

DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW-INCOME HOUSING CREDITS  
20[ ] 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 tax 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 [Minneapolis Community Planning and Economic Development Department, 505 4th Avenue South, Suite 320, Minneapolis, Minnesota 55415 (“CPED”)] [or] [the Housing and Redevelopment Authority of the City of Saint Paul, 25 West Fourth Street, Suite 1200, Saint Paul, Minnesota 55012] (the “HRA”).

RECITALS

A. The Owner is or will 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 tax credits (“HTC”)

C. The Owner has applied to the Board for an allocation of HTC to the Project, and the Board has determined that the Project will support HTC in the annual 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 to create certain covenants running with the Project Land for the purpose of enforcing the requirements of Section 42, the Treasury Regulations promulgated thereunder (the “Regulations”) and the Additional Restrictions set forth in Section 5 and Exhibit C and Exhibit D 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 shall be and are covenants running with the Project Land for the term of this Agreement and shall be binding upon all subsequent owners of the Project 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 IRS Form 8609(s) constituting the final allocation of Credits for the Project until 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 that during the term of this Agreement, that this Agreement and the covenants and restrictions set forth herein and in the Exhibits attached 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 and assigns and all future 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 Project 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 Project Land. For the term of this Agreement, every contract, deed, or other instrument hereafter executed conveying the Project Land or the Project or any 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 any 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(s) constituting the 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 as contemplated by this Agreement), and (iii) has the full legal right, power and authority to execute and deliver this Agreement.
- (b) The Owner's execution and performance of this Agreement: (i) does not and will not violate, any applicable law, rule or regulation, or any order of any court, agency or governmental body, and (ii) does not and will not violate any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project or Project Land is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance.
- (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 liens or encumbrances (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 against the Owner, the Project Land or the Project, or, to the knowledge of the Owner, threatened against or affecting it, the Project Land or the Project 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 contemplated by this Agreement) or which 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 separate and complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project or as transitional housing for the homeless pursuant to Section 42(i)(3) of the Code), 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, as defined in Section 1.42-9 of the Regulations, who qualify for occupancy thereof under the applicable election specified in Section 42(g)(1) of the Code ("Low-Income Tenants").

- (h) The Owner will fully comply with the requirements of the Fair Housing Act as it may from time to time be amended.
- (i) The Owner will 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, or a successor federal program, and, in connection therewith, the Owner will not apply tenant selection criteria to such voucher or certificate holders which are more burdensome than the criteria applied to any other prospective tenants.
- (j) Each unit in the Project is and will remain suitable for occupancy taking into account all federal, state and local health, safety and building codes (or other habitability standards).
- (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 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, Section 42 and the applicable Regulations.
- (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 Board approvals of the sale, transfer, or exchange as described in the Board's then-applicable Housing Tax Credit Procedural Manual (the "Procedural Manual"). 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 transfer any substantial portion of real or personal property of the Project or permit the use of a residential rental unit for any purpose other than rental housing during the term of this Agreement unless required to do so by law.
- (n) If all or any part the Project is damaged or destroyed or is 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 and 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) None of the HTC units in the Project shall at any time be utilized on a transient basis (unless the Project qualifies as a single room occupancy project or transitional housing for the homeless pursuant to Section 42(i)(3) of the Code); that none of the HTC units in the

Project shall be leased or rented for a period of less than six (6) months (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless pursuant to Section 42(i)(3) of the Code); and that neither the Project nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, trailer park, trailer court, mobile home park, or recreational vehicle park or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code).

- (q) Owner will 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 income (“AMI”).]

**or**

In accordance with Section 42(g)(1) of the Code, the Owner has elected that 100% percent of the residential units in the Project will continuously be maintained as both rent-restricted low-income units and occupied by households whose income is equal to or less than the designated area median income (“AMI”) [percentage of each unit. In the aggregate, the income/rent designations of the units taken into account for purposes of the set-aside must average [60]% or less of AMI and the income/rent designation of each unit taken into account for purposes of the set-aside must be one of the following tiers: 20%, 30%, 40%, 50%, 60%, 70%, 80%. Initial designations for each as set forth in Exhibit C attached hereto. Any changes to these initial designations may be made only with the Board’s expressed written consent and in accordance with the Board’s Income Averaging Policy in place at the time of the request.]

- (c) All HTC units 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**.

## SECTION 5 – ADDITIONAL RESTRICTIONS

**Exhibit C** and **Exhibit D** set forth additional obligations of the Owner with respect to the Project upon which the allocation of Credits has been based on and which the Owner covenants to comply with throughout the term of this Agreement (the “Additional Restrictions”). The Additional Restrictions listed in **Exhibit C** and **Exhibit D** must be consistent with the Project’s original reservation, binding agreement, any carryover agreement and, if applicable, any Section 42(m) Letter, with the exception of approved amendments.

## SECTION 6 – TERM OF AGREEMENT

- (a) The following definitions shall apply to this Section 6.
- (i) “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 10-year credit period with respect thereto.
  - (ii) “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 and ending on the date that is at least 15 years after the close of the Compliance Period or, if applicable, or such longer period as may be specified herein.
- (b) This Agreement shall commence on the first day of the Compliance Period and will end at the close of the Extended Use Period. Throughout the term of this Agreement, the Owner will comply with Section 42, the Occupancy Restrictions and Additional Restrictions, and all other provisions of this Agreement.
- (c) Notwithstanding subsection 6(b), the Extended Use Period, for any building that is part of the Project shall terminate:
- (i) 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 Owner, a purpose of which is to terminate this Agreement; or
  - (ii) If the Owner has properly requested the Board to 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 within one (1) year after the date of the written request was submitted to the Board. This Section 6(c)(ii) shall not apply if the Owner has waived this right as set forth in **Exhibit C** and **Exhibit D**.
- (d) Notwithstanding subsection (c) above, the Section 42 rent requirements shall continue for a period of three (3) years following the expiration or termination of this Agreement. 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 HTC unit other than for good cause and shall not increase the gross rent above the maximum allowed under Section 42 with respect to such HTC unit.

- (e) In the event foreclosure proceedings are initiated, the Board shall receive written notice of such foreclosure no less than 15 days prior to such foreclosure.

#### SECTION 7 – INSPECTIONS AND DOCUMENTATION

- (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.

#### SECTION 8 – ENFORCEMENT OF AGREEMENT

- (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 or 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 Department of the Treasury, the IRS, or HUD.
- (b) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Agreement is to ensure compliance of the Project and the Owner with Section 42 and the applicable regulations, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING HTC FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE BOARD AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 OF THE CODE (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 further 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 agrees that the representations and covenants set forth herein may be relied upon by the Board and all persons interested in the Project's 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 procedures 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** and **Exhibit D**. In addition, Board may be required to notify the IRS 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 Minneapolis Community Planning and Economic  
Development Department,  
505 4<sup>th</sup> Ave. S.  
Suite 320  
Minneapolis, Minnesota 55415]

[or]

[c/o Housing and Redevelopment Authority of the City  
of Saint Paul  
25 West Fourth Street, Suite 1200  
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. Notices regarding compliance and monitoring by the Board may be sent by electronic mail.

- (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 it 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 this Agreement 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.

**[Insert if Applicable]** 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 and 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: \_\_\_\_\_

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 Minneapolis Community Planning and Economic Development Department,  
505 4<sup>th</sup> Ave. S.  
Suite 320  
Minneapolis, Minnesota 55415]

[or]

[c/o Housing and Redevelopment Authority of the City of Saint Paul  
25 West Fourth Street, Suite 1200  
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 Credits is based upon the following:

1. Project Name: \_\_\_\_\_
2. Project Number: \_\_\_\_\_ Supplement Number: \_\_\_\_\_
3. Project Location: \_\_\_\_\_
4. Total Units: \_\_\_\_\_ HTC Units: \_\_\_\_\_
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 Eligible Basis: \_\_\_\_\_
14. Total Qualified Basis: \_\_\_\_\_
15. Applicable Percentage: \_\_\_\_\_
16. Annual Credit Amount: \_\_\_\_\_
17. Term of Agreement: \_\_\_\_\_

18. Qualified Contract Wavier: \_\_\_\_\_

19. Minimum Set-aside: \_\_\_\_\_

20. Income Averaging Designations:

- zero bedroom units at 20/30/40/50/60/70/80% AMI
- one bedroom units at 20/30/40/50/60/70/80% AMI
- two bedroom units at 20/30/40/50/60/70/80% AMI
- three bedroom units at 20/30/40/50/60/70/80% AMI
- four bedroom units at 20/30/40/50/60/70/80% AMI

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

The following performance items are indexed with a square  to the left side of their text. If this square is checked (X), the performance item is a requirement of the Agreement. The Owner is responsible for ensuring that the Project fully complies with all of the terms of the requirements.

## GENERAL REQUIREMENTS

### 21. Subsidy Layering:

- If this item is checked, Section 911 of the Housing and Community Act of 1992 require that specific procedures be followed for subsidy layering review when HTC and HUD assistance are combined in a single Project.

### 22. Tax Credits and Federally Funded Grants:

- Eligible Basis Adjustments, Federally Funded Grants, Treatment of New Buildings as Federal Subsidized:
  - a. Project includes a building or buildings costs financed with the proceeds of a federally funded grant. Pursuant to 42(d)(5), the eligible basis of the Project does not include any costs financed with the proceeds of a federally funded grant.
  - b. The Project includes a new building or new buildings which directly or indirectly use, for the building(s) or the operation of the building(s) the proceeds of an outstanding obligation which is tax exempt under Section 103 of the Code. Pursuant to 42(i)(2)(A) of the Code, these buildings are being treated as federally subsidized.
  - c. The Project includes a new building or new buildings which directly or indirectly use for the building(s) or the operation of the building(s) the proceeds



of an outstanding obligation which is tax exempt under Section 103 of the Code. Pursuant to 42(i)(2)(B) of the Code, these buildings are not being treated as federally subsidized because the taxpayer elected to exclude the proceeds of such obligation from the eligible basis of the Project.

**23. Qualified Non Profit General Partner:**

The Project partnership has received tax credits associated with the non-profit set-aside and must involve as a General Partner, a qualified Nonprofit Organization (see item 8 of this Exhibit) as defined in the Housing Tax Credit Procedural Manual. 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 15-year compliance period as required by Section 42(h)(5) of the Code. This entity must remain a General Partner and must materially participate in the development and operating of the Project for the full term of the Declaration.

**24. Minimum Requirements for Qualified Contract Provisions:**

**Minimum Requirement HTC Projects**

The Owner agrees that the provisions of Code Sections 42(h)(6)(E)(i)(II) and 42(h)(6)(F) (which would permit Owner to terminate the restrictions under the Agreement at the end of the 15-year compliance period in the event that Board does not present Owner with a qualified contract for the acquisition of the Project) do not apply to the Project.

**25. Affirmative Fair Housing:**

The Affirmative Fair Housing Marketing policy requires that each applicant carry out an affirmative marketing program to attract prospective buyers or tenants in the housing market area regardless of race, creed, color, religion, sex, national, origin, marital status, status with regard to public assistance, disability, sexual orientation, or familial status. At the time of 8609 and throughout the term of the Agreement as directed by Board, all applicants must submit an Affirmative Fair Housing Marketing Plan documenting an acceptable plan to carry out an affirmative marketing program.

**26. Design Standards:**

The design features of the Project must comply with and provide all applicable submittals in accordance with the MN Overlay to the Enterprise Green Communities criteria. Minneapolis projects are also subject to the Minneapolis Unified Housing Policy standards. Saint Paul projects are also subject to the Saint Paul Sustainable Building Ordinance.

**27. Short Term Rentals (Minneapolis Projects Only):**

Short Term Rentals are defined as units rented in periods of less than one month. For the duration of the Declaration, the Owner shall not rent units (HTC or non-HTC units) in

such a way as to permit master leasing of short term rentals. Owner shall not be in default of this provision if a resident of an individual unit leases such unit as a short-term rental so long as the lease for such unit prohibits such activity and the Owner is using reasonable means to enforce such provision.

**EXHIBIT D**  
**Declaration of Land Use Restrictive Covenants**  
**Additional Selection Restrictions**

**(The Exhibit D provided by the Board must be attached to the Agreement)**

