

ORDINANCE # 144

FIRST READING - February 10, 2004
 SECOND READING - February 26, 2004

**FORMAL ACTION CONSTITUTING A QUALIFIED INTEREST RATE
 MANAGEMENT AGREEMENT ORDINANCE
 UNDER THE LOCAL GOVERNMENT UNIT DEBT ACT**

APPROVING AND ADOPTING AN INTEREST RATE MANAGEMENT PLAN; APPROVING THE FORMS OF INTEREST RATE MANAGEMENT AGREEMENT RELATING TO ITS SERIES OF 2004B; AUTHORIZING THE PROPER OFFICERS OF THE COUNTY TO EXECUTE AND DELIVER THE INTEREST RATE MANAGEMENT AGREEMENT; APPROVING THE MAXIMUM RATE OF INTEREST PAYABLE BY THE COUNTY UNDER THE INTEREST RATE MANAGEMENT AGREEMENT AND THE MINIMUM RATE OF INTEREST PAYABLE BY THE COUNTERPARTY (AS DEFINED HEREIN) UNDER THE INTEREST RATE MANAGEMENT AGREEMENT; APPROVING THE TERM OF THE INTEREST RATE MANAGEMENT AGREEMENT; COVENANTING TO PAY THE PERIODIC SCHEDULED PAYMENTS OF THE COUNTY UNDER THE INTEREST RATE MANAGEMENT AGREEMENT; AUTHORIZING THE PREPARATION OF A TRANSCRIPT OF PROCEEDINGS TO BE FILED WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER NECESSARY DOCUMENTS AND THE TAKING OF OTHER NECESSARY ACTION IN CONNECTION WITH THE FOREGOING.

WHEREAS, the County has heretofore issued its \$34,485,000 General Obligation Bonds, Series of 1997 ("1997 Bonds") to provide financing for the Lackawanna County Prison, and to pay the costs of issuance associated therewith; and

WHEREAS, the 1997 Bonds are currently outstanding in the aggregate principal amount of \$34,465,000; and

WHEREAS, the County has heretofore issued its \$27,865,000 General Obligation Bonds, Series of 1999A ("1999 Bonds") to currently refund certain prior bonds of the County, and pay the costs of issuance associated therewith; and

WHEREAS, the 1999 Bonds are currently outstanding in the aggregate principal amount of \$24,700,000; and

WHEREAS, the County has heretofore issued its \$19,540,000 General Obligation Bonds, Series of 2002A ("2002 Bonds") to provide financing for certain current refundings, capital projects, and paying the costs of issuance associated therewith; and

WHEREAS, the 2002 Bonds are currently outstanding in the aggregate principal amount of \$18,060,000; and

WHEREAS, the County has heretofore appointed Investment Management Advisory Group, Inc. ("IMAGE"), a firm that is experienced in the financial aspects and risks of interest rate management agreements, to advise the County with respect to the Swap Agreement (as hereinafter defined); and

WHEREAS, IMAGE has been retained to, among other things, prepare an Interest Rate Management Plan and to evaluate whether to refund, using synthetic fixed rate bonds, the 1997 Bonds, the 1999 Bonds and the 2002 Bonds in order to generate debt service savings for the County; and

WHEREAS, the Interest Rate Management Plan contains recommendations relating to the process for selecting a counterparty and criteria for entering into a negotiated interest rate management agreement with either Morgan Stanley Capital Services, Inc. or another financial institution to be determined in consultation with its financial advisors (the "Counterparty"); and

WHEREAS, the Interest Rate Management Plan also contains a description of, and IMAGE is recommending to the County that the County use, synthetic fixed rate bonds (the "Series of 2004B Bonds") to advance refund all or a portion of the County's 1997 Bonds, 1999 Bonds and 2002 Bonds by, among other things, entering into a qualified interest rate management agreement for the purpose of reducing the County's interest rate costs related to the Series of 2004B Bonds; and

WHEREAS, the qualified interest rate management agreement shall be memorialized by a Master Agreement, as supplemented by a Schedule and Confirmation thereto (the "Swap Agreement"); and

WHEREAS, the County desires to approve and adopt the Interest Rate Management Plan, authorize the execution and delivery of the Swap Agreement and authorize the execution and delivery of such other documents as shall be necessary or appropriate in connection therewith.

NOW, THEREFORE, BE IT, AND IT HEREBY IS, ENACTED by the affirmative vote of a majority of all members of the County Commissioners as follows:

1. **Adoption of the Interest Rate Management Plan.** In accordance with the purposes and objectives of the Local Government Unit Debt Act, as amended, the County hereby adopts and approves the Interest Rate Management Plan prepared and recommended by IMAGE, attached hereto as Appendix I, subject to such modifications from time to time as the Chairman of the County Commissioners, the County's financial advisor and counsel to the County shall approve. The County hereby approves and authorizes the use of the process for selecting counterpartys, and awarding the Swap Agreement, set forth in the Interest Rate Management Plan. IMAGE is hereby determined to be independent and experienced in the financial aspects and risks of interest rate management agreements as contemplated by the Local Government Unit Debt Act.

The Controller of the County (the "Controller") is hereby authorized and directed, simultaneously with the execution of the Swap Agreement, to cause a supplement to the Interest Rate Management Plan to be prepared by IMAGE and filed with the Department of Community and Economic Development setting forth, with respect to such Swap Agreement, the final terms of the items required under the Act to be included in an Interest Rate Management Plan including, but not limited to, a schedule listing all consulting, advisory, brokerage or similar fees paid or payable by the County in connection with such Swap Agreement, a schedule of any finder's fees, consulting fees or brokerage fees paid or payable by the Swap Counterparty in connection with the Swap Agreement, and the final Swap Agreement, including the completed Confirmations.

2. **Authorization of the Swap Agreement.** In order to reduce interest costs to the County by locking into current synthetic fixed interest rates, the County is hereby authorized to execute and deliver the Swap Agreement, the substantial form of which is attached hereto as Appendix II. The substantial form of the Swap Agreement is hereby approved; provided that: (i) the notional amount subject to the Swap Agreement shall not exceed the aggregate principal amount of outstanding 2004 B Bonds, (ii) the term of the Swap Agreement shall be no later than the latest maturity date for any of the 2004 B Bonds, (iii) the Swap Agreement shall obligate the County to pay the amount equal to the Fixed Rate determined by IMAGE to be fair and reasonable at the time of pricing thereof, multiplied by the notional amount of the Swap Agreement at the time in question, at the times and in the manner set forth in the Swap Agreement which fixed rate shall not exceed 4.60%, (iv) the Swap Agreement shall obligate the Counterparty to pay a percentage of LIBOR (which may include a certain number of basis points during agreed upon interest rate environments) determined by IMAGE to be fair and reasonable and in the County's best financial interest at the time of pricing of the Swap Agreement, multiplied by the notional amount of the swap at the time in question, at the times and in the manner set forth in the Swap Agreement, and (v) both parties may be required to make certain additional payments to the extent required under the Swap Agreement, however periodic scheduled payments payable by the County under the Swap Agreement and debt service payable by the County on the 2004 B Bonds shall be senior in right and priority of payment to termination payments due under the Swap Agreement.

The Controller, in consultation with IMAGE and special counsel, is hereby authorized and directed to examine the advisability of obtaining insurance covering the risks of nonpayment of amounts due from the County under the Swap Agreement and to contract therefor if it is determined to be in the best financial interests of the County.

3. **Execution and Delivery of Swap Agreement.** The Chairman, Controller and the Treasurer are hereby authorized to execute the Swap Agreement by manual or facsimile signature and to approve the exact notional amount, term and interest rates under the Swap Agreement (subject to paragraph 2 above) such approvals to be conclusively evidenced by the execution thereof. Following such execution, the officers of the County are hereby authorized to deliver, or to cause to be delivered, the Swap Agreement.

The Swap Agreement, when executed, will be a general obligation of the County. The County hereby covenants that it shall include the amount of scheduled payments due thereunder for each fiscal year in which such sums are payable in its budget for that year; shall appropriate such amounts from its general revenues to the payment of such scheduled payments; and shall duly and punctually pay or cause to be paid the scheduled payments on the dates and places and in the manner stated in the Swap Agreement according to the true intent and meaning thereof, and for such proper budgeting, appropriation, and payment, the full faith, credit and taxing power of the County is hereby irrevocably pledged.

The maximum and estimated amounts which the County hereby covenants to pay under the Swap Agreement is set forth in Schedule I attached hereto. Attached hereto as Schedule II is the maximum combined obligations of the County taking into account the Swap Agreement and the 2004 B Bonds.

4. **Authorization of Private Sale By Negotiation.** In compliance with Section 8281(e) of the Local Government Unit Debt Act, the County Commissioners, in consultation with IMAGE, have determined that a private sale by negotiation rather than public sale is in the best financial interest of the County. Therefore, the Swap Agreement shall be awarded to the Counterparty subject to the requirements of this Ordinance; provided that the proceedings have been filed with the Department of Community and Economic Development in accordance with paragraph 7 below; and provided further that the County hereby reserves the right to award the Swap Agreement, in whole or in part, to another counterparty, if upon consultation with its advisors, the County deems such award to be in its best financial interest. The award of the Swap Agreement at a private sale, by negotiation, in accordance with the other terms and conditions set forth in this Ordinance, is hereby deemed to be in the best financial interest of the County and is hereby approved.

5. **Execution and Delivery of Documents.** The proper officers of the County are hereby authorized to execute and deliver, in the name of the County and on its behalf such other documents, agreements, instruments and certifications, as the executing officers determine to be reasonable and appropriate to provide for the Swap Agreement as authorized by this Ordinance, and to approve the final form and substance thereof, and any amendments or supplements thereto before or after the initial execution and delivery thereof copies of the foregoing documents, together with the other documents relating to the transactions authorized hereby, in final form as executed and delivered by the parties thereto, shall be filed in the official records of the County.

6. **Dating of Swap Agreement.** The Swap Agreement and other documents are presently expected to be dated as of their date of execution in April of 2004. The Chairman or Vice Chairman of the County Commissioners is hereby authorized to approve a later date for the Swap Agreement and all such other documents if the award of the Swap Agreement is delayed, such approval to be conclusively evidenced by the execution of the Swap Agreement and such other documents by the Chairman or Vice Chairman of the County Commissioners.

7. **Debt Act Proceedings.** The Chairman or Vice Chairman of the County Commissioners are authorized and directed to prepare or cause to be prepared, verify and file the proceedings required by Section 8284 of the Act, to take other necessary action.

The action of the proper officers and the advertising of a summary of this Ordinance as required by law in a newspaper of general circulation, is hereby ratified and confirmed, and approved. The advertisement by the Secretary of the County Commissioners in said paper of the adoption of the Ordinance is hereby directed within fifteen (15) days following the day of final enactment.

8. **Binding Effect of Covenants and Agreements.** All covenants, obligations and agreements of the County set forth in this Ordinance and in the documents authorized hereby shall be deemed to be the covenants, obligations and agreements of the County to the full extent authorized or permitted by law, and all such covenants, obligations and agreements shall be binding upon the County and its successors from time to time and upon any board or body to which any powers or duties affecting the same shall be transferred by or in accordance with law. Except as otherwise provided in this Ordinance, all rights, powers and privileges conferred and duties and liabilities imposed upon the County or the members thereof by the provisions of this Ordinance or the documents authorized hereby shall be exercised or performed by such members, officers or other representatives of the County as may be required or permitted by law to exercise or perform the same. No covenant, obligation or agreement herein contained or contained in any documents authorized hereby shall be deemed to be a covenant, obligation or agreement of any member, officer, agent or employee of the County in his or her individual capacity and neither the members of the County nor any officer executing the Swap Agreement or other documents authorized by this Ordinance shall be liable personally thereunder or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

9. **Further Action.** Any member of the County is hereby authorized and directed to execute such further documents and do such further things as may be necessary or proper to carry out the intent and purpose of this Ordinance or any document herein authorized.

10. **Repeal of Inconsistent Ordinances.** All prior Ordinances or parts thereof inconsistent herewith are hereby repealed to the extent of such inconsistency.

11. **Effective Date.** This Ordinance shall take effect on the 10th day after its enactment.

Adopted: February 26, 2004

DULY ENACTED by the County Commissioners of the County of Lackawanna, in lawful session assembled, on February 26, 2004.

[SEAL]

COUNTY OF LACKAWANNA

Robert C Cordaro

Chairman, Board of County Commissioners

A Munchak

Commissioner

No

Commissioner

Attest:
Paul D. Iannelli
Chief of Staff

Controller

Treasurer



APPENDIX I

County of Lackawanna

Interest Rate Management Plan**OVERVIEW**

In accordance with the requirements under Act 23 of 2003 amending the Pennsylvania Local Government Unit Debt Act ("LGUDA" or the "Act") this report shall serve as the Interest Rate Management Plan (the "Plan") of the County of Lackawanna (the "County"). The Plan shall cover all Qualified Interest Rate Management Agreements ("QIRMAs"), including, but not limited to, interest rate swaps, caps, floors, swaptions and similar derivative instruments entered into by the County for bonds payable or guaranteed by the County.

This analysis has been performed with regard to the first Qualified Interest Rate Management Agreement ("Swap") that the County will consider on February 26, 2004. The County is expected to approve the issuance of its General Obligation Bonds, Series A, B, C, D and E of 2004 (the "2004A Bonds", "2004B Bonds", "2004C Bonds", "2004D Bonds" and "2004E Bonds", respectively) on or about February 26, 2004. The 2004A Bonds are expected to be issued for the current refunding of all or a portion of the County's outstanding General Obligation Bonds, Series of 1994 (the "1994 Bonds") on or about September 7, 2004. The 2004B Bonds are expected to be issued to refund all or a portion of the County's General Obligation Bonds, Series of 1997 Bonds, Series of 1999A Bonds and Series of 2002A Bonds (the "1997 Bonds", "1999A Bonds" and the "2002A Bonds", respectively) on or about April 5, 2004. The 2004C Bonds are expected to be issued to finance certain capital projects of the County on or about April 5, 2004. The 2004D Bonds and 2004E Bonds will both be taxable. The 2004D Bonds are expected to be issued to finance certain capital projects of the County on or about April 5, 2004. The 2004E Bonds are expected to be issued to refund the Lackawanna County Multi-Purpose Authority's Guaranteed Stadium Revenue Bonds, Series of 2002 on or about April 5, 2004.

The County is considering whether to enter into a floating to fixed swap (the "2004B Swap") that will relate to the County's 2004B Bonds. The 2004B Bonds are expected to be issued to refund all or a portion of the County's 1997 Bonds, 1999A Bonds and 2002A Bonds. It is expected that the County will issue the 2004B Bonds concurrently with the execution and delivery of the 2004B Swap and with the same principal amortization schedule as the 2004B Bonds thus creating a "synthetic fixed rate" liability. The effective date on the 2004B Swap is expected to be the date of closing of the 2004B Bonds. Morgan Stanley Capital Markets ("Morgan Stanley") is expected to be the provider of the 2004B Swap and it is being structured such that the principal schedule and maturity date will match the portion of the 1997, 1999A and 2002A Bonds being refunded by the 2004B Bonds. The County will structure the 2004B Bonds and the 2004B Swap to generate a total expected present value debt service savings as a result of issuing the 2004B Bonds and entering into the 2004B Swap.

I. Debt Outstanding & Proposed New Debt

The County had total general obligation debt outstanding of \$94,500,000 as of February 1, 2004 and an additional \$11,330,000 of lease rental debt for a total of \$105,830,000. A schedule of currently outstanding debt issues, expected annual debt service and, for variable rate debt, estimated and maximum annual debt service is shown in Appendix A. (All of the currently outstanding debt issues have fixed interest rates.)

II. Swaps Outstanding

The County had no swaps outstanding as of February 10, 2004.

III. Swap Fees Paid or Payable

A schedule of all consulting, advisory, brokerage or similar fees paid directly by the County, or indirectly by the other party (the "Counterparty") in connection with the County's Swaps is shown in Appendix B. The County has not previously entered any interest rate management agreements, so the table refers only to fees expected to be paid upon the completion of the 2004B Swap.

IV. Scheduled Periodic Payments under Swaps

A schedule of estimated and maximum periodic scheduled annual payments due under the 2004B Swap are shown in Appendix C.

V. Risk Analysis — Proposed Swap

This section reviews the risks in the proposed transaction.

Risks

1. Interest Rate — The risk that a generally adverse move in variable rates increases the overall cost of borrowing or that credit concerns relating to the County have the same impact. The County's exposure to variable rates will commence upon issuance of the 2004B Bonds in the auction rate mode. Increases in auction rates would likely result in increases in the amount payable by the Counterparty, based on historical performance. If the 2002B Swap is terminated for any reason, the County will still be responsible for paying debt service on the variable rate bonds. See "Basis Risk" and "Tax Risk" below.
2. Counterparty Credit — The risk that the counterparty will not perform pursuant to the terms of the swap contract. Under the proposed structure, for example, if the counterparty defaults, the County would be exposed to an unhedged variable rate bond position ultimately resulting in interest rate risk and may have to make a termination payment to the Counterparty depending on interest rates at the time.
3. Termination — The risk that a swap could be terminated (while valued in favor of or against the County) as a result of any of several events, which may include a ratings downgrade for the County or Morgan Stanley, covenant violation by either party, bankruptcy of either party, swap payment default of either party, and other default events as defined by the documents. For a calculation of termination cost to the County under one discrete set of circumstances, see Appendix E.
4. Basis — The risk of a mismatch between the interest rate received from the swap counterparty and the interest rates actually owed by the County on the variable rate bonds being hedged. The County's risk is that the variable swap payments received from Morgan Stanley will be less than the variable interest rates actually owed by the County on its variable rate bonds. In the proposed transaction, the 2004B Bonds will initially bear interest at the auction rate which will from time to time exceed the rate paid by Morgan Stanley under the 2004B Swap. The rate paid by Morgan Stanley is initially expected to be 65% of LIBOR plus 25 basis points, however, at any time that LIBOR exceeds 5.00% the rate paid by Morgan Stanley will be 68% of LIBOR.
5. Tax — All issuers who issue tax-exempt variable rate debt, inherently accept risk stemming from changes in marginal income tax rates. A specific type is tax risk. A mismatch between changes in the rate or price on the County's underlying variable rate bonds and the swap caused by a reduction or elimination in the benefits of the tax exemption for municipal bonds, e.g., a tax cut for individuals that results in an increase in the ratio of tax-exempt to taxable yields. This risk exists if a percentage of a taxable index is used to hedge tax-exempt debt as contemplated in the proposed transaction.
6. Market Access — The risk that the County is unable to access the debt market in the future. This risk is subject to overall general market conditions as well as the County's credit. If the County were to desire to convert the proposed Bonds to a weekly or fixed rate, this risk could be present in connection with the termination of the 2004B Swap.
7. Liquidity / Remarketing — The risk that the County cannot secure a cost-effective Letter or Line of Credit or suffers a failed auction or remarketing with respect to the variable-rate bonds related to the swap.

Appendix C contains schedules of the estimated and maximum scheduled periodic payments due under the proposed swaps.

Appendix D contains schedules of the estimated and maximum scheduled periodic payments due on all of the County's General Obligation debt after the issuance of all of the 2004 Bonds and the 2004B Swap.

Appendix E contains a summary of the risks for the proposed transaction and certain proposed mitigants.

VI. Approach and Objectives

Interest rate swaps are appropriate interest rate management tools that can help the County meet important financial objectives. Properly used, these instruments can increase the County's financial flexibility, provide opportunities for interest rate savings and help the County manage its balance sheet through better matching of assets and liabilities. Swaps should be integrated into the County's overall debt and investment management plan and should not be used for speculation or leverage.

Rationales for Utilizing Interest Rate Management Agreements

The County generally will strive to utilize Swaps if it is reasonably determined that the proposed transaction is expected to:

1. Optimize capital structure; including schedule of debt service payments and/or fixed vs. variable rate allocations.
2. Achieve appropriate asset/liability match.
3. Reduce risk, including:
 - o Interest rate risk;
 - o Tax risk; or
 - o Liquidity renewal risk.
4. Provide greater financial flexibility.
5. Generate interest rate savings.
6. Manage exposure to changing markets in advance of anticipated bond issuances (through the use of anticipatory hedging instruments).

VII. ONGOING MANAGEMENT

The County will seek to maximize the benefits and minimize the risks it carries by actively managing its swap program as an integral piece of its overall debt and investment management plan. This will entail periodic monitoring of market conditions, by the County's Director of Finance, the Swap and/or Financial Advisor

and swap counterparties, for emergent opportunities and risks. Active management may require modifications of existing positions including, for example:

1. Early termination;
2. Shortening or lengthening the term;
3. Sale or purchase of options; or
4. Use of basis swaps.

The County intends to manage the use of Swaps on an ongoing basis to avoid excessive exposure to any of the foregoing risks and expects to enter into a formal arrangement with Investment Management Advisory Group (IMAGF) in that regard.

VIII. ONGOING REPORTING REQUIREMENTS

A written report providing the status of all interest rate swap agreements entered into by the County will be provided to the County's Commissioners and Director of Finance prepared by the County's Swap Advisor on at least an annual basis or other basis, if so directed by any of the above mentioned and shall include the following:

1. A description of all outstanding interest rate swap agreements, including bond series, type of swap, rates paid and received by the County, total notional amount, average life of each swap agreement, remaining term of each swap agreement.
2. Highlights of all material changes to swap agreements or new swap agreements entered into by the County, on behalf of the County, since the last report.
3. Termination exposure of each of the County's interest rate swap agreements entered into for the County's benefit.
4. The credit rating of each swap counterparty and credit enhancer insuring swap payments, if any.
5. If applicable, information concerning any default by a swap counterparty to the County, including but not limited to the financial impact to the County and County, if any.
6. If applicable, information concerning any default by the County to a swap counterparty.
7. A summary of swap agreements that were terminated or that have expired.
8. For a swap transaction entered into to generate debt service savings, the County will calculate on an annual basis the actual debt service requirements versus the projected debt service on the swap transaction at the original time of execution. Such a calculation shall include a determination of the cumulative actual savings (or, if applicable, additional payments made by the County) versus the projected or expected savings at the time the swap was executed.
9. The status of any collateral related to any swap transaction including type and amount of collateral, and market value of that collateral.

IX. PROCEDURE FOR SUBMISSION AND EXECUTION

These procedures are meant as guidelines for use by the County. If at any time they are in conflict with current Federal or Commonwealth of Pennsylvania statute or law, those will apply, notwithstanding anything written to the contrary in this Plan.

The County may consider the use of Swaps that are either presented as proposals or that are developed by the County in consultation with consultants, advisors and legal counsel. The County's Director of Finance and the County's Swap and/or Financial Advisor shall review all proposals prior to determination by the County whether to proceed with execution. The County will give detailed consideration only to proposals that the County, in its sole discretion, believes should be considered further given, for example, the projected savings or other benefits and the ability to meet one or more of the objectives outlined herein.

Only proposals that meet the savings described hereinafter, or that the County finds compelling for other reasons, shall be considered for execution.

The County may also consider the use of Swaps if they meet one of the benefits outlined herein or if they:

1. Provide a specific benefit not otherwise available;
2. Produce greater expected interest rate savings or incremental yield than cash market alternatives;
3. Are not speculative or do not create unreasonable leverage or risk;
4. Result in an improved capital structure or better asset/liability match; or
5. Reasonably pass the risk evaluation required by these guidelines.

It is of utmost importance that the County has thorough knowledge of all swap counterparties. Selection of swap counterparties will be based on legality, performance, quality of service, experience, reputation, integrity, creditworthiness, capitalization, and other relevant factors. The County will deal only with those having substantial experience and a high level of capitalization. With assistance from an independent financial advisor, the County's Director of Finance will carefully investigate all potential swap counterparties, including review of ratings by nationally recognized rating agencies and obtaining other relevant information. Swap counterparties shall have a rating of at least the third highest category from a nationally recognized rating agency.

In accordance with the provisions of Act 23, when entering into either competitively and/or negotiated procurements, the execution of any Swap transaction shall be the subject of an independent review, analysis and finding that its terms and conditions reflect a fair market value of such agreement as of the date and time of its execution.

X. Swap Analysis and Participant Requirements

In connection with any swap, the County's Director of Finance and its Swap and/or Financial Advisor shall review the proposed transaction and outline any considerations associated with the transaction to the County's Board. Such a review should include the following:

1. The identification of the proposed benefit and potential risks, which shall include, but not necessarily be limited to, those risks outlined herein.
2. Independent analysis of potential benefits from a proposed transaction.
3. Fixed versus variable rate and swap exposure on, before and after the proposed transaction.
4. Market Net Termination Exposure for all existing and proposed transactions with the County.
5. Credit Rating of the potential swap counterparty or counterparties.

XI. Analysis of Swap Risks and Benefits

In reviewing proposed or possible Swap transactions, the County shall consider each of the types of risks described in Section V above, as applicable:

The County shall at all times manage its use of Swaps to avoid excessive exposure to any of the foregoing risks.

Benefit Expectation

Financial transactions, using Swaps or other synthetic financing structures, should generate greater projected savings than the savings guidelines the County would consider for traditional bonds. This will serve as a guideline and will not apply should the transaction, in the County's judgment, help to meet any of the other objectives outlined herein. The higher savings target reflects the greater complexity and higher risk associated with Swap transactions. Such comparative savings analyses shall include, where applicable, the consideration of the probability (based on historical interest rate indices, where applicable, or other accepted analytic techniques) of the realization of savings for both the synthetic and traditional structures. For variable rate or other swap transactions that do not result in a fixed interest rate, the County will evaluate any additional value generated through the transaction in assessing the benefits of proceeding, including the ability to meet the objectives outlined herein. These benefits include, for example, reducing interest rate or tax risk, optimizing the capital structure or further reducing interest expense.

In determining any benefit in implementing a floating-to-fixed swap, the cost of remarketing, in addition to the cost of credit enhancement or liquidity fees (if any) must be added to the projected variable rate. Such a calculation should consider the trading performance of comparable bonds and any trading premium resulting from a specific form of credit enhancement or liquidity and/or any impact related to broader industry trends.

XII. LEGAL AND CONTRACTUAL REQUIREMENTS

Unless otherwise approved by the County's Director of Finance and Board, the County will use standard ISDA swap documentation including the Schedule to the Master Agreement and a Credit Support Annex. The County may use additional documentation if the product is proprietary or the County deems in its sole discretion that such documentation is otherwise in its interest.

Terms and Notional Amount of Swap Agreement

The County shall determine the appropriate term for an interest rate swap agreement on a case-by-case basis. In connection with the issuance or carrying of bonds, the term of the swap agreement between the County and a qualified swap counterparty shall not extend beyond the final maturity date of related debt of the County, or in the case of a refunding transaction, beyond the final maturity of the refunding bonds.

Terms and conditions of any swap shall be negotiated by the County in the best interests of the County subject to the provisions of Act 23 and, unless otherwise waived or altered by the County, these guidelines. The swaps between the County, and each counterparty shall include, as appropriate, payment, term, security, collateral, default, remedy, termination, and other terms, conditions and provisions as the County, in consultation with Counsel, on behalf of the County, deems necessary or desirable.

Subject to the provisions contained herein, interest rate management agreement documentation and terms should include the following:

1. Downgrade provisions triggering termination shall in no event be worse than those affecting the counterparty.
2. Governing law will be New York law, but should reflect Pennsylvania authorization and remedial provisions.
3. The Jurisdiction of Adjudication shall be Pennsylvania.
4. The specified indebtedness related to credit events in any interest rate management agreement should be narrowly drafted and refer only to specific debt.
5. Collateral thresholds should be set on a sliding scale reflective of credit ratings (see Collateral below)
6. Eligible collateral as set forth in the Collateral section below.
7. Termination value should be set by "market quotation" methodology, when the County deems appropriate.
8. The County should only agree to an Additional Termination Event the County to the extent that the ratings on the applicable bonds fall below a ratings trigger acceptable to the County and the counterparty and no form of credit support or enhancement is in place.

Termination Provisions

All swap transactions shall contain provisions granting the County the right to optionally terminate a swap agreement at any time over the term of the agreement. Such a provision shall be required even if any termination is at market. In general, exercising the right to terminate an agreement should produce a benefit to the County, either through the receipt of a payment from a termination or, if the termination payment is made by the County, in conjunction with a conversion to a more beneficial (desirable) debt obligation of the County, as determined by the County.

Collateral

As part of any interest rate management agreement, the County may require collateralization or other forms of credit enhancements to secure any or all payment obligations of the counterparty. As appropriate, the County in consultation with their Counsel and the Swap Advisor, may require collateral or other credit enhancement to be posted by each counterparty under the following circumstances:

1. Each counterparty may be required to post collateral if the credit rating of the counterparty or its parent falls below the "A" category. Additional collateral for further decreases in credit ratings of each counterparty shall be posted by each counterparty in accordance with the provisions contained in the collateral support agreement with the County.
2. Threshold amounts shall be determined by the County on a case-by-case basis. The County will determine the reasonable threshold limits for the initial deposit and for increments of collateral posting thereafter.
3. In determining maximum uncollateralized exposure, the County shall also consider and include, as applicable, financial exposure to the same corporate entities that they or either of them may have through other forms of financial dealings, such as securities lending agreements and commercial paper investments.
4. Collateral shall be deposited with a third party trustee, or as mutually agreed upon between the County and the counterparty.
5. A list of acceptable securities that may be posted as collateral and the valuation of such collateral will be determined and mutually agreed upon during negotiation of the agreement with each counterparty. A complete list of acceptable securities and valuation percentages are included as Attachment A.
6. The market value of the collateral shall be determined on at least a monthly basis, or more frequently if the County determines it is in the County's best interest given the specific collateral security.
7. The County shall determine on a case-by-case basis whether other forms of credit enhancement are more beneficial.

XIII. LIMITATIONS ON TERMINATION EXPOSURE TO A SINGLE COUNTERPARTY

The County desires to diversify counterparty credit risk, and to limit its credit exposure to any one counterparty, however strict limits will not be established for each counterparty based upon both the credit rating of the counterparty as well as the relative level of risk associated with each existing and proposed swap transaction. However, the County will review general termination exposure at least annually with respect to whether the County should enter into an additional transaction with an existing counterparty. The County may make exceptions to any general guidelines at any time to the extent that the execution of a swap achieves one or more of the goals outlined in these guidelines or provides other benefits to the County. In general, the maximum Net Termination Exposure to any single counterparty should be set so that it does not exceed a prudent level as measured against the gross revenues, available assets or other financial resources of the County.

Such guidelines will also not mandate or otherwise force automatic termination by the County, on behalf of the County, or the counterparty. Maximum Net Termination Exposure is not intended to impose retroactively any terms and conditions on existing transactions. Such provisions will only act as guidelines in making a determination as to whether or not a proposed transaction should be executed given certain levels of existing and projected net termination exposure to a specific counterparty. Additionally, the guidelines are not intended to require retroactively additional collateral posting for existing transactions, if any. The calculation of net termination exposure per counterparty will take into consideration multiple transactions, some of which may offset the overall exposure to the County.

The County may in the future set strict limits on individual counterparty exposure based on existing as well as new or proposed transactions in the future. The sum of the **current market value** and the **projected exposure** shall constitute the Maximum Net Termination Exposure. For outstanding transactions, current exposure will be based on the market value as of the last quarterly swap valuation report provided by the Swap Advisor. Projected exposure shall be calculated based on the swap's potential termination value taking into account possible adverse changes in interest rates as implied by historical or projected measures of potential rate changes applied over the remaining term of the swap.

For purposes of this calculation, the County shall include all existing and projected transactions of an individual counterparty and all transactions will be analyzed in aggregate such that the maximum exposure will be additive.

Exposure thresholds, which will be reviewed periodically by the County to ensure that they remain appropriate, will also be tied to credit ratings of the counterparties and whether or not collateral has been posted. If a counterparty has more than one rating, the lowest rating will govern for purposes of the calculating the level of exposure.

If the exposure limit is exceeded by a counterparty, the County shall conduct a review of the exposure limit per counterparty. The County, in consultation with its Counsel and Swap Advisor, shall explore remedial strategies to mitigate this exposure.

APPENDIX II

MASTER AGREEMENT

dated as of

..... and

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows: ---

1. Interpretation

- (a) **Definitions.** The terms defined in Section 12 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

2. Obligations

- (a) **General Conditions.**
- (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement
- (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
- (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.
- (b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.
- (c) **Netting.** If on any date amounts would otherwise be payable: ---
- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject

to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of branches or offices through which the parties make and receive payments or deliveries.

(d) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into) that:—

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party any forms, documents or certificates specified in the Schedule or any Confirmation by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) or to give notice of a Termination Event) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party.

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period); or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (i) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer: —

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement;

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified to (i) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (ii) below, or an Additional Termination Event if the event is specified pursuant to (iii) below:—

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party)

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party (such party ("X")), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(iii) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation);

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) in action to avoid that Termination Event.

(iii) **Right to Terminate.** If: —

(1) an agreement under Section 6(b)(ii) has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality other than that referred to in Section 6(b)(ii), a Credit Event Upon Merger or an Additional Termination Event occurs,

either party in the case of an Illegality, any Affected Party in the case of an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) **Effect of Designation.**

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(d) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant amount to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:--

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party over (B) the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party less (B) the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) **Second Method and Loss.** If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event: --

(1) **One Affected Party.** If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) **Two Affected Parties.** If there are two Affected Parties:--

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Unpaid Amounts owing to X less (II) the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the date of the Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) shall be a pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation, amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(c).

Any purported transfer that is not in compliance with this Section will be void.

8. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties shall specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) **No Waiver of Rights.** Failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

9. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including reasonable attorney's fees, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement, including the Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

10. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(v) if sent by electronic messaging system, on the date that electronic message is received, unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Address.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

11. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:

(i) submit to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such Party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

12. Definitions

As used in this Agreement:

"**Additional Termination Event**" has the meaning specified in Section 5(b).

"**Affected Party**" has the meaning specified in Section 5(b).

"**Affected Transactions**" means (a) with respect to any Termination Event consisting of an Illegality, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

"**Affiliate**" means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person; for this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"**Applicable Rate**" means:

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

"consent" includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

"Credit Event Upon Merger" has the meaning specified in Section 5(b).

"Credit Support Document" means any agreement or instrument that is specified as such in this Agreement.

"Credit Support Provider" has the meaning specified in the Schedule.

"Default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by (1) if it were to fund or of funding the relevant amount plus 1% per annum.

"Defaulting Party" has the meaning specified in Section 6(a).

"Early Termination Date" means the date determined in accordance with Section 6(a) or 6(b)(iii).

"Event of Default" has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

"Illegality" has the meaning specified in Section 5(b).

"law" includes any treaty, law and/or regulation and **"lawful"** and **"unlawful"** will be construed accordingly.

"Local Business Day" means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

"Loss" means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, an amount that party has determined in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or other trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(ii)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 9. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may, but need not, determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

"Market Quotation" means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount that may be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic effect of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction will be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) or, if not so reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e)(ii)(1) if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation of the middle one, disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

"Non-default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

"Non-defaulting Party" has the meaning specified in Section 6(a).

"Potential Event of Default" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Reference Market-makers" means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

"Scheduled Payment Date" means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

"Set-off" means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

"Settlement Amount" means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Market Quotation (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

"Specified Entity" has the meaning specified in the Schedule.

"Specified Indebtedness" means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as to principal or surety or otherwise) in respect of borrowed money.

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

"Terminated Transactions" means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

"Termination Event" means an illegality or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

"Termination Rate" means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

"Unpaid Amounts" or, if to one party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was or would have been but for Section 2(a)(iii) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled due for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to be delivered or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party or parties making the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

.....
(Name of Party)

.....
(Name of Party)

By:

By:

Name:
Title:
Date:

Name:
Title:
Date: