

## ARRA Tax Credit Exchange Program

### Promissory Note

Harrisburg, Pennsylvania

FOR VALUE RECEIVED, the undersigned, \_\_\_\_\_, having its principal offices at \_\_\_\_\_ (hereinafter referred to as "Project Owner"), promises to pay to the **PENNSYLVANIA HOUSING FINANCE AGENCY**, (" the 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) at 211 North Front Street, Harrisburg, Pennsylvania 17101, the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) (the "ARRA Assistance Funding").

The purpose of the ARRA Assistance Funding is to assist Project Owner in the construction, rehabilitation, acquisition and capital financing of certain buildings, structures, and/or land located in the \_\_\_\_\_, County of \_\_\_\_\_, Pennsylvania, (the "Development" or "Project") participating in the Low Income Housing Tax Credit ("LIHTC") Program under Section 42 of the Internal Revenue Code of 1986 as amended (the "Code") and further qualified for funds available through the American Recovery and Reinvestment Act of 2009 ("ARRA").

Pursuant to LIHTC and ARRA, Project Owner has made certain representations and covenants and the delivery of funds by the Agency has been made specifically in reliance upon the continued satisfaction of such representations and covenants. Project Owner has agreed to comply with all requirements of the LIHTC Program, the Code, ARRA and related regulations and guidance as may be amended from time to time (collectively, the "Tax Credit Program Requirements.") Such representations and covenants are set forth more fully in the Tax Credit Exchange Program Assistance Agreement of even date herewith by and between the parties, and in all ancillary funding documents referenced therein (collectively, the "ARRA Assistance Agreements").

1. **TAX CREDIT EXCHANGE PROGRAM ASSISTANCE.** This is a Tax Credit Exchange Program loan (the "ARRA Assistance Funding") and funds loaned to the Project Owner were provided by the U.S. Department of Treasury through the Exchange Program. The funds are being supplied in the form of a non-interest bearing, deferred payment loan. The Exchange Program requires that the Project Owner comply with all requirements of the LIHTC Program during a fifteen (15) year recapture period (the "Recapture Term"), and the Agency requires extended use program compliance for the thirty (30) year program period (the "Project Term").

2. **TERM.** Project Owner agrees that its obligations hereunder shall be and will remain in full force and effect and in no way impaired until the expiration of a date which is thirty (30) years from the date the buildings are "placed in service" as defined in Section 42 of the Code (the "Project Term"); at that time, the ARRA Assistance Funding and all related obligations shall be deemed satisfied. Until the Project Term has expired or until the Agency has otherwise agreed in writing to the contrary, Project Owner shall be fully obligated to pay from any lawful source the full amount of ARRA Assistance Funding then due under this Note upon the occurrence of an Event of Default under any of ARRA Assistance Agreements including this Note, uncured after the applicable notice and the expiration of any applicable grace period and opportunity to cure.

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Development: \_\_\_\_\_

3. **INTEREST.** Interest shall not accrue on the sums advanced in connection with this Note, unless and until there is an Event of Default under the terms of this Note or the accompanying ARRA Assistance Agreements.

4. **REPAYMENT.** In the event the Agency declares an Event of Default under this Note or under any of the ARRA Assistance Agreements, the outstanding principal amount of the ARRA Assistance Funding, on such date, shall be repaid immediately by the Project Owner.

Any payments of ARRA Assistance Funding that become due under this Note shall be payable at the Pennsylvania Housing Finance Agency, 211 North Front Street, Harrisburg, PA 17101, or at such other place as the Agency may designate in writing.

5. **RECAPTURE.** PROJECT OWNER ACKNOWLEDGES THAT FAILURE TO COMPLY WITH TAX CREDIT PROGRAM REQUIREMENTS MAY TRIGGER RECAPTURE AS DEFINED IN THE ARRA ASSISTANCE AGREEMENT 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 BY THE AGENCY AGAINST ANY ASSETS OF THE PROJECT OWNER.

A. The recapture obligation (but not the debt) self amortizes as per the following schedule:

(i) 6.67% of the recapture amount is forgiven each year on the anniversary date of the date the Development is placed in service as a qualified tax credit project.

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

This description of recapture is subject to change in the event Treasury provides additional, supplemental or contrary guidance.

B. If the Project Owner becomes the subject of a foreclosure proceeding that results in the sale of part or all of the premises, any sums in excess of those paid to superior lien holders shall be paid to the Agency to apply to the outstanding balance of this loan.

C. Project Owner shall be responsible for payment of all fees or costs associated with the satisfaction or release of the mortgage associated with this Note, either when the loan is paid off or after the end of the Project Term.

D. NOTWITHSTANDING the reduction of principal amount due in the event of recapture during the fifteen (15) year Recapture Term, the full amount of the loan shall remain due and payable for the entire Project Term in the Event of a Default under the ARRA Assistance Agreements.

E. Until the end of the Recapture Period defined in the ARRA Assistance Agreement, the Agency may pursue any asset of the Project Owner (but not against the individual partners of the Project Owner unless directed by the U.S. Department of Treasury) to secure repayment of the indebtedness to Treasury.

6. **ASSUMPTION AND ASSIGNMENT FOR PURPOSES OF COLLECTION.** This Note may be assumable, subject to the Agency's prior written consent, in the event of an approved sale or transfer of

the property secured hereunder. In addition, Project Owner acknowledges and agrees that the Agency may assign its claim to any third party or may pursue collection of the indebtedness directly or through its assigns. The Agency may pursue prosecution of any suit necessary to satisfy the indebtedness on the Development and on any improvements, fixtures and equipment located thereon or used or usable in connection with the operation of the Development. Further, the Agency may exercise any rights to seek collection under guarantees delivered by Project Owner as additional security. The Agency, or its assigns, may pursue any and all means of collection against the Project Owner or the Development, without limitation or setoff.

7. **PREPAYMENT.** Project Owner may prepay the principal due on this Note in whole or in part, with the Agency's consent, without penalty.

8. **ACCOMPANYING DOCUMENTS.** This Note is secured by a Mortgage and by other loan documents. All the terms, covenants, agreements, conditions, warranties and provisions contained in the ARRA Assistance Agreements are hereby incorporated in this Note. A breach by the Project Owner of any of the terms of the ARRA Assistance Agreements shall also constitute a breach of the terms of this Note.

9. **REMEDIES.** In the event that the Project Owner violates any terms of this Note or the ARRA Assistance Agreements beyond notice and cure, then the Agency may immediately declare the entire principal remaining due under the terms of this Note to be immediately due and payable. All covenants, conditions and remedies of this Note shall be construed as affording to the Agency rights and remedies additional to, and not exclusive of, any and all other rights and remedies conferred by law or equity. The Agency shall not be deemed, by any act or commission, to have waived any of its rights or remedies hereunder, unless such waiver is in writing and signed by the Agency, and then only to the extent specifically set forth in writing. A waiver on one event shall not be construed as continuing or as a bar to or a waiver of any rights or remedies to a subsequent event.

**10. CONFESSION OF JUDGMENT.** Project Owner 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 Default hereunder, to appear for and confess judgment against Project Owner in favor of the Agency in any jurisdiction in which Project Owner, 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. Project Owner hereby waives and releases all relief from any and all appraisal, stay or exemption law of any state now in force or hereinafter enacted.

Project Owner 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 Project Owner without its prior knowledge or consent and without the opportunity to raise any defense, set off, counterclaim or other claim Project Owner may have, and Project Owner 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 Project Owner at one time or at different times as the Agency elects until the liabilities are fully discharged.

11. **NOTICES.** Any notices to be given pursuant to this Note may be given by either first class or registered or certified mail or overnight courier. Notices shall be sent to the addresses indicated in this Note, unless either party notifies the other in writing of a change in address.

12. **SUCCESSORS AND ASSIGNS.** Unless the context indicates otherwise, the word "Agency" herein shall be deemed and construed to include successors and assigns of the Agency, and the word "Project Owner" herein shall be deemed and construed to include the respective heirs, executors, administrators, successors and assigns of "Project Owner"; and in the event there is more than one party named herein as a Project Owner, the word "Project Owner" whenever occurring herein shall be deemed and taken to be plural, and all the covenants, waivers, warrants, promises and releases by, and obligations or liabilities imposed upon "Project Owner" shall bind them jointly and severally and its, his, her and their, and each of their respective heirs, executors, administrators, successors and assigns.

13. **GOVERNING LAW.** This Note shall be governed by and construed according to the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, Project Owner has caused these presents to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**WITNESS (ATTEST)**

**PROJECT OWNER**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**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 Note 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)**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_