

RESOLUTION NO. 102615-3

A RESOLUTION APPROVING A REAL ESTATE DONATION AGREEMENT WITH ABILENE HIGHLANDS, LP CONCERNING THE CONVEYANCE OF CERTAIN REAL PROPERTY COMMONLY KNOWN AS THE ABILENE HIGHLANDS ADDITION 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;

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; and

WHEREAS, the Trustees desire to accept a donation of real estate from Abilene Highlands, LP.

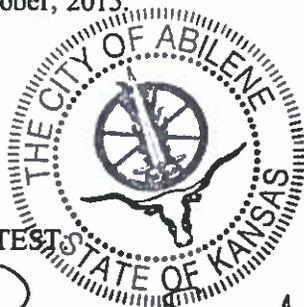
NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

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.

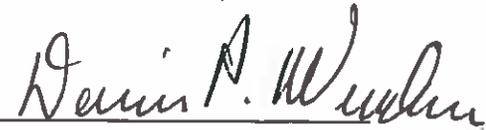
PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 26th day of October, 2015.



ATTEST:


Penny Soukup, CMC
City Clerk

CITY OF ABILENE, KANSAS

By: 
Dennis P. Weishaar, Mayor

APPROVED AS TO FORM:


Aaron O. Martin, City Attorney

EXHIBIT A

Real Estate Donation Agreement

Abilene Highlands, LP

October 26, 2015

REAL ESTATE DONATION AGREEMENT

This Real Estate Donation Agreement ("Agreement") is entered into this 26th day of October, 2015, by Abilene Highlands, L.P. ("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; Charitable Deduction.** 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. It is understood that Donor intends to claim the value of the Property as a noncash charitable contribution for tax purposes. Land Bank will sign the acknowledgment section of IRS Form 8283 that is correctly completed by Donor and its appraiser. In addition, Donor acknowledges and agrees that Donor's claimed deduction on the IRS Form 8283 shall reflect a "bargain sale" showing an "amount received" by Donor equal to the outstanding taxes and special assessments due and owing on the Property at the time of closing. Donor shall be solely responsible for any audits, costs, or liabilities that may arise from the charitable deduction claimed by Donor in this transaction and shall hold Land Bank and the City of Abilene, Kansas harmless for any claims related to the same. Donor is advised to seek its own legal and/or tax counsel of the gift contemplated in this Agreement and has not relied on any representation from Land Bank related to the gift provided in this Agreement. Land Bank makes no representation regarding the fair market value of the Property or any tax related 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 the following items:

- (a) One-half of the title insurance premium;
- (b) One-half of the escrow and closing fee, if any;
- (c) The cost of recording the deed;
- (d) The cost of obtaining an appraisal pursuant to Section 4 below, subject to Donor's reimbursement obligation as set forth therein; and
- (e) Any attorneys' fees and expenses incurred by the Land Bank in the preparation and performance of this Agreement.

3.2 Donor. Donor shall pay the following items:

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

4. Appraisal. As a condition to Donor's obligations at Closing, Land Bank shall obtain and deliver to Donor, at least five (5) days prior to the Closing Date, an appraisal for the Property prepared by The Simmons Company. The appraisal is not required to report any predetermined value or direction in value, and Land Bank shall be deemed to have fulfilled its obligations hereunder upon delivery of the appraisal to Donor, regardless of the ultimate appraised value. If Land Bank is unable or fails to deliver the appraisal to Donor as required hereunder, then Donor may terminate this Agreement. If Donor is unable or fails to furnish title or possession as agreed in this Agreement, then Land Bank may terminate this Agreement and Donor agrees to pay Land Bank the sum of \$4,500.00 as reimbursement for its appraisal fees and costs. Such amount shall be paid to Land Bank within ten (10) days of written demand by Land Bank.

5. 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.

6. Evidence of Title. As soon as reasonably possible after execution of this Agreement, Land Bank shall request the preparation of a commitment for an owner's title insurance policy in an amount not to exceed the appraised value of the Property, 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) business 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.

7. Closing Date and Possession. The Closing Date shall be on or before November 19, 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.

8. 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 for 2015 and all prior years.

9. **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.

10. **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.

11. **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."

12. **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.

13. **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.

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

15. **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.

16. **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.

17. **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.

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

19. **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.

20. **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}

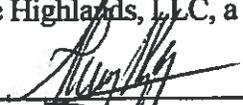


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives.

"DONOR"

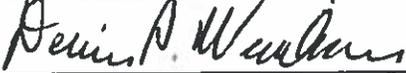
ABILENE HIGHLANDS, L.P.

By: Abilene Highlands, LLC, a Kansas limited liability company, its sole General Partner

By: 
Harry Utzig Member

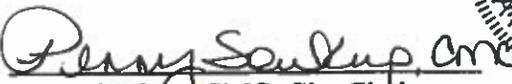
"LAND BANK"

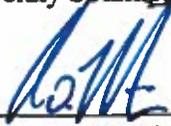
CITY OF ABILENE LAND BANK

By: 
Name: Dennis P. Weishaar
Title: Mayor



Attest:

By: 
Penny Soukup, CMC, City Clerk

Form: 
Legal Counsel



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 3 day of November, 2015.

FIRST AMERICAN TITLE INSURANCE COMPANY

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

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

East Highlands Legal Description

A parcel of land located in the West Half of Section 8, Township 13 South, Range 2 East of the 6th Principal Meridian in Dickinson County, Kansas, more particularly described as follows:

Commencing at the Southwest Corner of the Southwest Quarter of said Section 8; thence on an assumed bearing of N 00°00'00" E along the West line of said Southwest Quarter a distance of 668.20 feet to the Southwest Corner of the North Half of the Southwest Quarter of said Southwest Quarter, said point also being the POINT OF BEGINNING of the parcel to be described; thence continuing N 00°00'00" E along said West line a distance of 1021.58 feet to the South right-of-way line Interstate 70; thence N 90°00'00" E along said South right-of-way line distance of 30.00 feet; thence N 12°45'36" E along said South right-of-way line a distance of 947.27 feet; thence N 86°59'06" E along said South right-of-way line a distance of 956.79 feet; thence N 86°26'10" E along said South right-of-way line a distance of 141.67 feet; thence S 00°07'21" E along the East line, and extensions thereof, of the West Half of said Southwest Quarter a distance of 1996.85 feet to the Southeast Corner of said North Half of the Southwest Quarter of the Southwest Quarter; thence S 89°40'08" W along the South line of said North Half of the Southwest Quarter of the Southwest Quarter a distance of 1340.38 feet to the POINT OF BEGINNING; Said parcel contains 57.53 acres, more or less, and is subject to easements, reservations and restrictions of record.

West Highlands Legal Description

A parcel of land located in the Southeast Quarter of Section 7, Township 13 South, Range 2 East of the 6th Principle Meridian in Dickinson County, Kansas, more particularly described as follows:

Commencing at the Southeast Corner of said Southeast Quarter; thence on an assumed bearing N 00°00'00" E along the East line of said Southeast Quarter a distance of 668.02 feet to the Southeast Corner of the North Half of the Southeast Quarter of said Southeast Quarter, said point also being the POINT OF BEGINNING of the parcel to be described; thence S 89°39'57" W along the South line of said North Half of the Southeast Quarter of the Southeast Quarter a distance of 1322.73 feet to the Southwest corner of said North Half of the Southeast Quarter of the Southeast Quarter; thence N 00°04'09" W along the West line of said Southeast Quarter of the Southeast Quarter a distance 663.95 feet to the Southwest corner of the Northeast Quarter of said Southeast Quarter; thence continuing N 00°04'09" W along the West line of said Northeast Quarter of said Southeast Quarter a distance of 1266.69 feet to a point on the South right-of-way line of Interstate 70; thence N 87°48'43" E along said South right-of-way line a distance of 1205.56 feet; thence N 76°18'25" E along said South right-of-way line a distance of

83.57 feet; thence N 87°56'37" E along said South right-of-way line a distance of 39.18 feet to the Northeast corner of said Southeast Quarter; thence S 00°00'00" E along said East line of the Southeast Quarter a distance of 1990.14 feet to the POINT OF BEGINNING. Said parcel contains 59.36 acres (112,596 square feet), more or less, and is subject to easements, reservations and restrictions of record.

Exempt from the Land Bank

The following parcels shall be exempt from the Real Estate Donation Agreement:

1. West Highlands, Section 7, Township 13, Range 2, BLOCK 1, Lot 6, LESS R/W; and
2. West Highlands, Section 7, Township 13, Range 2, BLOCK 1, Lot 5, 5860 SQUARE FEET.