

Comm 27th. 2/1/04

COUNTY OF DAUPHIN
Commonwealth of Pennsylvania

ORDINANCE NO. 2-2004

AN ORDINANCE

OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF DAUPHIN, PENNSYLVANIA (THE "COUNTY") AUTHORIZING AND APPROVING A PROJECT (THE "PROJECT") TO BE UNDERTAKEN BY THE DAUPHIN COUNTY ECONOMIC DEVELOPMENT CORPORATION, A PENNSYLVANIA NONPROFIT CORPORATION AND INDUSTRIAL DEVELOPMENT AGENCY (THE "CORPORATION"), BRIEFLY DESCRIBING THE PROJECT, AND AUTHORIZING CERTAIN APPROVALS OR CONSENTS BY THE COUNTY; APPROVING THE CORPORATION'S ISSUANCE OF ITS GUARANTEED PARKING REVENUE NOTE, SERIES OF 2004 (THE "NOTE") TO FINANCE CERTAIN COSTS OF THE PROJECT; DETERMINING TO INCUR LEASE RENTAL DEBT IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$2,200,000 FOR THE PURPOSE OF ASSISTING IN THE FINANCING OF THE PROJECT; DETERMINING THAT SUCH DEBT SHALL BE INCURRED AS LEASE RENTAL DEBT IN THE FORM OF A GUARANTY OF THE CORPORATION'S NOTE (THE "GUARANTY"); AUTHORIZING AND DIRECTING PROPER OFFICERS OF THE COUNTY TO EXECUTE, ATTEST, SEAL AND DELIVER, AS APPROPRIATE, THE GUARANTY; APPROVING THE FORM OF THE GUARANTY; AUTHORIZING AND DIRECTING THE CHAIRMAN OR VICE CHAIRMAN OF THE BOARD OF COMMISSIONERS AND THE CHIEF CLERK OF THE COUNTY TO PREPARE, VERIFY AND FILE, AS APPLICABLE, THE DEBT STATEMENT, THE BORROWING BASE CERTIFICATE TO BE APPENDED TO THE DEBT STATEMENT, AND OTHER APPROPRIATE DOCUMENTS REQUIRED BY THE LOCAL GOVERNMENT UNIT DEBT ACT [53 Pa. C.S. § 8001 ET SEQ.]; AUTHORIZING AND DIRECTING PROPER OFFICERS OF THE COUNTY TO EXECUTE OR ACCEPT AND DELIVER A REIMBURSEMENT AGREEMENT (THE "REIMBURSEMENT AGREEMENT"), AND APPROVING THE FORM OF THE REIMBURSEMENT AGREEMENT; AUTHORIZING PROPER OFFICERS OF THE COUNTY TO EXECUTE ALL REQUIRED, NECESSARY OR DESIRABLE CERTIFICATES AND DOCUMENTS IN CONNECTION WITH SAID LEASE RENTAL DEBT, THE GUARANTY, THE REIMBURSEMENT AGREEMENT AND THE PROJECT; SPECIFYING THE MAXIMUM AMOUNT OF THE GUARANTY OBLIGATIONS OF THE COUNTY PURSUANT TO THE GUARANTY, THE SOURCES OF PAYMENT OF SUCH GUARANTY OBLIGATIONS, AND PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE COUNTY WITH RESPECT TO THE GUARANTY; AUTHORIZING PROPER OFFICERS OF THE COUNTY TO TAKE ALL OTHER REQUIRED, NECESSARY OR DESIRABLE ACTION IN CONNECTION WITH SUCH PROJECT AND THE EXECUTION, DELIVERY OR ACCEPTANCE OF THE GUARANTY OR REIMBURSEMENT AGREEMENT; PROVIDING FOR THE EFFECTIVENESS OF THIS ORDINANCE; PROVIDING FOR THE SEVERABILITY OF PROVISIONS OF THIS ORDINANCE; AND PROVIDING FOR THE REPEAL OF

ALL INCONSISTENT ORDINANCES OR RESOLUTIONS OR PARTS OF
ORDINANCES OR RESOLUTIONS.

WHEREAS, the County of Dauphin, Pennsylvania (the "County") exists under laws of the Commonwealth of Pennsylvania (the "Commonwealth") and is a "local government unit," as such term is defined under the Local Government Unit Debt Act [53 Pa. C.S. § 8001 *et seq.*] (the "Act"); and

WHEREAS, Dauphin County Economic Development Corporation (the "Corporation") is a nonprofit corporation organized on behalf of the County and incorporated under the Nonprofit Corporation Law of 1988, as amended and supplemented, of the Commonwealth for the purpose of, *inter alia*, assisting and encouraging the stabilization, expansion and/or retention of jobs and businesses in the County; and

WHEREAS, the Corporation desires to undertake a project (the "Project") consisting of the acquisition of two floors of a new parking garage with 88+ parking spaces located at 17 North Second Street in the City of Harrisburg, Dauphin County, Pennsylvania; and

WHEREAS, in order to finance the Project, the Corporation has determined to enter into a credit facility, in the principal sum not to exceed \$2,200,000, with Manufacturers and Traders Trust Company (the "Bank") pursuant to which the Bank has agreed, upon certain terms and conditions, to loan said sum to the Corporation to be applied for and toward payment of costs of the Project; and

WHEREAS, the Corporation's obligations to repay said loan will be evidenced by its Guaranteed Parking Revenue Note, Series of 2004, to be dated as of the date of delivery thereof (the "Note"), to be issued and delivered under and pursuant to a loan agreement by and between the Bank and the Corporation; and

WHEREAS, the Corporation has received realistic cost estimates of the Project from persons qualified by experience; and

WHEREAS, the Board of Commissioners of the County has determined that the Project is in the best interests of the County and its residents; and

WHEREAS, the County, pursuant to authority granted to it under provisions of the Debt Act, may guarantee debt incurred by an "authority," which term includes a Pennsylvania nonprofit corporation organized on behalf of the County, such as the Corporation; and

WHEREAS, the County desires the Corporation to undertake the Project, and as inducement to the Corporation to undertake the Project and to issue its Note, the County is willing to guarantee the full payment of the principal of and the interest on the Note, when due, pursuant to the authority set forth in the Debt Act.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Commissioners of the County of Dauphin, Pennsylvania, as follows:

1. The Board of Commissioners of the County hereby approves the Project as described in the recitals hereof and requests and authorizes the Corporation to proceed to undertake the Project, the financing thereof and the payment of all "costs" related thereto.

2. The Board of Commissioners of the County authorizes and approves the Corporation's issuance of the Note and its undertakings with respect to the loan, as aforesaid, in accordance with a proposal submitted to the Corporation by the Bank; and

3. The Board of Commissioners of the County hereby determines to incur "debt," as such term is defined in the Debt Act, as "lease rental debt," as such term is defined in the Debt Act, for the purpose of assisting in the financing of the Project.

4. The debt to be incurred, as lease rental debt, as set forth in Section 3 hereof, shall be evidenced by the County's execution and delivery of a guaranty (the "Guaranty"), in the maximum principal amount of \$2,200,000, pursuant to which the County agrees to guarantee the payment of principal of and interest on the Note, when due. The Note, to be issued in the principal amount not to exceed \$2,200,000, and for a maximum term of 27 years, shall be secured, in part, by, *inter alia*, the Guaranty executed and delivered by the County, substantially in the form referred to in Section 6 hereof. The term of the Note does not exceed the estimated useful life of the Project, which the County determines to be not less than thirty (30) years.

5. The County shall execute, attest, seal and deliver the Guaranty, dated and effective as of the date of delivery of the Note, substantially in the form referred to in Section 6 hereof, with respect to the Note to be issued by the Corporation.

6. The Guaranty shall be substantially in the form set forth in Exhibit A hereto with such additions, changes and deletions as the officers of the County executing the Guaranty and the County Solicitor shall deem necessary, which form is approved. The execution, attestation and delivery of the Guaranty by appropriate officers of the County shall constitute conclusive evidence of such approval.

7. The Chairman or Vice Chairman of the Board of Commissioners and the Chief Clerk of the County are authorized and directed to make application to the Pennsylvania Department of Community and Economic Development (the "Department") for approval with respect to the Guaranty, as required by the Debt Act, and to pay or cause to be paid to the Department all proper filing fees required by the Debt Act and to take all other required and appropriate action.

Accordingly, the Chairman or Vice Chairman of the Board of Commissioners and Chief Clerk of the County are authorized and directed: (a) to prepare, verify and file with the Department, a debt statement as required by the Debt Act; (b) to prepare, execute and file with the Department the borrowing base certificate to be appended to the debt statement referred to in subparagraph (a) of this Section; (c) to prepare, execute and file the application with the Department, together with a complete and accurate transcript of the proceedings relating to the incurring of debt, of which debt the Note, upon issue, and the Guaranty, upon execution and delivery, will be evidence, as required by the Debt Act; (d) to pay or to cause to be paid to the Department all filing fees required by the Debt Act in connection with the foregoing; and (e) to take other required, necessary and/or appropriate action, and further, the same proper officers are authorized, at their discretion hereafter, to prepare and file, as required, with the Department, appropriate statements required by the Debt Act which are necessary to qualify all or a portion of lease rental debt of the County, which is subject to exclusion as self liquidating debt, for exclusion from the appropriate debt limit of the County as self liquidating debt.

8. The County shall enter into an agreement (the "Reimbursement Agreement") with the Corporation by which the Corporation agrees to repay to the County a sum equal to any amount that the County has paid to the holders of the Note pursuant to the County's Guaranty, such repayment to be from the sources and revenues of the Corporation as set forth in the Reimbursement Agreement. Proper officers of the County are hereby authorized and directed to execute or accept and deliver, and (where

appropriate) the Chief Clerk is hereby authorized and directed to affix the corporate seal of the County to, and attest, the Reimbursement Agreement in such form hereafter approved, with such provisions as are necessary and appropriate in connection with the transaction contemplated by this Ordinance. The Reimbursement Agreement shall contain such provisions as shall be in substance and form satisfactory to the County Solicitor, to bond counsel and to the officers of the County executing the Reimbursement Agreement. The execution, attestation and delivery of the Reimbursement Agreement by appropriate officers of the County shall constitute conclusive evidence of such approval.

9. The Chairman or Vice Chairman, or in the alternative, each member, of the Board of Commissioners and Chief Clerk of the County are authorized and directed to execute, attest and deliver, as applicable, on behalf of the County, any other document, agreement, instrument or certificate deemed necessary and proper, in substantially the form approved by this Ordinance, or with such changes as such officers shall approve, their execution to constitute conclusive evidence of such approval; provided that, such execution and delivery of the Guaranty shall be subject to compliance by the County with applicable provisions of the Debt Act.

10. The County hereby guarantees the full payment of the principal of and interest on the Note and in furtherance thereof covenants and agrees with the holders from time to time of the Note that if the Corporation shall fail to pay the full amount of the principal of and interest on the Note when the same becomes due and payable, at the times and places, under the terms and conditions, and in the manner prescribed in said Note and in the Loan Agreement, the County will pay the full amount of such principal and interest to the holders of such Note.

The County agrees and hereby covenants with the holders of such Note that the County shall include the amount of debt service on such Note, including interest thereon, for each fiscal year of the County in which such sums are payable in its budget for that fiscal year, shall appropriate and shall duly and punctually pay or cause to be paid the full amount of such principal of and interest on the dates and at the places and in the manner stated in such Note. For such budgeting, appropriation and payment the County hereby does pledge its full faith, credit and taxing power and hereby does agree that this covenant shall be specifically enforceable in accordance with the Debt Act.

The County agrees that maximum debt service in each of its fiscal years with respect to the Note to which the foregoing guaranty shall apply is as set forth in Exhibit B attached hereto.

11. Proper officers of the County are authorized and directed to execute all documents and to take such other action as may be necessary to carry out the intent and purposes of this Ordinance and the undertakings of the County under the Guaranty.

12. This Ordinance shall become effective in accordance with the provisions of the Debt Act.

13. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of the County that the remainder of the Ordinance shall remain in full force and effect.

14. All ordinances and resolutions or parts thereof, insofar as the same are inconsistent herewith, are repealed hereby.


DULY ENACTED AND ORDAINED this 11th day of February, 2004, by the Board of Commissioners of the County of Dauphin, Pennsylvania, in lawful session duly assembled.

COUNTY OF DAUPHIN
Commonwealth of Pennsylvania



Chairman, Board of Commissioners

ATTEST:



Chief Clerk

(SEAL)



Vice Chairman, Board of Commissioners



Member, Board of Commissioners

EXHIBIT A

GUARANTY AGREEMENT

[FORM OF GUARANTY AGREEMENT]

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT, dated for convenience as of _____, 2004, but effective as provided herein, made and executed by the COUNTY OF DAUPHIN, Pennsylvania (the "County"), a Pennsylvania municipality organized and existing under the laws of the Commonwealth of Pennsylvania, and delivered to MANUFACTURERS AND TRADERS TRUST COMPANY (the "Bank"), with an office in the City of Harrisburg, Dauphin County, Pennsylvania.

WITNESSETH:

WHEREAS, the County is a Local Government Unit, as defined in the Local Government Unit Debt Act, 53 Pa.C.S. § 8001 *et seq.*, as amended and supplemented (the "Debt Act"); and

WHEREAS, Dauphin County Economic Development Corporation (the "Corporation") is a nonprofit corporation organized on behalf of the County and incorporated under the Nonprofit Corporation Law of 1988, as amended and supplemented, of the Commonwealth for the purpose of, *inter alia*, assisting and encouraging the stabilization, expansion and/or retention of jobs and businesses in the County; and

WHEREAS, the Corporation desires to undertake a project (the "Project") consisting of the acquisition of two floors of a new parking garage with 88+ parking spaces located at 17 North Second Street in the City of Harrisburg, Dauphin County, Pennsylvania; and

WHEREAS, the Corporation, in order to finance the Project, has determined to enter into a credit facility, in the principal sum not to exceed \$2,200,000, with the Bank pursuant to which the Bank has agreed, upon certain terms and conditions, to loan said sum to the Corporation to be applied for and toward payment of costs of the Project; and

WHEREAS, the Corporation's obligations to repay said loan will be evidenced by its Guaranteed Parking Revenue Note, Series of 2004, to be dated as of the date of delivery thereof (the "Note"), to be issued and delivered under and pursuant to a loan agreement by and between the Bank and the Corporation; and

WHEREAS, the Bank is willing to purchase the Note subject to the terms and conditions set forth therein, provided that the County guarantee payment of the principal of and the interest on the Note; and

WHEREAS, the County heretofore has determined to guarantee the full payment of the principal of and interest on the Note, pursuant to the authority set forth in the Debt Act.

NOW, THEREFORE, the County, intending to be legally bound, hereby covenants and agrees as follows:

1. The County hereby guarantees the full and prompt payment of the principal of and interest on the Note and in furtherance thereof covenants and agrees with the holders of the Note that if the Corporation shall fail to pay the full amount of the principal of and interest on the Note when the same becomes due and payable, at the times and place, under the terms and conditions, and in the manner prescribed in the Note, the County will pay the full amount of such principal and interest to the holders of such Note.

The County agrees and hereby covenants with the holders of such Note that the County shall include the amount of debt service on such Note, including interest thereon, for each Fiscal Year (which term shall mean the fiscal year of the County, from time to time designated by law) in which such sums are payable in its budget for that Fiscal Year, and that the County, in the event the Corporation shall fail to pay the full amount of the principal of and interest on such Note when due and payable, at the times and place, under terms and conditions and in the manner prescribed in the Note, shall appropriate from its general revenues and duly and punctually pay or cause to be paid from its sinking fund established therefor or any other of its funds or revenues the full amount of such principal and interest on the dates and at the place and in the manner stated in such Note according to the true intent and meaning hereof. For such budgeting, appropriation and payment the County hereby does pledge its full faith, credit and taxing power and hereby does agree that this covenant shall be specifically enforceable.

The County agrees that the debt service in each fiscal year with respect to the Note, to which the foregoing guarantee shall apply, is set forth in Exhibit "A" attached hereto and hereby incorporated herein as if set forth in full in this Section 1.

2. This Guaranty Agreement may not be assigned by the County nor may its obligations arising hereunder be in any manner whatsoever alienated by the County. This Guaranty Agreement shall inure to the benefit of the Bank and other holders, if any, from time to time of the Note. The County acknowledges that such holders from time to time of the Note shall materially rely on the existence of this Guaranty Agreement and the County's due performance of its obligations hereunder.

3. The County covenants to provide the Bank with its annual audited financial statement prepared by a Certified Public Accountant, using generally accepted accounting principles, within 180 days after the end of each fiscal year of the County during the term hereof.

4. The invalidity or unenforceability of any one or more phrases, sentences, clauses or Sections in this Guaranty Agreement contained, shall not affect the validity or enforceability of the remaining portions of this Guaranty Agreement, or any part thereof.

5. This Guaranty Agreement shall be construed in accordance with and governed by the laws of the Commonwealth.

6. This Guaranty Agreement shall be effective upon issuance of the Series 2003 Bond and acceptance of delivery of this Guaranty Agreement by the Bank.

IN WITNESS WHEREOF, County of Dauphin, Pennsylvania, has caused this Guaranty Agreement to be executed on its behalf by the Board of Commissioners and its official seal to be hereunto affixed and attested by the Chief Clerk of the County and delivered to Manufacturers and Traders Trust Company, as initial holder of the Note, all as of the ___ day of February, 2004.

COUNTY OF DAUPHIN,
Commonwealth of Pennsylvania

Specimen
Chairman, Board of Commissioners

ATTEST:

Specimen
Chief Clerk

Specimen
Vice Chairman, Board of Commissioners

(SEAL)

Specimen
Member, Board of Commissioners

ACCEPTANCE AND ACKNOWLEDGMENT

Manufacturers and Traders Trust Company (the "Bank"), Harrisburg, Pennsylvania, hereby accepts the foregoing Guaranty Agreement and acknowledges receipt of an executed counterpart thereof.

MANUFACTURERS AND TRADERS TRUST
COMPANY

By: _____
Authorized Officer

Dated: February ____, 2004

EXHIBIT B

MAXIMUM ANNUAL
DEBT SERVICE SCHEDULE

COUNTY OF DAUPHIN
COMMONWEALTH OF PENNSYLVANIA
GUARANTY OF
\$2,200,000
DAUPHIN COUNTY ECONOMIC DEVELOPMENT CORPORATION
GUARANTEED PARKING REVENUE NOTE, SERIES OF 2004

MAXIMUM ANNUAL DEBT SERVICE SCHEDULE*

<i>Date</i>	<i>Principal Amount</i>	<i>Interest Rate</i>	<i>Interest Payment</i>	<i>Total Debt Service</i>	<i>Fiscal Year</i>	<i>Fiscal Year Debt Service</i>
6/1/04			58,666.67	58,666.67		
12/1/04	-	10.000%	110,000.00	110,000.00	2004	168,666.67
6/1/05			110,000.00	110,000.00		
12/1/05	-	10.000%	110,000.00	110,000.00	2005	220,000.00
6/1/06			110,000.00	110,000.00		
12/1/06	45,000.00	10.000%	110,000.00	155,000.00	2006	265,000.00
6/1/07			107,750.00	107,750.00		
12/1/07	45,000.00	10.000%	107,750.00	152,750.00	2007	260,500.00
6/1/08			105,500.00	105,500.00		
12/1/08	45,000.00	10.000%	105,500.00	150,500.00	2008	256,000.00
6/1/09			103,250.00	103,250.00		
12/1/09	60,000.00	10.000%	103,250.00	163,250.00	2009	266,500.00
6/1/10			100,250.00	100,250.00		
12/1/10	60,000.00	10.000%	100,250.00	160,250.00	2010	260,500.00
6/1/11			97,250.00	97,250.00		
12/1/11	65,000.00	10.000%	97,250.00	162,250.00	2011	259,500.00
6/1/12			94,000.00	94,000.00		
12/1/12	65,000.00	10.000%	94,000.00	159,000.00	2012	253,000.00
6/1/13			90,750.00	90,750.00		
12/1/13	70,000.00	10.000%	90,750.00	160,750.00	2013	251,500.00
6/1/14			87,250.00	87,250.00		
12/1/14	75,000.00	10.000%	87,250.00	162,250.00	2014	249,500.00
6/1/15			83,500.00	83,500.00		
12/1/15	75,000.00	10.000%	83,500.00	158,500.00	2015	242,000.00
6/1/16			79,750.00	79,750.00		
12/1/16	80,000.00	10.000%	79,750.00	159,750.00	2016	239,500.00
6/1/17			75,750.00	75,750.00		
12/1/17	80,000.00	10.000%	75,750.00	155,750.00	2017	231,500.00
6/1/18			71,750.00	71,750.00		
12/1/18	85,000.00	10.000%	71,750.00	156,750.00	2018	228,500.00
6/1/19			67,500.00	67,500.00		
12/1/19	90,000.00	10.000%	67,500.00	157,500.00	2019	225,000.00
6/1/20			63,000.00	63,000.00		
12/1/20	95,000.00	10.000%	63,000.00	158,000.00	2020	221,000.00
6/1/21			58,250.00	58,250.00		
12/1/21	95,000.00	10.000%	58,250.00	153,250.00	2021	211,500.00
6/1/22			53,500.00	53,500.00		
12/1/22	100,000.00	10.000%	53,500.00	153,500.00	2022	207,000.00
6/1/23			48,500.00	48,500.00		
12/1/23	105,000.00	10.000%	48,500.00	153,500.00	2023	202,000.00
6/1/24			43,250.00	43,250.00		
12/1/24	110,000.00	10.000%	43,250.00	153,250.00	2024	196,500.00
6/1/25			37,750.00	37,750.00		
12/1/25	115,000.00	10.000%	37,750.00	152,750.00	2025	190,500.00
6/1/26			32,000.00	32,000.00		
12/1/26	120,000.00	10.000%	32,000.00	152,000.00	2026	184,000.00
6/1/27			26,000.00	26,000.00		
12/1/27	120,000.00	10.000%	26,000.00	146,000.00	2027	172,000.00
6/1/28			20,000.00	20,000.00		
12/1/28	125,000.00	10.000%	20,000.00	145,000.00	2028	165,000.00
6/1/29			13,750.00	13,750.00		
12/1/29	135,000.00	10.000%	13,750.00	148,750.00	2029	162,500.00
6/1/30			7,000.00	7,000.00		
12/1/30	140,000.00	10.000%	7,000.00	147,000.00	2030	154,000.00
Totals	2,200,000.00		3,743,166.67	5,943,166.67		5,943,166.67

* Assumes a closing date of February 25, 2004

CERTIFICATE

I, the undersigned officer of the County of Dauphin, Pennsylvania (the "County"), hereby certify that: (a) attached to this Certificate is a true, correct and complete copy of an Ordinance (the "Ordinance") which was duly enacted at a meeting of the Board of Commissioners of the County on February 11, 2004, at which a quorum was present and acting throughout, and which was at all times open to the public; (b) the Ordinance was duly recorded in the County's Ordinance Book, and a summary of the Ordinance was published as required by law in a newspaper of general circulation in the County; (c) the County met the advance notice requirements of the Sunshine Act, 65 Pa. C.S. § 701 *et seq.*, as amended, by advertising the date of the meeting and posting a notice of the meeting at the public meeting place of the Board of Commissioners; (d) the total number of members of the Board of Commissioners is three; and (e) the vote upon the Ordinance was called and duly recorded upon the minutes and that the members voted in the following manner:

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Jeffrey T. Haste	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Dominic DiFrancesco, II	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
George P. Hartwick, III	<u>X</u>	<u> </u>	<u> </u>	<u> </u>

WITNESS my hand and seal of the County this 11th day of February, 2004.



Chief Clerk

(SEAL)