

Amendment 1 to Council Bill No. 11-2017

**BY: The Chairperson at the
request of the County Executive**

**Legislative Day No. 5
Date: March 6, 2017**

Amendment No. 1

(This amendment clarifies language and substitutes a revised Exhibit B that incorporates the agreed-upon rate quote.)

- 1 On page 1, in line 8, strike “for the first”.
- 2
- 3 On page 1, in line 9, strike “year’s payment of a 10-year lease-to-purchase program”.
- 4
- 5 Remove the Tax-Exempt Lease/Purchase Agreement, attached to the Bill as Exhibit B, in its
- 6 entirety and substitute a revised Exhibit B as attached to this Amendment.

SUNTRUST EQUIPMENT FINANCE & LEASING CORP.
TAX-EXEMPT LEASE/PURCHASE AGREEMENT (LEASE NO. {LeaseNumber})

This **TAX-EXEMPT LEASE/PURCHASE AGREEMENT** (the “Agreement”), dated as of {MasterLeaseDate}, is made and entered into by and between **SUNTRUST EQUIPMENT FINANCE & LEASING CORP.**, a Virginia corporation, as lessor (“Lessor”), and **Howard County, Maryland**, a political subdivision of the State of Maryland, as lessee (“Lessee”).

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Lease; Possession and Use. Lessor leases the property (the “Equipment”) described in the Equipment Schedule attached hereto as Exhibit A (the “Equipment Schedule”) to Lessee, and Lessee leases the Equipment from Lessor, upon the terms and conditions set forth herein and in the Equipment Schedule. The Equipment Schedule (including all exhibits and attachments thereto) is incorporated herein by reference. Lessee shall have quiet use and enjoyment of the Equipment during the Lease Term, except as expressly set forth in this Agreement.

Term. The “Lease Term” shall consist of an “Original Term” commencing on the date (such date, the “Commencement Date”) the proceeds of this Agreement are deposited in escrow with SunTrust Bank (the “Escrow Agent”) pursuant to an Escrow Agreement attached to the Equipment Schedule as Exhibit 4 (the “Escrow Agreement”) and ending at the end of the budget year of Lessee in effect on such date, and one or more “Renewal Terms,” each having a duration of one year, coextensive with Lessee’s budget year. The Lease Term shall commence on the Commencement Date and shall terminate upon payment of the final Rental Payment and the exercise of the purchase option described herein, unless sooner terminated pursuant to this Agreement. Lessee hereby authorizes and instructs Lessor to insert the Commencement Date as appropriate in any blanks in this Agreement and the schedules and exhibits hereto.

Rental Payments. Lessee agrees to pay the rental payments due as specified in the Payment Schedule in Exhibit 1 to the Equipment Schedule (collectively, the “Rental Payments”). A portion of each Rental Payment is paid as interest as specified in the Payment Schedule, and the first Rental Payment shall include interest accruing from the date set forth in the Equipment Schedule. Lessee shall pay the Rental Payments with lawful money of the United States of America from moneys legally available therefor. To the extent permitted by applicable law, Lessor shall have the right to require a late payment charge for each Rental Payment or any other amount due hereunder which is not paid within 10 days of the date when due equal to the lesser of 5% of such late payment or the legal maximum.

Inclusion in Budget. The person or entity in charge of preparing Lessee’s budget will include in the budget request for each budget year the Rental Payments to become due during such budget year, and will use reasonable and lawful means available to secure the appropriation of money for such budget year sufficient to pay all Rental Payments coming due therein. Lessee reasonably believes that moneys in an amount sufficient to make all Rental Payments can and will be lawfully appropriated. Lessor acknowledges that appropriation for Rental Payments is a governmental function which Lessee cannot contractually commit itself in advance to perform, and that this Agreement does not constitute such a commitment. No remedy is provided, and Lessee shall not be liable for any damages, for failure to comply with this paragraph.

Nonappropriation. If sufficient funds are not appropriated to make Rental Payments required under this Agreement for the Original Term or any Renewal Term, this Agreement shall terminate at the end of the then-current Original Term or Renewal Term, and Lessee shall not be obligated to make Rental Payments under this Agreement beyond the then-current Original Term or Renewal Term, and all of Lessee’s right, title and interest in and to the Equipment shall terminate as of the end of the then-current Original Term or Renewal Term. If such a nonappropriation (an “Event of Nonappropriation”) occurs, Lessee shall (subject to the appropriation of money for such purpose), no later than the end of the then-current Original Term or Renewal Term, return the Equipment to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee, and in the condition required to be maintained by this Agreement; provided that, if Lessee does not appropriate money for such purpose, it shall make the Equipment available for Lessor to take possession of, at the location listed in the Equipment Schedule. Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the termination of Lessee’s interest in the Equipment and passage of title to the Equipment to Lessor. Lessee shall notify Lessor in writing within seven (7) days after the occurrence of an Event of Nonappropriation, but failure to provide such notice shall not operate to extend the Lease Term or result in any liability to Lessee. If Lessee has failed

to return the Equipment as required by this paragraph, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of damages in an amount equal to the amount of the Rental Payments that would thereafter have come due if this Agreement had not been terminated and which are attributable to the number of days after which Lessee fails to return the Equipment and for any other loss suffered by Lessor as a result of Lessee’s failure to deliver the Equipment. In addition, Lessor may, by written instructions to the Escrow Agent, instruct the Escrow Agent to release all such proceeds and any earnings thereon to Lessor. For the avoidance of doubt, all payment obligations of Lessee hereunder are subject to the appropriation of funds.

Current Expense. The obligations of Lessee, including its obligation to pay Rental Payments due in any budget year, shall constitute a current expense of Lessee for such budget year, and shall not constitute indebtedness of Lessee within the meaning of the Constitution and laws of the State of Maryland (the “State”). This Agreement does not constitute a pledge of the full faith or taxing power of Lessee. Upon appropriation of Rental Payments for a budget year, the Rental Payments for such budget year shall be a binding obligation of Lessee, provided that such obligation shall not include a pledge of the taxing power of Lessee.

Unconditional Rental Payments. Subject in all cases to Lessee’s right to non-appropriate Rental Payments, Lessee’s obligation to make Rental Payments and any other payments hereunder shall be absolute and unconditional in all events, without set-off, counterclaim, deduction, defense or abatement for any reason, including through accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment, obsolescence of the Equipment or condemnation of the Equipment. This paragraph shall not limit Lessee’s rights against any manufacturer or vendor of the Equipment.

Option to Purchase. Lessee shall have the option to purchase Lessor’s entire interest in the Equipment on the last day of the Lease Term, if this Agreement is still in effect on such day, upon payment in full of the Rental Payments and any other amounts due hereunder plus payment of one dollar (\$1) to Lessor. Lessee shall also have the option to prepay its obligations under this Agreement, in whole but not in part, to the extent and on the terms set forth in the Equipment Schedule. Lessee shall give written notice to Lessor of its intention to exercise its option to prepay not less than thirty (30) days prior to the Payment Date on which the option will be exercised and shall pay to Lessor not later than such Payment Date an amount equal to all Rental Payments and any other amounts then due or past due under this Agreement (including the Rental Payment due on the Payment Date on which the option shall be effective) plus the applicable Prepayment Price set forth in the Payment Schedule. Lessee’s obligations under this Agreement shall be prepaid in part from the excess proceeds of this Agreement on the terms set forth in the Escrow Agreement.

Representations and Warranties of Lessee. Lessee represents and warrants to Lessor as follows: (a) Lessee is a state or political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the “Code”), duly organized and existing under the Constitution and laws of the State, and has requisite power and authority under the Constitution and laws of the State to enter into this Agreement and the transactions contemplated hereby, and to perform all of its obligations under this Agreement; (b) the execution and delivery of this Agreement have been duly authorized by all necessary action of Lessee’s governing body and such action is in compliance with all public bidding and other State and federal laws applicable to this Agreement and the acquisition and financing of the Equipment by Lessee; (c) this Agreement has been duly executed and delivered by and constitutes the valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms; (c) Lessee’s governing body has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during the Original Term; (d) Lessee’s exact legal name is as set forth on the first page of this Agreement; (e) the execution, delivery and performance of this Agreement by

Lessee does not (i) violate any State or federal law or local law or ordinance, or any order, writ, injunction, decree, or regulation of any court or other governmental agency or body applicable to Lessee, or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, deed of trust, lease or other obligation to which Lessee is bound; (f) there is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee, challenging Lessee's authority to enter into this Agreement or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement; (g) except as otherwise disclosed in writing by Lessee to Lessor, no lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been the obligated party required to make the payments, at any time during the past ten (10) years has been terminated by Lessee solely as a result of insufficient funds being appropriated in any budget year, and no event has occurred which would constitute an event of default by the Lessee under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years; and (h) Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is not temporary or expected to diminish during the Lease Term.

Tax Covenants. The parties contemplate that interest payable under this Agreement will be excluded from gross income for federal income tax purposes under Section 103 of the Code. Lessee will comply with all applicable provisions of the Code, including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Rental Payments under this Agreement and will not use or permit the use of the Equipment in such a manner as to cause this Agreement to be a "private activity bond" under Section 141(a) of the Code. Lessee will use the proceeds of this Agreement as soon as practicable and with all reasonable dispatch for the purposes for which this Agreement has been entered into, and no part of the proceeds of this Agreement shall be invested in any securities, obligations or other investments except for the temporary period pending such use. The Lessee will not use the proceeds of this Agreement or cause the proceeds of this Agreement to be used, at any time, directly or indirectly in a manner which, if such use had been reasonably anticipated on the Commencement Date, would have caused this Agreement to become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the Commencement Date.

Tax Representations. Lessee represents and warrants to Lessor that: (a) the estimated total costs, including taxes, freight, installation, cost of issuance, of the Equipment will not be less than the total principal amount of the Rental Payments; (b) the Equipment has been ordered or is expected to be ordered within six months after the Commencement Date and the Equipment is expected to be delivered and installed, and the vendor fully paid, within eighteen months from the Commencement Date; (c) Lessee will pursue the acquisition of the Equipment and the expenditure of the net proceeds of this Agreement with due diligence; (d) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (1) that is reasonably expected to be used to pay the Rental Payments, or (2) that may be used solely to prevent a default in the payment of the Rental Payments; (e) the Equipment has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments; (f) there are no other obligations of Lessee which (1) are being sold within 15 days of the Commencement Date, or (2) are being sold pursuant to the same plan of financing as this Agreement, and (3) are expected to be paid from substantially the same source of funds; and (g) the officer or official who has executed this Agreement on Lessee's behalf is familiar with Lessee's expectations regarding the use and expenditure of the proceeds of this Agreement. To the best of Lessee's knowledge, information and belief, the facts and estimates set forth in this paragraph are accurate and the expectations of Lessee set forth in this paragraph are reasonable. The representations, warranties and covenants set forth in this paragraph are superseded by the representations, warranties and covenants set forth in any arbitrage or tax certificate executed and delivered by Lessee in connection with this Agreement.

Interest Rate Adjustment. If Lessor either (i) receives notice, in any form, from the Internal Revenue Service, or (ii) reasonably determines, based on an

opinion of independent tax counsel selected by Lessor, that Lessor may not exclude the interest component of Rental Payments paid under this Agreement from its federal gross income, Lessee shall pay to Lessor upon demand (A) an amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest due through the date of such event), will restore to Lessor its after-tax yield (assuming tax at the highest marginal corporate tax rate and taking into account the time of receipt of Rental Payments and reinvestment at the after-tax yield rate) on the transaction evidenced by this Agreement through the date of such event, and (B) as additional Rental Payments to Lessor on each succeeding Payment Date such amount as will maintain such after-tax yield to Lessor. If, during the Lease Term, the federal corporate income tax rate decreases (whether or not Lessor is actually taxed at the maximum marginal statutory rate) or the federal tax laws are changed to reduce or cap the benefit of the tax exemption for the interest component of Rental Payments under this Agreement (whether or not Lessor is actually subject to such reduction or cap), the annual interest rate on this Agreement shall be adjusted as follows: (x) the interest rate shall be divided by 0.65, (y) the resulting quotient shall be multiplied by the difference between 1.0 and the actual new maximum federal corporate income tax rate or the effective maximum federal corporate income tax rate after giving effect to any reduction or cap on the benefit of the tax exemption, as applicable, and (z) the resulting amount shall be the new interest rate for this Agreement. Such increase in the interest rate shall take effect on the effective date of the change in federal tax laws. For the fiscal year of Lessee in which the effective date of the change in federal tax law falls, the increased interest accruing shall be due and payable on the first due date for Rental Payments in the fiscal year of Lessee following the fiscal year in which the effective date of the change in federal tax law falls. Appropriation of said increased interest shall be subject to the appropriation of funds, and failure to appropriate such increased interest shall be an Event of Nonappropriation hereunder. Upon an increase in the interest rate under this paragraph, Lessor shall provide to Lessee a revised Payment Schedule for this Agreement reflecting the increased interest rate.

Liability and Property Insurance. All risk of loss to the Equipment shall be borne by Lessee. Lessee shall, at its own expense, or through its transit contractor procure and maintain continuously in effect during each Lease Term: (a) public liability insurance for death or injuries to persons, or damage to property arising out of or in any way connected to the Equipment sufficient to protect Lessor from liability in all events, with coverage similar to the coverage Lessee or its transit contractor maintains for other comparable Equipment, and (b) insurance against such hazards as Lessor may require, including, but not limited to, all-risk casualty and property insurance, in an amount equal to the greater of the full replacement cost of the Equipment or the applicable Prepayment Price. Lessee will also carry or require its transit contractor to carry workers' compensation insurance covering all employees on, in near or about the Equipment, if required by applicable law. All insurance policies shall be taken out and maintained with insurance companies acceptable to Lessor and Lessee shall request a provision that thirty (30) days prior to any change in the coverage (including cancellation) the insurer must provide written notice to the insured parties. In addition to any notice provided by the insurer, Lessee shall provide written notice to Lessor prior to any such change in coverage. No insurance shall be subject to any co-insurance clause. Each liability insurance policy shall be endorsed to name Lessor as an additional insured party and each casualty and property insurance policy shall be endorsed to name Lessor as loss payee, in each case regardless of any breach of warranty or other act or omission of Lessee. At Lessor's request, Lessee shall deliver to Lessor the evidence of insurance which complies with this paragraph. Lessee may self-insure against the risks described in this paragraph. If Lessee self-insures, Lessee shall deliver to Lessor at Lessor's request, a letter from its risk manager or insurance consultant in substantially the form attached to the Equipment Schedule. If Lessee fails to maintain the insurance required by this paragraph, Lessor may (but shall not be obligated to) take such action to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 12% per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

Application. If the Equipment is stolen, lost or destroyed, in whole or in part, or is damaged by fire or other casualty, or title to, or the temporary use of, the Equipment has been taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Lessor and Lessee will cause the net proceeds of any insurance claim, condemnation award or sale

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under threat of condemnation (the "Net Proceeds") to be applied, at the option of Lessee, to (a) the prompt replacement, repair, restoration, modification or improvement of the Equipment in substantial conformance with the original specifications, or (b) the prepayment of this Agreement in whole. Lessee will give Lessor written notice of its election within ninety (90) days after its receipt of the Net Proceeds. The insufficiency of the Net Proceeds to pay in full the cost of any repair, restoration, modification or improvement shall not affect Lessee's obligations under this paragraph, and Lessee shall not be entitled to any reimbursement therefor from Lessor or any diminution of the Rental Payments. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement may be retained by Lessee.

Use and Maintenance of Equipment; Liens. Lessee shall, at its own expense, maintain the Equipment in good condition and working order, and shall make all necessary repairs and replacements to keep the Equipment in such condition. Lessee shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any manufacturer's guidelines or in violation of any applicable law or regulation. Lessee shall obtain and maintain all permits and licenses necessary for the installation and operation of the Equipment. The initial principal garage of the Equipment shall be located at the address specified in the Equipment Schedule. If Lessee changes the principal garage of the Equipment, it shall use good faith efforts to provide thirty (30) days prior written notice to Lessor specifying the address of the new location. Lessee shall provide Lessor with the address of the principal garage of the Equipment upon Lessor's reasonable request. Lessee will not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition will change or impair the originally intended value, function or use of the Equipment. Without limiting the foregoing sentence, Lessor acknowledges that Lessee may affix or install decals, paint and other accessories to identify the Equipment as the equipment of Lessee. Lessee will not affix the Equipment to real property such that the Equipment becomes fixtures.

Taxes. Lessor and Lessee contemplated that the Equipment will be used for a governmental or proprietary purpose of Lessee, and therefore that the Equipment will be exempt from all property taxes. The Rental Payments payable by Lessee under this Agreement have been established to reflect the savings resulting from this exemption. Lessee will take all necessary actions under applicable law to obtain or maintain such exemption. Nevertheless, if the use, possession or acquisition of the Equipment is determined to be subject to taxation or later becomes subject to taxation, Lessee shall pay all taxes, assessments and other charges which are assessed or levied against the Equipment or any part thereof, during the Lease Term, whether assessed against Lessee or Lessor. With respect to any taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the then current budget year of the Lease Term.

Financial Information. To the extent not publicly available, Lessee shall deliver to Lessor upon request such financial statements and information relating to the ability of Lessee to satisfy its obligations under this Agreement as Lessor may request from time to time.

Title; Security Interest. During the Lease Term, title to the Equipment shall be in Lessee, subject to Lessor's interests under this Agreement. In order to secure Lessee's payment of all Rental Payments and the performance of all other obligations hereunder, Lessee hereby grants to Lessor a continuing security interest in and to (a) the Equipment, all repairs, replacements, substitutions, restorations, accessions, improvements and modifications thereto; (b) all books and records solely to the extent related to the Equipment; (c) all moneys and investments in any escrow account into which proceeds of this Agreement have been deposited; and (d) all proceeds of the foregoing, including insurance proceeds. Lessee hereby authorizes Lessor to prepare and file such financing statements and other such documents to establish and maintain Lessor's valid first lien and perfected security interest. Lessee will execute and deliver such documents and will perform such acts as Lessor may request to establish and maintain Lessor's security interest. Lessee will not change its legal name in any respect without giving Lessor 30 days prior written notice.

Acceptance; Disclaimer of Warranties. Lessee covenants with Lessor that it will cause the Equipment to be delivered and installed in its entirety in accordance with the bid or purchase order specifications pursuant to which Lessee ordered the Equipment from the vendor or manufacturer, and will pay all taxes, delivery costs and installation costs, if any, in connection therewith. All of the Equipment and the vendor of the Equipment have been selected by

Lessee. Lessor shall have no responsibility in connection with the selection of the Equipment, the ordering of the Equipment, its suitability for the use intended by Lessee, the acceptance by any vendor or its sales representative of any order submitted, or any delay or failure by such vendor or its sales representative to manufacture, deliver or install any Equipment for use by Lessee. Proceeds of this Agreement will be disbursed in accordance with the Escrow Agreement. Lessor assigns to Lessee for the Lease Term all of vendors' warranties in connection with the Equipment. The insufficiency of proceeds under this Agreement to pay costs of the Equipment shall not affect Lessee's obligations under this paragraph. When the Equipment has been delivered, installed and accepted, Lessee shall promptly execute and deliver to Lessor (with a copy to the Escrow Agent) an acceptance certificate in the form attached to the Escrow Agreement. LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, QUALITY, DURABILITY, SUITABILITY, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT. In no event shall Lessor be liable for any incidental or consequential damages in connection with or arising out of this Agreement or the Equipment or Lessee's use of the Equipment.

Risk of Loss. Lessee shall not be required to indemnify Lessor from liabilities associated with this Agreement; however, to the extent permitted by applicable laws of the State, as between Lessor and Lessee, Lessee assumes all risks and liabilities from any cause whatsoever, whether or not covered by insurance, and Lessee agrees to defend Lessor against, all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses that relate to or arise out of this Agreement, including but not limited to, (a) the selection, manufacture, purchase, acceptance or rejection of Equipment or the ownership of the Equipment, (b) the delivery, lease, possession, maintenance, use, condition, return or operation of the Equipment, (c) the condition of the Equipment sold or otherwise disposed of after possession by Lessee, (d) the conduct of Lessee, its officers, employees and agents, (e) any claim, loss, cost or expense involving alleged damage to the environment relating to the Equipment, including, but not limited to investigation, removal, cleanup and remedial costs, and (f) any strict liability under the laws or judicial decisions of any state or the United States. The indemnification obligations of the Lessee in this Agreement, if any, are provided to the extent of the provisions of the Maryland Local Government Tort Claims Act, Sections 5-301 et seq. of the Courts and Judicial Proceedings Article, Maryland Annotated Code and subject to the appropriation of funds. As a condition of indemnification, Lessor agree(s) to notify Lessee of any suits, claims or potential claims as soon as practicable following Lessor's receipt of written notice thereof; provided, however, that the failure of Lessor to provide timely notice to Lessee with respect to any such suit, claim or potential claim shall not affect the obligations of Lessee hereunder with respect to such suit, claim or potential claim except to the extent that Lessee is materially prejudiced by Lessor's failure to give Lessee timely notice thereof. The foregoing indemnification, if any, is not to be deemed as a waiver of any immunity that may exist in any action against Lessee or its officers, agents, volunteers and employees. This provision shall survive the termination of this Agreement.

Assignment by Lessor. Lessor may assign, sell or encumber all or any part of this Agreement, the Rental Payments and any other rights hereunder, including with respect to the Equipment, without Lessee's consent. Such assignees may include trust agents for the benefit of holders of certificates of participation. No such assignment shall be effective as against Lessee unless and until written notice of the assignment is provided to Lessee. When presented with a notice of assignment, Lessee will acknowledge in writing receipt of such notice for the benefit of Lessor and any assignee. Lessee shall keep a complete and accurate record of all such assignments. Lessee makes no representation as to the effect that such assignment or participation may have on the tax exemption for the interest component of Rental Payments under this Agreement.

Assignment and Subleasing by Lessee. Neither this Agreement nor any interest herein or in the Equipment may be assigned, subleased, sold, transferred, pledged or mortgaged by Lessee.

Events of Default Defined. The occurrence of any of the following events shall constitute an Event of Default: (a) Lessee's failure to pay any Rental Payment or other amount required to be paid to Lessor under this Agreement within ten (10) days following the due date thereof; (b) Lessee's failure to maintain insurance required by this Agreement; (c) Lessee's failure to perform or abide by any other condition, agreement or covenant set forth in this

Agreement for a period of thirty (30) days after written notice by Lessor to Lessee specifying such failure and requesting that it be remedied; (d) Lessor's determination that any representation, warranty or statement made by Lessee in or pursuant to this Agreement was untrue in any material respect on the date made; (e) the filing of a petition in bankruptcy or receivership or similar proceeding by or against Lessee, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental functions or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of any adjustment of indebtedness of Lessee, or the dissolution or liquidation of Lessee. An Event of Nonappropriation shall not constitute an Event of Default.

Remedies on Default. Upon the occurrence of any Event of Default, Lessor shall have the right, at its option and without any further demand or notice to one or more or all of the following remedies: (a) Lessor may terminate this Agreement and all of Lessee's rights hereunder as to any or all items of Equipment; (b) Lessor may declare all Rental Payments payable under this Agreement to the end of the then-current budget year of Lessee to be immediately due and payable by Lessee; (c) Lessor may repossess any or all of the Equipment by giving Lessee written notice to deliver such Equipment; or in the event Lessee fails to do so within ten (10) days after receipt of such notice, Lessor may enter upon Lessee's premises where such Equipment is kept and take possession of such Equipment and charge Lessee for costs incurred, including reasonable attorneys' fees; (d) Lessor may proceed by appropriate court action or actions to enforce performance by Lessee of its obligations hereunder or to recover damages for the breach hereof; (e) by written notice to the Escrow Agent, Lessor may instruct the escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under this Agreement; and (f) Lessor may exercise any other remedy available, at law or in equity, with respect to such Event of Default. Any Equipment returned (subject to the appropriation of money for such purpose) under clause (c) above shall be to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee, and in the condition required to be maintained by this Agreement; provided that, if Lessee does not appropriate money for such purpose, it shall make the Equipment available for Lessor to take possession of, at the location listed in the Equipment Schedule. If Lessor takes possession of the Equipment, Lessor may thereafter dispose of the Equipment in accordance with the requirements of Article 9 of the Uniform Commercial Code; provided that any proceeds of such disposition in excess of the sum of (i) the unpaid principal component of Rental Payments (including Rental Payments due in future budget years), (ii) Lessor's costs and expenses associated with the disposition of the Equipment and the Event of Default (including attorneys fees), and (iii) any other amounts then due under this Agreement, shall be paid to Lessee or such other creditor of Lessee as may be entitled thereto. No deficiency shall be allowed against Lessee, except with respect to any unpaid Rental Payments to the end of the then-current budget year of Lessee and unpaid costs and expenses incurred by Lessor in connection with the repossession and disposition of the Equipment. Each of the rights and remedies of Lessor under this Agreement is cumulative and may be enforced separately or concurrently. No course of dealing or conduct between Lessor and Lessee shall be effective to amend, modify or change any provisions of this Agreement. No failure or delay by Lessor to insist upon the strict performance of any term, covenant or agreement of this Agreement, or to exercise any right, power or remedy consequent upon a breach hereof, shall

constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lessor from exercising any such right, power or remedy at any later time or times.

Notices. All written notices to be given under this Agreement shall be given (a) personally, (b) by mail in registered or certified form, with postage prepaid, or (c) by overnight courier, charges prepaid, in each case to the party entitled thereto at its address specified beneath each party's signature, or at such address as the party may provide to the other parties hereto in writing from time to time, and to any assignee at its address as it appears on the registration books maintained by Lessee. Any such notice shall be deemed to have been received 72 hours after deposit in the United States mail, on the next business day after deposit for overnight delivery with a courier, or, if given by other means, when delivered.

Construction. This Agreement is binding upon and inures to the benefit of Lessor and Lessee and their respective successors and permitted assigns. In the event any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. This Agreement may be amended or modified only by written documents duly authorized, executed and delivered by Lessor and Lessee. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of this Agreement. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. This Agreement shall be governed by and construed in accordance with the laws of the State.

Usury. It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein, in no event shall this Agreement require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by applicable law. Any such excess interest or fees shall first be applied to reduce principal, and when no principal remains, refunded to Lessee. In determining whether the interest paid or payable exceeds the highest lawful rate, the total amount of interest shall be spread through the Lease Term so that the interest is uniform through such term.

Waiver of Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSOR AND LESSEE HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WITH RESPECT TO, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT.

USA Patriot Act Compliance Notification. Lessor hereby notifies Lessee that pursuant to the requirements of the USA PATRIOT Act (the "Act"), it is required to obtain, verify and record information that identifies Lessee, which information includes the name and address of Lessee and other information that will allow Lessor to identify Lessee in accordance with the Act. Lessee shall, promptly upon Lessor's request, provide all documentation and other information that Lessor requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

IN WITNESS WHEREOF, Lessor has caused this Agreement to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Agreement to be executed in its name by its duly authorized officer.

WITNESS/ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrator Officer

By: _____
Allan H. Kittleman
County Executive

RECOMMENDED FOR APPROVAL:

Clive Graham
Administrator, Office of Transportation

APPROVED FOR SUFFICIENCY OF FUNDS:

Stanley J. Milesky, Director
Department of Finance

APPROVED FOR FORM AND LEGAL SUFFICIENCY

this ____ day of _____, 2017:

Gary W. Kuc
County Solicitor

REVIEWING ATTORNEY:

Norman E. Parker, Jr.
Senior Assistant County Solicitor

**SUNTRUST EQUIPMENT FINANCE & LEASING
CORP.,**
Lessor

By: _____
Name: _____
Title: _____

Address:
P.O. Box 4418
Atlanta, GA 30302

EXHIBIT A

**EQUIPMENT SCHEDULE
TO TAX-EXEMPT LEASE/PURCHASE AGREEMENT**

The following described equipment (the "Equipment") is the subject of the Tax-Exempt Lease/Purchase Agreement dated as of {MasterLeaseDate} (the "Agreement") between the undersigned Lessor and Lessee.

1. Equipment. The cost of the Equipment to be funded by Lessor under this Agreement is \$2,540,058.50. The Equipment consists of the following equipment which has been or shall be purchased from the manufacturer(s) and/or vendor(s) named below for the prices set forth below:

Manufacturer and/or Vendor Name & Invoice No.	Description	Invoice Cost
EIDorado National California, Inc. HGAC Contract No. BT01-17	Seven (7) E-Z Rider II 32' Low-Floor, Transit Buses. Product Code: MMD	\$ 2,540,058.50
	Total Invoice Cost:	\$ 2,540,058.50

2. Location of Equipment. The Equipment is essential to the governmental functions of Lessee. The initial principal garage of the Equipment will be located at the following address(es): 8800 Corridor Road, Annapolis Junction, MD, 20701.

3. Commencement Date. The Commencement Date of this Agreement is _____.

4. Interest Accrual Date. The amounts of the interest component of Rental Payments payable under this Agreement have been calculated based on the assumption that the proceeds of this Agreement were disbursed on the Commencement Date, and such payments of interest component will be payable as set forth in the Payment Schedule regardless of when the proceeds of this Agreement were actually disbursed.

5. Payment Schedule. The Payment Schedule is attached to this Equipment Schedule as Exhibit 1.

6. Lessee's Certificate. The Lessee's General and Tax Certificate is attached to this Equipment Schedule as Exhibit 2.

7. Opinion. The opinion of Lessee's counsel is attached to this Equipment Schedule as Exhibit 3.

8. Proceeds. Lessor shall disburse the proceeds of this Equipment Schedule in accordance with the Escrow Agreement attached hereto as Exhibit 4.

9. Insurance. Check Item A and/or Item B.

A Lessee's insurance letter is attached to this Equipment Schedule as Exhibit 5. _____

B. A letter from Lessee's risk manager or insurance consultant is attached as Exhibit 5. X

10. Form 8038-G or -GC. The Form 8038-G or Form 8038-GC with respect to the Agreement is attached to this Equipment Schedule as Exhibit 6.

IN WITNESS WHEREOF, Lessor has caused this Equipment Schedule to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Equipment Schedule to be executed in its name by its duly authorized officer.

HOWARD COUNTY, MARYLAND

Lessee

**SUNTRUST EQUIPMENT FINANCE & LEASING
CORP.,**

Lessor

By: _____

Name: Allan H. Kittleman

Title: County Executive

By: _____

Name: _____

Title: _____

Address:

Office of Transportation

3430 Courthouse Drive

Ellicott City, MD 21043

ATTN: Jai Saunders

Address:

P.O. Box 4418

Atlanta, GA 30302

Telephone: 410-313-0539

Facsimile: 410-313-1655

E-mail address: jasanders@howardcountymd.gov

**Exhibit 1 to Equipment Schedule
Tax-Exempt Lease/Purchase Agreement**

PAYMENT SCHEDULE

The annual interest rate applicable to the Agreement shall be 2.59 percent. Lessee will make Rental Payments each consisting of principal and interest as set forth below for a Lease Term of 120 months. Rental payments are due annually as set forth below.

Payment Number	Payment Date	Total Payment	Principal Component	Interest Component	Prepayment Price*
1	3/15/2017	\$ 284,214.07	\$ 284,214.07	\$ 0.00	\$ 2,278,402.88
2	3/15/2018	\$ 284,214.07	\$ 225,787.82	\$ 58,426.25	\$ 2,050,357.18
3	3/15/2019	\$ 284,214.07	\$ 231,635.71	\$ 52,578.35	\$ 1,816,405.11
4	3/15/2020	\$ 284,214.07	\$ 237,635.06	\$ 46,579.00	\$ 1,576,393.70
5	3/15/2021	\$ 284,214.07	\$ 243,789.80	\$ 40,424.27	\$ 1,330,166.00
6	3/15/2022	\$ 284,214.07	\$ 250,103.94	\$ 34,110.12	\$ 1,077,561.02
7	3/15/2023	\$ 284,214.07	\$ 256,581.62	\$ 27,632.45	\$ 818,413.59
8	3/15/2024	\$ 284,214.07	\$ 263,227.07	\$ 20,987.00	\$ 552,554.25
9	3/15/2025	\$ 284,214.07	\$ 270,044.64	\$ 14,169.43	\$ 279,809.16
10	3/15/2026	\$ 284,214.07	\$ 277,038.78	\$ 7,175.29	\$ 0.00

* After payment of the Rental Payment due on such date.

HOWARD COUNTY, MARYLAND

Lessee

By: _____

Name: Allan H. Kittleman

Title: County Executive

LESSEE'S GENERAL AND TAX CERTIFICATE

[Bond Counsel to provide]

OPINION OF LESSEE'S COUNSEL

[Bond Counsel to provide]

SUNTRUST EQUIPMENT FINANCE & LEASING CORP.

ESCROW AGREEMENT

[To be provided]

SELF-INSURANCE LETTER

SUNTRUST EQUIPMENT FINANCE & LEASING CORP.
P.O. Box 4418
Atlanta, GA 30302

Ladies and Gentlemen:

The undersigned is the risk manager or insurance consultant for Howard County, Maryland (the "Lessee"), and in such connection the undersigned is familiar with Lessee's insurance and self-insurance arrangements. In connection with the Tax-Exempt Lease/Purchase Agreement (the "Agreement"), between Lessee and SunTrust Equipment Finance and Leasing Corp. (the "Lessor"), the undersigned makes the following certifications to Lessor, effective as of the Commencement Date. Capitalized terms used but not defined herein have the meanings given in the Agreement.

1. Howard County, Maryland has created and funded a self-insurance program to provide compensation for injury to persons or damage to property resulting from the negligence or other wrongful acts of the County's public officials, employees and agents for which the County is legally liable. Further, Howard County, Maryland, provides self-insured workers' compensation coverage for all employees in accordance with Maryland law and all-risk property coverage for County property, vehicles and equipment. The establishment of this Fund does not constitute a waiver of the immunities, liability caps and defenses available to Howard County, Maryland, for its officers, agents and employees. (Section 23.100 Title 23, Howard County Code).

2. Upon delivery of the Equipment described in the Agreement, Howard County shall cause its contracted transit service provider to purchase and maintain the following coverage:

- a. All Risk Physical Damage Insurance on the leased Equipment evidenced by a **Certificate of Insurance and Long Form Loss Payable Clause naming SUNTRUST EQUIPMENT FINANCE & LEASING CORP. and/or its assigns as Loss Payee.**

The Coverage Required is \$2,540,059.

- b. Commercial General Liability Insurance evidenced by a **Certificate of Insurance naming SUNTRUST EQUIPMENT FINANCE & LEASING CORP. and/or its assigns as Additional Insured.**

The following minimum coverage is required and will be provided:

Liability:	\$500,000 per person
Liability – Bodily Injury:	\$1,000,000 aggregate
Liability – Property Damage:	\$1,000,000 property damage liability

PROPERTY Seven (7) Transit Buses at \$362,865.57 each (or \$2,540,059 for all seven).

LOCATION: 8800 Corridor Road, Annapolis Junction, MD 20701.

Upon issuance of the coverage outlined above, a **Certificate of Insurance** will be mailed to **SUNTRUST EQUIPMENT FINANCE & LEASING CORP., P.O. Box 4418, Atlanta, GA 30302.**

Dated: Feb. 15, 2017

Very truly yours,

By: 

Name: Lynne K. Levin

Title: Risk Management Administrator

**Exhibit 6 to Equipment Schedule
Tax-Exempt Lease/Purchase Agreement**

[FORM 8038-G or 8038-GC]

[PAGE TO BE REPLACED BY UCC FINANCING STATEMENT]

**SCHEDULE A TO FINANCING STATEMENT OF
HOWARD COUNTY, MARYLAND, AS DEBTOR, AND
SUNTRUST EQUIPMENT FINANCE & LEASING CORP., AS SECURED PARTY**

Continuation of Collateral Description

The financing statement to which this Schedule A is attached covers the types of property described on the face of such financing statement and all of the Debtor's right, title and interest in and to (collectively, the "Collateral"):

(a) the equipment described in the Tax-Exempt Lease/Purchase Agreement between Debtor, as lessee, and Secured Party, as lessor, as such agreement may be amended, modified or supplemented from time to time;

(b) to the extent not included in the foregoing, all books and records solely to the extent related to the Collateral; and

(c) to the extent not included in the foregoing, all repairs, replacements, substitutions, restorations, accessions, improvements and modifications and all proceeds and products of any or all of the foregoing, whether existing on the date hereof or arising hereafter, including insurance proceeds.