

**Purchase and Development Agreement**

**between**

**Philadelphia Land Bank**

**and**

**DEVELOPER NAME**

**For the Development of PROPERTY ADDRESS  
Philadelphia, Pennsylvania**

**THIS SECTION WILL BE REMOVED FROM THE COVER PAGE OF THE FINAL VERSION OF THIS AGREEMENT THAT IS EXECUTED BY THE PHILADELPHIA LAND BANK.**

NO LATER THAN TEN (10) BUSINESS DAYS AFTER RECEIPT OF THIS AGREEMENT FROM THE LAND BANK, THE DEVELOPER MUST DELIVER TO THE LAND BANK THREE (3) SIGNED AND NOTARIZED ORIGINALS OF THIS AGREEMENT. THIS AGREEMENT SHALL BE EFFECTIVE AND BINDING ONLY UPON EXECUTION BY BOTH THE LAND BANK AND DEVELOPER.

THIS AGREEMENT IS A DRAFT AND DOES NOT CONSTITUTE A LEGALLY BINDING OBLIGATION OF ANY PARTY HERETO OR AN AGREEMENT BY ANY PARTY TO NEGOTIATE IN ANY PARTICULAR MANNER, OR AT ALL, OR TO CONSUMMATE THE TRANSACTION DESCRIBED HEREIN. THE DEFINITIVE TERMS FOR THE TRANSACTION DESCRIBED HEREIN, IF SAME SHOULD OCCUR, WILL BE SET FORTH IN A FULLY EXECUTED, DEFINITIVE AGREEMENT BETWEEN THE PARTIES AND WILL REQUIRE APPROVAL OF THE VACANT PROPERTY REVIEW COMMITTEE, PHILADELPHIA LAND BANK BOARD, AND CITY COUNCIL. EITHER PARTY MAY, AT ANY TIME PRIOR TO EXECUTION OF A DEFINITIVE AGREEMENT, UNILATERALLY TERMINATE ALL NEGOTIATIONS, FOR ANY REASON OR FOR NO REASON, WITHOUT ANY LIABILITY WHATSOEVER TO THE OTHER PARTY.

**THIS PURCHASE AND DEVELOPMENT AGREEMENT** is entered into as of \_\_\_\_\_, 20\_\_\_\_, effective as of the Effective Date, as defined in Section 1.02, between the Philadelphia Land Bank and the Developer, as defined in Section 1.02.

### **RECITALS**

- A. Section 16-700, *et seq.* of the Philadelphia Code created the Philadelphia Land Bank, as permitted pursuant to Section 68 Pa.C.S.A. §2101, *et seq.*
- B. Section 16-707 of the Philadelphia Code authorizes the Philadelphia Land Bank to convey, exchange, sell, transfer, lease, grant, or mortgage interests in real property of the Philadelphia Land Bank, subject to approval of the Vacant Property Review Committee and resolution of Philadelphia City Council, among other things.
- C. In accordance with terms and conditions of this Agreement, the Philadelphia Land Bank desires to sell, transfer, and convey the Premises, as defined in Section 1.02, to the Developer, and the Developer desires to purchase and accept the Premises from the Philadelphia Land Bank.

**NOW THEREFORE**, in consideration of the mutual covenants, promises, and agreements set forth in this Agreement and intending to be legally bound, the Land Bank and the Developer agree as follows:

### **SECTION I - RECITALS AND DEFINITIONS**

1.01 **Recitals.** The above recitals are incorporated herein by reference as if set forth at length.

1.02 **Defined Terms.** In addition to any other terms defined in this Agreement, as used in this Agreement, the following terms have the respective meanings assigned to them:

"**Agreement**" means this Purchase and Development Agreement.

"**Cancellation Agreement**" means the Cancellation Agreement attached as **Exhibit B.**

"**City**" means the City of Philadelphia in the Commonwealth of Pennsylvania.

"**Commonwealth**" means the Commonwealth of Pennsylvania.

"**Construction Start Date**" means the date that is VERBAL NUMBER (NUMERIC) months after Settlement.

"**Construction Completion Deadline**" means the date that is VERBAL NUMBER (NUMERIC) months after Settlement.

"Delivery Date" means the date the Land Bank mails a fully executed original, or emails a fully executed copy, of this Agreement to Developer.

"Deposit" means the amount of VERBAL NUMBER and CENTS/100 Dollars (\$NUMERIC).

"Developer" means DEVELOPER NAME, a natural person OR STATE limited liability company OR STATE limited partnership OR STATE general partnership OR STATE corporation having a mailing address of DEVELOPER MAILING ADDRESS.

"Effective Date" means the date this Agreement is signed by the last party to sign it as indicated on the notary acknowledgement to this Agreement.

"Environmental Laws" means any and all applicable federal, state, and local laws, rules, and regulations, and all applicable orders and decrees, in each case as now or hereafter in effect, relating to the regulation or protection of human health, safety, or the environment or to emissions, discharges, releases, or threatened releases of pollutants, contaminants, chemicals, toxic or hazardous substances or wastes into the environment including ambient air, soil, surface water, ground water, wetlands, land, or subsurface strata; or relating to the manufacture, processing, holding, existence, release, distribution, use, treatment, storage, disposal, transport, handling, generation, production, refining, control, management, abatement, removal, transfer, spilling, leaking, or dumping of pollutants, contaminants, chemicals, toxic or hazardous substances, materials, or wastes.

"Hazardous Material" means any material or substance, of any type or nature, which is now or hereafter prohibited, limited, or otherwise regulated in any way under any Environmental Laws.

"Improvements" means DETAILED DESCRIPTION OF IMPROVEMENTS, which shall be completed in accordance with the Plans attached as **Exhibit C**.

"Land Bank" means the Philadelphia Land Bank having a mailing address of 1234 Market St., 16<sup>th</sup> Floor, Philadelphia, PA 19107, Attn: Executive Director.

"Premises" means the real estate, and any portion thereof, situated at PROPERTY ADDRESS, Philadelphia, PA PROPERTY ZIP CODE as more particularly described in **Exhibit A**.

"Purchase Price" means the amount of VERBAL NUMBER (\$NUMERIC) and CENTS/100 Dollars.

"Settlement" means the transfer of title to the Premises and payment of all funds owing to the Land Bank pursuant to this Agreement.

"Settlement Date" means the date Settlement is scheduled to occur pursuant to Section 4.02 and, once Settlement occurs, the actual date of Settlement.

"Settlement Deadline" means the date that is not later than three (3) months after the Delivery Date.

"Affordable Unit(s)" means a residential dwelling unit which will be subject to the Declaration.

1.03 Other Definitional Provisions. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant to this Agreement unless otherwise defined therein.

## **SECTION II - SALE OF THE PREMISES AND LOSS/DAMAGE TO PREMISES**

2.01 Premises. Subject to the terms and conditions of this Agreement, Land Bank agrees to sell, transfer, and convey to Developer, and Developer agrees to purchase and accept from Land Bank, the Premises.

2.02 Loss or Damage to Premises. Any loss or damage to the Premises or to any improvements thereon occurring between the Effective Date and Settlement as a result of fire or other casualty shall not affect, void, or impair any provision of this Agreement.

## **SECTION III - TITLE, PREPARATION OF DEED, AND RECORDING**

3.01 Title. Subject to the terms and conditions of this Agreement, the Land Bank shall convey the Premises to Developer by special warranty deed (the "**Deed**"). Title shall be insurable at regular rates by any reputable title insurer licensed in the Commonwealth and shall be free and clear of all liens and encumbrances except for the following: (i) current real estate taxes and other municipal charges that are not yet due and payable; (ii) all easements, covenants, agreements, and restrictions; (iii) such facts or conditions that an inspection or accurate survey would disclose; (iv) all laws, ordinances, rules, and regulations; (v) assessments for improvements begun or completed after the Effective Date; (vi) all defects, liens, claims, judgments, encumbrances, mortgages, encroachments, and other clouds on title which existed, or were recorded, perfected, filed, or attached to the Premises, prior to the Land Bank's ownership (except for municipal liens); and (vii) Commonwealth inheritance taxes and inheritance tax liens. This Agreement shall be recorded in the City Department of Records before recordation of the Deed. The Deed shall be subject to the terms, provisions, obligations, covenants, and conditions of this Agreement and a Declaration of Restrictive Covenants, Conditions and Restrictions attached as **Exhibit E** (the "**Declaration**"). The Declaration will be recorded in the City Department of Records immediately after recordation of the Deed. **Please be advised that you have the option to purchase title insurance. The Land Bank cannot, and does not, require you to purchase title insurance. However, you are strongly encouraged to consider purchasing title insurance. If you decide not to purchase title insurance you will not be afforded protection in the event of a defect in the title to the Premises.**

3.02 Inability of Land Bank to Convey Title.

- (a) If the Land Bank provides notice to Developer that the Land Bank is unable to convey title pursuant to Section 3.01, the Land Bank may, in its sole and absolute discretion, at any time and from time to time, elect to: (i) extend the Settlement Date, the Settlement Deadline, or both; (ii) allow the Developer, at the Developer's option, to take such title as the Land Bank

can give without abatement of the Purchase Price; or (iii) terminate this Agreement.

- (b) If the Land Bank elects to terminate this Agreement pursuant to this Section 3.02, the Developer shall execute the Cancellation Agreement. Upon the Land Bank's receipt of the Cancellation Agreement signed by the Developer, the Land Bank shall promptly return the Deposit (less the cost and fees to record the Cancellation Agreement) and there shall be no further liability or obligation by either party hereunder and this Agreement shall be null and void.

3.03 Preparation of Deeds. The Land Bank shall prepare the Deed and any appurtenant easements at its own cost and expense.

#### **SECTION IV - SETTLEMENT**

4.01 Settlement. Developer shall take title to the Premises in accordance with this Agreement on the Settlement Date, but no later than the Settlement Deadline. Settlement will be held at the office of the Land Bank or such other place as the Land Bank may reasonably designate.

4.02 Proposed Settlement Date.

- (a) Developer shall propose a date for Settlement by notifying the Land Bank by both letter and email, which proposed date shall be no later than the Settlement Deadline (the "**Proposed Settlement Date**"). Developer's notice of the Proposed Settlement Date must (i) contain a copy of a title report and (ii) be delivered at least forty-five (45) days before the Proposed Settlement Date.
- (b) The Land Bank shall notify the Developer if the Proposed Settlement Date is acceptable to the Land Bank. If the Proposed Settlement Date is not acceptable, the Land Bank shall provide the Developer with an alternative date for Settlement, which date may be after the Settlement Deadline, in the Land Bank's sole and absolute discretion, and Settlement shall occur on the date as indicated by the Land Bank.

4.03 Waiver of Formal Tender. The parties hereby waive tender of the Deed and the Purchase Price, but nothing herein contained shall be construed as a waiver of the Land Bank's obligation to deliver the Deed or of the concurrent obligation of Developer to pay the Purchase Price at Settlement.

#### **SECTION V - PURCHASE PRICE AND PRORATIONS**

5.01 Purchase Price. At Settlement, the Developer shall pay the Land Bank the Purchase Price by certified check or by wire transfer, subject to Section 5.02.

5.02 Taxes, Prorations, and Recording Fees.

- (a) All Commonwealth and City realty transfer taxes due in connection with this transaction shall be paid by Developer.
- (b) Real estate taxes, water, sewer and stormwater fees, and all other utility charges will be adjusted at Settlement pro-rata on a daily basis between the Land Bank and Developer. The

Land Bank will be responsible for such items up to and including the date of Settlement and Developer will pay for all days following Settlement.

- (c) Developer shall, at its sole cost and expense, pay any and all (i) fees and costs to record this Agreement, the Deed, the Declaration, and any and all other documents required to be recorded by the Land Bank including any deed necessary to convey the Premises to the Land Bank, (ii) premiums for title insurance, if obtained by the Developer, and (iii) fees, costs, and commissions to any broker or agent.

## **SECTION VI - PERFORMANCE DEPOSIT**

6.01 **Performance Deposit.** Unless previously provided, Developer will provide the Land Bank with the Deposit no later than five (5) days after the Delivery Date. The Deposit will secure performance of the Developer's obligations under this Agreement. The Land Bank shall be under no obligation, but shall have the right, in its sole and absolute discretion, to place the Deposit in an interest bearing account. Any interest earned on the Deposit shall be retained by the Land Bank as property of the Land Bank. After issuance of a Certificate of Completion, the Land Bank shall use the Deposit to record the Certificate of Completion, and promptly return the balance of the Deposit, without interest, to the Developer on the condition that there is no uncured Event of Default. Notwithstanding any provision of this Agreement to the contrary, Developer's failure to timely pay the Deposit shall be an Event of Default and shall give the Land Bank the right to terminate this Agreement without notice to Developer or opportunity to cure, in the Land Bank's sole and absolute discretion.

## **SECTION VII - REQUIRED APPROVALS AND CONDITIONS PRECEDENT**

7.01 **Required Approvals.**

- (a) Promptly after Developer's execution of this Agreement, Developer shall, at its sole cost and expense, file all applications, pay all fees, and submit all documents necessary to obtain all approvals and permits from the Zoning Board of Adjustment of the City, the City Department of Public Property, the Philadelphia Planning Commission, and any other governmental or quasi-governmental entity that are necessary to legally construct the Improvements and otherwise develop the Premises pursuant to this Agreement (collectively, the "**Required Approvals**").
- (b) The Land Bank shall reasonably cooperate with Developer, as requested, in connection with applying for the Required Approvals including providing authorizations necessary for such applications, but in no event shall the Land Bank be required to expend any costs, sums, or expenses in connection with such cooperation. Developer shall diligently and with best efforts seek to secure the Required Approvals on or before the Settlement Deadline.

7.02 **Conditions Precedent to Settlement.** The following are conditions precedent (each "**Condition Precedent**") to the Land Bank's obligation to convey title to the Premises:

- (a) Developer has demonstrated to the satisfaction of the Land Bank the availability of the full amount of funds needed to complete construction of the Improvements;
- (b) Developer has obtained all Required Approvals;

- (c) There is no uncured Event of Default;
- (d) Developer has obtained approval of the Marketing Plan, as defined in Section 9.10(a), from the Land Bank;
- (e) There is no adverse change in any information provided by the Developer to the Land Bank;
- (f) The Developer has submitted such other documentation that the Land Bank may reasonably request prior to Settlement;
- (g) Developer, and all individuals and entities having an ownership, controlling, or managing interest in the Developer or in any entity that is connected to or affiliated with the Developer,
  - (i) are current on all City and City-related obligations (*e.g.*, payments for real estate taxes, gas, and water);
  - (ii) do not own or have an interest in any property that is subject to any significant unremediated violation of City codes or ordinances;
  - (iii) do not have any unresolved conflicts of interest; and
  - (iv) are in compliance with all other requirements relating to the conveyance of the Premises whether located in any ordinance, policy, or otherwise;
- (h) If applicable, the Land Bank has acquired the Premises from the applicable governmental or quasi-governmental entity; and
- (i) The unconditional approval by the Vacant Property Review Committee, Philadelphia City Council, and the Land Bank Board of Directors for conveyance of the Premises to the Developer.

7.03 Incomplete Conditions Precedent.

- (a) If any Condition Precedent is not satisfied prior to the Settlement Deadline, the Land Bank may, in its sole and absolute discretion, at any time and from time to time, elect to: (i) waive any Condition Precedent (except for Section 7.02(h) and Section 7.02(i)); (ii) extend the Settlement Date, the Settlement Deadline, or both; or (iii) terminate this Agreement.
- (b) If the Land Bank elects to terminate this Agreement pursuant to this Section 7.03, the Developer shall execute the Cancellation Agreement. Upon the Land Bank's receipt of the Cancellation Agreement signed by the Developer, the Land Bank shall promptly return the Deposit (less the cost and fees to record the Cancellation Agreement) and there shall be no further liability or obligation by either party hereunder and this Agreement shall be null and void.

## **SECTION VIII - CONSTRUCTION FINANCING**

8.01 Prohibition against Encumbrances. No mortgage, judgment, lien, encumbrance, easement, security interest, attachment, levy, or any other adverse charge (collectively, "**Encumbrance**") shall be entered or filed against the Premises without the prior written consent of the Land Bank, which consent may be withheld, conditioned, or delayed in the Land Bank's sole and absolute discretion, except that the Land Bank's consent for financing the acquisition of the Premises or construction of the Improvements shall not be unreasonably withheld. Any approved Encumbrance may not be assigned except to a bank, savings institution, commercial credit company, real estate investment trust, or other nationally recognized investment company. Nothing in this Section VIII shall be deemed to affect the validity or enforceability of the Declaration.

8.02 Notice of Financing, Removal of Encumbrances. If the Developer intends to obtain financing for the acquisition of the Premises or construction of the Improvements, which is to be secured by an Encumbrance upon the Premises, the Developer shall notify the Land Bank in writing at least thirty (30) days prior to closing on such financing so that the Land Bank can decide whether to grant its consent, which consent shall not be unreasonably withheld. If any unapproved Encumbrance attaches to the Premises, the Developer shall notify the Land Bank in writing and promptly take all necessary action to, and shall, remove, satisfy, or discharge the Encumbrance no later than fifteen (15) days after the Encumbrance attached to the Premises. If Developer permits a mortgage to be recorded without the Land Bank's approval or which is inconsistent with the requirements of this Section VIII, such mortgage will be null and void and of no effect.

8.03 Mortgagee's Rights. If any mortgagee, lienor, secured party, or holder of any Encumbrance, which received prior approval by the Land Bank ("**Approved Mortgagee**"), obtains title to the Premises as a result of foreclosure or other judicial proceedings or action in lieu thereof or otherwise, such Approved Mortgagee shall be exempted from those provisions of this Agreement which require construction and completion of the Improvements within a certain time period. This exemption shall not run in favor of any purchaser at foreclosure or judicial sale, other than an Approved Mortgagee, nor in favor of any person or entity who subsequently obtains title to the Premises from an Approved Mortgagee. No person or entity, including an Approved Mortgagee, may devote the Premises to any use or construct any improvements thereon other than those uses and Improvements permitted in this Agreement.

8.04 Mortgagee's Option to Cure Defaults. An Approved Mortgagee shall, within thirty (30) days from the date of mailing by the Land Bank of a notice of an Event of Default, have the right to exercise the following options:

- (a) to cure the Event of Default and to add the cost thereof to the sums due under its mortgage and the lien thereof; or
- (b) to assume the position, and all rights, duties and obligations, of Developer under this Agreement as if such Approved Mortgagee were substituted for and succeeded Developer in all provisions of this Agreement, in which event the Land Bank may require the prior execution and delivery of an Agreement with the Approved Mortgagee which provides for construction of the Improvements and use of the Premises in accordance with this Agreement; or
- (c) upon prior written consent of the Land Bank, not to be unreasonably withheld, to sell, assign, or transfer all of its right, title and interest to the Premises to a purchaser, assignee, or transferee, satisfactory to the Land Bank, who shall expressly assume all of the covenants, agreements, and obligations of Developer under this Agreement, by written instrument to be recorded in the City Department of Records, in which event the time limits set forth in this Agreement may be extended by the Land Bank for such reasonable period of time as may then be necessary to complete the performance of Developer's obligations under this Agreement.

8.05 Notices of Default to and from Approved Mortgagees. A copy of any notice of an Event of Default delivered by the Land Bank to Developer shall be sent to each Approved Mortgagee at its last address shown in the Land Bank's records. Notwithstanding the foregoing, any failure by the Land Bank to provide

any Approved Mortgagee with notice of an Event of Default shall not extend the Cure Period or render void or ineffective any notice of an Event of Default. A copy of any notice or demand delivered by any Approved Mortgagee to Developer for any breach or default with regard to any Encumbrance shall be forwarded by Developer to the Land Bank in accordance with Section 14.05.

## **SECTION IX - DEVELOPER'S OBLIGATIONS AND CERTIFICATE OF COMPLETION**

9.01 **Obligation to Develop.** Developer has submitted to the Land Bank a site plan, elevations, floor plans, and other plans and specifications (collectively, the "**Plans**") which have been approved by the Land Bank and are attached as **Exhibit C**. Subject to Section 9.03, the Developer shall use the Premises for the Improvements and shall develop the Premises and complete the Improvements in a good and workman like manner in accordance with the Plans and this Agreement, to the Land Bank's satisfaction, no later than the Construction Completion Deadline. The Developer shall promptly (i) provide the Land Bank with a copy of all plans for the Premises, which have been approved and stamped by the City of Philadelphia Department of Licenses and Inspections ("**L&I Approved Plans**") and (ii) inform the Land Bank in writing of any deviations between the Plans and the L&I Approved Plans.

9.02 **Commencement of Construction.** Developer shall commence construction of the Improvements by the Construction Start Date. Developer shall not commence any work on the Premises until Developer has (i) obtained, at its sole cost and expense, all Required Approvals and all other permits, licenses, approvals, and variances required by any governmental or quasi-governmental entity; (ii) Developer has attended a pre-construction meeting with the Land Bank; and (iii) the Land Bank has provided a notice to proceed.

9.03 **Changes to Plans.** No Material Change may be made to the Plans without the prior written approval of the Land Bank and the City Councilperson in whose district the Premises are located, which approval may be withheld, conditioned, or delayed in their sole and absolute discretion. A "**Material Change**" means the following differences, changes, or modifications to the Plans: (i) an increase or decrease in number of housing or commercial units by more than fifteen percent (15%); (ii) an increase or decrease in building square footage of more than fifteen percent (15%); or (iii) any modification to the use of the Premises.

9.04 **Inspection of the Premises.** Upon no less than twenty four (24) hours prior notice by the Land Bank, and subject to reasonable safety standards, the Developer shall provide the Land Bank and the City, their respective agents and representatives, full access to the Premises and the Improvements at all times during construction and give assistance for inspection, examination, and tests.

9.05 **Insurance.**

- (a) Developer shall, at its sole cost and expense, insure the Premises and the Improvements in an amount not less than the full insurable value of the Premises and Improvements. The "full insurable value" is defined as the replacement cost of the Premises and the Improvements, plus the cost of removing the debris produced by the destruction of the Improvements.
- (b) The Developer shall, at its sole cost and expense, obtain general liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million

Dollars (\$2,000,000) in the aggregate, which shall, among other things, provide for contractual liability coverage for the Developer's indemnity obligations under this Agreement.

- (c) For all insurance required under this Section 9.05, Developer shall furnish the Land Bank with a certificate of insurance in form and with companies reasonably satisfactory to the Land Bank, naming the Land Bank, the City, and their respective directors, officers, employees, and agents as additional insureds with respect to general liability insurance, and providing that coverage may not be canceled or terminated without thirty (30) days prior written notice to the Land Bank.

9.06 Maintenance of Premises and Improvements. From and after Settlement, Developer shall maintain the Premises and the Improvements in such condition as to remove and keep out the elements of blight and enforce adequate safeguards for the proper maintenance of all parts of the Premises and the Improvements. This Section 9.06 shall be a covenant running with the land and shall inure to the benefit of and be enforceable by the Land Bank and the City, and shall survive issuance of a Certificate of Completion, and shall be contained in any deed or deeds from the Developer conveying, or purporting to convey, the Premises or any interest therein.

9.07 Indemnification.

- (a) Developer shall indemnify, defend (with counsel reasonably acceptable to the Land Bank), and hold harmless the Land Bank, the City, the Philadelphia Redevelopment Authority, and their respective directors, officers, employees, and agents (collectively, together with the Land Bank, the "**Indemnitees**") from and against any and all liabilities, obligations, losses, fines, penalties, expenses (including attorneys' fees, court, and settlement expenses) claims, orders, administrative decisions, statutory claims, judgments, settlements, suits, actions, causes of action, arbitration proceedings, requests for relief, forbearance, appeals, or demands of any kind whatsoever, whether or not involving a third party, arising from, caused or created by, resulting from or relating to, directly or indirectly, (i) this Agreement; (ii) the performance of Developer's obligations under this Agreement; (iii) an Event of Default or breach under this Agreement by the Developer; (iv) the Developer's proposal in response to any request for proposal concerning the Premises; (v) any past, present, or future violation, or alleged violation, of any Environmental Laws regarding the Premises; (vi) any past, present or future, actual, threatened, or alleged, presence, release, discharge, manufacturing, processing, holding, existence, distribution, use, treatment, storage, disposal, transport, handling, generation, production, refining, control, management, abatement, removal, transfer, spilling, leaking, or dumping of any Hazardous Materials on, under, from, or in the vicinity of, the Premises; or (vii) any actual or alleged actions, omissions, negligence, or willful misconduct of the Developer or any of the Developer's employees, directors, officers, contractors, subcontractors, or agents (collectively, "**Claims**").
- (b) The Developer's obligation to indemnify under this Section 9.07 includes all legal, professional and consulting fees, costs, and expenses, all foreseeable consequential damages, the costs of all required or necessary repair, cleanup, or detoxification of the Premises including the soil and ground water thereof, and the preparation and implementation of any closure, remedial, or other required plans. The Developer's duty to indemnify, hold harmless,

and defend shall arise at the time written notice of a claim is first provided regardless of whether a suit has been filed. The Developer shall indemnify as costs and expenses are incurred upon presentation of invoices. All payments pursuant to this Section 9.07 shall be in addition to any and all other legal rights and remedies available to the Land Bank and shall not be considered the Land Bank's exclusive remedy. If Developer fails to engage counsel reasonably satisfactory to the Land Bank, then the Land Bank shall have the right to engage counsel to represent the Land Bank at Developer's sole cost and expense. The Developer's duty to indemnify, hold harmless, and defend shall not be limited by any insurance. It is specifically stated to be the intention of the parties to have the Developer's indemnification obligations interpreted in the broadest legally permissible fashion in favor of the Indemnitees, and in such way as to provide the Indemnitees with the greatest possible protection.

Notwithstanding anything to the contrary contained in this Agreement, if the Developer is required to indemnify or defend the Indemnitees, or any of them, the Land Bank, in the Land Bank's sole and absolute discretion, shall have exclusive authority to control and direct the defense of any and all Claims and to settle and compromise any and all Claims.

- (c) This Section 9.07 shall be a covenant running with the land and shall inure to the benefit of and be enforceable by the Indemnitees, or any of them, and shall survive issuance of a Certificate of Completion, and shall be contained in any deed or deeds from the Developer conveying, or purporting to convey, the Premises or any interest therein.

9.08 Certificate of Completion.

- (a) Subject to (i) Developer's completion of the Improvements in accordance with this Agreement; (ii) Developer obtaining a permanent, unconditional certificate of occupancy for the Improvements; and (iii) there being no uncured Event of Default, Developer shall request and the Land Bank shall record a certificate of completion ("**Certificate of Completion**"). The Certificate of Completion shall provide that the obligations of this Agreement shall be deemed completed except for the following: Section 9.06, Section 9.07, Section 10.02, and Section 11.01. Developer hereby authorizes the Land Bank to use the Deposit to pay all fees to record the Certificate of Completion in the City Department of Records.
- (b) If the Land Bank refuses or fails to provide a Certificate of Completion, the Land Bank shall, within thirty (30) days after written request by Developer, provide the Developer with a written statement indicating in what respects the Developer has failed to complete the Improvements or is otherwise not in compliance with this Agreement and what actions will be necessary for Developer to take in order to obtain a Certificate of Completion.

9.09 Access to Premises.

- (a) Neither Developer nor any of Developer's contractors, subcontractors, or agents are permitted to access, enter upon, or perform any activities on the Premises prior to Settlement unless they have (i) obtained approval from the Land Bank, which approval may be granted, withheld, or conditioned, in the Land Bank's sole and absolute discretion; and (ii) entered into a license agreement with the Land Bank in form and substance acceptable to the Land Bank in its sole and absolute discretion.
- (b) Neither Developer nor any of Developer's contractors, subcontractors, or agents shall in any

manner alter the condition of the Premises prior to Settlement, including the removal of soil or the making of any changes or alterations to the improvements thereon.

9.10 Affordable Housing Obligations.

- (a) No later than ten (10) business days following the Delivery Date, Developer shall prepare, and deliver to, the Land Bank a marketing plan for the sale of the Affordable Unit(s) (the "**Marketing Plan**") for the Land Bank's approval, which approval may be withheld, conditioned, or delayed, in the Land Bank's sole and absolute discretion. Developer shall diligently and with best efforts seek to secure approval of the Marketing Plan on or before the Settlement Deadline. Once approved, Developer shall fully comply with the Marketing Plan and shall maintain, and provide to the Land Bank as requested from time to time, detailed documentation evidencing compliance with the Marketing Plan including print advertising (e.g., flyers, emails, blogs, door tags), community outreach efforts, e-marketing efforts, community meetings, and lists of showings and prospects.
- (b) Developer shall not market, offer for sale, or enter into any sales or reservation agreement for any Affordable Unit(s) until (i) the Marketing Plan is approved; and (ii) the Developer has permitted the Philadelphia Housing Authority to exclusively market the Affordable Unit(s) for a period of thirty (30) days with such period commencing as determined by the Land Bank. The Developer will cooperate with the Philadelphia Housing Authority.
- (c) The Developer shall not enter into any sales or reservation agreement with a prospective purchaser for any Affordable Unit(s) until the Land Bank or other entity identified by the Land Bank, in its sole and absolute discretion, has determined that such prospective purchaser complies with the income eligibility requirements set forth in the Declaration. The Developer will cooperate with the Land Bank and other entities to determine income eligibility. The Developer (i) shall maintain, and provide to the Land Bank as requested from time to time, detailed documentation evidencing compliance with this Section 9.10(c) and (ii) hereby authorizes all entities involved with determining income eligibility to provide the Land Bank with any and all lawful information to evidence compliance with this Section 9.10(c).
- (d) Developer shall attach a Affordable Unit(s) rider (the "**Rider**") to each sales or reservation agreement with a prospective purchaser for a Affordable Unit(s). The Rider shall be in form and substance as provided by the Land Bank, in its sole and absolute discretion. The deed for each Affordable Unit(s) must contain a covenant regarding the Declaration in form and substance as provided by the Land Bank, in its sole and absolute discretion.

**SECTION X - DISCLAIMERS AND RELEASE**

10.01 Disclaimer of Warranties and Representations. DEVELOPER IS PURCHASING THE PREMISES IN AS IS, WHERE IS CONDITION WITH ALL FAULTS AS OF THE EFFECTIVE DATE, INCLUDING ANY AND ALL DEFECTS, KNOWN AND UNKNOWN, AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, PROMISES, REPRESENTATIONS, OR GUARANTEES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST OR PRESENT, MATERIAL OR IMMATERIAL, OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM OR ON BEHALF OF THE LAND BANK, THE CITY, THE PHILADELPHIA REDEVELOPMENT AUTHORITY, ANY

OTHER GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY, OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS. TO THE MAXIMUM EXTENT OF THE LAW, THE LAND BANK DISCLAIMS, AND DEVELOPER EXPRESSLY WAIVES, ANY AND ALL IMPLIED WARRANTIES OF HABITABILITY (INCLUDING POTENTIAL OR ACTUAL LATENT DEFECTS), REASONABLE WORKMANSHIP, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND STATUTORY CLAIMS. DEVELOPER ACKNOWLEDGES THAT IT IS NOT ENTITLED TO, HAS NOT RELIED UPON, AND IS NOT RELYING UPON ANY INFORMATION, DOCUMENT, REPORT, STATEMENT, MAP, SKETCH, PROJECTION, PRO FORMA, WARRANTY, PROMISE, REPRESENTATION, OR GUARANTEE, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST OR PRESENT, MATERIAL OR IMMATERIAL, OF ANY KIND, NATURE, OR TYPE WHATSOEVER, THAT MAY HAVE BEEN GIVEN, OR MADE BY, OR ON BEHALF OF, THE LAND BANK, THE CITY, THE PHILADELPHIA REDEVELOPMENT AUTHORITY, ANY OTHER GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS INCLUDING ANY WARRANTY, PROMISE, REPRESENTATION, OR GUARANTEE CONCERNING (I) THE QUALITY, NATURE, ADEQUACY, OR CONDITION OF SOIL, GROUND WATER, SUB-SURFACE SUPPORT, STRUCTURAL INTEGRITY, OR GEOLOGY OF THE PREMISES; (II) THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIAL AT, ON, UNDER, OR IN THE VICINITY OF THE PREMISES; OR (III) THE CONDITION OF TITLE OR THE NATURE, STATUS, OR EXTENT OF ANY DEFECT, LIEN, CLAIM, JUDGMENT, RIGHT, ENCUMBRANCE, LICENSE, RESERVATION, MORTGAGE, ENCROACHMENT, COVENANT, RESTRICTION, CLOUD, OR CONDITION AFFECTING TITLE TO THE PREMISES.

10.02 Release. Without in any way limiting the generality of Section 10.01, upon the occurrence of Settlement, to the maximum extent of the law, Developer, on behalf of itself, and its successors, assigns, heirs, administrators, executors, legatees, transferees, and subrogees hereby forever remises, releases, waives, and forever discharges the Land Bank, the City, the Philadelphia Redevelopment Authority, and their respective directors, officers, employees, and agents (collectively, the “**Released Parties**”) from any and all actions, causes of actions, suits, debts, covenants, obligations, liabilities, losses, damages, claims, statutory claims, and demands of any kind or character whatsoever, known or unknown, suspected or unsuspected, in contract or in tort, at law or in equity which Developer has or had or may have against the Released Parties, or any of them, which relates in whole or in part, directly or indirectly, to (i) this Agreement; (ii) the Premises; (iii) the condition of title or any defect, lien, claim, judgment, right, encumbrance, license, reservation, mortgage, encroachment, covenant, restriction, cloud, or condition affecting title to the Premises; (iv) any violation, or alleged violation, of any Environmental Laws; (v) the presence, or alleged presence, of any Hazardous Materials at, on, under, or in the vicinity of the Premises; or (vi) any actual or alleged actions, omissions, negligence, or willful misconduct of the Released Parties, or any of them. This Section 10.02 shall be a covenant running with the land and shall inure to the benefit of and be enforceable by the Released Parties, or any of them, and shall survive issuance of a Certificate of Completion, and shall be contained in any deed or deeds from the Developer conveying, or purporting to convey, the Premises or any interest therein.

10.03 Responsibility for Condition of Premises. The Land Bank shall not, under any circumstances, be

responsible for any condition of the Premises or any land or improvements in the vicinity of the Premises or for the care, remedy, or removal thereof. The Developer shall be responsible, at its sole cost and expense, for the condition of the Premises including the remediation of, and associated approvals and permits for, any and all Hazardous Material at, on, under, or in the vicinity of the Premises.

## **SECTION XI - NON-DISCRIMINATION AND ECONOMIC OPPORTUNITY PLAN**

11.01 Covenant Against Discrimination. Developer hereby covenants, promises and agrees that:

- (a) No person shall be deprived of the right to live in the Premises because of race, creed, color, national origin, gender, sexual orientation, or disability; and
- (b) There shall be no discrimination against any person in the use or sale of the Premises because of race, creed, color, national origin, gender, sexual orientation, or disability.
- (c) This Section 11.01 shall be a covenant running with the land and shall inure to the benefit of and be enforceable by the Land Bank and the City, and shall survive issuance of a Certificate of Completion, and shall be contained in any deed or deeds from the Developer conveying, or purporting to convey, the Premises or any interest therein.

11.02 Minority, Disadvantaged and Female Owned Business Enterprise Requirements.

- (a) Developer shall submit to the Land Bank an Economic Opportunity Plan ("**EOP**"), in the form attached as **Exhibit D**, in which Developer will describe its good faith efforts to ensure against discrimination in the issuance of contracts and how Developer intends to ensure that its agents and all individuals associated with construction of the Improvements will abide by the EOP.
- (b) Developer shall meet with the Division of Housing and Community Development's ("**DHCD**") Compliance Unit, to set M/W/DSBE as well as Workforce Development goals prior to submitting the EOP. Agreed upon goals will then be submitted to the Office of Economic Opportunity ("**OEO**") for signature by the DHCD Compliance Unit.
- (c) Developer shall comply with all relevant federal, Commonwealth and local monitoring and reporting laws, regulations and ordinances including, but not limited to, submitting, within the time frames prescribed by the OEO, any and all documentation the OEO may request, including Monthly Progress Reports, Contractor Business Utilization Reports, copies of M/W/DSBE Subcontracts, participation summary reports, M/W/DSBE participant invoices, telephone logs and correspondence with M/W/DSBE participants, cancelled checks and certification of payments.

## **SECTION XII - RESTRICTIONS AGAINST CERTAIN TRANSFERS**

12.01 Restrictions on Transfer and Assignment of Interest in Developer.

- (a) Prior to issuance of a Certificate of Completion, unless the Land Bank has given its prior written consent, which consent may be withheld, conditioned, or delayed, in the Land Bank's sole and absolute discretion, Developer (if an individual), or any person, corporation, partnership, or other legal entity owning ten percent (10%) or more of the legal or equitable interest in Developer (if a business entity), will not, by any method or means whatsoever:

- (i) assign, transfer, cause to be assigned or transferred, or suffer to be assigned or transferred any legal or equitable interest in Developer or the stock of the Developer; or
  - (ii) cause, or suffer to be caused, any significant change in the legal or equitable ownership of Developer; of the stock of the Developer or in the relative distribution thereof; the assets of Developer; or the identities of the parties in control of the Developer or the degree of such control; or
  - (iii) assign, transfer, or cause to be assigned or transferred, any interest in this Agreement; or
  - (iv) except as permitted in Section 8.01, sell, mortgage, pledge, encumber, lease, or otherwise transfer the Premises, nor will it suffer or cause any such transfer to be made.
- (b) If the Developer violates Section 12.01(a), in addition to any and all other rights and remedies at law or in equity or pursuant to this Agreement, the Land Bank shall be entitled to fifty percent (50%) of any and all sums, amounts, and consideration received by the Developer or any related person or entity.
- (c) Subject to the terms and conditions of this Agreement, Developer may enter into any agreement to sell the Premises, which conveyance shall take effect after recording the Certificate of Completion. Developer shall submit to the Land Bank all instruments and other legal documents related to the transfer.

### **SECTION XIII - DEFAULT AND REMEDIES**

13.01 Event of Default. Each of the following shall constitute an event of default ("**Event of Default**") under this Agreement:

- (a) if any bankruptcy proceeding is filed against Developer and such proceeding continues unstayed and in effect for a period of sixty (60) days or Developer shall submit themselves to such proceeding;
- (b) if Developer makes an assignment for the benefit of creditors;
- (c) if a receiver is appointed for Developer or the property or assets of Developer and such receivership is not dismissed within sixty (60) days;
- (d) if Developer or any of Developer's contractors, subcontractors, or agents commences work at the Premises for which a permit, license, variance, or other approval is required, but is not obtained;
- (e) if Developer or any of Developer's contractors, subcontractors, or agents fails to comply with Sections 9.09(a) or 9.09(b) of this Agreement;
- (f) if Developer violates or fails to keep, perform, or comply with any of the terms, provisions, or covenants to be kept, complied with, or performed under this Agreement;
- (g) if Developer provides, or at any time has provided, false or inaccurate information to the Land Bank; or
- (h) if Developer conveys the Premises prior to receipt of a Certificate of Completion.

13.02 Notice of Event of Default. Upon written notice from the Land Bank, Developer shall proceed to

promptly cure an Event of Default. If Developer (a) fails to promptly take and diligently pursue such action to cure the Event of Default; or (b) fails to cure the Event of Default within thirty (30) calendar days after receipt of such demand from the Land Bank ("**Cure Period**"), in addition to any and all other remedies the Land Bank may have, at law or in equity or pursuant to this Agreement, the Land Bank may cancel this Agreement and retain the Deposit, together with any and all interest accrued thereon and, in addition, the Land Bank may institute any and all proceedings permitted by law or equity or this Agreement including an action to compel specific performance by the Developer of its obligations under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, an Event of Default under Section 13.01(g) or Section 13.01(h) is incurable.

13.03 Condition Subsequent and Right of Re-Entry.

- (a) This Agreement has been entered into, and the Deed shall provide that conveyance of the Premises is being made, on the condition that upon the occurrence of an Event of Default and the Developer's failure to cure the Event of Default by the expiration of the Cure Period, the Land Bank may enter into the Premises and by this entry terminate the estate that had been conveyed by the Land Bank to Developer and revert title to the Premises in the Land Bank absolutely.
- (b) Provided, however, that such condition subsequent and any reversion of title in the Land Bank (i) shall be subject to and shall not impair in any way any rights or interests provided in this Agreement for the protection of an Approved Mortgagee, and (ii) shall not apply to individual parts or parcels of the Premises on which the Improvements have been completed in their entirety in accordance with this Agreement.

13.04 Limitation of Developer's Remedies. Developer agrees that if the Land Bank fails or refuses to convey the Premises, terminates this Agreement, or re-enters the Premises and effects a reversion of title to the Premises, Developer will in no event resort to, and hereby knowingly, voluntarily, intelligently, and upon the advice of counsel waives any and all rights to equitable defenses, procedures of court and remedies which prevent the continuing enjoyment by the Land Bank or the immediate and unequivocal reversion of good and marketable title to the Land Bank including any action or counterclaim for specific performance, injunctive relief, or any action at law or equity which may result in the entry of the pendency of any legal or equitable action in the judgment index in the Office of the Prothonotary of the Court of Common Pleas of Philadelphia, the filing of a lis pendens, or any cloud on title with respect to the Premises; but Developer may have recourse to an action at law for money damages under the terms of this Agreement, except that in no event shall the Land Bank be liable to Developer, in whole or in part, for any indirect, special, exemplary, consequential, liquidated, incidental, or punitive damages, or lost profits, lost revenues, lost business expectancy, business interruption losses, or benefit of the bargain damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL THE LAND BANK'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE EXCEED THE TOTAL OF THE PURCHASE PRICE ACTUALLY PAID BY THE DEVELOPER PURSUANT TO THIS AGREEMENT.

13.05 Irrevocable Power of Attorney. THIS SECTION 13.05 SETS FORTH A WARRANT OF

ATTORNEY FROM DEVELOPER TO THE LAND BANK. IN GRANTING THIS WARRANT OF ATTORNEY, DEVELOPER HEREBY KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY, AND, ON THE ADVICE OF THE SEPARATE COUNSEL OF THE DEVELOPER, UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS DEVELOPER HAS OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY FOR HEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES AND THE COMMONWEALTH OF PENNSYLVANIA.

A. IN ORDER TO SECURE FURTHER ITS OBLIGATIONS UNDER THIS AGREEMENT, AFTER AN EVENT OF DEFAULT AND THE DEVELOPER'S FAILURE TO CURE THE EVENT OF DEFAULT BY THE EXPIRATION OF THE CURE PERIOD, DEVELOPER HEREBY IRREVOCABLY MAKES, CONSTITUTES, AND APPOINTS THE EXECUTIVE DIRECTOR AND SENIOR COUNSEL OF THE LAND BANK, OR ANY OF THEM AND ANY OF THEIR SUCCESSORS, THEIR TRUE AND LAWFUL AGENTS, FOR THEMSELVES AND IN THEIR NAME, PLACE AND STEAD, TO ENTER INTO AND TAKE POSSESSION OF THE PREMISES AND APPURTENANT EASEMENTS, IN OR TO WHICH THEY ARE NOW POSSESSED OR SEIZED OR IN ANY WAY ENTITLED OR INTERESTED; AND TO GRANT, BARGAIN AND SELL THE SAME OR ANY PART THEREOF, FOR ONE (\$1.00) DOLLAR LAWFUL MONEY OF THE UNITED STATES OF AMERICA OR SUCH SUM OR PRICE AND UPON SUCH TERMS AS THEM OR ANY OF THEM SHALL DEEM TO MEET; AND TO MAKE, EXECUTE, ACKNOWLEDGE, AND DELIVER GOOD AND SUFFICIENT DEEDS AND CONVEYANCES FOR THE SAME, EITHER WITH OR WITHOUT COVENANTS OR WARRANTY; AND TO LET AND DEMISE SAID PREMISES AND APPURTENANT EASEMENTS FOR SUCH RENT AND TERM OR TERMS AS THEY OR ANY OR THEM SHALL DEEM ADVISABLE; AND TO ASK, DEMAND, RECOVER, RECEIVE, AND RECEIPT FOR ALL SUMS OF MONEY WHICH SHALL BECOME DUE AND OWING TO IT BY REASON OF ANY SUCH BARGAIN, SALE OR LEASE AND TO TAKE ALL LAWFUL WAYS AND MEANS FOR THE RECOVERY THEREOF; AND TO AGREE FOR THE SAME, AND TO EXECUTE AND DELIVER GOOD AND SUFFICIENT DISCHARGES AND ACQUITTANCE THEREFOR; AND TO EXECUTE AND DELIVER A CANCELLATION AGREEMENT TO THE LAND BANK, IN SUBSTANTIALLY THE FORM SET FORTH IN EXHIBIT B, THEREBY TERMINATING THIS AGREEMENT; WITH POWER TO SUBSTITUTE ONE OR MORE AGENT OR AGENTS UNDER THEM OR ANY OF THEM IN OR CONCERNING THE FOREGOING OR ANY PART THEREOF, AND THE SAME AT THEIR PLEASURE OR THE PLEASURE OF ANY OF THEM TO REVOKE; GIVING AND GRANTING UNTO THEIR SAID AGENT OR ANY SUBSTITUTE OR SUBSTITUTES FULL POWER AND AUTHORITY TO DO AND PERFORM ALL AND EVERY ACT AND THING WHATSOEVER, REQUISITE AND NECESSARY TO BE DONE IN AND ABOUT THE FOREGOING, AS FULLY TO ALL INTENTS AND PURPOSES AS THEY MIGHT OR COULD DO IF PERSONALLY PRESENT, HEREBY RATIFYING AND CONFIRMING ALL THAT THEIR SAID AGENT (OR THE SUBSTITUTE OR SUBSTITUTES) SHALL LAWFULLY DO OR CAUSE TO BE DONE BY VIRTUE HEREOF. FOR SO DOING, THIS AGREEMENT, OR A VERIFIED COPY HEREOF, SHALL BE A SUFFICIENT WARRANT.

B. DEVELOPER RELEASES ALL PROCEDURAL ERRORS AND DAMAGES ARISING OUT OF

PROCEDURAL ERRORS. NO SINGLE EXERCISE OF THE FOREGOING WARRANT SHALL BE DEEMED TO EXHAUST THE POWER, WHETHER OR NOT ANY SUCH EXERCISE SHALL BE HELD BY ANY COURT TO BE INVALID, VOIDABLE OR VOID, BUT THE POWER SHALL CONTINUE UNDIMINISHED AND MAY BE EXERCISED AT ANY TIME AND FROM TIME TO TIME AS OFTEN AS THE LAND BANK, THE LAND BANK'S SUCCESSORS OR ASSIGNEES SHALL ELECT, UNTIL ALL OBLIGATIONS UNDER THIS AGREEMENT HAVE BEEN SATISFIED.

C. DEVELOPER SPECIFICALLY ACKNOWLEDGES THAT THIS AGREEMENT CONTAINS THE FOREGOING WARRANT OF ATTORNEY. DEVELOPER HAS HAD THE OPPORTUNITY TO REVIEW THE WARRANT OF ATTORNEY CONTAINED HEREIN AND UNDERSTANDS THE MEANING OF THE WARRANT GIVEN HEREBY. DEVELOPER HAS ALSO HAD AN ATTORNEY REVIEW THE WARRANT OF ATTORNEY CONTAINED IN THIS SECTION 13.05, AND TO EXPLAIN SUCH SECTION AND THE MEANING OF THE WARRANT DESCRIBED IN THIS SECTION 13.05, OR HAS WAIVED HIS/HER/ITS RIGHTS TO HAVE AN ATTORNEY DO SO. DEVELOPER SPECIFICALLY INITIALS THIS SECTION TO SHOW THAT DEVELOPER HAS READ, UNDERSTOOD AND AGREED TO ITS TERMS.

<b>DEVELOPER'S ACKNOWLEDGEMENT OF SECTION 13.05</b>	
By: _____ Signature	By: _____ Signature

13.06 Distribution Upon Sale After Revestment of Title. Upon the reversion in the Land Bank of title to all or any part of the Premises under this Agreement, the Land Bank shall use its commercially reasonable efforts to resell the Premises or part thereof (subject to the rights of an Approved Mortgagee as provided in Section 13.03) as soon as and in such manner as the Land Bank shall find feasible to a qualified and responsible party or parties (as determined by the Land Bank in its sole and absolute discretion) who will assume the obligation of making or completing the Improvements or such other improvements as shall be satisfactory to the Land Bank and in accordance with the uses specified for the Premises or part thereof in the Plan. Upon such resale of the Premises, the proceeds thereof shall be applied as follows:

- (a) first, to reimburse the Land Bank, on its own behalf or on behalf of the City, for all costs and expenses incurred by the Land Bank including salaries of personnel, in connection with the recapture, management, and resale of the Premises or part thereof (but less any income derived by the Land Bank from the Premises or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Premises or part thereof; any payments made or necessary to be made to discharge any encumbrances or liens existing on the Premises or part thereof at the time of reversion of title thereto in the Land Bank or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereof on the Premises or part thereof; and any other amounts otherwise owing the Land Bank by Developer;

- (b) second, to reimburse Developer up to the amount equal to the sum of the purchase price paid by it for the Premises (or allocable to the part thereof) and the monies actually spent by it in making any of the Improvements, less any gains or income made from the use of the Premises; and
- (c) Any balance remaining after such reimbursements shall be retained by the Land Bank as its property.

13.07 Powers of Attorney. The powers of attorney granted herein shall not be construed in accordance with Section 5601 of Chapter 56 of Title 20 of the Pennsylvania Consolidated Statutes, as amended. Such powers shall be exercised for the benefit of the Land Bank and not for the benefit of Developer and, in acting under such powers, the Land Bank shall have no fiduciary duty to Developer.

13.08 Force Majeure. Neither the Land Bank nor Developer shall be deemed in default on account of any failure in performance due to unforeseeable causes beyond the reasonable control of and without its fault or negligence including acts of God or of a public enemy, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotion, freight embargoes, shortages of material, removal of any archaeological artifacts or acts of the federal, state or local government or any of its agencies, or delays of contractors or subcontractors due to any such causes. This Section 13.08 shall not excuse defaults attributable to economic conditions, financial market volatility, or inability to obtain any Required Approvals.

13.09 Rights and Remedies Cumulative. The rights and remedies of the Land Bank, whether provided by law, equity, or this Agreement, shall be cumulative and the exercise by the Land Bank of any one or more of such remedies shall not preclude the exercise by the Land Bank, at the same or different times, of any remedies for any default or breach by the Developer. Notwithstanding the existence of specific remedies such as liquidated damages, the Land Bank shall have the right to obtain from a court of competent jurisdiction injunctive relief, specific performance, and such other equitable remedies.

#### **SECTION XIV - MISCELLANEOUS PROVISIONS**

14.01 Compliance with Applicable Law. Developer shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations, and requirements, statutory or administrative, now in effect or hereafter enacted, as amended, including any successor to such law, statute, ordinance, rule, regulation, or requirement (collectively, “**Applicable Laws**”).

14.02 Severability. If any provision of this Agreement is held illegal, invalid, or unenforceable under any present or future law, the remainder of this Agreement shall not be affected thereby and, in lieu of such provision, there shall be added as part of this Agreement, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and legal, valid, and enforceable.

14.03 Developer and Independent Contractor. Developer is an independent contractor and is not the servant, agent, or employee of the Land Bank.

14.04 Time is of the Essence. **TIME IS OF THE ESSENCE FOR ALL PROVISIONS OF THIS**

**AGREEMENT AND ANY AND ALL AMENDMENTS HERETO.**

14.05 Notices. All notices, demands, or other communications under this Agreement by any party to the other shall be in writing and sufficiently given if sent by registered or certified mail, postage prepaid, return receipt requested, by nationally recognized overnight courier, or delivered personally with receipt obtained. Each party must accept and claim the notices given by the other. Notice shall be deemed effective three (3) days after deposit in the mail (in the case of certified mail, postage prepaid, return receipt requested), on the date of confirmation of delivery (in the case of a nationally recognized overnight courier), on receipt (in the case of personal delivery). The addresses for notices to the Land Bank and the Developer are set forth in Section 1.02 of this Agreement. For any notice to the Land Bank to be effective, a copy must be sent to the attention of "General Counsel – Philadelphia Land Bank" at the Land Bank's notice address. Either party may from time to time designate a different person or address for notices by delivering a written notice to that effect to the other parties pursuant to this Section 14.05. Notices may be given on a party's behalf by its attorney.

14.06 Binding Effect/Integration. This Agreement shall be effective and binding only upon execution by both the Land Bank and Developer. This Agreement constitutes and expresses the whole agreement of the parties. All prior promises, undertakings, representations, agreements, understandings, and arrangements relating to the subject matter of this Agreement are merged herein. This Agreement is the product of negotiations between the parties. This Agreement shall not be construed against one party or another merely because one party drafted some part or all of this Agreement.

14.07 Amendments. This Agreement may not be amended, modified, altered, amended, or changed orally, by course of dealing, or otherwise except by an instrument in writing duly and validly executed by the Land Bank and Developer. The Land Bank may charge a reasonable administrative fee for the preparation of any amendments.

14.08 Successors and Assigns. Subject to Section 12.01 of this Agreement, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, assigns, heirs, administrators, executors, legatees, and transferees, and any reference to Developer or Land Bank in this Agreement shall include reference to their respective successors, assigns, heirs, administrators, executors, legatees, and transferees, unless the contrary is explicitly provided.

14.09 Waiver. The failure of either the Land Bank or the Developer to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times. No terms, covenants, or conditions shall be deemed waived by the Land Bank, except by written instrument signed and delivered by the Land Bank.

14.10 Exhibits. All Exhibits which are referred to in this Agreement and which are attached hereto are expressly made and constitute a part of this Agreement.

14.11 Merger. None of the terms, provisions, obligations, covenants, or conditions of this Agreement or the Declaration shall be deemed or are intended to merge with the Deed or any subsequent deed and the Deed and any subsequent deed shall not be deemed to affect or impair the terms, provisions, obligations, covenants, and conditions of this Agreement or the Declaration.

14.12 Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, and all of which taken together shall constitute a single agreement, with the same effect as if the signatures thereto and hereto were upon the same instrument. An executed counterpart sent by facsimile, digitally, or by electronic mail shall constitute an original. Any party delivering an executed counterpart of this Agreement by facsimile, digitally, or by electronic mail shall also deliver an original executed counterpart of this Agreement, but the failure to deliver an original executed counterpart shall not affect the validity of this Agreement.

14.13 Computation of Time. In computing any period of time, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday, or legal holiday in Pennsylvania, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or such legal holiday.

14.14 No Third Party Beneficiary. The parties agree that: (a) this Agreement is for the benefit of the parties to this Agreement and is not intended to confer any rights or benefits on any third party or Developer's successors, assigns, heirs, administrators, executors, legatees, transferees, or subrogees, except for the City, the Philadelphia Redevelopment Authority, the Indemnitees, and the Released Parties; and (b) there are no third-party beneficiaries to this Agreement or any specific term of this Agreement, except for the City, the Philadelphia Redevelopment Authority, the Indemnitees, and the Released Parties.

14.15 Rules of Construction. Whenever the words "include", "includes", or "including" are used in this Agreement or any other document made or delivered pursuant to this Agreement they shall be deemed to be followed by the words "without limitation". Whenever the word "or" is used in this Agreement, it shall not be deemed exclusive. When a reference is made in this Agreement to an Article, a Section, an Exhibit, or a Schedule, such reference shall be to an Article of, a Section of, or an Exhibit or a Schedule to, this Agreement unless otherwise indicated.

14.16 Covenants Running with Land. If any term, covenant, provision, or restriction of this Agreement which is intended to be a covenant running with the land is not contained in the Deed or in any subsequent deed, the validity or enforceability of such term, covenant, provision, or restriction and its status as a covenant running with the land shall not be affected thereby.

**SIGNATURE PAGE FOLLOWS  
REMAINDER OF PAGE INTENTIONALLY BLANK**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed under seal as of the date first above written, effective as of the Effective Date as defined in Section 1.02.

Attest

\_\_\_\_\_

**DEVELOPER**

DEVELOPER NAME

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest

\_\_\_\_\_

**DEVELOPER**

DEVELOPER NAME

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest

\_\_\_\_\_

Steve Cusano  
Senior Counsel

**LAND BANK**

Philadelphia Land Bank

By: \_\_\_\_\_

Angel Rodriguez

Executive Director

Approved as to Legal Form  
Philadelphia Land Bank

By: \_\_\_\_\_

Attorney



NOTARY ACKNOWLEDGEMENT – INDIVIDUAL (CAN BE MORE THAN ONE)

COMMONWEALTH OF PENNSYLVANIA :  
: ss  
COUNTY OF PHILADELPHIA :

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared NAME OF ALL PERSONS SIGNING AS INDIVIDUALS, a natural persons(s), known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission expires:



NOTARY ACKNOWLEDGEMENT – LLC WITH SOLE MEMBER BEING A NATURAL PERSON

COMMONWEALTH OF PENNSYLVANIA :  
: ss  
COUNTY OF PHILADELPHIA :

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared SIGNER’S NAME known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument who acknowledged that he/she is the sole member of DEVELOPER, a STATE limited liability company, and that he/she as such member, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission expires:



EXHIBIT A  
LEGAL DESCRIPTION

INSERT LEGAL DESCRIPTION

EXHIBIT B  
CANCELLATION AGREEMENT

## CANCELLATION AGREEMENT

This Cancellation Agreement (this "**Cancellation Agreement**") is entered into as of DATE (the "**Effective Date**") by the Philadelphia Land Bank ("**Land Bank**") and DEVELOPER NAME ("**Developer**").

### RECITALS

- A. The Land Bank and Developer entered into a Purchase and Development Agreement dated PDA DATE ("**Development Agreement**") concerning PROPERTY ADDRESS, Philadelphia, PA (the "**Premises**") as more specifically described in Exhibit A attached hereto and made a part hereof.
- B. Land Bank and Developer desire to terminate the Development Agreement pursuant to this Cancellation Agreement.

**NOW THEREFORE**, intending to be legally bound hereby, Land Bank and Developer agree as follows:

1. Recitals. The above recitals are incorporated herein by reference as if set forth at length.
2. Defined Terms. All initially capitalized terms in this Cancellation Agreement shall have the meanings given to them in the Development Agreement unless otherwise defined in this Cancellation Agreement.
3. Cancellation. The Development Agreement is hereby rescinded, cancelled, and terminated as of the Effective Date.
4. Release. The Land Bank and Developer, for themselves and their respective successors, assigns, heirs, administrators, executors, and legatees finally and forever release and discharge each other from any and all costs, expenses, actions, charges, damages, demands, attorney fees, causes of action, liabilities, obligations, and claims of any kind, known or unknown, in connection with the Development Agreement.

**IN WITNESS WHEREOF**, the Land Bank and Developer have executed this Cancellation Agreement as of the date first above written.

*[SIGNATURE PAGE, NOTARY ACKNOWLEDGEMENTS, AND EXHIBITS TO BE ATTACHED]*

EXHIBIT C  
PLANS

EXHIBIT D  
ECONOMIC OPPORTUNITY PLAN

**City of Philadelphia  
Economic Opportunity Plan**

**PROJECT NAME/ADDRESS**

I. Introduction, Definitions, Goals and Diversity Practices

The City of Philadelphia, acting through its offices of the Division of Housing and Community Development (“DHCD”) and Office of Economic Opportunity (“OEO”) (collectively, “City”) and the Philadelphia Redevelopment Authority (“PRA”) strongly encourage the use of certified Minority (“MBE”), Women (“WBE”), Disabled (“DSBE”) and Disadvantaged<sup>1</sup> (“DBEs”) Business Enterprises (collectively, “M/W/DSBEs”) and minority and female workers in all aspects of the development and use of a parcel(s) of land located at PREMISES ADDRESS, which may include financial investment, design, construction and operations (Project). In support of this objective, City and PRA will require that the DEVELOPER NAME (“Purchaser”) of this parcel commit to this Economic Opportunity Plan (“EOP” or “Plan”) as required by Section 17-1602 of The Philadelphia Code, as amended.

This Plan contains ranges of projected M/W/DSBE utilization and goals for the employment of minority and female workers in connection with the Project. Purchaser shall cause this Plan to be made part of and incorporated into all bids, proposals and solicitations and any resulting agreement(s) entered into between Purchaser and any participant in connection with the development and use of the parcel. By submission of this Plan, Purchaser makes a legally binding commitment to the City and PRA to abide by the provisions of this Plan which include its commitment to exercise its Best and Good Faith Efforts throughout the project and its commitment to cause its participants to use their Best and Good Faith Efforts to provide subcontracting opportunities for M/W/DSBEs in all phases of the project and to employ a diverse workforce. This Plan expressly applies to all contracts awarded in connection with the Project.

Neither Purchaser nor any participant shall discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, gender identity, ancestry, age, or handicap in the award and performance of contracts pertaining to this Plan. Purchaser has summarized its current and past practices relating to Purchaser’s diversity practices (“Diversity Practices Statement”). This statement, included as Attachment “A” to this Plan, identifies and describes Purchaser’s processes used to develop diversity at all levels of Purchaser’s organization including, but not limited to, board and managerial positions. This Diversity Practices Statement summarizes Purchaser’s strategic business plans specific to its current or past practices of M/W/DSBE utilization on its government and non-government projects and procurement activities. Purchaser further agrees to identify any “Equity Ownership” held in connection with this Project which shall mean the percentage of beneficial ownership in the Purchaser’s organization or development team that is held by minority persons,

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<sup>1</sup>Disadvantaged Business Enterprises (“DBEs”) are those socially or economically disadvantaged minority and woman owned businesses certified under 49 C.F.R. Part 26.

women and disabled persons. In the event Equity Ownership is identified, Purchaser agrees to abide by the reporting requirements enumerated in Section 17-1603 (1)(g)(.3).

Purchaser hereby verifies that all information submitted to the City in response to this Plan, is true and correct and is notified that the submission of false information is subject to the penalties of 18 Pa.C.S. Section 4904 (relating to unsworn falsification to authorities) and 18 Pa.C.S. Section 4107.2 (a)(4) (relating to fraud in connection with **minority business** enterprises or women's business enterprises).

For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by OEO. Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency<sup>2</sup> will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at [www.phila.gov/oEO/directory](http://www.phila.gov/oEO/directory).

For this Plan, the term "Best and Good Faith Efforts," the sufficiency of which shall be in the sole determination of the City, means: efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and an appropriately diverse workforce and to achieve the objectives herein stated. Best and Good Faith Efforts are rebuttably presumed met, when commitments are made within the M/W/DSBE Participation Ranges established for this development and a commitment is made to employ a diverse workforce as enumerated herein.

## II. Goals

### A. M/W/DSBE Participation Ranges

The City of Philadelphia has established a citywide goal of 35% M/W/DSBE utilization as informed by its Annual Disparity Study.<sup>3</sup> This citywide goal should be used as a benchmark for the Purchaser's expression of Best and Good Faith Efforts which are efforts taken by Purchaser to provide meaningful and representative opportunities for M/W/DSBEs in the Project. For this project, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable through the exercise of Best and Good Faith Efforts is stated below as participation ranges. These percentages relate to the good faith estimated cost of the entire Project. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. These ranges are based upon an analysis of factors such as the size and scope of the development and the availability of MBEs, WBEs, DSBEs and DBEs to participate in this Project:

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<sup>2</sup>A list of "OEO approved certifying agencies" can be found at [www.phila.gov/oEO](http://www.phila.gov/oEO)

<sup>3</sup> The City of Philadelphia FY'16 Annual Disparity Study recommends an overall goal of 35% based upon an analysis of FY'16 utilization and availability.

MBE	WBE

B. Workforce Goals for a Diverse Workforce

As a benchmark for the expression of “Best and Good Faith Efforts” to provide meaningful and representative opportunities for diverse workers in the Project, the following goals have been established for the employment of minority persons and females in the Project workforce of apprentices and journeymen at the following levels<sup>4</sup>:

African American Journeypersons – 22% of all journey hours worked across all trades

Asian Journeypersons – 3% of all journey hours worked across all trades

Hispanic Journeypersons – 15% of all journey hours worked across all trades

Female Journeypersons – 5% of all journey hours worked across all trades

Minority Apprentices – 50% of all hours worked by all apprentices

Female Apprentices – 5% of all hours worked by all apprentices

III. Responsiveness

A. Purchaser shall, and shall cause its participants to identify all M/W/DSBE commitments and agree to employ a diverse workforce on the form entitled, “M/W/DSBE Participation and Workforce Commitments.” The commitments on this form constitute a representation that the identified M/W/DSBE is capable of providing commercially useful goods or services relevant to the commitments and that the Purchaser and its participants have entered into legally binding agreements with the listed M/W/DSBEs for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, the standard mathematical rules apply in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern.

B. M/W/DSBE commitments are to be memorialized in a written subcontract agreement. Letters of intent, quotations, contracts, subcontracts and any other documents evidencing commitments with M/W/DSBEs, including the M/W/DSBE Participation and Workforce Commitments Form, become part of and an exhibit to this Plan.

C. DHCD will review the M/W/DSBE Participation and Workforce Commitments Form for the purpose of determining whether Best and Good Faith Efforts have been made. DHCD reserves the right to request further documentation and/or clarifying information at any time during the construction and development of the Project.

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<sup>4</sup> These goals are informed by the City of Philadelphia’s annual disparity assessment of workforce diversity, the “Economic Opportunity Plan Employment Composition Analysis Fiscal Year 2016.”

D. If Purchaser, its participants or any subsequent developer makes any changes in contracts that have been reviewed by DHCD under the Plan, or if Purchaser at the time of Closing has not yet identified contracts entered into for the development of the Project, then Purchaser, its participants or any subsequent developer shall have the obligation to inform DHCD of any changes to the approved Plan and shall use Best and Good Faith efforts to use M/W/DSBEs for any new contracts.

#### IV. Compliance and Monitoring of Best and Good Faith Efforts

A. A hard copy of this Plan, as certified below by OEO, shall be filed with the Chief Clerk of City Council within fifteen (15) days of Closing. The Plan shall be filed with:

Michael Decker, Chief Clerk of City Council  
Room 402 City Hall  
Philadelphia, Pennsylvania 19107

B. Purchaser and its participants agree to cooperate with DHCD in its compliance monitoring efforts, and to submit, upon the request of DHCD, documentation relative to their implementation of the Plan, including the items described below:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;
  - Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation; and
  - Telephone logs and correspondence relating to M/W/DSBE commitments.
- To the extent required by law, the Purchaser and its participants shall ensure that all its on-site contractors maintain certified payrolls which include a breakout of hours worked by minority and female apprentices and journeypersons; these documents are subject to inspection by the City.

#### C. Prompt Payment of M/W/DSBEs

1. The Purchaser and its participants agree and shall cause all its contractors to ensure that all M/W/DSBEs participating in the Project receive payment for their work or supply effort within five (5) business days after receipt of a proper invoice following satisfactory performance.

#### D. Oversight Process

1. Where the dollar value of development is in excess of Five Million Dollars (\$5,000,000), the Plan shall establish a Project Oversight Committee, consisting of, as appropriate, the contractor, developer or recipient of financial assistance and representatives of the Purchaser, PRA, OEO, DCHD, City Council, and appropriate community organizations. Such Committee shall meet regularly, beginning no later

than the initiation of the design phase of the project, and shall be responsible for facilitating compliance with the Plan. OEO will implement the Oversight Process, as required by Section 17-1603(b) of The Philadelphia Code. The Oversight Committee, through the Oversight Process, shall have within its purview the reconciliation of all compliance related issues or grievances. The Oversight Committee Process, as needed, will involve convening individual consultation or periodic small group meetings to include any or all of the constituent parties.

V. Remedies and Penalties for Non-Compliance

A. The Purchaser acknowledges and agrees that its compliance with the requirements of this Plan is a material inducement for the Ordinance of City Council and Purchaser's failure to substantially comply with the Plan may result in enforcement actions and the imposition of penalties as authorized by Sections 17-1605 and 17-1606 of The Philadelphia Code. Notwithstanding the foregoing, no privity of contract exists between PRA, the City and any M/W/DSBE identified in any contract resulting from implementation of the Plan. Neither PRA nor the City intends to give or confer upon any such M/W/DSBE any legal rights or remedies in connection with subcontracted services under any law or policy or by any reason of any contract resulting from implementation of the Plan except such rights or remedies that the M/W/DSBE may seek as a private cause of action under any legally binding contract to which it may be a party.

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PRINT NAME OF PURCHASER	DATE
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SIGNATURE OF PURCHASER	DATE
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LYNN NEWSOME, DHCD COMPLIANCE DIRECTOR	DATE
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IOLA HARPER, DIRECTOR, OFFICE OF ECONOMIC OPPORTUNITY <sup>5</sup>	DATE
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<sup>5</sup> Pursuant to Section 17-1603 (2) of The Philadelphia Code, the representative of the City of Philadelphia's Office of Economic Opportunity, the "certifying agency", certifies that the contents of this Plan are in compliance with Chapter 17-1600.

EXHIBIT E  
DECLARATION OF RESTRICTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS

**DECLARATION OF RESTRICTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**THIS INDENTURE** (the “**Declaration**”), made as of \_\_\_\_\_, 20 \_\_, by DEVELOPER NAME, a natural person OR STATE limited liability company OR STATE limited partnership OR STATE general partnership OR STATE corporation (“**Owner**”), with offices located at DEVELOPERS MAILING ADDRESS.

**WITNESSETH**

**WHEREAS**, Owner is purchasing certain real estate located at PROPERTY ADDRESS and more fully described on Exhibit A attached hereto and made a part hereof (the “**Property**”) from the Philadelphia Land Bank (the “**Land Bank**”), a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, with offices at 1234 Market Street, 16<sup>th</sup> Floor, Philadelphia, Pennsylvania, 19107;

**WHEREAS**, Owner desires to construct on the Property VERBAL NUMBER (NUMERIC) single family homes and related site improvements (individually, a “**Home**”) which will be sold to an Original Buyer or Qualified Purchaser (as defined below);

**WHEREAS**, the Land Bank desires to advance the public interest in the creation and retention of workforce OR affordable housing within the City of Philadelphia (the “**City**”) and to assure that resale of a Home is at a price that continues its affordability to a Qualified Purchaser;

**WHEREAS**, Owner has agreed to subject the Property to the covenants, conditions and restrictions set forth below.

**NOW, THEREFORE**, in consideration of conveyance of the Property and in order to fulfill the above-stated public interest, and for other good and valuable consideration, Owner, for itself, its successors and assigns, hereby declares that from this date forward the Property is and shall be held, transferred, sold, conveyed, used, occupied, and encumbered subject to the conditions and restrictions set forth below as if said covenants were set forth in the deed by which Owner acquired title to the Property, and said conditions for all purposes shall be deemed to run with the land.

1. The Preambles of this Declaration are incorporated herein as though set forth in full.

2. In addition to the terms defined above, the following terms, when used in this Declaration, shall have the following meanings:

**Adjusted Purchase Price** means the sum of i) the Purchase Price; ii) the reasonable and customary closing costs paid by either the Original Buyer or a Qualified Purchaser, as the case may be, at the time of their purchase and iii) reasonable and customary closing costs estimated to be paid by either the Original Buyer or a Qualified Purchaser, as the case may be, upon the sale of the Home.

**Affordable Price** means the Adjusted Purchase Price as increased (but not decreased) based on the change in the Consumer Price Index for All Urban Consumers for the Philadelphia, Wilmington, Atlantic City area for All Items (1982-84=100) as published by the U.S. Department of Labor (“**CPI-U**”) between the date of purchase by the Original Buyer or the Qualified Purchaser, as the case may be, and the date the Home is listed for sale calculated as follows:

The Adjusted Purchase Price shall be multiplied by a fraction, the denominator of which is the CPI-U for the month and year the Home is listed for sale and the numerator of which is the difference between the CPI-U for the month and year the Home is listed for sale and the CPI-U for the month and year of the purchase of the Home, which product shall then be added to the Adjusted Purchase Price to arrive at the Affordable Price.

If the format or components of the CPI-U are materially changed after the date of sale to the Original Buyer, The Land Bank may substitute an index that is published by the Bureau of Labor Statistics or similar agency, which is comparable to the CPI-U.

**Extended Compliance Period** means an additional ten (10) year term beginning on the date of each Transfer which occurs during the Original Compliance Period or, if applicable, an Extended Compliance Period. However, an Extended Compliance Period and this Declaration shall terminate automatically on a date which is thirty (30) years from the beginning of the Original Compliance Period.

**First Mortgagee** means a bank, financial institution or other institutional lender that provides financing which is secured by a first lien mortgage on a Home.

**Original Compliance Period** means a period of ten (10) years beginning on the date of sale to the Original Buyer.

**Original Buyer** means an individual(s), as approved by the Land Bank, who is purchasing the Home from the Owner and whose household income at the time of purchase does not exceed INSERT VERBAL PERCENT percent (INSERT NUMERIC PERCENT %) of the median family income for the area as determined by the United States Department of Housing and Urban Development (“**HUD**”).

**Purchase Price** means the stated consideration as appears on the deed conveying the Home from Owner to the Original Buyer or subsequent deed to a Qualified Purchaser.

**Qualified Purchaser** means an individual(s), as approved by the Land Bank, who is purchasing the Home from the Original Buyer (or other Qualified Purchaser) and whose household income at the time of purchase does not exceed INSERT VERBAL PERCENT percent (INSERT NUMERIC PERCENT %) of the median family income for the area as determined by HUD.

**Transfer** means the sale, transfer, conveyance or other disposition of a Home but shall exclude any conveyance for nominal consideration which occurs as part of marriage, divorce, or death. The grantee of such nominal consideration transfer shall be considered the “**Original Buyer**” or “**Qualified Purchaser**”, as applicable.

3. Owner, and any successor in title, shall not sell or transfer the Property or any portion thereof without the prior written consent of the Land Bank.

4. Following the issuance of a Certificate of Occupancy by the City's Department of Licenses and Inspections, Owner shall sell each Home to an Original Buyer at a price approved in writing by the Land Bank, which price shall not exceed INSERT VERBAL PRICE Dollars (\$ NUMERIC).

5. During the Original Compliance Period or Extended Compliance Period, if applicable, the following conditions shall apply to each Home:

- a. The Home must be owned and occupied as the principal residence of the Original Buyer or Qualified Purchaser.
- b. Original Buyer or Qualified Purchaser will not complete a Transfer of the Home without first offering the Home to the Land Bank in writing at the Affordable Price. Such offer shall require the Original Buyer or Qualified Purchaser to deliver a special warranty deed, free and clear of all liens and encumbrances and each party shall pay the customary apportionment of real estate taxes, utility service charges and transfer taxes. The Land Bank shall have thirty (30) days to notify the Original Buyer or Qualified Purchaser in writing of its intent to exercise this right of first refusal and an additional thirty (30) days to complete the purchase of the Home.
- c. Except for a Transfer to the Land Bank pursuant to section 5(b), any Transfer must be to a Qualified Purchaser for an Affordable Price as approved by the Land Bank.

6. This Declaration shall automatically terminate for a Home upon any of the following events:

- a. At the end of the Original Compliance Period, if no Transfer occurs prior to that date; or
- b. Upon a transfer pursuant to a foreclosure sale to the First Mortgagee, a deed-in lieu of foreclosure to the First Mortgagee or an assignment of the first mortgage to the Secretary of HUD; or
- c. Thirty (30) years from the date of the sale from Owner to the Original Buyer.

7. This Declaration may be terminated by the Land Bank in its sole discretion.

8. Owner, its successors and assigns, shall not discriminate on the basis of race, color, religion, sex or national origin in the sale or in the use or occupancy of this Property or any improvements to be erected thereon.

9. Notwithstanding anything to the contrary contained in this Declaration, the Owner, for itself, its heirs, successors, and assigns, agrees that the terms, covenants, conditions, and restrictions contained in this Declaration (i) are for the benefit of the Land Bank and the City and (ii) shall be **COVENANTS**

**RUNNING WITH THE LAND.** In any deed of conveyance of the Property or any part thereof, the terms, covenants, conditions, and restrictions contained in this Declaration shall be incorporated by reference to this Declaration and the record hereof or as fully as the same are contained herein.

10. The covenants, conditions and restrictions contained herein may be enforced by the Land Bank, its successors and assigns, or the City. Notwithstanding any law to the contrary, this Declaration may not be terminated or cancelled by any party, except by the Land Bank, its successors and assigns, or the City.

**IN WITNESS WHEREOF**, Owner has executed this Declaration the day and year first above written.

Attest

\_\_\_\_\_

**OWNER**  
DEVELOPER NAME

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest

\_\_\_\_\_

**OWNER**  
DEVELOPER NAME

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NOTARY ACKNOWLEDGEMENT – INDIVIDUAL (CAN BE MORE THAN ONE)

COMMONWEALTH OF PENNSYLVANIA :  
: ss  
COUNTY OF PHILADELPHIA :

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared NAME OF ALL PERSONS SIGNING AS INDIVIDUALS, a natural persons(s), known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission expires:



NOTARY ACKNOWLEDGEMENT – LLC WITH SOLE MEMBER BEING A NATURAL PERSON

COMMONWEALTH OF PENNSYLVANIA :  
: ss  
COUNTY OF PHILADELPHIA :

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared SIGNER’S NAME known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument who acknowledged that he/she is the sole member of DEVELOPER, a STATE limited liability company, and that he/she as such member, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission expires:



EXHIBIT A  
LEGAL DESCRIPTION

INSERT LEGAL DESCRIPTION