

ORDINANCE NO. 2007-1
OF THE BOARD OF SUPERVISORS
OF THE TOWNSHIP OF LOWER OXFORD,
CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE THAT AUTHORIZES THE INCURRENCE OF NON-ELECTORAL DEBT BY THE TOWNSHIP OF LOWER OXFORD (THE "PARTICIPANT") PURSUANT TO THE ISSUANCE OF THE GUARANTEED REVENUE NOTE, SERIES OF 2007 (THE "PARTICIPANT NOTE") IN THE AGGREGATE PAR AMOUNT OF \$1,000,000 AND APPROVES CERTAIN CAPITAL PROJECTS; APPROVES THE NEGOTIATED SALE OF THE PARTICIPANT NOTE TO THE DELAWARE VALLEY REGIONAL FINANCE AUTHORITY; APPROVES THE SUBSTANTIAL FORMS OF THE PARTICIPANT NOTE, LOAN AGREEMENT, AND CONTINUING DISCLOSURE AGREEMENT AND AUTHORIZES EXECUTION AND DELIVERY OF ALL NECESSARY DOCUMENTS; STATES THE AMORTIZATION SCHEDULE AND MAXIMUM ANNUAL DEBT SERVICE PAYMENTS; AUTHORIZES AND AWARDS A TRANSACTION UNDER A QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT AND AUTHORIZES AND DIRECTS A FILING TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; PLEDGES OPEN SPACE TAX REVENUES, WITH A GUARANTY OF THE FULL FAITH, CREDIT AND TAXING POWER OF THE PARTICIPANT, FOR THE PAYMENTS DUE ON THE PARTICIPANT NOTE, INCLUDING THE REGULARLY SCHEDULED PAYMENTS DUE UNDER THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT; COVENANTS TO PAY ANY TERMINATION FEES; CREATES AND APPOINTS A SINKING FUND DEPOSITORY; AUTHORIZES THE APPLICATION FOR APPROVAL OF THE ISSUANCE OF THE PARTICIPANT NOTE TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; AUTHORIZES

ADVERTISEMENT OF ENACTMENT; AND REPEALS INCONSISTENT ORDINANCES.

WHEREAS, certain capital projects (collectively, the “2007 Project”) consisting of (i) the purchase of agricultural, farmland, and open space easements to preserve open space, (ii) the reimbursement of expenditures on the 2007 Project paid from other available funds prior to the closing of the Participant Note, and (iii) the payment of the costs of issuance of the Participant Note will benefit the health and welfare of the residents of the Township of Lower Oxford; and

WHEREAS, the electorate of the Township of Lower Oxford has approved, in a referendum held on November 3, 2003, the imposition of an additional earned income tax (the “Open Space Tax”) in the aggregate amount of 0.50%, pursuant to the *Open Space Lands Acquisition and Preservation Act, 32 P.S. §5001, et seq.*, to be used to retire the indebtedness incurred in purchasing interests in real property or in making additional acquisitions of real property for the purpose of securing an open space benefit or benefits; and

WHEREAS, the Board of Supervisors imposed the Open Space Tax at the rate of 0.50% effective January 1, 2004; and

WHEREAS, the Participant expects that the revenues received from the Open Space Tax (collectively, the “Open Space Tax Revenues”) will be sufficient to pay the debt service of the Participant Note; and

WHEREAS, the incurrence of non-electoral debt by the Participant is necessary to fund the 2007 Project; and

WHEREAS, the Participant has incurred costs of the 2007 Project before the issuance of the Participant Note that have been paid from other available funds; and

WHEREAS, the Participant wishes to reimburse expenditures paid before the issuance of the Participant Note from the proceeds of the Participant Note; and

WHEREAS, the *Internal Revenue Code* requires the adoption of a statement of official intent under Regulation 1.150-2 (the “Reimbursement Regulations”) for the reimbursement of expenditures from the proceeds of a tax exempt obligation; and

WHEREAS, the Participant adopted a resolution on March 14, 2007, (the “Reimbursement Resolution”) that stated the official intent of the Participant as required by the Reimbursement Regulations; and

WHEREAS, the 2007 Project shall be for the benefit and use of the general public, and no private party shall have any special legal entitlement to the beneficial use of the 2007 Project, through a lease, management contract, or any other arrangement; and

WHEREAS, the proposed increase of non-electoral debt from the issuance of the Participant Note, together with the non-electoral and lease rental debt presently outstanding, will not cause the constitutional or statutory debt limitations of the Participant to be exceeded; and

WHEREAS, the Delaware Valley Regional Finance Authority (the “DVRFA”), a public authority within the meaning of the *Local Government Unit Debt Act*, 53 Pa. C.S.A. §8001, *et seq* (the “*Debt Act*”), issued the Local Government Revenue Bonds, Series of 1997 (the “DVRFA Bonds”), to provide funds for loans to be secured by the pledge of the full faith, credit and taxing power of local government units (the “Loan Program”); and

WHEREAS, the DVRFA determined to enter into an “Interest Rate Management Agreement”, as such term is defined in the *Debt Act*, with respect to the DVRFA Bonds (the “DVRFA Swap Agreement”) in order to provide a more cost effective Loan Program and to allow participants in the Loan Program to manage interest rate risk more efficiently; and

WHEREAS, Calhoun, Baker Inc. (the “Financial Advisor”) is an “Independent Financial Advisor”, as such term is defined in the *Debt Act*, to the DVRFA, and the Financial Advisor has prepared an “Interest Rate Management Plan” (the “DVRFA Plan”), as such term is defined in the *Debt Act*, that has been adopted by the Board of DVRFA; and

SECTION 4. AMORTIZATION SCHEDULE AND MAXIMUM ANNUAL DEBT SERVICE PAYMENTS

The indebtedness of the Participant Note shall be evidenced by one Note in the aggregate par amount of ONE MILLION DOLLARS (\$1,000,000). The Participant Note shall bear interest at the floating rate specified in the Loan Agreement and Participant Note, the substantial forms of which are attached to the Purchase Proposal. The principal amortization schedule and maximum annual debt service payments as defined in the Participant Note and Loan Agreement for periodic scheduled payment under the Participant Note (based upon the maximum interest rate of 25%) are shown below:

Township of Lower Oxford
Guaranteed Revenue Note, Series of 2007
Estimated Debt Service Payments

<u>Fiscal</u> <u>Year</u> <u>Ending</u>	<u>Principal</u> <u>Amount (1)</u>	<u>Fixed Interest</u> <u>Rate (4)</u>	<u>Finance</u> <u>Charge (4)</u>	<u>Interest</u> <u>Payment (3)</u>	<u>Finance</u> <u>Charge (4)</u>	<u>Total</u> <u>Payment</u>
25-Dec-07	\$ -	4.113%	0.400%	\$ 21,933.31	\$ 2,133.31	\$ 24,066.62
25-Dec-08	32,000.00	4.113%	0.400%	40,357.34	3,925.34	76,282.68
25-Dec-09	33,000.00	4.113%	0.400%	39,017.34	3,795.04	75,812.38
25-Dec-10	35,000.00	4.113%	0.400%	37,612.26	3,658.35	76,270.61
25-Dec-11	36,000.00	4.113%	0.400%	36,148.90	3,516.00	75,664.90
25-Dec-12	38,000.00	4.113%	0.400%	34,620.39	3,367.31	75,987.70
25-Dec-13	39,000.00	4.113%	0.400%	33,033.62	3,212.96	75,246.58
25-Dec-14	41,000.00	4.113%	0.400%	31,381.75	3,052.34	75,434.09
25-Dec-15	43,000.00	4.113%	0.400%	29,647.68	2,883.66	75,531.34
25-Dec-16	45,000.00	4.113%	0.400%	27,831.34	2,706.96	75,538.30
25-Dec-17	47,000.00	4.113%	0.400%	25,932.75	2,522.34	75,455.09
25-Dec-18	49,000.00	4.113%	0.400%	23,951.89	2,329.66	75,281.55
25-Dec-19	52,000.00	4.113%	0.400%	21,864.77	2,126.65	75,991.42
25-Dec-20	54,000.00	4.113%	0.400%	19,678.30	1,914.00	75,592.30
25-Dec-21	57,000.00	4.113%	0.400%	17,385.62	1,691.00	76,076.62
25-Dec-22	59,000.00	4.113%	0.400%	14,993.52	1,458.31	75,451.83
25-Dec-23	62,000.00	4.113%	0.400%	12,495.16	1,215.34	75,710.50
25-Dec-24	65,000.00	4.113%	0.400%	9,873.44	960.35	75,833.79
25-Dec-25	68,000.00	4.113%	0.400%	7,128.36	693.31	75,821.67
25-Dec-26	71,000.00	4.113%	0.400%	4,259.85	414.34	75,674.19
25-Dec-27	74,000.00	4.113%	0.400%	1,268.00	123.35	75,391.35
Total	<u>\$ 1,000,000.00</u>			<u>\$ 490,415.59</u>	<u>\$ 47,699.92</u>	<u>\$ 1,538,115.51</u>

- (1) Principal is payable annually, commencing on: 25-May-08
(2) Fixed rate terminates on: 25-May-27
Estimate assumes the future rates are unchanged.
(3) Interest is payable monthly, commencing on: 25-Jun-07
(4) Estimated rate and amount.

SECTION 5. AUTHORIZATION AND AWARD OF A QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT

The Participant is incurring indebtedness under the *Debt Act* which will be issued to the DVRFA, a public authority, and the Participant, by execution of the Loan Documents, will become obligated for a portion of the DVRFA Swap Agreement equal to the outstanding principal amount of the Participant Note. The Board of Supervisors hereby accepts and adopts

the DVRFA Plan as the Interest Rate Management Plan fulfilling the requirements of §8281(b)(2) of the *Debt Act*. The Board of Supervisors hereby accepts and ratifies the minimum criteria used by DVRFA to select the provider of the DVRFA Swap Agreement and hereby accepts and ratifies the award of the DVRFA Swap Agreement in a private sale by negotiation. The Board of Supervisors hereby authorizes and awards the DVRFA Swap Agreement as the Qualified Interest Rate Management Agreement with respect to the Participant Note pursuant to §8281(a)(2) of the *Debt Act*. The Board of Supervisors hereby authorizes and directs the filing, to the Department of Community and Economic Development (“DCED”) within fifteen days of enactment, of a certified copy of this Ordinance and the following documents, attached hereto, in accordance with §8284(a)(1) of the *Debt Act*:

- (a) Form of the Loan Agreement to be executed by the Participant and DVRFA,
- (b) DVRFA Swap Agreement, the Qualified Interest Rate Management Agreement pursuant to §8281(b)(1) of the *Debt Act*,
- (c) DVRFA Plan, the Interest Rate Management Plan pursuant to §8281(b)(2)(ii) of the *Debt Act*, and
- (d) Finding of the Financial Advisor that the financial terms and conditions of the DVRFA Swap Agreement were fair and reasonable as of the date of the award by DVRFA, pursuant to §8281(e)(5) of the *Debt Act*.

SECTION 6. OBLIGATIONS OF THE PARTICIPANT RELATED TO THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT

The Participant’s obligations related to the DVRFA Swap Agreement are set forth in the Loan Agreement. In accordance with §8281(c) of the *Debt Act*:

- 1) The Participant pledges its full faith, credit, and taxing power to make any scheduled payments related to the DVRFA Swap Agreement, and covenants to budget, appropriate, and pay any termination payment (the “Termination Payment”) that may be due under the DVRFA Swap Agreement.

- 2) The notional amount of the DVRFA Swap Agreement related to the Participant Note is equal to the outstanding principal amount of the Participant Note, initially \$1,000,000.
- 3) The scheduled term of the Participant's obligations related to the DVRFA Swap Agreement ends on May 25, 2027.
- 4) The Participant's obligations under the DVRFA Swap Agreement end when the Participant repays or prepays the amounts outstanding under the Participant Note and the Loan Agreement.
- 5) The maximum interest rate under the DVRFA Swap Agreement is 15%.
- 6) The maximum annual net, scheduled payments, not including any Termination Payment, related to the DVRFA Swap Agreement shall not exceed the maximum annual debt service payments authorized for the Participant Note.
- 7) The Participant has pledged Open Space Tax Revenues for the payment of any obligations due under the DVRFA Swap Agreement.
- 8) The DVRFA Swap Agreement requires collateralization if the ratings of the provider drop below "Aa3" by Moody's Investor Service and "AA-" by Standard & Poor's.
- 9) The Participant's obligations to make payments due on the Participant Note and scheduled payments related to the DVRFA Swap Agreement are senior to any obligation for a Termination Payment.

SECTION 7. PLEDGE OF OPEN SPACE TAX REVENUES AND GUARANTY OF THE FULL FAITH, CREDIT, AND TAXING POWER

The Participant hereby pledges the Open Space Tax Revenues for the timely payment of all amounts due under the Participant Note and the Loan Agreement. The Participant hereby covenants not to issue any additional debt with a pledge of the Open Space Tax Revenues that would be senior to the pledge for the Participant Note. In the event of a deficiency of the Open Space Tax Revenues, the Participant hereby covenants:

- (i) to include all periodic scheduled payments payable under the Participant Note, which takes into consideration (a) the regularly scheduled interest payments on the DVRFA's Bonds, (b) the regularly scheduled payments due under the DVRFA Swap Agreement, (c) all Administrative Fees and Expenses, except any Termination Payments due under the DVRFA Swap Agreement, and (d) the amortization of principal due on the Participant Note, in the budget of the fiscal year in which such amounts are due and payable,
- (ii) to appropriate such amounts from its taxes and other general revenues, and
- (iii) to pay, or cause to be paid, punctually and duly, such amounts that are due and payable under the Participant Note and the Loan Agreement at the dates and places and in the manner stated in the Participant Note and the Loan Agreement.

For such budgeting, appropriation, and payment, the Participant irrevocably pledges its full faith, credit, and taxing power. As provided by the *Debt Act*, this covenant shall be specifically enforceable.

SECTION 8. COVENANTS FOR TERMINATION PAYMENTS

The Participant hereby covenants:

- (i) to include the amounts for Administrative Fees and Expenses allocable to Termination Payments due under the DVRFA Swap Agreement for each fiscal year in which such Termination Payments are payable in its budget for that year,
- (ii) to appropriate such amounts from its general revenues for the payment of such Termination Payments, and
- (iii) to duly and punctually pay or cause to be paid from its sinking fund or any other of its revenues or funds the Termination Payments at the dates and places and in the manner stated in the Participant Note and the Loan Agreement.

Pursuant to §8129 of the *Debt Act*, in the event of a payment default by the Participant, the Termination Payments shall constitute “unfunded debt.”

SECTION 9. SINKING FUND DEPOSITORY

The Board of Supervisors hereby finds and acknowledges that under the terms of the Loan Agreement, Commerce Bank, N.A. (the “Bank”), or its successors, shall serve and is hereby appointed as the Sinking Fund Depository, shall maintain separate accounts, subaccounts and subfunds for Repayments (as defined in the Loan Agreement) to be made by the Participant until such Participant Note is paid in full. These accounts, subaccounts and subfunds shall, collectively, constitute the “Sinking Fund” required by the *Debt Act* for the Participant Note. The Board of Supervisors hereby authorizes, empowers, and directs the Chairman or Vice Chairman and the Secretary/Treasurer to contract with the Bank by the execution of the Loan Agreement to serve as Sinking Fund Depository for the Participant Note.

SECTION 10. AUTHORIZATION TO SUBMIT STATEMENTS TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

The Solicitor and the Secretary/Treasurer are hereby authorized and directed to prepare and to submit to the DCED an application for approval of the incurrence of the non-electoral debt evidenced by the Participant Note, including the proceedings that authorize issuance, the debt statement, any statements or certificates required to qualify the Participant Note as self-liquidating debt pursuant to Section 8026 of the *Debt Act*, and any other documents required by the *Debt Act* or DCED.

SECTION 11. LEGAL ADVERTISEMENTS

The Board of Supervisors hereby ratifies and directs the advertisement of a summary of this Ordinance as finally enacted, as required by the *Debt Act*, in the *Daily Local News*, a newspaper of general circulation in the Township of Lower Oxford, within fifteen (15) days following the day of final enactment.


SECTION 12. CONFLICTING ORDINANCES

All ordinances or parts of ordinances not in accord with this Ordinance are hereby repealed insofar as they conflict herewith.

[Signature Page Follows]

IN WITNESS WHEREOF, we, the undersigned authorized officials of the Township of Lower Oxford, have hereunto set our signatures and affixed hereto the Seal.


Dated: May 9, 2007



ARTHUR A. ASTLE
Chairman of the Board of Supervisors
Township of Lower Oxford

[Seal]

ATTEST:



SARA LAGANELLI
Secretary/Treasurer
Township of Lower Oxford

