

Sample NIST Covenant of Purpose, Use and Ownership

COVENANT OF PURPOSE, USE AND OWNERSHIP

THIS COVENANT OF PURPOSE, USE AND OWNERSHIP dated this _____ day of _____, 201__ (hereinafter referred to as the “Covenant”), by and between _____

whose address is _____

(hereinafter with its successors and assigns called “Recipient”); and the **NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, DEPARTMENT OF COMMERCE, UNITED STATES OF AMERICA**, whose address is 100 Bureau Drive, Gaithersburg, Maryland 20899 (hereinafter with successors and assigns called “NIST”).

RECITALS

WHEREAS, Recipient submitted an application, designated as NIST Award No. _____, for financial assistance pursuant to _____ (hereinafter the “Act”);

WHEREAS, by offer of Award, dated _____, NIST offered to Recipient a financial assistance award in the amount of \$ _____ (hereinafter called “Award Amount”) to assist in financing _____

(hereinafter called “Project”);

WHEREAS, said Project included acquisition of and/or specifically improving the real property described in Exhibit “A” attached hereto and incorporated herein (hereinafter with all improvements called “Property”);

WHEREAS, on _____, Recipient accepted the offer of award (hereinafter called “Award Agreement”) subject to terms and conditions, pursuant to which Recipient covenanted and agreed to comply with the requirements of 15 C.F.R. part 14 or 24, as applicable;

WHEREAS, under the authority of the Act and of the Award Agreement, prior to the end of the Project’s Estimated Useful Life (as defined in Section 1 of this Covenant), NIST is not authorized to permit Recipient to use the Property for purposes other than Project Purposes or to lease, transfer, convey, mortgage or hypothecate the Project to any party without prior approval from the Grants Officer, NIST, or his/her designee or successor (hereinafter called the “NIST Grants Officer”), unless NIST is repaid its Federal Interest (as defined in Section 2 of this Covenant) in the Property;

WHEREAS, Recipient as owner of all or part of the real property described in Exhibit “A,” attached hereto, agreed to record this Covenant in the appropriate office for the recording of

public records affecting real property so as to constitute notice to all persons of any and all restrictions on title to and use of the Project and all or part of the real property described in Exhibit "A;" and

WHEREAS, the _____
located at _____
is the proper office to record this Covenant.

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by NIST and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and to assure that the benefits of the Project will accrue to the public and be used as intended by both NIST and by the Recipient, Recipient hereby covenants and agrees as follows:

1. The estimated useful life of the Project is twenty (20) years from the date that a certificate of occupancy or equivalent certification is issued for the Project (hereinafter referred to as the "Estimated Useful Life"), a copy of which will be provided by the Recipient to NIST. During the Estimated Useful Life of the Project, the Recipient holds its interest in the Property in trust to carry out the public purposes of the Project.
2. Recipient agrees that for the Estimated Useful Life of the Project, the Recipient will not sell, transfer, convey, or mortgage any interest in the Property without the prior permission of the NIST Grants Officer, nor shall Recipient use the Property for purposes other than the Project Purposes, without the prior written approval of the NIST Grants Officer, which approval shall not be unreasonably withheld, conditioned or delayed. Such approval may be withheld until such time as Recipient first pays to NIST the Federal Interest in the Property as provided in 15 C.F.R. part 14 or 24, as applicable. The Federal Interest is that percentage of the current fair market value of the Property attributable to the NIST participation in the Project.
3. Recipient further covenants that, during the Estimated Useful Life of the Project, the Recipient will compensate the Federal Government for the Federal Interest in the Property in the event the Property is used for purposes other than Project Purposes, or is sold, leased, transferred, conveyed, or mortgaged without the prior written approval of the NIST Grants Officer.
4. Recipient further agrees that, as a condition to accepting the disbursement of any portion of the Award Amount from NIST, Recipient shall execute and place on record against the Property this Covenant and shall provide NIST with evidence of such recordation. NIST will in its sole discretion determine whether this Covenant is satisfactory and may require an opinion of counsel for the Recipient that the Covenant is valid and enforceable according to its terms, that there is no lien or other encumbrance superior to the Covenant, and that the Covenant has been properly recorded.
5. Recipient further agrees that whenever the Property is, except as otherwise permitted by Section 9 below, sold, leased, or otherwise conveyed, Recipient or the transferor shall add to

the instrument of conveyance, pursuant to the requirement of 15 C.F.R. Part 14, a covenant of purpose, use and ownership. NIST will, in its sole discretion, determine whether such covenant is satisfactory. In connection with any such transfer, NIST may require an opinion of counsel for the Recipient that the covenant is valid and enforceable according to its terms and has been properly recorded.

6. 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 Property given the Federal Interest expressed herein.
7. This Covenant shall run with the land.
8. This Covenant shall be construed in a manner consistent with the terms and conditions of the Award Agreement and applicable regulations; provided, however, that if there is a conflict, the terms and conditions of the Award Agreement shall control.

IN WITNESS WHEREOF, the Recipient has hereunto set their hand as of the day and year first above written by their duly authorized officer. A completed duly recorded copy of this Covenant shall be forwarded to NIST.

(The appropriate acknowledgment must be included for recording in Recipient's jurisdiction.)

RECIPIENT: _____

By: _____

Print Name: _____

Title: _____

ATTEST:

By _____

Title _____

EXHIBIT A

Legal Description of Property