

ARRA ASSISTANCE GUARANTY

THIS ARRA ASSISTANCE GUARANTY ("Guaranty") is made as of the _____ day of _____, 2009, by _____, a Kentucky _____, and _____, (both collectively, "**Guarantors**"), to and for the benefit of _____ ("**Property**") and **KENTUCKY HOUSING CORPORATION**, a de jure municipal corporation and political subdivision of the Commonwealth of Kentucky, 1231 Louisville Road, Frankfort, Kentucky 40601 ("KHC").

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, KHC is providing substantial funds in the Property in the form of an Assistance grant pursuant to the provisions of the American Recovery and Reinvestment Act of 2009 (the "Tax Credit Assistance Program") (as defined in the Tax Credit Assistance Program Assistance Agreement); and

WHEREAS, KHC 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 KHC 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 amount of \$ _____ [amount of Loan Funds] (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").

This Guaranty is intended by the parties to partially match the 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. Additional definitions and guidance regarding Recapture may be applicable to this Guaranty as it becomes available from Treasury.

ARTICLE III PROVISIONS OF GUARANTY

1. **Guaranty to Ensure Exchange Program Compliance.** Guarantors hereby unconditionally guarantee to KHC that the Property will fully and faithfully perform all of its obligations under the Tax Credit Assistance Program which are set forth in the Declaration of Land Use Restrictive Covenants and Subordination Agreement ("LURA") and Tax Credit Assistance Program Assistance Agreement ("**Assistance Agreement**"), the terms and obligations of which are all incorporated by reference herein.

2. **Financial Guaranty.** Except as limited in the following section, Guarantors hereby unconditionally guarantee to advance all funds necessary to support the Property during the entire term of this Guaranty. Any payments for said deficits, obligations, or any other expenses of the Property shall not be funded by any grant to or obligation of the Property, but shall instead be funded as a payment without any obligations of the Property to repay such amounts.

3. **Limitation on Guaranty.** Notwithstanding anything contrary in this Guaranty, the Guarantors' total liability under this Guaranty shall be limited to any amounts that the Project Owner collectively receives as Assistance prior to and during the entire term of this 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.

4. **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 KHC 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.

5. **Enforcement of Guaranty.** Upon an Event of Default under the LURA or Assistance Agreement, Guarantor shall be fully obligated to pay all amounts funded under the Assistance Agreement. The Guarantors shall pay, on demand by the Property or KHC, any and all expenses (including, without limitation, attorneys' fees) incurred by the Property or KHC in the enforcement of this Guaranty. In any right of action that may accrue to the Property or KHC by reason of any obligations guaranteed hereunder, the Property or KHC 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 KHC 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.

6. **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 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.

7. 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 grant 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 90 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.

8. 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.

9. 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.

10. Miscellaneous. This Guaranty shall be construed and enforced according to the laws of the Commonwealth of Kentucky. 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 KHC's successors, assigns and legal representatives.

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

GUARANTOR(S)

By: _____

Title: _____

By: _____

Name: _____