

**CITY OF ANN ARBOR
COUNTY OF WASHTENAW
STATE OF MICHIGAN**

**RESOLUTION TO APPROVE EXERCISE OF RIGHT OF FIRST REFUSAL FOR
ACQUISITION OF 2500-2550 S. STATE STREET, APPROPRIATE NECESSARY
FUNDS AND AUTHORIZE AN INSTALLMENT PURCHASE AGREEMENT AND
DIRECT THE CITY ADMINISTRATOR TO NOTIFY AND CONFIRM TO EDWARD
BROTHERS MALLOY THE EXERCISE OF THIS RIGHT**

(2500-2550 S. STATE ST ACQUISITION PROJECT)
(8 VOTES REQUIRED)

At a special meeting of the City Council of the City of Ann Arbor, Michigan (the "City"), Washtenaw County, Michigan, held in the City Hall, on Monday, February 24, 2014, at 7:07 p.m., Michigan time, there were

Present: Councilmembers Kailasapathy, Briere, Petersen, Lumm, Taylor, Kunselman, Teall, Eaton, Warpehoski, Anglin and Mayor Hieftje (11)

Absent: Councilmembers None (0)

The following preamble and resolution were offered by Councilmember Petersen and seconded by Councilmember Warpehoski :

RECITALS

WHEREAS, City Council approved an Industrial Facilities Exemption Certificate Agreement between the City of Ann Arbor and Edward Brothers Inc. (now Edwards Brothers Malloy, Inc. ("Edwards Brothers") (R-11-019) which included a provision granting to the City of Ann Arbor the Right of First Refusal to purchase the property;

WHEREAS, Edwards Brothers offered the property for sale and executed a Term Sheet for the sale of the property with the University of Michigan subject to the City's Right of First Refusal ("Offer");

WHEREAS Edwards Brothers provided notice to the City on November 27, 2013 of the principal terms of the Term Sheet between Edwards Brothers Malloy, Inc. (as to 2500 S. State St.) and Edwards Property Management, LLC (as to 2550 S. State St.) and the University of Michigan for the purchase and sale of the property and the City has sixty business days after the date of receipt of notice of the Offer and its terms to accept the Offer;

WHEREAS, City Council directed the City Administrator and the City Attorney to gather appropriate information to be used by City Council to evaluate whether to exercise the City's Right of First Refusal and to explore options to make this financially feasible (R-14-012);

WHEREAS, In response to City Council's directive, the Administration and the City Attorney has completed all appropriate inquiries regarding the title, boundaries, environmental conditions and physical condition of the property and the buildings and structures thereon;

WHEREAS, The City of Ann Arbor, Michigan (the "City") is authorized, pursuant to Act No. 99 of the Michigan Public Acts of 1933, as amended ("Act 99"), to enter into contracts for the purchase of lands, property or equipment for public purposes, to be paid for in installments over a period of not to exceed 15 years or the useful life of the property acquired, whichever is less;

WHEREAS, The City Council has determined that it is necessary and appropriate to acquire from Edwards Brothers Malloy, Inc., a Michigan corporation (the "Seller"), a parcel of real property within the City, located at 2500-2550 S. State St., Ann Arbor, Michigan, and all buildings and other improvements thereon, including the cell tower installed on a portion of the real property (the "Project"), and intends to exercise of its right of first refusal to purchase the Project;

WHEREAS, The City Council has further determined that it is necessary and appropriate to enter into an installment purchase agreement to finance such acquisition pursuant to Act 99, at a cost (exclusive of interest) not to exceed \$13,000,000, to be financed on an installment purchase basis ("Financed Funds");

WHEREAS, The City has solicited requests for proposals from several financial institutions for the purchase of the Seller's rights under a 5-yr installment purchase agreement for an amount not to exceed \$13,000,0000 to be prepayable at any time without penalty; and to receive an assignment of the Seller's rights in said agreement;

WHEREAS, The City has received three proposals in response to its request for proposals and is currently evaluated these proposals and it is necessary and desirable to authorize the Chief Finance Officer and/or the City Treasurer (each an "Authorized Officer") to select the proposal deemed economically advantageous and in the best interest of the City;

WHEREAS, The useful life of the Project has been determined to exceed fifteen (15) years, and the aggregate outstanding balance, exclusive of interest, of all installment contracts or agreements for purchases by the City of lands, property or equipment for public purposes, including the purchase of the Project described, does not exceed 1.25% of the taxable value of the real and personal property in the City;

WHEREAS, A form of Installment Purchase Agreement (the "Agreement"), attached hereto as Exhibit A, for the Project has been presented to the City Council and is before this meeting, which may be utilized to provide for the installment purchase financing in the principal amount of up to \$13,000,000 over a period of not more than five (5) years, with interest accruing at a variable rate, and payable at such intervals as determined by the Authorized Officer, with all outstanding principal payable at the 5-yr maturity of the Agreement, subject to prepayment by the City in whole or in part at any time without premium or penalty; and

WHEREAS, The City Council adopts the following findings and approves the following actions:

RESOLUTIONS

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The exercise of its Right of First Refusal for Acquisition of 2500-2550 S. State Street and the acquisition of the Project is hereby approved City Council on the terms and conditions stated in a certain Term Sheet between Edwards Brothers Malloy, Inc. and Edwards Property Management, LLC and the University of Michigan (“Term Sheet”) and the further provisions of this Resolution;
2. The terms and conditions of the Term Sheet require and Council approves a Lease between the City and Edward Brothers for their continued occupancy of 2500-2550 S. State Street for the period March 1, 2014 to December 31, 2014;
3. Funds are appropriated and a Project budget established for the acquisition of the Project in the amount of \$13,490,000 to cover the costs of acquisition, closing, and incidental costs to be available for expenditure without regard to fiscal year as follows:

Capital Projects Fund Revenue: Transfer from General Fund for closing and carrying costs - \$490,000 (2014 portion only). Note proceeds \$13,000,000.

Capital Projects Fund Expenditure: Purchase of property - \$13,000,000. Closing and carrying costs \$490,000.

General Debt Service Revenue: Transfer from the General Fund to debt service - \$200,000 (2014 portion only)

General Debt Service Expenditure: Interest payments on debt service - \$200,000 (2014 portion only)

General Fund Revenue: Use of Fund Balance for closing costs, carrying costs and interest payments - \$690,000 (2014 portion only)

General Fund Expenditure: Transfer out to Capital Projects/Debt Service Funds - \$690,000 (2014 portion only)

4. An Installment Purchase Agreement is deemed in the best interests of the City based on the existence of an immediate need for the acquisition of the Project to meet the response time required under the terms of the City’s Right of First Refusal and the acquisition and use of the Project constitute essential public purposes, including but not limited to the furtherance of the land use recommendations contained in the City’s South State Street Corridor Plan.

5. The form of the Installment Purchase Agreement which is attached at Exhibit A and incorporated herein by reference is hereby approved in substantially the form submitted to this meeting, and the Mayor and the City Clerk are hereby authorized and directed to execute, acknowledge and deliver the Installment Purchase Agreement for the acquisition and funding of the Project with such changes therein as shall be necessary or desirable, permitted by law and not materially adverse to the City subject to the approval as to form by the City Attorney. The financial terms of the transaction, substantially in accordance with those described in the Recitals above and as set forth in the Installment Purchase Agreement, with such changes therein as shall be negotiated with the Bank by the Authorized Officer and not materially adverse to the City, are also approved.
6. The Project has a useful life extending beyond five (5) years, the term of the Agreement, and the aggregate principal amount of the Installment Purchase Agreement and of all outstanding installment purchase obligations of the City under Act 99 does not exceed 1.25% of the taxable value of the real and personal property in the City.
7. The City hereby agrees to include in its budget for each fiscal year during the term of the Agreement an amount sufficient to pay when due the principal of and interest coming due under the Installment Purchase Agreement during such fiscal year. In addition, the City hereby pledges to levy in each fiscal year ad valorem taxes on all taxable property in the City in an amount which, together with other funds available for such purpose, shall be sufficient for the payments required under the Installment Purchase Agreement in such fiscal year, provided that any such tax levy is subject to existing charter, statutory and constitutional tax limitations.
8. The Mayor, the City Clerk, the City Treasurer, the Chief Financial Officer and the City Administrator, severally, are authorized to act on behalf of the City in executing and delivering all agreements, lease, assignment, documents, certificates, instruments of title, financing statements and other documents as may be necessary to consummate the transactions contemplated by the Resolution, and to pay costs incidental to the financing of the acquisition of the Project, including bond counsel fees and expenses, Bank counsel fees and expenses, closing and carrying costs and other incidental costs necessary to accomplish the financing and acquisition of the Project.
9. The obligation of the City to make the payments required under the Installment Purchase Agreement is a full faith and credit general obligation of the City, subject to applicable constitutional, statutory and charter limitations.
10. This Resolution shall be effective immediately upon its adoption.
11. That the City Administrator is authorized and directed to implement this Resolution, including provision of written notice to Edward Brothers Malloy, Inc.,

no later than February 25, 2014, of the City's exercise of its Right of First Refusal, which notice shall include a certified copy of this Resolution

12. All resolutions and parts of resolutions, insofar as they conflict with the provisions of this resolution, are hereby rescinded.

A roll call vote on the foregoing resolution was taken, the result of which is as follows:

YES: Councilmembers Briere, Petersen, Lumm, Teall, and Mayor Hieftje (5)

NO: Councilmembers Kailasapathy, Taylor, Kunselman, Eaton, Warpehoski and Anglin (6)

ABSTAIN: Councilmembers None (0)

THE RESOLUTION WAS THEREUPON DECLARED DEFEATED.

CERTIFICATION

I, the undersigned, the duly qualified and acting City Clerk of the City of Ann Arbor, Washtenaw County, Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council at a regular meeting held on February 24, 2014, the original of which is on file in my office, and that such meeting was conducted and public notice thereof was given pursuant to and in compliance with Act No. 267, Michigan Public Acts of 1976, as amended, and that minutes of such meeting were kept and are available as required by such Act.

Jacqueline Beaudry, City Clerk

Dated: February __, 2014

EXHIBIT A

Form of Installment Purchase Agreement

**CITY OF ANN ARBOR, MICHIGAN
INSTALLMENT PURCHASE AGREEMENT
(_____ ACQUISITION PROJECT)**

INSTALLMENT PURCHASE AGREEMENT

THIS INSTALLMENT PURCHASE AGREEMENT (_____ PROJECT) made and executed as of this ___ day of _____, 2014 (the “Agreement”), by and among the CITY OF ANN ARBOR, MICHIGAN, a home rule city organized and existing under the Constitution and laws of the State of Michigan (the “City”), _____, a Michigan _____ (the “Seller”), and _____, Ann Arbor, Michigan, as assignee of the Seller (the “Financial Institution”).

WHEREAS, the City has exercised its right of first refusal to purchase the property described in Exhibit A hereto, located at _____ in the City (the “Project”), pursuant to notice duly given to the Seller; and

WHEREAS, the Project will serve essential public purposes of the City.

WHEREAS, the City intends to finance its acquisition of the Project from the Seller through an installment purchase plan as authorized by Act 99 of the Public Acts of Michigan of 1933, as amended (hereinafter referred to as “Act 99”).

WHEREAS, the Financial Institution is willing to provide the required funding that will enable the City to acquire the Project on an installment purchase plan pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the respective representations and agreements herein contained, the parties hereto agree as follows:

Section 1. Definitions. The following terms, wherever used in this Agreement shall have the following meanings, unless the context shall indicate another or different meaning:

“Acquisition Fund” means the Acquisition Fund established by the City pursuant to Section 3 of this Agreement to be used to pay the Seller the Purchase Price for the Project.

“Act 99” means Act 99 of the Public Acts of Michigan of 1933, as amended.

“Agreement” means this Installment Purchase Agreement, by and among the City, the Seller and the Financial Institution.

“City” means the City of Ann Arbor, Washtenaw County, Michigan.

“Financed Funds” means the sum of \$_____ to be provided by the Financial Institution towards the Purchase Price of the Project.

“Financed Purchase Price” means that portion of the Purchase Price of the Project to be provided by the Financial Institution through the Financed Funds.

“Financial Institution” means _____.

“Interest Payment” means the payment of interest on the unpaid principal balance of the Financed Funds in accordance with the schedule set forth in Exhibit A attached hereto.

“Interest Rate” means a variable rate of interest per annum, computed on the basis of a 365/366 day year for the actual number of days elapsed, based on a floating rate index equal to _____.

“Payment Date” means the date a Principal Payment and Interest Payment are due and payable in accordance with the schedule set forth in Exhibit A attached hereto. The first Payment Date shall be _____ and subsequent Payment Dates shall be on the ___th day of each _____ of each year thereafter, or if not a business day on the next succeeding business day, to and including _____.

“Principal Payment” means the payment of a principal installment of the Financed Funds in accordance with the schedule set forth in Exhibit A attached hereto.

“Project” means the land, buildings and related improvements to be acquired, pursuant to the [Sale Agreement] and this Agreement, as described in Exhibit A hereto.

“Purchase Price” means the purchase price of the Project set forth in the [Sale Agreement].

“Seller” means _____, a Michigan _____.

“State” means the State of Michigan.

Section 2. Acquisition of Project. The City has agreed to acquire the Project from the Seller, and the Seller has agreed to sell the Project to the City, pursuant to terms of the [Sale Agreement]. The City will pay to the Seller the Purchase Price for the Project, with the funds deposited in the Acquisition Fund. Title to the Project shall be conveyed by the Seller to and shall at all times remain in the City.

Section 3. Establishment and Use of Acquisition Fund. Simultaneously with the execution of this Agreement, the City shall establish and maintain a separate depository account with a bank insured by the Federal Deposit Insurance Corporation, which may be the Financial Institution, entitled the “City of _____ Project Acquisition Fund” and shall immediately deposit the Financed Funds into such account. The City shall pay the Seller the Purchase Price of the Project as provided in the [Sale Agreement], from moneys available in the Acquisition

Fund. Upon acquisition of the Project and the payment of all amounts due and owing the Seller, the Acquisition Fund shall be closed and any remaining balance therein shall be used by the City to prepay in part the Principal Payments, to the extent prepayment is permitted, or to pay interest hereunder.

Section 4. Assignment of Seller's Interest. The Seller hereby irrevocably assigns its interest in this Agreement, except for certain warranties, indemnifications, representations and other obligations set forth in Sections 12 and 14 hereof (the "Seller's Interest"), to the Financial Institution in consideration for the City's promise to pay the Seller from moneys available in the Acquisition Fund the Purchase Price of the Project in accordance with the provisions of the [Sale Agreement]. Such assignment shall be without recourse to Seller, and Seller shall have no liability to the Financial Institution whatsoever arising under this Agreement. Such assignment shall not, however, include any warranties, indemnifications, representations or other obligations of the Seller to the City referenced in Sections 12 and 14 hereof. The City hereby consents to this assignment in consideration for the Financial Institution's promise to provide the City an amount equal to the Financed Funds to be used to pay the Seller a portion of the Purchase Price of the Project. The Financial Institution hereby accepts this assignment and will, upon execution of this Agreement, and upon consummation of the transactions contemplated hereby, pay to the City in immediately available funds, an amount equal to the Financed Funds to be deposited in the Acquisition Fund and used by the City to pay the Seller the Purchase Price of the Project in consideration for the City's promise to pay the Financial Institution the Principal Payments and Interest Payments in accordance with Section 5 hereof.

Section 5. Installment Payments. The City agrees to pay to the Financial Institution, as assignee of the Seller, the Principal Payments and the Interest Payments on the Payment Dates in accordance with the schedule set forth in Exhibit A attached hereto as payment for the Project on an installment purchase plan in accordance with Act 99. Any Principal Payment or Interest Payment which remains unpaid for more than five (5) days after the Payment Date on which it is due shall bear interest until paid at a fluctuating interest rate per annum equal [to the Interest Rate plus 1%] or the maximum rate permitted by law, whichever is less.

Section 6. Payments Unconditional. The City's obligation to the Financial Institution to pay the Principal Payments and Interest Payments is absolute and unconditional and shall remain in full force and effect until the amounts owed hereunder shall have been paid by the City to the Financial Institution, and such obligation shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation, any of the following:

- (a) Any failure of title with respect to the Project;
- (b) The invalidity, unenforceability or termination of this Agreement;
- (c) The modification or amendment (whether material or otherwise) of any non-Principal Payment or non-Interest Payment obligation, covenant or agreement set forth in this Agreement;
- (d) The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshaling of assets and liabilities, receivership, insolvency,

bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment or other similar proceedings affecting the Seller or any of its assets or any allocation or contest of the validity of this Agreement, or the disaffirmance of this Agreement in any such proceeding;

(e) To the extent permitted by law, any event or action which would, in the absence of this clause, result in release or discharge by operation of law of the Seller from the performance or observation of any obligation, covenant or agreement contained in this Agreement or the [Sale Agreement];

(f) The default or failure of the Seller fully to perform any of its obligations set forth in this Agreement, the [Sale Agreement] or any other agreement; or

(g) Any casualty or destruction of the Project.

The City shall make Principal Payments and Interest Payments when due and shall not withhold any such payments as a result of any disputes arising between the City and the Seller or any other person, nor shall the City assert any right of set-off or counterclaim against its obligation to make such payments or be entitled to any abatement of such payments as a result of accident or unforeseen circumstances, or the Project being unusable. Nothing in the Agreement shall prevent the City from pursuing any of its legal remedies against the Seller.

Section 7. Prepayment. The Principal Payments may be prepaid by the City in whole or in part in inverse order of maturity on any day, plus accrued and unpaid interest to the date of prepayment, without premium or penalty. Upon prepayment, interest shall cease to accrue on the Principal Payments prepaid and, in the case of a partial prepayment of the Financed Funds, Exhibit A attached hereto shall be revised to reflect such partial prepayment. The City shall give the Financial Institution seven (7) days' prior written notice of any prepayment, which may be delivered electronically to the Financial Institution's primary relationship officer for the City.

Section 8. Useful Life of Project. The City represents that the useful life of the Project is equal to or longer than the date of the final Principal Payment as set forth in Exhibit A attached hereto.

Section 9. Security for Payment - Limited Full Faith and Credit. The City agrees to include in its budget for each fiscal year during the term hereof an amount sufficient to pay when due the Principal Payments and Interest Payments coming due under this Agreement during such fiscal year. In addition, the City hereby pledges to levy in each fiscal year ad valorem taxes on all taxable property in the City in an amount which, together with other funds available for such purpose, shall be sufficient for the payment of such Principal Payments and Interest Payments in such fiscal year. Any such tax levy is, however, subject to existing charter, statutory and constitutional tax limitations.

Section 10. Term of Agreement. This Agreement shall terminate on the final Payment Date indicated on Exhibit A attached hereto or such earlier date that all amounts due hereunder by City to Financial Institution are paid in full.

Section 11. Representations of the City. The City makes the following representations:

(a) The City is a city duly organized and legally existing under the constitution and laws of the State of Michigan.

(b) The City will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a city under the laws of the State of Michigan.

(c) The City is authorized under the constitution and laws of the State, including Act 99, to enter into this Agreement and the transactions contemplated hereby and to perform all of its obligations hereunder.

(d) This Agreement constitutes a legal, valid, binding and enforceable obligation of the City in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

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

(f) The City will annually provide the Financial Institution with a copy of its annual audit within 180 days after the end of each fiscal year during the term of this Agreement.

(g) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting the City, nor to the best knowledge of the City is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement and which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement. All actions, authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by the City of this Agreement or in connection with the carrying out by the City of its obligations hereunder have been obtained.

(h) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which the City is or is to be a party will not violate any judgment, order, law or regulation applicable to the City.

(i) The City has adopted a binding resolution determining the useful life of the Project is equal to or longer than the date of final payment hereunder.

Section 12. Representations of the Seller and Financial Institution. (a) The Seller makes the following representations:

(i) It has the legal capacity to sell the Project.

(ii) The Agreement [and the Sale Agreement] are each valid, binding and enforceable in accordance with their respective terms upon it, except as enforcement may be limited by

applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(b) The Financial Institution makes the following representations:

(i) It has the legal capacity to execute this Agreement and to carry out its obligations and undertakings hereunder and the person executing this Agreement on its behalf has been duly authorized to do so.

(ii) The Agreement is valid, binding and enforceable in accordance with its terms upon it, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

Section 13. Tax Matters. The Financial Institution acknowledges that the Interest Payments are not excludable from gross income for federal income tax purposes.

Section 14. Seller's Representations, Warranties and Indemnification. (a) The Seller reaffirms its agreement to all of the terms, conditions and provisions of the [Sale Agreement]. The City expressly acknowledges that the Financial Institution makes, and has made, no representation or warranties whatsoever as to the existence or availability or enforceability of such warranties of the Seller.

(b) The Seller hereby represents that the Seller's Interest is not subject to any liens or encumbrances.

Section 15. Disclaimer of Warranties by Financial Institution. The Financial Institution makes no warranty or representation, either expressed or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Project, or warranty with respect thereto. In no event shall the Financial Institution be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or the City's use of the Project or any item thereof.

Section 16. Indemnification by City. To the extent permitted by the laws and the constitution of the State, the City shall protect, hold harmless and indemnify:

(a) the Financial Institution from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereto, and expenses in connection therewith, including without limitation, reasonable counsel fees and expenses arising out of the acquisition, use, operation or condition of the Project or any accident in connection with the operation, use or condition of the Project resulting in damage to property or injury or death to any person. This indemnification shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of this Agreement for any reason, and,

(b) the Seller from and against any and all liability, obligations, losses, claims and damages whatsoever, and expenses in connection therewith including without limitation reasonable counsel fees and expenses in connection therewith, including without limitation,

reasonable counsel fees and expenses asserted by the Financial Institution and arising out of this Agreement; provided, however, the foregoing indemnification shall not extend to any claim by the Financial Institution that the Seller breached its representations and warranties set forth in Sections 12 and 14 hereof.

Section 17. Events of Default. The following shall be an “Event of Default” under this Agreement:

(a) Failure by the City to make the Principal Payments and Interest Payments within 5 days of the times specified herein; or

(b) Failure of the City to observe and perform any other covenant, condition or agreement on its part to be observed or performed and continuation of such failure for a period of 30 days after written notice specifying such failure and requesting that it be remedied, unless the Financial Institution shall agree in writing to an extension of such time prior to its expiration, or unless such failure is other than the payment of money and shall be such that it cannot with due diligence be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the City within such period and diligently pursued until corrected; or

(c) The City shall: (i) admit in writing its inability to pay its debts generally as they become due; (ii) commence a proceeding under any federal or state bankruptcy, insolvency, reorganization or other similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed or unstayed for 60 days; (iii) make an assignment for the benefit of creditors or provide for the entry into any agreement for the composition of creditors; or (iv) have applied for the appointment of a receiver, purchaser or liquidator for it or the whole or any substantial part of its property; or

(d) The City shall materially breach any representation or warranty under this Agreement.

Section 18. Remedies Upon Default. Whenever an Event of Default referred to in Section 17 hereof shall occur and be continuing, the Financial Institution shall have the right to exercise the following remedies:

(a) Upon the occurrence of an Event of Default described in Section 17(a) hereof after all applicable grace periods have expired and the failure to cure such Event of Default within five (5) days following written notice from the Financial Institution to the City, the Financial Institution may, by written notice, declare all of the unpaid Principal Payments and Interest Payments (the portion thereof accrued) to be immediately due and payable, whereupon such amounts shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived; and

(b) Take whatever action at law or in equity may be allowed by law to enforce its rights under this Agreement.

Section 19. Assignment. This Agreement, and the obligation of the City to make the payments hereunder, may be assigned by the Financial Institution and reassigned in whole or in

part to one or more assignees at any time subsequent to its execution, without the necessity of obtaining the consent of the City; provided, however, that the City shall only be required to make payments to the Financial Institution and that the City shall deal only with the Financial Institution for purposes of this Agreement. The Financial Institution agrees to give notice of assignment to the City. The Financial Institution's interest in this Agreement may not be assigned or reassigned in whole or in part unless (i) the document by which such assignment or reassignment is made discloses the name and address of the assignee, and (ii) the City receives written notification of the name and address of the assignee. Provided that it does not result in any additional costs or expenses to the City beyond those described in this Agreement or a waiver of any right otherwise held by the City, the City hereby designates the Financial Institution or its assignee as its agent to maintain a book entry system, consisting of a record of ownership that identifies the owner of any interest in this Agreement, which record may be examined by the City at its request. The right to payment of the amounts due hereunder may be transferred only through such book entry system. Anything in the foregoing to the contrary notwithstanding, the Financial Institution's interest in this Agreement may be assigned in whole or in part upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for holders of certificates of participation in this Agreement.

Section 20. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when dispatched by registered or certified mail, return receipt requested, postage prepaid, or by hand delivery, or by telegram and confirmed the same day by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the City:

City of Ann Arbor
301 E. Huron Street
Ann Arbor, MI 48107
Attention: _____

If to the Financial Institution:

Attention: _____

If to the Seller:

Attention: _____

The parties hereto may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates or other communications may be sent.

Section 21. Governing Law. This Agreement shall be construed in all respects in accordance with the laws of the State.

Section 22. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 23. Binding Effect. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective successors and assigns of the parties hereto.

Section 24. 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 25. 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 26. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and there are no representations, warranties, promises, guarantees or agreements, oral or written, express or implied, between the parties hereto with respect to this Agreement.

Section 27. Amendments. This Agreement may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the City and the Financial Institution.

IN WITNESS WHEREOF, the City, the Financial Institution and the Seller have caused these presents to be signed all as of the day and year first above written.

CITY OF ANN ARBOR

“City”

By: _____

John Hieftje

Its: Mayor

By: _____

Jacqueline Beaudry

Its: City Clerk

Approved as to Substance

Approved as to Form and Substance

By: _____

Steven D. Powers, City Administrator

By: _____

Stephen K. Postema, City Attorney

“Financial Institution”

By: _____

Its: _____

“Seller”

By: _____

Its: _____

EXHIBIT A
Property Description

EXHIBIT B

Principal And Interest Payment Schedule