

Recording requested by:

[1]

When recorded mail to:

[2]

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**RENTAL ASSISTANCE DEMONSTRATION TRANSFER OF ASSISTANCE RESTRICTIVE COVENANTS
FOR AFFORDABLE HOUSING USES**

These Rental Assistance Demonstration Transfer of Assistance Restrictive Covenants for Affordable Housing Uses (these "Covenants"), dated as of [3] by and between the U.S. Department of Housing and Urban Development, with an address of 451 Seventh Street, S.W., Washington, DC 20410, Attention: Office of Recapitalization, Office of Multifamily Housing ("HUD"), and [4], a public body corporate and politic duly organized under the laws of the [5] with an address of [6] (the "PHA").

RECITALS

A. The PHA owns certain real property described in Exhibit A, attached hereto and incorporated herein (the "Property"). The development of the Property, the operation of the Property, and/or the acquisition of the site or sites thereof was financed with assistance provided by HUD and the Property was previously used for public housing purposes pursuant to agreements by and between HUD and the PHA.

B. The public housing assistance related to this property has been converted to Rental Assistance Demonstration (RAD) Section 8 Project Based Voucher (PBV) or Project Based Rental Assistance (PBRA) assisted housing, located at another site, pursuant to a transfer of assistance under the RAD administered by HUD. HUD and the PHA have released the Property from any declaration of restrictive covenants, declaration of trust and/or obligation associated with the prior public housing uses of the Property recorded at [7], in the records of [8], dated [9]. In lieu of the prior restrictions, HUD and the PHA desire to restrict the ongoing use of the Property as set forth in these Covenants.

C. The PHA has elected to operate the Property exclusively for Affordable Housing Purposes and the parties desire to document that election in these Covenants. The specific

intended Affordable Housing Purposes will include sales to affordable buyers, sales to market-rate buyers in communities to create income diversity, Fair Market Value (FMV) sales where proceeds will be used for Affordable Housing Purposes, parks and commercial purposes to serve the area public housing, tax credit housing, Section 8 RAD housing or other Federal or local housing programs serving households with incomes at or below 80% of area median income.

AGREEMENT

In consideration of the promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as set forth below. The Recitals are incorporated by reference.

1. Definitions.

a. "Act" shall mean the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 et. seq.

b. "Affordable Housing Purposes" shall mean any activity that supports the pre-development, development or rehabilitation of other RAD conversions, public housing, housing assisted under Section 8 of the Act, properties subject to low-income housing tax credit use restrictions, or other federal or local housing programs serving households with incomes at or below 80% of area median income, or that provide services or amenities that will be used primarily by low-income households as defined by the Act.

c. "Reference Date" shall mean [10].

d. "Restricted Period" shall mean the period the Property is subject to the Use Requirement, as set forth in Section 2(b).

e. "Use Requirement" shall mean the use restrictions set forth in Section 2.

2. Use Requirement.

a. Generally. The PHA, for itself and for its successors and assigns, hereby covenants and agrees for the benefit of HUD that the Property shall be used for Affordable Housing Purposes throughout the period set forth in Section 2(b). [11]

b. Restricted Period.

i. The Use Requirement shall encumber the Property from the date of these Covenants through such date which is ten (10) years following the date of these Covenants.

ii. Notwithstanding the foregoing, if the PHA receives payment upon transfer of the Property to a third party, such ten-year period shall be reduced by multiplying ten years by the ratio of (i) the payment from the third party to the PHA relative to (ii) the value of the Property as documented by an appraisal commissioned by the PHA and acceptable to HUD. Upon request from the PHA, HUD may accept a valuation of the Property determined according to an alternative methodology acceptable to HUD in HUD's sole discretion. If any payment is made at the time these Covenants are executed, the Restricted Period shall end on [12].

The letters “NA,” a blank, or similar markings shall indicate that no current adjustment from the ten-year period has been approved. In the event any payment is made after execution of these Covenants, HUD shall execute an amendment to the Covenants specifying the new duration of the Restricted Period. Any transfer of the Property shall be subject to the terms of Section 4, below. Any proceeds from such the sale of the Property must be deposited by the PHA in a bank account covered by a General Depository Agreement (HUD Form 51999) until the funds are disbursed for an Affordable Housing Purpose.

c. Exceptions to the Use Requirement. The following events shall not constitute a breach of the Use Requirement:

i. Vacancy. If the Property or any unit within the Property is left vacant for a reasonable period.

ii. Casualties. If the Property is damaged or destroyed by fire or other casualty and the use of the Property in conformance with the Use Requirement ceases during a period of repairs and/or reconstruction.

iii. Takings. If the Property is taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof.

3. Release. Upon the expiration of the Restricted Period, the Use Requirement shall cease and terminate, and the Property shall be deemed released of the Use Requirement and these Covenants without the requirement of any further writing between the parties herein. Notwithstanding the foregoing, upon expiration of the Restricted Period, HUD agrees to execute and deliver to the PHA such documents as the PHA shall reasonably request releasing and confirming the release of the Use Requirement and these Covenants from title to the Property and clearing title to the Property from any cloud created by the Use Requirement or these Covenants.

4. Actions Requiring the Prior Written Approval of HUD.

a. The PHA shall not convey, assign, transfer, lease, sublease, pledge, hypothecate, encumber or otherwise dispose of the Property or any interest therein or permit the conveyance, assignment, transfer, lease, pledge or encumbrance of the Property during the period covered by these Covenants without the prior written approval of HUD. Notwithstanding the foregoing, the PHA need not obtain the prior written approval of HUD for (i) the conveyance or dedication of land for use as streets, alleys or other public rights-of-way, (ii) the granting of easements for the establishment, operation and maintenance of public utilities, and/or (iii) the documentation of residential lease or other occupancy arrangements in the normal course of operation of the Property.

b. If any transfer is approved by HUD at the time these Covenants are executed, the name of the transferee shall appear here: [13]. The letters “NA,” a blank, or similar markings shall indicate that no transferee has been approved.

5. Events of Default.

a. Upon breach of any of the terms of these Covenants, HUD shall give the PHA written notice of the breach. The PHA shall have thirty (30) calendar days after receipt of such notice of breach to cure the breach; provided that, if the PHA uses commercially reasonable efforts to cure the breach within the prescribed thirty (30) day period and is unable to do so, HUD may approve in writing an extension of an additional thirty (30) calendar days to cure the breach, such approval not to be unreasonably withheld, conditioned or delayed. If the breach is not corrected to the satisfaction of HUD within the prescribed cure period HUD may declare a default under these Covenants (an “Event of Default”) without further notice.

b. The PHA does hereby acknowledge and declare that, upon an Event of Default and without further action by the PHA, the PHA is possessed of the Property and holds the Property in trust for the benefit of HUD. During the existence of the trust hereby created, HUD has been granted and is possessed of an interest in the above described Property, specifically the right to require the PHA to remain seized of the title to the Property and to refrain from transferring, conveying, assigning, leasing, mortgaging, pledging, or otherwise encumbering or permitting or suffering any transfer, conveyance, assignment, lease, mortgage, pledge or other encumbrance of the Property or any part thereof, any appurtenances thereto, or any rent, revenues, income, or receipts therefrom or in connection therewith, or any interest in any of the same, except that the PHA may (a) lease dwellings and other spaces and facilities in the Property, or (b) convey or dedicate land for use as streets, alleys, or other public right-of-way, and grant easements for the establishment, operation, and maintenance of public utilities; or (c) upon request by HUD, convey title to or deliver possession of the Property to HUD.

c. In addition to the foregoing, upon an Event of Default, HUD shall have all other remedies available under statute, at law or in equity. No person or entity, other than the parties to these Covenants, has any rights or remedies under these Covenants. Further, HUD may take whatever investigative steps it deems necessary to ensure compliance. In the Event of Default, to the extent permitted by applicable law, HUD shall have the right to seek specific performance of these Covenants and/or to enjoin any violation of these Covenants in Federal Court. The right to specific performance and injunction shall be in addition to all other remedies available to HUD under statute, at law or in equity.

6. Third Party Beneficiaries. No person or entity, other than the parties to these Covenants, has any rights or remedies under these Covenants.

7. Successors and Assigns. Recordation of these Covenants shall constitute the agreement by PHA to be bound by and to comply with the restrictions set forth in these Covenants. The benefits and burdens of these Covenants touch and concern and run with the land and are binding upon and shall inure to the benefit of the respective successors and assigns of the parties to these Covenants, including any HUD-approved transferee.

8. Notices. All notices under these Covenants shall be in writing and shall be served by (a) personal service or receipted courier service, (b) by registered or certified first-class mail, return receipt requested, or (c) nationally-recognized overnight delivery service, addressed to HUD or the PHA, as appropriate, at the addresses for such parties set forth above. Any notice or other communication sent pursuant to clause (a) hereof shall be deemed received upon such personal service, if sent pursuant to clause (b) shall be deemed received seven (7) calendar days

following deposit in the mail, and/or if sent pursuant to clause (c) shall be deemed received the next succeeding business day following deposit with such nationally recognized overnight delivery service. Any party may change its address by notice given in accordance with this Section 8.

9. Amendments. These Covenants may be amended only by a written instrument signed by the parties to these Covenants. Notwithstanding the foregoing, the parties may not amend, modify, rescind, revoke and/or terminate these Covenants without the prior written approval of HUD. Further, these Covenants are not subject to negotiation by the PHA, Lessee or any Lender with a Secured Interest in the Property.

10. Subordination. Any mortgage liens shall be subject and subordinate to these Covenants. These Covenants shall survive foreclosure and bankruptcy.

11. Execution of Other Covenants. PHA covenants and agrees that it has not and shall not execute any other agreement with provisions contradictory of, or in opposition to, the provisions of these Covenants, and that in any event, the provisions of these Covenants are paramount and controlling as to the rights and obligations set forth herein and supersede any conflicting requirements.

12. Governing Law. These Covenants shall be governed, construed and interpreted in accordance with the laws of the state in which the Property is located, and the parties shall submit to the jurisdiction and venue of the courts in the county where the Property is located.

13. Severability. The invalidity or unenforceability of any clause, part or provision of these Covenants shall not affect the validity or enforceability of the remaining portions thereof.

14. Counterpart Signatures. These Covenants may be executed in any number of original counterparts, all of which evidence only one agreement, and only one of which need be produced for any purpose.

Remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the parties hereto, by their respective duly authorized representatives, have caused their names to be subscribed hereto, on the date first written above.

PHA hereby certifies that the statements and representations contained in this instrument and all supporting documentation are true, accurate, and complete and that each signatory has read and understands the terms of these Covenants. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD, and may be relied upon by HUD as a true statement of facts contained therein.

PHA: [14], a public body corporate and politic

By: _____
Name: _____
Its: _____

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

[15]

[16]

ss.

On _____, 20__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of this State or Commonwealth that the foregoing paragraph is true and correct. Witness my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

HUD: U.S. Department of Housing and Urban
Development

By: _____
Thomas R. Davis
Director, Office of Recapitalization

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

District of Columbia | ss.

On _____, 20__, before me, _____, Notary Public, personally appeared Thomas R. Davis, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the District of Columbia that the foregoing paragraph is true and correct. Witness my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

Warning:

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in any matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Address: [**17**]

Real property in the City of _____, County of _____,
State/Commonwealth of _____, described as follows:

[**18**]

INSTRUCTIONS:

1. Insert the name and address of the PHA requesting the release of the DOT or of their attorneys.
2. Insert the name and address of the PHA requesting the release of the DOT or of their attorneys.
3. Insert the day, month and year.
4. Insert the legal name of the PHA.
5. Insert the place of legal formation, e.g., Commonwealth of Virginia.
6. Insert the PHA's legal address.
7. Insert the document number or book and page recording information for the Release.
8. Insert the name of the Local Recording Entity where the Release is recorded (e.g., Office of the Register of Deeds for Fairfax County, Virginia).
9. Insert the day, month and year of the Release.
10. Fill in either the effective date of the HAP contract on the Transfer of Assistance site or a phrase such as the following: "the effective date of the HAP contract for the property referenced in that certain Rental Assistance Demonstration Conversion Commitment (RCC) executed by and among HUD, the PHA and _____, dated as of _____." The inserted phrase should be adequate to identify the applicable RCC.
11. Additional detail regarding the nature of affordable housing use may be, but is not required to be included as additional sentences in this paragraph.
12. Insert the date for the end of the Restricted Period or type "NA".
13. Insert the legal name of any approved transferee or type "NA".
14. Insert the legal name of the PHA.
15. Insert the name of the State or Commonwealth.
16. Insert the name of the County.
17. Insert street address and any other tax map identification
18. Insert complete metes and bounds legal description or other legal description (such as a reference to a plat map) which is legally sufficient in the State or Commonwealth.