RESIDENCY ENFORCEMENT MORTGAGE

This Residency Enforcement 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 natural person residing presently at _____, New York _____ ("Resident"), referred to collectively herein as the "Parties."

RECITALS

WHEREAS, the Land Bank has agreed to sell to Resident, and Resident 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, Resident has agreed to improve, develop and use the Property (the "Development Plan") in a manner specified in a certain Property Purchase Application submitted by Resident to the Land Bank dated _____, and attached hereto and made a part hereof as Schedule B (the "Application"); and

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

Commented [J1]: Please enter the definition of indebtedness as it relates to Default Events. Please ensure "event of default" is replaced by Default Event throughout all documents

WHEREAS, the Land Bank has agreed to sell the Property to Resident upon the condition that the Resident, or Resident's approved by the Land Bank Board of Directors, successor in interest (Resident and Resident's approved successor in interest are hereafter collectively "Resident"), occupies the Property as Resident's principal residence; and

WHEREAS, as a material component of the consideration for the purchase and sale of the Property, Resident has agreed to occupy and use the Property as Resident's principal residence for a period of at least five (5) years; and

WHEREAS, Resident acknowledges that the Land Bank would not have agreed to sell the Property to Resident absent Resident's commitment to occupy and use the

Property as Resident's principal residence for a period of at least five (5) years, and this Agreement is intended to ensure that Resident fulfills such commitment; and

Commented [J2]: Please insert language to the effect of: Any covenants concerning occupanct or affordability shall pass to any subsequent Residents that occucy property for five years following this agreement.

WHEREAS, Resident pledges the Property as security for Resident's commitment to occupy and use the Property as Resident's principal residence for a period of at least five (5) years and, in the event of Resident's failure to fulfill such commitment, Resident agrees to repay the Recapture Obligation (as defined herein) to the Land Bank in accordance with the terms of this Agreement.

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. **Definition of "Principal Residence"**. The term "Principal Residence" means the property that Resident uses as his or her residence. If Resident uses more than one property as his or her residence, Resident's Principal Residence is the property in which Resident lives for the majority of the time during the year and not less than half of the year.
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 Resident 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 Resident 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 Resident. 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 Resident of a Certificate of Substantial Completion (as hereafter defined). Upon a request by Resident, the Land Bank, after the issuance of a Certificate of Substantial Compliance, shall execute and deliver to Resident 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, Resident 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 Resident has completed the Development Plan. The Land Bank shall determine, with commercially reasonable expedience, whether performance of the Buyer is in "Substantial Completion" (as defined herein) with the Development Plan. At a mutually agreeable time, Resident 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 Resident is in Substantial Compliance with the Development Plan. If the Land Bank determines in its sole but reasonable discretion that the Resident is in Substantial Compliance with the Development Plan, it shall issue Resident 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.

5. **Resident's Obligations**. Resident hereby agrees, represents and warrants as follows:

a. Resident shall occupy and use the Property as the Resident's Principal Residence within sixty (60) days of the Term Commencement Date (as defined in Section 3 hereof) and shall continue to occupy and use the Property as the Resident's Principal Residence, on an uninterrupted basis, during the Term of this Agreement; and

b. Buyer 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

c. Upon the Land Bank's demand, Resident shall provide proof satisfactory to the Land Bank that Resident is using and occupying the Property as Resident's Principal Residence; and

d. Resident 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

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

f. Resident 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 Resident shall furnish evidence of payment of same on the Land Bank's demand; and

g. Resident shall keep the Property and all improvements insured against loss by fire, with extended coverage endorsement, and such other hazards and/or

potential liabilities (and in such amounts) as the Land Bank may reasonably require from time to time. All policies shall have endorsed thereon the standard New York mortgagee clause in the name of the Land Bank as an additional insured. Resident 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.

6. **Term**. The term of this Agreement (the "Term") shall commence on the date title to the Property is transferred from the Land Bank to Resident (the "Term Commencement Date") and shall end on the day prior to the fifth (5th) anniversary of the Term Commencement 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, if an Default Event occurs and Resident fails to pay the Recapture Obligation (as hereafter defined), then the security interest created by this Agreement will continue until the amount of the Recapture Obligation and all costs of collection and any other amounts payable under the terms and conditions of this Agreement have been satisfied fully by Resident.

7. **Discharge of Mortgage**. Upon written request by Resident, after the expiration of the Term and so long as no Event of Default has occurred and is continuing under the terms of this Agreement, the Land Bank shall execute and deliver to Resident a satisfaction or discharge of Mortgage in proper form for recording in the County Clerk's office.

8. **Default**. The occurrence of any one or more of the following shall constitute a "Default Event" under this Agreement:

   a. Breach of Residency Covenant. Resident's failure to comply with the principal residency obligation set forth in Section 2(a) hereof.

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

   c. Change in Control. Resident's sale or transfer all of 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. Any transfer of a majority of the stock or membership interests of Resident (or the transfer of more than 50 percent in interest of Resident if Resident is a partnership or limited liability company) whether in one or a series of transactions, and any merger or consolidation of Resident with any other entity, shall be deemed to be a sale or transfer hereunder.

   d. Sale, Transfer, Encumbrance. Developer sells, transfers, or encumbers the Property, or any interest thereto, at any time during the Term, without the prior written consent of the Land Bank. The prior written consent to any particular

sale, transfer, or encumbrance, will in no way operate as a consent to any future sale(s), transfer(s), or encumbrance(s) occurring after such consent is given.

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 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. Resident'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.

9. **Recapture Obligation**. Upon the occurrence of an Default Event in the first year of the Term, Resident agrees that Resident will be indebted to and shall pay the Land Bank the sum of _____ **and 00/100 DOLLARS ($_,000.00)** (the "Recapture Obligation") in cash or other good funds in form acceptable to the Land Bank within twenty (20) days after written notice that such Recapture Obligation is due and owing is given to Resident. Upon the occurrence of a Default Event after the first year of the Term, the Recapture Obligation shall decrease by an amount equal to 20% of the original Recapture Obligation for each year after the first year of the Term in which the Event of Default occurs and shall otherwise be payable in the same manner as the original Recapture Obligation. Resident and the Land Bank acknowledge that the damages to the Land Bank upon a Default Event by

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Commented [J4]: Please insert language to the effect of : Buyer will pay land bank the amount of money that the land bank has invested, up to the Default Event, in a bond held in escrow, refunded to buyer after Certified Completion of work plan. (Same as in Development Enf. Note and Mortgage)

Resident would be difficult or impossible to determine, that the amount of the Recapture Obligation represents the Parties' best and most accurate estimate of the damages that would be suffered by the Land Bank with a Default Event by Resident, 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 Resident reasonably anticipate would exist at the time of such Default Event. Accordingly, in lieu of actual damages for a Default Event, Resident agrees that the Recapture Obligation may be assessed and recovered by the Land Bank as against Resident without the Land Bank being required to present any evidence of the amount or character of actual damages sustained by reason thereof.

10. **Default Event, Liquidated Damages**. Resident and Land Bank hereby acknowledge that the injury to the Land Bank upon a Default Event by Resident 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 Resident, 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 Resident reasonably anticipate would exist at the time of such Default Event. Accordingly, in lieu of actual damages for a Default Event, Resident agrees that the Liquidated Damages remedy set forth herein may be assessed and recovered by the Land Bank as against Resident without the Land Bank being required to present any evidence of the amount or character of actual damages sustained by reason thereof.

11. **Mortgage**. To secure the performance of all of Resident's obligations hereunder, including, but not limited to, the payment of the Recapture Obligation as Liquidated Damages, along with any interest and fees owed now or in the future by Resident to the Land Bank pursuant to this Agreement, Resident 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 Resident 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.

12. **Receiver**. If, following a Default Event, 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.

13. **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.

14. **Collection Costs and Fees**. Resident 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 Recapture Obligation and other amounts secured by the Mortgage. Such amounts together with interest as provided for herein shall be added to the Recapture Obligation 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.

15. **Interest**. Any payment due and owing from Resident 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.

16. **Right of Entry**. For the purpose of assuring compliance with this Agreement, the 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 Resident, which consent shall not be unreasonably delayed, conditioned, or withheld.

17. **Assignment of Leases and Rents**. Resident hereby assigns to the Land Bank the rents, issues, and profits of the Property as further security for the payment of said Recapture Obligation and all other amounts secured hereby. The Resident 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 Recapture Obligation and

all other amounts secured hereby. This assignment and grant will continue in effect until all sums secured hereunder are fully and irrevocably satisfied. 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 Resident 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, provided that such right of the Resident may be revoked by the Land Bank upon a Default Event hereunder, a right and remedy which exists solely at the option and discretion of the Land Bank.

18. **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.

19. **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 Resident to an unrelated, institutional third party lender to finance the acquisition or improvement of the Property.

20. **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.

21. **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.

22. **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.

23. **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.

24. **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.

25. **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.

26. **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.

27. **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.

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

29. **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.

30. **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.

31. **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.

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

33. **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.

34. **Jury Waiver**. The Land Bank and Resident agree that to the fullest extent permitted by law, the Land Bank and Resident waive any right to a trial by jury 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 Resident are adverse to one another.

35. **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.

Commented [J5]: Please change to the effect of: Any and all mortgage recording taxes will be passed on, or billed to the Buyer at closing.

36. **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	RESIDENT
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