VOLUNTARY COMPLIANCE AGREEMENT

BETWEEN

THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

AND

DIAMOND STATE COMMUNITY LAND TRUST

AND

SUSSEX COUNTY COUNCIL AND SUSSEX COUNTY PLANNING AND ZONING COMMISSION

The U.S. Department of Housing and Urban Development ("Department" or "HUD") completed its investigation of the subject case filed under Title VI of Civil Rights Act of 1964 ("Title VI"), 42 U.S.C. 2000d, and its implementing regulations found at 24 C.F.R. Part 1. Based on the evidence obtained during the investigation, the Department has determined that Sussex County, Delaware ("Recipient" or "Respondent") is in noncompliance with Title VI, 24 C.F.R. §§1.4(b)(1)(iii), 1.4(b)(1)(iv), 1.4(b)(1)(v), 1.4(b)(3), and 1.4(b)(6) with respect to the allegations raised by Diamond State Community Land Trust ("DSCLT" or "Complainant"). Further, Sussex County certified to the State that its programs will be conducted and administered in conformity with the Civil Rights Act of 1964, 42 U.S.C. § 2000a *et seq.* and the Fair Housing Act, *42 U.S.C.* § 3601 *et seq.* ("civil rights laws"), and that it will affirmatively further fair housing. The Department has determined that the Recipient is not in compliance with Title VI, and that there are grounds on which to question the Recipient's certification that its program will be conducted and administered in conformity with civil rights laws, and that it will affirmatively further fair housing.

The Fair Housing Act generally, and HUD regulations in particular, provide that communities that receive CDBG and HOME funds must affirmatively further fair housing within their jurisdictions. To that end, they must determine what impediments to fair housing choice exist within their jurisdictions, undertake actions to ameliorate those impediments, and maintain adequate records of the analysis used to determine the impediments, and of their efforts to overcome them. See 42 U.S.C. §3608(d) & (e)(5); 24 CFR §91.225(a)(1); 24 CFR §91.425(a).

I. STATEMENT OF FACTS

The Diamond State Community Land Trust ("DSCLT" or "Complainant") alleged that, in wrongfully denying preliminary subdivision plan approval for "New Horizons," a proposed development of 50 single-family affordable homes for low- and moderate-income families - many of whom will be people of color - the Sussex County Planning and Zoning Commission and the Sussex County Council (1) made housing unavailable; (2) discriminated in the provision of services or facilities in connection therewith; (3) violated Title VI of the Civil Rights Act of 1964 and regulations promulgated by HUD pursuant to Title VI; and (4) violated the Housing and Community Development Act of 1974 with respect to the Recipient's obligation to affirmatively further fair housing.

The Complainant further alleges that Sussex County receives federal housing and community development funds through the Delaware State Housing Authority, and that the County's discriminatory actions with respect to New Horizons do not comply with its obligation to affirmatively further fair housing.

The Complainant alleges that on December 23, 2008, it filed with the Commission an Application for Subdivision Plan Approval, and revisions thereto were submitted on March 29, 2010, all of which were considered under Application #2010-3 (the "Application"), to subdivide

a parcel in order to develop New Horizons. The Complainant asserts that the Application complies with all applicable Code requirements.

The Complainant asserts the applicable zoning permits low density single family residential development, and that New Horizons is consistent with the County's 2008 Comprehensive Plan. The Complainant asserts that the Comprehensive Plan cites support for the DSCLT and "encourages more limited home equity projects... i.e. community land trusts..." as one way of meeting the critical shortage of homeownership options available to low- and moderate-income families.

The Complainant asserts that the New Horizons community is Complainant's first large-scale housing development and was named after the New Horizons Cooperative, a group formed by low-income, mostly Latino agricultural workers who originally came together in 2003 over the issue of health-threatening raw sewage and the contaminated well at Dogwood Mobile Home Park in Sussex County. The Complainant asserts it has developed the New Horizons community to provide housing for some members of the Cooperative and similarly-situated low-income families in the greater Sussex County area, who are disproportionately Latino or African-American.

The Complainant alleges that the Planning Commission held public hearings on June 10, 2010 and July 14, 2010. The Complainant alleges that members of the public opposing New Horizons did so on the basis of bias and stereotype concerning people of color, thinly veiling their opposition in terms of concerns about crime, public safety and property values. The Complainant alleges that their opposition was explicitly framed in terms of local residents' interests in excluding "these people," contained threats of force against the prospective residents of New Horizons, and expressed opposition to "first-time homebuyers." The Complainant alleges that these thinly veiled comments and warnings amount to code words expressing discrimination on the basis of race, color and national origin; and on information and belief, Commission members understood these comments to be based on discriminatory views regarding race, color and national origin.

The Complainant asserts that on August 12, 2010, Complainant timely appealed the Commission's decision to the County Council. The Complainant asserts that the Council held a public hearing on September 28, 2012 and, after receiving additional discriminatory comments from opponents of New Horizons, voted to affirm the decision of the Planning Commission on October 19, 2010. The Complainant asserts that although no written decision has been issued, the Council affirmed the Commission's decision.

The Complainant alleges the reasons recited by the Commission and implicitly affirmed by the Council are mere pretexts for discrimination on the basis of the perceived race, color or national origin of the families likely to purchase homes in the New Horizons subdivision. The Complainant alleges the criteria imposed on New Horizons by the Commission and the Council are not contained in the County's zoning ordinance, and the Commission and Council departed from their traditional criteria and analysis in denying the Application. The Complainant alleges

that on information and belief, the Commission and the Council adopted, or acquiesced in, the discriminatory views expressed in public hearings by opponents of New Horizons, and those views, in whole or in part, are the reasons for the decisions of the Commission and the Council.

The Complainant alleges that as a condition for receiving Community Development Block Grant and HOME Investment Partnership funds through the Delaware State Housing Authority, Sussex County is required to certify its compliance with Title VI, the Fair Housing Act and the obligation to affirmatively further fair housing. The Complainant alleges that the discriminatory denial of Complainant's Application violates Title VI and the Fair Housing Act; and is evidence that the County disregards its affirmative obligations to identify and analyze all existing impediments to fair housing choice experienced by the people of Sussex County, most notably those related to race, color and national origin.

The Recipient asserts that the Complainant's allegations lack merit. The Recipient also asserts that there is no evidence that opponents of the "New Horizons" community, or Recipient discriminated against DSCLT on the basis of race, color or national origin. The Recipient asserts that although DSCLT alleges in the Complaint that opponents of the "New Horizons" community opposed it "on the basis of bias and stereotype of people of various races, color and national origins" and utilized "code words expressing discrimination on the basis of race, color and national origin," a review of the Planning and Zoning hearing transcript refutes this claim.

II. GENERAL PROVISIONS

1. The parties agree that nothing contained in this Agreement shall be construed to be a final finding or determination by the Department that Sussex County or any of its agents, employees, or elected or appointed officials intentionally engaged in unlawful practices that may have had the effect of illegally discriminating on the basis of race, color, national origin, sex, familial status, religion or disability.

2. The parties agree that nothing contained in this document shall be construed as an admission of liability or an admission of having acted in violation with respect to the Department's preliminary findings by the Recipient or any of its agents or employees.

3. Nothing in this Agreement is intended to confer on any non-signatory third party a right to sue for an alleged breach of this Agreement, and the parties expressly intend to preclude the interference of any alleged third-party beneficiary right.

4. The Department and the Recipient hereby agree that this Agreement does not increase or diminish the ability of any person or class of persons to exercise their rights under, Title VI, Section109, the Fair Housing Act or any other Federal, State or local civil rights statute or authority with respect, to any current, on-going or future actions. This Agreement does not create any private right of action for any person or class of persons not a party to this Agreement.

5. This Agreement shall be binding on the Parties, their employees, and their successors and assigns.

6. This Agreement does not affect HUD's ability to take action under appropriate statutory or regulatory authorities unrelated to issues covered by this VCA, and HUD agrees that all issues related to the New Horizons application and HUD's analysis of Sussex County's actions to affirmatively further fair housing are fully and finally addressed in this VCA.

7. Upon the Effective Date, which shall be the date of the final approving signature below, this Agreement is a public document. A copy of this Agreement shall be made available to any person for review, in accordance with the law.

8. To the extent that any prior HUD guidance (written or oral) in the form of waivers, administrative decisions, letters, opinions, or similar guidance regarding Sussex County's obligations, responsibilities, or technical requirements under the Fair Housing Act or any other law enforced or administered by HUD conflicts with this Agreement, this Agreement is the controlling document from the Effective Date. This Agreement does not constitute a waiver of any other agencies' or government entities' requirements under other statutory or regulatory programs not administered by HUD.

9. This Agreement does not supersede, or in any manner change, the rights, obligations, and responsibilities of the Parties under any court orders, or settlements of other controversies involving compliance with civil rights statutes.

10. Sussex County will provide all notices, correspondence and other communications that this Agreement requires to be disseminated in alternate formats, upon request.

III. CORRECTIVE ACTIONS

Sussex County agrees that it shall accomplish the following corrective actions:

1. As prescribed in the DOJ Consent Decree, Within ninety (90) days of the entry of the Decree, and annually thereafter for the duration of the Decree, the defendants shall provide in-person training on the requirements of the Decree and of the FHA to all County officers, elected and appointed officials, or employees who have duties related to the planning, zoning, permitting, construction, or occupancy of residential housing, including, but not limited to: the County Administrator; all members, staff and employees of the Planning and Zoning Commission, the Board of Adjustment, and the County Council; and all staff and employees of the Department of Community Development and Housing and the Department of Planning and Zoning. The training(s) shall be conducted in accordance with the Consent Decree Section IV a-d.

2. Address the decision to deny the New Horizons Cluster Subdivision proposal and reimbursement to Diamond State Community Land Trust as agreed upon in the DOJ Consent Decree (Section II-10 and Section VIII).

3. Limit the evaluation of future land use proposals to compliance with the County Code and State law.

4. Contingent upon funding and the County's authority, to the greatest extent feasible or practicable the County shall comply with guidance and instructions provided by the State of Delaware to affirmatively further fair housing.

5. Within 30 days of the effective date of this agreement Sussex County shall hire or appoint a Fair Housing Compliance Officer to oversee compliance with the provisions of this Agreement as agreed upon in the DOJ Consent Decree. Such person shall be designated in writing and a copy of that designation shall be provided to HUD. This person shall be HUD's primary point of contact with respect to this Agreement.

6. In the event that the Fair Housing Officer resigns or is otherwise terminated prior to the expiration of this Agreement, the County shall notify HUD and designate a replacement within fifteen (15) business days of such resignation or termination. The replacement shall be appointed in writing and the County shall provide a copy of the appointment letter to HUD within five days of the appointment.

7. In an effort to Affirmatively Further Fair Housing Sussex County shall undertake the following activities:

(a) Within 120 days of the effective date of this agreement Sussex County shall review and evaluate the 1998, 2003, and 2011 Analysis of Impediments to determine what impediments were identified; if past impediments continue to exist; and develop a proposed priority fair housing plan to address the identified impediments. The plan shall be submitted to DSHA and HUD for review and approval.

(i) The plan will incorporate a strategy to increase housing opportunities throughout the County, taking into account the housing needs of African-American and Hispanic residents and it will develop mechanisms in which Sussex County will use CDBG and other funding to affirmatively further fair housing.

(ii) In future planning efforts, Sussex County shall collaborate with DSHA and the Office of State Planning and Coordination to identify the County's priority actions to develop a strategy to integrate affordable housing that is fully available without regard to race or ethnicity into all communities throughout the County. To the extent that the County approves development outside designated growth areas, the provision of affordable housing shall be a consideration.

(iii) Within 120 days of the effective date of this agreement the Fair Housing Compliance Officer will be responsible for identifying successful models of affordable housing strategies used in other states, counties or localities similar in jurisdiction and authority to Sussex County to recommend to County Council, to assist the County in formulating an affordable housing policy as prescribed in the DOJ Consent Decree Section III Additional Provisions Related to Affordable and Fair Housing 13(a)(v).

(b) Amend the Moderately Priced Housing Unit ("MPHU") program to include provisions that create access to persons that are between 50%-125% of the median income. The revised provisions will be posted on the County's website.

(c) Through the Strong Communities Initiative, the County will perform an internal evaluation of the recommended communities below (the "Impacted Communities") to determine at minimum, investment strategies, priority designation of infrastructure and or community development for those elements of infrastructure over which the County has primary governing authority. The County will also evaluate its past participation in providing secondary elements of infrastructure in the Impacted Communities (such as funding for trash disposal, roadway crusher run installation, well and septic installation and repair, public water and sewer system hookup, afterschool and community programs, streetlighting, and construction for accessibility purposes) with the goal of prioritizing the funding for such infrastructure improvements and formalizing an approval process for continued County participation in such infrastructure projects. Priority designations shall be given to communities that have the greatest need.

Lucas Development
Pine Town
New Hope
West Rehoboth
Polly Branch
Dog Patch
Mount Joy
Concord
Possum Point
Coverdale Crossroads

8. Based upon the evaluation of the Impacted Communities, in coordination with the County's current Comprehensive Plan, and following the formal approval process to be instituted, the County will provide such improvements and services so long as such assistance is consistent with the County's available resources, and is consistent with relevant statutes, rules, regulations, and policies. The evaluation of the Impacted Communities, the approval process for funding the infrastructure projects, and the approvals granted for the infrastructure projects should be made publicly available via Sussex County's website on an on-going basis.

9. Sussex County will revise its methodology, as currently proposed by DSHA, to target minorities with disproportionate housing needs to ensure that minorities are benefiting from all affordable housing programs supported by the County.

IV. PUBLIC NOTICE

Within thirty (30) days of the Effective Date of this Agreement or the DOJ Consent Decree, whichever is later, Sussex County shall publish a Notice in a newspaper of general circulation and on its website regarding this VCA. The Notice will provide a summary of the general provisions of this Agreement and a description of the corrective actions that will be accomplished. HUD must approve the text of the Notice before it is published.

V. REPORTING AND COMPLIANCE REQUIREMENTS

A. Reporting

1. Sussex County shall submit semi-annual reports to HUD for the duration of the DOJ Consent Decree, detailing its progress in complying with this Agreement. These reports shall be submitted either electronically OR as agreed upon in the DOJ Consent Decree.

2. The reports shall contain, at a minimum, the following information on each required corrective action listed above: progress made, work remaining, reason(s) for any delay, and dates of completion/proposed completion. The reports shall be signed and certified as accurate by the Fair Housing Officer/VCA Administrator, on behalf of Sussex County. The reports will have evidence/documentation attached or included, when appropriate.

B. General

1. For the purpose of this Agreement, if the reporting day falls on a weekend or a Federal, State, or local holiday, the report shall be due the first business day following the weekend or holiday.

2. For the purpose of this Agreement, the reporting materials must be mailed to the following:

Barbara Delaney, Philadelphia Center Director
Office of Fair Housing and Equal Opportunity
Philadelphia Regional Office
100 Penn Square East, 12th Floor
Philadelphia, Pennsylvania 19107

VI. RECORDKEEPING REQUIREMENTS

During the term of this Agreement, Sussex County shall maintain adequate files along with all materials relating to the County's implementation of this Agreement.

VII. MONITORING AND REPORTING

Sussex County agrees that HUD is entitled to monitor and evaluate its compliance with this VCA. HUD may inspect, and may interview any witnesses, including Sussex County's employees, its hired contractors and their employees with prior reasonable notice given to the County. HUD is entitled to receive, upon request, any documents which may have a bearing on the County's performance under, or compliance with, this VCA. The County agrees to fully cooperate in any HUD monitoring activity and will take all actions necessary to facilitate HUD monitoring activities.

VIII. BREACH AND TECHNICAL ASSISTANCE

1. Acts or omissions by the County which violate the terms of this Agreement may serve as grounds for HUD to determine that the County has materially breached its duties. HUD will provide the County with notice and a reasonable opportunity to cure any alleged violations of the terms of this Agreement as further discussed herein.

2. A material breach of this VCA may result in the suspension or termination of, or refusal to grant or continue Federal financial assistance, or any other actions authorized by law, including referral to the Department of Justice.

3. If HUD determines that Sussex County has materially breached its duties hereunder, it shall notify Sussex County, in writing, of such determination by either first class U.S. mail or by private delivery. The written notice shall state the specific rationale for the finding of breach, and shall cite evidence thereof, as appropriate to the circumstances. The County will be deemed to have received the written notice of breach three days after mailing, if first class U.S. mail is used. Sussex County shall then have 15 business days after receipt of such notice to remedy the breach, or to provide HUD with a reasonable justification or explanation to rebut HUD's finding of breach. HUD may, in its discretion, provide, in writing, for a longer period to remedy the breach, depending upon the particular circumstances. If the breach is remedied within fifteen (15) business days, or as otherwise specified by HUD, HUD shall take no further action with respect to the breach. If the breach is not remedied but HUD accepts the County's justification, HUD may, in its discretion, prescribe additional duties or procedures upon the County to remedy the situation or prevent it from recurring. In such a situation, the Parties agree that HUD has broad discretion to fashion corrective measures.

4. In instances where HUD has determined that Sussex County has committed a non-material or *de minimus* breach of its duties hereunder, HUD will provide notice thereof to Sussex County by any reasonable means and, to the extent warranted, shall provide technical assistance to the County to correct the identified problem.

5. HUD will provide technical assistance to Sussex County any time the County requests such assistance, so long as such assistance is consistent with HUD's available resources, and is consistent with relevant statutes, rules, regulations, and policies.

IX. MODIFICATION AND TERMINATION

1. This VCA may only be modified or amended in writing, signed by the Parties, that specifically states that its purpose is to amend or modify this VCA.

2. This agreement shall remain in effect for a four year period following the date of execution (the "Termination Date"). Sussex County shall notify HUD sixty (60) days prior to its anticipated completion of all work, training, and reporting required under this Agreement, whereupon HUD shall begin its final evaluation process of Sussex County's compliance.

3. After HUD receives Sussex County's notice that it has determined itself to be in full compliance, HUD shall perform a final review, and provide a final letter notification to the County regarding the completion of the terms noted in the Agreement unless otherwise determined.

4. If HUD determines that further action is required to achieve full compliance, it shall specify any deficiencies it has found, and specify a time frame for Sussex County to take corrective actions. However, any extension of a time frame past the Termination Date must be by mutual agreement of the parties.

X. MISCELLANEOUS

1. The provisions of this VCA are severable. Should any competent authority find any of its individual provisions unlawful or unenforceable, the remainder of the provisions shall remain unaffected.

2. This VCA is the entire agreement between the Parties with respect to remedying HUD's Letter of Determination of Noncompliance dated August 23, 2012, that Sussex has violated Title VI of the Civil Rights Act of 1964 and its obligation to Affirmatively Further Fair Housing. Any prior or contemporaneous agreements between HUD and Sussex County regarding the County's non-compliance with the duty to affirmatively further fair housing, whether oral or written, are hereby merged in this VCA and shall be of no force and effect. This clause shall not be deemed under any circumstances to inhibit HUD or any other agency or representative of the United States Government from performing any of their normal regulatory functions with respect to Sussex County.

3. This Agreement may be signed and executed on separate signature pages by the respective parties to expedite the execution process.

4. Any notice or other communication provided for in this Agreement must be in writing and delivered to the following:

If to HUD:

Melody Taylor-Blancher, Regional Director

Office of Fair Housing and Equal Opportunity

Philadelphia Regional Office

100 Penn Square East, 12th Floor
Philadelphia, PA 19107

If to SUSSEX COUNTY:

To the Fair Housing Officer, to be appointed pursuant to this Agreement.

XI. SIGNATURES

Intending to be legally bound, the representatives of SUSSEX COUNTY and HUD hereby execute this Agreement on the dates indicated, and, by their signatures, affirm that they have authority to legally bind SUSSEX COUNTY, and HUD, respectively:

Michael H. Vincent
Sussex County Authorized Signature

11/26/12
Date

Approved:

Melody Taylor-Blancher
Director, Region III
Fair Housing and Equal Opportunity Division
U.S. Department of Housing and Urban Development

November 28, 2012
Date