NJHMFA State Tax Credit Subsidy Program Auction

(Purs. To P.L. 2025, c. 111)

TAX CREDIT PURCHASE AGREEMENT

BETWEEN

The New Jersey Housing and Mortgage Finance Agency

AND

[PURCHASER NAME]

SAMPLE

TAX CREDIT PURCHASE AGREEMENT

This Tax Credit Purchase Agreement (the "Agreement") is made as of this ___ day of _____, 202_, by and between The New Jersey Housing and Mortgage Finance Agency ("NJHMFA" or the "Agency") a body corporate and politic created in, but not of, the Department of Community Affairs pursuant to the New Jersey Housing and Mortgage Finance Agency Law of 1983, N.J.S.A. 55:14K-1, *et seq*., with its principal office at 637 South Clinton Avenue, P.O. Box 18550, Trenton, New Jersey 08650-2085;

and

[PURCHASER NAME] having its principal office at **[PURCHASER ADDRESS]** (the "Purchaser").

WHEREAS, pursuant to P.L. 2025, c. 111, NJHMFA was authorized to approve the allocation of certain State Tax Credits (as defined therein) to eligible purchasers by way of auction conducted for that purpose, in the manner specified in N.J.S.A. 34:1B-292;

and

WHEREAS, on **[DATE]**, the Agency concluded an auction, as authorized by the said statute, at which time Purchaser submitted its bid in the amount of **[$XXX.XX]** for the proposed purchase of **[$XXX.XX]** in such State Tax Credits as authorized by the said statute, along with the required documents, fees and a Deposit in the amount of **[$XXX.XX].**

and

WHEREAS, the Agency, having considered the bids, has determined that the bid submitted by Purchaser named herein was the highest and best of the eligible bids submitted, and consistent with P.L. 2025, c. 111, Section 5, the parties hereto have therefore agreed to enter into the within Tax Credit Purchase Agreement, subject to the terms and conditions herein, as follows:

1. Defined Terms. The following terms, as used in this Agreement shall have the meanings set out herein:

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by Purchaser. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to Section 1563 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 1563 or the entity is an organization in a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 414.

"Approval Letter" means the letter issued by NJHMFA evidencing the Agency's conditional approval of the Purchaser's Tax Credit Bid, as it may be amended or supplemented.

"Auction Deposit" or "Deposit" means the refundable deposit in the amount set forth on Schedule A hereto remitted to the Agency by the Purchaser in connection with submitting its Tax Credit Bid and submitted by wire transfer, consistent with P.L. 2025, c. 111, Section 5.

"Director" means the Director of the Division of Taxation in the Department of the Treasury of the State of New Jersey.

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"Division" means the Division of Taxation in the Department of the Treasury of the State of New Jersey.

"Effective Date" means the date of full execution of this Agreement by both the Purchaser and the Agency.

"Offer Balance" means an amount equal to the Tax Credit Purchase Offer, *less* the Auction Deposit.

"Privilege Period" or "Tax Privilege Period" shall mean the fiscal accounting period for which a tax is payable under the Corporation Business Tax Act, N.J.S.A. 54:10A-5 (or such other eligible tax liability pursuant to P.L. 2025, c. 111) or other period set forth for the application of the Tax Credits, as determined by the Division of Taxation.

"Program" means the NJHMFA State Tax Credit Subsidy Program Auction established pursuant to P.L. 2025, c. 111 and Guidelines established by the Agency, as the same may be amended from time to time.

"Program Guidelines" or "Guidelines" means the State Tax Credit Subsidy Program Auction Guidelines, as the same may be amended from time to time.

"Purchaser" means the Purchaser set forth on the execution page hereof and in Schedule A hereto.

"State" means the State of New Jersey.

"Tax Credit" or "Tax Credits" means an award of credits against Purchaser's State tax liability due pursuant to Section 5 of P.L.1945, c.162 (C.54:10A-5), Sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), Section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5 for the current Privilege Period as of the date of the approval of the credits.

"Tax Credit Agreement of Sale" means an agreement between the Purchaser and a Transferee for the sale, transfer, or assignment of all or a portion of the Tax Credit Amount.

"Tax Credit Amount" means the face-value of the Tax Credits awarded pursuant to the terms of this Agreement, as evidenced by the Tax Credit Certificate.

"Tax Credit Bid" means the Purchaser's submission to the Agency of its Tax Credit Purchase Offer and all other documents required by the Program Guidelines for bids in auctions conducted by the Agency under the Program.

"Tax Credit Certificate" means the certificate issued by the Division to the Purchaser evidencing the Tax Credit Amount.

"Tax Credit Purchase Offer" means the specific cash dollar amount offered by the Purchaser, and set forth in the Tax Credit Bid, to purchase the Tax Credits in accordance with the Program and pursuant to the terms of this Agreement.

"Tax Credit Transfer Certificate" means such certificate issued by the Division to a Transferee upon approval by the Agency and the Director of the sale or assignment by the Purchaser of all or a part of its Tax Credit Amount to a Transferee pursuant to a Tax Credit Agreement of Sale.

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"Transferee" means the recipient of a Tax Credit Certificate transferred from the Purchaser consistent with P.L. 2025, c. 111, Section 7.

2. Representations. Subject to the conditions contained herein and in reliance on the information, representations and warranties set forth in the Purchaser's Tax Credit Bid, this Agreement and other documents submitted by the Purchaser to NJHMFA, the Agency has determined that the Purchaser has satisfied the eligibility criteria of the Program to purchase Tax Credits with a face-value as set forth in Schedule A attached hereto ("Tax Credit Amount").

3. Consideration. Subject to the Program Guidelines, conditions set forth herein and in exchange for the award of Tax Credits in an amount equal to the Tax Credit Amount, the Purchaser has paid to the Agency the required fees in addition to a Deposit in the amount set forth in Schedule A and further subject to the payment of the "Offer Balance" as set forth below. Pursuant to the terms of the Program and its Tax Credit Bid, the Purchaser shall then pay to the Agency the full amount of its Tax Credit Purchase Offer, as set forth in Schedule A, less the deposit previously paid with its bid (the "Offer Balance").

4. Payment Terms. Within ten (10) business days following the Agency's issuance to Purchaser of an Approval Letter, the Purchaser shall remit to the Agency the Offer Balance. The Offer Balance shall be paid via the wire instructions contained in the Approval Letter. The Purchaser acknowledges and agrees that the Auction Deposit shall become non-refundable upon the Parties' fully executing this Agreement.

5. Failure to Remit the Offer Balance. Pursuant to P.L. 2025, c. 111, Section 5, failure by the Purchaser to pay the amount agreed upon on time shall disqualify the Purchaser from purchasing the Tax Credits and the Agency may reassign the Tax Credits to another purchaser; failure by the Purchaser to adhere to the commitments made in its auction bid shall disqualify the Purchaser from participating in future auctions and may result in the recapture of the Tax Credits. Further, in the event the Purchaser fails to remit the Offer Balance within said ten (10) business day period the Agency may, in its sole discretion: offer for purchase the Tax Credits to other approved Tax Credit purchasers in accordance with the Program Guidelines, terminate this Agreement and/or take such other legal or equitable actions as may be deemed appropriate.

6. Tax Credit Certificate. Within ten (10) business days following the Agency's receipt of the Offer Balance and this Agreement, the Agency shall release the Tax Credit Certificate to the Purchaser with a face value equal to the amount of the Tax Credit Amount set out in Schedule A. Upon the issuance of the Tax Credit Certificate by the Director, the Purchaser may apply the Tax Credit Certificate against the Purchaser's State tax liability due pursuant to Section 5 of P.L.1945, c.162 (C.54:10A-5) or such other eligible tax liability pursuant to P.L. 2025, c. 111 for the Purchaser's Tax Privilege Period. Notwithstanding anything contained herein to the contrary, the Director shall prescribe the order of priority for the application of the Tax Credit Amount awarded pursuant to the Program and subject to such other terms and conditions as may be required by the Division of Taxation. Purchaser agrees that it has conducted its own due diligence with respect to the application of the Tax Credits and that NJHMFA makes no representations or warranties with respect to the same.

7. Purchaser's Representations. The Purchaser certifies and represents that it satisfies the requirements to be eligible under the Program to purchase the Tax Credits and that:

(a) The Purchaser is the type of entity identified on Schedule A hereto and is either duly organized, validly existing and in good standing under the laws of the State or is duly qualified to do business in the State. The Purchaser is not in violation of any provision of its governing documents, whether a certificate of incorporation and by-laws or certificate of formation and operating or similar agreement, as applicable, and has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement.

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(b) The execution, delivery and performance of this Agreement and the consummation of the transactions by the Purchaser herein contemplated have been duly authorized by all requisite action on the part of Purchaser and will not violate any provision of law, any order of any court or agency of government, or the Purchaser's governing documents, whether a certificate of incorporation and by-laws or certificate of formation and operating or similar agreement, as applicable, or any indenture, agreement or other instrument to which the Purchaser is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever.

(c) This Agreement constitutes the legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms.

(d) There is no action or proceeding pending or, to the best knowledge of the Purchaser, threatened by or against the Purchaser by or before any court or administrative agency that might adversely affect the ability of the Purchaser to perform its obligations under this Agreement and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Purchaser as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of the Purchaser hereunder have been obtained.

(e) The Purchaser is not in default under any other program administered by the State.

(f) All information contained in the Tax Credit Bid and in all documents submitted in support of its Tax Credit Bid is true, correct and complete in all material respects, does not contain any untrue statement of a material fact, and does not omit to state a material fact.

(g) The Purchaser has provided a current Tax Clearance Certificate issued by the Division of Taxation, which certificate is valid for the full period required for the Purchaser to fulfill the terms of this Agreement.

(h) The Purchaser agrees that under no circumstances may the Tax Credits be sold, assigned, transferred or pledged except upon terms consistent with P.L. 2025, c. 111, Section 7 (relating to transfer of Tax Credits and the issuance of a Tax Credit Transfer Certificate) and such other conditions as may be required by the Division of Taxation.

(i) Notwithstanding anything contained herein to the contrary, the Agency makes no representations or warranties as to the Purchaser's ability to apply all or any portion of the Tax Credit Amount in accordance with the terms of this Agreement in the event the Purchaser fails to adhere to the terms hereof or otherwise.

(j) The Purchaser has submitted its Auction Deposit in accordance with the Program requirements.

8. Indemnification. The Parties understand and agree that NJHMFA makes no warranties with respect to the subject matter of this Agreement and further that the Agency does not indemnify the Purchaser, nor any other persons or entities with respect to the subject matter of this Agreement.

(a) The Purchaser nevertheless agrees to protect, indemnify and hold harmless the Agency, the State, the New Jersey Department of the Treasury and the Division and their respective members, agents, officers, employees and servants (collectively, the "Indemnified Parties") from all losses, claims, damages, liabilities, and costs (including all costs, expenses and reasonable counsel fees incurred in

SAMPLE

investigating and defending such losses and claims, etc.) suffered by any Indemnified Party or brought by any person or entity against any Indemnified Party, and caused by, related to, arising or purportedly arising out of, or from the participation by the Purchaser in the Program including without limitation any actions or inactions of the Purchaser relating to this Agreement or the Tax Credit purchased.

(b) If any action shall be brought against one or more of the Indemnified Parties based upon any of the above and in respect to which indemnity may be sought against the Purchaser, such Indemnified Party shall promptly notify the Purchaser in writing, and the Purchaser shall assume the defense thereof, including the employment of counsel satisfactory to the Indemnified Party, the payment of all costs and expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel at the Purchaser's expense in any such action and to participate in the defense thereof if a conflict of interest arises out of the representation by the same counsel. The Purchaser shall not be liable for any settlement of any such action effected without the Purchaser's written consent, but if settled with the consent of the Purchaser, or if there is a final judgment for the claimant on any such action, the Purchaser agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement of judgment.

(c) The provisions of this section shall be in addition to any and all other obligations and liabilities the Purchaser may have to any Indemnified Party and shall survive the expiration or earlier termination of this Agreement.

9. Changes in Law. As noted above, the Purchaser has conducted its own due diligence and acknowledges that NJHMFA makes no representations or warranties with respect to the Tax Credits, nor to their continuing utility to the Purchaser or to subsequent Transferee. Accordingly, the Purchaser agrees that the Agency is not liable for the issuance, non-issuance, use, sale, or marketability of the Tax Credits. The Purchaser acknowledges the risks of relying on the use and sale of the Tax Credits. The Purchaser further acknowledges and accepts that the State Legislature may enact further changes to the authorizing statutes or to tax laws and that the terms and conditions set forth herein, including the Tax Credit Amount and when such amounts may be applied, are subject to changes to P.L. 2025, c. 111 and Guidelines and to tax laws. Nothing herein shall be construed as a waiver of the Purchaser's right to challenge the validity of any legislation or regulation that may be enacted after the date on which this Agreement is executed which changes the material terms of this Agreement or the use of such Tax Credits.

10. Events of Default. The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment or order of any court or any order, rule or regulation of any administrative or governmental body) shall constitute an “Event of Default”:

(a) The Purchaser fails to strictly observe or comply with the terms, conditions, and laws relating to the use, sale, assignment or transfer of the Tax Credit Certificate or a Tax Credit Transfer Certificate (the conditions for which are set out in P.L. 2025, c. 111, Section 7); or

(b) Purchaser fails to make any required payment when due or fails to do so in the manner required.

(c) Any representation or warranty made by the Purchaser in its Tax Credit Bid, the Approval Letter, in this Agreement, or in any other submission to the Agency or to the Division under this Program is false, misleading, or inaccurate in any material respect as of the date made; or

(d) The Purchaser is declared in default by the Agency, by the Division or by the State or any other division of the State under any existing or new assistance or incentive program provided by the

SAMPLE

Agency and/or the State or any division of the State to the Purchaser and/or any of its Affiliates or in which the Purchaser and/or any of its Affiliates participates.

11. Entire Agreement. This Agreement, together with the Tax Credit Bid and Approval Letter, constitutes the entire agreement between the Parties and supersedes any prior agreements, representations and understandings, if any, whether written or oral, between the Parties with respect to the subject matter hereto.

12. Severability. If any term or provision of this Agreement is declared invalid or unenforceable, the remainder of this Agreement shall remain valid and enforceable.

13. Amendments and Modifications. Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated (other than by virtue of an Event of Default) except by an instrument in writing signed by the Agency and Purchaser and except that this Agreement may be amended in accordance with the provisions of any future regulations or statutory requirements that may affect the standard terms and conditions of approvals issued pursuant to the Act without the approval of Purchaser.

14. Non-Waiver. No failure by the Agency to insist upon the strict performance of any term hereof or to exercise any right, power or remedy upon an Event of Default hereunder shall constitute a waiver of any such Event of Default or of any such term. To the fullest extent permitted by law, no waiver of any Event of Default shall affect or alter this Agreement, and this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Event of Default.

15. Public Disclosure. The Purchaser acknowledges and agrees that the Agency may publish on its website and in other locations, information relating to this Agreement, the Purchaser and any Transferee, including, without limitation:

(a) the name of the Purchaser or Transferee;

(b) the value of the Tax Credit Award purchased by the Purchaser or Transferee;

(c) the State tax against which the Purchaser or Transferee may apply the Tax Credit; and

(d) the Tax Credit Purchaser Offer or other amounts paid by the Purchaser or Transferee.

16. Notices. All Notices, demands, requests, consents, approvals and other communications hereunder shall be in writing and, unless otherwise required by law or regulation, shall be either (a) personally delivered, (b) sent by overnight courier, (c) sent by registered or certified mail, return receipt requested to the address provided herein, or (d) sent by electronic mail (email) to the address set forth herein so long as delivery of such email is confirmed by either automatic read receipt or email confirmation by the recipient and so long as a follow-up Notice is sent by the methods set forth in clauses (a), (b) or (c) above.

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If to the Agency, to:

Attn: Executive Director
NJHMFA
637 South Clinton Avenue
P.O. Box 18550
Trenton, NJ 08650-2085

Email: auction@njhmfa.gov

If to the Purchaser, to the address set forth on Schedule A hereto.

By giving the other party at least five (5) business days prior written notice, either party may, by Notice given as provided above, designate a different address or addresses for Notices. All Notices hereunder shall be deemed received (the time period measured by the giving of Notice shall commence): (i) upon delivery, if personally delivered or sent by overnight courier, or (ii) upon the date set forth on the return receipt if given by registered or certified mail.

17. Successors and Assigns. Notwithstanding that this Agreement and the rights hereunder are not transferable, except as provided in P.L. 2025, c. 111, Section 7, all the terms and provisions of this Agreement shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

18. Governing Law. This Agreement and any claims arising therefrom or related thereto asserted against NJHMFA, its officers, employees or agents shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, *et seq*. (except N.J.S.A. 59:13-9). While this statute is not applicable by its terms to claims arising under contracts with NJHMFA because of its status as a "sue and be sued entity", Purchaser nevertheless agrees that it shall be applicable to all claims arising under this Agreement. It is also acknowledged by the Parties that NJHMFA is a public entity covered by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, *et seq*. Notwithstanding any provision to the contrary in any form of contract, invoice, correspondence, email or any other document propounded by the Purchaser, the Agency does not waive or limit any rights provided by any applicable statute of limitations or the tolling thereof pursuant to law.

19. Forum and Venue. The exclusive forum and venue for all actions or claims related to or arising from the subject of this Agreement shall be the Superior Court of New Jersey in Mercer County, or in the United States District Court serving Mercer County, New Jersey.

20. No Third-Party Beneficiaries. This Agreement has been entered into solely by and among the Parties hereto and will not be deemed to create any rights in third parties or to create any obligations of any party hereto to any such third parties.

21. Signatures and Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. The parties may also elect to utilize electronic signatures in such manner as the Agency, in its sole discretion deems acceptable.

[SIGNATURE PAGE FOLLOWS]

SAMPLE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered by their respective officers duly authorized as of the date and year set forth below:

THE NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY:

By: _____

Name:

Title:

Date:

PURCHASER:

By: _____

Name:

Title:

Date:

SAMPLE

Tax Credit Purchase Agreement

Schedule A

Purchaser Name:

Purchaser Address:

Phone Number:

Email Address:

Entity Type:

State of Formation:

Date of Formation:

Date of NJ Business Registration:

Date of Tax Clearance Certificate:

Tax Credit Bid Date:

Tax Credit Amount:

Tax Credit Purchase Offer:

Auction Deposit Amount Paid:

Purchaser Tax Privilege Period:

Date of Approval Letter:

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