

**TAX CREDIT EXCHANGE PROGRAM
ASSISTANCE AGREEMENT**

This Tax Credit Exchange Program Agreement (this "ARRA Assistance Agreement" or "Agreement") is entered into as of _____, 2009, between _____, a _____ (the "Project Owner" or "Owner") and the PENNSYLVANIA HOUSING FINANCE AGENCY, a public corporation and government instrumentality, created by and existing pursuant to the Housing Finance Agency Law, 35 P.S. Section 1680.101 et seq., as amended (the "Agency" or "PHFA").

WHEREAS, Section 1602 of the American Recovery and Reinvestment Act of 2009 (hereinafter "Act") created the Housing Credit Exchange Program (hereinafter "Exchange Program") that allows allocating agencies to exchange a portion of their tax credit authority for money to fund construction or acquisition and rehabilitation of qualified low-income housing.

WHEREAS, the Act requires that all funds received under the Exchange Program be treated as if the funds were traditional Low Income Housing Tax Credits, and subject to all of the obligations, rules, and requirements attached thereto in Section 42 of the Internal Revenue Code.

WHEREAS, PHFA is an allocating agency that administers Exchange Program funds for the Commonwealth of Pennsylvania.

WHEREAS, Owner successfully applied for Low Income Housing Tax Credits and/or Exchange Program funds for the purpose of constructing or acquiring and rehabilitating rental dwellings (hereinafter "Development" or "Project") in _____, Pennsylvania on certain property (hereinafter "Property") legally described in Attachment A, which is attached hereto and incorporated by reference herein.

WHEREAS, as a prerequisite for receiving Exchange Program funds, Owner has or will record an Indenture of Restrictive Covenants (hereinafter "IRC"), the terms and obligations of which are incorporated by reference herein.

WHEREAS Owner has demonstrated a good faith effort to obtain investment commitments prior to receiving funds under the Exchange Program and PHFA has determined that use of the Exchange Program funds will increase the total funds available to the Commonwealth of Pennsylvania to build and rehabilitate affordable housing.

NOW, THEREFORE, in consideration for PHFA providing Exchange Program funding assistance in the aggregate amount of _____ Dollars and No Cents (\$ _____), Owner agrees to the following:

1. **Title.** Owner understands and acknowledges that disbursement of the Assistance funds is conditioned upon and subject to the title to the Project Owner's fee or leasehold title to the Property being marketable and free of any lien or encumbrance, except as expressly consented to by PHFA.

2. **Insurance.** Owner shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, wind, and such other hazards as PHFA may reasonably require and in such amounts and for such periods and from such providers as PHFA may reasonably require, during the entire term of the extended use period.

3. **Taxes, Utilities, and Impositions.** Owner shall pay, or cause to be paid and discharged, all taxes and utilities on the Property and any assessments and payments, usual or unusual, which shall be imposed upon or become due and payable or become a lien upon the Property.

4. **Maintenance, Repairs, and Alterations.** Owner shall keep the Property, or cause the same to be kept, in good condition and repair and fully protected from the elements to the satisfaction of PHFA. Owner shall commit or permit no waste thereon. Except as approved in the original Development application, Owner shall not remove, demolish, or structurally alter any of the Development or Property (except such alterations as may be required by laws, ordinances, or regulations) without the prior written permission of PHFA. Owner shall complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Property and promptly restore in like manner any improvement which may be damaged or destroyed thereon and will pay when due all claims for labor performed and materials furnished therefore. Owner shall use and operate, and will require its lessees or licensees to use or operate, the Property in compliance with all applicable laws, ordinances, regulations, covenants, conditions, and restrictions.

5. **Liens.** Owner shall pay and promptly discharge, at Owner's cost and expense, all liens, encumbrances, and charges upon the Property or any part thereof or interest therein except those shown in PHFA's title insurance policy and acceptable to PHFA. Notwithstanding the preceding sentence, Owner shall have the right to contest in good faith the validity of any such lien, encumbrance, or charge, provided that Owner shall thereafter diligently proceed to cause such lien, encumbrance, or charge to be removed and discharged.

Owner will not create, assume, or suffer to exist in respect to the Property, any mortgage or lien (other than the IRC) unless Owner, prior to the time such mortgage becomes a lien on the Property or any part thereof, shall receive the written permission of PHFA.

6. **Inspection.** Owner shall make the Development and Property open to inspection by PHFA or its agents (including state and federal agencies and their contractors) at any reasonable time. Owner shall allow PHFA full access to Owner's facilities, contracts, plans, specifications, drawings, and records (written or electronic). PHFA may from time to time inspect the progress of the work and determine the quality of its workmanship and materials going into the Development. It is understood and agreed, however, that Owner, upon its own responsibility, has selected architects, contractors, subcontractors, materials, and labor, or will make its own arrangements for the same and that PHFA has no responsibility thereof.

7. **Fees.** The Agency may collect reasonable fees from Owner to cover expenses associated with performance of its Compliance and Asset Management duties under Section 1602(c)(3) of the Act. The Agency has determined these fees to be \$800 per unit for the Project as set forth in Exhibit B and such fees must be paid to the Agency in the first requisition for Assistance funds. The Agency will also collect its construction monitoring fee of \$500 during each month of the construction period.

8. **Disbursement.** Subject to the requirements of ARRA and to continuing compliance with all Tax Credit Program Requirements, the Agency agrees to provide an Assistance loan to Project Owner for eligible project costs incurred under this Agreement in a maximum principal amount not to exceed

\$ _____ from the date hereof to December 31, 2011, provided the Project is at least thirty percent (30%) complete by December 31, 2010 and subject to Project meeting all Agency disbursement processing deadlines; such funding is referred to as the "Assistance" and all provisions and disbursements thereof are subject to the following:

(a) Assistance will be provided to pay for costs and fees associated with the Project identified on the Project ARRA Award Letter which outlines the specific information of the tax credit project, location, units, parties, and Project Owner, attached hereto and incorporated herein as Exhibit A hereto.

(b) Assistance will be provided only for costs and reimbursement items identified in the financial spreadsheet attached hereto and incorporated herein as Exhibit B hereto.

(c) Disbursement of Assistance to the Project Owner shall be made as invoices are received for services, fees and costs incurred by Project Owner and after the Agency has reviewed the requisition for payment within 30 days. Reimbursement by the Agency does not imply acceptance of the work or concurrence in the reimbursement by the Agency and the Agency reserves the right to disallow payment of any item of cost or expense at any time upon later review and upon Project Owner's final submission of cost certification items.

(d) Requisitions for payment shall be in writing on a form provided by the Agency. These forms and requisition requirements may be amended at anytime to meet the Agency's protocols. To receive payment under this Agreement, Project Owner shall submit requests for payment based upon actual expenditures. The Agency may set a minimum payment level or amount for each request for payment. Funds will NOT be provided in advance for any costs or expenses. The Agency may not provide Assistance funds to any Project Owner in advance of need. The Agency will not place in escrow or advance lump sums to Project Owner. Any disbursement in violation of this section shall be subject to immediately repayment to the Agency by the Project Owner.

(e) Requisitions must be submitted to the Agency with all required signatures in place. If Project Owner has other funding sources, all disbursements must be made in accordance with a disbursement agreement signed by all parties in form and manner acceptable to the Agency. The Agency will not disburse any Assistance funds to Project Owner if at any time there are not sufficient funds available from all funding sources to support the construction and rehabilitation set forth in Exhibit B.

(f) Project Owner must fully account for all costs and expenses involved in the Project to satisfy the Agency close out requirements at the end of the construction or rehabilitation of the Project ("Cost Certification") and throughout the disbursement period as necessary to meet all applicable Tax Credit Program Requirements. The Agency may establish separate reserves during the disbursement process to provide funds it deems necessary to ensure completion of the Property, including contractor holdbacks for work completed and hold back of earned, but unpaid Developer fees.

(g) The Agency will only disburse funds it receives from Treasury. Nothing herein shall be construed as an assurance that funds will be available to the Project from the Treasury and Project Owner waives and holds Agency harmless from any delay or failure to fund for circumstances beyond the Agency's control.

(h) Time is of the essence and Owner must complete and submit all requisitions and supporting documentation for funding to the Agency no later than November 15, 2011. The Agency may

continue to disburse Assistance through December 31, 2011, provided the Project is at least thirty percent (30%) complete by December 31, 2010.

9. **Reporting.** Periodic reports are required by the United States Department of Treasury ("Treasury"). The Agency must provide a financial status report and a project performance report on a quarterly basis, due 10 working days after the end of the quarter. Quarters end on March 31, June 30, September 30, and December 31. To allow the completion of these reports in a timely manner, the Agency requires that each Project Owner provide all necessary reports and data five (5) calendar days following the end of each quarter.

(a) The performance report must have the following elements, and the Owner must certify to those items at Closing and thereafter:

- (i) Name of Owner
- (ii) Name of project
- (iii) Brief description of project
- (iv) Location of project; city/county, State, zip code
- (v) Number of construction jobs created
- (vi) Number of construction jobs retained
- (vii) Number of non-construction jobs created
- (viii) Number of non-construction jobs retained
- (ix) Number of total housing units newly constructed
- (x) Number of total housing units rehabilitated
- (xi) Number of low-income housing units newly constructed
- (xii) Number of low-income housing units rehabilitated
- (xiii) Project Occupancy Report
- (xiv) Quarterly Project Financial Operating Report
- (xv) Number and types of persons employed full time and part time by the Project

(b) The Owner shall submit any other reports that Treasury or PHFA deem necessary. FAILURE TO PROVIDE REPORTS REQUIRED BY THIS SECTION IN THE TIMEFRAME SET BY THE AGENCY MAY RESULT IN SUSPENSION OF ANY ONGOING DISBURSEMENT OF ASSISTANCE BY THE AGENCY AND MAY RESULT IN RECAPTURE OR TERMINATION OF THIS AGREEMENT.

(c) Owner must provide quarterly financial reports on the Project operation in accordance with Agency guidance.

10. **Payment and Performance Bond.** Owner shall keep in place during the entire period of construction a payment and performance bond or similar security instrument that meets or exceeds 100% of the acquisition and rehabilitation or construction contract amount or letter of credit by the general contractor for 10% of the contract sum. Owner shall provide PHFA evidence of such bond or instrument and list PHFA as a payee.

11. **Minimum Standards.** Project Owner shall rehabilitate and/or construct the Project in conformance with Agency's Submission Guide for Architects, Minimum Housing Standards for Projects with 11 units or less, if applicable and all applicable state and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards set forth in 24 CFR Section 982.401 or any successor regulations.

12. **Reserve Requirements; Audited Financial Statements.** Project Owner agrees to establish and maintain the following escrows and reserves, and any escrows and reserves to be held by the Agency, shall be deposited at the time of initial loan closing:

(a) Operating Reserve Fund – Project Owner shall deposit (in cash or letter of credit) with the Agency, unless the Agency, in its sole discretion, approves the use of a third party deposit agreement outlining acceptable terms and conditions for disbursement of the funds, an Operating Reserve in the amount of _____ Dollars (\$ _____) to be held in an escrow account to cover the costs of operations. The Operating Reserve will be held until the earlier of the Project achieving two years of sustaining occupancy or fifteen (15) years, whichever comes first.

The Operating Reserve shall be subject to disbursement for application: (1) to the mortgage debt; (2) to cure any Event of Default not timely cured after notice by Owner of the provisions of the Mortgage Loan Documents; (3) to remedy any failure to maintain the building in accordance with Agency standards; (4) to meet the cost of furnishing and equipping the Project; (5) to pay taxes, Agency fees and charges, property insurance premiums, mortgage insurance premiums, assessments, water charges, sewer rents and municipal and other charges and fees; (6) to cover any unfunded cash deficit resulting from operational losses; and (7) to the Agency in the event the expiration date of the Letter of Credit or other security required hereunder is not extended to a time and in an amount acceptable to the Agency, and satisfactory evidence of such extension or substituted security acceptable to Agency is not provided to the Agency by Owner within ten (10) business days prior to the expiration date, so that such Letter of Credit or other security remains in full force and effect until the Agency releases the Reserve as described in the paragraph above. Such disbursements may occur at any time prior to the expiration of the aforesaid consecutive financial reporting periods.

Any funds that remain in the Operating Reserve escrow at the end of the compliance period or upon sale of the property, whichever is earlier, must be used as directed by the Agency, to reduce any outstanding indebtedness or pay for eligible capital costs associated with the Development.

(b) Transformation Reserve - If applicable, Project Owner shall deposit with the Agency, unless the Agency, in its sole discretion, approves the use of a third party deposit agreement outlining acceptable terms and conditions for disbursement of the funds, a Transformation Reserve in an amount sufficient to cover the Annual Contribution Contract ("ACC") subsidy for a period of twelve (12) months. The Agency has the right to approve any disbursement from the Transformation Reserve at any time and, in the event of default under the Mortgage, such funds may be applied to the loan. Any funds that remain in the Transformation Reserve escrow at the end of the Project Term or upon sale of the property, whichever is earlier, must be used to reduce any outstanding indebtedness or pay for eligible capital costs associated with the development. In the event that the Agency is providing a primary mortgage to the Project, the Transformation Reserve must be held by the Agency.

(c) Family Supportive Services Program Escrow - If applicable, Project Owner shall deposit with the Agency, unless the Agency, in its sole discretion, approves the use of a third party deposit agreement outlining acceptable terms and conditions for disbursement of funds, a supportive services program escrow for the purpose of providing supportive services to tenants of the Project. The Agency has the right to approve any disbursement from the Family Supportive Service Escrow at any time and, in the event of default under the Mortgage, such funds may be applied to the repayment of the loan.

(d) Rental Subsidy Fund - If applicable, Project Owner shall deposit with the Agency, unless the Agency, in its sole discretion, approves the use of a third party deposit agreement outlining acceptable terms and conditions for disbursement of the funds, a rental subsidy fund. The fund shall be used to subsidize rents of individuals at or below 20% of area median income, at the applicable rents. The fund shall be held and applied as appropriate during the first fifteen (15) years of the Project Term. The Agency has the right to approve any disbursement from the Rental Subsidy Fund at any time and, in the event of default under the Mortgage, such funds may be applied to the repayment of the loan.

(e) Reserve for Replacements – Project Owner shall deliver evidence of the establishment and maintenance of a reserve fund for replacements to be funded by depositing amounts per annum as to cover expected maintenance and replacement of capital items during the term of the Project. The reserve shall be held and maintained by the Agency, unless the Agency, in its sole discretion, approves the use of a third party deposit agreement outlining acceptable terms and conditions for disbursement of the funds. The Agency has the right to approve any disbursement from the Reserve for Replacement Fund at any time and, in the event of default under the Mortgage, such funds may be applied to the repayment of the loan.

(f) Owner shall annually submit to PHFA within ninety (90) days following the end of each calendar year, which may be extended with written notice to PHFA in the event Owner files an extension with the Internal Revenue Service to file its Tax Return, an audited financial statement for the Property that includes the Reserve Fund for Replacements and evidences any other approved third party escrows or reserves.

13. **Development Fees.** Subject to the deferred development fees, Project Owner shall only pay development fees as initially approved by PHFA and in accordance with the following schedule:

- (a) 25 percent of total development fees at closing;
- (b) 25 percent at construction completion (as approved by PHFA);
- (c) 25 percent upon qualified occupancy for 95% of the units; and
- (d) 25 percent upon achievement of two (2) successive years of continued:
 - (i) 95% occupancy,
 - (ii) positive cash flow, and
 - (iii) no findings of non-compliance or ten (10) years from occupancy, whichever is earlier.

The Agency may require that such fees be requisitioned and paid out to the Project Owner for deposit into an escrow fund to be held by the Agency in accordance with the schedule set forth above.

At any time, the Agency may require additional retention of the Developer's fee or deposit of additional security in a pledged account, or financial guaranty from a qualified guarantor to ensure fiscal and physical compliance with the long term affordability period for Developments in its discretion. Such additional retention or security, in the form of unpaid developers fee, letter of credit, cash reserves, or guaranties will be determined by Agency in its sole discretion.

14. **Affordability; Extended Use Commitment.** In consideration for the fees and other benefits Project Owner receives from the Property and notwithstanding anything contrary in the IRC, Project Owner shall maintain the restricted uses set out in the IRC for the Property throughout the entire 30 year extended use period. Project Owner hereby waives any rights it may have under the qualified contract process (if such process is applicable).

15. **Project Owner Representations and Warranties.** The Project Owner represents and warrants that:

(a) The Project Owner is duly organized and existing under the laws of the Commonwealth of Pennsylvania, is in good standing under any applicable corporate standards and has all the power and authority to undertake all necessary acts to finance, construct, administer and operate the Project and to abide by all of the applicable Tax Credit Program Requirements and to consummate the transactions contemplated in this Agreement.

(b) This Agreement has been duly and validly executed and delivered by the Project Owner, and constitutes a valid and legally binding obligation enforceable in accordance with its terms and the Project Owner has duly authorized the applicable principal signator hereof to execute all necessary documents and bind the Project Owner in all legal matters regarding the Agency, this Agreement and the Project.

(c) All information set forth in the Application and in the supporting documentation provided to Agency is true and correct in all material regards and Project Owner agrees to provide immediate notice to the Agency of any changes or modifications which, in any aspect, may affect the ability of the Project Owner to complete the Project on time and to place the Project in service, or which may raise the costs of construction or rehabilitation beyond the amount set forth in the financial spreadsheet.

(d) There is no action, suit or proceeding pending, or to the best of Project Owner's knowledge threatened, against or affecting Project Owner in any court at law or in equity, or before or by any governmental instrumentality, whether federal, state, county or municipal, affecting Project Owner's existence, the real and personal property of Project Owner or affecting Project Owner's ability to carry out and perform the duties of the Project or the Tax Credit Program Requirements.

(e) Project Owner shall promptly advise the Agency in writing of any litigation affecting the Project Owner or the Project and of all complaints or investigations commenced or filed by an federal, state or local governmental authority affecting the Project or the Project Owner's construction or operation of the Project or which may impede the construction and placement in service of the Project or otherwise impair the security to the Agency.

(f) Project Owner shall indemnify, defend and hold harmless the Agency from any and all environmental liabilities, claims, damages, injuries, costs, expenses, and losses, of every kind whatsoever, that are paid incurred, suffered by or asserted against the Agency, as a direct or indirect result of the presence of any hazardous substance on the Project or the escape, seepage, leakage, spillage, discharge, emission or release thereof at the Project.

(g) Project Owner shall rehabilitate and/or construct the Project in conformance with Agency's Submission Guide for Architects, Minimum Housing Standards for Projects with 11 units or less, if applicable and all applicable state and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards set forth in 24 CFR Section 982.401 or any successor regulations.

(h) Prior to making any disbursement of Assistance, the Project Owner must demonstrate that it has made a good faith effort to obtain investment commitments for tax credits in lieu of assistance under this Exchange Program. The Agency has adopted a written program outlining the requirements that a Project Owner must meet to demonstrate that it has made a good faith effort to obtain investor commitments, but it reserves the right to require additional items in furtherance of meeting these standards and it may amend the written protocol during the term of this Agreement. Any such amendment or change may be applied to the Project Owner prior to the next disbursement of Assistance funds hereunder. Project Owner reaffirms all statements and representations it has made to the Agency to demonstrate that it has made this good faith effort and acknowledges that Agency has relied upon its statements and representations in making the determination that the Project Owner has demonstrated a good faith effort to obtain investment commitments for tax credits in order to qualify for the Assistance.

(i) Project Owner shall comply with the terms and conditions of the Agreement for Supportive Housing, including, without limitation, the requirement to set-aside the number of units it has identified in its application for housing for low income households which have members with disabilities that significantly interfere with their ability to obtain and maintain decent, safe and sanitary housing and who, without appropriate supportive services are not able to obtain and maintain such housing, including individuals with serious and persistent mental illness who are (i) ready for discharge from community rehabilitation residences or (ii) homeless or at risk of homelessness (the "Target Population") and shall provide a preference in the Project to the Target Population for the Project Term.

(j) Pursuant to federal regulations under the Americans with Disabilities Act, 28 C.F.R. Section 35.101 *et seq.*, Project Owner agrees that no individual with a disability shall, on the basis of the disability, be denied or excluded from Participation under this Agreement or in the Program, or from activities provided for under this Agreement. As a condition of accepting the Assistance, Project Owner agrees to comply with the "General Prohibitions Against Discrimination", 28 C.F.R. Section 35.130 and all other regulations promulgated now or in the future under Title II of the Americans with Disabilities Act, which are applicable to the benefits, services, programs or activities provided by the Agency through agreements with third parties.

16. **Covenants of the Project Owner.** The Project Owner hereby covenants and agrees that it shall at all times throughout the Project Term:

(a) Immediately report to the Agency any indication of fraud, waste, abuse, or potentially criminal activity pertaining to the Assistance.

(b) Comply, at all times, with all Federal, State and local laws, regulations and requirements applicable to the Project.

(c) Promptly pay any and all additional funds necessary to complete the Project if the Assistance and all other identified sources in the financial spreadsheet set forth herein as Exhibit B are not sufficient to complete the Project or if the Agency reasonably determines that costs for which Assistance Funding is sought are not qualified costs and expenditures under the Tax Credit Program Requirements or its funding guidelines.

(d) Promptly cause any mechanic's lien or other lien claim against the Project to be discharged or bonded over.

(e) Indemnify, defend and hold harmless the Agency from any and all liabilities, claims, damages, injuries, costs, expenses, and losses, of every kind whatsoever, that are paid incurred, suffered by or asserted against the Agency, as a direct or indirect result of its provision of Assistance to support the construction and operation of the Project.

(f) At all times during the operation of the Project, employ qualified staff to provide management services for the Project.

(g) In addition to meeting all ARRA Program timeframes and deadlines, meet all applicable Section 42 timeframes, deadlines and requirements.

(h) Rental of ancillary or commercial facilities shall be subject to prior written approval by Agency.

17. **Additional Federal Program Requirements.**

(a) Asset Management. Project Owner acknowledges that the Agency must perform asset management functions so as to ensure compliance with Section 42 of the Code and the regulations thereunder (including Title 26 Code of Federal Regulations Section 1.42.9), and the long-term viability of the buildings funded by any Assistance under the Act in accordance with Section 1602(c)(3) of the Act. Project Owner covenants to assist the Agency in fulfilling its obligations to perform such functions under ARRA.

(b) Financial Management. Project Owner acknowledges that the Agency must perform financial management functions so as to ensure compliance with Section 42 of the Code and the regulations thereunder (including Title 26 Code of Federal Regulations Section 1.42.9), and the long-term viability of the buildings funded by any Assistance under the Act in accordance with Section 1602(c)(3) of the Act. Project Owner covenants to assist the Agency in fulfilling its obligations to perform such functions under ARRA.

(i) Project Owner shall at all times expend and account for Assistance funds in accordance with federal and state laws and procedures for expending and accounting to permit preparation of required reports and to support the application of funding expenditures adequate to establish that such Assistance funds have not been used in violation of the restrictions and prohibitions of applicable statutes. Effective control and accountability must be maintained for all Assistance.

(ii) Project Owner shall at all times maintain program, financial, and accounting records sufficient to demonstrate that Assistance was used in accordance with the Exchange Program and these terms and conditions.

18. **Information Availability.**

(a) In addition to Agency and Commonwealth representatives, Project Owner acknowledges that Treasury, the cognizant Treasury inspector general, and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to Project and to any pertinent books, documents, papers, or other records (electronic and otherwise) of Project Owner, which are pertinent to the Assistance, in order to make audits, examinations, excerpts, and transcripts.

(b) Project Owner acknowledges that all information provided by or concerning the Project, Project Owner, the Assistance or the Application is subject to disclosure under the Commonwealth of Pennsylvania Right to Know law.

19. **Events of Default.** The occurrence of any one or more of the following shall constitute an event of default hereunder ("Event of Default"):

(a) Project Owner shall be in default under any provision of the Mortgage and any applicable grace period has expired under the Mortgage has been given or any notice has been given.

(b) Project Owner fails to perform or observe any term, covenant, condition or obligation contained in this Agreement or in the Tax Credit Program Requirements and not remedy or correct such performance within any applicable cure period.

(c) If at any time any representation or warranty made by Project Owner shall be incorrect in any material adverse respect as of the time made.

(d) Project Owner fails to comply with any of the covenants, terms and conditions contained in any agreement through which financial assistance is to be provided to assist in the construction and/or rehabilitation or operation of the Project and such failure is declared an event of default under such relevant agreements beyond any applicable notice and cure period.

(e) If at any time title to any part of the Project is not satisfactory to the Agency by reason of any lien, encumbrance or other defect (even though the same may have existed at the time of any prior disbursement), except those matters affecting title which appeared in the title insurance policy or binder delivered to the Agency at the time of the recording of the Mortgage or which have at any time been consented to in writing by the Agency, and Project Owner has failed to commence and proceed diligently to correct such lien, encumbrance or other defect within ten (10) days after notice to Project Owner, or if the Title Company shall fail or refuse to insure any disbursement to be secured by the Mortgage as a valid first lien on the Premises, subject only to those matters affecting title which appeared in the title insurance policy or binder delivered to the Agency at the time of the recording of the Mortgage or which have at any time been consented to in writing by the Agency.

(f) Project Owner assigns this Agreement or any advance to be made hereunder or any interest in either, or if the Project or any part thereof is conveyed, assigned, mortgaged, pledged or encumbered in any way other than as herein provided without the prior written consent of the Agency.

(g) The improvements are partially or totally damaged or destroyed by fire or any other cause and the restoration thereof cannot be expected to be placed in service on or before December 31, 2010, whether or not the Agency and Project Owner agree to use of the proceeds of any fire or other casualty insurance.

(h) There is any cessation of construction of the improvements for any period after the date construction and/or rehabilitation shall commence in excess of twenty (20) successive calendar days, unless the conditions of each of subparagraphs (i), (ii), (iii) and (iv) below shall have been satisfied:

(i) the cessation of construction shall have been caused by conditions beyond the control of Project Owner, including, without limitation, acts of God or the elements, fire, strikes, labor disputes, delays in delivery of material and disruption of shipping;

(ii) Project Owner shall have made adequate provision, acceptable to the Agency, for the protection of materials stored on site and for the protection of the Project, to the extent then constructed and/or rehabilitated, against deterioration and against other loss or damage and theft;

(iii) Project Owner shall have furnished to the Agency satisfactory evidence that such cessation of construction will not adversely affect or jeopardize the rights of Project Owner under material contracts relating to the construction and/or rehabilitation or operation of the Project; and

(iv) from time to time upon Agency's request therefor during any such cessation of construction and/or rehabilitation, Project Owner shall furnish to the Agency satisfactory evidence that (notwithstanding such cessation of construction and/or rehabilitation) the completion of the Project can be accomplished on or before December 31, 2011, that at least thirty percent (30%) of the Project shall be complete by December 31, 2010 and adequate additional funds are available to complete the Project.

(i) Except as specifically agreed to by Agency in writing, if (i) Project Owner executes any chattel mortgage or other security agreement on any materials, fixtures or articles used in the construction and/or rehabilitation or operation of the Project or on articles of personal property located therein, or (ii) any such materials, fixtures or articles are not in accordance with the Project construction documents approved by the Agency or are purchased pursuant to any conditional sales contract or other security agreement or otherwise so that the ownership thereof will not vest unconditionally in Project Owner free from encumbrances, or (iii) Project Owner does not furnish to the Agency upon request the contracts, bills of sale, statements, receipted vouchers and agreements, or any of them, under which Project Owner claims title to such materials, fixtures or articles.

(j) Any statements, details, budgets or revisions submitted by Project Owner to the Agency indicate, in the opinion of the Agency, that the estimated cost of construction and/or rehabilitation of the Project is in excess of the amount of funds available to Project Owner to complete and pay for such construction and/or rehabilitation.

(k) Project Owner fails to comply with any requirement of any Governmental Authority within the time period provided by the Governmental Authority or within thirty (30) days after notice in writing of such requirement shall have been given to Project Owner by such Governmental Authority, or fails to furnish to the Agency upon request official reports made by any such Governmental Authority.

(l) A petition in bankruptcy or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a receiver or trustee for any of its property is filed by Project Owner, or a petition in bankruptcy or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a receiver or trustee of any of its property is filed against Project Owner which is not dismissed within sixty (60) days, or a receiver or trustee of any property of Project Owner is appointed and is not discharged within sixty (60) days, or Project Owner makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts, or Project Owner is adjudged insolvent by any State or Federal court of competent jurisdiction, or an attachment of execution is levied against any substantial portion of the property of Project Owner which is not discharged within sixty (60) days.

(m) Project Owner fails to construct or rehabilitate, whichever is applicable, the Project in accordance with the Construction Contract Documents.

(n) Project Owner fails to comply with any reporting and record keeping which may be deemed applicable to the Assistance. PROJECT OWNER ACKNOWLEDGES THAT THESE REPORTING AND RECORD KEEPING REQUIREMENTS MAY BE AMENDED FROM TIME TO TIME AND PROJECT OWNER AGREES TO ABIDE BY ANY AMENDMENTS MADE TO THE ARRA PROGRAM IN THE FUTURE WHEN COMMUNICATED BY THE AGENCY.

(o) Project Owner fails to operate and maintain the Project as affordable rental housing in accordance with the Tax Credit Program Requirements, fails to follow Tax Credit Program Requirements or becomes ineligible for funding for any reason during the thirty (30) year term of this Agreement.

(p) If, at any time during the Recapture Period, there is not a financially responsible entity providing a guaranty (the "Guarantor") of the repayment of Assistance which may be due to Treasury if there is a Recapture Event. Evidence of the satisfaction of this continuing obligation shall be documented by submission of annual audited financial statements by the Guarantor for the Project within 150 days of the close of each calendar year which support the entity's financial capacity.

20. **Recapture Provision; Action and Remedies upon an Event of Default.** PROJECT OWNER ACKNOWLEDGES THAT FAILURE TO COMPLY WITH ALL TAX CREDIT PROGRAM REQUIREMENTS MAY TRIGGER RECAPTURE AND ANY DEBT DETERMINED TO BE SUBJECT TO SUCH RECAPTURE WILL BE A DEBT OWED TO THE UNITED STATES PAYABLE TO THE GENERAL FUND OF THE TREASURY AND ENFORCEABLE BY ALL AVAILABLE MEANS AGAINST ANY ASSETS OF THE PROJECT OWNER.

(a) Upon the occurrence of any of the Events of Default set forth in Section 19 or 20 hereof, the Agency may immediately seek any legal remedies available to recover the full amount of Assistance determined by the Agency to be due as of the date hereof.

(b) Upon demand, Project Owner shall immediately reimburse the Agency for any funds used in violation of the Program. If not paid, an action will arise immediately for collection of any funds spent by the Project Owner in violation of this Agreement and will include fees and costs associated with enforcement and collection of such funds by the Agency.

(c) If the Project Owner materially fails to comply with any term of the award, whether stated in a Federal statute or regulation, the terms and conditions herein, in the Allocation Plan or Application, a notice of award, or elsewhere, the Agency or Treasury may take one or more of the following actions, as either of them deem appropriate in the circumstances:

- (i) Temporarily halt Assistance pending correction of the deficiency;
- (ii) Disallow all or part of the cost of the activity or action not in compliance;
- (iii) Wholly or partly suspend or terminate the Assistance;
- (iv) Withhold further Assistance;
- (v) Require Recapture;
- (vi) Debar the Project Owner from further Agency program participation;
- (vii) Apply any Reserves or security funds to the outstanding Debt;
- (viii) Take any other remedies that may be legally available, including foreclosure.

21. **Tax Credit Compliance.** The provisions of this Agreement are intended to comply with Section 42 of the Internal Revenue Code, as well as the Exchange Program, as the same may be amended or interpreted from time to time by regulation or public pronouncement issued by the Internal Revenue Service (hereinafter "IRS"). If any provision of this Agreement is inconsistent with any provisions of Section 42, the Exchange Program, or official IRS interpretations thereof, then such inconsistent provision(s) shall be construed and applied in a manner so as to comply with Section 42 and the Exchange Program.

22. **Audit Requirements.**

(a) Project Owner must provide project audit information in accordance with standards and schedules established by ARRA and the Agency. Such audits must be completed by a qualified independent auditor in accordance with the Tax Credit Program Requirements.

(b) Project Owner shall maintain books, records, and documents that support the services provided, that the fees earned are in accordance with the Agreement, and that Project Owner has complied with the terms and conditions of the Tax Credit Program Requirements. Project Owner agrees to make available, upon reasonable notice, at the office of Project Owner, during normal business hours, for the term of this Agreement and the retention period set forth in this section, any of the books, records, and documents for inspection, audit, or reproduction by any state or federal agency or its authorized representative.

(c) Project Owner shall preserve all books, records, and documents related to this Agreement for a period of time as required by applicable federal laws and regulations. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.

(d) At all times Project Owner must maintain records relating to the Tax Credit Program and must provide, upon request, access to such records to the appropriate federal agencies or their authorized representatives.

(e) All terms and conditions of this Agreement will remain in effect and be binding upon the parties thereto until the Project Term expires.

23. **Project Owner Integrity.** Definitions for this Article are as follows:

(a) 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.

(b) 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 Agreement.

(c) Project Owner means the individual or entity that has entered into this Agreement with Agency, including directors, officers, general partners, managers, key employees.

(d) 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.

(e) 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 agreements of any kind.

(f) Project Owner shall maintain the highest standards of integrity in the performance of this Agreement 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.

(g) Project Owner shall not disclose to others any confidential information gained by virtue of this Agreement.

(h) Project Owner shall not, in connection with this or any other Agreement 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.

(i) Project Owner shall not, in connection with this or any other Agreement 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.

(j) Except with the consent of the Commonwealth and/or Agency, neither Project Owner nor anyone in privity with Project Owner 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 Agreement except as provided therein.

(k) Except with the consent of the Commonwealth and/or Agency, Project Owner shall not have a financial interest in any other contractor, subcontractor or supplier providing services, labor or material on this Project.

(l) Project Owner, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Agency in writing.

(m) Project Owner, by execution of this Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.

(n) Project Owner shall, upon request of the Office of State Inspector General, reasonably and promptly make available to that office and its representatives, for inspection and copying, all business and financial records of Project Owner of, concerning, and referring to this Agreement, or which are otherwise relevant to the enforcement of these provisions.

(o) For violation of any of the above provisions, the Commonwealth and/or Agency may terminate this and any other Agreement with Project 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 contractor to complete performance hereunder, and debar and suspend the Project Owner from doing business with Agency. These rights and remedies are cumulative, and the use of nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those Agency may have under law, statute, regulation or otherwise.

24. **Project Owner Responsibility.**

(a) Project Owner certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the Project 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) If Project Owner enters into subcontract or employs under this Agreement 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 Agreement or any extensions or renewals thereof, the Commonwealth shall have the right to require Project Owner to terminate such subcontractors or employment. Project Owner further agrees not to enter into any contract or provide funds available under this Agreement to any organization that is prohibited from receiving such funds by either state or federal law.

(c) Project Owner agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of Inspector General for investigations of Project Owner compliance with the terms of this or any other agreement between Project Owner and the Commonwealth which result in the suspension or debarment of Project 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. Project Owner shall not be responsible for investigative costs for investigations which do not result in the Project Owner's suspension or debarment.

(d) Project Owner may obtain the current list of suspended and debarred contractors by contacting the:
Department of General Services, Office of Chief Counsel
North Office Building Room 603
Harrisburg, Pennsylvania 17125
Phone: (717) 783-6472 Fax: (717) 787-9138

25. **Nondiscrimination/Sexual Harassment Clause.** During the term of this Agreement, Project Owner agrees as follows:

(a) Project 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 because of race, color, religious creed, ancestry, handicap, national origin, age, or sex. Project 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. Project Owner shall post in conspicuous places, available employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

(b) Project 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) Project Owner shall send each labor union or workers' representatives with which it has a collective bargaining agreement or other agreement 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 Project Owner.

(d) Project 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 Project 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 Project Owner was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor 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 group persons, so that Project Owner will be unable to meet its obligations under this nondiscrimination clause, Project Owner shall then employ and fill vacancies through other nondiscriminatory employment procedures.

(g) Project Owner shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Project Owner noncompliance with the nondiscrimination clause of this Agreement or with any such laws, this Agreement may be terminated or suspended, in whole or in part, and all money due or to become due under this Agreement may be forfeited. In addition, Project Owner may be declared temporarily ineligible for further Agency or Commonwealth Agreements and Agency may proceed with debarment or suspension and may place the Project Owner in the Contractor Responsibility File and other sanctions may be imposed and remedies invoked.

(h) Project Owner shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by the contracting agency and the Department of General Services' Bureau of Agreement Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment clause. If Project Owner does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Department of General Services' Bureau of Agreement Administration and Business Development.

(i) Project Owner shall actively recruit minority and women subcontractor or subcontractors with substantial minority representation among their employees.

(j) Project Owner shall include the provisions of this Nondiscrimination/Sexual Harassment clause in every subcontract, so that such provisions will be binding upon each subcontractor.

26. **Conflict of Interest.** Project Owner, their subcontractors, and assignees, on behalf of employees and/ or agents, covenants that they presently have no interest and shall not acquire any interest,

direct or indirect, which would conflict in any manner or degree with the performance of their activities hereunder. Project Owner, their subcontractors, and assignees further covenant that in the performance of this Agreement they will not knowingly employ any person having such interest.

27. **Compliance with Applicable Laws.** Project Owner, their subcontractors and assignees must agree to carry out all responsibilities under this Agreement in accordance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Executive Order 11063, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act, and all other applicable federal and state contracting provisions.

28. **Assignment, Transfer and Collateral Use.** This Agreement may not be assigned or transferred by Project Owner by operation of law or otherwise and Project Owner may not delegate its duties hereunder without the prior written consent of the Agency. Any approval of an assignment and/or reimbursement of payment to any third party on behalf of Project Owner does not establish any legal relationship between the Agency and the other third party, and under no circumstances shall the Agency be held liable for any act or omission pursuant to such an assignment.

29. **Miscellaneous.**

(a) Notices. All notices given hereunder shall be made by United States mail to the following addresses:

Agency: Attention – Tax Credit Administrator
 211 North Front Street
 Harrisburg, PA 17101

Project Owner: see address set forth in Exhibit A hereto.

(b) Governing Law. The validity, interpretation, enforcement, and effect of this Agreement shall be governed by and construed in accordance with, the laws of the Commonwealth of Pennsylvania.

(c) Amendment. This Agreement may not be modified or amended except in writing executed by all of the parties hereto.

(d) Counterparts. This Agreement may be executed in various counterparts each of which shall be an original but all of which shall constitute on instrument.

(e) Survival. The terms of this Agreement shall be remain operative throughout the Project Term.

[intentionally left blank]

IN WITNESS WHEREOF, the signatory below is provided by a duly authorized person with full and complete authority to bind the party noted below, its successors and assigns on the date first written above.

WITNESS

PENNSYLVANIA HOUSING FINANCE AGENCY

By: _____

Title: _____

WITNESS

PROJECT OWNER

By: _____

Title: _____

Attachment: Legal Description

Exhibit A: ARRA Award Letter

Exhibit B: PHFA Worksheet