
PUBLIC FACILITIES PURCHASE AND OCCUPANCY AGREEMENT

between

**COUNTY SQUARE REDEVELOPMENT CORPORATION
as Seller**

and

**GREENVILLE COUNTY, SOUTH CAROLINA
as Buyer**

DATED AS OF FEBRUARY 1, 2020

ALL RIGHT, TITLE AND INTEREST OF COUNTY SQUARE REDEVELOPMENT CORPORATION IN THE REVENUES DERIVED UNDER THIS PUBLIC FACILITIES PURCHASE AND OCCUPANCY AGREEMENT (EXCEPT FOR CERTAIN RESERVED RIGHTS) HAVE BEEN ASSIGNED TO U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, UNDER A TRUST AGREEMENT DATED AS OF FEBRUARY 1, 2020, BETWEEN COUNTY SQUARE REDEVELOPMENT CORPORATION AND THE TRUSTEE.

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PUBLIC FACILITIES PURCHASE AND OCCUPANCY AGREEMENT

THIS PUBLIC FACILITIES PURCHASE AND OCCUPANCY AGREEMENT dated as of February 1, 2020 (the “*Facilities Agreement*”) is made and entered into by and between **COUNTY SQUARE REDEVELOPMENT CORPORATION** (together with its successors and assigns, the “*Corporation*”), a nonprofit corporation formed under the laws of the State of South Carolina (the “*State*”), as seller, and **GREENVILLE COUNTY, SOUTH CAROLINA** (the “*County*”), a political subdivision and body corporate and politic of the State, as buyer.

WITNESSETH

WHEREAS, the Corporation is a nonprofit corporation formed under the provisions of Title 33, Chapter 31, Code of Laws of South Carolina, 1976, as amended; and

WHEREAS, the County is a public body corporate and politic and a political subdivision organized and existing pursuant to the laws of the State and is authorized under the provisions of Title 4, Chapter 9, Code of Laws of South Carolina, 1976, as amended, to enter into this Facilities Agreement; and

WHEREAS, the County is the owner of certain land described in *Exhibit A* hereto (the “*Real Property*”) upon which will be constructed and renovated the Project Facilities (as defined below); and

WHEREAS, the Corporation and the County have agreed to enter into a Base Lease and Conveyance Agreement, dated as of February 1, 2020 (the “*Base Lease*”) pursuant to which the County is leasing the Real Property and conveying the 2020 Facilities located on the 2020 Real Property to the Corporation so that the Corporation will (i) provide funds for the acquisition, construction, renovation, installing, furnishing and equipping of (a) County administration facilities (the “*Administration Facilities*”) and (b) facilities to be used for various State and County governmental offices and court facilities (the “*2020 Facilities*” and together with the Administration Facilities, the “*Project Facilities*”); (ii) provide funds to enable the County to [acquire / be reimbursed for the acquisition of] the 2020 Real Property; and (iii) sell and convey the Project Facilities to the County; and

WHEREAS, in order to provide funds for the payment of the costs of financing (i) the Project Facilities and (ii) certain facilities, equipment and improvements (as more particularly described herein) which will not be situated on the Real Property and will not be subject to the Base Lease or this Facilities Agreement (the “*Ancillary Facilities*”), the Corporation intends to issue \$_____ Installment Purchase Revenue Bond Anticipation Notes, Series 2020, dated the date of their delivery (the “*Series 2020 Notes*”), under and by the terms of a Trust Agreement dated as of February 1, 2020 (the “*Trust Agreement*”) by and between the Corporation and U.S. Bank National Association, as trustee (the “*Trustee*”), the principal of and interest on which is to be paid from the proceeds of the Corporation’s installment purchase revenue bonds or one or more series of the Corporation’s bond anticipation notes; and

WHEREAS, the County has agreed to make certain payments (the “*Acquisition Payments*”) for its acquisition of the Project Facilities on an installment basis and, in accordance with the terms hereof, shall be entitled to the use and occupancy of the Real Property and the Project Facilities and certain other matters; and

WHEREAS, the right to receive Acquisition Payments is being assigned to the Trustee under the Trust Agreement as security and the source of payment for the Obligations (as defined herein);

NOW, THEREFORE, in consideration of the undertaking of the Corporation to acquire, construct, renovate and equip the Project Facilities, the undertaking of the County to pay the Acquisition Payments hereunder, the mutual covenants and agreements of the parties hereto, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Corporation and the County, intending to be legally bound, do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. Capitalized terms not otherwise defined herein shall have the meanings provided therefor in the Base Lease or the Trust Agreement or as set forth below:

“2020 Note Fund” means the fund of such name established pursuant to Section 5.5 of the Trust Agreement.

“2020 Project Fund” means the fund of such name established pursuant to Section 5.2 of the Trust Agreement.

“Acquisition Payments” means the payments to be paid by the County pursuant to **Sections 4.1** and **4.2** hereof, including Base Payments and Additional Payments, subject to an Event of Nonappropriation as provided in **Section 4.7** hereof.

“Acquisition Price” shall mean the sum of all Base Payments to be made hereunder on a semi-annual basis, on such dates as shown on **Exhibit C** hereto, in order for the County to acquire the Project Facilities; subject, however, at all times to **Sections 2.2** and **2.3** hereof, which Acquisition Price may be recalculated in the event of any prepayment of Base Payments provided for in **Section 9.1** hereof.

“Additional Payments” means that portion of the Acquisition Payments specified in **Sections 4.1** and **4.2** hereof as Additional Payments.

“Additional Project Facilities” means any facilities, other than the Project Facilities, proposed to be acquired or renovated by the Corporation and sold to the County under the provisions hereof. Such Additional Project Facilities may be made subject to this Facilities Agreement.

“Additional Real Property” means any real property that is or will become the site of Additional Project Facilities.

“Ancillary Facilities” means the following improvements: (i) various public improvements, including but not limited to roads, sidewalks and utility improvements adjacent to and in the vicinity of the Administration Facilities and (ii) an emergency operations center and related facilities. Such improvements and the real property upon which such improvements may situate shall not be subject to the Base Lease or this Facilities Agreement.

“Base Payments” means that portion of the Acquisition Payments specified in **Section 4.1** hereof as Base Payments.

“Bond Counsel” means a firm of nationally recognized bond counsel experienced in matters of tax-exempt finance that shall be acceptable to the Trustee.

“Certificate of Acceptance” means the Direction to Make Final Disbursement and Certificate of Acceptance filed with the Trustee in accordance with **Section 3.4** hereof.

“Completion Date” means the date on which the County provides a Certificate of Acceptance.

“Corporation Facilities” means that portion of the Project Facilities allocated to the Corporation as the result of a partition under the provisions of **Section 2.4** hereof.

“County Council” means the County Council of the Greenville County, the governing body of the County, and any successor body.

“County Facilities” means that portion of the Project Facilities allocated to the County as the result of a partition under the provisions of **Section 2.4** hereof.

“Environmental Regulations” means any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating to dangerous, toxic or hazardous pollutants, Hazardous Substances, chemical waste, materials or substances.

“Event of Default” means the events set forth in **Section 8.1** hereof.

“Event of Nonappropriation” means a termination of this Facilities Agreement pursuant to **Section 4.7** herein.

“Facilities Component” means an entire building, or a portion thereof, including any related auxiliary buildings and other structures, together with the Real Property associated therewith, or portion thereof, on which such building is located.

“Fiscal Year” means the fiscal year of the County, currently beginning on each July 1 and ending on the succeeding June 30.

“Force Majeure” means, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies or officials or any civil or military authority; insurrection; riots; landslides; earthquakes, flood; fire; storms, droughts; explosion; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the control of the party seeking the benefit of force majeure and not due to its own negligence.

“Hazardous Substances” means (a) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (i) pose a hazard to the Project Facilities or to persons on or about the Project Facilities or (ii) cause the Project Facilities to be in violation of any Environmental Regulation; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (c) any chemical, material or substance defined as or included in the definition of “waste,” “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” or “toxic substances” or words of similar import under any Environmental Regulation including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC §§ 9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §§ 6901 et seq.; the Hazardous Materials Transportation Act, 49 USC §§ 1801 et seq.; the Federal Water Pollution Control Act, 33 USC §§ 1251 et seq.; (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or agency or may or could pose a hazard to the health and safety of the occupants of the Project Facilities or the owners and/or occupants of property adjacent to or surrounding the Project Facilities, or any other person coming upon the Project Facilities or adjacent property; or (e) any other chemical, materials or substance which may or could pose a hazard to the environment.

“Net Proceeds” when used with respect to any proceeds from policies of insurance required hereby or any condemnation award, or proceeds from damages, refunds, adjustments or otherwise in

connection with claims against any suppliers, vendors, contractors or subcontractors and/or materialmen or similar persons, including payments from sureties or on performance bonds with respect thereto, or from any liquidation of any part of the Project Facilities, means the amount remaining after deducting from the gross proceeds thereof all expenses (including, without limitation, reasonable attorney's fees and costs) incurred in the collection of such proceeds or award.

“Obligations” means collectively, the Series 2020 Notes, the Bonds and the Notes issued from time to time pursuant to the provisions of the Trust Agreement, as supplemented or amended.

“Obligation Proceeds” means the gross proceeds received from the issuance and sale of the Series 2020 Notes plus any additional series of Obligations.

“Ordinance” means that certain ordinance enacted by the County Council on January 7, 2020, which, inter alia, authorizes the financing of the Project Facilities and the Ancillary Facilities and expresses the intent of the County to enter into this Facilities Agreement.

“Owner” means the registered owner of any Obligation as shown in the registration books of the Corporation maintained by the Trustee or any registrar or paying agent.

“Permitted Encumbrances” means, as of any particular time, (i) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pursuant to the provisions of **Sections 4.1 and 4.2** respectively hereof; (ii) the Security Documents; (iii) utility, access and other easements and other rights-of-way, restrictions and exceptions which an officer of the County certifies will not interfere with or impair the use of the Real Property or Project Facilities by the Corporation or the County as contemplated hereby, including rights or privileges in the nature of easements; (iv) any financing statements filed to perfect security interests pursuant to this Facilities Agreement or the Trust Agreement; and (v) the matters described on **Exhibit B** hereto.

“Project Facilities” means the projects designated as such by the Corporation and the County to be acquired, constructed or renovated and includes the assets and improvements, the cost of acquisition, construction, renovation or equipping for which is or has been paid from amounts disbursed from the 2020 Project Fund and includes any Additional Project Facilities. Ancillary Facilities are not included with the Project Facilities.

“Project Facilities Contracts” means those contracts entered into by or on behalf of the Corporation in connection with the Project Facilities.

“Purchase Option Price” means an amount equal to the amount required to defease or otherwise discharge the Obligations under the Trust Agreement plus the amount of any Additional Payments which are due or accrued hereunder at the time which any purchase option hereunder is exercised.

“Real Property” means that certain real property leased to the Corporation under the Base Lease, as more particularly described on **Exhibit A** attached hereto, as may be amended in accordance with **Section 10.6** herein.

“Security Documents” means this Facilities Agreement, the Base Lease, the Trust Agreement, financing statements, if any, and any other instruments or documents providing security for the Owners of the Obligations.

“State” means the State of South Carolina.

“*Waiver Period*” means the period of time commencing on the date notice is received by the County pursuant to **Section 4.7(b)** hereof of the occurrence of an Event of Nonappropriation and ending on and including the July 31 following the commencement of a Fiscal Year affected by an Event of Nonappropriation.

Section 1.2. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.

Section 1.3. Terms Defined in the Trust Agreement; Rights of the Trustee. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Trust Agreement unless the context clearly indicates to the contrary. The parties hereto acknowledge that the rights of the Corporation hereunder have been assigned to the Trustee to the extent and in the manner provided in the Trust Agreement. Accordingly, wherever in this Facilities Agreement reference is made to the Corporation for enforcement of any right or remedy, the parties agree that the Trustee may enforce such right or remedy regardless of whether so stated. The parties acknowledge that the Trustee is a third-party beneficiary of the obligations of the County hereunder and may act directly, in its own name, in enforcing such obligations.

Section 1.4. County Representations, Warranties and Covenants. The County makes the following representations, warranties and covenants:

(a) The County is a body corporate and politic and a political subdivision organized and existing under the laws of the State and has full power and legal right to enter into this Facilities Agreement and the Base Lease and to perform its obligations hereunder and thereunder. The County’s actions in making and performing this Facilities Agreement and the Base Lease have been duly authorized by all necessary governmental action and do not and will not violate or conflict with any law or governmental rule or regulation, or any mortgage, agreement, instrument or other document by which the County or its properties are bound.

(b) The County is a political subdivision within the meaning of Section 103(c)(1) of the Code.

(c) The County will take such action as is necessary to assure that the Project Facilities are completed, furnished and occupied by the County. In the event the amounts available from the proceeds from the Obligations appear to be insufficient for such purpose, the County shall cooperate with the Corporation to make such modifications or changes in the Project Facilities as will assure the completion, provided that under no circumstances shall the County be required to expend any monies for Project Facilities other than monies in the 2020 Project Fund. Nothing herein shall prohibit the payment by the County of costs of Project Facilities from other sources available to it.

(d) The County will take such action as is necessary to ensure that the proceeds from the Obligations, other than amounts set aside in the Trust Agreement for payment of costs of issuance, funding of reserves or payment of interest, are applied solely for the payment of the costs of acquiring the Project Facilities and the Ancillary Facilities (from the payment of Base Lease Rent).

(e) No portion of the Project Facilities or the Ancillary Facilities will be used in the trade or business of a person who is not a “political subdivision” within the meaning of Section 103(c)(1) of the Code, without the written approval of Bond Counsel.

(f) The amounts, if any, spent by the County from its own funds to pay costs of the acquisition, construction, renovation and equipping of the Project Facilities or the Ancillary Facilities, including site preparation or similar costs incident to the commencement of construction were not expended more than 60 days prior to the date the County signed a reimbursement certificate signifying its intention to be reimbursed from tax-exempt bond proceeds for prior expenditures paid, except with respect to certain preliminary expenditures for architectural, engineering, surveying, soil testing and similar costs.

(g) To the knowledge of the County, there is no fact that is not disclosed in the Official Statements for the Series 2020 Notes which will materially and adversely affect the properties, activities, operations, revenues, prospects or condition (financial or otherwise) of the County, its status as a political subdivision of the State within the meaning of Section 103(c)(1) of the Code, its ability to own and operate its property in the manner such property is currently operated or its ability to perform its obligations under this Facilities Agreement or the Base Lease.

(h) There are no proceedings pending or, to the knowledge of the County, threatened against or affecting the County, except as disclosed in the Official Statements for the Series 2020 Notes, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the properties, operations, prospects or condition (financial or otherwise) of the County, or the corporate existence or powers or ability of the County to enter into and perform its obligations under this Facilities Agreement or the Base Lease.

(i) The execution and delivery of this Facilities Agreement and the Base Lease (collectively, the “*County Agreements*”), and the consummation of the transactions provided for herein and therein, and compliance by the County with the provisions of the County Agreements:

(i) are within the governmental powers and have been duly and validly authorized by all necessary governmental and other action on the part of the County;

(ii) do not and will not conflict with or result in any material breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the County pursuant to, any indenture, loan agreement or other agreement or instrument (other than this Facilities Agreement) or any governmental restriction to which the County is a party or by which the County, its properties or operations may be bound or with the giving of notice or the passage of time or both would constitute such a breach or default or result in the creation or imposition of any such lien, charge or encumbrance, which breach, default, lien, charge or encumbrance could materially and adversely affect the validity or the enforceability of the County Agreements or the County’s ability to perform fully its obligations under the County Agreements; nor will such action result in any violation of any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the County, its properties or operations are subject.

(j) No event has occurred and no condition exists that constitutes an Event of Default or which, upon the execution and delivery of this Facilities Agreement, and/or the passage of time or giving of notice or both, would constitute an Event of Default. The County is not in violation in any material respect, and has not received notice of any claimed material violation (except such violations as do not, and shall not, have any material adverse effect on the transactions herein contemplated and the compliance by the County with the terms hereof, or the Security Documents), of any terms of any court order, statute, regulation, ordinance, agreement, or other instrument to which it is a party or by which it, its properties or its operations may be bound.

(k) This Facilities Agreement is a legal, valid and binding obligation and agreement of the County, enforceable against the County in accordance with its terms except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity; anything herein to the contrary notwithstanding, this Facilities Agreement is subject in its entirety to the right of the County to terminate this Facilities Agreement and all the terms and provisions hereof by failing to budget and appropriate moneys specifically to pay Acquisition Payments, as provided in **Sections 2.2, 4.6 and 4.7** hereof.

(l) The operation of the Real Property and the Project Facilities in the manner contemplated will not conflict in any material respect with any zoning, water or air pollution or other ordinance, order, law, rule, or regulation applicable to the Real Property and the Project Facilities including, without limitation, Environmental Regulations. The County has caused or will cause the Project Facilities to be designed in accordance with all applicable federal, state and local laws or ordinances (including rules and regulations) relating to zoning, planning, building, safety and environmental quality. The County will operate or will cause the Real Property and the Project Facilities to be operated in compliance with the requirements of all such laws, ordinances, rules and regulations, including, without limitation, Environmental Regulations. The County further covenants and agrees to comply in all material respects with and materially conform to, and to use its reasonable efforts to cause other persons whose obligations it is to so comply, by contract or pursuant to law, to comply in all material respects with and materially conform to, all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and every applicable governmental authority, including Environmental Regulations, applicable to the Real Property and the Project Facilities, and all covenants, restrictions and conditions now or hereafter of record which may be applicable to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Real Property and the Project Facilities, including building and zoning codes and ordinances (collectively, the "**Legal Requirements**"), provided that the County shall not be in default hereunder so long as the County promptly after receiving an actual written notice of any noncompliance, files a copy thereof with the Trustee and the County commences and uses its diligent efforts to cause compliance with such Legal Requirements, as long as the failure to comply does not subject the Real Property or the Project Facilities to any material danger of being forfeited or lost as a result thereof. The County possesses or will possess, and the County hereby agrees to maintain and obtain in the future, all necessary licenses and permits, or rights thereto, to operate the Real Property and the Project Facilities as proposed to be operated, and all such licenses, permits or other approvals required in connection with the operation of the Real Property and the Project Facilities have been duly obtained and are in full force and effect except for any such licenses, permits or other approvals that are not yet required and that will be duly obtained not later than the time required or the failure to obtain which will not materially and adversely affect the operation of the Real Property and the Project Facilities. The County covenants and agrees to do all things necessary to preserve and keep in full force and effect its franchises, rights, powers and privileges as the same relate to the Real Property and the Project Facilities.

(m) The County has approved the Corporation and the issuance by the Corporation of the Series 2020 Notes.

(n) The County has not as of the date hereof terminated any lease, lease-purchase agreement or installment purchase agreement to which it has been a party by nonappropriation.

Section 1.5. Corporation Representations, Warranties and Covenants. The Corporation makes the following representations, warranties and covenants:

(a) The Corporation is a duly organized and existing nonprofit corporation created under the laws of the State, has the requisite power to carry on its present and proposed activities, and has full power, right and authority to enter into this Facilities Agreement, the Trust Agreement and the Base Lease and to perform each and all of the obligations of the Corporation provided therein.

(b) The Corporation has taken or caused to be taken all requisite corporate action to authorize the execution and delivery of, and the performance of its obligations under this Facilities Agreement, the Base Lease, the Trust Agreement and each of the Project Facilities Contracts to which it is or will be a party.

(c) By proper corporate action the officers of the Corporation have been duly authorized to execute and deliver this Facilities Agreement, the Base Lease, and the Trust Agreement.

(d) The execution and delivery by the Corporation of this Facilities Agreement, the Base Lease and the Trust Agreement and the consummation by the Corporation of the transactions contemplated hereby and thereby have not and will not conflict with or constitute a breach of or default under the Corporation's articles of incorporation or bylaws or any bond, debenture, note or other evidence of indebtedness of the Corporation, or any contract, agreement, or instrument to which the Corporation is a party or by which it is bound.

(e) Each of this Facilities Agreement, the Base Lease, the Trust Agreement and each Project Facilities Contract to which the Corporation is or will be a party has been or will be duly executed and delivered by the Corporation and constitutes or will constitute a legal and valid obligation of the Corporation, enforceable against the Corporation in accordance with its terms, except as enforcement may be limited by laws affecting creditors' rights generally and except as equitable remedies may be limited by judicial discretion.

(f) To the knowledge of the Corporation, there is no litigation pending or threatened against the Corporation that challenges the Corporation's authority to execute, deliver or perform this Facilities Agreement or the Trust Agreement or to issue the Series 2020 Notes, and the Corporation has disclosed any threatened litigation with respect to such matters of which the Corporation is aware.

(g) The Corporation is in material compliance with all applicable laws, regulations and ordinances, including but not limited to those applicable to the Corporation's activities in connection with this Facilities Agreement.

(h) The Corporation is a South Carolina nonprofit, public benefit corporation, no part of the net income of which inures to the benefit of any private individual or organization.

(i) In order to finance the Project Facilities, the 2020 Real Property and the Base Lease Rent (which will be used to finance the Ancillary Facilities), the Corporation will enter into the Trust Agreement pursuant to which it will issue the Obligations payable from and secured by the Acquisition Payments under this Facilities Agreement.

[End of Article I]

ARTICLE II

ACQUISITION AND USE OF PROJECT FACILITIES

Section 2.1. *Acquisition and Use of Project Facilities; Term.* The Corporation hereby agrees to sell the Project Facilities on an installment basis to the County in accordance with the provisions hereof. As of the date hereof, title to the Project Facilities is in the name of the Corporation. Upon each payment of Base Payments from funds other than amounts constituting Obligation Proceeds (including any amounts deposited from the sale of Series 2020 Notes or other Obligations as provided in Section 5.1 of the Trust Agreement and income from the investment of such amounts), title to an undivided interest in the Project Facilities equal to that percentage of the Acquisition Price represented by such payment will transfer from the Corporation to the County without further action by either party hereto.

In conjunction therewith, the Corporation hereby conveys and grants to the County an undivided interest in the Project Facilities which undivided interest shall increase pro rata based on the percentage of the Acquisition Price represented by each Base Payment. At the request of the County, the Corporation agrees to execute such quitclaim or special warranty deed(s) to the County indicating the undivided interest so acquired by the County.

Any prepayment of Base Payments will result in a recalculation of the Acquisition Price to take account of such prepayment and, upon the making of such prepayment, the County shall be credited with an undivided interest in the Project Facilities equal to that percentage of the total Acquisition Price, as adjusted, represented by the total of all Base Payments made, including the prepayment on such date.

Subject to the provisions of **Section 4.7** and **Article VIII** hereof, the County shall have the exclusive right to occupy and use the Real Property and the Project Facilities until this Facilities Agreement is terminated.

The County may permit agencies of the State or any other political subdivision thereof to use portions of the Real Property and the Project Facilities subject to the following limitation: (i) the Real Property or Project Facilities shall not be used in any manner that interferes with the use of such property by the County for the purposes for which it was designed or is then being used; and (ii) except in the case of single event uses, the County shall have received an opinion from Bond Counsel stating that the proposed use will not adversely affect the Federal income tax treatment of interest on the Series 2020 Notes or other tax-exempt Obligations issued to retire or refund the Series 2020 Notes or other Obligations. The County shall monitor all such use to ensure continued compliance with the provisions of the Tax Regulatory Agreement and **Section 5.3** hereof.

Section 2.2. *Termination.* This Facilities Agreement shall terminate upon the earliest of any of the following events:

(a) The earlier of (i) the last day of the Fiscal Year during which there occurs an Event of Nonappropriation as provided in **Section 4.7(a)** hereof, or (ii) the July 31 following any July 1 on which the County shall fail to specifically budget and appropriate moneys sufficient to pay the Acquisition Payments due hereunder during the Fiscal Year beginning such July 1, pursuant to **Article IV** hereof (which Event of Nonappropriation is not thereafter duly waived);

(b) The purchase by the County of the Project Facilities as provided in **Article IX** hereof;

(c) The occurrence of an Event of Default under and termination of this Facilities Agreement by the Corporation or Trustee under **Article VIII** hereof; or

(d) June 30, 20__, or such later date as all Acquisition Payments due hereunder shall be paid.

Termination of this Facilities Agreement shall terminate all obligations of the County under this Facilities Agreement, including its obligations to pay any future Acquisition Payments (except as specifically provided herein), and, subject to identification as provided in **Section 2.4** hereof, shall terminate the County's rights of possession under this Facilities Agreement to the Corporation Facilities (except to the extent of any conveyance pursuant to **Article IX** hereof); but all other provisions of this Facilities Agreement, including all obligations of the Corporation with respect to the Owners of the Obligations and the receipt and disbursement of funds and all rights and remedies of the Corporation specifically provided herein, shall be continuing until the Trust Agreement is discharged as provided therein. Notwithstanding the foregoing, termination of this Facilities Agreement shall not impair the County's rights as landlord or the Corporation's rights as tenant under the Base Lease, except as provided in the Base Lease.

Section 2.3. Post-Termination Payments. In the event the County fails to deliver possession of the Corporation Facilities or any part thereof at the time required under **Section 2.4** hereof, the County shall be liable for the payment of Acquisition Payments, including Additional Payments, for successive six month periods commencing on the Payment Date following the last due date of Base Payments hereunder until the County delivers possession of the Corporation Facilities to the Corporation.

Section 2.4. Surrender of Possession Upon Termination; Partition of Undivided Interests. Upon the occurrence of an Event of Default or an Event of Nonappropriation which results in termination hereof, the respective interests of the County and the Corporation in the Project Facilities and the Real Property shall be partitioned, so that the parties' respective undivided interests in the Project Facilities and the Real Property will be divided, to the extent feasible, into separate interests comprising the Facilities Components in accordance with the following provisions. The date upon which the Trustee gives notice of the occurrence of any such event under the provisions of **Section 4.7(b)** hereof or Section 7.2 of the Trust Agreement shall be the "***Division Date.***"

Appointment of Consultant; Report. As soon as practicable after the Division Date, the Trustee shall at the expense of the County appoint an advisor selected by the County and the Corporation (the "***Consultant***") experienced in the valuation of municipal facilities to propose a division of the respective interests in the Project Facilities and the Real Property. In preparing the proposed partition, the Consultant shall endeavor, as nearly as possible, to allocate Project Facilities so that entire Facilities Components are assigned to the County and the Corporation, respectively, and that the Project Facilities and Facilities Components assigned to the Corporation will be those which will protect the interests of the Owners.

Valuation of Facilities Components. In making the determinations of which portions of Project Facilities are to be allocated to the Corporation to protect the interests of the Owners, the Consultant may take into account the market value of Facilities Components, any Permitted Encumbrances that may affect the uses that may be made of such property and the relative importance of such Facilities Components to the County, all to determine which Facilities Components will best protect the interests of the Owners.

Partial Divisions. In the event that the Consultant is unable to devise a partition that results in a division of the Project Facilities solely into separate Facilities Components for the County and the Corporation, then the Consultant shall endeavor to identify Facilities Components with the least residual interest in the Corporation, such being designated as the "***Partial County Facilities.***" With respect to Partial County Facilities, the County may (i) continue to occupy the Facilities Component which encompasses a Partial Municipal Facility if it agrees to make payments in an amount to be determined by the Consultant as the proper charge for use of the Corporation's interest in such Facilities Component; (ii)

purchase the balance of the Corporation's interest in such Facilities Component by the payment of the amount determined by the Consultant; or (iii) cede occupancy rights to the Corporation for the duration of the term of the Base Lease. In determining the purchase price, if the County elects to purchase the balance of the Corporation's interest, the Consultant shall determine the prepayment amount that would be required under the third paragraph of **Section 2.1** hereof to result in the allocation of the Facilities Component to the County. In setting the payments to be made by the County if it chooses to continue to occupy the Facilities Component which includes a Partial Municipal Facility, the Consultant shall set a payment that is not less than the amount of total Base Payments allocable to such Facilities Component that would have been payable from and after the date of partition if this Facilities Agreement or the rights of the County hereunder had not been terminated.

Proposal; Finality. The Consultant shall be required to make its proposal not later than 45 days after the date of its appointment. The County and the Corporation shall have seven business days from the receipt of the Consultant's proposal to object to the partition recommended therein, and if there is no objection, the report shall be final. If there is any objection, the Consultant shall issue a final partition report not later than seven business days after the last date on which objection could be made and such report shall be conclusively binding upon all parties. The Trustee shall be fully protected in relying on any report of the Consultant which is accepted by both the County and the Corporation, and the Trustee has no duty or obligation to make any determination or evaluation with respect to such agreed to partitions.

Instruments of Conveyance. Not later than 10 business days after the Consultant's report becomes final, the County and the Corporation shall exchange deeds, leases or other instruments conveying title to such of the Project Facilities as is required to effect such partition; provided, however, that any conveyance deed or other instrument made by the Corporation shall be made in the manner and subject to the conditions set forth in **Section 9.2** hereof. Immediately thereafter, the County shall deliver up or cause to be delivered up peaceable possession of the Corporation Facilities to the Corporation, together with the related portions of the Real Property, if any, upon which it is located, without delay, in good repair and operating condition, excepting reasonable wear and tear; provided, however, that in the event of a partial division, the terms relating to Partial County Facilities described above shall control and the Corporation shall deliver up or cause to be delivered up peaceable possession of the County Facilities to the County, together with the related portions of the Real Property, if any, upon which it is located, without delay, in good repair and operating condition, excepting reasonable wear and tear; provided, however, that in the event of a partial division, the terms relating to Partial County Facilities described above shall control. Any Facilities Component delivered to the Corporation in connection with such partition shall remain, at all times, subject to the terms of the Base Lease.

[End of Article II]

ARTICLE III

THE PROJECT FACILITIES; FINANCING

Section 3.1. Acquisition, Construction, Renovation and Equipping of the Project Facilities.

The Corporation and the County acknowledge that the County will be responsible for any and all contracts necessary or appropriate for the acquisition, construction, renovation and equipping to be performed in connection with the completion of the Project Facilities and the County shall be the agent of the Corporation for all such purposes. The County and the Corporation agree and acknowledge that all contracts relating to the Project Facilities shall be entered into in compliance with the procurement procedures of the County. The County may install machinery, equipment and other tangible property in the Project Facilities and all such machinery, equipment and other tangible property not acquired and financed from Obligation Proceeds will remain the sole property of the County and will not be deemed a portion of the Project Facilities.

Section 3.2. Administration of Project Facilities Contracts. The County shall be responsible for preparing, administering, amending and enforcing the contracts to be entered into with respect to the Project Facilities and for litigating or settling all claims thereunder. The County and the Corporation, as their interests may appear, will be entitled to the benefit of all warranties, guaranties and indemnities provided under the Project Facilities Contracts and by law.

Section 3.3. Notices and Permits. The Corporation shall cooperate in any request made by the County in order to give or cause to be given all notices and shall comply or cause compliance with all laws, ordinances, municipal rules and regulations and requirements of public authorities applying to or affecting the conduct of any work relating to the Project Facilities. To the extent permitted by law, the County will defend and save the Corporation, the Trustee and their respective members, directors, officers, agents and employees harmless from all liabilities, damages or fines due to failure to comply therewith.

Section 3.4. Disbursements from the 2020 Project Fund.

(a) The balance of the Obligation Proceeds (net of any underwriter's discount retained by the underwriter of the Series 2020 Notes) shall be deposited by the Trustee into the 2020 Project Fund. Thereafter, disbursements from the 2020 Project Fund shall be made for costs of the Project Facilities, the 2020 Property and the Ancillary Facilities and costs of issuance in accordance with the procedures set forth in Section 5.3 of the Trust Agreement.

(b) As provided in Section 5.3(c) of the Trust Agreement, the final requisition from the 2020 Project Fund shall contain, among other things, a Certificate of Acceptance of the County stating that the Project Facilities have been substantially completed in accordance with the applicable Project Facilities Contracts and other terms and conditions of the Facilities Agreement and that the Project Facilities comply in all material respects with all applicable governmental regulations. Upon receipt of such Certificate of Acceptance, the Trustee shall apply any balance then remaining in the 2020 Project Fund in the manner provided in Section 5.4 of the Trust Agreement. As used in this paragraph, "substantial completion" of the Project Facilities shall mean completion such that a certificate of occupancy could be issued notwithstanding the fact that certain minor items of work remain to be done.

(c) Any amounts remaining in the 2020 Project Fund following the delivery of such Certificate of Acceptance by the County to the Trustee shall be paid to the County or as otherwise provided in Section 5.4 of the Trust Agreement. Any amounts so disbursed to the County shall be expended only for the purpose of defraying the cost of Project Facilities, Ancillary Facilities or other

capital expenditures. The County by notice to the Corporation may direct that any of the amounts available to it under this **Section 3.4(c)** be applied as provided in Section 5.4 of the Trust Agreement.

Section 3.5. No Merger of Project Facilities. The Corporation and County confirm that the Project Facilities shall be property of the Corporation and title thereto shall remain vested in the Corporation and shall not merge into the respective leasehold estates of the Corporation in the Real Property and that title to the Project Facilities shall revert to and be vested in the County upon termination of the Base Lease. Undivided interests in the Project Facilities are automatically conveyed to the County from time to time as Acquisition Payments are made as contemplated hereby.

[End of Article III]

ARTICLE IV

ACQUISITION PAYMENTS; ASSIGNMENT TO TRUSTEE

Section 4.1. Acquisition Payments.

(a) *Acquisition Payments to Constitute a Current Expense of County.* The Corporation and the County understand and intend that the obligation of the County to pay Acquisition Payments hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, moneys or credit of the County.

(b) *Payment of Base Payments.* Subject to an Event of Nonappropriation as described in **Section 4.7** hereof, on or before the 15th day prior to each Payment Date during the period this Facilities Agreement is in effect, the County shall pay to the Trustee, as assignee of the Corporation, Base Payments exclusively from moneys specifically budgeted and appropriated for such purpose as provided in **Section 4.1(b)(ii)** herein in lawful money of the United States of America, which payments shall be made to the Trustee as assignee of this Facilities Agreement, in the amounts and on the dates set forth on *Exhibit C* hereto.

(i) Each payment of Base Payments shall be in consideration for the conveyance of title to an undivided interest in the Project Facilities as and to the extent provided in **Section 2.1** hereof. As further consideration for the receipt of Base Payments, the County shall be entitled to the use and occupancy of all of the Real Property and the Project Facilities during the applicable Fiscal Year in which such payments are made, subject to the provisions of **Section 8.2** hereof.

(ii) Subject to the right of the County to terminate this Facilities Agreement pursuant to **Section 4.7** herein, the County covenants that it will enact by June 30 of each year a budget providing for the appropriation of funds sufficient (or a debt service budget providing for the issuance of general obligation bonds or other legally permissible debt at such time and in a principal amount sufficient) to make Acquisition Payments coming due in the next succeeding Fiscal Year, and, subject to such **Section 4.7**, apply such funds and/or proceeds to the payment of Acquisition Payments coming due in the then current Fiscal Year.

(iii) Prior to the commencement of the Base Payments set forth on *Exhibit C* hereto, the County agrees to pay annual rental payments (the "**Rental Payments**") for the use and occupancy of all of the Real Property and the Project Facilities during the applicable Fiscal Year in which such Rental Payments are made, subject to the provisions of **Section 8.2** hereof. The Rental Payments are set forth on *Exhibit C*.

(c) *Payment of Additional Payments.* Subject to the provisions of **Section 4.7** hereof, the County agrees to pay the following amounts as Additional Payments together with such other sums as are provided for herein:

(i) The amounts provided for in **Sections 4.2** and **4.4** hereof to the parties referred to therein;

(ii) All reasonable costs and expenses (including reasonable attorneys' fees, costs and expenses, if any) incurred or to be paid by the Corporation or the Trustee, as the case may be,

under the terms of this Facilities Agreement or the Trust Agreement, including without limitation the amounts specified in **Section 4.4** hereof; and

(iii) All reasonable costs and expenses incurred or to be paid by the Corporation from time to time in connection with its operation and existence as a nonprofit corporation, including its legal fees, costs of maintaining directors and officers insurance and payment of any taxes due, including the costs of preparation and filing of tax returns.

The Corporation may, but shall be under no obligation to, advance moneys (i) to pay taxes, assessments and other governmental charges with respect to the Real Property and the Project Facilities, (ii) for the discharge of mechanic's and other liens relating to the Real Property and the Project Facilities, (iii) to obtain and maintain insurance for the Real Property and the Project Facilities and pay premiums therefor, and (iv) generally, to make payments and incur expenses in the event that the County fails to do so as required by this Facilities Agreement or the Base Lease. As provided in Section 6.11 of the Trust Agreement, the Trustee may, but shall be under no obligation to, take any such action. Any such advances shall continue to be due as Additional Payments hereunder.

(d) *Credits.* The County shall be entitled to a credit against payments of Base Payments in the amount of any deposits in the 2020 Note Fund provided for in Sections 5.6(d) and 5.6(e) of the Trust Agreement. In addition to the credit provided in the preceding sentence, the amount payable by the County as Base Payments will be reduced by the amount of money in the Acquisition Account to be credited against those payments and representing Base Payments, including without limitation accrued interest on the Series 2020 Notes or other Obligations.

(e) *Reserved.*

(f) *Acquisition Payments by County.* The County has no reason to believe, as of the date hereof, that it will not continue making Acquisition Payments through the entire duration of this Facilities Agreement, and reasonably believes that it will pay the Acquisition Payments due or coming due hereunder in order to continue to use the Project Facilities.

Section 4.2. Acquisition Payments Not Subject to Reduction, Offset or Other Credits.

(a) The County and the Corporation intend that this Facilities Agreement shall yield on a net basis the Base Payments specified in **Section 4.1** hereof during the duration of this Facilities Agreement, and that all costs, expenses, liabilities and obligations of any kind and nature whatsoever including, without limitation, any *ad valorem* taxes or other taxes levied against owners of real or personal property, insurance premiums, utility charges, fees and expenses of the Consultant, and assessments and all operation, maintenance, repair and upkeep expenses relating to the Project Facilities and Real Property and the use of the Project Facilities and Real Property which do not constitute Base Payments, or other obligations relating to the Project Facilities and Real Property which may arise or become due during this Facilities Agreement and which the Corporation except for this Facilities Agreement or the provisions of the Base Lease would ordinarily be required to pay as owner of the Project Facilities and Real Property (regardless of whether the County as owner would be so required to pay) shall either be paid under the provisions of the Base Lease or be included in the Acquisition Payments and paid by the County as Additional Payments. The County acknowledges that, under the provisions of the Base Lease, it has retained sole responsibility for the payment of taxes and insurance on the Real Property and the Project Facilities and the property associated therewith and the obligations of the County under the Base Lease are not subject to the limitations of **Section 4.6** hereof, except as provided in **Section 4.1(b)** of the Base Lease.

(b) All payments of Additional Payments referred to in **Section 4.2(a)** above shall be made by the County in immediately available funds on a timely basis directly to the person or entity to which such payments are owed; provided, however, subject to the terms of the Security Documents, that the County shall not be required to pay, discharge or remove any tax, lien, or assessment or any mechanic's, laborer's or materialman's lien or encumbrance, or any other imposition or charge against the Real Property or the Project Facilities or any part thereof, or comply with any law, ordinance, order, rule, regulation or requirement, as long as the County shall, after written notice to the Corporation and the Trustee, at the County's expense, contest the same or the validity thereof in good faith, by action or inaction which shall operate to prevent the collection of the tax, lien, assessment, encumbrance, imposition or charge so contested, or the enforcement of such law, ordinance, order, rule, regulation or requirement, as the case may be, and the sale of the Real Property or the Project Facilities or any part thereof to satisfy the same or to enforce such compliance; provided further, that the County shall have given reasonable security as may be demanded by the Corporation to insure such payment and prevent any sale or forfeiture of the Real Property or the Project Facilities or any part thereof by reason of such nonpayment or noncompliance.

Section 4.3. Prepayment of Acquisition Payments. The County may prepay Acquisition Payments in whole or in part as provided in, and under the conditions prescribed under, **Sections 7.3** and **9.1** hereof, or at any time that the County so determines for the purpose of providing for the redemption of Series 2020 Notes as provided in Section 4.1(a) of the Trust Agreement or of other Obligations as provided in any supplement to the Trust Agreement. The County shall notify the Trustee in writing of the dates on which the Series 2020 Notes or other Obligations corresponding to any prepayment hereunder are to be redeemed and the amount to be redeemed on each such date, all in accordance with the provisions of the Trust Agreement. The Trustee may request such reasonable information and reports as may be necessary to establish the sufficiency of the payments to be made at the time of such prepayment.

Section 4.4. Administrative Expenses. Subject to the provisions of **Section 4.7** hereof, the County shall pay as Additional Payments (i) the periodic fees and reasonable expenses from time to time of the Trustee and any paying agent or registrar incurred in administering the Trust Agreement and the Obligations, and (ii) any reasonable expenses (including reasonable attorneys' fees, costs and expenses) incurred by the Corporation or the Trustee to compel full and punctual performance of this Facilities Agreement in accordance with the terms hereof.

Section 4.5. Assignment of Facilities Agreement; Manner of Payment. As security for and the source of payment of the Obligations, pursuant to the Trust Agreement, the Corporation has assigned to the Trustee all of its right, title and interest in and to this Facilities Agreement, except for the right of the Corporation to receive payment of its fees and expenses pursuant to **Sections 4.2, 4.4** and **5.7** hereof. The County consents and agrees to the assignment of this Facilities Agreement as provided herein. The County covenants to fully perform, in timely fashion, all of its covenants, agreements and obligations under this Facilities Agreement, and to make all payments required by the County under this Facilities Agreement (other than payment for fees and expenses of the Corporation) directly to the Trustee, all without set-off, defense or counterclaim by reason of any dispute which the County may have with the Corporation or the Trustee.

Section 4.6. Limited and Special Obligation of County. UPON THE OCCURRENCE OF AN EVENT OF NONAPPROPRIATION, THE COUNTY MAY TERMINATE THIS FACILITIES AGREEMENT AT THE END OF THE LAST FISCAL YEAR WHICH IS NOT AFFECTED BY SUCH EVENT OF NONAPPROPRIATION, AND THE COUNTY SHALL NOT BE OBLIGATED TO MAKE PAYMENT OF THE ACQUISITION PAYMENTS PROVIDED FOR IN THIS FACILITIES AGREEMENT BEYOND THE END OF SUCH FISCAL YEAR. The County agrees to deliver notice to the Corporation and the Trustee of any such termination prior to July 1 of the Fiscal Year first affected by

an Event of Nonappropriation. If this Facilities Agreement is terminated under this **Section 4.6** or as provided in **Section 4.7** or **Section 2.2**, the County agrees to peaceful delivery of that portion of the Project Facilities to be retained by the Corporation or its assigns as provided in **Section 2.4** hereof.

The obligations of the County to make Acquisition Payments required under this **Article IV** and other sections hereof, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, except as expressly provided under this Facilities Agreement. Notwithstanding any dispute involving the County and any of the Corporation, any contractor, subcontractor, or supplier of materials or labor, or any other person, the County shall make all Acquisition Payments when due and shall not withhold any Acquisition Payments pending final resolution of such dispute, nor shall the County assert any defense or right of set-off, recoupment, or counterclaim against its obligation to make such payments required under this Facilities Agreement. The County's obligation to make Acquisition Payments during the duration of this Facilities Agreement shall not be abated through accident or unforeseen circumstances. The County agrees not to suspend, reduce, abrogate, diminish, postpone, modify, discontinue, withhold, or abate any portion of the payments required pursuant to this Facilities Agreement by reason of failure of consideration, the invalidity of any provision of this Facilities Agreement, any acts or circumstances that may constitute an eviction or constructive eviction, destruction of or damage to the Real Property or the Project Facilities, the taking by eminent domain of title to or the use of all or any part of the Real Property or the Project Facilities, failure of the County's title to the Real Property or any part thereof, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either thereof or in the rules or regulations of any governmental authority, or any failure of the Corporation to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Facilities Agreement. Nothing contained in this paragraph shall be construed to release the Corporation from the performance of any of the agreements on its part herein contained. In the event the Corporation should fail to perform any such agreement on its part, the County may institute such action against the Corporation as the County may deem necessary to compel performance so long as such action does not abrogate the County's obligations under this Facilities Agreement. The County may, however, at its own cost and expense and in its own name or in the name of the Corporation, prosecute or defend any action or proceeding or take any other action involving third persons which the County deems reasonably necessary in order to secure or protect its right of possession, occupancy, and use under this Facilities Agreement, and in such event the Corporation hereby agrees to cooperate fully with the County and to take all action necessary to effect the substitution of the County for the Corporation in any such action or proceeding if the County shall so request. It is the intention of the parties that the payments required by this Facilities Agreement will be paid in full when due without any delay or diminution whatsoever, **SUBJECT ONLY TO THE SPECIAL AND LIMITED NATURE OF THE COUNTY'S OBLIGATION TO PAY ACQUISITION PAYMENTS HEREUNDER AS SET FORTH ABOVE.**

THE OBLIGATIONS OF THE COUNTY UNDER THIS FACILITIES AGREEMENT SHALL NOT CONSTITUTE A PLEDGE OF THE FULL FAITH, CREDIT OR TAXING POWER OF THE COUNTY WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL OR STATUTORY PROVISION.

Section 4.7. Event of Nonappropriation. In the event the County Council shall not, on or before July 1 of each year, specifically budget and appropriate from the proceeds of general obligation bonds or other legally permissible indebtedness, including installment purchase revenue bonds of the Corporation or bond anticipation notes, or from other moneys which may be lawfully used to pay Rental Payments and/or Acquisition Payments, as the case may be, funds sufficient to pay all Acquisition Payments due hereunder in the Fiscal Year commencing on such July 1, an Event of Nonappropriation shall be deemed to have occurred; subject, however, to each of the following provisions:

(a) The Trustee shall declare an Event of Nonappropriation on any earlier date on which the Trustee receives official, specific written notice from the County that this Facilities Agreement will be terminated.

(b) As soon as practicable after receiving such specific written notice from the County or after an Event of Nonappropriation is deemed to have occurred as contemplated above and the Trustee has actual notice of such deemed occurrence, the Trustee shall give written notice to the County and the Corporation of an Event of Nonappropriation; but any failure of the Trustee to give such written notice shall not prevent the Trustee from declaring an Event of Nonappropriation or from taking any remedial action which would otherwise be available to the Trustee.

(c) [Reserved]

(d) The Trustee shall waive any Event of Nonappropriation which is cured prior to the expiration of the Waiver Period by the County's specifically budgeting and appropriating from the proceeds of general obligation bonds, bond anticipation notes, or other permissible indebtedness of the County or the Corporation (or other moneys which may be lawfully used to pay Rental Payments and/or Acquisition Payments) funds sufficient to pay all Rental Payments and/or Acquisition Payments, as the case may be, due hereunder in such Fiscal Year to which the Event of Nonappropriation applies.

If an Event of Nonappropriation occurs and is not waived, the County shall not be deemed to be in default under this Facilities Agreement and shall not be obligated to make payment of any future Rental Payments or Acquisition Payments due hereunder or any other payments provided for herein which accrue after the beginning of the Fiscal Year with respect to which there has occurred an Event of Nonappropriation; provided, however, that, subject to the limitations of **Section 4.6** hereof and this **Section 4.7**, the County shall continue to be liable for Rental Payments and/or Acquisition Payments, as the case may be, (a) accrued prior to the beginning of such Fiscal Year, and due hereunder, and (b) allocable to any period during which the County shall continue to occupy the Corporation Facilities.

The enactment by County Council of an ordinance authorizing the issuance of general obligation bonds or bond anticipation notes of the County or other permissible indebtedness of the County or Corporation at such time and in such amount as will provide sufficient funds for the County to make all Rental Payments or Base Payments due in the Fiscal Year in question or the inclusion in the County's budget of sufficient millage to pay debt service on general obligation bonds or bond anticipation notes, or sufficient funds to pay debt service on other legally permissible indebtedness, issued to fund Rental Payments or Base Payments due in such Fiscal Year shall be deemed a specific budgeting and appropriating of such funds for purposes of this **Section 4.7**.

The County, in all events, shall cooperate with the Corporation and the Trustee in making the partition required under **Section 2.4** hereof and, if requested by the Trustee, shall vacate and deliver over to the Trustee the Corporation Facilities by the expiration of the Fiscal Year during which an Event of Nonappropriation occurs if such occurs by notice, or not later than the July 31 following the July 1 on which the County shall fail to specifically budget and appropriate sufficient moneys to pay the Rental Payments and/or Acquisition Payments, as the case may be, hereunder.

The Trustee shall, upon the occurrence of an Event of Nonappropriation, be entitled to all moneys then on hand and being held in all funds created under the Trust Agreement for the benefit of the Owners of the Obligations. After the expiration of the Fiscal Year during which an Event of Nonappropriation occurs, if such occurs by notice, or the July 31 following the July 1 on which the County fails to specifically budget and appropriate sufficient moneys to pay the Rental Payments or the Acquisition Payments hereunder, the Trustee may or shall, as the case may be, proceed to exercise its remedies,

liquidate its interest in this Facilities Agreement or to lease the Project Facilities as provided in **Section 8.2** hereof, provided, however, that the Project Facilities shall always be operated for a civic or a public purpose as provided in Section 4.1 of the Base Lease to the extent such requirement continues to be applicable under State law. All property, funds and rights acquired by the Trustee by reason of an Event of Nonappropriation as provided herein, less any moneys due and owing to the Trustee for services performed as Trustee, shall be held by the Trustee for the benefit of the Owners of the Obligations as set forth in the Trust Agreement.

Notwithstanding anything in this Facilities Agreement to the contrary, in the event that the Trustee shall receive a payment for the transfer of its interest in this Facilities Agreement, or total rental payments for leasing that are, after the payment of the Corporation's expenses in connection therewith, including attorneys' and other fees, costs and expenses of the Trustee, in excess of the principal amount of the Outstanding Obligations at the time of the Event of Nonappropriation and the interest due and to become due thereon (with amounts so received to be credited first to such interest and then to principal), then such excess shall be paid to the County by the Trustee, its assigns or its lessee.

[End of Article IV]

ARTICLE V

COVENANTS OF THE COUNTY

Section 5.1. Maintenance and Operation of Real Property and Project Facilities.

(a) Subject to **Sections 4.6** and **4.7** herein, the County covenants and represents it will, at its own cost or expense, operate the Real Property and the Project Facilities in a sound and economical manner, in compliance with all present and future laws and governmental regulations applicable thereto, further that it will maintain, preserve and keep the Real Property and the Project Facilities in good repair, working order and condition, and that it shall from time to time make or cause to be made all necessary and proper repairs and renewals so that at all times the operation of the Real Property and the Project Facilities may be properly and advantageously conducted. This covenant shall not prevent the County from discontinuing operation of the Real Property and the Project Facilities at any time.

(b) Except as otherwise provided in this **Section 5.1**, prior to payment of the Obligations in full, the County shall not sell, transfer, lease, sublease or otherwise dispose of all or any substantial portion of the Real Property or the Project Facilities, or its interests under this Facilities Agreement, except to another municipality or political subdivision of the State which assumes in writing all obligations of the County under this Facilities Agreement. The County, at its discretion, may lease or sublease less than a substantial portion of the Real Property to third parties. If this Facilities Agreement terminates prior to the termination of such lease or sublease, the Corporation hereby agrees to assume the role of lessor in the place of the County until the termination of the Base Lease, at which point the County will again resume the role of lessor under such lease or sublease.

(c) Notwithstanding any other provision hereof to the contrary, the County may provide for the exchange of any asset comprising Real Property and Project Facilities (the "**Released Facility**") for another building and the real estate on which such facility (the "**Exchange Facility**") is located if: (i) the County provides the Trustee an appraisal from an appraiser selected by the County showing that the proposed Exchange Facility has a value equal to or greater than the proposed Released Facility; (ii) the County certifies to the Trustee that the Exchange Facility is necessary to the operations of the County and that the remaining useful life of the Exchange Facility is not less than the remaining useful life of the Released Facility; (iii) the County certifies to the Trustee that the exchange is necessary to facilitate either the sale or other disposition of the Released Facility or the conversion of its use to another purpose; and (iv) the Trustee receives an opinion of Bond Counsel to the effect that the proposed exchange will not adversely affect the federal income tax treatment of interest paid to the Holders of the Series 2020 Notes or other tax-exempt Obligations. The Trustee shall be fully protected in relying on such appraisal and certifications in releasing the proposed Released Facility and has no duty or obligation to make any determination or evaluation as to such appraisal or certifications.

(d) The Base Lease may be amended from time to time as provided therein to provide for the lease by the County to the Corporation of Real Property and Additional Real Property acquired or made available by the County after the date of the Base Lease and this Facilities Agreement. Upon the lease of such Real Property or Additional Real Property by the County to the Corporation pursuant to the Base Lease, **Exhibit A** hereto shall be amended to include such Real Property or Additional Real Property.

Section 5.2. Liens on Project Facilities. The County shall not create, incur or suffer to exist any lien, charge or encumbrance on the Real Property or the Project Facilities or its rights under this Facilities Agreement other than any Permitted Encumbrance.

Section 5.3. Representations and Covenants Regarding Tax Exempt Status of Series 2020 Notes.

(a) The County shall not take any action or permit any action to be taken on its behalf, or cause or permit any circumstance within its control to arise or continue, if such action or circumstance, or its expectation on the date of this Facilities Agreement would cause the interest paid on the Series 2020 Notes to be includable in the gross income of the recipients thereof for federal income tax purposes.

(b) The County covenants to the Corporation, the Trustee and the Owners of the Series 2020 Notes that, notwithstanding any other provision of this Facilities Agreement or any other instrument, it will neither make nor cause to be made any investment or other use of the proceeds of the Series 2020 Notes or amounts on deposit in any of the funds or accounts held under the Trust Agreement or under any other document related to the Series 2020 Notes which would cause the Series 2020 Notes to be "arbitrage bonds" under Section 148 of the Code and the regulations thereunder or to be "Federally guaranteed" under Section 149(b) of the Code and the regulations thereunder, and that it will comply with the requirements of such Sections and regulations throughout the term of the Series 2020 Notes.

(c) The County shall take all actions necessary on its part to enable compliance with the rebate provisions of Section 148(f) of the Code in order to preserve the federal income tax status of payments of interest with respect to the Series 2020 Notes. The County shall ensure that the Corporation retains a consultant experienced in the calculation and determination of rebate payments and liability under Section 148(f) of the Code to provide the reports required under the Tax Regulatory Agreement.

(d) The County will accept title to the Project Facilities upon the discharge of the Series 2020 Notes.

Section 5.4. Reports and Opinions; Inspections.

(a) The County shall deliver to the Trustee and the Corporation, within 90 days after the end of each Fiscal Year, a certificate stating that no Event of Default under this Facilities Agreement has occurred and is continuing and that the Project Facilities are being used in accordance with the terms of this Facilities Agreement.

(b) On a date not later than four years and six months after the issuance of any series of Obligations, and on each fifth anniversary of such date, the County shall deliver to the Trustee a legal opinion advising the Trustee of each action necessary to continue for the following five-year period the perfection of the security interests granted pursuant to the Trust Agreement together with any UCC continuation statements or other documents that are identified in such opinion. To the extent any such required actions require the Trustee to file or record any documentation, the Trustee agrees to do so and the County agrees to compensate the Trustee for any customary fees and expenses incurred by the Trustee in so doing.

(c) The County shall permit the Corporation and the Trustee to examine, visit and inspect, at any reasonable time, the Project Facilities and any accounts, books and records, including its receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and to supply such reports and information as the Trustee may reasonably require.

Section 5.5. Immunity of Corporation and Trustee. In the exercise of the powers of the Corporation and the Trustee and their members, directors, officers, employees and agents under the Trust Agreement, the Base Lease or this Facilities Agreement including (without limiting the foregoing) the application of moneys and the investment of funds, neither the Corporation nor the Trustee shall be

accountable to the County for any action taken or omitted with respect to the Real Property, the Project Facilities or this Facilities Agreement by either of them or their members, directors, officers, employees and agents in good faith and believed by it or them to be authorized or within the discretion or rights or powers conferred under this Facilities Agreement. The Corporation and the Trustee and their members, officers, employees and agents shall be protected in its or their acting upon any paper or documents believed by it or them to be genuine, and it or they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action. No recourse shall be had by the County for any claims based on the Trust Agreement or this Facilities Agreement against any member, director, officer, employee or agent of the Corporation or the Trustee alleging personal liability on the part of such person.

Section 5.6. Compliance with Laws. With respect to the Real Property and the Project Facilities and any additions, alterations, or improvements thereto, the County will at all times comply with all applicable requirements of federal and state laws and with all applicable lawful requirements of any agency, board, or commission created under the laws of the State or of any other duly constituted public authority; provided, however, that the County shall be deemed in compliance with this **Section 5.6** so long as it is contesting in good faith any such requirement by appropriate legal proceedings.

Section 5.7. Insurance and Condemnation Proceeds. The County shall make or direct any disposition of insurance or condemnation payments with respect to the Project Facilities as may be required by the terms of the Security Documents or of any Permitted Encumbrances existing on the date hereof.

Section 5.8. Filing of Budget with Trustee. For the duration of this Facilities Agreement, the County shall file with the Trustee, prior to the end of each Fiscal Year, a copy of the annual budget of the County for the following Fiscal Year. The Trustee shall have no duty to review or analyze such annual budget or verify the accuracy thereof and shall hold such annual budget solely as a repository for the benefit of the holders of the Obligations, nor shall the Trustee be deemed to have notice of any information contained therein or event of default which may be disclosed therein in any manner.

Section 5.9. Alterations of the Real Property and Project Facilities; Removals. The County, in its discretion and at its expense, may remodel or make such additions, modifications and improvements to the Real Property and the Project Facilities as it may deem to be desirable; provided that no such additions, modifications or improvements shall adversely affect the structural integrity or strength of, or materially interfere with the use and operations of, the Real Property and the Project Facilities. Subject to the right of the County to install its own machinery, equipment and other tangible personal property as provided in **Section 3.1** hereof, any such changes shall become and be deemed to constitute part of the Real Property or the Project Facilities, as the case may be.

In this connection, the County may remove any items of personal property constituting a part of the Project Facilities, provided that such removal of the personal property shall not materially diminish the value of the Project Facilities or the related Real Property.

In the case of any removal as provided above or any removal of County property not constituting the Project Facilities, the County shall repair any damage resulting from such removal

Section 5.10. Continuing Disclosure.

(a) The County covenants to provide the information required by Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as an Obligated Person (as defined in Rule 15c2-12) and to comply with the provisions of the Continuing Disclosure Undertaking (the “**Disclosure Undertaking**”) attached hereto as **Exhibit D**. In the event of a failure by the County to comply with any provisions of the

Disclosure Undertaking, the rights of the Owners of the Obligations to enforce the provisions of the Disclosure Undertaking shall be limited solely to a right, by action in mandamus or specific performance, to compel performance of the parties' obligations under the Disclosure Undertaking. Any failure by a party to perform in accordance with the Disclosure Undertaking shall not constitute a default on the Obligations or under any other document relating to the Obligations, and all rights and remedies shall be limited to those expressly stated in the Disclosure Undertaking.

(b) In accordance with Section 11-1-85, Code of Laws of South Carolina 1976, as amended, the County hereby covenants to, as long as the provisions of said Section 11-1-85 remain in effect with respect to the Obligations, file with a central repository for availability in the secondary bond market when requested: (i) an annual independent audit, within thirty (30) days of the County's receipt of such audit; and (ii) event specific information, within thirty (30) days of an event adversely affecting more than five percent of the County's revenue or tax base. The only remedy for failure by the County to comply with the covenant in this **Section 5.10(b)** shall be an action for specific performance of the covenant. The County specifically reserves the right to amend or delete this covenant to reflect any change in (or repeal of) Section 11-1-85, without the consent of any Holders of the Obligations.

[End of Article V]

ARTICLE VI

INSURANCE

Section 6.1. Types of Insurance and Coverage Requirements.

(a) The County shall maintain all-risk fire, extended coverage, vandalism, and malicious mischief insurance on the Project Facilities, with such deductible provisions as are standard for facilities similar to those of the Project Facilities. Such insurance shall name the Corporation and the Trustee as additional insureds, or, in lieu thereof, loss payees, as their interests may appear, be maintained for the duration of this Facilities Agreement and each policy shall be in an amount equal to the replacement value of the Project Facilities; provided that, at least once every three years in conjunction with the County's current insurance renewal schedule for other County-owned facilities, the County shall cause the preparation and pay for the expense of a certification of the maximum full insurable value of the Project Facilities by an independent insurance agent or a person or company knowledgeable in such matters.

(b) The County shall maintain workers' compensation coverage in amounts equal to the State statutory limits as well as employers' liability coverage in the amount of \$1,000,000.

(c) The County shall maintain, for the duration of this Facilities Agreement, general liability insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from the death or bodily injury of persons or damage to the property of others caused by accident or occurrence (including contractual liability endorsement), with limits of not less than \$300,000 for a loss arising from a single occurrence and not less than \$600,000 in the aggregate per occurrence regardless of the number of claims made, and \$300,000 for property damage per occurrence, excluding liability imposed upon the County by any applicable worker's compensation law. Such insurance shall name the Corporation and the Trustee as additional insureds, or, in lieu thereof, loss payees, as their interests may appear.

(d) The County is currently partially self-insured for all hazards, including but not limited to worker's compensation, automobile and general liability, and vehicle and property, subject to self-insured retention ("SIR") limits. The worker's compensation SIR limit effective for the period beginning July 1, 20__ is \$__,000 per occurrence for all employees except sworn police officers and firefighters, who are subject to a \$__,000 per occurrence limit. Further, the County maintains stop loss coverage in an amount of \$____,000 per employee / \$____,000 per accident with respect to worker's compensation claims. Automobile and general liability claims are subject to a \$__,000 per occurrence SIR limit. Vehicle damage claims have a \$__,000 SIR limit, while property damage claims have a \$__,000 limit. The County purchases excess coverage from The Traveler's Companies. The Project Facilities will be insured in a similar fashion.

(e) All policies of insurance required hereunder shall be either self-insurance of the County or written by the South Carolina Insurance Reserve Fund, companies rated not lower than A by A. M. Best Company or in one of the two highest rating categories by Standard and Poor's Credit Markets Services and Moody's Investors Service, in each case qualified to do business in the State and each policy shall provide that the carrier shall endeavor to provide at least 30 days prior written notice to the Corporation and the Trustee before such policy is canceled. The County may provide any part or all of the insurance required hereby under the terms of a policy insuring other facilities or risks or any "blanket" policy. The County covenants that it will take all action, or cause the same to be taken, which may be necessary to enable recovery under the aforesaid insurance policies.

(f) All policies of insurance required hereby shall be open to inspection by the Corporation and the Trustee at all reasonable times. Certificates of insurance describing such policies shall be furnished by the County or the County shall cause the same to be furnished to the Corporation at or prior to the execution and delivery of this Facilities Agreement, and at least 10 days prior to the expiration of each of such policies. If any change shall be made in such insurance as to either amount or type of coverage, a description and notice of such change shall be furnished immediately to the Corporation by the County or it shall cause the same to be so furnished. In the event that the County fails to maintain any insurance as provided in this Section, the Trustee may, following written notice to the County, procure and maintain such insurance at the expense of the County (reimbursable as provided hereinbefore), but the Trustee shall not be under an obligation to do so.

(g) Notwithstanding the above, during the construction phase of the Project Facilities, the developer or the construction company constructing such facilities will obtain and maintain, or cause to be obtained and maintained, at all times one or more policies of insurance on the Project Facilities containing the following types of coverage on such terms as approved by the County: builders' risk, general liability, workers' compensation, motor vehicle, and contractor's pollution.

(h) The County agrees that it shall certify in writing to the Trustee on June 30 of each year that it is in compliance with this **Section 6.1**. The Trustee is not responsible for determining the sufficiency of such insurance requirements.

Section 6.2. Self-Insurance Approval. As set forth in **Section 6.1(d)** above, the County self-insures for certain types of claims. If, at the time of execution of this Facilities Agreement, the County self-insures or at any time hereafter desires to self-insure to the extent permitted by law other than as described in **Section 6.1(d)** above, the entry into such self-insurance program shall require the written approval of the Corporation.

[End of Article VI]

ARTICLE VII

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 7.1. *Damage, Destruction and Condemnation.* If, during the duration of this Facilities Agreement, (i) the Project Facilities or any portion thereof shall be destroyed (in whole or in part), or damaged by fire or other casualty, or (ii) title to, or the temporary or permanent use of, the Project Facilities, the Real Property or any portion thereof or the estate of the County or the Corporation in the Project Facilities, the Real Property or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or (iii) a material defect in construction or installation of the Project Facilities, the Real Property or any portion thereof shall become apparent, or (iv) title to or the use of all or any portion of the Project Facilities, Real Property or any portion thereof shall be lost by reason of a defect in title thereto, then the County shall be obligated, subject to the option provided in **Section 7.3** hereof and the provisions of **Sections 4.6** and **4.7** hereof, to continue to pay the amounts specified as Acquisition Payments under this Facilities Agreement.

Section 7.2. *Obligation to Repair or Replace the Real Property and Project Facilities.* Subject to the provisions of **Section 7.3** hereof, the County, the Corporation and the Trustee shall cause the Net Proceeds of any insurance policies, performance bonds or condemnation awards, made available by reason of any occurrence described in **Section 7.1** hereof, to be deposited in a separate trust fund designated as the “*Net Proceeds Fund*” which the Trustee is hereby directed to establish in such event. Except as set forth in **Section 7.3** hereof, all Net Proceeds so deposited shall be applied to the prompt repair, restoration, modification, improvement or replacement of the Real Property or the Project Facilities, as are appropriate, by the County upon receipt of requisitions signed by an authorized official of the County stating with respect to each payment to be made: (i) the requisition number; (ii) the name and address of the person, firm or corporation to whom payment is due; (iii) the amount to be paid; and (iv) that each obligation mentioned therein has been properly incurred, is properly payable from the Net Proceeds held in the separate trust fund and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation. The Trustee shall cooperate with the County in the administration of such fund and shall disburse funds upon receipt of a properly presented requisition. The Trustee has no duty or obligation to determine whether or not such requested disbursements are for authorized or permitted uses and shall be fully protected in relying on all such requisitions received by it. The balance of any such Net Proceeds remaining after such repair, restoration, modification, improvement or replacement has been completed shall be applied to any lawful and authorized purpose of the County as directed in writing by the County. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be included as part of the Real Property or Project Facilities, as appropriate, under this Facilities Agreement and the Trust Agreement.

If the Net Proceeds (plus any amounts withheld from such Net Proceeds by reason of any deductible clause) shall be insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Real Property or the Project Facilities referred to above, the County shall be responsible, subject to the option contained in **Section 7.3** hereof, for the completion of the work and the payment of any cost in excess of the amount of the Net Proceeds. The County agrees that, if by reason of any such insufficiency of the Net Proceeds, the County shall make any payments pursuant to the provisions of this paragraph, the County shall not be entitled to any reimbursement therefor from the Trustee or the Owners of the Obligations, nor shall the County be entitled to any diminution of any Acquisition Payments payable under this Facilities Agreement.

Section 7.3. Discharge of Obligation to Repair or Replace the Real Property and Project Facilities. If, as a result of the occurrence of an event described in **Section 7.1** hereof, (a) any part of the Project Facilities or the Real Property is totally destroyed or is damaged to such an extent that the rebuilding or repairing of such part of the Project Facilities or the Real Property would be impracticable, (b) there is discovered a material defect in the construction of the Project Facilities, or any portion thereof that renders the Project Facilities or such portion unusable by the County for its intended purposes, (c) all or substantially all of the Project Facilities or the Real Property relating to a particular building is taken by eminent domain or (d) the County is deprived of the use of any part of the Project Facilities or the Real Property by reason of a defect in title thereto, the County may elect to apply the Net Proceeds of applicable insurance policies, performance bonds or condemnation awards as a prepayment of Acquisition Payments and the discharge of its obligations with respect to **Sections 7.1** and **7.2** hereof. Such an election may be made by written notice to the Corporation and the Trustee within 90 days of the occurrence of an event described in (a) through (d) above. Upon any such prepayment, the amount thereof shall be applied to redeem Obligations at the earliest practicable date, the Acquisition Price shall be recalculated by the Corporation to take account of such prepayment, title to the affected part of the Project Facilities shall be deemed transferred to the County and in the event of any future partition under **Section 2.4** hereof, such affected part of the Project Facilities or the Real Property shall be automatically assigned to the County. If at any time the amount to be applied as a prepayment hereunder shall exceed the redemption price of all Obligations, all Obligations shall be redeemed, title to all the Project Facilities and the Real Property or portion thereof shall be transferred to the County and any amounts not required for the redemption of the Obligations and payment of other expenses under the Trust Agreement shall be paid to the County.

Section 7.4. Cooperation of the Parties. The Corporation, the County and the Trustee shall cooperate fully with each other in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in **Section 7.1** hereof, in making the Net Proceeds available in accordance with **Section 7.2** or **7.3** hereof and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Project Facilities or any portion thereof and in the enforcement of all warranties relating to the Project Facilities. The Corporation hereby designates the County as its agent for the purpose of making collections under such policies. In no event shall the Corporation voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding with respect to the Project Facilities or any portion thereof without the written consent of the County and the Trustee.

[End of Article VII]

ARTICLE VIII

DEFAULTS AND REMEDIES

Section 8.1. *Events of Default.* Each of the following events is hereby defined as, and declared to be and shall constitute, an “*Event of Default*”:

(a) failure by the County to make any payment required to be made pursuant to **Section 4.1(b)** hereof by the first day of the calendar month after the same is due (provided, however, that an Event of Nonappropriation shall not result in an Event of Default under this provision); or

(b) failure by the County to timely comply with the provisions of **Section 2.4** hereof relating to partition and vacating of the Project Facilities at the times required; or

(c) failure by the County to make any payment required to be made pursuant to **Section 4.1(c), 4.2 or 4.4** hereof or under the provisions of the Base Lease within 10 days after the same is due; or

(d) failure by the County to observe and perform any other covenant, condition or agreement on its part to be observed or performed under this Facilities Agreement for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to the County by the Trustee; or

(e) if any of the representations and warranties of the County hereunder shall prove to be false or misleading in any material respect; or

(f) the failure by the County promptly to stay or lift any execution, garnishment or attachment of such consequence as will, in the reasonable judgment of the Trustee, materially impair its ability to carry out its obligations under this Facilities Agreement (provided that the County shall not be in default so long as it is diligently prosecuting a bona fide appeal from any such execution, garnishment or attachment); or

(g) if the County shall (i) apply for or consent to the appointment of a receiver, trustee, or the like of the County or of property of the County, or (ii) admit in writing the inability of the County to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) be adjudicated a bankrupt or insolvent, or (v) commence a voluntary case under the United States Bankruptcy Code or file a voluntary petition seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the United States Bankruptcy Code.

The foregoing provisions of this **Section 8.1** are subject to the following provision: If, by reason of Force Majeure, the County shall be unable in whole or in part to carry out any agreement on its part herein contained, other than the obligations on the part of the County contained in **Articles IV and VI** hereof, the County shall not be deemed in default during the continuance of such inability. The County agrees, however, to remedy, as promptly as legally and reasonably possible, the cause or causes preventing the County from carrying out its agreement, provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the County.

Section 8.2. *Remedies.* Subject at all times to the rights of the County under **Section 2.1** hereof as to portions of the Project Facilities it has so acquired, whenever any Event of Default referred to in **Section 8.1** hereof shall have happened and be continuing, or if an Event of Nonappropriation shall have

happened, the Corporation and the Trustee may terminate this Facilities Agreement and shall give notice to the County to vacate the Corporation Facilities within 31 days from the date of such notice; provided that if an Event of Nonappropriation shall occur by reason of the failure of the County to specifically budget and appropriate for Acquisition Payments on or before July 1 of any year, the County shall, if requested, vacate or deliver possession of the Corporation Facilities not later than the immediately following July 31 or such later date as may be determined under **Section 2.4** hereof.

Subject at all times to the rights of the County under **Section 2.1** hereof as to portions of the Project Facilities it has so acquired, the Trustee, in its discretion, may also (i) take whatever action at law or in equity which may appear necessary or desirable to enforce its rights in and to the Project Facilities under this Facilities Agreement, the Security Documents and the Trust Agreement, subject, however, to the limitations set forth herein, and (ii) exercise all applicable rights and remedies of a secured party under Title 36, Chapter 9, Code of Laws of South Carolina, 1976, as amended.

In addition, the Trustee may, or at the written direction of the Owners of the majority in aggregate principal amount of the Outstanding Obligations and upon being provided satisfactory indemnity by such Owners shall, without any further demand or notice, and subject to the terms of the Base Lease, including without limitation, the provisions in Section 4.1 of the Base Lease which provide that the Corporation Facilities shall always be operated for a civic or public purpose to the extent applicable under State law, take one or both of the following additional remedial steps:

- (i) sell or assign its interest in the Base Lease upon five days prior written notice to the County; or
- (ii) temporarily assign its rights to the Corporation Facilities for the benefit of the Owners of the Obligations.

Notwithstanding anything in this Facilities Agreement to the contrary, in the event of a termination of the County's interest in any portion of the Project Facilities and subsequent thereto the Trustee shall receive a payment for the transfer of its interest in this Facilities Agreement or total rental payments for leasing that are, after the payment of the Corporation's expenses in connection therewith, including fees, costs and expenses of the Trustee, in excess of the principal amount of the Outstanding Obligations at the time of the Event of Default or Event of Nonappropriation and the interest due and to become due thereon (with amounts so received to be credited first to such interest and then to principal), then the Trustee shall pay such excess to the County.

Section 8.3. Limitations on Remedies. A judgment requiring a payment of money may be entered against the County by reason of an Event of Default or Event of Nonappropriation only as to the County's liabilities described in **Section 10.1** hereof.

Section 8.4. Cumulative Rights. No remedy conferred upon or reserved to the Corporation or the Trustee by this Facilities Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Agreement or now or hereafter existing at law or in equity or by statute. No waiver by the Corporation or the Trustee of any breach by the County of any of its obligations, agreements or covenants hereunder shall be deemed a waiver of any subsequent breach, or a waiver of any other obligation, agreement or covenant, and no delay or failure by the Corporation or the Trustee to exercise any right or power shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised by the Corporation or the Trustee from time to time and as often as may be deemed expedient.

Section 8.5. *Discontinuance of Proceedings.* In case the Corporation or the Trustee shall have proceeded to enforce any right under this Facilities Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Corporation or the Trustee, then and in every such case the County, the Corporation and the Trustee shall be restored respectively to their several positions and rights hereunder and all rights, remedies and powers of the County, the Corporation and the Trustee shall continue as though no such proceeding had been taken.

[End of Article VIII]

ARTICLE IX

CONVEYANCE OF THE PROJECT FACILITIES

Section 9.1. *Optional Purchase of the Project Facilities.*

(a) *Purchase in Full.* The County is hereby granted the option to terminate this Facilities Agreement and to purchase the Corporation's interest in the Project Facilities not theretofore acquired by the County at any time upon payment by the County of the then applicable Purchase Option Price; provided, however, that no such termination shall relieve the County from its obligation to pay Administrative Expenses as provided in **Section 4.4** hereof until the Obligations have been fully discharged and the Trust Agreement terminated. The County shall notify the Corporation and the Trustee of its intention to exercise this option, on or before the 45th day preceding the date of such purchase or such later date as may be acceptable to the Trustee, but in no event later than the 30th day preceding the date of such purchase, and the County shall provide funds for such prepayment. Upon the payment of the Purchase Option Price, the Corporation shall transfer and convey all its remaining interest in the Project Facilities to the County in the manner provided in **Section 9.2** hereof.

(b) *Partial Prepayment of Acquisition Payments and Purchase.* From and after _____ 1, 20__, the County is also granted the option to prepay Acquisition Payments on the due date of any Base Payments hereunder for the purpose of having such prepayments credited towards the purchase price of the Project Facilities. The County shall notify the Corporation and the Trustee of its intention to exercise this option, on or before the 45th day preceding the date of such prepayment or such later date as may be acceptable to the Trustee, but in no event later than the 30th day preceding the date of such prepayment, and shall provide funds for such prepayment.

Section 9.2. *Manner of Conveyance.*

(a) *Complete Conveyance.* At the closing of any purchase or other conveyance of all of the Project Facilities and the Real Property pursuant to **Section 9.1(a)** hereof, or at the termination hereof by the payment of all amounts due hereunder, the Corporation and the Trustee by an instrument terminating the Base Lease and this Facilities Agreement and by quit claim or special warranty deed, as the case may be, in the form as mutually agreed to by the Trustee, the Corporation and the County shall execute and deliver to the County all necessary documents assigning, transferring, conveying and relinquishing all interest to the Project Facilities and Real Property, subject to the following:

(i) Permitted Encumbrances, other than this Facilities Agreement and the Trust Agreement;

(ii) all liens, encumbrances and restrictions created or suffered to exist by the County, the Corporation and the Trustee as required or permitted by this Facilities Agreement or the Trust Agreement or arising as a result of any action taken or permitted to be taken by the County, the Corporation or the Trustee as required or permitted by this Facilities Agreement or the Trust Agreement; and

(iii) any lien or encumbrance created by action of the County.

(b) *Partial Conveyance Resulting from Partition.* Upon any conveyance under **Section 2.4** hereof to the County, the Corporation and the Trustee shall execute and deliver to the County all necessary documents assigning, transferring and conveying all interest in the County Facilities by an instrument terminating the Base Lease and this Facilities Agreement with respect to the County Facilities

and quit claim or special warranty deed, as the case may be, in the form as mutually agreed to by the Trustee, the Corporation and the County, subject to the following:

(i) Permitted Encumbrances, other than this Facilities Agreement and the Trust Agreement;

(ii) all liens, encumbrances and restrictions created or suffered to exist by the County, the Corporation and the Trustee as required or permitted by this Facilities Agreement or the Trust Agreement or arising as a result of any action taken or permitted to be taken by the County, the Corporation or the Trustee as required or permitted by this Facilities Agreement or the Trust Agreement; and

(iii) any lien or encumbrance created by action of the County.

Neither the Trustee nor the Corporation shall be responsible for the recordation of any deed or other instrument for such purposes, and the County shall be responsible for the recordation of any such deed or other instrument for such purposes.

Upon any conveyance under **Section 2.4** hereof to the Corporation, the County shall execute and deliver to the Corporation and the Trustee all necessary documents assigning, transferring and conveying all interest in the Corporation Facilities by an instrument terminating this Facilities Agreement with respect to the Corporation Facilities and quit claim or special warranty deed, as the case may be, in the form as mutually agreed to by the Trustee, the Corporation and the County, subject to the following:

(i) Permitted Encumbrances, other than this Facilities Agreement and the Trust Agreement;

(ii) all liens, encumbrances and restrictions created or suffered to exist by the County, the Corporation and the Trustee as required or permitted by this Facilities Agreement or the Trust Agreement or arising as a result of any action taken or permitted to be taken by the County, Corporation or the Trustee as required or permitted by this Facilities Agreement or the Trust Agreement;

(iii) any lien or encumbrance created by action of the County; and

(iv) the Base Lease.

The County shall not be responsible for the recordation of any deed or other instrument to the Trustee or the Corporation for such purposes and the Corporation shall be responsible for the recordation of any such deed or other instrument for such purposes.

(c) *Partial Conveyance Resulting from Prepayment.* Any conveyance resulting from a partial prepayment under **Section 9.1(b)** hereof shall be made in the manner as all other conveyances with respect to payments on each Payment Date.

[End of Article IX]

ARTICLE X

MISCELLANEOUS

Section 10.1. *Limitation of Liability of the Corporation and the County.* Notwithstanding any other provision of this Facilities Agreement, in the event of any default by either the Corporation or the County hereunder or under the Trust Agreement, any liability of the Corporation or the County shall be enforceable only out of their respective interests in the Base Lease and under this Facilities Agreement and the moneys to be paid by the County through the later of the end of the Fiscal Year as to which Base Payments have been appropriated for or any Base Payments due as provided in **Section 2.3** hereof, and there shall be no recourse for any claim based on this Facilities Agreement, the Trust Agreement, the Obligations, against any other property of the Corporation or the County or against any officer or employee, past, present or future, of the Corporation or the County or any successor body as such, either directly or through the Corporation or the County or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, and the liability of the Corporation and the County shall be limited to its interests in the Base Lease and interests under this Facilities Agreement and the moneys to be paid by the County hereunder through the later of the end of the Fiscal Year as to which Base Payments have been appropriated therefor or any Base Payments due as provided in **Section 2.3** hereof, and the lien of any judgment shall be restricted thereto, and there shall be no other recourse by the County against the Corporation or the Corporation against the County or any of the property now or hereafter owned by it or either of them. The provisions hereof shall not be deemed to limit the rights of either the County or the Corporation or any assignee thereof as to any contracts with other parties with respect to the Project Facilities.

Section 10.2. *Surrender of Possession Upon Termination.* Upon termination hereof or upon termination of all rights of the County hereunder, either by reason of an Event of Default or an Event of Nonappropriation, the County covenants that it will deliver up or cause to be delivered up peaceable possession of such of the Project Facilities as are determined under **Section 2.4** hereof to be Corporation Facilities together with the related Real Property without delay, upon demand made by the Corporation or the Trustee, in good repair and operating condition, excepting reasonable wear and tear and damage, injury or destruction by fire or other casualty which, under the terms hereof, shall not have been repaired, reconstructed or replaced.

Section 10.3. *Notices.* Notices hereunder shall be given to the addresses shown below or to such other address as shall be filed in writing with the parties hereto:

| | |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The Corporation | County Square Redevelopment Corporation Attention: President, Board of Directors 301 University Ridge, Suite 2400 Greenville, South Carolina 29601 |
| The County | Greenville County, South Carolina Attention: County Administrator 301 University Ridge, Suite 2400 Greenville, South Carolina 29601 |
| The Trustee | U.S. Bank National Association Attention: Corporate Trust Services Mail Code: EX-SC-WMSC 1441 Main Street, Suite 775 Columbia, South Carolina 29201 |

Section 10.4. Assignments. Except as contemplated in the Trust Agreement, this Facilities Agreement may not be assigned by either of the parties hereto without the written consent of the other party hereto and the written consent of the Trustee.

Section 10.5. Severability. In case any provision of this Facilities Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof and this Facilities Agreement shall be construed as if such provision had never been contained herein.

Section 10.6. Amendments. The County and the Corporation may, with the prior written consent of the Trustee, as provided in the Trust Agreement, but without the consent of the Owner of any Obligation, enter into any amendments hereto at any time for any of the following purposes:

- (a) To cure any ambiguity, defect or omission herein or in any amendment hereto; or
- (b) To grant to or confer upon the Corporation any additional rights, remedies, powers, authority or security that lawfully may be granted to or conferred upon it; or
- (c) To add to the covenants and agreements of the County herein contained, or to surrender any right or power herein reserved to or conferred upon the County; or
- (d) To increase the Base Payments hereunder to enable the County to proceed to acquire and install Additional Project Facilities or Additional Ancillary Facilities; or
- (e) To reflect a change in applicable law; or
- (f) To make any changes required in connection with a substitution of facilities as permitted under the Base Lease or hereunder or to add Additional Real Property; or
- (g) To make any amendments required by any rating agency as a condition to rating the Obligations.

The County and the Corporation may, with notice to but without the prior consent of the Trustee, and without the consent of the Owner of any Obligation, enter into any amendments hereto at any time and from time to time to (i) add additional parcels of Real Property and Additional Real Property to the description in **Exhibit A** hereto as provided in **Section 5.1(d)** hereof, or (ii) under the conditions specified in **Section 5.1(c)** hereof, to delete Real Property in connection with a substitution of other Real Property.

All other amendments must be approved by the Trustee, as provided in the Trust Agreement, and, if and to the extent required by the Trust Agreement, the consent of the Holders of the Obligations.

Section 10.7. Successors and Assigns. All covenants, promises and agreements contained in this Facilities Agreement by or on behalf of or for the benefit of the County or the Corporation, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 10.8. Applicable Law. This Facilities Agreement shall be governed by, and interpreted under, the laws of the State without regard to conflict of law principles.

Section 10.9. *Recordation.* At the option of the Corporation this Facilities Agreement or a short form and summary hereof may be recorded in appropriate official records.

[End of Article X]

EXHIBIT A

LEGAL DESCRIPTION OF THE REAL PROPERTY

EXHIBIT B
PERMITTED ENCUMBRANCES

EXHIBIT C

RENTAL PAYMENTS SCHEDULE

BASE PAYMENTS SCHEDULE

EXHIBIT D
CONTINUING DISCLOSURE UNDERTAKING