

ARRA ASSISTANCE GUARANTY

THIS ARRA ASSISTANCE GUARANTY ("Guaranty") is made as of the ___ day of _____, 2009, by _____, a Pennsylvania _____, and _____, (both collectively, "**Guarantors**"), to and for the benefit of _____ ("**Property**") and 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* ("PHFA" or the "Agency").

ARTICLE I BACKGROUND

WHEREAS, the Guarantors have or are to receive substantial consideration, fees in payment of certain services and other assistance rendered or to be rendered to the Property and the Project Owner; and

WHEREAS, in reliance on the obligations of the Guarantors to be performed under this Guaranty, PHFA is providing substantial funds in the Property in the form of an Assistance loan pursuant to the provisions of Section 1602 of the American Recovery and Reinvestment Act of 2009 (the "Exchange Program") (as defined in the ARRA Assistance Agreement); and

WHEREAS, PHFA requires the execution and delivery of this Guaranty as a condition precedent to providing said funding in the Property; and the Guarantors each acknowledge that, without delivery of this Guaranty, the Guarantor's economic interest in the Property will not be paid or granted; and

WHEREAS, the Guarantors each acknowledge that both the Property and PHFA are the intended beneficiaries of this Agreement; and

WHEREAS, the Guarantors acknowledge and agree that all references to "Guarantors" in this Guaranty shall be deemed to mean on a joint and several basis;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantors hereby irrevocably and unconditionally promise, covenant, guarantee and agree as follows:

ARTICLE II TERM AND AMOUNT OF GUARANTY

This Guaranty is made in the full amount of any ARRA Assistance Funds provided by the Agency to develop, construct and place in service the Low Income Housing Tax Credit qualified tax credit development (the "Property") and shall match the amount of such Assistance that shall be due and payable to the US Treasury upon an Event of Recapture as such term is defined in the ARRA Exchange Program and any guidance issued by Treasury from time to time, subject to the reduction in the next section (the "Recapture Obligation").

The term of this Guaranty shall commence on the date first stated above and shall end upon completion of the initial fifteen (15) year Tax Credit compliance period (the "Recapture Term"). Upon completion of construction and placement of the Property in service, the amount of the Guaranty will begin to reduce. The obligations under this Guaranty shall be reduced per the following schedule:

(i) 6.67% of the original Guaranty amount is reduced each year on the anniversary date of the year the Property is placed in service and as described in the Note.

(ii) No credit shall be given for a portion of a year. For the above reduction to apply, the Project Owner must be in compliance with all Section 42 requirements for the full twelve (12) month period.

This Guaranty is intended by the parties to match, but not exceed, the amount of Recapture Obligation of Project Owner that may be outstanding to the U.S. Department of Treasury at any particular time during the Recapture Term, and the terms of this Guaranty may be amended as defined by the Exchange Program and by Treasury. Guarantor shall not be liable for any other obligations of the Project Owner under the ARRA Assistance Agreement or the ancillary PHFA funding documents.

This Guaranty Recapture Obligation is a recourse obligation to the guarantor and it supersedes any contrary obligation set forth in Notes, Mortgages or Indentures of even date herewith.

Additional definitions and guidance regarding Recapture may be applicable to this Guaranty as it becomes available from Treasury, provided the reduction set forth above remains in effect.

ARTICLE III **PROVISIONS OF GUARANTY**

1. **Guaranty to Ensure Exchange Program Compliance.** Guarantors hereby unconditionally guarantee to PHFA that the Property will fully and faithfully perform all of its Recapture Obligations upon an Event of Recapture under the Tax Credit Exchange Program which are set forth in the Indenture of Restrictive Covenants ("**IRC**") and ARRA Assistance Funding Agreement ("**Assistance Agreement**"), the terms and obligations of which are all incorporated by reference herein.

2. **Amount of and Limitation on Guaranty.** Notwithstanding anything contrary in this Guaranty, the Guarantors' liability under this Guaranty shall be limited to any outstanding amounts owed to the U.S. Department of Treasury as a Recapture Obligation, as defined above, that the Project Owner collectively receives as Assistance prior to and during the entire term of this Guaranty. Notwithstanding that the Guaranty amount is limited to the Recapture Obligation, PHFA shall be entitled to collect reasonable attorney fees and costs of enforcement, if any such fees and costs are incurred in collecting under the Guaranty.

In the event Treasury provides guidance that has the effect of mitigating or reducing the Recapture Obligation otherwise due to the Treasury in the event the Property is not placed in service or otherwise deemed to be a qualified property for purposes of receiving ARRA assistance, this Guaranty shall be automatically amended to reflect such reduction in the Recapture Obligation.

It is intended that this Guaranty be limited to the amount due to Treasury as a Recapture Obligation.

3. **Breach of Guaranty.** If the Guarantors fail to perform any of their obligations under this Guaranty, the Guarantors shall be responsible for any and all damages resulting to PHFA from such noncompliance. Furthermore, the Guaranty made hereunder is of payment and not of collection, and the Guarantors waive any right to require that any action be brought against any other person liable for performance or payment of any of the Property's obligations or that resort first be had to any other security.

4. **Enforcement of Guaranty.** Upon an Event of Recapture, as set forth in the ARRA Assistance Agreement, Guarantor shall be fully obligated to pay all amounts outstanding under the Note less the reductions provided in this Agreement. The Guarantors shall pay, on demand by the Property or PHFA, any and all expenses (including, without limitation, attorneys' fees) incurred by the Property or PHFA in the enforcement of this Guaranty. In any right of action that may accrue to the Property or PHFA by reason of any obligations guaranteed hereunder, the Property or PHFA may, at their option, proceed against (a) each Guarantor individually, without having first proceeded against the other, or (b) both Guarantors, collectively. Prior to filing an action against a Guarantor, the Property or PHFA will give the Guarantor a reasonable period of notice with an opportunity to cure any failure to perform as required, which shall be at least 30 days except in case of emergency.

5. **Sufficient Consideration.** Each Guarantor acknowledges that such Guarantor has received good, valuable and sufficient consideration for the making of this Guaranty and expressly agrees that recourse may be had against any and all such Guarantor's properties and assets for all obligations hereunder, and further agrees that any and all of the Guarantors' properties and assets shall be subject to execution for any judgment rendered against such Guarantor on this Guaranty by a court of competent jurisdiction.

6. **Evidence of Financial Capacity.** Guarantor acknowledges that it has presented to the Agency its audited financial statements in connection with Agency's provision of the Assistance loan to the Project Owner and that such statements accurately and correctly present the financial condition of Guarantor as of the date thereof and that no material events have occurred which make the statements inaccurate or which jeopardize the ability of Guarantor to provide the financial support anticipated hereunder. Each Guarantor shall have an ongoing obligation to provide updated financial information to the Agency throughout the term of this Guaranty. Each Guarantor shall provide to the Agency audited financial statements within 150 days of the close of its fiscal year to provide the Agency with evidence of its continued financial capacity to meet the Recapture Obligations described herein. All such financial statements shall be prepared in accordance with generally accepted accounting principles.

7. **Waiver of Rights.** Each Guarantor agrees to waive (a) notice of acceptance of this Guaranty; (b) any and all other notices to which such Guarantor might otherwise be entitled except as this document requires; (c) any and all defenses arising by reason of any disability of the Guarantors or any defense of any other person; (d) any and all rights to extension, composition, election with respect to any collateral under any provision of the Federal Bankruptcy Code, as now existing or hereafter amended from time to time, or any other debtor's or guarantor's remedy thereunder or under any other federal or state law affecting creditors' rights; (e) diligence in any attempt to enforce the obligations guaranteed under this Guaranty, to realize upon any other security, or to collect from anyone any amount, the payment of which is guaranteed under this Guaranty, and any right to require that any action be brought against any other person or to require that resort first be had to any such security; (f) protection of any such security for the payment of the obligations guaranteed under this Guaranty; and (g) the observance

of any and all formalities that might otherwise be required to charge any Guarantor with liability under this Guaranty.

This Guaranty is a primary obligation of each Guarantor. No irregularity, unenforceability or invalidity of any of the documents creating the obligations for the Property or of any other document, item, matter, action or circumstance shall impair, release or be a defense to this Guaranty. Each Guarantor has no, or hereby waives any, present defense to any action or proceeding at law or otherwise that may be instituted on this Guaranty, except for any defense other than disability that the Guarantor may have at law or under the articles.

8. **Notice.** Notice under this Guaranty may be sent by regular US Mail, by overnight mail (through the US mail or by an commercial provider such as Federal Express or similar service), by personal delivery or by registered or certified United States mail, postage prepaid, addressed to the intended recipient at the last address specified by the addressee.

9. **Miscellaneous.** This Guaranty shall be construed and enforced according to the laws of the Commonwealth of Pennsylvania. If any provision of this Guaranty should be held invalid, the validity of the remainder of this Guaranty shall be construed as if such invalid part were never included. The descriptive headings of this Guaranty are for convenience only and shall not be deemed to affect the meaning of any provision. This Guaranty shall be binding on the successors and assigns, legal representatives and other transferees of the Guarantors. This Guaranty shall inure to the benefit of the Property's and PHFA's successors, assigns and legal representatives.

10. **Confession of Judgment.** Guarantor hereby irrevocably authorizes and empowers the Agency, by any authorized officer, employee or agent, or by its attorney, or by the prothonotary or clerk of any court of record in the Commonwealth of Pennsylvania or elsewhere where permitted by law, upon Event of Recapture hereunder, to appear for and confess judgment against Guarantor in favor of the Agency in any jurisdiction in which Guarantor, or any of its property is located for the amount of any or all of the liabilities, together with the costs of suit and with actual collection costs, including reasonable attorneys' fees, with or without declaration, with release of all procedural errors, without stay of execution and the right to issue execution forthwith, and for doing so this Note or a copy verified by affidavit shall be sufficient warrant. Guarantor hereby waives and releases all relief from any and all appraisal, stay or exemption law of any state now in force or hereinafter enacted.

Guarantor acknowledges that by agreeing that the Agency may confess judgment hereunder, it waives the right to notice in a prior judicial proceeding to determine its rights and liabilities, and it further acknowledges that the Agency may obtain a judgment against Guarantor without its prior knowledge or consent and without the opportunity to raise any defense, set off, counterclaim or other claim Guarantor may have, and Guarantor expressly waives such rights as an explicit and material part of the consideration for the Agency's agreement to finance the property. The foregoing power to confess judgment may be exercised against Guarantor at one time or at different times as the Agency elects until the liabilities are fully discharged.

IN WITNESS WHEREOF, each Guarantor has caused this Guaranty to be duly executed as of the date noted above.

WITNESS (ATTEST)

Guarantor, _____

By: _____

Name: _____

Title: _____

WITNESS (ATTEST)

Guarantor, _____

By: _____

By: _____

Name: _____

In his personal capacity.

**EXPLANATION AND WAIVER OF RIGHTS IN CONNECTION
WITH THE SIGNING OF AN INSTRUMENT CONTAINING
CONFESSION OF JUDGMENT**

This explanation and waiver is appended to that certain ARRA Assistance Guaranty document of even date herewith, which has been executed by the undersigned (the "Document").

The undersigned acknowledges and agrees that the Document contains provisions under which the Agency may enter judgment by confession against the undersigned. Being fully aware of its rights to prior notice and a hearing on the validity of any claims that may be asserted against it by the holder of the documents (the "Agency") before judgment is entered, the undersigned hereby freely, knowingly and intelligently waives these rights and expressly agrees and consents to the Agency's entering judgment against it by confession pursuant to the terms hereof.

The undersigned also acknowledges and agrees that the Document contains provisions under which the Agency may, after entry of judgment and without notice and a hearing, foreclose upon, attach, levy or otherwise seize property of the undersigned in full or partial payment of the judgment. Being fully aware of its rights after judgment is entered, the undersigned hereby freely, knowingly and intelligently waives these rights and expressly agrees and consents to the Agency's taking such actions as may be permitted under applicable law without prior notice to the undersigned.

WITNESS (ATTEST)

Guarantor, _____

By: _____

Name: _____

Title: _____

WITNESS (ATTEST)

Guarantor, _____

By: _____

By: _____

Name: _____

In his personal capacity.