

# **INSTALLMENT PURCHASE AGREEMENT**

This Installment Purchase Agreement (this "Agreement") entered into as of «Agreement\_Date» between «ESP\_Name», as seller, whose mailing address is «ESP\_Address», and «Purchaser\_Name», as purchaser, [an agency of the State of Georgia] [a public body corporate and politic duly created and existing under the laws of the State of Georgia] ("State"), whose mailing address is «Purchaser\_Address».

For and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

## **ARTICLE I DEFINITIONS**

Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms used in this Agreement shall have the respective meanings specified below.

**"Acceptance Certificate"** means a certificate in substantially the form attached to the Energy Savings Contract as Exhibit II and which shall be delivered by Purchaser to Seller upon receipt and acceptance of the Property.

**"Agreement"** means this Installment Purchase Agreement with its Exhibits, which Exhibits are attached hereto and incorporated herein by reference.

**"Commencement Date"** is the date when the term of this Agreement begins and Purchaser's obligation to pay purchase price accrues, which date shall be the date first above written.

**"Commission"** means the Georgia State Financing and Investment Commission.

**"Energy Savings Contract"** means the Guaranteed Energy Savings Performance Contract, dated \_\_\_\_\_, between Seller and Purchaser.

**"Escrow Agreement"** means the Escrow Agreement, dated the date hereof, among Seller, Purchaser, and «Escrow Agent\_Name», as escrow agent.

**"Event of Nonappropriation"** shall have the meaning specified in Section 6.04 of this Agreement.

**"Prepayment Price"** means the amount set forth and so titled in Exhibit A hereto that Purchaser may pay to Seller to prepay the Purchase Price as provided in Section 11.01.

**"Property"** means the property described in Exhibit B and which is the subject of this Agreement.

**"Purchase Amount"** means the outstanding and unpaid aggregate principal component of the payments of Purchase Price.

**"Purchase Price"** means the payments of Purchase Price payable by Purchaser pursuant to Exhibit A of this Agreement.

**"Purchase Term"** means the period beginning with the Commencement Date and continuing until terminated as provided in Article IV.

**"Purchaser"** means the entity that is described in the first paragraph of this Agreement and that is purchasing the Property from Seller under the provisions of this Agreement.

**"Seller"** means (i) «ESP\_Name», acting as seller hereunder, (ii) any surviving, resulting, or transferee entity, and (iii) except where the context requires otherwise, any assignee(s) of Seller.

**"Vendor"** means the manufacturer of the Property as well as the agents or dealers of such manufacturer.

## **ARTICLE II REPRESENTATIONS, WARRANTIES, AND COVENANTS OF PURCHASER**

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

(a) Purchaser is [the State] [a public body corporate and politic duly created and existing under the Constitution and statutes of the State]. [Purchaser will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a public body corporate and politic.]

(b) Purchaser is authorized under the Constitution and statutes of the State to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.

(c) Purchaser is duly authorized to execute and deliver this Agreement by the resolution of its governing body attached hereto as Exhibit C, or by other appropriate official approval. All requirements have been met and procedures have occurred, in order to ensure the enforceability of this Agreement, and Purchaser has complied with such legal procurement requirements as may be applicable to this Agreement and the acquisition by Purchaser of the Property hereunder. No event or condition that constitutes, or with the giving of notice or the lapse of time or both, would constitute, an Event of Default exists at the date hereof.

(d) During the Purchase Term, the Property will be used by Purchaser only for the purpose of performing one or more governmental or proprietary functions of Purchaser consistent with the permissible scope of Purchaser's authority and will not be used in a trade or business of any person or entity other than Purchaser or another agency of the State of Georgia.

(e) During the Purchase Term, Purchaser will annually provide Seller with current financial statements, budgets, proof of appropriation for the ensuing fiscal year, and such other financial information relating to the ability of Purchaser to continue this Agreement as may be reasonably requested by Seller or its assignee, when and if such information is reasonably available to Purchaser.

(f) The Property will have a weighted aggregate useful life in the hands of Purchaser that is substantially in excess of the Purchase Term.

(g) The execution, delivery, and performance of this Agreement by Purchaser does not (1) violate any state or federal law or local law or ordinance or any order, writ, injunction, decree, or regulation of any court or other governmental agency or body applicable to Purchaser or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, deed to secure debt, lease, or other obligation by which Purchaser is bound.

(h) There is no action, suit, proceeding, claim, inquiry, or investigation, at law or in equity, before or by any court, regulatory agency, or public board or body pending or, to the best of Purchaser's knowledge, threatened against or affecting Purchaser, challenging Purchaser's authority to enter into this Agreement or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement.

(i) Except as otherwise disclosed in writing by Purchaser to Seller, no lease, rental agreement, lease-purchase agreement, payment agreement, or contract for purchase to which Purchaser has been a party at any time during the past ten (10) years has been terminated by Purchaser as a result of insufficient funds being appropriated in any budget year, and no event has occurred, to the knowledge of the Purchaser, that would constitute an event of default under any debt obligation that Purchaser has issued during the past ten (10) years.

(j) Purchaser has an immediate need for, and expects to make immediate use of, the Property, which need is not temporary or expected to diminish during the Purchase Term.

(k) The Property qualifies as an "allowable cost" of an "energy conservation measure," as each are defined in O.C.G.A. § 50-37-2, and Purchaser has complied with the requirements of Chapter 37 of Title 50 of the Official Code of Georgia Annotated in executing this Agreement and the Energy Savings Contract.

(l) On or before the Commencement Date, Purchaser shall provide the following to Seller in form reasonably acceptable to Seller:

- (i) an opinion of counsel to Purchaser in substantially the form attached hereto as Exhibit E; and
- (ii) such other items reasonably required by Seller.

**ARTICLE III  
SALE OF PROPERTY**

Seller hereby sells to Purchaser, and Purchaser hereby purchases from Seller, the Property, in accordance with the provisions of this Agreement. To the extent funds are held under the Escrow Agreement for the acquisition and installation of the Property, such funds shall be disbursed as provided therein. The insufficiency of funds held under the Escrow Agreement to pay all costs of acquiring and installing the Property shall not affect Purchaser's obligations under this Agreement. When the Property is delivered, installed, and accepted, Purchaser shall promptly execute and deliver to Seller an Acceptance Certificate.

**ARTICLE IV  
PURCHASE TERM**

The term of this Agreement shall commence as of the Commencement Date and shall remain in effect until the first to occur of: (a) the exercise by Purchaser of the option to prepay the Purchase Price under Article XI, (b) the occurrence of an Event of Nonappropriation in accordance with Section 6.04, or (c) the payment by Purchaser of all sums required to be paid by Purchaser hereunder.

**ARTICLE V  
ENJOYMENT OF PROPERTY**

**Section 5.01. Quiet Enjoyment.** Seller hereby agrees not to interfere with Purchaser's quiet use and enjoyment of the Property.

**Section 5.02. Vendor's Warranties.** Purchaser may assert claims and rights that Seller may have against any Vendor of any portion of the Property. Purchaser expressly acknowledges that Seller makes, and has made, no representation or warranty whatsoever in this Agreement as to the existence or availability of any warranties of the Vendor of the Property. Purchaser's sole remedy in this Agreement for the breach of such warranty shall be against the Vendor of the Property, and not against Seller, nor shall such matter have any effect whatsoever on the obligations of Purchaser hereunder. The obligation of Purchaser to pay the Purchase Price shall not be abated, impaired, or reduced by reason of any claims of Purchaser with respect to the Property, including but not limited to, its condition, quality, workmanship, delivery, shipment, installation, defects, or otherwise.

**Section 5.03. Disclaimer of Warranties.** No assignee of Seller that is not a party to the Energy Savings Contract shall make any warranty or representation, either express or implied, as to the value, design, condition, merchantability, or fitness for particular purpose or fitness for use of the Property, or any other warranty or representation, express or implied, with respect thereto and, as to any such assignee, Purchaser's acquisition of the Property shall be on an "as is" basis. In no event shall any such assignee be liable for any incidental, indirect, special, or consequential damage in connection with or arising out of this Agreement, the Property, or the existence, furnishing, functioning, or Purchaser's use of any item, product, or service provided for in this Agreement.

**ARTICLE VI  
PURCHASE PRICE**

**Section 6.01. Payment of Purchase Price; Interest and Principal Components.** Purchaser shall promptly pay payments of Purchase Price, exclusively from legally available funds, in lawful money of the United States of America, to Seller or, in the event of assignment by Seller, to its assignee, in such amounts and on such dates as are set forth in Exhibit A hereto. A portion of each payment of Purchase Price is paid as interest, and the balance of each payment of Purchase Price is paid as principal. Exhibit A hereto sets forth the interest component and the principal component of each payment of Purchase Price during the Purchase Term.

**Section 6.02. Purchase Price to be Unconditional.** The obligation of Purchaser to make payments of Purchase Price, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, except as expressly provided in Section 6.04 of this Agreement, notwithstanding any dispute between Purchaser and Seller, any Vendor, or any other person. Purchaser shall not assert any right of set-off or counterclaim against its obligation to make payments under this Agreement. Purchaser's obligation to make payments of Purchase Price shall not be reduced, diminished, or abated through accident; unforeseen circumstances; failure of Seller to install the Property in accordance with the Energy Savings Contract; failure of the Property to perform as desired or in accordance with the Energy Savings Contract; defects, malfunctions, breakdowns, or infirmities in the Property; damage or destruction to the Property; loss of possession of the Property; or obsolescence of the Property; and Purchaser shall be obligated to continue to make payments required of it by this Agreement if title to, or temporary use of, the Property or any part thereof shall be taken under exercise of the power of eminent domain.

**Section 6.03. Continuation of Purchase Term by Purchaser.** Purchaser intends, subject to the provisions of Section 6.04, to continue the Purchase Term and to pay all of the Purchase Price hereunder. Purchaser reasonably believes that legally available funds of an amount sufficient to pay all of the Purchase Price during the Purchase Term can be obtained. Purchaser further intends to do all things lawfully within its power to obtain and maintain funds from which the Purchase Price may be paid.

**Section 6.04. Nonappropriation.** If (a) sufficient funds are not appropriated for Purchase Price due in any fiscal year and (b) Purchaser shall have at such time no funds legally available for the Purchase Price or other amounts payable hereunder from other sources, an Event of Nonappropriation shall be deemed to have occurred. Purchaser shall promptly deliver written notice thereof to Seller and the Commission. Purchaser's determination of the occurrence of an Event of Nonappropriation shall be conclusive and binding on Seller. Notwithstanding anything to the contrary contained in this Agreement, an Event of Nonappropriation shall not be deemed to have occurred until the Commission shall have adopted a resolution concurring with Purchaser's determination of the occurrence of an Event of Nonappropriation. Following the occurrence of an Event of Nonappropriation, Purchaser shall make the remaining payments of the Purchase Price and other amounts due hereunder for which funds have been properly appropriated in the then current fiscal year for which appropriations have been made.

**ARTICLE VII  
TITLE TO PROPERTY**

During the Purchase Term, title to the Property shall vest in Purchaser when installed by Seller pursuant to the Energy Savings Contract.

**ARTICLE VIII  
MAINTENANCE AND TAXES**

**Section 8.01. Maintenance of Property by Purchaser.** Purchaser shall, at Purchaser's own cost and expense, maintain, preserve, and keep the Property in good repair, working order, and condition. Purchaser shall not alter any item of the Property or install any accessory, equipment, or device on any item of the Property, if such alteration or improvement would impair any applicable warranty or the originally intended function or value of that Property.

**Section 8.02. Taxes, Other Governmental Charges, and Utility Charges.** In the event that the use, possession, or acquisition of the Property is found to be subject to taxation in any form (except for income taxes of Seller), governmental charges, or utility charges and expenses, Purchaser shall pay all such taxes and charges as they come due.

**ARTICLE IX  
DAMAGE, DESTRUCTION, AND CONDEMNATION; USE OF NET PROCEEDS**

Purchaser assumes all risk of loss of or damage to the Property from any cause whatsoever, and no such loss of or damage to the Property nor defect therein nor unfitness or obsolescence thereof shall relieve Purchaser of the obligation to make payments of Purchase Price or to perform any other obligation under this Agreement. If (a) the Property or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Property or any part thereof is taken under the exercise of the power of eminent domain, Purchaser and Seller shall cause the Net Proceeds of any insurance claim or condemnation award to be applied either to the prompt repair, restoration, modification, or replacement of the Property or, at Purchaser's option, to the payment in full of the Prepayment Price. Any balance of the Net Proceeds remaining after such work or purchase has been completed shall be paid to Purchaser.

For purposes of this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award paid as a result of any event described in clauses (a) or (b) above, after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.

**ARTICLE X  
TAX COVENANT**

It is the intention of Purchaser and Seller that the interest component of the Purchase Price payments be and remain excluded from gross income for federal income tax purposes. Purchaser covenants that it will take any and all action necessary to maintain the exclusion from gross income for federal income tax purposes of the interest component of the Purchase Price payments, and that it will not perform or omit to perform any act or enter into any agreement or use or permit the use of the Property or any portion thereof in a manner that shall have the effect of causing the interest component of the Purchase Price payments to be included in gross income for federal income tax purposes, including (without limitation) leasing all or any portion of the Property or contracting to a third party for the use or operation of all or any portion of the Property if entering into such lease or contract would have such effect.

**ARTICLE XI  
PREPAYMENT OF PURCHASE PRICE**

**Section 11.01. Optional Prepayment of Purchase Price.** Purchaser shall be entitled to prepay the Purchase Price, in whole or in part, on any purchase price payment date on or after \_\_\_\_\_, by paying to Seller the payment of Purchase Price then due, together with the Prepayment Price set forth in Exhibit A, along with all other amounts then due hereunder, so long as there is no Event of Default continuing hereunder and upon written notice delivered at least 30 days in advance. In the event of a partial prepayment of the Purchase Amount, Seller or its assignee shall prepare and deliver to Purchaser a revised Exhibit A to this Agreement, reflecting such partial prepayment of Purchase Amount and the reduction in subsequent payments of Purchase Price resulting from such prepayment, and an amendment to this Agreement. Any such reduction in the payments of Purchase Price shall not become effective until Seller or its assignee has received a signed revised Exhibit A and a signed amendment to this Agreement and such other documentation reasonably requested by Seller or its assignee.

**Section 11.02. Extraordinary Optional Prepayment of Purchase Price.** Purchaser shall be entitled to prepay the Purchase Price, in whole or in part, on any purchase price payment date within 180 days after (1) the Energy Savings Contract is terminated or (2) the Acceptance Certificate is delivered, from amounts held under the Escrow Agreement, by paying to Seller the payment of Purchase Price then due, together with the Purchase Amount being prepaid, without premium or penalty [**BREAKAGE FORMULA**], along with all other amounts then due hereunder, so long as there is no Event of Default continuing hereunder and upon written notice delivered at least 30 days in advance.

**ARTICLE XII  
ASSIGNMENT, LEASING, ENCUMBERING, AND SELLING**

**Section 12.01. Assignment or Sale by Seller.**

(a) This Agreement, and the obligation of Purchaser to make payments hereunder, may be sold, assigned, or otherwise disposed of in whole or in part to one or more successors, grantors, holders, assignees, or subassignees by Seller without the consent of Purchaser. Upon any sale, disposition, assignment, or reassignment, Purchaser shall be provided with a written notice of such assignment containing the name and address of the assignee or transferee. During the Purchase Term, Purchaser shall keep a complete and accurate register of all such assignments in form necessary to comply with Section 149(a) of the Internal Revenue Code of 1986, as amended.

(b) Purchaser agrees to make all payments to the assignee designated in the assignment, notwithstanding any claim, defense, setoff, or counterclaim whatsoever that Purchaser may from time to time have against Seller or Vendor. Purchaser agrees to execute all documents, including notices of assignment, which may be reasonably requested by Seller or its assignee to protect its interests in this Agreement.

(c) Purchaser hereby agrees that Seller may sell or offer to sell this Agreement (i) through a certificate of participation program, whereby two or more interests are created in this Agreement or the Purchase Price or (ii) with other similar instruments, agreements, and obligations through a pool, trust, limited partnership, or other entity.

**Section 12.02. No Sale, Assignment, or Leasing by Purchaser.** This Agreement and the interest of Purchaser in the Property may not be sold, assigned, leased, or encumbered by Purchaser without the prior written consent of Seller or its assignee. Notwithstanding the foregoing, this Agreement and the interest of Purchaser in the Property may be assigned by Purchaser to any other agency of the State of Georgia without the consent of Seller or its assignee.

**ARTICLE XIII  
EVENTS OF DEFAULT AND REMEDIES**

**Section 13.01. Events of Default.** The following constitute "Events of Default" under this Agreement:

- (a) failure by Purchaser to pay any payment of Purchase Price or other payment required to be paid hereunder when due; or
- (b) Purchaser's breach in any material respect of any representation or warranty contained in this Agreement or failure by Purchaser to observe and perform any other covenant, condition, or agreement on its part to be observed or performed (other than as set forth in clause (a) above) for a period of 30 days after written notice is given to Purchaser by Seller, specifying such breach or failure and requesting that it be remedied; provided, however, that if the breach or failure stated in such notice cannot be corrected within such 30-day period, Seller will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Purchaser within the applicable period and diligently pursued until the breach or failure is corrected; or
- (c) initiation by or against Purchaser of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning its indebtedness.

The foregoing provisions of this Section are subject to the provisions of Section 6.04 hereof.

**Section 13.02. Remedies on Default.** Whenever any Event of Default shall have occurred and be continuing, Seller shall have the right, at its sole option without any further demand or notice, to proceed by appropriate court action to enforce performance by Purchaser of the applicable covenants of this Agreement or to recover for the breach thereof. Purchaser shall pay the reasonable attorneys' fees and expenses incurred by Seller in exercising any remedy hereunder.

**Section 13.03. No Remedy Exclusive.** No remedy herein conferred upon or reserved to Seller is intended to be exclusive, 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. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

**Section 13.04. Late Charge; Interest on Late Payment.** Any payment of Purchase Price or portion thereof that is not paid on its due date shall bear a late charge equal to two percent (2%) of the amount of the past due payment of Purchase Price or portion thereof, but in no event less than \$100.00. Any unpaid payment of Purchase Price or other amount payable by Purchaser to Seller hereunder shall bear interest at the lesser of (a) the rate payable on the principal component of the Purchase Price, plus five full percentage points per annum, or (b) the maximum rate allowed by law.

**Section 13.05. Force Majeure.** If by reason of force majeure Purchaser is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Purchaser contained in Article VI, Purchaser shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or any of their departments, agencies, or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.

#### **ARTICLE XIV MISCELLANEOUS**

**Section 14.01. Notices.** All notices, certificates, or other communications hereunder shall be in writing (including, without limitation, telecopy or facsimile with receipt confirmed) and mailed, telecopied, or delivered to the address set forth on the first page hereof. Any notice, certificate, or other communication that is mailed shall be mailed registered mail, postage prepaid, return receipt requested. Notices, certificates, or other communications shall be effective upon the earlier of (i) actual receipt by the addressee or (ii) the date shown on the return receipt, fax confirmation, or delivery receipt.

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

**Section 14.03. Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 14.04. Execution in Counterparts.** This Agreement may be executed in several counterparts.

**Section 14.05. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State.

**Section 14.06. Captions.** The captions or headings in this Agreement are for convenience only and no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

**Section 14.07. Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between Seller and Purchaser concerning the matters addressed herein. No waiver, consent, amendment, modification, or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, amendment, modification, or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations, or warranties, express or implied, not specified herein regarding this Agreement or the Property purchased hereunder, except as set forth in the Energy Savings Contract and the Escrow Agreement. Any terms and conditions of any purchase order or other document submitted by Purchaser in connection with this Agreement that are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on Seller and will not apply to this Agreement. Purchaser by the signature below of its authorized representative acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

**Section 14.08. No Waiver Under Energy Savings Contract.** Nothing contained in this Agreement, express or implied, shall be construed to waive, release, limit, affect, impair, diminish, change, or modify any obligations of Seller, or any rights or remedies that Purchaser may have against Seller, in or under the Energy Savings Contract, any related payment or performance bond or guaranty, or any other related agreement.

**Section 14.09. Usury.** It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein, in no event shall this Agreement require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by applicable law. Any such excess interest or fees shall first be applied to reduce principal components of Purchase Price, and when no principal components of Purchase Price remain, refunded to Purchaser. In determining whether the interest paid or payable exceeds the highest lawful rate, the total amount of interest shall be spread through the Purchase Term so that the interest is uniform through such term.

**Section 14.10. USA Patriot Act Compliance Notification.** Seller hereby notifies Purchaser that pursuant to the requirements of the USA PATRIOT Act (the "Patriot Act"), its assignee is required to obtain, verify, and record information that identifies Purchaser, which information includes the name and address of Purchaser and other information that will allow Seller's assignee to identify Purchaser in accordance with the Patriot Act. Purchaser shall, promptly upon the request of Seller's assignee, provide all documentation and other information that Seller's assignee requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

**IN WITNESS WHEREOF**, Seller has executed this Agreement in its corporate name, and Purchaser has caused this Agreement to be executed in its official name. All of the above occurred as of the date first written on the heading hereof.

**SELLER:**

«ESP\_NAME»

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

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

**PURCHASER:**

«PURCHASER\_NAME»

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

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

**REVIEWED AND APPROVED:**

\_\_\_\_\_  
Executive Director, Georgia Environmental Finance Authority

This Agreement is in compliance with the multiyear contract value authority set by the Georgia State Financing and Investment Commission for multiyear guaranteed energy savings performance contracts pursuant to Section 50-37-7(3) of the Official Code of Georgia Annotated.

**GEORGIA STATE FINANCING AND INVESTMENT COMMISSION**

By: \_\_\_\_\_  
Director, Financing and Investment Division

Counterpart No. \_\_\_\_ of \_\_\_\_\_ manually executed and serially numbered counterparts. To the extent that this Agreement constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

**EXHIBIT A**

**PURCHASE PRICE PAYMENT SCHEDULE**

<u>Payment Number</u>	<u>Due Date of Payment</u>	<u>Total Purchase Price Payment</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Prepayment Price After Purchase Price Payment Due Has Been Made</u>
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Interest Rate - \_\_\_\_\_%

Purchaser: «Purchaser\_Name»

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

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

Date: \_\_\_\_\_

**EXHIBIT B**

**DESCRIPTION OF THE PROPERTY**

PROPERTY:      «Property\_Description»

Purchaser: «Purchaser\_Name»

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

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

Date: \_\_\_\_\_

**EXHIBIT C**

**EXTRACT OF MINUTES  
RESOLUTION OF GOVERNING BODY**

Purchaser: «Purchaser\_Name»  
Date of Agreement: «Agreement\_Date»

At a duly called meeting of the governing body of the Purchaser identified above (“Purchaser”) held on the \_\_\_\_ day of \_\_\_\_\_, the following resolution was introduced and adopted.

**WHEREAS**, the governing body of Purchaser has determined that a true and very real need exists for the acquisition of the Property described in the Installment Purchase Agreement (the “Agreement”) presented to this meeting; and

**WHEREAS**, the governing body of Purchaser has taken the necessary steps, including any legal procurement requirements, under applicable law to arrange for the acquisition of such Property;

**NOW, THEREFORE, BE IT RESOLVED** by the governing body of Purchaser that the forms, terms, and conditions and the execution, delivery, and performance of the Agreement and the Escrow Agreement (collectively the “Contracts”) presented to this meeting are hereby approved and authorized.

**BE IT FURTHER RESOLVED** by the governing body of Purchaser that the terms of the Contracts are in the best interests of Purchaser for the acquisition of such Property, and the governing body of Purchaser designates and authorizes the following person to execute and deliver the Contracts and any related documents necessary to the consummation of the transactions contemplated by the Contracts.

\_\_\_\_\_  
(Name of Person to Execute Contracts)

\_\_\_\_\_  
(Title)

Yes  No **BE IT FURTHER RESOLVED** by the governing body of Purchaser that the purchase obligation contemplated by the Agreement is hereby designated as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

The undersigned further certifies that the above resolution has not been repealed or amended and remains in full force and effect and further certifies that the above and foregoing Installment Purchase Agreement is the same as presented at such meeting of the governing body of Purchaser.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Secretary



**EXHIBIT D**

**CERTIFICATE OF PURCHASER**

I, \_\_\_\_\_, am a duly authorized representative of «Purchaser\_Name» (“Purchaser”), as purchaser under that certain Installment Purchase Agreement, dated «Agreement\_Date» (the “Agreement”), with «ESP\_Name» (“Seller”), as seller, and as purchaser under that certain Escrow Agreement, dated «Agreement\_Date» (the “Escrow Agreement”), with Seller and«Escrow Agent\_Name», as escrow agent, and hereby certify as follows and in accordance with the requirements of the Agreement. Capitalized terms used herein have the same meaning as in the Agreement.

**A. INCUMBENCY OF OFFICIAL AND SIGNATURE:**

I have custody of the records of Purchaser, and the following official of Purchaser is duly elected or appointed and holds the office or title set forth opposite such individual’s name, and the signature opposite his or her name is true and correct, and such individual has the authority to enter into the Agreement and the Escrow Agreement on behalf of Purchaser:

<u>Name</u>	<u>Title/Office</u>	<u>Signature</u>
_____	_____	_____

**B. ESSENTIAL USE:**

1. The Property will be used by Purchaser for the following governmental or proprietary purpose:

\_\_\_\_\_

\_\_\_\_\_

2. The Property is essential for the functioning of Purchaser and is immediately needed by Purchaser. Such need is neither temporary nor expected to diminish during the Purchase Term. The Property is expected to be used by Purchaser for a period in excess of the Purchase Term.

**C. CERTIFICATE OF APPROPRIATION:**

Moneys for all payments of purchase price to be made under the Agreement for the fiscal year ending \_\_\_\_\_, \_\_\_\_\_, are available from unexhausted and unencumbered appropriations or funds within Purchaser’s budget for such fiscal year, and appropriations or funds have been designated for the payment of those payments of purchase price that may come due under the Agreement in such fiscal year.

IN WITNESS WHEREOF, I have executed and delivered this certificate as of the \_\_\_ day of \_\_\_\_\_.

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

**EXHIBIT E**

**FORM OF LEGAL OPINION OF SPECIAL COUNSEL TO PURCHASER**

[Attached]

«Agreement\_Date»

«Purchaser\_Name»  
\_\_\_\_\_, \_\_\_\_\_

«ESP\_Name»  
\_\_\_\_\_, Georgia

«Assignee\_Name»  
\_\_\_\_\_, \_\_\_\_\_

Re: Installment Purchase Agreement between «ESP\_Name», as seller, and «Purchaser\_Name», as purchaser

Ladies and Gentlemen:

We have acted as Special Counsel to «Purchaser\_Name» (the “Purchaser”) in connection with the execution and delivery on this date of an Installment Purchase Agreement, dated the date hereof (the “Agreement”), between «ESP\_Name» (the “Seller”), as seller, and the Purchaser, as purchaser. The Agreement provides for the sale by the Seller to the Purchaser of certain property (or interests in property) for use by the Purchaser in connection with its governmental undertakings, in consideration of the Purchaser’s agreement to make periodic installment payments of purchase price (the “Purchase Price Payments”) to the Seller or its assignee. The Agreement provides that the payment of all Purchase Price Payments and other amounts required to be paid by the Purchaser under the Agreement are subject to and dependent upon appropriations being made from time to time by the Purchaser sufficient for such purposes.

«Assignee\_Name» (the “Assignee”) has purchased the Seller’s right to receive Purchase Price Payments under the Agreement from the Seller, and the Seller has assigned its right to receive Purchase Price Payments under the Agreement to the Assignee, pursuant to an Absolute Assignment Agreement, dated the date hereof (the “Assignment”), between the Seller and the Assignee. In exchange for the Purchaser executing and delivering the Agreement to the Seller, the Seller deposited the proceeds from the sale of its right to receive Purchase Price Payments under the Agreement into a fund created under the terms of an Escrow Agreement, dated the date hereof (the “Escrow Agreement”), among the Purchaser, the Seller, and «Escrow Agent\_Name», as escrow agent (the “Escrow Agent”).

We have examined the law and such certified proceedings and other papers authorizing and relating to the contracts described above as we deem necessary to render this opinion, including the following:

1. Article VII, Section IV, Paragraph XII of the Constitution of the State of Georgia.
2. Chapter 37 of Title 50 of the Official Code of Georgia Annotated.
3. Certified copy of an authorizing resolution adopted by the Purchaser on \_\_\_\_\_, authorizing the execution, delivery, and performance of the Agreement and the Escrow Agreement.
4. Fully executed counterpart of the Agreement.
5. Fully executed counterpart of the Escrow Agreement.
6. Fully executed counterpart of the Assignment.
7. Fully executed counterpart of the Tax Certificate of the Purchaser, dated the date hereof (the “Tax Certificate”).
8. Fully executed counterpart of the Certificate as to Arbitrage Matters of the Purchaser, dated the date hereof (the “Non-Arbitrage Certificate”).

In all such examinations, we have assumed the authenticity of all documents submitted to us as original documents and the authenticity of originals and conformity to original documents of all documents submitted to us as certified, conformed, or photostatic copies. We have assumed, but not independently verified, that the signatures on all documents and certificates that we have examined are genuine, and, as to certificates, we have assumed the same to be properly given and to be accurate.

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As to questions of fact material to our opinion, we have relied upon the following items, without undertaking to verify any of them by independent investigation: (a) certified proceedings and other certifications of public officials furnished to us, (b) certifications furnished to us by or on behalf of the Purchaser (including certifications made in the Tax Certificate and in the Non-Arbitrage Certificate), and (c) representations of the Purchaser contained in such proceedings and in documents delivered in connection with the Agreement.

With your permission, in rendering the opinions set forth herein, we have assumed the following, in addition to the assumptions set forth elsewhere in this letter, without any investigation or inquiry on our part:

- (i) the due authorization, execution, and delivery of the Agreement, the Escrow Agreement, and the Assignment (collectively the "Contracts") by the parties thereto other than the Purchaser;
- (ii) that the Contracts constitute the binding obligations of the parties thereto other than the Purchaser and that the parties thereto other than the Purchaser have all requisite power and authority to perform their respective obligations thereunder; and
- (iii) that the only interest, fees, and other charges contracted for or to be reserved, charged, taken, or paid in connection with the Agreement are those set forth in the Agreement and that all such interest, fees, and charges will be reserved, charged, taken, and applied solely as described in the Agreement, and that, contrary to its terms, no interest shall be reserved, charged, taken, or paid under the Agreement on unpaid interest and that under no circumstances shall the rate of interest paid or payable under the Agreement (including any fees, charges, premiums, or similar amounts that may be characterized as interest) exceed 5.00% per month (whether due to prepayment, acceleration, termination, or otherwise).

Based upon the foregoing, it is our opinion, as of the date hereof and under existing law, that:

(1) The Purchaser has all requisite power and authority to enter into and perform its obligations under the Agreement and the Escrow Agreement.

(2) The Agreement and the Escrow Agreement have been duly authorized, executed, and delivered by the Purchaser and constitute the legal, valid, and binding obligations of the Purchaser enforceable upon the Purchaser. We note that under the terms of the Agreement payment of the Purchase Price Payments is enforceable only if and to the extent appropriations for such purpose are made by the Purchaser. We express no opinion as to the validity or enforceability of the provisions of Section 13.04 of the Agreement (relating to late charges and interest on late payments).

(3) The Purchaser may not assert the defense of sovereign immunity to any action at law (as opposed to equity) for the breach of the Agreement or the Escrow Agreement or to any action at law (as opposed to equity) to enforce a judgment taken for the breach of the Agreement or the Escrow Agreement, provided that such action is filed only in the Superior Court of Fulton County, Georgia and such judgment is enforced only against moneys specified in the Agreement. We express no opinion as to whether the Purchaser may assert the defense of sovereign immunity against the enforcement of equitable remedies for breach of the Agreement or the Escrow Agreement.

(4) The portion of each Purchase Price Payment paid and denominated as interest under the Agreement and received by the owner of the Agreement is excluded from gross income for federal income tax purposes (including the tax imposed by Chapter 2A of Subtitle A of the Internal Revenue Code of 1986, as amended (the "Code")) and is not an enumerated "item of tax preference" for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, it should be noted that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings. The opinions set forth in the immediately preceding sentence are subject to the condition that the Purchaser complies with all requirements of the Code that must be satisfied subsequent to the execution and delivery of the Agreement in order that the portion of each Purchase Price Payment paid and denominated as interest be, or continue to be, excluded from gross income for federal income tax purposes. The Purchaser has covenanted to comply with all such requirements. Failure to comply with certain of such requirements may cause the inclusion of the portion of each Purchase Price Payment paid and denominated as interest in gross income for federal income tax purposes (including the tax imposed by Chapter 2A of Subtitle A of the Code) to be retroactive to the date of execution and delivery of the Agreement. [The purchase obligation contemplated by the Agreement is a "qualified tax-exempt obligation," within the meaning of Section 265(b)(3) of the Code, and, in the case of certain financial institutions (within the meaning of Section 265(b)(5) of the Code), a deduction is allowed for 80 percent of that portion of such financial institutions' interest expense allocable to the portion of each Purchase Price Payment paid and denominated as interest.] We express no opinion regarding any other federal tax consequences arising with respect to the Agreement.

(5) The portion of each Purchase Price Payment paid and denominated as interest under the Agreement and received by the owner of the Agreement is exempt from State of Georgia income taxation.

(6) The Assignee is the owner of the Agreement for federal income tax purposes by virtue of the Assignment.

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With respect to the enforceability of the Contracts, we have assumed that, to the extent that any applicable law would require the rights and remedies of the Seller or the Assignee set forth therein to be exercised by it in good faith or in a reasonable or commercially reasonable manner as a condition to the enforceability thereof, the Seller or the Assignee will observe and satisfy such legal requirements.

The enforceability of the Contracts (i) may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the enforcement of creditors' rights; (ii) may be subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); and (iii) may also be subject to the exercise of judicial discretion in appropriate cases.

We also note that, to the extent that the Contracts require the Purchaser to pay attorneys' fees, such provisions may be subject to the requirements and limitations of Section 13-1-11 of the Official Code of Georgia Annotated.

We make no statement with respect to the ability or willingness of the Purchaser to budget and appropriate sufficient funds for the payment of amounts to become due under the Agreement for any fiscal year of the Purchaser.

Notwithstanding anything herein to the contrary, we express no opinion in this letter regarding: (i) the enforceability of any provisions in the Agreement that purport to provide for payment of interest on unpaid interest in violation of Section 7-4-17 of the Official Code of Georgia Annotated; (ii) the enforceability of any provisions in the Agreement that, due to prepayment, acceleration, or otherwise, would cause the rate of interest payable under the Agreement to exceed five percent (5.0%) per month in violation of Section 7-4-18 of the Official Code of Georgia Annotated; and (iii) the enforceability of any provisions in any of the Contracts that purport to provide that any party shall be deemed to have been given or to have received any notice that such party did not actually receive.

We are members of the State Bar of Georgia. Our opinions herein are limited to the laws of the State of Georgia and any applicable federal laws of the United States. This opinion is limited to the matters expressly set forth above, and no opinion is implied or may be inferred beyond the matters so stated. This opinion is intended solely for the use of the Purchaser, the Seller, and the Assignee in connection with the transactions contemplated by the Contracts and may not be relied upon for any other purpose or by any other person for any purpose without our prior written consent. We expressly disclaim any duty to update this opinion in the future for any changes of fact or law that may affect any of the opinions expressed herein.

Very truly yours,

**DENTONS US LLP**

By: \_\_\_\_\_  
Earle R. Taylor, III, Partner