

RESOLUTION NO. 122815-1

**A RESOLUTION APPROVING A REAL ESTATE DONATION AGREEMENT
CONCERNING THE CONVEYANCE OF CERTAIN REAL PROPERTY TO THE LAND
BANK OF THE CITY OF ABILENE, KANSAS**

WHEREAS, the governing body established a Land Bank for the City of Abilene, Kansas with the adoption of Ordinance No. 3265;

WHEREAS, the governing body serves as the Board of Trustees ("Trustees") for said Land Bank; and

WHEREAS, the Trustees have the authority to accept donations of real estate as provided by K.S.A. 9-1401 et seq., and amendments thereto, and Ordinance No. 3265.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

SECTION ONE. Agreement. That a Real Estate Donation Agreement is hereby adopted as attached hereto as Exhibit A.

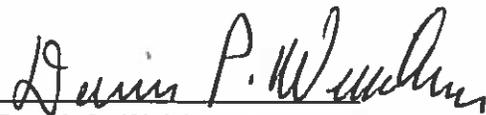
SECTION TWO. Implementation. The Mayor is hereby authorized to execute the aforementioned Agreement, and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

SECTION THREE. Effective Date. That the effects of this Resolution shall be in full force after its approval by the governing body.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 28th day of December, 2015.



CITY OF ABILENE, KANSAS

By: 
Dennis P. Weishaar, Mayor

ATTEST:

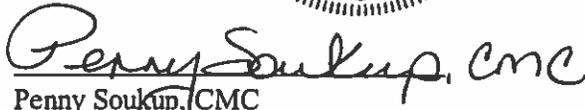

Penny Soukup, CMC
City Clerk

EXHIBIT A

Real Estate Donation Agreement

December 28, 2015

REAL ESTATE DONATION AGREEMENT

This Real Estate Donation Agreement ("Agreement") is entered into this 28th day of December, 2015, by Kelly Dunn Construction, Inc. ("Donor"), and the City of Abilene Land Bank ("Land Bank").

1. **Donation and Acceptance.** Donor agrees to donate, convey, and transfer to Land Bank, and Land Bank agrees to receive and accept from Donor, the following described real estate in Dickinson County, Kansas:

See Exhibit A attached hereto,

together with all appurtenances, permanent improvements and fixtures (the "Property"), upon the terms and conditions of this Agreement.

2. **Donative Intent.** The Property will be donated at no cost to Land Bank, subject to Land Bank's responsibility for the expenses set forth in Section 3 below. Donor is advised to seek its own legal and/or tax counsel regarding the donation contemplated in this Agreement and has not relied on any representation from Land Bank related to the donation provided in this Agreement. Land Bank makes no representation regarding the fair market value of the Property or any tax related benefits or consequences of the transaction contemplated in this Agreement.

3. **Payment of Expenses.** Expenses shall be allocated between the parties as follows:

3.1 **Land Bank.** Land Bank shall pay any attorneys' fees and expenses incurred by Land Bank in the preparation and performance of this Agreement.

3.2 **Donor.** Donor shall pay all of the following items:

- (a) The title insurance premium;
- (b) The escrow and closing fee, if any;
- (c) The cost of recording the deed; and
- (d) Any attorneys' fees and expenses incurred by Donor in the preparation and performance of this Agreement.

4. **Escrow Agent.** First American Title Insurance Company, 315 Broadway, Abilene, Kansas, is designated as the Escrow Agent of the parties and shall hold this Agreement, the deed, the title insurance policy, and all other papers of transfer pending the complete fulfillment of this Agreement. The Escrow Agent shall receive and disburse all amounts to be paid under this Agreement.

5. **Evidence of Title.** As soon as reasonably possible after execution of this Agreement, Donor shall obtain and deliver to Land Bank a commitment for an owner's title insurance policy in the amount of \$34,600.00, insuring Land Bank's title to the Property, subject only to liens, encumbrances, exceptions, or qualifications set forth in this Agreement, and those which shall be discharged by Donor at or before Closing. Land Bank shall

have ten (10) days after receipt to examine the title insurance commitment and to notify Donor in writing of any requirements to make the title marketable, in Land Bank's reasonable discretion.

6. **Closing Date and Possession.** The Closing Date shall be on or before December 31, 2015. "Closing" means the settlement of the obligations of Donor and Land Bank to each other under this Agreement, including the delivery to Land Bank of a warranty deed in a proper form for recording so as to transfer to Land Bank fee simple title to the Property, free of all encumbrances except as herein stated. Land Bank shall take possession of the Property immediately following the Closing.

7. **Restrictions, Easements, Limitations, Taxes.** Land Bank shall take title subject to zoning restrictions, covenants and matters appearing on the plat or of record; public utility easements of record; and taxes and special assessments prorated to the Closing Date, if available, and, if not, based upon taxes and assessments for the prior calendar year.

8. **Conveyance.** Donor shall properly execute a general warranty deed conveying the Property to Land Bank free and clear of all liens and encumbrances whatsoever, except as herein provided, and shall place such deed in escrow with the Escrow Agent as soon as may be reasonably possible. At Closing, the Escrow Agent shall deliver the warranty deed and other documents to the Property to Land Bank.

9. **Mechanic's Liens.** Donor certifies that at Closing there will be no lien claimants, potential lien claimants, or improvements to the Property for 120 days prior to Closing Date.

10. **Condition of Property.** Except as otherwise provided herein, Donor is making no warranties of any kind regarding the condition of the Property, and Land Bank is not asking for any warranties from Donor. Therefore, Land Bank acknowledges that it has inspected the Property and agrees to accept it "as is."

11. **Default.** If Donor is unable or fails to furnish title or possession as agreed in this Agreement, Land Bank may terminate this Agreement by written notice to Donor and the parties shall be released from all obligations hereunder.

12. **Authority.** Donor represents and warrants that Donor has the power to enter into this Agreement and to execute and deliver this Agreement and to perform all duties and obligations imposed upon it hereunder, and neither the execution or delivery of this Agreement, nor the consummation of the conveyance contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or will result in the breach of any of the terms, conditions or provisions of any agreement or instrument to which Donor, or any partner or related entity or affiliate of Donor, is a party or by which Donor, or any partner or related entity or affiliate of Donor, or any of Donor's assets is bound. Donor agrees to execute such further documents and take such further actions as may be reasonably required to evidence and document the representations and warranties contained in this section.

13. **Assignment.** This Agreement or any right or interest in the Property shall not be assigned by either Donor or Land Bank.

14. **No Commission.** The parties stipulate that they have not consulted with any real estate broker or salesperson with respect to this transaction, and that no commissions arising from this transaction are due and owing.

15. **Real Estate Reporting Person.** The parties agree that the Escrow Agent is the real estate reporting person as that term is defined under Internal Revenue Code Section 6045(e). Donor agrees to provide Escrow Agent with a written statement, certified under penalties of perjury, setting forth Donor's correct name, address, and taxpayer identification number. The parties further agree that Escrow Agent shall be required to file the informational return required by Internal Revenue Code Section 6045.

16. **Representation of Parties.** Land Bank is represented by the law firm of Clark, Mize & Linville, Chartered, Salina, Kansas. Donor acknowledges that neither Land Bank nor Land Bank's legal counsel has provided legal or tax advice related to the transaction contemplated by this Agreement. Donor is advised that it has the right to such independent legal and/or tax counsel of its own choosing to represent it herein and to advise it with respect to this matter. Donor acknowledges that it has either consulted separate counsel of its own choosing or has elected to proceed without separate counsel.

17. **Time.** Time is of the essence of this Agreement.

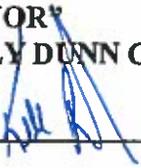
18. **Persons Bound-Copies.** This Agreement shall extend to and bind the heirs, executors, administrators, trustees, successors, and authorized assigns of the parties, and may be executed in any number of counterparts, each of which shall be deemed an original, or in multiple originals, and all such counterparts or originals shall for all purposes constitute one agreement.

19. **Merger Clause.** These terms are intended by the parties as a complete, conclusive and final expression of all the conditions of their Agreement. No other promises, statements, warranties, agreements or understandings, oral or written, made before or at the signing thereof, shall be binding unless in writing and signed by all parties and attached hereto.

{Signature Page Follows}

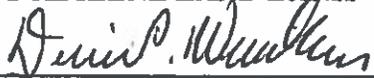
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives.

"DONOR"
KELLY DUNN CONSTRUCTION, INC.

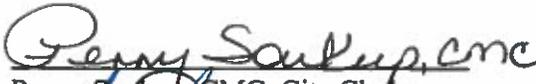


"LAND BANK"

CITY OF ABILENE LAND BANK

By: 
Name: Dennis P. Weishaar
Title: Mayor

Attest:

By: 
Penny Soukup, CMC, City Clerk

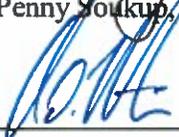
Form: 
Legal Counsel



EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Parcel No. 1:

A parcel of land located in the Northeast Quarter of Section Eighteen (18), Township Thirteen (13) South, Range Two (2) East of the 6th Principal Meridian in City of Abilene, Dickinson County, Kansas, more particularly described as follows: Commencing at the Southeast corner of said Northeast Quarter; thence on an assumed bearing of N 00°00'00" E along said East line a distance of 40.00 feet; thence N 89°58'11" W a distance of 60.00 feet to the intersection of the West right-of-way of Van Buren Street and the North right-of-way line of the Northwest Eighth Street, said Point also being the Point of Beginning of the parcel to be described; thence N 89°58'11" W along said North right-of-way line a distance of 1265.91 feet to point on the West line of the East Half of said Northeast Quarter; thence N 00°05'27" E along said West line a distance of 949.86 feet; thence S 89°57'15" E along said West line a distance of 949.86 feet; thence S 89°57'15" E a distance of 11264.44 feet to a point on said West right-of-way line; thence S 00°00'00" E along said West right-of-way line a distance of 949.52 feet to the Point of Beginning. EXCEPT a parcel of land located in the Northeast Quarter of Section Eighteen (18), Township Thirteen (13) South, Range Two (2) East of the 6th Principal Meridian in City of Abilene, Dickinson County, Kansas, more particularly described as follows: Beginning at the Southeast corner of said Northeast Quarter; thence on an assumed bearing of N 89°58'11" W along the South line of said Northeast Quarter a distance of 284.99 feet; thence N 00°00'00" E a distance of 364.65 feet; thence N 90°00'00" W a distance of 334.99 feet; thence N 00°00'00" E a distance of 420.00 feet; thence N 90°00'00" W a distance of 10.00 feet; thence N 00°00'00" E a distance of 205.21 feet; thence S 89°57'15" E a distance of 629.96 feet to a point on the East line of said Northeast Quarter; thence S 00°00'00" E along said East line a distance of 989.50 feet to the Point of Beginning.

Parcel No. 2:

Lot 1, Block 6, Cedar Ridge Estates No. 1 to the City of Abilene, Dickinson County, Kansas.

RECEIPT BY ESCROW AGENT

The undersigned hereby acknowledges receipt of the executed original of this Agreement, and agrees to act as Escrow Agent and Real Estate Reporting Person as defined under Internal Revenue Code Section 6045(e). This receipt is executed this 31 day of December, 2015.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: Joleen Rankin
Name: Joleen Rankin
Title: Settlement Agent