

DELAWARE VALLEY REGIONAL FINANCE AUTHORITY COVENANT AGREEMENT

This Covenant Agreement (the “Agreement”) originally adopted on April 9, 2001, by the Delaware Valley Regional Finance Authority (the “Authority”) for the benefit of the holders of any and all Bond Series, as defined herein as amended and restated on April 23, 2002, April 12, 2004, and June 28, 2007, is hereby amended and restated as of August 3, 2009.

Whereas, the Authority has issued bonds (the “Outstanding Bond Series”) to provide funds for loans to local government units (the “Pooled Loan Program”):

- 1) \$145,000,000 Adjustable Rate Local Government Revenue Bonds, Series 1985 A, 1985B, 1985 C and 1985 D pursuant to the provisions of a Trust Indenture dated December 30, 1985 (the “1985 Indenture”);
- 2) \$115,000,000 Local Government Revenue Bonds, Series 1986 Bi-Modal Multiple-Term Format (the “1986 Bonds”) pursuant to an Indenture of Trust dated as of August 28, 1986, as amended and restated as of May 13, 1988 (the “1986 Indenture”);
- 3) \$140,000,000 Local Government Revenue Bonds, 1997 Series A, B and C (the “1997 Bonds”) pursuant to a Trust Indenture dated as of July 1, 1997 (the “1997 Indenture”);
- 4) \$300,000,000 Local Government Revenue Bonds, 1998 Series A, B and C (the “1998 Bonds”) pursuant to a Trust Indenture dated as of August 1, 1998 (the “1998 Indenture”);
- 5) \$375,000,000 Local Government Revenue Bonds, Series of 2002 pursuant to a Trust Indenture dated as of May 1, 2002 (the “2002 Indenture”); and
- 6) \$160,000,000 Local Government Revenue Bonds, 2007 Series A, B and C (“the “2007 Bonds”) pursuant to the Master Trust Indenture (the “Master Indenture”) and the First Supplemental Indenture (the “2007 Indenture”) each dated as of June 28, 2007.

WHEREAS, the 1985 Indenture permits monies in the Earnings Fund, when Parity (as therein defined) exists, to be transferred as otherwise directed by the Program Administrator; the 1986 Indenture permits amounts on deposit in the Surplus Fund to be transferred, *inter alia*, to the Authority free and clear of the trusts created by the 1986 Indenture; the 1997 Indenture permits amounts deposited in the Discretionary Fund, when Parity (as therein defined) exists to be used at the direction of the Authority for any lawful purpose; the 1998 Indenture permits amounts deposited in the Discretionary Fund when Parity (as therein defined) exists to be used at the direction of the Authority for any lawful purpose, and the 2002 Indenture permits payments to the Authority from moneys in the Discretionary Fund under the 2002 Indenture which receive

a favorable opinion of Bond Counsel; provided that at the time of such payment, no Termination Payment under a Swap Agreement (as each term is defined under the 2002 Indenture) is then due and owing.

WHEREAS, the Master Indenture provides that the Program Administrator may, from time to time, direct the transfer of funds in the Revenue Fund to the Discretionary Fund created thereunder, and that funds in the Discretionary Fund may be used by the Authority for any purpose, inter alia, to make payments pursuant to this Covenant Agreement, provided that no Termination Payment is due and owing.

WHEREAS, the Authority has accumulated in each of the 1985 Indenture, the 1986 Indenture, the 1997 Indenture, the 1998 Indenture, the 2002 Indenture, and the Discretionary Fund under the Master Indenture amounts which, as provided therein, can be paid to and used by the Authority for any purpose, which, as provided therein, can be used for the purpose set forth in this Covenant Agreement (collectively, the "Excess Funds").

WHEREAS, the Authority will, from time to time hereafter, issue additional series of bonds (the "Future Bond Series"), all of which shall be secured under the Master Indenture.

WHEREAS, the Authority wishes to enhance the marketability of the Outstanding Bond Series and the Future Bond Series (collectively, the "Bond Series") in order to reduce the costs of its Pooled Loan Program.

NOW, THEREFORE, in consideration of the benefits to be obtained by it as a result of the execution and delivery of this Covenant Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Authority hereby covenants as follows:

- 1) The Authority hereby authorizes and directs the Program Administrator to transfer Excess Funds to
 - (i) replenish any deficiency of the debt service reserve fund of any Bond Series that cannot be restored from the available funds of that Bond Series or
 - (ii) pay any debt service (including debt service as a result of any provider of a credit facility failing to honor a draw on such credit facility for the payment of debt service), periodic scheduled payments on interest rate swap agreements, Administrative Expenses and Termination Payments that cannot be paid from the available funds of a Bond Series.
- 2) The Authority hereby authorizes and directs the Program Administrator to review the sufficiency of the available funds of each Bond Series and to transfer Excess Funds among the Bond Series, as needed.
- 3) The Authority hereby covenants, as long as any Bond Series is outstanding, to restrict the use of any Excess Funds to (i) replenish any deficiency of the debt service reserve fund of any

Bond Series that cannot be restored from the available funds of that Bonds Series or (ii) pay any debt service payments (including debt service as a result of any provider of a credit facility failing to honor a draw on such credit facility for the payment of debt service), periodic scheduled payments on interest rate swap agreements, Administrative Expenses and Termination Payments that cannot be paid from the available funds of a Bond Series.

- 4) As used in this Covenant Agreement, the term “Administrative Expenses” means any expenditures of the Authority reasonably and necessarily incurred by the Authority by reason of its issuance of any Bond Series or for the Pooled Loan Program, as determined by the Program Administrator, including, without limitation, compliance charges with respect to securities disclosure requirements, auditing fees and expenses, extraordinary payments with respect to arbitrage rebate or negotiated closing agreements with the Internal Revenue Service, non-asset bond costs, costs associated with rebate compliance, the fees and expenses of trustees, the Program Administrator and rebate analysts, all other legal, financing and administrative expenses incurred by the Authority with respect to the Pooled Loan Program, the maintenance of prudent levels of liquidity to provide sufficient levels of operating cash flow, as determined by the Program Administrator, and any expenses incurred by the Authority or trustees to compel full and punctual performance of all the provisions of all documents related to the Pooled Loan Program.
- 5) As used in this Covenant Agreement, the term “Termination Payments” means amounts, other than periodic scheduled payments, payable by the Authority under an agreement which in the judgment of the Authority, is designed to manage interest rate risk or interest cost of the Authority or its borrowers under the Pooled Loan Program and which is entered into by the Authority with respect to any Bond Series.
- 6) The Authority hereby covenants with respect to each Bond Series that it will make loans from time to time from such Bond Series only to the extent that the principal repayment of such loans scheduled to be made in accordance with the terms of each such loan, together with other available monies, is sufficient to pay, when due, the principal on any bonds of such Bond Series.
- 7) The Authority hereby covenants, after the effective date of this Amended and Restated Covenant Agreement, that the Participant, its Guarantor, or the provider of a municipal bond insurance policy or financial guaranty policy that secures the loan repayments of the Participant (each a “Participant Credit Enhancer”) for any new loan must have a published rating of “A3” or higher from Moody’s Investors Service (“Moody’s”) or “A-” or higher from Standard & Poor’s (“S&P”) unless:
 - (i) the principal amount of loans outstanding from all the Bond Series that do not have published ratings for Participants, Guarantors, or Participant Credit Enhancers of “A3” or higher from Moody’s or “A-” or higher from S&P will not exceed 10% of the funding available to originate loans from all Bond Series (the “Available Funding,” equal to the principal amount of all loans outstanding plus the deposits in accounts held by the Trustees of the Bond Series that are restricted to the origination of new loans) or

- (ii) Moody's and S&P affirm that the closing of the loan would not result in the withdrawal or downgrading of the rating of the Authority or the Bond Series.
- 8) The Authority hereby covenants, after the effective date of this Amended and Restated Covenant Agreement, that if the rating of a Participant Credit Enhancer for a loan that has already closed is reduced below "Aa3" by Moody's or below "AA-" by S&P, the Authority will secure a new Participant Credit Enhancer, rated "Aa3" or higher by Moody's or "AA-" or higher by S&P unless:
 - (i) the principal amount of loans outstanding from all the Bond Series that do not have published ratings for Participants, Guarantors, or Participant Credit Enhancers of "A3" or higher from Moody's or "A-" or higher from S&P will not exceed 10% of the Available Funding or
 - (ii) Moody's and S&P affirm that the withdrawal or downgrading of the rating of the Authority or the Bond Series would not result if the Participant Credit Enhancer were not replaced.
- 9) The Authority hereby covenants, after the effective date of this Amended and Restated Covenant Agreement, that if the rating of a Participant is reduced below "A3" by Moody's or below "A-" by S&P subsequent to the closing of the loan, the Authority will secure a Participant Credit Enhancer, rated "Aa3" or higher by Moody's or "AA-" or higher by S&P unless:
 - (i) the principal amount of loans outstanding from all the Bond Series that do not have published ratings for Participants, Guarantors, or Participant Credit Enhancers of "A3" or higher from Moody's or "A-" or higher from S&P will not exceed 10% of the Available Funding or
 - (ii) Moody's and S&P affirm that the withdrawal or downgrading of the rating of the Authority or the Bond Series would not result if the loan is not secured by a Participant Credit Enhancer.
- 10) The Authority hereby covenants that it will not originate a loan if the Participant, Guarantor, or Participant Credit Enhancer does not have a published rating of "A3" or higher from Moody's or "A-" or higher from S&P if the "10% of the Available Funding" thresholds in Sections 7, 8, and 9 herein have been exceeded without the prior written consent of Ambac Assurance Corporation ("Ambac") as long as the Municipal Bond Insurance Policies (the "Policies") issued by Ambac to secure the payment of principal of and interest on the 1997 Bonds and 1998 Bonds remain in full force and effect and Ambac has not defaulted on its obligations under the Policies.

- 11) The Authority hereby covenants that it will not amend Sections 7, 8, 9, 10, or 11 without the prior written consent of Ambac as long as the Policies remain in full force and effect and Ambac has not defaulted on its obligations under the Policies.
- 12) The provisions of this Covenant Agreement in Sections 7, 8, 9, 10, and 11 herein, in effect on the date hereof shall remain in full force and effect notwithstanding any amendment, modification, or termination of the Covenant Agreement, in whole or in part, unless Ambac gives prior written consent, as long as the Policies remain in full force and effect and Ambac has not defaulted on its obligations under the Policies.

IN WITNESS WHEREOF, the **DELAWARE VALLEY REGIONAL FINANCE AUTHORITY** has authorized its Chairman and Secretary to execute, attest, and seal this Covenant Agreement.

ATTEST:

**DELAWARE VALLEY REGIONAL
FINANCE AUTHORITY**

JOSEPH E. BRION
Secretary

By: _____
CHARLES O. MARTE, JR.
Chairman

(SEAL)