



Mattress Factory

## Mattress Factory Board of Directors

### **Resolution of the Board of Directors regarding FNB Loan for *making home here* Exhibition**

Whereas the artist Harrison K. Smith is presenting a new exhibition at the Mattress Factory in September 2021, as part of the *making home here* show featuring new work by five artists. The exhibition's central artwork is an escrow account designed to insure a Black homeowner living in the Central Northside neighborhood for excessive property taxes incurred in the coming fifteen years.

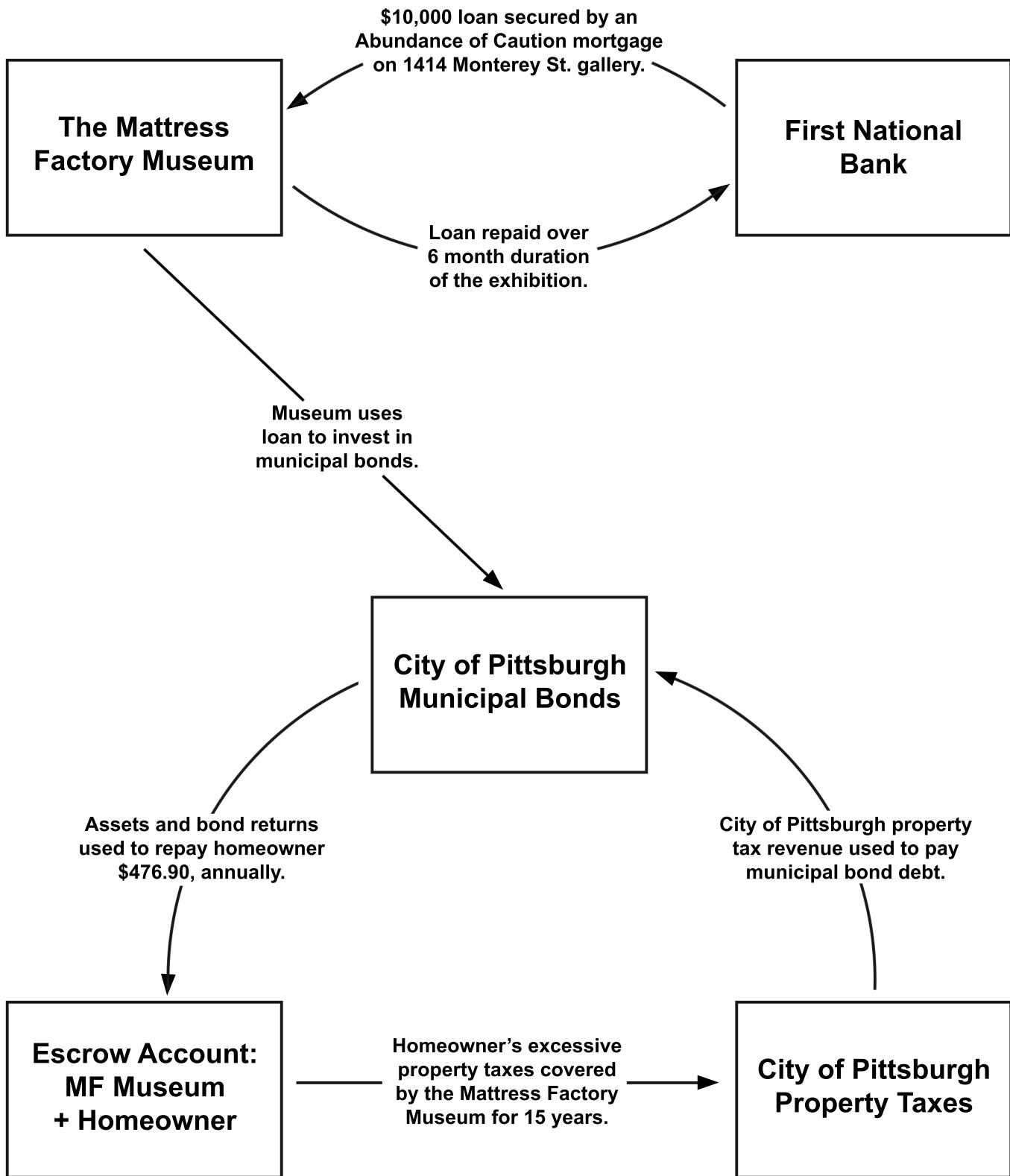
The escrow account will be funded through a \$10,000 loan, secured by an "Abundance of Caution" mortgage on the Mattress Factory's annex gallery at 1414 Monterey Street ("Monterey Annex").

Whereas this Board of Directors deems it acceptable and in line with the Museum's mission to support artists' exhibitions and borrow \$10,000 from FNB, through an Abundance of Caution mortgage on the Mattress Factory's Monterey Annex.

*Therefore, be it resolved that* the Board of Directors of the Mattress Factory authorizes a loan of \$10,000 from FNB, through an Abundance of Caution mortgage on the Mattress Factory's Monterey Annex ("Loan"). The Loan shall be due and payable in full at the end of the set period.

*Be it resolved further that* the Mattress Factory Executive Director and the Chief Financial Officer are hereby authorized, directed and empowered to execute, for and on behalf of the Mattress Factory, any and all documents required in connection with the Loan, including but not limited to the Loan Agreement.

***Resolution approved by Mattress Factory Board of Directors  
August 28, 2021***



## ESCROW AGREEMENT

This Escrow Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ 2021, between The Mattress Factory, Ltd. (“the Company”), [REDACTED] (“Homeowner”) (collectively, “the Parties”) and First National Bank.

*Whereas*, the Parties have entered into an agreement in relation to *Sed Valorem*, an exhibition by the artist Harrison Kinnane Smith at the Mattress Factory, as part of the 2021-2022 *making home here* art exhibition. That agreement is attached as Exhibit A and incorporated herein;

*Whereas*, the Parties and the artist Harrison Kinnane Smith believe that an escrow account is a desirable and appropriate form to hold and disburse the funds relating to the exhibition, in accordance with the provisions set forth in Exhibit A;

*Whereas*, the Parties wish to appoint First National Bank as the escrow agent, per the terms and conditions set forth below.

**NOW THEREFORE**, in consideration of the foregoing, the Parties and First National Bank agree as follows:

**1. Appointment.** The Parties appoint First National Bank as their escrow agent for the purposes set forth herein (“Escrow Agent”). The Escrow Agent accepts such appointment under the terms and conditions set forth herein.

**2. Establishment of the Escrow Account.** Simultaneously with the date hereof, the Parties have established an interest-bearing account with the Escrow Agent. The Mattress Factory has deposited with the Escrow Agent \$10,000. The Escrow Agent shall hold the Escrow Account, per the terms and conditions set forth herein.

The Escrow Account period shall begin on the date that the Parties open the Escrow Account. The Escrow Account period terminates on April 30, 2036.

**3. Disposition of the Escrow Account.** Monies in the Escrow Account shall be distributed by Escrow Agent solely as follows:

(a) Disbursement: The Escrow Agent will process disbursement of monies from the Escrow Account when requested to do so in writing from the Mattress Factory.

Unless otherwise instructed, the Mattress Factory requests distribution of funds in the following amount and on the following schedule:

\$476.90, on or around April 15 of every year, through and including 2036

The Escrow Agent will disburse the funds into the Homeowner’s FNB checking account.

(b) Escrow Period: The escrow period (the “Escrow Period”) shall begin with the establishment of the Escrow Account and shall terminate upon notification in writing from the Mattress Factory. The following events will trigger the Mattress Factory’s notice of termination:

- Expiration of the Escrow Account period (April 30, 2036);
- Full depletion of all funds in the Escrow Account;
- Sale by Homeowner of their current property, the address of which is [REDACTED];
- A county-wide reassessment of property values occurs, and upon application of said reassessed values, the Homeowner’s annual property tax burden is decreased by more than \$476.90;
- Death of Homeowner;
- Mutual decision of the Parties; or
- Mattress Factory’s termination of the agreement between the Parties.

Additionally, upon expiration of the Escrow Period, the Escrow Agent shall close the Escrow Account. If any funds remain in the Escrow Account, the Escrow Agent shall distribute all remaining funds back to the Mattress Factory.

(c) The Parties agrees that the Mattress Factory is primarily responsible for all communications with and instructions to the Escrow Agent, including notification to the escrow agent regarding cessation of funds.

For written instructions regarding the Escrow Account, the Mattress Factory will endeavor to provide a copy of correspondence to the Homeowner.

#### **4. Escrow Agent.**

(a) The Escrow Agent’s duties are limited solely to the safekeeping of the Escrow Account in accordance with the terms of this Agreement. The Escrow Agent’s duties shall be deemed purely ministerial in nature, and no other duties shall be implied.

The Escrow Agent shall neither be responsible for, nor have any requirements to comply with, the terms and conditions of any other agreement, instrument or document between the Parties, other than this Agreement. The Escrow Agent shall not be required to determine if any person or entity has complied with any such agreements. In the event of any conflict between the terms and provisions of this Agreement and those of any other applicable agreement between the Parties, the terms and conditions of this Agreement shall control.

The Escrow Agent may rely upon and shall not be liable for acting upon any written notice, document, instruction or request furnished to it and believed by it to be genuine and to have been signed or presented by the proper Party or Parties. The Escrow Agent shall have no duty of inquiry and no obligation to require substantiating evidence of any kind.

The Escrow Agent shall have no duty to solicit any payments which may be due it or the Escrow Account, including, without limitation, the initial deposit or any additional funds required

hereby, nor shall the Escrow Agent have any duty or obligation to confirm or verify the accuracy or correctness of any amounts deposited with it hereunder.

(b) The Escrow Agent shall not be liable for any action taken or omitted to be taken by it in good faith, except to the extent that a final adjudication of a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the primary cause of any loss to either Party.

The Escrow Agent may execute any of its powers and perform any of its duties directly or through affiliates or agents. The Escrow Agent may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Escrow Agent shall not be liable for any action taken or omitted to be taken by it in accordance with, or in reliance upon, the advice or opinion of any such counsel, accountants or other skilled persons.

In the event that the Escrow Agent is uncertain or believes there is some ambiguity as to its duties or rights, it shall be entitled to refrain from taking any action. In such a circumstance, its sole obligation shall be to keep safely all property held in escrow, until it shall be given a direction in writing by the Parties which eliminates such ambiguity or uncertainty to the satisfaction of Escrow Agent or by a final and non-appealable order or judgment of a court of competent jurisdiction.

The Parties agree to pursue any redress or recourse in connection with any dispute without making the Escrow Agent a party to the same. Anything in this Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for special, incidental, punitive, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

## **5. Succession.**

(a) The Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving thirty (30) days advance notice in writing of such resignation to the Parties, specifying a date when such resignation shall take effect. If the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) days following receipt of the notice of resignation, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto.

(b) Any entity into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all the escrow business may be transferred, shall be the Escrow Agent under this Agreement without further act.

**6. Compensation and Reimbursement.** The Escrow Agent shall not be compensated for serving as the Escrow Agent but may be reimbursed, upon approval of the Mattress Factory, for its reasonable third party out of pocket costs and expenses in acting as Escrow Agent.

During the Escrow Period, the Escrow Agent is aware and understands that it is not entitled to any funds received into the Escrow Account. No amounts deposited in the Escrow Account shall become the property of the Escrow Agent or any other entity, or be subject to the debts of the Escrow Agent or any other entity.

## **7. Indemnity.**

(a) The Parties shall jointly and severally indemnify, defend, and hold harmless the Escrow Agent and its affiliates and their respective successors, assigns, directors, agents and employees (the "Indemnitees") from and against any and all losses, damages, claims, liabilities, penalties, judgments, settlements, litigation, investigations, costs or expenses (including, without limitation, the fees and expenses of outside counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively "Losses") arising out of or in connection with (i) the Escrow Agent's execution and performance of this Agreement, tax reporting or withholding, the enforcement of any rights or remedies under or in connection with this Agreement, or as may arise by reason of any act, omission or error of the Indemnitee, except in the case of any Indemnitee to the extent that such Losses are finally adjudicated by a court of competent jurisdiction to have been primarily caused by the gross negligence or willful misconduct of such Indemnitee, or (ii) its following any joint instructions or joint directions from the Parties, except to the extent that its following of any such instruction or direction is expressly forbidden by the terms hereof. The indemnity obligations set forth in this Section shall survive the resignation, replacement or removal of the Escrow Agent or the termination of this Agreement.

(b) The Parties hereby grant the Escrow Agent a lien on, right of set-off against, and security interest in, the Escrow Account for the payment of any claim for indemnification, fees, expenses and amounts due hereunder. In furtherance of the foregoing, the Escrow Agent is expressly authorized and directed, but shall not be obligated, to charge against and withdraw from the Escrow Account for its own account or for the account of an Indemnitee any amounts due to the Escrow Agent or to an Indemnitee of this Agreement.

**8. Notices.** All communications hereunder shall be in writing and shall be deemed to be duly given and received: (a) upon delivery, if delivered personally, or upon confirmed transmittal, if by electronic mail or facsimile; (b) on the next business day if sent by overnight courier; or (c) four (4) business days after mailing if mailed by prepaid registered mail, return receipt requested, to the appropriate notice address as any party hereto may have furnished to the other parties in writing by registered mail, return receipt requested.

**9. Compliance with Court Orders.** In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the parties hereto or to any

other person, entity, firm or corporation, by reason of such compliance notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

**10. Miscellaneous.** The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by the Escrow Agent and the Parties. Neither this Agreement nor any right or interest hereunder may be assigned in whole or in part by the Escrow Agent or any Party, except as provided in Section regarding Succession, without the prior consent of the Escrow Agent and the other Parties.

Each Party irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of the courts located in the Commonwealth of **Pennsylvania**. To the extent that in any jurisdiction either Party may now or hereafter be entitled to claim for itself or its assigns, immunity from suit, execution attachment (before or after judgment), or other legal process, such Party shall not claim, and it hereby irrevocably waives, such immunity.

No party to this Agreement is liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the parties to this Agreement may be transmitted by facsimile, and such facsimile will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party. If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. A person who is not a party to this Agreement shall have no right to enforce any term of this Agreement. The Parties represent, warrant and covenant that each document, notice, instruction or request provided by such Party to Escrow Agent shall comply with applicable laws and regulations. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby irrevocably waived by the parties hereto to the fullest extent permitted by law, to the end that this Agreement shall be enforced as written. Except as expressly provided above, nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than the Escrow Agent and the Parties any legal or equitable right, remedy, interest or claim under or in respect of this Agreement or any funds escrowed hereunder.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date set forth above.

**The Mattress Factory**

By: \_\_\_\_\_

Name:

Title:

Date:



By: \_\_\_\_\_

Name:

Date:

**ESCROW AGENT**

**First National Bank**

By: \_\_\_\_\_

Name:

Title:

Date:

## AGREEMENT

This Agreement is made this 8<sup>th</sup> day of September 2021, between The Mattress Factory, Ltd. ("the Mattress Factory") and Mr. [REDACTED] ("Homeowner") (together, "the Parties").

## **RECITALS**

*Whereas*, the artist Harrison Kinnane Smith is presenting *Sed Valorem*, a new exhibition at the Mattress Factory in September 2021, as part of the *making home here* show featuring new work by five artists ("Mattress Factory exhibition" or "exhibition");

*Whereas*, Smith's exhibition includes novel research, which builds on recent nationwide studies that demonstrate disparities among the property tax rates levied on homeowners of different racial and economic backgrounds;

*Whereas*, as part of the exhibition, the Mattress Factory's Board of Directors resolved to apply for a \$10,000 loan from First National Bank, secured by the Museum's Monterey Annex gallery, located at 1414 Monterey Street, Pittsburgh, PA 15212;

*Whereas*, the loan proceeds will fund an escrow account, for which First National Bank will serve as the escrow agent, and monies from the escrow account will be distributed to a Black homeowner living in the Central Northside neighborhood whose property has been overly taxed.

**NOW THEREFORE**, in consideration of the foregoing, the Parties agree as follows:

1. **FNB Account.** The Parties agree that the Homeowner will establish a checking account with FNB, which can be done at no charge ("FNB Account").
2. **Escrow Account.** The Parties will establish an escrow account with First National Bank ("Escrow Account"). The Parties further agree that First National Bank will serve as escrow agent ("Escrow Agent") for the Escrow Account.

The Escrow Account period shall begin on the date that the Parties open the Escrow Account. The Escrow Account period terminates on April 30, 2036.

3. **Disbursement of Funds.** The Escrow Agent will process disbursement of monies from the Escrow Account when requested to do so in writing from the Mattress Factory.

Unless otherwise instructed, the Mattress Factory requests distribution of funds in the following amount and on the following schedule, subject to Section 5:

\$476.90, on or around April 15 of every year, through and including 2036

The Escrow Agent will disburse the funds into the Homeowner's FNB Account.

4. **Use of Funds.** The Homeowner shall be entitled to use the funds for any lawful and permissible purpose, as they see fit. The Mattress Factory places no restrictions on the Homeowner's use of the funds, other than those already existing at law, nor will the Mattress Factory seek an accounting or audit of the funds from the Homeowner after the funds are disbursed.
5. **Cessation of Fund Distribution and Agreement Expiration.** The Parties agree that distribution of funds will cease, and the Agreement will expire, upon the earliest of any of the following conditions:
  - Expiration of the Escrow Account period (April 30, 2036);
  - Full depletion of all funds in the Escrow Account;
  - Sale by Homeowner of their current property, the address of which is [REDACTED]  
[REDACTED]
  - A county-wide reassessment of property values occurs, and upon application of said reassessed values, the Homeowner's annual property tax burden is decreased by more than \$476.90;
  - Death of the Homeowner;
  - Mutual decision of the Parties; or
  - Mattress Factory's termination of the Agreement.

Upon the expiration of this Agreement, the Mattress Factory shall have no further obligation or liability to the Homeowner, or their heirs and personal representatives, and shall not be required to distribute or pay any additional funds.

Additionally, upon expiration of the Agreement, the Escrow Agent shall close the Escrow Account. If any funds remain in the Escrow Account upon the expiration of this Agreement and prior to closing, the Escrow Agent shall distribute all remaining funds back to the Mattress Factory. The Mattress Factory will then distribute the funds per the following allocation: 50% to Perry Hilltop Citizens Council, 50% to Grounded Strategies. If either organization is no longer in existence, the Mattress Factory shall direct 100% of the remaining funds to the remaining organization. If both organizations are no longer in existence, the Mattress Factory shall direct 100% of the remaining funds to the Buhl Foundation.

6. **Mattress Factory's Termination of Agreement.** In addition to any rights and remedies available at law, the Mattress Factory may terminate this Agreement and all benefits to the Homeowner hereunder, including ceasing the distribution of funds, in the unlikely event that the Mattress Factory determines in its reasonable and good faith opinion that circumstances have changed such that the Agreement would adversely impact the reputation, image, mission or integrity of the Mattress Factory in the event of a continued association.

Upon any such termination of this Agreement, the Mattress Factory shall have no further obligation or liability to the Homeowner, or their heirs and personal representatives, and shall not be required to distribute or pay any additional funds.

In the unlikely event of the Mattress Factory's dissolution, the dissolution shall not impact fund distribution.

7. **Taxes.** The Homeowner is responsible for any and all federal, state, and local taxes, fees, and other government assessments on the funds after they have been disbursed.
8. **Communications with Escrow Agent:** The Parties agrees that the Mattress Factory is primarily responsible for all communications with and instructions to the Escrow Agent, including notification to the Escrow Agent regarding cessation of funds and expiration of the Agreement.

For written instructions regarding the escrow fund, the Mattress Factory will endeavor to provide a copy of correspondence to the Homeowner.

9. **Nondisclosure.** The Parties agree as follows:
  - a. The Mattress Factory agrees that it will not publicly disclose the identity of the Homeowner to the press, media, social media, public or via any means of communication through which a reasonable person would expect the Homeowner's identity to become public. The Mattress Factory further agrees to redact the Homeowner's name and any other identifying information from any public documents or information relating to the Mattress Factory exhibition, other than the fact that the Homeowner's property is located in the Northside, the year of the Homeowner's property purchase, and the race, gender and age of the Homeowner.
  - b. The Homeowner agrees that they will not publicly identify themselves as a Party to this Agreement, or as otherwise involved with or related to the Mattress Factory exhibition, to the press, media, social media, public or via any means of communication through which a reasonable person would expect the Homeowner's identity to become public, including disclosure to other individuals or entities. The Homeowner may disclose the fact and terms of this Agreement to Homeowner's tax advisor, taxing authorities, and/or an attorney, or as otherwise permitted by law.
  - c. This provision is not intended to limit the Mattress Factory's ability or right to publicize the Mattress Factory exhibition in any manner and in whole or in part, so long as the Mattress Factory adheres to restrictions set forth in the sub-section (a).
  - d. Upon mutual decision and written confirmation, the Parties may agree to waive this nondisclosure provision.
10. **Release of Claims.** Homeowner, on behalf of themself and their heirs and personal representatives, hereby releases and forever discharges The Mattress Factory from any and all liability or responsibility to Homeowner or anyone claiming through or under Homeowner by way of subrogation or otherwise for any loss or damage to Homeowner relating to this Agreement and/or the Mattress Factory exhibition, including claims for breach of this Agreement; invasion of privacy; defamation; libel or exploitation; or any other loss or damage. The Mattress Factory is not responsible for any injury or damage, whether to

Homeowner or any other person or to any property, related to or resulting from this Agreement or the Mattress Factory exhibition. By entering into this Agreement, Homeowner expressly assumes all liability and responsibility for their participation and agrees that participation is solely at their own risk.

11. **Assignment**. This Agreement and the rights and benefits hereunder may not be assigned by either Party without the prior written consent of the other Party, which consent shall be in the sole and absolute discretion of the non-assigning Party.
12. **Entire Agreement**. This Agreement contains the entire understanding of the Parties with respect to the subject matter of the Agreement. This Agreement also supersedes all other agreements and understandings, both oral and written, between the parties relating to the subject matter of the Agreement.
13. **Amendment**. By mutual consent of the Parties, any provision of this Agreement may be amended, modified, or deleted. Any such changes, deletions or additions shall be recorded in written signed addenda, which shall form part of this Agreement.
14. **Applicable Law**. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to the principles of conflicts of law. The Parties consent to the exclusive jurisdiction and venue of the federal and state courts located in Allegheny County, Pennsylvania, in any action arising out of, or relating to this Agreement.

In witness whereof, the Parties have executed this Agreement:

**The Mattress Factory**

By: /s/ Hayley Haldeman

Name: Hayley Haldeman  
Title: Mattress Factory Executive Director  
Date: Sept. 20, 2021

**Homeowner – Mr.**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Date: 9/8/2021