

**City of Minneapolis, Minnesota**  
**Inclusionary Zoning**  
**Revenue Loss Offset Assistance Policy**

The City of Minneapolis has recognized the need to increase the number of housing units in the City that are affordable to low and moderate-income households. Pursuant to Minneapolis Code of Ordinances, Title 20, Article XIV (the “Inclusionary Zoning Ordinance”), the City has adopted an Inclusionary Housing Zoning Code Text Amendment, whereby any multiple-family residential development of 20 or more residential units seeking site plan approval from the City of Minneapolis would be required to comply with the City of Minneapolis’ Unified Housing Policy (“UHP”). Options for compliance with the UHP include options that allow the developer to access City financial assistance to offset revenue loss related to compliance. This Inclusionary Zoning Revenue Loss Offset Assistance Policy is intended to accomplish the following purposes:

- to inform developers of the availability of tax increment financing (“TIF”) and other financial assistance to facilitate inclusionary zoning and the rules that will apply to the granting of TIF assistance for that purpose (“IZ TIF”); and
- to guide staff in forming recommendations regarding the use of IZ TIF and negotiating contract terms with developers.

The City’s standard Tax Increment Financing Policy, which was approved by the Minneapolis City Council on April 2, 2005, remains the governing tax increment financing policy for all developments seeking TIF assistance outside the context of the Inclusionary Zoning Ordinance.

- I. Applicability and Minimum Development Size. Revenue loss offset assistance pursuant to this policy is only available to a development that:
  - (a) is subject to the Inclusionary Zoning Ordinance;
  - (b) has made the election that at least 20% of the total dwelling units in such development will be affordable to and occupied by households at or below 50% of area median income for a minimum of 30 years (the “IZ 20% Election”);
  - (c) has at least 10 units meeting the restrictions described in Section I(b) above; and
  - (d) has no more than 20% of the square footage of any building receiving IZ TIF assistance being utilized for non-residential use.

*If a development meets the requirements of Section I(a) and (b) above, but has less than 10 units meeting the restrictions described in Section I(b) above and/or more than 20% of the square footage in the building is being used for non-residential purposes, City staff will evaluate the need for and availability of financial assistance to such development and may make alternatively sourced financial assistance recommendations to the City Council as appropriate.*

- II. Amount of Revenue Loss Offset Assistance. Upon approval of the City Council, a development meeting the requirements of Section I above (an “IZ-Assisted Development”) will be provided IZ TIF assistance in an amount determined by the City as needed to offset the revenue loss resulting from the IZ 20% Election (the “Revenue Loss Offset”). The Revenue Loss Offset assistance is not intended to make the developer of an IZ-Assisted Development “whole” or to fully compensate them for the cost of adding affordable units to their projects. The Revenue Loss Offset assistance is intended to ensure an IZ-Assisted Development remains financially feasible to develop.

Sizing of the Revenue Loss Offset assistance will depend upon the specifics of each project. Available tax increment (“ATI”) is equal to the tax increment revenue generated by a housing TIF district, as defined in Minnesota Statutes, § 469.174, subd. 11, and received by the City from Hennepin County less a 10% City administrative fee. The maximum amount of annual ATI revenue that will be disbursed by the City to the developer each year is determined upfront and is the lesser of the following three amounts:

- (a) the projected amount of ATI in the first full year of tax increment collection, divided by a coverage factor (e.g., 1.15%) as required by the developer’s tax increment lender. In all cases, the City will retain any annual excess tax increment amount attributable to the coverage factor required by the developer’s tax increment lender;
  - (b) the amount of ATI needed to offset all or a portion of the lost rental revenue resulting from including the affordable units, thereby restoring the project’s financial feasibility. City staff will use generally acceptable industry standards, methodologies, and levels (e.g., yield on cost, return on equity, etc.) as established from time to time by the City’s Finance Officer to determine financial feasibility; and
  - (c) the projected amount of ATI that amortizes a TIF loan equal to the combined decrease in the first mortgage loan and equity that results from including the affordable units.
- III. Qualification of Revenue Loss Offset Assistance. All ATI revenue distributed by the City to the developer must be qualified as reimbursing the developer for the costs of construction of affordable housing.
- IV. Applicability of City Policies. An IZ-Assisted Development receiving Revenue Loss Offset assistance pursuant to this policy must comply with the Prevailing Wage Policy for real estate developments assisted by CPED, provided that contractors will be required to retain records of compliance but will not be required to submit certified payroll into the City’s on-line database.

All developers and contractors building projects in the City of Minneapolis are encouraged to use good faith efforts to comply with all other hiring and contracting policies and ordinances that would otherwise apply to City-assisted development. Unless such development is receiving other City-financial assistance or is purchasing all or a portion of the development site from the City, however, this policy shall supersede all developer contracting and hiring policies and ordinances that apply to City-assisted development.

An IZ-Assisted Development receiving Revenue Loss Offset assistance pursuant to this policy will not be required to have Minneapolis Development Finance Committee review.

V. Process:

Step 1: Developer submits a completed IZ TIF Revenue Loss Offset application to Community Planning and Economic Development (“CPED”) staff.

Step 2: CPED and Finance & Property Services (“FPS”) staff perform a preliminary financial analysis of the application, determine applicability of this policy and maximum Revenue Loss Offset assistance amount if appropriate, and inform the developer of the results of the financial analysis.

Step 3: Developer verifies IZ 20% Election, and informs CPED staff.

Step 4: CPED Director and Finance Officer authorize staff to begin the IZ TIF approval process for the IZ-Assisted Development.

Step 5: FPS staff prepare the IZ TIF Plan and begin the statutory TIF approval process.

Step 6: City Council votes on approval of the IZ TIF Plan and the amount of IZ TIF assistance to the IZ-Assisted Development<sup>1</sup>.

Step 7: City and developer execute a development agreement specifying the terms of the IZ TIF assistance.

Step 8: Developer records Affordable Housing Declaration and City issues IZ TIF Note in accordance with the terms of the development agreement. Developer pays the IZ TIF Note Origination fee as required by the City’s Public Financial Assistance Fee Policy.

VI. Fees. IZ-Assisted Developments that receive an award of Revenue Loss Offset assistance pursuant to this policy shall pay the fees required by the City’s Public Financial Assistance Fee Policy in effect at the time of submittal of an IZ Revenue Loss Offset application.

VII. Pay-Go IZ TIF Debt. Revenue Loss Offset TIF assistance provided pursuant to this policy shall be covered under a development agreement and provided primarily through the City’s issuance of a pay-as-you-go TIF note to the developer in substantially the form attached as Attachment A (the “IZ TIF Note”).

If the annual amount calculated in Section II(a) is less than amounts calculated in Sections II(b) and II(c), and the maximum TIF loan that the developer’s tax increment lender will provide does not completely close the development gap resulting from the restrictions in Section I(b), then the City shall consider lending additional funds to the developer through the issuance of a pay-as-you-go subordinated TIF loan (the “Subordinated IZ TIF Loan”). In this case, the

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<sup>1</sup> This policy does not commit the City to approving any particular application for Revenue Loss Offset assistance. The City reserves the right to reject any IZ Revenue Loss Offset Application and terminate the City’s review and approval process at any time.

Subordinated IZ TIF Loan shall be payable solely from any semi-annual surplus tax increment revenue that remains after first paying the semi-annual payments due on the IZ TIF Note.

- VIII. **Additional Financial Assistance.** If City staff determines that the maximum IZ TIF Debt is in sufficient to achieve project feasibility, then the City will consider providing additional financial assistance. If applicable, the form and amount of this additional assistance will be determined by staff and approved by the City Council. If all of the financial assistance provided under this Revenue Loss Offset Policy is insufficient to achieve project feasibility, then staff may recommend to the City Council a reduction in the IZ requirements as determined in the discretion of the City.
- IX. **Declaration of Affordable Housing Covenants.** As a condition to receiving the Revenue Loss Offset assistance, the developer shall provide documentation to the City that a declaration of affordable housing covenants in substantially the form attached as Attachment B (the “IZ Declaration of Affordable Housing Covenants”) has been properly filed against the IZ-Assisted Development with the Office of the Hennepin County Recorder or Registrar of Titles, as appropriate, which shall include affirmative marketing requirements and requirements to accept housing assistance payments.
- X. **Recapture.** The City will only pursue recapture of TIF assistance provided pursuant to this policy to the extent that the City is required to refund tax increment to Hennepin County as a result of a default under the IZ Declaration of Affordable Housing Covenants or because of a property tax refund.
- XI. **Pooling.** Whenever possible, new TIF districts established pursuant to this policy will be structured to support additional affordable housing that is located outside the TIF district.

**ATTACHMENT A**  
**FORM OF IZ TIF NOTE**

**UNITED STATES OF AMERICA**

**STATE OF MINNESOTA**

**COUNTY OF HENNEPIN**

**CITY OF MINNEAPOLIS**

**INCLUSIONARY ZONING**

**TAX INCREMENT LIMITED REVENUE NOTE**

( \_\_\_\_\_ Project)

( \_\_\_\_\_ [Address of Project])

The City of Minneapolis (the "City"), hereby acknowledges itself to be obligated and, for value received, promises to pay to the order of \_\_\_\_\_, a \_\_\_\_\_  
\_\_\_\_\_ (the "Developer"), solely from the source, to the extent, and in the manner hereinafter provided, the principal amount of this Note, being \_\_\_\_\_  
\_\_\_\_\_ and No/100 Dollars (\$ \_\_\_\_\_) or such lesser amount as may equal the certified Housing Project Costs as described in Section \_\_\_\_ of the Contract, with interest at the Note Rate, in the installments specified in this Note, on the Payment Dates.

Capitalized terms not defined elsewhere in this Note shall have the meanings below:

***"Available Tax Increment"*** means the Gross Tax Increment received by the City from Hennepin County during the period preceding each semi-annual Payment Date, less (i) the amount of tax increment, if any, which the City must pay to the school district, the county and the state pursuant to *Minnesota Statutes*, Sections 469.177, Subds. 9 and 11; 469.176, Subd. 4h; and 469.175, Subd. 1a, as the same may be amended from time to time, (ii) actual administrative costs of the City in an amount not to exceed 10% of Gross Tax Increment.

**"Certificate of Completion"** means a Certificate issued by the City to the Developer pursuant to Section \_\_\_\_ of the Contract certifying that the Development Project has been substantially completed and the Housing Project Costs have been incurred.

**"Contract"** means that certain Development Contract between the City and the Developer, dated \_\_\_\_\_, 20\_\_\_\_.

**"Declaration of Affordable Housing Covenants"** means the IZ Declaration of Affordable Housing Covenants dated of even date with this Note executed by the Developer in favor of the City and filed against the Property.

**"Development"** means new construction of \_\_\_\_ rental housing units, no more than \_\_\_\_\_ square feet of commercial space, \_\_\_\_ parking spaces, and related improvements as described in the Contract.

**"District"** means the \_\_\_\_\_ Tax Increment Financing District established by the City as a housing district pursuant to the Tax Increment Financing Act to aid in financing the Development.

**"Gross Tax Increment"** means that portion of the property taxes generated by the Property and Development that is received by the City from Hennepin County as tax increment revenue under the Tax Increment Financing Act.

**"Housing Project Costs"** means actual costs of constructing the Development, which cannot exceed \$\_\_\_\_\_ and must be approved by the City pursuant to the Contract.

**"IZ TIF Note Repayment Schedule"** means the IZ TIF Note Repayment Schedule attached hereto as **Exhibit B**, which shows the semi-annual payments of tax increment that fully amortize this Note.

**"Maturity Date"** means the earlier of (i) February 1 of the year following the final year of Tax Increment collection from the District; and (ii) the date when the principal and interest amount of this Note has been paid in full.

**"Note Rate"** means \_\_\_\_\_ percent (\_\_\_\_%) per annum, calculated and paid semi-annually on each Payment Date based on a 30-day month/360-day year.

**"Payment Date"** means August 1 of the year of first tax increment collection from the District and each February 1 and August 1 thereafter until the Maturity Date, provided that in no event will any payment date occur before the City's issuance of the Certificate of Completion under the terms of the Contract.

**"Property"** means the real property legally described in the attached **Exhibit A**, upon which the Development will be constructed.

**“Semi-Annual TI Shortfall”** means the amount by which Available Tax Increment received by the City for the semi-annual period preceding each Payment Date is less than the TIF payment amount shown on the IZ TIF Note Repayment Schedule for the applicable Payment Date.

**“Semi-Annual TI Surplus”** means the amount by which Available Tax Increment received by the City for the semi-annual period preceding each Payment Date is greater than the TIF payment amount shown on the IZ TIF Note Repayment Schedule for the applicable Payment Date.

**“Tax Increment Financing Act”** means *Minnesota Statutes*, Section 469.174-469.1799, as amended, or any successor statutes applicable to the District.

On each Payment Date, the City shall pay the Developer an installment equal to the lesser of (i) the Available Tax Increment for the semi-annual period preceding the Payment Date and (ii) the TIF payment amount that appears on the IZ TIF Note Repayment Schedule for the applicable Payment Date. Any Semi-Annual TI Surplus will first be used to reimburse the Developer for any prior Semi-Annual TI Shortfall amounts that have not been previously reimbursed. No interest shall accrue on any prior Semi-Annual TI Shortfall amounts. Any remaining Semi-Annual TI Surplus shall be retained and used by the City as permitted by the Tax Increment Financing Act and the District. The City is not obligated to retain and use Semi-Annual TI Surplus to reimburse the Developer for any future Semi-Annual TI Shortfalls.

If, after issuance of the Certificate of Completion the Developer is in default under the Declaration of Affordable Housing Covenants, and, after notice by the City to the Developer as provided in Section \_\_\_ of the Declaration of Affordable Housing Covenants, such default has not been cured within the time period provided in the Declaration of Affordable Housing Covenants (an “Event of Default”), then the City may suspend payment on this Note until the Event of Default is cured or the City’s obligations under this Note are terminated. If payments are suspended due to an Event of Default under the Declaration of Affordable Housing Covenants, the City is not obligated to pay to the Developer the amount of the suspended payments that would otherwise have been paid to the Developer between the date the payment is suspended and the date the Event of Default is cured. Further, the City reserves the right to seek repayment of any payments previously made during a period when the Developer was in default under the Declaration of Affordable Housing Covenants or due to a property tax refund if the City is required to repay tax increment to Hennepin County as a result of such default or refund. To the extent that on any Payment Date there is insufficient Available Tax Increment to make a full scheduled payment, such failure to make a full scheduled payment shall not constitute a default under this Note.

On the Maturity Date, this Note shall be deemed paid in full and the City shall have no further obligation under this Note even if the aggregate of the tax increment that has actually been paid to the Developer on each Payment Date is less than the full principal and interest amount of this Note. This Note may be prepaid in full or in part at any time without penalty.

Each payment on this Note is payable in any coin or currency of the United States of America which on the date of such payment is legal tender for public and private debts and shall be made by wire transfer, check or draft made payable to the Developer and mailed to the Developer at \_\_\_\_\_, or such other address as the Developer shall provide in writing to the City's notice address as set forth in the Contract.

The Note is a special and limited obligation and not a general obligation of the City, which has been issued by the City pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including *Minnesota Statutes*, Section 469.178, subdivision 4, to aid in financing a "project", as therein defined, of the City consisting generally of defraying certain costs incurred by the Developer within and for the benefit of the Development.

**THE NOTE IS NOT A DEBT OF THE STATE OF MINNESOTA (THE "STATE"), OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY OF MINNEAPOLIS, MINNESOTA, EXCEPT THAT THE CITY SHALL BE OBLIGATED TO MAKE PAYMENTS FROM AVAILABLE TAX INCREMENT AS SET FORTH HEREIN, AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY, SHALL BE LIABLE ON THE NOTE, EXCEPT FOR THE CITY'S OBLIGATION TO MAKE PAYMENTS FROM AVAILABLE TAX INCREMENT AS SET FORTH HEREIN, NOR SHALL THE NOTE BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN AVAILABLE TAX INCREMENT AS SET FORTH HEREIN.**

This Note shall not be transferred to any person, unless the City has been provided with an opinion of counsel acceptable to the City that such transfer is exempt from registration and official statement delivery requirements of federal and applicable state securities law and an investment letter reasonably acceptable to the City.

This Note shall not be payable from or constitute a charge upon any funds of the City, and the City shall not be subject to any liability hereon or be deemed to have obligated itself to pay hereon from any funds except the Available Tax Increment, and then only to the extent and in the manner herein specified.

The Developer shall never have or be deemed to have the right to compel any exercise of any taxing power of the City or of any other public body, and neither the City nor any person executing or registering this Note shall be liable personally hereon by reason of the issuance of registration thereof or otherwise.

**IT IS HEREBY CERTIFIED AND RECITED** that all acts, conditions and things required by the Constitution and the laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; that this Note is issued pursuant to the Tax Increment Act; and that this Note together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional or statutory limitation thereon.

*(Signature page follows.)*



**IN FURTHERANCE WHEREOF**, the City of Minneapolis, by action of its City Council, has caused this Note to be executed by the manual signature of its Finance Officer, and has caused this Note to be dated \_\_\_\_\_, 20\_\_\_\_.

**CITY OF MINNEAPOLIS**

By \_\_\_\_\_

\_\_\_\_\_

Its Finance Officer

Approved as to form:

\_\_\_\_\_

Assistant City Attorney

**EXHIBIT A TO INCLUSIONARY ZONING TIF NOTE**

**Description of the Property**

\_\_\_\_\_, Hennepin County, Minnesota

**EXHIBIT B TO INCLUSIONARY ZONING TIF NOTE**

**IZ TIF Note Repayment Schedule**

**ATTACHMENT B**

**Form of IZ Declaration of Affordable Housing Covenants**

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**INCLUSIONARY ZONING  
DECLARATION OF AFFORDABLE HOUSING COVENANTS**

**By**

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**in favor of the**

**CITY OF MINNEAPOLIS**

**Dated as of: \_\_\_\_\_, 20\_\_\_\_**

**Relating to the:**

**\_\_\_\_\_ Project**

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***This instrument was drafted by:***

***Minneapolis City Attorney's Office (\_\_\_\_)***

***Crown Roller Mill, Suite 200***

***105 Fifth Avenue South***

***Minneapolis, Minnesota 55401-2534***

***(612) 673-\_\_\_\_\_***

**THIS INCLUSIONARY ZONING DECLARATION OF AFFORDABLE HOUSING COVENANTS**, is made on or as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_ (“Developer”), having its offices at \_\_\_\_\_, in favor of the **City of Minneapolis**, a Minnesota municipal corporation (“City”).

**WITNESSETH :**

**WHEREAS**, Developer and City have entered into that certain Inclusionary Zoning Development Contract dated \_\_\_\_\_, 20\_\_\_\_ (the "Development Contract"), pursuant to which the City agreed to permit [*a multi-family residential rental development not previously allowed by zoning /an increase in development capacity of more than 60% of what would otherwise be allowed for a development {choose one}*] and provide tax increment assistance of significant value; and

**WHEREAS**, pursuant to the Development Contract, Developer is obligated to cause construction of \_\_\_\_\_ rental housing units (the “Project”) on the property described in Exhibit A attached hereto (the “Property”) and to cause this Declaration to be recorded against the Property, imposing the affordability covenants set forth below; and

**WHEREAS**, Developer hereby acknowledges that the zoning approvals and financial assistance making possible the construction of the Project is sufficient consideration for executing and filing this Declaration; and

**WHEREAS**, capitalized terms in this Declaration have the meaning provided in the Development Contract, unless otherwise defined herein.

**NOW, THEREFORE**, in consideration of the premises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer agrees as follows:

**SECTION 1. Definitions.**

In this Declaration, unless a different meaning clearly appears from the context:

**AFFIRMATIVE MARKETING PLAN** –A written plan approved by City that describes the affirmative marketing steps Developer will take to market the Affordable Units to renters in minority groups who are not likely to seek rental opportunities in the Project.

**AFFORDABILITY PERIOD** – A period commencing on the Completion Date and continuing for 30 years.

**AFFORDABLE UNITS**– \_\_\_\_\_ (\_\_\_) rental housing units in the Project, specifically \_\_\_\_\_ (\_\_\_) studio units, \_\_\_\_\_ (\_\_\_) one-bedroom units, \_\_\_\_\_ (\_\_\_) two-bedroom units and \_\_\_\_\_ (\_\_\_) three-bedroom units.

**ANNUAL INCOME** – “Annual Income,” as defined at 24 CFR 5.609, which is the definition used for the “Section 8” program.

**APARTMENT UNITS** – \_\_\_\_\_ (\_\_\_) rental housing units and related improvements on the Property according to plans and specifications approved by the City.

**CITY** – The City of Minneapolis.

**COMPLETION DATE** – The date when construction of the Apartment Units upon the Property is completed and City has issued a certificate of occupancy for the Project.

**COMPLIANCE MANUAL** – The City of Minneapolis Inclusionary Zoning Compliance Manual for Owners and Managers of Affordable Rental Housing Units in effect as of the date of the Development Contract.

**ELIGIBILITY CERTIFICATION** – A Certification of Tenant Eligibility in such form as may be deemed appropriate by Developer for consistency with the Compliance Manual, in which the prospective Qualifying Tenant certifies as to Annual Income.

**HUD** – The United States Department of Housing and Urban Development.

**MEDIAN FAMILY INCOME** – The "Median Family Income" as most recently established by HUD for the Minneapolis/St. Paul standard metropolitan statistical area, adjusted for family size.

**OTHER DOCUMENTS** – Any agreement or deed containing covenants, conditions, or restrictions for the benefit of City, including any Development Contract or other agreement between City and Developer.

**OVER-INCOME HOUSEHOLD** – A household that was a Qualifying Tenant at the time tenancy commenced, but whose income over time exceeds one hundred and forty percent (140%) of the maximum income allowed for a Qualifying Tenant.

**PROJECT** – The Property and the Apartment Units.

**PROPERTY** – The real property located in Hennepin County, Minnesota, and legally described on Exhibit A attached hereto and made a part hereof.

**QUALIFYING TENANTS** – Those persons and families who shall be certified from time to time by Developer to have combined adjusted Annual Income that does not exceed 50% of the Median Family Income for the applicable calendar year. For purposes of this definition, the occupants of an Affordable Unit shall not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are "students," as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), not entitled to an exemption under the Code.

**UTILITY PAYMENTS** – Actual utility payments or a Utility Allowance paid by a tenant of an Affordable Unit, excluding telephone.

**UTILITY ALLOWANCE** – A utility allowance determined by City to be reasonable.

## **SECTION 2. Representations.**

Developer represents to and for the benefit of City, that Developer has duly authorized, executed and delivered this Declaration pursuant to proper authorization therefor; that this Declaration constitutes a valid and

binding obligation of Developer, enforceable in accordance with its terms, except only as such enforceability may be limited by bankruptcy, moratorium, reorganization or other laws, or principles of equity affecting creditors' rights and that the execution and delivery of this Declaration does not constitute a breach, violation or default under any law, regulation, order, judgment or ruling binding upon such party, or a default under any indenture, mortgage, agreement or other instrument to which Developer is subject or by which it or the Property is bound.

**SECTION 3. Restrictions on Use.**

- A. Developer agrees to develop, operate and manage the Project, including the Affordable Units, according to the terms of this Declaration for the duration of the Affordability Period.
- B. During the Affordability Period, this Declaration shall constitute covenants running with the land and be binding on the successors and assigns of Developer and on all parties having or acquiring any rights, title, or interest in the Project.
- C. Rental of the Project shall be in accordance with the following:
  - (a) All of the Affordable Units shall be occupied by Qualifying Tenants and shall bear rents not greater than 30% of the adjusted income of a family whose gross income equals 50% of the Median Family Income adjusted by Section 3(C)(d) charges paid by the Qualifying Tenant.
  - (b) The initial rent schedule for the Affordable Units is attached hereto as Exhibit B. In no event will City require the Affordable Unit gross rents to be set lower than the rents listed on Exhibit B.
  - (c) Developer may not refuse to lease an Apartment Unit in the Project to a prospective tenant because the prospective tenant is a Section 8 certificate or voucher holder, or a participant in any other tenant-based assistance program.
  - (d) City may review and approve rents and other charges or allowances annually for consistency with this Declaration. The limitations on rents imposed by this Section 3 includes rent, services and Utility Payments or monthly allowances for services and other non-optional charges. Developer must provide tenants with not less than 30 days prior written notice of increases in rents.
  - (e) The determination of whether an individual or family is a Qualifying Tenant shall be made at the time the tenancy commences and on an ongoing basis thereafter, determined annually, in accordance with the Compliance Manual. If, during the tenancy, a Qualifying Tenant's income exceeds one hundred forty percent (140%) of the maximum income allowed for a Qualifying Tenant at the point of an annual Eligibility Certification, Developer must evict such Over-Income Household upon ninety (90) days written notice.
  - (f) (1) All leases of Affordable Units shall contain clauses, among others, wherein each individual tenant: (i) certifies the accuracy of the statements made in its

application and Eligibility Certification (as defined in Section 4 hereof); and (ii) agrees that the family income at the time the lease is executed shall be deemed substantial and material obligation of the tenant's tenancy, that the tenant will comply promptly with all requests for income and information relevant to determining low or moderate income status from Developer or City, and that the tenant's failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the tenant's tenancy;

- (2) The form of lease to be utilized by Developer in renting any Affordable Units in the Project to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person to eviction upon 30 days' notice for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Eligibility Certification defined below or upon ninety (90) days' notice for being an Over-Income Household.
- (g) Developer shall retain all records related to compliance with this Declaration for a minimum of six (6) years after termination of the Affordability Period. Developer shall permit any duly authorized representative of City to inspect the books and records of Developer related to compliance with this Declaration. Developer also agrees to provide City, upon request, copies of any leases for the Affordable Units and access to the Project and Affordable Units for on-site inspections. Developer agrees to submit any other information, documents or certificates requested by City which City deems reasonably necessary to substantiate continuing compliance with the provisions specified in this Declaration.
- (h) Developer shall, upon annual invoicing from City, reimburse City for third-party expenses related to monitoring of Project compliance with this Agreement.
- (i) Tenants of the Affordable Units must not be charged fees that are not customarily charged in rental housing, such as laundry room access fees.
- (j) Developer shall comply with the Compliance Manual, Tenant Selection Plan and the Affirmative Marketing Plan for the Project and provide evidence of compliance to City upon request.

#### **SECTION 4. Certification of Tenant Eligibility.**

As a condition to initial and continuing occupancy, each person who is intended to be a Qualifying Tenant shall be required annually to sign and deliver to Developer an Eligibility Certification. In addition, such person shall be required to provide whatever other information, documents or certifications are deemed necessary by the Developer or the City to substantiate the Eligibility Certification, on an ongoing annual basis, and to verify that such tenant continues to be a Qualifying Tenant as defined herein. Eligibility Certifications will be maintained on file by Developer with respect to each Qualifying Tenant who resides in an Affordable Unit or resided therein during the immediately preceding calendar year.



Developer agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. A form for collecting tenant information that meets these requirements is available from City upon request. Developer shall immediately report to City any requests from third parties for information relating to this Declaration. City agrees to promptly respond to inquiries from Developer concerning data requests. Developer agrees to hold City, its officers, department heads and employees harmless from any claims resulting from Developer's unlawful disclosure or use of data protected under state and federal laws unless such disclosure was done at the direction of City.

#### **SECTION 5. Annual Report.**

- (1) Annual Report. Developer covenants and agrees that during the terms of this Declaration, it will prepare and submit to City, on or before March 31 of each year, a certificate substantially in the form of Exhibit C hereto, executed by Developer and: (a) identifying the tenancies and dates of occupancy or vacancy for all Qualifying Tenants in the Affordable Units, or held vacant and available for occupancy by Qualifying Tenants, at all times during the year preceding the date of such certificate; and (b) describing all transfers or other changes in ownership of the Project or any interest therein; and (c) that Developer was not otherwise in default under this Declaration during such year.
- (2) Notice of Non-Compliance. Developer will immediately notify City if, at any time during the term of this Declaration, the Affordable Units in the Project are not occupied or available for occupancy as required by the terms of this Declaration.

#### **SECTION 6. Restrictions on Sale of the Project.**

Developer agrees not to sell, transfer, convey or assign the Affordable Units (except leases in the ordinary course of business) (a "Transfer") without first providing City with at least ninety (90) days' notice of a sale of the Project and obtaining the express written assumption by the purchaser, transferee, grantee, or assignee of the obligations imposed on Developer by this Declaration, a copy of which shall be delivered to City prior to any such Transfer; provided, however, that this Declaration shall remain enforceable against a purchaser, transferee, grantee, or assignee even in the absence of a written assumption. Any sale in violation of this Declaration shall be null and void at the election of City.

#### **SECTION 7. Covenants: Binding Upon Successors in Interest.**

It is intended and agreed that the covenants provided in this Declaration shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, be binding on Developer, the successors and assigns of Developer, and all parties having or acquiring any right, title, or interest in all or any part of the Project. This Declaration shall be enforceable against all such parties to the fullest extent permitted by law and equity for the benefit and in favor of City, its successors and assigns. It is expressly agreed and acknowledged that: the covenants provided in this Declaration are in addition to the provisions of any Other Documents; this Declaration shall not be deemed to

limit or merge into any Other Documents or vice versa; this Declaration shall survive the expiration or termination of any of the Other Documents; and the satisfaction or release of any Other Documents shall not be deemed to a satisfaction or release of this Declaration.

**SECTION 8. Remedies for Default.**

In the event of any default, failure, violation, or any other action or inaction by Developer specified in this Declaration, City, at its option, may institute such actions or proceedings at law or in equity as it may deem desirable for effectuating the provisions of this Declaration, including without limitation actions for specific performance, extension of the Affordability Period, damages, and injunctive relief, and including also any remedy allowed under the terms of any Other Documents. Developer hereby further acknowledges that City cannot be adequately compensated by monetary damages in the event of any default hereunder. In any action or proceeding to enforce its rights under this Declaration, City shall be entitled to the recovery from Developer of reasonable attorneys' fees.

**SECTION 9. Notices and Demands.**

A notice, demand, or other communication under this Declaration by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- A. in the case of Developer, is addressed to or delivered personally to Developer at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

- B. in the case of City, is addressed to or delivered personally to City at:

City of Minneapolis  
Department of Community Planning and Economic Development  
Crown Roller Mill, Suite 200  
105 Fifth Avenue South  
Minneapolis, Minnesota 55401-2534  
ATTENTION: Director

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

**SECTION 10. Indemnification.**

Developer hereby indemnifies and agrees to defend and hold harmless City from and against all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, allegations, claims, demands and judgments of any nature arising from the consequences of a legal or administrative proceeding or action brought against them, or any of them, on account of any failure by Developer to comply with the terms of this Declaration, or on account of any representation or warranty of Developer contained herein being untrue.

**SECTION 11. Agent of the City.**

City shall have the right to appoint an agent to carry out any of its duties and obligations hereunder, and shall inform Developer of any such agency appointment by written notice.

**SECTION 12. Severability.**

The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.

**SECTION 13. 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.

*(Signature pages follow.)*

[Signature page to Inclusionary Zoning Declaration of Affordable Housing Covenants]

\_\_\_\_\_

a \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MINNESOTA )

) ss.

COUNTY OF HENNEPIN )

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

\_\_\_\_\_

Notary Public

*This instrument was drafted by:*

*Minneapolis City Attorney's Office (SAR)*

*105 Fifth Avenue South, Suite 200*

*Minneapolis, MN 55401-2534*

**EXHIBIT A**  
**TO INCLUSIONARY ZONING**  
**DECLARATION OF AFFORDABLE HOUSING COVENANTS**

**LEGAL DESCRIPTION**

**EXHIBIT B**  
**TO INCLUSIONARY ZONING**  
**DECLARATION OF AFFORDABLE HOUSING COVENANTS**

**INITIAL RENT SCHEDULE**

<b>Unit #</b>	<b>Bedroom Size</b> (Studio, 1, 2, or 3 bedrooms)	<b>Maximum Rent</b>

**EXHIBIT C**  
**TO INCLUSIONARY ZONING**  
**DECLARATION OF AFFORDABLE HOUSING COVENANTS**

**CERTIFICATE OF**  
**CONTINUING PROGRAM COMPLIANCE**

Date: \_\_\_\_\_, \_\_\_\_\_.

The following information with respect to the Project located at \_\_\_\_\_, Minneapolis, Minnesota (the "Project"), is being provided by \_\_\_\_\_ (the "Developer") to the Department of Community Planning and Development in and for the City of Minneapolis, Minnesota (the "City"), pursuant to that certain Inclusionary Zoning Declaration of Affordable Housing Covenants, dated \_\_\_\_\_, 20\_\_ (the "Declaration"), with respect to the Project:

(A) The total number of residential units which are available for occupancy is \_\_\_. The total number of such units occupied is \_\_\_\_\_.

(B) The following residential units (identified by unit number) have been designated for occupancy by "Qualifying Tenants," as such term is defined in the Declaration (for a total of \_\_\_ units):

Studio Units:

1 BR Units:

2 BR Units:

(C) The following residential units which are included in (B) above, have been re-designated as units for Qualifying Tenants since \_\_\_\_\_, 20\_\_\_, the date on which the last "Certificate of Continuing Program Compliance" was filed with the City by the Developer:

Unit Number	Previous Designation of Unit (if any)	Replacing Unit Number
_____	_____	_____
_____	_____	_____

(D) The following residential units are considered to be occupied by Qualifying Tenants based on the information set forth below:

	Unit Number	Name of Tenant	Number of Persons Residing in the Unit	Number of Bedrooms	Total Adjusted Gross Income	Date of Initial Occupancy	Rent
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							



12							
13							
14							
15							
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25							
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28							
29							
30							
31							
32							
33							
34							
35							

(E) The Developer has obtained a "Certification of Tenant Eligibility," in the form provided as EXHIBIT B to the Declaration, from each Tenant named in (D) above, and each such Certificate is being maintained by the Developer in its records with respect to the Project. Attached hereto is the most recent "Certification of Tenant Eligibility" for each Tenant named in

(D) above who signed such a Certification since \_\_\_\_\_, \_\_\_\_\_, the date on which the last "Certificate of Continuing Program Compliance" was filed with the City by the Developer.

(F) In renting the residential units in the Project, the Developer has not given preference to any particular group or class of persons (except for persons who qualify as Qualifying Tenants); and none of the units listed in (D) above have been rented for occupancy entirely by students, no one of which is entitled to file a joint return for federal income tax purposes. All of the residential units in the Project have been rented pursuant to a written lease, and the term of each lease is at least \_\_\_\_ months.

(G) The information provided in this "Certificate of Continuing Program Compliance" is accurate and complete, and no matters have come to the attention of the Developer which would indicate that any of the information provided herein, or in any "Certification of Tenant Eligibility" obtained from the Tenants named herein, is inaccurate or incomplete in any respect.

(H) The Project is in continuing compliance with the Declaration.

(I) The Developer certifies that as of the date hereof at least \_\_\_\_\_ of the residential dwelling units in the Project are occupied or held open for occupancy by Qualifying Tenants, as defined and provided in the Declaration.

(J) The rental levels for each Qualifying Tenant comply with the maximum permitted under the Declaration.

3-8-19

IN FURTHERANCE WHEREOF, I have hereunto affixed my signature, on behalf of the Developer,  
on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

a \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_