

(Large top margin left to accommodate recording information, as necessary)

[Insert the “instrument prepared by” clause and contact information as required by local law]

COVENANT OF PURPOSE, USE AND OWNERSHIP

This Covenant of Purpose, Use and Ownership (“Covenant”) dated this _____ day of _____, 20__, is made by _____ with an address of _____ (“Recipient”) for the benefit of the United States Department of Commerce, Economic Development Administration located at 1401 Constitution Avenue, NW, Washington, DC 20230 with a regional office at _____ (“EDA”):

RECITALS:

WHEREAS, pursuant to the Public Works and Economic Development Act of 1965 (42 U.S.C. § 3121 *et seq.*) (“PWEDA”), Recipient has applied to, received and accepted from EDA a Financial Assistance Award dated _____ (“Award”), in the amount of _____ Dollars (\$) (“EDA Award Amount”) for EDA Award No. _____; and

WHEREAS, the Award is subject to certain terms and conditions pursuant to which Recipient agreed to comply with, *inter alia*, the applicable requirements of EDA’s regulations at 13 C.F.R. Chapter III and government-wide regulations set out at 2 C.F.R. part 200; and

WHEREAS, pursuant to the application submitted by Recipient requesting said Award, which includes all forms, documentation, and any information submitted to EDA as part and in furtherance of the request for the Award, including any information submitted after the initial application (“Grant Application”) and pursuant to the Award, the EDA Award Amount is to be used for the purpose of financing the acquisition of and/or improvements to the real property described in “Exhibit A,” attached hereto and made a part hereof (the “Project Property”) consisting of _____ (the “Project”); and

WHEREAS, ____ years from [the trigger date (e.g., date of award, construction end date, etc.)], as determined by EDA, is the Estimated Useful Life, as defined in 13 C.F.R. § 314.1, of the improvements made to the Project Property pursuant to the Project; and

WHEREAS, the Award provides, *inter alia*, that Recipient will not sell, lease, transfer, convey, encumber, mortgage, or otherwise alienate any right to or interest in the Project Property, or use the Project Property for purposes other than, or different from, those purposes set forth in the Award and the Grant Application made by Recipient therefor (“Project Purposes”), such alienation or use being prohibited by 13 C.F.R. part 314 and by 2 C.F.R. part 200; and

WHEREAS, in accordance with PWEDA, EDA is not authorized to permit transfer or conveyance of Project Property to parties that are not eligible to receive EDA grants unless EDA is repaid the Federal Share as defined at 13 C.F.R. § 314.5 (“Federal Share”) or unless the authorized purpose of the Award is to develop land in order to lease or sell the land for a specific use, approved in advance by EDA, in which case EDA may authorize a lease or sale of the Project Property or a portion thereof if certain conditions are met; and

WHEREAS, Recipient, as owner of the Project Property agreed to record this Covenant in the Bureau of Indian Affairs so as to constitute notice to all persons of any and all restrictions on title to and use of all or part of the Project Property.

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by EDA and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and to ensure that the benefits of the Project will accrue to the public and be used as intended by both EDA and Recipient consistent with the Project Purposes, Recipient hereby covenants and agrees as follows:

1. COMPLIANCE WITH AWARD AND REGULATIONS

Recipient shall comply with the terms and conditions of the Award and the regulations set forth in 13 C.F.R. Chapter III and 2 C.F.R. part 200.

2. RESTRICTIONS DURING ESTIMATED USEFUL LIFE

For the Estimated Useful Life set forth above, Recipient will not sell, lease, transfer, convey, encumber or mortgage any interest in the Project Property, nor shall Recipient use the Project Property for purposes other than the Project Purposes without the prior written approval of EDA.

3. LEASE OF PROJECT PROPERTY

If the Grant Application provides for and the Award authorizes Recipient to lease Project Property, each lease arrangement shall be subject to the prior written approval of EDA during the Estimated Useful Life. EDA must determine that the applicable lease arrangement is consistent with the Grant Application and authorized general and special purpose(s) of the Award; will provide adequate employment and economic benefits for the area in which Project Property is located; is consistent with EDA policies concerning, but not limited to, non-discrimination, non-relocation, and environmental requirements; and that the proposed lessee is providing adequate consideration, as defined in 13 C.F.R. § 314.1, to Recipient for said lease.

4. PROJECT PURPOSES AND TRANSFER OF PROJECT PROPERTY

Recipient further covenants that in the event the Project Property is used for purposes other than the Project Purposes, or is sold, leased, transferred, conveyed, encumbered or mortgaged without the prior written approval of EDA, Recipient will compensate the Federal Government in the amount of the Federal Share, which amount shall be determined at the sole discretion of EDA, such amount being: (a) EDA's pro-rata share of the fair market value of the Project Property as further set forth in 13 C.F.R. § 314.5, as that provision may be amended from time to time, (b) the EDA Award Amount, or (c) the amount of grant funds actually disbursed.

5. CHARGES; LIENS

Recipient shall protect the title and possession of all Project Property and pay when due all taxes, assessments, mechanic and/or materialmen liens, and other charges, fines, and impositions now existing or hereafter levied or assessed upon the Project Property.

6. HAZARD INSURANCE

Recipient shall insure and keep insured all improvements now or hereafter created upon Project Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said improvements but in no event less than the full replacement value of the improvements. Any insurance proceeds received by Recipient due to loss shall be applied to restoration or repair of any damaged Project Property, provided such restoration or repair is economically feasible. If such restoration or repair is not economically feasible, Recipient shall use said insurance proceeds to compensate EDA for its Federal Interest, as defined at 13 C.F.R. § 314.2 ("Federal Interest"). EDA's Federal Interest shall be satisfied when the amount received is equal to the Federal Share as that term is defined at 13 C.F.R. § 314.5.

7. PRESERVATION AND MAINTENANCE OF PROJECT PROPERTY

Recipient shall keep Project Property in good condition and repair during the Estimated Useful Life and shall not permit or commit any waste, impairment, or deterioration of Project Property, but shall give written notice thereof to EDA without delay.

8. INDEMNIFICATION

To the extent permitted by law, Recipient agrees to indemnify and hold the Federal Government harmless from and against all liabilities that the Federal Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of the Project Property or construction, renovation, or repair of any facility on the Project Property, to the extent that such liabilities are incurred because of toxic or hazardous contamination of groundwater, surface water, soil, or other conditions caused by operations of the Recipient or any of its predecessors (other than the Federal Government or its agents) on the Project Property. *See also* 13 C.F.R. § 302.19 (“Indemnification”).

9. INSPECTION

EDA may make or cause to be made reasonable entries upon and inspection of Project Property by EDA or an authorized representative of EDA.

10. CONDEMNATION

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of Project Property, or any part thereof, or for any conveyance in lieu of condemnation shall be used by Recipient to compensate EDA for EDA’s Federal Share. EDA’s Federal Share of said condemnation proceeds shall be equal to that percentage which the EDA Award Amount bore to the total project costs under the Award for which the condemned property was acquired or improved. *See also* 13 C.F.R. § 314.5 (“Federal Share”).

11. REMEDIES

Upon Recipient’s breach of any term or condition of the Award or term or condition of this Covenant, then EDA, its designees, successors, or permitted assigns may declare the amounts owed to EDA (i.e., the Federal Share) with interest thereon at the rate set forth in 31 U.S.C. § 3717, immediately due and payable, such amounts being: (a) EDA’s pro-rata share of the fair market value of the Property as further set forth in 13 C.F.R. § 314.5, as that provision may be amended from time to time, (b) the EDA Award Amount, or (c) the amount of the grant

funds actually disbursed (the “Indebtedness”). The amount shall be determined at the sole discretion of EDA in accordance with EDA’s authorities and regulations, and Recipient agrees that the Indebtedness shall be due and payable by Recipient to EDA upon the termination of the Award for material noncompliance or upon any attempt to use, transfer or alienate any interest in the Project Property in violation of the Award or of the regulations in 13 C.F.R. Chapter III or 2 C.F.R. part 200 and does, moreover, agree that such Indebtedness shall be extinguished only through and upon the full payment of the Indebtedness to the Federal Government.

12. REMEDIES CUMULATIVE

EDA may enforce any and all remedies afforded by law or equity, including seeking and obtaining a judicial determination(s) compelling Recipient to comply with the terms and conditions of the Award and this Covenant, which may be exercised concurrently, independently or successively.

13. FORBEARANCE NOT A WAIVER

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by EDA shall not be a waiver of EDA’s rights under this Covenant.

14. GOVERNING LAW; SEVERABILITY

This Covenant shall be governed by applicable federal law, if any, and if there is no applicable federal law by state law, and nothing contained herein shall be construed to limit the rights EDA, its designees, successors, or assigns are entitled to under applicable federal or state law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

15. RECORDING COVENANT AGAINST TITLE

Pursuant to 13 C.F.R. part 314, Recipient further agrees that Recipient shall execute and place on record against the title to the Project Property acquired or improved in whole or in part with the Award, this Covenant of Purpose, Use and Ownership. Recipient shall furnish EDA with the original, recorded Covenant as executed or a certified copy. Recipient further agrees that whenever the Project Property is sold, leased or otherwise conveyed pursuant to 13 C.F.R. part 314, Recipient or transferor shall add to the document conveying such interest in and to the real

estate an express reference to this Covenant, satisfactory to EDA, whereby the purchaser or tenant expressly accepts and agrees to be bound by this Covenant.

16. NOTICE

Any notice from EDA to Recipient provided for in this Covenant shall be sent by certified mail to Recipient's last known address or at such address as Recipient may designate to EDA, except for any notice given to Recipient in the manner as may be prescribed by applicable law as provided hereafter in this Covenant. Likewise, any notice from Recipient to EDA shall be sent by certified mail to EDA's address.

17. PARTIES BOUND BY THIS COVENANT

This Covenant and this Covenant's rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the parties hereto, together with their respective successors and permitted assigns.

18. RESTRAINT ON TITLE

It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the Project Property given to evidence and secure the Federal Interest expressed herein.

19. COVENANT RUNS WITH LAND

This Covenant shall run with the land.

20. AUTHORITY TO EXECUTE COVENANT

Recipient represents and warrants to and covenants with EDA that Recipient has been duly authorized by Recipient's governing body by all necessary action and has received all necessary third party consents to enter into this Covenant.

IN WITNESS WHEREOF, Recipient has hereunto set its hand as of the day and year first above written by its duly authorized officer.

RECIPIENT

By: _____

Title: _____

Attorney for Recipient

[Optional depending on RO:

“This approval by Recipient’s counsel shall be in addition to and in no way a restriction or limitation of said Attorney’s separate written legal opinion regarding this Covenant.”]

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me, a Notary Public in and for said County and State, this _____ day of _____, 20____, by _____ on behalf of _____.

Notary Public

My commission expires: _____

Exhibit A
Property Description