UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CONCILIATION AGREEMENT AND VOLUNTARY COMPLIANCE AGREEMENT

Under

THE FAIR HOUSING ACT

And

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

And

SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

Between

The United States Department of Housing and Urban Development

And

PathStone Housing Corporation of Pennsylvania
("Complainant"/"PathStone")

And

Township of Whitehall
("Recipient/Respondent")

And

Whitehall Zoning Hearing Board
("Respondent")

Approved by the FHEO Regional Director on behalf of the United States Department of Housing and Urban Development

CASE NUMBERS: 03-15-0314-8
03-15-0314-6
03-15-0314-9

A. PARTIES AND SUBJECT PROPERTIES

1. The parties to this conciliation agreement and voluntary compliance agreement are as follows:

   a. Complainant:

   [redacted]
   PathStone Corporation
   7 Prince Street
   Rochester, NY 14607

   Representing Complainant:

   Michael Allen
   Relman, Dane & Colfax, PLLC
   1225 19th Street, N.W., Suite 600
   Washington, DC 20036-2456

   b. Respondents/Recipients:

   Township of Whitehall
   c/o The Honorable Edward D. Hozza, Jr., Mayor
   3219 MacArthur Road
   Whitehall, PA 18052

   Zoning Hearing Board
   c/o Lee Christman, Chairperson
   Township of Whitehall
   3219 MacArthur Road
   Whitehall, PA 18052

   Representing Respondents:

   Christopher A. Tinari, Esquire
   Michael Miller, Esquire
   Margolis Edelstein
   The Curtis Center, 170 S Independence Mall W, Suite 400E
   Philadelphia, PA 19106-3337

2. Complainant is a wholly owned non-profit subsidiary of PathStone Corporation with a mission to meet the housing needs of economically and socially disadvantaged persons in Pennsylvania.

3. Recipient/Respondent Whitehall Township is a subrecipient of federal funds, specifically Community Development Block Grant (CDBG) funds, from Lehigh County, Pennsylvania.

4. Respondent Whitehall Zoning Hearing Board hears all matters regarding special exceptions or variances to the Whitehall Township Zoning Ordinance.

5. The subject property is a former mill building located at 215 Quarry Street, Whitehall, Pennsylvania, which PathStone has proposed to develop under the name The Lofts at Fullerton Mills ("The Lofts").

B. STATEMENT OF FACTS

1. A complaint was filed with the United States Department of Housing and Urban Development ("Department") on April 27, 2015 and amended on August 13, 2015, alleging that the Complainant was injured by alleged discriminatory acts of the Respondents. Complainant alleges that the Respondents violated the Fair Housing Act, as amended in 1988, 42 U.S.C. 3601 et. seq. ("Act") by using ordinances to discriminate in zoning and land use, providing discriminatory terms and conditions in zoning, otherwise denying or making housing unavailable, and discriminatory acts under Section 818 (interference with the exercise of rights under the Act) on the basis of race, national origin, disability, and familial status.

2. Complainant also alleges Respondents violated Title VI of the Civil Rights Act of 1964 ("Title VI"), and Section 109 of the Housing and Community Development Act of 1974 ("Section 109") by not conducting and administering its programs in conformity with civil rights laws and failing to affirmatively further fair housing.

3. On October 24, 2016, Recipient/Respondent Whitehall Township, through its Board of Commissioners, approved Ordinance No. 3061, AN ORDINANCE AMENDING THE WHITEHALL TOWNSHIP CODIFIED ORDINANCES, CHAPTER 27, ZONING, BY AMENDING THE GENERAL REGULATIONS TO PERMIT 'ADAPTIVE RE-USE' FOR AFFORDABLE HOUSING AND MULTI-FAMILY HOUSING AS A PERMITTED USE IN ALL RESIDENTIAL (R-1, R-2, R-3, R-3A, R-4, R-5, R-5A, AND R-6) ZONING DISTRICTS ("Adaptive Re-Use Ordinance"). The Adaptive Re-Use Ordinance became effective on October 26, 2016, and was enacted to expand fair housing choice and remove barriers to the development of affordable housing, consistent with the Township's obligations under the Act, Title VI and Section 109, and with the recommendations identified in the Lehigh Valley Planning Commission's "Comprehensive Plan, The Lehigh Valley...2030" and the Lehigh Valley Regional Analysis of Impediments to Fair Housing Choice (September 2014). In enacting the Adaptive Re-Use Ordinance, the Township specifically found that the parking needs of households residing in "Affordable Housing" would be less than those in "Multi-Family Housing," as those terms are defined in the Adaptive Re-Use Ordinance, and therefore prescribed different on-site parking requirements.

4. Complainant proposes to develop The Lofts as "Affordable Housing" in conformance with the requirements of the Adaptive Re-Use Ordinance, including applicable building, fire, engineering and parking specifications.

C. NO ADMISSION OF LIABILITY

Recipient/Respondents deny having discriminated against Complainant and admit no liability with respect to any of the allegations or claims in any of the complaints. Recipient/Respondents nevertheless agree to settle the claims in the underlying actions by entering into this Conciliation Agreement and Voluntary Compliance Agreement.

D. TERM OF AGREEMENT

This Conciliation Agreement and Voluntary Compliance Agreement (hereinafter "Agreement") shall govern the conduct of the parties to it for a period of five (5) years from the effective date of the Agreement.

E. EFFECTIVE DATE

1. The parties expressly agree that this Agreement constitutes neither a binding contract under state or federal law nor a Conciliation Agreement or Voluntary Compliance Agreement pursuant to the Act, Title VI, or Section 109, unless and until such time as it is approved by the Department, through the FHEO Regional Director or his or her designee.

2. This Agreement shall become effective when the Department's FHEO Regional Director or her authorized designee approves it, and the Effective Date shall be the date of her signature or that of her authorized designee.

F. GENERAL PROVISIONS

1. The parties acknowledge that this Agreement is voluntary and constitutes a full settlement of the claims set forth in the complaint in the above-referenced cases. The parties affirm that they have read and fully understand the terms set forth herein. The parties agree that they have not been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.

2. The Recipient/Respondents acknowledge that they have an affirmative duty not to discriminate under the Act, Title VI, and Section 109, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act, Title VI, or Section 109. The Recipient/Respondents further acknowledge that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement and a statutory violation of the Act, Title VI, and Section 109.

3. This Agreement, after it has been approved by the FHEO Regional Director or her designee, is binding upon the Complainant, its employees, successors, and assigns and the Recipient/Respondents, their employees, successors, and assigns.

4. Pursuant to Section 810(b)(4) of the Act, this Agreement shall become a public document upon approval of FHEO Region III Director or his or her designee.

5. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving the Recipient/Respondents made pursuant to the Act, or any other complaint within the Department's jurisdiction.

6. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification, or waiver; (b) the amendment, modification, or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by the Regional Director, Philadelphia Office.

7. The parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, and that the original executed signature pages attached to the body of the Agreement constitute one document.

8. Complainant hereby forever waives, releases, and covenants not to sue the Department or the Recipient/Respondents and their respective heirs, executors, assigns, agents, employees and attorneys with regard to any and all claims, damages, and injuries of whatever nature, whether presently known or unknown, arising out of the subject matter of HUD Case Numbers 03-15-0314-8, 03-15-0314-6, and 03-15-0314-9, or which could have been filed in any action or suit arising from said subject matter.

9. The Recipient/Respondents hereby forever waive, release, and covenant not to sue the Department or Complainant, their heirs, executors, assigns, successors, agents, officers, employees, and attorneys with regard to any and all claims, damages, and injuries of whatever nature, whether presently known or unknown, arising out of the subject matter of HUD Case Numbers 03-15-0314-8, 03-15-0314-6, and 03-15-0314-9, or which could have been filed in any action or suit arising from said subject matter.

G. RELIEF FOR COMPLAINANT PATHSTONE

1. Recipient/Respondent Whitehall Township shall take all reasonable steps necessary to defend the Adaptive Re-Use Ordinance from challenge by third parties so that Complainant can proceed with development of The Lofts pursuant to the Adaptive Re-Use Ordinance.

2. Recipient/Respondent Whitehall Township shall extend its full cooperation throughout the remainder of the planning, application and approval processes relevant to development of The Lofts, and throughout the infrastructure development, building permit process, construction, and initial rent-up phases of The Lofts. To that end, the Township shall issue the appropriate development, construction and occupancy permits with all reasonable and good faith efforts to

expedite the processing of the same within the timeframe of the Ordinance once PathStone applies for same.

3. Following the issuance of site development and building permits for the Lofts, Recipient/Respondent Whitehall Township agrees to actively promote The Lofts on the Township website and through its quarterly newsletter by endorsing the development as one which expands fair housing choice and opportunity. The Recipient/Respondent Whitehall Township shall do this in four (4) of the quarterly newsletters in the year following the issuance of site development and building permits.

4. Within thirty (30) days of the issuance of site development and building permits for The Lofts, Recipient/Respondent Whitehall Township shall issue a public notice that appropriate permits for The Lofts have been granted. This notice must be published in newspapers of general circulation in the Township and Lehigh County.

5. No later than December 28, 2016, Recipient/Respondents shall remit the amount of Three Hundred Seventy-Five Thousand Dollars ($375,000.00) to Complainant PathStone. The check shall be made payable to "Relman, Dane & Colfax, PLLC, counsel for PathStoneHousing Corporation of Pennsylvania" and sent to Michael Allen, Esquire, Relman, Dane & Colfax, PLLC, 1225 19th Street, N.W., Suite 600, Washington, D.C. 20036. This amount is paid in full satisfaction of all of PathStone's claims for monetary compensation, additional carrying costs, out-of-pocket expenses and additional staff time related to development of The Lofts from the time of the May 20, 2014, denial by Respondent Zoning Hearing Board, as well as additional payments to the current owner of subject property to reserve PathStone's purchase rights, the expense of reapplication for PHFA funding in 2015, additional interest on the predevelopment loan for The Lofts, and attorneys' fees and costs.

H. RELIEF IN THE PUBLIC INTEREST

1. Within fifteen (15) days of the effective date of this Agreement, the Respondents/Recipients shall appoint a point of contact for compliance with this Agreement and provide the point of contact's name, address, telephone number, and email address to the Department.

2. Within thirty (30) days of the effective date of this Agreement, the Respondents/Recipient shall provide a copy of this Agreement to all ZHB members, Planning Commission members, Township officials, and any other Whitehall Township staff who have duties related to the provision of housing, planning, zoning,

permitting, construction, or occupancy of residential housing, the obligation to affirmatively further fair housing, fair housing, and the CDBG application process. This can be accomplished through electronic mail. Additionally, a copy of the Agreement shall be made available to the public at the Whitehall Township municipal building and on the Township's website. The Township shall also provide a copy of the Agreement to Lehigh County as a subrecipient of federal funds from the County.

3. Within sixty (60) days of the effective date of this Agreement, Respondents/Recipient shall develop and disseminate a notice to the public, making it available generally at the Whitehall Township municipal building, on the Township's website, and at the beginning of each public hearing on land use or affordable housing issues, describing the specific limits of ZHB and Township authority with regard to land use decisions, the Respondents'/Recipient's obligation to affirmatively further fair housing, and their obligation to review land use applications in accordance with federal civil rights statutes. Within thirty (30) days of the effective date of this Agreement, the Township shall provide a draft of the notice to the Department for review and approval. The Township will not disseminate the notice until it has approval from the Department on the language in the notice.

4. Within sixty (60) days of the effective date of this Agreement, Respondents/Recipient shall review its zoning code with the assistance of a fair housing group or fair housing consultant approved by the Department, and identify any language within the zoning code that specifically prohibits rental housing, including, but not limited to, a review of § 27-76 regarding R-5A High Density Residential Without Apartments zoning districts. This language shall be submitted to the Department for review prior to removal from the zoning code and the Department will provide comments to the Township prior to the removal from the zoning code.

5. Within thirty (30) days of the effective date of this Agreement, Respondents/Recipient must secure the services of a qualified consultant to provide a series of mandatory, in-person training sessions for Township officials, ZHB members, Planning Commission members, and staff about the Fair Housing Act, the obligation to affirmatively further fair housing, the Joint Statement of HUD and DOJ on State and Local Land Use Laws and Practices and the Application of the Fair Housing Act, and their obligation to review land use applications in accordance with federal civil rights statutes. This training shall be a minimum of four (4) hours in length. Respondents/Recipient shall submit the contact information of the qualified consultant, along with an agenda to the Department for review and approval prior to holding the training.

6. Within sixty (60) days of the effective date of this Agreement and annually for the term of this Agreement, Respondents/Recipient shall participate in the approved training

outlined in H.5. along with all Township officials, ZHB members, Planning Commission members, and staff. Any new employees hired during the term of the Agreement shall participate in the annual training that follows their hire date.

7. Within ninety (90) days of the effective date of this Agreement, Respondents/Recipient shall make additional changes to the zoning and land use regulations to expand fair housing choice and remove barriers to the development of affordable housing based on recommendations from a fair housing consultant or fair housing group approved by the Department, who the Township will utilize to review its zoning code. These changes shall include, but are not limited to:

    a. The adoption of recommendations identified in the Lehigh Valley Planning Commission's "Comprehensive Plan, The Lehigh Valley...2030;"
    b. Recommendations that the Township will seek from the County regarding such changes; and
    c. Additional parking relief provisions available in all residential zones to proposed developments that are located in proximity to public transit or that can demonstrate that a combination of on-site and street parking will meet the anticipated parking demand, as estimated by a third-party professional firm based on *Institute for Transportation Engineers* (ITE) standards.

8. Within one hundred and eighty (180) days of the effective date of this Agreement, Respondents/Recipient must conduct a thorough review, with the assistance of a fair housing group or consultant approved by the Department, of all Township land use guidelines to determine whether they constitute impediments to fair housing choice, and to take appropriate actions, including the repeal and amendment of offending provisions, in order to come into compliance with federal law and HUD guidance (principally, the Fair Housing Assessment Tool and the *Fair Housing Planning Guide*). The Township shall also seek recommendations from the County, which will be incorporated into its review.

9. Within one hundred and eighty (180) days of the effective date of this Agreement, Respondents/Recipient must review, with the assistance of a fair housing group or consultant approved by the Department, the following documents, specifically as to affordable fair housing and affirmatively furthering fair housing:

    (a) Correspondence between the Township and the County's Consultant regarding the draft AI and the Township's Zoning Ordinance;
    (b) The Lehigh Valley Regional Analysis of Impediments to Fair Housing Choice (September 2014);
    (c) The Whitehall Comprehensive Plan (August 2015); and

(d) The Lehigh Valley Planning Commission Regional Housing Plan (January 2014)

and devise a plan with appropriate benchmarks and criteria ensuring that the Township's land use and funding decisions are consistent with the obligation to "affirmatively further fair housing." This plan with benchmarks must be submitted to the Department for review and approval. This provision of the Agreement is not considered complete until the Township receives such approval from the Department.

10. Prior to submission to the Department of the plan outlined in H.9., the Township will submit its plan to Lehigh County to seek recommendations and revisions, which it shall incorporate into its plan regarding its obligation to affirmatively further fair housing. The Township shall seek to align its plan with the County's efforts to address impediments to fair housing it will identify in its Assessment of Fair Housing in order to take meaningful actions and prioritized goals to address such impediments.

11. Within three hundred and sixty-five (365) days of the effective date of this Agreement and annually for the term of this Agreement, Respondents/Recipient shall update the plan established in H.9. with meaningful actions taken to address impediments, prioritized goals to address remaining impediments, and details on how the Township's land use decisions are consistent with civil rights certifications the Township signs as a precondition to receiving federal funds. This update shall be provided to the Department and the County as a record of the Township's efforts to affirmatively further fair housing.

I. MONITORING

1. The Department shall determine compliance with the terms of this Agreement for its duration. During the term of the Agreement, the Department may examine witnesses and copy pertinent records of the Respondents/Recipient. The Respondents/Recipient agree to provide their full cooperation in any monitoring review undertaken by the Department to ensure compliance with this Agreement.

2. In the event that the Respondents/Recipient fails to comply in a timely fashion with any requirement of this Agreement without obtaining advance, written agreement from the Department, the Department may enforce the terms of this Agreement by any contractual, statutory or regulatory remedy available.

J. REPORTING AND RECORD KEEPING

1. Unless otherwise specified above, within ten (10) days of completing each required item in sections G. and H., the Respondents/Recipient shall provide the Department with a signed certification stating that the item has been completed as required and evidence demonstrating compliance with the item.

2. All required certifications and documentation of compliance must be submitted to:

Rachel Leith
Enforcement Branch Chief, Region III
U.S. Department of Housing and Urban Development
Rachel.L.Leith@hud.gov

3. Annual Reporting. Respondents/Recipient will also submit an annual report to the Department for the duration of the Agreement on the progress of incomplete items under the terms of the Agreement.

K. CONSEQUENCES OF BREACH

Whenever the Department has reasonable cause to believe that the Respondents/Recipient have breached this Agreement, the matter may be referred to the Attorney General of the United States, to commence a civil action in the appropriate U.S. District Court, pursuant to §§ 810(c) and 814(b)(2) of the Act.

L. SIGNATURES

By signing below, the signatories agree that they intend to be legally bound, and represent that they have the authority to execute this Agreement on behalf of the party they are signing for.

[redacted]

PathStone Housing Corporation of Pennsylvania

November 30, 2016
Date

Print Name: [redacted]

Title: [redacted]

L. **SIGNATURES**

By signing below, the signatories agree that they intend to be legally bound, and represent that they have the authority to execute this Agreement on behalf of the party they are signing for.

Mayor Edward D. Hozza Jr.
Whitehall Township

12/13/16
Date

Print Name: Edward D. Hozza Jr.

Title: Mayor.

L. **SIGNATURES**

By signing below, the signatories agree that they intend to be legally bound, and represent that they have the authority to execute this Agreement on behalf of the party they are signing for.

Whitehall Zoning Hearing Board

12/15/16
Date

Print Name: Michael Miller

Title: Attorney, Representative for Township ZHB

M. APPROVAL

Melody Taylor, Director
Philadelphia Regional Office of FHEO
U.S. Department of Housing and Urban Development

December 15, 2016
Date