DECLARATION OF LAND USE RESTRICTIVE COVENANTS
FOR HOUSING TAX CREDITS
2003 ALLOCATION YEAR

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (this "AGREEMENT"), dated as of_______, by ______________, and its successors and assigns (the "Owner") is given as a condition precedent to the allocation of low-income housing credits by the Minnesota Housing Finance Agency, a public body corporate and politic of the State of Minnesota, Suite 300, 400 Sibley Street, St. Paul, MN 55101 (MHFA) (together with any successor to its rights, duties and obligations).

WITNESSETH:

WHEREAS, the Owner is or shall be the owner of a ______ unit rental housing project located on lands in the City of __________, County of ________, State of Minnesota, more particularly described in Exhibit A (legal description) hereto (the "Project Land"), known as or to be known as ______________ (the "Project"); and

WHEREAS, the MHFA 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 housing credit dollars (the "Credit"); and

WHEREAS, Owner has applied to the MHFA for an allocation of Credit to the Project; and

WHEREAS, the Owner has represented to the MHFA in Owner's Housing Credit Application (the "Application") that Owner shall lease __% (Project Applicable Fraction) of the units in the Project to individuals or families whose income is __% or less of the area median gross income (including adjustments for family size) as determined in accordance with Section 42 of the Internal Revenue Code of 1986 (“Section 42” or the “Code”) ("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
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WHEREAS, the MHFA has determined the Project would support an annual Credit in the amount of $__________________; and

WHEREAS, the Owner has represented to the MHFA in Owner's application that it will impose additional rent restrictions or will covenant to maintain the Section 42 rent and income restrictions for an additional period of time.

(Check applicable line): Applicable _____ Not Applicable _____

WHEREAS, Section 42 requires as a condition precedent to the allocation of the Credit that the Owner execute, deliver and record in the official land deed records of the county in which the Project is located this Agreement 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** by regulating and restricting the use and occupancy and transfer of the Project as set forth herein;

WHEREAS, 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 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 hereinafter set forth, 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 defined in the Whereas clauses of this Agreement or in Section 42 or by Treasury, Internal Revenue Service or Department of Housing and Urban Development 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 hereto to be recorded and filed with the County Recorder of the county in which the Project is located, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the MHFA an executed original of the recorded Agreement showing the date and document numbers of record, or a duly certified copy of the executed original. The Owner agrees that the MHFA will not issue the Internal Revenue Service Form 8609 constituting final allocation of the Credit unless and until the MHFA has received the recorded executed original, or a duly certified copy, of the Agreement as recorded.

(b) The Owner intends, declares and covenants, on behalf of itself and all future Owners and operators of the Project Land during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement and 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, encumbering the Project Land for the term of this Agreement, binding upon the Owner's successors in title and all subsequent Owners and Operators of the Project Land, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner (and the benefits shall inure to the MHFA 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 any and 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 this Credit is claimed or the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying 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 lienholder for the Project to this Agreement and such consent shall be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of the Credit.

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) The Owner will, at the time of execution and delivery of this Agreement, have 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, which, 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 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) During the term of this Agreement, all units subject to the Credit shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42(g) of the Code.

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

(i) The Owner will not during the term of this Agreement 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) During the term of this Agreement, the Owner covenants, agrees and warrants that 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 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 MHFA 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 agrees to notify the MHFA in writing of any sale, transfer or exchange of the entire Project or any low-income portion of the Project.

(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 any residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law.

(n) The Owner represents, warrants and agrees that 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 warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(p) Upon request by MHFA, and as required by the conditions of the Minnesota Housing Finance Agency Housing Tax Credit Program Procedural Manual, the owner agrees to provide MHFA with a completed Characteristic of Tenant Household Form detailing out the development's demographic characteristics.

SECTION 4 - INCOME RESTRICTIONS; RENTAL RESTRICTIONS

The Owner represents, warrants and covenants throughout the term of this Agreement and in order to satisfy the requirements of Section 42 ("Section 42 Occupancy Restrictions") that:

(Check Minimum Set Aside election)

(a) (1)__ At least 20% or more of the residential units in the Project are both rent-restricted and occupied by individuals whose income is 50% or less of area median income.

(2)__ At least 40% or more of the residential units in the Project are both rent-restricted and occupied by individuals whose income is 60% or less of area median income.

(b) 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 such Low-Income Tenant.

(c) The applicable fraction (as defined in subsection 42(c)(1) of the Code) for each building for each taxable year in the extended use period will not be less than the Applicable Fraction for each building specified in Exhibit B

SECTION 5 - ADDITIONAL RESTRICTIONS

Exhibit C to this Agreement sets forth certain additional obligations of the Owner with respect to the Project during the term of this Agreement upon which the allocation of Credits has been based, and which the Owner covenants to comply with throughout the extended use period.

SECTION 6 - TERM OF AGREEMENT

(a) Except as hereinafter provided, this Agreement and the Section 42 Occupancy Restrictions specified herein shall commence with the first day on which any building which is part of the Project is placed in service and shall end on the date which is 15 years after the close of the Compliance Period.

(b) Notwithstanding subsection (a) above, the Owner shall comply with the requirements of Section 42 relating to the extended use period for an additional 15 years, provided, however, the extended use period for any building which is part of this Project shall terminate:

   (1) On the date the building is acquired by foreclosure or instrument in lieu of foreclosure; or

   (2) On the last day of the compliance period if the Owner has properly requested that the MHFA assist in procuring a qualified contract for the acquisition of the low-income portion of any building which is a part of the Project and the MHFA is unable to present a qualified contract (unless this clause (b)(2) has been waived by the Owner in **Exhibit C**).

(c) Notwithstanding subsection (b) above, the Section 42 rent requirements shall continue for a period of three years following the termination of the extended use requirement pursuant to the procedures specified in subsection (b) above. 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 the Code with respect to such low-income unit.

(d) If the Owner has agreed to optional Additional Restrictions as reflected in Section 5 and **Exhibit C** of this Agreement, this Agreement shall not terminate until the time period for compliance with such Additional Restrictions has expired.

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 MHFA, to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income Tenants which pertain to compliance with the terms of this Agreement.

(b) The Owner shall submit any other information, documents or certifications requested by the MHFA which the MHFA shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions 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. Moreover, Owner covenants to take any lawful action (including amendment of this Agreement as may be necessary, in the opinion of the MHFA) 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 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 MHFA 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 MHFA and all persons interested in Project compliance under Section 42 and the applicable regulations.

(d) The project Owner acknowledges that the MHFA is required, pursuant to Section 42(m)(1)(iii) of the Code and Section 1.42-5 of the Regulations, to establish a procedure to monitor the Project Owner's and the Project's compliance with the requirements of Section 42, which procedure includes the monitoring of the Project Owner's compliance with the Additional Restrictions, if any, set forth in Section 5 and **Exhibit C** hereof. In addition, MHFA is required to notify the Internal Revenue Service of any noncompliance, if found.

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 forth below, or to such other place as a party may from time to time designate in writing.

To the MHFA: ATTENTION: Housing Tax Credit Program
Minnesota Housing Finance Agency
400 Sibley Street, Suite 300
St. Paul, MN 55101

To the Owner: ATTENTION: ______________________________
____
____
____

The MHFA, 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 MHFA and the Owner, which agreement shall be effective upon execution thereof by the MHFA and the Owner and the recording of the amendment with the County Recorder of the County in which the Project is located. The Owner agrees that it will take all actions necessary to effect amendment of this Agreement as may be necessary to comply with the Code, any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Credit.

(d) Subordination of Agreement. This Agreement and the restrictions hereunder are subordinate to the loan and loan documents, if any, on the Project except insofar as Section 42 requires otherwise (relating to the three-year vacancy control during the extended use period).

(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 Application shall survive the allocation of the Credit and shall not be deemed to terminate or merge with the issuing of the allocation.

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 ________________________, _______ by _____________________________________, ______________________________ of __________________________________, a ____________________________, on behalf of the ________________________.

____
Notary Public

This document drafted by:

Minnesota Housing Finance Agency
400 Sibley Street, Suite 300
St. Paul, MN 55101

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*
____________	____________________________________	____________%
____________	____________________________________	____________%
____________	____________________________________	____________%
____________	____________________________________	____________%
____________	____________________________________	____________%
____________	____________________________________	____________%
____________	____________________________________	____________%
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____________	____________________________________	____________%
____________	____________________________________	____________%
____________	____________________________________	____________%

*** THE BUILDING APPLICABLE FRACTION STATED ON THIS FORM MUST MATCH THE BUILDING APPLICABLE FRACTION STATED ON HTC 28, BUILDING MAP.**

EXHIBIT C

Declaration of Land Use Restrictive Covenants

MHFA Additional Restrictions

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

Applicable Not Applicable (Check appropriate line for each item)

(a) _______ ______ Owner agrees that the provisions of Section 42(h)(6)(E)(i)(II) and 42(h)(6)(F) (which provisions would permit the Owner to terminate the restrictions under this agreement at the end of the compliance period in the event that the Agency does not present the Owner with a qualified contract for the acquisition of the Project) do not apply to the Project, and 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 in which the building is a part of a qualified low-income housing project.

(b) _______ _______ For a period of five years following the placed in service date for each building, ___% of the HTC units shall have gross rents established at a level not greater than 30% of 50% of area median income and of these units an additional ___% of the units shall have gross rents established at a level not greater than 30% of 30% of area median income.

For projects receiving points for restricting rents pursuant to this paragraph 5(b), 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.

Year	30% of 50% Rent Levels	30% of 30% Rent Levels
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%

	Applicable	Not Applicable	(Check appropriate line for each item)
(c)	_______	________	The owner agrees to Preserve federally assisted low income housing which, due to mortgage prepayments or expiring rental assistance, would convert to market rate use or due to physical deterioration or deterioration of capacity of current ownership/management entity would lose its federal subsidies. The owner shall continue renewals of existing project based housing subsidy payment contract for as long as the assistance is available. The owner shall maintain the Housing Tax Credit Units in the development for at least 30 years. Except for "good cause", the owner shall not evict existing subsidized residents and shall continue to renew leases for those residents.
(d)	_______	_______	Throughout the term of this Agreement, the Project shall provide family housing that is not restricted to persons 55 years or older in which at least 75% of the units contain two or more bedrooms and at least ____% of the 75% contain three or more bedrooms.
(e)	_______	_______	Throughout the term of this Agreement, the Project shall provide at least ___50% or___75% of the units for single room occupancy housing with one bedroom or less rents affordable at 30% of median income.
(f)	_______	_______	Throughout the term of this agreement the Project shall rent at least _____ 25% or _____________ 50% of the units to persons with mental illness, mental retardation, 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 shall obtain a commitment from a public or private social services agency to provide services consistent with applicable state licensing requirements for the services.

	Applicable	Not Applicable	(Check appropriate line for each item)
(g)	_______	_______	Rental Assistance requirements apply to the development as indicated below: (1) ___ at least 20% of the total units shall be set aside for project based rental assistance Or (2) ___ at least 10% but under 20% of the total units shall be set aside for project based rental assistance And/or (3) ___ the owner shall comply with the requirements of a cooperatively developed housing plan to provide other rental assistance (e.g., Section 8, portable tenant based, HUD Operating Subsidy or other similar programs approved by the Agency) to meet the existing need as outlined in a certain Cooperative Agreement dated _______________________between the owner and __________________________________ the local housing authority. In addition to the requirements of 1,2 or 3 as checked above, the owner agrees to comply with all performance commitments and program requirements for the specific rental assistance type as contained in the rental assistance program guidelines and the requirements contained in the MHFA Housing Tax Credit Procedural Manual.
(h)	_______	______	At the end of the initial 15-year compliance period, the Project Owner shall transfer ownership of 100% of the HTC units in the project to tenant ownership. The purchase price for each unit at time of sale shall be affordable to households with incomes meeting HTC eligibility requirements. To be eligible, the buyer must have had an HTC qualifying income at the time of initial occupancy or time of purchase. The transition plan shall incorporate a Limited Partnership ownership exit strategy and provide for services including home ownership education and training.
(i)	_______	______	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 I the the operation of the project throughout the compliance period as required by Section 42(h)(5) of the Code.
(j)	_______	______	This development falls within the jurisdiction of a suballocator of tax credits which is party to a current Joint Powers Agreement with the Minnesota Housing Finance Agency. This development has been reserved/allocated tax credits pursuant to terms, conditions and restrictions of the suballocator's Qualified Allocation Plan. This development must maintain compliance with the suballocator's terms, conditions and restrictions which are listed on Exhibit D attached to this Declaration.

EXHIBIT D

Declaration of Land Use Restrictive Covenants

Joint Powers Suballocator Additional Restrictions