

BOROUGH OF SUMMIT HILL,
CARBON COUNTY, PENNSYLVANIA

ORDINANCE NO. 2009- 4

AN ORDINANCE

OF THE COUNCIL OF THE BOROUGH OF SUMMIT HILL (THE "BOROUGH"), CARBON COUNTY, PENNSYLVANIA, AUTHORIZING THE EXTENSION OF THE MATURITY DATE OF THE BOROUGH'S GENERAL OBLIGATION NOTE, SERIES OF 2008 (THE "NOTE"), IN THE STATED PRINCIPAL AMOUNT OF \$650,000; APPROVING THE SUBSTANTIAL FORM OF THE EXTENSION AMENDMENT; CONFIRMING CERTAIN TERMS WITH RESPECT TO THE NOTE; AUTHORIZING APPROPRIATE OFFICERS TO FILE THE NEW DEBT SERVICE SCHEDULE FOR THE NOTE WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; CONFIRMING CERTAIN FEDERAL TAX COVENANTS AND DECLARING THE NOTE, AS EXTENDED, TO BE A QUALIFIED TAX-EXEMPT OBLIGATION; AUTHORIZING DELIVERY OF THE AMENDMENT OF THE NOTE EXTENDING THE MATURITY DATE; AUTHORIZING THE APPROPRIATE BOROUGH OFFICERS GENERALLY TO TAKE ANY ACTION NECESSARY OR CONVENIENT TO EFFECTUATING THE EXTENSION OF THE NOTE AND TO EXECUTE AND DELIVER ANY DOCUMENTS, CERTIFICATES OR AGREEMENTS REQUIRED BY THE PURCHASER OF THE NOTE, OR BOND COUNSEL, IN ORDER TO COMPLETE THE EXTENSION; PROVIDING FOR INVALID PROVISIONS; PROVIDING FOR INCONSISTENT ORDINANCES; PROVIDING WHEN THE ORDINANCES SHALL BECOME EFFECTIVE.

WHEREAS, the Borough of Summit Hill, Carbon County, Pennsylvania (the "Borough"), is a Local Government Unit, as defined in the Pennsylvania Local Government Unit

Debt Act, as codified by the Act of December 19, 1996, P.L. 1158, No. 177 constituting Title 53, Part VII, Subpart B of the Pennsylvania Consolidated Statutes, as amended (the "Act"); and

WHEREAS, the Council of the Borough (the "Council") previously determined to undertake construction of new facilities for the municipal offices of the Borough and the Borough fire company, and various other capital projects (the "2008 Improvement Projects" or the "Projects"); and

WHEREAS, part of the cost of the 2008 Improvement Projects is to be ultimately funded through a Redevelopment Grant (the "Grant"), dated as of July 7, 2008, which the Borough has received from the Commonwealth of Pennsylvania in the amount of \$1,250,000 (Commonwealth Contract No. ME300-609); and

WHEREAS, the Grant is an ongoing reimbursement grant and, as such, the Borough desired to obtain interim financing for the 2008 Improvement Projects prior to the receipt of grant funds; and

WHEREAS, on December 18, 2008 the Council determined to implement the foregoing decision by the authorization, issuance and sale of its General Obligation Note, Series of 2008, in the aggregate principal amount of \$650,000 (the "Note"), the proceeds from the sale thereof, after payment of the costs of issuance, was to fund the Projects, sometimes referred to herein as the "Financing Program"; and

WHEREAS, Harleysville National Bank and Trust Company (the "Bank") purchased the Note at private sale in accordance with the Financing Program; and

WHEREAS, the maturity date of the Note is December 18, 2009; and

WHEREAS, the Borough has not received funding under the Grant within the expected time period, and desires to extend the maturity date of the Note by ninety (90) days, to which the Bank has no objection.

NOW, THEREFORE, BE IT ENACTED, by the Council of the Borough, as follows:

Section 1. The Council of the Borough of Summit Hill does authorize and direct the extension of the maturity date of the Note by ninety (90) days, to March 18, 2010. Interest shall continue to be paid quarterly, as set forth in the Note.

Section 2. The appropriate Borough Officers are authorized to execute and deliver an Amendment to the Note, substantially in the form attached as Exhibit "A", providing for the extension of the maturity date of the Note (the "Extension Amendment").

Section 3. The Extension Amendment shall be executed in the name of and in behalf of this Borough by the signature or facsimile signature of the President or Vice President of the Council, and the official seal of this Borough or a facsimile thereof shall be affixed thereunto, attested by the signature or facsimile signature of the Borough Secretary.

Section 4. This Borough covenants to and with the holder or registered owner of the Note, from time to time, pursuant to this Ordinance, that this Borough shall include the amount of the debt service thereon, as extended, for each fiscal year of this Borough in which such sums are payable, in its budget for each such fiscal year, shall appropriate such amounts to the payment of such debt service, and duly and punctually shall pay or shall cause to be paid the principal of the Note, as extended, and the interest thereon on the dates and place and in the manner stated therein, according to the true intent and meaning thereof; and, for such budgeting, appropriation and payment, this Borough shall and does pledge, irrevocably, its full faith, credit and taxing power. As provided in the Act, the foregoing covenant of this Borough shall be enforceable specifically.

Section 5. The President or Vice President of the Council, the Borough Secretary and the Borough Treasurer, collectively and individually, which shall include their duly qualified

successors in office, if applicable, are authorized and directed, as appropriate, to file with the Department of Community & Economic Development documentation regarding the Note's new maturity schedule, and to take other required, necessary and/or appropriate action.

Section 6. The Borough hereby confirms its covenants with the registered owner from time to time, of the Note, as extended, that:

(a) No part of the proceeds of the Note, as extended, or of any moneys on deposit with the Paying Agent and Sinking Fund Depository hereunder will be used, at any time, directly or indirectly, in a manner which would have caused the Note to be an "arbitrage Note" within the meaning of Section 148 of the Code and the Regulations thereunder proposed or in effect at the time of such use and applicable to the Note, and that it will comply with the requirements of that section and Regulations throughout the term of the Note.

(b) The Borough will not operate any of the Projects or cause the same to be operated in any manner which would cause the interest on the Note, as extended, to be subject to Federal income tax in the hands of the owners of the Note or take or permit any action which will result in the Note becoming a Private Activity Bond as defined in Section 141 of the Code.

(c) The Borough shall take such action as shall be necessary to comply with provisions of the Code to the extent that such compliance is required to maintain the exclusion of interest on the Note, as extended, from gross income for Federal income tax purposes.

(d) If the total tax-exempt borrowings of the Borough in the calendar year 2009 should exceed the applicable exemption limitation (not more than \$5,000,000), and if the gross proceeds of the Note, as extended, are invested at a yield greater than the yield on the Note and are not expended within six months from the date of issuance, or within the applicable periods therefrom and in the applicable percentages if Section 1.148-7(d) or Section 1.148-7(e) of

the United States Treasury Regulations shall be applicable, the Borough covenants that it will "Rebate" to the U.S. Treasury, at the times and in the manner required by the Code, all investment income derived from investing the proceeds of the Note in an amount which exceeds the amount which would have been derived from the investment of the proceeds of the Note at a yield not in excess of the yield on the Note.

Section 7. The Borough hereby designates the Note, as extended, as a "Qualified Tax-Exemption Obligation" pursuant to Section 265(b)(3) of the Code, and represents and covenants that the total amount of its obligations so designated and to be designated during the calendar year does not and will not exceed \$30,000,000.

Section 8. The Borough does hereby covenant and agree, for the benefit of the holders of the Note from time to time, that it will comply with the requirements of Rule 15c2-12 of the Securities and Exchange Commission ("SEC") with respect to municipal securities disclosure, and will execute and comply with an appropriate Continuing Disclosure Certificate as approved by Note counsel, if required, counsel as long as the Note is outstanding.

Section 9. Proper officers of this Borough are authorized and directed to pay or direct the payment of the transaction costs and expenses associated with the extension, including counsel fees, advertising costs and Bank fees, if any.

Section 10. The proper officers of this Borough are authorized and directed to take any necessary or convenient action in order to effectuate the purpose of this Ordinance, which is the extension of the Note, and to execute and deliver any documents, certificates, or agreements required by the Bank or counsel in order to effectuate the extension.

Section 11. Upon the Borough's receipt of grant funds under the Grant, the Borough shall continue to use such funds to pay down the outstanding principal amount of the Note, and

not use the grant funds for investment purposes except for a limited temporary period not exceeding thirty (30) days.

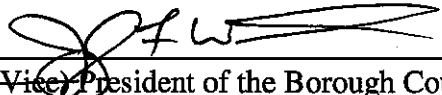
Section 12. In the event that any provision, section, sentence, clause or part of this Ordinance shall be held invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of the Borough that such remainder shall be and shall remain in full force and effect.

Section 13. All ordinances or parts of ordinances, insofar as the same shall be inconsistent herewith, shall be and the same expressly are repealed.


Section 14. This Ordinance shall be immediately.

DULY ENACTED this 8th day of December, 2009, by the Borough Council of the Borough of Summit Hill, Carbon County, Pennsylvania, in lawful session duly assembled.

BOROUGH COUNCIL OF THE BOROUGH
OF SUMMIT HILL


BY: 
~~(Vice)~~ President of the Borough Council

ATTEST:


Borough Secretary

(SEAL)

EXAMINED AND APPROVED, on this 8th day of December, 2009..


MAYOR

3. The Borough hereby confirms that any collateral for the Obligations, including liens, security interests, mortgages, and pledges granted by the Borough or third parties (if applicable), shall continue unimpaired and in full force and effect, and shall cover and secure all of the Borough's existing and future Obligations to the Bank, as modified by this Amendment.

4. As a condition precedent to the effectiveness of this Amendment, the Borough shall comply with the terms and conditions (if any) specified in Exhibit A.

5. To induce the Bank to enter into this Amendment, the Borough waives and releases and forever discharges the Bank and its officers, directors, attorneys, agents, and employees from any liability, damage, claim, loss or expense of any kind that it may have against the Bank or any of them arising out of or relating to the Obligations. The Borough further agrees to indemnify and hold the Bank and its officers, directors, attorneys, agents and employees harmless from any loss, damage, judgment, liability or expense (including attorneys' fees) suffered by or rendered against the Bank or any of them on account of any claims arising out of or relating to the Obligations. The Borough further states that it has carefully read the foregoing release and indemnity, knows the contents thereof and grants the same as its own free act and deed.

6. This Amendment may be signed in any number of counterpart copies and by the parties to this Amendment on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Amendment by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

7. This Amendment will be binding upon and inure to the benefit of the Borough and the Bank and their respective heirs, executors, administrators, successors and assigns.

8. This Amendment has been delivered to and accepted by the Bank and will be deemed to be made in the State where the Bank's office indicated in the Loan Documents is located. This Amendment will be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State where the Bank's office indicated in the Loan Documents is located, excluding its conflict of laws rules.

9. Except as amended hereby, the terms and provisions of the Loan Documents remain unchanged, are and shall remain in full force and effect unless and until modified or amended in writing in accordance with their terms, and are hereby ratified and confirmed. Except as expressly provided herein, this Amendment shall not constitute an amendment, waiver, consent or release with respect to any provision of any Loan Document, a waiver of any default or Event of Default under any Loan Document, or a waiver or release of any of the Bank's rights and remedies (all of which are hereby reserved). **The Borough expressly ratifies and confirms the confession of judgment (if applicable) and waiver of jury trial provisions contained in the Loan Documents.**

WITNESS the due execution of this Amendment as a document under seal as of the date first written above.

WITNESS / ATTEST:

SUMMIT HILL BOROUGH

Kira Michalik

Print Name: Kira Michalik

Title: Borough Secretary

(Include title only if an officer of entity signing to the right)

By: [Signature]

Print Name: Joseph F. Weber (SEAL)

Title: COUNCIL PRESIDENT

HARLEYSVILLE NATIONAL BANK AND TRUST COMPANY

By: _____

(SEAL)

Print Name: _____

Title: _____

**EXHIBIT A TO
AMENDMENT TO LOAN DOCUMENTS
DATED AS OF DECEMBER 18, 2008**

- A. The "Loan Documents" that are the subject of this Amendment include the following (as any of the foregoing have previously been amended, modified or otherwise supplemented):
1. A \$650,000.00 General Obligation Note, Series of 2008, dated December 18, 2008 (the "Note");
 2. All other documents, instruments, agreements, and certificates executed and delivered in connection with the Loan Documents listed in this Section A.
- B. The Loan Documents are amended as follows:
1. The Note shall be amended so that the "Maturity Date" stated in the Note shall be revised to March 18, 2010. Notwithstanding any other provision of the Note, any outstanding principal and accrued interest shall be due and payable in full on March 18, 2010. All other terms and conditions of the Note shall remain the same.
- C. Conditions to Bank's Acceptance of Amendment: The Bank's willingness to agree to the amendments set forth in this Amendment are subject to the prior satisfaction of the following conditions:
1. Execution by all parties and delivery to the Bank of this Amendment.
 2. Due adoption, with public notice, of an Ordinance providing for this Amendment.
 3. An approving opinion of bond counsel, King, Spry, Herman, Freund & Faul, LLC, in form and substance reasonably acceptable to the Bank, confirming the due issuance of this Amendment and reconfirming that interest on the Note, as amended by this Amendment, is not includable in gross income for purposes of Federal income taxation under existing statutes, regulations, rulings, and court decisions and that the Note, as extended, is a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code.
 4. Execution and delivery of such other agreements, undertakings, instruments and documents in connection with the foregoing as the Bank may reasonably request.
 5. Payment of any financing fee of the Bank for this Amendment, and reimbursement of the Bank's expenses in connection herewith including without limitation the fees and disbursements of the Bank's legal counsel.