

ORDINANCE

AN ORDINANCE AMENDING ORDINANCE NO. 1327-2009, AUTHORIZING AND APPROVING A SEVEN MILLION DOLLAR (\$7,000,000.00) LOAN AGREEMENT AND PROMISSORY NOTE BETWEEN THE REDEVELOPMENT AUTHORITY OF THE CITY OF COATESVILLE AND THE CITY OF COATESVILLE, TO AUTHORIZE THE CAPITALIZATION OF ONE MILLION NINE HUNDRED SIXTY-TWO THOUSAND, TWO HUNDRED THIRTY-FOUR DOLLARS (\$1,962,234.00) ACCRUED INTEREST, FORGIVENESS OF CERTAIN ACCRUED INTEREST, ELIMINATION OF FURTHER INTEREST PAYMENTS AND SETTING FORTH TERMS OF REPAYMENT; AND AUTHORIZING AND APPROVING A PROMISSORY NOTE BETWEEN THE REDEVELOPMENT AUTHORITY OF THE CITY OF COATESVILLE AND THE CITY OF COATESVILLE.

WHEREAS, the City of Coatesville is a Third Class City situated in Chester County, Pennsylvania, operating under its Home Rule Charter and the Third Class City Code (“City”); and

WHEREAS, the Redevelopment Authority of the City of Coatesville (“RDA”) is an authority created pursuant to the Urban Redevelopment Law, 35 P.S. §1701, *et seq.*; and

WHEREAS, pursuant to 35 P.S. §1718, the RDA is empowered to borrow money from the City for or in aid of its operations; and

WHEREAS, Pennsylvania’s Redevelopment Cooperation Law, 35 P.S. §1744(c), authorizes the City to do all things necessary to aid and cooperate in the redevelopment undertaken by the RDA;

WHEREAS, pursuant to 35 P.S. §1746, the City is authorized to lend or donate money to the RDA;

WHEREAS, pursuant to Ordinance No. 1328-2009, the City authorized and approved a seven million dollar (\$7,000,000.00) Loan to the RDA and the

execution of a Note between the RDA and the City (the “Current Debt”); and

WHEREAS, the RDA has accrued unpaid interest through January 1, 2017 of one million nine hundred sixty-two thousand, two hundred thirty-four dollars (\$1,962,234.00) (“Unpaid Interest”), on the Current Debt; and

WHEREAS, the RDA requests and the City agrees to refinance the Current Debt by capitalizing the Unpaid Interest, resulting in a principal amount due of eight million nine hundred sixty-one thousand, three hundred ninety dollars (\$8,961,390.00); and

WHEREAS, the RDA requests and the City agrees that all interest accruing under the Note from January 1, 2017 through and including the date of this Ordinance shall be forgiven; and

WHEREAS, the RDA requests and the City agrees that the refinancing of the Current Debt shall be interest free, but subject to the repayment terms set forth in the Promissory Note attached hereto; and

NOW THEREFORE, in accordance with the foregoing authority, which incorporates all rights and powers granted by law to the City of Coatesville, the City does hereby enact and ordain as follows:

1. The City authorizes and approves the execution of the Promissory Note in the amount of eight million nine hundred sixty-one thousand, three hundred ninety dollars (\$8,961,390.00) between the Redevelopment Authority and the City of Coatesville.
2. The President or Vice President of the Council of the City of Coatesville and the City Manger are hereby authorized and directed to execute, attest, seal and deliver any documents necessary to complete the Promissory Note.
3. All payments made by the Redevelopment Authority to the City of Coatesville to reduce the principal of the Loan shall be paid into the Reserve Trust Fund by the City upon receipt.

All ordinances or parts of ordinances conflicting with any provisions of this ordinance are hereby repealed insofar as the same affects this ordinance.

If any sentence, clause, section or part of this Ordinance is for any reason

found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof.

This Ordinance shall be effective thirty (30) days after publication following final adoption in accordance with the City Charter and the Third-Class City Code.

ENACTED AND ORDAINED this 22 day of October, 2018.



Linda Lavender-Norris
President, City Council

ATTEST:



Michael T. Trio, City Manager

CERTIFICATION

I HEREBY CERTIFY that the foregoing Ordinance was introduced on the 8 day of October, 2018, was duly enacted by the Council of the City of Coatesville, Chester County, Pennsylvania, on the 22 day of October, 2018, and that the vote upon the said Ordinance has been recorded in the Minutes of the City Council and that the Ordinance has been fully recorded.



Michael T. Trio, City Manager

PROMISSORY NOTE

\$8,961,390.00

Date: October ____, 2018

Borrower Redevelopment Authority of the City of Coatesville (“**RDA**”) promises to pay to the order of Lender/Obligee City of Coatesville (“**City**”) the sum of **EIGHT MILLION NINE HUNDRED SIXTY-ONE THOUSAND, THREE HUNDRED NINETY DOLLARS (\$8,961,390.00)** without interest and without defalcation, in accordance with and subject to the provisions of this Note, and payable on the terms and conditions set forth below, which are accepted and approved by City by and through its governing body, Coatesville City Council.

- 1. Termination of Note Dated November 16, 2009.** The parties agree that the interest-accruing Promissory Note dated November 16, 2009 between the RDA as Borrower and the City is hereby terminated and of no further effect. This Note replaces the terminated Note dated November 16, 2009 and evidences indebtedness by the RDA consisting of the sum of (a) the original principal amount of SIX MILLION NINE HUNDRED AND NINETY-NINE THOUSAND ONE HUNDRED AND FIFTY-SIX DOLLARS (\$6,999,156.00) and (b) the interest accrued under the Note Dated November 16, 2009 (\$1,962,234.00) for a total principal amount of **EIGHT MILLION NINE HUNDRED SIXTY-ONE THOUSAND, THREE HUNDRED NINETY DOLLARS (\$8,961,390.00)**, which debt shall not bear or accrue interest.
- 2. Retroactive Effect.** This Note, dated above, has a retroactive effect to January 1, 2017.
- 3. Tender of Payment.** All unpaid principal and all other amounts payable hereunder shall be due and payable in full on November 30, 2028.
- 4. Application of Payments.** Except as otherwise may be provided herein, each payment shall be applied to principal.
- 5. Required Payments.** Within fifteen (15) business days of the sale of real estate owned by the RDA (excluding those parcels of real estate acquired and/or to be acquired by the RDA in connection with (a) the Coatesville Office/Hotel redevelopment project and (b) the Coatesville Train Station project), a payment of at least ninety percent (90%) of the net proceeds from that sale shall be paid to the City in order to reduce the principal balance of this Note. In consideration of such payment, on or before the closing of such sale of real estate, the City will release the real estate in question from the lien of mortgage issued by the RDA to secure this Note.
- 6. Security for the Note:**
 - A.** This Note is executed and delivered by RDA to the City in accordance with a **n o n - c o n s u m e r** transaction. As security for this Note and all of the RDA's obligations hereunder, the RDA shall execute and deliver to the City for the City to record at the City's expense the following:
 - 1)** An individual and open-end mortgage and security agreement encumbering each piece of real estate owned by the RDA subject to the exclusions described in Section 5 above (the parcels eligible to be mortgaged are

identified on the attached Exhibit "A" and individually and collectively referred to as the "Premises"), which are intended to be forthwith recorded by the City in the Recorder of Deeds Office of Chester County, Pennsylvania (the "Mortgages"), and the City shall provide copies of the recorded Mortgages and the Recorder's receipts with the recording data for each of the Mortgages (i.e., date of recording, book and page number) to the RDA;

- 2) An assignment of all of the RDA's right, title and interest in and to any and all future rents, leases and agreements of lease affecting the Premises or any part thereof, which is intended to be forthwith recorded in the Recorder of Deeds Office of Chester County, Pennsylvania (the "Assignment of Rents and Leases"), provided however that such Assignment of Rents and Leases shall allow the RDA to negotiate and execute leases in the ordinary course of business, and to collect and use such rental proceeds for the RDA's operations and public purposes, so long as the RDA is not in default under the Loan Documents as defined in Section 6.B below, subject to any applicable right to cure contained in any or all of the Loan Documents; and
 - 3) Such other and additional documents as the City may reasonably require, provided however that the City agrees that it shall not require the RDA to execute or provide any documents which would contravene, or cause the RDA to (A) violate any of its organizational documents; (B) violate any provision of law, order of any court, agency or other instrumentality of government as to which the RDA is subject to or bound by, or (C) default upon, the terms and/or conditions of any contract, agreement, grant, and/or award that the RDA has, or may have in the future, with any (i) State Public Body as defined in the Pennsylvania Redevelopment Cooperation Law, as amended and/or (ii) the federal government of the United States of America, and/or any agency, department, or other unit thereof, or (D) violate any provision of any indenture, agreement or other instrument to which the RDA is a party or by which it or any of its properties is bound
- B. The Mortgages, the Assignment of Rents and Leases, and all other miscellaneous documents, instruments and certificates executed by RDA or any other obligated party in connection with this Note are hereinafter referred to individually as the "Loan Document" and collectively as the "Loan Documents".
- C. The RDA hereby grants to the City a continuing security interest in all personal property of the RDA as security for the payment of this Note and any other liabilities of RDA to the City under the terms of the Loan Documents, which security interest shall be enforceable and subject to all the provisions of this Note, as if such property were specifically pledged hereunder.

7. Representations and Warranties. RDA represents and warrants to the City as follows:

- A. The RDA (i) is a redevelopment authority, duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, and is

authorized to do business in each jurisdiction wherein its ownership of property or conduct of business legally requires such authorization; (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of all of its obligations under each Loan Document to which it is a party.

- B. Each of the Loan Documents to which RDA is a party will not: (i) violate any of its organizational documents; (ii) to its knowledge, violate any provision of law, order of any court, agency or other instrumentality of government; (iii) violate any provision of any indenture, agreement or other instrument to which it is a party or by which it or any of its properties is bound; (iv) result in the creation or imposition of any lien, charge or encumbrance of any nature, other than the liens created by the Loan Documents; and (v) require any authorization, consent, approval, license or order by any court or governmental authority, other than the approval by the members of the Board of the RDA.
- C. The Loan Documents to which RDA is a party is the legal, valid and binding obligation of RDA, enforceable against it in accordance with its terms, except as the same may be limited by the Pennsylvania Urban Redevelopment Law, bankruptcy, insolvency, reorganization or other laws or equitable principles relating to or affecting the enforcement of creditors' rights generally.

8. Events of Default. The occurrence of any one or more of the following events shall constitute an event of default ("Event of Default") hereunder:

- A. RDA shall fail to pay any installment of principal or any other sum hereunder on the date on which it shall fall due subject to the opportunity to cure set forth in Section 9; or
- B. RDA shall apply for or consent to the appointment of a receiver, trustee or liquidator of itself or himself or any of its or his property, admit in writing its or his inability to pay its or his debts as they mature, make a general assignment for the benefit of creditors, be adjudicated a bankrupt or insolvent, file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute or an answer admitting the material allegations of a petition filed against it or him in any proceeding under any such law, or if an action shall be taken by RDA for the purposes of effecting any of the foregoing; or
- C. Any order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition seeking reorganization of RDA or all or a substantial part of the assets of RDA, or appointing a receiver, sequestor, trustee or liquidator of RDA, or any of its or his property, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) days; or

- D. Any representation or warranty in this Note, in the Mortgage or any other Loan Document or in any financial or other statement, schedule, certificate or other document of RDA delivered to the City on behalf of RDA proves to be false in any material respect when made or thereafter shall become false in any material respect; or
- E. The entry of any judgment or the issuance of any execution, attachment or garnishment proceedings against RDA, any of which shall be for an amount exceeding Twenty-Five Thousand (\$25,000.00) Dollars, and which shall remain unsatisfied or unstayed for a period of sixty (60) days or more following written notice thereof from the Court in which the judgment was entered or the writ was issued.
9. **Notice and Opportunity to Cure.** Before entering a judgment against the RDA to collect under the Confession of Judgment provisions in Section 13 of this Note, or taking any other action against the RDA to collect upon the indebtedness evidenced by this Note or to enforce its terms, the City must provide RDA with sixty (60) days prior written notice and opportunity to cure via U.S. Certified Mail Return Receipt Requested, Postage Prepaid or by overnight delivery by a nationally recognized courier that generates a delivery tracking receipt evidencing delivery of the Notice (e.g. Federal Express, United Parcel Service (UPS), etc. The parties addresses are set forth on the last page of this Note, and such addresses may be changed at any time by giving written notice of change of address in the manner set forth in this Section 9.
10. **Governing Law.** This Note, its terms and conditions, and the performance of the parties, are governed by the laws of the Commonwealth of Pennsylvania.
11. **Pre-payment** – The indebtedness evidenced by this Note may be prepaid by RDA in whole or in part at any time, and from time to time.
12. **Successors and Assigns** - The covenants, conditions, waivers, releases and agreements contained in this Note shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns; provided, however, that this Note cannot be assigned by RDA without the prior written consent of the City, and any such assignment or attempted assignment by RDA shall be void and of no effect.
13. **Confession of Judgment. IN THE EVENT OF AN UNCURED DEFAULT UNDER SECTIONS 8 AND 9 OF THIS NOTE, RDA IRREVOCABLY AUTHORIZES AND EMPOWERS THE CHESTER COUNTY (PENNSYLVANIA) PROTHONOTARY'S OFFICE, CLERK OF COURT OR ANY ATTORNEY OF ANY COURT OF RECORD OF PENNSYLVANIA, OR ELSEWHERE, TO APPEAR FOR AND TO CONFESS JUDGMENT AGAINST RDA FOR THE ABOVE SUM, WITH COURT COSTS AND REASONABLE ATTORNEYS' FEES, WITH RELEASE OF ERRORS, WITHOUT STAY OF EXECUTION, FOR WHICH A VERIFIED AFFIDAVIT OF UNCURED DEFAULT SIGNED BY THE CITY'S AUTHORIZED OFFICIAL, SHALL BE A SUFFICIENT WARRANT. THE AUTHORITY TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY EXERCISE THEREOF. RDA EXPRESSLY AUTHORIZES THE ENTRY OF REPEATED JUDGMENTS UNDER**

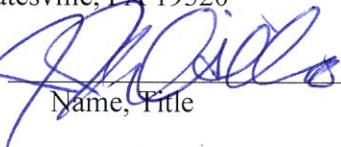
THIS SECTION NOTWITHSTANDING ANY PRIOR ENTRY OF JUDGMENT IN THE SAME OR ANY OTHER COURT FOR THE SAME OBLIGATION OR ANY PART THEREOF.

- 14. Construction** - Whenever used, the singular number shall include the plural, the plural, the singular, and the use of any gender shall be applicable to all genders.
- 15. Captions for Sake of Convenience Only** - The captions or headings of the paragraphs in this Note are for convenience only and shall not control or affect the meaning or construction of any of the terms or provisions of this Note.
- 16. Amendments must be in Writing and Signed** - This Note may not be supplemented, extended, modified or terminated except by an amendment or other agreement in writing which has been signed by the authorized officers of City and RDA.

Intending to be legally bound hereby, the parties have signed this instrument below:

BORROWER:

Redevelopment Authority of the City of Coatesville
One City Hall Place
Coatesville, PA 19320

By:  Chairman
Name, Title

Executed on October 15, 2018

CITY:

City of Coatesville
One City Hall Place
Coatesville, PA 19320

By:  Council President
Name, Title

Executed on October 22, 2018