

LAND TRANSFER AGREEMENT

This Land Transfer Agreement (the “Agreement”) dated as of April __, 2014 (the “Effective Date”) is by and between the City of Detroit (the “City”) and the Detroit Land Bank Authority (the “Detroit Land Bank”).

RECITALS

WHEREAS, the Detroit Land Bank was created by the City and the Michigan Land Bank Fast Track Authority (the “State Authority”) pursuant to the Intergovernmental Agreement dated September 15, 2008 by and between the City and the State Authority (as amended and restated, the “Authority IGA”) to provide a separate authority to acquire, develop, and re-sell land located in the City in accordance with Public Act 258 of 2003 (the “Land Bank Fast Track Act”).

WHEREAS, the Michigan legislature has declared that there exists in the state of Michigan a continuing need to strengthen and revitalize the economy of local units of government and it is in the best interests of the local units of government to assemble or dispose of public property, including tax reverted property, in a coordinated manner to foster the development of that property and to promote economic growth in the local units of government in this state.

WHEREAS, the Michigan legislature has declared it a valid public purpose for a land bank fast track authority to provide for the financing of the acquisition, assembly, disposition, and quieting of title to property, and for a land bank fast track authority to exercise other powers granted to a land bank fast track authority under the Land Bank Fast Track Act, and that the powers conferred by the Land Bank Fast Track Act constitute a necessary program and serve a necessary public purpose.

WHEREAS, pursuant to this authority, the Detroit Land Bank is implementing a range of policies to provide for the disposition of the properties that it acquires, including but not limited to sales to owner-occupants, sales of side lots, and auctions of properties, as well as the demolition and/or deconstruction of those properties that cannot reasonably be rehabilitated, which create blight in the City.

WHEREAS, the United States government, acting through the Department of Treasury and the Michigan State Housing Development Authority (“MSHDA”), has awarded to the Detroit Land Bank approximately \$52 million under the Hardest Hit Fund program to carry out demolition of residential structures on publicly owned surplus land within the City of Detroit, which funds must be expended before April 2015.

WHEREAS, the Detroit Land Bank currently does not have title to a sufficient number of parcels that include a residential structure to expend the \$52 million dollars allocated to it, and if those funds are not expended by April 2015, they must be returned to the United States government.

WHEREAS, the City holds title to sufficient parcels identified as having a residential structure within the geographic limitations of the City for the Detroit Land Bank to expend all of the \$52 million if those parcels were owned by the Detroit Land Bank.

WHEREAS, the City acquired title to certain of these parcels in connection with prior Wayne County tax foreclosure sales, in which the City was conveyed title to parcels that were available for sale that did not receive the opening bid of \$500.

WHEREAS, subject to the terms and conditions of this Agreement, the City wishes to transfer to the Detroit Land Bank and the Detroit Land Bank wishes to receive title to the parcels of surplus land owned by the City within the geographic limitations of the City that are identified by the City's Planning & Development Department ("P&DD") as having a residential structure with no more than four units therein (the "Residential Parcels"), so that the Detroit Land Bank can demolish blighted structures on such Residential Parcels utilizing the Hardest Hit Funds prior to the deadline, and to develop, maintain and re-sell those Residential Parcels to reduce blight in the City and strengthen and revitalize the economy of the City.

WHEREAS, the transfer of the Residential Parcels to the Detroit Land Bank shall be construed as an involuntary transfer in accordance with Section 14(4) of the Land Bank Fast Track Act (MCL 124.764(4)).

NOW THEREFORE, in consideration of the mutual agreements, covenants, representations, warranties and indemnities contained in this Agreement, the City and the Detroit Land Bank agree as follows:

1. **Transfer of Residential Parcels.**

- (a) Identification of Parcels to be Transferred. Exhibit A, attached hereto, is a listing of 16,399 City-owned properties that P&DD has preliminarily identified as being a Residential Parcel. Each of these properties will be reviewed initially by P&DD and then by the Detroit Land Bank prior to transfer to confirm that they meet the definition of a Residential Parcel. No property may be transferred under this Agreement if it is not included on the list attached as Exhibit A, but the parties anticipate that some of the parcels listed on Exhibit A will not qualify as Residential Parcels or will otherwise be excluded from transfer pursuant to Section 1(b) of this Agreement, in which case they will not be transferred under this Agreement.
- (b) **Transfer of Residential Parcels.** For no consideration, as permitted by Section 23 of the Land Bank Fast Track Act (MCL 124.773), as of the Effective Date, the City, acting through the P&DD, is authorized to convey all of the City's right, title and interest to the Residential Parcels to the Detroit Land Bank, by one or multiple quitclaim deeds, in the form attached hereto as EXHIBIT B (the "Quitclaim Deed"), subject to the following exceptions:
 - (i) This Agreement does not authorize the transfer of any Residential Parcel which is subject to additional legal requirement beyond City Council

approval for disposition (for example, the transfer of historic or urban renewal property that requires, *inter alia*, a public hearing prior to disposition), and for any such parcels all such requirements shall be satisfied by the City prior to transfer to the Detroit Land Bank.

- (ii) This Agreement does not authorize the transfer of any Residential Parcel which the City plans to use in another unrelated City undertaking, which undertakings could include, but are not limited to, the consolidation of parcels for sale and re-development, the transfer of parcels to other governmental entities to facilitate the construction of infrastructure projects, and the development of such parcels as public spaces such as public parks. Notwithstanding the foregoing, if the City later determines in its sole discretion that a Residential Parcel that is included on the list in Exhibit A is not to be used for such other undertakings, PD&D is hereby authorized to transfer such Residential Parcel by a Quitclaim Deed to the Detroit Land Bank pursuant to this Agreement.
 - (c) **Records.** In connection with the transfer of Residential Parcels, the City shall have the right to provide the Detroit Land Bank with any records the City has pertaining to those transferred Residential Parcels.
 - (d) **Reports.** The Detroit Land Bank shall provide to the Mayor and the City Council a regular report every quarter which shall include a listing of the address for each Residential Parcel to which title was received from the City pursuant to this Agreement in the preceding quarter, together with a report on the number of properties demolished and sold during that quarter.
2. **As-Is Transfer.** The Detroit Land Bank acknowledges and agrees that neither the City nor any agent, employee, attorney, or representative of the City has made any statements, agreements, promises, assurances, representations, or warranties, whether express, implied, or otherwise, regarding the City, the condition of the Residential Parcels, the suitability of the Residential Parcels for any uses or purposes contemplated by the Detroit Land Bank, the zoning classification of the Residential Parcels, the tax classification of the Residential Parcels, the right to occupy the Residential Parcels, the environmental condition of the Residential Parcels, the state of title to the Residential Parcels and/or any other aspect of or matter pertaining to the Residential Parcels or any other fact or matter whatsoever, whether pertaining to the City, the Residential Parcels, or otherwise, except in all cases as expressly provided in this Agreement. The Detroit Land Bank has negotiated the transfer to reflect the current condition of the Residential Parcels, and agrees to accept the Residential Parcels in their present “as is” condition, with all defects, latent and patent, and to make no claims against the City concerning the condition of the Residential Parcels or any matter pertaining to the Residential Parcels.
3. **Restriction of Certain Assembling and Sale of Residential Parcels.** As a condition to this Agreement, the Detroit Land Bank agrees that if it transfers ten (10) or more contiguous parcels and transfers them simultaneously to the same transferee, such

transfer shall not be valid or effective without the prior approval of the Mayor and the City Council.

4. **Profits on Sale of Residential Parcels.**

- (a) **Statement Delivery.** Within thirty (30) days after the end of each calendar year in which a Residential Parcel or a portion of a Residential Parcel is sold by the Detroit Land Bank, the Detroit Land Bank shall deliver to the Mayor and the City Council a statement (the "**Annual Statement**") showing the proceeds for the sale of property by the Detroit Land Bank that constituted in whole, or in part, one or more of the Residential Parcels sold in that year (the "**Residential Parcel Proceeds**") and the expenditures incurred and paid by the Detroit Land Bank in that year related to its work with respect to the Residential Parcels, including, but not limited to, its operating costs (including its overhead, administrative, advisor and employee costs) and the costs of demolishing acquiring, maintaining, operating and developing Residential Parcels owned by the Detroit Land Bank (the "**DLB Operating Costs**").
- (b) **City's Share of Profits.** In the event that the Residential Parcel Proceeds exceed the DLB Operating Costs in any given year, the Detroit Land Bank shall, within ten (10) days after delivery of the Annual Statement, pay to the City 33.33% of the difference between the Residential Parcel Proceeds and the DLB Operating Costs in that year (the "**Residential Parcel Profit**") in immediately available funds by wire transfer or direct deposit to the City's General Fund.
- (c) **Return of Profits.** Notwithstanding anything to the contrary in Section 4(b), if the City determines, in its sole discretion, that it would be in the best interests of the City for the Detroit Land Bank to retain the City's share of the Residential Parcel Profit in any given year, then upon written notice from the Mayor, approved by the City Council, which notice may be provided at any time prior to the delivery of the Residential Parcel Profit for that year, the Detroit Land Bank shall retain the Residential Parcel Profit. In the event the City makes such an election, the amount of the Residential Parcel Profit retained by the Detroit Land Bank will be added to the calculation of the Residential Parcel Proceeds in the following year.
- (d) **Annual Statement Audit.** The City, upon notice given to the Detroit Land Bank within two (2) years after the City's receipt of an Annual Statement may elect to have the City's designated (in such notice) auditor examine such of the Detroit Land Bank's books and records (collectively, the "**Records**") as are directly relevant to the Residential Parcel Proceeds, the DLB Operating Costs and the Residential Parcel Profit for a period not to exceed 120 days following the date on which all the Records are first made available as provided in this Section 4(d). If it is determined that any amounts on the Annual Statement are misstated by more than 3%, then the Detroit Land Bank shall reimburse the City for the cost of its audit. The City, within 120 days after the date on which the Records are first made available as provided herein, may send a notice ("**City's Statement**") to the Detroit Land Bank that the City disagrees with the Annual Statement, and, then

the City and the Detroit Land Bank shall attempt to resolve such disagreement. If they are unable to do so, then the City may notify the Detroit Land Bank, within 180 days after the date on which the Records are made available to the City in connection with the disagreement in question, that the City desires to have such disagreement determined by a certified public accountant (the "Arbiter") whose determination made in accordance with this Section 4(d) shall be binding upon the parties. In all events, the cost of the Arbiter shall be borne equally by the City and the Detroit Land Bank. The Arbiter shall be a certified public accountant and a member of an independent certified public accounting firm comprised of at least 15 members who shall be certified public accountants. If the City and the Detroit Land Bank shall be unable to agree upon the designation of the Arbiter within 15 days after notice from the City to the Detroit Land Bank requesting agreement as to the designation of the Arbiter, then either party shall have the right to request that the American Arbitration Association (or any organization which is the successor thereto) designate as the Arbiter a certified public accountant having the qualifications described above in this Section 4(d).

- 5. **Term and Survival.** This Agreement shall expire upon the transfer of the last of the Residential Parcels permitted to be transferred pursuant to this Agreement, unless otherwise agreed to in writing by both parties, provided that Section 4 shall survive for so long as the Detroit Land Bank owns Residential Parcels transferred by the City pursuant to this Agreement.
- 6. **Assignment.** The parties agree that neither party shall have the right to assign this Agreement without the prior written consent of the other party.
- 7. **Notice.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by overnight air express service or by registered or certified mail, postage prepaid, return receipt requested, addressed to the parties hereto at their respective addresses set forth below. Such notice or other communication shall be deemed given (a) upon receipt or upon refusal to accept delivery if delivered by personal delivery, (b) one business day after tendering to an overnight air express service selecting next business day service, and (c) four business days after mailing if by registered or certified mail.

To City: City of Detroit
Office of the Mayor
2 Woodward Avenue, 11th Floor
Detroit, MI 48226

With a copy to: City of Detroit
Office of the Emergency Manager
2 Woodward Ave., 11th Floor
Detroit, MI 48226
Attn: Sonya Mays

With a copy to: City of Detroit
Planning & Development Department
65 Cadillac Square, Suite 2300
Detroit, MI 48226
Attn: Director

To Detroit Lank Bank: 65 Cadillac Square, Suite 3200
Detroit, MI 48226
Attn: Executive Director

Notice of change of address shall be given by written notice in the manner detailed in this Section 7.

8. **Miscellaneous.**

(a) **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(b) **Waivers.** No waiver of any breach or any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No obligations hereunder may be waived, except by written instrument signed by the party to be charged.

(c) **Entire Agreement.** All Exhibits attached to this Agreement are hereby incorporated herein by reference. This Agreement (including all Exhibits attached hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements, if any, with respect thereto. This Agreement may not be amended or modified, other than as expressly set forth in this Agreement. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto and their successors and assigns.

(d) **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Michigan.

(e) **Business Days.** If the final day of any period or any date of performance under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

(f) **Counterparts:** This Agreement may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature

delivered by a party by facsimile transmission or by email transmission of a PDF copy shall be deemed to be an original signature hereto.

(g) Successors and Assigns. This Agreement shall inure to the benefit of the parties and their respective permitted successors and assigns and is binding upon the parties and their respective successors and assign.

(h) Prevailing Party's Fees. If there is any legal action or proceeding between the City and the Detroit Land Bank to enforce this Agreement or to protect or establish any right or remedy under this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees and disbursements, incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees and disbursements shall be included in and as a part of such judgment.

[Rest of page left intentionally blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

WITNESSES

City of Detroit

By: _____

Kevyn D. Orr
Its: Emergency Manager

Date: _____

STATE OF MICHIGAN)

)

COUNTY OF WAYNE)

This document was acknowledged before me on _____ by Kevyn Orr on behalf of the City of Detroit.

Notary Public,

County of Wayne, State of Michigan

WITNESSES

Detroit Land Bank Authority

By: _____

Name: _____

Its: _____

Date: _____

STATE OF MICHIGAN)

)

COUNTY OF WAYNE)

This document was acknowledged before me on _____ by
_____ on behalf of the Detroit Land Bank Authority.

Notary Public,

County of Wayne, State of Michigan

EXHIBIT A

LIST OF ADDRESSES OF PARCELS

EXHIBIT B
FORM OF DEED

[see attached]