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ORDINANCE
OF THE
COUNTY OF DAUPHIN
COMMONWEALTH OF PENNSYLVANIA

ORDINANCE NO. ___-2011
Enacted: February 2, 2011

AN ORDINANCE ENACTING AN INTEREST RATE MANAGEMENT PLAN WITH RESPECT TO A PORTION OF THE COUNTY'S OUTSTANDING GENERAL OBLIGATION BONDS, SERIES A OF 2002, GENERAL OBLIGATION BONDS, SERIES C OF 2005 AND GENERAL OBLIGATION BONDS, SERIES OF 2006 AND AWARDED, BY PRIVATE NEGOTIATED SALE, A QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT (THE "AGREEMENT") WITH RESPECT TO THE SAME; COVENANTING TO BUDGET AND APPROPRIATE THE PERIODIC SCHEDULED AMOUNTS DUE THEREUNDER AND PLEDGING THE COUNTY'S FULL FAITH, CREDIT AND TAXING POWER TO THE PAYMENT OF SUCH PERIODIC PAYMENTS; LIMITING THE TOTAL AND ANNUAL NOTIONAL AMOUNTS AND DATES AND MAXIMUM ANNUAL INTEREST RATES IN THE AGREEMENT AND COVENANTING TO BUDGET FOR TERMINATION PAYMENTS; AUTHORIZING APPROPRIATE OFFICERS TO TAKE OTHER APPROPRIATE ACTIONS IN CONNECTION WITH THE AWARD AND EXECUTION OF THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT; REPEALING ALL ORDINANCES INCONSISTENT HEREWITH.

WHEREAS, the Board of Commissioners (the "Governing Body") of the County of Dauphin, Pennsylvania (the "County") has appointed Susquehanna Group Advisors, Inc. (the "Financial Advisor") to prepare an interest rate management plan, as contemplated by the Pennsylvania Local Government Unit Debt Act, 53 Pa. C.S. §8001 *et seq.* (the "Act") with respect to the County's outstanding General Obligation Bonds, Series A of 2002 maturing on November 15, 2014 through and including November 15, 2024 (the "2002A Swapped Bonds"); the County's outstanding General Obligation Bonds, Series C of 2005 maturing on November 15, 2014 through and including November 15, 2024 (the "2005C Swapped Bonds"); and the County's outstanding General Obligation Bonds, Series of 2006 maturing on November 15, 2014 through and including November 15, 2023 (the "2006 Swapped Bonds," and together with the 2002A Swapped Bonds and the 2005C Swapped Bonds, the "Swapped Bonds"). (Although the Governing Body of the County has authorized the advance refunding of the 2002A Swapped Bonds by Ordinance No. 1 -2010, duly enacted on March 3, 2010, and approved by the Department of Community and Economic Development (the "Department"), by Approval No.

GOB-17432, dated April 15, 2010, the County has not yet undertaken the advance refunding of the 2002A Swapped Bonds, and the 2002A Swapped Bonds remain outstanding); and

WHEREAS, the Financial Advisor has prepared an interest rate management plan (the "Plan"), in the form attached hereto as *Exhibit A*, with respect to the Swapped Bonds; and

WHEREAS, the County has previously entered into an International Swaps and Derivatives Association, Inc. ("ISDA") 1992 Master Agreement and Schedule, dated as of April 29, 2004 (together with all related schedules, supplements, exhibits and addenda, the "2004 Swap Agreement") with Royal Bank of Canada (the "Swap Counterparty"), which contemplate the execution of various confirmations to evidence specific qualified interest rate management agreements between the County and the Swap Counterparty; and

WHEREAS, the Swap Counterparty has presented to the Governing Body a qualified rate management agreement to be evidenced as a transaction set forth as a confirmation under the 2004 Swap Agreement (the "2011 Confirmation," as incorporating and governed by the 2004 Swap Agreement, the "Swap") with respect to the Swapped Bonds, with a trade date to be determined by the Proper Officers of the County and the Swap Counterparty; and

WHEREAS, as contemplated by the Act, the maximum net payments by fiscal year for periodic scheduled payments by the County, not including any termination payments, on the Swap, plus interest on the Swapped Bonds, could exceed in the aggregate the maximum payment amounts approved for various fiscal years in the proceedings of the County filed with and approved by the Department of Community and Economic Development (the "Department") for the Swapped Bonds (Approval No. GOB-14581, dated May 14, 2002, as to the 2002A Swapped Bonds; Approval No. GOB-16008, dated July 29, 2005, as to the 2005C Swapped Bonds; and Approval No. 16325, dated July 5, 2006, as to the 2006 Swapped Bonds); and

WHEREAS, the Governing Body desires to amend the interest rates specified in each of the ordinances, duly enacted in accordance with the Act on or before the date of enactment of this Ordinance, as follows: as to the 2002A Swapped Bonds, Ordinance No. 6-2002 duly enacted on September 10, 2002 (the "2002A Bonds Enabling Ordinance"); as to the 2005C Swapped Bonds, Ordinance No. 2-2005, duly enacted on June 29, 2005 (the "2005C Bonds Enabling Ordinance"); and, as to the 2006 Swapped Bonds, Ordinance No. 2-2006, duly enacted on June 7, 2006 (the "2006 Bonds Enabling Ordinance," and together with the 2002A Bonds Enabling Ordinance and the 2005C Bonds Enabling Ordinance, the "Enabling Ordinances"), as well as the provisions of the related documents, to include a maximum interest rate of 20% per annum, for calculating payments by the County under the Swap, in addition to the fixed rates specified for the maturities of the Swapped Bonds, which is in excess of the sum of the net interest exposure described in the preceding paragraph, as contemplated by Section 8284 of the Act; and

WHEREAS, the Swap, in the judgment of the County is designed, as set forth in the Plan, to manage interest rate risk or interest cost of the County with respect to the Swapped Bonds;

NOW, THEREFORE, BE IT RESOLVED, by the County, as follows:

Section 1. **Financial Advisor; Interest Rate Management Plan.** The appointment of the Financial Advisor is hereby ratified and confirmed. The Financial Advisor has represented to the Governing Body that it is an "independent financial advisor" within the meaning of and in accordance with the Act, in that the Financial Advisor is not the Swap Counterparty or an affiliate or agent thereof. The Plan, in the form attached hereto as *Exhibit A* as prepared by the Financial Advisor and presented to the Governing Body as of the date of consideration of this Ordinance by the Governing Body, together with such modifications from time to time as the Chairman, Vice Chairman or any other member of the Board of Commissioners, and the Chief Clerk or any Deputy Chief Clerk, being proper officers of the County (the "Proper Officers") and the Financial Advisor shall approve, is hereby approved and adopted as an "interest rate management plan," within the meaning of the Act, of the County in connection with the Swap.

The Plan and other materials provided to the Governing Body by the Financial Advisor have fully identified and disclosed the risks inherent in the contemplated transactions, and the Governing Body recognizes that implementation of such transactions may result in exposure of the County to risks such as, but not limited to, basis, counterparty credit, tax, termination, interest rate and other risks.

Pursuant to the Plan, the County intends to enter into the Swap on such date as shall be determined by the Governing Body and the Swap Counterparty, to be effective on such date as shall be determined by the Governing Body and the Swap Counterparty.

Section 2. **Qualified Interest Rate Management Agreement.** The 2011 Confirmation, which shall be substantially in the form attached hereto as *Exhibit B*, and containing such other terms presented to the Governing Body by or on behalf of the Swap Counterparty as of the date of consideration of this Ordinance, in consultation with and upon the advice of the Financial Advisor, together with such modifications from time to time as the Chairman or Vice Chairman of the Governing Body and the Financial Advisor shall approve, is hereby approved. Further, the Governing Body hereby ratifies and affirms in all respects the 2004 Swap Agreement, as attached hereto as *Exhibit B*, and its provisions as they relate to and govern the 2011 Confirmation. Pursuant to and in accordance with the terms and provisions thereof, the County approves the award of the Swap to the Swap Counterparty on private sale by negotiation, which the Governing Body hereby confirms to have been determined to be in the best financial interest of this County. The Director of Budget and Finance, with the advice of the Financial Advisor, the solicitor to the County (the "Solicitor"), and McNees Wallace & Nurick LLC, as swap counsel to the County (the "Swap Counsel"), is hereby authorized and directed to approve final terms and conditions under the Swap, as may be required, provided, however, that the rate the Swap Counterparty will pay to the County will be at least equal to .70% of one-month LIBOR plus .25%; and, the Proper Officers, or any one of such Proper Officers alone, are hereby authorized and directed to execute, to attest, to seal and to deliver the 2011 Confirmation and all other documents related to the Swap to the Swap Counterparty, as may be required, and to take any and all related, necessary or appropriate action.

Section 3. **Method of Award.** In compliance with Sections 8281(b)(3) and 8281(e) of the Act, the Governing Body, in consultation with the Financial Advisor, has determined that a private sale by negotiation, rather than a public sale or private sale by

invitation, is in the best financial interest of the County. Therefore, the Swap shall be awarded to the Swap 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 this Ordinance, the award of the Swap 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. The ratings of the Swap Counterparty meet the requirements of Section 8281(e)(2) of the Act.

Section 4. **Award of Swaps/Market Pricing Letter.** As part of completing the closing on the Swap (the "Closing"), the County will receive a written final market pricing letter from the Financial Advisor, in form and substance satisfactory to the Director of Budget and Finance, dated as of the Closing, that the terms and conditions of the Swap executed and delivered by the parties are fair and reasonable to the County as of the trade date and the date of execution and delivery. Based on the recommendations received to date from the Financial Advisor, other information provided to the Governing Body, and the market pricing letter to be received from the Financial Advisor, the Governing Body determines that the structure and terms of the Swap are in the County's best financial interest.

Section 5. **Covenants Respecting Swap Payments and Limitations Thereon.** The County hereby covenants to make the payments required under the Swap and further covenants that the County shall include the periodic scheduled amounts payable in respect of the Swap in its budget for each fiscal year in which such amounts are payable, shall appropriate such amounts from its general revenues for the payment of amounts due under the Swap, and hereby pledges its full faith, credit and taxing power to the payment of such periodic scheduled payments due under the Swap.

The County further covenants that it shall (i) include any amounts for termination payments or similar payments (the "Termination Payments") due under the Swap in its current budget at any time during a fiscal year or in a budget adopted in a future fiscal year, as the Swap shall provide, (ii) appropriate such amounts from its general revenues for the payment of such Termination Payments, and (iii) duly and punctually pay or cause to be paid from any other of its revenues or funds the Termination Payments at the dates and places and in the manner stated in the Swap. The periodic scheduled payments due from the County under the Swap shall be equally and ratably payable and secured with the debt service due on the Swapped Bonds.

The total and annual notional amounts and dates on the Swap do not and shall not exceed or extend beyond the maturity amounts and dates applicable to the Swapped Bonds. The County's obligations to make periodic scheduled payments related to the Swap and debt service due on the Swapped Bonds shall be senior in right and priority of payment to Termination Payments. The maximum annual interest rate which the County may pay, and the provisions addressing the actions to be taken if the credit rating of the Swap Counterparty changes, are set forth in the Swap and the Plan and are hereby approved.

The maximum payment obligations in each of the Enabling Ordinances are hereby amended to insert a maximum rate on net payments (excluding principal) due on the Swapped Bonds, plus maximum periodic scheduled payments (which exclude Termination Payments) under the 2011 Confirmation, of 20.0% per annum. Schedules referenced on *Exhibit*

C illustrate the maximum payments on the Swapped Bonds and the 2011 Confirmation, based on a maximum net interest rate of 25.0%, which supersede the schedules attached to or filed with each of the Enabling Ordinances, as the same may have been previously amended.

The Swap may be terminated, as provided by and pursuant to the terms thereof, at the option of the County without cause, but may not be terminated by the Swap Counterparty without cause, as described in the Swap. The County acknowledges and agrees that upon a termination of the Swap by either party, the County may owe a Termination Payment to the Swap Counterparty.

Pursuant to Section 8129 of the Act, in the event of a Termination Payment owed by the County such Termination Payment shall constitute "unfunded debt."

Section 6. **DCED Proceedings, Execution of Documents.** The Proper Officers of the County, or any one of such Proper Officers alone, are authorized and directed to: (i) prepare, verify and file a copy of this Ordinance and related proceedings with the Department of Community and Economic Development within 15 days following the enactment of this Ordinance; and (ii) take all action, execute, deliver, file and/or record all documents, and publish all notices deemed necessary or appropriate to complete the Closing on the Swap and the swap transaction.

Section 7. **Authorizing Incidental Action.** The Proper Officers of the County are hereby authorized, empowered and directed on behalf of the County to execute any and all papers and documents as shall be incidental to or necessary or appropriate in connection with the transactions authorized by this Ordinance, and documents necessary to do or cause to be done any and all acts and things necessary or proper for the execution or carrying out of the purposes of this Ordinance. All actions to date taken in connection with the Swap are hereby ratified, approved and confirmed.

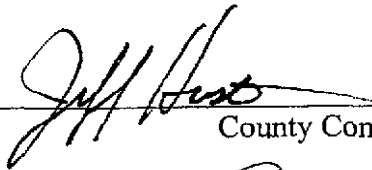
Section 8. **Rescinding Inconsistent Resolutions.** All prior Ordinances or parts thereof inconsistent herewith are hereby rescinded, canceled and annulled.

Section 9. **Effective Date; Governing Law and Amendments.** This Ordinance is enacted pursuant to the provisions of the Act and all of the mandatory provisions thereof shall apply to this Ordinance whether or not explicitly stated herein. This Ordinance shall be effective in accordance with the Act. This Ordinance may at any time be amended in accordance with law. The laws of the Commonwealth of Pennsylvania shall govern the construction and interpretation of this Ordinance.

Section 10. **Swap Counsel.** The County hereby appoints McNeese, Wallace & Nurick, LLC, Harrisburg, as Swap Counsel to the County.

DULY ADOPTED, by the Board of Commissioners, in lawful session duly assembled,
this 26st day of January, 2011.

COUNTY OF DAUPHIN, PENNSYLVANIA

By: 
County Commissioner

By: 
County Commissioner

By: George P. Hartwick, III
County Commissioner

ATTEST:


(Deputy) Chief Clerk

(SEAL)

EXHIBIT A
Interest Rate Management Plan

EXHIBIT B
Swap

DRAFT: February 1, 2011 (Preliminary, subject to change)

Short form Confirmation requires an executed ISDA, subject to further review.

[LOGO]

Fax # 1-717-257-1604

[TBD 2011]

COUNTY OF DAUPHIN, PA.

DAUPHIN COUNTY ADMINISTRATION BUILDING
2 SOUTH SECOND STREET - 4TH FLOOR
HARRISBURG , PA
USA, 17101

Attention: MICHAEL YOHE

Re: SWAP Transaction MATURING 15 Nov 2024 FOR USD 45,040,000.00

(Our Ref. No. 1953867 / 2047380)

Dear Sir or Madam:

The purpose of this letter is to set forth the terms and conditions of the Transactions entered into between us on the Trade Date specified below (the Transaction). This letter constitutes a Confirmation as referred to in the ISDA Master Agreement specified below.

The definitions and provisions contained in the 2006 ISDA Definitions (as published by the International Swaps and Derivatives Association, Inc.) are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms part of, and is subject to, the ISDA Master Agreement dated as of 29 Apr 2004, as amended and supplemented from time to time (the "Agreement") between you and us. All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

2. The terms of the particular Swap Transaction to which this Confirmation relates are as follows:-

Notional Amount: USD 45,040,000.00

Trade Date: [TBD 2011]

Effective Date: [TBD 2011]

Termination Date: 15 Nov 2024

Floating Amounts:

Floating Notional Amount: **USD 45,040,000.00 (see Schedule A attached)**

Floating Rate Payer: **ROYAL BANK OF CANADA ("Party A")**

Spread **[TBD] percent**

Floating Rate Payer Payment Dates: **SEMI-ANNUALLY on 15 May and 15 Nov commencing on 15 May 2011 subject to adjustment in accordance with the Modified Following Business Day Convention and there will be no adjustment to the Calculation Period.**

Floating Rate for initial Calculation Period: **To be determined**

Floating Rate Option: **USD-LIBOR-BBA * 70.00000%**

Designated Maturity: **1MONTH**

Floating Rate Day Count Fraction: **Actual/Actual**

Reset Dates: **On the Effective Date and MONTHLY thereafter on the fifteenth of each month.**

Method of Averaging: **Not applicable**

Business Day (for Payments): **New York**

Business Day (for Rate Resets): **London**

Compounding: **Not applicable.**

Fee: **USD [TBD] payable by Party A to Party B on [TBD 2011]**

Floating Amounts:

Floating Notional Amount: **USD 45,040,000.00 (see Schedule A attached)**

Floating Rate Payer: **COUNTY OF DAUPHIN, PA. ("Party B")**

Spread **0.00000 percent**

Floating Rate Payer Payment Dates: **SEMI-ANNUALLY on 15 May and 15 Nov commencing on 15 May 2011 subject to adjustment in accordance with the Modified Following Business Day Convention and there will be no adjustment to the Calculation Period.**

Floating Rate for initial Calculation Period: **To be determined**

Floating Rate Option: **USD-SIFMA Municipal Swap Index**

Business Day:

New York

Compounding:

Not applicable.

Fee:

Not applicable.

3. Account Details

| | | |
|-------------|-------------------------------|--|
| Payments to | ROYAL BANK OF CANADA | CHASUS33 JPMORGAN CHASE BANK N.A. NEW YORK Account #: 001-1-153004 ROYCCAT3IMM |
| Payments to | COUNTY OF DAUPHIN, PA. | M & T BANK HARRISBURG //FW022000046 Account of: COUNTY OF DAUPHIN CONCENTRATION ACCOUNT Account #: 0060776455 |

4. Offices:

(a) The Office of **COUNTY OF DAUPHIN, PA.** for the Transaction is **HARRISBURG**

(b) The Office of **ROYAL BANK OF CANADA** for the Transaction is **TORONTO**

5. Other.

(a) RELATED BONDS

For purposes of this Transaction "Related Bonds" shall mean Party B's **General Obligation Bonds, Series A of 2002 (maturities 2014 to and including 2024), General Obligation Bonds, Series C of 2005 (maturities 2014 to and including 2024) and General Obligation Bonds, Series of 2006 (maturities 2014 to and including 2023).**

(b) MAXIMUM NET SCHEDULED PAYMENTS

The maximum net scheduled payments by fiscal year by Party B pursuant to this Transaction will not exceed **20.00%** per annum for periodic scheduled payments pursuant to this Transaction, not including any termination payments, and the interest rate payable on the Related Bonds.

(c) FEE PAYMENT TO PARTY B

At the direction of Party B, Party A has agreed to make a one-time Fee Payment to Party B as specified in Part 2 of this Confirmation. That Fee Payment is reflected in, and has decreased, the floating rate payable by Party A hereunder.

This Confirmation 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 upon your confirmation in the manner prescribed hereunder, will be deemed for all purposes to be a legally binding transaction.

Please confirm that the foregoing correctly sets forth the terms of our agreement by signing in the space provided below and returning same to us by facsimile transmission, or send to us within two (2) Business Days a letter by facsimile transmission or telex or electronic messaging system similar to this letter which sets forth the material terms of the foregoing Transaction to which this Confirmation relates and which indicates your agreement to those terms.

Royal Bank of Canada confirms, and **COUNTY OF DAUPHIN, PA.** acknowledges, that this Confirmation has been executed by Royal Bank of Canada by means of a computer-based system and that such execution shall have the same legal effect as if a signature had been manually written on such Confirmation and that such Confirmation shall be deemed to have been signed by Royal Bank of Canada for the purposes of any statute or rule of law that requires such Confirmation to be signed. The parties acknowledge that in any legal proceedings between them respecting or in any way relating to this Confirmation, each party expressly waives any right to raise any defense or waiver of liability based upon the execution of this Confirmation by Royal Bank of Canada by means of an electronically-produced signature.

Telephone No.: **416-842-4578**

Facsimile No.: **416-842-4902**

Yours sincerely,

Confirmed as of the date first written:

For and on behalf of

For and on behalf of

ROYAL BANK OF CANADA

COUNTY OF DAUPHIN, PA.

By: [_____]

By: _____

Authorized signature

Authorized signature

ROYAL BANK OF CANADA pays USD Float to COUNTY OF DAUPHIN, PA.
 (Our Ref. No. 1953867 / 2047380)

PRELIMINARY, ACTUAL CASH FLOWS ARE SYSTEM GENERATED.

| <u>From</u> <u>and Including</u> | <u>To</u> <u>but excluding</u> | <u>Notional</u> <u>Balance</u> | <u>Amortization</u> |
|-------------------------------------|-----------------------------------|-----------------------------------|---------------------|
| TBD | 05/15/2011 | 45,040,000 | - |
| 05/15/2011 | 11/15/2011 | 45,040,000 | - |
| 11/15/2011 | 05/15/2012 | 45,040,000 | - |
| 05/15/2012 | 11/15/2012 | 45,040,000 | - |
| 11/15/2012 | 05/15/2013 | 45,040,000 | - |
| 05/15/2013 | 11/15/2013 | 45,040,000 | - |
| 11/15/2013 | 05/15/2014 | 45,040,000 | - |
| 05/15/2014 | 11/15/2014 | 45,040,000 | 2,540,000 |
| 11/15/2014 | 05/15/2015 | 42,500,000 | - |
| 05/15/2015 | 11/15/2015 | 42,500,000 | 3,025,000 |
| 11/15/2015 | 05/15/2016 | 39,475,000 | - |
| 05/15/2016 | 11/15/2016 | 39,475,000 | 3,170,000 |
| 11/15/2016 | 05/15/2017 | 36,305,000 | - |
| 05/15/2017 | 11/15/2017 | 36,305,000 | 3,335,000 |
| 11/15/2017 | 05/15/2018 | 32,970,000 | - |
| 05/15/2018 | 11/15/2018 | 32,970,000 | 3,525,000 |
| 11/15/2018 | 05/15/2019 | 29,445,000 | - |
| 05/15/2019 | 11/15/2019 | 29,445,000 | 3,720,000 |
| 11/15/2019 | 05/15/2020 | 25,725,000 | - |
| 05/15/2020 | 11/15/2020 | 25,725,000 | 5,140,000 |
| 11/15/2020 | 05/15/2021 | 20,585,000 | - |
| 05/15/2021 | 11/15/2021 | 20,585,000 | 5,435,000 |
| 11/15/2021 | 05/15/2022 | 15,150,000 | - |
| 05/15/2022 | 11/15/2022 | 15,150,000 | 5,755,000 |
| 11/15/2022 | 05/15/2023 | 9,395,000 | - |
| 05/15/2023 | 11/15/2023 | 9,395,000 | 6,075,000 |
| 11/15/2023 | 05/15/2024 | 3,320,000 | - |
| 05/15/2024 | 11/15/2024 | 3,320,000 | 3,320,000 |

COUNTY OF DAUPHIN, P.A. pays USD Float to ROYAL BANK OF CANADA
(Our Ref. No. 1953867 / 2047380)

Commodity Futures

(Multicurrency—Cross Border)

ISDA[®]
International Swap Dealers Association, Inc.
MASTER AGREEMENT

dated as of April 29, 2004

Royal Bank of Canada and County of Dauphin, Pennsylvania

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 14 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 Offices through which the parties make and receive payments or deliveries.

(d) *Deduction or Withholding for Tax.*

(i) *Gross-Up.* All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

(1) promptly notify the other party ("Y") of such requirement;

(2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;

(3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(ii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) *Liability. If: —*

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(c) *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 and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) 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, is 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)), 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.

(e) *Payer Tax Representation*. Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) *Payee Tax Representations*. Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

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 or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case 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.

(d) *Tax Agreement.* It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) *Payment of Stamp Tax.* Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other 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(e) 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(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) 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 (other than a representation under Section 3(e) or (f)) 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 (1) 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 in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event

(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) *Tax Event*. Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) *Tax Event Upon Merger*. The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or

(2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) *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

(v) *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). Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:--

(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) *Transfer to Avoid Termination Event.* If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the

terms proposed.

(iii) *Two Affected Parties.* If an Illegality under Section 5(b)(i)(1) or a Tax Event 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) on action to avoid that Termination Event.

(iv) *Right to Terminate.* If: —

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, 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 under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or 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(e) 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 account 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) in the Termination Currency, 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.

(c) *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 Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of 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 Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of 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 Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of 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 relevant 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) is a reasonable 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

Subject to Section 6(b)(ii), 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 or 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(e).

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

8. Contractual Currency

(a) *Payment in the Contractual Currency.* Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) *Judgments.* To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will

be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) *Separate Indemnities.* To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) *Evidence of Loss.* For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. 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 will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) *No Waiver of Rights.* A 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.

10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.

(b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.

(c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any 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.

12. 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 Addresses.* 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.

13. 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) submits 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) *Service of Process.* Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) *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.

14. 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, Tax Event or Tax Event Upon Merger, 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.

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

"Change in Tax Law" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

"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 it) 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)(iv).

"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).

"Indemnifiable Tax" means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this

Agreement or a Credit Support Document).

"law" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) 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 and, if different, in the principal financial centre, if any, of the currency of such payment, (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, the Termination Currency Equivalent of an amount that party reasonably determines 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 related 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)(i)(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 11. 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, if any, that would 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 equivalent 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 would 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) on or as soon as 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(c), and, 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 remaining after 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).

"Office" means a branch or office of a party, which may be such party's head or home office.

"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.

"Relevant Jurisdiction" means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

"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 Termination Currency Equivalent of the Market Quotations (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 meanings specified in the Schedule.

"Specified Indebtedness" means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as 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.

"Stamp Tax" means any stamp, registration, documentation or similar tax.

"Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

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

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

"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 Currency" has the meaning specified in the Schedule.

"Termination Currency Equivalent" means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

"Termination Event" means an Illegality, a Tax Event or a Tax Event Upon Merger 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" owing to any 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

value of that which was (or would have been) required to be delivered as of the originally scheduled date 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 have been paid 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 obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents 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.

ROYAL BANK OF CANADA

By: *Susan Heard*
Name: **SUSAN HEARD**
Title: **MANAGING DIRECTOR**
RBC DOMINION SECURITIES INC.
Date: *June 17/04*

COUNTY OF DAUPHIN, PENNSYLVANIA

By: *Jeff Kaste* *6/30/04*
Name: **Jeff Kaste**
Title: **Chairman**
Date: *6/30/04*

By: *Dominic D. DiFrancesco, II*
Name: **Dominic D. DiFrancesco, II**
Title: **Vice Chairman**
Date: *6/30/04*

By: *George P. Hartwick, III*
Name: **George P. Hartwick, III**
Title: **Secretary**
Date: *6/30/04*

ISDA
International Swaps and Derivatives Association, Inc.

SCHEDULE
to the
1992 Master Agreement

dated as of April 29, 2004

between

Royal Bank of Canada
("Party A")

and

County of Dauphin, Pennsylvania
("Party B")

Part 1. Termination Provisions.

(a) "Specified Entity" means in relation to Party A for the purpose of:-

| | |
|--------------------|------|
| Section 5(a)(v), | None |
| Section 5(a)(vi), | None |
| Section 5(a)(vii), | None |
| Section 5(b)(iv), | None |

In relation to Party B for the purpose of:-

| | |
|--------------------|------|
| Section 5(a)(v), | None |
| Section 5(a)(vi), | None |
| Section 5(a)(vii), | None |
| Section 5(b)(iv), | None |

(b) "Specified Transaction" will have the meaning specified in Section 14 of this Agreement.

(c) The "Cross Default" provisions of Section 5(a)(vi) will apply to Party A and will apply to Party B.

If such provisions apply:-

The "." at the end of the definition of "Specified Indebtedness" in Section 14 of this Agreement shall be deleted and replaced by the following: ", except that (i) with respect to Party A, such term shall not include obligations in respect of deposits received in the ordinary course of Party A's banking business, if any."

"Threshold Amount" means in relation to each of Party A, 1% of its shareholders' equity (as disclosed in its most recent financial statements) or the equivalent in any other currency, and in relation to Party B, USD 5,000,000.

(d) The "Credit Event Upon Merger" provisions of Section 5(b)(iv) will apply to Party A and will apply to Party B.

(e) The "Automatic Early Termination" provision of Section 6(a) will not apply to Party A and will not apply to Party B.

(f) **Payments on Early Termination.** For the purpose of Section 6(e) of this Agreement:-

- (i) Market Quotation will apply.
- (ii) The Second Method will apply.

(g) "Termination Currency" means United States Dollars.

(h) **Additional Termination Event** will apply. The following shall constitute an Additional Termination Event:-

1. With respect to Party A and pertaining to Transactions which are not Insured Transactions as such term is defined under Part 5 (15) hereof:

Either:

(a) the reduction of the long-term unsecured, unsubordinated debt rating of Party A below a rating of:

- (i) A- by Standard & Poor's Rating Service ("S&P"); or
- (ii) A3 by Moody's Investors Service Inc. ("Moody's"); or

(b) the cessation by either S&P or Moody's (together referred to herein as the "Rating Agencies") to issue ratings in respect of the long-term unsecured, unsubordinated debt of Party A.

2. With respect to Party A and pertaining to Transactions which are Insured Transactions as such term is defined under Part 5 (16) hereof:

Either:

(a) the reduction of the long-term unsecured, unsubordinated debt rating of Party A below a rating of:

- (j) A- by Standard & Poor's Rating Service ("S&P"); or
- (ii) A3 by Moody's Investors Service Inc. ("Moody's"); or

(b) the withdrawal or suspension by either S&P or Moody's to issue ratings in respect of the long-term unsecured, unsubordinated debt of Party A and such ratings are not reinstated within seven business days.

3. With respect to Party B and pertaining to Transactions which are not Insured Transactions as such term is defined under Part 5 (16) hereof:-

Either:

(a) the reduction of the underlying, unenhanced general obligation rating of Party B, below a rating of:

- (i) A- by "S&P"; or
- (ii) A3 by "Moody's"; or

(b) the cessation by either S&P or Moody's to issue ratings in respect of the underlying, unenhanced general obligation rating of Party B.

In each case, the party whose rating is so reduced or who ceases to be so rated shall be the Affected Party for purposes of this Additional Termination Event.

In the event that one or both of the Rating Agencies cease providing rating services generally, or cease providing rating services in regard to long-term unsecured, unsubordinated debt specifically, the parties hereto shall mutually agree upon one or more alternate rating agencies and shall designate the rating level by such rating agency or agencies for the purposes of this provision.

Or:

An Additional Termination Event shall occur on the date when all of Party B's Related Bonds (as such term is defined in a Confirmation) are no longer outstanding. In such event, Party A and Party B shall be the Affected Parties for purposes of this Additional Termination Event.

4. **Election by Party B to Terminate Without Cause** – In accordance with Pennsylvania law, Party B may at will and without cause at its option by not more than 20 days notice to Party A specifying election to terminate without cause, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of an outstanding Transactions, or as an Early Termination Date in respect of part of a Transaction through reduction of the notional amount; provided, however, that any such partial reduction will be subject to a minimum notional reduction of USD 1,000,000 and limited to no more than one (1) reduction per calendar year. In such event, Party A and Party B shall be the Affected Parties for purposes of this Additional Termination Event. Party B may not optionally terminate this Transaction unless Party B also provides evidence reasonably satisfactory to Party A and the Insurer that Party B has or will have on the termination date available funds, without regard to the Swap Insurance Policy with which to pay any amount due to Party A as a result of such termination. Early termination is not permitted by Party A except for the Events of Default and Termination Events as outlined in Part 1(h)(3) above, or with respect to Insured Transactions as specified in Part 5(16) of this Schedule.

Part 2. Tax Representations.

(a) **Payer Representations.** For the purpose of Section 3(e) of this Agreement, Party A will make the following representation and Party B will make the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, provided that it shall not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(b) **Payee Representations.**

(i) **Party A.** For the purpose of Section 3(f) of this Agreement, Party A makes the representations specified below:

- (A) It is a bank organized under the laws of Canada and (ii) it is a foreign corporation for U.S. federal tax purposes.
 - (B) In respect of a Transaction the income from which is attributable to its New York office, each payment received or to be received by it in connection with this Agreement will be effectively connected with its conduct of a trade or business in the United States.
 - (C) In every other case, (i) each payment received or to be received by it will be received by a foreign person or a non-U.S. branch of a foreign person and (ii) no part of any payments received or to be received by it in connection with this Agreement is attributable to a trade or business carried on by it in the United States.
- (ii) Party B. For the purpose of Section 3(f) of this Agreement, Party B makes the representations specified below:

- (A) It is a political subdivision of the Commonwealth of Pennsylvania existing under the laws of the Commonwealth of Pennsylvania and it is a political subdivision of the Commonwealth of Pennsylvania for U.S. federal tax purposes.

Part 3. Agreement to Deliver Documents.

For the purpose of Sections 4(a)(i) and (ii) of this Agreement, each party agrees to deliver the following documents, as applicable:-

- (a) Tax forms, documents or certificates to be delivered are:-

| Party required to deliver document | Form/Document/Certificate | Date by which to be delivered |
|------------------------------------|--|---|
| Party A | With respect to any payments described in Part 2(b)(i)(B) of this Schedule, U.S. Internal Revenue Service Form W-8ECI (or any successor of such Form), completed accurately and in a manner reasonably acceptable to Party B | (1) Before the first payment date under this Agreement (2) before December 31 of each third succeeding calendar year, (3) promptly upon the earlier of reasonable demand by Party B and learning that any such Form is required, (4) prior to the expiration or obsolescence of any previously delivered Form, and (5) promptly upon the information on any such previously delivered Form becoming inaccurate or incorrect |
| Party A | With respect to any payments described in Part 2(b)(i)(C) of this Schedule, U.S. Internal Revenue Service Form W-8BEN (or any successor of such Form), completed accurately and in a manner reasonably acceptable to Party B | (1) Before the first payment date under this Agreement (2) before December 31 of each third succeeding calendar year, (3) promptly upon the earlier of reasonable demand by Party B and learning that any such Form is required, (4) prior to the expiration or obsolescence of any previously delivered |

| Party required to deliver document | Form/Document/Certificate | Date by which to be delivered |
|------------------------------------|---|---|
| Party B | U.S. Internal Revenue Service Form W-9 (or any successor of such Form), completed accurately and in a manner reasonably acceptable to Party A | Form, and (5) promptly upon the information on any such previously delivered Form becoming inaccurate or incorrect 1) Before the first payment date under this Agreement (2) promptly upon the earlier of reasonable demand by Party A and learning that any such Form is required, (3) prior to the expiration or obsolescence of any previously delivered Form, and (4) promptly upon the information on any such previously delivered Form becoming inaccurate or incorrect |
| Party A and Party B | Any other form or document, accurately completed and in a manner reasonably satisfactory to the other party, that may be required or reasonably requested in writing in order to allow the other party to make a payment under this Agreement, including any Credit Support Document, without any deduction or withholding for or on account of any Tax or with such deduction at a reduced rate. | Promptly upon request of other party. |

(b) Other documents to be delivered are:-

| Party required to deliver document | Form/Document/Certificate | Date by which to be delivered | Covered by Section 3(d) representation |
|------------------------------------|---|--|--|
| Party A | Power of Attorney and Certificate of Incumbency | Upon execution of this Agreement, and, if requested, each Confirmation | Yes |
| Party A | Copy of extract of resolutions with respect to execution of agreements. | Upon execution of this Agreement | Yes |
| Party B | Copies of the incorporating documents (or other equivalent or analogous laws) applicable to Party B certified as the date hereof as true and in full force and effect | Upon execution of this Agreement | Yes |
| Party B | Certified copies of all resolutions required to authorize the signing, delivery and performance of this Agreement by Party B and appointing and empowering individuals with specimens of their respective signatures for and on behalf of | Upon execution of this Agreement, and, if requested, each Confirmation | Yes |

| Party required to deliver document | Form/Document/Certificate | Date by which to be delivered | Covered by Section 3(d) representation |
|------------------------------------|--|--|--|
| | Party B to sign and deliver this Agreement and sign under seal or otherwise and deliver all agreements, documents and instruments, and give all instructions, in connection herewith | | |
| Party A | Opinion of internal counsel of Party A | Upon execution of this Agreement | No |
| Party B | Opinion of legal advisors to Party B substantially in the form attached hereto and satisfactory to Party A | Upon execution of this Agreement | No |
| Party B | Certified copy of documents filed with the Pennsylvania Department of Community and Economic Development | Deliverable upon the execution of this Agreement | Yes |
| Party B | Swap Policy | Deliverable upon the effective date of the Transaction | Yes |
| Party B | Opinion of FSA re Commitment | Deliverable upon the execution of this Agreement | No |
| Party B | Opinion of FSA re Policy | Deliverable upon delivery of Policy | No |

Part 4. Miscellaneous.

(a) **Address for Notices.** For the purpose of Section 12(a) of this Agreement:-

Address for notices or communications to Party A with respect to this Agreement shall be given to it at the following address:

Address: Royal Bank of Canada
2nd Floor
Royal Bank Plaza
200 Bay Street
Toronto, Ontario
CANADA M5J 2W7

Attention: Managing Director, Global Middle Office

Facsimile No.: (416) 842-4334

Unless otherwise provided herein, address for notices or communications to Party A relating to a particular Swap Transaction concluded with its Toronto office, shall be given to it at the following address:

| |
|--|
| Swap Transaction |
| Royal Bank of Canada 5 th Floor, North Tower Royal Bank Plaza 200 Bay Street Toronto, Ontario CANADA M5J 2W7 |
| Attention: Manager, Capital Market Products Operations |
| Facsimile No.: (416) 842-4303 or (416) 842-4304 |

Address for notices or communications to Party A relating to a particular Swap Transaction concluded with its New York Office, shall be given to it at the following address:-

| |
|--|
| Swap Transaction |
| Royal Bank of Canada New York Branch One Liberty Plaza, 2 nd Floor 165 Broadway New York, New York 10006-1404 U.S.A |
| Attention: RBC DS Global Markets Capital Markets Group |
| Telex: 420464 Answerback: RBOC |
| Facsimile No.: 212-426-3018 |

Address for notices or communications to Party B with respect to this Agreement and any Transactions shall be given to it at the following address:

Address: County of Dauphin
County Administration Building
2 South Second Street
Harrisburg, PA 171001

Attention: Budget Director
Facsimile: (717) 257-1604
Telephone: (717) 780-6309

(b) **Process Agent.** For the purpose of Section 13(e) of this Agreement:-

Party A appoints as its Process Agent - None

Party B appoints as its Process Agent - None

(c) **Offices.** The provisions of Section 10(a) will apply to Party A and Party B; provided, however, that without in any way limiting the effect of the foregoing, each party agrees to deal first with the Office of the other party specified in the Confirmation rather than such party's head or home office with respect to resolving any default that results solely from wire transfer difficulties or an error or omission of an administrative or operational nature. Notwithstanding the foregoing, a party (the "Owed Party") may seek payment from the head or home office of the other party (the "Owing Party") with respect to this

Agreement in the event that an amount payable to the Owed Party by the Owing Party pursuant to this Agreement as a result of the designation of an Early Termination Date has not been paid in full when due.

(d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:-

Party A is a Multibranch Party and may act through its Toronto and New York offices.

Party B is not a Multibranch Party.

(e) **Calculation Agent.** The Calculation Agent is Party A unless otherwise specified in a Confirmation in relation to the relevant Transaction. With respect to Section 5(a)(ii) of the Agreement, if a party hereto is designated as the Calculation Agent for any Transaction, then Section 5(a)(ii) shall not include any failure by that party to comply with its obligations as Calculation Agent and the sole remedy of the other party for such failure shall be the right, upon notice to the Calculation Agent, to designate itself or a third party as a replacement Calculation Agent.

(e) **Credit Support Document.** Details of any Credit Support Document: - None.

(f) **Credit Support Provider.** Credit Support Provider means in relation to Party B: None

(h) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York, except that the capacity of Party B to enter into this Agreement or any transaction hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

(i) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will apply to all Transactions.

(j) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement. Section 3(c) is hereby amended by deletion of the phrase "or any of its Affiliates" in lines 1 and 2 thereof.

Part 5. Other Provisions.

1. **Definitions.** This Agreement, each Confirmation, and each Transaction are subject to the 1992 ISDA U.S. Municipal Counterparty Definitions (the "1992 Muni Definitions") and the 2000 ISDA Definitions (the "2000 Definitions" and, together with the 1992 Muni Definitions, the "Definitions"), in each case as published by the International Swaps and Derivatives Association, Inc., and will be governed in all respects by the provisions set forth in the Definitions with references to "Swap Transaction" therein being a reference to "Transaction" for purposes of this Agreement. The provisions of the Definitions are incorporated by reference in, and made part of, this Agreement as if set forth in full in this Agreement and each Confirmation. In the event of any inconsistency between (i) (A) the provisions of this Schedule and the Master Agreement of which it is a part; and (B) the Definitions, the provisions set forth in this Schedule will prevail; and (ii) in the event of any inconsistency between (A) the provisions of a Confirmation, and (B) any of this Schedule, the Master Agreement or the Definitions, the provisions set forth in the Confirmation will prevail.

2. **Illegality.** For purposes of Section 5(b)(i), the obligation of Party A to comply with any official directive issued or given by any government agency or authority with competent jurisdiction which has the result referred to in Section 5(b)(i) will be deemed to be an "illegality".

3. **Payments on Early Termination - Events of Default - Second Method.**

Section 6 of this Agreement is amended by the inclusion of the following Section 6(f):

"(f) Conditions to Certain Payments. Notwithstanding the provisions of Section 6(e)(1)(3) and (4), as applicable, if the amount referred to therein is a positive number, the Defaulting Party will pay such amount to the Non-defaulting Party, and if the amount referred to therein is a negative number, the Non-defaulting Party shall have no obligation to pay any amount thereunder to the Defaulting Party unless and until the conditions set forth in (i) and (ii) below have been satisfied at which time there shall arise an obligation of the Non-defaulting Party to pay to the Defaulting Party an amount equal to the absolute value of such negative number less any and all amounts which the Defaulting Party may be obligated to pay under Section 11:

- (i) the Non-defaulting Party shall have received confirmation satisfactory to it in its sole discretion (which may include an unqualified opinion of its counsel) that (x) no further payments or deliveries under Section 2(a)(1) or 2(e) in respect of Terminated Transactions will be required to be made in accordance with Section 6(c)(ii) and (y) each Specified Transaction shall have terminated pursuant to its specified termination date or through the exercise by a party of a right to terminate and all obligations owing under each such Specified Transaction shall have been fully and finally performed; and
- (ii) all obligations (contingent or absolute, matured or unmatured) of the Defaulting Party and any Affiliate of the Defaulting Party to make any payment or delivery to the Non-defaulting Party or any Affiliate of the Non-defaulting Party shall have been fully and finally performed."

4. **Execution.** Section 9(e)(ii) of this Agreement is deleted and replaced in its entirety with the following provision:

"(ii) Execution of Transactions. 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 exchange of electronic messages on an electronic messaging system, facsimile transmissions or other delivery, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. With respect to Confirmations created by an exchange of electronic messages, facsimile transmissions or other delivery, only those terms which match and are contained in the messages sent by both parties will form the Confirmation of the Transaction. Where a Transaction is confirmed by means of electronic messaging system (including, without limitation, circumstances where such electronic message is printed and faxed or otherwise delivered by one party to the other party) such confirmation will constitute a 'Confirmation' as referred to in this Agreement even where not so specified in the Confirmation. The location, branch or office of each party to which payment or delivery is required under the terms of a Transaction shall be deemed to be an "Office" for purposes of Section 10 of the Agreement even where the Confirmation does not expressly identify such location, branch or office as an "Office".

5. **Service of Process.** With respect to the provisions of Section 13(c) of the Agreement, the reference herein to Section 12 to the contrary notwithstanding, no consent is given by either party to service of process by telex, facsimile transmission or electronic messaging system.
6. **Equivalency Clause.** For the purpose of disclosure pursuant to the Interest Act (Canada), if a rate of interest payable under the Agreement (the "Agreement Interest Rate") is calculated on a basis other than a full calendar year, then an equivalent rate of interest calculated on a basis of a full calendar year (the "Equivalent Interest Rate") must also be disclosed. In such circumstances, the Equivalent Interest Rate may be determined by multiplying the Agreement Interest Rate by a fraction, the numerator of which is the actual number of days in the calendar year in which the Equivalent Interest Rate is to be ascertained and the denominator of which is the number of days comprising the basis on which the Agreement Interest Rate is calculated.
7. **Set-Off.** Section 6 of this Agreement is amended by adding the following Section as Section 6(g):

"(g) **Set-Off.** Any Amount (the "Early Termination Amount") payable to one party (the "Payee") by the other party (the "Payer") under Section 5(e), in circumstances where there is a Defaulting Party or one Affected Party in the case where a Termination Event under Section 5(b)(iv) has occurred, will, at the option of the party ("X") other than the Defaulting Party or the Affected Party (and without prior notice to the Defaulting Party or the Affected Party), be reduced by its set-off against any amount(s) (the "Other Agreement Amount") payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) or undertaking(s) issued or executed by one party to, or in favour of, the other party (and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off). X will give notice to the other party of any set-off effected under this Section 6(f). For this purpose, either the Early Termination Amount or the Other Agreement Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party is able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency. If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained. Nothing in this Section 6(f) shall be effective to create a charge or other security interest. This Section 6(f) shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which either party is at any time otherwise entitled (whether by operation of law, contract or otherwise)."

8. **Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for the Transaction):
- (a) **Non Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction. It has not made any representation, nor is it relying on any communication (written or oral) of the other party, with respect to whether, how, when or in what manner a derivative transaction will be hedged; it being understood that this representation expressly supersedes any communication (written or oral) which may have occurred between the parties with respect to whether, how, when or in what manner a derivative transaction may be hedged.
 - (b) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming and assumes, the risks of that Transaction.
 - (c) **Status of Parties.** The other party is not acting as a fiduciary for or as an advisor to it in respect of that Transaction.
9. **Electronic Signatures.** Party A confirms, and Party B acknowledges, that Party A uses a computer-based system to execute certain Confirmations and that each such Confirmation executed by Party A by means of an electronically-produced signature shall have the same legal effect as if such signature had been manually written on such Confirmation and that each such Confirmation shall be deemed to have been signed for the purposes of any statute or rule of law that requires such Confirmation to be signed. The parties acknowledge that in any legal proceedings between them respecting or in any way relating to this Agreement, each party expressly waives any right to raise

any defence or waiver of liability based upon the execution of a Confirmation by Party A by means of an electronically-produced signature. This provision shall apply to all Confirmations outstanding as of the date hereof and executed by Party A by means of an electronically-produced signature, and to all Confirmations in respect of Transactions entered into between Party A and Party B after the date hereof.

10. **Consent to Recording.** The parties agree that each may electronically record all telephonic conversations between their trading and marketing personnel and that any such tape recordings may be submitted in evidence in any Proceedings relating to the Agreement. In the event of any dispute between the parties as to the terms of any Transaction governed by this Agreement, the parties may use the electronic recordings as the preferred evidence of the terms of the Transaction, notwithstanding the existence of any writing to the contrary.

11. **Representations, Warranties and Acknowledgments Relating to Status as "Eligible Contract Participant".** Each party represents and warrants to the other party that:

(i) it is an "eligible contract participant" within the meaning of Commodities Futures Modernization Act of 2000 (the "Act"); and

(ii) it has entered into this Agreement (including each Transaction evidenced hereby) in conjunction with its line of business (including financial intermediation services) or the financing of its business.

In addition, each party acknowledges and agrees that (A) this Agreement and each Transaction constitutes a "swap agreement" within the meaning of the Act; (B) neither this Agreement or any Transaction is one of a fungible class of agreements that are standardized as to their material economic terms, within the meaning of the Act, and the material economic terms of each Transaction are subject to individual negotiation; and (C) the creditworthiness of the other party was or will be a material consideration in entering into or determining the terms of this Agreement and each Transaction, including pricing, cost or credit enhancement terms of the Agreement or Transaction, within the meaning of the Act.

12. **Waiver of Jury Trial.** Each party hereto irrevocably waives any and all right to trial by jury in any suit, action or proceeding arising out of or relating to this Agreement or any Transaction hereunder.

13. **Party B Covenants.** Party B covenants as follows:

a. Party B obligations under this Agreement will be paid from Party B's general revenues.

b. Party B will make all payments required by this Agreement and covenants with Party A that: (1) Party B will include the periodic scheduled amounts payable under this Agreement for each fiscal year in its budget for that fiscal year; (2) Party B will appropriate from its general revenues amounts due under this Agreement; and (3) Party B will pledge its full faith, credit and taxing power for the budgeting, appropriation and payment of periodic scheduled payments due under this Agreement.

c. The following will be equally and ratably payable and secured under Party B's covenants to budget funds, appropriate funds, and pledge Party B's full faith, credit and taxing power: (i) periodic scheduled payments due under this Agreement; and (ii) the debt service due on the Related Bonds.

d. Periodic scheduled payments due under this Agreement and debt service due on the Related Bonds, will be senior in right and priority of payment to termination payments due under this Agreement. Termination payments due under this Agreement will be subordinate to periodic scheduled payments due under this Agreement and debt service due on the Related Bonds.

14. **Jurisdiction.** Section 13(b) of this Agreement is deleted and replaced in its entirety with the following provisions:

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

(i) submits to the exclusive jurisdiction of the Courts of the Commonwealth of Pennsylvania and the United States District Court located in the [Middle] District of Pennsylvania; 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.

(iii) Nothing in the Agreement precludes either party from bringing Proceedings in any other jurisdiction to enforce any judgment obtained in any Proceedings referred to in the preceding sentence, nor will the bringing of such enforcement Proceedings in any one or more jurisdictions preclude the bringing of enforcement Proceedings in any other jurisdiction.

15. **Immunity.** Section 3 of this Agreement is hereby amended by the additional of the following subsection "(g)" thereto:--

"(g) **Immunity.** Party A represents that it is not entitled to claim immunity on the grounds of sovereignty or other similar grounds with respect to itself or its revenues or assets (irrespective of their use or intended use) 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) or (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be made subject to in any Proceeding (as defined in Section 13(b)) in the courts of any jurisdiction and no such immunity (whether or not claimed) may be attributed to such party or its revenues or assets. Party B represents that although Party B, as an instrumentality of the Commonwealth of Pennsylvania, is entitled to immunity on the grounds of sovereignty in certain situations, Proceedings may be brought against Party B for contract claims including, but not limited to, payment obligations under this Agreement, in such courts and tribunals in which such Proceedings may be brought against Party B, and Party B is not entitled to claim immunity on the grounds of sovereignty or other similar grounds with respect to such claims."

16. **Swap Insurer Requirements.**

The following provisions shall apply to any Transactions for which a Swap Policy (the "Swap Policy") has been issued by Financial Security Assurance Inc. (the "Swap Insurer"), for the account of Party B, as principal, and Party A, as beneficiary (the "Insured Transactions").

- (I) Designation of Early Termination Date. Notwithstanding anything to the contrary in Section 6 of this Agreement, if any:

- (A) Event of Default in respect of any Insured Transaction under this Agreement occurs;
or
- (B) Termination Event in respect of any Insured Transaction under this Agreement occurs;

then, in either such case, neither Party A nor Party B shall designate an Early Termination Date in respect of any such Insured Transaction unless:

- (W) Either (a) the reduction of the financial strength rating or claims paying rating of Swap Insurer is below a rating of:

- (i) A- By Standard & Poor's Rating Service ("S&P"); or
- (ii) A3 by Moody's Investors Service Inc. (Moody's); or

(b) the withdrawal or suspension by either S&P or Moody's (together referred to herein as the "Rating Agencies") of a rating in respect of the financial strength rating or the claims paying rating of Swap Insurer and such rating is not reinstated within seven (7) business days.

- (X) The Swap Insurer has failed to pay any payment when due to Party A under the terms and conditions of the Swap Policy and such failure is continuing; or
- (Y) The Swap Insurer has otherwise consented in writing to such designation; or
- (Z) An Insurer Event of Insolvency occurs with respect to the Swap Insurer. An Insurer Event of Insolvency shall mean the occurrence and continuance of one or more of the following events: (a) the issuance, under the laws of the State of New York, of an order of rehabilitation, liquidation or dissolution of Financial Security; (ii) the commencement by Financial Security of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect including, without limitation, the appointment of a trustee, receiver, liquidator, custodian or other similar official for itself or any substantial part of its property ; (iii) the consent of Financial Security to any relief referred to in the preceding clause (ii) in an involuntary case or other proceeding commenced against it; (iv) the making by Financial Security of an assignment for the benefit of creditors; (v) the failure of Financial Security to generally pay its debts or claims as they become due; or (vi) the initiation by Financial Security of any actions to authorize any of the foregoing.

Notwithstanding anything in this Agreement, if any Event of Default under this Agreement occurs, with Party B as the Defaulting Party, then the Swap Insurer, (so long as it has not failed to pay any payment over to Party A under the terms and conditions of the Swap Policy and so long as an Insurer Event of Insolvency has not occurred), shall have the right (but not the obligation) upon notice to Party A to designate an Early Termination Date with respect to Party B with the same effect as if such designation were made by Party A. For purposes of the foregoing sentence, an Event of Default with respect to Party B shall be considered to be continuing, notwithstanding any payment by the Swap Insurer under the Swap Policy. Party A and Party B acknowledge that, except as the Swap Policy may be otherwise endorsed, unless the Swap Insurer designates an Early Termination Date (as opposed to merely consenting to such designation by one of the parties) termination payments due from Party B because an Early Termination Date has been designated will not be insured.

- (ii) No suspension of payments. Notwithstanding Section 2(a)(iii) of this Agreement, Party A shall not suspend any payments due under an Insured Transaction under Section 2(a)(iii) unless the Swap Insurer is in default in respect of any payment obligations under the Swap Policy.
- (iii) Representations and agreements. Each party agrees that each of its representations and agreements in this Agreement is expressly made to and for the benefit of the Swap Insurer.
- (iv) Third-party beneficiary. Party A and Party B hereby each acknowledge and agree that Swap Insurer shall be an express third-party beneficiary (and not merely an incidental third-party beneficiary) of this Agreement and the obligations of such party under any Insured Transaction, and as such, entitled to enforce the Agreement and the terms of any such Insured Transaction against such party on its own behalf and/or on behalf of the holders of the related Bonds and

otherwise shall be afforded all remedies available hereunder or otherwise afforded by law against the parties hereto to redress any damage or loss incurred by Swap Insurer including, but not limited to, fees (including professional fees), costs and expenses incurred by Swap Insurer which are related to, or resulting from any breach by such party of its obligations hereunder.

- (v) Policy coverage. Party A and Party B hereby each acknowledge and agree that Swap Insurer's obligation with respect to Insured Transactions shall be limited to the terms of the Swap Policy. Notwithstanding Section 2(e) or any other provision of this Agreement, Swap Insurer shall not have any obligation to pay interest on any amount payable by Party B under this Agreement.
- (vi) Subrogation. Party A and Party B hereby acknowledge that to the extent of payments made by Swap Insurer to Party A under the Swap Policy, Swap Insurer shall be fully subrogated to the rights of Party A against Party B under the Insured Transaction to which such payments relate, including, but not limited to, the right to receive payment from Party B and the enforcement of any remedies. Party A hereby agrees to assign to Swap Insurer its right to receive payment from Party B under any Insured Transaction to the extent of any payment thereunder by Swap Insurer to Party A. Party B hereby acknowledges and consents to the assignment by Party A to Swap Insurer of any rights and remedies that Party A has under any Insured Transaction or any other document executed in connection herewith.
- (vii) Isolation of Insured Transactions in designating an Early Termination Date. Notwithstanding Section 6 of this Agreement, any designation of an Early Termination Date in respect of the Insured Transactions by Swap Insurer or by Party A pursuant to paragraph (l) above shall apply only to the Insured Transactions and not to any other Transaction under this Agreement, unless Party A shall designate an Early Termination Date in respect of such other Transaction. Nothing contained in this paragraph shall affect the rights of Party A under this Agreement to designate an Early Termination Date in respect of any Transaction other than the Insured Transactions, which designation shall not apply to the Insured Transactions unless expressly provided in such designation and unless Swap Insurer shall have designated, or consented to the designation by Party A of, an Early Termination Date in respect of the Insured Transactions in accordance with paragraph (l) above.
- (viii) No netting. Notwithstanding Section 2(c) of this Agreement, in no event shall either Party A or Party B be entitled to net its payment obligations in respect of the Insured Transactions against the payment obligations of the other party in respect of other Transactions under this Agreement if such Transactions are not Insured Transactions, nor may either Party A or Party B net the payment obligations of the other party under Transactions that are not Insured Transactions against the payment obligations of such party under Insured Transactions, it being the intention of the parties that their payment obligations under Insured Transactions be treated separate and apart from all other Transactions. Section 6(e) of this Agreement shall apply to all Insured Transactions with the same effect as if the Insured Transactions constituted a single master agreement. Notwithstanding Section 6(e) of this Agreement, the amount payable under Section 6(e) of this Agreement upon the termination of any Insured Transaction shall be determined without regard to any Transactions other than the Insured Transactions, it being the intention of the parties that their payment obligations under the Insured Transactions be treated separate and apart from all other Transactions unless otherwise specified in such other Transaction and agreed to in writing by Swap Insurer.
- (ix) No set-off or counterclaim. In no event shall either Party A or Party B be entitled to:
- (A) set-off its payment obligations in respect of an Insured Transaction against the payment obligations of the other party (whether by counterclaim or otherwise) if such obligations are not Insured Transactions, or

- (B) net the payment obligations of the other party that are net with respect to Insured Transactions against the payment obligations of such party under Insured Transactions,

it being the intention of the parties that their payment obligations under Insured Transactions be treated separate and apart from all other obligations. Notwithstanding Section 6(e) or Section 6(g) of this Agreement, the amount payable under Section 6(e) or Section 6(g) of this Agreement upon the termination of any Insured Transaction shall be determined without regard to any obligation other than those under the Insured Transactions, it being the intention of the parties that their payment obligations under the Insured Transactions be treated separate and apart from all other obligations unless otherwise specified in such other obligation and agreed to in writing by Swap Insurer.

- (x) Expenses. Party B agrees to reimburse Swap Insurer immediately and unconditionally upon demand for all reasonable expenses incurred by Swap Insurer in connection with the issuance of the Swap Policy and the enforcement by Swap Insurer of Party B's obligations under this Agreement and any other documents executed in connection with the execution and delivery of this Agreement, including, but not limited to, fees (including professional fees), costs and expenses incurred by Swap Insurer which are related to, or resulting from any breach by Party B of its obligations hereunder or under the Indenture (as defined below).
- (xi) Transfers/Assignments. Notwithstanding Section 7 of this Agreement, no Insured Transaction may be assigned or transferred by either Party A or Party B without the prior written consent of Swap Insurer. However Party A may make such an assignment to an affiliate of Party A without Swap Insurer's prior written consent, if Party A provides a guaranty of the Swap, as assigned, and an opinion of counsel to Party A relating thereto, each acceptable to Swap Insurer.
- (xii) Amendments/waivers. No amendment, modification, supplement or waiver of this Agreement will be effective unless in writing and signed by each of the parties hereto and unless the parties hereto shall have obtained the prior written consent of the Swap Insurer.
- (xiii) Notices. A copy of each notice or other communication between the parties with respect to this Agreement must be forwarded to Swap Insurer.
- (xiv) Reference Market-makers. The definition of "Reference Market-makers" set forth in Section 12 of the Agreement shall be amended in its entirety to read as follows:

"Reference Market-makers" means four (4) leading dealers in the relevant swap 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 of deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among dealers having an office in the greater New York City metropolitan area. The rating classification assigned to any outstanding long-term senior debt securities issued by such dealers shall be at least (1) "Aa3" or higher as determined by Moody's Investors Service, Inc., (2) "AA-" or higher as determined by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or (3) an equivalent investment grade rating determined by a nationally-recognized rating service acceptable to both parties, provided, however, that in any case, if Market Quotations cannot be determined by four (4) such dealers, the party making the determination of the Market Quotation may designate, with the consent of the other party and Swap Insurer, one (1) or more leading dealers whose long-term senior debt bears a lower investment grade rating.

- (xv) Coordination with Related Bonds. Party B will comply with all provisions of the Resolution. So long as the Related Bonds are outstanding, the Notional Amount of each Insured Transaction must correspond to the outstanding principal amount of the applicable subseries of the related Bonds and the rate borne by the related Bonds must bear a known relationship to one of the swap rates.

Party B agrees that the related Bonds will not be converted to a different rate, redeemed or refunded if any amounts are due to the Swap Insurer under this Agreement or the Swap Policy which have not been paid, nor will Party B convert the Related Bonds to a different interest rate mode without the prior written consent of the Swap Insurer. Party A agrees that if the Notional Amount of an Insured Transaction has changed, it will provide a new schedule incorporating such changes for attachment to the Swap Policy following approval by the Swap Insurer.

- (xvi) Insurer Payment Rate Reimbursement. The Swap Agreement shall require Party B to reimburse Financial Security amounts paid under the Financial Guaranty and all costs of collection thereof and enforcement of the Swap Agreement at the Insurer Payment Rate. "Insurer Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank ("Chase") at its principal office in the City of New York, as its prime or base lending rate ("Prime Rate") (any change in such Prime Rate to be effective on the date such change is announced by Chase) plus 3 percent and (ii) the then highest rate of interest on the Related bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Insurer Payment rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event that Chase ceases to announce its Prime Rate publicly, Prime Rate shall be the publicly announced prime or base lending rate of such national bank as Financial Security shall specify.

Royal Bank of Canada

County of Dauphin, Pennsylvania

By: *Susan Heard*

Name: SUSAN HEARD
Title: MANAGING DIRECTOR
RBC DOMINION SECURITIES INC.

By: *Jeff Haste* 6/30/04

Name: Jeff Haste
Title: Chairman

By: *Dominic D. DiFranco, II*

Name: Dominic D. DiFranco, II
Title: Vice-Chairman

By: *George P. Hartwick, III*

Name: George P. Hartwick, III
Title: Secretary

EXHIBIT C

Maximum Net Payments

See Schedule 4B of the County's Interest Rate Management Plan. The Interest Rate Management Plan is attached hereto as Exhibit A.