

BOROUGH OF AVALON
ALLEGHENY COUNTY, PENNSYLVANIA

ORDINANCE 1328

AUTHORIZING THE INCURRENCE OF NONELECTORAL DEBT OF BOROUGH OF AVALON, ALLEGHENY COUNTY, PENNSYLVANIA, BY THE ISSUANCE OF ITS \$780,000 PRINCIPAL AMOUNT GENERAL OBLIGATION NOTE, SERIES OF 2009, FOR THE PURPOSE OF PROVIDING FUNDS FOR AND TOWARDS CERTAIN CAPITAL PROJECTS; AUTHORIZING THE PREPARATION AND FILING OF A DEBT STATEMENT AND OTHER DOCUMENTATION; COVENANTING TO CREATE A SINKING FUND AND TO BUDGET, APPROPRIATE AND PAY DEBT SERVICE ON THE NOTE AND PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF BOROUGH OF AVALON, ALLEGHENY COUNTY, PENNSYLVANIA, FOR THE NOTE; SETTING FORTH THE SUBSTANTIAL FORM OF THE NOTE; SETTING FORTH THE STATED PRINCIPAL AND INTEREST PAYMENT DATES, REDEMPTION PROVISIONS, PLACE OF PAYMENT AND OTHER DETAILS OF THE NOTE; PROVIDING FOR THE SALE OF THE NOTE AT PRIVATE SALE BY NEGOTIATION AND ACCEPTING A PROPOSAL FOR THE PURCHASE OF THE NOTE; APPOINTING A LOAN PAYING AGENT AND SINKING FUND DEPOSITORY; AND AUTHORIZING OTHER NECESSARY ACTION.

Recitals

Borough of Avalon, Allegheny County, Pennsylvania (the "Participant") has determined to finance certain capital projects to be undertaken by the Participant as more particularly described in Exhibit "A" attached hereto and made a part hereof, and to finance the issuance of the Participant's General Obligation Note, Series of 2009 (the "Capital Project"). The Participant is granted the power by the Local Government Unit Debt Act of the Commonwealth of Pennsylvania (Act No. 177, approved December 19, 1996, P.L. 1158), as amended (the "Act"), to incur indebtedness and to issue bonds or notes for the purpose of providing funds for and towards the costs of the Project.

The Participant has received a proposal for the purchase of its General Obligation Note, Series of 2009 (the "Note") from Emmaus General Authority, of Emmaus, Pennsylvania (the "Authority") and now desires to authorize the issuance of the Note for the purpose of financing a portion of the costs of the Capital Project, and the costs of issuing the Note, and to accept the proposal for the purchase of the Note. The Note shall be issued to finance the Capital Project and shall mature as set forth in therein.

The Note is to be issued pursuant to this Ordinance and pursuant to an Agreement (the "Agreement") between the Participant and the Authority. The Agreement and Note will be assigned and delivered by the Authority to The Bank of New York Mellon Trust Company, N.A., as Trustee, successor to J.P. Morgan Trust Company, National Association, under a Trust Indenture

dated as of March 1, 2000, as amended and supplemented, including the First Supplemental Indenture, dated as of March 1, 2009, as amended by an Amendment to First Supplemental Indenture dated as of April 1, 2009 (the "Indenture"), in order to secure in part the Authority's Variable Rate Demand Bonds, Series 2000A (Pennsylvania Variable Rate Loan Program) (the "Bonds").

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of Borough of Avalon, Allegheny County, Pennsylvania, and IT IS HEREBY ORDAINED, as follows:

Section 1. Authorization of Project and Incurrence of Indebtedness; Useful Life and Estimated Cost. The Participant shall undertake the Project and shall incur indebtedness pursuant to the Act in the amount of \$780,000 with respect to the Note for the purpose of providing funds for and toward the costs of the Project, including the expenses of the financing.

The Participant hereby reserves the right, subject to the terms of the Agreement, to undertake the acquisitions, renovations and improvements included in the Capital Project in such order and at such time or times as it shall determine and to allocate the proceeds of the Note and other available moneys to the final costs of the Capital Project in such amounts and order of priority as it shall determine; but the proceeds of the Note shall be used solely to pay the "costs," as defined in the Act, of the Capital Project or, upon appropriate amendments to this Ordinance, to pay the costs of other capital projects for which the Participant is authorized to incur indebtedness under the Act.

It is hereby determined and stated that the estimated cost of the portion of the Capital Project to be financed with the proceeds of the Note is \$780,000 and that such cost is based upon actual bids for the Capital Project or professional estimates received by the Participant from persons qualified by experience to provide such estimates.

It is hereby determined and stated that the estimated completion date of the Capital Project financed with the proceeds of the Note is December, 2009, that the realistic estimated useful life of the Capital Project is in excess of thirty (30) years, and that principal on the Note is scheduled to mature in accordance with the limitations set forth in Section 8142(a)(2) of the Act.

Section 2. Authorization of Issuance of the Note. The Participant shall issue, pursuant to the Act and this Ordinance, its \$780,000 principal amount General Obligation Note, Series of 2009, to provide funds for and toward the costs of the Project authorized in Section 1 hereof.

Section 3. Type of Indebtedness. The indebtedness authorized by this Ordinance is nonelectoral debt.

Section 4. Execution of Debt Statement, Note and Other Documents. The President or Vice President of the Borough Council and the Secretary or Assistant Secretary of the Participant and their successors are hereby authorized and directed to file the debt statement required by Section 8110 of the Act, to execute and deliver the Note in the name and on behalf of the Participant and to take all other action required by the Act or this Ordinance in connection with the issuance of the Note. Said officers and their successors are further hereby authorized if, in their opinion, it is advisable to do so, to prepare and file such statements and documents as may be required by

Article II of the Act in order to qualify all or any portion of the existing indebtedness of the Participant or of the above authorized indebtedness as subsidized or self-liquidating debt.

Section 5. Type of Note. The Note when issued will be a general obligation note.

Section 6. Covenant to Pay Debt Service - Pledge of Taxing Power. The Participant hereby covenants with the holders of the Note outstanding pursuant to this Ordinance as follows: that the Participant will include in its budget for each fiscal year during which the Note is outstanding the amount of the debt service on the Note issued hereunder which will be payable in each such fiscal year so long as the Note shall remain outstanding; that the Participant shall appropriate from its general revenues such amounts and punctually pay or cause to be paid the principal of and interest on the Note at the dates and places and in the manner stated in the Note according to the true intent and meaning thereof; and for such budgeting, appropriation and payment the Participant hereby pledges its full faith, credit and taxing power. The covenant contained in this Section 6 shall be specifically enforceable.

Section 7. Form of Note. The Note shall be substantially in the form set forth in Exhibit "C" hereto, with appropriate omissions, insertions and variations.

Section 8. Terms of the Note. The Note shall be issued in registered form, as one note in the denomination of \$780,000, shall be dated as of the date of issuance, shall mature as provided therein, and shall evidence the obligation of the Participant to make all the payments required under the Agreement (hereinafter defined). The Note shall bear interest from its date of issuance on the unpaid principal amount thereof at a variable rate as provided therein, but in no event shall such variable rate exceed the maximum rate of 25% per annum. Interest on the Note shall be calculated on the basis of a 365- or 366-day year for the number of days actually elapsed. Interest on the Note shall be payable to the holder of the Note on the third day (or if such day is not a Business Day, the preceding Business Day) prior to the first Thursday of each month, or such other day as shall be conclusively determined by the Administrator (as defined in the Indenture), commencing with the month following the issuance of the Note (each an "Interest Payment Date") to and including October, 2019. The principal of the Note shall be payable as set forth in the Note. The Participant is required to pay to the Loan Paying Agent (as hereinafter defined) in immediately available funds for deposit in the Sinking Fund (as defined in the Indenture) for the Note the amount of any payment of principal and/or interest under the Note on or prior to 11:00 a.m. on the applicable Interest Payment Date.

The principal of and interest on the Note shall be payable in lawful money of the United States of America at the corporate trust office of The Bank of New York Mellon Trust Company, N.A., successor to J.P. Morgan Trust Company, National Association, as Loan Paying Agent (the "Loan Paying Agent") in Philadelphia, Pennsylvania, or at such other office as the Loan Paying Agent may designate in writing to the Participant. The Bank of New York Mellon Trust Company, N.A. is hereby appointed loan paying agent and the sinking fund depository for the Note.

Section 9. Prepayment of Note. The Note shall be subject to prepayment prior to maturity as described in the form of Agreement set forth in Exhibit "C" of this Ordinance.

Section 10. Sale of Note. The Note shall be sold at private sale by negotiation as hereinafter set forth in Section 13. After due consideration, the Borough Council of the Participant

hereby finds and determines, on the basis of all the information available, that a private sale of the Note by negotiation is in the best financial interest of the Participant.

Section 11. Creation of and Deposits in Sinking Fund. The Participant covenants that there shall be and there is hereby established and that it shall hereafter maintain a sinking fund (the "Sinking Fund") for the Note to be held by the Loan Paying Agent (or such substitute or successor Loan Paying Agent which shall hereafter be appointed in accordance with the provisions of the Act) in the name of the Participant, but subject to withdrawal only by the Loan Paying Agent.

For the Note, the Participant covenants and agrees to deposit in the Sinking Fund on each payment date (or prior thereto if required under the Note) the debt service payable on the Note or such greater or lesser amount as at the time shall be sufficient to pay principal of and interest on the Note becoming due on each such date.

Pending application to the purposes for which the Sinking Fund is established, the President, the Vice President or Treasurer of the Borough Council is hereby authorized and directed to cause the moneys therein to be invested or deposited and insured or secured as permitted and required by Section 8224 of the Act; in the absence of instructions from the Participant, the Loan Paying Agent is authorized to invest such moneys as provided in the Loan Paying Agent Agreement (as hereinafter defined) between the Participant and the Loan Paying Agent. All income received on such deposits or investments of moneys in the Sinking Fund during each period shall be added to the Sinking Fund and shall be credited against the deposit next required to be made in the Sinking Fund.

The Loan Paying Agent is hereby authorized and directed, without further action by the Participant, to pay from the Sinking Fund the principal of and interest on the Note as the same become due and payable in accordance with the terms thereof, and the Participant hereby covenants that such moneys, to the extent required, will be applied to such purposes.

The Loan Paying Agent shall, upon receipt of a written request to do so, deliver to or as directed by the Participant all moneys deposited in the Sinking Fund for the payment of the Note which have not been claimed by the owners thereof after two years from the date payment is due, except where such moneys are held for the payment of outstanding checks, drafts or other instruments of the Loan Paying Agent, shall be returned to the Participant. Upon any such disposition to the Participant, all liability of the Loan Paying Agent with respect to such moneys shall cease, and the holder of the Note shall thereafter look to the Participant for payment of any amounts then due. In the absence of any such written request of the Participant, the Loan Paying Agent shall from time to time deliver such unclaimed funds to or as directed by any pertinent escheat authority, as identified by the Loan Paying Agent in its sole discretion, pursuant to and in accordance with applicable unclaimed property laws, rules or regulations. Any such delivery shall be in accordance with the customary practices and procedures of the Loan Paying Agent and escheat authority. All moneys held by the Loan Paying Agent and subject to this Section shall be held uninvested and without liability for interest thereon. Nothing contained herein shall relieve the Participant of its liability to the holder of the unrepresented Note.

The proper officers of the Participant are authorized to enter into a contract with The Bank of New York Mellon Trust Company, N.A., in connection with its duties as the Loan Paying Agent (the "Loan Paying Agent Agreement").

Section 12. No Taxes Assumed. The Participant shall not assume the payment of any tax or taxes in consideration of the purchase of the Note.

Section 13. Award and Sale of Note. The Note is hereby awarded and sold to the Authority at a price of \$780,000 and in accordance with the terms and conditions contained in the proposal of the Authority presented at this meeting and attached hereto as Exhibit "B", which proposal is hereby accepted. A copy of said proposal shall be attached to this Ordinance and lodged with the official minutes of this meeting and is hereby incorporated herein by reference. The proper officers of the Participant are hereby authorized and directed to endorse the acceptance of the Participant on said proposal and to deliver executed copies thereof to the Authority.

Pursuant to such proposal, the Note will be issued on October 22, 2009, unless the Participant and the Authority agree to a later closing.

Section 14. Federal Tax Covenants. The Participant will take no action, or permit or suffer any action or event, which will cause the Note to be a "private activity bond" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"). The Participant will neither make nor cause to be made any investment or other use of the proceeds of the Note which would cause the Notes to be arbitrage bonds under Section 148 of the Code and the regulations thereunder, and that it will comply with the requirements of such Section and any regulations applicable thereto throughout the term of the Note. The Participant agrees to comply with all other tax covenants set forth in the Agreement.

Section 15. Execution and Authentication of the Note. As provided in Section 4, the Note shall be executed by the President or the Vice President of the Borough Council of the Participant and the Secretary or Assistant Secretary of the Participant and each such execution may be by facsimile signature. If any officer whose signature appears on any Note shall cease to hold such office before the actual delivery date of the Note, such signature shall nevertheless be valid and sufficient for all purposes as if such person had remained in such office until the actual delivery date of the Note.

Section 16. Authorization of Agreement and Loan Paying Agent Agreement. The President of the Borough Council of the Participant or Secretary of the Participant are authorized to execute and deliver the Agreement and the Loan Paying Agent Agreement each substantially in the form presented to this meeting, which are hereby approved, subject only to such changes as counsel may recommend and the President of the Borough Council of the Participant may approve, such approval to be conclusively evidenced by his or her execution thereof.

Section 17. Application of Proceeds of the Note. Upon receipt of the purchase price for the Note, the proper officers of the Participant shall deposit the same in one or more bank accounts as provided in the Indenture and apply such proceeds to the payment of the costs of the Project, including certain costs and expenses of issuing the Note.

Section 18. Officers Authorized to Act. For the purpose of expediting the closing and the issuance and delivery of the Note, or in the event that the President of the Borough Council of the Participant or the Secretary of the Participant shall be absent or otherwise unavailable for the purpose of executing documents, or for the purpose of taking any other action which they or either

of them may be authorized to take pursuant to this Ordinance, the Vice President or the Assistant Secretary of the Participant, respectively, are hereby authorized and directed to execute documents, or otherwise to act on behalf of the Participant in their stead.

Section 19. Further Action. The proper officers and officials of the Participant are hereby authorized and directed to take all such action, execute, deliver, file and/or record all such documents, publish all notices and otherwise act in such manner as they deem necessary or desirable to comply with the provisions of this Ordinance and the Act in the name and on behalf of the Participant.

Section 20. Act Applicable to the Note. This Ordinance is enacted pursuant to, and the Note issued hereunder shall be subject to, the provisions of the Act and all of the mandatory provisions thereof shall apply hereunder whether or not explicitly stated herein.

Section 21. Contract with Noteholders. This Ordinance constitutes a contract with the holder of the Note and shall be enforceable in accordance with the provisions of the laws of the Commonwealth of Pennsylvania.

Section 22. Severability. In case any one or more of the provisions contained in this Ordinance or in the Note issued pursuant hereto shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Ordinance or of said Note and this Ordinance or said Note shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained therein.

Section 23. Repealer. All Ordinances and parts of ordinances heretofore enacted to the extent that the same are inconsistent herewith are hereby repealed.

Section 24. Effective Date. This Ordinance shall take effect on the earliest date permitted by the Act.

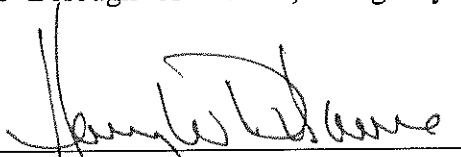
CERTIFICATE OF SECRETARY

The undersigned, (Assistant) Secretary of the Borough Council of Borough of Avalon, Allegheny County, Pennsylvania, HEREBY CERTIFIES that:

1. The foregoing Ordinance authorizing the issuance of the \$780,000 General Obligation Note, Series of 2009, of Borough of Avalon, Allegheny County, Pennsylvania, was duly moved and seconded and enacted by a majority vote of all the members of Borough Council of said Borough of Avalon, Allegheny County, Pennsylvania, at a duly called and convened public meeting of said Borough Council held on September 22, 2009, and that public notice of said meeting was given as required by law.

2. Said Ordinance has not been altered, amended, modified, suspended and is still in full force and effect as of the date of the delivery of this Certificate.

WITNESS my hand and seal of the Borough of Avalon, Allegheny County, Pennsylvania, as of September 22, 2009.



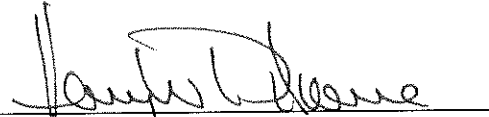
Borough Manager
Borough of Avalon
Allegheny County, Pennsylvania

(Seal)

SUPPLEMENTAL CERTIFICATE

I certify that the foregoing Ordinance has not been altered, amended, modified, suspended or repealed and is still in full force and effect as of the date of the delivery of this Certificate.

WITNESS my hand and seal of Borough of Avalon, Allegheny County, Pennsylvania, as of October 22, 2009.



Borough Manager
Borough of Avalon
Allegheny County, Pennsylvania

(Seal)

EXHIBIT A

DESCRIPTION OF CAPITAL PROJECT

Proceeds of the Note will be used to provide funds for and toward: (1) repaving streets within the Borough of Avalon, Pennsylvania 15202; (2) curbing streets within the Borough; (3) general infrastructure improvement of the road system; and (4) paying the costs of remarketing the Note.

EXHIBIT B

LOAN PURCHASE COMMITMENT

EXHIBIT C
(FORM OF AGREEMENT AND NOTE)