

ORDINANCE NO. 616
OF THE BOARD OF SUPERVISORS
OF THE TOWNSHIP OF LOWER PROVIDENCE,
MONTGOMERY COUNTY, PENNSYLVANIA

AN ORDINANCE THAT AUTHORIZES THE INCURRENCE OF NONELECTORAL DEBT BY THE TOWNSHIP OF LOWER PROVIDENCE, MONTGOMERY COUNTY, PENNSYLVANIA (THE "TOWNSHIP") PURSUANT TO THE ISSUANCE OF THE GENERAL OBLIGATION NOTES, 2014 SERIES (THE "2014 NOTES") IN THE AGGREGATE PRINCIPAL AMOUNT OF \$1,012,000 AND APPROVES CERTAIN CAPITAL PROJECTS; APPROVES THE NEGOTIATED SALE OF THE 2014 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 TOWNSHIP FOR THE TIMELY REPAYMENT OF THE 2014 NOTES, INCLUDING THE PERIODIC PAYMENTS DUE UNDER THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT; COVENANTS TO PAY ANY TERMINATION CHARGES; CREATES AND APPOINTS A SINKING FUND DEPOSITORY; AUTHORIZES THE APPLICATION FOR APPROVAL OF THE ISSUANCE OF THE 2014 NOTES TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; AUTHORIZES ADVERTISEMENT OF ENACTMENT; AND REPEALS INCONSISTENT ORDINANCES.

WHEREAS, certain capital projects (collectively, the "2014 Project") consisting of (i) road reconstruction and resurfacing projects and (ii) the costs of issuance of the 2014 Notes, will benefit the health and welfare of the residents of the Township; and

WHEREAS, the Township has obtained preliminary cost estimates for the 2014 Project from persons qualified by experience; and

WHEREAS, the incurrence of nonelectoral debt by the Township is necessary to provide the funding to complete the 2014 Project; and

WHEREAS, the 2014 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 2014 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 2014 Notes, together with the nonelectoral and lease rental debt presently outstanding, will not cause the constitutional or statutory debt limitations of the Township 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 be secured by the pledge of the full faith, credit, and taxing power of local government units (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 “Financial Advisor”) is an “Independent Financial Advisor”, as such term is defined in the *Debt Act*, to DelVal, and the Financial 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 DelVal; and

WHEREAS, DelVal established minimum rating criteria of at least one long term, senior, unsecured debt rating in the “AA” category or higher by a Nationally Recognized Statistical Rating Organization registered with the Securities and Exchange Commission for any counterparty to the DelVal Swap Agreement, 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

Financial 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 Township wishes to utilize the DelVal Loan Program by issuing the 2014 Notes to DelVal; and

WHEREAS, under the terms of the Loan Agreement with DelVal, interest payments on the 2014 Notes (the “Loan Interest”) will equal the amounts allocable to the 2014 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 2014 Notes (the “Loan Principal”) will equal the notional amount of the DelVal Swap Agreement related to the 2014 Notes; and

WHEREAS, the Board of Supervisors 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 2014 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 BOARD OF SUPERVISORS OF THE TOWNSHIP OF LOWER PROVIDENCE, MONTGOMERY COUNTY, PENNSYLVANIA, AND IT IS HEREBY ORDAINED AND ENACTED BY THE AUTHORITY OF SAID BOARD OF SUPERVISORS THAT:

SECTION 1. APPROVAL OF THE 2014 PROJECT AND AUTHORIZATION TO ISSUE THE 2014 NOTES

Pursuant to §8142(a)(2) of the *Debt Act*, the weighted average useful life of the 2014 Project exceeds the ten-year term of the 2014 Notes. The principal of the 2014 Notes shall be amortized to provide approximately level or declining annual debt service, pursuant to §8142(b)(2) of the *Debt Act*. The amortization of the principal amounts of the 2014 Notes shall begin within two years of the date of issue in accordance with §8142(c) of the *Debt Act*.

The Board of Supervisors (the “Board”) hereby authorizes and approves the 2014 Project. The Board hereby authorizes and directs the incurrence of nonelectoral, general obligation debt in the aggregate principal amount of \$1,012,000 by the issuance of the 2014 Notes.

SECTION 2. APPROVAL OF THE LOAN COMMITMENT

The Board, after due deliberation and investigation, hereby determines that a private sale by negotiation of the 2014 Notes to DelVal is in the best financial interests of the Township. The Board hereby accepts the Loan Commitment from DelVal, attached hereto, to purchase the 2014 Notes at an aggregate price of \$1,012,000 from the proceeds of the DelVal Bonds. The Township shall be responsible for paying DelVal's costs of origination in an amount not to exceed \$5,060, as directed by DelVal's Program Administrator upon the issuance of the 2014 Notes. The 2014 Notes shall be purchased by DelVal on or about July 25, 2014, or in such installments and/or at such other times as the Chairman or Vice-Chairman of the Board 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, 2014 Notes, Continuing Disclosure Agreement, and Participant Tax Compliance Agreement (collectively, the "Loan Documents") attached to the Loan Commitment are hereby approved. The Chairman or Vice-Chairman of Board and the Secretary (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 2014 Notes) and (ii) to take all actions that may be necessary or beneficial to issue the 2014 Notes.

SECTION 4. AMORTIZATION SCHEDULE AND MAXIMUM ANNUAL DEBT SERVICE PAYMENTS

The indebtedness of the 2014 Notes shall be nonelectoral debt and a general obligation of the Township and shall be evidenced Promissory Notes in the aggregate par amount of ONE MILLION TWELVE THOUSAND DOLLARS (\$1,012,000). The 2014 Notes shall bear interest (the "Loan Rate") at the rate specified in the Loan Agreement and the 2014 Notes, the substantial forms of which are attached to the Loan Commitment. The 2014 Notes shall be subject to

optional redemption by the Township as set forth in the 2014 Notes and the Loan Agreement. The amortization schedule of the Loan Principal and the maximum Loan Interest payments under the 2014 Notes, based upon the maximum Loan Rate of 15%, are shown below:

**General Obligation Notes, 2014 Series
Principal Amortization Schedule and
Maximum Annual Debt Service Payments**

<i>Bond Year Ending</i>	<i>Principal (1)</i>	<i>Maximum Interest Rate</i>	<i>Maximum Interest Payment (2)</i>	<i>Maximum Annual Debt Service</i>
25-Jul-15	\$ 92,000.00	15%	\$ 151,800.00	\$ 243,800.00
25-Jul-16	94,000.00	15%	138,000.00	232,000.00
25-Jul-17	96,000.00	15%	123,900.00	219,900.00
25-Jul-18	98,000.00	15%	109,500.00	207,500.00
25-Jul-19	100,000.00	15%	94,800.00	194,800.00
25-Jul-20	102,000.00	15%	79,800.00	181,800.00
25-Jul-21	104,000.00	15%	64,500.00	168,500.00
25-Jul-22	106,000.00	15%	48,900.00	154,900.00
25-Jul-23	109,000.00	15%	33,000.00	142,000.00
25-Jul-24	111,000.00	15%	16,650.00	127,650.00
Total	<u>\$1,012,000.00</u>		<u>\$860,850.00</u>	<u>\$1,872,850.00</u>

- (1) Principal is payable annually, commencing on: 25-Jul-15
Principal is amortized to provide level or declining annual debt service.
- (2) Interest is payable monthly on the 25th, commencing: 25-Aug-14
Interest is calculated for the period beginning on: 25-Jul-14

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

The Township is incurring indebtedness under the *Debt Act* that will be issued to DelVal, a public authority, and the Township, by execution of the Loan Agreement, will become obligated for a portion of the DelVal Swap Agreement equal to the outstanding principal amount of the 2014 Notes. The Board hereby accepts and adopts the Plan as the Interest Rate Management Plan fulfilling the requirements of §8281(b)(2) of the *Debt Act*. The Board 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 Board hereby authorizes and awards the Loan Agreement and the portion of the DelVal Swap Agreement allocable to the 2014 Notes as the Qualified Interest Rate Management Agreement with respect to the 2014 Notes, pursuant to

§8281(a)(2) of the *Debt Act*. The Board 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 and the DelVal Swap Agreement, the Qualified Interest Rate Management Agreement pursuant to §8281(b)(1) of the *Debt Act*,
- 2) The Interest Rate Management Plan pursuant to §8281(b)(2)(ii) of the *Debt Act*, and
- 3) The finding of the Financial Advisor that the financial terms and conditions of the DelVal Swap Agreement were fair and reasonable as of the date of the award by DelVal, pursuant to §8281(e)(5) of the *Debt Act*.

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

The Township hereby covenants to:

- 1) Include all payments of Loan Interest and Loan Principal payable under the Loan Agreement and the 2014 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 2014 Notes and the Loan Agreement on the dates, at the places, and in the manner stated in the 2014 Notes and the Loan Agreement.

For such budgeting, appropriation, and payment, the Township 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 TOWNSHIP RELATED TO THE QUALIFIED INTEREST RATE MANAGEMENT AGREEMENT

The Township’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 Township pledges its full faith, credit, and taxing power to make any periodic scheduled payments due and payable under the DelVal Swap Agreement related to the 2014 Notes and Loan Agreement (the “Periodic Payments”). The Township

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 2014 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 2014 Notes is equal to the outstanding principal amount of the 2014 Notes, initially \$1,012,000.
- 3) The Township's obligations under the DelVal Swap Agreement end when the Township repays or prepays the amounts outstanding under the 2014 Notes and the Loan Agreement. The scheduled term of the Township's obligations related to the DelVal Swap Agreement ends on July 25, 2024.
- 4) The Township pledges to budget, appropriate, and pay any termination payment due and payable under the DelVal Swap Agreement related to the 2014 Notes and Loan Agreement (the "Termination Charge"). The Township 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 2014 Notes and the Loan Agreement. The Township'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 2014 Notes. The maximum Loan Rate under the Loan Agreement and the DelVal Swap Agreement is 15%.

SECTION 8. SINKING FUND DEPOSITORY

The Board hereby finds and acknowledges that under the terms of the Loan Agreement, Wells Fargo Bank, N.A. (the "Bank"), or its successors or assigns, shall serve and is hereby appointed as the Paying Agent and Sinking Fund Depository, shall maintain separate accounts,

subaccounts and subfunds for payments of Loan Principal and Loan Interest to be made by the Township until such 2014 Notes are paid in full. These accounts, subaccounts, and subfunds shall, collectively, constitute the “Sinking Fund” required by the *Debt Act* for the 2014 Notes. The Board hereby authorizes, empowers, and directs the Authorized Officers to contract with the Bank, by the execution of the Loan Agreement, to serve as Paying Agent and Sinking Fund Depository for the 2014 Notes.

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

The Board hereby authorizes and directs the preparation and submission of an application for approval of the incurrence of the nonelectoral debt evidenced by the 2014 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 Board hereby ratifies and directs the advertisement of a summary of this Ordinance as finally enacted, as required by the *Debt Act*, in *The Times Herald*, a newspaper of general circulation in the Township, 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 TOWNSHIP OF LOWER PROVIDENCE, Montgomery County, Pennsylvania.

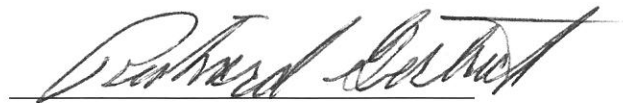
Dated: June 19, 2014

A handwritten signature in cursive script, reading "Colleen Eckman", written over a horizontal line.

COLLEEN ECKMAN
Chairman, Board of Supervisors

[Seal]

ATTEST:

A handwritten signature in cursive script, reading "Richard G. Gestrich", written over a horizontal line.

RICHARD G. GESTRICH
Secretary