

RESOLUTION NO. 9, SERIES 2017

A RESOLUTION AUTHORIZING THE TRANSFER OF FIVE (5) PARCELS OF REAL PROPERTY LOCATED AT 2816 SOUTH 6TH STREET (050E-0114-000), 702 M STREET (050E-0041-0000), 1501 BICKEL AVENUE (066G-0065-000), 3960 WHEELER AVENUE (066G-0062-0297), AND 3962 WHEELER AVENUE (066G-0061-000), BY THE LOUISVILLE AND JEFFERSON COUNTY LANDBANK AUTHORITY, INC.

WHEREAS, according to KRS 65.370, the Louisville and Jefferson County Landbank Authority, Inc., may enact resolutions for the purpose of sale or conveyance of real property owned by the Authority; and

WHEREAS, according to KRS 65.370 (d), the Authority shall have the power to manage, maintain, protect, rent, lease, repair, insure, alter, sale, trade, exchange or otherwise dispose of any property on terms and conditions as determined by KRS 65.350 to 65.375 and by the Authority; and

WHEREAS, the real properties which are the subject of this Resolution have never been dedicated by virtue of use, deed, ordinance or any other manner for a public or governmental purpose

WHEREAS, the applicant will have adhered to all conditions as outlined as part of the proposed OPTION TO PURCHASE AGREEMENT discussed by the Board at its May 10, 2017 meeting, (Exhibit "A");

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD MEMBERS OF THE LOUISVILLE AND JEFFERSON COUNTY LANDBANK AUTHORITY, INC.,

SECTION 1. That the Board Members, of the Louisville and Jefferson County Landbank

Authority, Inc., hereby authorize the sale of the following described properties:

BLOCK	LOT	SUBLOT	STREET ADDRESS	CONSIDERATION
050E	0114	0000	2816 South 6 th Street	\$500.00
050E	0041	0000	702 M Street	\$1,000.00
066G	0065	0000	1501 Bicknell Avenue	\$1,000.00
066G	0062	0297	3960 Wheeler Avenue	\$1,000.00
066G	0061	0000	3962 Wheeler Avenue	\$500.00

SECTION 2. That the Chairman of the Louisville and Jefferson County Landbank Authority, Inc., or his designee, is hereby authorized and directed to transfer the property listed herein in the manner provided according to KRS 65.370, to The Housing Partnership, Inc., for the construction of single-family residences, without further action by the Authority.

SECTION 3. That approval is granted with the following conditions:

1. The applicant will have met the terms of a mutually-agreed upon OPTION TO PURCHASE AGREEMENT;
2. The applicant has maintained, and will continue to maintain, the properties free from property maintenance cases and fines;
3. The applicant agrees to insure the properties; such requirements being included and recorded as a deed restriction.

SECTION 4. That this Resolution shall become effective upon its passage and approval.

APPROVED BY: _____ **DATE APPROVED:** _____

**William P. Schreck
Chairman and President
Louisville and Jefferson County
Landbank Authority, Inc.**

APPROVED AS TO FORM:

James T. Carey
Assistant Jefferson County Attorney
531 Court Place, Suite 900
Louisville, KY 40202
(502) 574-6333

EXHIBIT “A”

OPTION TO PURCHASE AGREEMENT

THIS OPTION TO PURCHASE AGREEMENT (“Option Agreement”) is made as of this ____ day of _____, 2017 by and between the **LOUISVILLE AND JEFFERSON COUNTY LANDBANK AUTHORITY, INC.**, a Public Body Corporate and Politic, which is an agency of the Louisville/Jefferson County Metro Government, the Board of Education of Jefferson County, Kentucky, and the Commonwealth of Kentucky, with an address of 444 South Fifth Street, Suite 500, Louisville, Kentucky 40202, (“Seller”) and **THE HOUSING PARTNERSHIP, INC.**, a Kentucky Corporation, with an address of 1512 Crums Lane, Suite 401, Louisville, Kentucky 40216 (“Buyer”).

WITNESSETH:

WHEREAS, Seller is the fee simple owner of certain real property located at 2816 South 6th Street, 702 M Street, 1501 Bicknell Avenue, 3960 Wheeler Avenue and 3962 Wheeler Avenue, which properties are more particularly described in the attached Exhibit 1, together with all appurtenances pertaining thereto and all improvements, if any, located thereon, (the “Properties”); and

WHEREAS, the Buyer is interested in purchasing the Properties for redevelopment purposes; and

WHEREAS, the Buyer is in the process of obtaining financing; and

WHEREAS, prior to agreeing to purchase the Properties, Buyer needs to perform various due diligence investigations; and

WHEREAS, in order to demonstrate its commitment to provide the Buyer the opportunity to purchase and redevelop the Properties, Seller agrees to grant Buyer an option to purchase the Properties in accordance with the terms and conditions of this Option Agreement.

NOW THEREFORE, in consideration of the premises, the mutual promises, covenants, and agreements hereinafter set forth and for other good and valuable consideration, the mutuality, receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

1. **Grant of Option.** In consideration of the “Option Consideration,” as defined in Section 3, Seller hereby grants to Buyer an option (“Option”) to purchase the Properties, together with all buildings and improvements located thereon and all rights and appurtenances thereunto belonging and all right, title and interest of Seller in and to any and all appurtenant easements, including any and all appurtenant rights to use any and all roads, streets, lanes and highways, whether public or private, adjacent to or adjoining the Properties, for the “Purchase Price,” as such term is described in Section 6, and in

accordance with the terms and subject to the conditions hereinafter set forth in this Option Agreement.

2. **Term of Option.** The term of the Option shall be for six (6) months from the date of this Option Agreement.
3. **Option Consideration.** The consideration for the Option shall be Four Hundred Dollars (\$400.00) (the “Option Consideration”). Buyer shall pay the Option Consideration as of the date of execution of this Option Agreement. If Buyer purchases the Properties, the Option Consideration shall be a credit against the Purchase Price. The Option Consideration is refundable if Buyer is unable to secure funding for this project; and shall be non-refundable if Buyer, for any other reason, elects not to purchase the Properties. The Option Consideration shall be fully refundable should completion of this transaction not occur due to failure or inability of the Seller to fulfill its obligations under this Option Agreement. Buyer’s failure to perform its obligations hereunder will entitle Seller to liquidated damages in the amount of the agreed upon Option Consideration as the Seller’s sole remedy for Buyer’s failure to perform its obligations hereunder.
4. **Exercise of Option.** Buyer may exercise its Option at any time during the Term of Option in its sole and absolute discretion by delivering written notice to Seller of its exercise of the Option (“Notice”). On the date of the Notice, this Option Agreement shall be deemed to be a legally binding contract of purchase and sale between Seller and Buyer, enforceable in accordance with its terms.
5. **Buyer Financing.** Exercise of this Option by Buyer is dependent upon Buyer securing full financing for the project.
6. **Purchase Price.** In the event the Buyer exercises the Option, the purchase price for the Properties shall be:
 - a. 2816 S. 6th Street – Five Hundred Dollars (\$500);
 - b. 702 M Street – One Thousand Dollars (\$1,000);
 - c. 1501 Bicknell Avenue – One Thousand Dollars (\$1,000);
 - d. 3960 Wheeler Avenue – One Thousand Dollars (\$1,000);
 - e. 3962 Wheeler Avenue – Five Hundred Dollars (\$500).

The Option Consideration shall be a credit against the Purchase Price at Closing. Payment shall be made in cash or immediately available funds.

7. **Closing.** The closing (“Closing”) of the sale of the Properties from Seller to Buyer shall take place at a mutually acceptable location on a date to be agreed upon between the Parties within Sixty (60) days after the date of Notice has been given by the Buyer. Sole possession of the Properties shall be given to Buyer at the Closing.
8. **Title.** At its own expense, Buyer shall obtain title commitment opinions for each of the Properties. If title to any Property proves defective and Seller is unwilling or unable to cure the title defects, Buyer may declare this Agreement null and void. Or, Buyer, in its discretion, shall have the right to accept title to the Property with its faults. Seller shall convey the Properties to Buyer by special warranty deed.
9. **Broker’s Fees.** Each of the Parties hereto represents and warrants to the other that it has engaged no broker or finder in connection with the negotiation of this Option Agreement, and each party, to the extent permitted by Kentucky law, indemnifies and holds the other harmless against any claims for fees for such services by any person or firm claiming under or through such indemnitor. Each party hereto shall bear its own respective expenses and costs for legal, accounting and administrative services in connection with the negotiation of this Option Agreement and consummation of the transactions contemplated hereby, except as mutually agreed to by the Parties. To the extent permitted by Kentucky law, each Party hereto indemnifies and holds the other harmless against any claims for fees for such services by any person or firm claiming under or through such indemnitor.
10. **Entry upon Properties.** During the Option Term and, if Buyer exercises the Option, up to the Closing, the Buyer and its officers, employees, engineers, surveyors, and other agents and assigns, shall have, and are hereby granted by Seller, the right to enter upon the Properties for the purpose of maintaining the lot and landscaping and any structure on the Properties in its current condition, and making such other reasonable observations and inspections of the Properties and their environs as are deemed necessary or appropriate by the Buyer. Any access to the Property for other purposes, including making any surveys, testing, test borings or any other soil testing may be permitted upon approval of the Seller only. Buyer agrees to indemnify and hold Seller harmless from any damages to persons or properties arising out of the actions of Buyer, its invitees, subcontractors and/or licensees as a result of entry upon the Properties. Furthermore, Buyer agrees to indemnify Seller for any and all claims arising from damages or injury incurred on the Properties.
11. **Assignment.** This Option Agreement is not assignable.

12. Buyer's Representations, Warranties and Covenants. Buyer represents and warrants to Seller that:

- a. Neither Seller, nor any agent, representative, or attorney of Seller, has made any representation with respect to the physical nature or physical condition of the Properties to be sold hereunder except as specifically set forth in this Option Agreement;
- b. Buyer shall maintain the Properties, including landscaping and any improvements thereon in their current condition during the term of this Option;
- c. Buyer acknowledges that no other representations or warranties of any kind have been made by Seller or by any agent, representative or attorney of Seller, as to the physical condition, rents, lease tenancies, or expenses of the Properties or the use to which the Properties may be put, except as specifically set forth in this Option Agreement;
- d. The Properties are being acquired in "As Is" condition and "With All Faults" and no representations or warranties, either express or implied, have been made by Seller as to its usability or habitability, and Seller hereby expressly disclaims any and all such representations or warranties;
- e. Buyer possesses full right, power and authority to execute, deliver and perform this Option Agreement; and
- f. Within five (5) days of the execution of this Option Agreement, without limiting Buyer's indemnification obligations, Buyer shall provide evidence of an acceptable general liability occurrence-based insurance policy on a primary noncontributory basis to insure its interest in and activities on the Properties. Such insurance shall be at a minimum limit of \$300,000 per occurrence. Buyer shall provide Seller with a certificate of insurance evidencing said insurance.

13. Covenants of Seller Prior to Closing. Seller hereby covenants with Buyer that, from and after the date of this Option Agreement and through the earlier of the date of expiration or other termination of the Option Terms or the date of Closing, as applicable Seller shall not:

- a. Sell, grant, convey, mortgage, encumber or dispose of the Properties or any part thereof or any improvements located thereon or the appurtenances thereunto belonging;
- b. Allow any defects, liens, adverse claims, demands or encumbrances of any nature, kind or character to be asserted against the Properties or any part thereof, other than Permitted Exceptions;

- c. Grant any easement, license or right-of-way in, to or through the Properties or any part thereof;
- d. Create, or allow to be created, any condition, restriction of covenant of any kind, character or nature whatsoever with respect to the Properties, unless approved in writing by the Buyer.

14. Environmental Indemnification. Buyer agrees to assume full responsibility for any and all environmental compliance and monitoring that may be required by any federal state or local regulatory agency concerning the Properties which arises due to Buyer's use or occupancy of the Properties, whether prior to or after conveyance of the Properties pursuant to this Option Agreement. Buyer agrees to indemnify and hold harmless Seller from any and all damages, claims or losses to persons, property and entities, whether public or private, arising out of Buyer's use or occupancy of the Properties, whether prior to or after conveyance of the Properties pursuant to this Option Agreement. Damages, claims and losses shall include, but not be limited to, actual, compensatory, consequential, incidental and punitive damages, attorney fees, court costs, experts fees, sampling costs, costs of remediation, fines and penalties. Buyer hereby waives any defense it may have against Seller in connection with any environmental violations on the Properties during Buyer's use or occupancy, which defenses rely on Seller's knowledge of or permission for Buyer's use of the Properties.

15. Notices. All notices to be given under this Option Agreement shall be given in writing, either by personal delivery to the Party to whom the same is given or to its authorized representative, or by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Seller: Louisville and Jefferson County Landbank Authority, Inc.
 444 South Fifth Street, Suite 500
 Louisville, KY 40202

If to Buyer: The Housing Partnership, Inc.
 1512 Crums Lane
 Suite 401
 Louisville, KY 40216

16. Default. In the event that Buyer shall exercise the Option and fail to comply with any of its duties and obligations provided hereunder, Seller shall be entitled to retain the Option Consideration, in which event this Option Agreement shall be cancelled.

17. **Neutral Construction.** The Parties hereto acknowledge that this Option Agreement was the subject of fair negotiation between parties adequately represented by independent counsel of their choice or who had the opportunity to obtain independent counsel but elected not to do so. Neither Party shall be considered a “drafter” of this Option Agreement for the purpose of construing any of its terms and conditions.
18. **Counterparts.** This Option Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.
19. **Time of Essence.** Time shall be of the essence in the performance by Buyer and Seller of all of their respective obligations under this Option Agreement.
20. **Entire Agreement.** Buyer and Seller have read the entire contents of this Option Agreement and acknowledge receipt of an executed copy hereof. It is agreed that all terms and conditions pertinent hereto are included in this Option Agreement, and no verbal agreements or understandings of any kind shall be binding upon Buyer or Seller.
21. **Survival.** Buyer agrees that all of the terms and provisions of this Option Agreement shall survive the closing of the sale of the Properties.
22. **Governing Law.** This Option Agreement shall be governed by the laws of the Commonwealth of Kentucky and ordinances of the Louisville/Jefferson County Metro Government. The Parties hereto agree that venue for all disputes shall be in the courts of Jefferson County, Kentucky.
23. **Severability.** If any provision of this Option Agreement is declared invalid or not enforceable, the remainder of the Option Agreement shall continue in full force and effect.

This Instrument Prepared By:

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

By: _____

James T. Carey

Assistant Jefferson County Attorney

531 Court Place, Suite 900

Louisville, Kentucky 40202

(502) 574-6333

Exhibit 1

Property #1:

<u>Street Address</u>	<u>PVA Tax Parcel No.</u>
2816 S. 6 th Street	050E-0114-0000
BEGINNING on the West side of Sixth Street, 155 feet from the Northwest corner of "N" Street, thence running Northwardly 27 ½ feet, thence Westwardly 100 feet parallel with "N" Street to a (10') alley, thence Southwardly 27 ½ feet, thence Eastwardly 100 feet to the point of beginning, also being Lot #22, Block #1276 in J.T. Burghard's Subdivision, plat of which is recorded in Deed Book 422, Page 189, in Jefferson County, Kentucky Court Clerk's Office. BEING the same property acquired by the Louisville and Jefferson County Landbank Authority, Inc. by Deed dated May 30, 2006, of record in Deed Book 8851, Page 259, in the Office of the County Clerk of Jefferson County, Kentucky.	

Property #2:

<u>Street Address</u>	<u>PVA Tax Parcel No.</u>
702 M Street	050E-0041-0000
BEGINNING in the South line of "M" Street 40 feet West of Rodman (formerly Seventh) Street; thence Westwardly with the said line of "M" Street 45 feet; and extending back Southwardly, of that width throughout, between lines parallel with Rodman Street, 125 feet to a 15 foot alley. BEING the same property acquired by the Louisville and Jefferson County Landbank Authority, Inc. by Deed dated June 10, 2004, of record in Deed Book 8434, Page 750, in the Office of the County Clerk of Jefferson County, Kentucky.	

Property #3:

<u>Street Address</u>	<u>PVA Tax Parcel No.</u>
1501 Bicknell Avenue	066G-0065-0000
BEING lot 294 and 295 as shown on Plan of Hazelwood Subdivision of the Bergman Addition to the City of Louisville, Kentucky as shown on the Plat of record in Road and Route Book 2, Page 51 in the Office of the Clerk of the County Court of Jefferson County, Kentucky. BEING the same property acquired by the Louisville and Jefferson County Landbank Authority, Inc. by Deed dated December 14, 2007, of record in Deed Book 9155, Page 451, in the Office of the County Clerk of Jefferson County, Kentucky.	

Property #4:

<u>Street Address</u>	<u>PVA Tax Parcel No.</u>
3960 Wheeler Avenue	066G-0062-0297
BEING Lot 297, Hazelwood Subdivision of the Bergman Addition, plat of which is of record in Road Route Book 2, Page 51, in the Jefferson County Clerk's Office. BEING Tract 1 of the property acquired by the Louisville and Jefferson County Landbank Authority, Inc. by Deed dated September 12, 2016, of record in Deed Book 10710, Page 34, in the Office of the County Clerk of Jefferson County, Kentucky.	

Property #5:

<u>Street Address</u>	<u>PVA Tax Parcel No.</u>
3962 Wheeler Avenue	066G-0061-0000
BEING Lot number 296, in Hazelwood Subdivision of the Bergmann Addition to the City of Louisville, Kentucky, a plat of which Subdivision is recorded in "Maps of Road Route" Book number 2, Page 51, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.	
BEING Tract 2 of the property acquired by the Louisville and Jefferson County Landbank Authority, Inc. by Deed dated September 12, 2016, of record in Deed Book 10710, Page 34, in the Office of the County Clerk of Jefferson County, Kentucky.	