

Public reporting burden for this collection of information is estimated to average 1 hour per response. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. HUD will use this information to ensure that PHAs remain seized of the title of public housing projects and other public housing real property and 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 said property or any part thereof, appurtenances thereto, or any rent, revenues, income, or receipts therefrom or in connection therewith, or any of the benefits or contributions granted to it by or pursuant to the ACC. The information requested does not lend itself to confidentiality.

This document may not be changed without HUD's prior written approval.

DECLARATION OF TRUST/RESTRICTIVE COVENANTS

THIS DECLARATION OF TRUST/RESTRICTIVE COVENANTS (the "Declaration") is made and entered into as of this [1] day of [1], 20 [1] by and between [2] (the "Authority"), a public body corporate and politic, organized and existing under the laws of [3], and if under a Mixed Finance Amendment to the Annual Contributions Contract, then also [4] (the "Owner"), a [5], for the benefit of the United States of America, acting by and through the Secretary of Housing and Urban Development ("HUD").

NOTE: OPTION TO USE FOR ALL PUBLIC HOUSING OR MIXED FINANCE PUBLIC HOUSING – FILL IN PHA OR OWNER ENTITY

WHEREAS, pursuant to the U.S. Housing Act of 1937, as amended, and any successor legislation (the "Act") the Authority and HUD have entered into a Consolidated Annual Contributions Contract ("ACC") number: [6], dated [7], as the same may be amended from time to time, which provides for grants and annual contributions to be made by HUD to assist the Authority in developing, maintaining, and operating its public housing units in accordance with all applicable public housing requirements (as further defined below); and

NOTE: FILL IN THE LATEST ACC NUMBER ON RECORD

NOTE: COMPLETE ONE OF THE FOLLOWING GROUPS OF PARAGRAPHS: DEVELOPMENT, MODERNIZATION OR MIXED FINANCE (STANDARD OR OPERATING FUNDS ONLY)

For Public Housing Development Declaration of Trust (complete these two paragraphs):

WHEREAS, as of the date of execution of this Declaration, the Capital Fund Grant ACC Amendment and ACC cover the low-income housing project located at [8], in the City of [9], County of [10] in the State/Commonwealth of [11] (which, together with any fixtures, rents, revenues, other income, and personalty related to such units and appurtenances shall hereafter collectively be referred to as the "Project") which will provide [12] dwelling units and necessary associated appurtenances;

WHEREAS, the Project and acquisition of the site or sites thereof have been assisted with a Capital Fund grant provided by HUD;

For Public Housing Modernization Declaration of Trust (complete these two paragraphs):

WHEREAS, as of the date of execution of this Declaration, the Capital Fund Grant ACC Amendment and the ACC cover a certain individual low-income housing project located at _____[8]_____, in the City of _____[9]_____, County of _____[10]_____ in the State/Commonwealth of _____[11]_____ (which, together with any fixtures, rents, revenues, other income, and personalty related to such units and appurtenances shall hereafter collectively be referred to as the “Project”) which will provide _____[12]_____ dwelling units and necessary associated appurtenances; and

WHEREAS, the modernization of the Project will have been assisted with a Capital Fund grant provided by HUD.

For Mixed Finance Declarations of Restrictive Covenants (standard) (complete these two paragraphs):

WHEREAS, as of the date of execution of this Declaration, HUD and the Authority have entered into a certain Mixed Finance Amendment, Amendment No. _____[13]_____ to the ACC (“Mixed Finance ACC Amendment”), adding the _____[12]_____ public housing units and any necessary associated appurtenances to the ACC under project number _____[15]_____ located at _____[8]_____ in the City of _____[9]_____, County of _____[10]_____, in the State/Commonwealth of _____[11]_____ (which, together with any fixtures, rents, revenues, other income, and personalty related to such units and appurtenances shall hereafter collectively be referred to as the “Project”).

WHEREAS, the Authority and the Owner have entered into a Regulatory and Operating Agreement, and other Agreements, whereby the Authority has agreed to provide the Owner with assistance obtained under the Mixed Finance ACC Amendment to pay a portion of the development costs of the Project, and with Operating Fund assistance to assist in operating and maintaining the low income character of the public housing units in the Project;

For Mixed Finance Declarations of Restrictive Covenants (Operating Funds only) (complete these two paragraphs)

WHEREAS, as of the date of execution of this Declaration, HUD and the Authority have entered into a certain Mixed Finance Amendment to Consolidated Annual Contributions Contract for Projects Receiving Only Public Housing Operating Fund Assistance, Amendment No. _____[13]_____ to the ACC (“Mixed Finance ACC Amendment”), adding the _____[14]_____ public housing units and any associated appurtenances to the ACC under project number _____[14]_____ located at _____[8]_____ in the City of _____[9]_____, County of _____[10]_____, in the State of _____[11]_____ (which, together with any fixtures, rents, revenues, other income, and personalty related to such units and appurtenances shall hereafter collectively be referred to as the “Project”).

WHEREAS, the Authority and the Owner have entered into a Regulatory and Operating Agreement, and other Agreements, whereby the Authority has agreed to provide the Owner with Public Housing Operating Fund assistance derived under the Act to assist in operating and maintaining the low income character of the public housing units in the Project;

For Mixed Finance Declarations of Restrictive Covenants (standard and Operating Funds only) (complete these paragraph two paragraphs):

WHEREAS, in return for the receipt of such assistance, the Owner has agreed to develop, operate and maintain the Project in accordance with all requirements applicable to public housing, including, without limitation, the Act, HUD regulations thereunder (and, to the extent applicable, any HUD-approved waivers of regulatory requirements), the ACC, the Mixed Finance ACC Amendment, the HOPE VI Grant Agreement (if

applicable), this Declaration, and all pertinent Federal statutory, executive order, and regulatory requirements, as those requirements may be amended from time to time (all such requirements hereafter collectively referred to as the “Applicable Public Housing Requirements”);

WHEREAS, as of the date of execution of this Declaration, title to the Project is held by [17A, 17B]

For Public Housing Development, Public Housing Modernization and Mixed Finance Development and Mixed Finance Operating Funds Only Projects (all of these paragraphs apply):

NOW, THEREFORE, to assure HUD of the performance by the Authority and the Owner (in the case of Mixed Finance Development or Mixed Finance Operating Funds Only), and any successors in interest to the Authority and Owner, of the Applicable Public Housing Requirements in connection with the development, operation and maintenance of the Project for the term of the low income use restrictions, the parties hereby acknowledge and agree:

1. The [17A AND B] does hereby acknowledge and declare that it is possessed of and holds title to the Project consisting of the real property located at _____[8]_____ situated in the City of _____[9]_____, County of _____[10]_____, in the State/Commonwealth of _____[11]_____, as more fully described in Exhibit A to this Declaration, and which is made a part hereof;
2. The [17A AND B] does hereby acknowledge and declare that it is possessed of and holds title to the Project in trust for the benefit of HUD, for the purposes hereinafter stated;
3. _____[18]_____
4. The Owner (if Mixed Finance Development or Mixed Finance Operating Funds Only) and Authority (in all cases) hereby declare and acknowledge that during the existence of the trust hereby created, the restrictive covenants set forth in this Declaration shall be, and are, covenants running with the Project for the period of the low-income use restrictions, and are binding upon the Owner (if Mixed Finance Development or Mixed Finance Operating Funds Only) and the Authority (in all cases), and their successors and assigns, for such term;
5. The Authority shall, or in the case of Mixed Finance Development or Mixed Finance Operating Funds only, cause the Owner to, develop, modernize or operate the Project in compliance with the Applicable Public Housing Requirements, and shall thereafter operate and maintain the Project in compliance with the Applicable Public Housing Requirements for the following periods:
 - (i) In the case of Public Housing Development or Mixed Finance Development (standard), for a 40-year period (for development work) and such 40-year period shall be extended for 10 years after the end of the last PHA fiscal year for which Operating Fund assistance is provided by the Authority on behalf of the Project, or as may be otherwise required by law or amended by law;
 - (ii) In the case of the use of Capital Funds for Public Housing Modernization or Modernization occurring after Mixed Finance Development (standard) or Mixed Finance Operating Funds Only), for a 20-year period that begins on the date on which the modernization is completed, or for such other period as may be required by law or amended by law and such 20-year period shall be extended for 10 years after the end of the last PHA fiscal year for which Operating Fund assistance is provided by the Authority on behalf of the Project, or as may be otherwise required by law or amended by law;

- (iii) In the case of Operating Fund only Projects, for a 10-year period expiring upon the conclusion of the fiscal year for which Operating Fund assistance is last provided by the Authority for the benefit of the Project Units, or as may be otherwise required by law or amended by law; or
6. In the case of Mixed Finance Operating Funds Only Projects, the Owner shall not, without the prior written approval of HUD or as may otherwise be authorized by law, dispose of the Project during and for 10 years after the end of the last PHA fiscal year in which the Project receives Operating Fund assistance from the Authority. The Authority may seek, pursuant to section 18 of the Act, an early termination of the 10-year prohibition on disposition and the low income use restrictions in the event of reduced appropriations of operating subsidies to the Authority under section 9(e) of the Act. In such case, HUD may approve in writing the disposition of the Project from the public housing program if it determines such action to be in the best interests of the Project residents and the Authority, and is otherwise consistent with the Act.
 7. The Authority, or in the case of Mixed Finance Development or Mixed Finance Operating Funds Only, the Owner, shall remain seized of title to the Project and shall refrain from transferring, conveying, assigning, leasing, mortgaging, pledging, or otherwise encumbering or permitting or suffering any transfer of any kind of the Project, or any part thereof, or any rent, revenues, income, or receipts of the Project in connection therewith, or any of the benefits or contributions granted to it by or pursuant to the ACC, as amended, or any interest in any of the same, except to the extent approved in writing by HUD, as otherwise authorized by the ACC, as amended, or as authorized below:
 - A. Deeds of trust and financing arrangements approved in writing by HUD under the terms of the Mixed Finance ACC Amendment, and transfer of the Project to the beneficiary under any such approved loans, by foreclosure or deed-in-lieu of foreclosure, or to a third-party purchaser at a foreclosure sale, provided that any such transfer shall be subject to the terms of this Declaration;
 - B. Dwelling leases with eligible families and lease of other spaces and facilities in the Project;
 - C. Conveyance or otherwise dispose of any real or personal property which is determined and approved by HUD to be excess to the needs of the Project;
 - D. Dedication of land for use as streets, alleys, or other public rights-of-way, and grants and easements for the establishment, operation, and maintenance of public utilities; and
 - E. Normal uses associated with the operation of the Project, to the extent authorized by the ACC.
 8. (A) No transfer, conveyance, or assignment or release of this Declaration shall be made without the prior written approval of HUD including as well: (i) any interest of a managing member, general partner, or controlling stockholder (any such interest being referred to as a "Controlling Interest") of the Owner; or (ii) a Controlling Interest in any entity which has a Controlling Interest in the Owner; or (iii) prior to the payment in full of all equity

contributions described in the approved evidentiary documents listed in the Mixed Finance ACC Amendment, any other interest in the Owner, or in any partner or member thereof.

(B) Notwithstanding the foregoing, HUD consent is not required where a business organization that has a limited interest (non-controlling and non-managing) in the Owner transfers a non-controlling and non-managing interest in the business organization as long as the Owner: (i) provides HUD with written notice of such transfer; and (ii) certifies to HUD that the new owner of the limited interest remains obligated to fund its equity contribution in accordance with the terms of the HUD-approved organizational documents of the Owner.

(C) HUD will not unreasonably withhold, delay, or condition a request by the Owner for HUD's consent to an internal reorganization of the corporate or partnership structure of the Owner or any of the partners, members or stockholders of the Owner.

9. This Declaration shall first be approved by HUD and then be recorded at the expense of the Authority or the Owner (in the case of Mixed Finance Development (standard) or Mixed Finance Operating Funds Only) in the local land records of the Project and a recorded copy shall be provided to HUD.
10. This Declaration shall not be amended, modified or released without the prior written consent of HUD.
11. Upon expiration of the period during which the Project is required to be operated and maintained as public housing in accordance with the Applicable Public Housing Requirements, or otherwise upon HUD's approval to release this Declaration, HUD will execute a release of this Declaration by an instrument to be recorded in the appropriate land records (the "Release"). The Release shall be prepared by the Authority or the Owner (in the case of Mixed Finance Development or Mixed Finance Operating Funds Only) and recorded at the expense of Authority or Owner (in the case of Mixed Finance Development or Mixed Finance Operating Funds Only) and a copy provided to HUD.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Authority and the Owner (in the case of Mixed Finance Development or Mixed Finance Operating Funds Only) have caused this Declaration to be executed by their duly authorized officers for proper recording in the public records.

[2]
Housing Authority

By: _____ [19]
Name: _____ [19]
Title: _____ [19]

[4]
Owner

By: _____ [20]
Name: _____ [20]
Title: _____ [20]

Exhibit A

Legal Description of Project

MUST INSERT METES AND BOUNDS DESCRIPTION

IF AVAILABLE, ALSO INCLUDE STREET NAME AND NUMBER AFTER THE METES AND BOUNDS DESCRIPTION

[21]

INSTRUCTIONS FOR COMPLETING THE REQUIRED FORM OF DECLARATION OF TRUST/RESTRICTIVE COVENANTS

This is a mandatory form document required by HUD. This document may not be changed except with prior written approval of HUD. Complete only applicable sections. Leave non-applicable sections blank. Enter the following information, as described below, for each of the corresponding spaces on the Required Form of Declaration of Trust/Restrictive Covenants:

1. The day, month and year, respectively, in which this Declaration is being executed.
2. The name of the Authority executing the Declaration.
3. The State or Commonwealth in which the Authority is organized and existing.
4. The name of the Owner (inserted in the case of Mixed Finance Development or Mixed Finance Operating Funds Only) executing the Declaration.
5. The legal structure of the Owner (e.g., limited partnership) and the State or Commonwealth in which it is organized and existing.
6. The number of the ACC entered into between HUD and the Authority. [**NOTE:** All mixed finance transactions require execution of a 1995 or later ACC to permit proper amendment by the Mixed Finance ACC Amendment.]
7. The date on which the ACC between HUD and the Authority, as described in item 6, was executed.
8. The street address or plat number or parcel number where the Project is located.
9. The City where the Project is located.
10. The County where the Project is located.
11. The State/Commonwealth where the Project is located.
12. The number of dwelling units in the Project.
13. The ACC Amendment number designated by the HUD field office for the Mixed Finance ACC Amendment covering this Project.
14. The number of public housing units for this Project being added to the ACC via the Mixed Finance ACC Amendment.
15. The project number designated for this Project, as stated in Section 2 of the Mixed Finance ACC Amendment.
16. The ACC Amendment number designated by the HUD field office for the Mixed Finance Amendment to the ACC for Projects Receiving Only Public Housing Operating Fund Assistance covering this Project.
- 17A. The name of the entity (either the Authority or the Owner Entity) that holds title to _____ the site on

which the Project is (or will be) located.

17B. If the Authority holds title to the Project, and is entering into a ground lease with the Owner, add the following sentence: “The Authority has entered into a ground lease with the Owner for the site on which the Project is to be developed, and on which the Owner will construct [or rehabilitate] and operate the Project.”

18.If the Authority holds title to the site on which the Project is to be developed and is entering into a ground lease with the Owner for the site, insert a paragraph to read as follows: “The Owner is possessed of and holds in trust for the benefit of HUD, for the purposes hereinafter stated, a leasehold interest in the Project and all buildings and fixtures developed or to be developed thereon or appurtenant thereto, and including all personalty.” [NOTE: if this additional language is inserted, modify the numbering of the succeeding paragraphs accordingly.]

19. Signature, name and title of the Authority’s duly authorized representative.

20. Signature, name and title of the Owner’s duly authorized representative.

21. Must insert legal metes and bounds description of the Project. If street address is available (may not be available for vacant land), insert that address after the legal metes and bounds description of the Project.