

Prepared by & Return to:
PHFA-Legal Division
211 North Front Street, P.O. Box 8029
Harrisburg, Pennsylvania 17105-8029
717-780-3846

PIN / ID Number: 88-6-9000-00

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[REDACTED] Housing
[REDACTED]

PENNSYLVANIA HOUSING FINANCE AGENCY
INDENTURE OF RESTRICTIVE COVENANTS
FOR LOW-INCOME HOUSING TAX CREDITS

THIS INDENTURE, made this 20TH day of February 2015, and effective this 1ST day of April, 2015, by and between [REDACTED] L.P., a Pennsylvania limited partnership, with a principal place of business at 222 N. 17th Street, Suite 435, Philadelphia, Pennsylvania 19103("Owner"),

AND

PENNSYLVANIA HOUSING FINANCE AGENCY, a public corporation and government instrumentality of the Commonwealth of Pennsylvania, with principal offices at 211 North Front Street, Harrisburg, Pennsylvania 17101 (the "Agency").

WITNESSETH:

WHEREAS, the Governor of the Commonwealth of Pennsylvania has designated the Agency as the housing tax credit agency for the Commonwealth of Pennsylvania for the allocation of low income housing tax credit dollars pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the property is 2 parcels currently known as [REDACTED] and [REDACTED], to be known as [REDACTED] 19125, Pennsylvania, as more fully described in Exhibit A attached hereto and made a part hereof, known as [REDACTED] (the "Development"); and

WHEREAS, based upon Owner's representations, Owner has received, pursuant to the Code, an allocation of low income housing tax credit dollars for the Development from the Agency (the "Tax Credits") which allocation is subject to Owner executing, delivering and recording in the official land deed records of the county in which the Development is located this Indenture for the purpose of enforcing the requirements of the Code by regulating and restricting the use, occupancy and transfer of the Development as set forth herein; and

WHEREAS, Owner, under this Indenture, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Development shall be and are covenants running with the Development for the term stated herein and binding upon all subsequent owners of the Development for such term.

NOW, THEREFORE, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I
DEFINITIONS

All words and phrases defined in the Code and in the Regulations (as such term is herein defined) pertaining thereto promulgated by the U.S. Department of Treasury ("Treasury"), the Internal Revenue Service ("IRS") or the U.S. Department of Housing and Urban Development ("HUD") shall have the same meanings in this Indenture.

ARTICLE II
OWNER'S REPRESENTATIONS AND WARRANTIES

- A. The Development will be constructed, financed, operated and managed in a manner which is fundamentally and materially consistent with the representations and certifications set forth in the Owner's application to the Agency for Tax Credits.
- B. Owner is and shall continue to be duly organized and existing under the laws of the Commonwealth of Pennsylvania as the type of entity it represents itself to be and authorized to perform the activities contemplated by the Development financing.
- C. There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted or would materially affect its financial condition.
- D. All statements and representations made by Owner to the Agency in connection with the Tax Credits or relating to the Development were true and correct in all material respects when made by Owner.
- E. Owner has and shall continue to have good and marketable title to the Development.
- F. Owner acknowledges that the Development is and shall remain low-income residential rental property, in accordance with the Code and the regulations (proposed, temporary and final), which shall include, but are not limited to compliance monitoring regulations, promulgated by Treasury thereunder, as well as all public rulings, notices, procedures, announcements and bulletins issued by the IRS (collectively, the "Regulations"), for the term of this Indenture. Owner will not knowingly take or permit to be taken any action which would, either directly or indirectly, subject Owner or the Development to non-compliance with the Code or the Regulations.
- G. During the term of this Indenture, Owner agrees and warrants that each low-income unit is and will remain suitable for occupancy.

- H. Owner (or any successors or assigns thereto) shall not displace, evict or terminate an existing tenant of any residential unit subject to this Indenture and included in the applicable fraction (other than for good cause) in accordance with the Code and/or Regulations or make an increase in the gross rent with respect to a low-income unit not otherwise permitted by the Code. Furthermore, for the term of this Indenture, Owner shall continue to comply with any and all applicable Code, Regulations or technical advice of the IRS with respect to such tenancy.
- I. For the term of this Indenture, the Owner shall continue to comply with Section 42(h)(5)(A-C) of the Code and any and all applicable federal regulations and laws including those that apply retroactively.
- J. Owner shall submit information including, but not limited to, unit amenities, household size, household income and move-in information and any ongoing unit vacancies in a secure and timely manner in a form proscribed by the Agency. In addition to the foregoing, Owner shall keep such additional records and prepare and submit to Agency such additional reports as Agency may deem necessary to ensure compliance with the requirements of the Regulations and this Indenture.

ARTICLE III
RENTAL RESTRICTIONS

Pursuant to its application for Tax Credits with the Agency, Owner represents, warrants and covenants throughout the term of this Indenture:

- A. The applicable fraction (as defined in Section 42(c)(1) of the Code) shall be at least 100% and shall continue to apply during the term of the Indenture with Section 42(h)(6)(B)(i).
- B. Owner hereby certifies that a minimum of twenty-four (24) units will be available and affordable to tenants at or below 50 percent of median income.
- C. In accordance with Section 42(g)(1) of the Code, Owner has elected the Minimum Set-Aside Requirement to be 40 percent of the units at 60 percent of median income.

ARTICLE IV
TERM OF INDENTURE

- A. Except as otherwise provided herein, the term of this Indenture (consistent with Section 42(h)(6)(D) of the Code) shall begin on the first day of the compliance period specified in Section 42 of the Code and shall terminate thirty (30) years after the first day of the Compliance Period (such period being herein referred to as the "Compliance Period" or the "Extended Use Period").
- B. Notwithstanding paragraph A above, Owner shall comply with the requirements of the Code relating to the Compliance Period, provided, however, the Compliance Period for any building that is part of the Development shall terminate on the date the Development is acquired by foreclosure or transferred by a deed or other instrument in lieu of foreclosure unless the Secretary of the Treasury determines that such acquisition is part of an arrangement with Owner a purpose of which is to terminate such Compliance Period. Owner acknowledges that by recording this Indenture in the county's official land deed records the Owner waives the right to petition the Agency for relief under Section 42(h)(6)(E)(i)(II) of the Code during the Extended Use Period.

- C. For a period of three (3) years from the date of termination of the Extended Use Period made pursuant to Paragraph B above, Owner (or any successors or assigns thereto) shall not displace, evict or terminate an existing tenant of any low-income unit and included in the applicable fraction (other than for good cause) or increase the gross rent above the maximum allowed under the Code with respect to such units.

ARTICLE V
OWNER'S COVENANTS

- A. Owner shall not discriminate on the basis of race, creed, color, gender, age, handicap, marital status, national origin, status as a holder of a voucher or certificate of eligibility under Section 8 of the U.S. Housing Act of 1937, family status or religion, in the lease, sale, rental, use or occupancy of the Development or in connection with the employment or application for employment of persons for the operation and management of the Development or in connection with any improvements to be erected thereon or in connection with maintenance of the Development.
- B. If Owner becomes aware of any situation, event or condition that would result in non-compliance with the Code or the Regulations, Owner shall promptly submit written notice thereof to the Agency.
- C. Owner, for itself, its successors and assigns, agrees that the terms, conditions and restrictions of this Indenture shall be covenants running with the land, and that in any deed of conveyance of the Development or any part thereof, said terms, conditions and restrictions shall be incorporated by reference to this Indenture and the record hereof as fully as the same are contained herein for the Compliance Period as defined herein.
- D. Subject to the requirements of the Code and this Indenture, Owner may sell, transfer or exchange the entire Development at any time, but, unless the Compliance Period has terminated in accordance with Article IV hereof, Owner (and its successors and assigns) shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Development or any interest therein that such acquisition is subject to the requirements of this Indenture and to the requirements of the Code and Regulations. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Development or any low-income portion of the Development.
- E. Owner agrees to notify the Agency in writing in advance of any sale, transfer or exchange of the Development. Owner shall not dispose to any person any portion of the Development to which this Indenture applies unless all of the Development is disposed of to such person. Within thirty (30) days of the closing of such sale, transfer, or exchange, the Owner shall provide the Agency a complete copy of all of the closing documents.
- F. The Agency may at any time during the term of this Indenture seek to enforce all material representations made by the Owner at any time.

ARTICLE VI
ENFORCEMENT OF PROVISIONS

Owner acknowledges that the primary purpose for requiring compliance with the restrictions provided in this Indenture is to assure compliance of the Development and Owner (and its successors and assigns) with the Code, the Regulations and the applicable Agency's Tax Credit Program requirements. Owner in consideration for receiving the Tax Credits for the Development, hereby agrees and consents that (i) the Agency, the Commonwealth of Pennsylvania and/or the United States of America shall be entitled to enforce specific performance by Owner, its successors and assigns, of its obligations under this Indenture in any tribunal in the Commonwealth of Pennsylvania for any and all breach of the conditions and restrictions hereof or material representations made by Owner at any time, and in addition to all other remedies provided by law or in equity; and (ii) Owner further acknowledges and agrees that this Indenture shall inure to the benefit of all prospective, present and former low-income tenants or occupants of the Development who meet the income limitation applicable to the Development under Section 42(g) of the Code as third party beneficiaries who, either individually or collectively, shall have the right to enforce the requirements and prohibitions of Section 42(h)(6)(B)(i) in any tribunal in the Commonwealth of Pennsylvania. The Agency has the right to enforce the additional Agency Policy Restrictions and the Commonwealth Contracting Provisions attached hereto and incorporated herein as Exhibit B and C respectively.

ARTICLE VII
MISCELLANEOUS

- A. This Indenture shall not be amended without the prior written agreement of the parties hereto.
- B. The Agency or its agents and assigns shall have the right of entry and inspection of the Development and shall have access to inspection and reproduction of all records, books and accounts for the Development during regular business hours.
- C. The invalidity of any clause, part or provision of this Indenture shall not affect the validity of the remaining portions thereof.
- D. This Indenture and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania and, where applicable, the laws of the United States of America.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be signed on the date first written above.

WITNESS

[REDACTED]
a Pennsylvania limited partnership

By: [REDACTED]
A Pennsylvania nonprofit stock corporation,
its general partner

[REDACTED] By: [REDACTED] PRESIDENT
[REDACTED] President

WITNESS

PENNSYLVANIA HOUSING FINANCE AGENCY

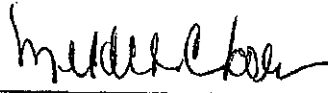
Janna I Ball

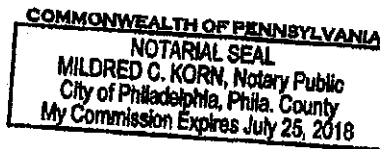
By: *Holly Glauser*
Holly Glauser
Director of Development

Commonwealth of Pennsylvania :
County of Philadelphia : SS:
:

On this, the 17th day of April, 2015, before me, a Notary Public the undersigned officer, personally appeared [REDACTED], who acknowledged himself to be the President of St. Francis Villa, Inc. the general partner [REDACTED], L.P., and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

In Witness Whereof, I hereunto set my hand and official seal.


Seal
Notary Public



COMMONWEALTH OF PENNSYLVANIA

COUNTY OF Shuadipke

SS:

On this, the 17th day of April, 2015, before me, the undersigned officer, personally appeared _____ who being sworn according to law, deposes and states that s/he is the Managing Member of _____, an _____, the sole member of _____, an _____, the general partner of _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that s/he, being authorized to do so, executed the same for the purpose therein contained, and desires the same to be recorded as such.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF DAUPHIN

On this, the 20th day of January, 2015, before me, the undersigned officer, personally appeared Holly Glauser, who acknowledged herself to be Director of Development of PENNSYLVANIA HOUSING FINANCE AGENCY, a public corporation and government instrumentality created by the Commonwealth of Pennsylvania (35 P.S. Section 1680.101 et seq., as amended), and acknowledged that she as such Director of Development, being authorized to do so, executed the foregoing instrument for the purposes therein contained, and desires the same to be recorded as such.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Joanna L. Ball, Notary Public
City of Harrisburg, Dauphin County
My commission expires October 28, 2016

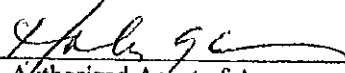
Joanna L. Ball
Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Joanna L. Ball, Notary Public
City of Harrisburg, Dauphin County
My commission expires October 28, 2016

I hereby certify that the principal place of business and complete post office address of the within-named Agency is, and after recordation this Indenture should be returned to:

Pennsylvania Housing Finance Agency
Attention: Legal Division
211 North Front Street
Harrisburg, Pennsylvania 17101

Please mail this Indenture to the above post office address.

By: 
Authorized Agent of Agency

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF _____ :

RECORDED on this _____ day of _____, 20__ in the Office of the Recorder of Deeds in and for said County, in Deed Book Volume _____, Page _____.

Recorder of Deeds

EXHIBIT B
ADDITIONAL AGENCY POLICY RESTRICTIONS

The Owner represents, warrants and covenants that it will satisfy the requirements indicated below throughout the term of this Indenture:

- A. During the term of this Indenture, Owner shall provide supportive services to tenants for the duration of the Compliance Period set forth in the Code.
- B. Four (4) units in the Development must be made available to persons who need accessible features of the units. Units in the Development with accessible features shall be available to persons requiring such features during the first 30 days of rent up. Thereafter, Owner has established a policy to allow the units to be occupied by persons who need the accessible features to the greatest extent feasible and said policy has been incorporated in the lease provisions. Furthermore, the policy and lease shall provide that in the event an accessible unit is occupied by a person not requiring such features, the tenant agrees to move to a comparable unit without such accessible features.
- C. Notwithstanding anything to the contrary in this Indenture, the Agency allocated Tax Credits based upon the Owner's representation that four (4) units in the Development will be affordable to households with income at or below 20% of area median income ("extremely low-income") during the first 15 years of the Compliance Period. Of these four (4) units, two (2) of these units must be set-aside as accessible housing to persons with disabilities. This covenant means that Owner shall take all necessary steps to market all accessible units to households where a member needs the accessible features of the unit and the rent shall be affordable to households with extremely low-income. In the event there is no eligible extremely low-income household identified for an accessible unit, Owner shall rent the unit to the lowest income households requiring the accessible features and the tenant's portion of the rent shall be affordable based on the tenant's income level. If there is no household needing the accessible features, the Owner may rent the unit to another eligible household. However, the Owner must make the accessible unit available and affordable to the next qualified extremely low-income household needing the accessible features (as soon as a vacancy arises at the property allowing the nondisabled household to be relocated to a comparable unit). Owner hereby certifies that it will make every effort to reach this designated tenant population and, to that end, shall comply with the updated and amended protocols and policies established by the Agency with regard to the accessible units, including the procedures set forth in the Agency's Accessible Unit Policy, as amended from time to time, incorporated herein by reference.
- D. Owner hereby certifies that the total tenant paid rent received by the Owner for twenty-four (24) units may not exceed the rents established for units at or below 50% of median income. In the event the Owner receives subsidies for rent from any source (including, without limitation, project-based, tenant based or internal rent subsidy programs), Owner certifies that upon expiration or termination of the subsidy, the tenant paid portion of the rent may not exceed the 50% of area median income Tax Credit rent.
- E. Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Indenture are paramount and controlling as to the rights and obligations set forth, and supersede any other requirements in conflict herewith.

EXHIBIT C
COMMONWEALTH CONTRACTING PROVISIONS

ARTICLE I
OWNER INTEGRITY

- A. Definitions for this section are as follows, as applicable:
1. Commonwealth means the Commonwealth of Pennsylvania.
 2. Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth and/or Agency.
 3. Consent means written permission signed by a duly authorized officer or employee of the Commonwealth and/or Agency, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth and/or Agency shall be deemed to have consented by virtue of execution of this Indenture.
 4. Owner means the individual or entity that has entered into this Indenture with Agency, including directors, officers, partners, managers, key employees, and owners of more than five percent (5%) interest.
 5. Financial interest means ownership of more than a five percent (5%) interest in any business or holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 6. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
 7. Immediate family means a spouse and any unemancipated child.
 8. Political contribution means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth or for paying debts incurred by or for a candidate or committee before or after any election.
- B. Owner shall maintain the highest standards of integrity in the performance of this Indenture and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth and/or Agency.
- C. Owner shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Owner employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Owner employees.
- D. Owner, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act*, 65 Pa.C.S. §§ 1101 et seq.; the State Adverse Interest Act, 71 P.S. § 776.1 et seq.; and the Governor's Code of Conduct,

- Executive Order 1980-18, 4 Pa. Code § 7.151 et seq., or to breach any other state or federal law or regulation.
- E. Owner shall not disclose to others any confidential information gained by virtue of this Indenture.
 - F. Owner shall not, in connection with this or any other Indenture with the Commonwealth and/or Agency, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth and/or Agency.
 - G. Owner shall not, in connection with this or any other Indenture with the Commonwealth and/or Agency, directly or indirectly offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth and/or Agency.
 - H. Except with the consent of the Commonwealth and/or Agency, neither Owner nor anyone in privity with it shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Indenture except as provided therein.
 - I. Except with the consent of the Agency, Owner shall not have a financial interest in any other contractor, subcontractor or supplier providing services, labor or material on this Development, unless the financial interest is disclosed to the Agency in writing and the Agency consents to Owner's financial interest prior to Agency execution of the Indenture. Owner shall disclose the financial interest to the Agency at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Owner's submission of the executed Indenture.
 - J. Owner, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Owner under this Indenture without the prior written approval of the Commonwealth and/or Agency, except as required by the *Pennsylvania Right-to-Know Law*, 65 P.S. §§ 67.101-3104, or other applicable law or as otherwise provided in this Indenture. Any information, documents, reports, data, or records secured by Owner from the Commonwealth or a third party in connection with the performance of this Indenture shall be kept confidential unless disclosure of such information is:
 - 1. Approved in writing by the Commonwealth and/or Agency prior to its disclosure; or
 - 2. Directed by a court or other tribunal of competent jurisdiction unless the Indenture requires prior Commonwealth approval; or
 - 3. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
 - 4. Necessary for purposes of Owner's internal assessment and review; or
 - 5. Deemed necessary by Owner in any action to enforce the provisions of this Indenture or to defend or prosecute claims by or against parties other than the Commonwealth and/or Agency; or
 - 6. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or
 - 7. Otherwise required by law.
 - K. Owner certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Agency in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified

of, charged with, convicted of, or officially notified of a governmental determination of any of the following:

1. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
2. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Owner or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
 - (a) obtaining;
 - (b) attempting to obtain; or
 - (c) performing a public contract or subcontract.

Owner's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

1. Violation of any federal or state antitrust statutes.
 2. Violation of any federal or state law regulating campaign contributions.
 3. Violation of any federal or state environmental law.
 4. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
 5. Violation of the Act of June 2, 1915 (P.L. 736, No. 338), known as the Workers' Compensation Act, 77 P.S. 1 et seq.
 6. Violation of any federal or state law prohibiting discrimination in employment.
 7. Debarment by any agency or department of the federal government or by any other state.
 8. Any other crime involving moral turpitude or business honesty or integrity.
- L. Owner shall comply with requirements of the *Lobbying Disclosure Act*, 65 Pa. C.S. § 13A01 et seq., and the regulations promulgated pursuant to that law.
- M. Owner, upon having reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, shall immediately notify the Agency's Chief Counsel and the Commonwealth Inspector General in writing.
- N. Owner, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Agency in writing.
- O. Owner, by execution of this Indenture and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of these provisions.
- P. If applicable, Owner shall immediately notify the Agency of any security breach, which may involve confidential consumer information.
- Q. Owner shall, upon request of the Office of State Inspector General and/or Agency, reasonably and promptly make available to that office and its representatives, for inspection and copying, all business and financial records of Owner of, concerning, and referring to this Indenture, or which are otherwise relevant to the enforcement of these provisions.

For violation of any of the above provisions, the Commonwealth and/or Agency may terminate any other contract, excluding this Indenture, with Owner, claim liquidated damages in an amount equal to

the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another facility to complete performance hereunder, and debar and suspend the Owner from doing business with Agency and/or the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Agency and/or the Commonwealth may have under law, statute, regulation or otherwise.

ARTICLE II
OWNER RESPONSIBILITY

- A. Owner certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the Owner cannot so certify, then it agrees to submit along with the bid/proposal a written explanation of why such certification cannot be made.
- B. Owner certifies that it has no tax liabilities or other outstanding Commonwealth debts. The Owner's obligations pursuant to these provisions are ongoing from and after the effective date of this Indenture through the termination date hereof. The Owner shall inform the Agency if, at any time during the term of this Indenture, it becomes delinquent in the payment of taxes, or other Commonwealth debts, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment. The failure of the Owner to notify the Agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of this Indenture.
- C. Owner agrees that the Commonwealth and/or the Agency may offset the amount of any state tax, Agency or Commonwealth debt of the Owner or its affiliates and subsidiaries that is owed to the Commonwealth and/or Agency against any payments due under contract with the Commonwealth and/or Agency.
- D. If Owner enters into subcontracts or employs under this Indenture any subcontractors/individuals who are currently suspended or debarred by the Commonwealth or the federal government or who become suspended or debarred by the Commonwealth or federal government during the term of this Indenture or any extensions or renewals thereof, the Commonwealth shall have the right to require the Owner to terminate such subcontractors or employment.
- E. Owner agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of Inspector General for investigations of Owner's compliance with the terms of this or any other Indenture between Owner and the Commonwealth which result in the suspension or debarment of Owner. Such costs shall include, but not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. Owner shall not be responsible for investigative costs for investigations which do not result in Owner's suspension or debarment.
- F. Owner may obtain the current list of suspended and debarred contractors by contacting the: Department of General Services, Office of Chief Counsel, 603 North Office Building Harrisburg, Pennsylvania 17125, Phone: (717) 783-6472 and Fax: (717) 787-9138.

ARTICLE III
NONDISCRIMINATION/SEXUAL HARASSMENT/AMERICANS WITH DISABILITIES CLAUSE

During the term of this Indenture, Owner agrees as follows:

- A. Owner shall not discriminate against nor intimidate any employee, applicant for employment, independent contractor, or any other person for the manufacture of supplies, performance of work, or any other activity, under this Indenture or any subcontract, because of race, color, religious creed, ancestry, handicap, national origin, age, or gender. Owner shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, handicap, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Owner shall post in conspicuous places, that are available to employees, agents, applicants for employment, and other persons, a notice setting forth the provisions of this nondiscrimination clause.
- B. Owner shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age, or sex.
- C. Owner shall send each labor union or workers' representatives with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Owner.
- D. Owner and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- E. It shall be no defense to a finding of noncompliance with this Nondiscrimination/Sexual Harassment Clause that Owner had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Owner was not on notice of the third-party discrimination or made a good faith effort to correct it, such factors shall be considered in mitigation in determining appropriate sanctions.
- F. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority persons, so that Owner will be unable to meet its obligations under this nondiscrimination clause, Owner shall then employ and fill vacancies through other nondiscriminatory employment procedures.
- G. Owner shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Owner's noncompliance with the Nondiscrimination/Sexual Harassment Clause of this Indenture or with any such laws.
- H. Owner may be declared temporarily ineligible for further Agency or Commonwealth contracts or financing and Agency may proceed with debarment or suspension and may place the Owner in the Contractor Responsibility File and other sanctions may be imposed and remedies invoked.
- I. Owner shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by the Agency and the Department of General Services' Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment clause. If Owner does not possess documents or records reflecting the necessary information requested, it shall

- furnish such information on reporting forms supplied by the Department of General Services' Bureau of Contract Administration and Business Development.
- J. Owner shall actively recruit minority and women subcontractors or subcontractors with substantial minority representation among their employees.
 - K. Owner shall include the provisions of this Nondiscrimination/Sexual Harassment clause in every subcontract, so that such provisions will be binding upon each subcontractor.
 - L. Owner's obligations under this clause are limited to Owner's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.
 - M. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101 et seq., the Owner understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Indenture or from activities provided for under this Indenture. As a condition of accepting and executing this Indenture, the Owner agrees to comply with the "*General Prohibitions Against Discrimination*," 28 C.F. R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth and the Agency through contracts with outside contractors.

ARTICLE IV
RIGHT-TO-KNOW LAW

Owner understands that this Indenture and records related to or arising out of the Indenture are subject to requests made pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL"). The Owner is required to adhere to the following requirements:

- A. The Owner shall notify the Agency in writing of any change in the name or the contact information within a reasonable time prior to the change.
- B. If the Owner fails to provide access to, and copies of the requested information to the Agency, within the period specified by the Agency, the failure shall be considered an event of default and the Owner shall pay, indemnify and hold the Agency harmless for any damages, penalties, detriment or harm that the Agency may incur as a result of the Owner's failure to produce the requested information.
- C. Owner agrees not to challenge the Agency's decision to deem the requested information a Public Record as defined by the RTKL, or in any way hold the Agency liable for such a decision. However, if the Owner believes the requested information to be a Trade Secret as defined by the RTKL, then the Owner will provide a statement signed by a representative of the Owner explaining why the requested material is exempt from public disclosure under the RTKL within the timeframe prescribed by the Agency. The Agency's determination as to whether the requested information is a Public Record is dispositive of the question as between the parties to this Indenture.