

**AN ORDINANCE TO AUTHORIZE THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING AND ANNUAL FUNDING AGREEMENT BETWEEN THE CITY OF WILMINGTON AND THE WILMINGTON NEIGHBORHOOD CONSERVANCY LAND BANK**

---

#4288

**WHEREAS**, pursuant to Section 2-308 of the City Charter, the City of Wilmington is authorized to enter into agreements that shall run for more than a period of one year if approved by City Council by Ordinance; and

**Sponsors:**

**Council  
President  
Gregory**

**Council  
Member  
Shabazz**

**WHEREAS**, the City desires to authorize the execution of the Memorandum of Understanding (the "MOU") and the Annual Funding Agreement between the City of Wilmington and the Wilmington Neighborhood Conservancy Land Bank (the "Land Bank"); and

**WHEREAS**, the City suffers from a large number of vacant, abandoned and blighted properties that drain City resources and that negatively impact quality of life for the citizens of the City; and

**WHEREAS**, the similar institutions and organizations to the Land Bank have been proven to be an effective vehicle for the removal of vacant, blighted, and abandoned property in other states and cities; and

**WHEREAS**, the General Assembly of the State of Delaware enacted Chapter 47 of Title 31 of the Delaware Code, known as the "Delaware Neighborhood Conservation and Land Banking Act," which enables any political subdivision of the State of Delaware that has the power to cause the sale of real property located within its respective jurisdiction for the collection of liens inuring to that subdivision to create an entity, known as a land bank, for the purpose of returning vacant, abandoned, and delinquent properties to productive use; and

**WHEREAS**, the City passed Substitute No. 1 to Ordinance No. 15-040 authorizing the establishment of the Land Bank; and

**WHEREAS**, the City and the Land Bank have diligently been working on negotiating an agreement that will enumerate certain rights and responsibilities of the City and the Land Bank to ensure the success of the Land Bank and its mission to help the City fight against crime and blight; and

**WHEREAS**, the City and Land Bank have crafted and agreement that reflects the intentions of both the City and the Land Bank by way of the MOU which is attached hereto and made a part hereof as 'Exhibit A' and by way of the Annual Funding Agreement which is attached hereto and made a part hereof as 'Exhibit B'.

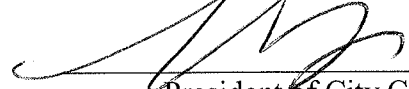
**THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:**

**SECTION 1.** the MOU, a copy of which, in substantial form, is attached hereto as Exhibit "A," for a period of ten (10) years beginning on the date of execution, and the Annual Funding Agreement as contemplated in the MOU, a copy of which, in substantial form, is attached hereto as Exhibit "B," are hereby approved, and the Mayor and the City Clerk are hereby authorized to execute as many copies of said agreements, as well as all additional undertakings related thereto, as may be necessary.

**SECTION 2.** This Ordinance shall be effective upon its passage by City Council and approval of the Mayor.

First Reading ..... November 3, 2016  
Second Reading.... November 3, 2016  
Third Reading . . . Dec. 8, 2016

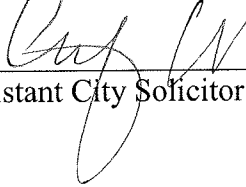
Passed by City Council,  
December 8, 2016



\_\_\_\_\_  
President of City Council

ATTEST:   
\_\_\_\_\_  
City Clerk

Approved as to form this  
3rd day of November, 2016

  
\_\_\_\_\_  
Assistant City Solicitor

Approved this 12 day of Dec, 2016

  
\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Ordinance authorizes the execution of the Memorandum of Understanding and Annual Funding Agreement between the City of Wilmington and the Wilmington Neighborhood Conservancy Land Bank (the "Land Bank") which will empower and enable the Land Bank to assist the City in fighting crime and blight that stem from a high number of vacant and abandoned properties located within the City.

## **Fiscal Impact Statement**

This Ordinance authorizes the execution of the Annual Funding Agreement and the Memorandum of Understanding between the City of Wilmington and the Wilmington Neighborhood Conservancy Land Bank for a period of ten (10) years with a non-binding commitment of financial support made by the City to the Land Bank in an amount of \$15,000,000 (fifteen million dollars).

**EXHIBIT A**

**Memorandum of Understanding**  
**Between**  
**The City of Wilmington**  
**And**  
**The Wilmington Neighborhood Conservancy Land Bank Corporation**

## PREAMBLE

This Memorandum of Understanding (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2016 (the “Effective Date”) between the City of Wilmington (“City”) and the Wilmington Neighborhood Conservancy Land Bank Corporation, a Delaware non-profit corporation (“Land Bank”; the City and Land Bank are collectively referred to herein as the “Parties”).

## RECITALS

WHEREAS, the General Assembly of the State of Delaware enacted Chapter 47 of Title 31 of the Delaware Code, known as the “Delaware Neighborhood Conservation and Land Banking Act,” which enables any political subdivision of the State of Delaware that has the power to cause the sale of real property located within its respective jurisdiction for the collection of liens inuring to that subdivision to create an entity, known as a land bank, for the purpose of returning vacant, abandoned, and delinquent properties to productive use; and

WHEREAS, the City passed Substitute No. 1 to Ordinance No. 15-040 authorizing the establishment of the Land Bank; and

WHEREAS, the Parties wish to enumerate certain rights and responsibilities of each, to clarify the Parties’ relationship, and thereby, ensure the success of the Land Bank.

NOW, THEREFORE, in consideration of the covenants and promises set forth herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## ARTICLE I DEFINITIONS

As used in this Agreement, the following terms shall have the meanings provided in this Article.

**Section 1.01.** “**Annual Funding Agreement**” shall have the meaning ascribed to such term in Section 7.02 below.

**Section 1.02.** “**Board of Directors**” or “**Board**” means the Board of Directors of the Land Bank.

**Section 1.03.** “**Effective Date**” means the date upon which the following are satisfied:

- (a) This Agreement is executed by the Parties; and
- (b) This Agreement is approved by Ordinance of the Council of the City of Wilmington.

**Section 1.04.** “**Existing Parcels**” shall include all Real Property, located within the City corporate limits, which is owned by the City as of the Effective Date.

**Section 1.05. “Funding”** shall mean any grants appropriated by the City to the Land Bank and/or any in-kind services provided by the City to the Land Bank.

**Section 1.06. “Land Bank Act”** means Chapter 47, Title 31 of the Delaware Code and as it may hereafter be amended, subject to this Agreement.

**Section 1.07. “Parcel” or “Parcels”** means a tract of Real Property.

**Section 1.08. “Party” or “Parties”** means either individually or collectively, as the context provides, the Land Bank and/or the City of Wilmington.

**Section 1.09. “Person”** means an individual, limited liability company, partnership, firm, corporation, organization, association, joint venture, trust, or other legal entity.

**Section 1.10. “Prospective Parcels”** shall include all Real Property located within the City corporate limits, which the City does not own at the time of execution of this Agreement.

**Section 1.11. “Real Property”** means all lands and improvements thereon, including all fixtures permanently attached to land or to the buildings thereon.

**Section 1.12. “State”** means the State of Delaware.

**Section 1.13. “Supplementary City Contribution”** means the sum of all fees, taxes, amounts owed, and assessments which the City has written off or elects to write off (i.e., not pursue) for Real Property acquired by the Land Bank, as well as the value of fees, taxes, amounts owed and assessments that the City elects to not enforce or pursue while the Land Bank holds certain Real Property.

**Section 1.14. “Tax Delinquent Property”** means Real Property encumbered by an outstanding lien for a delinquent tax, fee, charge, assessment or other applicable debt owed to the City of Wilmington.

## **ARTICLE II** **PURPOSE**

**Section 2.01. Purpose.** The purpose of this Agreement is to set forth certain understandings regarding the Parties’ relationship so that they may focus on addressing vacant, abandoned and/or blighted or depressed property in the City in a coordinated manner and promoting the development and return of such property to productive use.

**Section 2.02. Powers and Functions.** The Land Bank shall have all those powers, duties, functions, and responsibilities authorized pursuant to the Land Bank Act that are not inconsistent with this Agreement.



**ARTICLE III**  
**CREATION OF THE LAND BANK**

**Section 3.01. Creation and Legal Status of the Land Bank.** The Land Bank has been established pursuant to the Land Bank Act and Substitute No. 1 to City Ordinance No. 15-040 as a not-for-profit corporation.

**Section 3.02. By-Laws.** Attached hereto as Exhibit A is a copy of the bylaws that have been duly adopted by the Board of Directors. Any future amendment of such bylaws shall be consistent with the provisions of this Agreement and the Land Bank Act.

**Section 3.03. Principal Office.** The principal office of the Land Bank shall be determined by the Board but shall always be in a location within the corporate limits of the City.

**Section 3.04. Title to Land Bank Assets.** All Real Property held in fee by the Land Bank shall be held in its own name.

**Section 3.05. Extinguishment of Taxes and Assessments.** Upon the Land Bank's acquisition of any Real Property, the City shall extinguish and forgive any and all taxes, fees, charges and any other amounts constituting liens under 25 Del. C. § 2901 that are then due and payable to the City, including all penalty and interest accruing thereon. The City will keep records of the value of extinguished and forgiven liens and will take this valuation into consideration when determining the amount of Funding that the Land Bank shall receive annually. The intent of this Section 3.05 is to encourage the transfer of Real Property to the Land Bank and to allow the Land Bank to acquire such Real Property free and clear of all City liens.

**Section 3.06. Tax-Exempt Status.** Any Real Property, while it is owned by the Land Bank, shall be exempt from all City (a) taxes, (b) water, sewer and stormwater charges, and (c) vacant property registration fees. The City will keep records of the value of such exemptions and will use this valuation as part of the formula that will be used to determine the amount of Funding that the Land Bank shall receive annually.

**Section 3.07. Compliance with Law.** The Land Bank shall comply with all federal, State, and local laws, ordinances, rules, regulations, and orders applicable to this Agreement, unless otherwise agreed upon by the Parties.

**Section 3.08. Relationship of the Parties.** The Parties agree that the City shall not be responsible, in whole or in part, for the acts of the employees, agents, and servants of the Land Bank (other than City employees), whether acting separately or in conjunction with implementation of this Agreement. The Parties shall be bound and obligated under this Agreement only as expressly agreed to by each Party. The Land Bank shall not obligate the City nor shall any obligation of the Land Bank constitute an obligation of the City.

**Section 3.09. No Third-Party Beneficiaries.** Except as otherwise specifically provided herein, this Agreement does not create, and is not intended to create, in any non-Party, by implication or otherwise, any direct or indirect benefit, obligation, duty, promise, right to be

indemnified (such as contractually, legally, equitably, or by implication), right to be subrogated to any Party's rights under this Agreement, and/or any other right or benefit.

#### **ARTICLE IV** **POWERS OF THE LAND BANK**

**Section 4.01. The Powers of The Land Bank.** The Land Bank shall have all those powers necessary to carry out and effectuate the purposes and provisions of the Land Bank Act and Substitute No. 1 to City Ordinance No. 15-040, including all powers granted to the Land Bank pursuant to any other relevant City ordinance.

**Section 4.02. Purchase of Tax Liens.** The Land Bank may acquire liens encumbering a Tax Delinquent Property.

**Section 4.03. Execution of Legal Documents Relating to Real Property.** The terms of any contract or agreement concerning the sale, lease, license, easement, encumbrance, or other alienation of any interest in Real Property, or improvements thereto, or personal property of the Land Bank, shall be approved by the Board. All contracts of the Land Bank shall be executed in the name of the Land Bank.

**Section 4.04. Civil Actions By the Land Bank.** The Land Bank may institute a civil action to prevent, restrain, or enjoin the waste of or unlawful removal of any Real Property owned by the Land Bank. The Land Bank may also institute a civil action to protect, clear title to, determine the rights of parties to, remove liens from, or that are otherwise related to the Real Property of the Land Bank, subject to written notice to the City prior to commencement of such action if an interest of the City will be negatively impacted in material manner by such action.

**Section 4.05. Transfer of Interests in Real Property by Land Bank.** On terms and conditions, in a manner, and for consideration the Land Bank deems proper, fair, and reasonable, the Land Bank may convey, sell, transfer, exchange, lease, or otherwise dispose of Real Property or rights or interests in Real Property in which the Land Bank holds a legal interest to any public or private Person.

**Section 4.06. Disposition of Proceeds.** Any financial consideration received as a result of the sale or transfer of Real Property by the Land Bank, that is not otherwise due in whole or in part to the City, shall be retained, expended, or transferred by the Land Bank as determined by the Board.

#### **ARTICLE V** **RESTRICTIONS ON POWERS**

**Section 5.01. Eminent Domain Prohibited.** The Land Bank shall neither possess nor exercise the power of eminent domain.

**Section 5.02. Limitation on Political Activities.** The Land Bank shall not spend any public funds on political activities. Subject to the foregoing, this section is not intended to prohibit the Land Bank from engaging in activities authorized by applicable law.

**Section 5.03. No Waiver of Governmental Immunity.** The Parties agree that no provision of the Agreement is intended, nor shall it be construed, as a waiver by the City of any governmental immunity provided under any applicable law.

**Section 5.04. Non-Discrimination.** The Land Bank shall comply with all applicable laws prohibiting discrimination.

**Section 5.05. Building and Housing Codes.** The Land Bank shall maintain all Real Property held by the Land Bank in accordance with applicable Federal and State laws and City Codes.

## **ARTICLE VI**

### **BOOKS, RECORDS, AND FINANCES**

**Section 6.01. Land Bank Records.** The Land Bank shall keep and maintain at the principal office of the Land Bank all documents and records of the Land Bank. All records of the Land Bank, subject to any claimed privilege, shall be made available to the City, including the Office of the City Auditor, upon request. The records and documents of the Land Bank shall be maintained in accordance with a records retention policy adopted by the Board.

**Section 6.02. Annual Report.** The Land Bank shall provide the City with an annual written report that (a) details the Land Bank's short- and long-term goals and year-to-date progress on reaching such goals, (b) a copy of the Land Bank's audited financial statements for the prior calendar year that have been prepared in accordance with Section 6.03 below and (c) a copy of the Land Bank's budget that was adopted by its Board of Directors for the current calendar year that has been prepared in accordance with Section 6.04 below. The Land Bank shall submit its annual report to the City within 30 days following the completion of the audit of the Land Bank and the delivery of the final audited financial statements to the Land Bank by its auditor.

**Section 6.03. Financial Statements and Reports.** The Land Bank shall cause to be prepared audited financial statements on an annual basis, which audit shall be commenced on or before May 15<sup>th</sup> of each calendar year. Such financial statements shall be prepared in accordance with generally accepted accounting principles and accompanied by a written opinion of an independent certified public accounting firm. Upon completion, the Land Bank shall provide the annual audited financial statements to the City within thirty (30) days.

**Section 6.04. Annual Budget.** On or prior to October 31<sup>st</sup> of each calendar year, the executive director, or another individual designated by the Board, shall prepare a draft of the

Land Bank's annual budget for the following calendar year, and a copy of such draft budget shall be shared with the City. The Board shall review and seek to approve a budget for the Land Bank immediately preceding each fiscal year of the Land Bank. Notwithstanding anything to the contrary in this Section 6.04, the parties acknowledge and agree that the Land Bank's obligations under this Section 6.04 shall not commence until October 31, 2017.

**Section 6.05. Disbursements.** Disbursements of funds from the Land Bank shall be in accordance with guidelines established by the Board.

**Section 6.06. Performance Objectives.** The executive director, or other individual designated by the Board, shall prepare on an annual basis, for review and approval by the Board, objectives for the Land Bank's performance.

**Section 6.07. Real Property Inventory Records.** The Land Bank shall regularly inventory all Real Property owned or held by the Land Bank. In addition, the Land Bank shall include a note in its annual audited financial statements or annual report to the City that details all Real Property disposed of by the Land Bank during the period covered by such audited financial statements or annual report. The Land Bank's inventory, annual audited financial statements and annual report to the City shall be maintained as a public record and shall be made available in accordance with the Delaware Freedom of Information Act, Title 29, Ch. 100 of the Delaware Code.

## **ARTICLE VII**

### **FUNDING COMMITMENT**

**Section 7.01. Funding Commitment.** The Parties currently estimate that the Land Bank will require at least \$45,000,000 in financial support over the initial ten (10) year term in order to significantly reduce the number of vacant, abandoned and/or troubled Parcels in the City. The City has set a non-binding goal of providing \$15,000,000 in financial support to the Land Bank over the initial ten (10) year term with the understanding that the Land Bank shall seek to obtain at least \$15,000,000 in financial support from other governmental bodies and at least \$15,000,000 in financial support from private and charitable sources during the initial ten (10) year term. No later than October 31<sup>st</sup> of each calendar year, the Parties shall engage in ongoing meetings to discuss the level of financial support that the City will provide to the Land Bank during the upcoming City fiscal year in order to provide the Land Bank with financial resources to reduce vacant, abandoned and/or troubled Parcels in the City. All future Funding provided by the City will be from sources determined by the City in its sole discretion.

**Section 7.02. Annual Funding Agreement.** The City and the Land Bank, after holding the discussions described in Section 7.01 above, shall enter into a separate written agreement (the "Annual Funding Agreement"), a new version of which shall be executed for every fiscal year that funding is provided by the City to the Land Bank. The Annual Funding Agreement will specify the annual Funding that the City will provide to the Land Bank for the fiscal year in question, will include an estimate of the Supplementary City Contribution that the City will make for the fiscal year in question and will provide a breakdown of the sources and the total amount of Funding the City will provide.

**Section 7.03. Other Means of Funding.** The City commits to work with the Land Bank to identify and secure federal, state, private or charitable resources to assist in the stabilization of the Land Bank's inventory of properties and to implement strategies to return such Parcels to productive use.

**ARTICLE VIII**  
**TRANSFER OF REAL PROPERTY; CBAAT MEETINGS**

**Section 8.01. Transfer of Existing Parcels.**

(a) The City and the Land Bank will consult as to the disposition of any Existing Parcel that the Land Bank may wish to acquire. Upon mutual agreement of the City and the Land Bank regarding any Existing Parcel to be transferred to the Land Bank, the City shall execute a special warranty deed in favor of the Land Bank which shall convey title to such Existing Parcel to the Land Bank. The Land Bank shall be responsible for the payment of all recording fees to the New Castle County Recorder of Deeds for such deed. The execution and delivery of the City's deed for any Existing Parcel as set forth in this section is hereby deemed approved by the City Council of the City of Wilmington and shall not require any additional councilmanic action or approval.

(b) The City will forgive, discharge, and/or otherwise release the above-mentioned Existing Parcel(s) from the lien of any City tax, water charge, sewer charge, stormwater charge, citation cost, Vacant Property fee, municipal improvement lien, or any other fees or charges on any Existing Parcel(s) transferred to the Land Bank. The City will however keep records of the value of said liens and will take this valuation into consideration when determining the amount of Funding that the Land Bank shall receive annually.

(c) The City shall not assess the Land Bank for any taxes, water charges, sewer charges, stormwater charges, citation costs, Vacant Property fees, or any other fees or charges on any Existing Parcel(s) that the Land Bank may come to own. The City will however keep records of the value of said assessments and will take this valuation into consideration when determining the amount of Funding that the Land Bank shall receive annually.

**Section 8.02. Acquisition of Tax Delinquent Properties at Sheriff Sale.**

(a) If the Land Bank desires to acquire any Tax Delinquent Property by way of Sheriff Sale, the Land Bank shall be entitled to all rights afforded to it under 31 Del. C. § 4712(c).

(b) In advance of each monthly Sheriff Sale, representatives of the City and Land Bank shall meet to review the list of Tax Delinquent Properties that the City is causing to be submitted to Sheriff Sale that month, and the representative of the Land Bank shall indicate whether the Land Bank has any objection to acquiring title to any of the Tax Delinquent Properties being submitted to Sheriff Sale by the City.

1. If the Land Bank has not lodged an objection to acquiring title to such Tax Delinquent Properties, then the City shall open bidding at the Sheriff Sale on each

Tax Delinquent Property with a bid that will allow the City to fully recover any and all amounts owing to the City for such Tax Delinquent Property.

2. If a third party fails to bid above the City's bid, then the City shall assign its rights to the winning bid to the Land Bank, at no cost to the Land Bank, following the completion of the Sheriff Sale, so that the Land Bank may petition for, and obtain a sheriff's deed for such Tax Delinquent Property. The City will keep records of the amount of its bid and will take this amount into consideration when determining the amount of Funding that the Land Bank shall receive annually.
3. The assignment of the City's right to a winning bid for any Tax Delinquent Property to the Land Bank is hereby deemed approved by the City Council of the City of Wilmington and shall not require any additional councilmanic action or approval.

(c) If the bid at Sheriff Sale for any Tax Delinquent Property desired by the Land Bank exceeds at any time the full value of the monition placed on said Tax Delinquent Property which warranted the Sheriff Sale, the Land Bank shall be free to continue bidding at the Land Bank's discretion. If the Land Bank is the winning bidder, the Land Bank shall be credited with the amounts owing to the City for such Tax Delinquent Property; however, the Land Bank shall be required to pay any amounts exceeding the full value of the monition placed on said Tax Delinquent Property which warranted the Sheriff Sale, in accordance with the policies and procedures of the New Castle County Sheriff's Office. The City will keep records of the amount of any credits provided to the Land Bank pursuant to this section and will take this amount into consideration when determining the amount of Funding that the Land Bank shall receive annually.

**Section 8.03. Crime and Blight Abatement Action Team Meetings.** In order to facilitate the coordination of efforts between the City and Land Bank to address crime, blight and vacant and abandoned housing within the City, a representative of the Land Bank shall participate in the City's Crime and Blight Abatement Action Team Meetings.

## **ARTICLE IX**

### **LAWS AND ORDINANCES RELATING TO REAL PROPERTY**

**Section 9.01. Compliance.** The Land Bank shall comply with all applicable federal and state laws, local laws, rules, regulations and ordinances related to or regarding the obligations of owners of real property or sellers of real property including, but not limited to, those relating to renovation, rehabilitation, demolition, property maintenance, environmental laws, lead paint abatement, flood plain and lead paint disclosures, and historic preservation.

**Section 9.02. Permits and Demolition.** Any and all requests for City issued permits for any type of construction or demolition work must conform with City Code.

**ARTICLE X**  
**DURATION OF AGREEMENT**

**Section 10.01. Duration.** This Agreement shall commence on the Effective Date and shall remain in full force and effect for a period of ten (10) years following the Effective Date. This Agreement shall thereafter be automatically renewed for successive five (5) year periods unless, at least one hundred eighty (180) days prior to the end of the then current term, a Party has delivered notice to the other Party of its intention to have the term of this Agreement expire at the end of the then current term.

**ARTICLE XI**  
**MISCELLANEOUS**

**Section 11.01. Notices.** Any and all correspondence or notices required, permitted, or provided for under this Agreement to be delivered to any Party shall be sent to that Party via (a) certified mail, return receipt requested, (b) personal delivery or (c) overnight delivery using a nationally recognized overnight courier. All such written notices shall be sent to the Parties at the addresses below, or any subsequent address provided by either Party:

**To: The City of Wilmington**

City of Wilmington  
Attn: Mayor's Office  
Louis L. Redding City/County Bldg.  
800 N. French Street, 9th Floor  
Wilmington, DE 19801

**With Carbon Copy to:**

City of Wilmington  
Law Department  
Attn: City Solicitor  
Louis L. Redding City/County Bldg.  
800 N. French Street, 9th Floor  
Wilmington, DE 19801

**To: The Land Bank:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**With Carbon Copy to:**

Richard L. Emge, Esquire  
Cozen O'Connor  
1201 N. Market Street, Suite 1001  
Wilmington, DE 19801

W0087268.9

**Section 11.02. Entire Agreement.** Except for any Annual Funding Agreement, this Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings between the Parties in any way related to the subject matter of this Agreement. It is further understood and agreed that the terms and conditions of this Agreement are contractual and are not a mere recital and that there are no other contracts, understandings, or representations between the Parties in any way related to the subject matter of this Agreement, except as expressly stated in this Agreement.

**Section 11.03. Interpretation of Agreement.** The Parties intend that this Agreement shall be construed liberally to effectuate the intent and purpose of this Agreement and the legislative intent and purposes of the Land Bank Act and Substitute No.1 to City Ordinance No. 15-040. All powers granted to the Land Bank under this Agreement shall be broadly interpreted to effectuate such intent and purposes and shall not be deemed to be a limitation on such powers.

**Section 11.04. Severability of Provisions.** If any provision of this Agreement, or its application to any Person, Party, or circumstance, is invalid or unenforceable, the remainder of this Agreement and the application of that provision to other Persons, Parties, or circumstances shall not be affected but will be enforced to the greatest extent permitted by law.

**Section 11.05. Governing Law.** This Agreement is made and entered into in the State of Delaware and shall in all respects be interpreted, enforced, and governed under the laws of the State of Delaware without regard to the doctrine of conflict of laws.

**Section 11.06. Captions and Headings.** The captions, headings, and titles in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning or to be interpreted as part of this Agreement.

**Section 11.07. Terminology.** All terms and words used in this Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and any other gender as the context may require.

**Section 11.08. Cross-References.** References in this Agreement to any article include all sections, subsections, and paragraphs in the article, unless specifically noted otherwise. References in this Agreement to any section include all subsections and paragraphs in the section.

**Section 11.09. Mediation & Dispute Resolution.** In the event of a dispute between the Parties over the meaning, interpretation, or implementation of the terms, covenants, or conditions of this Agreement, then the parties shall promptly consult with one another and make diligent, good faith efforts to resolve the disagreement, by negotiation. Should the dispute not be resolved within sixty (60) days after commencement of such negotiations, the dispute shall be submitted to a mediator mutually acceptable to the Parties within ninety (90) days. The costs of mediation will be allocated as part of the resolution in mediation, but absent such resolution, shall be paid equally by the Parties. Within 120 days after submission of the dispute to a mediator, if mediation is unsuccessful, any controversy or claim arising out of or relating to this Agreement or the validity or breach of any of the provisions thereof, or the relationship, dealings, rights, and



obligations of the Parties, shall be settled by a court of competent jurisdiction located in New Castle County, State of Delaware.

**Section 11.10. Amendments to Agreement.** This Agreement may be amended or supplemented only by an instrument in writing executed by both Parties.

**Section 11.11. Insurance.** The Land Bank shall provide insurance coverage for itself and all of its employees, if any, used in connection with this Agreement as follows: workers' compensation as required by law; comprehensive general liability coverage for personal injury, including death, and property damage in the minimum amount of One Million Dollars (\$1,000,000.00). Such policies shall be issued by a financially sound carrier and/or carriers and shall be subject to the reasonable approval of the City. The Land Bank shall provide the City with a certificate of insurance evidencing the above-stated coverages and naming the City as an additional insured. The Land Bank shall provide workers' compensation insurance coverage as may be required by law for all employees employed by the Land Bank during the term of this agreement.

**Section 11.12. Council Approval.** Any action required or that in the City's discretion may be taken under this Agreement, that would otherwise require approval of the Wilmington City Council, such action is hereby deemed approved by the City Council of the City of Wilmington and shall not require any additional councilmanic action or approval.

**Section 11.13. Default and Termination.** In the event that the Land Bank fails to comply with any term of this agreement, the Land Bank shall have sixty (60) days following receipt of a written notice of default from the City to cure said default. If the Land Bank fails to cure the default within the 60 day cure period, or any extension thereof granted by the City, the City may terminate this Agreement and the Agreement shall have no further force or effect, except for those provisions that survive termination pursuant to the terms of this Agreement. The City may suspend disbursements during the period of time given between a notice of default and the opportunity to cure.

**Section 11.14. Certificate of Incorporation.** The Certificate of Incorporation of the Land Bank is attached to this Agreement as Exhibit B and incorporated herein by reference.

[signature page follows]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first set forth below.

**CITY OF WILMINGTON**

**WILMINGTON NEIGHBORHOOD  
CONSERVANCY LAND BANK  
CORPORATION**

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

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

Approved as to form this \_\_\_\_ day of  
\_\_\_\_\_, 2016.

\_\_\_\_\_  
Assistant City Solicitor

**EXHIBIT A**  
**COPY OF LAND BANK BYLAWS**

[see attached]

**EXHIBIT B**

**COPY OF LAND BANK CERTIFICATE OF INCORPORATION**

[see attached]

**EXHIBIT B**

**ANNUAL FUNDING AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF WILMINGTON**

**AND**

**THE WILMINGTON NEIGHBORHOOD CONSERVANCY LAND BANK**

**THIS ANNUAL FUNDING AGREEMENT** (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Wilmington (the "City") and the Wilmington Neighborhood Conservancy Land Bank Corporation (the "Land Bank"; the City and Land Bank are collectively referred to herein as the "Parties").

**WHEREAS**, the City and Land Bank entered into that certain Memorandum of Understanding dated on or about the date hereof (the "MOU"); and

**WHEREAS**, the City desires to assist the Land Bank operations during City Fiscal Year 2017; and

**WHEREAS**, the Land Bank wishes to accept and utilize funding from the City pursuant to the terms of this Agreement; and

**WHEREAS**, this Agreement has been authorized by and is subject to the requirements of Substitute No. 1 to Ordinance No. 15-040, which was adopted by Wilmington City Council on \_\_\_\_\_ and approved by Mayor Dennis P. Williams on \_\_\_\_\_; and

**WHEREAS**, this Agreement has been authorized by the Land Bank's Board of Directors; and

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE I.**  
**FUNDING.**

As contemplated by the MOU and as more particularly described below, the City agrees to provide to the Land Bank during City Fiscal Year 2017 certain funding equal to the value of any cash grants appropriated by the City for disbursement to the Land Bank during such fiscal year and the value of any in-kind services provided by the City to the Land Bank during such fiscal year (hereinafter the "Funding") and certain other indirect contributions to the Land Bank in the form of fees, taxes, amounts owed, and assessments which the City has written off or elects to write off (i.e., not pursue) with respect to property acquired by the Land Bank, as well as the

value of any fees, taxes, amounts owed and assessments that the City elects to not enforce or pursue with respect to Land Bank property (hereinafter the "Supplementary City Contributions").

- A. Cash Grant. The City will disburse a cash grant in the aggregate amount of One Million Five Hundred Thousand Dollars (\$1,500,000) to the Land Bank on or prior to December 31, 2016.
- B. In-Kind Services. The Parties estimate that the City shall provide in-kind services to the Land Bank during City Fiscal Year 2017 having an aggregate monetary value of \$ \_\_\_\_\_.
- C. Supplementary City Contributions. The City will not seek to collect any fees, taxes, assessments and other amounts due the City with respect to property acquired by the Land Bank, and the City will not enforce or attempt to collect any fees, taxes, assessments and other amounts due the City with respect to property owned by the Land Bank. The Parties estimate that the value of the Supplementary City Contributions during City Fiscal Year 2017 shall be equal to \$ \_\_\_\_\_.

The Land Bank agrees to use the Funding from the City only (i) in furtherance of the terms of the MOU, (ii) for those purposes permitted by law, (iii) in furtherance of the Land Bank's mission statement and (iv) in accordance with the Land Bank's adopted policies and procedures.

## **ARTICLE II.**

### **REPORTING BY THE LAND BANK.**

The Land Bank shall provide the City with an annual written report that (a) details the Land Bank's short- and long-term goals and year-to-date progress on reaching such goals, (b) a copy of the Land Bank's audited financial statements for the prior calendar year and (c) a copy of the Land Bank's budget that was adopted by its Board of Directors for the current calendar year. The Land Bank shall submit its annual report to the City within 30 days following the completion of the audit of the Land Bank and the delivery of the final audited financial statements to the Land Bank by its auditor.

## **ARTICLE III.**

### **NOTICES**

All written communications or notices required to be sent pursuant to this Agreement shall be hand delivered, sent by certified or registered first class mail, or by overnight courier, to the Parties as follows:

To: The City of Wilmington

City of Wilmington  
Attn: Mayor's Office  
Louis L. Redding City/County Bldg.

800 N. French Street, 9th Floor  
Wilmington, DE 19801

With Carbon Copy to:

City of Wilmington  
Law Department  
Attn: City Solicitor  
Louis L. Redding City/County Bldg.  
800 N. French Street, 9th Floor  
Wilmington, DE 19801

To: The Land Bank:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With Carbon Copy to:

Richard L. Emge, Esquire  
Cozen O'Connor  
1201 N. Market Street, Suite 1001  
Wilmington, DE 19801

**ARTICLE IV.**  
**GENERAL CONDITIONS**

A. General Compliance

The Land Bank will comply with all applicable federal, state and local laws and regulations governing the receipt or use of the Funding provided under this Agreement.

B. Prior Agreement(s)

Excluding the MOU, this Agreement shall supersede any prior agreement(s) between the Parties regarding these matters.

C. Survivability of Certain Provisions

Any provisions related to, or regarding, the expenditure of the Funding shall survive the termination of this Agreement until such time as all of the Funding disbursed pursuant to this Agreement has been expended.



D. Hold Harmless

The Land Bank shall hold harmless and defend and indemnify the City from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Land Bank's actions, inaction, performance or failure to perform as related to this Agreement that were funded in whole or in part by the Funding that constitute negligence or willful misconduct, and to any activities of the Land Bank funded in whole or in part by the Funding that constitute negligence or willful misconduct.

E. Amendments

The Parties may amend this Agreement at any time provided that such amendments make specific reference to this Agreement and are executed in writing, signed by a duly authorized representative of each Party.

F. Assignability

The Land Bank shall not pledge, assign or transfer any interest in this Agreement or the Funding without obtaining the prior written consent of the City.

G. Conflicts of Interest

No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the Funding, or any other person who exercises any functions or responsibilities in connection with the Funding shall have any personal financial interest, direct or indirect, in this Agreement; and the City and the Land Bank shall take appropriate steps to assure compliance.

H. Governing Law and Proper Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware without regard to any conflict of laws provision. The City and the Land Bank agree that any claim between the Parties arising from or out of this Agreement shall be brought in a court of competent jurisdiction in New Castle County, Delaware.

I. Effect of Waiver of Breach

The waiver of breach of any provision of this Agreement shall not constitute or operate as a waiver of any other provision, nor shall the failure to enforce a provision operate as a waiver of that provision or any other provision.

**ARTICLE V.**  
**DEFAULT AND TERMINATION**

In the event the Land Bank fails to comply with the terms of this Agreement, the Land Bank shall have thirty (30) days following receipt of a written notice of default from the City to cure said default. If the Land Bank fails to cure the default within the 30 day cure period, or any extension thereof granted by the City, the City may terminate this Agreement and the Agreement shall have no further force or effect, except for those provisions that survive termination pursuant to the terms of this Agreement. The City may suspend disbursements during the period of time given between a notice of default and the opportunity to cure.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date last written below.

**City of Wilmington**

**Wilmington Neighborhood  
Conservancy Land Bank Corporation**

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

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

Approved as to form this \_\_\_ day of  
\_\_\_\_\_, 2016.

\_\_\_\_\_  
**Assistant City Solicitor**