DEVELOPMENT ENFORCEMENT

NOTE AND MORTGAGE AGREEMENT

This Development Enforcement Note and Mortgage (the “Agreement”) is made as of this __ day of _____, 20___ by and between the **Allegany County Land Bank Corporation**, a New York not-for-profit corporation having an office for the transaction of business at 6087 State Route 19N, Suite 300, Belmont, New York 14813 (the “Land Bank”) and _____, a New York _____ having an address of _____, (the “Developer”), referred to collectively herein as the “Parties.”

RECITALS

WHEREAS, the Land Bank has agreed to sell to Developer, and Developer has agreed to purchase from the Land Bank, a certain parcel of real property situate in the County of Allegany, State of New York and commonly known as _____ (INSERT ADDRESS), constituting current Allegany County tax parcel #_____ and specifically described on Schedule A attached hereto (the "Property"); and

WHEREAS, as a material component of the consideration for the purchase and sale of the Property, Developer has agreed to improve, develop and use the Property (the "Development Plan") in a manner specified in a certain Property Purchase Application submitted by Developer to the Land Bank dated _____, and attached hereto and made a part hereof as Schedule B (the "Application"); and

WHEREAS, Developer acknowledges that the Land Bank would not have agreed to sell the Property to Developer absent Developer's commitment to complete the Development Plan and this Agreement is intended to ensure that Developer fulfills the Development Plan and, until such time, Developer pledges the Property as security for the completion of the Development Plan and any indebtedness associated with the failure to complete the Development Plan.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Developer Obligations**. Developer hereby covenants and agrees to the following material conditions of this Agreement:

    a. Developer shall improve, develop, redevelop, and/or repair the Property in accordance with the Development Plan on or before _____, 20__ (INSERT DATE ONE YEAR FROM CLOSING) (the "Completion Date"); and

b. Developer shall use the Property solely for the purpose(s) specified in the Development Plan; and

c. Developer shall comply with all federal, state, county, city, town and other applicable laws, ordinances, rules and regulations and all orders and rules of any duly constituted authorities affecting the Property, or the use and occupancy of the Property (collectively "Laws"); and

d. Developer shall remedy any and all outstanding building and zoning code violations at the Property prior to the Completion Date.

e. Developer shall not create or allow any nuisance to exist in or on the Property; and

f. Developer shall pay when due all taxes, liens, judgments, assessments, sewer and water charges and environmental clean-up costs which may be required by a governmental authority with appropriate authority affecting or pertaining to the Property, and Developer shall furnish evidence of payment of same on the Land Bank's demand; and

g. Developer shall keep the Property and all improvements insured against loss by fire, with extended coverage endorsement, and such other hazards (and in such amounts) in an amount and as the Land Bank may otherwise reasonably require. All policies shall have endorsed thereon the standard New York mortgagee clause in the name of the Land Bank as an additional insured. Developer shall also, on the Land Bank's demand, furnish evidence of coverage to the Land Bank and assign and deliver such policies to the Land Bank.

2. **Term**. The term of this Agreement (the "Term") shall commence on the date title to the Property is transferred from the Land Bank to Developer and shall end on the Completion Date, unless sooner terminated hereunder, at which time neither Party will have any further rights or obligations under this Agreement against each other except that, in the Default Event and the subsequent failure of the Developer to pay the Indebtedness (as hereafter defined), then the security interest created by this Agreement will continue until the amount of the Indebtedness and all costs of collection and other amounts payable under the terms of this Agreement have been paid in full by Developer. So long as no Default Event has occurred and is continuing, this Agreement shall be automatically terminated without further action by either Party upon issuance by the Land Bank to Developer of a Certificate of Substantial Completion (as hereafter defined). Upon a request by Developer, the Land Bank, after the issuance of a Certificate of Substantial Compliance, shall execute and deliver to Developer a satisfaction or discharge of Mortgage in proper form for recording in the County Clerk's office.

3. **Certificate of Substantial Completion.** On or before the Completion Date, time being of the essence, Developer shall provide the Land Bank with copies of any and all building permits, certificates of completion, certificates of occupancy certificates of adequacy, certificates of inspection and/or other similar permits or certificates obtained for the Property as may be required by any Laws or as may be reasonably requested by the Land Bank (the "Certificates") and any drawings, plans, receipts, photographs, specifications and/or other documentation reasonably requested by the Land Bank confirming that Developer has completed the Development Plan. The Land Bank shall determine, with commercially reasonable expedience, whether performance of the Developer is in "Substantial Completion" (as defined herein) with the Development Plan. At a mutually agreeable time, Developer will allow Land Bank employees and/or its agents access to the Property for the purpose of inspecting the Property to assist in the determination as to whether Developer is in Substantial Compliance with the Development Plan. If the Land Bank determines in its sole but reasonable discretion that the Developer is in Substantial Compliance with the Development Plan, it shall issue Developer a Certificate of Substantial Completion, which Certificate shall be issued within twenty (20) days from the date of such inspection.

   For the purpose of this Agreement, "Substantial Completion" shall mean (i) completing the Development Plan on or before the Completion Date; (ii) completing the Development Plan in a good and workmanlike manner; and (iii) applying for and receiving any and all Certificates as may be required by any Laws.

4. **Default**. The occurrence of any of the following and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Land Bank to the Developer, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Developer to commence to cure within such thirty (30) day period and to prosecute the same with due diligence, shall constitute an “Default Event” under this Agreement:

   a. Substantial Completion. Developer fails to achieve Substantial Compliance as evidenced by a Certificate of Substantial Completion on or before the Completion Date.

   b. Prohibited Act(s) and/or Omission(s). Developer takes any action prohibited by this Agreement or fails to take any action required by this Agreement.

   c. Sale, Transfer, Encumbrance. Developer sells, transfers, or encumbers the Property or any interest in the Property during the Term without the prior written consent of the Land Bank. The prior written consent to any particular sale or transfer will in no way operate as a consent to any future sales or transfers occurring after such consent is given.

   d. Change in Control. Developer ceases to exist because of a business combination or the sale of a substantial part of its business, including but not

limited to any transfer of a majority of the stock or membership interests of Developer (or the transfer of more than 50 percent in interest of Developer if Developer is a partnership) whether in one or a series of transactions, and any merger or consolidation of Developer with any other entity, shall be deemed to be a sale or transfer hereunder. Consent to any such transfer during the Term shall, however, not be unreasonably withheld as long as Developer (i) retains an ownership interest in the Property or in any business entity to which the Property shall be transferred, and (ii) retains control of, and responsibility for, implementing the Development Plan.

e. Breach of Nonpayment Covenants. Borrower fails to perform any covenant or agreement contained in the sections of this agreement pertaining to the use of proceeds, notices of default, liens, encumbrances, and/or payment of taxes.

f. Breach of Representation and/or Warranty. A representation by borrower proves to be untrue, incomplete, or misleading at the time made.

g. Cross-default. Borrower defaults on the payment of or performance under debt owed to another lender such that the default results in the acceleration of the maturity of such debt obligation.

h. Dissolution or Bankruptcy. Borrower is dissolved or becomes subject to voluntary or involuntary bankruptcy proceedings.

i. Judgment Liabilities. Aggregate amount (excluding amounts that may be subject to appeal and amounts for which the borrower has set aside reserves) of unsatisfied judgments, decrees, or orders for the payment of money against the borrower exceeds $_____.

j. Responses to Lender Information Requests for Financial Statements. Failure to submit, at any time during the Term of this Agreement, any reasonably requested financial, operational, and/or institution information to the Land Bank within ten (10) business days.

k. Other Default. Developer's unexcused failure to perform any other term, covenant, or condition contained in this Agreement and such unexcused failure to perform continues for a period exceeding thirty (30) days after written notice thereof is given by the Land Bank to the Resident, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Resident to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.

5. **Indebtedness**. Upon the occurrence of a Default Event, Developer agrees that it will be indebted to and shall pay the Land Bank the sum of _____**and ___/100 Dollars ($_____)** (the "Indebtedness") in cash or other good funds in form acceptable to the Land Bank

not less than twenty (20) days after service of written notice to Developer that such Indebtedness is due and owing.

6. **Default Event, Liquidated Damages**. Developer and Land Bank acknowledge that the injury to the Land Bank upon a Default Event by Developer would be difficult or impossible to determine and quantify, that the aforementioned Indebtedness represents the Parties' best and most accurate estimate of the damages that would be suffered by the Land Bank with a Default Event by Developer, that such estimate is reasonable under the circumstances existing as of the date of this Agreement and under the circumstances that the Land Bank and Developer reasonably anticipate would exist at the time of such Default Event. Accordingly, in lieu of actual damages for a Default Event, Developer agrees that the Indebtedness remedy set forth herein as Liquidated Damages may be assessed and recovered by the Land Bank as against Developer without the Land Bank being required to present any evidence of the amount or character of actual damages sustained by reason thereof.

7. **Mortgage**. To secure the performance of Developer hereunder and the payment of the Indebtedness plus all other obligations including, but not limited to, interest and fees owed now or in the future by Developer to the Land Bank pursuant to this Agreement, Developer hereby mortgages all of Resident's right, title, and interest in the Property to the Land Bank, as the senior secured interest in the Property, to which any other secured interest(s) shall hereinafter be subordinate, absent express prior approval from the Land Bank, and as provided herein, to the fullest extent permitted by law:

   TOGETHER WITH any buildings or improvements now or hereafter located thereon,

   TOGETHER WITH all fixtures and personal property which now are or which later may be attached to or used or useful in connection with the Property (not including household furniture),

   TOGETHER WITH any and all easements, rights-of-way, gores of land, streets, sewer rights, utility rights, water rights, and all estates, rights, titles, interests, privileges, and appurtenances of any nature whatsoever relating or pertaining to the Property,

   TOGETHER WITH any right, title and interest of the Developer in and to any and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Property to the center line thereof, and

   TOGETHER WITH all condemnation awards for any taking by a government or agency of the whole or part of the property or buildings or any easement in connection with the Property. This includes awards for changes of grade of streets.

8. **Receiver**. If, following an Event of Default, the Land Bank commences an action to foreclose the mortgage described in this Agreement, the Land Bank shall have the right to have a receiver appointed by a court of competent jurisdiction to take control of the Property and collect rents, if any.

9. **Sale in One or More Parcels**. In case of a foreclosure sale, the Property may be sold in one or more parcels, any provision of any statute, regulation or other law to the contrary notwithstanding.

10. **Collection Costs and Fees**. Developer agrees to pay all costs, charges and expenses, including reasonable attorneys' fees, which are: incurred by the Land Bank in connection with preserving or protecting the Land Bank's rights and interests under this Agreement whether or not a legal action is filed; or incurred by the Land Bank in any action or proceeding to foreclose the Mortgage or to collect the Indebtedness and other amounts secured by the Mortgage. Such amounts together with interest as provided for herein shall be added to the Indebtedness then due and will be a lien on the Property, prior to any right or title to, interest in, or claim upon said Property attaching or accruing subsequent to the lien of the Mortgage, and will be deemed to be secured by the Mortgage.

11. **Interest**. Any payment due and owing from Developer to the Land Bank hereunder which is not made within ten (10) days of the date when due shall accrue interest at a rate of fifteen percent (15%) per annum.

12. **Right of Entry**. For the purpose of assuring compliance with this Agreement, Land Bank agents, officers and employees shall have the right to enter on and inspect the Property at reasonable times upon prior notice to and with the consent of the Developer, which consent shall not be unreasonably delayed, conditioned or withheld.

13. **Assignment of Leases and Rents**. Developer hereby assigns to the Land Bank the rents, issues and profits of the Property as further security for the payment of said Indebtedness, and all other amounts secured hereby. The Developer grants to the Land Bank the right to enter upon and to take possession of the Property for the purpose of collecting the same and to lease the Property or any part thereof, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on account of said Indebtedness and all other amounts secured hereby. This assignment and grant will continue in effect until all sums secured hereunder are fully and irrevocably paid. The Land Bank hereby waives the right to enter upon and to take possession of said Property for the purpose of collecting said rents, issues and profits, and the Developer will be entitled to collect and receive said rents, issues and profits, until default under any of the covenants, conditions or agreements contained in this Agreement, but such right of the Developer may be revoked by the Land Bank upon a default hereunder.

14. **Trust Fund Provisions**. This Agreement is subject to the trust fund provisions of Section 13 of the Lien Law of the State of New York.

15. **Subordination**. The Land Bank acknowledges that all terms and conditions of this Agreement, including the lien established by the mortgage herein, shall be subject and subordinate to any purchase money mortgage given by Developer to an unrelated, institutional third party lender to finance the acquisition of the Property and/or the implementation of the Development Plan.

16. **Notices**. Any notice required or permitted to be given under or pursuant to the terms of this Agreement, shall be in writing and shall be deemed to have been duly given if personally delivered, delivered by an overnight courier service or mailed by certified mail return receipt requested, postage and registry fees prepaid in the event of mailing, and in all events addressed to the Party to receive such notice at the address set forth at the beginning of this Agreement. By notice sent in accordance with this section, any Party may change the address to which further notice shall be sent. All notices shall be deemed given when mailed or delivered in the manner provided in this section.

17. **Right and Remedies are Cumulative.** Each right and remedy of the Land Bank provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing at law or in equity, by statute or otherwise.

18. **Relationship of the Parties**. Nothing contained herein shall be deemed or construed by the Parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the Parties hereto.

19. **Joint and Several Liability**. If this Agreement is executed by two or more entities or persons, they shall be jointly and severally liable, and all provisions of this Agreement shall apply to each and all of them.

20. **Severability**. If any provision of this Agreement or the application thereof to any Party or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other Parties or circumstances shall not be affected thereby and that provision shall be enforced to the greatest extent permitted by law.

21. **Effect of Land Bank's Waiver**. The Land Bank's waiver of breach of one covenant or condition of this Agreement is not a waiver of breach of others, or of subsequent breach of the one waived.

22. **Agreement Applicable to Successors**. This Agreement and the covenants and conditions hereof apply to and are binding on the heirs, successors, executors, administrators and assigns of the Parties hereto.

23. **No Drafter**. The Parties agree this Lease is the result of mutual negotiation and compromise and for the purposes of construction and interpretation, no one Party prepared or drafted this Lease.

24. **Governing Law.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of New York.

25. **Venue**. In the event of a lawsuit, the parties herein agree to submit to the jurisdiction of the Courts of Allegany County, State of New York.

26. **Authority to Enter into Agreement**. Each Party hereto hereby warrants and represents that it has the necessary power and authority to enter into this Agreement and that it has taken all necessary action in order to enter into this Agreement.

27. **Enforcement, Signatures Required**. This Agreement shall not be enforceable unless and until approved by the Parties' respective attorney(s), if any, and signed by the Parties hereto.

28. **Representations.** The Land Bank has not made any representations or promises to Developer as to any matter or thing except as may be specifically set forth in this Agreement, and Developer hereby acknowledges that Developer is not relying on any representation of any kind or nature other than as may be set forth in this Agreement.

29. **Headings**. The headings in this Agreement are used solely for convenience of the Parties and shall not be considered in interpreting the meaning of any provision(s) herein.

30. **Jury Waiver**. The Land Bank and Developer agree to the fullest extent permitted by law, that the Land Bank and Developer waive any right to a jury trial in any action involving or proceeding relating to this Agreement or to the performance of either Party's obligations hereunder in which the Land Bank and Developer are adverse to one another.

31. **Recording Tax**. The Land Bank will record or cause this Agreement to be recorded in all offices where recordation hereof is necessary and will pay, or cause to be paid, all mortgage recording taxes, if any, which may be imposed by the State of New York or other governmental authority upon this Agreement. All recording costs and applicable taxes will be passed on to the seller at closing.

32. **Entire Agreement**. This Agreement constitutes the entire agreement of the Parties concerning the subject matter hereof, and it may be amended only by a document signed by the Party against whom any such change is sought to be enforced. This Agreement supersedes all prior or contemporaneous understandings, agreements, and negotiations, all of which are merged into this Agreement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the day first set forth above.

ALLEGANY COUNTY LAND BANK CORPORATION	DEVELOPER
By: _____	_____
Please print name	Please print name

STATE OF NEW YORK)
COUNTY OF ALLEGANY) ss.:

On the _____ day of _____, 20____, before me, the undersigned, personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

STATE OF NEW YORK)
COUNTY OF ALLEGANY) ss.:

On the _____ day of _____, 20____, before me, the undersigned, personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

SCHEDULE A

PROPERTY DESCRIPTION

SCHEDULE B

APPLICATION