tax Credit Procedural Manual (the "Procedural Manual"). The notification to the Board shall be made in the manner described in the Procedural Manual.
- (m) 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 an residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law.
- (n) 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, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement.
- (o) The Owner has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth herein and supersede any other requirements in conflict herewith.
- (p) Upon request by the Board, the Owner shall provide the Board with a completed Characteristic of Tenant Household Form detailing the Project's demographic characteristics.
- (q) The Owner shall fully comply with the requirements of Section 42 and any applicable regulations as they may from time to time be amended.

## SECTION 4 – INCOME RESTRICTIONS; RENTAL RESTRICTIONS

The Owner represents, warrants, and covenants that throughout the term of this Agreement and in order to satisfy the income and rental restrictions required by Section 42 (the “Occupancy Restrictions”):

- (a) The determination of whether a tenant meets the low-income requirement shall be made by the Owner at least annually on the basis of the current income of the tenant.
- (b) In accordance with Section 42(g)(1) of the Code, the Owner has elected that \_\_\_ percent or more of the residential units in the Project shall be occupied by individuals whose income is \_\_\_ percent or less of area median gross income.
- (c) All units subject to Section 42 shall be rent-restricted in accordance with Section 42(g)(2) of the Code.
- (d) The applicable fraction (as defined in Section 42(c)(1) of the Code) for each building for each taxable year in the Extended Use Period (as defined herein) will not be less than the Applicable Fraction for each building specified in Exhibit B attached hereto.
- (e) The applicable fraction (as defined in Section 42(c)(1) of the Code) for the Project for each taxable year in the Extended Use Period will not be less than the Applicable Fraction for the Project specified in Exhibit C attached hereto.

## SECTION 5 – ADDITIONAL RESTRICTIONS

**Exhibit C** attached hereto sets forth certain additional obligations of the Owner with respect to the Project upon which the allocation of Credits has been based and with which the Owner covenants to comply throughout the Extended Use Period. The obligations listed in **Exhibit C** must be consistent with the Project’s original reservation and binding agreement, any carryover agreement or, if applicable, any Section 42(m) Letters, with the exception of approved amendments.

## SECTION 6 – TERM OF AGREEMENT

- (a) The following definitions shall apply to this Section 6.
  - (1) “Compliance Period” means, with respect to any building that is part of the Project, the period of 15 taxable years beginning with the first taxable year of the credit period with respect thereto.
  - (2) “Extended Use Period” means, with respect to any building that is part of the Project, the period beginning on the first day in the Compliance Period on which such building is part of a qualified low-income housing project and ending on the date that is 15 years (or, if applicable, the number of years that is set forth in **Exhibit C** attached hereto) after the close of the Compliance Period.

- (b) This Agreement and the Owner's obligation to comply with Section 42 and the Occupancy Restrictions shall commence on the first day of the Compliance Period and shall end at the close of the Extended Use Period.
- (c) Notwithstanding Section 6(b) hereof, the Extended Use Period for any building that is part of the Project shall terminate:
  - (1) On the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary of the Treasury determines that such acquisition is part of an arrangement with the taxpayer, a purpose of which is to terminate the Extended Use Period; or
  - (2) On the last day of the Compliance Period if the Owner has properly requested that the Board assist in procuring a qualified contract for the acquisition of the low-income portion of any building that is a part of the Project, and the Board is unable to present a qualified contract. This Section 6(c)(2) shall not apply if the Owner has waived this right as provided in **Exhibit C** attached hereto.
- (d) Notwithstanding subsection (c) above, the Section 42 rent requirements shall continue for a period of three years following the termination of the Extended Use Period pursuant to Section 6(c) hereof. Throughout the term of this Agreement and during such three-year period, the Owner shall not evict or terminate the tenancy of an existing tenant of any low-income unit other than for good cause and shall not increase the gross rent above the maximum allowed under Section 42 with respect to such low-income unit.
- (e) Unless otherwise specified in **Exhibit C** hereof, this Agreement shall not terminate for a period of 30 years beginning on the first day of the Compliance Period in which the building is part of a qualified low-income housing Project.

## SECTION 7 – ENFORCEMENT OF ADDITIONAL RESTRICTIONS

- (a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Board to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income Tenants that pertain to compliance with the terms of this Agreement.
- (b) The Owner shall submit any other information, documents or certifications requested by the Board that the Board shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of this Agreement and the requirements of Section 42.
- (c) The Owner shall submit any other information, documents or certifications requested by the BOARD, which the BOARD shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provision of this Agreement.

## SECTION 8 – ENFORCEMENT OF SECTION 42 OCCUPANCY RESTRICTIONS

- (a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 and applicable regulations of this Agreement. The Owner covenants to take any lawful action (including amendment of this Agreement as may be necessary, in the opinion of the BOARD) to comply fully with the Code and 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 Internal Revenue Service, or the Department of Housing and Urban Development from time to time pertaining to the Owner's obligations under Section 42 and affecting the Project.
- (b) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with Section 42 and the applicable regulations, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE BOARD AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN A STATE COURT 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.
- (c) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the BOARD and all persons interested in Project compliance under Section 42 and the applicable regulations.
- (d) The Owner acknowledges that the BOARD is required, pursuant to Section 42(m)(1)(B)(iii) of the Code and Section 1.42-5 of the Regulations, to establish a procedure to monitor the Owner's and the Project's compliance with the requirements of Section 42, which procedure includes the monitoring of the Owner's compliance with the Additional Restrictions, if any, set forth in **Exhibit C** hereof. In addition, BOARD may be required to notify the Internal Revenue Service of any noncompliance.
- (e) The Owner shall submit any other information, documents or certifications requested by the BOARD, which the BOARD shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provision of this Agreement.

## SECTION 9 – MISCELLANEOUS

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

- (b) Notices. All notices to be given pursuant to this Agreement 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 set for below, or to such other place as a party may from time to time designate in writing.

To the Board:

ATTENTION: Housing Tax Credit Program  
Minneapolis/Saint Paul Housing Finance Board  
c/o Housing and Redevelopment Authority of the City  
of Saint Paul  
25 West Fourth Street, Suite 1300  
Saint Paul, Minnesota 55102]

To the Owner:

ATTENTION: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Board, and the Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

- (c) Amendment. Notwithstanding anything to the contrary contained herein, this Agreement may be amended by a written agreement between the Board and the Owner, which agreement shall be effective upon execution thereof by the Board and the Owner, and the recording of the amendment with the County Recorder or Registrar of Titles of the County in which the Project is located. The Owner agrees that is will take all actions necessary to effect the amendment of this Agreement as may be necessary to comply with the Code and any applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to the Credits.
- (d) Subordination of Agreement. This Agreement and the restrictions hereunder are subordinate to the loans and loan documents, if any, on the Project except insofar as Section 42(h)(6)(E)(ii) of the Code requires otherwise (relating to the three-year period of eviction and rent restrictions in accordance with Section 42(h)(6)(E)(ii) of the Code and Section 6(d) hereof following the early termination of the Extended Use Period in accordance with Section 6(c) hereof).
- (e) Governing Law. This Agreement shall be governed by the laws of the State of Minnesota and, where applicable, the laws of the United States of America.
- (f) Survival of Obligations. The obligations of the Owner as set forth herein and in the Owner’s application for the Credits shall survive the allocation of the Credits and shall not be deemed to terminate or merge with the issuing of the allocation.



## SECTION 10 – HUD REQUIRED PROVISIONS

(a) In the event of any conflict between any provision contained elsewhere in this Agreement and any provision contained in this Section 10, the provisions contained in this Section 10 shall govern and be controlling in all respects.

(b) The following terms shall have the following definitions:

“Code” means the Internal Revenue Code of 1986, as amended.

“HUD” means the United States Department of Housing and Urban Development.

“HUD Regulatory Agreement” means the Regulatory Agreement for Multifamily Projects between the Owner and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Mortgage Loan” means the mortgage loan made by Senior Lender to the Owner pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Senior Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act of 1934, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument

“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

“Security Instrument” means the Multifamily Mortgage, Assignments of Leases and Rents and Security Agreement and Fixture Filing from the Owner in favor of Senior Lender, as the same may be supplemented, amended or modified.

“Senior Lender” means \_\_\_\_\_, its successors and assigns.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in this Agreement to the contrary, except the requirements in 26 U.S.C. § 42(h)(6)(E)(ii), to the extent applicable, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). The Owner covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or this Agreement. In the event of any conflict between the provisions of this Agreement and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Board’s ability to enforce the terms of this Agreement, provided such terms do not conflict with statutory provisions of the National

Housing Act or the regulations related thereto. The Owner represents and warrants that to the best of the Owner's knowledge this Agreement impose no terms or requirements that conflict with the National Housing Act and related regulations.

- (d) In accordance with 26 U.S.C. § 42(h)(6)(E)(i)(1), in the event of foreclosure (or deed in lieu of foreclosure), this Agreement (including without limitation), any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii), to the extent applicable, or as otherwise approved by HUD.
- (e) The Owner and the Board acknowledge that the Owner's failure to comply with the covenants provided in this Agreement does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.
- (f) Except for the Board's reporting requirement, in enforcing this Agreement, the Board will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:
  - i. Available Surplus Cash, if the Owner is a for-profit entity;
  - ii. Available distributions of Surplus Cash and Residual Receipts authorized for release by HUD, if the Owner is a limited distribution entity;
  - iii. Available Residual Receipts authorized by HUD, if the Owner is a non-profit entity; or
  - iv. A HUD-approved collateral assignment of any HAP contract.
- (g) For so long as the Mortgage Loan is outstanding, the Owner and the Board shall not further amend this Agreement, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.
- (h) Subject to the HUD Regulatory Agreement, the Board may require the Owner to indemnify and hold the Board harmless from all loss, cost, damage an expense arising from any claim or proceeding instituted against the Board relating to the subordination and covenants set forth in this Agreement, provided, however, that the Owner's obligation to indemnify and hold the Board harmless shall be limited to available Surplus Cash and/or Residual Receipts of this Owner.
- (i) Notwithstanding anything to the contrary contained herein, it is not the intent of any of the parties hereto to cause a recapture of the Low Income Housing Tax Credit or any portion thereof related to any potential conflicts between the HUD Requirements and this Agreement. The Owner represents and warrants that to the best of the Owner's knowledge the HUD Requirements impose no requirements which may be inconsistent with full compliance with this Agreement. The acknowledged purpose of the HUD Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of this Agreement is to articulate

requirements imposed by Section 42 of the Code. In the event an apparent conflict between the HUD Requirements and this Agreement arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. It is the primary responsibility of the Owner, with advice of counsel, to determine that it will be able to comply with the HUD Requirements and its obligations under this Agreement. No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax exemption, except in strict accord with Program Obligations.

IN WITNESS WHEREOF, the Owner has caused this Agreement to be signed by its duly authorized representatives, as of the day and year first written above.

OWNER

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF MINNESOTA            )  
  ) ss  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Republic

This document drafted by:

Minneapolis/Saint Paul Housing Finance Board  
c/o Housing and Redevelopment Authority of the City of Saint Paul  
25 West Fourth Street, Suite 1300  
Saint Paul, Minnesota 55102

**EXHIBIT A**

**Declaration of Land Use Restrictive Covenants**

**Legal Description**

**EXHIBIT B**

**Declaration of Land use Restrictive Covenants  
Applicable Fraction**

<u>BIN #</u>	<u>BUILDING ADDRESS</u>	<u>APPLICABLE FRACTION*</u>
_____	_____	_____ %
_____	_____	_____ %
_____	_____	_____ %
_____	_____	_____ %
_____	_____	_____ %
_____	_____	_____ %
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_____	_____	_____ %
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_____	_____	_____ %
_____	_____	_____ %

**\*THE BUILDING APPLICABLE FRACTION STATED ON THIS FORM  
MUST MATCH THE BUILDING APPLICABLE FRACTION STATED ON  
MINNESOTA HOUSING FINANCE AGENCY FORM HTC 28, BUILDING  
MAP**

**EXHIBIT C**

**Declaration of Land Use Restrictive Covenants**

**Project Summary and Additional Restrictions**

This Allocation of Low-Income Housing Credits (“Credits”) is based upon the following:

1. Project Name: \_\_\_\_\_
2. Project Number: \_\_\_\_\_ Supplement Number: \_\_\_\_\_
3. Project Location: \_\_\_\_\_
4. Total Units: \_\_\_\_\_ Credit Unit: \_\_\_\_\_
5. Partnership Name: \_\_\_\_\_
6. Partnership Address: \_\_\_\_\_
7. Name(s) of General Partner(s): \_\_\_\_\_  
\_\_\_\_\_
8. Name(s) of Nonprofit General Partner(s): \_\_\_\_\_  
\_\_\_\_\_
9. Owner Taxpayer I.D. No.: \_\_\_\_\_
10. Nonprofit Tax I.D. No.: \_\_\_\_\_
11. Type of Credits: \_\_\_\_\_
12. Qualified Census Tract Number: \_\_\_\_\_  
Difficult Development Area: \_\_\_\_\_  
State Designated Basis Boost Applied: \_\_\_\_\_ Yes \_\_\_\_\_ No
13. Total Qualified Basis: \_\_\_\_\_
14. Total Eligible Basis: \_\_\_\_\_
15. Annual Credit Amount: \_\_\_\_\_

The Owner represents, warrants, and covenants that throughout the term of this Agreement:

	Does Not
Applies to	<u>Apply to</u>
<u>Project</u>	<u>Project</u>

(Check appropriate line for each item)

- (a)   Check Minimum Set-Aside Election
- 1) At least 20 percent or more of the total residential units in the Project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median income; or
- (2) At least 40 percent or more of the total residential units in the Project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median income.
- (b)   The Project must conform to IRS and HUD guidelines governing combining Credits with HOME Investment Partnership Program under 24 CFR Part 92.
- (c)   A Qualified Nonprofit Organization (as defined in Section 42(h)(5)(C) of the Code) will own an interest in the Project and materially participate in the operation of the Project throughout the compliance period as required by Section 42(h)(5) of the Code. The Qualified Nonprofit Organization's primary service area is the City of Saint Paul.
- (d)   The Owner agrees to lease \_\_\_\_ percent (Project Fraction) of the total units in the Project to individuals and families whose income is \_\_\_\_ percent or less of the area median gross income (including adjustments for family size) as determined in accordance with Section 42 ("Low-Income Tenants") and shall lease units in each building in the Project to Low-Income Tenants according to the applicable fraction set forth in Exhibit B attached hereto.

- (e)      [ ]            [ ]      The Project shall provide family housing that is not restricted to persons 55 years or older in which at least 75 percent of the Credit units contain two or more bedrooms and at least one-third of the 75 percent shall contain units with three or more bedrooms. [IF SELECTION PRIORITY #1 WAS SELECTED, ALSO INCLUDING THE FOLLOWING: In addition, the Project shall provide family housing that is not restricted to persons 55 years or older in which at least \_\_\_\_ percent of the Project units (as opposed to, if applicable, Credit units only) contain three or more bedrooms.] The tenant selection plan must give priority to families with minor children.
- (f)      [ ]            [ ]      The Project shall provide at least 75 percent of the Credit units for single room occupancy housing with one bedroom or less to occupants whose income does not exceed 30 percent of area median income with rents affordable at 30 percent of area median income.
- (g)      [ ]            [ ]      The Project shall rent at least 50 percent of the total units to persons with mental illness, brain injury, drug dependency, developmental disabilities, or physical disabilities in a manner consistent with Minnesota Statutes, Section 462A.222, subdivision 3, subparagraph (d)(3) and/or to persons with HIV/AIDS or related illnesses, and shall obtain a commitment from a public or private social services agency to provide services consistent with applicable state licensing requirements for the services.
- (h)      [ ]            [ ]      Rental Assistance requirements apply to the Project as indicated below:
- (1) \_\_\_\_ at least 51 percent of the total units shall be set aside for project-based rental assistance; or
- (2) \_\_\_\_ at least 20 percent but less than 51 percent of the total units shall be set aside for project-based rental assistance; or
- (3) \_\_\_\_ at least 10 percent but less than 20 percent of the total units shall be set aside for project-based rental assistance



In addition to (1), (2), or (3) as checked above, the Owner agrees to comply with all performance commitments and program requirement for the specific rental assistance type as contained in the rental assistance program guidelines, extended term contract requirements identified in the project's 2016 Housing Tax Credit Self-Scoring Worksheet and the requirements contained in the Procedural Manual.

(i)                                                After the end of the initial 15-year Compliance Period, the Owner shall transfer ownership of 100 percent of the Credit units in the Project to tenant ownership. The transfer shall be in accordance with the Owner's transfer plan as initially submitted and amended, and accepted by the Board. The plan shall incorporate a limited partnership ownership exit strategy and provide for services including homeowner education and training. The purchase price for each unit at time of sale shall be affordable to households with incomes meeting Credit eligibility requirements. To be eligible, the buyer must have had a Credit-qualifying income at the time of initial occupancy or time of purchase. Until the time the Credit units are purchased by a qualified tenant or if the Credit units are not acquired by a qualified tenant, the Owner will extend the duration of low-income use for the longest period (30 years), and the Owner agrees that Sections 42(h)(6)(E)(i)(II) and 42(h)(6)(F) of the Code shall not apply to the Project.

(j)                                                The Owner agrees that the Project will serve members of an underserved population defined as Single Head of Household with Minor Children, Individuals and Households of Color. The Owner further agrees to use marketing efforts that will attract the above-defined underserved population including collaborations and partnerships with members or organizations addressing the needs of the underserved population.

(k)                                                The Owner agrees to preserve existing Credit units in a Project that received a previous Board allocation of Credits; and

The Owner agrees to maintain the Credit units in the Project for at least 30 years, and Sections 42(h)(6)(E)(i)(II) and 42(h)(6)(F) of the Code shall not apply to the Project.

(l)        [ ]            [ ]        The Owner agrees that at least 20 percent (at least \_\_\_\_units) of the total Credit units will be rented to households experiencing long-term homelessness as defined in Minnesota Rule 4900.3705, Subpart 10a. Supportive services also will be provided to the households housed in such units, as evidenced from time to time by one or more written commitments from one or more appropriate social service agencies to provide such supportive services.

If the necessary rental assistance, operating support, or tenant service funding for the Project is withdrawn or terminated due to reasons not attributable to the actions or inactions of the Owner, and alternative funding is unavailable, and the Project is otherwise in full compliance with all the terms of the funding for the Project, the Owner may petition the Board to modify its requirements. The Board may (i) relax or eliminate the requirement for supportive services or (ii) relax or eliminate the requirement that the assisted unit be occupied by households experiencing long-term homelessness. If the Board eliminates the requirement that the assisted units be occupied by households experiencing long-term homelessness, the Board will permit the Owner to phase out the targeting of units to households experiencing long-term homelessness and convert the rents of those units to Section 42 50% rent limit without jeopardizing the Credit allocation, provided that more restrictive threshold, selection priority, or funding requirements do not apply. If such conversion occurs, in order to retain the Credit allocation, the above-described 50% rent limit and the Section 42 minimum set-aside elected for the Project by the Owner must be maintained for the remainder of the Extended Use Period.

The Owner agrees to comply with the reporting requirements contained in the Long-Term Homelessness Rider to Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits and shall attach a copy of such Rider to this Declaration.

(m)        [ ]            [ ]        The Owner agrees to provide high speed internet access via installation of all appropriate infrastructure and connections for cable, DSL or wireless internet service to every unit in the Project.

- (n) [ ] [ ] The Owner agrees to institute and maintain a written policy for the Project prohibiting smoking in all the units and all common areas within the building(s) of the project. The Owner must include a non-smoking clause in the lease for every household of the Project. The Owner shall maintain the Project's smoke-free policy for the term of this Declaration.
- (o) [ ] [ ] The Owner agrees that the Section 42 income and rental restrictions shall apply for a period of 30 years beginning with the first day of the Compliance Period, and Sections 42(h)(6)(E)(i)(II) and 42(h)(6)(F) of the code shall not apply to the Project.
- (p) [ ] [ ] For a period of five years\* following the last placed in service date for any building in the property, (i) \_\_\_\_ percent of the Credit units shall have gross rents established at a level not greater than 30 percent of 30 percent of area median income, and (ii) \_\_\_\_ percent of the Credit units shall have gross rents established at a level not greater than 30 percent of 50 percent of area median income, and (iii) \_\_\_\_ percent of the Credit units shall have gross rents established at a level not greater than 30 percent of 60 percent of area median income.

Provided that more restrictive threshold, selection priority, or funding requirements do not apply, rents may, following the five-year restricted period, be increased for the applicable restricted units on a pro-rata basis over a three-year period beginning on the last day of the five-year restriction period according to the following chart:

<u>Year</u>	<u>30% of 50% Rent Levels</u>	<u>30% of 30% Rent Levels</u>
*Years 1-5	30% of 50%	30% of 30%
Year 6	30% of 53%	30% of 33%
Year 7	30% of 57%	30% of 37%
Year 8	30% of 60%	30% of 40%

- (q)      [ ]            [ ]      To promote economic integration of the Project, the Owner agrees that at least 25 percent, but not greater than 50%, of Project units (excluding from the total number of Project units any full-time manager's unit and any other common unit) will be subject to the Section 42 income and rental restrictions, and as this Declaration may restrict further, and the Owner shall use the Owner's best efforts to rent the balance of the Project units to households whose income exceeds 60 percent of area median income.
- (r)      [ ]            [ ]      At least \_\_\_\_ percent of the Project units use project-based funding (*e.g.*, project-based Section 8 assistance or Minnesota Housing Finance Agency homeless initiative funds) to allow gross rents for such units to be established at a level not greater than 30 percent of 30 percent of area median income.
- (s)      [ ]            [ ]      (i) At least \_\_\_\_ percent of the Project units [inclusive of the Project units, if any, described in the following clause (ii)] shall be rented to households whose income is 50 percent or less of area median income at gross rents established at a level not greater than 30 percent of 50 percent of area median income, and (ii) at least \_\_\_\_ percent of the Project units shall be rented to households whose income is 30 percent or less of area median income at gross rents established at a level not greater than 30 percent of 30 percent of area median income.
- (t)      [ ]            [ ]      The Project provides resident support services (*i.e.*, information and referral, advocacy, case management, self-reliance training, resident association, and community building activities) pursuant to one or more agreements with one or more established organizations with experience in providing such services.

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