02-O -1150

(Do Not Write Above This Line)

AN ORDINANCE
BY Felicia A. Moore

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A SECOND AMENDMENT TO CONTRACT TO PURCHASE BY AND AMONG THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA, GEORGIA, AND THE CITY OF ATLANTA, GEORGIA; FOR THE PURPOSE OF PERMITTING A REFUNDING OF THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA, GEORGIA REFUNDING REVENUE BONDS (UNDERGROUND ATLANTA PROJECT), SERIES 1992; INCLUDING CERTAIN INTEREST RATE SWAP AGREEMENTS IN CONNECTION THEREWITH; AND FOR OTHER PURPOSES.

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☒ PERSONAL PAPER REFER

Date Referred 6/17/02

Referred To: Finance / Exec

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee

Date

Chair

Referred to

Committee	Committee
Date	Date
Chair	Chair
Action: Fav, Adv, Hold (see rev. side) Other:	Action: Fav, Adv, Hold (see rev. side) Other:
Members	Members
Refer To	Refer To

Committee	Committee
Date	Date
Chair	Chair
Action: Fav, Adv, Hold (see rev. side) Other:	Action: Fav, Adv, Hold (see rev. side) Other:
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION

☐ 2nd ☐ 1st & 2nd Readings ☐ 3rd

☐ Consent ☐ V Vote ☐ RC Vote

CERTIFIED

MAYOR'S ACTION

02- O -1150

MUNICIPAL CLERK
ATLANTA, GEORGLA

A ORDINANCE Felicia A. Moore

SUBMITTED BY _____

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A SECOND AMENDMENT TO CONTRACT TO PURCHASE BY AND AMONG THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA, GEORGIA, AND THE CITY OF ATLANTA, GEORGIA; FOR THE PURPOSE OF PERMITTING A REFUNDING OF THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA, GEORGIA REFUNDING REVENUE BONDS (UNDERGROUND ATLANTA PROJECT), SERIES 1992; INCLUDING CERTAIN INTEREST RATE SWAP AGREEMENTS IN CONNECTION THEREWITH; AND FOR OTHER PURPOSES.

WHEREAS, the Downtown Development Authority of the City of Atlanta, Georgia (the "Issuer"), issued $85,000,000 in aggregate principal amount of its Revenue Bonds (Underground Atlanta Project) (the "Series 1986 Bonds") pursuant to and under that certain Trust Indenture, dated as of August 1, 1986, as supplemented by the First Supplemental Trust Indenture, dated as of August 14, 1986 (as supplemented, the "1986 Indenture"), between the Issuer and SouthTrust Estate and Trust Company of Georgia, N.A., as successor trustee, for the purpose of financing, in part, the cost of certain improvements and facilities for a festival market place (the "Underground Project") located in Atlanta, Georgia (the "City"); and

WHEREAS, the City and the Issuer are parties to a Lease Agreement, dated as of August 1, 1986 (the "Underground Lease"), pursuant to which the City leases the Underground Project from the Issuer; and

WHEREAS, the Issuer refinanced a portion of the Series 1986 Bonds contemporaneous with its issuance of $86,015,000 in aggregate principal amount of its Refunding Revenue Bonds (Underground Atlanta Project), Series 1992 (the "Series 1992 Bonds"); and

WHEREAS, the City entered into the Contract to Purchase, dated as of October 1, 1992, between the Issuer and the City in order to provide for the purchase of the Underground Project and to provide for installment payments (in addition to any rental payments due under the Underground Lease) to be made by the City to the Issuer in amounts sufficient to assure the timely payment of principal, premium, if any, and interest on the Series 1992 Bonds; and

WHEREAS, the terms of the Series 1992 Bonds and the Internal Revenue Code prevent the Issuer from effecting a current refunding of the Series 1992 Bonds until 90 days prior to October, 2002; and

WHEREAS, the City has entered into an agreement (the "Swap Agreement") with Ambac Financial Services, Limited Partnership (the "Swap Counterparty"), which agreement provides the Issuer and the City the approximate economic equivalent of a refunding of the Series 1992 Bonds through the Swap Counterparty's payment of an up front commitment payment (the "Commitment Payment") in consideration for entering into the Swap Agreement; and

WHEREAS, pursuant to the Swap Agreement the Issuer grants to the Swap Counterparty the option to compel the Issuer to issue certain variable rate bonds within 90 days of October 1, 2002 (the "Series 2002 Variable Rate Bonds"), which bonds will refund the outstanding Series 1992 Bonds, and pursuant to the Swap Agreement the Issuer will receive moneys sufficient to pay the interest when due on the Series 2002 Variable Rate Bonds from the Swap Counterparty and the Issuer will pay the Swap Counterparty a fixed rate of interest as set forth in the Swap Agreement; and

WHEREAS, the City entered into a First Amendment to Contract of Purchase, dated as of September 1, 1998 which provides for the obligations of the Issuer and the City to include the debt service and administrative payments on the Series 2002 Variable Rate Bonds, the payment of amounts due to the Swap Counterparty under the Swap Agreement, and the payment of a termination fee in the event that the Issuer and City are unable to comply with their commitment under the Swap Agreement to issue the Series 2002 Variable Rate Bonds; and

WHEREAS, the City has determined that it is in the best interest of the Issuer and the City that the Issuer and the City enter into a Second Amendment to Contract of Purchase dated as of July 1, 2002 (the "Agreement"), which Agreement provides for the obligations of the Issuer and the City to include the premium payments and certain administrative expenses on the Series 2002 Variable Rate Bonds; and

WHEREAS, the Swap Counterparty has elected to exercise its option to compel the issuance of the Series 2002 Variable Rate Bonds within 90 days of October 1, 2002; and

WHEREAS, the City is authorized by Article IX, Section III, Paragraph I, of the Constitution of the State of Georgia of 1983 to contract for any period not exceeding fifty years with the Issuer for joint services, for the provision of services or for the joint or separate use of facilities or equipment, and, in addition, the City is authorized by *O.C.G.A.* § 48-5-220(20) to provide financial assistance to the Issuer for the purpose of developing trade, commerce, industry and employment opportunities;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA as follows:

1. That the Mayor be and is hereby authorized to execute on behalf of the City of Atlanta, Georgia, the Second Amendment to Contract to Purchase among the Issuer and the City, to provide for the City to make premium payments and pay administrative expenses on

the Series 2002 Variable Rate Bonds. Said Second Amendment to Contract to Purchase shall be in substantially the form as attached hereto as Exhibit "A."

2. The original aggregate principal amount of the Series 2002 Variable Rate Bonds shall equal $_____, and such principal, and interest thereon, shall be payable as shall be set forth in a Trust Indenture between the Issuer and a corporate trustee, which payment schedule, after taking into account payments to be made to, and amounts to be received from, the Swap Counterparty pursuant to the Swap Agreement, and certain administrative expenses, shall be approximately equal to the amounts of the combined principal and interest payments that would have been due with respect to the Series 1992 Bonds.

3. The Mayor and officers of the City are hereby requested to do any and all things and to execute any and all documents required to be done and executed in connection with the issuance of the execution, delivery and performance of the Agreement.

4. That all other ordinances or resolutions or parts of ordinances or resolutions, to the extent in conflict herewith, be and are hereby repealed.

ADOPTED this 17th day of June, 2002.

CITY OF ATLANTA, GEORGIA

By: _____
President of City Council

By: _____
Mayor

CERTIFIED AND AUTHENTICATED:

_____
Municipal Clerk

APPROVED AS TO FORM:

_____
City Attorney

::ODMA\PCDOCS\ATL\586974\2

EXECUTION COPY

SECOND AMENDMENT TO CONTRACT TO PURCHASE

BETWEEN

DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATL4NTA, GEORGIA

AND

THE CITY OF ATLANTA, GEORGIA

Dated as of July 1, 2002

The interest of the Downtown Development Authority of the City of Atlanta, Georgia (the "Authority"), in Part I of this Second Amendment to Contract to Purchase amends immediately the 1992 Contract described herein, which is assigned to SouthTrust Estate and Trust Company of Georgia, N.A., as trustee and the First Amendment to Contract to Purchase, dated September 1, 1993 (the "First Amendment"). Subject to such prior assignment, the interest of the Authority in this Second Amendment to Contract to Purchase is to be assigned (except for the rights of, and amounts payable to, the Downtown Development Authority of the City of Atlanta, Georgia under Sections 5.1 and 9.4 hereof and any rights of the Issuer to indemnification hereunder), pursuant to a Trust Indenture to be dated as of July 1, 2002, from the Downtown Development Authority of the City of Atlanta, Georgia, to Wachovia Bank, National Association, as trustee, and is subject to the security interest of Wachovia Bank, National Association, as trustee.

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SECOND AMENDMENT TO
CONTRACT TO PURCHASE

STATE OF GEORGIA

COUNTY OF FULTON

THIS SECOND AMENDMENT TO CONTRACT TO PURCHASE, dated as of July 1, 2002 (the "Agreement"), is entered into between the **DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA, GEORGIA** (herein called the "Issuer"), a body corporate and politic duly created and validly existing under the Constitution and the laws of the State of Georgia, as the Seller, and the **CITY OF ATLANTA, GEORGIA** (herein called the "City"), a municipal corporation and political subdivision of the State of Georgia, as the Purchaser.

W I T N E S S E T H:

WHEREAS, the Issuer has previously issued $85,000,000 in aggregate principal amount of its Revenue Bonds (Underground Atlanta Project), (the "Series 1986 Bonds"), pursuant to and under that certain Trust Indenture, dated as of August 1, 1986, as supplemented by the First Supplemental Trust Indenture, dated as of August 14, 1986 (as supplemented, the "1986 Indenture"), between the Issuer and SouthTrust Estate and Trust Company of Georgia, N.A., as successor trustee for the purpose of financing, in part, the cost of certain improvements and facilities for a festival market place (the "Underground Project"), located in Atlanta, Georgia; and

WHEREAS, the City of Atlanta is a party to a Lease Agreement between the Issuer and the City, dated as of August 1, 1986 (the "Underground Lease"), pursuant to which the City leases the Underground Project from the Issuer; and

WHEREAS, the Issuer refinanced a portion of the Series 1986 Bonds by defeasing $76,580,000 in aggregate principal amount of the Series 1986 Bonds maturing on October 1, 1997, through and including October 1, 2016, by issuing $86,015,000 in aggregate principal amount of its Refunding Revenue Bonds (Underground Atlanta Project) Series 1992 (the "Series 1992 Bonds"); and

WHEREAS, the City and the Issuer entered into a Contract to Purchase, dated October 1, 1992, between the Issuer and the City (the "1992 Contract"), in order to provide for the purchase of the Underground Project and to provide for installment payments (in addition to any rental payments due under the Underground Lease) to be made by the City to the Issuer in amounts sufficient to assure the timely payment of principal, premium, if any, and interest on the Series 1992 Bonds; and

WHEREAS, because of a significant decrease in market interest rates since the issuance of the Series 1992 Bonds, the City and the Issuer have the opportunity to refinance the Series 1992 Bonds by redeeming the $70,010,000 aggregate principal amount of the Series 1992 Bonds

maturing on October 1, 2002, through and including October 1, 2016, and to acquire the Underground Project on substantially similar terms as if the City continued to make the installment payments under the 1992 Contract after September 1, 2002, while additionally providing a funding source for the Issuer and the City to cover a portion of the installment payments due on the 1992 Contract before September 1, 2002 and to provide for the payment of the premium of and administrative expenses related to the refunding of the Series 1992 Bonds; and

WHEREAS, in order to facilitate the refunding of the Series 1992 Bonds, the Issuer has agreed to issue $_____ in aggregate principal amount of its Variable Rate Revenue Refunding Bonds from Tax Exempt Multi Modal Refunding Revenue Bonds (Underground Atlanta Project), Series 2002 (the "Series 2002 Bonds") for the purpose of refunding the Series 1992 Bonds; and

WHEREAS, the Issuer has entered into a commitment, pursuant to the Swap Agreement (hereinafter defined), to issue the Series 2002 Bonds, to refund the Series 1992 Bonds, and for the City and the Issuer to enter into the First Amendment in order to provide for the purchase of the Underground Project and to provide for installment payments (in addition to any rental payments due under the Underground Lease) to be made by the City to the Issuer in amounts sufficient to assure the timely payment of principal, premium, if any, and interest on the Series 2002 Bonds and the obligations of the Issuer under the Swap Agreement; and

WHEREAS, the City has determined it would be in the best interests of the City for the Issuer to enter into this Agreement to provide for the payment of the premium of and certain administrative expenses related to the issuance of the Series 2002 Bonds; and

WHEREAS, the City is authorized by Article IX, Section III Paragraph I, of the Constitution of the State of Georgia of 1983 to contract for any period not exceeding fifty years with the Issuer for joint services, for the provision of services or for the joint or separate use of facilities or equipment, and in addition, the City is authorized by *O.C.G.A.* § 48-5-220(20) to provide financial assistance to the Issuer for the purpose of developing trade, commerce, industry and employment opportunities; and

WHEREAS, the Issuer is authorized by *O.C.G.A.* § 36-42-8(10) to contract for any period, not exceeding fifty years, with the State of Georgia, state institutions, or any municipal corporation or county of the State of Georgia for the use by any state institution or any municipal corporation or county of any facilities or services of the Issuer, provided that such contract shall deal with such activities and transactions as the Issuer and any such political subdivision with which the Issuer contracts are authorized by law to undertake;

WHEREAS, the Issuer is authorized by *O.C.G.A.* § 36-42-8(15) to use any real property, personal property or fixtures or any interest therein or to rent or lease such property to or from others or make contracts with respect to the use thereof, or to sell, lease, exchange, transfer, assign, pledge or otherwise dispose of or grant options for any such property in any manner as it deems to be the best advantage of the Issuer and the public purpose thereof; and

WHEREAS, pursuant to the Series 1992 Indenture, hereinafter defined, the Issuer and the City may enter into an amendment to the 1992 Contract pursuant to any supplement to the Series 1992 Indenture authorized thereby and the Series 1992 Indenture provides for supplements thereto without consent of the holders of the Series 1992 Bonds for the purpose of issuing Additional Bonds for the purpose of issuing refunding bonds; and

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the Issuer and the City agree as follows:

PART I

This Part I shall be effective as of September 1, 1998. Certain terms used herein are defined in Part II.

ARTICLE I.

REPRESENTATIONS

Section 1.1 **Representations by the Issuer.** The Issuer makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Issuer was duly created pursuant to the authority granted under the Act. The Issuer is now existing and operating as a body corporate and politic. Under the provisions of the Act, the Issuer has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper corporate action, the Issuer has duly authorized the execution and delivery of this Agreement.

(b) The Issuer has found and hereby declares that the issuance of the Series 2002 Bonds for the purpose of facilitating the refunding of the Series 1992 Bonds will be in furtherance of the public purpose for which the Issuer was created. The Issuer is issuing the Series 2002 Bonds for the purpose of refunding the Series 1992 Bonds, all as provided herein and in the Series 2002 Indenture, for the benefit of the City.

(c) The Series 2002 Bonds are to be issued under and secured by the Series 2002 Indenture, pursuant to which the Issuer's interest in payments under this Agreement, excepting only the payments under Sections 5.1 and 9.4 of Part II hereof and any rights of the Issuer to indemnification hereunder, are pledged.

Section 1.2 **Representations and Agreements of the City.** The City makes the following representations and agreements as the basis for the undertakings on its part herein contained:

(a) The City is a municipal corporation and a political subdivision of the State of Georgia; has the power to enter into this Agreement and perform all obligations contained herein; and, by proper action of its City Council and Mayor, has duly authorized the execution and delivery of this Agreement.

(b) The City hereby warrants that it is not subject to any limitation or provision of any nature whatsoever, by contract, under law, ordinance, regulation, resolution, or otherwise, which in any way limits, restricts, or prevents the City from entering into this Agreement or from performing any of its obligations hereunder.

ARTICLE II.

COVENANTS RELATED TO SWAP AGREEMENT

Section 2.1 **Agreement to Pay Issuer If Amounts Due Under Swap Agreement Prior to Issuance of Series 2002 Bonds.** In consideration of the Issuer's execution and delivery of the Swap Agreement (as defined in Section 1.1 of Part II hereof) and the utilization of a portion of the amounts received thereunder to discharge a portion of the City's obligation pursuant to the 1992 Contract, the City agrees that if, for any reason, the Issuer cannot issue the Series 2002 Bonds and, as a result thereof, or if for any other reason, there are amounts due to be paid by the Issuer pursuant to the terms of the Swap Agreement prior to the issuance of the Series 2002 Bonds, the City shall pay to the Issuer, upon demand, all such amounts.

Section 2.2 **Amendment to 1992 Contract**. The provisions set forth in Section 2.1 above shall constitute an addition to the Purchase Price set forth in the 1992 Contract and shall be payable to the full extent provided for payment of the Purchase Price, including without limitation, Section 3.8(f) thereof. This Article shall be an amendment to the 1992 Contract, executed in connection with the authorization of Additional Bonds for the purpose of refunding all the Series 1992 Bonds. Notwithstanding Section 10.01 of the 1992 Contract, no termination of the 1992 Contract as amended hereby shall occur except upon satisfaction of all the Issuer's obligations under the Swap Agreement.

ARTICLE III.

MISCELLANEOUS

Section 3.1 **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified mail, postage prepaid, addressed as follows:

(a) if to the Issuer, to

Downtown Development Authority of the City of Atlanta
c/o Atlanta Development Authority
230 Peachtree Street, N.W.
Suite 2100
Atlanta, Georgia 30303
Attention: Kevin Hanna, President

with a copy to

Powell, Goldstein, Frazer & Murphy LLP
16th Floor
191 Peachtree Street, N.E.
Atlanta, Georgia 30303
Attention: Gregory H. Worthy, Esq.

(b) if to the City, to

City of Atlanta
c/o Chief Financial Officer
Suite 11000, City Hall Tower
68 Mitchell Street
Atlanta, Georgia 30335

with a copy to

City of Atlanta
Department of Law
Suite 4100, City Hall Tower
68 Mitchell Street
Atlanta, Georgia 30335

(c) if to the Series 2002 Trustee, to such address as set forth in the Series 2002 Indenture.

A duplicate copy of each notice, certificate, or other communication given hereunder by either the Issuer, the City or the Series 2002 Trustee to any one of the others shall also be given to all of the others. The Issuer, the City and the Series 2002 Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent.

Section 3.2 **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the City and their respective successors and assigns, subject, however, to the limitations contained in this Agreement.

Section 3.3 **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof

Section 3.4 **Amendments, Changes and Modifications.** Except as otherwise provided in this Agreement or the Swap Agreement, this Agreement may not be amended, changed, modified, altered, or terminated without the consent of the Swap Counterparty so long as the Swap Agreement is still in effect and, except as provided in this Agreement or in the Series 2002 Indenture, subsequent to the initial issuance of the Series 2002 Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of Article XIII of the Series 2002 Indenture), this Agreement may not be effectively amended, changed, modified, altered, or terminated.

Section 3.5 **Execution Counterparts.** . This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 3.6 **Captions.** . The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement, except for the statements as to the different effective dates of Part I hereof and this Part II.

Section 3.7 **Recording of Agreement.** . This Agreement or a memorandum form thereof in recordable form and every assignment and modification thereof shall be recorded in the office of the Clerk, Superior Court Fulton County, Georgia, or in such other office as may be at the time provided by law as the proper place for such recordation.

Section 3.8 **Law Governing Construction of Agreement.** . This Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia.

Section 3.9 **Immunity of Members, Officers and Employees of Issuer and City.** . No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the Issuer or the City contained in this Agreement or for any claim based hereon or otherwise in respect hereof or upon any obligation, covenant, promise or agreement of the Issuer contained in the Series 2002 Indenture or Series 2002 Bonds against the Mayor, the President of Council, any council member, director, member, officer or employee, as such, in his or her individual capacity, past, present or future, of the Issuer, the City or of any successor corporation, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, it being expressly agreed and understood that this Agreement is solely a corporate obligation of the City and the Issuer payable only from the funds and assets of the City and the Issuer herein specifically provided to be subject to such obligation and that no personal liability whatsoever shall attach to, or be incurred by, the Mayor, the President of Council, any council member, director, member, officer or employee, as such, past, present, or future, of the City or the Issuer, or of any successor corporation, either directly or through the City, the Issuer or any successor corporation, under or by reason of any of the obligations, covenants, promises or agreements entered into between the City and the Issuer whether contained in this Agreement, the Series 2002 Indenture or the Series 2002 Bonds or to be implied herefrom or therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such Mayor, President of Council, council member, director, member, officer and employee is, by the execution of this Agreement and as a condition of, and as part of the consideration for, the execution of this Agreement, expressly waived and released. The immunity of the Mayor, President of council, council members, directors, members, officers and employees of the Issuer and the City under the provisions contained in this Section shall survive the termination of this Agreement.

End of Part I

PART II

This Part II shall be effective as of the date of issuance of the Series 2002 Bonds in fulfillment of the Issuer's commitment pursuant to the Swap Agreement (as hereinafter defined). This Part II is an amendment to and, except for the description of the Leased Land, a restatement of the 1992 Contract, providing for the security for the Series 2002 Bonds and any Additional Bonds issued pursuant to the Series 2002 Indenture.

ARTICLE I.

DEFINITIONS; USE OF PHRASES

Section 1.1 **Definitions.** Any capitalized terms not defined herein shall have the meanings assigned to them in the Series 2002 Indenture (as hereinafter defined). In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement shall have the following meanings unless the context or use indicates another or different meaning or intent:

"Acquisition Date" means the date on which title to the Underground Project shall pass from the Issuer to the City when payment in full of all of the principal of, premium, if any, and interest on the Series 2002 Bonds and any Additional Bonds have been paid or provided for as provided in the Series 2002 Indenture and any supplemental indenture pursuant to which any Additional Bonds are issued and all obligations under the Swap Agreement have been satisfied.

"Act" means the Downtown Development Authorities Law of Georgia (1980 Ga. Laws, p. 4488, *et seq.*), and any amendments and supplements thereto.

"Additional Bonds" means the revenue bonds of the Issuer of one or more series issued pursuant to Section 4.8 of the Series 2002 Indenture.

"Agreement" means this Contract to Purchase as it now exists and as it may hereafter be amended pursuant to Article XI of the Series 2002 Indenture.

"Authority" means the Downtown Development Authority of the City of Atlanta, Georgia, a body corporate and politic, duly created and existing under the Act, and its successors and assigns.

"Authorized City Representative" means the Chief Financial Officer of the City of Atlanta, or any other person at the time designated to act on behalf of the City by written certificate furnished to the Issuer and the Series 2002 Trustee containing the specimen signature of such person and signed on behalf of the City by the Mayor. Such person shall not be any individual who is at the time serving as a member of the Issuer. Such certificate may designate an alternate or alternates.

"Bond Fund" means the fund created under the Series 2002 Indenture for the benefit of the holders of the Series 2002 Bonds which is designated the "Downtown Development Authority of the City of Atlanta Underground Project Debt Service Fund."

"Bondholder," "holder," or **"owner"** means the registered owner of any Series 2002 Bond or any Additional Bonds issued pursuant to the Series 2002 Indenture.

"Bond Payment Date" means, for the Series 2002 Bonds, April 1 and October 1 of each year, commencing April 1, 2003, and for any Additional Bonds, the dates set forth in the relevant supplement to the Series 2002 Indenture.

"City" means the City of Atlanta, Georgia, a municipal corporation and political subdivision of the State of Georgia, and any public entity, body, or authority to which is hereafter transferred or delegated by law the duties, power, authorities, obligations, or liabilities of the present political subdivision.

"Code" means the Internal Revenue Code of 1986, as amended.

"Improvements" means the buildings, plazas, sidewalks, parks, streets and other improvements constructed on the Leased Land in accordance with the Master Plan and as more specifically described in the Project Plan (as defined in the 1986 Indenture).

"Independent Counsel" means an attorney who is duly admitted to practice law before the highest court of any state of the United States of America, is not a full-time employee of either the Issuer or the City, and is approved by the Issuer and City.

"Leased Land" means the real property described in Exhibit A attached to the 1992 Contract and by this reference made a part of this Agreement. The description of the Leased Land, and the tracts or parcels comprising the same, may be modified or amended, and any property (or rights therein) added to or deleted from the same, by the mutual written consent of the City and the Issuer, without the necessity of Bondholders' consent.

"Liquidity Agreement" means the Standby Purchase Agreement, Letter of Credit Reimbursement Agreement or other similar agreement entered into between the Issuer and a bank agreeing, for a fee, to provide funds for the purchase of Series 2002 Bonds that cannot be remarketed by the Remarketing Agent pursuant to the Remarketing Agreement.

"Liquidity Assurance Agreement" means the Liquidity Assurance Agreement between the Swap Counterparty and the Issuer, dated as of September 1, 1998.

"1986 Indenture" means that certain Trust Indenture, dated as of August 1, 1986, as amended by the Supplemental Trust Indenture, dated as of August 14, 1986, between the Issuer and SouthTrust Estate and Trust Company of Georgia, N.A., as successor Trustee.

"Permitted Encumbrances" means, as of any particular time, (i) the encumbrances created by this Agreement and the Series 2002 Indenture, (ii) utility, access and other easements

and rights of way, restrictions, reservations, reversions and exceptions which are specified in Exhibit B attached hereto, (iii) unfiled and inchoate mechanics' and materialmen's liens for construction work in progress, and (iv) mechanics', materialmen's, suppliers' and vendors' liens or other similar liens not then payable or permitted to exist as provided in Section 6.1 of the Underground Lease.

"Purchase Price" means the purchase price to be paid by the City for the Underground Project pursuant to this Agreement, as described in Section 3.8 hereof.

"Remarketing Agreement" means the Remarketing Agreement between the Issuer and Wachovia Capital Markets, Inc., as the initial Remarketing Agent, pursuant to which the Remarketing Agent provides remarketing services for the Series 2002 Bonds, and any succeeding remarketing agreement with a replacement remarketing agent.

"Series 1992 Bonds" means the Issuer's $86,015,000 in original aggregate principal amount of Refunding Revenue Bonds (Underground Atlanta Project), Series 1992.

"Series 1992 Indenture" means the Trust Indenture, dated as of October 1, 1992, by and between the Issuer and SouthTrust Estate and Trust Company of Georgia, N.A., as trustee, relating to the issuance of the Series 1992 Bonds, as the same may be supplemented or amended, including the First Supplemental Trust Indenture, dated as of September 1, 1998.

"Series 1992 Trustee" means SouthTrust Estate and Trust Company of Georgia, NA., in its capacity as trustee under the Series 1992 Indenture, or any successor trustee thereunder.

"Series 2002 Bonds" means the Issuer's Variable Rate Revenue Refunding Bonds from Tax-Exempt Multi Modal Refunding Revenue Bonds (Underground Atlanta Project), Series 2002, issued pursuant to the Series 2002 Indenture to refund the outstanding Series 1992 Bonds.

"Series 2002 Indenture" means that certain Trust Indenture dated as of July 1, 2002, between the Issuer and the Series 2002 Trustee securing the Series 2002 Bonds.

"Series 2002 Trustee" means the bank or trust company serving in the capacity of trustee for the Series 2002 Bonds under the Series 2002 Indenture.

"Swap Agreement" means that interest rate swap agreement with the Swap Counterparty, which consists of an ISDA Master Agreement dated as of September 10, 1998 between the Issuer and the Swap Counterparty, and the Confirmation dated as of September 10, 1998 between such parties and any replacement agreement therefor entered into by the Issuer with a Swap Counterparty.

"Swap Counterparty" means Ambac Financial Services, Limited Partnership, and successors and assigns as permitted by the Swap Agreement and, in the event that a successor or replacement interest rate swap agreement is entered into by the Issuer following termination of the initial Swap Agreement, the provider thereof.

"Tender Agent Agreement" means the Agreement between the Issuer and Wachovia Bank, National Association, as the initial Tender Agent under the Series 2002 Indenture, and any succeeding tender agent agreement with a replacement Tender Agent.

"Term of this Agreement" means from the effective date hereof until the Purchase Price shall have been paid in full and title to the Underground Project shall have been conveyed to the City in accordance with this Agreement.

"Underground Lease" means that certain Lease Agreement between the Issuer and the City, dated as of August 1, 1986, as the same may be supplemented or amended.

"Underground Project" means the Leased Land and the Improvements, as they may at any time exist.

Section 1.2 **Use of Phrases.** "Herein," "hereby," "hereunder," "hereof," "hereinabove," "hereinafter," and other equivalent words refer to this Agreement and not solely to the particular portion hereof in which any such word is used. The definitions set forth in Section 1.1 hereof include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders.

ARTICLE II.

REPRESENTATIONS

Section 2.1 **Representations Effective.** The Issuer and the City each make the representations found in Part I, Article I, of this Agreement effective as if made on the date of issuance of the Series 2002 Bonds.

ARTICLE III.

AGREEMENT TO SELL THE UNDERGROUND PROJECT TO THE CITY

Section 3.1 **Modification of Agreement to Purchase and Sell.** In recognition of the payment of the Series 1992 Bonds and the release of the City's obligations with respect thereto under the 1992 Contract, the parties agree as follows. For and in consideration of the payment by the City of the Purchase Price, the Issuer hereby agrees to sell to the City, and the City hereby agrees to purchase from the Issuer on the Acquisition Date, upon the terms and conditions contained in this Agreement, all right, title and interest of the Issuer in and to the Underground Project, subject to Permitted Encumbrances, and to all present and future zoning, building and other laws, ordinances and regulations affecting the Underground Project or the use thereof and to the further restrictions set forth in Section 3.5 below.

Section 3.2 **Executory Contract Only; No Sale.** This Agreement is an executory contract to purchase and sell, and does not constitute a sale, conveyance, transfer or assignment of the Underground Project. The title to, and right to possession of, the Underground Project

will pass to the City only when transferred to it, by deed or other appropriate conveyance, on the Acquisition Date as provided in Section 3.6 hereof.

Section 3.3 **Settlement Costs.** The City agrees to pay all costs and expenses in connection with the transfer of the Issuer's interest in the Underground Project from the Issuer to the City, including real estate transfer taxes title insurance premiums, recording, legal and satisfaction fees.

Section 3.4 **Possession Upon Completion of Payment of Purchase Price.**

(a) The City shall be entitled to exclusive possession of the Underground Project pursuant to this Agreement only upon payment in full of the Purchase Price. The Issuer and the City acknowledge that the City is otherwise entitled to possession of the Underground Project pursuant to the Underground Lease. The City and the Issuer agree and covenant to maintain, preserve and keep effective the Underground Lease until the payment in full of the Series 2002 Bonds and all Additional Bonds, if any, in the manner set out in Article VIII of the Series 2002 Indenture, respectively.

(b) In furtherance of this Agreement, the Issuer and the City agree to assign or cause the assignment of the Underground Lease to the Series 2002 Trustee as additional security for the Series 2002 Bonds, upon the payment in full of the Series 1992 Bonds in the manner set out in Article XI of the Series 1992 Indenture. Such assignment shall be accomplished by a supplement to the Series 2002 Indenture.

(c) The Issuer and the City agree and covenant that the owners of the Series 2002 Bonds and the Swap Counterparty are third-party beneficiaries of the Underground Lease from and after the date of this Agreement.

(d) The City, pursuant to the 1992 Contract, waived and relinquished its right to purchase the Underground Project contained in Section 12.1 of the Underground Lease, and hereby waives and relinquishes such rights for the benefit of the Bondholders and the Swap Counterparty.

Section 3.5 **Zoning**. The City has satisfied itself respecting the existing classification, the legality of the present use and any future use of the Underground Project intended by the City and the existence or nonexistence, as the case might be, of any violations of any local codes or state laws respecting the Underground Project, and the City waives any right it may have against the Issuer respecting representations concerning the Underground Project.

Section 3.6 **Transfer Upon Payment of Purchase Price**. The Issuer shall retain its interest in the Underground Project (and shall not surrender, waive, release or cancel any of its rights or the City's rights therein without the prior written consent of the City) until the Purchase Price provided hereunder has been paid in full and the Series 2002 Indenture has been discharged in accordance with Article VIII thereof. Upon payment of the Purchase Price and discharge of the Series 2002 Indenture as provided in Article VIII thereof, the Issuer shall on the Acquisition Date transfer to the City by special warranty deed good and marketable title to the Issuer's

interest in the Underground Project, insurable at regular, basic rates by a title insurance company authorized to transact business in the State of Georgia, excepting, however, any part of such interest taken by eminent domain during the Term of this Agreement, together with a bill of sale for all fixtures, equipment and other personalty comprising the Underground Project and subject to the following if they exist on the Acquisition Date: (a) liens and encumbrances to which title to such property was subject when conveyed to the Issuer; (b) liens, encumbrances and restrictions created or suffered by the City or to the creation or suffering of which the City consented; (c) liens, encumbrances and restrictions resulting from the failure of the City to perform or observe any of the agreements on its part contained herein or in the Underground Lease; (d) Permitted Encumbrances other than the Series 2002 Indenture and this Agreement; and (e) if the option is exercised pursuant to the provisions of Section 10.2(b) hereof, the rights and title of the condemning authority. In connection with the closing of the sale of the Underground Project to the City, the City shall furnish to the Issuer reasonable security to indemnify the Issuer, its members and agents against any claims then pending or arising out of the Issuer's ownership of its interest in the Underground Project which are not covered by liability insurance, which also covers the Issuer, its members and agents as additional insureds. The Issuer shall give timely written notice to the City of any claims, actions and proceedings of which the Issuer has knowledge.

Section 3.7 Issuance of the Series 2002 Bonds.

(a) In order to facilitate the refunding of the Series 1992 Bonds, the Issuer has committed to issue and sell the Series 2002 Bonds and has entered into the Swap Agreement. The Series 2002 Bonds will be issued under the Series 2002 Indenture, the terms of which are hereby approved by the City, and will be payable solely from the sources set forth in the Series 2002 Indenture.

(b) The proceeds of the Series 2002 Bonds will be deposited in the various funds created under Section 6.2 of the Series 2002 Indenture and will be used by the Issuer in accordance with Section 2.10 of the Series 2002 Indenture to pay all the outstanding Series 1992 Bonds by deposit of funds with the Series 1992 Trustee in accordance with the terms of the Series 1992 Indenture.

Section 3.8 Purchase Price.

(a) The City shall pay to the Issuer the Purchase Price hereunder with respect to the purchase of the Underground Project. The Purchase Price shall be in an amount sufficient to pay the total amount of principal of, premium, if any, and interest on, the Series 2002 Bonds and certain administrative expenses related to the issuance of the Series 2002 Bonds and all amounts due under the Swap Agreement. Such Purchase Price will be payable in installments as provided in subparagraph (b) below and shall bear interest in respect of the payment of the principal of, and premium identical with the provisions and requirements of the Series 2002 Bonds and the Swap Agreement.

(b) At least three (3) business days before each Bond Payment Date (or any other date on which any of the Series 2002 Bonds are to be paid or redeemed), until the principal of,

redemption premium, if any, and interest on the Series 2002 Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Series 2002 Indenture, the City shall pay to the Series 2002 Trustee, in trust for the holders of the Series 2002 Bonds, on behalf of the Issuer, and deposit into the Bond Fund, in immediately available funds, as installment payments of the Purchase Price for the Underground Project a sum equal to the aggregate amount equal to the principal of (including principal amounts payable on mandatory redemption of the Series 2002 Bonds), redemption premium, if any, and interest payable on such Bond Payment Date (or other date on which the Series 2002 Bonds are to be paid or redeemed). At least three (3) business days before each Bond Payment Date (or any other date on which any amounts are due from the Issuer to the Swap Counterparty pursuant to the Swap Agreement), the City shall pay to the Series 2002 Trustee, in trust for the benefit of the Swap Counterparty, on behalf of the Issuer, and deposit into the Bond Fund, in immediately available funds, as installment payments of the Purchase Price for the Underground Project, a sum equal to the aggregate amount equal to the amount due from the Issuer to the Swap Counterparty on such Bond Payment Date (or other date on which any amounts are to be paid). In the event the full amount due by the Issuer with respect to interest on the Series 2002 Bonds cannot be determined on such third preceding business day and the Swap Agreement with respect to interest on the Series 2002 Bonds, is not providing payments based on the actual interest rate on the Series 2002 Bonds, the City shall calculate the installment of the Purchase Price based on the assumption that the Series 2002 Bonds bear interest for the period that cannot be determined at the rate of 15% per annum; provided that the higher rate of 25% shall be used to the extent the interest rate on the Series 2002 Bonds could be greater because either (i) the Issuer has designated a greater "Ceiling Rate," as provided in the Indenture, or (ii) any Series 2002 Bonds are owned by the Liquidity Provider and the Liquidity Provider shall have given notice of such ownership to the City. In any event, each installment payment under this Section shall be sufficient to pay the total amount of interest, principal of (including principal amounts payable on mandatory redemption of the Series 2002 Bonds), and redemption premium, if any, payable with respect to the Series 2002 Bonds and the Swap Agreement on the next succeeding Bond Payment Date (or other date on which the Series 2002 Bonds are to be paid or redeemed or amounts are due under the Swap Agreement). If, on any Bond Payment Date (or other date on which the Series 2002 Bonds are to be paid or redeemed or amounts are due under the Swap Agreement), the balance in the Series 2002 Bond Fund is insufficient to make required payments of principal of (including principal amounts payable on mandatory redemption of the Series 2002 Bonds), interest and redemption premium, if any, with respect to the Series 2002 Bonds or amounts are due under the Swap Agreement on such date, the City shall forthwith pay any deficiency.

(c) Anything herein to the contrary notwithstanding, any amount at any time held by the Series 2002 Trustee in the Bond Fund including, without limitation, amounts deposited into the Bond Fund as return from investments, and any other amounts, shall be credited against the next succeeding installment payment and shall reduce the payment to be made by the City to the extent such amount is in excess of the sum of (i) the amount required for payment of the Series 2002 Bonds theretofore matured or called for redemption, (ii) the redemption premium, if any, on such theretofore matured or called Series 2002 Bonds, (iii) past due accrued interest in all cases where such Series 2002 Bonds have not been presented for payment, and (iv) all amounts due the Swap Counterparty pursuant to the Swap Agreement, and any other amounts shall be credited against the next succeeding installment payment and shall reduce the payment to be

made by the City to the extent such amount is in excess of the installment payment, and provided further, if the aggregate amount held by the Series 2002 Trustee in the Bond Fund should be sufficient to cause the outstanding Bonds and all Additional Bonds, if any, to be deemed to be paid within the meaning of Article VIII of the Series 2002 Indenture and to pay all amounts, if any, due to the Swap Counterparty, the City shall not be obligated to make any further installment payments under the provision of this Section.

(d) As additional installment payments of the Purchase Price, the City agrees to pay directly to the Series 2002 Trustee for the Issuer until the principal of, redemption premium, if any, and interest on the Series 2002 Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the provisions of Article VIII of the Series 2002 Indenture, (i) an amount equal to the annual fee, if any, of the Series 2002 Trustee for the Ordinary Services rendered by the Series 2002 Trustee and its Ordinary Expenses incurred under the Series 2002 Indenture, (ii) the reasonable fees and charges of the Series 2002 Trustee for Extraordinary Services rendered by it and Extraordinary Expenses incurred by it under the Series 2002 Indenture, fees of the Paying Agent and Bond Registrar and any other amounts payable by the Issuer to the Series 2002 Trustee under the Series 2002 Indenture, subject to the provisions of Section 10.2 of the Series 2002 Indenture, as and when the same become due, and (iii) all amounts due to be paid by the Issuer pursuant to the Remarketing Agreement, the Tender Agent Agreement, the Liquidity Assurance Agreement or the Liquidity Agreement, to the extent accrued on and after the date of issuance of the Series 2002 Bonds.

(e) Anything to the contrary in this Section 3.8 notwithstanding, the City, at its option, to be exercised on or before the 40th day next preceding any principal payment date for the Series 2002 Bonds or the 40th day next preceding any mandatory redemption date for such Series 2002 Bonds required to be redeemed prior to maturity, may (a) deliver to the Series 2002 Trustee for cancellation Series 2002 Bonds of the maturity which is to be paid on the upcoming mandatory redemption date, or (b) receive a credit in respect of the upcoming payment for any Series 2002 Bonds of the maturity to be paid or redeemed on the upcoming mandatory redemption date which prior to said date have been purchased or redeemed and cancelled by the Issuer and not thereafter applied as a credit in the manner provided in this paragraph, or (c) the City may elect to exercise such option as to both (a) and (b) of the foregoing. Each Series 2002 Bond so delivered or previously redeemed shall be credited at 100% of the principal amount thereof against the scheduled payment obligation of the City on such scheduled date for a payment of principal of, premium, if any, and interest on the Series 2002 Bonds.

(f) The City covenants that it will exercise its power of taxation to the extent necessary to pay the amounts required to be paid hereunder and it will make available and use for the payment of its obligations incurred hereunder all such taxes levied and collected for that purpose together with funds received from any other sources not otherwise pledged or appropriated. The City further covenants and agrees that in order to make such funds available for such purpose in each fiscal year, it will, in its revenue, appropriation and budgetary measures whereby its tax funds or revenues and the allocation thereof are controlled or provided for in each fiscal year during the term of this Agreement, include sums sufficient to satisfy the payments required to be made under this Agreement, whether or not any other sums are included in such measure, until all payments required to be made hereby shall have been made in full.

Section 3.9 **Place of Installment Payments.** The installment payments provided for in Section 3.8(b) hereof shall be paid directly to the Series 2002 Trustee, on behalf of the Issuer, in trust for the benefit of the holders of the Series 2002 Bonds and the Swap Counterparty for deposit in the Bond Fund. Any additional payment provided for in Section 3.8 hereof shall also be paid directly to the Series 2002 Trustee, unless otherwise directed by the Issuer with respect to amounts due pursuant to Section 3.8(d)(iii).

Section 3.10 **Obligations of City Hereunder Unconditional.** The obligations of the City to make the payments required in Section 3.8 hereof and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional. Until such time as the principal of, redemption premium, if any, and interest on the Series 2002 Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Series 2002 Indenture and all amounts to be paid by the Issuer due pursuant to the Swap Agreement have been paid, the City (i) shall not suspend or discontinue any payments provided in Section 3.8 hereof except to the extent the same have been prepaid, (ii) shall perform and observe all of its other agreements contained in this Agreement, and (iii) shall not terminate this Agreement for any cause whatsoever.

Section 3.11 **Payments Received in Trust.** Any payments made by the City received by the Issuer under and pursuant to this Article III, or otherwise under this Agreement, excepting only payments to the Issuer for expenses incurred under Sections 3.8(d)(iii), 5.1 and 9.4 hereof and with respect to any rights of the Issuer to indemnification hereunder, shall not be commingled with other funds or property of the Issuer, but shall be paid immediately to the Series 2002 Trustee to be held by the Series 2002 Trustee for the benefit of the holders of the Series 2002 Bonds and Additional Bonds, if any, and the Swap Counterparty, separate and apart from the other funds and property held by the Series 2002 Trustee and upon express trust for the benefit of the holders of the Series 2002 Bonds and the Additional Bonds, if any, and the Swap Counterparty.

Section 3.12 **Assignment of Issuer Rights to Trustee.** The Issuer hereby notifies the City and the City acknowledges that all of the Issuer's rights and benefits in this Agreement, excepting only payments to the Issuer for expenses incurred under Sections 5.1 and 9.4 hereof and with respect to any rights of the Issuer to indemnification hereunder, are being assigned and transferred to the Series 2002 Trustee under the Series 2002 Indenture to provide a source of payment of all interest and principal and redemption premium, if any, owing by the Issuer pursuant to the terms of the Series 2002 Bonds, the Series 2002 Indenture and the Swap Agreement. The City hereby consents to such assignment and agrees that the Series 2002 Trustee, as assignee of the Issuer, shall have the right to enforce all of the covenants, agreements, duties and obligations of the City contained in this Agreement. The City further acknowledges that except for the obligation of the Series 2002 Trustee to credit amounts paid or recovered under this Agreement to the Issuer's right to expenses or indemnification, the Issuer has no further interest in this Agreement, and the Series 2002 Trustee may grant extensions, make amendments, release collateral and otherwise deal with this Agreement, subject to the terms of the Series 2002 Indenture, and the Series 2002 Trustee may start and prosecute suit or otherwise take action to recover amounts owing under this Agreement, subject to the provisions of the

Series 2002 Indenture, without first obtaining the consent of the Issuer or without joining the Issuer as a plaintiff.

Section 3.13 **Prepayment.** The City shall have the right and obligation to prepay the Purchase Price to the same extent and on the same terms and conditions as the Issuer has the right and the obligation to prepay or redeem the Series 2002 Bonds. The Issuer covenants that it will not knowingly cause any optional redemption of the Series 2002 Bonds without the prior written consent of the City.

Section 3.14 **Indemnification of Issuer.** The City shall indemnify and save the Issuer harmless against and from all claims by or on behalf of any person, firm, or corporation arising from the conduct or management of, or from any work or thing done on, the Underground Project during the Term of this Agreement, and against and from all claims arising during the Term of this Agreement from (a) any condition of the Underground Project caused by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Agreement, (c) any act of negligence of the City or of any of its agents, contractors, servants, employees, or licensees, and (d) any act of negligence of any assignee or sublessee of the City, or of any agent, contractor, servant, employee, or licensee of any assignee or sublessee of the City, but excepting (as to (a) through (d) of the foregoing) any claims resulting from the willful or wanton misconduct or unlawful acts of the Issuer and also excepting (as to clauses (a) through (d) of the foregoing), any liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the indemnified person, his agents, or employees relative to the construction, alterations, repair, or maintenance of a building structure, appurtenances, and appliances, including moving, demolition, and excavating connected therewith, it being understood and agreed that this latter exception is included herein to assure the validity and enforceability of the indemnity provision hereof under Georgia law, and, in particular, *O.C.G.A.* § 13-8-2 (1982), as amended, and is not otherwise intended by the parties to narrow the indemnity provision hereof. The City shall indemnify and save the Issuer harmless from and against any and all costs and expenses (including, without limitation, attorneys' fees) incurred or in connection with any action or proceeding brought thereon, and upon notice from the Issuer, the City shall defend it in any such action or proceeding.

Section 3.15 **Warranty of Title.** The Issuer warrants that it now has, and will on the Acquisition Date have, good and marketable title to the Leased Land, free from all encumbrances other than Permitted Encumbrances, and subject to all present and future zoning, building and other laws, ordinances and regulations affecting the Underground Project or the use thereof and to the further restrictions set forth in Sections 3.5 and 10.3 hereof.

ARTICLE IV.

CERTAIN COVENANTS OF THE ISSUER AND THE CITY

Section 4.1 **Agreement to Issue the Bonds; Application of Bond Proceeds.** In order to provide long-term financing to the Issuer so that the Series 1992 Bonds can be refunded, the Issuer has issued, sold, and caused to be delivered to the purchasers thereof, $_____ in aggregate principal amount of the Series 2002 Bonds. The Series 2002 Bonds are dated, bear

interest from their date at such rates payable on such dates, and mature at such times, as provided by the Issuer pursuant to the Series 2002 Indenture. The Series 2002 Bonds are subject to redemption in whole or in part in accordance with the Series 2002 Indenture.

Section 4.2 **Tax Covenant.** The City covenants that neither the proceeds (including interest on proceeds) of the Series 2002 Bonds nor monies in the Bond Fund or interest thereon, nor any other trust funds held at any time by the City or the Series 2002 Trustee, or interest thereon, shall be invested or reinvested or used in such manner that any of the Series 2002 Bonds would be "arbitrage bonds" within the meaning of Section 148 of the Code, and applicable regulations thereunder. The City will not take any action, or refrain from taking any action, which would result in the interest on the Series 2002 Bonds becoming includable in gross income for federal income tax purposes. The Issuer covenants that any monies received by it for the benefit of the Bondholders or the Swap Counterparty will be immediately turned over to the Series 2002 Trustee and it will take all actions requested of it to avoid the treatment of the Series 2002 Bonds as "arbitrage bonds" within the meaning of Section 148 of the Code.

ARTICLE V.

ADDITIONAL OBLIGATIONS OF THE CITY

Section 5.1 **Other Issuer Expenses.** Anything to the contrary herein notwithstanding, the City will pay any fees and expenses, whether or not specifically mentioned herein, which are incurred by the Issuer in connection with or relating to the Underground Project, this Agreement, the Series 2002 Indenture, the Series 2002 Bonds or the Swap Agreement, which are not payable from the Bond Fund pursuant to Article VI of the Series 2002 Indenture, including, but not limited to, any attorneys' fees or other related fees and expenses.

ARTICLE VI.

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 6.1 **Damage and Destruction.**

(a) If, prior to full payment of the Series 2002 Bonds (or provision for payment thereof having been made in accordance with the provisions of the Series 2002 Indenture), the Underground Project or any part thereof is damaged by fire or other casualty, to such an extent that in the judgment of the City (A) such damage or destruction will result in a reduction of more than twenty-five percent (25%) of the revenues from the Underground Project for a period of six months or longer or (B) the cost of restoration thereof would exceed the Net Proceeds, as defined in the Underground Lease, of insurance carried thereon pursuant to the requirements of the Underground Lease, plus any deductible amounts permitted under the Underground Lease, the City, at its option, with the cooperation of the Issuer, which cooperation the Issuer shall be required to provide, shall make payment into the Bond Fund of an amount sufficient, taken together with any Net Proceeds, for redemption of all of the Series 2002 Bonds, together with accrued and unpaid interest on the Series 2002 Bonds to the date of redemption in accordance with and subject to the applicable redemption provisions and redemption payment credit

provisions for the Series 2002 Bonds provided in Article III of the Series 2002 Indenture and sufficient to satisfy all obligations, if any, remaining due under the Swap Agreement; provided, however, no such occurrence shall interrupt or interfere with the City's obligation to make installment payments of the Purchase Price in accordance with the provisions of Section 3.8 hereof, which obligation is absolute and unconditional.

If the Series 2002 Bonds and all Additional Bonds, if any, have been fully paid (or provision for payment thereof has been made in accordance with the provisions of Article VIII of the Series 2002 Indenture) and all obligations under the Swap Agreement have been satisfied, Net Proceeds shall be paid to the City.

(b) Within ninety (90) days from the date of any such damage or destruction, the City shall notify the Issuer, the Series 2002 Trustee and the Swap Counterparty in writing as to which of the ways specified in this Section the City elects to have the Net Proceeds applied; and the Series 2002 Trustee, on behalf of the Issuer, shall proceed pursuant to the terms of the Series 2002 Indenture to carry out the directions of the City to the extent permitted by the Series 2002 Indenture.

(c) The Series 2002 Indenture shall provide that the Series 2002 Trustee, on behalf of the Issuer, shall cooperate fully with the City in the handling and conduct of any pending claim for insurance in the event of any such damage or destruction with respect to the Underground Project or any part thereof and will, to the extent it may lawfully do so, permit the City to litigate in any such proceeding in the name and on behalf of the Issuer and the Series 2002 Trustee. In no event will the Issuer voluntarily settle, or consent to the settlement of, any prospective or pending condemnation proceeding with respect to the Underground Project or any part thereof, without the written consent of the City.

(d) The City shall not, by reason of the use of any Net Proceeds pursuant to this Section, be entitled to any reimbursement from the Issuer or the Series 2002 Trustee or to abatement or reduction of the installment payments payable under Section 3.8 hereof.

Section 6.2 <u>Condemnation</u>.

(a) In the event that title to, or the temporary use of, the Underground Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm, or corporation acting under governmental authority, including a taking of the temporary use of the Underground Project, which the City projects will result in a reduction of more than twenty-five percent (25%) of the revenues from the Underground Project for a period of six months or longer, the City shall be obligated to continue to make the installment payments specified in Section 3.8 hereof. Any Net Proceeds received from any award made in such eminent domain proceedings shall be applied at the option of the City in one or more of the following ways:

(i) the restoration of the Improvements located on the Leased Land to substantially the same condition as they existed prior to the exercise of said power of eminent domain;

(ii) the acquisition, by construction or otherwise, by the Issuer of other improvements suitable for the City's operations (which improvements shall be deemed to constitute a part of the Underground Project and to be available for use and occupancy by the City without payment of any purchase price other than as herein provided to the same extent as if such other improvements were specifically described herein and sold hereby); or

(iii) payment into the Bond Fund an amount sufficient, taken together with any Net Proceeds, for (A) redemption of all of the Series 2002 Bonds, together with accrued and unpaid interest on the Series 2002 Bonds to the date of redemption in accordance with and subject to the applicable redemption provisions and redemption payment credit provisions for the Series 2002 Bonds provided in Article III of the Series 2002 Indenture, and (B) the satisfaction of all the Issuer's obligations under the Swap Agreement.

If the Series 2002 Bonds and all Additional Bonds, if any, have been fully paid (or provision for payment thereof has been made in accordance with the provisions of Article VIII of the Series 2002 Indenture), and all of the Issuer's obligations under the Swap Agreement have been satisfied, then the Net Proceeds shall be paid to the City.

(b) Within ninety (90) days from the date of entry of a final order in any eminent domain proceedings granting condemnation, the City shall notify the Issuer, the Series 2002 Trustee and the Swap Counterparty in writing as to which of the ways specified in this Section the City elects to have the condemnation award applied; and the Series 2002 Trustee, on behalf of the Issuer, shall proceed pursuant to the terms of the Series 2002 Indenture to carry out the directions of the City to the extent permitted by the Series 2002 Indenture.

(c) The Series 2002 Indenture shall provide that the Series 2002 Trustee, on behalf of the Issuer, shall cooperate fully with the City in the handling and conduct of any prospective or pending condemnation proceeding with respect to the Underground Project or any part thereof and will, to the extent it may lawfully do so, permit the City to litigate in any such proceeding in the name and on behalf of the Issuer and the Series 2002 Trustee. In no event will the Issuer voluntarily settle, or consent to the settlement of, any prospective or pending condemnation proceeding with respect to the Underground Project or any part thereof, without the written consent of the City.

(d) The City shall not, by reason of the use of any condemnation proceeds pursuant to this Section, be entitled to any reimbursement from the Issuer or the Series 2002 Trustee or to abatement or reduction of the installment payments payable under Section 3.8 hereof.

Section 6.3 **Destruction or Condemnation of City-Owned Property.** The Issuer hereby assigns to the City all of its rights and interests in any Net Proceeds of any condemnation award or portion thereof made for damages to or takings of its own property or for damages on

account of the taking or interference with the City's rights to possessions use, or occupancy of the Underground Project.

Section 6.4 **Opinion of Bond Counsel.** If the City elects to complete, repair, rebuild or restore under the provisions of Section 6.1(a) above, or to restore, acquire or construct under the provisions of Section 6.2(a)(i) or (ii) above, it shall first furnish to the Series 2002 Trustee an opinion of Bond Counsel that the same will not result in the interest on the Series 2002 Bonds becoming includable in gross income for federal income tax purposes.

Section 6.5 **Invalidity of this Agreement.** In the event as a result of (a) any changes in the Constitution of the State of Georgia or the Constitution of the United States of America, (b) legislative or administrative action (whether state or federal), or (c) a final decree, judgment, or order of any court or administrative body (whether state or federal) entered after the contest thereof by the City in good faith, this Agreement shall become void, unenforceable, or impossible of performance in accordance with the intent and purpose of the parties as expressed in this Agreement or unreasonable burdens or excessive liabilities shall have been imposed on the Issuer or the City including, without limitation, federal, state, or other ad valorem, property, income, or other taxes not being imposed on the date of this Agreement, the City may, at its option, make payment into the Bond Fund of amounts sufficient for redemption of all of the Series 2002 Bonds, together with accrued and unpaid interest to the date of redemption in accordance with and subject to the applicable redemption provisions and redemption payment credit provisions for the Series 2002 Bonds provided in Article III of the Series 2002 Indenture and sufficient for the satisfaction of all of the Issuer's obligations under the Swap Agreement.

ARTICLE VII.

SPECIAL COVENANTS

Section 7.1 **No Warranty of Condition or Suitability by the Issuer.** The Issuer makes no warranty, either express or implied, as to the condition of the Underground Project or that it will be suitable for the City's purposes or needs; provided, however, that the Issuer covenants and agrees that the City shall have all of the rights and benefits under any and all warranties, either express or implied, relating to the Underground Project or any appurtenances thereto or personal property located thereon, given or made by any contractor, subcontractor, equipment supplier, supplier of services, laborman, or materialman to the Issuer by reason of or incident to any work performed or materials or equipment furnished in connection with the Underground Project.

ARTICLE VIII.

ASSIGNMENT; PLEDGING AND SELLING; REDEMPTION; PREPAYMENT AND ABATEMENT

Section 8.1 **Assignment.** This Agreement may be assigned by the City to any assignee permitted under the Act, without the prior written consent of the Issuer or the Series 2002 Trustee, subject, however, to each of the following conditions:

(a) no assignment shall relieve the City from primary liability for any of its obligations hereunder, and notwithstanding any such assignment, the City shall continue to remain primarily liable for payment of the installments specified in Section 3.8 hereof and for performance and observation of each of the other agreements on its part herein provided to be performed and observed by it;

(b) the assignee shall assume the obligations of the City hereunder with respect to any further assignment;

(c) the City shall, within thirty days after the delivery thereof, furnish or cause to be furnished to the Issuer, the Series 2002 Trustee and the Swap Counterparty a true and complete copy of each such assignment; and

(d) the City shall deliver to the Issuer and the Series 2002 Trustee, prior to the effective date of such assignment, an opinion of Bond Counsel to the effect that such assignment will not have the effect of causing the interest on the Series 2002 Bonds to become includable in gross income for federal income tax purposes or the Series 2002 Bonds to be "arbitrage bonds" under Section 148 of the Code, and will not result in a loan of credit or appropriation for any person or nonpublic corporation or association in violation of Article IX, Section II, paragraph VIII of the 1983 Georgia Constitution.

Section 8.2 **Assignment and Pledge.** The Issuer shall assign to the Series 2002 Trustee its interest in amounts to be received by the Issuer hereunder and pledge any monies receivable under this Agreement as security for payment of the principal of, redemption premium, if any, and the interest on the Series 2002 Bonds and the Issuer's obligations under the Swap Agreement.

Section 8.3 **Restrictions on Sale of Project by Issuer.** Except for any transfers contemplated by the Permitted Encumbrances, the Issuer agrees that it will not sell, or agree to sell, assign, or agree to assign, transfer, or agree to transfer, or convey, or agree to convey, the Underground Project or any part thereof during the Term of this Agreement.

Section 8.4 **Redemption of Bonds.** The Issuer, at the City's request, if the Series 2002 Bonds are redeemable at the time of such request, shall forthwith take, or cause the Series 2002 Trustee to take, all steps that may be necessary under the applicable redemption provisions of the Series 2002 Indenture to effect redemption of all or part of the then outstanding Series 2002 Bonds, as requested by the City, on the earliest redemption date on which such redemption may be made under the applicable provisions of the Series 2002 Indenture or on the date set for redemption by the City pursuant to applicable provisions of this Agreement and the Series 2002 Indenture. So long as the City is not in Default hereunder, the Issuer shall not redeem, or cause the Series 2002 Trustee to redeem, the Series 2002 Bonds prior to their maturities unless required by the Series 2002 Indenture or requested in writing by the City.

Section 8.5 **Prepayment of Purchase Price.** There is expressly reserved to the City the right, and the City is authorized and permitted, at any time it may choose, to prepay all or any

part of the installments payable under Section 3.8 hereof. All installments so prepaid shall be credited to the installment payments in Section 3.8 hereof as specified by the City, and, at the election of the City, shall be used for the redemption or purchase of Series 2002 Bonds in the manner and to the extent permitted in the Series 2002 Indenture and satisfaction of all obligations of the Issuer under the Swap Agreement; provided however, in no event shall this right of prepayment impair the right of the Series 2002 Trustee, on behalf of the Issuer, or the holders of the Series 2002 Bonds to receipt of amounts sufficient to pay the total amount of principal of, redemption premium, if any, or interest payable on any Bond Payment Date (or other date on which the Series 2002 Bonds are to be paid or redeemed) or the rights of the Swap Counterparty.

Section 8.6 **Reference to the Series 2002 Bonds Ineffective After Series 2002 Bonds are Paid.** Upon payment in full of the Series 2002 Bonds and all Additional Bonds, if any, as provided in Article VIII of the Series 2002 Indenture or provision for payment thereof having been made in accordance with the provisions of that Article, all references in this Agreement to the Series 2002 Bonds, the Series 2002 Indenture, and the Series 2002 Trustee shall be ineffective and neither the Series 2002 Trustee nor the holders of any of the Series 2002 Bonds and all Additional Bonds, if any, shall thereafter have any rights hereunder, except such rights as shall have been theretofore vested.

ARTICLE IX.

DEFAULTS AND REMEDIES

Section 9.1 **Events of Default Defined.** The following shall constitute "Events of Default" under this Agreement and the term "Events of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

(a) failure by the City to pay any amounts required to be paid under Section 3.8 hereof at the times specified for such payments;

(b) failure by the City to observe and perform any covenant, condition, or agreement on its part to be observed or performed under this Agreement, other than as referred to in subsection (a) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied shall have been given to the City by the Issuer, the Series 2002 Trustee, any Bondholder or the Swap Counterparty. If a default specified in this subsection (b) is such that it can be corrected but not within the period specified herein, unless an extension of such period would materially endanger the lien or charge hereon in favor of the Bondholders or the Underground Project or the revenue therefrom would be subjected to loss or forfeiture, such default shall not constitute the basis of an Event of Default hereunder (i) if corrective action capable of remedying such default is instituted by the City within the applicable period and diligently pursued until the default is corrected, and (ii) if the City shall within the applicable period furnish to the Issuer a certificate executed by the Authorized City Representative certifying that the default is such that it can be corrected but not within the applicable period and that corrective action capable of remedying such default has been

instituted and is being diligently pursued and will be diligently pursued until the default is corrected;

(c) the occurrence of an Event of Default under the Underground Lease;

(d) the making of any representation or warranty by the City herein if such representation or warranty is untrue, incorrect, or invalid when made; and

(e) the filing by the City of a voluntary petition in bankruptcy; the commission by the City of any act of bankruptcy; or the adjudication of the City as a bankrupt.

The foregoing provisions of this Section are subject to the following limitations: if by reason of force majeure the City is unable in whole or in part to carry out the agreements on its part herein contained, other than the obligations on the part of the City contained in Article III and Sections 5.1 and 9.4 hereof, the City shall not be deemed in Default during the continuance of such inability. The term "force majeure" as used herein shall include, without limitation, the following: acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States of America or of the State of Georgia or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes, or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the City. The City agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the City from carrying out its agreements; provided, that the settlement of strikes, lockouts, and other similar disturbances shall be entirely within the discretion of the City, and the City shall not be required to make settlement of strikes, lockouts, and other similar disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the City, unfavorable to the City.

Section 9.2 **Remedies on Default.** Whenever any Event of Default referred to in Section 9.1 hereof shall have occurred and be subsisting, the Issuer may take any one or more of the following remedial steps:

(a) the Issuer, at its option, may elect

(i) to recover from the City as liquidated damages the outstanding principal balance of the Series 2002 Bonds, plus all accrued but unpaid interest thereon to the date of payment, and amounts sufficient to satisfy all of the Issuer's obligations under the Swap Agreement, plus any other amounts which may be owing from the City pursuant to this Agreement, including, without limitation, amounts required to be paid pursuant to Sections 3.8, 5.1 and 9.4 hereof; or

(ii) to declare all installments payable under Section 3.8 hereof for the remainder of the Term of this Agreement to be immediately due and

payable, whereupon the same shall become immediately due and payable. If the Issuer elects to exercise the remedy afforded under this subsection 9.2(a)(ii) and accelerate all installment payments payable under Section 3.8 hereof for the remainder of the Term of this Agreement, the amount then due and payable by the City as accelerated installment payments shall be the sum of the aggregate principal amount of the outstanding Series 2002 Bonds and all accrued and unpaid interest thereon then due and to become due to maturity and amounts sufficient to satisfy all of the Issuer's obligations under the Swap Agreement. Such sums as may then become payable shall be paid into the Bond Fund;

(b) subject to the provisions of any lease or sublease of the Underground Project, including the Underground Lease, the Issuer may, without terminating this Agreement, sell, lease or sublease the Underground Project for the account of the City, holding the City liable for the difference between the sales price, rent and other amounts payable by such purchaser, lessee or sublessee under such lease or sublease and the installment payments and other amounts payable by the City hereunder;

(c) subject to the provisions of any lease or sublease of the Underground Project, including the Underground Lease, the Issuer may terminate this Agreement and use its best efforts to sell or lease the Underground Project to another for the account of the Issuer holding the City liable for all installment payments due up to the effective date of such sale or lease and for the difference between (i) the amounts that would have been payable under this Agreement through the end of the Term of this Agreement and (ii) the amount actually received under this Agreement;

(d) the Issuer may require the City to furnish copies of the books and records of the City pertaining to the Underground Project; and

(e) the Issuer may take whatever action at law or in equity may appear necessary or desirable to collect the installment payment then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement, or covenant of the City under this Agreement.

Any amounts collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Series 2002 Indenture or, if the Series 2002 Bonds have been fully paid (or provision for payment thereof has been made in accordance with the provisions of Article VIII of the Series 2002 Indenture), to the City.

Nothing contained herein shall be construed to prevent the City or the Series 2002 Trustee from taking such action as shall be necessary to enforce compliance with any covenant or agreement by the Issuer hereunder.

Section 9.3 **No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Issuer 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 Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. Such rights and remedies as are conferred on the Issuer hereunder shall also extend to the Series 2002 Trustee, and the Series 2002 Trustee and the holder or holders of the Series 2002 Bonds and the Swap Counterparty shall be deemed third-party beneficiaries of all covenants and agreements herein contained.

Section 9.4 **Agreement to Pay Attorneys' Fees and Expenses.** In the event the City should default under any of the provisions of this Agreement and either or both the Issuer or the Series 2002 Trustee should employ attorneys or incur other expenses for the collection of installment payments or the enforcement of performance or observance of any obligation or agreement on the part of the City herein contained, the City agrees that it will on demand therefor pay to the Issuer and the Series 2002 Trustee the reasonable fees of attorneys and such other reasonable expenses so incurred by the Issuer and the Series 2002 Trustee.

Section 9.5 **No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver of any breach hereunder shall be made except in accordance with the Series 2002 Indenture.

ARTICLE X.

OPTIONS IN FAVOR OF THE CITY

Section 10.1 **Options to Terminate.** The City shall have the following options to cancel or terminate this Agreement:

(a) at any time prior to full payment of the Series 2002 Bonds and all Additional Bonds, if any (or provision for payment thereof having been made in accordance with the provisions of Article VIII of the Series 2002 Indenture), the City may terminate this Agreement by providing for the payment in full of the Series 2002 Bonds and all Additional Bonds, if any, in the manner set out in Article VIII of the Series 2002 Indenture and the satisfaction of all the Issuer's obligations under the Swap Agreement; and

(b) at any time after the full payment of the Series 2002 Bonds and all Additional Bonds, if any (or provision for payment thereof having been made in accordance with the provisions of Article VIII of the Series 2002 Indenture), and the satisfaction of all the Issuer's obligations under the Swap Agreement, the City may terminate this Agreement by giving the Issuer notice in writing of such termination and such termination shall forthwith become effective.

Section 10.2 <u>Option to Prepay Purchase Price Prior to Maturity of the Series 2002 Bonds</u>. The City shall have and is hereby granted the option to prepay the Purchase Price and complete the purchase of the Underground Project prior to the maturity of the Series 2002 Bonds (or prior to provision for payment thereof having been made in accordance with the provisions of Article VIII of the Series 2002 Indenture) if any one or more of the following events shall have occurred:

(a) the Underground Project shall have been damaged or destroyed as set forth in Section 6.1 hereof to such extent that in the judgment of the City (i) such damage or destruction will result in a reduction of more than twenty-five percent (25%) of the revenues from the Underground Project for a period of six months or longer, or (ii) the cost of restoration thereof would exceed the Net Proceeds of insurance carried thereon pursuant to the requirements of Section 6.3 of the Underground Lease, plus any deductible amount permitted under Section 6.3 of the Underground Lease;

(b) title to all or substantially all the Underground Project shall have been taken under the exercise of the power of eminent domain by any governmental authority or by any person, firm, or corporation acting under governmental authority, including a taking of the temporary use of the Underground Project, which the City projects will result in a reduction of more than twenty-five percent (25%) of the revenues from the Underground Project for a period of six months or longer; and

(c) as a result of (i) any changes in the Constitution of the State of Georgia or the Constitution of the United States of America, (ii) legislative or administrative action (whether state or federal), or (iii) a final decree, judgment, or order of any court or administrative body (whether state or federal), entered after the contest thereof by the City in good faith, this Agreement shall have become void, unenforceable, or impossible of performance in accordance with the intent and purposes of the parties as expressed in this Agreement or unreasonable burdens or excessive liabilities shall have been imposed on the Issuer or the City including, without limitation, federal, state, or other ad valorem, property, income, or other taxes not being imposed on the date of this Agreement.

To exercise such option, as to (a) through (c) above, the City shall, within ninety (90) days following the event authorizing the exercise of such option, give written notice to the Issuer (and to the Series 2002 Trustee if any of the Series 2002 Bonds and Additional Bonds, if any, shall then be unpaid and to the Swap Counterparty if all obligations of the Issuer thereunder are not yet satisfied) and shall specify therein the date of closing for such purchase, which date shall be not less than forty-five (45) nor more than ninety (90) days from the date such notice is mailed. The Purchase Price which shall be paid to the Series 2002 Trustee by the City in the event of its exercise of the option granted in this Section 10.2 shall be the sum of the following:

(1) an amount of money which, when added to the amount then on deposit in the Bond Fund will be sufficient to retire all the then outstanding Series 2002 Bonds and all Additional Bonds, if any, on the earliest applicable maturity date or the earliest permissible redemption date including,

without limitation, principal, redemption premium, if any, and accrued interest on the Series 2002 Bonds to such date, plus

(2) an amount sufficient to satisfy all obligations of the Issuer under the Swap Agreement, plus

(3) an amount of money equal to the fees and expenses of the Series 2002 Trustee under the Series 2002 Indenture accrued and to accrue until such final payment of the Series 2002 Bonds and all Additional Bonds, if any, plus

(4) all amounts due pursuant to the Liquidity Assurance Agreement, the Liquidity Agreement and the Remarketing Agreement, plus

(5) the sum of one dollar ($1.00) which shall be paid by the City to the Issuer.

From and after the date of exercise of the option granted in this Section, any Net Proceeds of insurance or condemnation shall be paid to the City.

Section 10.3 **Conveyance On Exercise of Option to Purchase.** At the closing of the purchase pursuant to the exercise of any option to purchase granted herein, the Issuer will, upon receipt of the Purchase Price, deliver or cause to be delivered to the City documents conveying to the City good and marketable title to the Underground Project with respect to which such option was exercised, as such property then exists, subject to the following: (i) liens and encumbrances, if any, to which title to such property was subject when conveyed to the Issuer, (ii) liens and encumbrances created by the City or to the creation or suffering of which the City consented, (iii) liens, encumbrances and restrictions resulting from the failure of the City to perform or observe any of the agreements on its part contained in this Agreement or in the Underground Lease, (iv) Permitted Encumbrances other than the Series 2002 Indenture and this Agreement, and (v) if the option is exercised pursuant to the provisions of Section 10.2(b) hereof, the rights and title of the condemning authority.

Section 10.4 **Relative Priority of Options and Indenture.** The options respectively granted to the City in this Article shall be and remain prior and superior to the Series 2002 Indenture and may be exercised whether or not the City is in default hereunder, provided that such default will not result in nonfulfillment of any condition to the exercise of any such option.

Section 10.5 **Amounts Remaining in Bond Fund.** It is agreed by the parties hereto that any amounts remaining in the Bond Fund upon completion or sooner termination of this Agreement, as provided herein, after payment in full of the Series 2002 Bonds (or provision for payment thereof having been made in accordance with the provisions of Article VIII of the Series 2002 Indenture) and the fees, charges, and expenses of the Issuer and the Series 2002 Trustee in accordance with this Agreement and the Series 2002 Indenture and amounts sufficient to satisfy all the obligations of the Issuer under the Swap Agreement, shall belong to and be paid to the City by the Series 2002 Trustee as overpayment of installment payments.

End of Part II

IN WITNESS WHEREOF, the Issuer and the City have caused this Agreement to be executed in their respective names and their respective seals to be hereunto affixed and attested by their duly authorized officers, all as of the 1st day of July, 2002.

DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA, GEORGIA

By:_____
Title:_____

ATTEST:

_____
Secretary (Assistant)

(SEAL)

As to the Downtown Development Authority of the City of Atlanta, Georgia, signed and sealed on this _____ day of July, 2002, in the presence of:

_____
Witness

_____
Notary Public

CITY OF ATLANTA, GEORGIA

By:_____
Mayor

ATTEST:

_____
Municipal Clerk

(SEAL)

As to the City of Atlanta, Georgia, signed and
sealed on this _____ day of July, 2002,
in the presence of:

_____
Witness

_____
Notary Public

ACKNOWLEDGMENT FOR SERIES 1992 TRUSTEE

The undersigned. as the Trustee under the Series 1992 Indenture, as defined in the hereinabove First Amendment to Contract of Purchase. executes this First Amendment to acknowledge Article II of Part I as an amendment to the 1992 Contract permitted pursuant to Article XII of the Series 1992 Indenture.

SOUTHTRUST BANK, N.A., as Trustee

By:_____
Title:_____

[CORPORATE SEAL[

Attest:_____
Title:_____

As to SouthTrust Bank, N.A., signed and sealed on this _____ day of July, 2002, in the presence of:

_____
Witness

_____
Notary Public

My Commission Expires: _____

[SEAL]

::ODMA\PCDOCS\ATL\587032\2