

ORDINANCE NO. ____
OF THE BOROUGH COUNCIL
OF THE BOROUGH OF KENNETT SQUARE,
CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE THAT AUTHORIZES THE INCURRENCE OF NONELECTORAL, GENERAL OBLIGATION DEBT BY THE BOROUGH OF KENNETT SQUARE, CHESTER COUNTY, PENNSYLVANIA (THE “PARTICIPANT”) PURSUANT TO THE ISSUANCE OF THE GENERAL OBLIGATION NOTES, 2020 A SERIES AND GENERAL OBLIGATION NOTES, 2020 B SERIES (COLLECTIVELY, THE “2020 NOTES”) IN THE AGGREGATE PRINCIPAL AMOUNT OF \$4,820,000; APPROVES A CERTAIN REFUNDING PROJECT; APPROVES THE NEGOTIATED SALE OF THE 2020 NOTES TO THE DELAWARE VALLEY REGIONAL FINANCE AUTHORITY; APPROVES THE SUBSTANTIAL FORMS OF THE LOAN DOCUMENTS 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 THE FULL FAITH, CREDIT, AND TAXING POWER OF THE PARTICIPANT FOR THE TIMELY REPAYMENT OF THE 2020 NOTES, INCLUDING THE PERIODIC PAYMENTS DUE UNDER THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT; COVENANTS TO PAY ANY TERMINATION CHARGES; CREATES A SINKING FUND AND APPOINTS A SINKING FUND DEPOSITORY; AUTHORIZES THE APPLICATION TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT FOR APPROVAL OF THE ISSUANCE OF THE 2020 NOTES; AUTHORIZES ADVERTISEMENT OF ENACTMENT; AND REPEALS INCONSISTENT ORDINANCES.

WHEREAS, the Borough of Kennett Square (the “Participant”) issued its General Obligation Bond, Series A of 2019 (the “2019 A Bond”) on July 19, 2019, in the aggregate par amount of \$3,030,000 to fund certain refunding and capital projects (collectively, the “2019 A Project”) consisting of: (i) the refunding of a portion of the General Obligation Note, Series of

2016 (the “2016 Note”), (ii) a portion of the costs to plan, design, and construct a new parking garage, and (iii) the costs of issuance of the 2019 A Bond; and

WHEREAS, the Participant issued its General Obligation Bond, Series C of 2019 (the “2019 C Bond”) in the aggregate par amount of \$2,033,000 on July 19, 2019, to fund certain capital projects (collectively, the “2019 C Project”) consisting of: (i) improvements to the Borough sewer system and (ii) the costs of issuance of the 2019 C Bond; and

WHEREAS, the Participant issued its 2016 Note in the aggregate par amount of \$4,972,000 to fund certain refunding projects (collectively, the “2016 Project”) consisting of (i) the refunding of the General Obligation Bonds, Series A of 2011 (the “2011 A Bonds”), and (ii) the costs associated with the issuance of the 2011 A Bonds; and

WHEREAS, the Participant issued its 2011 A Bonds in the aggregate par amount of \$6,885,000 to fund certain refunding and capital projects (collectively, the “2011 Project”) consisting of (i) the refunding the General Obligation Bonds, Series of 2003 (the “2003 Bonds”), (ii) the refunding the Guaranteed Parking Revenue Bonds, Series of 2004 (the “2004 Bonds”), (iii) certain capital improvement projects in the Borough, and (iv) the costs associated with the issuance of the 2011 A Bonds; and

WHEREAS, the Participant issued its 2004 Bonds in the aggregate par amount of \$4,300,000 to fund certain refunding projects (collectively, the “2004 Project”) consisting of (i) the advance refunding of the Guaranteed Parking Revenue Bonds, Series of 1995 (the “1995 Bonds”), and (ii) the costs associated with the issuance of the 2004 Bonds; and

WHEREAS, the Participant issued its 2003 Bonds in the aggregate par amount of \$3,000,000 to fund certain capital projects (collectively, the “2003 Project”) consisting of (i) firefighting equipment, (ii) acquisition of land and buildings and renovations and improvements thereto, (iii) water system, storm drainage and street renovations and improvements, (iv) recreation facilities, (v) Geographic Information System mapping, and (vi) the costs associated with the issuance of the 2003 Bonds; and

WHEREAS, the Participant issued its 1995 Bonds in the aggregate par amount of \$4,525,000 to fund certain capital projects (collectively, the “1995 Project”) consisting of (i) the costs to plan, design, and construct a new parking garage, (ii) interest during construction, (iii)

streetscape improvements, (iv) a debt service reserve fund, and (v) the costs of issuance of the 1995 Bonds; and

WHEREAS, the Participant may optionally redeem the 2019 A and C Bonds on any date; and

WHEREAS, the Participant would reduce its total debt service costs by currently refunding the 2019 A and C Bonds at current market levels; and

WHEREAS, the Participant has obtained preliminary cost estimates for the refunding of the 2019 A and C Bonds from persons qualified by experience; and

WHEREAS, the incurrence of nonelectoral debt by the Participant is necessary to refund the 2019 A and C Bonds; and

WHEREAS, the Participant has determined to issue its General Obligation Notes, 2020 A Series (the “2020 A Notes”) and its General Obligation Notes, 2020 B Series (the “2020 B Notes”, and, collectively with the 2020 A Notes, the “2020 Notes”) and to undertake a certain refunding project (the “2020 Refunding”) consisting of (i) the current refunding of the 2019 A Bond, (ii) the current refunding of the 2019 C Bond, and (iii) the payment of the costs of issuance of the 2020 Notes; and

WHEREAS, the 2019 A Project, including the projects refinanced by the 2019 A Bond, and the 2019 C Project to be refinanced by the 2020 Notes, 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 2019 A Project or 2019 B Project, through a lease, management contract, or any other arrangement that would result in a private business use under the *Internal Revenue Code of 1986*, as amended; and

WHEREAS, the proposed increase of nonelectoral debt from the issuance of the 2020 Notes, together with the nonelectoral 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 (“DelVal”), a public authority within the meaning of the *Local Government Unit Debt Act*, 53 Pa. C.S.A. §8001, *et seq* (the “*Debt Act*”), has from time to time issued Local Government Revenue Bonds (the “DelVal

Bonds”), to provide funds for loans to local government units and municipal authorities (the “Loan Program”); and

WHEREAS, from time to time, DelVal has entered into interest rate swap agreements related to the DelVal Bonds (collectively, the “DelVal 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 “Municipal Advisor”) is an “Independent Financial Advisor”, as such term is defined in the *Debt Act*, to DelVal, and the Municipal Advisor has prepared an “Interest Rate Management Plan” (the “Plan”), as such term is defined in the *Debt Act*, and an Interest Rate Swap Management Policy (the “Swap Policy”) that have been adopted by the Board of Directors of DelVal; and

WHEREAS, DelVal established minimum rating criteria for any counterparty to the DelVal Swap Agreement of long term, senior, unsecured debt ratings in the “AA-” or “Aa3” category or higher, or ratings equal to or higher than any active counterparty, by a Nationally Recognized Statistical Rating Organization registered with the Securities and Exchange Commission, and the Board of Directors of DelVal found that the award of transactions under the DelVal Swap Agreement by negotiation in private sales were in the best financial interests of DelVal and the participants in the Loan Program, and the Municipal Advisor concluded that the financial terms and conditions of the DelVal Swap Agreement were fair and reasonable as of the dates of award; and

WHEREAS, the Participant wishes to utilize the DelVal Loan Program by issuing the 2020 Notes to DelVal; and

WHEREAS, under the terms of the Loan Agreement with DelVal, interest payments on the 2020 Notes (the “Loan Interest”) will equal the amounts allocable to the 2020 Notes for interest on the DelVal Bonds, periodic scheduled payments on the DelVal Swap Agreement, and other costs and liquidity requirements incurred by DelVal to administer the Loan Program; and

WHEREAS, under the terms of the Loan Agreement with DelVal, the principal amount outstanding of the 2020 Notes (the “Loan Principal”) will equal the notional amount of the DelVal Swap Agreement related to the 2020 Notes; and

WHEREAS, the Borough Council intends to (i) designate the Loan Agreement and the allocable portion of the DelVal Swap Agreement as a Qualified Interest Rate Management Agreement related to the 2020 Notes, (ii) approve the Plan as the Interest Rate Management Plan required by the *Debt Act*, and (iii) adopt the Swap Policy.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOROUGH COUNCIL OF THE BOROUGH OF KENNETT SQUARE, CHESTER COUNTY, PENNSYLVANIA, AND IT IS HEREBY ORDAINED AND ENACTED BY THE AUTHORITY OF SAID BOROUGH COUNCIL THAT:

SECTION 1. APPROVAL OF THE 2020 REFUNDING AND AUTHORIZATION TO ISSUE THE 2020 NOTES

The Borough Council (the “Council”) hereby authorizes and approves the 2020 Refunding. Pursuant to §8241(b)(1) of the *Debt Act*, the current refunding of the 2019 A Bond from the proceeds of the 2020 A Notes and the current refunding of the 2019 C Bond from the proceeds of the 2020 B Notes will each reduce total debt service. In accordance with §8243(a) of the *Debt Act*, the maturities of the 2019 A and C Bonds will not be extended by the refunding. Pursuant to §8142(a)(2) of the *Debt Act*, 14-year remaining weighted average useful life of the 2019 A Project exceeds the eleven-year term of the 2020 A Notes, and the 24-year remaining weighted average useful life of the 2019 C Project exceeds the eleven-year term of the 2020 B Notes. The principal of the 2020 Notes shall be amortized to provide level or declining annual debt service, pursuant to §8142(b)(1) of the *Debt Act*. The amortization of the principal amounts of the 2020 Notes shall begin within two years of the date of issue in accordance with §8142(c) of the *Debt Act*. The Council hereby authorizes and directs that notice of optional redemption be sent to the holders of the 2019 A and C Bonds. The Council hereby authorizes and directs the incurrence of nonelectoral, general obligation debt in the aggregate principal amount of \$4,820,000 by the issuance of the 2020 Notes.

SECTION 2. APPROVAL OF THE LOAN COMMITMENT

The Council, after due deliberation and investigation, hereby determines that a private sale by negotiation of the 2020 Notes to DelVal is in the best financial interests of the Participant. The Council hereby accepts the Loan Commitment from DelVal, attached hereto, to purchase the 2020

Notes at an aggregate price of \$4,820,000 from the proceeds of the DelVal Bonds. The Participant shall be responsible for paying DelVal's costs of origination in an amount not to exceed \$24,100, as directed by DelVal's Program Administrator upon the issuance of the 2020 Notes. The 2020 Notes shall be purchased by DelVal on or about October 26, 2020, or in such installments and/or at such other times as the President or Vice-President of the Council and DelVal's Program Administrator shall determine.

SECTION 3. APPROVAL OF THE FORMS OF THE LOAN DOCUMENTS AND AUTHORIZATION TO EXECUTE AND DELIVER ALL NECESSARY DOCUMENTS

The substantial forms of the Loan Agreement and 2020 Notes (collectively, the "Loan Documents") attached to the Loan Commitment are hereby approved. The President or Vice-President of the Council and the Secretary or Assistant Secretary of the Council (collectively, the "Authorized Officers") are hereby authorized and directed to execute and deliver the Loan Documents, in the substantial forms attached to the Loan Commitment, but with such alterations, deletions and additions as the Authorized Officers may approve (such approval to be conclusively established by the execution of the Loan Documents by the Authorized Officers). The Authorized Officers also are hereby authorized and directed (i) to execute and deliver such other certificates, instruments, and agreements (including those required by any institution issuing a financial guaranty insurance policy, municipal bond insurance policy, letter of credit, or similar instrument related to the DelVal Bonds or the 2020 Notes) and (ii) to take all actions that may be necessary or beneficial to issue the 2020 Notes.

SECTION 4. AMORTIZATION SCHEDULE AND MAXIMUM ANNUAL DEBT SERVICE PAYMENTS

The indebtedness of the 2020 Notes shall be nonelectoral debt and a general obligation of the Participant and shall be evidenced by two or more Promissory Notes (The forms are attached hereto as Exhibit A.) in the aggregate par amount of \$4,820,000. The 2020 Notes shall bear interest (the "Loan Rate") at the rate specified in the Loan Agreement and the 2020 Notes, the substantial forms of which are attached to the Loan Commitment. The 2020 Notes shall be subject to optional redemption by the Participant as set forth in the 2020 Notes and the Loan Agreement. The amortization schedule of the Loan Principal and the maximum Loan Interest payments under the 2020 Notes, based upon the maximum Loan Rate of 15%, are shown below.

**General Obligation Notes, 2020 Series
Principal Amortization Schedule and
Maximum Annual Debt Service Payments**

<i>Bond Year Ending</i>	<i>Principal Amount (1)</i>			<i>Maximum Interest Rate</i>	<i>Maximum Interest Payment (2)</i>	<i>Maximum Annual Debt Service</i>
	<i>2020 A Notes</i>	<i>2020 B Notes</i>	<i>Total</i>			
25-May-21	\$ 269,000.00	\$ 169,000.00	\$ 438,000.00	15%	\$ 419,741.67	\$ 857,741.67
25-May-22	271,000.00	170,000.00	441,000.00	15%	657,300.00	1,098,300.00
25-May-23	273,000.00	172,000.00	445,000.00	15%	591,150.00	1,036,150.00
25-May-24	276,000.00	173,000.00	449,000.00	15%	524,400.00	973,400.00
25-May-25	278,000.00	175,000.00	453,000.00	15%	457,050.00	910,050.00
25-May-26	280,000.00	176,000.00	456,000.00	15%	389,100.00	845,100.00
25-May-27	283,000.00	178,000.00	461,000.00	15%	320,700.00	781,700.00
25-May-28	285,000.00	180,000.00	465,000.00	15%	251,550.00	716,550.00
25-May-29	288,000.00	181,000.00	469,000.00	15%	181,800.00	650,800.00
25-May-30	290,000.00	183,000.00	473,000.00	15%	111,450.00	584,450.00
25-May-31	85,000.00	185,000.00	270,000.00	15%	40,500.00	310,500.00
Total	<u>\$ 2,878,000.00</u>	<u>\$ 1,942,000.00</u>	<u>\$ 4,820,000.00</u>		<u>\$ 3,944,741.67</u>	<u>\$ 8,764,741.67</u>

- (1) Principal is payable annually, commencing on: 25-May-21
(2) Interest is payable monthly on the 25th, beginning: 25-Nov-20
Interest is calculated for the period beginning on: 26-Oct-20

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

The Participant is incurring indebtedness under the *Debt Act* that will be issued to DelVal, a public authority, and the Participant, by execution of the Loan Agreement, will become obligated for a notional amount of the DelVal Swap Agreement equal to the outstanding principal amount of the 2020 Notes. The Council hereby accepts and adopts the Plan as the Interest Rate Management Plan fulfilling the requirements of §8281(b)(2) of the *Debt Act*. The Council hereby adopts the Swap Policy, accepts and ratifies the minimum criteria used by DelVal to select the counterparties of the DelVal Swap Agreement, and accepts and ratifies the award of the DelVal Swap Agreement in a private sale by negotiation. The Council hereby authorizes and awards the Loan Agreement and the portion of the DelVal Swap Agreement allocable to the 2020 Notes as the Qualified Interest Rate Management Agreement with respect to the 2020 Notes, pursuant to §8281(a)(2) of the *Debt Act*. The Council 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, in accordance with §8284(a)(1) of the *Debt Act*:

- 1) Form of the Loan Agreement, the Qualified Interest Rate Management Agreement pursuant to §8281(b)(2) of the *Debt Act*, and the form of the confirmation related to the 2020 Notes,
- 2) The Interest Rate Management Plan pursuant to §8281(b)(2) of the *Debt Act*, and
- 3) The finding of the Independent Financial Advisor that the financial terms and conditions of the DeVal Swap Agreement were fair and reasonable as of the date of the award by DeVal, pursuant to §8281(e)(5) of the *Debt Act*.

SECTION 6. PLEDGE OF THE FULL FAITH, CREDIT, AND TAXING POWER

The Participant hereby covenants to:

- 1) Include all payments of Loan Interest and Loan Principal payable under the Loan Agreement and the 2020 Notes in the budget of the fiscal year in which such amounts are due and payable,
- 2) Appropriate such amounts from its taxes and other general revenues, and
- 3) Pay, or cause to be paid, punctually and duly, such amounts that are due and payable under the 2020 Notes and the Loan Agreement on the dates, at the places, and in the manner stated in the 2020 Notes 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 7. OBLIGATIONS OF THE PARTICIPANT RELATED TO THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT

The Participant's obligations related to the Qualified Interest Rate Management Agreement are set forth in the Loan Agreement. In accordance with §8281 of the *Debt Act*:

- 1) The Participant pledges its full faith, credit, and taxing power to make any periodic scheduled payments due and payable under the DeVal Swap Agreement related to the 2020 Notes and Loan Agreement (the "Periodic Payments"). The Participant covenants to (a) include all Periodic Payments in the budget of the fiscal year in which such amounts are due and payable, (b) appropriate such amounts from its taxes and other general revenues, and (c) pay, or cause to be paid, punctually and duly, such amounts that are due and payable on the dates, at the places, and in the manner stated in the 2020

Notes and the Loan Agreement. As provided by the *Debt Act*, this covenant shall be specifically enforceable.

- 2) The notional amount of the DelVal Swap Agreement related to the 2020 Notes is equal to the outstanding principal amount of the 2020 Notes, initially \$4,820,000.
- 3) The Participant's obligations under the DelVal Swap Agreement end when the Participant repays or prepays the amounts outstanding under the 2020 Notes and the Loan Agreement. The scheduled term of the Participant's obligations related to the DelVal Swap Agreement ends on May 25, 2031.
- 4) The Participant pledges to budget, appropriate, and pay any termination payment due and payable under the DelVal Swap Agreement related to the 2020 Notes and Loan Agreement (the "Termination Charge"). The Participant covenants to (a) include any Termination Charge in the budget of the fiscal year in which such amounts are due and payable, (b) appropriate such amounts from its taxes and other general revenues, and (c) pay, or cause to be paid, punctually and duly, such amounts that are due and payable on the dates, at the places, and in the manner stated in the 2020 Notes and the Loan Agreement. The Participant's obligations to make Periodic Payments are senior to any obligation for a Termination Charge.
- 5) The maximum annual Periodic Payments, not including any Termination Charge, shall not exceed the maximum annual debt service payments authorized for the 2020 Notes. The maximum Loan Rate under the Loan Agreement and the maximum floating rate payable under the DelVal Swap Agreement is 15%.

SECTION 8. APPOINTMENT OF SINKING FUND DEPOSITORY AND CREATION OF SINKING FUND

Pursuant to §8221 of the *Debt Act*, the Council hereby appoints Wells Fargo Bank, N.A. (the "Bank"), or its successors or assigns, as the Sinking Fund Depository for the 2020 Notes, and the Council hereby irrevocably creates and establishes a sinking fund (the "Sinking Fund") to be used exclusively for the repayment of the 2020 Notes. The Participant shall deposit into the Sinking Fund sufficient amounts for debt service payments on the 2020 Notes no later than the date upon which such payments shall become due. The Bank shall maintain a separate account for the Sinking Fund until the 2020 Notes is paid in full. The Bank shall, as and when said

payments are due, without further action by the Participant, withdraw available monies in the Sinking Fund and apply said monies to payment of Loan Interest on and Loan Principal of the 2020 Notes. The Council hereby authorizes and directs the Authorized Officers to contract with the Bank, by the execution of the Loan Agreement, to serve as the Sinking Fund Depository and paying agent for the 2020 Notes.

SECTION 9. AUTHORIZATION TO SUBMIT STATEMENTS TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

The Council hereby authorizes and directs the Authorized Officers to prepare and submit an application for approval of the incurrence of the nonelectoral, general obligation debt evidenced by the 2020 Notes to DCED, including the proceedings that authorize issuance, the debt statement, and any other documents required by the *Debt Act* or DCED.

SECTION 10. LEGAL ADVERTISEMENTS

The Council hereby ratifies and directs the advertisement of a summary of this Ordinance as finally enacted, as required by the *Debt Act*, in the *Southern Chester County News*, a newspaper of general circulation in the Borough of Kennett Square, within fifteen (15) days following the date of final enactment.

SECTION 11. CONFLICTING ORDINANCES

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

IN WITNESS WHEREOF, we, the undersigned Authorized Officers, have hereunto set our signatures and affixed hereto the Seal of the BOROUGH OF KENNETT SQUARE, Chester County, Pennsylvania.

Dated: September 21, 2020

BRENDA MERCOMES
President, Borough Council

MATTHEW W. FETICK
Mayor

[Seal]

ATTEST:

RACHEL J. BERKOWITZ
Secretary, Borough Council

Exhibit A

Form of the 2020 Notes