

BOROUGH OF AVALON

Allegheny County, Pennsylvania

RESOLUTION No. 990

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 FIDELITY BANK OF PITTSBURGH, 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, Fidelity Bank of Pittsburgh, Pennsylvania (the "Bank") has submitted to the Borough of Avalon ("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 Avalon Borough 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, 2004**, to bear interest from the date thereof on the unpaid balance of principal at the Prime Rate in effect from time to time minus 2.00% per annum (the "Tax-Free Rate"), at maturity or earlier payment.

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 Main Office of the Bank, located at 1009 Perry Highway, Pittsburgh, Pennsylvania 15237-2105, 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.

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 the Prime Rate in effect from time to time minus 2.00% 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 December 16, 2003 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. ²⁰¹⁴ ~~2014~~ ¹⁻³⁰⁻⁰⁴ ~~1-30-04~~ JEV

SECTION 4. The Certification As To Taxes And Revenues to be collected dated January ~~29~~, 2004, prepared by the President of the Borough Council 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 and 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 the Borough Council 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 30th day of January, 2004.

ATTEST:

BOROUGH OF AVALON

Harry W. Dilmore
Harry W. Dilmore, Secretary

By Edward Klicker
Edward Klicker, President

By Edward T. Repp
Edward Repp, Vice President

By Harry W. Dilmore
Harry W. Dilmore
Secretary/Treasurer

Examined and approved this 30 day of
January, 2004:

By Daniel K. Bricmont
Daniel K. Bricmont, Esq., Mayor

CERTIFICATE OF AUTHORIZED MUNICIPAL OFFICER OR OFFICERS AS TO TAXES AND REVENUES TO BE COLLECTED AND OTHER MATTERS AND NON-ARBITRAGE CERTIFICATION

Borough of Avalon

Allegheny County, Pennsylvania

\$250,000.00 Aggregate Principal Amount

TAX ANTICIPATION NOTE,

SERIES OF 2004

30TH
1-30-04
JEV

In connection with the proposed issuance of the above-referenced Tax Anticipation Note (the "Note") of the above-referenced Local Government Unit (the "Local Government Unit") on or about January 29th, 2004 for the purpose of limiting the size of the issue to the lesser or (a) the maximum anticipated "cumulative cash flow deficit," as defined in Section 148(f)(4)(B)(iii)(II) of the Internal Revenue Code of 1986, as amended (the "Code"), or (b) eighty-five percent (85%) of estimated taxes as required by Section 8122 of the Local Government Unit Debt Act, the undersigned officers authorized by the governing body of the Local Government Unit, do hereby certify that:

1. (a) The Local Government Unit has no outstanding tax anticipation notes or other borrowings in anticipation of taxes or other current revenues, except as follows:

Principal Amount

Maturity Date

\$250,000.00 plus all interest

December 31, 2004

(If none, so indicate.)

(b) The amount of taxes levied for the current fiscal year is \$ 950,000; eighty-five percent (85%) of such amount is \$808,000.

2. It is the undersigned's reasonable expectation that during each of the months that the Note will be outstanding the revenues to be received and expenditures to be made by the Local Government Unit will be in accordance with the following computation. "Revenues" includes subsidies and reimbursements and due account has been taken of the past and anticipated collection experience of the Local Government Unit and of current economic conditions.

COMPUTATION

<u>Month</u>	<u>Year</u>	<u>Estimated Revenues</u>	<u>Estimated Expenditures</u>	<u>Monthly (Deficit) or Surplus</u>	<u>Cumulative (Deficit) or Surplus</u>
January	2004	\$60,000	\$120,000	\$(60,000)	\$3,000
February	2004	110,000	160,000	(50,000)	(47,000)
March	2004	90,000	150,000	(60,000)	(147,000)
April	2004	380,000	130,000	150,000	(57,000)
May	2004	425,000	160,000	265,000	358,000
June	2004	425,000	165,000	260,000	883,000
July	2004	120,000	160,000	(40,000)	1,103,000
August	2004	80,000	180,000	(100,000)	963,000
September	2004	100,000	170,000	(70,000)	793,000
October	2004	80,000	140,000	(60,000)	673,000
November	2004	80,000	150,000	(70,000)	540,000
December	2004	<u>65,000</u>	<u>120,000</u>	<u>(55,000)</u>	415,000

3. The maximum anticipated cumulative cash flow deficit for the period during which the Note will be outstanding is computed as follows (compute pursuant to either (a) or (b) below as applicable):

(a) If Less than \$5,000,000 Face Amount of Tax Exempt Obligations Issued Annually. If a Local Government Unit (including all subordinate entities thereof and all entities which issue bonds on behalf of the Local Government Unit) reasonably expects to issue less than the \$5,000,000 aggregate face amount of tax exempt borrowings including any general obligation bonds (but not including private activity bonds) in the current calendar year, then:

Highest cumulative deficit from Paragraph 2 above is:	\$ 147,000.00
(i) Add five percent (5%) of the prior fiscal year's actual general fund expenditures:	(+)\$ 145,305.00
(ii) Deduct balance at beginning of period of cash and/or securities in any municipal account which is available for payment of expenditures set forth in Paragraph 2 above (i.e., not earmarked for fixed liabilities). Funds shall not be included which are only accessible (A) for limited purposes by ordinance or resolution or (B) are subject to a legislative, judicial or contractual requirement that such account be reimbursed:	(-)\$ 292,305.00
Maximum anticipated cumulative cash flow deficit is:	<u>\$ 292,305.00</u>

(b) If Greater than \$5,000,000 Face Amount of Tax Exempt Obligations Issued Annually. If a Local Government Unit (including all subordinate entities thereof and all entities which issue bonds on behalf of the Local Government Unit) reasonable expects to issue more than the \$5,000,000 aggregate face amount of tax exempt borrowings including any general obligation bonds (but not including private activity bonds) in the current calendar year then:

Highest cumulative deficit from
Paragraph 2 above is: \$ 147,000.00

(ii) Deduct balance at beginning of period of cash and/or securities in any municipal account which is available for payment of expenditures set forth in Paragraph 2 above (i.e., not earmarked for fixed liabilities). Funds shall not be included which are only accessible (A) for limited purposes by ordinance or resolution or (B) are subject to a legislative, judicial or contractual requirement that such account be reimbursed: (-) \$0

Maximum anticipated cumulative cash
flow deficit is: \$ 147,000.00

Furthermore, if the Local Government Unit intends to issue more than the \$5,000,000 aggregate face value of tax exempt obligations in this calendar year in which the Note is issued, then it hereby covenants that either (a) the cumulative cash flow deficit (as calculated in this Paragraph 3(b)) to be financed with the Note will exceed ninety percent (90%) of the proceeds of the Note within the earlier of six months of the date of issue or the maturity date of the issue, or (b) it will calculate and pay to the United States Treasury the amount of rebate owned pursuant to Section 148(f) of the Internal Revenue Code.

4. The total estimated taxes remaining to be collected or received in the current fiscal year during the fiscal year when the Note will be outstanding are \$ 950,000, and eighty-five percent (85%) of such taxes is equal to \$ 808,000. The outstanding principal amount of borrowings pursuant to tax anticipation notes in the current fiscal year, plus the borrowing pursuant to the proposed Note does not exceed eighty-five percent (85%) of the sum of the estimated receipts set out above to be received during the period beginning on the date hereof and ending on the last day of the current fiscal year.

5. On the basis of the foregoing estimates and the facts and circumstances now in existence and herein set forth, it is not expected that the proceeds of the Note will be used in a manner that would cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the United States Internal Revenue Code of 1986, as amended. The Note is being issued to finance a portion of the maximum anticipated cumulative cash flow deficit of the Local Government Unit, as computed above and the aggregate principal amount of such Note is not greater than the lesser of (a) the maximum anticipated cumulative cash flow deficit shown in Paragraph 3 or (b) eighty-five percent (85%) of the estimated taxes during the period beginning on the date hereof and ending on the last day of the current fiscal year, as calculated in Paragraph 4.

6. There are no amounts in a general fund account or any other account (other than those noted in Paragraph 2(a)(ii) or 3(b)(i)) available for the payment of the estimated expenditures set forth in Paragraph 2 above which may be invaded to pay such expenditures without (a) an ordinance or resolution or (b) a legislative, judicial or contractual requirement that any such account be reimbursed,

7. It is the undersigned's reasonable expectation that the Local Government Unit will spend the proceeds of the Note, using the method of accounting that the Note proceeds will be spent after amounts available for payments of expenditures as described in Paragraphs 3(a)(ii) or 3(b)(i) above, as applicable, have been spent for working capital expenditures.

8. The estimates set out above are true and correct and are in accordance with the duly adopted budget of the Local Government Unit.

9. To the best of the knowledge and belief of the undersigned, the expectations stated herein are reasonable and there are no other facts, estimates or circumstances which would materially change the conclusions set out herein.

10. This Certificate is given pursuant to Section 506 of the Local Government Unit Debt Act and Section 148 of the Code.

11. To the best of the undersigned's knowledge the Local Government Unit has never been advised by the Internal Revenue Service that it has been listed as an issuer which may not certify its bonds or other obligations for arbitrage purposes.

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IN WITNESS WHEREOF, the undersigned officers have set their hands and affixed the seal of the Local Government Unit on this 30th day of January, 2004.

ATTEST:

BOROUGH OF AVALON

By Harry W. Dilmore
Harry W. Dilmore
Secretary

By Edward Klicker
Edward Klicker, President

By Edward Repp
Edward Repp, Vice President

By Harry W. Dilmore
Harry W. Dilmore
Secretary/Treasurer

Examined and approved this 30 day of
January, 2004.

By Daniel K. Bricmont
Daniel K. Bricmont, Esq., Mayor