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(Name of State Subrecipient)  
(Name of Program)

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS (NSP)**

**THIS DECLARATION** is made on the date set forth herein by \_\_\_\_\_, a  
Minnesota \_\_\_\_\_, with its offices located at  
\_\_\_\_\_ (“Declarant”).

**RECITALS**

A. Declarant, as the owner in fee simple of real property located in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of Minnesota, described in **Exhibit A** attached (the “Property”), has applied for a (Name of Program) mortgage loan from the (Name of State Subrecipient) (“Subrecipient”) pursuant to the provisions contained in the Housing and Economic Recovery Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009, and the Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008 (the “Act”), in the original principal sum of \$ \_\_\_\_\_ (the “NSP Assistance”) to aid Declarant in the (describe activity) of and financing on the Property of a multifamily housing development, together with all improvements now or hereafter located thereon, which is identified as \_\_\_\_\_ (the “Development”).

B. The Act imposes income, rent and occupancy requirements on those dwelling units located in the Development that will be assisted by the receipt and use of the NSP Assistance (the "NSP Assisted Units").

C. Declarant makes this Declaration in order to satisfy the requirements of the Act and enable State Subrecipient to make the NSP Assistance.

**NOW, THEREFORE**, Declarant makes the following declaration of the covenants, conditions and restrictions relating to the Property and improvements thereon, and intending the same to be binding upon Declarant, its successors, heirs or assigns, and all subsequent owners of all or any part of the Property or improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

## **ARTICLE I**

### **Income, Rent and Occupancy Restrictions**

**Section 1.** For the purpose of satisfying the requirements of the Act, Declarant hereby declares for itself, its successors and assigns that for the term of the Effective Period, as defined herein below, the Property shall be owned, operated, and managed so as to qualify as "affordable housing" under 24 CFR Part 92.252 (a) (c) (e) and (f). To that end, but without limitation, Declarant agrees as follows:

#### **A. Rent and Occupancy Restrictions.**

(1) The NSP Assisted Units shall bear rents not greater than the lesser of:

(a) The fair market rent for existing housing for comparable units in the area as established by the U.S. Department of Housing and Urban Development (HUD) under 24 CFR Part 888.111, less the monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant; or

(b) A rent that does not exceed 30% of the adjusted income of a family whose gross annual income equals 65% of the median income for the area, as determined by HUD, with adjustment for smaller and larger families. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, Declarant or State Subrecipient must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant. HUD will provide average occupancy per unit and adjusted income assumptions to be used in calculating the maximum rent allowed under this Section 1(A)(1)(b).

(2) The NSP Assisted Units shall be occupied only by households that qualify as Low-Income Families, defined as households with incomes no greater than 120% of Area Median Income, as published from time to time by HUD. Owners must verify income, assets, expenses, and deductions and all eligibility requirements prior to move-in and retain those records for at least \_\_\_\_\_ years.

(3) There shall be no fewer than \_\_\_\_ number of NSP Assisted Units that may be rented only to households with annual incomes no greater than 120% of the Area Median Income, as determined and published periodically by HUD. Of those units, \_\_\_\_\_ may be rented only to households with annual incomes no greater than 50% of the Area Median Income. These occupancy limitations shall remain in effect for the term of the Effective Period.

(4) Declarant shall not refuse to lease any NSP Assisted Unit to a holder of a rental voucher under 24 CFR Part 982 (Housing Choice Voucher Program) or to a holder of a comparable document evidencing participation in any tenant-based assistance program because of the status of the prospective tenant as a holder of such document.

(5) The NSP Assisted Units shall remain affordable, in accordance with this ARTICLE I for not less than the Effective Period, as defined below, without regard to the term of any mortgage lien on the Property or any transfer of ownership.

**B. Rent Schedule and Utility Allowances.** State Subrecipient must review and approve all rents proposed by Declarant and, if applicable, must review and approve, for all units subject to the maximum rent limitations set forth in subsection A of this Section 1, the monthly allowances proposed by Declarant for utilities and services to be paid by the tenant. The maximum monthly rent must be recalculated by Declarant and reviewed and approved by State Subrecipient annually, and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in rents for NSP Assisted Units is subject to provisions in outstanding leases; in any event, Declarant must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

**C. Tenant Income.**

(1) Declarant shall verify income from all sources of each household member before leasing an NSP Assisted Unit to a household, and calculate the household's annual income in accordance with 24 CFR 5.609. Households with annual incomes greater than 120% of Area Median Income shall not be allowed to occupy NSP Assisted Units. Furthermore, when determining which households may lease a unit, declarant shall make

occupancy decisions based on maintaining the minimum number of NSP Assisted Units occupied by households with annual incomes no greater than 50% of Area Median Income described in 1.A.(3).

(2) Declarant shall annually require tenant households to certify their annual income for the purpose of determining their continued qualification as a household with income no greater than 120% or 50% of Area Median Income.

(3) Declarant shall annually provide the State Subrecipient with information on rents and occupancy of NSP Assisted Units to demonstrate compliance with rent and occupancy requirements.

D. **Effective Period.** The time period commencing on the day after which the final disbursement of NSP funds occurred (the "Commencement Date"), and ending on \_\_\_\_\_, said date being the day completing a period of \_\_\_\_\_ years of affordability, as defined in 24 CFR § 92.252(e), and as approved in writing by State Subrecipient, is the "Effective Period".

**Section 2.** Declarant hereby represents and agrees for itself, its successors and assigns, that the obligation to operate the Development subject to this Declaration, the Act, and any amendments thereto, for the term of the Declaration, is independent of the existence of the NSP Assistance, and that the provisions of this Declaration are intended to survive the termination or extinguishment of the NSP Assistance, the mortgage securing its repayment, and of any other security instruments placed of record in connection with financing of the Development by State Subrecipient, and to survive the termination of any subsequent financing or security instruments placed of record by other lenders.

## ARTICLE II

### Enforcement of Income, Rent and Occupancy Restrictions

**Section 1.** Declarant will permit, during normal business hours and upon reasonable notice, any duly authorized representative of State Subrecipient, the Minnesota Housing Finance Agency, and HUD to inspect any books and records of Declarant regarding the Development with respect to the incomes of occupants of NSP Assisted Units and the rents charged for NSP Assisted Units to ensure compliance with the requirements of ARTICLE I hereof, the Act, and any amendments thereto.

**Section 2.** At the request of State Subrecipient, the Minnesota Housing Finance Agency, or HUD, Declarant will submit any other information, documents or certifications that, in their sole discretion, they deem necessary to substantiate Declarant's compliance with the requirements of ARTICLE I hereof, the Act, and any amendments thereto.

**Section 3.** Declarant will not knowingly take or permit any action that would result in a violation of the requirements of ARTICLE I hereof, the Act, and any amendments thereto. Moreover, Declarant covenants to take any lawful action, including amendment of this Declaration, as may be necessary, in the opinion of State Subrecipient, to comply fully with the Act, and any amendments thereto, and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the State Subrecipient, the State of Minnesota, the Minnesota Housing Finance Agency, or HUD from time to time pertaining to Declarant's obligations under the Act and affecting the Development.

### **ARTICLE III Representations, Covenants, and Warranties of Declarant**

**Section 1.** Declarant shall not refuse to lease any NSP Assisted Unit to a holder of a rental voucher under 24 CFR Part 982 (Housing Choice Voucher Program) or to a holder of a comparable document evidencing participation in any tenant-based assistance program because of the status of the prospective tenant as a holder of such document.

**Section 2.** Declarant hereby declares, represents, covenants and agrees for itself, its successors and assigns, that, for the term of this Declaration, each HOME Assisted Unit is and will remain suitable for occupancy and meet the minimum housing quality standards established by State Subrecipient, a copy of which Declarant acknowledges being provided..

**Section 3.** Declarant hereby declares, represents, covenants and agrees for itself, its successors and assigns, that it will not sell, transfer or exchange the Development or any portion thereof without the prior written consent of State Subrecipient.

**Section 4.** Declarant hereby declares, represents, covenants and agrees for itself, its successors and assigns, 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 Declaration are paramount and controlling as to the rights and obligations set forth herein and supersede any other document's provisions in conflict herewith.

### **ARTICLE IV Term**

This Declaration shall continue in full force and effect during the Effective Period.

### **ARTICLE V Covenants Touch and Concern**

Declarant, on behalf of itself, its successors and assigns, hereby agrees that the covenants, conditions and restrictions herein contained both confer a financial benefit upon Declarant and

constitute a burden on the use of Declarant's property, but Declarant agrees that this Declaration will provide to the residents of the State of Minnesota an assurance that the Development will afford them safe, sanitary and adequate housing for the duration of the term of this Declaration, and Declarant, for itself and its successors and assigns, specifically states that the burden upon Declarant's fee title to the Development is reasonable, acceptable and not unconscionable or against public policy in any way, given the other benefits of the transaction to State Recipient, Declarant, and the citizens on whose behalf State Recipient exercises the powers given to it by law.

**ARTICLE VI**  
**Representatives of Benefited Parties**

State Subrecipient is designated as the sole and exclusive representative(s) of any and all other persons or entities also benefited by such covenants, conditions and restrictions, insofar as the enforcement, the construction, the interpretation, the amendment, the release and/or the termination of such covenants, conditions and restrictions are concerned. This designation and appointment shall also run with the Property and the Development and is hereby made and agreed to by Declarant, its successors and assigns, and any subsequent transferee of any interest in the Development, or any part thereof, from Declarant.

**ARTICLE VII**  
**Remedies, Enforceability**

In the event of a violation or attempted violation of any of the covenants, conditions or restrictions herein contained, State Subrecipient and its successors and assigns may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or to specifically enforce the covenants, conditions and restrictions therein set forth, or to recover monetary damages caused by such violation or attempted violation. Unless terminated as provided herein, the provisions hereof are imposed upon and made applicable to the Development, and shall be enforceable against Declarant, each purchaser, grantee, owner or lessee of the Development and the respective heirs, legal representatives, successors and assigns of each. No delay in enforcing the provisions of said covenants, conditions and restrictions as to any breach or violation shall impair, damage or waive the right to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

**ARTICLE VIII**  
**Amendment, Termination of Covenants, Subordination of  
Covenants to State Subrecipient Loans**

**Section 1.** The provisions of this Declaration shall not be amended, terminated or deleted during the term hereof, except by an instrument in writing duly executed by State Subrecipient and

Declarant, their respective successors and assigns, or in accordance with Section 2 of this ARTICLE VIII.

**Section 2.** Unless sooner terminated, amended or deleted as provided in this ARTICLE VIII, the covenants, conditions and restrictions contained herein shall continue in full force and effect through the term hereof and shall thereupon terminate and be of no further force or effect.

### **ARTICLE IX Covenants Running with the Land**

Declarant intends, declares and covenants, on behalf of itself and all future owners and operators of the Property and the Development during the term of this Declaration, that this Declaration and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Property and the Development (i) shall be and are covenants running with the Property and the Development, encumbering the Property and the Development for the term of this Declaration, binding upon Declarant's successors in title and all subsequent owners and operators of the Property and the Development; (ii) are not merely personal covenants of Declarant; and (iii) shall bind Declarant (and the benefits shall inure to State Subrecipient and any past, present or prospective tenant of the Development) and its respective successors and assigns during the term of this Declaration. Declarant 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 Declaration 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 term of this Declaration, each and every contract, deed or other instrument hereafter executed conveying the Property and the Development or portion thereof shall expressly provide that such conveyance is subject to this Declaration; 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 Property and the Development or portion thereof provides that such conveyance is subject to this Declaration.

### **ARTICLE X Governing Law**

This instrument shall be governed by the laws of the State of Minnesota.

### **ARTICLE XI Notices**

Any notice required to be given to State Subrecipient or Declarant hereunder shall be given in writing by first class or certified mail at the address of such parties specified below, or at such other address as may be specified by that party by notice given to the other party:

State Subrecipient: (State Subrecipient Name and Address)

Declarant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE XII  
Severability**

If any provisions hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.



**EXHIBIT A**

**Legal Description**

SAMPLE

SAMPLE