

(Tax Anticipation Note)

BOROUGH OF AVALON
(Name of Local Government Unit)

Allegheny County, Pennsylvania

RESOLUTION NO. 885

AUTHORIZING A BORROWING IN ANTICIPATION OF CURRENT TAXES AND THE ISSUANCE OF (A) TAX ANTICIPATION NOTE; ESTABLISHING THE FORM OF SUCH NOTE; APPROVING AND ACCEPTING A PROPOSAL OF NATIONAL CITY BANK OF PENNSYLVANIA TO PURCHASE THE NOTE; AWARDING AND AUTHORIZING THE NEGOTIATED SALE THEREOF TO SAID BANK; PROVIDING SECURITY FOR SUCH NOTE; MAKING CERTAIN COVENANTS IN RESPECT OF SUCH NOTE; AUTHORIZING AND DIRECTING CERTAIN OFFICIALS TO DELIVER A CERTIFICATE AS TO TAXES AND REVENUES TO BE COLLECTED, TO CAUSE TO BE MADE THE FILINGS REQUIRED BY LAW, TO EXECUTE AND DELIVER THE NOTE, TO RESTRICT THE USE OF THE PROCEEDS OF THE NOTE; AND TO TAKE SUCH OTHER ACTIONS AS MAY BE NECESSARY OR DESIRABLE.

WHEREAS, the Local Government Unit Debt Act of the Commonwealth of Pennsylvania (the "Act") empowers and authorizes a local government unit to borrow money from time to time in any fiscal year in anticipation of the receipt of current taxes or current revenues or both and to evidence said indebtedness by tax and revenue anticipation Notes; and

WHEREAS, National City Bank of Pennsylvania (the "Bank") has submitted to the "Local Government Unit" a proposal to purchase a Tax Anticipation Note of the Local Government Unit and the Local Government Unit desires, by the adoption of this Resolution by the affirmative vote of a majority of the members of the governing body of the Local Government Unit now holding office, to accept such Proposal and award and authorize the issue and sale of its Tax Anticipation Note;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. The Borough Council of the Local Government Unit hereby authorizes the borrowing of the principal sum of \$250,000.00 in anticipation of the receipt of current taxes, said borrowing to be evidenced by the Tax Anticipation Note of the Local Government Unit (the "Note") in the aforesaid principal sum, such Note to be dated the date of the issuance thereof, to mature December 31, 1998, to bear interest from the date thereof on the unpaid balance of principal at the rate of 4.10% per annum (the "Tax-Free Rate"), if a fixed rate. If a variable rate, at the rate of _____% of the Prime Rate, as hereinafter defined rounded to the nearest one tenth of one percent (the "Tax Free Rate") in effect from time to time, said rate shall change simultaneously with the effective date of each corresponding change in the Prime Rate. "Prime Rate" as that term is used herein means the rate per annum announced from time to time by the Bank at its principal office in Pittsburgh, Pennsylvania as its prime rate, which may not be the lowest rate of interest charged by the Bank to other Borrowers. The Tax Free Rate as of the date hereof would be 4.10 % per annum) Interest is payable (check applicable payment provision).

quarterly on the _____ day of each calendar quarter, commencing _____, 19__)

(monthly on the _____ day of each month, commencing _____, 19__).

and at maturity or earlier payment.

After maturity, whether by declaration, acceleration or otherwise, the Note shall bear interest until fully paid at a variable rate per annum equal to _____% of the Prime Rate in effect from time to

time, such interest rate to change automatically from time to time, effective as of the effective date of each change in the Prime Rate, payable on demand.

Each interest rate referred to in the Note shall be computed on the basis of a year of 365 or 366 days, as the case may be.

The principal of and interest on the Note shall be payable at the Avalon Office of the Bank, 600 California Avenue, Avalon, Pennsylvania, 15202, in any coin or currency of the United States of America which, at respective times of payment, is legal tender for the payment of public and private debts.

If at any time or from time to time after the date of the Note, there should be a change in the rate of income tax imposed upon the Bank (the "Bank Tax Rate") by Section 11 of the Internal Revenue Code of 1986, as amended (the "Code"), then the Bank, in its discretion, may adjust the tax-free rate to reflect the change in the rate of income tax imposed upon the Bank, effective as of the effective date of the change in the Bank Tax Rate. Said adjustment shall be made to the same fixed rate originally used in determining the rate of the Note unless the Note is a variable rate Note. If the Note is a variable rate Note, said adjustment shall be made to the variable rate at the date of the change in the Bank Tax Rate. In no event will the Tax-Free Rate go below _____% or exceed _____%.

The interest received on the Note by the Bank and any other participant in the Note is not subject to Federal income tax and the Note is not subject to Federal income tax and the Note is a "qualified tax exempt obligation" as described in Section 265(b)(3)B of the Code. In the event, as a result of a change in existing statutes or in the interpretation or administration thereof by the Internal Revenue Service or any action or failure to take action by the Local Government Unit (hereinafter "IRS Action"), it shall be determined (after the Bank shall have taken such steps as in its reasonable judgment shall be required to dispute such determination) that all or any portion of the interest thereafter received by the Bank or by a participant in the Note shall be subject to Federal income tax or that the Note is not a "qualified tax exempt obligation," the rate of interest payable on the Note thereafter shall be changed to such rate as may be negotiated by the Bank and the Local Government Unit and, if a rate cannot be agreed upon within 30 days after a demand is made to negotiate, the Bank, in its discretion, may demand that the Note and all sums unpaid or due shall become immediately payable. In addition, in the event such IRS Action shall require the Bank or any participant in the Note to pay Federal income taxes on interest received prior to the date of such IRS Action or shall disallow the Bank's allocable interest expense under Section 265(b) of the Code with respect to the Note, in the discretion of the Bank, and within 90 days after its demand therefor, the Local Government Unit shall pay, during such period, as additional interest, an amount equal to the difference between the interest made subject to Federal income taxation by such IRS Action or disallowed under Section 265(b) of the Code and _____%, if a fixed rate, or _____% of the Prime Rate fluctuating as aforesaid during the period that interest is taxed or disallowed. The obligation under the immediately preceding sentence shall survive payment in full of this Note. Under no circumstances shall the Bank be obligated to refund or return to the Local Government Unit any interest paid by the Local Government Unit.

The Note shall be in substantially the form of Exhibit A annexed hereto.

SECTION 2. The Local Government Unit hereby finds that a private sale of the Note by negotiation is in the best financial interest of the Local Government Unit. The Proposal to Purchase the Note dated _____, 19____ of the Bank submitted to the Local Government Unit is hereby approved and accepted. The Note is approved and shall be awarded, issued and sold upon a negotiated sale to the Bank at the principal amount thereof in accordance with said Proposal.

SECTION 3. The Note shall be equally and ratably secured by the pledge of, security interest in, and a first lien and charge on, the taxes of the Local Government Unit to be received during the period when the Note will be outstanding. Such pledge, lien and charge shall be fully perfected as against the Local Government Unit, all its creditors and all third parties from and after the filing of a financing statement or statements with the Secretary of the Commonwealth and the Office of the Prothonotary of Allegheny County.

SECTION 4. The Certification As To Taxes And Revenues to be collected dated _____, 19____ prepared by the President of Council (Title of Official) and the Treasurer of the Local Government Unit and submitted to the Borough Council in accordance with the Act is hereby approved, and the said officials are hereby authorized, empowered and directed to deliver a signed counterpart of such certificate (or of a revised subsequently dated certificate as may be necessary to comply with the Local Government Unit Debt Act, 53 Pa. Cons. Stat. Ann. § § 8001 et seq. (the Act) to the Bank in connection with the issuance and delivery of the Note.

SECTION 5. The President of Council (Title of Official) and the Treasurer of the BOROUGH OF AVALON are hereby authorized, empowered and directed (i) to cause certified copies of the proceedings in connection with the authorization, issue and sale of the Note to be filed with the Department of Community and Economic Development as required by the Act, (ii) to execute and deliver a closing receipt for the proceeds thereof, and (iii) to take all such other actions and execute all such other documents as may be necessary or desirable to effect the issue and sale of the Note in conformity with the aforesaid Proposal and the Act.

SECTION 6. The Local Government Unit hereby covenants with the holder of the Note that it will make no use of the proceeds of the Note which will cause the Note to be (an) "arbitrage bond(s)" within the meaning of Section 148 of the Internal Revenue Code of 1986 as amended, and the Regulations thereunder and that it will comply with the requirements of said Section and Regulations throughout the term of the Note.

SECTION 7. Certain Representations and Covenants Regarding Federal Income Tax Matters. The Local Government Unit hereby represents and covenants as follows:

- (a) It is a governmental unit with general taxing powers and the authority to incur this debt.
- (b) The aggregate face amount of tax-exempt obligations which are not "private activity bonds" (as defined in Section 141 of the Code) issued after January 1 of this calendar year by the Local Government Unit or any subordinate entity controlled by the Local Government Unit and outstanding on the date of issuance of the Note, when added to the amount of the Note and the amount of tax-exempt obligations which are not "private activity bonds" which are reasonably expected to be issued by the Local Government Unit or any subordinate entity controlled by the Local Government Unit after the date of issuance of the Note and before the following January 1 of the next calendar year does not and will not exceed \$5,000,000; and
- (c) No more than 5% of the proceeds of any bond issuance including the funds hereby borrowed will be used directly or indirectly in a trade or business of a person or persons other than the Local Government Unit and its governmental affiliates. Additionally, no amount exceeding the lesser of 5% or \$5,000,000 of the proceeds will be used as loans to any persons other than a governmental unit;
- (d) At least 95% of the net proceeds of such issue will be used for local governmental activities of the Local Government Unit or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Local Government Unit.
- (e) The aggregate amount of the tax-exempt obligations which are not "private activity bonds" (as defined in Section 141 of the Code), other than "qualified 501(c)(3) bonds" (as defined in Section 145 of the Code) issued after January 1 of this calendar year by the Local Government Unit or any subordinate entity controlled by the Local Government Unit and outstanding on the date of issuance of the Note, when added to the amount of the Note and the amount of tax-exempt obligations (including "qualified 501(c)(3) bonds") which are not "private activity bonds" which are reasonably expected to be issued by the Local Government Unit or any subordinate entity controlled by the Local Government Unit after the date of issuance of the Note and before January 1 of the next calendar year does not and will not exceed \$10,000,000; and
- (f) The total amount of qualified tax-exempt obligations designated by the Local Government Unit in the current calendar year under Section 265(b)(3)(B) of the Code shall not exceed \$10,000,000.

SECTION 8. Qualified Tax-Exempt Obligation: Information Reporting. The Local Government Unit hereby agrees to designate on the face of the Note that the Note is a "qualified tax-exempt obligation," as that term is defined in Section 265(b)(3)(B) of the Code.

The Local Government Unit hereby covenants with the Bank that the Local Government Unit will provide to the Bank, at the time of payment for and delivery of the Note, a copy of IRS Form 8038-G or 8038-GC, as appropriate, prepared by the Local Government Unit in compliance with Section 149(e) of the Code with evidence of the filing thereof with the Internal Revenue Service Center, Philadelphia 19255.

SECTION 9. Registered-Required Obligations. The Local Government Unit agrees to maintain the Note in registered form. The Note will be registered as to both principal and any stated interest with the Local Government Unit. The transfer of the Note will be effected only by surrender of the old Note and either the reissuance by the Local Government Unit of the old Note to the new holder or the issuance by the Local Government Unit of a new instrument.

SECTION 10. All resolutions or parts of resolutions conflicting with the provisions of this Resolution are hereby repealed insofar as they conflict herewith.

Resolved and adopted this 16th day of December, 1997.

BOROUGH OF AVALON
Name of Local Government Unit

(LOCAL GOVERNMENT UNIT SEAL)

By Raymond D. Mone
(Officer)
By [Signature]
(Officer)

ATTEST:

Jean A. Welsh
(Secretary)