RESOLUTION NO. 82-25

RESOLUTION AUTHORIZING EXECUTION AND DELIVERY
OF
BILL OF SALE
AND
EQUIPMENT LEASE - PURCHASE AGREEMENT
AND
DOCUMENTS RELATING THERETO

WHEREAS, Section 6(d) of Article 1118x, Vernon's Texas Civil Statutes, as amended (the "Transit Act") authorizes Metropolitan Transit Authority (the "Authority") to sell or dispose of property of every kind and nature whatsoever necessary, convenient or useful for the full exercise of any of its powers; and

WHEREAS, Section 6(d) of the Transit Act authorizes the Authority to acquire by lease personal property of every kind and nature whatsoever necessary, convenient or useful for the full exercise of any of its powers; and

WHEREAS, Section 6(1) of the Transit Act authorizes the Authority to make leases with private corporations and to acquire property under conditional sales contracts, leases, or any other form of contract; and

WHEREAS, Article 2368a.2, Vernon's Texas Civil Statutes, as amended (the "Finance Act") authorizes the Board of the Authority to authorize the execution, performance, and making of payments under contracts with any person for the use, acquisition, or purchase of personal property, equipment, or an interest therein, deemed by the Board of the Authority to be necessary, useful, or appropriate to one or more purposes of the Authority and, subject only to applicable constitutional restrictions, to obligate taxes or revenues for the full term of an agreement entered into pursuant to the Finance Act for the payment of such agreement; and

WHEREAS, Section 9 of the Finance Act provides that the Finance Act is wholly sufficient authority within itself for the entering into of agreements under the Finance Act and the performance of other acts and procedures authorized by the Finance Act and that when agreements pursuant to the Finance Act are entered into, then to the extent of conflict or inconsistency between any of the provisions of the Finance Act and any provisions of any other law, the provisions of the Finance Act prevail and control,
except that any governmental agency may use the provisions of any other law not in conflict with the provisions of the Finance Act to the extent convenient or necessary to carry out any power or authority express or implied, granted by the Finance Act and that the Finance Act shall be liberally construed to effectuate its purpose;

WHEREAS, the Authority has previously acquired certain General Motors Corporation RTS-04 "Advance Design Buses" and caused to be rehabilitated by General Motors Corporation certain "New Look Buses," which buses would be necessary, convenient or useful for the full exercise of the Authority's powers;

WHEREAS, the Board of the Authority has determined that it would be necessary, convenient, or useful for the full exercise of the powers of the Authority to transfer title to those buses to which the Authority obtained title or caused rehabilitation as an integral part of the lease financing arrangement and thereafter make a lease contract to acquire the buses by lease, with an option to purchase, and to make payments under such lease contract for the acquisition by lease of such buses; and

WHEREAS, the Board of the Authority has examined proposed forms of Bills of Sale from the Authority, as Grantor, to the Capital Bank, N.A., of Houston, Texas (the "Bank"), as Grantee, disposing of and transferring title to those buses to which the Authority obtained title or caused rehabilitation as an integral part of the lease financing arrangement, and the Board finds the form and substance of such documents are satisfactory in that it is in the best interest of the public and the Authority and assists in carrying out the public purpose of the Authority and the Transit Act to authorize the execution and delivery of such Bill of Sale; and

WHEREAS, the Board of the Authority has examined a proposed form of Equipment Lease - Purchase Agreement between the Authority, as Lessee, and the Bank, as Lessor, and the Board finds the form and substance of such document is satisfactory and that it is in the best interest of the public and the Authority and assists in carrying out the public purpose of the Authority and the Transit Act and the Finance Act to authorize the execution and delivery of such Equipment Lease - Purchase Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF METROPOLITAN TRANSIT AUTHORITY, (OF HARRIS COUNTY, TEXAS), THAT:
Section 1. Bill of Sale. The Board hereby authorizes and directs the disposal of and the transfer of title to the buses identified in the Bills of Sale as necessary, convenient, or useful for the full exercise of the powers of the Authority in accordance with Bills of Sale, substantially in the form of the Bills of Sale attached to this Resolution as Exhibits "A" and "B", the forms, terms, and provisions of such Bills of Sale being hereby authorized and approved, and the Chairman or Vice Chairman of the Board is hereby authorized and directed to execute and deliver such Bills of Sale on behalf of the Authority and the Secretary of the Board is hereby authorized and directed to attest thereto and affix the Board's seal.

Section 2. Equipment Lease - Purchase Agreement. The Board hereby authorizes and directs the making of a lease contract with the Bank for the acquisition by the Authority by lease of the buses, the title to which is transferred to the Bank in accordance with the Bills of Sale, as necessary, convenient, or useful for the full exercise of the powers of the Authority in accordance with the Equipment Lease - Purchase Agreement substantially in the form of the Equipment Lease - Purchase Agreement attached to this Resolution as Exhibit "C", the form, terms, and provisions of such Equipment Lease - Purchase Agreement being hereby authorized and approved, and the Chairman or Vice Chairman of the Board is hereby authorized and directed to execute and deliver such Equipment Lease - Purchase Agreement on behalf of the Authority and the Secretary of the Board is hereby authorized and directed to attest thereto and affix the Board's seal.

Section 3. Authority of Officers; etc. The officers, employees and agents of the Authority, and each of them, shall be and each is expressly authorized, empowered, and directed from time to time and at any time to do and perform all acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the Authority all certificates, instruments, and other papers whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Resolution and of the Bill of Sale hereby authorized and of the Equipment Lease - Purchase Agreement hereby authorized, such determination to be conclusively evidenced by the performance of such acts and things in the execution of any such certificate, instrument or other paper.

Section 4. Resolution is Contract. In consideration of the execution and delivery of the Equipment Lease on behalf of the Bank, which Equipment Lease is to be executed and delivered on behalf of the Authority hereunder, the provisions of this
Resolution shall be deemed to be and shall constitute contracts between the Authority and the Bank (and its assignees) from time to time under the Equipment Lease; and the covenants and agreements herein set forth to be performed on behalf of the Authority shall be for the equal benefit, protection, and security of the Bank (and its assignees).

Section 5. Notice of Meeting. The Board officially finds, determines, recites, and declares that written notice of the date, hour, place, and subject of the meeting at which this Resolution is adopted was posted in a place convenient to the public and readily accessible to the general public at all times on a bulletin board at the administrative office of the Authority for at least two (2) hours preceding the scheduled time of the meeting, that a copy of such written notice was furnished to the County Clerk of Harris County, Texas in sufficient time for posting for a least two (2) hours preceding the scheduled time of the meeting on a bulletin board located at a place convenient to the public in the Harris County Courthouse, and that a copy of such written notice was posted in a place convenient to the public and readily accessible to the general public at all times on a bulletin board located in the Harris County Courthouse for the time required by law at all times during which said Resolution and the subject matter thereof was discussed, considered, and formally acted upon.

PASSED AND ADOPTED this April 15, 1982.

Chairman, Board of the
Metropolitan Transit Authority
(of Harris County, Texas)

ATTEST:

[Signature]
Secretary, Board of the
Metropolitan Transit Authority
(of Harris County, Texas)

(SEAL)
APPROVED AS TO SUBSTANCE:

S. A. CARIA,
Acting Executive Director

APPROVED AS TO FORM:

JONATHAN DAY, Legal Counsel
BILL OF SALE

(New Buses)

THIS BILL OF SALE, effective as of the date of execution set out below, by METROPOLITAN TRANSIT AUTHORITY (OF HARRIS COUNTY, TEXAS) (hereinafter called "Grantor"), in favor of CAPITAL BANK, N.A., a national banking corporation (hereinafter called "Grantee");

W I T N E S S E T H:

WHEREAS, Grantor is a public body corporate and politic duly organized and validly existing under the Constitution and laws of the State of Texas and is a "governmental agency" as that term is defined in the Public Property Finance Act, Article 2368a.2, Vernon's Texas Civil Statutes, as amended (the "Finance Act");

WHEREAS, Section 6(d) of Article 1118x, Vernon's Texas Civil Statutes, as amended (the "Transit Authority Act"), authorizes Grantor to "sell, lease or dispose of ... personal property of every kind and nature whatsoever ... necessary, convenient or useful for the full exercise of any of its powers" and to "acquire by grant, purchase, gift, devise, lease, or otherwise ... personal property of every kind and nature whatsoever ... necessary, convenient or useful for the full exercise of any of its powers";

WHEREAS, Section 6(l) of the Transit Authority Act authorizes Grantor to make leases with any private corporation and to acquire property under conditional sales contracts, leases or any other form of contract;

WHEREAS, Section 4(a) of the Finance Act authorizes the Board of Grantor to authorize the execution, performance and making of payments under agreements entered into pursuant to the Finance Act with any person for the use, acquisition or purchase of personal property, appliances, equipment, facility or furnishings, or an interest therein, whether movable or fixed, deemed by the Board of Grantor to be necessary, useful or appropriate to one or more purposes of Grantor;

WHEREAS, Section 9 of the Finance Act provides that such statute is wholly sufficient authority within itself for the entering into of agreements under the Finance Act and the performance of other acts and procedures authorized by the Finance Act.
and that when agreements pursuant to the Finance Act are entered into, then to the extent of conflict or inconsistency between any of the provisions of the Finance Act and any provisions of any other law, the provisions of the Finance Act prevail and control, except that any governmental agency may use the provisions of any other law not in conflict with the provisions of the Finance Act to the extent convenient or necessary to carry out any power or authority, express or implied, granted by the Finance Act and that the Finance Act shall be liberally construed to effectuate its purpose;

WHEREAS, Grantor has acquired certain General Motors Corporation RTS-04 "Advance Design Buses," all as further identified on Exhibit "A" attached hereto and made a part hereof (hereinafter called the "Equipment"), which are necessary, convenient or useful for the full exercise of Grantor's powers;

WHEREAS, in order for Grantor to exercise fully its powers under the Transit Authority Act and the Finance Act, including its powers under Section 6(d) of the Transit Authority Act to dispose of property and its powers under Section 4(a) of the Finance Act to execute, perform and make payments under contracts for the acquisition of any property, and further to exercise its powers under Sections 6(d) and (1) of the Transit Authority Act to make lease contracts for the acquisition by lease of personal property, the Board of Grantor has determined that Grantor should bargain, sell and deliver to Grantee a ten percent (10%) undivided interest in each unit of the Equipment identified on Exhibit "A" attached hereto and thereafter pursuant to an Equipment Lease - Purchase Agreement of even date herewith (the "Equipment Lease"), and acquire by lease from Grantee such ten percent (10%) interest in each such unit of the Equipment; provided, however, that all of the foregoing is subject to any present and future interests of the Urban Mass Transportation Administration ("UMTA") in the Equipment, as described below;

WHEREAS, Grantor has applied for a grant from UMTA for Federal participation in the acquisition of the Equipment (Project No. TX-03-0070), has received a letter of no-prejudice from UMTA, dated December 7, 1981, with respect to such acquisition and further has entered into a joint statement of understanding with UMTA regarding the buses;

WHEREAS, if UMTA approves the grant for the Equipment and obligates funds for it, UMTA will acquire a lien against each unit of the Equipment under the terms of its customary grant agreement and will further require that Grantor not execute any
"lease, pledge, mortgage, lien or other contract touching or affecting ...[such] facilities or equipment" without express authorization in writing of the Department of Transportation;

NOW, THEREFORE, for and in consideration of good and valuable considerations in hand paid to Grantor by Grantee, the receipt of which is hereby acknowledged and confessed, and to enable Grantor to more fully exercise its powers as hereinabove set forth, and further in consideration of the execution and delivery by Grantee of the Equipment Lease, Grantor has BARGAINED, SOLD and DELIVERED, and by these presents does BARGAIN, SELL and DELIVER unto Grantee a ten percent (10%) undivided interest in each unit of the Equipment, which consists of the items of personal property identified on Exhibit "A" attached hereto; provided, however, that the foregoing is subject to any present or future interests of UMTA in the Equipment.

Grantor has executed this Bill of Sale and bargained, sold and delivered the Equipment, and Grantee has accepted this Bill of Sale and purchased the Equipment, WITHOUT ANY WARRANTIES OF WHATSOEVER NATURE, EXPRESSED OR IMPLIED, IT BEING THE INTENTION OF GRANTOR AND GRANTEE TO EXPRESSLY NEGATE AND EXCLUDE ALL WARRANTIES INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PERSONALITY OR BY ANY SAMPLE OR MODEL, AND ANY OTHER WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY THE TEXAS UNIFORM COMMERCIAL CODE, except (a) the warranty of the title and right to transfer set forth herein which warranties shall extend to Grantee; and (b) the warranties given to Grantor by General Motors Corporation with respect to the buses are bargained, sold and delivered with the Equipment to Grantee, provided, however, such bargain, sale and delivery shall not affect Grantor's right to enforce such warranties against General Motors Corporation and such warranties are not made on behalf of Grantor to Grantee.

TO HAVE AND TO HOLD the Equipment unto Grantee, its successors and assigns; and Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND, subject to the interests of UMTA and the exclusion of warranties set forth herein, the title to the Equipment unto Grantee, its successors
and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS THE EXECUTION HEREOF as of __________, 1982.

METROPOLITAN TRANSIT AUTHORITY
(OF HARRIS COUNTY, TEXAS)

By
Daniel C. Arnold, Chairman
Board of the Metropolitan
Transit Authority (of Harris County, Texas)

ATTEST:

By
Geraldo Acosta, Secretary
Board of the Metropolitan
Transit Authority (of Harris County, Texas)
BILL OF SALE
(Rehabilitated Buses)

THIS BILL OF SALE, effective as of the date of execution set out below, by METROPOLITAN TRANSIT AUTHORITY (OF HARRIS COUNTY, TEXAS) (hereinafter called "Grantor"), in favor of CAPITAL BANK, N.A., a national banking corporation (hereinafter called "Grantee");

W I T N E S S E T H:

WHEREAS, Grantor is a public body corporate and politic duly organized and validly existing under the Constitution and laws of the State of Texas and is a "governmental agency" as that term is defined in the Public Property Finance Act, Article 2368a.2, Vernon's Texas Civil Statutes, as amended (the "Finance Act");

WHEREAS, Section 6(d) of Article 1118x, Vernon's Texas Civil Statutes, as amended (the "Transit Authority Act"), authorizes Grantor to "sell, lease or dispose of ... personal property of every kind and nature whatsoever ... necessary, convenient or useful for the full exercise of any of its powers" and to "acquire by grant, purchase, gift, devise, lease, or otherwise ... personal property of every kind and nature whatsoever ... necessary, convenient or useful for the full exercise of any of its powers";

WHEREAS, Section 6(l) of the Transit Authority Act authorizes Grantor to make leases with any private corporation and to acquire property under conditional sales contracts, leases or any other form of contract;

WHEREAS, Section 4(a) of the Finance Act authorizes the Board of Grantor to authorize the execution, performance and making of payments under agreements entered into pursuant to the Finance Act with any person for the use, acquisition or purchase of personal property, appliances, equipment, facility or furnishings, or an interest therein, whether movable or fixed, deemed by the Board of Grantor to be necessary, useful or appropriate to one or more purposes of Grantor;

WHEREAS, Section 9 of the Finance Act provides that such statute is wholly sufficient authority within itself for the entering into of agreements under the Finance Act and the performance of other acts and procedures authorized by the Finance Act.

EXHIBIT B
and that when agreements pursuant to the Finance Act are entered into, then to the extent of conflict or inconsistency between any of the provisions of the Finance Act and any provisions of any other law, the provisions of the Finance Act prevail and control, except that any governmental agency may use the provisions of any other law not in conflict with the provisions of the Finance Act to the extent convenient or necessary to carry out any power or authority, express or implied, granted by the Finance Act and that the Finance Act shall be liberally construed to effectuate its purpose;

WHEREAS, Grantor has caused to be rehabilitated certain General Motors Corporation Model 5307 buses, all as further identified on Exhibit "A" attached hereto and made a part hereof (hereinafter called the "Equipment"), which are necessary, convenient or useful for the full exercise of Grantor's powers;

WHEREAS, in order for Grantor to exercise fully its powers under the Transit Authority Act and the Finance Act, including its powers under Section 6(d) of the Transit Authority Act to dispose of property and its powers under Section 4(a) of the Finance Act to execute, perform and make payments under contracts for the acquisition of any property, and further to exercise its powers under Sections 6(d) and (1) of the Transit Authority Act to make lease contracts for the acquisition by lease of personal property, the Board of Grantor has determined that Grantor should bargain, sell and deliver to Grantee a ten percent (10%) undivided interest in each unit of the Equipment identified on Exhibit "A" attached hereto and thereafter pursuant to an Equipment Lease Purchase Agreement of even date herewith (the "Equipment Lease"), acquire by lease from Grantee such ten percent (10%) interest in each such unit of the Equipment; provided, however, that all of the foregoing is subject to the interests of the Urban Mass Transportation Administration ("UMTA") in the Equipment, as described below;

WHEREAS, while none of the cost of the rehabilitation of the buses was paid with federal financial assistance, the Equipment was originally purchased with federal financial assistance from UMTA, as a result of which UMTA has a lien interest in the buses, and Grantor may not execute any "lease, pledge, mortgage, lien or other contract touching or affecting ...[such] facilities or equipment" without express authorization in writing of the Department of Transportation;

NOW, THEREFORE, for and in consideration of good and valuable considerations in hand paid to Grantor by Grantee, the receipt of which is hereby acknowledged and confessed, and to
enable Grantor to more fully exercise its powers as hereinabove set forth, and further in consideration of the execution and delivery by Grantee of the Equipment Lease, Grantor has BARGAINED, SOLD and DELIVERED, and by these presents does BARGAIN, SELL and DELIVER unto Grantee a ten percent (10%) undivided interest in each unit of the Equipment, which consists of the items of personal property identified on Exhibit "A" attached hereto; provided, however, that the foregoing is subject to the interests of UMTA in the Equipment.

Grantor has executed this Bill of Sale and bargained, sold and delivered the Equipment, and Grantee has accepted this Bill of Sale and purchased the Equipment, WITHOUT ANY WARRANTIES OF WHATSOEVER NATURE, EXPRESSED OR IMPLIED, IT BEING THE INTENTION OF GRANTOR AND GRANTEE TO EXPRESSLY NEGATE AND EXCLUDE ALL WARRANTIES INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PERSONALITY OR BY ANY SAMPLE OR MODEL, AND ANY OTHER WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY THE TEXAS UNIFORM COMMERCIAL CODE, except (a) the warranty of the title and right to transfer set forth herein which warranties shall extend to Grantee; and (b) the warranties given to Grantor by the rehabilitator/refurbisher with respect to the buses are bargained, sold and delivered with the Equipment to Grantee, provided, however, such bargain, sale and delivery shall not affect Grantor's right to enforce such warranties against the rehabilitator and such warranties are not made on behalf of Grantor to Grantee.

TO HAVE AND TO HOLD the Equipment unto Grantee, its successors and assigns; and Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND, subject to the interests of UMTA and the exclusion of warranties set forth herein, the title to the Equipment unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.
WITNESS THE EXECUTION HEREOF as of ___________, 1982.

METROPOLITAN TRANSIT AUTHORITY
(OF HARRIS COUNTY, TEXAS)

By
Daniel C. Arnold, Chairman
Board of the Metropolitan
Transit Authority (of Harris
County, Texas)

ATTEST:

By
Geraldo Acosta, Secretary
Board of the Metropolitan
Transit Authority (of Harris
County, Texas)
EXHIBIT "A"

TO

BILL OF SALE

THIS Exhibit "A" is attached to and a part of that certain BILL OF SALE (Rehabilitated Buses), dated __________, 1982, from METROPOLITAN TRANSIT AUTHORITY (OF HARRIS COUNTY, TEXAS), as Grantor, in favor of CAPITAL BANK, N.A., as Grantee.
EQUIPMENT LEASE -- PURCHASE AGREEMENT

THIS EQUIPMENT LEASE - PURCHASE AGREEMENT (this "Lease"), by and between CAPITAL BANK, N.A., a national banking corporation (herein referred to as "Lessor"), and METROPOLITAN TRANSIT AUTHORITY (OF HARRIS COUNTY, TEXAS), a public body corporate and politic existing under and by virtue of the Constitution and laws of the State of Texas (herein referred to as "Lessee");

WITNESSETH:

WHEREAS, Lessee is a public body corporate and politic duly organized and validly existing under the Constitution and laws of the State of Texas and is a "governmental agency" as that term is defined in the Public Property Finance Act, Article 2368a.2, Vernon's Texas Civil Statutes, as amended (the "Finance Act");

WHEREAS, Section 6(d) of Article 1118x, Vernon's Texas Civil Statutes, as amended (the "Transit Authority Act"), authorizes Lessee to "acquire by ... lease or otherwise ... personal property of every kind and nature whatsoever ... necessary, convenient or useful for the full exercise of any of its powers";

WHEREAS, Section 6(1) of the Transit Authority Act authorizes Lessee to make leases with private corporations and to acquire property under conditional sales contracts, leases or any other form of contract;

WHEREAS, Section 4(a) of the Finance Act authorizes the Board of Lessee to authorize the execution, performance and making of payments under agreements entered into under the Finance Act with any person for the use, acquisition or purchase of any personal property, appliances, equipment, facilities or furnishings, or an interest therein, whether movable or fixed, deemed by the Board of Lessee to be necessary, useful or appropriate to one or more purposes of Lessee;

WHEREAS, Section 4 of the Finance Act further provides that such agreements may be on the terms and conditions that are deemed appropriate by the Board of Lessee; that such agreements may be in the form of a lease, a lease with option or options to purchase, installment purchase or any other form deemed appropriate by the Board of Lessee; that such agreements may provide for the payment of interest on the unpaid amounts at a rate or

EXHIBIT C
rates and may contain prepayment provisions, termination penalties and other provisions as shall be determined within the discretion of the Board of Lessee; that such agreements on behalf of Lessee shall be obligations of Lessee; and that subject only to applicable constitutional restrictions, the Board of Lessee has authority to obligate taxes or revenues of Lessee for the full term of any agreement entered into under the Finance Act for the payment of such agreement;

WHEREAS, Section 9 of the Finance Act provides that such statute is wholly sufficient authority within itself for the entering into of agreements under the Finance Act and the performance of other acts and procedures authorized by the Finance Act and that when agreements pursuant to the Finance Act are entered into, then to the extent of conflict or inconsistency between any of the provisions of the Finance Act and any provisions of any other law, the provisions of the Finance Act prevail and control, except that any governmental agency may use the provisions of the Finance Act to the extent convenient or necessary to carry out any power or authority, express or implied, granted by the Finance Act and that the Finance Act shall be liberally construed to effectuate its purpose;

WHEREAS, in exercise of its powers under the Transit Authority Act, including Sections 6(d) and (l) of the Transit Authority Act, and of its authority under the Finance Act, including Section 4 of the Finance Act the Board of the Lessee (i) has determined the "Equipment" (as hereinafter defined) to be necessary, useful or appropriate to one or more purposes of the Lessee; (ii) has determined to make a lease contract with Lessor to acquire the Equipment pursuant to this Lease; (iii) has determined that the terms and conditions of and the form of this Lease are appropriate for the acquisition of the Equipment; (iv) has duly authorized the execution, delivery and due performance of this Lease, including payment of all amounts specified herein together with payment of interest on the unpaid amounts at the rate specified in this Lease; and (v) has duly authorized the taking of any and all such action as may be required on the part of Lessee to carry out, give effect to and consummate the transactions contemplated by this Lease; and

WHEREAS, Lessor acknowledges that the Equipment was acquired in part, or the Lessee may in the future be reimbursed in part for the costs of the Equipment, with proceeds of a grant from the Urban Mass Transportation Administration ("UMTA"), as a result of which UMTA has, or will acquire, a lien against the Equipment under the terms of its customary grant agreement;
WHEREAS, UMTA grant agreements require that Lessee not execute any "lease, pledge, mortgage, lien or other contract touching or affecting ... [such] facilities or equipment" without express authorization in writing of the Department of Transportation;

WHEREAS, Lessor additionally acknowledges that this Lease is part of a transaction which also includes (1) transfers of the Equipment from Lessee to Lessor by Bills of Sale to be executed and dated as of the Closings, subject to any present or future interest of UMTA in the Equipment, and (2) by way of a "safe harbor" lease a transfer of the accelerated cost recovery system benefits associated with the Equipment and the balance of Lessee's interests in the Equipment, and Lessor further consents and agrees to such "safe harbor" lease as more specifically hereinafter provided in Section 31; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the Equipment, upon the terms and conditions hereinafter set forth:

1. DEFINITIONS. For all purposes herein, and for the purpose of the documents executed pursuant hereto, the following terms shall have the following meanings, unless the context indicates otherwise:

(a) Closings. The dates on which Lessee executes the Bills of Sale transferring the Equipment to the Lessor. Additionally, at the First Closing, which will relate to the new buses, this Lease will be executed. At the Second Closing, which will relate to the rehabilitated buses, the Agreement for Second Closing Under Equipment Lease-Purchase Agreement attached hereto as Exhibit C will be executed, and attached to said agreement will be Exhibits A-2 and B-2. The terms and conditions of this Lease shall not apply to the rehabilitated buses until such time as the Second Closing takes place, including execution of the Bill of Sale for the rehabilitated buses and the Agreement for Second Closing Under Equipment Lease-Purchase Agreement; provided, however, that the execution of such documents for the Second Closing is required by this Lease. It is expected that the First Closing will be on or about April 15, 1982, and that the Second Closing will be on or about July 15, 1982.

(b) Equipment. "Equipment" shall mean Lessor's ten percent (10%) undivided interest in each of the buses, including certain new General Motors Corporation ("GMC") RTS-04 buses
and certain rehabilitated GMC Model 5307 buses, all as described in the Lease Schedules annexed hereto.

(c) Equipment Cost. "Equipment Cost" shall mean the aggregate of the acquisition cost of the RTS-04 buses and the rehabilitation cost of the Model 5307 buses, all as leased to Lessee pursuant to the terms of this Lease.

(d) Lease Schedule. "Lease Schedule" shall mean the schedule which is attached hereto. The exhibits to the Lease Schedule will be as follows:

Exhibit A-1 The new buses to be described in Exhibit A to the Bill of Sale (New Buses), which will be executed by Lessee at the First Closing and will transfer to Lessor such portion of the Equipment.

Exhibit A-2 The rehabilitated buses to be described in Exhibit A to the Bill of Sale (Rehabilitated Buses), which will be executed by Lessee at the Second Closing and will transfer to Lessor such portion of the Equipment.

Exhibit B-1 The payment schedule for that portion of the Equipment which is described in Exhibit A-1 (New Buses).

Exhibit B-2 The payment schedule for that portion of the Equipment which is described in Exhibit A-2 (Rehabilitated Buses).

(e) Lease. "Lease," as used throughout this instrument, the Lease Schedule and all documents issued and executed pursuant hereto or thereto, shall mean this instrument as originally executed or, if later extended, renewed, amended or supplemented, then as so extended, renewed, amended or supplemented.

2. LEASE. Subject to the terms and provisions of this Lease, Lessor agrees to lease the Equipment to Lessee.

3. TERM. This Lease is effective with respect to the new buses as of the date of the First Closing and with respect to the rehabilitated buses as of the date of the Second Closing and will remain in effect until the full performance and observance of the terms, conditions and covenants contained in this Lease.
4. RENT PAYMENT. The total rent payable hereunder, which includes a principal component and an interest component, shall be the aggregate of that set forth in Exhibits B-1 and B-2 to the Lease Schedule. Lessee promises to pay to Lessor the periodic payments for the Equipment specified in the Lease Schedule on the payment dates specified in the Lease Schedule. Such payments and all other payments due Lessor under this Lease will be paid by Lessee to Lessor at Lessor's address as Lessor may designate, without notice or demand (except as otherwise expressly provided herein) and without abatement, setoff or deduction of any amounts whatsoever. Lessee agrees that, unless otherwise expressly set forth in this Lease, Lessee's obligation to make all payments due Lessor under this Lease will be absolute and unconditional under all circumstances, it being understood that Lessee will not be relieved from its obligation to make such payments because of any deficit in, damage to, or loss or destruction of, the Equipment from any cause, or any interruption of use of the Equipment for any reason.

5. PREPAYMENT. On any date after the first anniversary of the execution of this Lease, Lessee may, upon giving Lessor ten (10) days' written notice thereof, prepay all or any part of the principal components of the rent payments hereunder, in which case the related interest component will be abated, and further Lessee may upon payment thereof in full exercise the purchase option provided in Section 25 hereof according to its terms. If Lessor prepays less than the full amount of rent payable hereunder, the amount of any such prepayment shall be applied, in inverse order of maturity, to principal components of rent payments set out in Exhibits B-1 and B-2 to the Lease Schedule.

6. IDENTIFICATION OF EQUIPMENT. The serial number, descriptive material, Equipment Cost and other relevant matters for each item of Equipment leased hereunder is incorporated on the Lease Schedule. Lessor shall have no duty to inspect the Equipment. If the Equipment does not operate as represented or warranted by any supplier or rehabilitator/ refurbisher or is unsatisfactory for any reason, Lessee shall make any claim on account thereof solely against such supplier or rehabilitator.

7. AUTHORITY AND AUTHORIZATION. Lessee represents and warrants to Lessor that (a) Lessee has full power and authority to execute, deliver and comply with this Lease; (b) all required procedures in respect to Lessee's execution, delivery and performance of this Lease have been (or will be) complied with properly and in a timely manner; (c) the execution, delivery and performance of this Lease by Lessee have been duly authorized by Lessee are not in contravention of any applicable laws or the
terms of any other agreement to which Lessee is a party; and (d) this Lease evidences a valid and binding obligation of Lessee enforceable in accordance with its terms. Lessee will obtain and deliver to Lessor a certificate of an authorized official of Lessee and a favorable opinion of counsel, each in form and substance satisfactory to Lessor, as to the matters covered by (a), (b), (c) and (d) above.

8. **SECURITY.**

(a) **Pledge of Local Sales and Use Tax.** Pursuant to the Finance Act and any other applicable law, Lessee hereby pledges to secure the payment of all amounts payable under the Lease Schedule and all other amounts required to be paid or expended by Lessee hereunder, such of the receipts and proceeds of Lessee's local sales and use tax as are necessary and required, together with any other funds lawfully available for such purpose, to make full and timely payment of all such amounts as they become due; provided, however, Lessor hereby agrees to subordinate its interest in the receipts and proceeds of Lessee's local sales and use tax and other funds lawfully available to pay all such amounts to the rights of holders of bonds or notes issued by Lessee and to the rights of other persons with whom the Lessee makes a contract for use, acquisition or purchase of any property under the Finance Act if and only if the indenture or other trust instrument relating to such bonds and notes and the contract with such other person relating to the use, acquisition or purchase of property under the Finance Act contains provisions and covenants on behalf of Lessee whereby the Lessee agrees to establish and maintain rates, fares, tolls, charges, rents or other compensation for the use of the facilities of the Lessee's rapid transit system which, together with receipts from local sales and use taxes collected by the Lessee, shall be sufficient to produce revenues that are at all times adequate (1) to pay all expenses necessary to the operation and maintenance of the properties and facilities of Lessee; (2) to pay the interest on and principal of all such bonds and notes, and of all bonds, notes and other obligations issued by Lessee under the Transit Authority Act, all amounts due pursuant to agreements entered into by the Lessee under the Transit Authority Act and all amounts due pursuant to agreements entered into by the Lessee under the Finance Act (including all such contracts and this Lease) when and as the same shall become due and payable; (3) to pay all sinking fund and reserve fund payments agreed to be made in respect of any such bonds, and of any such notes, obligations and
agreements (including all such contracts and this Lease), and payable out of such taxes and revenues, when and as the same shall become due and payable; and (4) to fulfill the terms of any agreements made with the holders of such bonds, and of such notes and obligations and, with any person in their behalf, or with any person (including Lessor) who is a party to such agreements (including all such contracts with other persons and this Lease) under the Finance Act.

(b) Sufficiency of Funds. Lessee further covenants and agrees throughout the term of the Lease to do all things lawfully within its power to obtain and maintain funds from any and all sources from which all payments required hereunder may be paid, and (to the extent required by law) shall make provision for all such payments in each annual operating budget of the Lessee. Moreover, Lessee agrees throughout the term of this Lease to establish and maintain rates, fares, tolls, charges, rents or other compensation for the use of the facilities of Lessee's rapid transit system which, together with receipts from local sales and use taxes collected by Lessee, shall be sufficient to produce revenues that are at all times adequate (1) to pay all expenses necessary to the operation and maintenance of the properties and facilities of Lessee; (2) to pay the interest on and principal of all bonds, notes and other obligations issued by Lessee under the Transit Authority Act, all amounts due pursuant to agreements entered into by Lessee under the Transit Authority Act, and all amounts due pursuant to agreements entered into by Lessee under the Finance Act (including this Lease) when and as the same shall become due and payable; (3) to pay all sinking fund and reserve fund payments agreed to be made in respect of any such bonds, notes, obligations and agreements (including this Lease), and payable out of such taxes and revenues, when and as the same become due and payable; and (4) to fulfill the terms of any agreements made with the holders of such bonds, notes, and obligations and, with any person in their behalf, or with any person (including the Lessor) who is a party to such agreements (including this Lease) under the Finance Act. Lessee further represents and covenants that funds sufficient to make all payments under the Lease Schedule and to satisfy all of Lessee's obligations under this Lease for Lessee's current fiscal year have been lawfully budgeted and appropriated for such purpose.

9. TITLE TO THE EQUIPMENT. Subject to the provisions of Sections 31 and 32 hereof, Lessor will retain title to the Equipment during the term of this Lease (including any renewals
or extensions hereof) as collateral security for the payment and performance by Lessee of its obligations under this Lease. Lessor and Lessee do not intend nor admit that this Lease is intended as security, but to the extent (at any time or from time to time), if any, that this Lease is asserted to be or have been intended as security, Lessee and Lessor intend and agree that Lessee hereby grants a security interest to Lessor in the Equipment, the proceeds of any sale, assignment, lease or sublease thereof, and any other rights Lessee may have in or to said Equipment or proceeds. At the expense of Lessee, Lessee agrees to cooperate with Lessor in executing such financing statements or other documentation required by law, the Texas Business and Commercial Code or otherwise to protect Lessor's title and rights to the Equipment, and Lessee irrevocably authorizes Lessor to file financing statements signed only by Lessor in all jurisdictions where permitted by law. Lessee agrees to keep the Equipment at all times free and clear of all security interests, liens and encumbrances, other than those which may be granted to, or created by, UMTA. Title to the Equipment will pass to Lessee upon Lessee's exercise of the purchase option provided in Section 25 hereof and the complete payment and performance by Lessee of all of Lessee's obligations under this Lease as set forth in Section 25 hereof, and in such case Lessor agrees to execute such instruments and do such things as Lessee reasonably requests in order to effectuate the passage of title to Lessee.

10. POSSESSION OF EQUIPMENT. Subject to the provisions of Sections 31 and 32 hereof, Lessee will not, without the prior written consent of Lessor, sublease or otherwise in any manner deliver, transfer or relinquish possession of the Equipment.

11. CLAIMS AGAINST SUPPLIERS. Lessor authorizes and appoints Lessee to enforce, in its own name, any claim warranty, agreement or representation which may be made against any supplier or rehabilitator/refurbisher of the Equipment. BUT LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE EXTENT OF OR ENFORCEABILITY OF ANY SUCH CLAIM, WARRANTY, AGREEMENT, OR REPRESENTATION. NO DEFECT OR UNFITNESS OF THE EQUIPMENT SHALL RELIEVE LESSEE OF THE OBLIGATION TO PAY RENT OR OF ANY OTHER OBLIGATION UNDER THIS LEASE.

12. DISCLAIMER OF WARRANTY. LESSOR AND LESSEE, NOT BEING THE MANUFACTURERS, SUPPLIERS OR REHABILITATORS/REFURBISHERS OF ANY OF THE EQUIPMENT NOR DEALERS IN SIMILAR EQUIPMENT, HAVE NOT MADE AND DO NOT MAKE ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE DESIGN, DURABILITY, FITNESS FOR USE, SUITABILITY OR MERCHANTABILITY OF THE EQUIPMENT IN ANY RESPECT,
AND AS BETWEEN LESSOR AND LESSEE, ALL EQUIPMENT SHALL BE ACCEPTED
AND LEASED BY LESSEE "WHERE IS", "AS IS" AND "WITH ALL FAULTS",
AND NEITHER LESSOR NOR LESSEE SHALL BE RESPONSIBLE FOR ANY PATENT
OR LATENT DEFECTS THEREIN. LESSOR AND LESSEE AGREE TO SETTLE
SUCH CLAIMS DIRECTLY WITH THE SUPPLIERS AND EACH WILL NOT ASSERT
ANY SUCH CLAIMS AGAINST THE OTHER.

13. CERTAIN COVENANTS RELATING TO THE EQUIPMENT. So long as no
Event of Default (hereinafter defined) has occurred and is
continuing under this Lease, Lessee will be entitled to the quiet
use and enjoyment of the Equipment throughout the term of this
Lease.

14. ALTERATIONS. Lessee is hereby given the right, at its sole
expense, to make other alterations, modifications, additions or
attachments to the Equipment so long as the value or the useful-
ness of the Equipment is not reduced thereby. Lessee shall not
alter, remove, deface, destroy or permanently cover any manufac-
turer's nameplate, serial number or other similar distinguishing
number or mark on the Equipment.

15. RISK OF LOSS. Lessee shall assume and bear risk of loss or
damage to the Equipment and all component parts thereof from any
and every cause whatsoever, whether or not covered by insurance,
and shall assume and bear risk of loss or damage for the use,
operation and storage of the Equipment.

16. EQUIPMENT LOSS OR DAMAGE. No loss or damage to the Equip-
ment or any component part thereof shall impair any obligation of
Lessee under this Lease, which shall continue in full force and
effect except as hereinafter expressly provided.

17. INSURANCE. Until Lessee has delivered possession of the
Equipment to Lessor, or as otherwise herein provided, Lessee at
its expense agrees to and shall maintain property damage
insurance with respect to the Equipment with responsible insurers
satisfactory to Lessor.

18. REDELIVERY. Unless Lessee is entitled to retain possession
of the Equipment pursuant to its exercise of the purchase option
contained in Section 25 hereof, at the expiration or termination
of the lease term in respect of the Equipment, Lessee will, at
its own risk, cost and expense, return the Equipment to Lessor,
subject to the interest of UMTA therein, at such location within
Harris County, Texas, as Lessor shall designate and in the same
operating order, repair, condition and appearance as when
received, excepting only for reasonable wear and tear resulting
from proper use thereof and damage by any cause fully covered by
insurance collected by Lessor and not released to Lessee.

19. TAXES. Lessee shall be responsible for the timely payment
and discharge of all license or registration fees, assessments,
sales and use taxes, rental taxes, gross receipts taxes, personal
property taxes and other taxes now or hereafter imposed by any
federal, state or local government upon the Equipment or upon the
ownership, leasing, purchase, possession or use thereof (whether
the same be assessed to Lessor or Lessee), except for such taxes
as are being contested in good faith and by appropriate pro-
cedings, so long as such proceedings do not involve any danger
of the sale, forfeiture or loss of any item of Equipment at any
time within sixty (60) days. Lessee shall pay and discharge at
least ten (10) days before delinquency any and all such fees,
avessments and taxes directly to the proper levying authority,
unless otherwise required by law, except for such taxes as are
being contested in good faith and by appropriate proceedings, so
long as such proceedings do not involve any danger of the sale,
forfeiture or loss of any item of Equipment at any time within
sixty (60) days. Nothing herein shall be construed to require
Lessee to be so responsible for any federal or state taxes, or
payments in lieu thereof, imposed upon or measured by the net
income of Lessor or, except as provided hereinabove, any penal-
ties or interest resulting from Lessor's failure to timely remit
such tax payments.

20. INDEMNITY. Subject to the provisions of Section 32 hereof,
Lessee assumes liability for and hereby agrees (whether or not
Lessor is otherwise insured thereon) to indemnify, protect, save
and keep harmless Lessor and its agents and employees from and
against any and all liabilities, obligations, losses, damages,
penalties, claims, tax claims, actions, suits and proceedings,
including legal expenses and reasonable attorneys' fees of
whatsoever kind and nature, imposed on, incurred by or asserted
against Lessor because of the manufacture, purchase, rehabil-
itation/refurbishing, transportation, acceptance, ownership
(including absolute or strict liability in tort, contract or
otherwise), use or rejection of the Equipment (including, without
limitation, latent and other defects, whether or not discoverable
by Lessor or Lessee), and any claim for patent, trademark or
copyright infringement.

21. LESSOR'S PERFORMANCE OPTION. Should Lessee fail to make any
payment or to perform any act required to be made or performed by
Lessee hereunder, then Lessor shall have the right (but not the
obligation), without notice to Lessee of its intention to do so
and without waiving or releasing Lessee from any obligation or
default hereunder, at any time thereafter to make or to perform
the same for the account and at the expense of Lessee, to make
advances to preserve the Equipment or Lessor's interest thereto,
and to pay, purchase, contest or compromise any insurance premium
required to be paid by Lessee hereunder, encumbrance, charge, tax
lien or other sum which in the judgment of Lessor appears to
affect the Equipment or the interest of Lessor thereto, and in
exercising any such rights, Lessor may incur any liability and
expend whatever amounts in its absolute discretion it may deem
necessary therefor. All sums so paid, incurred or expended
(including without limitation reasonable attorney's fees) by
Lessor shall be due and payable by Lessee within ten (10) days of
notice thereof together with interest thereon at the rate specified
in Section 37 hereof from the date of demand.

22. EVENTS OF DEFAULT. Any of the following events shall be
considered an "Event of Default" as that term is used herein:

(a) Payments - Default occurs in the payment or
prepayment when due of any payment due hereunder and such
continues unremedied for ten (10) days after such payment is
due; or

(b) Representations and Warranties - Any representation
or warranty made by Lessee in this Lease proves to have been
incorrect in any material respect as of the date thereof; or

(c) Covenants - Default occurs in the due observance
or performance of any of the covenants or agreements con-
tained in this Lease to be kept or performed by Lessee and
such default continues unremedied for a period of thirty
(30) days after notice thereof being given by Lessor to
Lessee; or

(d) Involuntary Bankruptcy Proceedings - A receiver,
conservator, liquidator or trustee of Lessee or of any of
its property is appointed by the order or decree of any
court or agency or supervisory authority having jurisdi-
cation, and such decree or order remains in effect for more
than thirty (30) days; or Lessee is adjudicated bankrupt or
insolvent; or any of its property is sequestered by court
order and such order remains in effect for more than thirty
(30) days; or a petition is filed against Lessee under any
bankruptcy, reorganization, arrangement, insolvency, readjust-
ment of debt, dissolution or liquidation law of any
jurisdiction, whether now or hereafter in effect, and is not
dismissed within thirty (30) days after such filing; or
(e) Voluntary Petition - Lessee files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(f) Assignments for Benefit of Creditors, etc. - Lessee makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator or the Lessee or of all or any part of its property; or

(g) Discontinuance of Business - Lessee discontinues its usual business.

23. REMEDIES. Should any Event of Default occur and be continuing, Lessor may (a) without retaking possession of the Equipment, hold Lessee liable for all rents and other sums which shall become due thereafter and under the terms of this Lease and may recover such sums from Lessee from time to time as they become due or at any time thereafter (subject to any applicable statutes of limitation); or (b) subject to the interest of UMTA in the Equipment, exercise any other right, remedy or privilege which may be available to it under applicable laws of the State of Texas or any other applicable law or proceed by appropriate court action to enforce the terms of this Lease or to recover damages for the breach of this Lease or to rescind this Lease as to any or all of the Equipment. Lessor's pursuit and enforcement of any one or more remedy shall not be deemed an election or waiver by Lessor of any other remedy. Lessor shall not be entitled to recover a greater amount in damages than Lessor could have gained by receipt of Lessee's full, timely and complete performance of this obligations pursuant to the terms of this Lease.

24. INSPECTION BY LESSOR. Lessor, its agents or employees, shall at any and all reasonable times during business hours have the right to enter into and upon the premises where any Equipment may be located for the purpose of inspecting the same or observing its use.

25. PURCHASE OPTION. Upon (i) Lessee's payment of all rents and other sums provided for in all Lease Schedules and this Lease (ii) the termination of the lease term and (iii) Lessee's giving prior written notice of its election to exercise this purchase option within thirty (30) days prior to the end of the term of
this Lease, all the right, title and interest of Lessor in and to the Equipment set forth in the Lease Schedule shall vest in and become the property of Lessee upon payment of One Dollar ($1) by Lessee to Lessor, and Lessor covenants that it will thereupon execute to Lessee, a Bill of Sale transferring good and indefeasible title and interest in and to the Equipment under such Lease Schedule as evidence thereof and free from all liens, security interests, and encumbrances not created by Lessee or arising due to actions or inactions of Lessee.

26. COVENANTS AS TO ARBITRAGE. Lessee certifies that based upon all facts and estimates now known or reasonably expected to be in existence on the date hereof, Lessee reasonably expects that the proceeds from the sale of those certain buses identified in, and sold in accordance with, a Bill of Sale of even date herewith from Lessee as Grantor to Lessor as Grantee ("Bill of Sale") will not be used in a manner that would cause this Lease or any portion thereof to be an "arbitrage bond" under Section 103(c) of the Internal Revenue Code of 1954, as amended, and the regulations prescribed thereunder. Furthermore, all officers, employees and agents of Lessee charged with responsibility for entering into this Lease and for supervising compliance with this Lease are authorized and directed to provide certifications of facts and estimates that are material to the reasonable expectations of Lessee as of the date hereof. In particular, all or any officers of Lessee are authorized to certify for Lessee the facts and circumstances and reasonable expectations of Lessee on the date hereof regarding the amount and use of the proceeds from the sale of those certain buses identified in, and sold in accordance with, the Bill of Sale. Moreover, Lessee covenants to take such other and further actions as may be required so that this Lease shall not be an "arbitrage bond" under Section 103(c) of the Internal Revenue Code of 1954, as amended, and the regulations prescribed from time to time thereunder.

27. PARTIES BOUND. This Lease will be binding on Lessee and its successors and permitted assigns and will inure to the benefit of Lessor and its successors and assigns.

28. ASSIGNMENT.

(a) No Assignment by Lessee. Subject to the provisions of Sections 31 and 32 hereof, the rights and duties of Lessee hereunder are personal, and Lessee may not assign or hypothecate any of its rights hereunder and may not subcon- tract or delegate any of its duties hereunder, without, in either case, the prior written consent of Lessor. Without limiting the foregoing, in no event may Lessee assign or
hypothecate any of its rights hereunder or subcontract or
delegate any of its duties hereunder if the result thereof
would be to subject the interest on Lessee's obligations to
federal income taxation.

(b) Assignment by Lessor. Subject to the provisions
of Sections 31 and 32 hereof, Lessor, at its option, may
assign all or any part of its right, title and interest in,
to and under this Lease and/or the Equipment to any person
(an "Assignee"), and Lessor and Lessee agree that, in the
event of such assignment:

(i) The instrument whereby such assignment is
effected will specifically provide that the rights
granted thereunder are subject to UMTA's interest in
the Equipment and Lessee's rights provided herein;

(ii) Such assignment will not relieve Lessor of
any of Lessor's obligations under this Lease or be
construed to be an assumption by Assignee of any such
obligations (although Assignee may perform, at its
option, some or all of Lessor's obligations hereunder,
if the instrument effecting such assignment so
provides);

(iii) If requested, Lessee shall make all periodic
and other payments directly to either Assignee at such
address as may be designated by Assignee or to any
payment agent designated by Assignee or by the Lessor
for disbursement to Assignee;

(iv) Lessee's obligations under this Lease,
including, without limitation, its obligation to pay
rental and other payments, will not be subject to any
reduction, abatement, defense, set-off, counterclaim or
recoupment for any reason whatsoever; and

(v) After being notified of, or obtaining knowl-
edge of, any such assignment, Lessee will not consent
to any modification of this Lease without the written
consent of Assignee thereto.

29. NOTICES. All communications under or in connection with
this Lease shall be in writing and shall be mailed by first class
mail, postage prepaid, or otherwise sent by telex, telegram,
telecopy or other similar form of rapid transmission confirmed by
mailing (in the manner stated above) written confirmation at
substantially the same time as such rapid transmission, or

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personally delivered to an officer of the receiving party. All such communications shall be mailed, sent or delivered,

(a) if to Lessee, to the following address:

Metropolitan Transit Authority
401 Louisiana Street
Houston, Texas 77002

Attention: Wayne B. Placide, Treasurer

with copies to:

Mayor, Day & Caldwell
P.O. Box 4544
Houston, Texas 77210

Attention: Jonathan Day

and

Urban Mass Transportation Administration
819 Taylor Street
Suite 9A32
Fort Worth, Texas 76102

Attention: Regional Administrator

or to such other address or to such individual's or department's attention as it may have furnished Lessor in writing; and

(b) if to Lessor, to the following address:

Capital Bank, N.A.

Houston, Texas 7700

Attention: Robert L. Ross, Senior Vice President & Investment Officer

or to such other address or to such individual's or department's attention as it may have furnished Lessee in writing; and

Any notice so addressed and mailed by registered or certified mail shall be deemed to be given when so mailed, and any notice so delivered in person shall be deemed to be given when receipted
for by, or actually received by, an authorized officer of Lessee or Lessor, as the case may be.

30. **DEVIATION FROM COVENANTS.** The procedure to be followed by Lessee to obtain the consent of Lessor to any deviation from the covenants contained in this Lease shall be as follows:

   (a) Lessee shall send a written notice to Lessor and UMTA setting forth (i) the covenant(s) relevant to the matter, (ii) the requested deviation from the covenant(s) involved and (iii) the reason for the requested deviation from the covenant(s); and

   (b) Lessor will, within a reasonable time, send a written notice to Lessee and UMTA, signed by an authorized officer of Lessor, permitting or refusing the request; but in no event will any deviation from the covenants of this Lease be effective without written consent of Lessor.

31. **SAFE HARBOR LEASE.** Notwithstanding any provisions of this Lease to the contrary, Lessor hereby consents to Lessee entering into lease agreements with third parties with respect to the Equipment and the Lessee's interest in the buses described in the Lease Schedule attached hereto, which is intended to qualify under Section 168(f)(8) of the Internal Revenue Code of 1954, as amended (the "safe harbor leases"), and that entering into such safe harbor leases by Lessee does not violate any provisions of this Lease. Under such safe harbor leases, Lessee will, for federal income tax purposes only, sell the Equipment and the Lessee's interest in the buses described in the Lease Schedule attached hereto, and lease them back. Further, Lessor agrees to execute whatever documents are reasonably required by the Lessor under the safe harbor leases and to take no action which could jeopardize the federal income tax treatment of the safe harbor leases unless such action is necessary to protect Lessor's rights under this Lease. Lessor will not claim any depreciation or investment tax credit on the Equipment and will not take any action which indicates that it is the owner of the Equipment for federal income tax purposes. Lessor and Lessee acknowledge that this Lease is **NOT** intended to qualify as a lease under Section 168(f)(8) of the Code and agree that no election under Section 168(f)(8) of the Code will be made under which Lessor is to be treated as the owner of the Equipment for federal income tax purposes.
32. Federal Interest.

(a) The Equipment (exclusive of the rehabilitation costs) has been (or is expected to be) purchased with Federal financial assistance under a grant(s) from UMTA. UMTA has provided (or may provide) eighty percent (80%) of the cost of the Equipment (exclusive of rehabilitation costs) and, pursuant to the terms and conditions of executed (or to be executed) grant agreements with Lessee, retains (or will retain) an interest in the Equipment. In brief, the Federal interest is that the Equipment shall be used in accordance with the terms and conditions of the standard UMTA grant agreement or, in the event that any or all of such Equipment for whatsoever reason no longer is so used, UMTA shall be reimbursed in an amount equal to eighty percent (80%) of the then fair-market value (exclusive of the value attributable to the rehabilitation) of any such Equipment.

(b) Lessor and Lessee recognize that, pursuant to Section 108 of Part II of the standard UMTA grant agreement, Lessee shall not execute any lease or other contract affecting UMTA-funded equipment unless such lease or contract expressly is authorized in writing by UMTA.

(c) The indemnification clauses in this Lease in no way pledge or encumber, or otherwise limit or affect the Federal interest in, any agreement, or any property or equipment provided under any such grant agreement, between Lessee and UMTA.

33. INVALIDITY. In the event that any one or more of the provisions contained in this Lease shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease.

34. SURVIVAL OF AGREEMENTS. All representations and warranties of Lessee herein, and all covenants and agreements herein not fully performed before the effective date or termination date of this Lease, shall survive such date.

35. WAIVERS. No course of dealing on the part of Lessor, its officers, employees, consultants or agents, nor any failure or delay by Lessor with respect to exercising any right, power or privilege of Lessor under this Lease shall operate as a waiver thereof, except as otherwise provided in Section 30 hereof.
36. **CUMULATIVE RIGHTS.** Rights and remedies of Lessor under this Lease shall be cumulative, and the exercise of partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

37. **INTEREST.** Past due payments under this Lease, and amounts incurred or paid by Lessor in accordance with Section 22 hereof, shall bear interest at the maximum rate of interest permitted by the applicable usury laws of the State of Texas from the date when due until paid.

38. **SINGULAR AND PLURAL.** Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa.

39. **CONSTRUCTION.** This Lease is a contract made under and shall be construed in accordance with and governed by the laws of the State of Texas and of the United States of America.

40. **USURY DISCLAIMER.** It is the intention of the parties hereto to conform strictly to applicable usury laws now in force. Accordingly, if the transactions contemplated hereby would be usurious under the applicable usury laws of the State of Texas, then, in that event, notwithstanding anything to the contrary in this Lease or in any related documents, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, charged, or received under this Lease or otherwise in connection with the payments due by Lessee under this Lease shall under no circumstances exceed the maximum amount of interest permitted by the applicable usury laws of the State of Texas, and any excess shall be credited on the payments due by Lessee under this Lease by Lessor (or Assignee, as the case may be) thereof (or, if the payments due by Lessee under this Lease shall have been paid in full, refunded to the Lessee); and (ii) in the event that the maturity of the payments due by Lessee under this Lease is accelerated by reason of an election of the Lessor (or Assignee, as the case may be) resulting from an Event of Default under this Lease or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount permitted by the applicable usury laws of the State of Texas, and excess interest, if any, provided for in this Lease or otherwise shall be cancelled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on the payments due by the Lessee under this.
Lease (or, if the payments due by Lessee under this Lease shall have been paid in full, refunded to the Lessee).

41. **FURTHER ASSURANCES.** Lessee will promptly cure any defects in the execution and delivery of this Lease. Lessee at its expense will promptly execute and deliver to Lessor upon request all such other and further documents, agreements and instruments in compliance with or accomplishment of the covenants and agreements of Lessee in this Lease, or to further evidence and more fully describe the Equipment or to perfect, protect or preserve any of the rights, titles or interests of Lessor in the Equipment under this Lease, or to make any recordings, to file any notices or obtain any consents, all as may be necessary or appropriate in connection therewith.

42. **TITLES OF SECTIONS AND SUBSECTIONS.** All titles or headings to sections, subsections or other divisions of this Lease or the exhibits hereto are only for the convenience of the parties and shall not be construed to have an effect or meaning with respect to the other content being controlling as to the agreement between the parties hereto.

43. **COUNTERPARTS.** This Lease may be executed in two or more counterparts, and it shall not be necessary that the signatures of all parties hereto be contained on any one counterpart hereof; each counterpart shall be deemed an original, but all of which together shall constitute one and the same instrument.

**WITNESS THE EXECUTION HEREOF ON [Date], 1982 AND TO BE EFFECTIVE AS PROVIDED IN SECTION 3 HEREOF.**

**LESSEE:**

**METROPOLITAN TRANSIT AUTHORITY**

(OF HARRIS COUNTY, TEXAS)

**By:**

Daniel C. Arnold, Chairman
Board of Metropolitan Transit Authority (of Harris County, Texas)

**ATTEST:**

Geraldo Acosta, Secretary
Board of Metropolitan
Transit Authority (of Harris County, Texas)
LESSOR:  

CAPITAL BANK, N.A.

By:  

Robert L. Ross  
Senior Vice President  
& Investment Officer
LEASE SCHEDULE

TO

EQUIPMENT LEASE - PURCHASE AGREEMENT
dated ______, 1982

THIS LEASE SCHEDULE is attached to and a part of a certain EQUIPMENT LEASE - PURCHASE AGREEMENT dated as of 1982, between CAPITAL BANK, N.A., as Lessor, and METROPOLITAN TRANSIT AUTHORITY (OF HARRIS COUNTY, TEXAS), as Lessee.

A. Description of Buses and Cost of Buses

See attached Exhibits A-1 (New Buses) and A-2 (Rehabilitated Buses)

B. Term

1. New Buses:

Commencing on date of First Closing and ending on last day of the month which is 60 calendar months thereafter

2. Rehabilitated Buses:

Commencing on date of Second Closing and ending on the last day of the month which is 60 calendar months thereafter

C. Payment

1. 60 equal, consecutive monthly rent payments -- (See attached Exhibits B-1 (New Buses) and B-2 (Rehabilitated Buses) for schedule of principal and interest components)

2. Interest Rate: Eleven and one-half percent (11.5%) per annum

3. Rent Payment Dates: The fifth (5th) day of each calendar month throughout the Lease term representing rent payment for the previous month.

b/RMC/6L/A
<table>
<thead>
<tr>
<th>Property for First Closing</th>
<th>I.D. No.</th>
<th>Vehicle No.</th>
<th>Property</th>
</tr>
</thead>
</table>

**EXHIBIT A-1**
EXHIBIT A-2

to
LEASE SCHEDULE

LIST OF EQUIPMENT (REHABILITATED BUSES)

<table>
<thead>
<tr>
<th>Bus Number</th>
<th>Bus Type</th>
<th>Equipment Cost</th>
<th>Vehicle Identification Number</th>
</tr>
</thead>
</table>

[To be attached at the Second Closing and be the same as Exhibit A to the Bill of Sale (Rehabilitated Buses), which shall be executed at the Second Closing]
EXHIBIT B-1
to
LEASE SCHEDULE

PAYMENT SCHEDULE (NEW BUSES)

<table>
<thead>
<tr>
<th>Payment #</th>
<th>Principal Component</th>
<th>Interest Component</th>
<th>Total</th>
</tr>
</thead>
</table>

[To be furnished by Lessor]
EXHIBIT B-2
to
LEASE SCHEDULE

PAYMENT SCHEDULE (REHABILITATED BUSES)

<table>
<thead>
<tr>
<th>Payment #</th>
<th>Principal Component</th>
<th>Interest Component</th>
<th>Total</th>
</tr>
</thead>
</table>

[To be furnished by Lessor]
EXHIBIT C

AGREEMENT FOR SECOND CLOSING UNDER
EQUIPMENT LEASE-PURCHASE AGREEMENT

This AGREEMENT dated __________, 1982 by and between CAPITAL BANK, N.A., a national banking corporation ("Lessor"), and METROPOLITAN TRANSIT AUTHORITY of Harris County, Texas, a public body corporate and politic existing under and by virtue of the Constitution and laws of the State of Texas ("Lessee").

WHEREAS, Lessor and Lessee entered into an Equipment Lease-Purchase Agreement dated __________, 1982 (the "Agreement"); and

WHEREAS, the conditions necessary for the Second Closing (as described in the Agreement) have been satisfied.

NOW, THEREFORE, it is agreed:

1. The terms of the Agreement are for the purposes of this agreement incorporated herein by reference and adopted as if set forth fully herein. Terms defined in the Agreement are used herein with the same meaning.

2. The parties have agreed as to the form and content to the Exhibits A-2 and B-2 attached hereto, setting forth the list of Equipment and the payment schedule, respectively, for the Second Closing.
IN WITNESS WHEREOF, the parties have duly executed duplicate originals of this Agreement as of the date first above written.

LESSOR: 
CAPITAL BANK, N.A.

By __________________________

LESSEE: 
METROPOLITAN TRANSIT AUTHORITY
(OF HARRIS COUNTY, TEXAS)

By __________________________
RESOLUTION APPROVING SAFE HARBOR LEASE AGREEMENT
WITH FIRST CITY LEASING CORPORATION; PRESCRIBING
THE FORM AND SUBSTANCE OF SUCH AGREEMENT;
AUTHORIZED EXECUTION AND DELIVERY OF SUCH AGREEMENT;
AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Metropolitan Transit Authority (of Harris County, Texas) (the "Authority") has determined that is in the best interest of the Authority and necessary, convenient, or useful for the full exercise of its powers to approve the Safe Harbor Lease Agreement (the "Agreement"), between the Authority and First City Leasing Corporation, a Delaware corporation;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE METROPOLITAN TRANSIT AUTHORITY (OF HARRIS COUNTY, TEXAS), THAT:

Section 1. The Board hereby approves the Agreement in the form and substance attached hereto as Exhibit A.

Section 2. The Chairman and Secretary of the Board are hereby authorized, to execute and attest the Agreement for and on behalf of the Authority and, together with the employees and other agents of the Authority, to take such other actions as are necessary or convenient for the completion of the transactions contemplated thereby.

PASSED AND ADOPTED this April 15, 1982.

[Signature]
Chairman, Board of the Metropolitan Transit Authority (of Harris County, Texas)

ATTEST:

[Signature]
Secretary, Board of the Metropolitan Transit Authority (of Harris County, Texas)

(SEAL)
APPROVED AS TO SUBSTANCE:

[Signature]

S. A. CARIA
Acting Executive Director

APPROVED AS TO FORM:

[Signature]

JONATHAN DAY, Legal Counsel
SAFE HARBOR LEASE AGREEMENT

Dated as of April __, 1982

between

FIRST CITY LEASING CORPORATION
as Tax Lessor

and

METROPOLITAN TRANSIT AUTHORITY
OF HARRIS COUNTY, TEXAS
as Property Owner

THE PARTIES TO THIS AGREEMENT HAVE ELECTED TO CHARACTERIZE THIS AGREEMENT AS A LEASE, FOR FEDERAL INCOME TAX PURPOSES ONLY, PURSUANT TO SECTION 168(f)(8) OF THE INTERNAL REVENUE CODE.
SAFE HARBOR LEASE AGREEMENT

THIS SAFE HARBOR LEASE AGREEMENT ("Agreement"), dated April __, 1982, by and between Metropolitan Transit Authority of Harris County, Texas, a public body corporate and politic duly organized and validly existing under the Constitution and laws of the State of Texas, (the "Property Owner"), and First City Leasing Corporation, a Delaware corporation (the "Tax Lessor").

WHEREAS, the Property Owner owns or will own the property subject to this Agreement (the "Property"); and

WHEREAS, the parties desire that for Federal income tax purposes, and only for such purposes, the Tax Lessor be treated as the owner and lessor, and the Property Owner as the lessee, under a separate lease with respect to each item of the Property.

NOW, THEREFORE, it is agreed:


For Federal income tax purposes (and only for such purposes), pursuant to Section 168(f)(8) of the Internal Revenue Code of 1954, as amended (the "Code"), the Property Owner and the Tax Lessor each hereby characterizes this Agreement as a separate lease with respect to each item of the Property and each hereby
irrevocably elects to have the provisions of Section 168(f)(8) of the Code apply to this Agreement. In consequence, solely for Federal income tax purposes the parties hereby agree to treat the Tax Lessor as purchasing each item of the Property from the Property Owner on the terms set forth herein and agree to treat the Tax Lessor as the owner and lessor of each item of the Property and the Property Owner as the lessee and user of each item of the Property beginning with the respective Closing Dates (as defined herein).

The aggregate Purchase Price (as defined herein) for all items of Property subject to this Agreement will be no more than $9,000,000.

2. Closing Procedures and Conditions.

There will be two closings under this Agreement. The first closing ("First Closing") will be held on the date this Agreement is executed by the parties hereto ("First Closing Date"). The second closing ("Second Closing") will be held on or about July 1, 1982 ("Second Closing Date"). The First Closing Date and the Second Closing Date constitute the "Closing Dates" as that term is used herein. The closing on each of the Closing Dates will be held at 11 a.m., Houston time, at the offices of Property Owner, 401 Louisiana, Houston, Texas, or at such other time and place as shall be agreed upon by the parties.
The Property Owner will use its best efforts to satisfy the conditions to the Second Closing set forth in Subsection 2(d) so as to permit the Second Closing to occur on the date indicated above, but the Tax Lessor hereby acknowledges that satisfaction of certain conditions to the Second Closing is beyond the control of the Property Owner. The Property Owner shall notify the Tax Lessor when the Property Owner will be able to satisfy the conditions to the Second Closing and shall propose a date to be the Second Closing Date. The parties shall agree on a Second Closing Date, and in no event shall the Second Closing be later than 10 days following the date of Property Owner's original notice. In the event that the Second Closing is not held by July 30, 1982 the Second Closing will be canceled and both parties will be released from all obligations to proceed with respect to the Second Closing.

(b) The obligation of the Tax Lessor to make the Cash Payment to the Property Owner provided for the Subsection 3(b)(i) of this Agreement at the First Closing is subject to the following, wherein each document to be delivered to the Tax Lessor shall be in form and substance satisfactory to it.

(i) The Property Owner shall have duly and validly executed and delivered this Agreement to the Tax Lessor.
(ii) The Tax Lessor shall have received a certified copy of an order of the Board of the Property Owner authorizing the transactions contemplated hereby.

(iii) The Tax Lessor shall have received an opinion of Messrs. Mayor, Day & Caldwell, in form reasonably acceptable to Tax Lessor, as to the matters contained in Subsections 4(a), (f), (i), (n), (o), (p), (q), (r), (s) (second sentence only) and (t) of this Agreement.

(iv) The Tax Lessor shall have received a copy of the authorization of the UMTA referenced in Subsection 14(a)(ii) with respect to the items of Property identified in Schedule A.

(c) The obligation of Property Owner to close the transactions contemplated by this Agreement at the First Closing is subject to the following, wherein, each document to be delivered to the Property Owner shall be in form and substance satisfactory to it.

(i) The Tax Lessor shall have duly and validly executed and delivered this Agreement to the Property Owner.

(ii) The Property Owner shall have received an opinion from Mr. Lynn P. Sampson, Esq., in form reasonably acceptable to the Property Owner, as to the matters contained in Subsections 5(a), (c) and (d) of this Agreement.
and from Messrs. Vinson & Elkins, in form reasonably acceptable to the Property Owner, as to the matters contained in Subsections 5(b) and (e).

(d) The obligation of the Tax Lessor to make the Cash Payment to the Property Owner provided for the Subsection 3(b)(i) of this Agreement at the Second Closing is subject to the following, wherein each document to be delivered to the Tax Lessor shall be in form and substance satisfactory to it.

(i) The Property Owner shall have given the Tax Lessor at least four business days' advance written notice of the proposed Second Closing Date and accompanying said notice shall deliver to the Tax Lessor a schedule of the items of Property to be sold and leased back, for Federal income tax purposes only, on the Second Closing Date, in the form of Schedule B attached hereto, setting forth the information required thereon.

(ii) The Property Owner shall deliver a certificate certifying that the Property Owner has taken delivery and is ready to place, or has placed, in service at least sixty (60) rehabilitated Model GMC 5307 buses, which are described in the schedule delivered pursuant to Subsection 2(d)(i).

(iii) The Tax Lessor shall have received a copy of the authorization of the UMTA referenced in Subsection 14(a)(ii)
with respect to the items of Property described in the
schedule delivered pursuant to Subsection 2(d)(i).

(iv) The Property Owner shall have duly and validly
executed and delivered an agreement in the form of Schedule
G hereto to the Tax Lessor.

(v) The Tax Lessor shall have received a certified
copy of an order of the Board of the Property Owner
authorizing the transactions contemplated hereby with
respect to the Second Closing.

(vi) The Tax Lessor shall have received a bring-down
opinion of Messrs. Mayor, Day & Caldwell, in form reasonably
acceptable to Tax Lessor, as to the matters contained in
Subsections 4(a), (f), (i), (n), (o), (p), (q), (r), (s)
(second sentence only) and (t) of this Agreement.

(e) The obligation of Property Owner to close the
transactions contemplated by this Agreement as to the Second
Closing is subject to the following, wherein, each document to be
delivered to the Property Owner shall be in form and substance
satisfactory to it.

(i) The Tax Lessor shall have duly and validly
executed and delivered an agreement in the form of Schedule
G to the Property Owner.
(ii) The Property Owner shall have received a bring-down opinion of Mr. Lynn P. Sampson, Esq., in form reasonably acceptable to the Property Owner as to the matters contained in Subsections 5(a), (c), and (d) of this Agreement and from Messrs. Vinson & Elkins, in form reasonably acceptable to the Property Owner, as to the matters contained in Subsections 5(b) and (e).


The terms of each of the leases (individually, a "Deemed Lease," and each reference herein to a Deemed Lease shall apply equally to each Deemed Lease) and certain related transactions which are treated as existing or occurring for Federal income tax purposes under Section 168(f)(8) of the Code by virtue of the characterization and elections provided in Section 1 of this Agreement are as follows:

(a) **Purchase of Property by Tax Lessor.** The Property Owner shall be treated for Federal income tax purposes (and only for such purposes) as selling each item of the Property to the Tax Lessor and the Tax Lessor shall be treated for Federal income tax purposes (and only for such purposes) as purchasing each item of the Property from the Property Owner on the respective Closing Dates for a purchase price equal
to the Property Owner's Adjusted Basis (as hereinafter defined) for the item set forth in Schedule A hereto and Schedule B as completed by the Property Owner as a condition to the Second Closing.

It is understood and agreed by the Tax Lessor and the Property Owner that the purchase price (the "Purchase Price") for each item of the Property is intended to be and shall be equal to the Property Owner's "adjusted basis" within the meaning of Temp. Reg. §5c.168(f)(8) -6(b)(3)(ii) and (iii) (or the corresponding provisions of any subsequent regulations) (the "Adjusted Basis"), in each item of Property being transferred under this Agreement, determined as of the applicable Closing Date. In accordance with the foregoing, the Tax Lessor and the Property Owner have initially agreed that the aggregate Purchase Price for each item of Property shall be equal to the amount set forth in Schedule A attached hereto and Schedule B as completed by the Property Owner, of which 12.949809% will be paid by Tax Lessor in cash on the First Closing Date with respect to the Property set forth in Schedule A and of which 13.75% will be paid by Tax Lessor in cash on the Second Closing Date with respect to the Property set forth in Schedule B as completed by the Property Owner (the "Cash Payment") and the balance
of which shall be paid by Tax Lessor in the form of the Installment Loan (as hereinafter defined); provided, however, that if, at any time it shall be determined by the Internal Revenue Service (which determination is not contested further) or by final judgment of a court of competent jurisdiction, from which no appeal may be taken (or with respect to which the period of appeal has expired) (the "Determination"), that the Adjusted Basis of any item of Property is less than the amount used to determine the Purchase Price, then the Purchase Price, the Cash Payment, the principal amount of the Installment Loan and the Rent (as hereinafter defined) are hereby, without further action by the parties hereto, automatically adjusted proportionately and appropriately to maintain the Cash Payment to Purchase Price ratio indicated above. In the event the Cash Payment is adjusted, any payments from Property Owner to Tax Lessor in adjustment thereof shall be made promptly after the Determination with interest at 15% per annum compounded semi-annually (or, if less, the highest rate permitted by applicable law) from the respective Closing Date until the date of payment. Any payment made by Property Owner to Tax Lessor under this Subsection 3(a) shall reduce the amount payable by Property Owner to Tax Lessor under Subsection
8(b). In the event that the Adjusted Basis is determined to be greater than the Purchase Price no payments or adjustments will be made, rather Tax Lessor will be deemed to have purchased and leased back, for Federal income tax purposes only, an undivided interest in the Property. The Tax Lessor's undivided interest in the Property will be equal to the percentage resulting from dividing the Purchase Price for the item of Property by its Adjusted Basis as of the applicable Closing Date as finally determined.

(b) Payment of Purchase Price by Tax Lessor. The Tax Lessor shall be treated for Federal income tax purposes (and only for such purposes) as agreeing to pay the Purchase Price for each item of the Property as follows:

(i) The Cash Payment for each item of the Property set forth in Schedule A hereto and Schedule B as completed by the Property Owner, which will be paid in cash by the Tax Lessor to the Property Owner on the respective Closing Dates shall be treated as having been paid as part of the Purchase Price and shall constitute an amount which the Tax Lessor has at risk with respect to the item; and

(ii) The Tax Lessor shall be treated as having agreed for Federal income tax purposes (and only for
such purposes) to pay to the Property Owner the balance of the Purchase Price (the "Installment Loan") for each item of Property in level payment installments (the "Installment Loan Payment") in the amounts and on the dates set forth in Schedules C and E hereto, which amounts have been calculated assuming an interest rate of 23% per annum.

(c) **Lease Term and Rental Payments.** The term of the Deemed Lease for each item of the Property shall be 13.0 years from the respective Closing Date for that item unless sooner terminated as the result of the occurrence of a "disqualifying event" within the meaning of Temp. Reg. §5c.168(f)(8)-8 (or the corresponding provisions of any subsequent regulations); and the Property Owner shall be treated as having agreed for Federal income tax purposes (and only for such purposes) to make rental payments to the Tax Lessor (the "Rent") under each Deemed Lease equal in amounts to, and payable on the same dates as, the Installment Loan Payments with respect to the item of the Property covered by such Deemed Lease, as set forth in Schedules C and E.

(d) **Payments of Rental and Installment Loan Payments.** The Rent and Installment Loan Payment which are payable on
each payment date set forth in Schedules C and E hereto with respect to each item of the Property shall, solely for Federal income tax purposes, each be treated as having been paid automatically and without any action by either party on each such date as an offset of a mutual debt owing by each party to the other party, by being set-off against the corresponding payment due to each party from the other party. Each such payment obligation by either party is by its terms treated as payable on its respective payment date only to the extent that the corresponding payment due from the other party is treated as having been paid pursuant to the foregoing sentence or otherwise.

(e) **Property Owner Purchase at End of Lease Term.** On each Lease Termination Date set forth on Schedules A and B, the Property Owner shall purchase, for Federal income tax purposes only, from the Tax Lessor on an "as-is" and "where-is" basis, without recourse and without representations and warranties by the Tax Lessor, all items of Property for which the Deemed Lease expires for a purchase price equal to One Dollar ($1.00).

(f) **Allocation.** The amounts set forth on Schedules A, B, C and E for the Cash Payment, the Installment Loan Payments (including the principal and interest portion) and
the Rent constitute the aggregate amounts of such payments for all items of Property subject to this Agreement. Where necessary to determine the portion of such amounts allocable to a particular item of Property, such portion shall be determined by multiplying the total of such amount by a fraction, the numerator of which is the Adjusted Basis of the item of Property and the denominator of which is the aggregate Adjusted Basis of all items of Property listed on Schedule A or B, as the case may be.

4. **Representations, Warranties, and Covenants by the Property Owner.**

The Property Owner hereby represents, warrants and covenants to the Tax Lessor as follows, with all representations, warranties and covenants with respect to the Property set forth on Schedule B as completed by the Property Owner being effective as of the Second Closing Date:

(a) The Property Owner is the owner for Federal income tax purposes of each item of the Property set forth on Schedule A and, as of the Second Closing Date, the Property Owner will be the owner for Federal income tax purposes of each item of the Property set forth on Schedule B as completed by the Property Owner;
(b) No person other than the Tax Lessor has claimed or will claim, on its Federal income tax returns or otherwise, cost recovery deductions with respect to any costs incurred by the Property Owner through the respective Closing Dates in respect of any item of the Property, although the Adjusted Basis of the Property has in some instances been reduced in accordance with Temp. Reg. §5c.168(f)(8)-6(b)(3)(ii) as the result of use of the Property by the Property Owner;

(c) Each item of the Property is "qualified leased property" as defined in Section 168(f)(8)(D) of the Code;

(d) Each item of the Property listed on Schedule A, hereto was placed in service by the Property Owner after December 31, 1980 and before the First Closing Date and each item of Property listed on Schedule B as completed by the Property Owner will have been placed in service by the Property Owner after December 31, 1980 and before the Second Closing Date;

(e) Each item of Property set forth in Schedule A hereto and Schedule B as completed by the Property Owner (i) constitutes a "qualified mass commuting vehicle" (within the meaning of Section 103(b)(9) of the Code) and (ii) will continue to constitute a "qualified mass commuting vehicle" as to the Tax Lessor and the Property Owner during the term
of the Deemed Lease (except for changes resulting from the acts of the Tax Lessor); further, if held by a taxable entity, each item of Property would on the respective Closing Dates and throughout the term of this Agreement constitute Section 38 Property within the meaning of Section 48(a) of the Code;

(f) Each item of the Property has been financed in part with obligations of the Property Owner the interest on which is excludable from income under Section 103(a)(1) of the Code in an amount equal to at least 5% of the Adjusted Basis of such item set forth in Schedule A hereto and Schedule B as completed by the Property Owner;

(g) The Adjusted Basis (within the meaning of Temp. Reg. §5c.168(f)(8)-6(b)(3)(ii) and (iii) (or the corresponding provisions of any subsequent regulations)) of the Property Owner in each item of the Property at the applicable Closing Date is not less than the Purchase Price of the item set forth in Schedule A hereto and Schedule B as completed by the Property Owner;

(h) The present class life (or where applicable, the useful life under Section 167 of the Code) and the recovery class under Section 168(c)(2) of the Code for each item of the Property in the hands of the Tax Lessor are as set forth
in Schedule A hereto and Schedule B as completed by the Property Owner;

(i) The Property Owner has not entered into, and will not enter into, any agreement which relates to capitalized costs incurred by it through the respective Closing Dates in respect of any item of the Property to which the provisions of Section 168(f)(8) of the Code apply, except this Agreement;

(j) During the term of the Deemed Lease with respect to each item of the Property, the Property Owner will not sell or assign (collectively "Transfer") its interest in the item or in the Deemed Lease with respect to the item, unless (i) Tax Lessor consents to the Transfer, which consent shall not be unreasonably withheld, (ii) the transferee assumes the Property Owner's interest in this Agreement with respect to the item, including the Deemed Lease and the deemed Installment Loan Payments without relieving the Property Owner of any of its obligations under this Agreement and (iii) the transferee furnishes a written consent to take the item of Property subject to the Deemed Lease and the transferee files any required statements, in both cases at the time and in the manner provided in Temp. Reg. §5c.168-
(f)(8)-2(a)(5)(or the corresponding provisions of any subsequent regulations).

(k) The amount of the cost recovery deductions that the Tax Lessor shall be allowed with respect to any item of the Property will not be limited by the application to the Property Owner of the at-risk rules of Section 465 of the Code;

(l) No portion of the Adjusted Basis of any item of Property was, or will be, financed in whole or in part, directly or indirectly, with an Urban Mass Transportation Administration grant, a Federal-Aid Highway Act grant, or any other Federal grant;

(m) At all times during the term of the Deemed Lease for each item of the Property, the item will be used in a manner which will entitle the Tax Lessor to treat, for Federal income tax purposes, each amount of income, deduction and credit relating to the item as being derived from, or allocable to, sources within the United States;

(n) The Property Owner is a public body corporate and politic, duly organized and validly existing under the Constitution and laws of the State of Texas, including Article 1118X, Vernon's Annotated Texas Civil Statutes, as amended (the "Metro Act"), and is duly authorized and
empowered to execute and deliver this Agreement and all other documents contemplated by this Agreement, and to fulfill and comply with the terms, conditions and provisions hereof and thereof; each such agreement, document, instrument or certificate has been or will be (at the time of its delivery) duly authorized, executed and delivered and constitutes or will constitute (at the time of delivery) the valid, legal and binding obligation of the Property Owner, enforceable in accordance with its terms;

(o) Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated, nor the fulfillment of, or compliance with, the terms and provisions hereof will conflict with, result in a breach of or otherwise violate any of the terms, conditions or provisions of the Metro Act, any resolution of the Board of the Property Owner or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Property Owner is now a party or by which it or its property may be bound, or constitute or would constitute (with the giving of notice or the passage of time, or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or other
encumbrance of any nature whatsoever upon any property of the Property Owner or upon any item of the Property;

(p) Neither the execution and delivery by the Property Owner of this Agreement nor the consummation of the transactions contemplated in this Agreement nor the fulfillment of, or compliance with, the terms and provisions of this Agreement, will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality to which the Property Owner or the Property is subject;

(q) No other consent, authorization, approval or registration with any governmental or public body or authority is required in connection with the execution and delivery by the Property Owner of this Agreement, or the fulfillment of or compliance with the terms, conditions and provisions hereof except those consents, authorizations, approvals or registrations specifically contemplated and described in this Agreement, which have been obtained;

(r) The interest of the Tax Lessor created by this Agreement for Federal income tax purposes is not subject to any lien, charge, encumbrance, or other prior claim of any mortgagee or other creditor of the Property Owner or any
other third party, except the interest of Capital Bank, N.A. under that Equipment Lease-Purchase Agreement dated April 15, 1982 and Capital Bank, N.A. has consented to Property Owner entering into this Agreement;

(s) The Property has been, and (at Property Owner's expense) will be, reasonably maintained and is, and (at Property Owner's expense) will be kept in good working condition, except for ordinary wear and tear. The Property conforms, in all material aspects, with all applicable laws and regulations; and

(t) With the exception of City of Humble et al v. Metropolitan Transit Authority, et al, Cause No. 283,604 in the District Court of Travis County, Texas, currently on appeal to the Austin Court of Civil Appeals, there are no pending or, to Property Owner's knowledge, threatened suits, actions or other proceedings against or relating to the Property Owner which would have a material adverse effect on the Property Owner or the use or ownership of any of the Property by the Property Owner.

5. **Representations, Warranties and Covenants by the Tax Lessor.**

The Tax Lessor hereby represents, warrants and covenants to the Property Owner as follows:
(a) The Tax Lessor is a corporation duly incorporated and validly existing and in good standing under the laws of the jurisdiction of its incorporation, and is duly authorized and empowered to execute and deliver this Agreement and to fulfill and comply with the terms, conditions, and provisions hereof; and this Agreement has been duly authorized, executed and delivered;

(b) This Agreement constitutes the legal, valid, and binding obligation of the Tax Lessor, enforceable in accordance with its terms;

(c) Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated, nor the fulfillment of or compliance with, the terms and provisions hereof will conflict with or result in a breach of any of the terms, conditions or provisions of the certificate of incorporation or the by-laws of the Tax Lessor or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Tax Lessor is now a party or by which it or its property may be bound, or constitute or would constitute (with the giving of notice or the passage of time, or both) a default thereunder, or result in the creation or imposition of any lien, charge,
security interest or other encumbrance of any nature whatsoever upon any property of the Tax Lessor;

(d) Neither the execution and delivery by the Tax Lessor of this Agreement nor the consummation of the transactions contemplated in this Agreement nor the fulfillment of, or compliance with, the terms and provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality to which the Tax Lessor is subject;

(e) No consent, authorization, approval or registration with any governmental or public body or authority is required in connection with the execution and delivery by the Tax Lessor of this Agreement, or the fulfillment of or compliance with the terms, conditions and provisions hereof; and

(f) Tax Lessor is neither an electing small business corporation under Section 1371(b) of the Code nor a personal holding company under Section 542(a) of the Code.

6. **Termination Occurrences.**

If during the term of the Deemed Lease any item of the Property covered thereby (1) shall be or become lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for
use from any cause whatsoever, or seized, confiscated, taken or requisitioned by condemnation or otherwise, (2) shall, without compliance with Section 4(j) of this Agreement, be sold, assigned (whether voluntarily or involuntarily, including sales or assignments pursuant to a foreclosure proceeding) by the Property Owner or (3) shall cease to be a "qualified mass commuting vehicle" within the meaning of Section 103(b)(9) of the Code (any such occurrence, sale, assignment or cessation being hereinafter called a "Termination Occurrence," and any item of the Property which becomes the subject of a Termination Occurrence being hereinafter referred to as the "Item"), then the Property Owner shall promptly and fully notify the Tax Lessor with respect thereto.

On the date of the Termination Occurrence with respect to the Item, the Item shall be treated for Federal income tax purposes (and only for such purposes) as having been sold by the Tax Lessor to the Property Owner for the amount set forth in the next sentence, and the term of the Deemed Lease for the Item shall terminate. The amount realized by the Tax Lessor on the sale of the Item shall be equal to (i) the unpaid principal balance of the Installment Loan with respect to the Item (after taking into account the payments provided for in the following paragraph), which unpaid balance shall be treated as having been cancelled by the Property Owner, plus (ii) an amount to be paid
in cash by the Property Owner to the Tax Lessor equal to the Cash Payment allocable to such Item multiplied by the appropriate percentage set forth in Schedule D or F hereto as the case may be (hereinafter the "Termination Value"). The Termination Value set forth in Schedule D or F hereto for the Item on the Payment Date next succeeding the date of the Termination Occurrence shall be paid in cash on the later of (i) the Payment Date set forth in Schedule D or F, as the case may be, next succeeding the date of the Termination Occurrence or (ii) thirty days after the date of the Termination Occurrence.

The Property Owner shall be treated as having agreed for Federal income tax purposes (and only for such purposes) to make a Rent payment to the Tax Lessor under the Deemed Lease on the date of the Termination Occurrence with respect to the Item, which payment shall be equal in amount to the payment on the Installment Loan referred to in the next sentence. The Tax Lessor shall be treated as having agreed for Federal income tax purposes (and only for such purposes) to make a payment to the Property Owner on the date of the Termination Occurrence with respect to the Item in respect of principal and accrued interest (at the rate provided for in Section 3(b)(ii)) on the Installment Loan for the Item, which payment shall be equal in amount to (a) the Installment Loan Payment with respect to the Item due on the next succeeding Payment Date set forth in Schedule C or E, as the
case may be, multiplied by (ii) a fraction, the numerator of which equals the number of days from the day after the last Payment Date set forth in Schedule C or E, as the case may be, to and including the date of Termination Occurrence, and the denominator of which equals the number of days from the day after the last such Payment Date to and including the next succeeding Payment Date. The Rent payment and the Installment Loan Payment referred to in this paragraph shall for Federal income tax purposes (and only for such purposes) each be treated as having been paid automatically and without any action and without the payment of any cash by either party on the date of the Termination Occurrence.

7. **Interests in the Property for Purposes Other Than Federal Income Tax Purposes.**

Neither this Agreement nor any of the transactions provided for or treated as having occurred herein for Federal income tax purposes shall impair, restrict, encumber or otherwise affect the ownership and possessory interest of the Property Owner in each item of the Property for any purpose other than Federal income tax purposes. Nothing in this Agreement shall be construed as affording the Tax Lessor any ownership or other interest in any item of the Property for any purpose other than Federal income tax purposes.
8. Indemnity against Loss of Tax Benefits.
   (a) This Agreement has been entered into on the assumption that the Tax Lessor will be the owner of each item of the Property for Federal income tax purposes, and (1) will be entitled to such deductions and other benefits as are provided by the Code to the owner of the Property, including (i) deductions under Section 168 of the Code with respect to the Purchase Price of each item of the Property as set forth in Schedules A and B hereto, commencing in 1982 and using the percentages set forth in Section 168(b)(1)(A) of the Code for each item of the Property based on the recovery class for the item set forth in Schedules A and B hereto (the "Cost Recovery Deductions"), and (ii) deductions for interest on the Installment Loan with respect to each item of the Property in the amounts and at the times set forth in Schedules C and E hereto (the "Interest Deductions") and (2) will be required to include in gross income the Rent with respect to each item of the Property in the amounts and the the times set forth in Schedules C and E hereto. The Cost Recovery Deductions and the Interest Deductions constitute the "Tax Benefits" as that term is used herein.

   (b) If, (1) by reason of any misrepresentation or breach of any agreement contained herein by the Property Owner, or (2) by reason of any misrepresentation or breach of any
agreement, by any person to whom the Property Owner has transferred ownership or possession of any item of the Property or has sold or assigned the Deemed Lease with respect thereto, or by any subsequent transferee thereof, the Tax Lessor shall lose the right to claim, shall not claim (as the result of a good faith determination based upon the advice of tax counsel selected by the Tax Lessor and reasonably acceptable to and compensated by the Property Owner ("Tax Counsel") that such claim is not properly allowable), shall suffer disallowance of, or shall be required to recapture all or any portion of the Tax Benefits with respect to any item of the Property or shall be required to treat as income any amount with respect to the transactions provided for in this Agreement or otherwise with respect to any item of the Property, other than the Rent treated as having been made by the Property Owner pursuant to Sections 3(c) and 6 hereof and the other payments referred to in Section 6 hereof (any such event being hereinafter called a "Loss"), then the Property Owner shall, subject to the conditions set forth herein, pay to the Tax Lessor, as an indemnity, on 60 days' written notice to the Property Owner by the Tax Lessor of such Loss (but not prior to the earlier of (i) the filing of a return or the acceptance of an audit report in which such Loss is reflected or (ii) the payment by the Tax Lessor of the additional Federal income tax which
becomes due as a result of the Loss), such amount or amounts which, after deduction of the federal income tax required to be paid by the Tax Lessor in respect of the receipt of such amounts, shall be equal to the sum of the aggregate additional Federal income taxes payable by the Tax Lessor from time to time as a result of such Loss plus the amount of any interest, penalties or additions to the tax payable directly as a result of such Loss; provided, however, that the Property Owner shall not be required so to indemnify the Tax Lessor if the Loss results from a Termination Occurrence and the Termination Value with respect thereto has been paid pursuant to Section 6 hereof.

(c) If as a result of the facts and circumstances which gave rise to a Loss, the aggregate Federal income taxes paid by the Tax Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Tax Lessor had such facts and circumstances not occurred, then the Tax Lessor shall pay to the Property Owner the amount of such difference in taxes; provided, however, that the Tax Lessor shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Property Owner to the Tax Lessor pursuant to Section 8(b) in respect of a Loss, less (y)
the amount of all prior payments by the Tax Lessor to the Property Owner under this Section 8(c). Any payment due to the Property Owner from the Tax Lessor pursuant to this Section 8(c) shall be paid within 60 days after the filing of the Federal income tax return in which Tax Lessor realizes any such savings in its Federal income taxes.

(d) If the Internal Revenue Service proposes an adjustment in the Federal income taxes of the Tax Lessor for which the Property Owner would be required to indemnify the Tax Lessor pursuant to this section, Tax Lessor will promptly notify Property Owner of such proposal forthwith (such notice to include all relevant information relating to such proposal known to Tax Lessor). If the amount of the indemnity which the Property Owner could be required to pay exceeds $500,000, then if requested by the Property Owner in a written request within 30 days of receipt of such notice, the Tax Lessor shall obtain an opinion of tax counsel selected by Tax Lessor and reasonably acceptable to Property Owner as to whether the basis in law and in fact in favor of allowance of the item proposed to be adjusted outweighs the basis in law and in fact to the contrary. If the opinion is to that effect and if the Property Owner requests the Tax Lessor to do so within 30 days after receiving a copy of such opinion, the Tax Lessor shall contest the proposed adjustment; provided, however, that tax counsel to the Tax Lessor shall determine in
its sole discretion the nature of all action to be taken to contest such proposed adjustment including (A) whether any such action shall proceed by way of judicial or administrative proceedings, or both, (B) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof and (C) if the Tax Lessor shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. The Tax Lessor shall have full control over any contest pursuant to this paragraph and shall not be obligated to appeal an adverse determination by any court. The Tax Lessor will, however, consider in good faith any request of the Property Owner concerning the most appropriate method to proceed. At any time, whether before or after commencing to take any action required under this section, the Tax Lessor may decline to take any such required action by notifying the Property Owner in writing that the Property Owner is relieved of its obligation to indemnify the Tax Lessor with respect to the adjustment proposed by the Internal Revenue Service.

(e) The Tax Lessor shall not be required to take any action pursuant to Section 8(d) hereof unless and until Property Owner has agreed to indemnify the Tax Lessor in a manner reasonably satisfactory to the Tax Lessor for all costs and expenses
which the Tax Lessor may incur in connection with contesting the proposed adjustment (including reasonable fees and disbursements of counsel selected by the Tax Lessor). If the Tax Lessor determines to contest any adjustment by paying the additional tax and suing for a refund, the Property Owner shall pay to the Tax Lessor an amount equal to the sum on an after-tax basis of any tax, interest, penalties and additions to tax which are required to be paid and which are directly related to the transactions contemplated by this Agreement, at the time such amounts are paid by the Tax Lessor. Upon receipt by the Tax Lessor of a refund of any amounts paid by it in respect of which it shall have been paid an amount by the Property Owner pursuant to the foregoing sentence, the Tax Lessor shall pay to the Property Owner the amount of such refund, together with any interest received by it on such amount. In the event of an adverse determination with respect to such refund, the amount paid by the Property Owner to the Tax Lessor hereunder shall offset the Property Owner's obligation to indemnify the Tax Lessor pursuant to Section 8(b) hereof.

(f) The amounts referred to in Section 8(b) shall not be payable by the Property Owner if the Tax Lessor shall have lost, or shall not have had, the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of the Tax Benefits or shall be
required to include any additional income as a result of the occurrence of any of the following events:

(i) the failure of the Tax Lessor to claim the Tax Benefits, other than such failure following receipt of the opinion of Tax Counsel described in Section 8(b) hereof.

(ii) the failure of the Tax Lessor to have sufficient tax liability or income to utilize the Tax Benefits;

(iii) the failure of the Tax Lessor to notify the Property Owner of a claim made by the Internal Revenue Service or any other taxing authority which might lead to or result in the incurrence of a Loss in sufficient time to permit the Property Owner to request the Tax Lessor to contest such claim;

(iv) the reorganization, liquidation or change in corporate structure of the Tax Lessor;

(v) the assignment by the Tax Lessor of its interest in this Agreement or in the Property in a taxable transaction; or

(vi) an act or failure to act of the Tax Lessor which is independent of any act or failure to act of the Property Owner, and the Property Owner is otherwise in compliance with the terms of this Agreement.
(h) The determination of the amounts payable under this Section 8 shall be made in the first instance by the Tax Lessor, which shall furnish the Property Owner with a notice setting forth in reasonable detail the computations and methods used in computing such amount and, if requested by the Property Owner, such determination shall be verified by a firm of independent public accountants of nationally recognized standing selected by the Tax Lessor and reasonably acceptable to the Property Owner, who may be the regular auditors of the Tax Lessor. The costs of such verification shall be borne by the Property Owner.

(i) For the purposes of this Section 8, the Tax Lessor shall mean the Tax Lessor and any member of the affiliated group, within the meaning of Section 1504 of the Code, of which the Tax Lessor is a member which joins in the filing of Federal income tax returns on a consolidated basis.

(j) In the event that prior to September 1, 1983, the Internal Revenue Service has not issued final, proposed or temporary regulations pursuant to Section 168 of the Code which in the opinion of tax counsel to either party, confirm that the cost of rehabilitation incurred by the Property Owner in the calendar years 1981 and 1982 with respect to vehicles owned and operated by the Property Owner prior to January 1, 1981 represent "recovery property" within the meaning of Section 168(c) of the
Code eligible for the special leasing rules of Section 168(f)(8) and ACRS cost recovery for the Tax Lessor, then either party shall have the right to declare a Termination Occurrence with respect to the Deemed Lease of each item of Property which constitutes a rehabilitated vehicle, and Property Owner shall immediately return to Tax Lessor the Cash Payment with respect to each such item plus interest thereon at 15% from the respective Closing Date plus the Tax Lessor's out-of-pocket expenses in connection with this Agreement in an amount not to exceed $10,000.

(k) In the event that (i) section 168(f)(8) of the Code is amended or repealed retroactive to an effective date on or before the date of this Agreement, which in the opinion of tax counsel to either party provides that the parties are not entitled to treat each Deemed Lease as a lease for federal income tax purposes, or (ii) legislation is enacted or regulations are promulgated by reason of which the Tax Lessor shall lose the right to claim, shall not claim (as the result of a good faith determination based upon the advice of tax counsel selected by the Tax Lessor and reasonably acceptable to and compensated by the Property Owner that such claim is not properly allowable), shall suffer a disallowance of, or shall be required to recapture all or any portion of the Tax Benefits, with respect to any item
of the Property, or shall be required to treat as income any amount with respect to the transactions provided for in this Agreement or otherwise with respect to any item of the Property, other than the Rent treated as having been made by the Property Owner pursuant to Sections 3(c) and 6 hereof and the other payments referred to in Section 6 hereof, then either party may by giving written notice to the other party cancel each Deemed Lease and in the event of such cancellation Property Owner shall immediately return to Tax Lessor the Cash Payment with respect to each Deemed Lease plus interest at a rate of fifteen percent (15%) per annum from the applicable Closing Date to the date of such cancellation plus Tax Lessor's out-of-pocket expenses in connection with this Agreement in an amount not to exceed $20,000. In the event that Property Owner makes a payment to Tax Lessor under Section 8(j) with respect to any item of Property such Property will be excluded from this Section 8(k) and in the event that Property Owner makes a payment to Tax Lessor under this Section 8(k) with respect to any item of Property such Property will be excluded from Section 8(j). In no event will Property Owner be required to make payments under Section 8(j) and 8(k) for out-of-pocket expenses in connection with this Agreement in an aggregate amount in excess of $20,000.
9. **Successors and Assigns.**

   This Agreement shall be binding on and inure to the benefit of any successors or assigns of the respective parties hereto.

10. **General**

    (a) **General Indemnity.** The Property Owner agrees to indemnify the Tax Lessor against and hold it harmless from any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, taxes, expenses and disbursements, including legal fees and expenses, of whatsoever kind and nature imposed on, or any actions or claims initiated by, any person or entity not a party to this Agreement, which are related to this Agreement or the Property or any of the transactions provided for herein, except for any tax which the Property Owner is not obligated to pay or provided indemnity against pursuant to Section 10(b) hereof. The parties acknowledge and agree that the Tax Lessor will not directly or indirectly provide for, nor is the Tax Lessor obligated to provide for:

    (i) the servicing, repair or maintenance of any item of the Property during the Deemed Lease;

    (ii) the purchasing of parts and accessories for any item of the Property;
(iii) the loan of replacement or substitute property while any item of the Property is being serviced;
(iv) the purchasing of casualty and/or liability insurance with respect to any item of the Property; or
(v) the renewal of any license or registration for any item of the Property.

(b) **Taxes.** The Property Owner agrees to pay as and when due and payable, and to indemnify the Tax Lessor against and hold it harmless from, any and all taxes, fees or other charges imposed by any Federal, state, local or other government or taxing authority which would not have been imposed if this Agreement had not been entered into and the transactions contemplated herein had not been completed, except for (i) any net income tax or other tax on or measured by the Tax Lessor's net income and (ii) any tax or fee based on the right or authority of the Tax Lessor to do business or exist as a corporate body.

(c) **Right of Contest.** The Property Owner may contest in good faith by appropriate proceedings diligently conducted the applicability of any item for which the Tax Lessor is entitled to be indemnified pursuant to Sections 10(a) and (b) (herein "Impositions") at its own expense and in its own name and/or seek a refund of such Imposition under applicable procedures, provided such contest will not, in the good faith judgment of the Tax
Lessor, involve any risk of forfeiture or the sale or the sub-
jection to any lien of any property of the Tax Lessor. The Tax
Lessor agrees to cooperate, at the expense of the Property Owner,
in any such contest. In the event that the Property Owner, in
good faith on the advice of counsel, desires to contest the
applicability of any Imposition and applicable law requires that
such contest be made in the name of the Tax Lessor, the Property
Owner shall give 25 days' notice of any such proposed contest to
Tax Lessor and if Tax Lessor so requests by notice to the Prop-
erty Owner during such period, the Property Owner shall not
contest such Imposition in the name of the Tax Lessor and the
Property Owner shall not be obligated to indemnify the Tax Lessor
against such Imposition to the extent of such proposed contest.

(d) Expenses. Each party agrees to pay itself all
expenses incurred by it in connection with the preparation,
execution and delivery of this Agreement and the consummation of
the transactions contemplated herein.

(e) Insurance. The Property Owner will, at its own
expense, cause to be carried and maintained (i) insurance cover-
ing the loss or destruction, in whole or in part, of the Prop-
erty, with such deductibles as the Property Owner may determine,
and (ii) liability insurance in amounts consistent with prudent
business practice with respect to third-party personal injury and
property damage arising from the use or operation of or otherwise involving each item of the Property during the term of the Deemed Lease with respect thereto.

(f) **Amendment to Conform to Regulations.** If hereafter regulations are published under Section 168 or any other relevant section of the Code which are, for any reason and in any respect, contrary to, or inconsistent with the terms and provisions of this Agreement, and, in consequence thereof, the parties to this Agreement are required or permitted to amend or modify this Agreement to conform to, or comply with, such regulations, the Property Owner and the Tax Lessor agree to negotiate in good faith all such amendments and modifications as shall be required in order to preserve for the respective parties to this Agreement the rights and benefits which each seeks in the execution hereof.

(g) **Effect of Section 10 on Construction of this Agreement.** The inclusion of Section 10 in this Agreement shall not be construed as in any way modifying the provisions set forth in Section 7 hereof in any way implying the acquisition by the Tax Lessor of any ownership or other interest in any item of the Property for any purposes other than Federal income tax purposes.

(h) **Survival of Agreement.** The obligations and liabilities of the parties arising under this Agreement shall continue in full force and effect, notwithstanding the expiration
or other termination of this Agreement, until all such obligations have been met and such liabilities have been paid in full.

(i) **Further Assurances.** The Property Owner and the Tax Lessor each agree that it will promptly and duly execute and deliver to the other such further documents and assurances and take such further action (including without limitation any filing, recording and registration) as the other may from time to time reasonably request in order to more effectively carry out the intent and purpose of this Agreement and to establish and protect the Tax Lessor's ownership of the Property for Federal income tax purposes only and the rights and remedies created or intended to be created for the parties hereto.

(j) **Equal Opportunity.** It is mutually agreed that all parties hereto shall be bound by the provisions of Title 49, Code of Federal Regulations, Part 21, which was promulgated to effectuate Title VI of the Civil Rights Act of 1964. In particular, the Tax Lessor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Tax Lessor shall take affirmative action to insure that applicants are employed and that employees are treated during employment, without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading,
demotion of transfer; recruitment or advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

(k) Miscellaneous. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.


This Agreement may not be terminated or amended without the written consent of the parties hereto, and shall be governed by and construed under the laws of the State of Texas.


All notices required or permitted hereunder shall be in writing and shall be delivered to the addressee at its address specified below:

For Tax Lessor: First City Leasing Corporation
1111 Fannin Street, Suite 1000
Houston, Texas 77002
Attn: J. L. Williams
For Property Owner: Metropolitan Transit Authority
of Harris County, Texas
P.O. Box 61429
Houston, Texas 77208
Attn: Mr. Wayne B. Placide

with a copy to: Mayor, Day & Caldwell
P.O. Box 4544
Houston, Texas 77210
Attn: Mr. Jonathan Day

All such notices may be delivered in person or sent by U. S.
mail, postpaid, to the address set out above. Any party may
change its address for receiving notices hereunder by written
notice to the other party hereto. Notices hereunder shall be
deemed properly given only when actually received by the addressee.

13 Form 6793.

It shall be the responsibility of the Tax Lessor to
prepare and file Form 6793, Safe Harbor Lease Information Return.
Form 6793 must be submitted to the Property Owner for its approv-
al, which will not be unreasonably withheld, and its signature at
least 10 days prior to the due date of said form. The Property
Owner agrees to cooperate with the Tax Lessor in providing the
information which must be reported on Form 6793. For purposes of
Form 6793, the Property Owner hereby furnishes on Schedule H
certain information to be included on Form 6793.
14. **UMTA Requirements.**

In order to comply with requirements of the Urban Mass Transportation Administration, the following provisions are hereby included in this Agreement:

a. **Federal Interest.**

(i) The transit vehicles identified in Schedules A and B have been (or are expected to be) purchased with Federal financial assistance under a grant(s) from the Urban Mass Transportation Administration (UMTA), United States Department of Transportation. UMTA has provided (or may provide) 80 percent of the cost of the transit vehicles (exclusive of rehabilitation costs) and, pursuant to the terms and conditions of executed (or to be executed) grant agreements with the Property Owner, retains (or will retain) an interest in the federally-funded project. In brief, the Federal interest is that the project equipment shall be used in accordance with the terms and conditions of the standard UMTA grant agreement or, in the event that any or all of such equipment for whatsoever reason no longer is so used, UMTA shall be reimbursed in an amount equal to 80 percent of the then fair-market value (exclusive of the value attributable to the rehabilitation) of any such equipment.

(ii) The Tax Lessor and the Property Owner recognize that, pursuant to Section 108 of Part II of the standard
UMTA grant agreement, the Property Owner shall not execute any lease or other contract affecting UMTA-funded equipment unless such lease or contract expressly is authorized in writing by UMTA.

(iii) The indemnification clauses in this Agreement in no way pledge or encumber, or otherwise limit or affect the Federal interest in, any agreement, or any property or equipment provided under any such grant agreement, between the Property Owner and UMTA.

b. Title/Ownership/Control of Transit Vehicles; Security Interest.

(i) For purposes of Section 168(f) of the Code, this Agreement shall be deemed to be a lease. The Tax Lessor shall be deemed to be the lessor and Property Owner shall be deemed to be the lessee hereunder. For all other purposes, including other Federal laws, however, this Agreement is not a lease and the Property Owner is and shall continue to be the owner of and have title to the transit vehicles identified in Schedules A and B. Moreover, in accordance with Section 3(a)(2)(A) of the Urban Mass Transportation Act of 1964, as amended, the Property Owner has and will continue to have satisfactory continuing control over the use of the transit vehicles.
(ii) the Tax Lessor shall have no right or obligation to possess, control, operate or maintain all or any of the transit vehicles identified in Schedules A and B. The Tax Lessor shall have no security interest in any of the transit vehicles and shall not attempt to pledge, encumber or otherwise affect any interest in any of the transit vehicles.

15. UMTA Financing.

For those items of Property which Property Owner anticipates receiving funds from UMTA for the purchase of said Property, Property Owner is selling and leasing back, for Federal income tax purposes only, an undivided 20% interest in said Property. In the event that Property Owner determines that the funding anticipated to be received from UMTA with respect to said Property will not be provided, Property Owner is permitted to sell and lease back, for Federal income tax purposes only, all or part of its remaining undivided interest in each item of said Property. Property Owner is under no obligation to sell and lease back, for Federal income tax purposes only, the Property Owner's remaining undivided interest in the Property with Tax Lessor and Tax Lessor is under no obligation to purchase and lease back, for Federal income tax purposes only, the Property Owner's remaining undivided interest in the Property.
16. Entirety of Agreement.

This Agreement sets forth the entire agreement between the parties relating to the subject matter hereof, and there are no other understandings or agreements except as herein set forth.

17. Multiple Counterparts.

This Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which together shall constitute one document.

IN WITNESS WHEREOF, the parties have duly executed duplicate originals of this Agreement as of the date first above written.

FIRST CITY LEASING CORPORATION

By ____________________________

METROPOLITAN TRANSIT AUTHORITY
OF HARRIS COUNTY, TEXAS

By ____________________________
Schedule A
Property for First Closing

<table>
<thead>
<tr>
<th>Property Number</th>
<th>Vehicle I. D. No.</th>
<th>Purchase Price</th>
<th>Cash Payment</th>
<th>Lease Termination Date</th>
<th>Class Life</th>
<th>Recovery Class</th>
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</thead>
</table>

TOTAL
## Schedule C

**Loan and Rent Payments**

*for First Closing Property*

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<tr>
<th>Payment Date</th>
<th>Amount of Principal</th>
<th>Amount of Interest</th>
<th>Amount of Rent</th>
</tr>
</thead>
</table>


<table>
<thead>
<tr>
<th>Date of Termination Value Payment</th>
<th>Payment as a Percentage of Cash Payment</th>
</tr>
</thead>
</table>

Schedule D

Termination Value for First Closing Property
## Schedule E

Loan and Rent Payments  
for Second Closing Property

<table>
<thead>
<tr>
<th>Payment Date</th>
<th>Amount of Principal</th>
<th>Amount of Interest</th>
<th>Amount of Rent</th>
</tr>
</thead>
</table>
## Schedule F

### Termination Value for Second Closing Property

<table>
<thead>
<tr>
<th>Date of Termination Value Payment</th>
<th>Payment as a Percentage of Cash Payment</th>
</tr>
</thead>
</table>


Schedule G

AGREEMENT FOR SECOND CLOSING
UNDER SAFE HARBOR LEASE AGREEMENT

This AGREEMENT dated ________, 1982 between Metropolitan Transit Authority of Harris County, Texas, a public body corporate and politic duly organized and validly existing under the Constitution and laws of the State of Texas, (the "Property Owner"), and First City Leasing Corporation, a Delaware corporation (the "Tax Lessor"),

WHEREAS, Property Owner and Tax Lessor entered in a Safe Harbor Lease Agreement dated April __, 1982 (the "Agreement").

WHEREAS, the conditions necessary for the Second Closing (as defined in the Agreement) have been satisfied.

NOW, THEREFORE, it is agreed:

1. The terms of the Agreement are for purposes of this agreement incorporated by reference and adopted as if set forth fully herein. Terms defined in the Agreement are used herein with the same meaning.

2. The parties to this agreement have elected to characterize this agreement as a lease, for federal income tax purposes only, pursuant to Section 168(f)(8) of the Internal Revenue Code.
3. The parties have agreed as to the form and content to the Schedules B, E and F attached hereto, setting forth the Property to be sold and leased back, for Federal income tax purposes only, on the Second Closing Date, the Cash Payment, Lease Termination Date, class life, recovery class, Rent, Termination Value and principal and interest payments.

4. Tax Lessor therefore agrees to pay the Property Owner the required Cash Payment and Property Owner agrees to sell the Property to the Tax Lessor and lease back the Property for Federal income tax purposes only, on the terms and conditions set forth in the Agreement.

5. The representations and warranties of the Property Owner contained in the Agreement were true and correct when made, and are repeated at and as of the time of delivery hereof and are true and correct at and as of the time of delivery hereof, except for such representations and warranties as are expressly by their terms limited to as of the time they were made pursuant to the Agreement.

6. The Property Owner has performed and complied with all agreements and covenants contained in the Agreement required to be performed or complied with by it prior to or at the time of delivery hereof.

7. The representations and warranties of the Tax Lessor
contained in the Agreement were true and correct when made, and are repeated at and as of the time of delivery hereof and are true and correct at and as of the time of delivery hereof, except for such representations and warranties as are expressly by their terms limited to as of the time they were made pursuant to the Agreement.

8. The Tax Lessor has performed and complied with all agreements and covenants contained in the Agreement required to be performed or complied with by it prior to or at the time of delivery hereof.

IN WITNESS WHEREOF, the parties have duly executed duplicate originals of this Agreement as of the date first above written.

FIRST CITY LEASING CORPORATION

By____________________________________

METROPOLITAN TRANSIT AUTHORITY
OF HARRIS COUNTY, TEXAS

By____________________________________
Schedule H

1. Lessee's name: Metropolitan Transit Authority of Harris County, Texas

2. Lessee's address: 401 Louisiana
   Houston, Texas 77002

3. I.D. No.: 74-1998278

4. Principal business activity: 4100

5. Principal product or service: Transportation services

6. Service Center: Not applicable

7. Member of affiliated group: No

8. Information regarding parent corporation: Not applicable
A RESOLUTION

AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH ATE MANAGEMENT & SERVICE COMPANY, INC. FOR THE PROVISION OF MAINTENANCE AND TRANSPORTATION ON-SITE SUPPORT SERVICES.

WHEREAS, the MTA is undertaking an ambitious program of service expansion including additional vehicles and maintenance facilities, and

WHEREAS, the successful implementation of this service expansion program will require additional trained and experienced maintenance and transportation supervisory personnel, and

WHEREAS, the MTA does not presently have an adequate number of such trained and experienced personnel, and

WHEREAS, it is the opinion of the Board of Directors that the service expansion program should not be inhibited by the lack of such personnel, and

WHEREAS, the Executive Director has presented a recommendation that the ATE Management & Service Company, Inc. be employed to furnish a project team to provide maintenance and transportation on-site support personnel to supplement the MTA's internal management personnel on a temporary basis, and

WHEREAS, the Executive Director has provided satisfactory written justification for the procurement of such services on a sole source basis.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE METROPOLITAN TRANSIT AUTHORITY THAT:

Section 1: The Executive Director be and he is hereby authorized to negotiate and execute an agreement with ATE Management & Service Company, Inc. for the provision of
maintenance and transportation on-site support services.

Section 2: First year cost for such agreement is not to exceed $480,000, and second year cost is not to exceed $506,000.

Section 3: This Resolution shall be effective immediately upon passage.

PASSED this 15th day of April, 1982.

ATTEST:        APPROVED this 15th day of April, 1982.

Daniel C. Arnold
Chairman of the Board

APPROVED AS TO SUBSTANCE:

Alan F. Klepper
Executive Director

APPROVED AS TO FORM:

Dennis Gardner
Legal Counsel
A RESOLUTION

AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH MCKINSEY & CO. FOR AN ORGANIZATIONAL, OPERATIONAL AND FINANCIAL ASSESSMENT OF THE METROPOLITAN TRANSIT AUTHORITY.

WHEREAS, the Board of Directors of the Metropolitan Transit Authority has determined that a comprehensive evaluation of the MTA's organizational, operational and financial structure is desirable to quantify the current status of the MTA and to identify a program of action for the next five years; and

WHEREAS, the Executive Director has submitted written justification for the employment of McKinsey & Co. to perform such an organizational, operational and financial evaluation on a sole-source basis; and

WHEREAS, the Board of Directors finds that there are compelling reasons to engage McKinsey & Co. to perform such an evaluation.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE METROPOLITAN TRANSIT AUTHORITY THAT:

Section 1: The Executive Director is authorized to negotiate and execute an agreement with McKinsey & Co. for an organizational, operational and financial assessment of the Metropolitan Transit Authority.

Section 2: The cost of the assessment is not to exceed $300,000, and the work specified in the agreement is expected to be completed within ninety (90) days following the signing of the contract.

Section 3: This Resolution is to be effective immediately upon passage.
RESOLUTION NO. 82-28 (Page 2)

PASSED this 15th day of April, 1982.
APPROVED this 15th day of April, 1982.

ATTEST:

[Signature]
Assistant Secretary

[Signature]
Daniel C. Arnold
Chairman of the Board

APPROVED AS TO SUBSTANCE:

[Signature]
Alan F. Klepper
Executive Director

APPROVED AS TO FORM:

[Signature]
Dennis Gardner
Legal Counsel