18-149N E4-1-5

Prepared by & Return to:
PHFA-Legal Division
211 North Front Street
Harrisburg, PA 17101
717-780-3846

CERTIFIED PROPERTY IDENTIFICATION NUMBER
MUNICIPALITY Edwardsville Boro
PIN MAP 149N E4 BLOCK 1 LOT 5
TRANSFER DIVISION
DATE 3-30-2012 MAPPING CLERK

PIN / ID Number: 18-149N E4-1-5

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PENNSYLVANIA HOUSING FINANCE AGENCY
PRESERVATION THROUGH SMART REHAB PROGRAM
RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT ("Agreement") is made this 29th day of March, 2012, to be effective March 29, 2012 by and between TEMPLE B'NAI B'RITH HOUSING FOR THE ELDERLY, INC., a Pennsylvania nonprofit corporation, with a principal place of business at 408 Wyoming Avenue, Kingston, Pennsylvania 18704 ("Owner"),

AND

PENNSYLVANIA HOUSING FINANCE AGENCY, a public corporation and government instrumentality of the Commonwealth of Pennsylvania, with principal offices at 211 North Front Street, Harrisburg, Pennsylvania 17101 (the "Agency").

WITNESSETH:

WHEREAS, the Agency is the sub-grantee of funding made available under the American Recovery and Reinvestment Act of 2009 ("ARRA") for the U.S. Department of Energy's Weatherization Assistance Program ("WAP"), in accordance with an Interagency Agreement between the Agency and the Commonwealth of Pennsylvania's Department of Community and Economic Development ("DCED"); and

WHEREAS, the Agency established its Preservation through Smart Rehab Program("PTSR Program") to provide funding to existing affordable housing developments to weatherize and make rehabilitative improvements that will generate energy savings; and

WHEREAS, Owner holds title to property located at 5 Heisz Street, Edwardsville, Luzerne County, Pennsylvania, as more fully described in Exhibit A attached hereto and made a part hereof, known as Temple Apartments (the "Development"); and

WHEREAS, Owner has submitted an application to the Agency to fund weatherization activities for the Development under the Program and the Agency has determined the Owner is eligible to receive WAP funding; and

WHEREAS, Owner has agreed to comply with all requirements of ARRA, WAP, and the Program (including regulations and guidance) as may be amended from time to time (collectively, the "PTSR Requirements"); and

WHEREAS, provision of the WAP funding is contingent upon and subject to Owner executing, delivering and recording in the official land deed records of the county in which the Development is located this Agreement, which creates certain covenants running with the land for the purpose of enforcing the PTSR Requirements by regulating and restricting the use, occupancy and transfer of the Development as set forth herein; and

WHEREAS, Owner intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Development shall be and are covenants running with the Development for the term stated herein and binding upon all subsequent owners of the Development for such term.

NOW, THEREFORE, the parties hereto, intending to be legally bound, do hereby agree as follows:

A. Owner shall maintain the Development as residential rental housing for low or very low income families for a period of five (5) years from the date all work funded under the WAP program is completed and "placed in service" ("Affordability Term"), and such term may run conterminously with any existing affordability restrictions. Throughout the Affordability Term, the units must be maintained as decent, safe and sanitary housing and the units must be available to the general public as rental housing serving low and very low income households. The provision of this housing for the maximum Affordability Term is a material inducement to the Agency's provision of funding for the Development.

B. Owner shall not discriminate on the basis of race, creed, color, gender, age, handicap, marital status, national origin, status as a holder of a voucher or certificate of eligibility under Section 8 of the U.S. Housing Act of 1937, family status or religion, in the lease, sale, rental, use or occupancy of the Development or in connection with the employment or application for employment of persons for the operation and management of the Development or in connection with any improvements to be erected thereon or in connection with maintenance of the Development.

C. If Owner becomes aware of any situation, event or condition that would result in non-compliance with the PTSR Requirements, Owner shall promptly submit written notice thereof to the Agency.

D. Owner, for itself, its successors and assigns, agrees that the terms, conditions and restrictions of this Agreement shall be covenants running with the land, and that in any deed of conveyance of the Development or any part thereof, excepting those referenced in paragraph P of this Agreement, said terms, conditions and restrictions shall be incorporated by reference to this Agreement and the record hereof as fully as the same are contained herein for the Affordability Term as defined herein.

E. With the written permission of the Agency and subject to this Agreement, Owner may sell, transfer or exchange the entire Development at any time, but, unless the Affordability Term has terminated, Owner (and its successors and assigns) shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Development or any interest therein that such acquisition is subject to the requirements of this Agreement and to the PTSR Requirements and to provide such additional guaranties as the Agency may require to secure ongoing compliance with the PTSR

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Requirements. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Development or any low income portion of the Development.

F. Owner acknowledges that the primary purpose for requiring compliance with the restrictions provided in this Agreement are to assure compliance of the Development and Owner (and its successors and assigns) with PTSR Requirements, including, without limitation, the ongoing benefits of decent safe and sanitary housing for low and moderate income households for the Affordability Term. Owner in consideration for receiving PTSR funding for the Development, hereby agrees and consents that the Agency, the Commonwealth of Pennsylvania and/or the United States of America shall be entitled to enforce specific performance by Owner, its successors and assigns, of its obligations under this Agreement in any tribunal in the Commonwealth of Pennsylvania for any and all breach of the conditions and restrictions hereof or material representations made by Owner at any time, and in addition to all other remedies provided by law or in equity.

G. Owner shall submit any other reports that DCED or the Agency deem necessary and such reporting requirements will be amended as additional guidance is provided by the Agency, DCED, or DOE.

H. Owner shall provide the Agency with releases to obtain energy usage data directly from the utility company for all project-paid utilities. Similar releases shall be provided from a minimum of one-half of the residents occupying each unit type (e.g. one bedroom, two bedroom, three bedroom, etc.) for all tenant-paid utilities. Owner shall participate in any Agency data collection effort throughout the Affordability Term.

I. All records, books and accounts for the Project will be subject to examination and reproduction at reasonable hours by the Agency, DOE, DCED, L&I, or by any of their designated agents or representatives. Further, with respect to each Smart Rehab Program Agreement that utilizes ARRA funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized (1) to examine any records that pertain to and involve this transaction; and (2) to interview any officer or employee of the contractor, subcontractor or Owner regarding such transactions.

J. This Agreement shall not be amended without the written agreement of the parties hereto and the approval of HUD.

K. The Agency, its agents or assigns, and representatives of federal agencies shall have the right of entry and inspection of the Development and shall have access to inspection and reproduction of all records, books and accounts for the Development during regular business hours.

L. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

M. This Agreement and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania and, where applicable, the laws of the United States of America.

N. As the Development is HUD financed, Agency covenants and agrees that all of its rights and powers under this Agreement are subordinate and subject to the rights of all prior mortgage holders, regulatory agreements and restrictive covenant agreements with prior recorded lien interests.

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O. In the event that during the period the HUD Mortgage, HUD Regulatory Agreement and/or HUD Use Agreement are in effect, the Secretary of HUD acquires title to the Property by foreclosure, deed in lieu of foreclosure, or by any other means, this Agreement shall automatically terminate.

P. During the period the HUD Mortgage, HUD Regulatory Agreement and/or HUD Use Agreement are in effect, no default under this Agreement may be declared without prior written approval of HUD.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed as of the date first written above.

WITNESS:

TEMPLE B'NAI B'RITH HOUSING FOR THE ELDERLY, INC.
a Pennsylvania nonprofit corporation

By: _____
Name:
Title: President

WITNESS:

PENNSYLVANIA HOUSING FINANCE AGENCY

By: _____
Name: David L. Evans
Title: Assistant Executive Director of Multifamily Housing

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COMMONWEALTH OF PENNSYLVANIA :
:
: SS
:
COUNTY OF LUZERNE :

On this, the 29th day of MARCH, 2012, before me, the undersigned officer, personally appeared A. JOHN DIMONO, who being sworn according to law, deposes and states that he is the PRESIDENT of TEMPLE B'NAI B'RITH HOUSING FOR THE ELDERLY, INC., a Pennsylvania nonprofit corporation, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he, being authorized to do so, executed the same for the purpose therein contained, and desires the same to be recorded as such.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Lisa A. Burick
Notary Public

NOTARIAL SEAL
LISA A. BURICK, NOTARY PUBLIC
CITY OF WILKES-BARRE, LUZERNE CO.
MY COMMISSION EXPIRES AUGUST 9, 2015

COMMONWEALTH OF PENNSYLVANIA :
:
: SS
:
COUNTY OF DAUPHIN :

On this, the 22 day of March, 2012, before me, the undersigned officer, personally appeared David L. Evans, Assistant Executive Director of Multifamily Housing, who acknowledged himself to be an authorized officer of PENNSYLVANIA HOUSING FINANCE AGENCY, a public corporation and government instrumentality created by the Commonwealth of Pennsylvania (35 P.S. Section 1680.101 et seq., as amended), and acknowledged that he as such authorized officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, and desires the same to be recorded as such.

Tracy L.M. Horetsky
Notary Public

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COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Tracy L. M. Horetsky, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires April 26, 2014
Member, Pennsylvania Association of Notaries

I hereby certify that the principal place of business and address of the within-named Agency is, and after recordation this Agreement should be returned to:

Pennsylvania Housing Finance Agency
Attention: Legal Division
211 North Front Street
Harrisburg, PA 17101

Please mail this Agreement to the above address.

By: _____
Agent for Pennsylvania Housing Finance Agency

COMMONWEALTH OF PENNSYLVANIA :
:
COUNTY OF LUZERNE :

RECORDED on this _____ day of _____, 2012, in the Office of the Recorder of Deeds in and for said County, in Deed Book Volume _____, Page _____.

_____
Recorder of Deeds

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EXHIBIT A
Legal Description

ALL, that certain lot, piece, or parcel of land situate in the Borough of Edwardsville, County of Luzerne, and the State of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at an Iron Pin corner in the Southeasterly line of Heisz Street, said corner being located the following courses and distances from the intersection of the Southeasterly line of Heisz Street and the Southwesterly line of Northampton Street South 60° 30' West one hundred and no hundredths (100.00) feet to a point; THENCE South 58° 54' 54" West fifteen and one one-hundredths (15.01) feet to a point; THENCE South 52° 48' West thirty-three and ninety-five one-hundredths (33.95) feet to the point of BEGINNING; said corner also being a common corner to Lots No. 2-13 and 2-19 on Plot of Lots hereinafter referred to;

THENCE along the Division Line between Lot No. 2-19 and Lot No. 2-13 and continuing along the rear line of Lots No. 2-14, 2-15, 2-16, and part of Lot No. 2-17, South 29° 30' East three-hundred twenty-four and forty-two one-hundredths (324.42) feet to a point on the Division Line between Lot No. 2-17 and Lot No. 2-22;

THENCE through Lots No. 2-22, 2-23, 2-24, and 2-25 on a line parallel with and one hundred fifty and no hundredths (150.00) feet distant from the Northwesterly line of Thomas Street, South 52° 48' West three hundred two and twenty-eight one-hundredths (302.28) feet to a point in the Division Line between Lot No. 2-25 and Lot No. 2-26;

THENCE along the Division Line between Lot No. 2-25 and Lot No. 2-26 and along the Division Line between Lot No. 2-26 and lands of Gateway Apartment Association North 37° 12' West two-hundred four and seventy-eight one-hundredths (204.78) feet to an Iron Pin corner;

THENCE continuing along lands of Gateway Apartment Association North 52° 48' East fifty-nine and ninety one-hundredths (59.90) feet to an Iron Pin corner;

THENCE continuing along lands of Gateway Apartment Association North 37° 12' West one hundred sixteen and seventy one-hundredths (116.70) feet to an Iron Pin corner in the Southeasterly line of a fifty (50) foot Right-of-Way for a Right of Ingress and Egress as set forth in Luzerne County Deed Book 1612, Page 188;

THENCE along the Southeasterly line of said Right-of-Way and the Southeasterly line of Heisz Street North 52° 48' East two hundred eighty-five and eighty-five one-hundredths (285.85) feet to the Place of BEGINNING.

CONTAINING 2.23 Acres of land, be the same, more or less.

BEING the same premises conveyed to or acquired by the Redevelopment Authority of Luzerne County, Pennsylvania by the following Deed or Declaration of Taking:

1. Deed of Victor Price and Olga Price Kashuba, Executors of the Estate of Mary Price, Deceased, dated March 28, 1975, and recorded in Luzerne County Deed Book 1854, Page 514.

2. Declaration of Taking dated April 1, 1975 and indexed to No. 2538 of 1975, Notice of which is recorded in Luzerne County Deed Book 1856, Page 82.

ALSO BEING part of the premises conveyed to or acquired by the Redevelopment Authority of Luzerne County, Pennsylvania by the following Deeds or Declarations of Taking:

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1. Deed of James E. Garrahan, et ux, dated February 7, 1975, and recorded in Luzerne County Deed Book 1040, Page 642.

2. Deed of F. H. Garrahan, dated April 28, 1975, and recorded in Luzerne County Deed Book 1046, Page 920.

3. Declaration of Taking, dated April 1, 1975, and indexed to No. 2539 of 1975, Notice of which is recorded in Luzerne County Deed Book 1052, Page 41.

4. Declaration of Taking, dated December 12, 1974, and indexed to No. 10374 of 1974, Notice of which is recorded in Luzerne County Deed Book 1044, Page 128.

5. Declaration of Taking indexed to No. 4975 of 1975, Notice of which is recorded in Luzerne County Deed Book 1058, Page 886.

6. Declaration of Taking indexed to No. 5068 of 1975, Notice of which is recorded in Luzerne County Deed Book 1058, Page 795.

ALSO BEING the same premises as shown on the map identified as Exhibit "A" attached hereto and made a part hereof.

RECORDER OF DEEDS
LUZERNE COUNTY
PENNSYLVANIA

INSTRUMENT NUMBER
6005579
RECORDED ON
Mar 30, 2012
10:46:38 AM
BOOK:REC/3012
PAGE:52136
Total Pages: 9

PA WRIT TAX	$0.50
LUZERNE COUNTY RECORDING FEE	$28.00
LUZERNE COUNTY ARCHIVES FEE	$2.00
LUZERNE RECORDER'S ARCHIVES FEE	$3.00
TOTAL PAID	$33.50

INV: 672107

I hereby CERTIFY that this document is recorded in the Recorder of Deeds Office of Luzerne County, Pennsylvania
Joan Hoggarth
JOAN HOGGARTH
FIRST DEPUTY RECORDER

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