

# REPORT / RECOMMENDATION



**To:** MAYOR AND COUNCIL

**Agenda Item #:** IV. E.

**From:** John Wallin, Finance Director

**Action**

**Discussion**

**Date:** May 6, 2014

**Information**

**Subject:** Resolution No. 2014-47 Approving Execution & Delivery of First Amendment To Amended & Restated Declaration Of Restrictive Covenants For The City Of Edina Variable Demand Multifamily Housing Revenue Refunding Bonds (Edina Park Plaza Project) Series 1999

**Action Requested:**

Pass Resolution No. 2014-47 Approving Execution and Delivery of First Amendment to Amended and Restated Declaration of Restrictive Covenants for the City of Edina Variable Demand Multifamily Housing Revenue Refunding Bonds (Edina Park Plaza Project) Series 1999.

**Information / Background:**

In 1999 the City of Edina issued the conduit bonds referred to above (the "Bonds") to refund the conduit bonds originally issued by the City in 1985 to finance the acquisition and construction of Edina Park Plaza, the senior housing development at Edinborough. In connection with the issuance of the Bonds, the City, the Bond Trustee and the owner of the Edina Park Plaza entered into an Amended and Restated Declaration of Restrictive Covenants (the "Original Restricted Covenants"), which provided for the certain income and other rental restrictions for Edina Park Plaza required to meet the requirements under federal law for the tax exemption of interest on the Bonds. Because this is a conduit issue the City of Edina has no liability related to the issue.

The owner is proposing to make certain modifications to the facilities as detailed in the attached letter from Dorsey & Whitney which would require amending the original covenants to allow microwave ovens in certain units instead of cooking ranges as required by the original covenants.

The owner of Edina Park Plaza is requesting that the City execute and deliver a First Amendment to Amended and Restricted Covenants to amend Section 2(b) of the Original Restricted Covenants, to provide that an assisted living unit or memory care unit may contain a full size microwave oven rather than a cooking range. The City's bond counsel, Dorsey & Whitney has drafted the attached resolution authorizing the Mayor and City Manager to sign the First Amendment to Amended and Restated Declaration of Restrictive Covenants.

**Attachment:**

Dorsey & Whitney letter describing the details of the Bonds and the requested amendment.

Resolution No. 2014-47 Approving Execution and Delivery of First Amendment to Amended and Restated Declaration of Restrictive Covenants.

First Amendment to Amended and Restated Declaration of Restrictive Covenants.

Amended and Restated Declaration of Restrictive Covenants.

Dorsey & Whitney Opinion Letter.

JEROME P. GILLIGAN  
(612) 340-2962  
FAX (612) 340-2643  
gilligan.jerome@dorsey.com

April 28, 2014

Mr. John Wallin  
Finance Director  
City of Edina  
4801 West 50<sup>th</sup> Street  
Edina, MN 55424

Re: Variable Rate Demand Multifamily Housing Revenue Bonds (Edina Park  
Plaza Project – Freddie Mac Credit Enhanced) Series 1999  
City of Edina, Minnesota

Dear John:

In 1999 the City of Edina issued the Bonds referred to above (the “Bonds”) to refund the bonds originally issued by the City in 1985 to finance the acquisition and construction of Edina Park Plaza, the senior housing development at Edinborough. In connection with the issuance of the Bonds the City, the Bond Trustee and the owner of the Edina Park Plaza entered into an Amended and Restated Declaration of Restrictive Covenants (the “Original Restrictive Covenants”), which provided for the certain income and other rental restrictions for Edina Park Plaza required to meet the requirements under federal law for the tax exemption of interest on the Bonds.

The owner of Edina Park Plaza is proposing to make certain modifications to the facilities and the Federal Home Loan Mortgage Corporation (“Freddie Mac”), the credit enhancer for the Bonds, requested that Dorsey & Whitney, as bond counsel for the Bonds, give an opinion as to whether the proposed modifications adversely affects the tax exemption of the interest on the Bonds. Following completion of the modifications, the facility will have 11 full floors of independent living units and 1 floor that is one-half independent living units and one-half common area, 3 floors of assisted living units, 2 floors of memory care units and 1 floor that is all commons area.

Section 2(b) of the Original Restrictive Covenants required that each unit in Edina Park Plaza contain cooking facilities equipped with a cooking range. The proposed modifications will provide for assisted living units and memory care units which will not contain conventional cooking ranges but will contain full sized microwave ovens. Because of the modifications to Section 2(b) of the Original Restrictive Covenants needs to be amended to provide that assisted living units and memory care units may contain a full sized microwave oven rather than a cooking range. The Original Restrictive Covenants provides that the bond trustee shall not

Mr. John Wallin  
April 28, 2014  
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consent to an amendment unless it is provided with an opinion of bond counsel that such amendment will not cause the interest proposed on the bonds to be includable in gross income for federal income tax purposes.

The owner of Edina Park Plaza is requesting that the City execute and deliver a First Amendment to Amended and Restricted Covenants to amend Section 2(b) of the Original Restricted Covenants, to provide that an assisted living unit or memory care unit may contain a full size microwave oven rather than a cooking range.

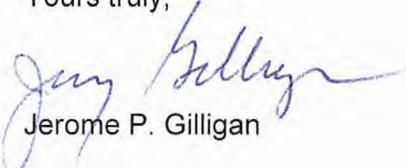
We have advised the parties that we are of the opinion that the proposed modifications to Edina Park Plaza and the amendments to the Original Restrictive Covenants by the First Amendment to Amended and Restated Declaration of Restrictive Covenants will not cause the interest on the Bonds to be includable in gross income for federal income tax purposes.

Enclosed are the following items:

1. Resolution of Edina City Council approving execution and delivery of the First Amendment to Amended and Restated Declaration of Restrictive Covenants for consideration at the City Council's meeting on May 6<sup>th</sup>;
2. A copy of the Original Restrictive Covenants and of the draft of the First Amendment to Amended and Restated Declaration of Restrictive Covenants; and
3. Form of opinion of Dorsey & Whitney as bond counsel that the modifications to Edina Park Plaza and the amendment of the Original Restrictive Covenants by the First Amendment to Amended and Restated Declaration of Restrictive Covenants will not cause interest on the Bonds to be includable in gross income for federal income tax purposes, which opinion will be delivered to the City, Bond Trustee and Freddie Mac upon execution of the First Amendment.

Should you have any questions or require any further information please let me know.

Yours truly,



Jerome P. Gilligan

JPG/pmh



RESOLUTION NO. 2014-47

RESOLUTION APPROVING EXECUTION AND  
DELIVERY OF FIRST AMENDMENT TO  
AMENDED AND RESTATED DECLARATION  
OF RESTRICTIVE COVENANTS

BE IT RESOLVED by the City Council of the City of Edina, Minnesota, as follows:

1. The City has issued its Variable Rate Demand Multifamily Revenue Bonds (Edina Park Plaza Project – Freddie Mac Credit Enhanced), Series 1999 (the “Bonds”), to refund bonds previously issued by the City to finance the acquisition and construction of Edina Park Plaza, a senior housing facility located in the City. In connection with the issuance of the Bonds the City, U.S. Bank National Association, as trustee for the Bonds (the "Bond Trustee"), and Brookdale Living Communities of Minnesota, LLC, a Delaware limited liability company and successor by merger to Brookdale Living Communities of Minnesota, Inc. (the “Owner”), entered into that certain Amended and Restated Declaration of Restrictive Covenants (the “Original Restrictive Covenants”). The Owner has requested that the City execute and deliver an amendment to the Original Restrictive Covenants entitled First Amendment to Amended and Restated Declaration of Restrictive Covenants (the “First Amendment”), by and among the City, the Bond Trustee and the Owner, a draft of which is on file with the City.

2. The amendment of the Original Restrictive Covenants by the First Amendment is hereby approved, and the Mayor and City Manager are hereby authorized and directed on behalf of the City to execute and deliver the First Amendment.

Passed and adopted by the Edina City Council this 6<sup>th</sup> day of May, 2014.

Attest: \_\_\_\_\_

Debra Mangen, City Clerk

James B. Hovland, Mayor

STATE OF MINNESOTA            )  
COUNTY OF HENNEPIN        )SS  
CITY OF EDINA                    )

CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Resolution was duly adopted by the Edina City Council at its Regular Meeting of May 6, 2014, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
City Clerk

**CITY OF EDINA**

**FIRST AMENDMENT TO AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE COVENANTS**

**THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS** (this “**First Amendment**”) is made and entered into as of May 6, 2014, by and among the **CITY OF EDINA**, a municipal corporation of the State of Minnesota duly organized and existing under the laws thereof (the “**Issuer**”), **U. S. BANK NATIONAL ASSOCIATION**, as trustee, a national banking association authorized to accept and execute trusts with its principal corporate trust office in St. Paul, Minnesota (the “**Trustee**”) and **BROOKDALE LIVING COMMUNITIES OF MINNESOTA, LLC**, a Delaware limited liability company and successor by merger to Brookdale Living Communities of Minnesota, Inc. (the “**Owner**”).

**W I T N E S S E T H:**

**WHEREAS**, the parties executed and entered into that certain Amended and Restated Declaration of Restrictive Covenants dated as of December 1, 1999, recorded as Document Number 3229918 in the Records of the County Recorder, Hennepin County, Minnesota (the “**Original Covenants**”) with respect to the Project located on the real property more particularly described on Exhibit “A” attached hereto (all defined terms used herein and not defined herein shall have the meanings set forth in the Original Covenants); and

**WHEREAS**, the parties hereto desire to modify and amend the Original Covenants in certain respects.

**NOW, THEREFORE**, for and in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuer, the Trustee and the Owner hereby agree as follows:

**1. Amendment of Original Covenants.** Section 2(b) of the Original Covenants is hereby modified and amended by deleting such section in its entirety and substituting in lieu thereof the following:

“(b) All of the dwelling units in the Project were and are similarly constructed, and each dwelling unit in the Project does and will contain facilities for living, sleeping, eating, cooking and sanitation for a single person or a family which are complete, separate and distinct from other dwelling units in the Project and do and will include a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range (or, in the case of an assisted living or memory care unit, a full-size microwave oven), refrigerator and sink.”

**2. Ratification.** The parties hereto hereby ratify and reaffirm the Original Covenants, as amended hereby, in all respects.

[Signature pages follows]

**IN WITNESS WHEREOF**, the Issuer, the Trustee and the Owner have executed this First Amendment by duly authorized representatives, all as of the date first above written.

**CITY OF EDINA, MINNESOTA**, a municipal corporation of the State of Minnesota

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

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

STATE OF MINNESOTA    )  
                                  )ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_ of the City of Edina, Minnesota, on behalf of said municipality.

\_\_\_\_\_  
Notary Public



**BROOKDALE LIVING COMMUNITIES OF MINNESOTA, LLC,**  
a Delaware limited liability company

By: PSLT-BLC Properties Holdings, LLC,  
a Delaware limited liability company, its sole member

By: PSLT OP, L.P.,  
a Delaware limited partnership, its sole member

By: PSLT GP, LLC,  
a Delaware limited liability company, its general partner

By: Ventas Provident, LLC,  
a Delaware limited liability company, its sole member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, the \_\_\_\_\_ of Ventas Provident, LLC, a Delaware limited liability company, the sole member of PSLT GP, LLC, a Delaware limited liability company, the sole general partner of PSLT OP, L.P., Delaware limited partnership, the sole member of PSLT-BLC Properties Holdings, LLC, a Delaware limited liability company, the sole member of Brookdale Living Communities of Minnesota, LLC, a Delaware limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public

This instrument was drafted by:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**

**Legal Description of Project Site**

The land referred to is situated in the State of Minnesota, County of Hennepin, and is described as follows:

Lot 2, Block 1, Edinborough Addition, according to the plat thereof on file and of record in the office of the Registrar of Titles, in and for Hennepin County, Minnesota.

AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS

between

CITY OF EDINA, MINNESOTA

and

U.S. BANK TRUST NATIONAL ASSOCIATION,  
as trustee

and

BROOKDALE LIVING COMMUNITIES OF MINNESOTA, INC.

Dated as of December 1, 1999

Relating to

\$15,040,000 Multifamily Housing Revenue Refunding Bonds  
(Edina Park Plaza Project - Freddie Mac Credit Enhanced), Series 1999  
City of Edina, Minnesota

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## AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS

THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS (the "Restated Declaration") is made and entered into as of December 1, 1999, between the CITY OF EDINA, a municipal corporation of the State of Minnesota duly organized and existing under the laws thereof (the "Issuer"), U.S. BANK TRUST NATIONAL ASSOCIATION, as trustee, a national banking association authorized to accept and execute trusts of the type contemplated by the Indenture (as herein defined), with its principal corporate trust office in Saint Paul, Minnesota (the "Trustee"), and BROOKDALE LIVING COMMUNITIES OF MINNESOTA, INC., a Delaware corporation (the "Owner").

### WITNESSETH:

WHEREAS, pursuant to Minnesota Statutes, Chapters 462A and 462C, as amended (the "Act"), the Issuer has heretofore issued its Housing Development Revenue Bonds (FHA Insured Mortgage Loan—Edina Park Plaza Project), Series 1985 (the "1985 Bonds"), for the purpose, among others, of making funds available to make a FHA-insured mortgage loan to finance the acquisition and construction of a 208-unit elderly multifamily rental housing facility development known as "Edina Park Plaza" located on the Project Site (as hereinafter defined) at 3330 Edinborough Way in the City of Edina, Minnesota (the "Project"), intended for occupancy primarily by elderly persons or designed to be affordable by low and moderate income persons within the meaning of the Act and in part by persons and families of "low and moderate income" within the meaning of the Code (as hereinafter defined); and

WHEREAS, simultaneously with the issuance of the 1985 Bonds, the Housing and Redevelopment Authority of the City of Edina (the "Authority") by a Deed and Covenants Running with the Land, dated as of October 1, 1985 and filed on October 24, 1985 in the office of the Registrar of Titles, Hennepin County, Minnesota, as Document No. 1680500 (the "Original Deed"), conveyed to Edina Park Plaza Associates Limited Partnership, an Illinois limited partnership (the "Original Owner"), the Project Site; and

WHEREAS, the Original Deed contained certain covenants and restrictions running with the land and binding upon the Original Owner, its successors and assigns (the "Covenants"); and

WHEREAS, pursuant to the Act and a Trust Indenture, dated as of November 15, 1989, between the Issuer and First Trust National Association (now known as U.S. Bank Trust National Association), as trustee, the Issuer issued \$17,415,000 in aggregate principal amount of its Housing Development Refunding Revenue Bonds (FHA Insured Mortgage Loan - Edina Park Plaza Project), Series 1989-A and Series 1989-B (collectively, the "Prior Bonds"), for the purpose of refunding and redeeming the Issuer's then outstanding 1985 Bonds; and

WHEREAS, simultaneously with the issuance of the Prior Bonds, the Authority, the Original Owner and First Bank National Association, as trustee for the 1985 Bonds, entered into a First Amendment to Deed and Covenants Running With the Land, dated as of November 15, 1989, and filed on December 19, 1989 in the office of the Registrar of Titles, Hennepin County, Minnesota, as Document No. 2061489 (the "First Amendment to Deed"), to amend certain of the Covenants; and

WHEREAS, the Original Owner conveyed the Project to the Owner pursuant to a Quit Claim Deed, filed on June 5, 1997, in the office of the Registrar of Titles, Hennepin County, Minnesota, as Document No. 2815856; and

WHEREAS, the Issuer, acting pursuant to the Act, has entered into a Trust Indenture, dated as of December 1, 1999 (the "Indenture"), with the Trustee; and

WHEREAS, the Act and the Indenture authorize the Issuer to issue refunding bonds to refund the outstanding Prior Bonds issued to refinance the Project; and

WHEREAS, pursuant to the Act and the Indenture, the Issuer proposes to issue \$15,040,000 aggregate principal amount of its revenue bonds designated "City of Edina, Multifamily Housing Revenue Refunding Bonds (Edina Park Plaza Project - Freddie Mac Credit Enhanced), Series 1999" (the "Bonds"), the proceeds of which will be used to make a mortgage loan to the Owner to refund the Prior Bonds; and

WHEREAS, the Owner will rent or lease or will hold available for rent or occupancy at least 20% of the completed dwelling units in the Project to individuals or families of lower income, as herein defined, all for the public purpose of assisting such individuals and families to afford the costs of decent, safe and sanitary housing, and

WHEREAS, the Code and the Internal Revenue Code of 1986, as amended (the "1986 Code"), and the regulations and rulings promulgated with respect thereto prescribe that the use and operation of the Project be restricted in certain aspects, and, in order to ensure that the Project will be used and operated in compliance with the foregoing, the Issuer, the Trustee and the Owner have determined to enter into this Restated Declaration to amend and replace the Covenants as amended by the First Amendment to Deed; and

WHEREAS, the Issuer, the Owner and the Trustee have agreed to amend and restate the Covenants contained in the Deed as amended and supplemented by the First Amendment to Deed and impose restrictive covenants on the Project Site in conjunction with the issuance of the Bonds to assure continuing compliance with the Code, the 1986 Code and Treasury Regulations and thereby ensure that interest on the Bonds will not be includable in gross income for purposes of federal income taxation.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Issuer, the Trustee and the Owner hereby agree as follows.

Section 1. Definitions and Interpretation. Capitalized terms used herein shall have the following meanings or, if not defined in this Section 1, the meanings assigned such terms in the Indenture or the Financing Agreement unless the context in which they are used clearly requires otherwise.

"Act" means Minnesota Statutes, Chapters 462A and 462C, as amended.

"Bond Counsel" means any attorney or firm of attorneys of national recognized standing with respect to the issuance by states and their political subdivisions of obligations the interest on which is exempt from federal income taxes, as selected by the Issuer.

"Bondholder" or "Holder" or "Owner of the Bonds" means the registered owner of any Bond as shown on the registration books maintained by the Trustee pursuant to the Indenture.

“Bonds” means the Issuer’s Multifamily Housing Revenue Refunding Bonds (Edina Park Plaza Project - Freddie Mac Credit Enhanced), Series 1999, issued in the original aggregate principal amount of \$15,040,000.

“Certification of Tenant Eligibility” means a certificate in the form of Exhibit B attached hereto.

“Code” means the Internal Revenue Code of 1954, as amended.

“Financing Agreement” means the Financing Agreement, dated as of December 1, 1999, between the Issuer, the Owner, the Trustee, and Glaser Financial Group, Inc., as servicer.

“Indenture” means the Indenture of Trust, dated as of December 1, 1999, between the Issuer and the Trustee, pursuant to which the Bonds have been issued, as originally executed or as it may, from time to time be supplemented, modified or amended by one or more supplemental indentures.

“Lower-Income Tenants” means individuals or families, on the basis of the “Certification of Tenant Eligibility” attached hereto as Exhibit B (which is hereby incorporated herein by reference and made a part hereof) as certified by such individual or family, who have an adjusted gross income (anticipated total annual income) which does not exceed 80% of the median gross income for the Minneapolis-St. Paul Metropolitan Statistical Area, determined in a manner consistent with the determination of median income made under the leased housing program established under Section 8 of the United States Housing Act of 1937, as amended (or if such program is terminated, under such program as is in effect immediately before such termination). In no event, however, will the occupants of a unit be considered to be of low or moderate income if all the occupants are students, no one of which is entitled to file a joint return.

“Lower-Income Units” means the dwelling units in the Project occupied or held for occupancy by Lower-Income Tenants pursuant to Section 3 hereof.

“Maturity Date” means December 1, 2029, the date of final maturity of the Bonds.

“Mortgage” means that Multifamily Mortgage, Assignment of Rents and Security Agreement and Fixture Financing Statement, dated as of December 1, 1999, together with all riders and addenda thereto, from the Owner to the Issuer, as assigned to the Credit Facility Provider, securing payment of the Mortgage Loan, as such Mortgage may from time to time be amended, modified or supplemented.

“Owner” means Brookdale Living Communities of Minnesota, Inc., a Delaware corporation, its successors and assigns, and any surviving, resulting or transferee entity, and any successor or assign which is the owner of the Project from time to time.

“Prior Bonds” means the Issuer’s outstanding Housing Development Refunding Revenue Bonds (FHA Insured Mortgage Loan - Edina Park Plaza Project), Series 1989-A and Series 1989-B, originally dated as of November 15, 1989, and issued on December 19, 1989.

“Project” means the Project Facilities and the Project Site.

“Project Facilities” means the 208-unit multifamily rental housing facility, with parking and other functionally related and subordinate facilities as contemplated by Section 103(b)(4)(A) of the Code, and all related equipment, fixtures and other property, owned by the Owner and located on the Project Site.

“Project Site” means the parcel of real property described in Exhibit A which is attached hereto, and hereby incorporated by reference herein and made a part hereof, and all rights and appurtenances thereunto appertaining.

“Qualified Project Period” means the period beginning on the first day on which ten percent (10%) of the units in the Project were first occupied (established as May 7, 1987, by a Certificate and Declaration executed by the Original Owner), and ending on the latest of (i) the date which is ten (10) years after the date on which at least fifty percent (50%) of the units in the Project were first occupied (established as November 1, 1987, by a Certificate and Declaration executed by the Original Owner), (ii) the date which is a “qualified number of days” after the date on which any of the units in the Project was first occupied (established as March 13, 1987 by a Certificate and Declaration executed by the Original Owner, or (iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates. “Qualified number of days” means fifty percent (50%) of the total number of days which comprise the period commencing on October 22, 1985 and ending on the last day of the term of the Bonds with the longest maturity (December 1, 2029).

“Related Person” shall have the meaning given in Section 103(b)(6)(C) of the Code.

“Required Rental Period” means the longer of the Qualified Project Period or the remaining term of the Bonds.

“Restated Declaration” means this Amended and Restated Declaration of Restrictive Covenants, dated as of December 1, 1999, between the Issuer, the Trustee and the Owner.

“State” means the State of Minnesota.

“Trustee” means the trustee serving as such under the Indenture.

Such capitalized terms as are not defined herein shall have the meanings ascribed to them in the Indenture.

Unless the context clearly requires otherwise, words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number and vice versa, when appropriate. “Or” is not intended to be exclusive, but to contemplate or encompass one, more or all of the alternatives conjoined.

All the terms and provisions hereof shall be construed to effectuate the purposes set forth in this Restated Declaration and to sustain the validity hereof. The titles and headings of the sections of this Restated Declaration have been inserted for convenience of reference only, are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this document or any provision hereof or in ascertaining intent, if any question of intent shall arise.

Section 2. Residential Rental Property. The Owner hereby represents, warrants and covenants as follows:

(a) The Project will be owned and operated for the purpose of providing multifamily residential rental property in accordance with Section 103(b)(4)(A) of the Code and related Treasury Regulations, comprised of a building or structure or several interrelated buildings or structures, and facilities functionally related and subordinate thereto, and no other facilities. As used herein, facilities functionally related and subordinate to the Project shall include facilities for use by the tenants, including, for example, swimming pools, other recreational facilities, parking areas and other facilities which are reasonably required for the Project, for example, heating and cooling equipment, trash disposal equipment or units for resident managers or maintenance personnel.

(b) All of the dwelling units in the Project were and are similarly constructed, and each dwelling unit in the Project does and will contain facilities for living, sleeping, eating, cooking and sanitation for a single person or a family which are complete, separate and distinct from other dwelling units in the Project and do and will include a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink.

(c) The Owner will not knowingly permit any of the dwelling units in the Project to be used on a transient basis and will not rent any of the units for a period of less than 30 consecutive days and none of the dwelling units in the Project will at any time be leased or rented for use as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium rest home or trailer court or park.

(d) Each dwelling unit in the Project will be rented or available for rental on a continuous basis to members of the general public (subject to the income restrictions contained herein) for the Required Rental Period.

(e) At no time will either the Owner or a Related Person occupy a dwelling unit in the Project; provided that the Owner or a Related Person may occupy a unit or units for resident managers and maintenance personnel.

(f) The Owner shall not discriminate on the basis of race, creed, color, sex, national origin, ancestry, religion, marital status, age, disability or receipt of public assistance or housing assistance in connection with the rental of units in the Project or in connection with the employment or application for employment of persons for operation and management of the Project, and all contracts, applications and leases entered into for such purposes shall contain nondiscriminatory clauses to such effect.

(g) The requirements of this Section 2 shall apply for the Required Rental Period.

Section 3. Lower-Income Tenants. The Owner hereby represents, warrants and covenants as follows:

(a) During the Qualified Project Period, at least 20% of the completed dwelling units in the Project are and will be occupied, or available for occupancy, by Lower-Income Tenants on a continuous basis. For purposes of this paragraph, a dwelling unit occupied by an

individual or family who at the commencement of the occupancy was a Lower-Income Tenant is treated as occupied by a Lower-Income Tenant during their occupancy of such dwelling unit, even though they subsequently cease to be qualified as a Lower-Income Tenant. Moreover, a unit occupied by a Lower-Income Tenant shall be deemed, upon the termination of such Lower-Income Tenant's occupancy, to be continuously occupied by a Lower-Income Tenant until reoccupied, other than for a temporary period, at which time the character of the unit shall be redetermined. In no event shall such temporary period exceed 31 days.

The Owner will not give preference to any particular class or group in renting the dwelling units in the Project except to the extent that dwelling units are required to be occupied or held available for occupancy by Lower-Income Tenants and elderly tenants. Tenants in the Lower-Income Units will have equal access to and enjoyment of all common facilities of the Project. Lower-Income Units shall be intermingled with all other dwelling units and shall be of comparable quality and offer a range of sizes and number of bedrooms comparable to units in the Project which are not Lower-Income Units.

(b) The Owner will obtain and maintain on file Certifications of Tenant Eligibility from each Lower-Income Tenant substantially in the form attached hereto as Exhibit B, being in the form required by Treasury Regulations, Section 1.167(k)-3(b), as it shall presently be in effect, or in such other form and manner shall be required by applicable rules, rulings, regulations or policies now or hereafter promulgated by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 103(b)(4)(A) of the Code. The Owner shall make a good-faith effort to verify that the income provided by an applicant in an income certification is accurate by taking any of the following steps as a part of the verification process or other steps it deems more accurate and suitable in the circumstances: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) obtain an income verification form from the applicant's current employer, (4) obtain an income verification form from the Social Security Administration and/or the Minnesota Department of Social Services if the applicant receives assistance from either of such agencies, or (5) if the applicant is unemployed and has no such tax return, obtain another form of independent verification.

(c) The Owner will maintain complete and accurate records pertaining to the Lower-Income Units, and will permit any duly authorized representative of the Issuer or the Trustee to inspect the books and records of the Owner pertaining to the incomes of Lower-Income Tenants residing in the Project.

(d) The Owner will accept as tenants, on the same basis as all other prospective tenants, Lower-Income Tenants who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937 or its successor, and shall not apply selection criteria to Section 8 certificate holders that are more burdensome than the criteria applied to all other prospective tenants.

(e) The requirements of this Section 3 shall apply for the Qualified Project Period.

Section 4. Reports. The Owner will prepare and submit to the Issuer, the Trustee and the Servicer annually, on or before the first day of each February, commencing February 2000, a "Certificate of Continuing Program Compliance" substantially in the form attached hereto as Exhibit C (which is

hereby incorporated herein and made a part hereof). Such certificates shall be provided as to Lower Income Tenants during the Qualified Project Period.

Section 5. Agreement To Record. The Owner hereby represents, warrants and covenants that it will cause this Restated Declaration to be recorded in the real property records of Hennepin County, Minnesota, and in such other places as the Trustee may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording.

Section 6. Consideration. The Issuer has issued the Bonds to obtain funds to provide refinancing for the Project. In consideration of the issuance of the Bonds by the Issuer, the Owner has entered into this Restated Declaration and has agreed to restrict the uses to which the Project can be put for the term hereof.

Section 7. Covenants Run With the Land. The Owner hereby declares its express intent that the covenants, restrictions, charges and easements set forth herein shall be deemed covenants running with the Land and shall pass to and be binding upon the Owner's successors in title including any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument, and any grantee, successor, assignee, transferee or other person or entity acquiring any interest in the property or Project or any portion thereof shall conclusively be held to have acquired such interest in the property or the Project or any portion thereof subject to the obligations of such covenants, regardless of whether or not such covenants and restrictions are set forth or referred to, or specifically agreed to be performed by any such transferee, in any such contract, lease, conveyance, agreement or other such instrument.

Section 8. Burden and Benefit. The Issuer and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Project Site in that the Owner's legal interest in the Project may be rendered less valuable thereby. The Issuer and the Owner further declare their understanding and intent, however, that the covenants, reservations and restrictions set forth herein directly benefit the Project Site (i) by enhancing and increasing the enjoyment and use of the Project by certain Lower-Income Tenants, (ii) by making possible the obtaining of advantageous refinancing for the Project and (iii) by furthering the public purposes for which the Bonds were issued.

Section 9. Reliance. The Issuer, the Trustee and the Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by the Trustee, the Issuer, the Owner, the Bondholders and the owners of the Prior Bonds. In performing its duties and obligations hereunder, the Trustee may rely upon statements and certificates of the Owner and Lower-Income Tenants. In performing its duties hereunder, the Owner may rely on the Certificates of Tenant Eligibility unless the Owner has actual knowledge that such Certificates are inaccurate. In addition, the Issuer, the Trustee and the Owner may consult with Bond Counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer, the Trustee

or the Owner hereunder in good faith and in conformity with such opinion. In determining whether any default or lack of compliance by the Owner exists under this Restated Declaration, the Trustee shall not be required to conduct any investigation into or view of the records of the Owner and may rely solely upon the certificates delivered to the Trustee by the Owner pursuant to the provisions hereof.

Section 10. Term. This Restated Declaration shall become effective upon its execution and delivery. This Restated Declaration shall remain in full force and effect for a term and period as specified in Sections 2, 3 and 4. The terms of this Restated Declaration to the contrary notwithstanding, this Restated Declaration and all and several of the terms hereof shall terminate and be of no further force and effect in the event of (i)(a) upon foreclosure of the Mortgage or transfer of title to the Project by deed in lieu of foreclosure and payment in full of the loan secured by the Mortgage; or (b) involuntary noncompliance with the provisions of this Restated Declaration caused by fire, seizure or requisition, or change in a federal law or an action of a federal agency after the date hereof which prevents the Issuer and the Trustee from enforcing the provisions hereof, or condemnation or similar event and (ii) the retirement of the Bonds within a reasonable period thereafter; provided, however, that the preceding provisions of this sentence contained in clause (i)(b) shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the events described in clause (i)(b), the Owner or any Related Person obtains an ownership interest in the Project for federal income tax purposes; and provided, further, however, that in no event shall such restrictions be reinstated following the foreclosure of the loan secured by the Mortgage or transfer of title to the Project by deed in lieu of foreclosure and payment in full of the loan secured by the Mortgage. Upon the termination of all and several of the terms of this Restated Declaration, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Restated Declaration in accordance with its terms.

Section 11. Default; Enforcement. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Restated Declaration and such default remains uncured for a period of 30 days after notice thereof is given by the Issuer or the Trustee to the Owner, then the Trustee, acting on its own behalf, as Trustee under the Indenture, or on behalf of the Issuer, or the Issuer on its own behalf, may institute an action for and seek specific performance by the Owner to remedy such default. The Issuer and the Trustee agree that, except for those covenants and agreements in Section 19 hereof, money damages are not available as a remedy for a default by the Owner under this Restated Declaration. The Owner agrees that an action to recover money damages for default will not be an adequate remedy at law, and the Trustee and the Issuer shall have the right to institute an action for and seek specific performance by the Owner to remedy such default. The provisions hereof are imposed upon and made applicable to the Project Site and shall run with the Project Site and, subject to Section 10 hereof, shall be enforceable against the Owner, each purchaser, grantee, owner or lessee of the Project, and the respective heirs, legal representatives, successors and assigns of the Owner and each such purchaser, grantee, owner or lessee.

No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or time.

For so long as the Bonds are outstanding, the rights of the Issuer in this Restated Declaration will be assigned as security to the Trustee and shall be enforceable by the Trustee in accordance with its terms and the terms of the Indenture.

Section 12. Estoppel Certificate. The Issuer and the Trustee agree, upon the request of the Owner or its successor in interest, to promptly execute and deliver to the Owner or its successor in interest or to any potential or actual purchaser, mortgagor or encumbrancer of the Project, a written certificate stating, if the same be true, that the Issuer and the Trustee have no knowledge of any violation or default of the Owner of any of its covenants hereunder, or if there are such violations or defaults, the nature of the same.

Section 13. Amendments. This Restated Declaration shall be amended only by a written instrument executed by the parties hereto, and duly recorded in the real property records of Hennepin County, Minnesota. The Trustee shall not consent to any amendment to this Restated Declaration unless it has been provided with an opinion of Bond Counsel that such amendment shall not cause the interest payable on the Bonds to become includable in gross income for federal income tax purposes.

Section 14. Notices. Any notice required to be given hereunder shall be given by certified mail, postage prepaid, return receipt requested, or shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

If to the Issuer:	City of Edina City Hall 4801 West 50 <sup>th</sup> Street Edina, Minnesota 55424 Attn: City Manager
If to the Trustee:	U.S. Bank Trust National Association 180 East Fifth Street Saint Paul, Minnesota 55101 Attn: Corporate Trust Department
If to the Owner:	Brookdale Living Communities of Minnesota, Inc. c/o Brookdale Living Communities, Inc. 77 West Wacker Drive, Suite 4400 Chicago, Illinois 60601 Attention: Chief Financial Officer Telephone: (312) 977-3700 Telecopy: (312) 977-3701

with a copy to: Brookdale Living Communities, Inc.  
77 West Wacker Drive, Suite 4400  
Chicago, Illinois 60601  
Attention: Robert J. Rudnik  
Telephone: (312) 977-3760  
Telecopy: (312) 977-3769

and with a copy to: Winston & Strawn  
35 West Wacker Drive  
Chicago, Illinois 60601  
Attention: Wayne D. Boberg  
Telephone: (312) 558-5882  
Telecopy: (312) 558-5700

(which copy or copies shall not constitute notice to the Owner)

Section 15. Severability. If any provision of this Restated Declaration shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

Section 16. Multiple Counterparts. This Restated Declaration may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

Section 17. Limited Liability. All obligations of the Issuer incurred hereunder shall be special, limited obligations of the Issuer, payable solely and only from Bond proceeds and other amounts pledged by the Issuer to the payment of the Bonds under the Indenture..

Section 18. The Trustee. The Trustee shall act as specifically provided herein and in the Indenture and may exercise such additional powers as are reasonably incidental hereto and thereto. The Trustee shall act as the agent of and on behalf of the Issuer when requested in writing to do so, and any act required to be performed by the Issuer as herein provided shall be deemed taken if such act is performed by the Trustee. The Trustee is entering into this Restated Declaration solely in its capacity as Trustee under the Indenture and the duties, powers and liabilities of the Trustee in acting hereunder shall be subject to the provisions of the Indenture, including, without limitation, the provisions of Article VIII thereof. After the date on which no Bonds remain outstanding as provided in the Indenture, the Trustee shall no longer have any duties or responsibilities under this Restated Declaration, and all references to the Trustee in this Restated Declaration shall be deemed references to the Issuer.

Section 19. Indemnification. The Owner hereby indemnifies, and agrees to defend and hold harmless, the Issuer and the Trustee 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 it on account of any failure by the Owner to comply with the terms of this Restated Declaration, or on account of any representation or warranty of the Owner contained herein or in any other written information furnished by the Owner being untrue.

Section 20. Governing Law. This Restated Declaration shall be governed by the laws of the State of Minnesota and, where applicable, the laws of the United States of America.

Section 21. Restated Declaration as Replacement. The Issuer, the Trustee and the Owner acknowledge and agree that, as to the Project Site, the provisions of this Restated Declaration are a complete restatement of and replace in full the Covenants contained in the Deed and Covenants Running with the Land, dated as of October 1, 1985 and filed on October 24, 1985 in the office of the Registrar of Titles, Hennepin County, Minnesota, as Document No. 1680500, as amended and supplemented by the First Amendment to Deed and Covenants Running With the Land, dated as of November 15, 1989, and filed on December 19, 1989 in the office of the Registrar of Titles, Hennepin County, Minnesota, as Document No. 2061489.

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**EXHIBIT A**

**Legal Description of Project Site**

The land referred to is situated in the State of Minnesota, County of Hennepin, and is described as follows:

Lot 2, Block 1, Edinborough Addition, according to the plat thereof on file and of record in the office of the Registrar of Titles, in and for Hennepin County, Minnesota.

**EXHIBIT B**

Certification of Tenant Eligibility  
 Edina Park Plaza  
 7800 Park Avenue South  
 Edina, Minnesota

UNIT NUMBER: \_\_\_\_\_

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully and truthfully each of the following questions for all persons who are to occupy the unit in the Edina Park Plaza Apartments development for which application is made, all of whom are listed below:

1.	2.	3.	4.	5.
<u>Name of Members of the Household</u>	<u>Relationship to Head of Household</u>	<u>Age</u>	<u>Social Security Number</u>	<u>Place of Employment</u>
_____ Head	_____	_____	____-____-____	_____
_____ Spouse	_____	_____	____-____-____	_____
_____	_____	_____	____-____-____	_____
_____	_____	_____	____-____-____	_____
_____	_____	_____	____-____-____	_____

Income Computation

6. **Anticipated Annual Income.** The anticipated total annual income from all sources of each person listed in item 1 above for the twelve month period beginning on the date of this certificate, including income described in (a) below, but excluding all income described in (b) below, is \$ \_\_\_\_\_.

- (a) The amount set forth above includes all of the following income (unless such income is described in (b) below);
  - (i) all wages and salaries, overtime pay, commissions, fees, tips and bonuses before payroll deductions;
  - (ii) net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets);

- (iii) interest and dividends (including income from assets as set forth in item 7(b) below);
  - (iv) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;
  - (v) payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;
  - (vi) the maximum amount of public assistance available to the above persons;
  - (vii) periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling;
  - (viii) all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; and
  - (ix) any earned income tax credit to the extent it exceeds income tax liability.
- (b) The following income is excluded from the amount set forth above:
- (i) casual, sporadic or irregular gifts;
  - (ii) amounts that are specifically for or in reimbursement of medical expenses;
  - (iii) lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlement for personal or property losses;
  - (iv) amounts of educational scholarships paid directly to student or educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes;
  - (v) hazardous duty pay to a member of the household in the armed forces who is away from home and exposed to hostile fire;
  - (vi) relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
  - (vii) income from employment of children (including foster children) under the age of 18 years;
  - (viii) foster child care payments;

- (ix) the value of coupon allotments under the Food Stamp Act of 1977;
- (x) payments to volunteers under the Domestic Volunteer Service Act of 1973;
- (xi) payments received under the Alaska Native Claims Settlement Act;
- (xii) income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;
- (xiii) payments on allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;
- (xiv) payments received from the Job Partnership Training Act;
- (xv) income derived from the disposition of funds of the Grand River Bank of Ottawa Indians; and
- (xiv) the first \$2,000 of per capita shares received from judgments awarded by the Indian Claims Commission or the Court of Claims or from funds held in trust for an Indian tribe by the Secretary of Interior.

7. **Net Family Assets.** If any of the persons described in item 1 above (or any person whose income or contributions were included in item 6 above) has any savings, stocks, bonds, equity in real property or other form of capital investment (excluding interests in Indian trust lands), provide:

- (a) the total value of all such assets owned by all such persons:

\$ \_\_\_\_\_;

- (b) the amount of income expected to be derived from such assets in the 12-month period commencing on the date hereof:

\$ \_\_\_\_\_; and

- (c) the amount of such income included in item 6:

\$ \_\_\_\_\_

8. **Students**

(a) Will all of the persons listed in item 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes \_\_\_\_\_

No \_\_\_\_\_



FOR COMPLETION BY PROJECT OWNER OR MANAGER ONLY:

A. Calculation of eligible income:

(1) Enter amount entered for entire household in item 6 above:

\$ \_\_\_\_\_

(2) If the amount entered in item 7(a) above is greater than \$5,000, enter the greater of (i) the amount entered in 7(b) less the amount entered in 7(c) or (ii) 10% of the amount entered in 7(a):

\$ \_\_\_\_\_

(3) TOTAL ELIGIBLE INCOME (Line A(1) plus line A(2):

\$ \_\_\_\_\_

B. The amount entered in A(3) (Total Eligible Income) is:

\_\_\_ Less than \$ \_\_\_\_\_, which is an amount equal to 80% of median income for the Minneapolis-St. Paul SMSA, which is the maximum income at which a household may be determined to be a Lower-Income Tenant as that term is defined in the Restated Declaration.

\_\_\_ More than the above-mentioned amount.

C. Number of apartment unit assigned: \_\_\_\_\_

D. This apartment unit was \_\_\_\_\_ was not \_\_\_\_\_ last occupied for a period of at least 31 consecutive days by a person or persons whose aggregate anticipated annual income, as certified in the above manner, was less than or equal to the amount at which a person would have qualified as a Lower-Income Tenant under the terms of the Restated Declaration.

E. Applicant:

\_\_\_ Qualifies as a Lower-Income Tenant.

\_\_\_ Does not qualify as a Lower Income Tenant.

\_\_\_\_\_  
Owner or Manager

**EXHIBIT C**

**Certificate of  
Continuing Program Compliance**

The undersigned \_\_\_\_\_ of Brookdale Living Communities of Minnesota, Inc., a Delaware corporation (the "Owner"), being the present owner of the real property described in the Restated Declaration identified below, hereby certifies as follows:

1. The undersigned has read and is familiar with the provisions of the Amended and Restated Declaration of Restrictive Covenants, dated as of December 1, 1999 (the "Restated Declaration"), entered into by the Owner, the City of Edina, Minnesota and U.S. Bank Trust National Association, as trustee, and duly recorded in the appropriate public real estate records in and for Hennepin County, Minnesota on November \_\_\_, 1999 as Document No. \_\_\_\_\_.

2. (a) \_\_\_ completed residential units in the Project, which constitute \_\_\_\_\_% of all residential units in the Project, were occupied by persons or families who qualify as Lower-Income Tenants or were held vacant and reserved for occupancy by Lower-Income Tenants.

(b) Attached as Schedule I is a list, by unit numbers and tenant names (if the unit is occupied) of all units enumerated in paragraph (a) above.

3. The Owner has obtained a "Certification of Tenant Eligibility," in the form provided as Exhibit B to the Restated Declaration or, for tenants who executed leases before the Bonds were issued, in a similar form as then required, from each Lower-Income Tenant named in 2 above, and each such Certification is being maintained by the Owner in its records with respect to the Project. Attached hereto is the most recent "Certification of Tenant Eligibility" for each Tenant named in 2 above who signed such a Certification since \_\_\_\_\_, \_\_\_, the date on which the last Certificate of Continuing Program Compliance was filed with the Trustee by the Owner.

4. In renting the residential units in the Project, the Owner has not given preference to any particular group or class of persons (except for persons who qualify as Lower-Income Tenants or elderly persons), and none of the units listed in 2 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 .

5. The information provided in this "Certificate of Continuing Program Compliance" is accurate and complete, and no matters have come to the attention of the Owner 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.

6. The Owner is not in default under any of its obligations under the Restated Declaration except as set forth on Schedule II, if any, attached hereto.

7. Words and phrases used in this certification shall have the same meanings herein as in the Restated Declaration.

Dated this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BROOKDALE LIVING COMMUNITIES  
OF MINNESOTA, INC.**

By \_\_\_\_\_  
Its \_\_\_\_\_





City of Edina, Minnesota  
Edina, Minnesota

U.S. Bank National Association, as Trustee  
Minneapolis, Minnesota

Federal Home Loan Mortgage Corporation  
Washington, D.C.

Re: \$15,040,000 City of Edina, Minnesota Variable Rate Demand  
Multifamily Housing Revenue Refunding Bonds (Edina Park Plaza Project – Freddie Mac  
Credit Enhanced) Series 1999

Ladies and Gentlemen:

We have acted as bond counsel to the City of Edina, Minnesota (the “City”) with respect to the Bonds named above (the “Bonds”). In that capacity, we have been asked to give this opinion with respect to certain tax consequences of certain proposed modifications to the rental housing facilities that were refinanced with proceeds of the Bonds and as are described in the Tenant Tax Certificate executed by BLC- Edina Park Plaza, LLC, a Delaware limited liability company on the date hereof (the “Tenant Certificate”). This opinion may be relied on by the City and by U.S. Bank National Association, as Trustee, for purposes of giving their consents under Section 13 of the Amended and Restated Declaration of Restrictive Covenants between the City, the Trustee, and Brookdale Living Communities Of Minnesota, LLC, a Delaware limited liability company, as successor by merger to Brookdale Living Communities of Minnesota, Inc. (separately and together, the “Owner”), dated as of December 1, 1999 relating to the Bonds (the “Declaration”) to the First Amendment to Amended and Restated Declaration of Restrictive Covenants between the City, the Trustee, and the Owner dated the date hereof (the “Amendment”). This opinion may be relied on by Federal Home Loan Mortgage Corporation for purposes of giving its consent to the Modifications.

For the purposes of giving this opinion, we have examined: (1) the Declaration, (2) the Amendment, (3) the Owner Tax Certificate with respect to the Bonds executed by the Owner on December 1, 1999 (the “Owner Certificate”), (4) the Tenant Certificate, (5) Owner’s Acknowledgement and Consent appended to the Tenant Certificate, and (6) such other documents that we considered necessary in order to give this opinion. As to questions of fact material to our opinion, we have assumed the authenticity of and relied upon the documents described above and other representations of the Tenant and Owner given to us, without undertaking to verify the same by independent investigation. With your permission, we have assumed, without undertaking to verify the same, that Owner is and has been in compliance with its representations and covenants made in the Owner Certificate, the Declaration, and the Financing Agreement, and will remain in compliance therewith, subject only to the express modifications identified in paragraph 4 of the Tenant Certificate (as qualified by the statements in paragraphs 5 and 6 of such Tenant Certificate) and in the Amendment (the “Modifications”).

City of Edina, Minnesota  
U.S. Bank National Association  
Federal Home Loan Mortgage Corporation  
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From such examination, based on such reliance, and on the basis of laws, regulations, rulings and decisions in effect on the date hereof, it is our opinion that neither the Modifications nor the Amendment, in and of themselves, shall cause interest on the Bonds to become includable in gross income for federal income tax purposes, if such interest otherwise is excludable from federal gross income.

Dated this \_\_\_\_ day of May, 2014