

INTRODUCED \_\_\_\_\_  
PUBLIC HEARING \_\_\_\_\_  
COUNCIL ACTION \_\_\_\_\_  
EXECUTIVE ACTION \_\_\_\_\_  
EFFECTIVE DATE \_\_\_\_\_

**County Council Of  
Howard County, Maryland**

2021 Legislative Session

Legislative Day No. 1

**Bill No. 2-2021**

Introduced by: The Chairperson at the request of the County Executive

AN ORDINANCE approving the execution and delivery by Howard County, Maryland (the "County") of a conditional purchase agreement or funding agreement (the "Conditional Purchase Agreement") in an amount not to exceed \$25,000,000 in order to refinance one or more lease agreements of the County and to pay the costs of such refinancing; providing that the County's obligation to make purchase installment payments under the Conditional Purchase Agreement shall be subject to annual appropriation by the County Council of Howard County, Maryland and shall not constitute indebtedness of the County; providing that the refinancing hereby approved is being undertaken for the purposes of realizing lease payment savings for the County; and generally providing for other matters related to the execution and delivery of the Conditional Purchase Agreement by the County.

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Introduced and read first time \_\_\_\_\_, 20\_\_\_. Ordered posted and hearing scheduled.

By order \_\_\_\_\_  
Diane Schwartz Jones, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on \_\_\_\_\_, 20\_\_ and concluded on \_\_\_\_\_, 20\_\_.

By order \_\_\_\_\_  
Diane Schwartz Jones, Administrator

This Bill was read the third time on \_\_\_\_\_, 20\_\_ and Passed, Passed with amendments, \_\_\_\_\_ Failed \_\_\_\_\_.

By order \_\_\_\_\_  
Diane Schwartz Jones, Administrator

Approved by the County Executive \_\_\_\_\_, 20\_\_

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Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike out indicates material deleted by amendment; Underlining indicates material added by amendment.

1           **WHEREAS**, pursuant to the provisions of Section 612 of the Howard County  
2 Charter, the County Council of Howard County, Maryland (the “County Council”) has  
3 previously approved financings of the acquisition of equipment by Howard County,  
4 Maryland (the “County”) by the execution and delivery of several leases, including the  
5 leases set forth on Exhibit A attached hereto (collectively, the “Leases”), in each case the  
6 obligation of the County thereunder being subject to appropriation by the County Council;  
7 and

8  
9           **WHEREAS**, the County seeks to refinance all or a portion of the Leases by  
10 approving the execution and delivery of a conditional purchase agreement or funding  
11 agreement (the “Conditional Purchase Agreement”), in accordance with Section 612 of the  
12 Howard County Charter and the sale of certificates of participation in purchase installment  
13 payments under the Conditional Purchase Agreement (the “Certificates”).

14  
15           NOW, THEREFORE,

16  
17           **Section 1. Be It Enacted** by the County Council of Howard County, Maryland  
18 that the execution and delivery of the Conditional Purchase Agreement on behalf of the  
19 County by the County Executive of the County (the “County Executive”) or the Chief  
20 Administrative Officer of the County (the “Chief Administrative Officer”) in an amount  
21 not to exceed \$25,000,000 and the sale of the Certificates are hereby approved, and the  
22 execution and delivery by these and any other officers, employees or agents of the County  
23 of all other related documents necessary to consummate the transactions contemplated  
24 therein and thereby are hereby approved. The Conditional Purchase Agreement may be  
25 executed and delivered in order to provide funds sufficient to refinance all or a portion of  
26 the Leases (including paying the redemption premium, if any, and the interest accrued and  
27 to accrue to the applicable maturity or redemption dates), to fund a debt service reserve  
28 fund, if any, and any other appropriate reserve funds created in connection with the  
29 Certificates, to fund interest on the Conditional Purchase Agreement and any Certificates  
30 and to pay any and all costs of issuance of such Certificates.

31

1           **Section 2. Be It Enacted** by the County Council of Howard County, Maryland  
2 that the County’s obligation to make the purchase installment payments under the  
3 Conditional Purchase Agreement shall be subject to annual appropriation by the County  
4 Council. The Conditional Purchase Agreement shall not constitute indebtedness of the  
5 County under the Constitution and laws of Maryland, the Howard County Charter and the  
6 public local laws of the County.

7  
8           **Section 3. Be It Enacted** by the County Council of Howard County, Maryland  
9 that the County Council hereby determines that it would be in the public interest of the  
10 County that the Certificates may be sold to one or more investors in a public, competitive  
11 sale in such manner and in accordance with such procedures substantially similar to the  
12 procedures for public sale with competitive bidding normally utilized by the County in  
13 connection with the sale of its general obligation bonds, subject to any limitations imposed  
14 by the Howard County Charter or other applicable law. The Certificates may be sold for a  
15 price at, above or below par, plus accrued interest to the date of delivery. The proceeds of  
16 the sale of the Certificates, including any premium paid for such Certificates in excess of  
17 the face amount thereof, together with investment earnings on such proceeds and premium,  
18 shall be applied to refinance the Leases, to fund a debt service reserve fund, if any, and any  
19 other appropriate reserve funds created in connection with the Certificates, to fund interest  
20 on the Conditional Purchase Agreement and any Certificates and to pay any and all costs  
21 of issuance of the Certificates, all as may be further specified and provided in the  
22 Conditional Purchase Agreement and other related documents necessary to consummate  
23 the transactions contemplated therein and approved pursuant to this Ordinance. The  
24 Conditional Purchase Agreement and the Certificates are hereby specifically exempted  
25 from the provisions of Sections 19-205 and 19-206 of the Local Government Article of the  
26 Annotated Code of Maryland, as amended.

27  
28           **Section 4. Be It Enacted** by the County Council of Howard County, Maryland  
29 that authority is hereby conferred on the County Executive and the Chief Administrative  
30 Officer to take any of the following actions and make any of the following commitments  
31 on behalf of the County:

1 (a) to approve, for and on behalf of the County, the form, tenor, terms  
2 and conditions of, and provisions for the execution and delivery of, the Conditional  
3 Purchase Agreement;

4 (b) to approve, for and on behalf of the County, any assignment of the  
5 Conditional Purchase Agreement or other documents related to the Leases;

6 (c) to sell the Conditional Purchase Agreement and any Certificates  
7 upon such terms deemed favorable under the existing market conditions to financial  
8 institutions or other investors which, in reasonable judgment, offer to purchase such  
9 instruments on terms deemed favorable to the County under the existing market  
10 conditions;

11 (d) to execute and deliver, as a binding and enforceable obligation of  
12 the County, continuing disclosure agreements, including any such agreements  
13 required to enable the underwriters to meet the requirements of paragraph (b)(5) of  
14 Rule 15c2-12 promulgated by the United States Securities and Exchange  
15 Commission;

16 (e) to determine the date, time and place when and where proposals for  
17 the purchase of such instruments will be received, to publish and otherwise  
18 distribute a suitable notice of sale and to award any such instruments for which a  
19 legally sufficient proposal has been received to the best bidder therefor;

20 (f) to appoint a bank having trust powers, or a trust company, as trustee,  
21 escrow agent, paying agent or registrar in connection with such Conditional  
22 Purchase Agreement or any Certificates, notwithstanding the fact that such bank or  
23 trust company may have neither its principal office nor any branch office within the  
24 County or the State of Maryland, such authority to include the power to agree with  
25 respect to the compensation of such trustee, escrow agent, paying agent or registrar  
26 for its services;

27 (g) to arrange for the preparation and distribution of an appropriate  
28 offering circular or official statement, including a preliminary official circular or  
29 preliminary official statement, with respect to the sale of any instruments hereby  
30 authorized;

1 (h) to authorize and approve, for and on behalf of the County, the form  
2 and contents of, and provisions for the execution and delivery of, a trust agreement  
3 or escrow agreement and any additional documents that the County Executive or  
4 Chief Administrative Officer may deem necessary or desirable, to provide security  
5 for payment of the Certificates or otherwise, in connection with the refinancing of  
6 the Leases and the execution, sale and delivery of the Conditional Purchase  
7 Agreement; and

8 (i) to prescribe, determine, specify, provide for or approve, for and on  
9 behalf of the County, such other matters in connection with the authorization,  
10 issuance, execution, sale, delivery and payment of, and security for, the Conditional  
11 Purchase Agreement and the consummation of the transactions contemplated by  
12 this Act as may be deemed appropriate and approved by the County Executive or  
13 the Chief Administrative Officer.

14 Subject to and in accordance with the provisions of this Ordinance, the County Executive  
15 or Chief Administrative Officer shall determine by order the matters specified above.

16  
17 **Section 5. Be It Enacted** by the County Council of Howard County, Maryland  
18 that the Conditional Purchase Agreement shall be in substantially the form of Exhibit B  
19 attached hereto, with such insertions, additions, deletions and amendments as the County  
20 Executive or the Chief Administrative Officer shall approve, such officer's execution and  
21 delivery of the Conditional Purchase Agreement to constitute conclusive evidence of such  
22 approval.

23  
24 **Section 6. Be It Enacted** by the County Council of Howard County, Maryland  
25 that in the event that the County shall enter into any Conditional Purchase Agreement with  
26 the intent that the interest component of the purchase installments payable thereunder be  
27 excludable from gross income for federal income tax purposes (the "Tax-Exempt C.P.A."),  
28 each of the County Executive, the Chief Administrative Officer and the Director of Finance  
29 shall be an officer of the County responsible for the issuance of such Tax-Exempt C.P.A.  
30 within the meaning of the Arbitrage Regulations (defined herein). Each of the County  
31 Executive, the Chief Administrative Officer and the Director of Finance shall also be an

1 officer of the County responsible for the execution and delivery (on the date of issuance of  
2 any Tax-Exempt C.P.A.) of a certificate of the County (the “Section 148 Certificate”)  
3 which complies with the requirements of Section 148 of the Internal Revenue Code of  
4 1986, as amended (“Section 148”), and the applicable regulations thereunder (the  
5 “Arbitrage Regulations”), and either such official is hereby directed to execute the Section  
6 148 Certificate and to deliver the same to bond counsel on the date of the issuance of any  
7 Tax-Exempt C.P.A.

8  
9 The County shall set forth in the Section 148 Certificate its reasonable expectations  
10 as to relevant facts, estimates and circumstances relating to the use of the proceeds of such  
11 Tax-Exempt C.P.A., or of any moneys, securities or other obligations to the credit of any  
12 account of the County which may be deemed to be proceeds of such Tax-Exempt C.P.A.  
13 pursuant to Section 148 or the Arbitrage Regulations (collectively, “Bond Proceeds”). The  
14 County covenants that the facts, estimates and circumstances set forth in the Section 148  
15 Certificate will be based on the County’s reasonable expectations on the date of issuance  
16 of such Tax-Exempt C.P.A. and will be, to the best of the certifying officials’ knowledge,  
17 true and correct as of that date.

18  
19 The County covenants and agrees with each of the holders of any Tax-Exempt  
20 C.P.A. that it will not make, or (to the extent that it exercises control or direction) permit  
21 to be made, any use of the Bond Proceeds which would cause such Tax-Exempt C.P.A. to  
22 be “arbitrage bonds” within the meaning of Section 148 and the Arbitrage Regulations.  
23 The County further covenants that it will comply with Section 148 and the regulations  
24 thereunder which are applicable to such Tax-Exempt C.P.A. on the date of issuance thereof  
25 and which may subsequently lawfully be made applicable to such Tax-Exempt C.P.A.

26  
27 The County further covenants that it shall make such use of the proceeds of the  
28 Tax-Exempt C.P.A., regulate the investment of the proceeds thereof, and take such other  
29 and further actions as may be required to maintain the excludability from gross income for  
30 federal income tax purposes of interest on the Tax-Exempt C.P.A., including (without  
31 limitation) payment of required rebate amounts to the United States of America. All

1 officers, employees and agents of the County are hereby authorized and directed to take  
2 such actions, and to provide such certifications of facts and estimates regarding the amount  
3 and use of the proceeds of Tax-Exempt C.P.A., as may be necessary or appropriate from  
4 time to time to comply with, or to evidence the County's compliance with, the covenants  
5 set forth in this Section, all as may be further specified in the order of the County Executive  
6 or Chief Administrative Officer.

7  
8 **Section 7. Be It Enacted** by the County Council of Howard County, Maryland  
9 that the execution of the Conditional Purchase Agreement and the sale of the Certificates  
10 to refinance the Leases are being undertaken for the public purpose of realizing savings for  
11 the County in the aggregate cost of lease payments and, at the time of the execution and  
12 delivery of the Conditional Purchase Agreement and the sale of the Certificates, the County  
13 Executive or the County Administration Officer shall certify, based on the final interest  
14 rates and other terms of the sale of the Certificates, that such savings will be realized by  
15 the County.

16  
17 **Section 8. Be It Enacted** by the County Council of Howard County, Maryland  
18 that this Ordinance constitutes approval by the County Council of the procedures to be  
19 followed in connection with the refinancing of the Leases and to the extent provided herein  
20 and only for the purposes of effectuating the transactions described in this Ordinance,  
21 constitutes approval of the assignment or reassignment of duties and functions described  
22 herein to the officials, offices and departments herein directed or authorized to perform  
23 such duties or functions. No further approval of the Conditional Purchase Agreement by  
24 the County Council shall be required.

25  
26 **Section 9. Be It Enacted** by the County Council of Howard County, Maryland  
27 that the County Executive may determine to refund all or a portion of the obligations under  
28 the Conditional Purchase Agreement and the Certificates authorized by this Ordinance  
29 pursuant to the authority granted in Section 19-207 of the Local Government Article of the  
30 Annotated Code of Maryland, and nothing in this Ordinance is intended to limit the  
31 refunding authority as provided therein. The County Executive shall have the authority to

1 determine whether any refunding pursuant to this Section should be sold at public sale on  
2 a competitive basis following the solicitation of bids or on private (negotiated) basis in  
3 order to achieve savings to the County.

4

5 **Section 10. Be It Enacted** by the County Council of Howard County, Maryland  
6 that if any one or more of the provisions of this Ordinance, including any covenants or  
7 agreements provided herein on the part of the County to be performed, should be contrary  
8 to law, then such provision or provisions shall be null and void and shall in no way affect  
9 the validity of the other provisions of this Ordinance.

10

11 **Section 11. Be It Enacted** by the County Council of Howard County, Maryland  
12 that this Ordinance shall be effective immediately upon its enactment.



Leases

<u>Lease Series</u>	<u>Execution Date</u>	<u>Original Amount</u>	<u>Outstanding Amount</u>
2009 Energy Performance	10/12/12	\$4,822,024.72	\$1,810,846.07
2015 Master Equipment - Fire Equipment (Schedules 3, 4 & 5)	5/5/15	\$4,250,000.00	\$755,260.07
2015 Master Equipment Lease Purchase (Schedule 6)	9/16/15	\$15,000,000.00	\$11,654,108.87
2017 Bus (SunTrust)	3/10/17	\$2,540,058.50	\$1,568,464.00
2018 Bus (Bank of America)	11/13/17	\$2,223,000.00	\$1,546,000.00
2018 Radio Equipment	6/27/18	\$10,363,285.63	\$7,633,591.63
2019 Water Meter Equipment	8/8/19	\$3,029,000.00	\$2,758,000.00
2020 LED Equipment Lease	8/5/20	\$3,298,000.00	\$3,298,000.00

EXHIBIT B  
To  
Bill No. \_\_-2021

Form of Conditional Purchase Agreement

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HOWARD COUNTY, MARYLAND  
acting as Purchaser

and

[NAME], as Trustee  
acting as Seller

CONDITIONAL PURCHASE AGREEMENT

Dated as of \_\_\_\_\_, 2021

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\$ \_\_\_\_\_

HOWARD COUNTY, MARYLAND  
CERTIFICATES OF PARTICIPATION

(\_\_\_\_\_ Program)

Series 2021

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**SCHEDULE OF EXHIBITS**

**EXHIBIT A: Description of Project**

**EXHIBIT B: Counsel Opinion**

**EXHIBIT C: Schedule of Payments**

## CONDITIONAL PURCHASE AGREEMENT

THIS CONDITIONAL PURCHASE AGREEMENT dated as of \_\_\_\_\_, 2021 (the “Agreement”), and entered into between [NAME], as trustee under the Trust Agreement (defined below) acting as seller hereunder (“Seller”), and HOWARD COUNTY, MARYLAND, acting as purchaser hereunder (“Purchaser”).

### RECITALS

Purchaser desires to acquire the beneficial interests of Seller in and to the Project, as hereinafter defined, from Seller, subject to the terms and conditions of and for the purposes set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereby agree as follows:

### ARTICLE I

#### COVENANTS OF PURCHASER AND SELLER

Section 1.01. Covenants of Purchaser. Purchaser represents, covenants and warrants for the benefit of Seller and its assignees as follows:

(a) Purchaser is a public body corporate and politic and a political subdivision duly organized and existing under the Constitution and laws of the State of Maryland and is authorized under the Constitution and laws of the State of Maryland to enter into this Agreement and the transactions contemplated hereby and to perform all of its obligations hereunder.

(b) Purchaser has been duly authorized to execute and deliver this Agreement and further represents and covenants that all requirements have been met, actions have been taken and procedures have been followed in order to ensure the validity and enforceability of this Agreement.

(c) Purchaser has complied with applicable laws and regulations with respect to this Agreement and the acquisition of the Project hereunder.

(d) Purchaser shall cause to be executed an opinion of counsel containing the substantive conclusions attached hereto as Exhibit B concurrently with the execution and delivery of the Certificates under the Trust Agreement.



(e) During the term of this Agreement, the Project will be used by Purchaser only for the purpose of performing one or more essential governmental functions of Purchaser consistent with the permissible scope of Purchaser's authority and within the scope of authorized public purposes.

(f) The execution, delivery and performance of this Agreement and the transactions contemplated herein will not violate any judgment, order, law or regulation applicable to Purchaser or result in any breach of, or constitute a default under any indenture, mortgage, deed of trust, bond, loan or credit agreement or other instrument to which Purchaser is a party or by which it is bound.

(g) There are no actions, suits or proceedings pending or, to the knowledge of Purchaser, threatened against, or affecting, Purchaser in any court or before any governmental commission, board or authority which, if adversely determined, will have a material adverse effect on the authority or ability of Purchaser to perform its obligations hereunder, or which question the legality, validity or enforceability hereof.

(h) Purchaser shall pay to the Trustee, from time to time, compensation for services rendered by the Trustee under the Trust Agreement, such compensation to be paid in accordance with the terms of the agreement dated [DATE] between the Trustee and Purchaser, to which terms Purchaser hereby agrees.

Section 1.02. Covenants of Seller. Seller represents, covenants and warrants for the benefit of Purchaser as follows:

(a) Seller is a duly organized and validly existing [ENTITY TYPE] in good standing and with full corporate power and authority to enter into this Agreement and to perform its obligations as Seller hereunder.

(b) During the term of this Agreement, Seller will preserve and keep in full force and effect its existence as a national banking association or shall do all things necessary to have all of its obligations hereunder assumed by its successors and permitted assigns, which shall preserve and keep in full force and effect their existence and their qualification to do business in the State of Maryland to the extent such qualification is necessary for the performance of Seller's obligations hereunder.

(c) Seller is authorized under its charter and by-laws and appropriate corporate resolutions to enter into this Agreement and the transactions contemplated hereby.

(d) The execution, delivery and performance of this Agreement and the transactions contemplated herein will not violate any judgment, order, law or regulation applicable to Seller or result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bond, loan or credit agreement or other instrument to which Seller is a party or by which it is bound.

## ARTICLE II

### DEFINITIONS

Section 2.01. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“Agreement” means this Conditional Purchase Agreement including the Exhibits attached hereto.

“Business Day” means a day other than a Saturday, Sunday, legal holiday or day on which banking institutions are authorized or required by law to be closed in the State of Maryland, the State of New York or in the state in which the principal office of the Trustee is located.

“Certificates” means the certificates of participation entitled “Howard County, Maryland Certificates of Participation (\_\_\_\_\_ Program) Series 2021” and any Additional Certificates (as defined in the Trust Agreement) issued under the Trust Agreement.

“Commencement Date” means the date when the Purchase Installments commence.

“County” means Howard County, Maryland, a body corporate and politic and a political subdivision of the State of Maryland, which entity is purchasing the Project from Seller under the provisions of this Agreement.

“Net Proceeds” means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including reasonable attorney’s fees) incurred in the collection of such claim or award.

“Project” means the acquisition, renovation and improvement of the equipment described in Exhibit A, as may be amended in accordance with the provisions of this Agreement.

“Purchase Installments” means the basic payments payable by Purchaser pursuant to the provisions of this Agreement during the Term which are payable in consideration of the right of Purchaser to use the Project during the then current portion of the Term and by which Purchaser acquires interests in ownership of the Project. Purchase Installments shall be payable by Purchaser to Seller or its assignee in the amounts and at the times during the Term set forth in Exhibit C in this Agreement.

“Purchase Price” means the amount so characterized as the price to acquire the Project outright on a payment date for Purchase Installments as set forth in Exhibit C to this Agreement

and shall (with respect to any prepayment) be equal to the then outstanding principal balance of the total purchase price due with respect to the Project.

“Purchaser” means Howard County, Maryland, a body corporate and politic and a political subdivision of the State of Maryland, which entity is purchasing the Project from Seller under the provisions of this Agreement.

“Seller” means (i) [NAME], as Trustee, a national banking association, acting as Seller hereunder; and (ii) except where the context requires otherwise, any assignee(s) of Seller.

“Term” means the term provided for in this Agreement under Section 4.01.

“Termination Date” means the date set forth in Exhibit C hereto at which time all Purchase Installments are required to have been paid in full.

“Trust Agreement” means the Trust Agreement dated as of the date hereof by and between the Trustee and Purchaser.

“Trustee” means [NAME], a [ENTITY DESCRIPTION], and its successor or successors and any other corporation which at any time may be substituted in its place pursuant to the Trust Agreement.

Section 2.02. Rules of Construction. Unless the context shall otherwise indicate, words importing the singular number include the plural number and vice versa, and words importing persons include any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

### ARTICLE III

#### PURCHASE OF PROJECT

Section 3.01. Purchase. Seller hereby agrees to grant and reconvey to Purchaser its interests in the Project in accordance with the provisions of this Agreement and, subject to payment of Purchase Installments, permit Purchaser the right to have and to hold the Project for the Term.

Section 3.02. Possession. Purchaser shall be entitled to possession and use of and title to the Project upon execution and delivery of this Agreement in accordance with the terms hereof.

## ARTICLE IV

### TERM

Section 4.01. Term of Agreement. This Agreement shall be in effect beginning on the date hereof and shall remain in effect until Purchaser has paid the Purchase Price to Seller and Seller has delivered a release of all its rights, title and interest in the Project to Purchaser. This Agreement is subject to earlier termination as set forth in Section 4.02 below, and, if such termination occurs prior to the full payment of the Purchase Price of the Project, Purchaser shall have no right to receive any refund of any Purchase Installments made by Purchaser.

Section 4.02. Termination of Term. The Term will terminate upon the earliest of any of the following events:

- (a) the termination of this Agreement in the event of nonappropriation of funds pursuant to Section 6.06;
- (b) the obtaining by Purchaser of full ownership rights to the Project granted under the provisions of Article IX or Article XI of this Agreement;
- (c) a default by Purchaser and Seller's election to terminate this Agreement under Article XIII; or
- (d) the payment by Purchaser of all Purchase Installments required to be paid by Purchaser hereunder and any other sums required to be paid hereunder and the delivery of a release of lien on the Project from Seller to Purchaser.

## ARTICLE V

### ENJOYMENT OF PROJECT

Section 5.01. Quiet Enjoyment. Seller hereby covenants to provide Purchaser throughout the Term with quiet use and enjoyment of the Project, and Purchaser shall peaceably and quietly have and hold and enjoy the Project, without suit, trouble or hindrance from Seller, except as expressly set forth in this Agreement and so long as Purchaser is not in default hereunder. During the Term, all costs associated with the Project shall be borne by the Purchaser on a "triple net" basis.

Section 5.02. Inspection by Seller. During the Term and upon written notice, Purchaser will allow Seller or its nominees to inspect the Project in order to protect its rights and exercise its right to protect its interest hereunder.

## ARTICLE VI

### PURCHASE INSTALLMENTS

#### Section 6.01. Payment of Purchase Installments.

(a) Purchaser shall make Purchase Installments in accordance with this Agreement.

(b) Purchaser shall pay all Purchase Installments from appropriated funds. All Purchase Installments shall be payable in lawful money of the United States of America to Seller at the address listed in Section 14.01 or, in the event of assignment by Seller, to its assignee at the location specified in the assignment, in the amounts and at the times as set forth on Exhibit C hereto.

Section 6.02. Interest Component. A portion of each Purchase Installment is paid as, and represents payment of, interest and Exhibit C hereto sets forth the interest component of each Purchase Installment during the Term.

Section 6.03. Purchase Installments to be Unconditional. Subject to the provisions of Section 6.06, the obligation of Purchaser to make payment of the Purchase Installments required under this Article VI and other sections hereof and to perform and observe the other covenants and agreements contained herein shall be absolute and unconditional in all events except as expressly provided in this Agreement. Notwithstanding any dispute between Purchaser and Seller or any other person, or any defects, breakdowns or malfunctions in any portion of the Project, Purchaser shall make all payments of Purchase Installments when due and shall not withhold any part of any Purchase Installments pending final resolution of such dispute or repair of the Project or any portion thereof nor shall Purchaser assert any right of set-off, cross-claim, recoupment, or counterclaim against its obligation to make such payments required under this Agreement. Purchaser's obligation to make Purchase Installments during the Term shall not be abated through accident or unforeseen circumstances.

Section 6.04. Continuation of Term by Purchaser. Purchaser agrees, subject to the provisions of Section 6.06, to pay the Purchase Installments due hereunder. Purchaser reasonably believes that funds of an amount sufficient to make all Purchase Installments during the Term will be available. The County Executive further agrees to do all things lawfully within the County Executive's power annually to request the appropriation of funds from which the Purchase Installments and payments for all necessary insurance and maintenance on the Project may be made, including (without limitation) the inclusion of such funds in the budget of the County to be submitted to the County Council of Howard County, Maryland (the "County Council") and a request for adequate funds to meet its annual obligations hereunder in full in its next fiscal year budget. Nothing in this Section 6.04 shall obligate the County Council to make any appropriation.

Section 6.05. Nonsubstitution. Purchaser agrees, to the extent permitted by law and subject to applicable public policy, (i) not to terminate this Agreement under Section 6.06 in any fiscal year for which sufficient funds are appropriated for the payment of Purchase Installments due in that fiscal year for the acquisition, retention and/or operation of any portion of the Project, and (ii) the County Executive will use best efforts to obtain the authorization and appropriation of such funds, including, without limitation, the inclusion of such funds in the budget of the County to be submitted to the County Council and a request for adequate funds to meet its obligations hereunder in full in its next fiscal year budget. Purchaser agrees to apply funds that are appropriated for the Project to the payment of its obligations hereunder. This Section shall not be construed so as to permit the County Executive to, and the County Executive shall not, by failing to comply with the provisions of Section 6.04 hereof, terminate this Agreement in order to acquire (through construction, purchase, lease or otherwise) any equipment that is similar to, functionally similar to or competitive with all or any portion of the Project from any other party or to allocate funds to perform indirectly essentially the same functions to the same extent for which any portion of the Project is intended.

Section 6.06. Nonappropriation. In the event sufficient funds shall not be appropriated for the payment of the Purchase Installments required to be paid under Exhibit C to continue the acquisition of the Seller's interest in the Project, Purchaser may terminate this Agreement at the end of the last fiscal year or earlier date for which an appropriation is available and Purchaser shall not be obligated to make payment of the Purchase Installments provided for in this Agreement beyond the last date for which an appropriation is available. Purchaser shall deliver written notice to Seller of such termination no later than seven (7) days after Purchaser has knowledge that an appropriation will not be available. The failure to give such notice shall not extend the Term beyond such fiscal year nor affect the termination of this Agreement pursuant to this Section 6.06. Upon termination of this Agreement for nonappropriation, the obligations of Purchaser requiring the expenditure of money will cease so long as all payments previously approved or appropriated have been made, and all title and interest of Purchaser in the Project will terminate and be conveyed to Seller, who may thereupon take possession of the Project and may take such other actions as are permitted to be taken upon an Event of Default as provided in Section 13.02 hereof.

Section 6.07. Essential Use. Purchaser represents that the Project is essential for the operations of Purchaser and in order to meet the needs of the residents of Howard County, Maryland and that Purchaser is in immediate need of the Project in order to meet such needs.

Section 6.08. Purchase Installments to Constitute a Current Expense of Purchaser. Seller and Purchaser understand and intend that the obligation of Purchaser to pay Purchase Installments hereunder shall constitute a current expense of Purchaser and shall not in any way be construed to be a debt of Purchaser in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by Purchaser, nor shall anything contained herein constitute a pledge of the full faith and credit or of the general tax revenues, funds or moneys

of Purchaser. Seller further acknowledges that all monetary obligations of Purchaser contained herein are subject to duly authorized appropriation by Purchaser.

## ARTICLE VII

### OWNERSHIP OF PROJECT; SECURITY INTEREST

Section 7.01. Ownership of the Project. Ownership of the Project and any and all additions, accretions, repairs, replacements or modifications will vest in the Purchaser, subject to the terms of this Agreement, upon the Purchaser's acquisition thereof from the respective vendors thereof. In the event of default as set forth in Section 13.01 or nonappropriation as set forth in Section 6.06, Purchaser shall surrender possession of the Project to Seller or its assignee in the manner set forth in Section 6.06.

The Purchaser's rights of possession in the Project shall not limit, waive or prejudice any right or remedy available to Seller pursuant to Section 13.02 of this Agreement.

Section 7.02. Security Interest; Financing Statements. To secure the payment of all of Purchaser's obligations under this Agreement, Purchaser hereby grants to Seller a first priority security interest in and to the Project. Purchaser grants to Seller and agrees to provide further assurances with respect to a right of entry, access, ingress and egress to the Project to permit Seller to exercise its rights and obligations under this Agreement. Nothing herein shall permit Seller to sell the Project in violation of this Agreement. Purchaser agrees to execute any documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Seller, which Seller deems necessary or appropriate to give notice of Seller's interest in the Project and, upon assignment, the interest of any assignee of Seller in the Project.

Section 7.03. Liens. Purchaser shall not directly or indirectly create, incur, assume or suffer to exist any pledge, lien, charge, security interest, encumbrances or claim on or with respect to the Project or any interest therein, except the lien created pursuant to Section 7.02 hereof in favor of Seller. Purchaser shall promptly, at its own expense, take such action as may be necessary to duly discharge any such pledge, lien, security interest, charge, encumbrance or claim if the same shall arise at any time and shall notify Seller and the Trustee in writing of such pledge, lien, charge, security interest, encumbrance or claim and the discharge thereof.

## ARTICLE VIII

### OPERATION AND MAINTENANCE; TAXES;

### INSURANCE; MODIFICATION

Section 8.01. Operation and Maintenance of Project by Purchaser. Purchaser shall cause proceeds of the Certificates, to the extent available, to be applied pursuant to the provisions of the Trust Agreement. Purchaser agrees that during the Term, Purchaser, at Purchaser's own cost and expense, will install, operate, maintain, preserve and keep the Project and every part and parcel thereof in good repair, working order and condition and that Purchaser, from time to time, will make or cause to be made all necessary and proper repairs, replacements and renewals necessary for the same. Seller shall have no responsibility under this Agreement in any of these matters or for the making of improvements or additions to the Project.

Section 8.02. Condition of the Project Upon Early Termination. If this Agreement is terminated prior to the Termination Date, either by reason of nonappropriation as provided in Section 6.06 or an Event of Default as provided in Section 13.01, Purchaser shall return possession of the Project to Seller in good and serviceable condition, together with all alterations, additions, or modifications thereto. If Purchaser, at the time of such termination, had begun to undertake any such alterations, additions, or modifications which will not be then completed (an "Unfinished Project"), Purchaser, at Purchaser's option and at Purchaser's sole cost, will, subject to appropriation, either (a) cause the Project to be restored as promptly as reasonably possible to its condition prior to the commencement of such Unfinished Project, (b) complete, or cause to be completed, as promptly as reasonably possible, the work on the Unfinished Project to a point where the Project will be useable in an unrestricted fashion, or (c) forthwith deposit funds with Seller sufficient to complete the Unfinished Project as provided in clause (b) above to the extent such funds have been appropriated.

Section 8.03. Taxes, Other Governmental Charges and Utility Charges. The parties to this Agreement contemplate that the Project will be used for a governmental or proprietary purpose of Purchaser and, therefore, that the Project will be exempt from all taxes presently assessed and levied with respect to real or personal property. In the event that the use, possession or acquisition of the Project is found to be subject to taxation in any form, Purchaser will pay during the Term, as the same respectively become due, subject to reasonable rights to defer and contest the applicability of any such charge (and as to which Seller agrees, upon reasonable notice from Purchaser, to join and assist, at no expense or liability to Seller), all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project and any property acquired by Purchaser in substitution for, as a renewal or replacement of, or a modification, improvement, accretion, accessory or addition to the Project, or with respect to Purchaser's possession or use of the Project, together with any interest or penalty thereon, as well as all charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project; provided that, with respect to any governmental charges that may lawfully be paid



in installments over a period of years, Purchaser shall be obligated to pay such installments as are accrued during such time as this Agreement is in effect.

Section 8.04. Insurance. Purchaser shall, during the Term, cause self-insurance (by means of a self-insurance fund set aside and maintained for that purpose) to be carried and maintained with respect to the Project in the amounts customarily maintained for personal property of the nature of those comprising the Project including protection of the interests of the Seller and the Trustee and sufficient to protect Seller and the Trustee. All insurance proceeds from property losses shall be payable as hereinafter provided in this Agreement. Purchaser may insure the Project under a blanket insurance policy or policies of self-insurance which covers not only the Project but other properties. Notwithstanding anything herein to the contrary, Purchaser shall at all times maintain self-insurance in an amount equal to the greater of (i) the full replacement value of the Project and (ii) the principal amount of the Certificates at the time outstanding and interest thereon for the next succeeding 6-month period.

Upon request of Seller and the Trustee, Purchaser shall deliver to Seller and the Trustee a letter certifying that self-insurance is being provided by Purchaser and setting forth the coverage provided by such self-insurance, the mechanisms for making claims under such self-insurance and such other information as Seller may reasonably require.

Section 8.05. Modifications. Purchaser may make any alterations, modifications or additions to the Project or any portion thereof as Purchaser deems appropriate and which are reasonably anticipated to improve or maintain the economic value thereof.

## ARTICLE IX

### DAMAGE, DESTRUCTION AND CONDEMNATION;

#### USE OF NET PROCEEDS

Section 9.01. Damage, Destruction and Condemnation. If prior to the termination of the Term (a) the Project or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Project or any part thereof or the estate of Purchaser or Seller in the Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Purchaser shall apply the Net Proceeds of any self-insurance fund (not including the proceeds of any public liability insurance) and of any condemnation award received on account of any damage, destruction or taking of the Project either to (i) replace, repair, rebuild, restore or modify the Project or (ii) make payments under this Agreement. Purchaser shall promptly provide written notice to the Trustee of the receipt of Net Proceeds and Purchaser's intended use of such Net Proceeds.

Section 9.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any replacement, repair, rebuilding, restoration or modification referred to in Section 9.01 hereof, Purchaser shall either (a) complete the work and pay any cost in excess of the amount of the Net Proceeds (Purchaser agrees that, if by reason of such insufficiency of the Net Proceeds, Purchaser shall make any payments pursuant to the provisions of this Section 9.02, Purchaser shall not be entitled to any reimbursement therefor from Seller or the Trustee nor shall Purchaser be entitled to any diminution of the amounts payable under Article VI hereof), or (b) if Purchaser is not in default hereunder, and the Trustee has received all compensation due and owing pursuant to Section 1.01(h) of this Agreement, pay to Seller the amount of the then applicable Purchase Price as set forth on Exhibit C, plus a pro rata allocation of interest, at the rate or rates utilized to establish the then unpaid Purchase Installments, from the prior due date of a Purchase Installment until the date of the payment, and, upon such payment, the Term shall terminate and title to the Project shall be conveyed by Seller to Purchaser as provided in Article XI of this Agreement. The amount of the Net Proceeds in excess of the then applicable Purchase Price, if any, may be retained by Purchaser. Any amounts payable by Purchaser under this Section is subject to appropriation.

## ARTICLE X

### DISCLAIMER OF WARRANTIES; NO CLAIMS AGAINST ASSIGNEE;

#### USE OF PROJECT

Section 10.01. Disclaimer of Warranties. (a) SELLER MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROJECT OR ANY PORTION THEREOF, OR ANY OTHER WARRANTY WITH RESPECT THERETO AND, AS TO SELLER, PURCHASER PURCHASES THE PROJECT AS IS. In no event shall Seller be liable for any loss or damage, including incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or Purchaser's use of any item, goods, products or services provided for in this Agreement.

(b) Purchaser hereby represents that it is satisfied that the Project is suitable for Purchaser's purposes.

Section 10.02. No Claims Against Assignee. The parties hereto contemplate that Seller will assign its interest in this Agreement to the Trustee pursuant to the Trust Agreement. Provided that Seller has complied with the provisions of Section 12.01(b), Purchaser shall not assert against any such assignee for value or any subsequent assignee any claim or defense, by set-off, counterclaim or otherwise, that it may now or hereafter have against Seller, including but not

limited to breach of warranty, whether express or implied, as to the value, design, condition, merchantability or fitness for a particular purpose or use of the Project or any portion thereof or any other warranty with respect thereto. In no event will such assignee be liable for any loss or damage, including incidental, indirect, special or consequential damages, in connection with any of the duties or obligations of Seller under this Agreement or otherwise.

Section 10.03. Use of the Project. Purchaser will not use, operate or maintain the Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement or contrary to any applicable insurance policy. Purchaser shall provide and obtain all permits and licenses, if any, necessary in the operation of the Project to the extent required by law. In addition, Purchaser agrees to comply in all respects (including, without limitation, with respect to the installation, use, maintenance and operation of each item of equipment) with all applicable laws and all orders, ordinances or regulations of any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Project; provided, however, that Purchaser may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Seller after consultation with experts in the field, materially adversely affect the estate of Seller in and to any portion of the Project or its interest or rights under this Agreement.

## ARTICLE XI

### CONSUMMATION OF PURCHASE

Section 11.01. Consummation of Purchase. At the request of Purchaser, Seller's interest in the Project will be transferred, conveyed and assigned to Purchaser and this Agreement and Seller's interest in the Project shall terminate:

(a) at the end of the Term, upon payment in full of all Purchase Installments due hereunder and all other sums required to be paid hereunder; or

(b) prior to the end of the Term, on any timely date for the payment of a Purchase Installment, upon payment by Purchaser of the then applicable Purchase Price in conjunction with the Purchase Installment then due and owing, including any applicable prepayment premium as provided in Section 11.02; or

(c) upon payment of the applicable Purchase Price and interest to Seller pursuant to Section 9.02.

Upon the occurrence of any of the above, Seller shall deliver to Purchaser a release of its rights in the Project.

Section 11.02. Prepayment.

(a) Commencing on \_\_\_\_\_, 20\_\_, Purchaser may prepay in full the remaining balance of the Purchase Price, without premium, at any time.

(b) There shall be applied as a prepayment of the Purchase Price, at any time, after the damage, destruction or condemnation of the Project, any excess insurance or condemnation proceeds remaining after the replacement, repair, rebuilding, restoration or modification of the Project.

(c) Upon any partial prepayment of the Purchase Price, such payments shall be applied to remaining Purchase Installments as directed upon the written direction of the Purchaser to the Trustee.

## ARTICLE XII

### ASSIGNMENT, SUBLEASING AND

### INDEMNIFICATION

Section 12.01. Assignment by Seller. (a) Seller may assign its interest in the Project and its rights hereunder, including but not limited to the right of Seller to receive payments hereunder, to one or more persons in connection with any financing of the Project or for any other lawful purpose.

(b) No assignment or reassignment of Seller's right, title or interest in this Agreement or the Project shall be effective unless and until Purchaser shall have received a duplicate original counterpart of the document by which the assignment or reassignment is made, disclosing the name and complete mailing address of each such assignee (provided, however, that if such assignment is made to a bank or trust company as paying or escrow agent for holders of participation certificates in this Agreement, it shall thereafter be sufficient that a copy of the agency or trust agreement shall have been deposited with Purchaser until Purchaser shall have been advised that such agency or trust agreement is no longer in effect).

(c) Upon receipt of the notice described above, Purchaser agrees to make all payments to the assignee designated in the assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Purchaser may from time to time have against Seller, or the assignee, and shall, if so requested, acknowledge the assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective. Purchaser agrees to execute all documents, including, but not limited to, notices of assignment, security agreements and financing statements which may be reasonably requested by Seller or its assignee to protect their interests in the Project and under this Agreement. Seller agrees that any assignment shall include a designation of a single assignee

or trustee or paying agent who will act as the recipient of Purchase Installments and be solely responsible for further distribution, if any, of moneys to other assignees.

Section 12.02. Assignment and Subleasing by Purchaser. This Agreement and the interest of Purchaser in the Project may not be sold, leased, pledged, assigned or otherwise encumbered by Purchaser for any reason without the prior written approval of Seller, which approval shall be granted if Seller reasonably determines that Seller's security in the Project will not be adversely affected. Purchaser shall use the Project for public purposes and in furtherance of its essential governmental functions, but such restriction shall not preclude Purchaser from permitting the use of the Project by others for public purposes or in furtherance of any essential governmental functions of Purchaser.

Section 12.03. Release and Indemnification. Except to the extent caused by the negligence or willful misconduct of Seller, Purchaser shall, to the extent permitted by applicable law and subject to appropriation, indemnify, protect, save and hold harmless Seller from and against any and all liability, obligations, losses, claims and damages whatsoever resulting or allegedly resulting in damage to property or injury or death to any person regardless of the cause thereof, and expenses in connection therewith, including, without limitation, expenses, penalties and interest arising out of or as the result of Purchaser's use and possession of the Project, the acquisition of the Project, or any accident in connection with the. operation, use, condition or possession of the Project, and any costs incurred in connection with the exercise of remedies hereunder. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Term for any reason, but only as to matters arising prior to the date of such termination.

### ARTICLE XIII

#### EVENTS OF DEFAULT AND REMEDIES

Section 13.01. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the terms "Event of Default" and "Default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure by Purchaser (i) to pay any Purchase Installment at the time specified herein; or (ii) to pay any other payment required to be paid hereunder (other than any Purchase Installments and those payments to the Trustee provided for in Section 1.01(h) hereof), at the time specified herein and expiration of a grace period of fifteen (15) days; however, payments required by Section 8.03 shall be subject to Purchaser's rights as set forth therein to defer and contest; or (iii) to observe and perform its obligations referred to in Sections 8.01, 9.01, 9.02 and those regarding self-insurance for casualty and property damage referred to in Section 8.04; or

(b) Failure by Purchaser to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 13.01(a), for a period of 30 days after written notice to Purchaser by Seller, specifying such failure and requesting that it be remedied, unless Seller shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated on the notice cannot be corrected within the applicable period, Seller will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Purchaser within the applicable period and diligently pursued until the default is corrected; or

(c) Any representation or warranty contained herein or any document, certificate or information furnished by Purchaser in connection herewith shall prove to be untrue or incorrect in any material respect when made; or

(d) Purchaser files any proceeding under the Federal Bankruptcy Code or makes a general assignment for the benefit of creditors or institutes or consents to the filing of any proceeding for any receivership under any other bankruptcy or insolvency laws.

The foregoing provisions of this Section 13.01 are subject to the provisions of Section 6.06 of this Agreement.

Section 13.02. Remedies on Default. Whenever any event of default referred to in Section 13.01 shall have happened and be continuing, Seller shall have all the rights and remedies of a secured party under the Uniform Commercial Code in effect in Maryland, and without limiting the generality of the foregoing, Seller shall have the right, at its sole option, without any further demand or notice, to terminate this Agreement and take any one or any combination of the following remedial steps:

(a) Terminate this Agreement and retake possession of all or any portion of the Project, without any court order or other process of law and without liability for entering the premises, and lease, sublease or make other disposition of the Project for use over a term in a commercially reasonable manner, holding Purchaser liable for the deficiency, if any, between (i) the amount actually appropriated for the purchase of the Project and unpaid by Purchaser during the current fiscal year and which is therefore payable by Purchaser hereunder to the end of the current fiscal year of Purchaser and (ii) the rent or other amounts paid by a lessee or sublessee of the Project pursuant to such lease or sublease, after deducting all Seller's costs and expenses, including reasonable attorneys' fees and expenses, incurred with respect to the recovery, repair and storage of any portion of the Project.

(b) Terminate this Agreement and retake possession of all or any portion of the Project, without any court order or other process of law and without liability for entering the premises, and sell all or any portion of the Project in a commercially reasonable manner. Purchaser shall be liable for the deficiency, if any, between (i) the amount actually appropriated for the purchase of the Project and unpaid by Purchaser during the current fiscal year and which is therefore payable by

Purchaser hereunder to the end of the current fiscal year of Purchaser, and (ii) the sale proceeds or purchase moneys or other amounts paid to Seller by a buyer of the Project pursuant to such sale of the Project in a commercially reasonable manner, after deducting all of the Seller's costs and expenses, including reasonable attorneys' fees and expenses, incurred with respect to the recovery, repair and storage of any portion of the Project. In the event there is no deficiency, Seller shall apply the sale proceeds or purchase moneys or other amounts paid by a buyer for the Project in the following manner:

FIRST, to pay all proper and reasonable costs and expenses associated with the recovery, repair, storage and sale of all or any portion of the Project;

SECOND, to pay Seller (i) the amount of all unpaid Purchase Installments, if any, which are then due and owing, together with interest at the rate utilized to establish the interest component for any such Purchase Installment from its due date, and (ii) the then applicable Purchase Price as set forth on Exhibit C (taking into account the payment of past due Purchase Installments as aforesaid), plus a pro rata allocation of interest, at the rate utilized to establish the interest component for the Purchase Installment next due, from the next preceding due date of a Purchase Installment until the date of payment by the buyer;

THIRD, to pay any compensation due and owing the Trustee pursuant to Section 1.01(h) hereof; and

FOURTH, to pay the remainder of the sale proceeds, purchase moneys or other amounts paid by a buyer of the Project to Purchaser.

Whenever an event of default referred to in clauses (a)(iii), (b), (c) or (d) of Section 13.01 of this Agreement shall have occurred and be continuing, Seller shall have the right, at its sole option, without further demand or notice, to institute appropriate legal proceedings to require Purchaser to cure any such Event of Default by observing, complying with or performing its obligations hereunder.

Section 13.03. No Remedy Waived. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Seller to exercise any remedy reserved to it in this Article XIII, it shall not be required to give any notice other than such notice as may be required in this Agreement.

Section 13.04. No Remedy Exclusive. The remedies provided herein are not intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

ARTICLE XIV

MISCELLANEOUS

Section 14.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the following addresses:

(a) if to Purchaser:     Director of Finance  
                                  Howard County, Maryland  
                                  3430 Court House Drive  
                                  Ellicott City, MD 21043

(b) if to Seller:            [NAME/ADDRESS]

and                            To any assignee, notice of whom  
                                  has been provided as provided  
                                  in Section 12.01 hereof

Section 14.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Seller and Purchaser and their respective successors and assigns.

Section 14.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision hereof, and provided if any provision with respect to payment or the rights of Seller to reclaim and use the Project as permitted hereunder shall be held invalid or unenforceable, Seller shall have the right to terminate this Agreement effective as of the end of the then current fiscal year and, as of such date, to exercise all of its remedies upon the occurrence of an Event of Default.

Section 14.04. Amendments, Changes and Modifications. This Agreement may only be amended by written agreement of Seller and Purchaser.

Section 14.05. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.06. Applicable Law and Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, excluding the conflict-of-law rules



of the State of Maryland. All judicial actions, claims, suits or proceedings brought by any party to enforce any rights hereunder shall be initiated and maintained only in the courts of the State of Maryland and not in the courts of any other jurisdiction.

Section 14.07. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 14.08. Estoppel Certificates. Purchaser will, from time to time, upon 20 days' prior request by Seller, execute, acknowledge and deliver to Seller a certificate executed by a duly authorized official, stating that (a) this Agreement is unmodified (or if modified, reciting the modifications) and in full effect, (b) the dates to which Purchase Installments have been paid, and (c) to the knowledge of the signer of the certificate, no default exists under this Agreement (or stating each default of which the signer has knowledge). Any such certificate may be relied upon by an assignee of Seller.

Section 14.09. Waiver. No covenant or condition of this Agreement can be waived except by the written consent of the party in whose favor such covenant or condition runs. Any failure of such party to require strict performance by the other or any waiver by the party benefited of any terms, covenants or agreements herein shall not be construed as a waiver of any other breach of the same or any other term, covenant or agreement herein.

Section 14.10. Entire Agreement. This Agreement, together with the exhibits and schedules attached hereto and other agreements referred to herein, constitutes the entire agreement between the parties.

Section 14.11. Time. Time is of the essence of this Agreement and each and all of its exhibits, schedules and provisions.

Section 14.12. Certificates to be Tax Exempt. Purchaser hereby covenants that, unless and until Purchaser has been advised by nationally recognized bond counsel that failure to comply will not cause interest on the Certificates to become subject to federal income taxation, Purchaser shall comply with the provisions of the Internal Revenue Code of 1986, as amended, applicable to the Certificates, including, without limitation, any provisions regulating or restricting the times within which, or the purposes for which, proceeds of the Certificates may be expended, any provisions restricting the yields that may be earned on the investment of proceeds of the Certificates or other funds relating to the Certificates, any provisions requiring the rebate to the United States of earnings received from the investment of proceeds of the Certificates or other funds relating to the Certificates, and any provisions requiring the filing of information or reports regarding the Certificates with the Internal Revenue Service.

Purchaser hereby further covenants that it shall make such use of the Project and of the proceeds of the Certificates, regulate the investment of the proceeds thereof, and take such other and further

actions as may be required under the Internal Revenue Code of 1986, as amended, to maintain the exclusion from gross income for federal income tax purposes of interest on the Certificates (unless and until Purchaser has been advised by nationally recognized bond counsel that failure to comply will not cause interest on the Certificates to become subject to federal income taxation).

All officers, employees and agents of Purchaser shall take such actions, provide such certifications of facts and estimates and enter into such further covenants and agreements regarding the application and investment of the proceeds of the Certificates as may be necessary or appropriate from time to time, in the opinion of nationally recognized bond counsel reasonably acceptable to Seller, to comply with, or to evidence Purchaser's compliance with, the covenants set forth above. Purchaser shall be permitted to enter into an agreement with the Trustee or other persons under which such persons assume responsibility for such actions as are necessary to comply with such covenants.

IN WITNESS WHEREOF, Seller and Purchaser, by their duly authorized officials, have executed and delivered this Agreement under seal as of the date and year first above written.

[SEAL]

SELLER:

[NAME],

as Trustee

ATTEST:

By: \_\_\_\_\_

\_\_\_\_\_  
[SEAL]

PURCHASER:

HOWARD COUNTY, MARYLAND:

ATTEST:

By: \_\_\_\_\_

Calvin Ball  
County Executive

\_\_\_\_\_  
**APPROVED FOR SUFFICIENCY OF FUNDS:**

\_\_\_\_\_  
Rafiu O. Ighile, Director  
Department of Finance

Approved as to form and legal sufficiency  
this \_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Gary W. Kuc  
County Solicitor

Reviewing Attorney

\_\_\_\_\_  
Kristen Bowen Perry  
Deputy County Solicitor

EXHIBIT A

Description of Project

The Project consists of [\_\_\_\_\_].

## EXHIBIT B

(Letterhead of Counsel for Purchaser)

(a) The Conditional Purchase Agreement has been duly authorized, executed and delivered between the parties thereto and constitutes the valid and binding obligation of the County.

(b) The Trust Agreement has been duly authorized, executed and delivered among the parties thereto and constitutes the valid and binding obligation of the County.

(c) The Certificates have been duly authorized, executed and delivered as set forth in the Trust Agreement, are validly issued, and represent proportionate interests in the Purchase Installments.

(d) The Certificates and the Conditional Purchase Agreement shall not ever constitute a debt of the County within the meaning of any constitutional, statutory or charter limitation or a charge against the general credit or taxing power of the County. The Certificates are payable from the moneys and property pledged to their payment under the Trust Agreement, including the payments to be made by the County under the Conditional Purchase Agreement. The County has not pledged its full faith and credit or its taxing powers to the payment of the Purchase Installments. The obligation of the County to make payments under the Conditional Purchase Agreement is subject to annual appropriation as provided in the Conditional Purchase Agreement.

EXHIBIT C

SCHEDULE OF PAYMENTS

Purchaser: Howard County, Maryland

Date of Agreement: [DATE]

<u>Principal Date</u>	<u>Interest Component</u>	<u>Total Principal Component</u>	<u>Purchase and Interest</u>	<u>Price*</u>
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\* After payment of the Principal Component of the Purchase Price (if any) due on such date.

a) Due Dates. Payments of the Principal Portion and Interest Portion of the Purchase Installments are due and payable on each [DATE] and [DATE] of any year and shall be paid by Purchaser in immediately available funds on the [third] Business Day prior to each [DATE] and [DATE].

(b) Corresponding Payments. Payments of the Principal Portion and Interest Portion of the Purchase Installments by Purchaser shall correspond with the payments of principal and interest which from time to time are required to be made on the Certificates by the Trustee under the Trust Agreement taking into account any reduction to debt service, for example, resulting from the redemption of Certificates prior to their maturity. Such payments by Purchaser shall be reduced by amounts held by the Trustee and made available pursuant to the Trust Agreement for corresponding payments to be made on the Certificates. Seller and Purchaser hereby agree to adjust the schedule of payments in this Exhibit that result from the redemption of Certificates prior to their maturity.

(c) Defeasance. (i) If sufficient money for the payment of the principal or redemption price of and interest on all Certificates Outstanding (as defined in the Trust Agreement) shall be held by Trustee (through deposit by Purchaser of moneys for such payment or otherwise, regardless of the source of such moneys), whether at or prior to the maturity or the redemption dates of such Certificates, or (ii) if the maturity or redemption dates of such Certificates shall not then have arrived, and provision shall have been made for the payment of the interest on Certificates on the due dates for such payments, by deposit with Trustee (or other method satisfactory to Trustee) of Government Obligations (as defined in the Trust Agreement) the principal of and the interest on which when due will provide sufficient moneys for such payments, then the obligations of Purchaser to pay the principal and interest portions of the Purchase Installments due under the Purchase Agreement shall be discharged and satisfied.

