

## **MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING** (this “Memorandum”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2009, by and among Howard County, Maryland, a body corporate and politic and a political subdivision of the State of Maryland (“Issuer”), and Petrie Ross Joint Ventures D.C., LLC, a Maryland Limited Liability Company (“Developer”).

### **RECITALS**

**WHEREAS**, Issuer is authorized by Sections 12-201, *et seq.* of the *Md. Economic Development Art. Annot.*, as amended (the “TIF Act”), to designate by resolution a development district and establish a special tax increment fund (“TIF Fund”) with respect to such development district into which the revenues and receipts from real property taxes representing the levy on the tax increment for such development district are deposited, such amounts to be used for the purposes set forth in the TIF Act; and

**WHEREAS**, Issuer is authorized by *Md. Art. 24 Code Annot.*, Section 9-1301, *et seq.* (the “Special Tax Act”) to create a special taxing district, to levy special taxes within such special taxing district for the purpose of financing certain infrastructure improvements as necessary for the development and utilization of the land within such special taxing district; and

**WHEREAS**, the State of Maryland (the “State”) is the owner of certain real property consisting of approximately 12.73 acres located within Howard County, Maryland, as more particularly described in Exhibit A, attached hereto and incorporated herein (the “Property”); and

**WHEREAS**, the Property is adjacent to the existing Savage MARC station which provides commuter rail service to Baltimore, Washington, D.C. and other parts of the State and is currently improved with surface parking serving the Savage MARC Station; and

**WHEREAS**, in order to enhance the State’s transportation system, and pursuant to the authority contained in *Md. Transportation Art. Annot.*, Section 4-312 and its Transportation Public-Private Partnership Program, the State desires to establish a Transit Oriented Development in conformance with *Code of Maryland Regulations*, Title 11, Subtitle 7, Chapter 6 (2007) on the Property; and

**WHEREAS**, in furtherance of this goal, the State has entered into a Transportation Public-Private Partnership Agreement along with several associated agreements attached as exhibits to the Transportation Public-Private Partnership Agreement (collectively, the “Partnership Agreement”) with Developer for the construction of a public parking garage containing approximately 704 spaces to serve the Savage MARC Station; and for the development of a mixed-use project consisting of residential, office, retail, and hotel uses on the Property (the “TOD Development”); and

**WHEREAS**, pursuant to the terms of the Partnership Agreement the State will retain ownership of the approximately 2.21 acres of the Property (the “State Property”) on which the parking garage will be constructed and will transfer approximately 10.52 acres of the Property to Developer upon which Developer shall construct the TOD Development; and

**WHEREAS**, Issuer has established a Transit Oriented Development (TOD) zoning district, set forth in Section 127.4 of the Howard County Zoning Regulations, for the purpose of encouraging development and redevelopment of key parcels of land within 3,500 feet of a MARC Station and to encourage mixed use development around MARC Stations to increase the commuting potential of the MARC system and create attractive employment or multi-use centers that provide for safe and convenient pedestrian travel; and

**WHEREAS**, both Issuer’s General Plan and the Route 1 Corridor Revitalization Study recommend facilitating redevelopment of sites next to MARC Stations with tax or development financing incentives;

**WHEREAS,** pursuant to the TIF Act, Issuer has promulgated Tax Increment Financing Guidelines (the “Guidelines”) to ensure that proposed development projects further Issuer’s desired public goals and purposes; and

**WHEREAS,** Developer has applied to Issuer to establish a development district on Property (the “TIF District”) to finance a portion of the costs of the public parking garage; and

**WHEREAS,** Developer’s initial application (“Original Application”) requested the issuance of tax-exempt tax increment financing bonds (“TIF Bonds”) to be privately placed with the Developer, which the County Executive approved subject to certain terms and conditions on June 25, 2008; and

**WHEREAS,** Developer has subsequently agreed to amendments to the Original Application to request that the TIF Bonds used to fund the construction of the public parking garage be issued at a limited public offering (the Amended Application) which Amended Application was approved by the County Executive on March 19, 2009; and

**WHEREAS,** Issuer proposes to issue the TIF Bonds to finance a portion of the costs associated with construction of a public parking garage on the State Property to be repaid by the incremental tax revenues resulting from the TOD Development and desires to establish the TIF District and a special taxing district (the “Tax District”) on the Property and to adopt all legislation required and necessary to implement the financing of the parking garage as provided in this Memorandum (the “TIF Legislation”); and

**WHEREAS,** Developer has consented to the establishment of the Tax District to supplement the incremental tax revenues as necessary to ensure payment of debt service on the TIF Bonds; and

**WHEREAS,** Issuer has reviewed the Amended Application and has determined that the establishment of the TIF District and the Tax District will meet the goals and criteria set forth in the Guidelines and the requirements of the TIF Act and the Special Tax Act.

**NOW, THEREFORE,** in consideration of the foregoing, the parties desire to set forth their mutual rights and obligations with regard to the financing of the parking garage on the State Property as follows:

**1.0. Recitals.** The foregoing recitals are hereby incorporated into the terms of this Memorandum.

**2.0. Public Improvement.** The public improvement to be financed under the terms and conditions of this Memorandum consists of (1) a public parking garage containing approximately 704 spaces and (2) infrastructure necessary to support the parking garage, all as more particularly described on the attached Exhibit B (collectively, the “Public Improvement”).

**3.0. Cost of Public Improvement.** Subject to the issuance of the TIF Bonds in the aggregate principal amount of \$17,000,000 in accordance with this Memorandum, Developer shall thereafter bear sole responsibility for all costs associated with the design, construction and development of the Public Improvement. Only in the circumstance in which the principal amount of the TIF Bonds to be received from the offering of and proposed orders for the TIF Bonds would be less than \$17,000,000.00, Developer shall have the right but not the obligation to withdraw its Amended Application and to terminate this Memorandum; provided, however, Developer shall continue to be responsible for its obligations set forth in sections 5.0 and 21.0 hereof which shall survive such termination, and Issuer shall have no obligation with respect to the costs of the Public Improvements. If Developer elects to withdraw its Amended Application and terminate this Memorandum, Issuer shall have no obligation to sell or issue the TIF Bonds.

**4.0. Special Obligation TIF Bonds.** Issuer proposes to issue tax-exempt bonds to be sold in a limited public offering to finance a portion of the Actual Costs (as hereinafter defined) (the “TIF Bonds”). Issuer expects to issue a series of bonds under an Indenture of Trust (the “Indenture”) by and

between Issuer and a trustee in the maximum aggregate principal amount of \$17,000,000.00 (Seventeen Million Dollars) of which a maximum of \$12,720,000.00 (Twelve Million Seven Hundred Twenty Thousand Dollars) shall be used to pay a costs to construct the Public Improvement and the balance of which shall be used to pay capitalized interest for a period of time agreed to by the parties and approved by bond counsel to Issuer (which is currently estimated at approximately \$2,270,000), fund required reserves, pay the costs of issuing the TIF Bonds including, but not limited to, attorneys' fees, underwriter's fees, engineering fees, appraisal fees, market study costs, and costs to be incurred by Issuer in connection with the initial administration and operation of the TIF District. The actual costs of the acquisition, design, construction and development of the Public Improvement (the "Actual Costs") shall include only those expenditures authorized by the TIF Act and the Special Tax Act. Any Actual Costs that exceed the anticipated proceeds of the TIF Bonds allocated therefor shall be the responsibility of Developer. Upon completion of the Public Improvement, Developer shall provide such information with respect to the Actual Costs as may be reasonably requested by Issuer to verify the Actual Costs and Issuer shall certify the Actual Costs in a manner to be agreed upon by the parties hereto. Actual costs may include a developer fee, subject to the following conditions as determined by Issuer after consultation with Developer: (i) the fee is to be paid pursuant to an identified scope of work to be provided by Developer, (ii) the fee may not exceed a fair and reasonable fee for the services provided by Developer, pursuant to industry standards, IRS regulations, and any applicable law, (iii) the fee may not exceed Developer's fee approved by MDOT as fairly allocated to the improvements funded by the TIF Bonds, and (iv) construction costs are to be paid first from TIF Bond proceeds with any excess TIF Bond proceeds then applied to the developer's fee.

If there are any TIF Bond proceeds remaining after the completion of the acquisition, design, construction and development of the Public Improvement and the payment of the Actual Costs, such

excess proceeds shall be used to partially redeem the TIF Bonds. The TIF Bonds shall have a term of no longer than 30 years from the date of issuance, inclusive of the capitalized interest period. The interest rate on the TIF Bonds shall not exceed seven percent (7%) per annum without an adjustment in the principal amount of the TIF Bonds to maintain debt service equal to TIF Bonds in the amount of \$17,000,000.00. Interest on the TIF Bonds shall not be paid from the Tax Increment, as described below or the Special Tax until moneys deposited in the capitalized interest account under the Indenture have been completely expended. The redemption terms of the TIF Bonds shall be satisfactory to Issuer in Issuer's sole discretion. The TIF Bonds shall be issued in minimum denominations of \$100,000.00. Issuer shall reasonably confer with Developer on the selection of Underwriter but shall make the final decision. Issuance of the TIF Bonds is subject to satisfaction of various customary conditions for such financing, including, without limitation, receipt by Issuer of a market study for the TOD Development satisfactory to Issuer, favorable market conditions for the sale of the TIF Bonds, an acceptable rate of interest on the TIF Bonds, receipt of all necessary government approvals for the Public Improvement, executed sales contracts with purchasers for the Required Development (hereinafter defined), excluding the retail portion if the retail portion is to be retained by the Developer, an appraisal providing a value to lien of at least equal to the greater of (i) two to one and (ii) as otherwise required by the bond market, and due diligence appropriate for issuance of public bonds with approval of any disclosure issued by Issuer.

Settlement on any TIF Bonds shall be concurrent with settlement on commercial financing obtained by Developer for construction of Phase I and Phase II of the TOD Development, and in Issuer's sole discretion, (i) such remaining phases of the TID Development, or (ii) an agreed-upon plan of finance for the remaining phases of the TOD Development, that will create sufficient Tax Increment Revenues (hereinafter defined) so that Special Taxes (hereinafter defined) are in the sole discretion of

Issuer, a reasonable and affordable burden on the Property in the Tax District (“Required Development”) or, alternatively, settlement on the TIF Bonds shall be made into escrow in a matter satisfactory to Issuer until settlement on commercial financing has occurred.

**4.1. Alternative Construction Financing.** (1) Developer is investigating the possibility of financing the construction of the Public Improvement with the proceeds of a short-term bond issued by the Maryland Industrial Development Financing Authority (the “MIDFA Bond”). If the MIDFA Bond is issued, the proceeds of the TIF Bonds would be used in part to repay the MIDFA Bonds upon completion of construction of the Public Improvement and acquisition of the public improvement. TIF Bonds issued to repay MIDFA Bonds shall be subject to the same terms and conditions as set forth in Section 4.0 of this Memorandum, except that the maximum aggregate principal amount of the TIF Bonds shall be reduced so that no portion of the proceeds of the TIF Bonds shall be used to pay capitalized interest unless otherwise agreed to by Issuer in its sole discretion; (2) Pursuant to the authority contained in *Md. Econ. Dev. Art. Annot.*, Section 5-1301, *et. seq* (the “BRAC Act”), Issuer is investigating the possibility of establishing a BRAC Revitalization and Incentive Zone (the “BRAC Zone”) in an area to include the Property in the next round of applications due to the State Department of Business & Economic Development (“DBED”). Should such a BRAC Zone be established, Issuer shall deposit a pro rata share of the annual revenues received pursuant to the BRAC Act into the TIF Fund. The pro rata share to be deposited in the TIF Fund shall be determined by the amount of incremental County property tax revenues attributable to the TOD Development divided by the total amount of incremental County property tax revenues attributable to the entire BRAC Zone. For the purposes of determining the annual pro rata share, the date of the base year used to calculate the County property tax increment shall be the date required pursuant to the BRAC Act.

**5.0. Issuance Costs.** It is expressly understood and agreed that Issuer shall not incur any direct or indirect liability or Third-Party Costs (defined below) in connection with the issuance or sale of the TIF Bonds, the adoption of the TIF Legislation, or the undertaking of the actions or the consummation of the transactions contemplated by the TIF Legislation and this Memorandum, except costs or liabilities payable from amounts deposited to the TIF Fund or the Tax Fund (hereinafter defined), including the payment of the principal of and premium, if any, and interest on the TIF Bonds, as further provided in the TIF Legislation.

**5.1. Third-Party Costs.** Developer shall pay the fees of legal counsel to Issuer (including bond counsel) and compensation to Issuer's financial advisor and other third parties who invoice Issuer for their services to the extent they have provided services or perform services necessary for the consummation of the transactions contemplated hereby on behalf of Issuer in connection with the TIF Legislation and the TIF Bonds (collectively, the "Third-Party Costs"). Developer shall pay all outstanding Third-Party Costs due within two (2) days following the enactment of the TIF legislation by the County Council. Developer's obligation to pay all Third-Party Costs is not contingent on the successful completion of the transactions contemplated by this Memorandum and if the TIF financing is not successfully completed, then Developer shall pay all Third Party Costs when (1) the Council fails to approve the TIF Legislation, (2) the Developer withdraws its Amended Application or (3) Issuer denies the Amended Application.

**5.1.1. Payment of Third-Party Costs.** Payment of all Third-Party Costs incurred as of the date of the execution of this Memorandum shall be payable as set forth in Section 5.1. above. Thereafter, following the enactment of the TIF legislation, Issuer shall use its best efforts to submit, or cause to be submitted, invoices to Developer on a monthly basis itemizing all such Third-Party Costs and describing the services rendered, the duration of each task, date of such task and hourly



rate or fixed fee charged. Developer shall pay all such invoices within thirty (30) days of the date of the invoice. Any failure by Issuer to submit, or to cause to be submitted, to Developer one or more invoices on a regular basis shall not relieve Developer of its obligation hereunder to pay such invoice or invoices in accordance with Section 5.1. above, but payment shall not be made unless and until such invoice or invoices are submitted to Developer. It is acknowledged that when and if the TIF Bonds are issued, the Third-Party Costs will be paid from the proceeds of the TIF Bonds, to the extent permitted by the TIF Act and the Special Tax Act, the TIF Legislation, the documents executed and delivered in connection with the issuance of the TIF Bonds and federal tax principles (if applicable to the TIF Bonds). To the extent Developer has paid any Third-Party Costs prior to the issuance of the TIF Bonds, Developer will be reimbursed from the TIF Bond proceeds for such Third-Party Costs to the extent permitted by the TIF Act and the Special Tax Act, the TIF Legislation, the documents executed and delivered in connection with the issuance of the TIF Bonds and federal tax principles (if applicable to the TIF Bonds).

**6.0. Submission of Information.** Before the issuance of the TIF Bonds, Developer will make available to Issuer in a manner to agreed upon by the parties such information with respect to the finances of Developer, the TOD Development and the issuance of the Bonds as Issuer may reasonably request for inclusion in a Limited Offering Memorandum or other disclosure document to be used in connection with the sale of the TIF Bonds. Such information will be furnished to Issuer by Developer solely for informational purposes and receipt of any such document does not constitute approval of any such document by Issuer or any person not submitting such documents.

**7.0. Development of Public Improvement.** Developer or its designee, will enter into contracts for the acquisition, design, construction, project management and development of the Public Improvement in accordance with the terms and conditions of the Partnership Agreement and this Memorandum.

**7.1. Acceptance of Public Improvement.** The terms of acceptance of the Public Improvement by Issuer or the State shall be established in the Indenture, but shall at a minimum include (1) issuance of a Use and Occupancy Permit for the parking garage structure and (2) inspection by Issuer to determine whether the associated infrastructure described in Exhibit B has received partial final inspection by Issuer, (3) that the Public Improvement has obtained all required government approvals and permits, (4) that the Public Improvement conforms to the plans and specifications approved by all applicable government agencies and (5) that the State has certified in writing to Issuer that it has accepted the parking garage under the terms of the Partnership Agreement.

**7.2. Disbursement of TIF Bond Proceeds.** Developer will enter into guaranteed maximum price or stipulated sum contracts, as may be agreed upon by the parties, for the construction of the Public Improvement and will obtain payment and performance bonds and/or completion bonds from the general contractor for such contracts acceptable to Issuer which acceptance shall not be unreasonably withheld. Issuer reserves the right to verify and certify all expenditures for the Public Improvement in a manner to be determined by the parties, but which at a minimum, will include inspection by Issuer of the work performed.

**8.0. Records of Expenditures.** Developer shall maintain and preserve records of all expenditures relating to the Public Improvement and any other information necessary or required to preserve the tax-exempt status of the TIF Bonds and to certify the Actual Costs in a manner which meets or exceeds the requirements of the Internal Revenue Code of 1986, for no less than 3 years after the TIF Bonds have been paid in full. Developer shall make these records available at all reasonable times to Issuer for inspection and audit.

**9.0. Establishment of TIF District.** Subject to County Council approval of the TIF Legislation and the provisions set forth in Section 22.0 of this Memorandum, Issuer agrees to proceed in

good faith using best efforts to establish the TIF District on the Property in conformance with the terms and conditions of this Memorandum. If so provided in the legislation establishing the TIF District, the TIF District shall terminate upon payment or defeasance of the TIF Bonds in full. Payment by Developer of all outstanding Third Party Costs shall be a condition precedent to the County Executive signing the TIF Legislation enacted by the County Council.

**10.0. Establishment of Special Tax District.** Developer hereby acknowledges, requests and consents to the establishment of the Tax District on the Property. Subject to approval by the County Council of the TIF Legislation and subject to the provisions of Section 22.0 of this Memorandum, Issuer agrees to proceed in good faith using diligent efforts to establish the Tax District on the Property in conformance with the terms and conditions of this Memorandum. If so provided in the legislation establishing the Tax District, the Tax District shall terminate upon (1) payment or defeasance of the TIF Bonds in full and (2) reimbursement to Issuer for any outstanding costs related to administering the Tax District.

**11.0. Tax Increment and Special Tax.**

**11.1. Tax Increment.** “Tax Increment” means for any tax year the amount by which the assessable base as of January 1 of the preceding tax year exceeds the original taxable value divided by the assessment ratio used to determine the original taxable value. “Tax Increment Revenues” means for any tax year the amount of the Tax Increment multiplied by the real property tax rate. For the purposes of this Section 11.0, the terms “tax year,” “assessable base,” “original taxable value,” “assessment ratio” shall have the meanings set forth in Section 12-201 of the TIF Act.

**11.2. Deposit in the TIF Fund.** Subject to County Council approval of the TIF Legislation and subject to Section 22.0 of this Memorandum, Issuer agrees to pursue in good faith using

diligent efforts to authorize the Tax Increment Revenues to be deposited in the TIF Fund to be used solely for the purposes set forth in the TIF Act, the TIF Legislation and the terms of this Memorandum.

**11.2.1. Payment of Tax Increment.** Should the TIF Fund be established, Issuer agrees to pay from the TIF Fund to the holders of the TIF Bonds that portion of the Tax Increment collected for each tax year equal to the amount of debt service due on the TIF Bonds for each year that the TIF Bonds are outstanding. Should the Tax Increment Revenues exceed the debt service on the TIF Bonds in any Tax Year, the Tax Increment Revenues shall be used by Issuer, in its sole discretion, for any purpose authorized by the TIF Act. After the TIF Bonds have been paid or defeased in full, the full amount of the Tax Increment Revenues shall revert to Issuer's General Fund and shall be retained by Issuer for any use authorized by law.

**11.2.2. OBLIGATION FOR PAYMENT. ISSUER'S OBLIGATION TO MAKE PAYMENTS TO THE HOLDERS OF THE TIF BONDS PURSUANT TO THIS MEMORANDUM SHALL NOT BE DEEMED TO BE A GENERAL OBLIGATION OF ISSUER, SHALL BE PAYABLE SOLELY FROM THE TAX INCREMENT REVENUES RECEIVED BY ISSUER, FROM ANY REVENUES RECEIVED PURSUANT TO THE BRAC ACT, AND FROM THE SPECIAL TAX (HEREINAFTER DEFINED).**

**11.3. Special Tax.** The "Special Tax" shall mean taxes levied by Issuer within the Tax District as authorized by the Special Tax Act and in accordance with the TIF Legislation, setting the tax rate within the Tax District, and with the terms of this Memorandum.

**11.3.1. Levy.** A Special Tax shall be levied upon the property in the Tax District in the manner set forth in the Rate and Method of Apportionment attached hereto and incorporated herein as Exhibit C. It is expressly understood and agreed that the Special Tax shall be levied in an amount sufficient to pay the expenses of Issuer, including the reasonable fees and expenses of any fiscal agent or trustee that may be employed by Issuer, the expenses of Issuer in carrying out its duties under an indenture under which the TIF Bonds may be refunded in the future, including, but not limited to, levying and collecting the Special Tax and complying with arbitrage rebate requirements and obligated

persons disclosure requirements associated with applicable federal and state securities law, including the costs of any employees of Issuer and fees of any professional retained by Issuer to the extent such employees and professionals provide services for such purposes, and all other costs and expenses of Issuer incurred in connection with the discharge of its duties under TIF Legislation and administration of the Tax District.

**11.4. Deposit of Special Tax.** Subject to County Council approval of the Tax Fund and subject to Section 22 of this Memorandum, the Special Tax shall be deposited into the Tax Fund.

**11.5. Payments of Special Tax.** Issuer shall pay from the Tax Fund to the holder(s) of the TIF Bonds the amount of the Special Tax equal to the amount of debt service due on the TIF Bonds for that tax year less the amount of the Tax Increment Revenues collected in that tax year.

**11.6. Increase In Tax Increment Revenues.** Should the amount of the special tax levied in any tax year exceed the amount necessary to pay those expenses set forth in Section 11.3.1 herein for that year due to an increase in the Tax Increment Revenues received after the Special Tax is levied, Issuer shall credit or refund to the owners of the property in the Tax District the amount equal to said increase less administrative costs incurred by Issuer in connection with the levy and collection of the Special Tax.

**11.7. Collection of Special Tax.** Issuer shall bill the Special Tax at the same time and in the same manner as real property taxes. Penalties and interest shall accrue on past due bills as provided by law. Issuer shall apply to the collection of delinquent payments of the Special Tax the same tax collection procedures as set forth in *Md. Code Tax-Property Art.*, Title 14, Subtitle 8.

**11.8. OBLIGATION OF ISSUER.** **ISSUER'S OBLIGATION TO MAKE PAYMENTS OF THE SPECIAL TAX TO THE HOLDERS OF THE TIF BONDS PURSUANT TO THIS MEMORANDUM SHALL NOT BE DEEMED TO BE A GENERAL OBLIGATION OF ISSUER AND SHALL BE PAYABLE SOLELY FROM PAYMENTS OF THE SPECIAL TAX RECEIVED BY ISSUER.**

**12.0. True-up Mechanism.** The parties agree that Developer is entitled to receive a reasonable profit from the development of the TOD Development equal to an unleveraged internal rate of return of 20% measured on cash flow before interest and income taxes compared to the total capital investment, excluding financing costs and costs associated with the Tax Increment Financing and Special Tax Districts but including payment of the special tax (the “Reasonable Profit”). A “true-up” mechanism will be established which will entitle Issuer to 33.33% of any profits in excess of the Reasonable Profit (“Excess Profits”) to be paid to Issuer by Developer to reduce Issuer’s investment in the TIF or for any use authorized by law.

The return would be measured at sale and/or transfer of all parcels of land within the TIF District. A parcel shall be construed to have been transferred if there is a transfer of the parcel to an entity established to develop that parcel, including an entity related to Developer, or if construction is commenced on the buildings located on that parcel and which are part of the development of that parcel. Issuer may determine the value of any transfers that are not arms length by an appraisal. Developer shall submit annual audited financial statements or agreed upon procedures as determined by Issuer for the TOD Development for the purpose of determining the amount of Excess Profits to which Issuer is entitled.

**13.0. Tax Credits.** Developer agrees that it shall not seek any federal, State or County tax credits for Developer Property or any portion thereof until such time as the TIF Bonds are paid or deemed paid in full.

**14.0. Partnership Agreement.** Notwithstanding any provision in the Partnership Agreement, the parties acknowledge and confirm that, for and in consideration of Issuer satisfying a financing contingency in the Partnership Agreement by the creation of a TIF District and in reliance on Developer’s performance of its obligations under the Partnership Agreement, Developer will use

diligent efforts to pursue an amendment to the Partnership Agreement which will authorize Issuer as a third-party beneficiary to the Partnership Agreement but only for any period of time during which the TIF Bonds remain outstanding. Once Issuer is named a third-party beneficiary under the Partnership Agreement, Issuer shall thereafter have all rights and claims which adhere to a third-party beneficiary under Maryland law. No bonds shall be issued until such time as the Partnership Agreement is amended as provided in this Section 14.0.

**15.0. Disclosure of Information.** Developer acknowledges that Issuer agrees not to disclose confidential commercial information clearly marked by Developer as such, except as required by law. Developer understands that Issuer is a government agency which by law may be required to disclose certain information and that Developer's designation of confidentiality is not necessarily conclusive. Developer may be required to provide justification why such material will not be disclosed under Maryland's Public Information Act and/or county law. In the event of a request for records previously designated by Developer as confidential, Issuer will endeavor to notify Developer, so that Developer may take such action it deems appropriate to protect its interests, but is not required to file suit (or to assert within any litigation whether brought by Issuer or some other person) the confidentiality of the information.

**16.0. Interpretation of Laws.** This Memorandum shall be construed pursuant to the laws of the State of Maryland.

**17.0. Notices.** Any notice or communication required to be sent to any party to this Memorandum shall be sent to:

For Developer:            Petrie Ross Joint Ventures, LLC  
                                    1919 West Street, Suite 100  
                                    Annapolis, MD 21401  
                                    Attention: Terry L. Richardson

With a copy to: David M. Sheehan, Esquire  
Brown & Sheehan, LLP  
One South Street, 23<sup>rd</sup> Floor  
Baltimore, MD 21202

For Issuer: Sharon R. Greisz  
Director of Finance  
3430 Courthouse Drive  
Ellicott City, MD 21043

With a copy to: Margaret Ann Nolan  
County Solicitor  
3430 Courthouse Drive  
Ellicott City, MD 21043

**18.0. Successors and Assigns.** This Memorandum is binding upon and shall inure to the benefit of the parties' respective permitted successors and assigns. Developer shall cause any transferee at the time of transfer of any portion of Developer Property to covenant to be bound by the terms of this Memorandum.

**19.0. Termination.**

**19.1.** Except for Developer's obligation to pay Third-Party Costs set forth in Section 5.0 of this Memorandum, this Memorandum and the parties' obligations hereunder are terminated if, for any reason, the County Council does not adopt the TIF Legislation or does not authorize the TIF Bonds to be issued.

**19.2.** If the TIF Bonds are issued, this Memorandum shall terminate and the terms and provisions of this Memorandum shall be incorporated into the documents executed and delivered by the parties hereto with respect to the TIF Bonds. To the extent of any conflict between the terms and provisions of such documents and the terms and provisions of this Memorandum, the terms and provisions of such documents shall control.



**19.3.** Issuer may, at Issuer's sole option, terminate this Memorandum in the event that any representation or warranty made herein or any statement or representation made in any certificate, report, opinion, statement or other instrument furnished in connection with this Agreement by the Developer, proves to be incorrect in any material respect. Furthermore, Issuer may, at its sole option, terminate this Memorandum if (i) any portion of the membership interest in Developer is assigned, transferred or otherwise conveyed to a third party, not including Developer's lender, or (ii) neither Developer nor an Affiliate (as defined in the Partnership Agreement) of Developer is the developer of Phase I and Phase II (each as defined in the Partnership Agreement), or (iii) Developer does not guarantee the completion of Phase I and Phase II, unless Issuer has given its prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.

**19.4.** Issuer or Developer may, at each other's sole option, terminate this Memorandum if the TIF Legislation does not conform to the terms of this Memorandum, provided that no TIF Bonds have been issued.

**19.5.** This Memorandum shall terminate by operation of law without any further action necessary to be taken by either of the parties if the TIF Legislation expires and becomes of no further force and effect.

**19.6.** Issuer may, at Issuer's sole option, terminate this Memorandum if all parties to the Partnership Agreement fail to execute such further documents and agreements which Issuer determines necessary to issue the TIF Bonds in conformance with the terms of this Memorandum and to meet all requirements of applicable State, local and federal laws.

**20.0. Warranties.** Developer represents and warrants that it is authorized under the terms of its organizational documents to enter into this Memorandum, that it is authorized to perform all obligations of the Partnership Agreement and this Memorandum, that none of the obligations set forth in

this Memorandum are prohibited by the Partnership Agreement, and that the signators on behalf of Developer to this Memorandum are authorized by Developer to sign this Memorandum on its behalf. Developer further represents and warrants that all information contained in the Amended Application and any statement, schedule, report, certificate, opinion, or any other document provided by Developer in connection with the Amended Application or with this Memorandum is true and accurate in all material respects, and Developer has not omitted to state any material fact or any fact necessary to make the information not misleading.

**21.0. Indemnification.** Developer shall protect, indemnify and hold Issuer, the County Executive, the members of the County Council, and the attorneys, agents, officers and employees of Issuer (collectively, the “Indemnatee”) harmless against any and all liabilities, losses, damages, costs, expenses, causes of action, suits, claims, demands and judgments of any nature, arising from or in connection with the issuance or sale of the TIF Bonds, the establishment of the TIF District and the Tax District, or the undertaking of Issuer of the actions or consummation of the transactions contemplated by the TIF Legislation or this Memorandum including matters related to the development and construction of the Public Improvement, provided further that the benefits of this Section 21.0 shall not inure to any person other than the Indemnatee; provided that the liability shall not have resulted from the gross negligence or willful misconduct of any such Indemnatee;.

**22.0. Legislative and Executive Action.** It is acknowledged and agreed by Developer that the undertakings contemplated in this Memorandum are subject to the approval of, and appropriate action by, the County Council, which action includes (without limitation) the levy of the Special Tax, the creation of the Tax Fund, the creation of the Tax District, the creation of the TIF District, the creation of the TIF Fund, and the allocation of the Tax Increment to the TIF Fund and the allocation of the Special Tax to the Special Tax Fund, and implementing the financing and fulfillment of the transactions as

described herein and approving the issuance of the TIF Bonds, and the approval by the County Executive of all matters, details, forms, documents and procedures pertaining to the sale, security, issuance delivery and payment of or for the TIF Bonds, the pledge of the Tax Increment and the Special Tax and the use of the proceeds thereof as contemplated hereby and by the TIF Legislation, including without limitation, approval of detailed provisions of all documents relating thereto as yet to be developed.

**22.1. Terms of TIF Bonds.** Issuer cannot make any guarantee, promise, or assurance that the terms and conditions of the TIF Bonds as actually authorized to be issued (including, without limitation, the principal amount; the rate of interest or method of determining same; the times and places that the TIF Bonds are to be executed, issued and delivered; the redemption provisions; the form, tenor and denominations; and the times and place or places of payment of the principal and interest) will be acceptable to Developer; provided nothing herein shall impair any right or rights of Developer to reject or terminate the issuance of the TIF Bonds prior to their issuance.

**23.0. Construction.** In no event shall this Memorandum be construed more strongly against any one person solely because such person or its representative acted as draftsman hereof, it being acknowledged by the parties hereto that all parties have been represented by competent legal counsel, that this Memorandum has been subject to substantial negotiation, and that all parties have contributed substantially to the preparation of this Agreement.

**24.0. Entire Agreement.** This Memorandum sets forth the entire understanding and agreement of the parties with respect to the subject matter hereunder and supersedes any prior agreements or understandings, written or oral, between the parties with respect to the Project. Any amendment to this Memorandum must be by mutual written agreement of the parties.

**IN WITNESS WHEREOF**, the parties set their hand and seal on the date aforementioned.

**ATTEST:**

**PETRIE ROSS JOINT VENTURES D.C., LLC**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

**HOWARD COUNTY, MARYLAND**

\_\_\_\_\_

Lonnie R. Robbins  
Chief Administrative Officer

By: \_\_\_\_\_ (SEAL)

Ken Ulman  
County Executive

**APPROVED FOR SUFFICIENCY OF FUNDS:**

\_\_\_\_\_

Sharon F. Greisz, Director  
Department of Finance

**APPROVED FOR FORM AND LEGAL SUFFICIENCY**

this \_\_\_\_\_ day of \_\_\_\_\_, 2007

\_\_\_\_\_

Margaret Ann Nolan  
County Solicitor

**EXHIBIT A**

Property Description  
(Metes and Bounds with Tax Parcel Numbers)

**PROPERTY DESCRIPTION**

**METES AND BOUNDS DESCRIPTION**

PARCEL A  
GOLDEN KEY  
PLAT BOOK 5909  
LANDS N/F  
STATE RAILROAD ADMINISTRATION  
LIBER 2778 FOLIO 106  
TITLE PARCEL 1  
AND  
LANDS N/F  
MARYLAND DEPARTMENT OF TRANSPORTATION  
TO THE USE OF MARYLAND TRANSIT ADMINISTRATION  
SHA PLAT NUMBER 57272  
TITLE PARCEL 2  
6<sup>TH</sup> ELECTION DISTRICT  
HOWARD COUNTY, MARYLAND

BEGINNING AT A POINT IN THE NORTHERLY RIGHT-OF-WAY LIMITS OF THE LANDS OF CSX TRANSPORTATION, INC., SAID POINT MARKING THE INTERSECTION OF THE SAID NORTHERLY RIGHT-OF-WAY LIMITS WITH THE DIVISION LINE BETWEEN PARCEL A, GOLDEN KEY (PLAT BOOK 5909), ON THE WEST AND PARCEL B, GOLDEN KEY (PLAT BOOK 5909), ON THE EAST, THENCE, WITH SAID NORTHERLY RIGHT-OF-WAY LIMITS OF CSX TRANSPORTATION, INC., THE FOLLOWING TWO COURSES AND DISTANCES;

1. SOUTH 68 DEGREES - 13 MINUTES - 13 SECONDS WEST, 92.73 FEET TO A POINT, THENCE;
2. CONTINUING, NORTH 00 DEGREES - 24 MINUTES - 38 SECONDS WEST, 52.57 FEET TO THE POINT OF INTERSECTION OF SAID NORTHERLY RIGHT-OF-WAY LIMITS WITH THE DIVISION LINE BETWEEN SAID LANDS OF CSX TRANSPORTATION, INC., ON THE SOUTH, SAID PARCEL A, GOLDEN KEY ON THE EAST AND THE LANDS OF THE MARYLAND DEPARTMENT OF TRANSPORTATION TO THE USE OF MARYLAND TRANSIT ADMINISTRATION (SHA PLAT NUMBER 57272), ON THE NORTH, THENCE WITH SAID DIVISION LINE;
3. 308.13 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 4244.47 FEET, A CENTRAL ANGLE OF 04 DEGREES - 09 MINUTES - 34 SECONDS, AND A CHORD BEARING AND DISTANCE OF SOUTH 69 DEGREES - 31 MINUTES - 44 SECONDS WEST, 308.06 FEET TO A POINT, MARKING THE INTERSECTION OF SAID DIVISION LINE WITH THE EASTERLY RIGHT-OF-WAY LIMITS OF DORSEY RUN ROAD, (VARIABLE WIDTH RIGHT-OF-WAY, (SHA PLAT NUMBER 57272), THENCE WITH SAID EASTERLY RIGHT-OF-WAY LIMITS THE FOLLOWING SEVENTEEN COURSES AND DISTANCES;
4. NORTH 08 DEGREES - 11 MINUTES - 50 SECONDS WEST, 39.98 FEET TO A POINT, THENCE;
5. CONTINUING, NORTH 03 DEGREES - 34 MINUTES - 36 SECONDS WEST, 69.82 FEET TO A POINT OF CURVATURE, THENCE;
6. CONTINUING, 101.38 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1154.46 FEET, THE CENTRAL ANGLE OF 05 DEGREES - 01 MINUTE - 54 SECONDS, AND A CHORD BEARING AND DISTANCE OF NORTH 05 DEGREES - 58 MINUTES - 45 SECONDS

WEST, 101.35 FEET TO A POINT OF TANGENCY, THENCE;

7. CONTINUING, NORTH 06 DEGREES - 41 MINUTES - 36 SECONDS WEST, 53.71 FEET TO A POINT OF CURVATURE, THENCE;
8. CONTINUING, 91.95 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 1068.51 FEET, A CENTRAL ANGLE OF 04 DEGREES - 55 SECONDS - 50 SECONDS, AND A CHORD BEARING AND DISTANCE OF NORTH 02 DEGREES - 06 MINUTES - 09 SECONDS WEST, 91.92 FEET TO A POINT OF COMPOUND CURVATURE, THENCE;
9. CONTINUING 96.43 FEET ALONG THE ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 722.45 FEET, A CENTRAL ANGLE OF 07 DEGREES - 38 MINUTES - 52 SECONDS, AND A CHORD BEARING AND DISTANCE OF NORTH 03 DEGREES - 30 MINUTES - 23 SECONDS EAST, 96.36 FEET TO A POINT OF COMPOUND CURVATURE, THENCE;
10. CONTINUING, 68.43 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 90.00 FEET, A CENTRAL ANGLE OF 43 DEGREES - 34 MINUTES - 06 SECONDS, AND CHORD BEARING AND DISTANCE OF NORTH 29 DEGREES - 06 MINUTES - 47 SECONDS EAST, 66.80 FEET TO A POINT OF COMPOUND REVERSE CURVATURE, THENCE;
11. CONTINUING, 33.70 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 75.00 FEET, A CENTRAL ANGLE OF 25 DEGREES - 44 MINUTES - 50 SECONDS AND A CHORD BEARING AND DISTANCE OF NORTH 37 DEGREES - 51 MINUTES - 59 SECONDS EAST, 33.42 FEET TO A POINT OF REVERSE CURVATURE, THENCE;
12. CONTINUING, 24.33 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 55 DEGREES - 45 MINUTES - 26 SECONDS, AND A CHORD BEARING AND DISTANCE OF NORTH 52 DEGREES - 52 MINUTES - 33 SECONDS EAST, 23.38 FEET TO A POINT OF COMPOUND CURVATURE, THENCE;
13. CONTINUING, 29.97 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 117.50 FEET, A CENTRAL ANGLE OF 14 DEGREES - 36 MINUTES - 53 SECONDS, AND A CHORD BEARING AND DISTANCE OF NORTH 88 DEGREES - 04 MINUTES - 03 SECONDS EAST, 29.89 FEET TO A POINT, THENCE;
14. CONTINUING, NORTH 05 DEGREES - 22 MINUTES - 30 SECONDS EAST, 65.39 FEET TO POINT ON A CURVE, THENCE;
15. CONTINUING, 82.61 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 94 DEGREES - 39 MINUTES - 55 SECONDS, AND A CHORD BEARING AND DISTANCE OF NORTH 27 DEGREES - 04 MINUTES - 37 SECONDS WEST, 73.53 FEET TO A POINT OF TANGENCY, THENCE;
16. CONTINUING, NORTH 20 DEGREES - 15 MINUTES - 07 SECONDS EAST, 601.26 FEET TO A POINT, THENCE;
17. CONTINUING, NORTH 68 DEGREES - 39 MINUTES - 53 SECONDS EAST, 46.46 FEET TO A POINT OF NON-TANGENT CURVATURE MARKING THE INTERSECTION OF SAID EASTERLY RIGHT-OF-WAY LIMITS OF DORSEY RUN ROAD WITH THE WESTERLY RIGHT-OF-WAY LIMITS OF HENKEL'S LANE, SERVICE ROAD "C" (VARIABLE WIDTH RIGHT-OF-WAY) (SHA PLAT NO. 51222 AND PLAT NO. 57272), THENCE;
18. CONTINUING, 179.07 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 295.03 FEET, A CENTRAL ANGLE OF 34 DEGREES - 46 MINUTES - 31 SECONDS, AND A CHORD BEARING AND DISTANCE OF SOUTH 42 DEGREES - 08 MINUTES - 06 SECONDS EAST, 176.33 FEET TO A POINT OF TANGENCY, THENCE;
19. CONTINUING, SOUTH 24 DEGREES - 44 MINUTES - 53 SECONDS EAST, 97.96 FEET TO A POINT OF CURVATURE, THENCE;

20. CONTINUING, 229.85 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 328.48 FEET, A CENTRAL ANGLE OF 40 DEGREES - 05 MINUTES - 32 SECONDS, AND A CHORD BEARING AND DISTANCE OF SOUTH 44 DEGREES - 47 MINUTES - 40 SECONDS EAST, 225.19 FEET TO A POINT MARKING THE INTERSECTION OF SAID WESTERLY RIGHT-OF-WAY LIMITS OF HENKEL'S LANE WITH SAID DIVISION LINE BETWEEN THE LANDS OF THE MARYLAND DEPARTMENT OF TRANSPORTATION TO THE USE OF MARYLAND TRANSIT ADMINISTRATION (SHA PLAT NUMBER 57272), ON THE NORTH, AND SAID PARCEL A, GOLDEN KEY (PLAT BOOK 5909), ON THE SOUTH, THENCE WITH SAID WESTERLY RIGHT-OF-WAY LIMITS, CONTINUING THE FOLLOWING SIX COURSES AND DISTANCES;
21. SOUTH 73 DEGREES - 52 MINUTES - 50 SECONDS EAST, 406.14 FEET TO A POINT, THENCE;
22. CONTINUING, SOUTH 72 DEGREES - 46 MINUTES - 19 SECONDS EAST, 13.07 FEET TO A POINT, THENCE;
23. CONTINUING, NORTH 18 DEGREES - 21 MINUTES - 00 SECONDS EAST, 4.07 FEET TO A POINT, THENCE;
24. CONTINUING, SOUTH 70 DEGREES - 22 MINUTES - 37 SECONDS EAST, 16.02 FEET TO A POINT, THENCE;
25. CONTINUING, SOUTH 20 DEGREES - 53 MINUTES - 22 SECONDS WEST, 4.07 FEET TO A POINT, THENCE;
26. CONTINUING, SOUTH 61 DEGREES - 42 MINUTES - 30 SECONDS EAST, 87.27 FEET TO A POINT MARKING THE INTERSECTION OF SAID WESTERLY RIGHT-OF-WAY LIMITS WITH THE DIVISION LINE BETWEEN PARCEL A, GOLDEN KEY (PLAT BOOK 5909), ON THE NORTH AND PARCEL B, GOLDEN KEY (PLAT BOOK 5909), ON THE SOUTH, THENCE WITH SAID DIVISION LINE THE FOLLOWING SIX COURSES AND DISTANCES;
27. SOUTH 70 DEGREES - 47 MINUTES - 11 SECONDS WEST, 593.16 FEET TO A POINT, THENCE;
28. CONTINUING, NORTH 18 DEGREES - 42 MINUTES - 41 SECONDS WEST, 5.00 FEET TO A POINT, THENCE;
29. CONTINUING, SOUTH 64 DEGREES - 36 MINUTES - 50 SECONDS WEST, 223.49 FEET TO A POINT OF CURVATURE, THENCE;
30. CONTINUING, 69.14 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 59.06 FEET, A CENTRAL ANGLE OF 67 DEGREES - 04 MINUTES - 29 SECONDS AND A CHORD BEARING AND DISTANCE OF SOUTH 31 DEGREES - 04 MINUTES - 19 SECONDS WEST, 65.26 FEET TO A POINT OF TANGENCY, THENCE;
31. CONTINUING, SOUTH 02 DEGREES- 27 MINUTES - 55 SECONDS EAST, 168.00 FEET TO A POINT, THENCE;
32. CONTINUING, SOUTH 23 DEGREES - 10 MINUTES - 54 SECONDS EAST, 131.00 FEET TO THE PLACE OF BEGINNING.

CONTAINING 554,716 SQUARE FEET OR 12.735 ACRES.

## **EXHIBIT B**

### **Description of Public Improvement**

The public facilities shall include the attributable costs of engineering, design, planning and coordination, together with the expenses related to the creation of the Savage Towne Centre Special Taxing District and the issuance of bonds, including without limitation any underwriter's discount, appraisals, reserve fund, capitalized interest, bond counsel and other legal fees, financial consultants, bond and official statement printing, and all other expenses incidental thereto. The public facilities shall be constructed to a Transportation Public-Private Partnership Agreement by and between the Maryland Department of Transportation, the Maryland Transit Administration and the Maryland Transportation Authority dated as of June 27, 2008, and as may be amended from time to time, and to be conveyed either to Howard County, Maryland (the "County") or to the State of Maryland (the "State") as authorized by law, whether or not in their completed states, pursuant to plans and specifications approved by such entities. The County and the State, as authorized by law, will own all public facilities acquired with bond proceeds.

### ***PUBLIC FACILITIES***

- (1) Construction of a multi-level public parking garage containing approximately 704 spaces;
- (2) Construction of roads, including curbs and gutters;
- (3) Related grading, engineering and stakeout; lighting; landscaping; identifying monuments; signage; traffic signals; sidewalks;
- (4) Such other buildings or equipment to be owned by the County or the State or other public improvements as the County and the Developer mutually agree.



## EXHIBIT C

### *Howard County, Maryland*

### *Savage Towne Centre Special Taxing District*

### ***RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES***

A Special Tax is hereby levied and shall be collected in the Savage Towne Centre Special Taxing District (the “District”) each Fiscal Year, beginning with the Commencement Date and continuing until the Termination Date, in an amount equal to the Maximum Special Tax as determined by the procedures described below. All of the real and personal property in the District, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

#### **A. DEFINITIONS**

The terms used herein shall have the following meanings:

“**Act**” means Md. Art. 24 Code Annot., Section 9-1301, *et seq.*, as amended from time to time.

“**Adjusted Maximum Special Tax**” means the Special Tax determined in accordance with Section B.2.

“**Administrative Expenses**” means any or all of the following: the fees and expenses of any fiscal agent or trustee employed by the County in connection with any Bonds; the expenses of the County in carrying out its respective duties under the Indenture of Trust, including, but not limited to, levying and collecting the Special Tax and complying with arbitrage rebate requirements and obligated persons disclosure requirements associated with applicable federal and state securities law, including the costs of any employees of the County and fees of any professionals retained by the County to provide services for such purposes; and all other costs and expenses of the County, Trustee, or Administrator incurred in connection with the discharge of their respective duties under the Indenture of Trust, as applicable, including legal expenses associated with such duties, and, in the case of the County, in any way related to the administration of the District.

“**Administrator**” means the designee of the Director of Finance for purposes of estimating the annual Special Tax Requirement and the Special Tax to be levied each Fiscal Year and for providing other services as required herein or by the Indenture of Trust.

“**Bond Year**” shall have the meaning given to such term in the Indenture of Trust.

“**Bonds**” means any bonds or other debt, including refunding bonds, whether in one or more series, issued for the District by the County pursuant to the Act.

“**Building Square Footage**” or “**BSF**” means the actual, or for property not yet developed, the

estimated, building area either rented or directly used in the production of income (not including area within a parking garage) as shown on the building permit, architectural plans or other available documents, as estimated by the Administrator.

**“Commencement Date”** means the first Fiscal Year in which Special Taxes are levied and may be collected, which shall be the first Fiscal Year after the issuance of the Bonds.

**“County”** means Howard County, Maryland, and any authorized designee of the County for the purposes of implementing this Rate and Method of Apportionment of Special Taxes.

**“Director of Finance”** means the official of the County who is the director of finance or other comparable officer of the County or designee thereof.

**“Equivalent Unit Factors”** means the following factors for each class of property:

Residential Property	1.00 per dwelling unit
Office Property	0.91 per 1,000 BSF
Retail Property	0.76 per 1,000 BSF
Hotel Property	0.56 per rentable room

**“Equivalent Units”** means the Equivalent Unit Factor for Residential Property, Office Property, Retail Property, and Hotel Property multiplied by the number of dwelling units of Residential Property, per 1,000 square feet of Building Square Footage for Office Property or Retail Property, and per hotel room for Hotel Property, respectively. The computation of the Equivalent Units for each Parcel shall be based on the information available regarding the use of the Parcel, which may include acreage and reasonable density ratios, and such computation by the County shall be conclusive as long as there is a reasonable basis for such determination.

**“Fiscal Year”** means the period starting any July 1 and ending on the following June 30.

**“Hotel Property”** means property used or intended for use as hotel facilities, including any ancillary space thereto.

**“Indenture of Trust”** means the indenture of trust relating to the Bonds, as modified, amended and/or supplemented from time to time.

**“Maximum Special Tax”** means the Special Tax determined in accordance with Section B.1.

**“Office Property”** means property used or intended for use as office facilities and any Taxable Property not classified as Residential Property, Hotel Property, and Retail Property, including any ancillary space thereto.

**“Owner Association Property”** means, for any Fiscal Year, any real property within the boundaries of the District that is owned by or irrevocably offered for dedication to a property owner's association and available for use in common by the property owners.

**“Parcel”** means a lot or parcel of real property within the District with a parcel number assigned by the Supervisor or property otherwise designated as a parcel by the County.

**“Proportionately”** means that the ratio of the Special Tax to be collected as a percent of the Adjusted Maximum Special Tax is equal for each Parcel (excluding those Parcels for which the Adjusted Maximum Special Tax is zero).

**“Public Improvements”** means those public improvements the County has authorized to be constructed for the benefit of the District and funded by the Bonds.

**“Public Property”** means property within the boundaries of the District owned by, or irrevocably offered for dedication (in a plat map approved by the County or otherwise), whether in fee simple interest or some other interest that creates an exclusive right of use, to the federal government, State of Maryland, County, any other public agency, or a public utility provider.

**“Residential Property”** means property used or intended for use as residential dwellings, including any ancillary space thereto.

**“Retail Property”** means property used or intended for use primarily for selling goods or services to the general public, including any ancillary space thereto.

**“Special Tax”** means the special tax levied by the County and to be collected pursuant to the terms herein.

**“Special Tax Credit”** means, for any Fiscal Year, Tax Increment Revenues to be collected from a Parcel for that Fiscal Year. For purposes of calculating the Tax Increment Revenues for each Parcel, the base year value shall be allocated to each Parcel on the basis of the assessed value of each Parcel.

**“Special Tax Requirement”** has the meaning given to it in Section C.1.

**“Supervisor”** means the Supervisor of Assessments for the County.

**“Tax Increment Fund”** means the account of such name established for the District pursuant to an ordinance enacted by the County.

**“Tax Increment Revenues”** means the amounts paid into the Tax Increment Fund each year by the County.

**“Taxable Property”** means any Parcel that is not Public Property or Owner Association Property.

**“Termination Date”** means the last Fiscal Year in which Special Taxes have been levied and may be collected as provided for in Section F.

**“Trustee”** means the trustee appointed by the County for the District to carry out the duties of the trustee specified in the Indenture of Trust.

## **B. MAXIMUM SPECIAL TAXES**

### **1. Maximum Special Tax**

The Maximum Special Tax for all Taxable Property in the District for the first Fiscal Year in which Special Taxes are levied (the Commencement Date) shall be equal to \$1,220,000. On each July 1 thereafter, the Maximum Special Tax shall be increased to 102 percent of the respective Maximum Special Tax in effect in the previous Fiscal Year.

The Maximum Special Tax for each Parcel shall be equal to the following formula:

$$A = (B \div C) \times D$$

Where the terms have the following meaning:

A	=	The Maximum Special Tax for a Parcel
B	=	The Equivalent Units built or expected to be built on a Parcel
C	=	The total Equivalent Units estimated for all of the Parcels in the District
D	=	The Maximum Special Tax for the District as stated above.

### **2. Adjusted Maximum Special Tax**

The Adjusted Maximum Special Tax for each Parcel shall be equal to the lesser of (but not less than zero) (i) the Maximum Special Tax for the Parcel and (ii) the amount calculated by the following formula:

$$A = B - C$$

Where the terms have the following meaning:

A	=	The Adjusted Maximum Special Tax for a Parcel
B	=	The Maximum Special Tax for the Parcel
C	=	The Special Tax Credit for the Parcel

The Special Tax Credit applied to all Parcels shall not exceed the Tax Increment Revenues applied to the Special Tax Requirement as provided for in Section C. 1.

### **3. Personal Property**

The special tax on personal property shall be zero.

## **C. COLLECTION OF THE SPECIAL TAX**

Special Taxes shall be collected each Fiscal Year from each Parcel of Taxable Property in amount calculated pursuant to the provisions of this section.

### **1. Special Tax Requirement**

The Special Tax Requirement for any Fiscal Year shall be estimated by the Administrator and determined by the County and shall be an amount equal to (A) the amount required in any Fiscal Year to pay: (1) debt service and other periodic costs (including deposits to any sinking funds) on the Bonds to be paid from the Special Taxes collected in such Fiscal Year, (2) Administrative Expenses to be incurred in the Fiscal Year or incurred in any previous Fiscal Year and not paid by the District, (3) any amount required to replenish any reserve fund established in association with any Bonds, (4) an amount equal to the estimated delinquencies expected in payment of the Special Tax or other contingencies as deemed appropriate, and (5) the costs of remarketing, credit enhancement, bond insurance, and liquidity facility fees (including such fees for instruments that serve as the basis of a reserve fund related to any indebtedness in lieu of cash), less (B) (1) Tax Increment Revenues available to apply to the Special Tax Requirement for that Fiscal Year, (2) any credits available pursuant to the Indenture of Trust, such as capitalized interest, reserves, and investment earnings on any account balances, and (3) any other revenues available to apply to the Special Tax Requirement.

### **2. Calculation of Special Taxes for Each Parcel**

Commencing with the Commencement Date and for each following Fiscal Year, the County shall determine the amount of Hotel Property, Office Property, Residential Property, and Retail Property for each Parcel of Taxable Property. The use of the Property shall be based on information available regarding the use of the property, as approved by the County, or if a specific use for the property has not been approved by the County, as proposed to be used by the owner of the Parcel. The determination of the use of the property pursuant to this section by the County shall be conclusive.

The Equivalent Units for each Parcel of Taxable Property shall be calculated as provided for in the definition of Equivalent Units.

The Maximum Special Tax and Adjusted Maximum Special Tax calculated for each Parcel of Taxable Property as provided for in Section B.

### **3. Collection of the Special Tax**

Commencing with the Commencement Date and for each following Fiscal Year, the County shall determine the Special Tax Requirement, if any, for the applicable Fiscal Year and shall collect the Special Tax Proportionately on each Parcel of Taxable Property in an amount up to the Adjusted Maximum Special Tax for each Parcel such that the total of the Special Tax to be collected is equal to the Special Tax Requirement.

The Administrator shall provide an estimate to the County each Fiscal Year of the amount of the Special Tax to be collected from each Parcel in conformance with the provisions of this section.

**4. Circumstances Under Which the Special Tax May be Increased as a Result of a Default**

The Maximum Special Tax levied on any Parcel may not be increased regardless of the default in the collection of the Special Tax from any other Parcel. The Special Tax to be collected from a Parcel may be increased as a result of a default in the payment of the Special Tax on another Parcel pursuant to the provisions of Section C. 1. and 2. If the Special Tax to be collected from a Parcel pursuant to the provisions of Section C.1. and 2. is less than the Adjusted Maximum Special Tax for such Parcel, the Special Tax may be increased up to the Adjusted Maximum Special Tax as a result of a default in the payment of the Special Tax to be collected from another Parcel. The Special Tax to be collected from a Parcel may not exceed the Adjusted Maximum Special Tax regardless of a default in the payment of Special Taxes by any other Parcel.

**D. EXEMPTIONS**

A Special Tax is not levied on and shall not be collected from Public Property or Owner Association Property.

**E. MANNER OF COLLECTION**

The Special Tax will be collected in the same manner and at the same time as ordinary real property taxes; provided, however, the Special Tax may be collected at a different time or in a different manner as determined by the Director of Finance, provided that such time or manner is not inconsistent with the provisions of the Indenture of Trust.

**F. TERMINATION OF SPECIAL TAX**

Except for any delinquent Special Taxes and related penalties and interest, Special Taxes shall not be collected from any Parcel after the earlier of (i) the repayment or defeasance of the Bonds, (ii) the thirtieth Fiscal Year in which Special Taxes are levied, with the first Fiscal Year being the Commencement Date, and (iii) such time provided for by the Indenture of Trust.

**G. REDUCTION IN THE MAXIMUM PROPERTY TAX RATE**

The Maximum Special Tax shall be reduced by the Director of Finance once the Bonds are issued to reflect the actual rate of interest on the Bonds and the amount of Bonds actually issued, to a rate that provides for adequate Special Tax revenue to pay the debt service on the Bonds and any other expected amounts of the Special Tax Requirement as provided for in the Indenture of Trust.

**H. APPEALS OF THE LEVY OF THE SPECIAL TAX**

Any property owner claiming that the amount or application of the Special Tax is not correct and requesting a refund may file a written notice of appeal and refund to that effect with the Director of Finance not later than one calendar year after the due date (i.e., July 1) for the Special Tax that is disputed. Such appeal may not affect the due date of the payment of the Special Tax. The Director of

Finance, or the designee of the Director of Finance, shall promptly review all information supplied by the appellant in support of the appeal and, if necessary, meet with the property owner, and decide the appeal. If the decision of the Director of Finance requires the Special Tax to be modified or changed in favor of the property owner, a cash refund shall not be made (except for the last year of levy or unless sufficient funds will otherwise be available to meet the Special Tax Requirement), but an adjustment shall be made to the next Special Tax levy on that Parcel. The decision of the Director of Finance may be appealed to the County's Chief Administrative Officer who shall hold a hearing on the appeal and consider any written or oral evidence presented by appellant. This procedure shall be exclusive and its exhaustion by any property owner shall be a condition precedent to any other appeal or legal action by such owner.

## **I. AMENDMENTS**

This Rate and Method of Apportionment of Special Taxes may be amended by the County and, to the maximum extent permitted by the Act, such amendments may be made without further notice under the Act and without notice to owners of Taxable Property within the District in order to (i) clarify or correct minor inconsistencies in the matters set forth herein, (ii) provide for lawful procedures for the collection and enforcement of the Special Tax so as to assure the efficient collection of the Special Tax for the benefit of the owners of the Bonds, and (iii) otherwise improve the ability of the County to fulfill its obligations to levy and collect the Special Tax and to make it available for the payment of the Bonds and Administrative Expenses. Any such amendment may not increase the Maximum Special Tax.

## **J. INTERPRETATION OF PROVISIONS**

The County shall make all interpretations and determinations related to the application of this Rate and Method of Apportionment of Special Taxes, unless stated otherwise herein or in the Indenture of Trust, and as long as there is a rational basis for the determination made by the County, such determination shall be conclusive.