

**BOROUGH OF CLARKS SUMMIT  
LACKAWANNA COUNTY, PENNSYLVANIA**

AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF CLARKS SUMMIT, LACKAWANNA COUNTY, PENNSYLVANIA, SETTING FORTH ITS INTENT TO INCREASE THE DEBT OF THE BOROUGH OF CLARKS SUMMIT IN THE AMOUNT OF ONE MILLION DOLLARS (\$1,000,000) WITHOUT THE ASSENT OF ELECTORS FOR THE PURPOSE OF PROVIDING FUNDS FOR A PROJECT; AUTHORIZING AND DIRECTING THE ISSUANCE OF A GENERAL OBLIGATION NOTE IN EVIDENCE OF SUCH DEBT TO FUND THE COSTS OF PAVING AND IMPROVEMENTS TO THE STREETS AND ROADS MAINTAINED BY THE BOROUGH, FIXING THE DATE, INTEREST RATE AND MATURITY OF THE NOTE; FINDING THAT A PRIVATE SALE BY NEGOTIATION IS IN THE BEST FINANCIAL INTEREST OF THE BOROUGH; PROVIDING FOR THE REDEMPTION OF THE NOTE PRIOR TO MATURITY; PROVIDING FOR THE MANNER OF REGISTRATION AND OF PAYMENT AND EXECUTION OF THE NOTE; APPROVING THE FORM OF THE NOTE, APPOINTING THE FISCAL AGENT, PAYING AGENT AND SINKING FUND DEPOSITORY; COVENANTING TO BUDGET FOR DEBT SERVICE ON THE NOTE AND TO APPROPRIATE AND PAY AMOUNTS FOR SUCH DEBT SERVICE WHEN DUE; PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE BOROUGH OF CLARKS SUMMIT FOR SAID OBLIGATION; SETTING FORTH THE AMOUNTS TO BE APPROPRIATED FOR ANNUAL DEBT SERVICE; ESTABLISHING A SINKING FUND AND PROVIDING FOR PAYMENT OF THE NOTE THEREFROM; PROVIDING THAT THE ORDINANCE AND THE LOCAL GOVERNMENT UNIT DEBT ACT SHALL CONSTITUTE A CONTRACT BETWEEN THE BOROUGH OF CLARKS SUMMIT AND THE NOTEHOLDER; DIRECTING THE PREPARATION AND EXECUTION OF A DEBT STATEMENT AND BORROWING BASE CERTIFICATE; ACCEPTING THE NEGOTIATED PROPOSAL TO PURCHASE THE NOTE AND AWARDING THE SAME TO SAID PURCHASER; DECLARING THE NOTE TO BE A "QUALIFIED TAX EXEMPT OBLIGATION" AS THAT TERM IS USED IN THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; AND AUTHORIZING DELIVERY OF THE NOTE AND EXECUTION AND DELIVERY OF SUCH OTHER DOCUMENTS AS MAY BE ADVISABLE IN CONNECTION WITH THE SALE AND ISSUANCE THEREOF.

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WHEREAS, the Borough Council of the Borough of Clarks Summit (the "Borough") has determined to undertake a project to pave and improve the roads and streets in the Borough (the "Project"); and

WHEREAS, upon detailed examination, the Borough has determined that the cost of the Project will be at least \$1,000,000, as a result of which the Borough desires to increase the debt of the Borough in the amount of \$1,000,000 for payment of the cost of the Project, without the assent

of the electors, and to issue its General Obligation Note of 2013 (the "2013 Note") to evidence such increase in debt to provide funds for and toward the cost of the Project; and

WHEREAS, the Borough has requested The Honesdale National Bank (the "Bank") to present a negotiated proposal for the purchase of the 2013 Note; and

WHEREAS, the Bank presented a proposal for the purchase of the 2013 Note to the Borough Council (the "Council") of the Borough at its regular meeting held at 7:00 p.m. on October 21, 2013, which bid was for the aggregate sum of \$1,000,000, with a tax free effective fixed interest rate of two and fifty-five hundredths percent (2.55%) per annum. If the interest in the hands of the holders of the 2013 Note is determined not to be free of federal and Pennsylvania income tax, or if the Cost to Carry the 2013 Note is not deductible to the extent of at least eighty percent (80%), as provided in §256 B (iii) of the Internal Revenue Code of 1986, as amended (the "Code"), then the rate of interest payable on the 2013 Note shall be changed, retroactive to the date of such determination, to the fixed rate of six and one-quarter percent (6¼%) per annum. Assuming that the interest is taxable in the hands of the holder, the maximum net interest cost shall be Four Hundred Sixteen Thousand Three Hundred Fifteen Dollars and Forty Four Cents (\$416,315.44); and

WHEREAS, the Council deems it in the best interest of the Borough to accept the negotiated proposal of the Bank;

NOW THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOROUGH OF CLARKS SUMMIT, LACKAWANNA COUNTY, PENNSYLVANIA, AND IT IS HEREBY ENACTED BY THE COUNCIL OF THE BOROUGH, THAT:

1. The authorized debt of the Borough is hereby increased in the sum of \$1,000,000, which is to be non-electoral debt, which, together with the existing net non-electoral debt of the Borough, will not result in a violation of the limitations of the Constitution of the Commonwealth

of Pennsylvania or of the Local Government Unit Debt Act, Act No. 52 of 1998, as amended (the "Act").

2. It is hereby determined that the above mentioned increase of debt shall be evidenced by the issuance of a Note of the Borough which is hereby classified as a General Obligation Note, as defined in the Act, in the principal amount of \$1,000,000 and designated as "Borough of Clarks Summit, General Obligation Note of 2013" (the "2013 Note") the execution, issuance, sale and delivery of which are hereby authorized and directed in accordance with the provisions hereof. The 2013 Note shall be registered as to principal and shall be dated and shall bear interest, if (i) the interest payable on the 2013 Note is free of federal and Pennsylvania income tax in the hands of the holder, and (ii) if the Bank shall be permitted to deduct the interest paid on funds deposited with the Bank to provide the funds to purchase the 2013 Note (the "Cost to Carry") in an amount not less than 80% of the Cost to Carry, as permitted by Section 265 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations thereunder, at the fixed rate of two and fifty-five hundredths percent (2.55%) per annum. Interest shall be computed on the basis of a 360 day year and paid for the actual days elapsed. The Borough shall pay the accrued interest, if any, and costs, and the principal of the 2013 Note, on or before a date which is eleven (11) years after the date of closing of the sale and purchase of the 2013 Note. If the interest is determined, at any time, not to be free of federal and Pennsylvania income tax in the hands of the holder, or if deduction of the Cost to Carry shall be limited to less than 80% thereof, then interest on the 2013 Note shall be payable at the fixed rate of six and one-quarter percent (6¼%) per annum, retroactive to the effective date of such determination.

The Borough reserves the right to anticipate any or all installments of principal or any part of interest at any time prior to the respective payment dates thereof, without notice or penalty.

3. The 2013 Note shall be executed with the signature of the President of the Council and the seal of the Borough shall be imprinted thereon and attested by the signature of the Secretary of the Borough.

4. The 2013 Note is hereby designated as a "qualified tax-free bond" as that term is defined in §256 of the Code. The Borough does not intend to borrow in excess of \$10,000,000 during fiscal year 2013.

5. The principal of and interest on the 2013 Note shall be payable at the corporate offices of the fiscal agent, hereinafter appointed, in Scranton, Pennsylvania, or of any successor fiscal agent appointed by the Borough pursuant to the Act, in such coin or currency as at the respective times of payment shall constitute legal tender for the payment of public and private debts, without deduction for any tax or taxes (except taxes on underwriting profits and gift, estate, succession or inheritance taxes) which the Borough or the Treasurer thereof may be required to pay thereon or retain therefrom under or pursuant to any present or future law of the Commonwealth of Pennsylvania, all of which taxes, except as above provided, the Borough assumes and agrees to pay.

6. The 2013 Note shall be in substantially the following form:

UNITED STATES OF AMERICA  
COMMONWEALTH OF PENNSYLVANIA  
BOROUGH OF CLARK'S SUMMIT  
LACKAWANNA COUNTY  
GENERAL OBLIGATION NOTE OF 2013

\$1,000,000.00

Dated: October 21, 2013

The Borough of Clarks Summit, Lackawanna County, Pennsylvania (the "Borough"), for value received, hereby promises to pay to the registered holder hereof, the sum of One Million Dollars (\$1,000,000) in such coin or currency as at the place and time

of payment shall be legal tender for the payment of public and private debts, in installments, as follows:

Commencing thirty (30) days after the date hereof, and on the same day of each month thereafter for twelve (12) consecutive months, or until the Project, defined in the Loan Agreement between Borrower and The Honesdale National Bank of even date herewith, the Borough shall make payments in the amount of Nine Thousand Four Hundred Forty Nine Dollars and Seventy Four Cents (\$9,449.74) each, applicable first to the payment of interest at the rate herein set forth, and the remaining in reduction of the principal balance; provided that the entire principal balance of the 2012 Note, plus accrued interest, if any, and costs attributable to the 2013 Note, shall be paid in full on or prior to October 21, 2024, subject to the terms of an Alternate Rate and Indemnity Agreement of even date herewith.

The 2013 Note shall bear interest, if (i) the interest payable on the 2013 Note is free of federal and Pennsylvania income tax in the hands of the holder, and (ii) if the Bank shall be permitted to deduct the interest paid on funds deposited with the Bank to provide the funds to purchase the 2013 Note (the "Cost to Carry") in an amount not less than 80% of the Cost to Carry, as permitted by the Internal Revenue Code of 1986, as amended (the "Code") and the regulations thereunder, at the fixed rate of two and fifty-five hundredths percent (2.55%) per annum; provided that if the interest payable on the 2013 Note is not free of federal and Pennsylvania income tax in the hands of the holder, or if the Cost to Carry shall not be deductible to the extent of at least eighty percent (80%) thereof by the Bank, then interest shall be payable on the 2013 Note at the fixed rate of six and one-half percent (6½%) per annum, retroactive to the effective date of such determination. Interest shall be calculated on the basis of a 360 day year and paid for the actual days elapsed.

If an Event of Default, as defined in the Loan Agreement, shall occur, and so long as the same is not cured, interest shall be payable on the 2013 Note at a rate which is four percent (4%) in excess of the otherwise applicable rate.

The Borough shall have the option to anticipate any payment of principal or interest at any time prior to the payment date thereof, without notice or penalty. When the amounts in the Sinking Fund shall be equal to, or shall exceed, the principal balance due on the 2013 Note and any accrued interest, such amount shall be paid forthwith to the registered holder hereof, and this 2013 Note shall be deemed to have been paid in full and discharged. Any balance in the Sinking Fund, following the discharge of the 2013 Note, shall be refunded promptly to the Borough.

The principal of, and the interest on, this 2013 Note are payable at any office of The Honesdale National Bank (the "Fiscal Agent"), or its successor as fiscal agent under the Note Ordinance hereinafter mentioned without deduction for any tax or taxes (except for taxes on underwriting profits and gift, estate, succession or inheritance taxes) which the Borough or the Treasurer thereof may be required to pay thereon or retain therefrom under or pursuant to any present or future law of the Commonwealth of Pennsylvania, all of which taxes, except as above provided, the Borough assumes and agrees to pay.

This 2013 Note is issued in accordance with the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, Act No. 52 of 1998, as amended (the "Act"), and pursuant to an ordinance (the "Note Ordinance") duly adopted by the Borough Council of the Borough of Clarks Summit.

Reference is hereby made to the Note Ordinance and the Act for a complete statement of the rights and limitations of rights of the holder of the 2013 Note, to all of which the holder hereof, by acceptance of this 2013 Note, assents.

Upon any of the defaults specified in the Act, the principal of the 2013 Note then outstanding may be declared or become due and payable in the manner and with the effect provided in the Act and the Note Ordinance. Upon the curing of any default, the Fiscal Agent or the holder of the 2013 Note may waive such default and its consequences, and such waiver shall be binding upon the Fiscal Agent and upon the holder of the 2013 Note.

As more fully provided in Section 8 of the Note Ordinance, if the Borough shall fail or refuse to make any required deposits in the Sinking Fund created by the Note Ordinance or to satisfy any of the covenants therein contained, the Fiscal Agent may, and upon request of the holder of the 2013 Note shall, exercise (subject to the limitations of Article XII of the Act) any remedy provided in the Act and such representation on behalf of the note holder shall be exclusive for the purposes herein and in the Act provided.

To the extent permitted and as provided in the Note Ordinance and the Act, modification of the contract created by said Ordinance and the Act, and of the rights of the holder of the 2013 Note thereunder, may be made with the consent of the holder. Any such consent by the holder of this 2013 Note shall be conclusive and binding upon such holder and all subsequent holders of this 2013 Note whether or not any notation of such consent shall be made upon this Note.

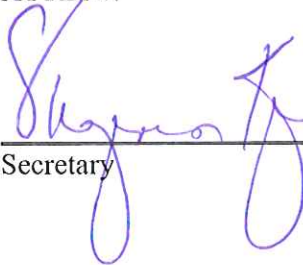
The Borough and the Fiscal Agent shall treat the registered owner of this 2013 Note as the absolute owner hereof for all purposes.

No covenant or agreement contained in this 2013 Note or the Note Ordinance shall be deemed to be a covenant or agreement of any officer, agent or employee of the Borough in his or her individual capacity, and no official executing this 2013 Note shall be liable personally on this 2013 Note nor be subject to any personal liability or accountability by reason of the issuance of this 2013 Note.

The proceedings authorizing the issuance of the 2013 Note have been approved by the Department of Community Economic Development of the Commonwealth of Pennsylvania. All actions have been duly taken and conditions have been fulfilled which are requisite in connection with the issuance of this 2013 Note, and in the creation of the debt of which this is evidence. The debt represented by the 2013 Note, together with all other non-electoral debt of the Borough, as defined in the Act, is not in excess of any constitutional or statutory limitation. The Borough has covenanted in the Note Ordinance to include in each annual budget of the Borough amounts sufficient to pay debt service on this 2013 Note when due, to make an annual appropriation of such amounts and to pay said debt service in full when due. The full faith, credit and taxing power of the Borough is hereby irrevocably pledged for the prompt and full payment of all the obligations of this 2013 Note and fulfillment of the covenants in the Note Ordinance.

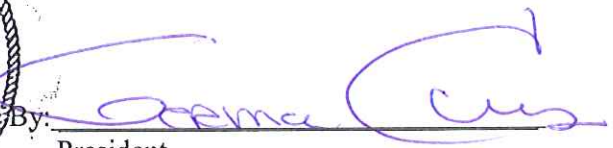
IN WITNESS WHEREOF, the Borough of Clarks Summit has caused this 2013 Note to be duly executed on its behalf by the signatures of its duly authorized officers, the corporate seal of the Borough to be hereon imprinted and duly attested, and this 2013 Note to be dated the 21 day of October, 2013.

ATTEST:

  
Secretary



BOROUGH OF CLARK'S SUMMIT

By:   
President  
Borough Council

7. The Honesdale National Bank, with an office at Honesdale, Pennsylvania, is hereby appointed as Fiscal Agent, Sinking Fund Depository and Paying Agent for the 2013 Note. The Fiscal Agent is hereby appointed as the Registrar of the 2013 Note and is hereby directed to maintain a registry for the notation of the registered owner of this 2013 Note. The proper Borough



officials are hereby authorized to contract with the Fiscal Agent for its services, and also to appoint and contract with any successor in such duties, except during the existence of any default hereunder.

8. If the Borough shall fail or refuse to make any required deposit in the Sinking Fund, or to satisfy any of the covenants herein contained, the Fiscal Agent may, and upon request of the holder of the 2013 Note, upon being furnished with indemnity satisfactory to it against the expenses and possible liabilities in connection with the duties thereby accepted, shall, exercise any remedy provided in the Act or at law or in equity, for the benefit of the holder of the 2013 Note, and shall disburse all funds so collected to the holder of the 2013 Note as provided in the Act, subject to any limitations contained in Article XII thereof. If the Fiscal Agent is willing at such time to serve and exercise the powers conferred upon the trustee appointed in the manner provided in Section 8106 of the Act, subject as aforesaid, such representation shall be exclusive for the purposes herein and in the Act provided.

9. The 2013 Note, as a general obligation of the Borough, shall be payable from revenues of the Borough (which revenues now include unlimited ad valorem taxes on property in the Borough taxable for Borough purposes). The Borough hereby covenants with the holder from time to time of the 2013 Note that the Borough will include the amount of the debt service on said Note due in each fiscal year of the Borough in its budget for such year, shall appropriate such amounts to the payment of such debt service, and shall duly and punctually pay or cause to be paid the principal of the 2013 Note and the interest thereon at the dates and place and in the manner stated in said 2013 Note, according to the true intent and meaning thereof, and for such budgeting, appropriation and payment, the Borough hereby pledges its full faith, credit and taxing power.

10. The amount of debt service to be appropriated for the fiscal year beginning January 1, 2013, for the 2013 Note will be as follows:

FISCAL YEAR BEGINNING

| <u>JANUARY 1ST</u> | <u>PRINCIPAL</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|--------------------|------------------|-----------------|--------------|
| 2013               | 0.00             | 21,180.50       | 21,180.50    |
| 2014               | 24,106.34        | 63,179.33       | 87,285.67    |
| 2015               | 75,630.66        | 59,663.94       | 135,294.60   |
| 2016               | 80,403.30        | 54,891.30       | 135,294.60   |
| 2017               | 85,810.48        | 49,484.12       | 135,294.60   |
| 2018               | 91,408.85        | 43,885.75       | 135,294.60   |
| 2019               | 97,372.49        | 37,922.11       | 135,294.60   |
| 2020               | 103,628.92       | 31,665.68       | 135,294.60   |
| 2021               | 110,486.01       | 24,808.59       | 135,294.60   |
| 2022               | 117,694.25       | 17,600.35       | 135,294.60   |
| 2023               | 125,372.76       | 9,921.84        | 135,294.60   |
| 2024               | 88,085.94        | 2,111.93        | 90,197.87    |
| Totals             | 1,000,000.00     | 416,315.44      | 1,416,315.44 |

or so much thereof as may be necessary; which appropriation is sufficient for and shall be applied exclusively to the payment of the principal of said 2013 Note at its maturity and the interest and taxes covenanted to be paid thereof as the same shall become due and payable.

11. A Sinking Fund is hereby established, designated "Sinking Fund, Borough of Clarks Summit, General Obligation Note of 2013" (the "Sinking Fund"), which shall be held by the Fiscal Agent, segregated from all other funds of the Borough. The Borough shall deposit in the Sinking Fund, not later than the business day next preceding each date when interest or principal is to become due on the 2013 Note, a sufficient part of each above-mentioned appropriation that on each such payment date the Sinking Fund will contain, together with any other available funds therein, sufficient money to pay in full, interest and principal then due on the 2013 Note.

12. The Sinking Fund shall be secured and invested by the Fiscal Agent in securities or deposits authorized by the Act, upon direction of the Borough, all as provided in the Act. Said deposits and securities shall be in the name of the Borough but subject to withdrawal or collection only by the Fiscal Agent, and said deposits and securities, together with the interest thereon shall

be a part of the Sinking Fund. The Fiscal Agent is authorized and directed to pay from the Sinking Fund the principal of and interest on the 2013 Note when due and payable.

13. This Ordinance and the Act, as in force from time to time, shall constitute a contract between the Borough and the holder from time to time of the 2013 Note. Said contract may be modified without the consent of said holder insofar as any such modification does not adversely affect its rights as such, and in other respects it may be modified with the consent of the holder of the 2013 Note.

14. The President of the Council and the Treasurer of the Borough, are hereby authorized and directed to prepare, certify and file in the appropriate records of the Borough, the debt statement required by Section 8110 of the Act. The proper officers of the Borough are hereby authorized thereafter as required by the Act, to prepare, certify and file any statements required by the Act necessary to qualify all or any portion of the debt of the Borough represented by the 2013 Note for exclusion from the appropriate debt limit of the Borough.

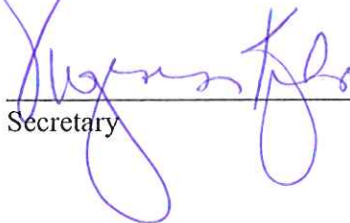
15. The negotiated proposal of ~~Penn Security Bank and Trust Company~~ JONESDALE NATIONAL BANK (the "Purchaser") for the purchase of the 2013 Note, a copy of which is attached hereto as Exhibit "A", is hereby accepted. The purchase price shall be \$1,000,000, being 100% of the sum of the principal thereof, with an effective net interest rate as provided therein. The maximum net interest cost [assuming a rate of six and one-quarter percent (6¼%) per annum] is Four Hundred Sixteen Thousand Three Hundred Fifteen Dollars and Forty Four Cents (\$416,315.44). The 2013 Note is hereby awarded to the Purchaser, said acceptance and award being conditioned upon all parts of this Ordinance becoming effective. The President of the Council, and the Treasurer of the Borough and their respective successors are further authorized and directed to deliver the 2013 Note to the Purchaser upon fulfillment of the aforementioned conditions and receipt of the purchase money, and in connection therewith the proper officers of the Borough are hereby authorized to execute

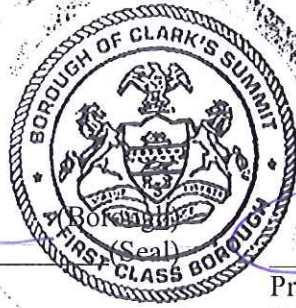
the necessary affidavits and all such other papers as may be necessary or convenient to make settlement or as may be required in the issuance of said 2013 Note.

16. All Ordinances or parts thereof insofar as they are inconsistent herewith are hereby rescinded.

Enacted and Ordained by the Council of the Borough of Clarks Summit, this 21<sup>st</sup> day of October, 2013.

ATTEST:

  
Secretary



  
President  
Borough Council  
Borough of Clarks Summit