

Memorandum



Date: November 3, 2009

Agenda Item No. 8(E)(1)(A)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "Burgess", written over a light blue horizontal line.

Subject: Securitization of the Guaranteed Investment Contract to be Used to Buyout the Assets Associated with the Lease/Leaseback Arrangement with Rabo Bank and Secured by Ambac Assurance Corporation

This item was amended at the Budget, Planning and Sustainability Committee on October 27, 2009 to remove the General Fund as the funding source to support the additional collateral and to remove the delegated authority for the County Mayor or County Mayor's designee to negotiate the terms for a letter of credit to replace the additional collateral.

Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the accompanying Resolution approving the use of County funds, not to exceed \$10 million, to be deposited with a third party trustee to be used as additional collateral to securitize the Equity Guaranteed Investment Contract (EPUA) held by the County to repurchase the assets associated with the RBD-II (Rabo Bank) Lease/Leaseback (LILO) transaction secured by AMBAC Capital Funding (Ambac) on the early buyout date, and delegating authority, within certain parameters, to the County Mayor or County Mayor's designee to enter into related agreements with Rabo Bank.

Scope

This proposed agenda item will have a countywide impact.

Fiscal Impact/Funding Source

The Board was previously made aware of the credit rating downgrade of Ambac to levels that place Ambac at significant risk of bankruptcy. Ambac's downgrade below AA- and Aa3 by Standard and Poor's Rating Services (S&P) and Moody's Investor Services (Moody's), respectively, entitles Rabo Bank, the current equity partner in the LILO to declare the County in default and demand termination payments. By depositing the requested County funds as additional collateral (not to exceed \$10 million) with a third party trustee, the County will eliminate the economic risks that the County would face if Rabo Bank were to declare a default due to Ambac's ratings downgrade. The current termination payment due to Rabo Bank is approximately \$52 million and the value of the EPUA, which is available to pay the termination costs, is approximately \$35.5 million. Rabo Bank is willing to accept the additional collateral as security for the EPUA. The LILO terminates in 2015, the early buyout date, at which time the County will use the EPUA to terminate the transaction.

The additional collateral will be supported by County's investment securities and recorded as restricted cash. These funds will only be used as additional security to support the EPUA, and the County will continue to own the funds which will continue to earn interest that the County can use for any lawful purpose. The amount of additional collateral needed each year is calculated based on the present value of the difference between the balance in the EPUA account and the value of

the termination payments. Per the existing agreement, the EPUA grows at an annual rate of 6.03%, therefore the amount of restricted cash associated with the additional collateral assignment will decrease each year as the amount of additional collateral required decreases.

In the event that Ambac's credit ratings increase to the levels contained in the LILO documents, that is, AA- and Aa3 by S&P and Moody's respectively, the County will commence negotiations with Rabo Bank to release the additional collateral and eliminate the restriction on cash. Additionally, on the early buyout date, the restricted cash balance will be eliminated as the additional collateral will no longer be required. In the event the additional collateral must be liquidated prior to the early buyout date, the County will need to make appropriations.

Background

Between 1997 and 2002, the County entered into 15 LILo transactions. Three of these leases have since been terminated. Each of the remaining leases is guaranteed by an insurance company that is required to maintain certain minimum credit ratings. Failure to maintain these minimum ratings may subject the County to a technical default and may require the County to take action as contained in the LILo documents. With the current economic environment, the County is assessing each lease transaction separately to determine the actions that are in the best interest of the County. The proposal before the Board today, relates to the sole LILo agreement for which Ambac is the guarantor.

In December 1998, the County entered into the LILo with Dana Commercial Credit Corporation using the Stephen P. Clark Center as the underlying asset. Under the arrangement, the County received an upfront payment of \$3.2 million for entering into the LILo. The County also has the option to terminate the agreement on the "early buyout" date in 2015. In April 2002, Dana Commercial Credit Corporation sold its equity interest in the LILo to Rabo Bank.

The County entered into two payment undertakings that were funded by the equity partner. The first payment undertaking is pledged solely to buy back the asset from the equity investor, and the second is pledged solely to pay the lender, AMBAC Assurance Corporation for the loan required to facilitate the LILo. The first payment undertaking, the Equity Payment Undertaking (EPUA) was invested in a guaranteed investment contract guaranteed by Ambac to pay the purchase option price on the early buyout date to both "reacquire" the asset, and terminate the LILo. The interest rate on the EPUA was calculated such that on the early buyout date the maturity value of EPUA will be equal to the purchase option price. The current EPUA value is approximately \$35 million.

The second payment undertaking, the debt payment undertaking or DPUA is sufficient to repay the debt service on the loan issued by AMBAC Assurance Corporation.

The EPUA

Ambac provided a fixed return on the EPUA of 6.03%. However, pursuant to the LILo agreement, if at any time prior to the early buyout date Ambac was rated AA- and Aa3 or above by S&P and Moody's respectively, Ambac would not be required to post collateral. If Ambac was rated below these threshold credit ratings, Ambac would have to post collateral equal to 104% of the accreted value of the EPUA, and the County would be required to replace Ambac at the County's expense with an AAA rated guarantor.

On November 3, 2008, Moody's downgraded Ambac to Baa1 and on November 19, 2008, S&P lowered Ambac's credit rating to A. These events caused a technical default under the LILo agreement and on November 20, 2008, Rabo Bank requested the County require Ambac post collateral and also replace Ambac as the guarantor for the EPUA. Failure to either have Ambac

post collateral or for the County to replace Ambac would enable Rabo Bank to declare a Sublease Event of Default. Such an event would subject the County to paying a LILO termination value based on a schedule of stipulated loss values to compensate investors for lost benefits. Currently the estimated termination value is approximately \$52 million and includes the remaining value of scheduled LILO payments and the present value of the lost tax benefits that would have been realized by Rabo Bank.

The DPUA

The DPUA is an unsecured guaranteed investment contract provided by Ambac. Earnings on the DPUA exactly match the debt service due under the loan agreement which was also issued by a subsidiary of Ambac. The current loan balance is \$33.5 million. This same Ambac subsidiary also makes the periodic debt service payments to Ambac. Therefore, since Ambac is guaranteeing the payments to itself, there was no need for downgrade provisions to be included in the DPUA as was the case with the EPUA. Consequently, the only County risk associated with the DPUA is bankruptcy risk. If Ambac declares bankruptcy, the bankruptcy court could direct that the DPUA be used to pay creditors, of which the County would be one, and simultaneously, the bankruptcy court could also direct Ambac to seek payment from the County for the outstanding portion of the loan issued by Ambac to facilitate the LILO. However, as outlined in the proposal before the Board today, if Ambac declares bankruptcy, Rabo Bank would allow the County and Ambac to extinguish the debt portion of the transaction, thereby fully paying off the loan balance via a liquidation of the DPUA.

Current Status and Proposed Arrangement with Rabo Bank

Since November 2008, the County has been negotiating with Rabo Bank to resolve the issues surrounding the technical default and to agree on a method of addressing and the risks associated with Ambac ratings downgrade. In November, Ambac posted the necessary collateral as required, however, the County continued to negotiate with Rabo Bank regarding the replacement of Ambac and the risk associated with the DPUA.

The County canvassed the market and held discussions with other entities in its continued effort to replace Ambac. However, because of the market upheaval and resultant economic decline, and the shrinking insurance market, it was not economically feasible to replace Ambac as the guarantor on the LILO. Subsequently, in May 2009, the County proposed the following arrangement to Rabo Bank:

- 1) The County would deposit an amount not to exceed \$10 million (expected to be between \$7 and \$8 million dependent on the interest rate market) in additional collateral to secure the EPUA. The additional collateral is to be held in "trust" by a third party.
- 2) The collateralized LILO EPUA would remain in place and continue to be guaranteed by Ambac to be equal to the payment amount needed on the early buyout date.
- 3) Ambac will continue to post collateral equal to 104% of the accreted value of the EPUA.
- 4) The County may invest the additional collateral in investment that is allowable under the County's Investment Policy.
- 5) The County and Rabo Bank will agree on a collateral schedule to keep the value of the additional collateral equal to the amount of security needed by Rabo Bank for the EPUA.
- 6) A waiver of the existing technical Sublease Event of Default arising out of the County's failure to replace Ambac as Surety Bond provider for as long as:
 - i) Ambac continues to maintain the collateral amounts required under the EPUA; and

- ii) The County continues to maintain the required amounts of additional collateral provided no other Sublease Event of Default exists at the time the waiver is granted.
- 7) Replacement of the Sublease Events of Default with the following provisions and associated remedies:

Events of Default

Rabo Bank could declare an event of default if;

- (i) Ambac fails to maintain the collateral amount required under the EPUA,
- (ii) The County fails to maintain the amount of the additional collateral; or
- (iii) Ambac files for bankruptcy.

Remedies

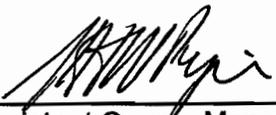
- a) In case of an Event of Default, the accreted amounts under the EPUA will become due and payable, and Rabo Bank will have the right to call for liquidation of the EPUA unless the County assumes all of Ambac's obligations under the EPUA.

Rabo Bank will not however, take any action with respect to an Event of Default attributable to Ambac under clauses (i) or (iii) above, other than exercise of its right, if applicable, to call for liquidation of the EPUA. In such an event, the existing value of the EPUA and any future payments made into the EPUA will be held as security for County's continuing obligations under the lease documentation, so long as, within 180 days after the occurrence of an Event of Default, the County supplements the additional collateral by the amount of any shortfalls on the EPUA with daily mark to markets.
- 8) Rabo Bank would allow the County and Ambac to extinguish the debt portion of the transaction via a liquidation of the DPUA, which will be sufficient to fully prepay the loan.

After repeated negotiations with Rabo Bank, the parties eventually agreed to the above proposal. The County Mayor or designee has the authority to do all things necessary to negotiate any and all documents necessary.

In summary, (a) this proposal eliminates the debt portion of the LILO transaction and all associated County liabilities, (b) eliminates the technical default that currently exists as a result of Ambac's credit ratings downgrade, (c) allows the County to negotiate new provisions regarding the additional collateral, and (d) reduces the amount of additional collateral each year as the value of the EPUA increases.

Resolution No. R-130-06 provides that any County contract with a third party be finalized and executed prior to being placed on a Board agenda. The items contemplated in the above documents will occur after the effective date of this resolution in order to provide the County the maximum flexibility in the marketplace. Therefore, a waiver of Resolution No. R-130-06 is also requested.


Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: November 3, 2009

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(E)(1)(A)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

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Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(E)(1)(A)
11-3-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING TRANSFER OF NOT TO EXCEED \$10 MILLION INTO THIRD PARTY ESCROW OR TRUST ACCOUNT FOR POSTING ADDITIONAL COLLATERAL IN STEPHEN P. CLARK CENTER LEVERAGED LEASE; AND AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE ALL AGREEMENTS EFFECTUATING SAID TRANSFER

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and documents, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Board hereby authorizes: (i) the transfer of not to exceed \$10 million into a third party escrow or trust account to post additional collateral required in the Stephen P. Clark Center leveraged lease, as more particularly set forth in the accompanying memorandum from the County Manager and associated documents; and (ii) the County Mayor or the County Mayor's designee to execute all agreements necessary to effectuate said transfer. ~~[[Additionally, the Board further authorizes, if deemed in the best interest of the County at any time after the posting of the additional collateral, for the County Mayor or the County Mayor's designee to negotiate a substitution of the additional collateral with a letter of credit or similar credit instrument and to do all things necessary to negotiate any and all documents necessary to and enter into a letter of credit or similar credit instrument.]]~~¹

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

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The foregoing resolution was offered by Commissioner
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman	
Jose "Pepe" Diaz, Vice-Chairman	
Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of November, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

dsh

David Stephen Hope

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