

**Rental Assistance Demonstration
Transfer of Assistance Restrictive
Covenants**

U.S. Department of Housing
and Urban Development

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This collection of information is required to apply to the Rental Assistance Demonstration program as authorized by the Consolidated and Further Continuing Appropriations Act of 2012 and subsequent appropriations. Requirements for RAD were established in Notice H-2019-09 PIH-2019-23 (HA) and related notices. The information will be used as the binding agreement between the owner and HUD for certain properties released from the Public Housing Declaration of Trust following a transfer of assistance. There are no assurances of confidentiality.

Recording requested by:

[1]

When recorded mail to:

[2]

(Space above this line for recorder's use.)

**RENTAL ASSISTANCE DEMONSTRATION
TRANSFER OF ASSISTANCE RESTRICTIVE COVENANTS**

These Rental Assistance Demonstration Transfer of Assistance Restrictive Covenants (these "Covenants"), dated as of [3], are entered into 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, together with the personal property associated therewith (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 under the Rental Assistance Demonstration (RAD) to housing subject to a Section 8 Project Based Voucher (PBV) or Project Based Rental Assistance (PBRA) contract located at another site, pursuant to a transfer of assistance under RAD. 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 parties hereto desire that the Property itself, or alternatively all financial proceeds from the operation or sale of the Property, be used for Affordable Housing Purposes.

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, rehabilitation or operation 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 properties participating in other federal, state or local housing programs serving households with incomes at or below 80% of area median income, or that provides services or amenities that will be used primarily by low-income families as defined by the Act. [10]
- c. “Proceeds” shall mean any net income generated from the Property, including through lease agreements, prior to the expiration of the Restricted Period, and any payments upon transfer of the Property.
- d. “Restricted Period” shall mean the period the Property is subject to the lien of the Use Requirement, as set forth in Section 3(a).
- e. “Restrictions on Proceeds” shall mean the restrictions on the use of the Proceeds set forth in Section 4.

f. “Use Requirement” shall mean the restrictions on the use of the Property set forth in Section 3.

2. Covenant. The PHA, for itself and for its successors and assigns, hereby covenants and agrees for the benefit of HUD that either the Property shall be used for Affordable Housing Purposes throughout the Restricted Period as described in Section 3 (“Property Use Requirement”) or the Proceeds shall be used for Affordable Housing Purposes as described in Section 4 (“Restrictions on Proceeds”).

3. Property Use Requirement.

a. Restricted Period.

i. The Use Requirement set forth in this Section 3 shall encumber the Property from the date of these Covenants through such date which is twenty (20) 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 twenty-year period shall be reduced by multiplying twenty years by the ratio of (i) the payment from the third party to the PHA relative to (ii) the fair market value, as documented by an appraisal commissioned by the PHA and acceptable to HUD. Upon request from the PHA and recognizing that there is variation among appraisals and that an arms-length purchase agreement may not correspond precisely to the appraised value, HUD may accept a ten percent (10%) variation from the appraised value for purposes of this calculation if the Property is sold for cash, without seller take-back financing, to an unrelated third party purchaser. Upon request from the PHA, HUD may accept, in its sole discretion, an alternative methodology to determine fair market value for purposes of this calculation provided that such alternative method meets the requirements of 2 CFR 200.311(c). If any payment is made at the time these Covenants are executed, the Restricted Period shall end on [11]. The letters “NA,” a blank, or similar markings shall indicate that no current adjustment from the twenty-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.

iii. For the duration of the Use Requirement, the PHA shall retain records of and annually report to its board of directors regarding the use of the Property (including any use for Affordable Housing Purposes) and any proposed transfer of the Property. The PHA shall provide such records to HUD whenever HUD approval is needed pursuant to Section 5 hereof or upon request.

b. Mixed-Use or Mixed-Income Development. A mix of residential and commercial uses on the Property or a mix of residential uses serving different income tiers on the Property shall be considered, in the aggregate, a residential use serving households with incomes at or below 80% of area median income if at least sixty percent (60%) of the square footage of improvements on the Property is restricted to residential use by households with incomes at or below 80% of area median income.

c. Release of the Use Requirement.

i. HUD agrees to execute and deliver to the PHA a release of the Use Restriction when an alternative restrictive covenant is placed upon the Property that, in HUD's determination, satisfies the Affordable Housing Purposes requirement.

ii. 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. Restrictions on Proceeds.

a. To the extent the Property or any portion thereof is not used for Affordable Housing Purposes, any Proceeds shall be held in a restricted account and be used exclusively for Affordable Housing Purposes. The Restrictions on Proceeds set forth in this Section 4 shall govern the use of the Proceeds until the funds are disbursed for an Affordable Housing Purpose or returned to HUD.

b. Any Proceeds 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. For the duration of the Restriction on Proceeds set forth in Section 4(a), the PHA shall retain records of and annually report to its board of directors the calculation of the Proceeds (the net income generated from the Property and the proceeds of any transfer of the Property), and the use of any Proceeds for Affordable Housing Purposes. The PHA shall provide such records to HUD whenever HUD approval is needed pursuant to Section 5 hereof or upon request.

5. 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 leases 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: [12]. The letters "NA," a blank, or similar markings shall indicate that no transferee has been approved.

6. 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 during the Restricted Period 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.

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

8. Successors and Assigns.

a. Recordation of these Covenants shall constitute public notice of the PHA’s agreement 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 through the term of the Restricted Period.

b. Following expiration of the Restricted Period, the Restrictions on Proceeds set forth in this Agreement shall not run with the land, nor bind the successors in title to the Property. The continued existence of Proceeds subject to the Restrictions on Proceeds shall not affect any release of the Use Requirement as a lien on the Property pursuant to Section 3(c). The Restrictions on Proceeds shall be a contractual relationship between HUD and the PHA and shall inure to the benefit of the respective successors and assigns of the parties with respect to the Proceeds. The Restrictions on Proceeds shall survive the expiration of the Use Requirement and any release of the lien on the Property.

9. 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 9.

10. 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, any lessee or any lender with a security interest in the Property.

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

12. 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.

13. 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.

14. 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.

15. 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.

The PHA hereby certifies that the statements and representations provided on this form and in any accompanying documentation is true and accurate. The PHA understands that any misrepresentations may be subject to civil and/or criminal penalties including, but not limited to, fine or imprisonment, or both under the provisions of Title 18, United States Code, Sections 1001 and 1010. 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: [13], 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.

[14]

[15]

ss.

On _____, 20__, before me, a Notary Public for the above jurisdiction, 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/her/their 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 above jurisdiction 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, a Notary Public for the above jurisdiction, 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 executed the same in his authorized capacity, and that by his 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 above jurisdiction that the foregoing paragraph is true and correct. Witness my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Address: [16]

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

[17]

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. Additional detail regarding the nature of affordable housing use may be, but is not required to be, included as additional sentences in this paragraph.
11. Insert the date for the end of the Restricted Period or type "NA".
12. Insert the legal name of any approved transferee or type "NA".
13. Insert the legal name of the PHA.
14. Insert the name of the State or Commonwealth.
15. Insert the name of the County.
16. Insert street address and any other tax map identification
17. 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.