

Code of

Standard
Wording,
Assumptions and
Provisions for
Swaps

1986 Edition

ISDA®

INTERNATIONAL SWAP DEALERS ASSOCIATION, INC.

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PREFACE TO THE CODE OF STANDARD WORDING, ASSUMPTIONS AND PROVISIONS FOR SWAPS, 1986 EDITION

The International Swap Dealers Association, Inc. ("ISDA") is pleased to publish the 1986 Edition of the Code of Standard Wording, Assumptions and Provisions for Swaps (the "1986 Code"). The publication of the 1986 Code represents an important step forward in the efforts that began in late 1983 to standardize and simplify rate swap documentation, efforts which led to the publication one year ago of the 1985 Edition of the Code (the "1985 Edition"). As was foreseen at the time the 1985 Edition was published, the rate swap market has continued the rapid growth and development that have characterized it since its inception. At the same time, certain new trends and practices have emerged from the ever-increasing volume of transactions.

It is against this background that the 1986 Code is published. The 1985 Edition has been well received and widely used by market participants, including large and small market makers and end users. As a logical extension of its predecessor, the 1986 Code addresses a number of subjects on which the 1985 Edition was silent. The rate swap market has now developed sufficiently to enable the Documentation Task Force of ISDA to reach agreement on standard language to be included in the Code to cover matters as diverse as compounding of floating amounts, events of default and termination events, standard representations and agreements, and a range of cross border and tax-related matters.

The approach that has been taken with respect to these new subjects is a familiar one: the 1986 Code creates presumptions as to certain matters, which the parties are free to vary; it provides a menu of choices as to other matters; and as to still other matters it provides only a framework without any suggested solutions.

Users will find that the 1986 Code, by introducing a distinction between a "rate swap agreement" and a "rate swap transaction", will better accommodate both those agreements that relate to a series of transactions treated as an integrated whole and those single-swap agreements that govern only one rate swap transaction. Those who have worked with the 1985 Edition will find a transition to the 1986 Code an easy matter. Those who prefer to continue using the 1985 Edition can rest assured that the original edition of the Code will serve them well in future transactions. The basic rate setting provisions of the 1985 Edition remain unchanged in the 1986 Code.

Parties may in their agreement adopt all or any portion of either the 1985 Edition or the 1986 Code and, of course, they may specify any variations or additions they desire to the provisions of either edition.

Unlike the 1985 Edition of the Code, which was viewed upon its publication as a first step in the effort to develop a standard vocabulary for rate swaps, the 1986 Code is intended to be a comprehensive Code for dollar rate swaps that will remain unchanged for the foreseeable future. The Documentation Task Force of ISDA now will turn its attention to other projects, such as the development of standard documentation for currency swap transactions and suggested standard form agreements and confirmation telexes for various types of rate swap and currency swap transactions.

GUIDE TO THE CODE OF SWAPS

1986 Edition

This Guide illustrates how the Code of Standard Wording, Assumptions and Provisions for Swaps, 1986 Edition (the “1986 Code”), can be used to simplify greatly the documentation of a rate swap. The 1986 Code can be used for fixed-to-floating rate swaps and for floating-to-floating rate swaps, whether simple or complex.

The 1985 Edition of the Code covered two principal subjects that continue to be essential parts of the 1986 Code: cash flows of a rate swap (Code Articles 1 through 10) and calculation of amounts payable upon early termination of a rate swap (Code Articles 11 and 12). These provisions have been refined in the 1986 Code to facilitate the use of integrated master agreements and to provide for compounding of Floating Amounts. The 1986 Code also adds many important new provisions, including definitions of various possible Events of Default and Termination Events (Code Sections 11.7 and 11.8), a list of representations (Code Article 15), a list of agreements (Code Article 16), definitions relating to Specified Entities, which are designed to simplify documentation for rate swaps in which a party’s obligations are guaranteed or supported in some way by another entity (Code Article 17), cross border provisions (Code Article 18), and withholding tax provisions (Code Article 19).

Like the 1985 Edition, the 1986 Code is not a contract. The payment obligations of the parties to a rate swap arise from the terms of their agreement. Parties may adopt the 1986 Code (or, if they prefer, may adopt the 1985 Edition of the Code) in its entirety as the general basis of their contract, either in a master agreement or in an agreement for an individual rate swap. They may also incorporate certain portions of either edition of the Code without incorporating others. In either case, they may specify variations in or additions to the provisions they incorporate. Express provisions in a contract always will override anything to the contrary in the Code.

On many points, the 1986 Code creates a rule to apply in the absence of any express provision by the parties in their agreement. On other points, the 1986 Code creates a menu of choices for use by the parties in deciding a particular matter. Such menu choices are intended only to suggest possible provisions to be considered by the parties and are not required to be included in any particular contract.

I. USING THE 1986 CODE TO ESTABLISH THE CASH FLOWS OF A TYPICAL RATE SWAP

If parties incorporate the 1986 Code into an agreement, they need only specify a few brief payment terms. This aspect of the Code remains unchanged in the 1986 Code. For example, for a “plain-vanilla” rate swap involving an exchange of semiannual fixed payments for semiannual floating payments, with the Floating Rate reset at the beginning of each semiannual period, only the following terms need be specified:

- Fixed Rate Payor and Floating Rate Payor. Code Sections 2.1 and 2.2.
- Effective Date. Code Section 3.2.

- Termination Date. Code Section 3.3.
- Notional Amount. Code Section 4.3.
- Payment Dates. Code Section 4.5.
- Fixed Amounts (or Fixed Rate). Code Sections 5.1 and 5.2.
- Floating Rate Option (and, for some options, a Designated Maturity). Code Section 7.1.
- Reset Dates. Code Section 6.3 (b).
- Calculation Agent. Code Section 4.8.

After specifying these terms, each party readily knows the dates on which payments are due, the exact amount of each fixed payment and how the exact amount of each floating payment is to be calculated. Each semiannual Payment Date automatically becomes the first day of a Calculation Period. The Calculation Period lasts until the next Payment Date. In this case, each Payment Date is also a Period End Date. Code Section 4.6(a). Payment Dates that would otherwise fall on nonbanking days are adjusted automatically by the Code (with alternative adjustments possible). Code Section 4.5.

If the Fixed Amount is not a specified amount, it will be determined for each Calculation Period on the basis of the following formula:

$$\text{Fixed Amount} = \text{Notional Amount} \times \text{Fixed Rate} \times \text{Portion of year covered by the Calculation Period}$$

For this formula, the parties must specify the Notional Amount and the Fixed Rate. The Code tells how days in a year are to be counted for purposes of applying the Fixed Rate, but parties may easily vary the Code's provision. Code Section 5.2 (b).

The Floating Amount will be determined for each Calculation Period on the basis of the following formula:

$$\text{Floating Amount} = \text{Notional Amount} \times (\text{Floating Rate} \pm \text{Spread}) \times \text{Portion of year covered by the Calculation Period}$$

For this formula, the parties must specify the Notional Amount and the Spread, if there is one, and must select a Floating Rate Option to be used in determining the Floating Rate. The method for applying the Floating Rate to the portion of the year covered by the Calculation Period is set forth in the Code but may be modified by the parties. Code Section 6.3 (f).

The Code sets forth seven Floating Rate Options:

- LIBOR (the London Interbank Offered Rate)
- Prime
- Treasury Bill
- CD
- Commercial Paper
- Federal Funds
- Bankers Acceptance

There are two basic ways of determining each Floating Rate Option—either by referring to a widely available source, such as the Reuters Screen or a Federal Reserve publication, or by obtaining quotations from participants in the relevant market.

Reset Dates for a rate swap are the days on which the Floating Rate changes, which in a typical rate swap will be a day near the start of each Calculation Period.

II. CHANGES IN THE 1986 CODE FROM THE 1985 EDITION RELEVANT TO CASH FLOWS OF A RATE SWAP

Articles 1 through 10 of the 1986 Code remain substantially unchanged from the same Articles of the 1985 Edition. The principal refinements in these provisions are:

- **Rate Swap Agreement and Rate Swap Transaction.** The 1985 Edition included a single basic definition of the term “rate swap”. The 1986 Code creates a distinction between two concepts: “Rate Swap Agreement” and “Rate Swap Transaction”. Code Sections 1.1 and 1.2. A Rate Swap Agreement is defined as an agreement that governs one or several Rate Swap Transactions. The new approach accommodates what has become the prevailing practice of executing master agreements that cover multiple transactions. It also facilitates the provisions of the 1986 Code (discussed below) which presume that an early termination will apply simultaneously to all transactions under a given Rate Swap Agreement and that permit termination payments to be calculated on an aggregate basis.

- **Trade Date.** A new term “Trade Date” was added as Code Section 3.4 to refer to the day on which the parties enter into a Rate Swap Transaction as opposed to the Effective Date or the time the Rate Swap Transaction is fully documented. This term should facilitate use of the new representations and agreements contained in the 1986 Code because users of the 1986 Code may require that representations and warranties be true as of the Trade Date for each Rate Swap Transaction.

- **Compounding.** The 1986 Code contains new provisions to cover compounding of Floating Amounts, a matter not dealt with in the 1985 Edition. Code Article 6. Compounding involves dividing each Calculation Period into a series of “Compounding Periods” and adding up the individual Compounding Period Amounts for all such Compounding Periods, with each Compounding Period Amount taking account of compounding of the Compounding Period Amounts for prior Compounding Periods in that same Calculation Period.

- **Corresponding Payment Dates.** New Section 9.3 of the 1986 Code addresses situations in which Payment Dates coincide for two or more Rate Swap Transactions governed by the same Rate Swap Agreement. This Section provides that if “Net Payments—Corresponding Payment Dates” is specified by the parties, then payments will be netted among the various Rate Swap Transactions for which Payment Dates coincide.

● **Conditions Precedent.** Changes have been made to Code Section 10.2 which have the effect of relieving a party of the duty to make any fixed or floating payments under a Rate Swap Agreement if there is any Event of Default (or incipient Event of Default) with respect to the other party under the Rate Swap Agreement, even if the Event of Default does not relate to the transaction for which the fixed or floating payment is due. This change is intended to help implement the concept that all Rate Swap Transactions under a single master agreement are part of a single, integrated agreement.

III. USING THE CODE FOR OTHER RATE SWAPS

In addition to facilitating the “plain-vanilla” rate swaps described in Part I of this Guide, the 1986 Code includes many terms and provisions that are useful for more complicated rate swaps:

● **Different Payment Dates.** Under the Code, the parties can make payments at different times simply by distinguishing “Party A Payment Dates” from “Party B Payment Dates”.

● **More Frequent Reset Dates.** Instead of specifying a day near the start of each Calculation Period as the Reset Date for a rate swap, parties can provide for the Floating Rate to be reset more frequently than once every Calculation Period—every three months, monthly, weekly or daily. When there is more than one Reset Date for a Calculation Period, parties may specify a method (or may use the method provided in the Code) for combining the rates determined on the various Reset Dates in calculating the Floating Rate for that Calculation Period. Code Sections 6.3 (a) (iii) - (v).

● **Delayed Payment.** By specifying “Delayed Payment” in a rate swap, parties may defer the Payment Date for each Calculation Period by five banking days (or any other period they specify). Code Section 4.5 (c). The Delayed Payment option is useful for rate swaps involving weekly or daily Reset Dates. Amounts due may be calculated prior to the day of payment, while at the same time the appropriate rate for a Reset Date occurring near the end of the Calculation Period may be taken into account.

● **Rate Cut-off Date.** As an alternative to Delayed Payment in rate swaps involving weekly or daily Reset Dates, parties may use a “Rate Cut-off Date” to “freeze” the Floating Rate toward the end of the Calculation Period for the purpose of calculating the Floating Amount. Code Section 6.3 (d).

● **Two Floating Rate Payors.** The Code can be used for rate swaps in which both parties pay based upon a floating rate simply by combining the appropriate terms with the names of the parties: “Party A Floating Rate Option”, “Party A Reset Dates”, etc.

● **Compounding.** As explained in Part II of this Guide, new provisions in the 1986 Code permit compounding of Floating Amounts. Code Article 6.

IV. EARLY TERMINATION

The 1986 Code, like its predecessor, contemplates that parties may wish to designate a date for settling out, on a “lump-sum” basis, amounts payable under a rate swap if a default or other event identified in their contract as permitting early termination occurs. A date designated in this manner is called an “Early Termination Date”.

“Event of Default” and “Termination Event” are defined in the 1986 Code by means of a list of terms describing typical events that might be specified by the parties to a rate swap. As is true for all “menus” of choices in the Code, the events described in Code Section 11.7 and Section 11.8 are only possibilities and are not required to be included in a particular contract. The parties to a rate swap are free to specify events of default and termination events not described in the Code. Events that were considered by the drafters but not defined in the 1986 Code include cross-default, insolvency, judgment lien, material adverse change, merger or sale of assets without consent and revocation of authorizations.

Code Section 11.10, which is new in the 1986 Code, provides that, with respect to any Event of Default or Termination Event, the parties can agree that the event will not be deemed to occur until the end of a specified “Cure Period” or until after notice is given, or both. If the parties so specify, only after this period has elapsed or notice has been given can an Early Termination Date be designated. The 1986 Code also contemplates that parties may, if they wish, agree not to designate an Early Termination Date as a result of illegality or the imposition of withholding taxes without first attempting to eliminate the illegality or taxes by assigning the agreement or affected transaction to another branch, office or affiliate. Code Sections 11.6 and 18.3. (See the discussion in Part VI below.)

The early termination provisions of the 1986 Code do not address the requirements for notice of an Early Termination Date or the treatment of unpaid amounts for Calculation Periods that ended on or before the Early Termination Date. These points should be addressed in each Rate Swap Agreement. In addition, parties may wish to indicate in their Rate Swap Agreement whether certain payment obligations survive the termination of the Rate Swap Agreement (such as the obligation to pay default interest pursuant to Section 10.3 of the Code, the obligation to pay expenses pursuant to Section 12.7 of the Code, the obligation to compensate the other party for losses arising from currency translation under Section 18.1 of the Code, and the tax gross-up obligation under Section 19.1 of the Code).

Article 12 of the 1986 Code continues to provide three different approaches to settling out on the Early Termination Date the loss or profit arising from an early termination:

(1) “Agreement Value” fixes the loss or profit on the basis of quotations from market makers in the rate exchange market for a replacement transaction that would generate the same payment streams as the transaction being terminated.

(2) “Formula” calculates loss or profit on the basis of hypothetical alternative borrowings and investments available on the Early Termination Date.

Adjustments for an element of fault or differences in creditworthiness of the parties may be made by specifying spreads above or below the relevant borrowing and investment rates.

(3) “Indemnification” allows the parties to calculate damages on the basis of a general indemnity.

In selecting an approach to damages, the parties should indicate whether the amount calculated is to be recovered on a “fault” or a “no-fault” basis. For that purpose, the Code provides three applications of each approach:

(1) If the parties specify “Agreement Value”, “Formula” or “Indemnification” but say nothing about “Two Way Payments”, payment will be made on a “fault” basis. The party suffering the greater loss will recover only if it cannot be held accountable for the event that caused the early termination. If neither party is at fault, recovery will be based on “Two Way Payments”.

(2) If the parties add the term “Two Way Payments”, payment will be made on a “no-fault” basis. The party suffering the greater loss will recover without regard to accountability for the early termination.

(3) If the parties add the term “Limited Two Way Payments”, recovery will depend on the nature of the event giving rise to the early termination. Recovery will be made on the basis of (1) above if termination is the result of an Event of Default and on the basis of (2) above if termination is the result of a Termination Event.

Article 12 generally provides that the party not accountable for the event giving rise to the early termination of the rate swap will be the one that determines the amount, if any, payable on the Early Termination Date. If, however, neither party can be held accountable or the parties are both accountable, then each party will determine the relevant amount and payment will be based on the average of the amounts determined.

V. CHANGES IN THE 1986 CODE FROM THE 1985 EDITION RELEVANT TO EARLY TERMINATION

In addition to adding a list of potential Events of Default and Termination Events, the 1986 Code makes the following changes in Code Articles 11 and 12:

- **Early Termination Date.** As rewritten in the 1986 Code, Code Section 11.1 presumes that upon an Early Termination Date the parties to a Rate Swap Agreement will settle out their payment obligations for all Rate Swap Transactions governed by that Rate Swap Agreement, whether or not the Event of Default or Termination Event relates to all the transactions. The parties can vary this presumption by providing that “Limited Early Termination” applies to a particular Event of Default or Termination Event; in that case, only the Rate Swap Transactions affected by the event are terminated. “Limited Early Termination” most likely would be used for Termination Events such as “Illegality” and “Tax Event”.

- **Right to Terminate.** New Code Section 11.6 sets forth presumptions that the party with a right to declare an Early Termination Date if a Termination Event

occurs is (i) a party affected by the event if it is a “Tax Event”, (ii) either party if the event is “Illegality” and (iii) otherwise the party that is not affected by the event.

- **Immediate Early Termination Date.** Parties can specify in their Rate Swap Agreement that if a particular Event of Default or Termination Event (*e.g.*, bankruptcy or insolvency) happens, an Early Termination Date will occur immediately, without it having to be designated by the appropriate party and without any other action. Amounts due upon immediate early termination will be determined as of the day on which the Early Termination Date occurred or as soon thereafter as practicable. Code Section 11.1.

- **Alternative Measures of Damages.** Whereas the 1985 Edition provided that “Formula” was the automatic fall-back for “Agreement Value” as the measure of damages, the 1986 Code requires parties using “Agreement Value” to specify an alternative measure of damages. Code Section 12.2. This recognizes that many ISDA members have a preference for “Indemnification” as a fall-back because of its simplicity. The 1986 Code also presumes that “Indemnification” is to be the automatic fall-back for “Formula”. Code Section 12.2.

- **Aggregation.** Many institutions using master agreements currently provide in their agreements that if an Early Termination Date occurs and as a result the entire master agreement is to be terminated, termination payments will be calculated for each transaction governed by that Rate Swap Agreement and the amounts so calculated will be aggregated to determine the amount actually payable on the Early Termination Date. The 1986 Code now accommodates this approach by permitting parties to specify that “Aggregation” applies to the measure of damages they have selected. Code Section 12.3. If Aggregation is not specified, termination payments will be determined and paid separately for each of the transactions being terminated, as is presumed to be the case under the 1985 Edition. The 1986 Code contains new definitions of “Aggregate Market Quotation”, “Aggregate Loss” and “Aggregate Formula Settlement Amount” that would be used to determine termination payments for Rate Swap Agreements to which Aggregation applies. Code Sections 12.4 (c), 12.5 (b) and 12.6 (a) (i).

- **Formula.** Many users found the “Formula” provisions in the 1985 Edition difficult to comprehend because of their complexity. These provisions have been reorganized in the 1986 Code and several subheadings and explanatory sentences have been added in an effort to guide readers through the definitions. Code Section 12.6. It is hoped that, as revised, the provisions will be easier to follow. No changes have been made in the substance of the Formula.

VI. NEW PROVISIONS IN THE 1986 CODE

As discussed in Part IV of this Guide, the 1986 Code includes a new menu of Events of Default and Termination Events. The 1986 Code also covers the following new subjects not included in the 1985 Edition:

- **Representations.** Article 15 of the 1986 Code sets forth standard representations which the parties can incorporate in their Rate Swap Agreement

if they wish. Code Section 15.1(a) contains certain “Basic Representations” intended to cover the basic corporate matters relevant to a Rate Swap Transaction. Code Section 15.1 also includes certain other nontax representations: absence of Events of Default or Termination Events; absence of litigation questioning or affecting the legality, validity or enforceability of the Rate Swap Agreement or Credit Support Document or affecting the party’s ability to perform; accuracy of financial information included in SEC filings; and accuracy of other specified information. Any applicable nontax representations are presumed to be made at the time the party enters into the Rate Swap Agreement and repeated on the Trade Date of each Rate Swap Transaction and at any other specified time. Of course, parties are free to make additional representations not included in Code Article 15. Tax representations are set forth separately in Code Article 19.

- **Agreements.** Under the 1986 Code, parties may incorporate into their Rate Swap Agreement any of the specified standard agreements. The nontax agreements relate to maintaining of authorizations and complying with laws, furnishing of annual financial statements, furnishing of quarterly financial statements, furnishing of regular public reporting documents, furnishing of other specified information, and the giving of notice of Events of Default or Termination Events. Code Article 16. The tax covenants are contained in Code Section 19.4 and include covenants to provide Form 1001 or Form 4224, to provide required or reasonably requested tax forms and to give notice of events that would nullify the other party’s tax gross-up obligation.

- **Specified Entities.** The new concept “Specified Entity” is useful for rate swaps in which a party’s obligations are guaranteed or supported in some way by an affiliate or other entity. The affiliate or other entity would be a “Specified Entity” for the party, as defined in Code Article 17, and could easily be included in representations or agreements using the terms defined in Code Articles 15 and 16. If the parties so specify, certain Events of Default and Termination Events would be triggered by the occurrence of the event in question with respect to the Specified Entity (for example, a misrepresentation by a guarantor or affiliate).

- **Cross Border Provisions.** The 1986 Code includes new provisions covering payment in a contractually specified currency (Code Section 18.1), waiver of immunities (Code Section 18.2) and assignment to avoid “Illegality” or a “Tax Event” (Code Section 18.3). Under Code Section 18.3, if the parties to a rate swap specify “Assignment To Avoid Illegality” or “Assignment To Avoid a Tax Event”, upon the occurrence of what would otherwise be a Termination Event for illegality or taxes, the affected party must use reasonable efforts to assign the Rate Swap Agreement to another office, branch or affiliate to avoid the illegality or withholding taxes, subject to the other party’s consent. The Rate Swap Agreement may further provide that this assignment obligation is a “two-way” obligation so that, if the affected party is unable to assign the Rate Swap Agreement, the nonaffected party will, if requested, use reasonable efforts to assign the Rate Swap Agreement. Aside from this provision for assignment to

avoid “Illegality” or “Tax Events”, the general subject of assignment of rate swaps is not addressed in the 1986 Code.

● **Withholding Tax Gross-Up.** The 1986 Code includes new provisions that apply where a party making a payment is legally required to withhold “Taxes” from the payment. Code Section 19.1 (b) requires the party making such withholding to gross up the amount of the payment for any amount it withholds on account of “Indemnifiable Taxes” (generally, taxes imposed by a jurisdiction with which the payee has no connection). Under Code Section 19.1 (c), however, a party is released from its gross-up obligation with respect to Indemnifiable Taxes that result from a breach by the other party of a “Payee Tax Representation” or a “Tax Covenant” made by the other party (unless the breach results from a “Change in Tax Law” and the parties have specified that the representation or covenant is subject to the occurrence of a “Change in Tax Law”).

CODE OF STANDARD WORDING, ASSUMPTIONS AND PROVISIONS FOR SWAPS, 1986 EDITION

Any or all provisions of this Code may be incorporated into a document by wording in the document indicating that, or the extent to which, the document is subject to the Code of Standard Wording, Assumptions and Provisions for Swaps, 1986 Edition (as published by the International Swap Dealers Association, Inc.). All provisions of this Code so incorporated in a document will be applicable to that document unless otherwise provided in that document, and all terms defined in this Code and used in provisions of this Code that are incorporated by reference in a document will have the respective meanings set forth in this Code unless otherwise provided in that document. Any term used in a document will, when combined with the name of a party, have meaning in respect of the named party only.

The parties to a Rate Swap Agreement may, but need not, include in the Rate Swap Agreement any of the matters or terms covered by this Code, and a Rate Swap Agreement need not be limited to the matters or terms covered by this Code.

ARTICLE 1

CERTAIN GENERAL DEFINITIONS

Section 1.1. Rate Swap Agreement. “Rate Swap Agreement” means an agreement (however designated) governing one or more Rate Swap Transactions.

Section 1.2. Rate Swap Transaction. “Rate Swap Transaction” means a rate exchange or swap transaction.

Section 1.3. Dollar. “Dollar” and “\$” each means the lawful currency of the United States of America.

Section 1.4. New York Banking Day. “New York Banking Day” means any day other than a Saturday, a Sunday or a day on which commercial banks in New York City are required or authorized to be closed.

Section 1.5. London Banking Day. “London Banking Day” means any day on which dealings in deposits in Dollars are transacted in the London interbank market.

Section 1.6. Business Day. “Business Day” means any day other than a Saturday, a Sunday or a day on which commercial banks in the city specified by the parties (or, if a city is not specified, New York City) are required or authorized to be closed.

ARTICLE 2

PARTIES

Section 2.1. Fixed Rate Payor. “Fixed Rate Payor” means, in respect of a Rate Swap Transaction, a party obligated to make payments from time to time during the Term of the Rate Swap Transaction of amounts calculated by reference to a fixed per annum rate.

Section 2.2. Floating Rate Payor. “Floating Rate Payor” means, in respect of a Rate Swap Transaction, a party obligated to make payments from time to time during

the Term of the Rate Swap Transaction of amounts calculated by reference to a floating per annum rate.

ARTICLE 3

TERM

Section 3.1. Term. “Term” means the period commencing on the Effective Date of a Rate Swap Transaction and ending on the Termination Date of the Rate Swap Transaction.

Section 3.2. Effective Date. “Effective Date” means the date specified as such for a Rate Swap Transaction, which date is the first day of the Term of the Rate Swap Transaction.

Section 3.3. Termination Date. “Termination Date” means the date specified as such for a Rate Swap Transaction, which date is the last day of the Term of the Rate Swap Transaction.

Section 3.4. Trade Date. “Trade Date” means, in respect of a Rate Swap Transaction, the date on which the parties enter into the Rate Swap Transaction.

ARTICLE 4

CERTAIN DEFINITIONS RELATING TO PAYMENTS

Section 4.1. Fixed Amount. “Fixed Amount” means, in respect of a Rate Swap Transaction, an amount that, subject to Sections 9.2, 9.3 and 10.2 of this Code, is payable by a Fixed Rate Payor on an applicable Payment Date and determined by reference to a Calculation Period as provided in Article 5 of this Code.

Section 4.2. Floating Amount. “Floating Amount” means, in respect of a Rate Swap Transaction, an amount that, subject to Sections 9.2, 9.3 and 10.2 of this Code, is payable by a Floating Rate Payor on an applicable Payment Date and determined by reference to a Floating Rate Option and a Calculation Period as provided in Article 6 of this Code.

Section 4.3. Notional Amount. “Notional Amount” means, in respect of any Calculation Period for a Rate Swap Transaction, the amount specified as such for the Rate Swap Transaction.

Section 4.4. Eurodollar Convention. “Eurodollar Convention” means, with respect to either Payment Dates or Period End Dates for a Rate Swap Transaction, that such Payment Dates or Period End Dates will be each day during the Term of the Rate Swap Transaction that numerically corresponds to the preceding applicable Payment Date or Period End Date, as the case may be, in the calendar month that is the specified number of months after the month in which the preceding applicable Payment Date or Period End Date occurred (or, in the case of the first applicable Payment Date or Period End Date, the day that numerically corresponds to the Effective Date in the calendar month that is the specified number of months after the month in which the Effective Date occurred), except that (a) if there is not any such numerically corresponding day in the calendar month in which a Payment Date or Period End Date, as the case may be, should occur, then the Payment Date or Period

End Date will be the last day that is a New York Banking Day and a London Banking Day in that month, (b) if a Payment Date or Period End Date, as the case may be, would otherwise fall on a day that is not a New York Banking Day and a London Banking Day, then the Payment Date or Period End Date will be the first following day that is a New York Banking Day and a London Banking Day unless that day falls in the next calendar month, in which case the Payment Date or Period End Date will be the first preceding day that is a New York Banking Day and a London Banking Day and (c) if the preceding applicable Payment Date or Period End Date, as the case may be, occurred on the last day in a calendar month that was a New York Banking Day and a London Banking Day, then all subsequent applicable Payment Dates or Period End Dates, as the case may be, prior to the Termination Date will be the last day that is a New York Banking Day and a London Banking Day in the month that is the specified number of months after the month in which the preceding applicable Payment Date or Period End Date occurred.

Section 4.5. Payment Date. “Payment Date” means, in respect of a Rate Swap Transaction,

(a) if “Delayed Payment” or “Early Payment” is not specified for the Rate Swap Transaction and Payment Dates are specified or otherwise predetermined for the Rate Swap Transaction, each day during the Term of the Rate Swap Transaction so specified or predetermined and the Termination Date;

(b) if “Delayed Payment” or “Early Payment” is not specified for the Rate Swap Transaction and the parties specify that Payment Dates will occur in accordance with the Eurodollar Convention at a specified interval of calendar months, each day during the Term of the Rate Swap Transaction at the specified interval, determined in accordance with the Eurodollar Convention, and the Termination Date;

(c) if “Delayed Payment” is specified for the Rate Swap Transaction and Period End Dates are established for the Rate Swap Transaction, each day that is five New York Banking Days after an applicable Period End Date or after the Termination Date; or

(d) if “Early Payment” and a period of days are specified for the Rate Swap Transaction and Period End Dates are established for the Rate Swap Transaction, each day that is the specified number of days before an applicable Period End Date or before the Termination Date;

except that, in the case of subsections (a), (c) and (d) above, an adjustment will be made if any Payment Date would otherwise fall on a day that is not a New York Banking Day (or, if a party to the Rate Swap Transaction is obligated to pay Floating Amounts calculated by reference to any “LIBOR” Floating Rate Option, any Payment Date would otherwise fall on a day that is not a New York Banking Day and a London Banking Day), so that

(e) if (i) the “Following Banking Day” convention is specified for the Rate Swap Transaction or (ii) an applicable convention is not specified, the Payment Date will be the first following day that is a New York Banking Day (and, if any “LIBOR” Floating Rate Option applies to the Rate Swap Transaction, a London Banking Day);

(f) if the “Modified Following Banking Day” convention is specified for the Rate Swap Transaction, the Payment Date will be the first following day that is a

New York Banking Day (and, if any “LIBOR” Floating Rate Option applies to the Rate Swap Transaction, a London Banking Day) unless that day falls in the next calendar month, in which case the Payment Date will be the first preceding day that is a New York Banking Day (and, if any “LIBOR” Floating Rate Option applies to the Rate Swap Transaction, a London Banking Day); or

(g) if the “Preceding Banking Day” convention is specified for the Rate Swap Transaction, the Payment Date will be the first preceding day that is a New York Banking Day (and, if any “LIBOR” Floating Rate Option applies to the Rate Swap Transaction, a London Banking Day).

Section 4.6. Period End Date. “Period End Date” means, in respect of a Rate Swap Transaction,

(a) if Period End Dates are not established for the Rate Swap Transaction, each Payment Date during the Term of the Rate Swap Transaction;

(b) if Period End Dates are specified or otherwise predetermined for the Rate Swap Transaction, each day during the Term so specified or predetermined;
or

(c) if it is specified for the Rate Swap Transaction that Period End Dates will occur in accordance with the Eurodollar Convention and an interval of calendar months is specified, and if “Delayed Payment” or “Early Payment” is specified for the Rate Swap Transaction, each day during the Term at the specified interval, determined in accordance with the Eurodollar Convention;

except that, in the case of subsection (b) above, an adjustment may be made if any Period End Date would otherwise fall on a day that is not a New York Banking Day (or, if a party to the Rate Swap Transaction is obligated to pay Floating Amounts calculated by reference to any “LIBOR” Floating Rate Option, any Period End Date would otherwise fall on a day that is not a New York Banking Day and a London Banking Day), so that

(d) if “No Adjustment of Period End Dates” is specified for the Rate Swap Transaction, an adjustment will not be made, notwithstanding that the Period End Date occurs on a day that is not a New York Banking Day (or a London Banking Day);

(e) if (i) the “Following Banking Day” convention is specified for the Rate Swap Transaction or (ii) an applicable convention is not specified, the Period End Date will be the first following day that is a New York Banking Day (and, if any “LIBOR” Floating Rate Option applies to the Rate Swap Transaction, a London Banking Day);

(f) if the “Modified Following Banking Day” convention is specified for the Rate Swap Transaction, the Period End Date will be the first following day that is a New York Banking Day (and, if any “LIBOR” Floating Rate Option applies to the Rate Swap Transaction, a London Banking Day) unless that day falls in the next calendar month, in which case the Period End Date will be the first preceding day that is a New York Banking Day (and, if any “LIBOR” Floating Rate Option applies to the Rate Swap Transaction, a London Banking Day); or

(g) if the “Preceding Banking Day” convention is specified for the Rate Swap Transaction, the Period End Date will be the First preceding day that is a

New York Banking Day (and, if any “LIBOR” Floating Rate Option applies to the Rate Swap Transaction, a London Banking Day).

Section 4.7. Calculation Period. “Calculation Period” means, in respect of a Rate Swap Transaction, each period from, and including, one Period End Date to, but excluding, the next following applicable Period End Date during the Term of the Rate Swap Transaction, except that (a) the initial Calculation Period for each party to the Rate Swap Transaction will commence on, and include, the Effective Date, and (b) the final Calculation Period for each party to the Rate Swap Transaction will end on, but exclude, the Termination Date.

Section 4.8. Calculation Agent. “Calculation Agent” means the party to a Rate Swap Transaction (or a third party) designated as such for the Rate Swap Transaction and responsible for (a) calculating the applicable Floating Rate, if any, for each Calculation Period or Compounding Period, (b) calculating any Floating Amount payable in respect of each Calculation Period, (c) calculating any Fixed Amount payable in respect of each Calculation Period, (d) giving notice to the parties to the Rate Swap Transaction on the Calculation Date for each Calculation Period, specifying (i) the date for payment in respect of such Calculation Period, (ii) the party or parties required to make the payment or payments then due, (iii) the amount or amounts of the payment or payments then due and (iv) reasonable details as to how such amount or amounts were determined and (e) if, after such notice is given, there is a change in the number of days in the relevant Calculation Period and the amount or amounts of the payment or payments due in respect of that period, promptly giving the parties to the Rate Swap Transaction notice of such changes, with reasonable details as to how such changes were determined. Whenever the Calculation Agent is required to select banks or dealers for the purpose of calculating a Floating Rate, the Calculation Agent will make such selection in good faith for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in the relevant market.

Section 4.9. Calculation Date. “Calculation Date” means, for any Calculation Period, the earliest day on which it is practicable to provide the notice that the Calculation Agent is required to give in respect of that Calculation Period, and in no event later than the close of business on the Business Day next preceding the Payment Date in respect of that Calculation Period.

ARTICLE 5

FIXED AMOUNTS

Section 5.1. Calculation of a Fixed Amount. The Fixed Amount for each applicable Payment Date in respect of any Calculation Period will be

(a) if an amount is specified for the Rate Swap Transaction as the Fixed Amount payable in respect of that Calculation Period, such amount; or

(b) if an amount is not specified for the Rate Swap Transaction as the Fixed Amount payable in respect of that Calculation Period, an amount calculated on a formula basis in respect of that Calculation Period as follows:

$$\text{Fixed Amount} = \text{Notional Amount} \times \text{Fixed Rate} \times \frac{\text{Fixed Rate Day count}}{\text{Fraction}}$$

Section 5.2. Certain Definitions Relating to Fixed Amounts. For purposes of the calculation of a Fixed Amount:

(a) “Fixed Rate” means the per annum rate specified as such for the Rate Swap Transaction, expressed as a decimal.

(b) “Fixed Rate Day Count Fraction” means

(i) if (A) “Actual/365” is specified for a Rate Swap Transaction as the applicable Fixed Rate Day Count Fraction or (B) an applicable Fixed Rate Day Count Fraction is not specified, the actual number of days in the Calculation Period in respect of which payment is being made divided by 365 (or, if any portion of that Calculation Period falls in a leap year, the sum of (X) the actual number of days in that portion of the Calculation Period falling in a leap year divided by 366 plus (Y) the actual number of days in that portion of the Calculation Period falling in a nonleap year divided by 365);

(ii) if “Actual/360” is specified for a Rate Swap Transaction as the applicable Fixed Rate Day Count Fraction, the actual number of days in the Calculation Period in respect of which payment is being made divided by 360; or

(iii) if “30/360” or “360/360” is specified for a Rate Swap Transaction as the applicable Fixed Rate Day Count Fraction, the number of days in the Calculation Period in respect of which payment is being made (calculated on the basis of a year of 360 days with 12 30-day months) divided by 360.

ARTICLE 6

FLOATING AMOUNTS

Section 6.1. Calculation of a Floating Amount. The Floating Amount for each applicable Payment Date in respect of any Calculation Period for a Rate Swap Transaction will be

(a) if Compounding is specified, an amount equal to the sum of the Compounding Period Amounts for each of the Compounding Periods in that Calculation Period; or

(b) if Compounding is not specified, an amount calculated on a formula basis in respect of that Calculation Period as follows:

$$\text{Floating Amount} = \text{Notional Amount} \times \text{Floating Rate} \pm \text{Spread} \times \text{Floating Rate Day Count Fraction}$$

Section 6.2. Calculation of a Compounding Period Amount. The Compounding Period Amount for any Compounding Period for a Rate Swap Transaction will be an amount calculated on a formula basis in respect of that Compounding Period as follows:

$$\text{Compounding Period Amount} = \text{Adjusted Notional Amount} \times \text{Floating Rate} \pm \text{Spread} \times \text{Floating Rate Day Count Fraction}$$

Section 6.3. Certain Definitions Relating to Floating Amounts. For purposes of the calculation of a Floating Amount:

(a) “Floating Rate” means, in respect of any Calculation Period or Compounding Period for a Rate Swap Transaction, a per annum rate, expressed as a decimal, equal to

(i) if a per annum rate is specified for the Rate Swap Transaction as the Floating Rate applicable in respect of that Calculation Period or Compounding Period, the Floating Rate so specified;

(ii) if only one Reset Date is established for the Rate Swap Transaction during (or with respect to) that Calculation Period or Compounding Period, the Relevant Rate for that Reset Date;

(iii) if more than one Reset Date is established for the Rate Swap Transaction during (or with respect to) that Calculation Period or Compounding Period and the “Unweighted Average Rate” method of calculation is specified, the arithmetic mean of the Relevant Rates for each of these Reset Dates;

(iv) if more than one Reset Date is established for the Rate Swap Transaction during (or with respect to) that Calculation Period or Compounding Period and the “Weighted Average Rate” method of calculation is specified, the arithmetic mean of the Relevant Rates in effect for each day in that Calculation Period or Compounding Period, calculated by multiplying each Relevant Rate by the number of days such Relevant Rate is in effect, determining the sum of such products and dividing such sum by the number of days in the Calculation Period or Compounding Period; or

(v) if more than one Reset Date is established for the Rate Swap Transaction during (or with respect to) that Calculation Period or Compounding Period and neither the “Unweighted Average Rate” nor the “Weighted Average Rate” method of calculation is specified, a Floating Rate determined (A) as if “Weighted Average Rate” had been specified as the

applicable method of calculation if the applicable Floating Rate Option is a “Prime” or “Federal Funds” Floating Rate Option and (B) as if “Unweighted Average Rate” had been specified as the applicable method of calculation if any other Floating Rate Option is applicable.

(b) “Reset Date” means each day specified as such (or determined pursuant to a method specified for such purpose) for the Rate Swap Transaction, except that an adjustment will be made if any Reset Date would fall on a day that is not a New York Banking Day (or, if the Floating Amount is being calculated by reference to any “LIBOR” Floating Rate Option, any Reset Date would fall on a day that is not a New York Banking Day and a London Banking Day), so that the Reset Date will be the first preceding day that is a New York Banking Day (and, if the Floating Amount is being calculated by reference to any “LIBOR” Floating Rate Option, a London Banking Day).

(c) “Relevant Rate” means (subject to the effect of any applicable Rate Cut-off Date), for any day, a per annum rate, expressed as a decimal, equal to

(i) if such day is a Reset Date, the rate determined with respect to that day for the specified Floating Rate Option as provided in Article 7 of this Code; or

(ii) if such day is not a Reset Date, the Relevant Rate determined pursuant to clause (i) above for the next preceding Reset Date.

(d) “Rate Cut-off Date” means each day specified as such (or determined pursuant to a method specified for such purpose) for the Rate Swap Transaction. The Relevant Rate for each Reset Date in the period from, and including, a Rate Cut-off Date to, but excluding, the next applicable Period End Date (or, in the case of the last Calculation Period, the Termination Date) will (solely for purposes of calculating the Floating Amount payable on the next applicable Payment Date) be deemed to be the Relevant Rate in effect on that Rate Cut-off Date.

(e) “Spread” means the per annum rate, if any, specified as such for the Rate Swap Transaction (expressed as a decimal). For purposes of determining a Floating Amount or a Compounding Period Amount, if positive the Spread will be added to the Floating Rate and if negative the Spread will be subtracted from the Floating Rate.

(f) “Floating Rate Day Count Fraction” means, in respect of any Calculation Period or Compounding Period, (i) if any “Treasury Bill” Floating Rate Option is specified as the applicable Floating Rate Option, the actual number of days in that Calculation Period or Compounding Period divided by 365 (or, if any portion of that Calculation Period or Compounding Period falls in a leap year, the sum of (A) the actual number of days in that portion of the Calculation Period or Compounding Period falling in a leap year divided by 366 plus (B) the actual number of days in that portion of the Calculation Period or Compounding Period falling in a nonleap year divided by 365) and (ii) in all other cases, the actual number of days in that Calculation Period or Compounding Period divided by 360.

Section 6.4. Certain Additional Definitions Relating to Compounding. For purposes of the calculation of a Floating Amount where “Compounding” is specified:

(a) “Compounding Period” means, in respect of a Calculation Period, each period from, and including, one Compounding Date to, but excluding, the next following applicable Compounding Date during that Calculation Period, except that (i) each initial Compounding Period for a Rate Swap Transaction will commence on, and include, the Effective Date and (ii) each final Compounding Period for a Rate Swap Transaction will end on, but exclude, the Termination Date.

(b) “Compounding Date” means each day during the Term of a Rate Swap Transaction specified as such (or determined pursuant to a method specified for such purpose) for the Rate Swap Transaction, except that, if the Period End Date for any Calculation Period is subject to adjustment in accordance with Section 4.6 of this Code, each applicable Compounding Date in that Calculation Period will be subject to adjustment in the same manner as such Period End Date.

(c) “Adjusted Notional Amount” means (i) in respect of the First Compounding Period in any Calculation Period, the Notional Amount for that Calculation Period and (ii) in respect of each succeeding Compounding Period in that Calculation Period, an amount equal to the sum of the Notional Amount for that Calculation Period and the Compounding Period Amounts for each of the previous Compounding Periods in that Calculation Period.

ARTICLE 7

CALCULATION OF RATES FOR CERTAIN FLOATING RATE OPTIONS

Section 7.1. Floating Rate Options. For purposes of determining a Relevant Rate:

(a) “LIBOR” means that the rate in respect of a Reset Date will be determined on the basis of the offered rates for deposits in Dollars for a period of the Designated Maturity commencing on that Reset Date which appear on the Reuters Screen LIBO Page as of 11:00 a.m., London time, on the day that is two London Banking Days preceding that Reset Date. If at least two such offered rates appear on the Reuters Screen LIBO Page, the rate in respect of that Reset Date will be the arithmetic mean of such offered rates. If fewer than two offered rates appear, the rate in respect of that Reset Date will be determined as if the parties had specified “LIBOR (Reference Banks)” as the applicable Floating Rate Option.

(b) “LIBOR (Reference Banks)” means that the rate in respect of a Reset Date will be determined on the basis of the rates at which deposits in Dollars are offered by the Reference Banks at approximately 11:00 a.m., London time, on the day that is two London Banking Days preceding that Reset Date to prime banks in the London interbank market for a period of the Designated Maturity commencing on that Reset Date and in a Representative Amount. The Calculation Agent will request the principal London office of each of the Reference Banks to provide a quotation of its rate. If at least two such quotations are provided, the rate in respect of that Reset Date will be the arithmetic mean of the quotations. If fewer than two quotations are provided as requested, the rate in respect of that Reset Date will be the arithmetic mean of the rates quoted

by major banks in New York City, selected by the Calculation Agent, at approximately 11:00 a.m., New York City time, on that Reset Date for loans in Dollars to leading European banks for a period of the Designated Maturity commencing on that Reset Date and in a Representative Amount.

(c) “Prime” means that the rate for a Reset Date will be the rate set forth in H.15 (519) for that day opposite the caption “Bank Prime Loan”. If on the Calculation Date for a Calculation Period such rate for a Reset Date in that Calculation Period is not yet published in H.15 (519), the rate for that Reset Date will be the arithmetic mean of the rates of interest publicly announced by each bank that appears on the Reuters Screen NYMF Page as such bank’s prime rate or base lending rate as in effect for that Reset Date as quoted on the Reuters Screen NYMF Page on that Reset Date or, if fewer than four such rates appear on the Reuters Screen NYMF Page for that Reset Date, the rate determined as if the parties had specified “Prime (Reference Banks)” as the applicable Floating Rate Option.

(d) “Prime (Reference Banks)” means that the rate for a Reset Date will be the arithmetic mean of the rates of interest publicly announced by each Reference Bank as its prime rate or base lending rate as in effect for that day. Each change in the prime rate or base lending rate of any bank so announced by such bank will be effective as of the effective date of the announcement or, if no effective date is specified, as of the date of the announcement.

(e) “Treasury Bill” means that the rate for a Reset Date on which United States Treasury bills are auctioned will be the rate set forth in H.15 (519) for that day opposite the Designated Maturity under the caption “U.S. Government Securities/Treasury Bills/Auction Average (Investment) ”. If on the Calculation Date for a Calculation Period United States Treasury bills of the Designated Maturity have been auctioned on a Reset Date during that Calculation Period but such rate for such Reset Date is not yet published in H.15 (519), the rate for that Reset Date will be the Bond Equivalent Yield of the auction average rate for these Treasury bills as announced by the United States Department of the Treasury. If United States Treasury bills of the Designated Maturity are not auctioned during any period of seven consecutive calendar days ending on and including any Friday and a Reset Date would have occurred if such Treasury bills had been auctioned during that seven-day period, a Reset Date will be deemed to have occurred on the day during that seven-day period on which such Treasury bills would have been auctioned in accordance with the usual practices of the United States Department of the Treasury, and the rate for that Reset Date will be determined as if the parties had specified “Treasury Bill (Secondary Market)” as the applicable Floating Rate Option (unless it is indicated for the Rate Swap Transaction that weeks in which United States Treasury bills of the Designated Maturity are not auctioned will be ignored, in which case there will not be any Reset Date during that seven-day period).

(f) “Treasury Bill (Secondary Market)” means that the rate for a Reset Date will be the Bond Equivalent Yield of the rate set forth in H.15 (519) for that day opposite the Designated Maturity under the caption “U.S. Government Securities/Treasury Bills/Secondary Market”. If on the Calculation Date for a Calculation Period such rate for a Reset Date in that Calculation Period is not yet

published in H.15 (519), the rate for that Reset Date will be the Bond Equivalent Yield of the arithmetic mean of the secondary market bid rates of the Reference Dealers as of approximately 3:30 p.m., New York City time, on that day for the issue of United States Treasury bills with a remaining maturity closest to the Designated Maturity.

(g) “CD” means that the rate for a Reset Date will be the rate set forth in H.15 (519) for that day opposite the Designated Maturity under the caption “CDs (Secondary Market)”. If on the Calculation Date for a Calculation Period such rate for a Reset Date in that Calculation Period is not yet published in H.15 (519), the rate for that Reset Date will be the rate set forth in Composite 3:30 P.M. Quotations for U.S. Government Securities for that day in respect of the Designated Maturity under the caption “Certificates of Deposit”. If on the Calculation Date for a Calculation Period the appropriate rate for a Reset Date in that Calculation Period is not yet published in either H.15 (519) or Composite 3:30 P.M. Quotations for U.S. Government Securities, the rate for that Reset Date will be determined as if the parties had specified “CD (Reference Dealers)” as the applicable Floating Rate Option.

(h) “CD (Reference Dealers)” means that the rate for a Reset Date will be the arithmetic mean of the secondary market offered rates of the Reference Dealers as of 10:00 a.m., New York City time, on that day for negotiable certificates of deposit of major United States money market banks with a remaining maturity closest to the Designated Maturity and in a Representative Amount.

(i) “Commercial Paper” means that the rate for a Reset Date will be the Money Market Yield of the rate set forth in H.15 (519) for that day opposite the Designated Maturity under the caption “Commercial Paper”. If on the Calculation Date for a Calculation Period such rate for a Reset Date in that Calculation Period is not yet published in H.15 (519), the rate for that Reset Date will be the Money Market Yield of the rate set forth in Composite 3:30 P.M. Quotations for U.S. Government Securities for that day in respect of the Designated Maturity under the caption “Commercial Paper” (with a Designated Maturity of one month or three months being deemed to be equivalent to a Designated Maturity of 30 days or 90 days, respectively). If on the Calculation Date for a Calculation Period the appropriate rate for a Reset Date in that Calculation Period is not yet published in either H.15 (519) or Composite 3:30 P.M. Quotations for U.S. Government Securities, the rate for that Reset Date will be determined as if the parties had specified “Commercial Paper (Reference Dealers)” as the applicable Floating Rate Option.

(j) “Commercial Paper (Reference Dealers)” means that the rate for a Reset Date will be the Money Market Yield of the arithmetic mean of the offered rates of the Reference Dealers as of 11:00 a.m., New York City time, on that day for commercial paper of the Designated Maturity placed for industrial issuers whose bond rating is “Aa” or the equivalent from a nationally recognized rating agency.

(k) “Federal Funds” means that the rate for a Reset Date will be the rate set forth in H.15 (519) for that day opposite the caption “Federal Funds (Effective)”. If on the Calculation Date for a Calculation Period such rate for a

Reset Date in that Calculation Period is not yet published in H.15 (519), the rate for that Reset Date will be the rate set forth in Composite 3:30 P.M. Quotations for U.S. Government Securities for that day under the caption “Federal Funds/Effective Rate”. If on the Calculation Date for a Calculation Period the appropriate rate for a Reset Date in that Calculation Period is not yet published in either H.15 (519) or Composite 3:30 P.M. Quotations for U.S. Government Securities, the rate for that Reset Date will be determined as if the parties had specified “Federal Funds (Reference Dealers)” as the applicable Floating Rate Option.

(1) “Federal Funds (Reference Dealers)” means that the rate for a Reset Date will be the arithmetic mean of the rates for the last transaction in overnight Federal funds arranged by each Reference Dealer prior to 9:00 a.m., New York City time, on that day.

(m) “Bankers Acceptance” means that the rate for a Reset Date will be the Money Market Yield of the rate set forth in H.15 (519) for that day opposite the Designated Maturity under the caption “Bankers Acceptances (Top Rated)”. If on the Calculation Date for a Calculation Period such rate for a Reset Date in that Calculation Period is not yet published in H.15 (519), the rate for that Reset Date will be determined as if the parties had specified “Bankers Acceptance (Reference Dealers)” as the applicable Floating Rate Option.

(n) “Bankers Acceptance (Reference Dealers)” means that the rate for a Reset Date will be the Money Market Yield of the arithmetic mean of the offered rates of the Reference Dealers as of the close of business in New York City on that day for top-rated bankers acceptances of the Designated Maturity and in a Representative Amount.

Section 7.2. Certain Published and Displayed Sources.

(a) “H.15 (519)” means the weekly statistical release designated as such, or any successor publication, published by the Board of Governors of the Federal Reserve System.

(b) “Composite 3:30 P.M. Quotations for U.S. Government Securities” means the daily statistical release designated as such, or any successor publication, published by the Federal Reserve Bank of New York.

(c) “Reuters Screen LIBO Page” means the display designated as page “LIBO” on the Reuter Monitor Money Rates Service (or such other page as may replace the LIBO page on that service for the purpose of displaying London interbank offered rates of major banks).

(d) “Reuters Screen NYMF Page” means the display designated as page “NYMF” on the Reuter Monitor Money Rates Service (or such other page as may replace the NYMF page on that service for the purpose of displaying prime rates or base lending rates of major United States banks).

Section 7.3. Certain General Definitions Relating to Floating Rate Options.

(a) “Representative Amount” means, for purposes of any Floating Rate Option for which a Representative Amount is relevant, an amount that is representative for a single transaction in the relevant market at the relevant time.

(b) “Designated Maturity” means the period of time specified as such for a Rate Swap Transaction.

(c) “Reference Banks” means (i) for purposes of the “LIBOR (Reference Banks)” Floating Rate Option, four major banks in the London interbank market and (ii) for purposes of the “Prime (Reference Banks)” Floating Rate Option, three major banks in New York City, in each case selected by the Calculation Agent.

(d) “Reference Dealers” means (i) for purposes of the “Treasury Bill (Secondary Market)” Floating Rate Option, three primary United States Government securities dealers in New York City, (ii) for purposes of the “CD (Reference Dealers)” Floating Rate Option, three leading nonbank dealers in negotiable Dollar certificates of deposit in New York City, (iii) for purposes of the “Commercial Paper (Reference Dealers)” Floating Rate Option, three leading dealers of commercial paper in New York City, (iv) for purposes of the “Federal Funds (Reference Dealers)” Floating Rate Option, three leading brokers of Federal funds transactions in New York City and (v) for purposes of the “Bankers Acceptance (Reference Dealers)” Floating Rate Option, three leading dealers of bankers acceptances in New York City, in each case selected by the Calculation Agent.

(e) “Bond Equivalent Yield” means, in respect of any security with a maturity of six months or less, the rate for which is quoted on a bank discount basis, a yield (expressed as a percentage) calculated in accordance with the following formula:

$$\text{Bond Equivalent Yield} = \frac{D \times N}{360 - (D \times M)} \times 100$$

where “D” refers to the per annum rate for the security, quoted on a bank discount basis and expressed as a decimal; “N” refers to 365 or 366, as the case may be; and “M” refers to, if the Designated Maturity approximately corresponds to the length of the Calculation Period in respect of which the Bond Equivalent Yield is being calculated, the actual number of days in that Calculation Period and, otherwise, the actual number of days in the period from, and including, the applicable Reset Date to, but excluding, the day that numerically corresponds to that Reset Date (or, if there is not any such numerically corresponding day, the last day) in the calendar month that is the number of months corresponding to the Designated Maturity after the month in which that Reset Date occurred.

(f) “Money Market Yield” means, in respect of any security with a maturity of six months or less, the rate for which is quoted on a bank discount basis, a yield (expressed as a percentage) calculated in accordance with the following formula:

$$\text{Money Market Yield} = \frac{D \times 360}{360 - (D \times M)} \times 100$$

where “D” refers to the per annum rate for the security, quoted on a bank discount basis and expressed as a decimal; and “M” refers to, if the Designated Maturity approximately corresponds to the length of the Calculation Period in respect of which the Money Market Yield is being calculated, the actual number of days in that Calculation Period and, otherwise, the actual number of days in the period from, and including, the applicable Reset Date to, but excluding, the

day that numerically corresponds to that Reset Date (or, if there is not any such numerically corresponding day, the last day) in the calendar month that is the number of months corresponding to the Designated Maturity after the month in which that Reset Date occurred.

Section 7.4. Corrections to Published and Displayed Rates. For purposes of determining the Relevant Rate for any day

(a) in any case where the Relevant Rate for a day is based on information obtained from any published or displayed source (including, without limitation, H.15 (519) or Composite 3:30 P.M. Quotations for U.S. Government Securities), that Relevant Rate will be subject to the corrections, if any, to that information subsequently published or displayed by that source within 30 days of that day;

(b) in any case where the Relevant Rate for a day is based on information obtained from any source used because H.15 (519) is not yet available, that Relevant Rate will (except in the case of rates based on quotations from Reference Banks or Reference Dealers) be subject to correction based upon the applicable rate, if any, subsequently published in H.15 (519) within 30 days of that day; and

(c) in the event that a Fixed Rate Payor or Floating Rate Payor for any Rate Swap Transaction notifies the other party to the Rate Swap Transaction of any correction referred to in subsection (a) or subsection (b) above no later than 10 New York Banking Days after the expiration of the 30-day period referred to in such subsection, an appropriate amount will be payable as a result of such correction (whether such correction is made or such notice is given before or after the Termination Date of the Rate Swap Transaction), together with interest on that amount at a rate computed on the basis of the “Federal Funds” Floating Rate Option with daily Reset Dates for the period from, and including, the day on which, based on such correction, a payment in the incorrect amount was first made to, but excluding, the day of payment of the refund or payment resulting from such correction.

ARTICLE 8

ROUNDING

All percentages resulting from any calculations referred to in this Code will be rounded upwards, if necessary, to the next higher one hundred-thousandth of a percentage point (*e.g.*, 9.876541% (or .09876541) being rounded to 9.87655% (or .0987655)), and all Dollar amounts used in or resulting from such calculations will be rounded to the nearest cent (with one half cent being rounded up).

ARTICLE 9

GROSS PAYMENTS AND NET PAYMENTS

Section 9.1. Gross Payments. “Gross Payments” means that, subject to Section 10.2 of this Code, each Fixed Amount and each Floating Amount is to be paid in full on the applicable Payment Date.

Section 9.2. Net Payments. “Net Payments” means that, subject to Section 10.2 of this Code, (a) on any Payment Date when amounts would otherwise be payable in respect of a Rate Swap Transaction by each of two parties to the other, neither party will be obligated to make a payment of any such amount to the other party, but if the amount that would have been payable by one party exceeds the amount that would have been payable by the other party, the party by which the larger amount would have been payable will be obligated to pay to the other party the excess of the larger amount over the smaller amount and (b) on any Payment Date when a Fixed Amount or Floating Amount would be payable in respect of a Rate Swap Transaction by only one party, such amount is to be paid in full by that party.

Section 9.3. Net Payments—Corresponding Payment Dates. “Net Payments—Corresponding Payment Dates” means that “Net Payments” will be applicable and that, subject to Section 10.2 of this Code, on any day when amounts would (after giving effect to Section 9.2 of this Code) otherwise be payable under a Rate Swap Agreement by each of two parties to the other, neither party will be obligated to make a payment of any such amount to the other party, but if the aggregate amount that would have been payable by one party exceeds the aggregate amount that would have been payable by the other party, the party by which the larger aggregate amount would have been payable will be obligated to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

Section 9.4. Payment Basis If Not Specified. If a payment basis is not specified for a Rate Swap Transaction, payments will be made as if “Net Payments” had been specified.

ARTICLE 10

PAYMENTS

Section 10.1. Payment Procedures. Payments in respect of a Rate Swap Transaction will be timely if made in same day funds not later than 2:00 p.m., local time at the designated place of payment, on the day on which they are due. Any amount due on a day on which banks are not open for business in the designated place of payment will be payable (without interest) on the first following day on which banks are open in that place.

Section 10.2. Conditions Precedent. Each obligation of each party to a Rate Swap Agreement to pay any amount due under the Rate Swap Agreement in respect of any Calculation Period is subject to (a) the condition precedent that no Event of Default (as defined in Section 11.2 of this Code), or event that with the giving of notice or lapse of time (or both) would become an Event of Default, in respect of the other party has occurred and is continuing and (b) each other applicable condition precedent specified in the Rate Swap Agreement.

Section 10.3. Default Rate. “Default Rate” means, in respect of a Rate Swap Transaction, the rate specified as such for the Rate Swap Transaction; if a Default Rate is specified, a party that defaults in the payment of any amount due will, to the

extent permitted by law, be required to pay interest on such amount to the other party, on demand, for the period from, and including, the original due date for payment to, but excluding, the date of actual payment at the Default Rate (using the same Floating Rate Day Count Fraction that would apply under this Code if such Default Rate were a Floating Rate and such period were a Calculation Period).

ARTICLE 11

EARLY TERMINATION

Section 11.1. Early Termination Date. “Early Termination Date” means a Business Day on which the parties to a Rate Swap Agreement will settle out, on a “lump-sum” basis, their payment obligations for the Rate Swap Transactions governed by that Rate Swap Agreement (or, if the Early Termination Date occurs as the result of an Event of Default or Termination Event to which the parties have specified that “Limited Early Termination” applies, their payment obligations for the Rate Swap Transactions governed by that Rate Swap Agreement and affected by that Event of Default or Termination Event) in respect of each Calculation Period for any such Rate Swap Transaction that would, but for the occurrence of the Early Termination Date, end after the Early Termination Date. Subject to any conditions to designation of an Early Termination Date set forth in a Rate Swap Agreement, a party to a Rate Swap Agreement may designate an Early Termination Date (a) if an Event of Default in respect of the other party has occurred and is continuing at the time the Early Termination Date is designated or (b) if a Termination Event in respect of either party has occurred and is continuing at the time the Early Termination Date is designated and the party has the right to designate an Early Termination Date as provided in Section 11.6 of this Code or in the Rate Swap Agreement. If an Early Termination Date is designated in accordance with the preceding sentence, the Early Termination Date will occur on the date so designated, whether or not the Event of Default or Termination Event is continuing on the Early Termination Date; *provided, however*, if the Rate Swap Agreement specifies that upon the occurrence of a particular Event of Default or Termination Event “Immediate Early Termination” will occur, the Early Termination Date will occur immediately upon the occurrence of such Event of Default or Termination Event, without any Early Termination Date being designated and without any other action being taken by either party to the Rate Swap Agreement, and the amount payable pursuant to Article 12 of this Code will be determined as of such Early Termination Date or as soon thereafter as practicable, regardless of when either party learns of the occurrence of the Event of Default or Termination Event, and will be paid promptly after notice of the amount due and owing under Article 12 of this Code. A party entitled to designate an Early Termination Date in accordance with this Section 11.1 may do so by giving to the other party to the Rate Swap Agreement such notice as the Rate Swap Agreement requires (specifying in reasonable detail in such notice the basis upon which it is given).

Section 11.2. Event of Default. “Event of Default” means, in respect of a party and a Rate Swap Agreement (or, in the case of an Event of Default to which “Limited Early Termination” applies, a Rate Swap Transaction governed by that Rate

Swap Agreement and affected by that Event of Default), any event specified in that Rate Swap Agreement as an Event of Default in respect of that party.

Section 11.3. Termination Event. “Termination Event” means, in respect of a party and a Rate Swap Agreement (or, in the case of a Termination Event to which “Limited Early Termination” applies, a Rate Swap Transaction governed by that Rate Swap Agreement and affected by that Termination Event), any event specified in that Rate Swap Agreement as a Termination Event in respect of that party.

Section 11.4. Defaulting Party. “Defaulting Party” means the party in respect of which an Event of Default has occurred.

Section 11.5. Affected Party. “Affected Party” means each party in respect of which a Termination Event has occurred.

Section 11.6. Right To Terminate Following Termination Events. Upon the occurrence of a Termination Event in respect of a party and a Rate Swap Agreement (or, if “Limited Early Termination” applies, a Rate Swap Transaction), (a) if such Termination Event is a “Tax Event”, a party that is an Affected Party will have the right to designate an Early Termination Date, (b) if such Termination Event is “Illegality”, either party will have the right to designate an Early Termination Date and (c) otherwise, the party that is not the Affected Party will have the right to designate an Early Termination Date. If the Rate Swap Agreement specifies “Assignment To Avoid Illegality” or “Assignment To Avoid a Tax Event”, an Early Termination Date may not be designated as a result of “Illegality” of the type described in Section 11.8 (a) (i) of this Code or a “Tax Event” unless the applicable provisions of Section 18.3 of this Code have been complied with.

Section 11.7. Specifying Events of Default and Termination Events. The parties to a Rate Swap Agreement may specify as Events of Default or Termination Events such events as they may agree. Such events may, but need not, include any of the events described in this Section and need not be limited to the events described in this Section. If used for purposes of specifying Events of Default or Termination Events in a Rate Swap Agreement, the following terms will, subject to the passage of any applicable cure period or the giving of any applicable notice specified in that Rate Swap Agreement, have the indicated meanings in respect of a party:

(a) “Breach of Covenant” means failure by the party to comply with or perform any agreement or obligation (not including an obligation to make a payment or to give notice of an Event of Default or Termination Event and not including any Tax Covenant) to be complied with or performed by the party in accordance with the Rate Swap Agreement.

(b) “Credit Support Default” means (i) default by the party or any applicable Specified Entity with respect to any obligation which the party (or such Specified Entity) has under any Credit Support Document relating to the Rate Swap Agreement or to any Rate Swap Transaction governed by the Rate Swap Agreement or (ii) the expiration or termination of such Credit Support Document, or the ceasing of such Credit Support Document to be in full force and effect, prior to the Termination Date of each Rate Swap Transaction governed by the Rate Swap Agreement and to which the Credit Support Document applies without the written consent of the other party to the Rate

Swap Agreement or (iii) the party (or such Specified Entity) repudiates, or challenges the validity of, such Credit Support Document.

(c) “Default Under Specified Swaps” means the occurrence of an event of default in respect of the party or any applicable Specified Entity under any Specified Swap that, following the giving of any applicable notice and the lapse of any applicable grace period, has resulted in the designation or occurrence of an Early Termination Date in respect of that Specified Swap.

(d) “Failure To Give Notice of Events of Default or Termination Events” means failure by the party to notify the other party of the occurrence of an Event of Default or Termination Event in respect of the party within 10 days after the occurrence of such Event of Default or Termination Event.

(e) “Failure To Pay” means failure by the party to pay, when due, any amount required to be paid by it under the Rate Swap Agreement.

(f) “Failure To Pay Under Specified Swaps” means failure by the party or any applicable Specified Entity to pay, when due, following the giving of any applicable notice and the lapse of any applicable grace period, an amount to be paid by the party (or such Specified Entity) under any Specified Swap.

(g) “Misrepresentation” means a representation (other than a Payee Tax Representation or a representation that the party is “Exempt From Withholding”) made or repeated or deemed to have been made or repeated by the party or any applicable Specified Entity in the Rate Swap Agreement or any Credit Support Document relating to the Rate Swap Agreement proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated.

(h) “Tax Misrepresentation” means a Payee Tax Representation or a representation that the party is “Exempt From Withholding” made or repeated or deemed to have been made or repeated by the party proves to have been incorrect or misleading in any material respect on the Trade Date of any Rate Swap Transaction governed by the Rate Swap Agreement.

Section 11.8. Specifying Termination Events. If used for purposes of specifying Termination Events in a Rate Swap Agreement (in addition to or in lieu of any of the events described in Section 11.7 of this Code or in addition to such other events as the parties may agree), the following terms will, subject to the passage of any applicable cure period or the giving of any applicable notice specified in that Rate Swap Agreement, have the indicated meanings in respect of a party:

(a) “Illegality” means, due to the adoption of, or any change in, any applicable treaty, law, rule or regulation after the Trade Date of a Rate Swap Transaction governed by the Rate Swap Agreement or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable treaty, law, rule or regulation after the Trade Date of that Rate Swap Transaction, it becomes unlawful for the party (i) to perform any absolute or contingent obligation to make a payment or to receive a payment in respect of that Rate Swap Transaction or to comply with any other material provision of the Rate Swap Agreement relating to that Rate Swap Transaction or (ii) to perform, or for any applicable Specified Entity to perform, any absolute or contingent obligation which the party (or such Specified Entity) has under any Credit Support Document relating to that Rate Swap Transaction.

(b) “Tax Event” means the occurrence in respect of a party of any event specified in the Rate Swap Agreement as a Tax Event. If used for purposes of specifying Tax Events in the Rate Swap Agreement, the following terms will have the indicated meanings in respect of the party referred to below as an “Affected Party”:

(i) “Tax Event upon Payment of Additional Amounts” means that an Affected Party determines that it is required to pay to the other party an additional amount in respect of an Indemnifiable Tax as provided in Section 19.1(b) of this Code (except in respect of default interest).

(ii) “Tax Event upon Substantial Likelihood of Gross-up” means that, in the written opinion of independent legal counsel of recognized standing, there is a substantial likelihood that an Affected Party will be required on the next succeeding Payment Date to pay to the other party an additional amount in respect of an Indemnifiable Tax as provided in Section 19.1 (b) of this Code (except in respect of default interest) and such substantial likelihood results from either (A) a Change in Tax Law or (B) an action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the Trade Date of a Rate Swap Transaction governed by the Rate Swap Agreement (regardless of whether such action was taken or brought with respect to a party to the Rate Swap Agreement).

Section 11.9. Certain General Definitions Relating to Events of Default and Termination Events.

(a) “Credit Support Document” means any agreement or instrument which is specified as such in a Rate Swap Agreement.

(b) “Indemnifiable Tax” and “Change in Tax Law” have the meanings set forth in Section 19.5 of this Code.

(c) “Specified Entity” has the meaning set forth in Section 17.1 of this Code.

(d) “Specified Swap” means, for purposes of an Event of Default or Termination Event specified in a Rate Swap Agreement, any rate swap, rate cap, currency exchange transaction or similar transaction specified or described as such in that Rate Swap Agreement with respect to a party to that Rate Swap Agreement (or any applicable Specified Entity) and that Event of Default or Termination Event.

Section 11.10. Cure Period and Notice. For purposes of determining whether, and when, an Event of Default or Termination Event has occurred

(a) if a Rate Swap Agreement does not specify, in respect of a party and an Event of Default or Termination Event, a period of days to be the applicable “Cure Period” and does not specify “After Notice”, such Event of Default or Termination Event in respect of that party will arise immediately upon the occurrence of the event or commencement of the condition giving rise to the Event of Default or Termination Event;

(b) if the Rate Swap Agreement specifies, in respect of a party and an Event of Default or Termination Event, a period of days to be the applicable “Cure

Period” and specifies “After Notice”, such Event of Default or Termination Event in respect of that party will arise the specified period of days after notice of the event or condition giving rise to the Event of Default or Termination Event is given to the party by the other party to the Rate Swap Agreement if such event or condition is continuing after such period has elapsed;

(c) if the Rate Swap Agreement specifies, in respect of a party and an Event of Default or Termination Event, a period of days to be the applicable “Cure Period” but does not specify “After Notice”, such Event of Default or Termination Event in respect of that party will arise the specified period of days after the occurrence of the event or commencement of the condition giving rise to the Event of Default or Termination Event if such event or condition is continuing after such period has elapsed; and

(d) if the Rate Swap Agreement specifies, in respect of a party and an Event of Default or Termination Event, “After Notice” but does not specify a period of days to be the applicable “Cure Period”, such Event of Default or Termination Event in respect of that party will arise immediately upon notice of the event or condition giving rise to the Event of Default or Termination Event being given to the party by the other party to the Rate Swap Agreement if such event or condition is continuing at the time such notice is given.

ARTICLE 12

PAYMENTS ON EARLY TERMINATION

Section 12.1. Measures of Damages. For purposes of determining the amount payable on an Early Termination Date (or, if Immediate Early Termination applies, promptly after notice of the amount due and owing) in respect of a Rate Swap Transaction or a Rate Swap Agreement, as the case may be,

(a) “Agreement Value” means that on the Early Termination Date (or, if Immediate Early Termination applies, promptly after notice of the amount due and owing), if there is a Defaulting Party or only one Affected Party, that party will be obligated to make a payment to the other party in the amount, if any, by which the Market Quotation determined by the other party exceeds zero. If “Agreement Value” is the applicable measure of damages and notice of the Early Termination Date is given as a result of a Termination Event but there is more than one Affected Party, the payment to be made will be determined as if the parties had specified “Agreement Value—Two Way Payments” as the applicable measure of damages.

(b) “Agreement Value—Limited Two Way Payments” means that on the Early Termination Date (or, if Immediate Early Termination applies, promptly after notice of the amount due and owing), if there is a Defaulting Party, that party will be obligated to make a payment to the other party in the amount, if any, by which the Market Quotation determined by the other party exceeds zero. If notice of the Early Termination Date is given as the result of a Termination Event, the payment to be made will be determined as if the parties had specified “Agreement Value—Two Way Payments” as the applicable measure of damages.

(c) “Agreement Value—Two Way Payments” means that on the Early Termination Date (or, if Immediate Early Termination applies, promptly after notice of the amount due and owing), (i) if there is a Defaulting Party or only one Affected Party, that party will, if the Market Quotation determined by the

other party exceeds zero, pay the amount of such excess to the other party, and the other party will, if the Market Quotation determined by it is less than zero, pay the amount of such deficiency to the Defaulting Party or the Affected Party, as the case may be, and (ii) if there is more than one Affected Party, each party will determine a Market Quotation, and the party with the lower Market Quotation will pay an amount equal to one-half of the difference between the two Market Quotations to the party with the higher Market Quotation.

(d) “Indemnification” means that on the Early Termination Date (or, if Immediate Early Termination applies, promptly after notice of the amount due and owing), if there is a Defaulting Party or only one Affected Party, that party will be obligated to make a payment to the other party in an amount equal to the positive amount, if any, of the other party’s Loss. If “Indemnification” is the applicable measure of damages and notice of the Early Termination Date is given as the result of a Termination Event but there is more than one Affected Party, the payment to be made will be determined as if the parties had specified “Indemnification—Two Way Payments” as the applicable measure of damages.

(e) “Indemnification—Limited Two Way Payments” means that on the Early Termination Date (or, if Immediate Early Termination applies, promptly after notice of the amount due and owing), if there is a Defaulting Party, that party will be obligated to make a payment to the other party in an amount equal to the positive amount, if any, of the other party’s Loss. If notice of the Early Termination Date is given as the result of a Termination Event, the payment to be made will be determined as if the parties had specified “Indemnification—Two Way Payments” as the applicable measure of damages.

(f) “Indemnification—Two Way Payments” means that each party will determine its Loss, and on the Early Termination Date (or, if Immediate Early Termination applies, promptly after notice of the amount due and owing), the party with the Loss that is less will be obligated to make a payment to the party with the Loss that is greater in an amount equal to one-half of the difference between their Losses.

(g) “Formula” means that on the Early Termination Date (or, if Immediate Early Termination applies, promptly after notice of the amount due and owing), if there is a Defaulting Party or only one Affected Party, that party will be obligated to make a payment to the other party in an amount equal to the excess, if any, of the Formula Settlement Amount of the Defaulting Party or Affected Party, as the case may be, over the Formula Settlement Amount of the other party. If “Formula” is the applicable measure of damages and notice of the Early Termination Date is given as the result of a Termination Event but there is more than one Affected Party, the payment to be made will be determined as if the parties had specified “Formula—Two Way Payments” as the applicable measure of damages.

(h) “Formula—Limited Two Way Payments” means that on the Early Termination Date (or, if Immediate Early Termination applies, promptly after notice of the amount due and owing), if there is a Defaulting Party, that party will be obligated to make a payment to the other party in an amount equal to the excess, if any, of the Formula Settlement Amount of the Defaulting Party over the Formula Settlement Amount of the other party. If notice of the Early Termination Date is given as the result of a Termination Event, the payment to be made will be determined as if the parties had specified “Formula—Two Way Payments” as the applicable measure of damages.

(i) “Formula—Two Way Payments” means that on the Early Termination Date (or, if Immediate Early Termination applies, promptly after notice of the amount due and owing) the Formula Settlement Amounts of the parties will be netted, and the party with the higher Formula Settlement Amount will be obligated to make a payment to the party with the lower Formula Settlement Amount in an amount equal to the difference between their Formula Settlement Amounts.

Section 12.2. Alternative Measures of Damages. If for any reason the amount payable in respect of an Early Termination Date cannot be determined, or is not determined, pursuant to the applicable measure of damages, (a) if “Agreement Value”, “Agreement Value—Limited Two Way Payments” or “Agreement Value—Two Way Payments” is specified as the applicable measure of damages, the amount payable in respect of the Early Termination Date will be determined on the basis of the alternative measure of damages specified by the parties or (b) if “Formula”, “Formula—Limited Two Way Payments” or “Formula—Two Way Payments” is specified as the applicable measure of damages, the amount payable in respect of the Early Termination Date will be determined on the basis of “Indemnification”, “Indemnification—Limited Two Way Payments” or “Indemnification—Two Way Payments”, respectively, as the alternative measure of damages.

Section 12.3. Aggregation. If “Aggregation” is specified in a Rate Swap Agreement in respect of a measure of damages or an alternative measure of damages, (a) all references to “Market Quotation” in Section 12.1 of this Code will be deemed references to “Aggregate Market Quotation”, all references to “Formula Settlement Amount” in Section 12.1 will be deemed references to “Aggregate Formula Settlement Amount”, and all references to “Loss” in Section 12.1 will be deemed references to “Aggregate Loss”, and (b) if “Formula”, “Formula—Limited Two Way Payments” or “Formula—Two Way Payments” is the applicable measure of damages, the amount of any damages determined on that basis will be increased or reduced, as appropriate, by an amount determined on the basis of “Indemnification”, “Indemnification—Limited Two Way Payments” or “Indemnification—Two Way Payments”, respectively, applying Aggregation, for all Rate Swap Transactions for which there is more than one Floating Rate Payor.

Section 12.4. Certain Definitions Relating to Agreement Value.

(a) “Market Quotation” means, with respect to a Rate Swap Transaction and a party to the Rate Swap Transaction making the determination, an amount (which may be negative) determined on the basis of quotations from Reference Market-makers for the Dollar amount that would be payable on the Early Termination Date, either by the party to the Rate Swap Transaction making the determination (to be expressed as a positive amount) or to such party (to be expressed as a negative amount), in consideration of an agreement between such party and the quoting Reference Market-maker and subject to such documentation as they may in good faith agree, with a Term commencing on the Early Termination Date (unless the Effective Date has not yet occurred, in which case the Term of such agreement will commence on the Effective Date), that would have the effect of preserving for such party the economic equivalent of the payment obligations of the parties in respect of each Calculation Period for that Rate Swap Transaction that would, but for the occurrence of the Early

Termination Date, end after the Early Termination Date (excluding any unpaid amounts in respect of any Calculation Period ended on or prior to the Early Termination Date but otherwise including, without limitation, any amounts that would, but for the occurrence of the Early Termination Date, have been payable (assuming each applicable condition precedent had been satisfied) on the next applicable Payment Date in respect of any Calculation Period in which the Early Termination Date occurs). The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation as of 11:00 a.m., New York City time, on the Early Termination Date (or, if Immediate Early Termination applies, as of a time as soon thereafter as practicable). If more than three such quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the quotations having the highest and lowest values. If fewer than three quotations are provided, the Market Quotation in respect of the Rate Swap Transaction will not be determined for either party and the alternative measure of damages will apply.

(b) “Reference Market-makers” means four leading dealers in the relevant rate swap market selected by the party determining a Market Quotation in good faith from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit.

(c) “Aggregate Market Quotation” means, with respect to a Rate Swap Agreement and a party, the sum of the Market Quotations (both positive and negative) determined by such party for all Rate Swap Transactions governed by that Rate Swap Agreement with respect to which an Early Termination Date has occurred and for which a Market Quotation is determined, plus, for each Rate Swap Transaction governed by that Rate Swap Agreement with respect to which an Early Termination Date has occurred and for which a Market Quotation is not, or cannot be, determined, (i) if “Formula”, “Formula—Limited Two Way Payments” or “Formula—Two Way Payments” is the alternative measure of damages specified by the parties, (A) in respect of each Rate Swap Transaction for which there is not a Floating Rate Payor or there is only one Floating Rate Payor, an amount (whether positive or negative) equal to the other party’s Formula Settlement Amount less such party’s Formula Settlement Amount and (B) in respect of each Rate Swap Transaction for which there is more than one Floating Rate Payor, an amount equal to such party’s Loss, or (ii) if “Indemnification”, “Indemnification—Limited Two Way Payments” or “Indemnification—Two Way Payments” is the alternative measure of damages specified by the parties, an amount equal to such party’s Loss.

Section 12.5. Certain Definitions Relating to Loss.

(a) “Loss” means, with respect to a Rate Swap Transaction and a party, an amount equal to the total amount (expressed as a positive amount) required, as determined as of the Early Termination Date (or, if Immediate Early Termination applies, as of a time as soon thereafter as practicable) by the party in good faith, to compensate the party for any losses and costs (including loss of bargain and costs of funding but excluding attorneys’ fees and other out-of-pocket expenses) that it may incur as a result of the early termination of the obligations of the parties in respect of the Rate Swap Transaction. If a party determines that

it would gain or benefit from the early termination of the obligations of the parties in respect of the Rate Swap Transaction, such party's Loss will be an amount (expressed as a negative amount) equal to the amount of the gain or benefit as determined by that party.

(b) "Aggregate Loss" means, with respect to a Rate Swap Agreement and a party, the sum of such party's Losses (both positive and negative) for all Rate Swap Transactions governed by that Rate Swap Agreement with respect to which an Early Termination Date has occurred and for which a Loss is determined.

Section 12.6. Certain Definitions Relating to Formula.

(a) *General Definitions.*

(i) "Aggregate Formula Settlement Amount" means, with respect to a Rate Swap Agreement and a party, the sum of such party's Formula Settlement Amounts for all Rate Swap Transactions governed by that Rate Swap Agreement with respect to which an Early Termination Date has occurred and for which there is not a Floating Rate Payor or there is only one Floating Rate Payor and for which the Formula Settlement Amount can be determined for each party.

(ii) "Current Value" means, in respect of any amount, the value of that amount on the Early Termination Date after discounting that amount on a semiannual basis from the originally scheduled date for payment on the basis of the Treasury Rate.

(iii) "Treasury Rate" means a per annum rate (expressed as a semiannual equivalent and as a decimal and, in the case of United States Treasury bills, converted to a Bond Equivalent Yield) determined to be the per annum rate equal to the semiannual equivalent yield to maturity for United States Treasury securities maturing on the Termination Date, as determined by interpolation between the most recent weekly average yields to maturity for two series of United States Treasury securities, (A) one maturing as close as possible to, but earlier than, the Termination Date and (B) the other maturing as close as possible to, but later than, the Termination Date, in each case as published in the most recent H.15 (519) (or, if a weekly average yield to maturity for United States Treasury securities maturing on the Termination Date is reported in the most recent H.15 (519), as published in H.15 (519)).

(b) *Definitions Relating to the Basic Formula.*

(i) "Formula Settlement Amount" means, with respect to a Rate Swap Transaction and a party, the sum of such party's (A) Current Calculation Period Adjustment (if the Early Termination Date is not an applicable Period End Date) and (B) Cost of Termination.

(ii) *Definitions Relating to the Current Calculation Period Adjustment.*

(A) "Current Calculation Period Adjustment" means, with respect to a Rate Swap Transaction and a party, the sum of (I) the Adjusted Fixed Amount, if such party is a Fixed Rate Payor, or the Adjusted Floating Amount, if such party is a Floating Rate Payor, and (II) the Redeployment Adjustment, if applicable.

(B) "Adjusted Fixed Amount" means, in respect of a Rate Swap Transaction and a Fixed Rate Payor, an amount equal to:

(I) if the Fixed Amount payable by the Fixed Rate Payor in respect of the Calculation Period in which the Early Termination Date occurs is a specified amount, such amount multiplied by a fraction the numerator of which is the actual number of days in the period from, and including, the most recent applicable Period End Date (or, if the Early Termination Date occurs before the first applicable Period End Date, from, and including, the Effective Date for the Rate Swap Transaction) to, but excluding, the Early Termination Date and the denominator of which is the actual number of days in the applicable Calculation Period in which the Early Termination Date occurs; or

(II) if the Fixed Amount payable by the Fixed Rate Payor is determined on a formula basis, an amount determined on that basis, as specified for the Rate Swap Transaction, for a hypothetical Calculation Period from, and including, the most recent applicable Period End Date (or, if the Early Termination Date occurs before the first applicable Period End Date, from, and including, the Effective Date for the Rate Swap Transaction) to, but excluding, the Early Termination Date.

(C) “Adjusted Floating Amount” means, in respect of a Rate Swap Transaction and a Floating Rate Payor, an amount determined to be the Floating Amount that would be payable by the Floating Rate Payor, computed on the basis of the applicable Floating Rate Option, the applicable Spread, if any, and the other variables specified for the Rate Swap Transaction, for a hypothetical Calculation Period from, and including, the most recent applicable Period End Date (or, if the Early Termination Date occurs before the first applicable Period End Date, from, and including, the Effective Date for the Rate Swap Transaction) to, but excluding, the Early Termination Date (except that if no Reset Date would otherwise occur during this hypothetical Calculation Period, the first day of this hypothetical Calculation Period will be deemed to be a Reset Date).

(D) A Redeployment Adjustment will be calculated only for a Rate Swap Transaction in which each Floating Rate is determined by reference to a single Reset Date for the Calculation Period to which the Floating Rate applies, and if positive the Redeployment Adjustment will be included in the Current Calculation Period Adjustment of the Fixed Rate Payor, and if negative the Redeployment Adjustment will be included (but as a positive amount) in the Current Calculation Period Adjustment of the Floating Rate Payor. “Redeployment Adjustment” means, with respect to a Rate Swap Transaction and a party for which it is applicable, an amount equal to the product of (I) the Notional Amount, (II) the Redeployment Rate and (III) a fraction, the numerator of which is the number of days remaining (from, and including, the Early Termination Date) in the Calculation Period in which the Early Termination Date occurs and in respect of which a Floating Amount would have been payable (assuming each applicable condition precedent had been satisfied) had the Early Termination Date not occurred and the denominator of which is the denominator of the Floating Rate Day Count Fraction that would otherwise have been applicable to that Calculation Period, after discounting that product, on

a semiannual basis, from the Payment Date in respect of that Calculation Period to the Early Termination Date on the basis of the Treasury Rate.

(E) “Redeployment Rate” means a per annum rate (which may be positive or negative), expressed as a decimal, equal to (I) a hypothetical Relevant Rate for the Early Termination Date computed as if the Early Termination Date were a Reset Date and as if the Designated Maturity were approximately equal to the length of the period from the Early Termination Date to the next scheduled Payment Date but otherwise on the basis of the applicable Floating Rate Option and the other variables specified for the Rate Swap Transaction, less (II) the Floating Rate utilized to calculate the Adjusted Floating Amount.

(iii) *Definitions Relating to Cost of Termination for Future Calculation Periods.*

(A) “Cost of Termination” means (I) in respect of a Rate Swap Transaction and a Fixed Rate Payor, the Fixed Rate Payor’s Discounted Remaining Fixed Amount Payments and (II) in respect of a Rate Swap Transaction and a Floating Rate Payor, the Alternative Financing Costs adjusted to give effect to the Floating Rate Spread Adjustment, if applicable.

(B) “Discounted Remaining Fixed Amount Payments” means, in respect of a Rate Swap Transaction and a Fixed Rate Payor, an amount equal to the sum of the Current Values of the Fixed Amounts (after subtracting, in the case of the next scheduled Fixed Amount, the Adjusted Fixed Amount if the Early Termination Date does not coincide with an applicable Period End Date) that would have been payable (assuming each applicable condition precedent had been satisfied) by the Fixed Rate Payor after an Early Termination Date if the Early Termination Date had not occurred.

(C) “Alternative Financing Costs” means, in respect of a Rate Swap Transaction, an amount which equals (I) if “Formula” is the applicable measure of damages and the Defaulting Party or Affected Party is a Fixed Rate Payor or “Formula—Limited Two Way Payments” is the applicable measure of damages and the Defaulting Party is a Fixed Rate Payor, the sum of the Current Values of each payment of interest the Floating Rate Payor would receive after the Early Termination Date (after subtracting from any such payment of interest any amount earned in respect of any period prior to the Early Termination Date) from an Alternative Fixed Rate Investment, (II) if “Formula” is the applicable measure of damages and the Defaulting Party or Affected Party is a Floating Rate Payor or if “Formula—Limited Two Way Payments” is the applicable measure of damages and the Defaulting Party is a Floating Rate Payor, the sum of the Current Values of each payment of interest the Fixed Rate Payor would pay for an Alternative Fixed Rate Borrowing and (III) if “Formula—Limited Two Way Payments” is the applicable measure of damages and the Early Termination Date occurs as the result of a Termination Event or if “Formula—Two Way Payments” is the applicable measure of damages, the arithmetic mean of the amounts described in clauses (I) and (II) above, unless a Treasury Rate Spread is expressly provided for the purpose of this clause (III), in which case Alternative Financing Costs

will be the amount described in clause (I) above (adjusted to give effect to that Treasury Rate Spread).

(D) “Alternative Fixed Rate Borrowing” means, in respect of a Rate Swap Transaction, at the option of the Fixed Rate Payor, either

(I) a loan in a principal amount equal to the Notional Amount that is or could have been obtained by the Fixed Rate Payor on the Early Termination Date, maturing on (or as close as possible to) the Termination Date and bearing interest payable semiannually (with a short first period, if necessary) at a per annum rate equal to (x) if a Treasury Rate Spread is expressly provided for the purpose of this clause (I), the Treasury Rate adjusted to give effect to that Treasury Rate Spread, (y) if a Treasury Rate Spread is not expressly provided for the purpose of this clause (I) and the Fixed Rate Payor has actually obtained such a loan, the actual fixed rate of interest the Fixed Rate Payor is required to pay for it and (z) if a Treasury Rate Spread is not expressly provided for the purpose of this clause (I) and the Fixed Rate Payor has not actually obtained such a loan, the arithmetic mean of the rates that two banks of nationally recognized standing in the United States, selected by the Fixed Rate Payor in good faith, estimate to be the lowest fixed rate of interest at which the Fixed Rate Payor could have borrowed such a loan on the Early Termination Date from responsible lenders or, if the Fixed Rate Payor is a bank, funded such a loan on the Early Termination Date in the London interbank market; or

(II) if a Treasury Rate Spread is not expressly provided for such purpose and the Fixed Rate Payor is a bank subject to the reserve requirements and insurance assessments described below, certificates of deposit of the Fixed Rate Payor in an amount equal to the Notional Amount which are or could have been issued by the Fixed Rate Payor on the Early Termination Date, with repayment of principal due on (or as close as possible to) the Termination Date and bearing interest payable semiannually (with a short first period, if necessary) at a per annum rate equal to the sum of (x) the quotient of (1) the arithmetic mean of the respective bid rates quoted to the Fixed Rate Payor as of 11:00 a.m., New York City time, on the Early Termination Date by each of three certificate of deposit dealers in New York City of recognized standing selected by the Fixed Rate Payor in good faith for the purchase at face value of such certificates of deposit, divided by (2) one minus the maximum aggregate reserve requirements (expressed as a decimal) imposed under Regulation D of the Board of Governors of the Federal Reserve System on nonpersonal time deposits of \$100,000 or more having a maturity similar to such certificates of deposit, as in effect on the Early Termination Date, plus (y) the net assessment rate per annum payable to the Federal Deposit Insurance Corporation (or any successor) for the insurance of domestic deposits of the Fixed Rate Payor during the calendar year in which the Early Termination Date occurs, as determined by the Fixed Rate Payor on the Early Termination Date.

(E) “Alternative Fixed Rate Investment” means, in respect of a Rate Swap Transaction, an investment in United States Treasury

securities in a principal amount equal to the Notional Amount maturing on (or as close as possible to) the Termination Date which are or could have been purchased by the Floating Rate Payor on the Early Termination Date, yielding interest at a per annum rate equal to, at the option of the Floating Rate Payor, either (I) if the Floating Rate Payor has actually made such an investment, the per annum rate equal to the semiannual equivalent yield to maturity of such securities (expressed as a decimal and, in the case of United States Treasury bills, converted to a Bond Equivalent Yield), or (II) if the Floating Rate Payor has not actually made such an investment, the Treasury Rate, in either case plus or minus the Treasury Rate Spread, if applicable.

(c) ***Definitions Relating to Certain Adjustments to the Basic Formula.***

(i) A Treasury Rate Spread will be used only if the parties to a Rate Swap Transaction specify a rate to be used for that purpose in determining Alternative Financing Costs under clause (III) of Section 12.6 (b) (iii) (C) of this Code, an Alternative Fixed Rate Borrowing under Section 12.6 (b) (iii) (D) of this Code or an Alternative Fixed Rate Investment under Section 12.6 (b) (iii) (E) of this Code, “Treasury Rate Spread” means, in respect of any calculation for which it is applicable, the per annum rate, if any, specified as such for the Rate Swap Transaction (expressed as a decimal). For purposes of applying a Treasury Rate Spread, if positive the Treasury Rate Spread will be added to the Treasury Rate or other rate to which it is applicable and if negative the Treasury Rate Spread will be subtracted from that rate.

(ii) ***Definitions Relating to a Floating Rate Spread Adjustment.***

(A) A Floating Rate Spread Adjustment will be calculated only for a Rate Swap Transaction in which the Floating Amount reflects a Spread specified by the parties. “Floating Rate Spread Adjustment” means an amount equal to the Discounted Remaining Spread Amounts. In computing the Cost of Termination, the Floating Rate Spread Adjustment will be added to the Alternative Financing Costs if the Spread is positive and subtracted from the Alternative Financing Costs if the Spread is negative.

(B) “Discounted Remaining Spread Amounts” means, in respect of a Rate Swap Transaction, an amount equal to the sum of the Current Values of the Spread Amounts (after subtracting, if the Early Termination Date does not coincide with an applicable Period End Date, that portion, if any, of the Adjusted Floating Amount attributable to the Spread from the Spread Amount determined in respect of the Calculation Period in which the Early Termination Date occurs) computed for each Calculation Period ending after the Early Termination Date in respect of which a Floating Amount would have been payable (assuming each applicable condition precedent had been satisfied) if the Early Termination Date had not occurred.

(C) “Spread Amount” means, in respect of a Rate Swap Transaction and a Calculation Period, an amount equal to the product of (I) the Notional Amount, (II) the Spread (for such purpose deemed to be positive) and (III) the Floating Rate Day Count Fraction that would otherwise have been applicable to that Calculation Period.

Section 12.7. Limited Indemnification for Expenses. A Defaulting Party (unless the appropriate measure of damages contemplates “Two Way Payments”) and, if there is only one Affected Party, the Affected Party (unless the appropriate measure of damages contemplates “Limited Two Way Payments” or “Two Way Payments”) will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including attorneys’ fees and all stamp, registration, documentation or similar taxes or duties, incurred by such other party by reason of the enforcement and protection of its rights under a Rate Swap Agreement or by reason of the early termination of the Rate Swap Agreement or any Rate Swap Transaction governed by that Rate Swap Agreement, including, but not limited to, costs of collection.

Section 12.8. Statement of Calculations. A party to a Rate Swap Agreement requesting payment of any amount under Article 12 of this Code will provide to the other party a statement in reasonable detail showing the calculation of such amount (including all relevant quotations). Absent written confirmation of a quotation obtained in determining a Market Quotation or Alternative Financing Costs from the source providing such quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

ARTICLE 13

SUBMISSION TO JURISDICTION

Section 13.1. Submission to Jurisdiction. With respect to any claim arising out of a Rate Swap Agreement, (a) each party irrevocably submits to the nonexclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, and (b) each party irrevocably waives any objection which it may have at any time to the laying of venue of any suit, action or proceeding arising out of or relating to the Rate Swap Agreement brought in any such court, irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum and further irrevocably waives the right to object, with respect to such claim, suit, action or proceeding brought in any such court, that such court does not have jurisdiction over such party.

Section 13.2. Jurisdiction Not Exclusive. Nothing in this Code will be deemed to preclude either party to a Rate Swap Agreement from bringing an action or proceeding in respect of the Rate Swap Agreement in any other jurisdiction.

ARTICLE 14

NOTICES

Section 14.1. Notices. Any notice or communication in respect of a Rate Swap Agreement will be sufficiently given to a party if in writing and delivered in person, sent by certified or registered mail (airmail if overseas) or the equivalent (with return receipt requested) or by overnight courier or given by telex (with answerback

received) addressed to the party at its address or telex number provided for that purpose.

Section 14.2. Effectiveness of Notice. A notice or communication will be effective, if delivered by hand or sent by overnight courier, on the day it is delivered (or if that day is not a day on which commercial banks are open for business in the city specified in the address for notice provided by the recipient (a “Local Banking Day”), or if delivered after the close of business on a Local Banking Day, on the first following day that is a Local Banking Day), if sent by telex, on the day the recipient's answerback is received (or if that day is not a Local Banking Day, or if after the close of business on a Local Banking Day, on the first following day that is a Local Banking Day) or, if sent by certified or registered mail (airmail if overseas) or the equivalent (return receipt requested), three Local Banking Days after dispatch if the recipient’s address for notice is in the same country as the place of dispatch and otherwise seven Local Banking Days after dispatch (or, in either case, if delivered after the close of business on a Local Banking Day, on the first following day that is a Local Banking Day).

Section 14.3. Addresses. Either party by notice to the other may designate additional or different addresses or telex numbers for subsequent notices or communications.

ARTICLE 15

REPRESENTATIONS

Section 15.1. Representations of the Parties. On the date as of which it enters into a Rate Swap Agreement, on the Trade Date of each Rate Swap Transaction governed by the Rate Swap Agreement and at any additional times specified in the Rate Swap Agreement, each party makes to the other party and to any Specified Entity of the other party the applicable representations specified in that Rate Swap Agreement. If used for purposes of specifying representations in a Rate Swap Agreement, the following terms will have the indicated meanings in respect of a party to the Rate Swap Agreement:

(a) “Basic Representations” means that the party represents that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or incorporation; (ii) it has the power to execute and deliver the Rate Swap Agreement and any other documentation relating to the Rate Swap Agreement that it is required by the Rate Swap Agreement to deliver and to perform its obligations under the Rate Swap Agreement and any obligations it has under any Credit Support Document and has taken all necessary action to authorize such execution and delivery and performance of such obligations; (iii) its execution and delivery of the Rate Swap Agreement and any other documentation relating to the Rate Swap Agreement that it is required by the Rate Swap Agreement to deliver and its performance of its obligations under the Rate Swap Agreement and any obligations it has under any Credit Support Document do not violate or conflict with any law, rule or regulation applicable to it, any provision of its charter or by-laws (or comparable constituent documents), any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting the party or any of its assets; (iv) all authorizations of and exemptions,

actions or approvals by, and all notices to or filings with, any governmental or other authority that are required to have been obtained or made by the party at the time this representation is made with respect to the Rate Swap Agreement or any Credit Support Document to which it is a party have been obtained or made and are in full force and effect and all conditions of any such authorizations, exemptions, actions or approvals have been complied with; and (v) each of the Rate Swap Agreement and any Credit Support Document to which it is a party constitutes the party's legal, valid and binding obligation, enforceable against the party in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) "Absence of Certain Events" means that the party represents that no event or condition has occurred that constitutes (or would with the giving of notice or passage of time or both constitute) an Event of Default or, to the party's knowledge, a Termination Event with respect to the party, and no such event would occur as a result of the party's entering into or performing its obligations under the Rate Swap Agreement or any Credit Support Document to which it is a party.

(c) "Absence of Litigation" means that the party represents that there is not pending or, to the party's knowledge, threatened against the party or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that purports to draw into question, or is likely to affect, the legality, validity or enforceability against the party of the Rate Swap Agreement or any Credit Support Document to which it is a party or the party's ability to perform its obligations under the Rate Swap Agreement or such Credit Support Document.

(d) "Accuracy of Financial Information" means that the party represents that all financial information furnished to the other party to the Rate Swap Agreement pursuant to Section 16.1 (a), 16.1 (b) or 16.1 (c) of this Code, or included in any report on Form 10-K, Form 10-Q or Form 8-K (or any successor form) filed by the party with the Securities and Exchange Commission which is furnished by the party to the other party to the Rate Swap Agreement, is, as of its date, true, accurate and complete in every material respect.

(e) "Accuracy of Specified Information" means that the party represents that all applicable information that is furnished in writing by or on behalf of the party to the other party to the Rate Swap Agreement and is identified in the Rate Swap Agreement is, as of the date of the information, true, accurate and complete in every material respect.

ARTICLE 16

AGREEMENTS

Section 16.1. Agreements of the Parties. Each party to a Rate Swap Agreement agrees to perform any additional obligations specified in that Rate Swap Agreement as agreements in respect of that party for so long as the party has any obligations under the Rate Swap Agreement or under any Credit Support Document. If used for purposes of specifying agreements in a Rate Swap Agreement, the

following terms will have the indicated meanings in respect of a party to the Rate Swap Agreement:

(a) “Furnish Annual Financial Statements” means that the party agrees to furnish to the other party, as soon as available and in any event within 120 days (or as soon as practicable after becoming publicly available) after the end of each of its fiscal years, a copy of the annual report of the party (or of such other entity as is specified in the Rate Swap Agreement) containing audited consolidated financial statements for such fiscal year certified by independent certified public accountants and prepared in accordance with accounting principles that are generally accepted in the country in which the party (or such entity) is organized.

(b) “Furnish Quarterly Financial Statements” means that the party agrees to furnish to the other party, as soon as available and in any event within 60 days (or as soon as practicable after becoming publicly available) after the end of each of its fiscal quarters, unaudited consolidated financial statements of the party (or of such other entity as is specified in the Rate Swap Agreement) for such quarter prepared in accordance with accounting principles that are generally accepted in the country in which the party (or such entity) is organized and on a basis consistent with that of the annual financial statements of the party (or such entity).

(c) “Furnish Investor Reports and Regular Public Reporting Documents” means that the party agrees to furnish to the other party, promptly after public availability, each regular financial or business reporting document that is (i) distributed or made generally available by the party (or by such other entity as is specified in the Rate Swap Agreement) to its shareholders or investors or (ii) filed by the party (or such entity) with such regulatory authorities as are specified in the Rate Swap Agreement and made available for public inspection.

(d) “Furnish Specified Information” means that the party agrees to furnish to the other party, upon request or as provided in the Rate Swap Agreement, such information as is specified in the Rate Swap Agreement as required to be so furnished.

(e) “Give Notice of Default and Certain Events” means that the party agrees, upon learning of the occurrence of any event or commencement of any condition that constitutes (or that with the giving of notice or passage of time or both would constitute) an Event of Default or Termination Event with respect to the party, promptly to give the other party notice of such event or condition (or, in lieu of giving notice of such event or condition in the case of an event or condition that with the giving of notice or passage of time or both would constitute an Event of Default or Termination Event with respect to the party, to cause such event or condition to cease to exist before becoming an Event of Default or Termination Event).

(f) “Maintain Authorizations and Comply with Laws” means that the party agrees (i) to maintain in full force and effect all authorizations of and exemptions, actions or approvals by, and all filings with or notices to, any governmental or other authority that are required to be obtained or made by the party with respect to the Rate Swap Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain or make any that may become necessary in the future and (ii) to comply in all material respects with all applicable laws, rules, regulations and orders to which it may be subject if failure so to comply would materially impair its ability to

perform its obligations under the Rate Swap Agreement or any Credit Support Document to which it is a party.

ARTICLE 17

SPECIFIED ENTITIES

Section 17.1. Definition of Specified Entity. “Specified Entity” means an entity specified as such in a Rate Swap Agreement with respect to a party to that Rate Swap Agreement and one or more Events of Default, Termination Events, representations, or agreements or other obligations.

Section 17.2. Definition of Affiliate. “Affiliate” of a party means any entity controlled, directly or indirectly, by the party, any entity that controls, directly or indirectly, the party or any entity under common control with the party. For purposes of this definition, “control” of an entity or of a party means ownership of a majority of the voting power of the entity or party.

Section 17.3. Representations and Agreements by Specified Entities. If a Rate Swap Agreement or an instrument or agreement relating to a Rate Swap Agreement indicates that any representation or agreement of a kind referred to in Section 15.1, 16.1, 19.2, 19.3 or 19.4 of this Code is made by any Specified Entity, for purposes of the Specified Entity’s representation or agreement, all references to “the party” in Section 15.1, 16.1, 19.2, 19.3 or 19.4 will be deemed references to “the Specified Entity” and, if the Specified Entity is not a party to the Rate Swap Agreement, all references to “the Rate Swap Agreement” in Section 15.1, 16.1, 19.2, 19.3 or 19.4 will be deemed references to “the instrument or agreement executed by the Specified Entity in connection with the Rate Swap Agreement”.

Section 17.4. Performance of Obligations by Specified Entities. If an obligation of a party under a Rate Swap Agreement is fully performed for the party by an applicable Specified Entity that is a party to a Credit Support Document or a party to the Rate Swap Agreement, such obligation will be deemed to have been fully performed by the party.

ARTICLE 18

CROSS BORDER PROVISIONS

Section 18.1. Payment in the Contractual Currency. To the extent permitted by applicable law, any obligation to make payments under a Rate Swap Agreement or Credit Support Document in any currency (the “Contractual Currency”) will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts due in respect of the Rate Swap Agreement or Credit Support Document. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency due in respect of the Rate Swap Agreement or Credit Support Document,

the party or Specified Entity required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency due in respect of the Rate Swap Agreement or Credit Support Document, the party receiving the payment will refund promptly the amount of such excess. To the extent permitted by applicable law, the obligation to pay an additional amount in accordance with the second preceding sentence will be enforceable as a separate and independent cause of action for the purpose of recovery in the Contractual Currency of such additional amount, will apply notwithstanding any indulgence granted by the party to which payment is owed and will not be affected by judgment being obtained for any other sums due in respect of the Rate Swap Agreement or Credit Support Document.

To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (a) for the payment of any amount owing in respect of a Rate Swap Agreement or Credit Support Document, (b) for the payment of any amount relating to any early termination in respect of a Rate Swap Agreement or any breach of a Credit Support Document or (c) in respect of a judgment or order of another court for the payment of any amount described in clause (a) or clause (b) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party, or from the applicable Specified Entity required to make such payment, the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party, or such Specified Entity, any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency, if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term “rate of exchange” includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

Section 18.2. Waiver of Immunities. Each party or Specified Entity entering into a Rate Swap Agreement or Credit Support Document irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets, all immunity on the grounds of sovereignty or other similar grounds from (a) suit, (b) jurisdiction of any court, (c) attachment of its assets (whether before or after judgment) and (d) execution of judgment to which it might otherwise be entitled in any suit, action or proceeding relating to the Rate Swap Agreement or Credit Support Document in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any such suit, action or proceeding.

Section 18.3. Assignment To Avoid Illegality or a Tax Event.

(a) If (i) Illegality occurs and a Rate Swap Agreement specifies “Assignment To Avoid Illegality” or (ii) a Tax Event occurs and the Rate Swap Agreement specifies “Assignment To Avoid a Tax Event”, the Defaulting Party or, if there is only one Affected Party, the Affected Party will have the obligation to use all reasonable efforts (which shall not require the party to incur a loss) to make within 30 days, subject to the consent of the other party (which consent will not be withheld if the other party’s policies in effect at the time would permit it to enter into a Rate Swap Agreement with the proposed assignee), an assignment of its rights and delegation (and transfer) of its obligations under the Rate Swap Agreement (or, if “Limited Early Termination” applies, its rights and obligations under the Rate Swap Agreement in respect of all Rate Swap Transactions governed by the Rate Swap Agreement and affected by the Illegality or Tax Event) to another of its offices, branches or Affiliates for the purpose of causing such Illegality or Tax Event to cease to exist, so long as such assignment and delegation will not create another Illegality or Tax Event. If the Defaulting Party or, if there is only one Affected Party, the Affected Party is not able to make such an assignment and delegation for such purpose after a reasonable effort to do so, and if the Rate Swap Agreement specifies that “Two Way Assignment” applies to Assignment To Avoid Illegality (in the case of Illegality) or Assignment To Avoid a Tax Event (in the case of a Tax Event), the Defaulting Party or the Affected Party may, for such purpose, request the other party to assign its rights and delegate its obligations under the Rate Swap Agreement (or, if “Limited Early Termination” applies, its rights and obligations under the Rate Swap Agreement in respect of all Rate Swap Transactions governed by the Rate Swap Agreement and affected by the Illegality or Tax Event) to another of its offices, branches or Affiliates for the purpose of causing such Illegality or Tax Event to cease to exist, so long as such assignment and delegation will not create another Illegality or Tax Event. Upon such request, such other party will have the obligation to use all reasonable efforts (which shall not require such other party to incur a loss) to make such an assignment and delegation within 30 days, subject to the consent of the Defaulting Party or the Affected Party (which consent will not be withheld if the Defaulting Party’s or the Affected Party’s policies in effect at the time would permit it to enter into a Rate Swap Agreement with the proposed assignee). Any such assignment and delegation will become effective upon (A) delivery to the nonassigning party of notice of the assignment and delegation and evidence reasonably satisfactory to such nonassigning party that the assignee and delegatee has, pursuant to such assignment and delegation, legally and effectively accepted all the rights, and assumed all the obligations, of the assigning and delegating party under the Rate Swap Agreement (or, if “Limited Early Termination” applies, its rights and obligations under the Rate Swap Agreement in respect of all Rate Swap Transactions governed by the Rate Swap Agreement and affected by the Illegality or Tax Event), (B) the nonassigning party’s written consent to the assignment, (C) delivery to the nonassigning party of (I) a letter of credit, guarantee or other Credit Support Document satisfactory to the nonassigning party, if the nonassigning party’s policies in effect at the time would require such

a letter of credit, guarantee or other Credit Support Document in connection with a Rate Swap Agreement with the proposed assignee, and (II) such tax forms, certificates and opinions as the nonassigning party may reasonably request and (D) payment by the Defaulting Party or the Affected Party to the other party of all reasonable costs incurred by such other party in connection with the assignment and delegation (including but not limited to attorneys' fees and any costs of negotiating or executing Credit Support Documents). Upon the effectiveness of any such assignment and delegation as provided in this Section, the assigning and delegating party will be released from all its obligations under the Rate Swap Agreement (or, if "Limited Early Termination" applies, its obligations under the Rate Swap Agreement in respect of all Rate Swap Transactions governed by the Rate Swap Agreement and affected by the Illegality or Tax Event) except as otherwise expressly provided in connection with such assignment and delegation.

(b) In the event that clause (i) or clause (ii) of the first sentence of Section 18.3 (a) of this Code is applicable and there is more than one Affected Party, each party will use all reasonable efforts to reach agreement within 30 days on action to be taken for the purpose of causing the Illegality or the Tax Event to cease to exist, which action may require one party or both parties to effect an assignment and delegation on the basis described in Section 18.3 (a) of this Code, and the parties will share equally the costs incurred in connection with any such assignment and delegation.

Section 18.4. Definitions of "Illegality" and "Tax Event". For purposes of Section 18.3, the terms "Illegality" and "Tax Event" have the meanings set forth in Section 11.8 (a) (i) and Section 11.8 (b) of this Code, respectively.

ARTICLE 19

CERTAIN PROVISIONS RELATING TO TAX MATTERS

Section 19.1. Tax Gross-Up.

(a) All payments under a Rate Swap Agreement are to be made without any deduction or withholding for or on account of any Tax except as provided in this Section 19.1.

(b) Subject to Section 19.1 (c) of this Code, if a party to a Rate Swap Agreement is required by any applicable law, rule or regulation to make any deduction or withholding for or on account of any Tax from any payment to be made by it under the Rate Swap Agreement, then that party (the "Withholding Party") will (i) promptly notify the other party (the "Taxed Party") of such requirement, (ii) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by the Withholding Party to the Taxed Party pursuant to this Section 19.1 (b)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against the Taxed Party, (iii) promptly forward to the Taxed Party an official receipt (or a certified copy), or other documentation acceptable to the Taxed Party, evidencing such payment to such authorities and (iv) if such Tax is an Indemnifiable Tax, pay to the Taxed Party, in addition to the payment to which the Taxed Party is otherwise entitled under the Rate Swap Agreement, such additional amount as is necessary to ensure that

the net amount actually received by the Taxed Party (free and clear of Indemnifiable Taxes, whether assessed against the Withholding Party or the Taxed Party) will equal the full amount the Taxed Party would have received had no such deduction or withholding been required.

(c) A party to a Rate Swap Agreement will not be required to pay any additional amount to the other party pursuant to Section 19.1 (b) of this Code to the extent that such additional amount would not be required to be paid but for (i) the failure of a Payee Tax Representation made by the other party to be accurate and true or (ii) the failure by the other party to comply with or perform any Tax Covenant made by it in the Rate Swap Agreement. However, the preceding sentence will not apply to a failure with respect to a Payee Tax Representation or Tax Covenant that is specified in the Rate Swap Agreement to be subject to the occurrence of a “Change in Tax Law”, if such failure would not have occurred but for a Change in Tax Law.

(d) If (i) a party to a Rate Swap Agreement (the “Withholding Party”) is required by any applicable law, rule or regulation to make any deduction or withholding from a payment received by the other party (the “Taxed Party”) for or on account of a Tax in respect of which the Withholding Party would not be required to pay an additional amount to the Taxed Party pursuant to Section 19.1 (b) of this Code, (ii) the Withholding Party does not so deduct or withhold and (iii) a liability resulting from such Tax is assessed directly against the Withholding Party, then, except to the extent the Taxed Party has satisfied or then satisfies the liability resulting from such Tax, the Taxed Party promptly will pay to the Withholding Party the amount of such liability (including any related liability for interest, but including any related liability for penalties only if the Taxed Party has agreed to “Give Notice of Breach of Payee Tax Representation or Tax Covenant” and has failed to comply with or perform such agreement).

Section 19.2. Payee Tax Representations. At all times during the Term of any Rate Swap Transaction governed by a Rate Swap Agreement, each party makes to the other party and to any Specified Entity of the other party the representations specified in that Rate Swap Agreement as “Payee Tax Representations” in respect of that party. If used for purposes of specifying Payee Tax Representations in the Rate Swap Agreement, the following terms will have the indicated meanings in respect of a party to the Rate Swap Agreement:

(a) “Effectively Connected” means that the party represents that, if it is acting through a branch, agency or office in the United States of America (including only the States and the District of Columbia) in respect of a Rate Swap Transaction governed by the Rate Swap Agreement, any payment received or to be received by it in connection with the Rate Swap Transaction is effectively connected with its conduct of a trade or business in the United States.

(b) “Eligible for Treaty Benefits” means that the party represents that it is fully eligible for the benefits (if any) of the “Business Profits” or “Industrial and Commercial Profits” provision, as the case may be, the “Interest” provision, and the “Other Income” provision (if any), of the Specified Treaty with respect to any payment described in such provisions and received or to be received by it in connection with a Rate Swap Transaction governed by the Rate Swap Agreement.

(c) “Ordinary Business Use” means that the party represents that each payment received or to be received by it in connection with a Rate Swap

Transaction governed by the Rate Swap Agreement relates to the regular business operations of the party (and not to an investment of the party).

(d) “Qualify as Business Profits” means that the party represents that each payment received or to be received by it in connection with a Rate Swap Transaction governed by the Rate Swap Agreement (other than default interest) qualifies as “business profits” or “industrial and commercial profits”, as the case may be, under the Specified Treaty.

Section 19.3. Withholding Tax Representation. If a Rate Swap Agreement specifies “Exempt from Withholding” in respect of a party (the “first party”), then on the date as of which it enters into a Rate Swap Agreement, on the Trade Date of each Rate Swap Transaction governed by the Rate Swap Agreement, and at any additional times specified in the Rate Swap Agreement, the first party represents to the other party and to any Specified Entity of the other party that the first party is not required by any law, rule or regulation of the jurisdiction (a) of the first party’s incorporation, organization, management and control, or seat, (b) where a branch or office through which the first party is acting for purposes of the Rate Swap Agreement is located or (c) in which the first party executes the Rate Swap Agreement, to make any deduction or withholding for or on account of any Tax from any payment (other than default interest) to be made by the first party to the other party under the Rate Swap Agreement. In making this representation the first party may rely on (i) the accuracy of any Payee Tax Representations and the satisfaction of any Tax Covenants made or deemed to be made by the other party under the Rate Swap Agreement and (ii) the accuracy and effectiveness of any document provided by the other party pursuant to any Tax Covenant.

Section 19.4. Tax Covenants. Each party to a Rate Swap Agreement agrees to perform any additional obligations specified in that Rate Swap Agreement as “Tax Covenants” in respect of that party for so long as the party has any obligations under the Rate Swap Agreement or under any Credit Support Document. If used for purposes of specifying Tax Covenants in the Rate Swap Agreement, the following terms will have the indicated meanings in respect of a party to the Rate Swap Agreement:

(a) “Give Notice of Breach of Payee Tax Representation or Tax Covenant” means that the party agrees to give notice of any failure described in the first sentence of Section 19.1 (c) of this Code with respect to any Payee Tax Representation or Tax Covenant made or deemed to have been made by the party, promptly upon learning of such failure.

(b) “Provide Form 1001” or “Provide Form 4224” means that the party agrees to Provide Tax Forms and to complete, accurately and in a manner reasonably satisfactory to the other party, and to execute and deliver to the other party, a United States Internal Revenue Service Form 1001 or 4224 (as the case may be), or any successor form, (i) before the first Payment Date under the Rate Swap Agreement, (ii) promptly upon reasonable demand by the other party and (iii) promptly upon learning that any such form previously provided by the party has become obsolete or incorrect.

(c) “Provide Tax Forms” means that the party agrees to complete, accurately and in a manner reasonably satisfactory to the other party, and to execute, arrange for any required certification of, and deliver to the other party (or to such government or taxing authority as the other party reasonably directs), any form or document that may be required or reasonably requested in

order to allow the other party to make a payment under the Rate Swap Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate, promptly upon the earlier of (i) reasonable demand by the other party and (ii) learning that the form or document is required.

Section 19.5. Certain Definitions Relating to Tax Matters.

(a) “Specified Treaty” means the treaty specified as such in a Rate Swap Agreement with respect to one or more Payee Tax Representations.

(b) “Change in Tax Law” means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any treaty, law, regulation or ruling (or in the application or official interpretation of any treaty, law, regulation or ruling) that occurs on or after the Trade Date of any Rate Swap Transaction governed by a Rate Swap Agreement.

(c) “Tax” means any present or fixture tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of a payment under a Rate Swap Agreement, other than a stamp, registration, documentation or similar tax.

(d) “Indemnifiable Tax” means any Tax other than a Tax that would not be imposed in respect of a payment under a Rate Swap Agreement but for a present or former connection between the jurisdiction of the government or taxing authority imposing such Tax and the recipient of such payment (including, without limitation, a connection arising from such recipient being or having been a citizen or resident of such jurisdiction, or being or having been organized, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient having executed, delivered, performed its obligations or received a payment under, or enforced, the Rate Swap Agreement).

ARTICLE 20

MISCELLANEOUS

Section 20.1. No Waiver of Rights. A failure or delay in exercising any right, power or privilege in respect of a Rate Swap Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

Section 20.2. Counterparts. A Rate Swap Agreement and each Credit Support Document or other written agreement relating to the Rate Swap Agreement may be executed in counterparts, each of which will be deemed an original.

Section 20.3. Governing Law. A Rate Swap Agreement and each Credit Support Document or other written instrument or agreement relating to the Rate Swap Agreement will, unless otherwise expressly provided, be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law doctrine.

Section 20.4. Headings. The article and section headings used in this Code or in a Rate Swap Agreement are for convenience of reference only and are not to affect the construction of or be taken into consideration in interpreting this Code or any Rate Swap Agreement.

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