**DECLARATION OF LAND USE RESTRICTIVE COVENANTS**
**FOR LOW-INCOME HOUSING TAX CREDITS**
**2019 ALLOCATION YEAR**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS ("AGREEMENT" or "LURA") dated as of , by , a , and its successors and assigns ("Owner"), is given as a condition precedent to the allocation of low-income housing tax credits by the Minnesota Housing Finance Agency, a public body corporate and politic of the state of Minnesota, 400 Wabasha Street North, Suite 400, St. Paul, MN 55102 (Minnesota Housing) together with any successor to its rights, duties and obligations.

**RECITALS**

A. Owner is or will be Owner of a -unit rental housing Project located on real property located in the City of , County of , state of Minnesota, legally described in **Exhibit A** attached hereto (the "Project Land"), known as or to be known as (the "Project").

B. Minnesota Housing has been designated by the Legislature of the state of Minnesota as the housing tax credit agency for the location of the Project for the allocation of low-income housing tax credits.

C. Owner has applied to Minnesota Housing for an allocation of low-income housing tax credits to the Project, and Minnesota Housing has determined that the Project would support annual low-income housing tax 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 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 and **Exhibit C** and **Exhibit D** of this agreement) by regulating and restricting the use, occupancy and transfer of the Project as set forth in this Agreement.

E. Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth in this Agreement governing the use, occupancy, and transfer of the Project will be and are covenants running with the Project Land for the term stated in this Agreement and will be binding upon all subsequent owners of the Project Land for the term, and are not merely personal covenants of Owner.

NOW, THEREFORE, in consideration of the promises and covenants set forth in this Agreement and of other valuable consideration, the receipt and sufficiency of which is acknowledged, 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 ("IRS"), or the Department of Housing and Urban Development ("HUD") in rules and regulations will have the same meanings in this Agreement.

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

(a) Upon execution and delivery by Owner, Owner will cause this Agreement and all amendments thereto to be recorded in the office of the County Recorder and/or Registrar of Titles of the county in which the Project Land is located and will pay all fees and charges incurred in connection with recording. Upon recording, Owner will immediately transmit to Minnesota Housing an executed original of the Agreement, or a duly certified copy of the executed original, showing the date and document numbers of record. Owner agrees that Minnesota Housing will not issue an IRS Form 8609 constituting final allocation of the Credits for the Project unless Minnesota Housing has received the recorded executed original, or a duly certified copy, of this Agreement as recorded.

(b) 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, including the covenants and restrictions set forth and the exhibits, regulating and restricting the use, occupancy and transfer of the Project Land and the Project: (i) will be and are covenants running with the Project Land, encumbering the Project Land for the term of this Agreement, binding upon Owner's successors in title and all subsequent owners and operators of the Project Land, (ii) are not merely personal covenants of Owner; and (iii) will bind Owner (and the benefits will inure to Minnesota Housing and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Agreement. 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 will 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 executed conveying the Project Land or any portion, will expressly provide that such conveyance is subject to this Agreement; provided, however, that the covenants contained in will survive and be effective regardless of whether such contract, deed or other instrument executed conveying the Project Land or any portion thereof provides that such conveyance is subject to this Agreement.

(c) Owner covenants to obtain the consent of any prior recorded lien holder for the Project to this Agreement, and such consent will be a condition precedent to Minnesota Housing's issuance of the IRS Form 8609 constituting final allocation of Credits for the Project.

**SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF OWNER**

Owner hereby represents, covenants and warrants as follows:

(a) 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 Owner: (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body; (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which 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, 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 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 will not be used on a transient basis.

(g) All units subject to Section 42 will be leased and rented or made available to members of the general public who qualify for occupancy under the applicable election specified in Section 42(g)(1) of the Code ("Low- Income Tenants").

(h) Owner will fully comply with the requirements of the Fair Housing Act as it may from time to time be amended.

(i) 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.

(j) Each low-income unit is and will remain suitable for occupancy.

(k) Subject to the requirements of Section 42 and this Agreement, Owner may sell, transfer or exchange the entire Project, at any time, but Owner will notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project or any interest in 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 will not act to waive any other restriction on sale, transfer, or exchange of the Project or any low-income portion of the Project. Owner agrees that Minnesota Housing 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 of Section 42.

(l) Owner will notify Minnesota Housing in writing of any sale, transfer or exchange of the entire Project or any low-income portion of the Project. Owner will obtain all required Minnesota Housing approvals of the sale, transfer or exchange as described in the Minnesota Housing Finance Agency Housing Tax Credit Program Procedural Manual (Procedural Manual). The notification to Minnesota Housing will be made in the manner described in the Procedural Manual.

(m) Owner will not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law.

(n) If the Project, or any part, is damaged or destroyed or will be condemned or acquired for public use, 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) 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) 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**

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 will be made by 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 will be occupied by individuals whose income is percent or less of area median gross income.

(c) All units subject to Section 42 (the "HTC Units") will 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 in this Agreement) will not be less than the Applicable Fraction for each building specified in **Exhibit B**.

**SECTION 5 - ADDITIONAL RESTRICTIONS**

**Exhibit C** and **Exhibit D** sets forth certain additional obligations of Owner with respect to the Project upon which the allocation of Credits has been based and with which Owner covenants to comply throughout the term of the LURA (together the "Additional Restrictions"). The obligations listed in **Exhibit C** and **Exhibit D** must be consistent with the Project's original reservation and binding Agreement and, if applicable, carryover Agreement, with the exception of approved amendments.

**SECTION 6 - TERM OF AGREEMENT**

(a) The following definitions will 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 to the Project.

(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 at least 15 years after the close of the Compliance Period or such longer period as may be specified herein..

(b) This Agreement will commence on the first day of the Compliance Period and will end at the close of the Extended Use Period. This term may be referred to as the "term of the Agreement" or the "term of the LURA." Throughout the term of this Agreement, the Owner will comply with Section 42, the Occupancy Restrictions, the Additional Restrictions, and all other provisions of the Agreement.

(c) Notwithstanding Section 6(b), the Extended Use Period for any building that is part of the Project will 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) If Owner has properly requested that Minnesota Housing 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 Minnesota Housing is unable to present a qualified contract. This Section 6(c)(2) will be subject to the time limitations and any waivers set out in **Exhibit C** and **Exhibit D**.

(d) The Section 42 rent requirements will continue for a period of three years following the termination of the Extended Use Period pursuant to Section 6(c). Throughout the term of this Agreement and during such three-year period, Owner will not evict or terminate the tenancy of an existing tenant of any low-income unit other than for good cause and will not increase the gross rent above the maximum allowed under Section 42 with respect to such low-income unit.

**SECTION 7 - INSPECTIONS AND DOCUMENTATION**

(a) Owner will permit, during normal business hours and upon reasonable notice, any duly authorized representative of Minnesota Housing to inspect any books and records of Owner regarding the Project with respect to the incomes of Low-Income Tenants that pertain to compliance with the terms of this Agreement.

(b) Owner will submit any other information, documents or certifications requested by Minnesota Housing that Minnesota Housing deems reasonably necessary to substantiate Owner's continuing compliance with the provisions of this Agreement and the requirements of Section 42.

**SECTION 8 - ENFORCEMENT OF AGREEMENT**

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

(b) Owner acknowledges that the primary purpose for requiring compliance by Owner with the requirements of this Agreement is to ensure compliance of the Project and Owner with Section 42 and any applicable regulations, AND BY REASON THEREOF, OWNER IN CONSIDERATION FOR RECEIVING CREDITS FOR THIS PROJECT HEREBY AGREES THAT MINNESOTA HOUSING 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 OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN A STATE COURT OF COMPETENT JURISDICTION. Owner further acknowledges that the beneficiaries of Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(c) Owner hereby agrees that the representations and covenants set forth herein may be relied upon by Minnesota Housing and all persons interested in Project compliance under Section 42 and any applicable regulations.

(d) Owner acknowledges that Minnesota Housing is required, pursuant to Section 42(m)(1)(B)(iii) of the Code and Section 1.42-5 of the Treasury regulations, to establish a procedure to monitor Owner's and the Project's compliance with the requirements of Section 42, which procedure includes the monitoring of Owner's compliance with the Additional Restrictions, if any, set forth in **Exhibit C** and **Exhibit D**. In addition, Minnesota Housing may be required to notify the IRS of any noncompliance.

**SECTION 9 - MISCELLANEOUS**

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

(b) Notices. All notices to be given pursuant to this Agreement will be in writing and will be deemed given when mailed by certified or registered mail, return receipt requested, to the parties at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

| | |
|---|---|
| **To Minnesota Housing:** | ATTENTION: Housing Tax Credit Program<br>Minnesota Housing Finance Agency<br>400 Wabasha Street North, Suite 400<br>St. Paul, MN 55102 |
| **To Owner:** | ATTENTION: |

Minnesota Housing and Owner, may, by notice given pursuant to this Agreement, designate any further or different addresses to which subsequent notices, certificates or other communications will be sent. Notices regarding compliance and monitoring by Minnesota Housing 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 Minnesota Housing and Owner, which agreement will be effective upon execution by Minnesota Housing and Owner and the recording of the amendment with the County Recorder and/or Registrar of Titles of the County in which the Project is located. Owner agrees that it will take all actions necessary to effect 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 following the early termination of the Extended Use Period in accordance with Section 6(c)).

(e) Governing Law. This Agreement will 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 Owner as set forth in this Agreement and in Owner's application for the Credits will survive the allocation of the Credits and will not be deemed to terminate or merge with the issuing of the allocation.

(THE REMAINING PORTION OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, 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 ____________________, ______, by , of , a , of , a , on behalf of the .

_______________________________________
Notary Public

This document drafted by:

Minnesota Housing Finance Agency
400 Wabasha Street North, Suite 400
St. Paul, MN 55102

**EXHIBIT A**
**Declaration of Land Use Restrictive Covenants**
**Legal Description**

**EXHIBIT B**
**Declaration of Land Use Restrictive Covenants**
**Applicable Fraction**

| BIN # | Building Address | Applicable Fraction | 1st Year of Credit Period | **Year Extended Use Period Terminates |
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*The building applicable fraction stated on this form must match the building applicable fraction stated on Minnesota Housing form HTC 28, Building Map.

**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 at least 15 years after the close of the Compliance Period (i.e., December 31 of the year the Extended Use Period terminates).

**EXHIBIT C**
**Declaration of Land Use Restrictive Covenants**
**Minnesota Housing Project Summary and Additional Restrictions**

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

1. Project Name:
2. Project Number: Supplemental Number:
3. Project Location:
4. Total Units: Tax Credit Units:
5. Partnership Name:
6. Partnership Address:
7. Name(s) of General Partner(s):
8. Name(s) of Non-Profit General Partner(s)
9. Owner Taxpayer I.D. No.:
10. Non-Profit Tax I.D. No.:
11. Type of Credits:
12. Minimum Set- Aside:
13. Qualified Census Tract Number:
    Difficult Development Area:
    State Designated Basis Boost Applied: Yes No
14. Total Eligible Basis: $ NOTE: if applicable include the boost
15. Total Qualified Basis: $
    NOTE: Total should not exceed the amount necessary to result in a credit amount
16. Applicable Percentage:
17. Annual Tax Credit Amount: $
18. Term of the LURA:
19. Qualified Contract Waiver (term):

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 development (Project) Owner is responsible for ensuring that the Project fully complies with all of the terms of the requirements.

**GENERAL REQUIREMENTS**

20. **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 housing tax credits and HUD assistance are combined in a single Project.

21. **Tax Credits and Federally Funded Grants:**

☐ Eligible Basis Adjustments, Federally Funded Grants, Treatment of New Buildings as Federal Subsidized:

☐ a. This 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 this Project does not include any costs financed with the proceeds of a federally funded grant.

☐ b. This 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. Pursuant to 42(i)(2)(A), these buildings are being treated as federally subsidized.

☐ c. This 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. Pursuant to 42(i)(2)(B), 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 building.

22. **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 Program 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 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 operation of the Project for the full term of the LURA.

23. **Minimum Requirements for Qualified Contract Provisions:**
**Minimum Requirement 9% Tax Credit Projects**
Tax credits from the state of Minnesota's tax credit volume cap must waive qualified contract provisions.

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

**Minimum Requirement 4% Tax Credit Projects**
Tax credits in association with Tax Exempt Bonds, must waive qualified contract provisions for a minimum of 20 years.

☐ Owner agrees that the provisions of Section 42(h)(6)(E)(i)(II) and 42(h)(6)(F) (which provisions would permit Owner to terminate the restrictions under the Agreement at the end of the 15-year compliance period in the event that Minnesota Housing does not present Owner with a qualified contract for the acquisition of the Project) do not apply to the Project, for a minimum of 20 years, beginning with the first day of the compliance period in which the building is part of a qualified low-income housing project.

24. **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 LURA as directed by Minnesota Housing, all applicants must submit an Affirmative Fair Housing Marketing Plan documenting an acceptable plan to carry out an affirmative marketing program.

25. **Design Standards:**

☒ The design features of the Project must comply with and provide all applicable submittals in accordance with the Minnesota Housing Rental Housing Design and Construction Standards (RHD/CS) in effect at time of initial Tax Credit selection and as required by the Project's selected application and Self-Scoring Worksheet. The Project must provide certification of the design standards and the review process.

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

## (The Exhibit D provided by the Agency must be attached to the LURA)