

DECLARATION OF LAND USE RESTRICTIVE COVENANTS
FOR LOW-INCOME HOUSING TAX CREDITS

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW-INCOME HOUSING TAX CREDITS (this “Declaration”), dated as of _____, 20____, 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 Washington County Community Development Agency, a public body corporate and politic of the State of Minnesota, 7645 Currell Boulevard, Woodbury, Minnesota 55125 (the “CDA”), together with any successor to its rights, duties and obligations.

RECITALS

- A. The Owner is or shall be the owner of a _____-unit rental housing project located on real property in the City of _____, County of Washington, State of Minnesota, legally described in **Exhibit A** attached hereto (the “Project Land”), known as or to be known as _____ (the “Project”).
- B. The CDA 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.
- C. The Owner has applied to the CDA for an allocation of low-income housing tax credits to the Project, and the CDA has determined that the Project would support annual low-income housing tax credits in the amount of \$_____ for 20____ credits (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 Declaration 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 hereof and **Exhibit C** attached hereto by regulating and restricting the use, occupancy and transfer of the Project as set forth herein.
- E. The Owner, under this Declaration, 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 shall be 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 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 Declaration 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 Declaration.

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

- (a) Upon execution and delivery by the Owner, the Owner shall cause this Declaration and all amendments hereto to be recorded in the office of the County Recorder or Registrar of Titles, or both, 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 CDA an executed original of the recorded Declaration, or a duly certified copy of the executed original, showing the date and document numbers of record. The Owner agrees that the CDA will not issue an IRS Form 8609 constituting final allocation of Credits for the Project unless the CDA has received the approved and recorded executed original, or a duly certified copy, of this Declaration as recorded.
- (b) The 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 Declaration, that this Declaration and the covenants and restrictions set forth herein and in the 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 Declaration, binding upon the Owner, 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 CDA and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Declaration. 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 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 ensure that these restrictions run with the land. For the longer of the period that the Credits are claimed or the term of this Declaration, every contract, deed or other instrument hereafter executed conveying the Project, the Project Land 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 Project Land or portion thereof provides that such conveyance is subject to this Declaration.
- (c) The Owner covenants to obtain the consent of any prior recorded lien holder for the Project to this Declaration, and such consent shall be a condition precedent to the CDA’s issuance of the IRS Form 8609 constituting 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 the State 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 Declaration.
- (b) The execution and performance of this Declaration 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) At the time of execution and delivery of this Declaration, the 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 Declaration, 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 that, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) 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 shall not be used on a transient basis.
- (g) All units subject to Section 42 (the “HTC Units”) shall be leased and rented or made available to members of the general public who qualify for occupancy thereof under the applicable election specified in Section 42(g)(1) of the Code (“Low-Income Tenants”). This does not include full-time manager or other common space units that comply with Section 42.
- (h) The Owner shall comply fully with the requirements of the Fair Housing Act as it may from time to time be amended.
- (i) [The Project is currently subject to a Housing Assistance Payments Contract (the “HAP Contract”) between the _____ and _____, dated _____, Project Number _____. The Owner, during the term hereof, will not terminate the HAP Contract, and will extend the HAP Contract, including any renewals or extensions thereof, and the existing low-income affordability restrictions as permitted by HUD.]
- (j) The Owner shall 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, or similar state or local rent subsidy,

because of the status of the prospective tenant as such a holder, 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 tenant.

- (k) Each low-income unit is and will remain suitable for occupancy taking into account all federal, state and local health, safety and building codes (or other habitability standards).
- (l) Subject to the requirements of Section 42 and this Declaration, 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 Declaration 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 CDA 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 Declaration and of Section 42.
- (m) The Owner shall obtain approval from the CDA in writing prior to any sale, transfer or exchange of the entire Project or any low-income portion of the Project. The Owner shall obtain all required CDA approvals of the sale, transfer or exchange as described in the CDA's Housing Tax Credit Program Procedural Manual (the "Procedural Manual"). The notification to the CDA shall be made in the manner described in the Procedural Manual.
- (n) 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 Declaration unless required by law.
- (o) If the Project, or any part thereof, is 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 Declaration.
- (p) 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 Declaration are paramount and controlling as to the rights and obligations set forth herein and supersede any other requirements in conflict herewith.
- (q) Upon request by the CDA or its designated agent, and as required by the Procedural Manual, the Owner shall provide the CDA with a completed Characteristic of Tenant Household Form detailing the Project's demographic characteristics.
- (r) The Owner shall fully comply with the requirements of Section 42 and any applicable regulations as they may from time to time be amended.
- (s) The Owner shall fully comply with the requirements of the CDA Housing Tax Credit Compliance Manual, as amended.
- (t) The Owner shall not allow, without the written approval of the CDA, any alteration of the Project that would change the unit configurations.

SECTION 4 - INCOME RESTRICTIONS; RENTAL RESTRICTIONS

The Owner represents, warrants and covenants that throughout the term of this Declaration 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, or as otherwise required by Section 42, on the basis of the current income of the tenant.
- (b) All HTC Units shall be income restricted in accordance with Section 42(g)(1) of the Code, as set forth in more detail in **Exhibit C** attached hereto.
- (c) All HTC Units shall be rent-restricted in accordance with Section 42(g)(2) of the Code. Once HTC Units are initially qualified for occupancy, annual rent increases for existing residents in such HTC Units shall not exceed the lower of the maximum allowed under Section 42 of the Code or up to a 6% increase from the existing resident’s prior year contract rent. HTC Units are not required to charge the maximum rent allowed and are encouraged to charge lower rents where financially feasible. HTC Units do not include full time manager or other common units described in IRS Revenue Ruling 92-61.

For HTC Units with project-based or tenant-based rental assistance, annual contract rents may be increased to the applicable Housing Assistance Payment Standard (“HAP”) or Fair Market Rent (“FMR”). Rent increases above the applicable HAP/FMR level for HTC Units with project-based or tenant-based rental assistance shall be subject to the same annual rent increase limitations stated above for existing residents.

Where total actual operating expenses have been significantly higher than projected, the Owner may submit a request to the CDA for an annual rent higher than allowed under this section. This request shall be submitted at least 90 days prior to the proposed implementation date of such annual rent increase and shall be subject to CDA review and approval in its sole discretion. Without prior CDA approval, all rent increases shall be subject to the limitations stated above for existing residents.

- (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** attached hereto.
- (e) The applicable fraction (as defined in Section 42(c)(1) of the Code) for the Project for each taxable year in the Extended Use Period will not be less than the Applicable Fraction for the Project specified in **Exhibit C** attached hereto.

SECTION 5 - ADDITIONAL RESTRICTIONS

Exhibit C attached hereto sets forth certain additional obligations of the Owner with respect to the Project upon which the allocation of Credits has been based and with which the Owner covenants to comply throughout the Extended Use Period. The obligations listed in **Exhibit B** and **Exhibit C** must be consistent with the Project’s original reservation or Section 42(m) letter and, if applicable, carryover agreement, with the exception of approved amendments.

SECTION 6 - TERM OF DECLARATION

- (a) The following definitions shall apply to this Declaration:
 - (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 thereto.
 - (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 specified in **Exhibit B**.
- (b) This Declaration and the Owner’s obligation to comply with Section 42, the Occupancy Restrictions and all other provisions herein shall commence on the first day of the Compliance Period and shall end at the close of the Extended Use Period.
- (c) Notwithstanding Section 6(b) hereof, the Extended Use Period for any building that is part of the Project shall terminate 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.
- (d) The Section 42 rent requirements shall continue for a period of three years following the termination or the end of the Extended Use Period. Throughout the term of this Declaration and 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 lower of the maximum allowed under Section 42 with respect to such low-income unit or the maximum allowed under section 4(c) above.

SECTION 7 – INSPECTIONS AND DOCUMENTATION

- (a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the CDA 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 Declaration.
- (b) The Owner shall submit any other information, documents or certifications requested by the CDA that the CDA shall deem reasonably necessary to substantiate the Owner’s continuing compliance with the provisions of this Declaration and the requirements of Section 42.

SECTION 8 - ENFORCEMENT OF DECLARATION

- (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, any applicable regulations, or this Declaration. The Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary, in the opinion of the CDA) 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 the 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 requirements of this Declaration is to ensure compliance of the Project and the Owner with Section 42 and any applicable regulations, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING CREDITS FOR THIS PROJECT HEREBY AGREES THAT THE CDA 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 DECLARATION 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 hereby agrees that the representations and covenants set forth herein may be relied upon by the CDA and all persons interested in Project compliance under Section 42 and any applicable regulations.

(d) The Owner acknowledges that the CDA 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 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** attached hereto. In addition, the CDA 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 Declaration shall not affect the validity of the remaining portions thereof.

(b) Notices. All notices to be given pursuant to this Declaration 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 CDA: Washington County Community
Development Agency
7645 Currell Boulevard
Woodbury, MN 55125

To the Owner: _____

The CDA 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 CDA or Minnesota Housing may be sent by electronic mail.

(c) Amendment. Notwithstanding anything to the contrary contained herein, this Declaration may be amended by a written agreement between the CDA and the Owner, which agreement shall be

effective upon execution thereof by the CDA and the Owner and the recording of the amendment with the County Recorder or Registrar of Titles, or both, of the County in which the Project is located. The Owner agrees that it will take all actions necessary to effect amendment of this Declaration 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) Counterparts. This Declaration may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- (e) Subordination of Declaration. This Declaration 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) hereof).
- (f) Governing Law. This Declaration shall be governed by the laws of the State of Minnesota and, where applicable, the laws of the United States of America.
- (g) 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.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the Owner has caused this Declaration to be signed by its duly authorized representative, as of the day and year first written above.

OWNER:

_____,
a _____

By: _____,
a _____
Its: _____

STATE OF MINNESOTA)
) ss
COUNTY OF _____)

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

Notary Public

This document drafted by:

Washington County CDA
Attn: Deputy Executive Director
7645 Currell Blvd
Woodbury MN 55125

IN WITNESS WHEREOF, the Owner has caused this Declaration to be signed by its duly authorized representative, as of the day and year first written above.

Washington County Community Development Agency:

By: _____

Name: _____
Its: _____

STATE OF MINNESOTA)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____, the _____ of the Washington County Community Development
Agency, on behalf of the agency.

Notary Public

This document drafted by:

Washington County CDA
Attn: Deputy Executive Director
7645 Currell Blvd
Woodbury MN 55125

EXHIBIT A
Legal Description

(Insert Legal Description)
(Abstract/Torrens) Property

EXHIBIT B
Applicable Fraction and Building Information

| <u>BIN #</u> | <u>BUILDING ADDRESS</u> | <u>APPLICABLE FRACTION*</u> | <u>1st YEAR OF CREDIT PERIOD</u> | <u>YEAR EXTENDED USE PERIOD ENDS**</u> |
|--------------|-------------------------|-----------------------------|---|--|
| MN-__-__ | _____ | _____ % | _____ | _____ |

*The building applicable fraction stated on this exhibit must match the building applicable fraction stated on Minnesota Housing Form HTC 28, Building Map.

**Extended Use Period ends on December 31 of the year the Extended Use Period terminates.

EXHIBIT C
CDA Project Summary and Additional Restrictions

This Allocation of Low-Income Housing Tax Credits is based on the following:

1. Project Name: _____
2. HTC Number: _____
HAP Project Number, if applicable: _____
MN Housing D/M Number, if applicable: _____
3. Project Location: _____, MN _____
4. Total Units: ____ Credit Units: ____ Common Space Units: ____
5. Owner Name: _____, a _____
6. Owner 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. Qualified Census Tract Number: ____
Difficult Development Area: ____
Designated Basis Boost Applied: ____
13. Total Eligible Basis: \$ _____
14. Total Qualified Basis: \$ _____
15. Applicable Percentage: _____
16. Annual Credit Allocation: \$ _____

The Owner represents, warrants and covenants that throughout the term of this Declaration, it will comply with the terms of the performance requirements below that are applicable to the Project:

Applies Does Not
to Project Apply to Project

(Check appropriate box for each item)

(a) Minimum Set-Aside Election:

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

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

(3) Average Income: The average of the imputed income limitations designated by the applicant for a minimum of 40 percent of the residential units are both rent restricted and occupied by individuals whose income does not exceed 60 percent or less of area median income. The imputed income limitations are as follows:

20%: _____ units
30%: _____ units
40%: _____ units
50%: _____ units
60%: _____ units
70%: _____ units
80%: _____ units

(b) Subsidy Layering: The Project must conform with Section 911 of the Housing and Community Act of 1992, which requires that specific procedures be followed for subsidy layering review when Credits and HUD assistance are combined in a single project.

(c) 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.

(d) The Owner agrees to lease _____ % percent (applicable fraction) of the total units in the Project to individuals and families whose income is [or if Average Income use "averages"] 60% percent or less of the area median gross income (including adjustments for family size) as determined in accordance with Section 42 ("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** attached hereto. In accordance with the submitted application, Owner agrees to lease _____ units in the Project

Applies
to Project

Does Not
Apply to Project

(Check appropriate line for each item)

(e) In accordance with the submitted application, the following income and rent restrictions apply:

_____ Units at ____ % AMI rent and ____ % AMI income

_____ Units at ____ % AMI rent and ____ % AMI income

_____ Units at ____ % AMI rent and ____ % AMI income

_____ Units at ____ % AMI rent and ____ % AMI income

(f) Minimum Threshold Requirements:

The Project shall provide new construction or substantial rehabilitation in which at least 75% of the total tax credit units are single room occupancy, efficiency or one bedroom units which are affordable by households whose income does not exceed 30% of area median income.

The Project shall provide new construction or substantial rehabilitation of family housing projects that are not restricted to persons who are 55 years of age or older and in which at least 75% of the tax credit units contain two or more bedrooms and at least one-third of the 75% contain three or more bedrooms.

The Project is a substantial rehabilitation project in neighborhoods targeted by the applicable city for revitalization.

The Project is not restricted to persons of a particular age group and a percentage of the units are set aside and rented to persons:

With a serious and persistent mental illness as defined in Minnesota Statutes section 245.462, subdivision 20, paragraph (c);

With a developmental disability as defined in United States Code, Title 42, Section 6001, paragraph (5), as amended;

Who have been assessed as drug dependent persons as defined in Minnesota Statutes section 254A.02, subdivision 5, and are receiving or will receive care and treatment services provided by an approved treatment program as defined in Minnesota Statutes section 254A.02, subdivision 2;

With a brain injury as defined in Minnesota Statutes section 256B.093, subdivision 4, paragraph (a); or

Applies
to Project

Does Not
Apply to Project

(Check appropriate line for each item)

- With permanent physical disabilities that substantially limit one or more major life activities, if at least 50% of the units in the Project are accessible as provided under Minnesota Rules, Chapter 1341.
- The Project, whether or not restricted to persons of a particular age group, will preserve existing subsidized housing and the use of tax credits is necessary to (1) prevent conversion to market rate use or (2) remedy physical deterioration of the Project which would result in loss of existing federal subsidies.
- The Project is financed by Rural Development and meets statewide distribution goals.

(g) CDA Additional Threshold Requirements (all requirements apply):

- The Owner agrees not to refuse to rent a unit to a tenant because that tenant has a Section 8 or other Tenant-Based Housing Choice Voucher (HCV).
- The Owner agrees to utilize CDA waiting lists in marketing units to the public.
- The Project satisfies CDA underwriting and cost standards in accordance with the CDA Procedural Manual, demonstrates reasonable operating expenses relative to comparable projects in the past, is consistent with a development specific Market Study, and will comply with all applicable building, land use, and zoning ordinances.
- The Owner agrees to waive the provisions of Code Sections 42(h)(6)(E)(i)(II) and 42(h)(6)(F), or related provisions, which would permit the Owner to terminate the rent and income restrictions under this Declaration. All projects must maintain the applicable rent and income restrictions for a minimum of 30 years.
- The Owner agrees to provide high speed internet access via installation of all appropriate infrastructure and connections for cable, DSL or wireless/data internet service to every unit.
- The Owner agrees to institute and maintain a written policy prohibiting smoking in all the units and common areas within the building(s) of the Project. The Project must include a non-smoking clause in the lease for every household.

(h) Strategically Targeted Resources:

- The Project is a new construction project that has received final city development application and zoning approvals at the time of application.

Applies
to Project

Does Not
Apply to Project

(Check appropriate line for each item)

The Project is a new construction project that will utilize existing sewer and water lines without substantial extensions.

OR

The Project is a rehabilitation project that provides for the continuation of existing affordable housing.

(i) The Project is at the time of application located in a community with a need for more affordable housing options because 1) there is a low share of affordable rental housing compared to all housing options in a community or 2) a large share of renters are cost burdened by their rent.

(j) The Project is at the time of application located in or near a city or township with a large number of jobs or job growth, individual employer growth, or having a large share of their workforce commuting long distances.

(k) Transit Oriented Development: The Project is located within walking distance to public transit stations and stops at the time of application. Only one location-based option may be selected as follows:

Project is located within ½ mile radius of a completed or planned (Gold Line, Rushline, or Red Rock) corridor transit station.

Project is located within ½ mile radius of a bus route stop or park and ride.

Project is located in a municipality with Transit Link, Metro Mobility, or other similar public transit options.

Project is located in a municipality not served by public transit.

The Project also includes transit oriented design features as follows:

Project incorporates walkable or bikeable connections to station/stop areas.

Project maximizes the site density to the maximum allowed under local comprehensive plan requirements.

(l) The Project is located on property owned by the CDA, Washington County, or a municipality in Washington County at the time of application.

(m) The Project is located in a Qualified Census Tract and is part of a concerted plan that provides for community revitalization consistent with the definition described as a Community Development Initiative at the time of application.

| | |
|-------------------------------|--------------------------------------|
| <u>Applies to Project</u> | <u>Does Not Apply to Project</u> |
|-------------------------------|--------------------------------------|

(Check appropriate line for each item)

(n) The Project has secured funding commitments for permanent funding sources or has no funding gap at the time of application.

Total eligible funding secured, awarded or committed (exclude first mortgage and syndication proceeds) \$ _____

Divided by Total Development Cost less first mortgage and excluded syndication proceeds \$ _____

Equals percentage of funds committed, rounded to the nearest tenth 0.0%

70.1% or more of gap funds committed or no gap

50.1 - 70.0% of gap funds committed

30.1 - 50.0% of gap funds committed

10.1 - 30.0% of gap funds committed

(o) The Project has the lowest cost of intermediaries on a sliding scale based on percentage of total development cost. Percentages will be enforced at issuance of IRS Form 8609.

Total intermediary costs \$ _____

Divided by Total Development Cost \$ _____

Equals percentage of costs toward intermediaries, rounded to the nearest tenth 0.0%

1 - 15.0% of total development cost

15.1 - 20.0% of total development cost

20.1 - 25.0% of total development cost

(p) The Owner and the CDA or similar entity have entered or will enter into a cooperatively developed housing plan to provide rental assistance (e.g., Section 8 Housing Choice Vouchers, Washington Cares, Housing Support program, or other similar, rental assistance programs approved by the CDA) to meet the existing need. The Owner agrees to continue this commitment for a minimum of 10 years.

(q) The Project has committed tax credit units for occupancy by people with disabilities as follows:

Sets aside 5% to 10%, but no fewer than 4 units

Applies
to Project

Does Not
Apply to Project

(Check appropriate line for each item)

Sets aside 11% to 25%, but no fewer than 7 units

(r) The Project has committed tax credit units for occupancy by households experiencing homelessness as follows:

Sets aside 5% to 10%, but no fewer than 4 units

Sets aside 11% to 25%, but no fewer than 7 units

Sets aside 26% or more, but no fewer than 20 units

(s) The Project presents a financially viable plan to transfer 100% of the tax credit unit ownership from the Owner to tenant ownership, after the end of the Compliance Period.

(t) The Owner agrees that the provisions of Code Sections 42(h)(6)(E)(i)(II) and 42(h)(6)(F) (which provisions would permit the Owner to terminate the restrictions under this Declaration at the end of the Compliance Period in the event the CDA does not present the Owner with a qualified contract for the acquisition of the Project) do not apply to the Project, and the Owner also agrees the Section 42 income and rental restrictions must apply for a minimum of 30 years (applies to all allocations).

In addition, the Project will comply with the income and rental restrictions for a period of years selected below beginning with the first day of the Compliance Period in which the building is a part of a qualified low-income housing project.

The Owner agrees to extend the long-term affordability of the Project and maintain the duration of low-income use for a minimum of 35 years.

The Owner agrees to extend the long-term affordability of the Project and maintain the duration of low-income use for a minimum of 40 years.

The Owner agrees to extend the long-term affordability of the Project and maintain the duration of low-income use for a minimum of 45 years.

The Owner agrees to extend the long-term affordability of the Project and maintain the duration of low-income use for a minimum of 50 years.

(u) The Project has a prior reservation of housing tax credits from the CDA, was not fully funded in a previous round, and the additional housing tax credits make the Project feasible at the time of application.

| | |
|-------------------------------|--------------------------------------|
| <u>Applies to Project</u> | <u>Does Not Apply to Project</u> |
|-------------------------------|--------------------------------------|

(Check appropriate line for each item)

(v) The Project preserves low-income housing receiving assistance under Section 8, Section 236, or other similar project-based subsidy, which, due to mortgage prepayments or expiring rental assistance contracts, could convert to market rate use.

(w) The Project preserves the rent and income restrictions under an existing housing tax credit extended use agreement which, due to expiring affordability periods within the next 5 years or proposed qualified contract application, could convert to market rate use.

(x) The Project has existing federally assisted units or was previously funded by tax credits or deferred loans from the CDA or another public entity, and is proposing a planned, long term and cost effective stabilization for the Project. As presented in the application, at least 15 years have passed since initial loan closing or most recent tax credit placed in service date and operating feasibility is expected to have a duration of at least 17 years.

(y) The Project serves the lowest income tenants without the use of rental assistance and the Owner agrees to maintain the deeper rent structure for the duration of this Declaration. This will restrict rents only at the limit(s) claimed below.

- Option 1 - A project in which 100% of the HTC unit rents average to the Washington County 50% LIHTC area median rent limit (50% rent restricted units), with no HTC Units exceeding 60% of the area median rent limit; representing ____ units.
- Option 2 - A project in which at least 75% of the HTC unit rents average to the Washington County 50% LIHTC area median rent limit (50% rent restricted units), with no HTC Units exceeding 70% of the area median rent limit; representing ____ units.
- Option 3 - In addition to either Option 1 or 2, a project, whether or not there is rental assistance, which further restricts 20% of the units identified in Option 1 or 2, with a minimum of 10 units, to the Washington County 30% LIHTC area median rent limit (30% rent restricted units).

(z) The Project is located in a city that has not received an award of CDA or Minnesota Housing financing for new affordable housing development in the prior 4 multifamily funding rounds at the time of application.

(aa) The Owner or developer composition includes firms historically underrepresented in the development and ownership of affordable housing, including BIPOC-owned/led and women-owned/led firms. The underrepresented firm must be a materially significant component of the ownership and/or development entity.