

City of Saint Paul

4d Participation Agreement

Property Owner(s): _____ (herein referred to as "Owner(s)")

Property Address: _____, **Saint Paul, MN 554** _____ (herein referred to as "Property")

Total Property Units: _____

Percentage (%) of Units restricted to be affordable to and occupied by households at or below 60% of Area Median Income _____

Date: _____, 20____

1. The Owner certifies that he/she/they is/are the Owner(s) of record of the Property.
2. The Owner submitted to the City of Saint Paul a completed 4(d) program application and rent roll documenting that _____% of the rental housing units located on the Property have rents that do not exceed 30% of the gross income of a family whose income equals 60% or less of the area median income ("AMI") as established by the United States Department of Housing and Urban Development ("HUD") for the Minneapolis/St. Paul area.
3. The Owner submitted to the City of Saint Paul a completed 4(d) program application and rent roll documenting that _____% of the rental housing units located on the Property have rents that do not exceed 30% of the gross income of a family whose income equals 50% or less of the AMI as established by HUD for the Minneapolis/St. Paul area.
4. The Owner agrees to record a declaration against its Property limiting the rental income on _____% of the rental housing units located on the Property as described in the attached Declaration as **Exhibit A** (the "Declaration") so that the Owner can qualify for 4(d) preferential tax classification pursuant to Minnesota Statutes §371.13, Subdivision 25. The Owner specifically represents that such preferable tax classification, along with access to the other financial incentives described in this Participation Agreement, is sufficient consideration for executing and filing the Declaration.
5. The Owner certifies that no existing tenants in the Property have been or will be evicted because of the filing of the Declaration.
6. Upon satisfaction of the foregoing conditions, the City of Saint Paul will, in cooperation with the Owner:
 - a. Record the Participation Agreement in the Ramsey County land records.
 - b. Submit the Owner's first application to the State of Minnesota for the certification of 4(d) classification and pay the associated application fee.
 - c. Provide the Owner with a grant in an amount equal to \$_____ (not to exceed \$1,000) to help the Owner cover the cost of complying with the Declaration's administrative and reporting requirements as well as to help the Owner make health, safety, and energy efficiency improvements to the Property.

The parties have executed this Agreement as of _____, 20__.

OWNER: _____

OWNER: _____

CITY OF SAINT PAUL:

Kayla Schuchman, Director of Housing

EXHIBIT A
FORM OF DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS, is made on or as of the _____ day of _____ 20____ by _____, a _____ ("Owner"), having its offices at _____, in favor of the City of Saint Paul, a Minnesota municipal corporation (the "City").

W I T N E S S E T H:

WHEREAS, Owner and the City have entered into that certain Green and Affordable 4D Participation Agreement dated _____, 20__ (the "Participation Agreement"), pursuant to which the City is offering certain financial incentives in exchange for Owner limiting rents and incomes on certain rental housing units located at _____; and

WHEREAS, but for the making and recording of this Declaration, the City would be unwilling to qualify the property for preferable tax classification or provide the other financial incentives described in the Participation Agreement;

NOW, THEREFORE, in consideration of said mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

SECTION 1. Definitions.

In this Declaration, unless a different meaning clearly appears from the context:

AFFORDABILITY PERIOD – A period commencing on the Date of this Declaration and continuing for 10 years.

AFFORDABLE UNITS– _____ Units in the Project as identified on Attachment B attached hereto [*unless reduced pursuant to Section 8 hereof*].

ANNUAL INCOME – means adjusted gross income as defined in S.62 of the United States Internal Revenue Code, of all members of a household (this is the "Adjusted Gross Income" amount reported on IRS form 1040).

HUD – The United States Department of Housing and Urban Development.

LAND – The real property located in Ramsey County, Minnesota, and legally described on Attachment A attached hereto and made a part hereof.

LOW-INCOME FAMILIES – Individuals or families whose annual income does not exceed 60 percent of the Area Median Income.

MEDIAN FAMILY INCOME – The "Median Family Income" as most recently established by the United States Department of Housing and Urban Development ("HUD") for the Minneapolis/St. Paul standard metropolitan statistical area, adjusted for family size.

PROJECT – A _____ unit rental housing project located at _____ in Saint Paul, Minnesota.

SECTION 2. Representations.

Owner represents to and for the benefit of the City that Owner has duly authorized, executed, and delivered this Declaration pursuant to proper authorization therefor; that this Declaration constitutes a valid and binding obligation of the Owner, enforceable in accordance with its terms, except only as such enforceability may be limited by bankruptcy, moratorium, reorganization or other laws, or principles of equity, affecting creditors' rights; and that the execution and delivery of this Declaration does not constitute a breach, violation, or default under any law, regulation, order, judgment or ruling binding upon Owner, or a default under any indenture, mortgage, agreement or other instrument to which Owner is subject or by which it or its property is bound. The Owner specifically represents that the preferable tax classification that it will receive in exchange for encumbering its Property with this Declaration, along with the grant funds and access to the other financial incentives described in the Participation Agreement is sufficient consideration for executing and filing this Declaration. It is the Owner's responsibility to submit an annual report to the City and a 4d application to Minnesota Housing in order to continue receiving such preferable tax classification and failure to do so shall not void or limit the enforceability of this Declaration.

SECTION 3. Restrictions on Use.

- A. Owner agrees to develop, operate, and manage the Project according to the terms of this Declaration for the duration of the Affordability Period.
- B. During the Affordability Period, this Declaration shall constitute covenants running with the land and be binding on the successors and assigns of Owner and on all parties having or acquiring any rights, title, or interest in the Project.
- C. Rental of the Project shall be in accordance with the following:
 - (a) _____ (number of units) of the Affordable Units shall be occupied by households with incomes that are 60 percent or less of the Median Family Income and shall bear rents not greater than 30 percent of the adjusted income of a family whose gross income equals 60 percent of the Median Family Income. The requirements of this Section 3(C)(a) shall be satisfied despite a temporary non-compliance with Section 3(C)(a), if the non-compliance is caused because either (i) a current tenant as of the date of this Declaration is in one of the Affordable Units or (ii) the incomes of tenants that were income qualified upon occupancy increase and if actions satisfactory to the City are being taken to ensure that all vacancies of Affordable Units are filled in accordance with this Section 3(C)(a) until the non-compliance is corrected.
 - (b) _____ (number of units) of the Affordable Units shall be occupied by households with incomes that are 50 percent or less of the Median Family Income and shall bear rents not greater than 30 percent of the adjusted income of a family whose gross income equals

50 percent of the Median Family Income. The requirements of this Section 3(C)(a) shall be satisfied despite a temporary non-compliance with Section 3(C)(a), if the non-compliance is caused because either (i) a current tenant as of the date of this Declaration is in one of the Affordable Units or (ii) the incomes of tenants that were income qualified upon occupancy increase and if actions satisfactory to the City are being taken to ensure that all vacancies of Affordable Units are filled in accordance with this Section 3(C)(a) until the non-compliance is corrected.

- (c) The initial rent schedule for the Affordable Units is attached as Exhibit B. In no event will the City require the Affordable Unit gross rents to be set lower than the rents listed on Exhibit B.
- (d) Subject to the limitations on rents imposed by Section 3(C)(a), Owner shall not raise rents for tenants in the Affordable Units by more than 3% annually unless the Owner provides evidence that a larger rent increase is needed to address deferred maintenance or unanticipated operating cost increases and City staff approve such larger rent increase.
- (e) Owner may not refuse to lease an Apartment Unit in the Project to a prospective tenant because the prospective tenant is a Section 8 certificate or voucher holder, or a participant in any other tenant-based assistance program.
- (f) The City may, upon request, review and approve rents not more frequently than annually for consistency with this Agreement.
- (g) Except for tenants already in the Affordable Units, Owner shall secure an income certification from the proposed tenant(s) of each Affordable Unit prior to such tenant(s)' initial occupancy. Such income certificate shall contain a statement of the total Annual Income for the previous year of each person who proposes to live in the Affordable Unit during that year. Upon request of the City, Owner shall re-certify the Annual Incomes of tenants in Affordable Units, provided that the City may not request re-certification more frequently than every three (3) years. Owner shall retain all records related to compliance with this Declaration for a minimum of six (6) years after termination of the Affordability Period.
- (h) On or before March 31 of each year of the Affordability Period the Owner shall make annual reports to the City in the form attached hereto as Attachment C.
- (i) Owner shall use affirmative fair housing marketing practices in soliciting renters, determining eligibility and concluding all transactions and provide evidence of compliance to the City upon request.

SECTION 4. Restrictions on Sale of the Project.

Owner agrees not to sell, transfer, convey or assign the Affordable Units (except leases in the ordinary course of business) without first obtaining the express written assumption by the purchaser, transferee, grantee, or assignee of the obligations imposed on Owner by this Declaration and providing a copy to the City with the name of the new contact person responsible for compliance with the Declaration; provided, however, that this Declaration shall remain enforceable against a purchaser, transferee, grantee, or assignee even in the absence of a written assumption. Any sale in violation of this Declaration shall be null and void at the election of the City. Sale of single-family properties to a homebuyer is limited to eligible homebuyer at 80% (or lower) of the area median income.

SECTION 5. Covenants: Binding Upon Successors in Interest.

It is intended and agreed that the covenants provided in this Agreement shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, be binding on Owner, the successors and assigns of Owner, and all parties having or acquiring any right, title, or interest in all or any part of the Land. This Declaration shall be enforceable against all such parties to the fullest extent permitted by law and equity for the benefit and in favor of the City, its successors and assigns. It is expressly agreed and acknowledged that: the covenants provided in this Declaration are in addition to the provisions of any Other Documents; this Declaration shall not be deemed to limit or merge into any Other Documents or vice versa; this Declaration shall survive the expiration or termination of any of the Other Documents; and the satisfaction or release of any Other Documents shall not be deemed to a satisfaction or release of this Declaration. This Declaration may not be amended unless such amendment is in writing, signed by the Owner and the City and recorded against the Project.

SECTION 6. Remedies for Default.

In the event of any default, failure, violation, or any other action or inaction by Owner specified in this Declaration, the City at its option may institute such actions or proceedings at law or in equity as it may deem desirable for effectuating the provisions of this Declaration, including without limitation actions for specific performance, damages, and injunctive relief, and including also any remedy allowed under the terms of any Other Documents. In any successful action or proceeding to enforce its rights under this Declaration, the City shall be entitled to the recovery from Owner of reasonable attorney fees.

SECTION 7. Notices and Demands.

A notice, demand, or other communication under this Declaration by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

A. in the case of Owner, is addressed to or delivered personally to Owner at:

B. in the case of the City, is addressed to or delivered personally to the City at:

City of Saint Paul
Department of Planning and Economic Development
25 W.4th Street, Suite 1300 City Hall Annex
Saint Paul, Minnesota 55102
ATTENTION: Director of Housing

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

[SECTION 8. Reduction of Affordable Units. If Owner has complied with the terms of this Declaration for at least five (5) years, then, upon request from Owner, the City will execute an amendment to this Declaration agreeing to reduce the number of Affordable Units down to a minimum of ____ Affordable Units.]

(Signature pages follow.)

[Signature page to Affordable Housing Declaration of Restrictive Covenants]

IN WITNESS WHEREOF, Owner has caused this Declaration to be duly executed on or as of the day and year first above written.

a _____

By _____

STATE OF MINNESOTA)
) ss.
RAMSEY COUNTY)

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

Notary Public

*This instrument was drafted by:
City Attorney Office
Room 400, City Hall
St Paul, MN 55102*

ATTACHMENT A
TO AFFORDABLE HOUSING DECLARATION OF RESTRICTIVE COVENANTS

LEGAL DESCRIPTION

ATTACHMENT B
TO AFFORDABLE HOUSING DECLARATION OF RESTRICTIVE COVENANTS

INITIAL RENT SCHEDULE

| Unit # | Bedroom Size | Maximum Rent |
|---------------|---------------------|---------------------|
| | | |
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