

CERTIFICATION OF CLERK

I, Brenda K. Wolf, the duly appointed, qualified, and Deputy City Clerk of Manhattan, Kansas, do hereby certify that the foregoing Agreement was duly adopted at a meeting of the City of Manhattan, Kansas, held on the 15th day of August, 2017, and that said Agreement has been compared by me with the original thereof on file and of record in my office, is a true copy of the whole of said original.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Manhattan, Kansas, this 18th day of October, 2017.



Brenda K. Wolf

Brenda K. Wolf, CMC, Deputy City Clerk

RECOVERABLE ADVANCE AGREEMENT

This Agreement (“Agreement”) is made and entered into as of the 17th day of October, 2017 by and between CITY OF MANHATTAN, a Kansas municipal corporation (“City”) and the MANHATTAN HOUSING AUTHORITY OF THE CITY OF MANHATTAN, an Agent of the City created under the authority of the Kansas Municipal Housing Law (“MHA”).

WHEREAS, MHA is redeveloping 88 affordable housing units located in its building located at 300 N. 5th St. in Manhattan, Kansas (“Development”), as more particularly described on Exhibit A; and

WHEREAS, MHA is seeking additional funding for the installation of windows and patio doors and the repair or replacement of sewer lines located on the premises (“Project Repairs”); and

WHEREAS, to the MHA’s knowledge, the completion of the Project Repairs will complete the Development to make it habitable and available to low-income households (“occupiable”); and

WHEREAS, City wishes to ensure the availability of affordable housing and provide for the general welfare of the citizens of the City and for their common good by assisting MHA to complete the Development and make it occupiable by making an advance to MHA as provided herein.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and MHA agree as follows:

- 1. Advance.** The City hereby agrees to make a monetary advance, as of the date hereof, to MHA for the costs of the Project Repairs, up to One Million and No/100 Dollars (\$1,000,000.00) (“Advance”). In no case shall this Agreement be construed to obligate the City to advance funds in excess of One Million and No/100 Dollars (\$1,000,000) for the Development or the Project Repairs, or to obligate the City to advance funds to MHA for any other purposes. In no case shall the City be obligated to release any Advance funds if MHA fails to meet each contingency in the sequence and as described in Section 2.

2. Advance Contingencies/Disbursements. The Advance shall be disbursed periodically, contingent upon completion of the following steps in this sequence:

a. On or before November 1, 2017, MHA shall contract with a Kansas-licensed engineer (i) to investigate the extent and nature of necessary sewer replacements and/or repairs and (ii) to perform project design to correct all deficiencies. The City shall reimburse MHA for the costs of this investigation/design process through the following process: MHA shall periodically submit itemized invoices to the City, and the City shall use Advance funds to reimburse MHA for all approved costs and expenses.

b. On or before January 31, 2018, the City through the City Manager's Office ("CMO"), MHA, and MHA's engineer and/or contractor shall meet to discuss the recommendations for the sewer replacements and/or repairs in an effort to finalize the scope of the Project Repairs and to determine whether the remaining Advance funds are sufficient to make the Development occupiable:

i. If MHA cannot complete the Development to make it occupiable with its existing funds and the remaining Advance funds, MHA shall return to the City Commission for approval of additional Advance funds or other alternatives, in the sole discretion of the City Commission.

ii. If MHA can complete the Development to make it occupiable with its existing funds and the remaining Advance funds, MHA shall initiate Project Repairs on or before March 31, 2018. MHA shall diligently pursue the Project to ensure completion on or before March 31, 2019. The City shall reimburse MHA for the costs of the Project Repairs through the following process: MHA shall periodically submit itemized invoices to the City, and the City shall reimburse MHA for all approved costs and expenses, up to the total remaining amount of the Advance.

3. Project. MHA shall be solely responsible for the design, procurement and construction of the Project Repairs and all other projects related to its Development. The City shall not be considered an "owner" of the Project Repairs of the Development; MHA shall contract for, manage, and be the "owner" of any and all projects related to its Development. The City shall reimburse MHA for the costs of approved Project Repairs

within 30 days of receiving an itemized invoice.

4. Repayment of Advance Amounts. MHA's obligation to repay the Advance is as follows:

- a. Beginning on November 15, 2021, and on or before every October 15 thereafter through and including November 15, 2051, MHA shall pay the City an amount equal to the City's annual debt service for the general obligation bonds used to finance the design and construction of the Project Repairs for the Development. Such annual Advance payment shall be due and payable regardless of when or whether the City actually issues the general obligation bonds and regardless of the City's repayment schedule, including whether the City pays any bonds that may be issued earlier than anticipated. The parties understand and agree that the version of Exhibit B that is attached to this Agreement as of the Execution Date provides an estimate of the City's annual debt service (and MHA's corresponding annual Advance payment) based upon the City's estimated debt service for a 30-year bond issue, including the estimated interest rate and costs of issuance of the bonds. The parties agree to substitute a revised Exhibit B that contains the actual annual repayment amount and MHA's corresponding annual payment. In no case shall this Agreement be construed to require the City to issue a 30-year general obligation bond to finance the design and construction of the Project Repairs; the City may select any payment or finance option it desires. Provided that, if the City chooses another payment or financing option other than a 30-year general obligation bond, MHA shall pay an annual Advance payment that is equal to what annual debt service, including the estimated interest rate and costs of issuance of the bonds, for a 30-year general obligation bond would have been at the time that the City's bonds would have been issued. In the event MHA's obligations under the finalized Exhibit B exceed the obligations under the present Exhibit B by more than ten percent (10%), the parties agree to renegotiate this provision in good faith.
- b. Notwithstanding subsection (a), the parties agree and understand that if, any year, MHA does not have sufficient funds to repay the City, MHA shall have no obligation to make payment to City with regard to the Advance for that year. Notwithstanding the foregoing, in advance of not having sufficient funds to repay City, MHA shall have submitted such information to City as part of its Annual Plan (as defined below). Failure to pay at any point in time shall not waive any

portion of the amount of indebtedness owed by MHA.

- c. *Triggering Events Causing Earlier Repayment.* Upon any one or more of the following events (each, a “Triggering Event”), the repayment of the Advance (or portions thereof) shall become immediately due and payable as set forth below:
- i. MHA sells all or any portion of the Development, at which point all of the proceeds of such sale or sales (less reasonable sale expenses) attributable and disbursed to MHA shall be used to repay the Advance, as applied in the discretion of City; and
 - ii. The Development’s appropriations under Section 9 of The United States Housing Act of 1937 are reduced (or other administrative or legislative changes significantly reduce the operating subsidy provided to MHA), such that the Development is removed from public housing (i.e., the Development is no longer subject to federal requirements applicable to public housing), at which point the parties hereto shall negotiate a payment schedule, which shall be agreeable to the parties and shall specify payment dates and amounts and a date upon which MHA must have made all payments to City in full repayment of the Advance.

5. Obligations of MHA.

- a. MHA shall include in its annual operating budget, which it submits to the United States Department of Housing and Urban Development (“HUD”), the proposed amount of repayment of the Advance to City. MHA shall provide City with a copy of the annual operating budget promptly upon approval by the MHA Board of Commissioners. MHA shall also provide a copy of its Annual Plan promptly after its submission to HUD in addition to the Capital Fund Program Five-Year Action Plan (HUD-50075.2) (the “Five-Year Plan”), which it submits to HUD, to City promptly after its submission to HUD.
- b. MHA shall keep this Agreement on file and available for HUD review in accordance with PIH Notice 2011-14, issued on February 24, 2011. Additionally, MHA shall provide a copy of this Agreement to its accountant in order to permit the accountant and auditor to complete MHA’s OMB A-133 or OMB non-A-133 audit.

6. **Warranty/Representation.** The MHA warrants and represents to the City that it has the authority to enter into this Agreement, and that the terms of this Agreement do not violate any law or Applicable Public Housing Requirement. MHA further warrants and represents to the City that the receipt of the Advance funds shall not impact any of MHA's existing HUD funds nor prevent MHA from applying for or receiving future HUD funds for the Development.
7. **Term.** This Agreement shall be effective upon the date first set forth above and shall remain in full force and effect until October 16, 2051, or until this Agreement is terminated earlier as may be mutually agreed upon by the parties or the earlier of (a) the full repayment of the Advance or (b) the earlier termination of this Agreement (i) due to MHA's failure to meet the contingencies as set forth in Section 2 or (ii) due to MHA's sale of the Development as described in Section 4.
8. **Note/Mortgage Subordination.** The parties agree that upon execution of this Agreement, they may execute a note and mortgage to the City and HUD's satisfaction. Provided that, this Agreement and any note/mortgage shall be subordinate to any mortgage recorded as part of the redevelopment and construction of the Development, including the Declaration of Trust attached as Exhibit C and any other HUD mixed finance documents; construction loans; permanent loans.

This financing is non-recourse to any public housing property (real or personal property including all public housing assets or income), or disposition proceeds approved pursuant to Section 18 of the United States Housing Act of 1937 (unless explicitly permitted by HUD in the Section 18 approval letter).

9. **Preemption.** In the event of a conflict or inconsistency between this Agreement and any Applicable Public Housing Requirement, the Applicable Public Housing Requirement shall in all instances be controlling. "Applicable Public Housing Requirement" shall mean all requirements applicable to public housing, including the United States Housing Act of 1937, as amended from time to time, HUD regulations thereunder (including any HUD-approved waivers of such regulations), the Consolidated Annual Contributions Contract and any amendments or riders thereto, MHA's standard public housing admissions and occupancy policies adopted in accordance with federal law and described in MHA's Annual Plan or the Five-Year Plan, and all other pertinent Federal statutory, executive order, and regulatory requirements, as those requirements may be amended

from time to time.

10. **Successors and Assigns.** This Agreement shall be binding upon the parties hereto and each of their successors and assigns.
11. **Governing Law.** This Agreement shall be governed by the internal laws of the State of Kansas.
12. **Entire Agreement; Amendment and Waiver.** This Agreement (including the Exhibits hereto) constitutes the full and entire understanding and agreement between the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties are expressly canceled. This Agreement may only be amended or terminated by prior written consent of both parties hereto. The terms and provisions of this Agreement may be waived by the written consent of the waiving party.
13. **Severability.** The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.
14. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including PDF) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF MANHATTAN

ATTEST:


By: LINDA MORSE, Mayor




GARY S. FEES, MMC, City Clerk

MANHATTAN HOUSING AUTHORITY


By: JoANN SUTTON
Executive Director


By: JANIS CLARE GALITZER
Board Chair

Exhibit A

To be provided

Exhibit B

Debt Service Schedule

Estimated Construction Start Date=

Construction Costs	
Project/Contract Amount:	\$ 1,000,000
Change Order Estimate = 0%	\$ -
Engineering Design	\$ -
ROW/Acquisition	\$ -
Engineering Observation and Inspection	\$ -
Other Miscellaneous Costs	\$ -
Total Construction Costs	\$ 1,000,000

Summary

Total Principal Paid	\$ 1,055,000
Total Interest Paid	\$ 772,000
Total Payments	\$ 1,827,000
Total Revenues	\$ -
Total Net Debt Paid	\$ 1,827,000

Funding Source-

Estimated Construction Completion Date =

Financing Information

Permanent Financing Mechanism G.O. Bonds

Temporary Financing Information

Temp Note Issue Date (Mar, Jun, Sep, Dec):	
Temp Note Closing Costs:	2.00%
Temp Note Interest Rate:	1.25%
Temp Note Term in Months:	0
Temp Note Interest:	\$ -
Temp Note Issuance Amount	\$ 1,020,000

Bond Information

Bond Issue Date (May or November)	
Bond Term:	30
Bonding Fee:	3.50%
Interest Rate:	4.00%
Bond Issuance Amount	\$ 1,055,000

Payment	Year of Pmt	Principal	Interest	Annual Debt Payment	Principal Remaining	Revenues	Net Debt Payment	Mill Levy	Homeowner Information	
									\$200,000 Home	Property Tax Impact
1	2021	20,000	42,200	62,200	1,035,000		62,200	0.104	\$	2.39
2	2022	20,000	41,400	61,400	1,015,000		61,400	0.100	\$	2.29
3	2023	20,000	40,600	60,600	995,000		60,600	0.096	\$	2.20
4	2024	20,000	39,800	59,800	975,000		59,800	0.092	\$	2.11
5	2025	20,000	39,000	59,000	955,000		59,000	0.088	\$	2.02
6	2026	25,000	38,200	63,200	930,000		63,200	0.091	\$	2.10
7	2027	25,000	37,200	62,200	905,000		62,200	0.087	\$	2.00
8	2028	25,000	36,200	61,200	880,000		61,200	0.083	\$	1.91
9	2029	25,000	35,200	60,200	855,000		60,200	0.079	\$	1.83
10	2030	25,000	34,200	59,200	830,000		59,200	0.076	\$	1.75
11	2031	30,000	33,200	63,200	800,000		63,200	0.079	\$	1.81
12	2032	30,000	32,000	62,000	770,000		62,000	0.075	\$	1.72
13	2033	30,000	30,800	60,800	740,000		60,800	0.071	\$	1.64
14	2034	30,000	29,600	59,600	710,000		59,600	0.068	\$	1.56
15	2035	35,000	28,400	63,400	675,000		63,400	0.070	\$	1.61
16	2036	35,000	27,000	62,000	640,000		62,000	0.067	\$	1.53
17	2037	35,000	25,600	60,600	605,000		60,600	0.063	\$	1.45
18	2038	35,000	24,200	59,200	570,000		59,200	0.060	\$	1.38
19	2039	40,000	22,800	62,800	530,000		62,800	0.062	\$	1.42
20	2040	40,000	21,200	61,200	490,000		61,200	0.058	\$	1.34
21	2041	40,000	19,600	59,600	450,000		59,600	0.055	\$	1.27

Exhibit C

Book: 859 Page: 7605



Riley County Scanning Label



Debra J. Register
Register of Deeds
Riley County, Kansas
Book: 859 Page: 7605
Receipt #: 185904 Total Fees: \$20.00
Pages Recorded: 4
Date Recorded: 07/30/2014 2:10:05 PM

(Space Above this Line for Recording Data)

Title(s) of Document: Declaration of Trust

Date of Document: July 24, 2014

Grantor(s): U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Grantor's Address: 400 State Avenue, Kansas City, KS 66101-2406

Grantee(s): Housing Authority of the City of Manhattan, Kansas
aka Manhattan Housing Authority

Grantee's Address: PO Box 1024 / 300 No. 5th Street, Manhattan, KS 66505-1024

Full Legal Description is located on page: 1

Reference Book(s) and Page(s), if required: _____

Declaration of Trust

(Public Housing Modernization Grant Projects)

U.S. Department of Housing and Urban Development Office of Public and Indian Housing

OMB No. 2577-0270 exp. 09/30/2013

Whereas, (1, see instructions) the Housing Authority of the City of Manhattan, Kansas (herein called the Public Housing Agency (PHA), a public body corporate and politic, duly created and organized pursuant to and in accordance with the provisions of the laws of the (2) State of Kansas, and the United States of America, Secretary of Housing and Urban Development (herein called HUD) pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437, et seq.) and the Department of Housing and Urban Development Act (5 U.S.C. 624) entered into a certain contract with the effective date as of (mm/dd/yyyy) (3) 01/19/1996, (herein called the Annual Contributions Contract) and a certain Modernization Project Grant Amendment to the Annual Contributions Contract with the effective date as of (mm/dd/yyyy) (4) 06/17/2014, (herein called the Modernization Grant Amendment) providing for a grant to be made by HUD to assist the PHA in modernizing lower income housing project(s); and

Whereas, as of the date of the execution of this Declaration of Trust, the Modernization Grant Amendment and the Annual Contributions Contract cover certain individual lower income housing projects located in: (5) City of Manhattan, County of Riley, State of Kansas which will provide approximately (6) 88 dwelling units; and which lower income housing projects are known as Modernization Project No. (7) CFP KS16E06350114 and individual projects as follows: Project No. (8) with approximately 88 dwelling units, Project No. (8) with approximately dwelling units, and Project No. (8) with approximately dwelling units; and

Whereas, the modernization of each Project will have been financed with grant assistance provided by HUD.

Now Therefore, to assure HUD of the performance by the PHA of the covenants contained in the Modernization Grant Amendment and the Annual Contributions Contract, the PHA does hereby acknowledge and declare that it is possessed of and holds in trust for the benefit of HUD, for the purposes herein stated, the following described real property situated in: (9)

City of Manhattan, County of Riley, State of Kansas

To Wit: (Insert legal description for each individual project.)(10)

The West Fifteen Feet (W15') of Lot Two Hundred Thirty Two (232) and all of Lots Two Hundred Thirty Three (233), Two Hundred Thirty Four (234), Two Hundred Thirty Five (235) and Two Hundred Thirty Six (236), in Ward Two (2) of the City of Manhattan, Riley County, Kansas. and all buildings and fixtures erected or to be erected thereon or appurtenant thereto.

The PHA hereby declares and acknowledges that during the existence of the trust hereby created, HUD has been granted and is possessed of an interest in the above described Project property, To Wit:

The right to require the PHA to remain seized of the title to said 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 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 Modernization Grant Amendment and the Annual Contributions Contract, or any interest in any of the same except that the PHA may (1) to the extent and in the manner provided in the Annual Contributions Contract, (a) lease dwellings and other spaces and facilities in any Project, or (b) convey or otherwise dispose of any real or personal property which is determined to be excess to the needs of any Project, or (c) 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 (d) enter into and perform contracts for the sale of dwelling units to members of tenant families, as authorized by the United States Housing Act of 1937, or (2) with the approval of HUD, release any Project from the trust hereby created; Provided, That nothing herein contained shall be construed as prohibiting the conveyance of title to or the delivery of possession of any Project to HUD pursuant to the Annual Contributions Contract.

The endorsement by a duly authorized officer of HUD (1) upon any conveyance or transfer made by the PHA of any real or personal property which is determined to be excess to the needs of any Project, or (2) upon any instrument of conveyance or dedication of property, or any interest therein, for use as streets, alleys, or other public right-of-way, or for the establishment, operation and maintenance of public utilities, or (3) upon any instrument transferring or conveying a dwelling unit, or an interest therein, to a member of a tenant family, or (4) upon any instrument of release made by the PHA of any Project shall be effective to release such property from the trust hereby created.

The individual projects covered by the Modernization Grant Amendment shall be subject to this Declaration of Trust for a period of twenty years beginning on the date of the Modernization Grant Amendment. Each individual project shall also be subject to this Declaration of Trust for a period of twenty years after the date of the most recent Modernization Grant Amendment applicable to that project. Upon expiration of the period during which the PHA is obligated to operate the individual projects in accordance with the Annual Contributions Contract, the trust hereby created shall terminate and no longer be effective.

In Witness Whereof, the PHA by its officers thereunto duly authorized has caused these presents to be signed in its name and its corporate seal to be hereunto affixed and attested this date (mm/dd/yyyy) 07/29/2014.

(Seal)

(1, see instructions)

Housing Authority of the City of Manhattan, Kansas

By [Signature] Chairperson

Attest [Signature] Secretary

Date (mm/dd/yyyy) 07/29/2014

Instructions for Completing form HUD-52190-B, Declaration of Trust (Public Housing Modernization Grant Projects)

Promptly after execution of an ACC Modernization Grant Amendment, HUD Counsel shall prepare and transfer to the PHA, form HUD-52190-B, Declaration of Trust (Public Housing Modernization Grant Projects), which shall cover all of the individual projects included in the modernization grant project. The letter transmitting the Declaration of Trust shall instruct the PHA to complete, execute, and record the Declaration of Trust and provide HUD Counsel with a copy as soon as it has been recorded. (Counsel for the PHA will be responsible for providing the legal description for the individual projects if HUD Counsel does not have this information in his/her files.)

The following instructions pertain to the use of the blank spaces in form HUD-52190-B:

1. Insert the name of the Public Housing Agency as it appears in the Modernization Grant Amendment.
2. Insert the name of the general governmental unit, indicating whether it is a State or Commonwealth.
3. Insert the date of the Annual Contributions Contract which has been amended by addition of the Modernization Grant Amendment.
4. Insert the effective date of the Modernization Grant Amendment.
5. Insert the names of the political subdivisions in which the housing projects covered by the Modernization Grant Amendment are located, e.g., City of _____, County of _____, State of _____.
6. Insert the approximate total number of units included in the modernization grant project.
7. Insert the modernization project number.
8. Insert the individual project number and approximate number of units for each individual project included in the modernization grant project. If more than three projects are included, add additional entries.
9. Same as Item 5.
10. Insert legal description for each individual project or of each individual unit comprising a project (e.g., single-family detached or semi-detached units operated in accordance with the Turnkey III or other Homeownership Program.)

State of Kansas

(County) of Riley

Signed or attested before me on 27th July 2014 (date) by Janis Clare Gialitzer

JoAnn R. Sutton

Mandy Thomas
(Signature of notarial officer)



My appointment expires: February 25, 2018