

Exempt from Mortgage Registry Tax
Pursuant to Minnesota Statutes §287.04(f)

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Minneapolis
Department of Community Planning and
Development City
505 4th Ave South
STE 320
Minneapolis, MN 55415-1345
Attn: Residential & Real Estate and Development

[site address]

(Space Above This Line for Recorder's Use)

MINNEAPOLIS PERPETUAL AFFORDABILITY HOUSING LAND TRUST
PROGRAM
LIMITED EQUITY HOME OWNERSHIP DECLARATION AND OPTION TO
PURCHASE AGREEMENT
(Minneapolis Homes or Inclusionary Zoning)

Section 1. Parties.

THIS LIMITED EQUITY HOME OWNERSHIP DECLARATION AND OPTION TO PURCHASE AGREEMENT (“Declaration”) is made as of _____, 20___, (the “Effective Date”) by and between _____ as _____ [indicate manner in which owner takes title] (“Owner”) and the City of Minneapolis, a Minnesota municipal corporation (the “City”). Owner is purchasing that certain real property in the City with a street address of _____, Minneapolis, Minnesota 55____, and more particularly described on Exhibit A attached hereto (the “Property”). Capitalized terms used in this Declaration have the meanings given to them in Section 4 below.

Section 2. Recitals.

The following recitals of fact are a material part of this Declaration:

(a) [The City has developed its Minneapolis Homes Program to provide home ownership opportunities to individuals and families with low and moderate incomes by providing either direct or indirect affordability gap assistance or stabilization assistance.] **OR** [*In accordance with Chapter 535 of the Minneapolis Code of Ordinances and the City’s Unified Housing Policy (the “IZ Requirements”) the City has imposed inclusionary zoning affordability standards on a portion of new ownership housing development in the City.*];

(b) The City's intent is to preserve the affordability of such homes by restricting the resale price;

(c) Such homes constitute a valuable community resource; and

(d) It is necessary, proper and in the public interest for the City to protect and preserve this resource under the Minneapolis Perpetual Affordability Housing Land Trust Program by administering occupancy and resale controls by means of this Declaration.

NOW, THEREFORE, in consideration of the substantial economic benefits received by the Owner from the *[Minneapolis Homes Program]* **OR** *[the City's IZ Requirements]* and the public purposes to be achieved under the Minneapolis Perpetual Affordability Housing Land Trust Program, Owner and the City agree as follows:

Section 3. Owner's Affordable Purchase Price.

The Owner's Affordable Purchase Price for the Property is \$_____. This is the purchase price that is Affordable to a household earning *[70%/50%/30%]* of Area Median Income, adjusted for household size and is at least 20% less than the Fair Market Value of the Property. *[The Affordable Purchase Price shall be established by using a Household Size that assumes occupancy by one person per bedroom plus one. The Fair Market Value of the Property as of the date of Owner's purchase is \$_____. [(The City's Development Gap Subsidy of \$_____ allowed Owner Developer to construct the improvements on the Property and the City's Affordability Gap Subsidy of \$_____ allowed Owner to purchase the Property from Owner Developer at the Affordable Purchase Price OR The City provided \$_____ in Stabilization Assistance to the Property). The Total City Assistance for the Property is \$_____.] (Add in if only Minneapolis Homes)*

OWNER ACKNOWLEDGES AND AGREES THAT TO THE EXTENT ANYTHING IN THIS DECLARATION COULD BE DEEMED A RESTRAINT ON OWNER'S ABILITY TO TRANSFER THE PROPERTY, THAT ANY SUCH LIMIT (A) IS REASONABLE, (B) IS SUPPORTED BY ADEQUATE CONSIDERATION RECEIVED BY OWNER, (C) IS NECESSARY TO IMPLEMENT THE CITY'S PUBLIC POLICY OBJECTIVE OF DEVELOPING AND PRESERVING AFFORDABLE HOUSING, (D) SHOULD BE ENFORCED AS WRITTEN, AND (E) ENABLED OWNER TO BUY THE PROPERTY FOR A PURCHASE PRICE WHICH IS MATERIALLY BELOW THE FAIR MARKET VALUE. OWNER THEREFORE, KNOWINGLY AND VOLUNTARILY, TO THE FULLEST EXTENT PERMITTED BY LAW, WAIVES THE RIGHT TO RAISE ANY DEFENSE TO THE ENFORCEMENT OF THE COVENANTS, CONDITIONS, RIGHTS AND RESTRICTIONS CONTAINED HEREIN, WHETHER AT LAW OR IN EQUITY.

Section 4. Definitions.

As used in this Declaration, the capitalized terms set forth below shall have the following meanings:

(a) ***["Affordability Gap Subsidy" means the subsidy provided by the City under the Minneapolis Homes Program which allowed Owner to purchase or retain the Property at an Affordable Purchase Price for at least 20% below appraised market value.][Delete if IZ]***

(b) "Affordable Purchase Price" for Owner is defined in Section 3.

(c) "Area Median Income" ("AMI") means the median income for a household, adjusted for household size, residing in the City, as determined by the City pursuant to publications issued by the United States Department of Housing and Urban Development for the Minneapolis/St. Paul Metropolitan Statistical Area, from time to time.

(d) "Arms-Length Transaction" means a transaction between two unrelated and unaffiliated parties in which both parties are independent and acting in their own self-interest to attain the most beneficial deal they can for themselves.

(e) **"Catastrophic Illness"** means an **illness** or injury that incapacitates Owner for an extended period of time, or that incapacitates a member of Owner's family, which incapacity requires Owner to take time off from work for an extended period to care for that family member, and taking extended time off from work creates a financial hardship for Owner because he or she has exhausted all of his or her sick leave and other paid time off.

(f) "City" is defined in Section 1.

(g) "Closing Costs" means the reasonable and customary costs incurred by Owner in transferring the Property.

(h) "Conveyance Deed" is defined in Section 8.1(b).

(i) "Damage" means deficiencies in the Property occurring during Owner's ownership of the Property, including without limitation: (1) violations of applicable building, plumbing, electric, fire or housing codes; (2) needed repair to appliances furnished to Owner upon purchase of the Property; (3) holes and other defects (except for holes from picture hangers) in walls, ceilings, floors, doors, windows, screens, carpets, drapes, countertops and similar appurtenances; and (4) repairs needed, as determined by the Qualified Administrator, to put the Property into saleable condition, including without limitation cleaning and painting.

(j) "Declaration" is defined in Section 1.

(k) "Development Gap Subsidy" means the direct subsidy provided by the City to the Owner Developer to acquire and/or construct the improvements on the Property pursuant to the MHF Funding Agreement. ***[Delete if IZ]***

- (l) “Effective Date” is defined in Section 1.
- (m) “Events of Default” are defined in Section 11.1.
- (n) “Fair Market Value” means the cash purchase price for the Property without the restrictions of this Declaration that a willing buyer would pay to a willing seller at the time of sale, neither being under a compulsion to buy or sell, as determined by an independent, certified appraiser acceptable to the City who has experience in residential appraisals in the City of Minneapolis.
- (o) “Fee Schedule” means the City’s PAH Program Fee Schedule published _____ as updated from time to time, any changes to be noticed to Owner in writing at least thirty (30) days prior to the effective date of such adjustment.
- (p) “Gross Annual Income” means “Annual Income” as defined at 24 CFR 5.609 which is the definition for the “Section 8” Program.
- (q) “Income Certification” has the meaning set forth in Section 6.3.
- (r) “IZ Unit” means a unit that was required to meet affordability standards pursuant to the City’s IZ Requirements.
- (s) “MHF Funding Agreement” is defined in Section 5.1.
- (t) “Monitoring Fee” means the annual fee published on the City’s Fee Schedule.
- (u) “Notice” is defined in Section 13.5.
- (v) “Notice of Proposed Transfer” is defined in Section 7.1.
- (w) “Occupancy Certificate” is defined in Section 13.4.
- (x) “Owner” is defined in Section 1, and upon Owner’s death includes the personal representative administering the Owner’s estate.
- (y) “Owner Developer” is the entity the City provided Development Gap Assistance to through the MHF Funding Agreement or that was required to produce the IZ Unit on the Property described in Section 5.1.
- (z) “Owner’s Proceeds” means the amount due to Owner upon Transfer of the Property as provided in Section 8.3.
- (aa) “PAH Manual” means the program manual for the City of Minneapolis’ Perpetual Affordability Housing Land Trust Program which details the operational and resale

restrictions that apply to properties in the City of Minneapolis' Perpetual Affordability Housing Land Trust as updated from time to time.

(bb) "PAH Program" the City of Minneapolis Perpetually Affordable Housing Land Trust Model as described in this Declaration and the PAH Manual.

(cc) "Permitted Exceptions" means those title exceptions that are listed on Exhibit B attached hereto and incorporated herein by reference.

(dd) "Principal Residence" means the location at which an individual resides for at least ten (10) months out of each calendar year or such shorter period of time as the City, in its sole discretion, shall determine.

(ee) "Property" is defined in Section 1.

(ff) "Purchase Option" is defined in Section 9.1.

(gg) "Purchase Option Assignee" is defined in Section 9.3.

(hh) "Qualified Administrator" means the entity selected by the Owner off the list of City approved Qualified Administrators to administer the Property's compliance with the terms of this Declaration consistent with the PAH Manual, or, if noticed in writing by the City, the City of Minneapolis.

(ii) "Qualifying Purchaser" means persons and families adjusted for Household Size whose Gross Annual Income does not exceed **[80% / 60% / 40%]** of Area Median Income and meeting all other requirements as outlined in the City's PAH Manual.

(jj) "Refinance Fee" means a flat fee as identified on the City's Fee Schedule.

(kk) "Repair Costs" means the costs to repair Damage to the Property as reasonably determined by the Qualified Administrator pursuant to Section 7.2 below.

(ll) "Resale Affordable Price" means the Affordable Purchase Price increased by 2.5% interest calculated on a 360 day basis, compounded annually.

(mm) "Resale Fee" means a Qualified Administrator flat fee as identified on the City's Fee Schedule to be paid by the Owner pursuant to Section 7.1.

(nn) "Senior Lender" means a bank, savings and loan association, insurance company, pension fund, publicly traded real estate investment trust, governmental entity, or charitable organization engaged in making loans which customarily makes residential purchase money loans which has loaned money to Owner or a Qualifying Purchaser to purchase or refinance the purchase of the Property.

(oo) “Senior Lien” means a single mortgage for the purpose of securing a loan from the Senior Lender to finance or refinance the purchase of the Property that meets all of the requirements described in the PAH Manual.

(pp) “Stabilization Assistance” means financing assistance provided by the City to help a current tenant or owner-occupant remain in the home they live in.

(qq) [“Total City Assistance” means the amount of Development Gap Assistance plus the amount of Affordability Gap Assistance the City has invested in the Property.] ***[Delete if IZ]***

(rr) “Transfer” means any voluntary or involuntary sale, assignment or transfer of any interest in the Property.

(ss) “Unauthorized Transfer” is defined in Section 11.

(tt) “Unsuccessful Marketing” means a failure to locate a Qualifying Purchaser for one hundred eighty (180) days after following the procedure outlined in the Declaration and PAH Manual.

Section 5. [MHF Financing/Inclusionary Zoning]. (Delete one)

5.1 MHF Funding Agreement. The City and _____, a Minnesota limited liability company (“Owner Developer”) entered into that certain MHF Funding Agreement, dated as of _____, 20____. The MHF Funding Agreement is on file with the City as a public record and is incorporated herein by reference. In consideration for the public assistance provided pursuant to the MHF Funding Agreement, the Property is income and price restricted to be affordable to persons or households earning not more than **[80%/60%/40%]** of Area Median Income. This Declaration is being executed and recorded in accordance with the MHF Funding Agreement and partially satisfies the requirements therein. **OR [Inclusionary Zoning.** This Declaration is being executed and recorded in accordance with the affordability standards of new housing development in the City pursuant to the City’s IZ Requirements and Owner acknowledges having received adequate consideration as a result of being able to acquire the Property at the Affordability Purchase Price.] ***(Delete one) (Delete both if Stabilization Funding and keep INTENTIONALLY LEFT BLANK)***

Section 6. Affordable Restrictions.

6.1 Restrictions. Owner shall own and occupy the Property as Owner's Principal Residence, and Owner shall not lease the Property, or any portion thereof, without the City's prior written consent. Owner shall submit to the City on an annual basis a certification as required by Section 13.4 below that Owner has occupied the Property as Owner's Principal Residence for at least ten (10) months in the preceding year. The Owner may not short-term rent or lease any portion of the Property for less than 30 days. Owner shall use and shall cause all occupants to use the Property for residential purposes and any other incidental activities permitted by the then-applicable zoning code. In the event the City has reasonable cause to believe that Owner is violating the provisions of this Declaration, the Qualified Administrator, may inspect the Property after a reasonable attempt to provide such Owner with 24 hours advance written notice.

6.2 Term. This Declaration shall remain in effect for thirty (30) years from the Effective Date until such time as the Property is Transferred pursuant to the terms of this Declaration, at which time a declaration with substantially the same form, term and substance as this Declaration shall be recorded and become effective for thirty (30) years from the effective date of such declaration. Within six months after the date that is the 29.5th anniversary of this Declaration, Owner must either (1) renew the Term of this Agreement for an additional thirty (30) years by recording a new Declaration provided by the City substantially with the same form, term and substance as this Declaration or (2) repay to the City the difference between the Resale Affordable Price and the Fair Market Value as determined at the completion of the 29th year. Notwithstanding the foregoing, the City's rights to pursue remedies for a default under this Section 6.2 shall survive termination of this Declaration due to the tolling of the 30 year anniversary date.

6.3 Owner Representations and Warranties. In applying to purchase the Property, Owner submitted an Income Certification form. Owner acknowledges that reasonable efforts may be made to verify such Income Certification, including without limitation calling Owner's employers or other sources of income to confirm the income shown. Owner represents and warrants to the City that the Income Certification and any financial and other information Owner previously provided to City for the purpose of qualifying to purchase the Property was true and correct at the time it was given and remains true and correct as of the date of this Declaration.

Section 7. Transfer Procedures.

7.1 Notice of Proposed Transfer. Except as provided in Sections 7.5 and 7.6(a), if Owner desires to Transfer the Property, Owner shall deliver written notice to the Qualified Administrator ("Notice of Proposed Transfer") and pay the Resale Fee, and the Qualified Administrator shall calculate the Resale Affordable Price and notify Owner of the same.

7.2 Inspection. The Owner and the Qualified Administrator shall coordinate to schedule an inspection of the Property within seven (7) days (or such longer period as is convenient to the Owner) after the Qualified Administrator's receipt of the Notice of Proposed

Transfer. The Qualified Administrator may inspect the Property to determine if any Damage exists. In the event any Damage is noted, the Qualified Administrator shall determine the Repair Costs and shall deliver written notice to Owner specifying the Damage and the Repair Costs. Owner shall either: (a) repair the Damage at Owner's cost, (b) place the Repair Costs in an escrow account with the Qualified Administrator to permit the new Qualifying Purchaser or City to complete the repairs or (c) request that the Qualified Administrator complete the repairs, in which case, the Owner's Proceeds shall be reduced by the Repair Costs. If Owner elects to repair the Damage, the City or Qualified Administrator shall have the right to re-inspect the Property under the terms of this Section 7.2 after the repairs are complete. If the City or Qualified Administrator determines in their sole discretion that Damage still remains, Owner shall cause the title company at closing to pay the remaining Repair Costs to the City or to the Qualifying Purchaser, as applicable, but only to the extent such funds are available after payment of the Senior Lien. If Owner elects to repair the Damage, all repairs and the re-inspection shall be completed without extending the closing date, unless extended by mutual written agreement of both the City and Owner.

7.3 Marketing the Property. Owner shall work with the Qualified Administrator to market the Property in accordance with the requirements of the PAH Manual and locate a Qualifying Purchaser for Transfer of the Property at the Resale Affordable Price. Owner and the Qualified Administrator shall use diligence and good faith in marketing the Property and locating a Qualifying Purchaser as evidence by all of the following:

- Listing the Property on the MLS Listing for a minimum of ten (10) calendar days; and
- Requesting that the City list the Property on the City's website.

If Owner and the Qualified Administrator, acting diligently and in good faith, are unable to locate a Qualifying Purchaser after one hundred and eighty (180) days from the date of the Qualified Administrator's receipt of the Notice of Proposed Transfer, then Owner shall provide the City with notice of such and the City may exercise its option to purchase the Property under the terms of Section 9 below. If the City does not exercise its purchase option, Owner may request, and the City shall issue a certificate in recordable form stating that the City has waived its purchase option and that the Owner may sell the Property for Fair Market Value free of the terms of this Declaration, provided the Transfer is an arms-length transaction and the Owner shall pay to the City fifty percent (50%) of Owner's Proceeds in excess of the Resale Affordable Price. Nothing in this Declaration constitutes a promise or guarantee by the City that Owner will be able to resell the Property for the Resale Affordable Price or any other price.

In the event multiple offers are received for the Property, the Qualifying Purchaser will be selected using the selection process outlined in the PAH Manual.

Notwithstanding the foregoing, Owner is not required to engage the Qualified Administrator for real estate broker services in the sale of the Property.

7.4 Monitoring Fee. To compensate the Qualified Administrator for the activities of monitoring compliance with this Declaration, Owner shall pay to the Qualified Administrator the Monitoring Fee annually.

7.5 Transfer to Certain Relatives Without Monetary Consideration.

(a) If an Owner marries after purchasing the Property, the spouse may become a co-Owner without having to meet the requirements for a Qualifying Purchaser. An Owner intending to add a spouse as a co-Owner must present his or her marriage certificate to the Qualified Administrator for review, and the proposed co-Owner shall execute an addendum to this Declaration and any other City documents related to the Property by which the co-Owner shall assume the same rights and responsibilities with respect to those documents as the Owner.

(b) The Owner may transfer the Property without monetary consideration to a child or children of the Owner, provided such child or children meet the requirements for a Qualifying Purchaser.

(c) The Owner may transfer the Property into an inter vivos trust in which the Owner is the beneficiary.

In the case of a Section 7.5 (b) or 7.5(c) Transfer, the Owner must give the Qualified Administrator at least 30 days prior written notice, provide the Qualified Administrator with related documentation requested by the Qualified Administrator and obtain the Qualified Administrator's prior written confirmation that the Transfer qualifies under this Section. Any such transferee shall take title subject to all the terms and conditions of this Declaration and shall execute and record such documents as the Qualified Administrator deems necessary.

7.6 Transfer Upon Owner's Death or Divorce.

(a) Upon Owner's death or pursuant to a court approved distribution of assets in a divorce proceeding, the Property may be Transferred to any co-Owner previously approved by the City without further City approval, but such co-Owner shall notify the Qualified Administrator within thirty (30) days of the Transfer.

(b) Upon the death of Owner and all City approved co-Owners, the Property may be Transferred by inheritance, will, or any other lawful process to a Qualifying Purchaser. The proposed transferee shall submit an Income Certification form and any other information reasonably requested by the Qualified Administrator to verify that the proposed transferee meets the requirements for a Qualifying Purchaser. The City shall have forty-five (45) days after receipt of all required information to determine whether the proposed transferee is a Qualifying Purchaser. If the City determines that the proposed transferee is a Qualifying Purchaser, the Property may be Transferred to the proposed transferee for no consideration. The proposed transferee shall execute a new Declaration with substantially the same form, term and substance as this Declaration and any other City documents related to the Property by which the proposed transferee shall assume the same rights and responsibilities with respect to those documents as Owner. If the City determines that the proposed transferee is not a Qualifying Purchaser, the Property shall be Transferred pursuant to Sections 7.1 – 7.3, inclusive. Failure of the non-Qualifying Purchaser to follow the foregoing procedures shall constitute an Event of Default of

this Declaration and the City may then exercise any of the remedies set forth in Section 11.2 below.

Section 8. Closing.

8.1 Conditions to Closing. Except as provided in Sections 7.5, 7.6(a) and Transfers by foreclosure or the Senior Lender's acceptance of a deed in lieu of foreclosure (an "Exception Transfer"), all Transfers shall be monitored by the Qualified Administrator with a mutually acceptable title company. It shall be a condition to closing, other than an Exception Transfer, that the title company involved in the closing has received the following:

(a) Written confirmation from the Qualified Administrator of the Resale Affordable Price and either (i) the identity of the Qualifying Purchaser or (ii) notification that the City is exercising the Purchase Option;

(b) A standard title company form deed, executed and acknowledged by Owner (or the City as attorney in fact for Owner) granting the Property to the Qualifying Purchaser or the City, as applicable ("Conveyance Deed"), which shall be recorded in the Hennepin County official property records at closing unless the sale is pursuant to a contract for deed approved by the City;

(c) If the Transfer is to a Qualifying Purchaser, a declaration with the same form, term and substance as this Declaration executed and acknowledged by the Qualifying Purchaser and the City, which shall be recorded in the Hennepin County official property records at closing;

8.2 Closing Procedures for Sale to Qualifying Purchaser or the City. At closing, Owner shall convey the Property to the Qualifying Purchaser or the City, as applicable, by Conveyance Deed. Owner shall cause a mutually acceptable title company to issue to the Qualifying Purchaser or the City, as applicable, a standard coverage owner's form of title insurance policy in the amount of the Resale Affordable Price insuring title to the Property vested in the Qualifying Purchaser or the City, as applicable, subject only to standard printed form exceptions, exclusions, liens for current taxes and assessments not yet due or payable, the new Declaration, a Senior Lien and such other matters as were exceptions to title as of _____ [date of sale to first Owner] or are accepted by the Qualifying Purchaser, or the City, as applicable, in writing, as set forth in the Permitted Exceptions attachment. All closing costs and title insurance premiums shall be allocated pursuant to local customary practices.

8.3 Owner's Proceeds. The Owner's Proceeds from a Transfer of the Property shall be calculated as follows:

(a) The Resale Affordable Price;

(b) Less the amount necessary to release the Senior Lien;

- (c) Less Closing Costs;
- (d) Less the Resale Fee;
- (e) Less any Repair Costs due to the City or Qualifying Purchaser pursuant to Section 7.2;
- (f) Less any unpaid fees due hereunder plus interest at the rate of 5% per year from the date due through the date paid.

8.4 Resale Affordable Price and Senior Lien.

The City and Owner acknowledge that the Senior Lien holder will not release the Senior Lien unless it is repaid in full. If the Senior Lien holder does not release the Senior Lien because Owner has not or cannot fully repay it, then the sale will be cancelled or Owner will be in default under the Senior Lien.

Section 9. City's Purchase Option.

9.1 Grant of Option. Owner grants to the City an option to purchase the Property at the Resale Affordable Price if Owner and the Qualified Administrator are unable to locate a Qualifying Purchaser after one hundred eighty (180) days from the date of the Qualified Administrator's receipt of the Notice of Proposed Transfer as set forth in Section 7.1 above or upon the occurrence of an Event of Default under Section 11.1 below ("Purchase Option").

9.2 Exercise of Option. The City may exercise the Purchase Option as follows:

(a) If the purchase option is triggered as a result of an Unsuccessful Marketing of the Property to a Qualifying Purchaser, the City may exercise the Purchase Option within thirty (30) days after such Unsuccessful Marketing

(b) If the Purchase Option is triggered as a result of an Event of Default under Sections 11.1(a) – (g), then the City may exercise the Purchase Option within ninety (90) days after the City gives written notice of default to Owner.

(c) If the Purchase Option is triggered as a result of Owner's default under the Senior Lien as defined in Section 11.1(e), then the City may exercise the Purchase Option at any time prior to five (5) business days before the date of a foreclosure sale, as the same may be postponed from time to time, under the Senior Lien.

9.3 Assignment of Purchase Option. Prior to or after exercise of the Purchase Option, the City may assign the Purchase Option to a governmental entity, non-profit organization, or a Qualifying Purchaser ("Purchase Option Assignee"), who shall be subject to this Declaration.

9.4 Grant of Power of Attorney. Owner hereby grants to the City an irrevocable power of attorney coupled with an interest to act on Owner's behalf to execute, acknowledge and deliver any and all documents relating to the Purchase Option, including, but not limited to a Conveyance Deed.

9.5 Non-Liability of City. The City shall not be held liable by reason of its exercise or non-exercise of the Purchase Option.

Section 10. Maintenance, Taxes, Assessments and Utilities.

10.1 Maintenance. Owner shall not destroy or damage the Property, allow the Property to deteriorate, or commit waste on the Property. Owner shall maintain the Property in compliance with all applicable laws, ordinances and regulations and in a good and clean condition and all appliances and fixtures shall be in good working order.

10.2 Taxes, Assessments and Utilities. Owner shall pay when due all taxes, governmental assessments and charges of every kind against the Property. Owner shall also pay, when due, all other service bills and utility charges that relate to the Property. Owner may, in good faith and with reasonable diligence, contest the amount or validity of any taxes relating to the Property if, during any such contest, the enforcement of the lien of such taxes is stayed.

Section 11. Default and Remedies.

11.1 Events of Default. The occurrence of any one of the following events or circumstances shall constitute an "Event of Default" by Owner under this Declaration.

- (a) Owner has actually Transferred or attempted to Transfer the Property in violation of the covenants and restrictions contained in this Declaration ("Unauthorized Transfer").
- (b) The City has determined that the Property is not being used as Owner's Principal Residence or that Owner has made a material misrepresentation to the City.
- (c) Owner fails to pay real estate taxes, assessments or homeowner's association dues, when due or Owner fails to maintain insurance in such amounts as required under this Declaration; or Owner places any mortgages, encumbrances or liens upon the Property in violation of this Declaration; and such event or condition shall not have been cured within thirty (30) days following the date of written notice to cure by the City to Owner.
- (d) Owner fails to perform any other agreements or obligations on Owner's part to be performed under this Declaration, and such failure continues for thirty (30) days following the date of written notice to cure by the City to Owner, or in the case of a default not susceptible of cure within thirty (30) days, Owner fails to promptly commence such cure within thirty (30) days and thereafter fails to diligently prosecute such cure to completion.

(e) Owner causes or permits a default under the Senior Lien and fails to cure the same in accordance with the cure provisions in the Senior Lien.

(f) Owner places or allows a lien to be placed on the Property in violation of Section 12.1 below.

(g) Owner declares bankruptcy or makes an assignment of assets for the benefit of creditors.

11.2 Remedies. Upon the occurrence of an Event of Default by Owner, City may exercise any or all of the remedies set forth below:

- (a) The City shall have the right to exercise the Purchase Option;
- (b) The City shall have the right to institute an action for specific performance of the terms of this Declaration, for an injunction prohibiting a proposed Transfer in violation of this Declaration, or for a declaration that a Transfer is void, an action for disgorgement of rental or sale proceeds and/or damages to reimburse the City for its enforcement costs;
- (c) The City shall have the right to recover any assistance Owner received in connection with the acquisition of the Property; and
- (d) The City shall have the right to exercise all other remedies permitted by law or at equity.

Section 12. Lender Provisions.

12.1 Purposes of Financing. Subject to the City's prior written approval, Owner may encumber title to the Property for the sole purpose of securing (a) purchase money financing, (b) refinancing (but only up to the amount of the original financing), or (c) refinancing up to the amount of the original financing, plus fifty percent (50%) of the difference between the Resale Affordable Price less the Owner's Affordable Purchase Price. Owner shall not cause or permit any other mortgages, encumbrances or liens upon the Property. Owner shall submit to the Qualified Administrator on an annual basis a certification that Owner has not refinanced the Property in violation of this Section 12.1.

12.2 Subordination. This Declaration shall be subordinate to the City-approved Senior Lien.

12.3 Default and Foreclosure. Owner shall provide a copy of any notice of default under the Senior Lien to the City within three (3) days after Owner's receipt. In the event of any default under the Senior Lien, the City, in addition to any other rights and remedies it may have under this Declaration, at law or in equity, shall have the right to:

- (a.) cure such default pursuant to Section 12.4; or

- (b) exercise its Purchase Option pursuant to Section 9.2(c)

The City's rights under this Section 12.3 shall not prevent the Senior Lender from commencing a judicial or nonjudicial foreclosure of the Senior Lien. If the City, in its sole discretion, does not act pursuant to Sections 12.3(a-b) above, and the Senior Lender acquires the Property through foreclosure or acceptance of a deed-in-lieu of foreclosure, this Declaration shall terminate and future sales of the Property shall not be subject to the resale restrictions provided herein except if Owner or any member of Owner's household or family is the immediate purchaser from Senior Lender, in which case, this Declaration shall be reinstated in its entirety.

12.4 Right to Cure. Although the City has no obligation to do so, the City may perform any act required of Owner in order to prevent a default under, or an acceleration of the indebtedness secured by, the Senior Lien or the commencement of any foreclosure or other action to enforce the collection of such indebtedness. If the City elects to cure any such default, Owner shall pay the expenses incurred by the City in effecting any cure upon demand within thirty (30) days, together with the interest thereon at the maximum interest rate permitted by law. Failure of Owner to timely reimburse the City shall constitute an Event of Default under Section 11.1(d).

12.5 Restrictions on Foreclosure Proceeds. If a creditor acquires title to the Property through a deed in lieu of foreclosure or otherwise, then Owner shall not be entitled to the proceeds of sale to the extent that such proceeds otherwise payable to Owner when added to the proceeds paid or credited to the Senior Lender exceed the Resale Affordable Price ("Excess Proceeds"). Owner shall instruct the holder of such Excess Proceeds to pay such Excess Proceeds to the City in consideration of the benefits received by Owner through purchase of the Property through the Minneapolis Perpetual Affordability Housing Land Trust Program.

Section 13. Miscellaneous.

13.1 Damage and Destruction; Condemnation; Insurance. If the Property is condemned or the improvements located on the Property are damaged or destroyed, all proceeds from insurance or condemnation shall be distributed in accordance with this Section 13.1, subject to the requirements of the Senior Lien. Insurance shall be maintained in the types and amounts required under the Senior Lien. Unless Owner, the City, and Senior Lender otherwise agree in writing, insurance proceeds shall be applied to restore or repair the Property damaged. If Owner, the City and Senior Lender determine that restoration or repair cannot be made, or if the Property is condemned, the insurance or condemnation proceeds shall first be allocated to pay the outstanding value of the Senior Lien and all associated fees of the Senior Lender, with the balance distributed between the Owner and City as follows. Any remaining proceeds in excess of the Resale Affordability Price shall be distributed fifty percent (50%) to the City and fifty percent (50%) to the Owner.

13.2 No Discrimination; Lead-Based Paint Prohibition. Owner shall comply with all applicable laws and regulations regarding non-discrimination and lead-based paint prohibitions.


13.3 Indemnity. Owner agrees to defend, indemnify and hold the City harmless from all losses, damages, liabilities, claims, actions, judgments, costs and reasonable attorney’s fees that the City may incur as a direct or indirect consequence of (a) Owner’s purchase or use of the Property or any activity, work or other things done, permitted or suffered by Owner in, on or about the Property; (b) Owner’s breach of this Declaration or violation of any applicable laws; or (c) any act or omission of Owner or any guest or invitee of Owner.

13.4 Owner Occupancy Verification. To ensure compliance with this Declaration’s requirement that Owner use the Property as his/her Principal Residence, Owner shall provide the Qualified Administrator with a completed Occupancy Certificate, (the form of which is available from the Qualified Administrator or at _____) by February 1 of each year for the previous calendar year.

13.5 Notices. Any notice, demand or other communication required or permitted to be given under this Declaration (a “Notice”) by either party to the other party or to the Qualified Administrator shall be in writing and sufficiently given or delivered if transmitted electronically or by registered or certified United States mail, postage prepaid, return receipt requested addressed as follows:

If to City: (via electronic mail only) to
Mplshomes@minneapolismn.gov

If to Owner: _____

If to Qualified Administrator: At the address for such Qualified Administrator posted


Any such Notice transmitted in accordance with this Section 13.5 shall be deemed delivered upon receipt, or upon the date delivery was refused. Any party may change its address for notices by written Notice given to the other party in accordance with the provisions of this Section 13.5.

13.6 Remedies Cumulative. Subject to applicable law, the City’s rights and remedies, whether provided by law, in equity or by this Declaration, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise of any other or further rights or remedies for the same or any other default or breach. No waiver with respect to the performance of any of Owner’s obligations shall be effective except to the extent the particular obligation is expressly waived, nor shall it be a waiver with respect to any other rights or remedies of any other of Owner’s obligations.

13.7 Attorneys' Fees for Enforcement. If any action or legal proceeding is instituted by Owner or the City arising out of this Declaration, the prevailing party therein shall recover reasonable attorneys' fees and costs in connection with such action or proceeding. For purposes of this Agreement, reasonable fees of any in-house counsel for the City shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the City's in-house counsel's services were rendered who practice in law firms located within the City of Minneapolis.

13.8 Integration. This Declaration constitutes an integration of the entire understanding and agreement of the Owner and the City with respect to the subject matter hereof. Any representations, warranties, promises, or conditions, whether written or oral, not specifically and expressly incorporated in this Declaration, shall not be binding on any of the parties, and Owner and the City each acknowledge that they have not relied, in entering into this Declaration, on any representation, warranty, promise or condition, not specifically and expressly set forth in this Declaration. All prior discussions and writings have been, and are, merged and integrated into, and are superseded by, this Declaration. Owner acknowledges having met with an attorney of Owner's choosing to review this Declaration and ensure clear understanding of its implications.

13.9 Severability. In the event that any provision of this Declaration is determined to be illegal or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions hereof, all of which shall remain in full force and effect.

13.10 Successors and Assigns. It is intended and agreed that the covenants provided in this Declaration shall be covenants running with the Property and that they shall in any event and without regard to technical classification or designation, legal or otherwise (except for Senior Lender's rights under Section 12.3 above) be binding on Owner, the successors and assigns of Owner and all parties having or acquiring any right, title or interest in all or any part of the Property. This Declaration shall be binding upon and inure to the benefit of the successors and assigns of the City. The City may assign or transfer its rights under this Declaration upon thirty (30) days' written notice to Owner. It is expressly agreed by Owner that Owner may assign his or her rights in the Property and this Declaration only by Transfer pursuant to the terms of Sections 7 and 9 hereof.

13.11 Headings. The headings within this Declaration are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Declaration.

13.12 Time for Performance. Time is of the essence in the performance of the terms of this Declaration. All dates for performance (or cure) shall expire at 5:00 p.m. on the performance or cure date. Any performance date which falls on a Saturday, Sunday or City holiday is automatically extended to the next City working day.

13.13 Amendments. Any modification or waiver of any provision of this Declaration or any amendment thereto must be in writing and signed by a person or persons having authority to do so, on behalf of both the City and Owner.

13.14 Controlling Agreement. Owner covenants that Owner has not executed and will not execute any other agreement with provisions contradictory to or in opposition to the provisions of this Declaration. Owner understands and agrees that this Declaration shall control the rights and obligations between Owner and the City.

13.15 Governing Law. This Declaration shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Minnesota.

13.16 Counterparts. This Declaration may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Declaration and all of which, when taken together, will be deemed to constitute one and the same agreement.

13.17 Recordation. Owner shall cause this Declaration to be properly recorded in the official property records of Hennepin County, Minnesota.

IN WITNESS WHEREOF, Owner and the City have executed this Declaration as of the date written above.

CITY:

City of Minneapolis

By: _____
Finance Officer

Responsible Department Head
Approval:

Andrea Brennan, CPED Director

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____
20___ by _____, the
Finance Officer of the City of Minneapolis, a Minnesota municipal corporation , on behalf of the
municipal corporation.

Notary Public

OWNER:

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

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

Notary Public

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT B
PERMITTED EXCEPTIONS