

## **Viewing Instructions**

This file has been indexed or bookmarked to simplify navigation between documents. If you are unable to view the document index, download the file to your local drive and open it using your PDF reader (e.g. Adobe Reader).

**CERTIFICATE PURCHASE AGREEMENT**

Dated as of November 1, 2013

between

**MONTEREY COUNTY EDUCATIONAL DELINQUENT TAX FINANCE  
AUTHORITY**

and

**TOWER DBW III TRUST 2013-3**

Relating to

**MONTEREY COUNTY EDUCATIONAL DELINQUENT TAX FINANCE  
AUTHORITY  
TAX RECEIVABLES CERTIFICATE OF PARTICIPATION  
Series 2013-A**

---

## CERTIFICATE PURCHASE AGREEMENT

This CERTIFICATE PURCHASE AGREEMENT, dated as of November 1, 2013, between MONTEREY COUNTY EDUCATIONAL DELINQUENT TAX FINANCE AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the "Authority"), and TOWER DBW III TRUST 2013-3, a Delaware statutory trust (the "Holder").

### BACKGROUND

1. The Authority has been formed for the purpose of purchasing delinquent ad valorem property taxes in accordance with Section 6516.6 of the Government Code of the State of California (the "State"), upon terms and conditions which are acceptable to school districts and other taxing agencies in the State.

2. Certain taxing agencies (the "Taxing Agencies") located in the County of Monterey, California (the "County") are entitled to allocations of ad valorem property taxes levied by the County on the secured roll and the supplemental roll of the County under the provisions of Article XIII A of the California Constitution and the provisions of the California Revenue and Taxation Code, which ad valorem property taxes levied by the County and allocable to the Taxing Agencies on the secured roll and the supplemental roll are delinquent.

3. Pursuant to Purchase and Sale Agreements, each dated as of November 1, 2013 (each, a "Purchase and Sale Agreement"), and each between the Authority and one of the Taxing Agencies, the Authority is purchasing from the Taxing Agencies all right, title and interest in and to the aforesaid allocations of ad valorem property taxes (as defined below, the "Tax Receivables").

4. In order to facilitate the purchase of the Tax Receivables, the Authority desires to issue and sell a certificate of participation representing a 100% participation interest in the Tax Receivables (the "Certificate") to the Holder, pursuant to Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State, pursuant to this Agreement.

**NOW, THEREFORE**, for and in consideration of the premises and the material covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

### ARTICLE I DEFINITIONS

**Section 1.01. Definitions.** Except as otherwise specified or as the context may otherwise require, the following terms have the meanings set forth below for all purposes of this Agreement, and the definitions of such terms are applicable to the singular as well as to the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Capitalized terms used but not defined herein have the meanings set forth in the Purchase and Sale Agreements.

“Agreement”: This Certificate Purchase Agreement, including all exhibits hereto, and all amendments hereof and supplements hereto.

“Authority”: Monterey County Educational Delinquent Tax Finance Authority, a joint exercise of powers authority organized and existing under the laws of the State of California, and its successors and assigns.

“Certificate”: The Monterey County Educational Delinquent Tax Finance Authority, Tax Receivables Certificate of Participation, Series 2013-A, executed and delivered by the Authority to the Holder pursuant to this Agreement, representing a 100% participation interest in the Tax Receivables, in substantially the form of Exhibit B hereto.

“Certificate Register”: The register maintained pursuant to Section 4.03 hereof.

“Closing Date”: The date on which the Certificate will be initially executed, authenticated and delivered, which is November 12, 2013.

“Collateral”: As set forth in Section 2.03 hereof.

“Collections”: With respect to a Tax Receivable, the amount collected by the County (whether as payments by the related Property Owner, as proceeds of sale of the related tax-defaulted Property or otherwise), on the property taxes of which the Tax Receivable is a portion, which has been allocated to the related Taxing Agency in accordance with Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code of the State. Collections include but are not limited to the following: (i) the related Taxing Agency’s allocable share of the delinquent taxes payable, (ii) the 10% penalty payable thereon in accordance with Section 2618 of the California Revenue and Taxation Code, (iii) interest accruing at the rate of 1.5% per month in accordance with Section 4103 of the California Revenue and Taxation Code, (iv) all administrative costs levied in connection therewith that are distributable to the related Taxing Agency, and (v) any other charges (including but not limited to attorney fees and costs) authorized by law to be paid to the related Taxing Agency.

“Holder”: The Person in whose name the ownership of the Certificate is registered in the Certificate Register, initially Tower DBW III Trust 2013-3, a Delaware statutory trust, or such other entity designated to the Authority in writing by Tower DBW III Trust 2013-3.

“1933 Act”: The Securities Act of 1933, as amended.

“Participation Interest”: As evidenced by the Certificate, a 100% undivided beneficial ownership interest in the Tax Receivables.

“Person”: Any individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust (including any beneficiary thereof), unincorporated organization or government or any agency or political subdivision thereof.

“Prior Certificates”: All of the certificates of participation previously issued by the Authority representing a 100% participation in tax receivables for the Taxing Agencies.

“Purchase Agreements”: The Purchase and Sale Agreements, each dated as of November 1, 2013, and each between one of the Taxing Agencies and the Authority, pursuant to which the Taxing Agencies have sold the Tax Receivables to the Authority, as same may be amended, modified or supplemented from time to time in accordance with their terms.

“Purchase Price”: As set forth in Section 4.02 hereof.

“Purchased Property”: As set forth in Section 2.01 hereof.

“Tax Receivables”: The aggregate of all of the “Tax Receivables”, as defined in the Purchase Agreements, sold by the Taxing Agencies to the Authority pursuant to the Purchase Agreements, constituting in the aggregate 100% of the amounts of taxes, penalties and accrued interest set forth on the Tax Receivables Schedule.

“Tax Receivables Schedule”: The Schedule on the Compact Disk-ROM attached hereto as Exhibit A.

“Taxing Agencies”: The California school districts and other California governmental entities listed on the Tax Receivables Schedule.

## **ARTICLE II CONVEYANCE OF PARTICIPATION INTEREST**

**Section 2.01. Conveyance of Participation Interest; Assumption of Authority Obligations.** (a) In consideration of the payment by the Holder to the Authority of the Purchase Price pursuant to Section 4.02 hereof, the Authority, simultaneously with the execution and delivery of this Agreement and the initial issuance of the Certificate, does hereby sell, assign, transfer, set over and convey to the Holder, without recourse, but subject to the terms of this Agreement, all the beneficial right, title and interest of the Authority in and to the following (the “Purchased Property”):

- (i) the Tax Receivables;
- (ii) the Collections;
- (iii) the Purchase Agreements, including all of its rights and remedies with respect to the breach of any representations, warranties and agreements of the Taxing Agencies under the Purchase Agreements;
- (iv) all payments of the Defective Tax Receivable Purchase Amount to be made by the Taxing Agencies under the Purchase Agreements; and
- (v) all proceeds of the foregoing.

On the Closing Date, the Authority shall issue and deliver the Certificate to the Holder. The Certificate shall represent the Participation Interest.

Upon the initial issuance of the Certificate, all the beneficial right, title and interest of the Authority in and to the Purchased Property shall be vested in the Holder from time to time of the Certificate. Notwithstanding the transfer of the beneficial interest in the Tax Receivables to the Holder and the issuance of the Certificate, legal title to each Tax Receivable shall continue in the name of the Authority and be retained by the Authority for the benefit of the Holder.

(b) In consideration of the issuance of the Certificate by the Authority to the Holder, the Holder agrees to assume and be bound by all of the obligations of the Authority to the Taxing Agencies under the Purchase Agreements.

**Section 2.02. Collections.** Pursuant to the Purchase Agreements, the Authority has given written directions to the Taxing Agencies to cause all Collections on the Tax Receivables to be paid directly to the Holder. Any Collections coming into the possession of the Authority shall be held by the Authority for the benefit of the Holder as the beneficial owner of the Tax Receivables and shall be promptly paid by the Authority directly to the Holder.

**Section 2.03. Pledge and Security Interest.** (a) Although the parties hereto intend that the issuance and sale of the Purchased Property evidenced by the Certificate by the Authority to the Holder be characterized as an absolute sale rather than a secured borrowing, in the event such transaction is deemed to be a secured borrowing, in order to secure the Authority's obligations to the Holder hereunder, the Authority hereby pledges, assigns and grants a security interest to the Holder in the Certificate and the Purchased Property (the "Collateral").

(b) The Authority consents to the filing by the Holder of Uniform Commercial Code financing statements in the appropriate filing offices in order to perfect the foregoing pledge, assignment and security interest.

(c) The Authority represents and warrants to the Holder that: (i) this Agreement creates a valid and continuing security interest (as defined in the Uniform Commercial Code of California) in the Collateral in favor of the Holder, which security interest is prior to all other liens, and is enforceable as such as against creditors of and purchasers from the Authority; (ii) the Authority owns and has good and marketable title to the Collateral free and clear of any lien, claim or encumbrance of any Person; (iii) the Authority has received all consents and approvals required by the terms of the Purchase Agreements to the sale of the Collateral hereunder to the Holder; (iv) the Authority has caused or will have caused, within ten days, the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under applicable law in order to perfect the security interest in the Collateral granted to the Holder hereunder; (v) other than the security interest granted to the Holder pursuant to this Agreement, the Authority has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Collateral; (vi) the Authority has not authorized the filing of and is not aware of any financing statements against the Authority that include a description of collateral covering the Collateral other than any financing statement relating to the security interest granted to the Holder hereunder or that has been terminated; and (vii) the Authority is not aware of any judgment or tax lien filings against the Authority. Such representations and warranties shall survive the Closing and may not be waived.

**Section 2.04. Release of Collateral upon Repurchase of Defective Tax Receivables.**

Any Defective Tax Receivable which is repurchased by a Taxing Agency in accordance with the applicable Purchase Agreement shall be released from the Collateral when the required payment to the Holder is made pursuant to Section 3.01(c) of the applicable Purchase Agreement. Promptly upon such release, the Holder shall amend the Tax Receivables Schedule to reflect the release of such Defective Tax Receivable from the terms of this Agreement. Such Tax Receivable shall cease to be a part of the Collateral and be released from, and no longer be subject to, the pledge of this Agreement. The Holder agrees to take or cause to be taken such actions and to execute, deliver and record such instruments and documents as may be set forth in a written request of such Taxing Agency to release such Defective Tax Receivable from the lien of this Agreement.

**Section 2.05. Payment of County Administrative Costs; County Information.**

As additional consideration for the purchase of the Certificate, the Holder agrees to pay to the County, upon demand, all reasonable and identifiable administrative costs and expenses of the County which are incurred as a direct result of the compliance of the Treasurer-Tax Collector of the County or the County Auditor-Controller, or both, with any new or additional administrative procedures required for the County to comply with 6516.6(c) of the Government Code of the State of California, including but not limited to the cost of obtaining from the County by the Holder of such information as is necessary for the Holder to monitor collection on the Tax Receivables. In the event that the Holder is at any time unable to obtain from the County such information as is necessary for the Holder to monitor collection on the Tax Receivables, the Authority shall, at the request of the Holder, join with the Holder in taking any action to obtain such information, including but not limited to enforcing its rights to obtain such information under the California Public Records Act.

**Section 2.06. Authority Expenses.**

As additional consideration for the purchase of the Certificate, the Holder agrees to pay (i) the expenses for which the Authority is responsible pursuant to Section 4.02 of each of the Purchase Agreements, (ii) any expenses of the Authority, including legal fees and disbursements, incurred by the Authority under Section 2.05 hereof, (iii) the cost of the annual audit of the Authority required by law and (iv) the other out-of-pocket operating expenses of the Authority, such other out-of-pocket operating expenses not to exceed \$2,500 per year, not otherwise reimbursed to the Authority by another party. The Holder shall pay such amounts to the Authority upon the invoice of the Authority supported by reasonable documentation.

**ARTICLE III**

**AUTHORITY REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 3.01. Representations and Warranties of the Authority.** The Authority hereby represents and warrants to the Holder as of the Closing Date that:

(a) The Authority is a joint powers authority formed pursuant to the Joint Exercise of Powers Agreement, dated April 16, 2003, duly organized and existing and in good standing under the laws of the State, with full right, power and authority to issue and sell the Certificate pursuant to the laws of the State of California and to execute, deliver and perform its obligations

under this Agreement and to carry out and consummate the transactions contemplated by this Agreement.

(b) By all necessary official action the Authority has duly authorized and approved the execution and delivery of, and the performance by the Authority of the obligations contained in this Agreement, and such authorization and approval is in full force and effect and has not been amended, modified or rescinded. Assuming the due authorization, execution and delivery of this Agreement by the Holder, this Agreement constitutes the legally valid and binding obligation of the Authority, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or affecting creditors' rights generally. The Authority has complied in all respects with the terms of this Agreement.

(c) The Authority is not in breach of or in default under any applicable constitutional provision, law or administrative rule or regulation of the State or the United States, or any applicable judgment or decree or any trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument to which the Authority is a party or is otherwise subject, and no event has occurred or will have occurred which, if continued with the passage of time or the giving of notice, or both, would constitute a default or event of default under any such instrument; and, as of such times, the authorization, execution and delivery of this Agreement and compliance with the provisions of such agreement or instruments does not and will not conflict with or constitute a breach of or default under any applicable constitutional provision, law or administrative rule or regulation of the State or the United States or any applicable judgment, decree, license, permit, trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument to which the Authority (or any of its officers in their respective capacities as such) is subject, or by which it or any of its properties is bound; nor will any such authorization, execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of its assets or properties or under the terms of any such law, regulation or instrument.

(d) No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by the Authority of its obligations under this Agreement or the issuance of the Certificate.

(e) No action, suit, proceeding, inquiry or investigation, at law or in equity before or by any court, government agency, public board or body, is pending or threatened (i) in any way questioning the corporate existence of the Authority or the titles of the officers of the Authority to their respective offices; (ii) affecting, contesting or seeking to prohibit, restrain or enjoin the purchase and sale of the Certificate by the Authority, or in any way contesting or affecting the validity of the Certificate or this Agreement or the consummation of the transactions contemplated thereby or hereby, or contesting the powers of the Authority or its authority to accept the assignments under the Purchase Agreements, or to issue and sell the Certificate; (iii) which may result in any material adverse change relating to the Authority.

(f) The Authority has good title, free and clear of any lien, security interest or charge, to each of the Tax Receivables, has not assigned any interest or participation in any such Tax

Receivable (or, if any such interest or participation has been assigned, it has been released) and has the right to pledge, assign and grant a security interest in each such Tax Receivable to the Holder.

**Section 3.02. Affirmative Covenants of the Authority.** So long as the Certificate remains outstanding, the Authority will, unless the Holder otherwise agrees:

(a) Keep in full effect its existence as a joint exercise of powers authority organized and existing under the laws of the State of California.

(b) At the written request and at the expense of the Holder, from time to time execute and deliver all such supplements and amendments hereto and all such financing statements, continuation statements, instruments of further assurance, and other instruments, and will take such other action as may be necessary or advisable to:

(i) grant more effectively a security interest in all or any portion of the Collateral,

(ii) maintain or preserve the security interest granted by this Agreement or carry out more effectively the purposes hereof,

(iii) perfect, publish notice of, or protect the validity of, the security interest granted by this Agreement,

(iv) preserve and defend title to any Tax Receivable or other instrument included in the Collateral and the rights of the Holder in such Tax Receivable or other instrument against the claims of all persons and parties,

(v) enforce the obligations of the Taxing Agencies and the remedies available to the Authority under the Purchase Agreements, or

(vi) more effectively carry out the purposes of this Agreement.

(c) Shall execute and shall cause any future purchaser of delinquent installment of delinquent ad valorem property taxes levied by the County on the secured roll and the supplemental roll of the County under the provisions of Article XIII A of the California Constitution and the provisions of the California Revenue and Taxation Code to execute an intercreditor agreement in the form of Exhibit C hereto.

The Authority hereby designates the Holder its agent and attorney-in-fact to execute any financing statement, continuation statement or other instrument required pursuant to this Section 3.02.

**Section 3.03. Negative Covenants of the Authority.** So long as the Certificate remains outstanding, the Authority will not, without the consent of the Holder:

(a) Dissolve or liquidate in whole or in part.

- (b) Merge or consolidate with any Person.
- (c) Engage in any business or activity other than the carrying out of the activities specifically permitted by its organizational documents, as in effect on the Closing Date.
- (d) Incur or assume any indebtedness (other than certificates of participation in tax receivables) or guarantee the indebtedness of any Person.
- (e) Make any loan or advance or credit to, or guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing or otherwise), endorse or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stocks or dividends of, or own, purchase, repurchase or acquire (or agree contingently to do so) any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other Person.
- (f) Make any expenditure (by long-term or operating lease or otherwise) for capital assets (either realty or personalty).
- (g) Sell, transfer, exchange or otherwise dispose of any portion of the Collateral except as expressly permitted by this Agreement.
- (h) Permit the lien of this Agreement not to constitute a valid first priority security interest in the Collateral.
- (i) Permit any lien, charge, security interest, mortgage or other encumbrance (other than the lien of this Agreement) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof.
- (j) Waive, amend, modify, supplement or terminate any Purchase Agreement or any provision thereof.

#### **ARTICLE IV THE CERTIFICATE**

**Section 4.01. The Certificate.** The Certificate shall be substantially in the form annexed hereto as Exhibit B and shall, upon original issue, be executed and delivered by the Authority to the Holder simultaneously with the transfer of the Tax Receivables to the Authority by the Taxing Agencies and the payment of the Purchase Price hereunder by the Holder to the Authority. An individual Certificate shall be initially issued and, subject to the provisions of Section 4.02, it and each thereafter may be reissued on transfer or exchange; provided, however, that there will never be more than one (1) Holder at one time. The Certificate and each replacement Certificate shall be executed on behalf of the Authority by its Chairman and attested by its Secretary. A Certificate bearing the signatures of individuals who were at any time the proper officers of the Authority shall bind the Authority, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the date of such Certificate. The initial Certificate issued hereunder shall be dated the Closing Date. The principal amount of the Certificate shall be equal to the aggregate amount of the Tax Receivables and the Collections thereon. No interest accrues on the principal amount of the Certificate.

**Section 4.02. Delivery of and Payment for the Certificate.** In consideration of the issuance by the Authority of the Certificate to or upon the order of the Holder, the Holder shall pay to the Authority on the Closing Date the purchase price of the Certificate in an amount equal to \$1,433,897.22 (the “Purchase Price”).

**Section 4.03. Certificate Register; Limitation on Transfer by Holder.** (a) The Authority shall cause to be kept at its office in Monterey, California, or at the office of its designated agent, a Certificate Register in which, subject to such reasonable regulations as it may prescribe, the Authority shall provide for the registration of the Certificate and of transfers and exchanges of the Certificate as herein provided. The Certificate Register shall contain the name of the then current Holder.

(b) The Certificate has not been registered or qualified under the 1933 Act or the securities laws of any state. No transfer, sale, pledge or other disposition of the Certificate shall be made unless such disposition is made pursuant to an effective registration statement under the 1933 Act and effective registration or qualification under applicable state securities laws, or is made in a transaction which does not require such registration or qualification. In the event that a transfer is to be made in reliance upon an exemption from said Act, the Authority may require, in order to assure compliance with said Act, that the Holder desiring to effect such disposition and such Holder’s prospective transferee each certify to the Authority in writing the facts surrounding such disposition. The Authority may also require an opinion of counsel satisfactory to it that such transfer may be made pursuant to an exemption from the 1933 Act, which opinion of counsel shall not be an expense of the Authority.

(c) Every Certificate presented or surrendered for transfer or exchange shall be duly endorsed by, or be accompanied by a written instrument of transfer in form satisfactory to the Authority duly executed by the Holder thereof, together with a notice to the Holder of such transfer and the effective date thereof.

(d) Subject to this Section 4.03, upon surrender for registration or transfer of any Certificate at such office, the Authority shall execute in the name of the designated transferee a new Certificate dated the date of registration by the Authority.

(e) The Authority may impose a service charge for any transfer or exchange of the Certificate, and the Authority may also require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of the Certificate.

(f) Each Certificate surrendered for transfer and exchange shall be destroyed or marked “cancelled” by the Authority.

**Section 4.04. Mutilated, Destroyed, Lost or Stolen Certificate.** If (i) any mutilated Certificate is surrendered to the Authority, or the Authority receives evidence to its satisfaction of the destruction, loss or theft of any Certificate, and (ii) there is delivered to the Authority such security or indemnity as may be required by it to save it harmless, then, in the absence of notice to the Authority that such Certificate has been acquired by a bona fide purchaser, the Authority shall execute and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or

stolen Certificate, a new Certificate. Upon the issuance, execution and delivery of any new Certificate under this Section 4.04, the Authority may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. Any duplicate Certificate issued pursuant to this Section 4.04 shall constitute complete and indefeasible evidence of ownership of the Participation Interest represented thereby, as if originally issued, whether or not the mutilated, destroyed, lost or stolen Certificate shall be found at any time.

**Section 4.05. Persons Deemed Holder; Obligations of the Holder.** Prior to due presentation of a Certificate for registration of transfer, the Authority may treat the person in whose name any Certificate is registered as the owner of such Certificate for all purposes whatsoever, and the Authority shall not be affected by notice to the contrary. By acceptance of a Certificate registered in the name of a Holder, such Holder agrees to be bound by and assume the obligations of the Holder hereunder.

**Section 4.06. Consolidation of Certificate with Prior Certificates.** The Holder has the right in its sole discretion, at any time following the Closing Date, to tender the Certificate and any or all of the Prior Certificates to the Authority in exchange for a single fully-registered consolidated certificate of participation representing and evidencing the Certificate and such Prior Certificates. Any such consolidation shall be solely for purposes of administrative convenience, it being understood that the Certificate shall continue to be governed by this Agreement and that each Prior Certificate shall continue to be governed by its related certificate purchase agreement. Upon receipt of the Certificate and such Prior Certificates, the Authority shall cancel the Certificate and such Prior Certificates and deliver to the Holder, in exchange therefore, a new consolidated certificate of participation in form and substance acceptable to the Holder, which shall be executed on behalf of the Authority by the manual or facsimile signature of its Chairman and attested to by the manual or facsimile signature of its Secretary.

## ARTICLE V MISCELLANEOUS PROVISIONS

**Section 5.01. Termination.** This Agreement shall continue in existence and effect until terminated as herein provided. This Agreement shall terminate upon the later of (a) the distribution to the Holder of final payment with respect to the last Tax Receivable or (b) the delivery of the Certificate to the Authority for cancellation (other than a delivery in connection with a transfer or exchange). If this Agreement shall terminate, there shall be no further obligations and liabilities of the Authority and the Holder pursuant to this Agreement except for those liabilities which may theretofore have accrued and those obligations which, by the terms of this Agreement, are intended to survive its termination.

**Section 5.02. Amendment.** This Agreement may be amended from time to time by the Authority and the Holder only by written agreement signed by the Authority and the Holder.

**Section 5.03. Notices.** All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by

registered mail, postage prepaid, to (a) in the case of the Authority, c/o Monterey Peninsula Unified School District, 700 Pacific Street, Monterey, CA 93940, Attn: Chief Business Officer or such other address as may hereafter be furnished to the Holder in writing by the Authority, and (b) in the case of the Holder, as set forth in the Certificate Register.

**Section 5.04. Benefits of Agreement.** Nothing in this Agreement or in the Certificate, expressed or implied, shall give to any Person, other than the parties hereto and their successors and assigns hereunder, any benefit or any legal or equitable right, remedy or claim under this Agreement.

**Section 5.05. Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws.

**Section 5.06. Severability.** In case any provision in this Agreement or in the Certificate shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Section 5.07. Counterparts.** This Agreement may be executed in one or more counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed to be an original; such counterparts, together, shall constitute one and the same agreement.

**Section 5.08. Effect of Headings.** The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

**IN WITNESS WHEREOF**, the Authority and the Holder have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

**MONTEREY COUNTY EDUCATIONAL DELINQUENT TAX FINANCE AUTHORITY**

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

Name: Dan Albert

Title: Chairperson

Attest:

\_\_\_\_\_

Name: Garry Bousum

Title: Secretary

**TOWER DBW III TRUST 2013-3**

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

Name:

Title: Administrator

**TAX RECEIVABLES SCHEDULE**

[See attached CD-ROM]

**EXHIBIT B**

THIS CERTIFICATE HAS NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES ACT OF 1933 AS AMENDED (THE "ACT") OR THE SECURITIES LAWS OF ANY STATE. ANY RESALE, TRANSFER OR OTHER DISPOSITION OF THIS CERTIFICATE WITHOUT SUCH REGISTRATION OR QUALIFICATION MAY BE MADE ONLY IN A TRANSACTION WHICH DOES NOT REQUIRE SUCH REGISTRATION OR QUALIFICATION AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.03 OF THE CERTIFICATE PURCHASE AGREEMENT REFERRED TO HEREIN.

THE OBLIGATION OF THE AUTHORITY TO MAKE THE PAYMENTS HEREUNDER DOES NOT CONSTITUTE A DEBT, LIABILITY OR OBLIGATION OF ANY OF THE PUBLIC AGENCIES THAT ARE PARTIES TO THE AGREEMENT CREATING THE AUTHORITY.

**MONTEREY COUNTY EDUCATIONAL DELINQUENT TAX FINANCE AUTHORITY  
TAX RECEIVABLES CERTIFICATE OF PARTICIPATION  
Series 2013-A**

No. R-000001

100% Participation Interest  
\$1,433,897.22

Registered Owner: TOWER DBW III TRUST 2013-3

Dated: November 12, 2013

MONTEREY COUNTY EDUCATIONAL DELINQUENT TAX FINANCE AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the "Authority"), hereby certifies that the Authority is the owner of certain tax receivables (the "Tax Receivables") identified on Exhibit A to that certain Certificate Purchase Agreement, dated as of November 1, 2013 (the "Agreement"), between the Authority and Plymouth Park Tax Services LLC, a Delaware limited liability company (the "Company"). Pursuant to the Agreement, the Authority has sold to the Company a 100% participation interest (the "Participation Interest") in the Tax Receivables in the amount set forth above. This Certificate is the Certificate referred to in the Agreement evidencing the Participation Interest set forth hereinabove in the Tax Receivables. As of the date set forth above, the above-named Registered Owner of this Certificate is entitled to all of the rights of the Company under the Agreement to receive the Participation Interest. This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement, to which Agreement the Registered Owner of this Certificate, by virtue of the acceptance hereof, assents and by which the Registered Owner of this Certificate is bound. To the extent not defined herein, the capitalized terms used herein have the meanings given them in the Agreement.

As provided in the Agreement and subject to certain limitations therein set forth, the transfer of this Certificate is registrable in the Certificate Register of the Authority upon surrender of this Certificate for registration of transfer at the offices or agencies maintained by the Authority in Salinas, California, duly endorsed by, or accompanied by a written instrument of

transfer in the form attached hereto duly executed by the Registered Owner hereof, and thereupon a new Certificate will be issued to the designated transferee. The Certificate is issuable only as a registered Certificate. There shall not be at any time more than one (1) registered owner of the Certificate. No service charge will be made for any such registration of transfer or exchange, but the Authority may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. Prior to due presentation of this Certificate for registration of transfer, the Authority and any agent thereof may treat the person in whose name this Certificate is registered as the owner hereof for all purposes, and neither the Authority nor any such agent shall be affected by notice to the contrary.

**IN WITNESS WHEREOF**, the Authority has caused this Certificate to be duly executed by its duly authorized officers.

MONTEREY COUNTY EDUCATIONAL DELINQUENT TAX FINANCE AUTHORITY

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

Name: Dan Albert

Title: Chairperson



**FORM OF INTERCREDITOR AGREEMENT**

INTERCREDITOR AGREEMENT (this "Agreement") dated as of November 12, 2013 by and among Plymouth Park Tax Services, LLC ("Holder"), a Delaware limited liability company, Monterey County Educational Delinquent Tax Finance Authority (the "Authority"), a joint exercise of powers authority organized and existing under the laws of the State of California, and Tower DBW III Trust 2013-3 or its designated affiliates (the "Purchaser"), a Delaware statutory trust.

WHEREAS, pursuant to the terms of the Certificate Purchase Agreement dated as of October 1, 2008 (the "2008 CPA") between Plymouth Park Tax Services, LLC, a Delaware limited liability company ("PPTS"), and the Authority, PPTS purchased a Certificate of Participation (the "2008 COP"), evidencing the right to receive certain ad valorem property taxes identified in Exhibit A thereto (together with certain other rights including collections thereon, the "2008 Tax Receivables");

WHEREAS, pursuant to the terms of the Certificate Purchase Agreement dated as of November 1, 2009 (the "2009 CPA") between PPTS and the Authority, PPTS purchased a Certificate of Participation (the "2009 COP"), evidencing the right to receive certain ad valorem property taxes identified in Exhibit A thereto (together with certain other rights including collections thereon, the "2009 Tax Receivables");

WHEREAS, pursuant to the terms of the Certificate Purchase Agreement dated as of November 1, 2010 (the "2010 CPA") between PPTS and the Authority, PPTS purchased a Certificate of Participation (the "2010 COP"), evidencing the right to receive certain ad valorem property taxes identified in Exhibit A thereto (together with certain other rights including collections thereon, the "2010 Tax Receivables");

WHEREAS, pursuant to the terms of the Certificate Purchase Agreement dated as of November 1, 2011 (the "2011 CPA" and, together with the 2008 CPA, 2009 CPA and 2010 CPA, the "PPTS CPAs") between PPTS and the Authority, PPTS purchased a Certificate of Participation (the "2011 COP" and, together with the 2008 COP, 2009 COP and 2010 COP, the "PPTS COPs"), evidencing the right to receive certain ad valorem property taxes identified in Exhibit A thereto (together with certain other rights including collections thereon, the "2011 Tax Receivables" and, the 2011 Tax Receivables, together with the 2008 Tax Receivables, the 2009 Tax Receivables and the 2010 Tax Receivables, the "Holder Tax Receivables");

WHEREAS, pursuant to the terms of the purchase agreement dated as of December 1, 2012 (the "2012 CPA" and, together with the PPTS CPAs, the "CPAs") between the Authority and Tower DBW II Trust 2013-1, an affiliate of the Purchaser, Tower DBW II Trust 2013-1 purchased a certificate of participation (the "2012 COP" and, together with the PPTS COPs, the "COPs") which evidences the right to receive certain ad valorem property taxes identified in Exhibit A thereto, together with certain other rights including collections thereon (the "2012 Tax Receivables");

WHEREAS, pursuant to the terms of the purchase agreement dated as of November 1, 2013 between the Authority and the Purchaser (the "Purchase Agreement"), the Purchaser is purchasing a certificate of participation which evidences the right to receive certain ad valorem property taxes identified in the Purchase Agreement, together with certain other rights including collections thereon (the "2013 Tax Receivables," the 2012 Tax Receivables and the 2013 Tax Receivables are collectively referred to as the "Tower Tax Receivables" and, the Tower Tax Receivables together with the Holder Tax Receivables are collectively referred to as the "Tax Receivables");

WHEREAS, the terms of the PPTS CPAs provide that the Authority has given written directions to the Taxing Agencies (as defined in each PPTS CPA) to cause all Collections (as defined in each PPTS CPA) on the Holder Tax Receivables to be paid directly to the holder of the PPTS COPs and any related Collections coming into the possession of the Authority shall be held by the Authority for the benefit of the Holder of the PPTS COPs as the beneficial owner of the Holder Tax Receivables and shall be promptly paid by the Authority directly to the Holder;

WHEREAS, the terms of the 2012 CPA provide that the Authority has given written directions to the Taxing Agencies (as defined in the 2012 CPA) to cause all related Collections (as defined in the 2012 CPA) on the 2012 Tax Receivables to be paid directly to the holder of the 2012 COP and any related Collections coming into the possession of the Authority shall be held by the Authority for the benefit of the holder of the 2012 COP as the beneficial owner of the 2012 Tax Receivables and shall be promptly paid by the Authority directly to the holder of the 2012 COP;

WHEREAS, the Taxing Agencies and the Authority transfer all Collections received to the Holder, as Holder of the PPTS COPs, and look to the Holder to calculate the apportionment of the related Collections among each of the PPTS COPs in reduction of the respective principal balances thereof;

WHEREAS, the Authority on behalf of itself and on behalf of the Taxing Agencies request that Holder continue making all calculations and apportionments in respect of Collections on the Holder Tax Receivables and the Holder agrees to do so; and

WHEREAS, the Authority on behalf of itself and on behalf of the Taxing Agencies request that Purchaser make all calculations and apportionments in respect of Collections on the Tower Tax Receivables and the Purchaser agrees to do so; and

WHEREAS, the parties hereto wish to agree upon their respective rights relating to collections on the Tax Receivables;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

#### **SECTION 1. Acknowledgment of Ownership Interests and Security**

**Interests.** The Authority, the Purchaser and the Holder hereby acknowledge the ownership interest of the Holder in the Holder Tax Receivables, including the Collections thereon and the revenues, collections, claims, rights, payments, money and proceeds arising therefrom, and the security interests in favor of the Holder therein. The Authority, the Purchaser and the Holder

hereby acknowledge the ownership interest of the Purchaser in the Tower Tax Receivables, including the Collections thereon and the revenues, collections, claims, rights, payments, money and proceeds arising therefrom, and the security interests in favor of the Purchaser therein.

**SECTION 2. Deposit Accounts.** The Authority, the Purchaser and the Holder each acknowledge that collections with respect to the Holder Tax Receivables and the Tower Tax Receivables may from time to time be deposited into one or more designated accounts which are maintained for the benefit of the Authority and/or the Taxing Agencies (the “Deposit Accounts”). Subject to Section 4, the Authority, for itself and on behalf of the Taxing Agencies agrees to:

(a) maintain or cause to be maintained the Deposit Accounts for the benefit of the Holder and the Purchaser as their respective interests may appear;

(b) allocate and remit or cause to be allocated and remitted funds from the Deposit Accounts at the times specified in the CPAs and the Purchase Agreement to the Holder, in the case of collections relating to the Holder Tax Receivables, and to the Purchaser, in the case of collections relating to the Tower Tax Receivables, in each case calculated as described in Section 4 hereof; and

(c) maintain or cause to be maintained records as to the amounts deposited into the Deposit Accounts, the amounts remitted therefrom and the allocation as provided in subsection (b) above.

The Holder and the Purchaser shall each have the right to require an accounting from time to time of collections, allocations and remittances by or on behalf of the Authority and the Taxing Agencies relating to the Deposit Accounts.

Each of the parties hereto acknowledges the respective security interests of the others in amounts on deposit in the Deposit Accounts to the extent of their respective interests as described in this Agreement and the COPs and/or the Purchase Agreement, as applicable.

**SECTION 3. Time or Order of Attachment.** The acknowledgments contained in Sections 1 and 2 are applicable irrespective of the time or order of attachment or perfection of security or ownership interests or the time or order of filing or recording of financial statements or mortgages or filings under applicable law.

**SECTION 4. Servicing; Method of Adjustment and Allocation.** The Authority shall allocate and remit funds received by or from, as applicable, the Taxing Agencies and shall, pursuant to Section 2 hereof, control the movement of such funds out of the Deposit Accounts as follows:

(a) For the periods with respect to which collections relating to the Holder Tax Receivables are deposited into the Deposit Accounts, the Holder and the Purchaser shall each obtain from the county treasurer-tax collector and the county auditor-controller, the publicly-available information they respectively determine to be relevant for calculating revenue sharing (the “Tax Receivables Information”).

(b) Within thirty (30) calendar days of its receipt of the Tax Receivables Information, the Holder shall determine the amounts payable to the Holder in respect of each PPTS COP as Holder thereof and the Purchaser shall determine the amounts payable to Tower DBW II Trust 2013-1 and to it in respect of the Tower Tax Receivables and each of Holder and Purchaser shall provide to the other parties hereto the pertinent information. The Authority shall then cause the amounts calculated pursuant to the preceding sentence to be wired to the respective accounts of the Holder, Tower DBW II Trust 2013-1 and the Purchaser, in that order, in immediately available funds promptly thereafter; any shortfalls in available funds will be allocated first to the Purchaser and then to Tower DBW II Trust 2013-1, in respect of their respective Tower Tax Receivables and then to the Holder, in respect of the PPTS COPs then outstanding in reverse order of their date of origination.

(c) In the event that either the Purchaser disagrees with the amount payable to the Holder pursuant to subclause (b) above, the parties hereto shall collaborate in good faith to correct any mathematical error for thirty (30) calendar days, during which time the Holder shall retain possession of the funds received by it. In the absence of manifest error on behalf of the Holder (such error to be agreed upon and acknowledged in writing by the Purchaser, the Authority and the Holder), Holder shall retain such funds.

**SECTION 5. Other Costs and Expenses.** Each CPA contains a provision whereby the holder of the related COP is required to pay for the Authority's annual audit and certain out-of-pocket fees and expenses, in an amount not to exceed \$2,500 per year. Such fees and expenses shall be shared equally by all holders of any outstanding COPs (based on the number of COP holders and not on the outstanding principal balance of any such COPs).

**SECTION 6. Sharing of Information.** For the purposes of reconciling the calculations required by Section 4(b) hereof, the parties hereto agree to cooperate with each other and make available to each other or any subsequent holder of a COP any and all related records and other data relevant to the Tax Receivables which it may have in its possession or may from time to time receive from the Authority, the Taxing Agencies, the Holder or the Purchaser or any successor hereto and thereto, including, without limitation, any and all computer programs, data files, documents, instruments, files and records and any receptacles and cabinets containing the same. The Authority hereby consents to the release of such information pursuant to this Section 6.

**SECTION 7. No Joint Venture.** Nothing herein contained shall be deemed as effecting a joint venture among any of the Authority, the Purchaser and the Holder.

**SECTION 8. Termination.** This Agreement shall terminate upon the payment in full of the last outstanding COPs, except that the understandings and acknowledgements contained in Sections 1, 2 and 3 shall survive the termination of this Agreement.

**SECTION 9. Governing Law.** THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

**SECTION 10. Further Assurances.** Each of the parties hereto agrees to execute any and all agreements, instruments, releases and any and all other documents reasonably requested by any of the other parties hereto in order to effectuate the intent of this Agreement. In each case where a release is to be given pursuant to this Agreement, the term release shall include any documents or instruments necessary to effect a release, as contemplated by this Agreement. All releases, subordinations and other instruments submitted to the executing party are to be prepared at no expense to such party.

**SECTION 11. Limitation on Rights of Others.** This Agreement is solely for the benefit of the Authority, Tower DBW II Trust 2013-1, Purchaser and the Holder for the benefit of themselves and, in the case of the Authority, for the benefit of the Taxing Agencies, and, subject to Section 13 hereof, no other person or entity shall have any rights, benefits, priority or interest under or because of the existence of this Agreement.

**SECTION 12. Amendments.** In the event that the Authority hereafter causes tax receivables to be sold, the parties hereto agree that this Agreement may be amended and restated (i) to add as parties hereto the purchasers of such tax receivables and (ii) to reflect the rights and obligations of such parties with respect to such tax receivables on terms substantially similar to the rights and obligations of the parties currently party hereto; provided that no such amendment shall be effective unless evidenced by written instrument signed by the parties hereto and such additional parties and provided, further, that no party hereto shall be required to execute any such amended agreement on terms which are materially more disadvantageous to it than those contained herein.

**SECTION 13. Assignment.** The rights and obligations of the Authority and the Purchaser under this Agreement shall not be assignable by operation or law or otherwise to a non-affiliated third party except with the prior written consent of the other parties hereto. The rights and obligations of the Holder under this Agreement shall be assignable by the Holder to any future purchaser of a PPTS COP so long as that entity meets the requirements and complies with the provisions of the applicable CPA and the entity duly becomes the “Holder” (as such term is defined in each PPTS CPA) of such PPTS COP thereunder.

**SECTION 14. Severability.** The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (i) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (ii) the remainder of this Agreement and the application of such provision to other Persons, or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

**SECTION 15. Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature

page to this Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Agreement.

**SECTION 16. Notices, Etc.** Any notice provided or permitted by this Agreement to be made upon, given or furnished to or filed with any party hereto shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing by facsimile transmission, first-class mail or overnight delivery service to the applicable party at its address set forth below or, as to any party, at such other address as shall be designated by such party by written notice to the other parties hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

PLYMOUTH PARK TAX SERVICES, LLC

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

Name:

Title:

Address for Notices: c/o JPMorgan Chase  
383 Madison Avenue  
New York, NY 10179  
Attn: President

MONTEREY COUNTY EDUCATIONAL  
DELINQUENT TAX FINANCE AUTHORITY

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

Name:

Title:

Address for Notices: 901 Blanco Circle  
P.O. Box 80851  
Salinas, CA 93901

TOWER DBW II TRUST 2013-1

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

Name:

Title: Administrator

Address for Notices: 10 North Park Place  
Suite 300  
Morristown, NJ 07960  
Attn: Kurt Shadle

TOWER DBW III TRUST 2013-3

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

Name:

Title: Administrator

*Signature Page to Intercreditor Agreement*

Address for Notices: 10 North Park Place  
Suite 300  
Morristown, NJ 07960  
Attn: Kurt Shadle

**PURCHASE AND SALE AGREEMENT**

**Dated as of November 1, 2013**

**between**

**«DISTRICT»  
Seller**

**and**

**MONTEREY COUNTY EDUCATIONAL DELINQUENT TAX FINANCE AUTHORITY  
Purchaser**

---

## TABLE OF CONTENTS

	<b>Page</b>
ARTICLE I Definitions .....	2
Section 1.01.    Definitions.....	2
Section 1.02.    Other Definitional Provisions.....	5
ARTICLE II Purchase and Sale of Tax Receivables .....	6
Section 2.01.    Purchase and Sale of Tax Receivables .....	6
Section 2.02.    Closing Conditions .....	7
Section 2.03.    Right to Terminate .....	8
Section 2.04.    Pledge and Security Interest.....	8
Section 2.05.    Release of Collateral upon Repurchase of Tax Receivables .....	9
ARTICLE III The Tax Receivables.....	9
Section 3.01.    Representations and Warranties as to the Tax Receivables .....	9
Section 3.02.    Protection of Title; Payment of Collections .....	13
Section 3.03.    Consent to Assignment.....	14
ARTICLE IV The District .....	14
Section 4.01.    Representations of District .....	14
Section 4.02.    Expenses .....	15
Section 4.03.    Payment of County Administrative Costs .....	16
Section 4.04.    Additional Representations and Agreements .....	16
ARTICLE V Miscellaneous.....	18
Section 5.01.    Amendment .....	19
Section 5.02.    Entire Agreement .....	19
Section 5.03.    Notices.....	19
Section 5.04.    Assignment by the District.....	19
Section 5.05.    Limitations on Rights of Others .....	19
Section 5.06.    Severability.....	19
Section 5.07.    Separate Counterparts .....	20
Section 5.08.    Headings.....	20
Section 5.09.    Governing Law.....	20
Section 5.10.    Nonpetition Covenants .....	20
Section 5.11.    Successor Is Deemed Included in All References to Predecessor .....	21
Section 5.12.    Waiver of Personal Liability .....	21

Exhibit A     Tax Receivables Schedule

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT, dated as of November 1, 2013, between «DISTRICT», a school district organized and existing under the laws of the State of California (the “District”), and MONTEREY COUNTY EDUCATIONAL DELINQUENT TAX FINANCE AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the “Authority”).

### BACKGROUND

1. The District is a taxing agency that is entitled to an allocation of ad valorem property taxes levied by the County of Monterey, California (the “County”) on the secured roll and the supplemental roll of the County under the provisions of Article XIII A of the California Constitution and the provisions of the California Revenue and Taxation Code.

2. Certain ad valorem property taxes levied by the County and allocated to the District on the secured roll and the supplemental roll are delinquent (such delinquent allocated taxes, the “Tax Receivables”) as of the Cut-off Date (as defined below).

3. The Authority has been formed for the purpose of purchasing delinquent ad valorem property taxes from participating local educational agencies in the County in accordance with Section 6516.6 of the Government Code of the State of California (the “State”), upon terms and conditions which are acceptable to such local educational agencies.

4. In order to facilitate the purchase of the Tax Receivables, the Authority has made arrangements to issue and sell a certificate of participation representing a 100% participation interest in the Tax Receivables (the “Certificate of Participation”) to Tower DBW III Trust 2013-3, a Delaware statutory trust, or its designated affiliate (the “Certificate Purchaser”), pursuant to Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State. The Certificate of Participation will be sold by the Authority to the Certificate Purchaser pursuant to a Certificate Purchase Agreement, dated as of November 1, 2013 (the “Certificate Purchase Agreement”), between the Authority and the Certificate Purchaser.

5. The District has determined that it is in the best interests of the District at this time to sell to the Authority the delinquent tax collections which it is entitled to receive arising from the collection of certain delinquent ad valorem property taxes for the fiscal year ending June 30, 2013, upon the terms and conditions provided herein.

**NOW, THEREFORE**, for and in consideration of the premises and the material covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

**ARTICLE I**  
**DEFINITIONS**

**Section 1.01.** Definitions. Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

“Administrative Agent” means Tower DBW III LLC, a Delaware limited liability company.

“Agreement” means this Purchase and Sale Agreement, as originally executed or as it may from time to time be supplemented, modified or amended in accordance with the provisions hereof.

“Authority” means the Monterey County Educational Delinquent Tax Finance Authority, a joint exercise of powers authority organized and existing under the laws of the State, or any successor thereto.

“Bond Counsel” means Jones Hall, A Professional Law Corporation, or any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to public financing in the State.

“Bond Law” means Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State, as in effect on the Closing Date or as thereafter amended.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banking institutions in the City of New York, New York or the City of San Francisco, California are authorized or obligated by law or executive order to be closed.

“Certificate of Participation” means the Certificate of Participation executed and delivered by the Authority to the Certificate Purchaser pursuant to the Certificate Purchase Agreement, representing a 100% participation interest in the Tax Receivables.

“Certificate Purchase Agreement” means that certain Certificate Purchase Agreement, dated as of November 1, 2013, between the Authority and the Certificate Purchaser, pursuant to which the Authority has sold to the Certificate Purchaser a 100% participation interest in the Tax Receivables.

“Certificate Purchaser” means Tower DBW III Trust 2013-3, a Delaware limited liability company, or its designated affiliate, and its successors and assigns.

“Closing Date” means November 12, 2013.

“Collections” means, with respect to a Tax Receivable, the amount collected by the County (whether as payments by the related Property Owner, as proceeds of sale of the related tax-defaulted Property or otherwise) on the Tax Receivable. Collections include but are not limited to the following: (i) the District’s allocable share of the delinquent taxes payable for the Fiscal Year to which the Tax Receivable is related, (ii) the 10% penalty payable thereon in

accordance with Section 2618 of the California Revenue and Taxation Code, (iii) interest accruing at the rate of 1.5% per month in accordance with Section 4103 of the California Revenue and Taxation Code, (iv) all administrative costs levied in connection therewith that are distributable to the District, if any, and (v) any other charges (including but not limited to attorney fees and costs) authorized by law to be paid to the District, if any.

“County” means the County of Monterey, a political subdivision of the State.

“Cut-off Date” means July 1, 2013.

“Defective Tax Receivable” has the meaning set forth in Section 3.01(c) hereof.

“Defective Tax Receivable Purchase Amount” means, as to any Defective Tax Receivable, an amount equal to the purchase price of such Defective Tax Receivable set forth on the Tax Receivables Schedule reduced by the amount, if any, of Collections on such Defective Tax Receivable which have been applied to the recovery of such purchase price as of the date of calculation; *provided, however*, that if the defect in the Defective Tax Receivable is solely that the related property taxes are determined to be less than the amount shown on the Tax Receivables Schedule, then the Defective Tax Receivable Purchase Amount shall be equal to 110.0% of the reduction in the amount of the related property taxes shown on the Tax Receivables Schedule with respect to such Defective Tax Receivable.

“Delinquent Tax Roll” means the delinquent tax roll which is delivered by the Treasurer-Tax Collector of the County to the County Auditor-Controller pursuant to Section 2627 of the Revenue and Taxation Code of the State, or such other report, file or data of the Treasurer-Tax Collector or Auditor-Controller of the County as may be available from the County and mutually satisfactory to the District, the Authority and the Certificate Purchaser.

“District” means «District», a school district organized and existing under the laws of the State, including any entity with which it may be consolidated or which otherwise succeeds to the interests of the District.

“Fiscal Year” means the 12-month period beginning on July 1 in any year and ending on the following June 30. Whenever in this Agreement reference is made to the Fiscal Year of a certain year, such reference is to the Fiscal Year ending June 30 of that year.

“Funding Date” means November 12, 2013, being the date on which the purchase price of the Tax Receivables is paid to the District.

“Opinion of Counsel” means one or more written opinions of counsel, who may be an employee of or counsel to the District, which counsel shall be acceptable to the recipient of such opinion or opinions.

“Property” means, with respect to a Tax Receivable, the real property that is encumbered by the Tax Lien of such Tax Receivable.

“Property Certificate Purchaser” means, with respect to a Tax Receivable, the fee owner or owners of the related Property.

“Property Owner” means, with respect to a Tax Receivable, the fee owner or owners of the related Property.

“Purchased Fiscal Year” means the Fiscal Year ended on June 30, 2013.

“Purchase Price” has the meaning set forth in Section 2.01(a) hereof.

“Redemptive Value” means, with respect to a Tax Receivable as of a particular date, the Tax Receivable Balance thereof as of such particular date plus accrued and unpaid interest from the Cut-off Date to such particular date on the amount described in clause (A) of the definition of Tax Receivable Balance.

“Repurchase Date” means each date that Collections are required to be paid to the Certificate Purchaser pursuant to Section 3.02(b) hereof.

“Responsible Officer” means, with respect to the District, the superintendent or chief business officer of the District or any other official of the District customarily performing functions similar to those performed by any of the above designated officials, and also with respect to a particular matter, any other official of the District to whom such matter is referred because of such official’s knowledge of and familiarity with the particular subject.

“Sale Date” means November 12, 2013.

“State” means the State of California.

“Tax Lien” means, with respect to a Tax Receivable, the lien that attaches by operation of Section 2187 of the California Revenue and Taxation Code to the fee interest in the Property securing the Tax Receivable.

“Tax Receivable Balance” means, with respect to a Tax Receivable as of a particular date, the sum of (A) an amount equal to the District’s share of the delinquent property taxes payable to the County Tax Collector shown with respect to such Tax Receivable on the Tax Receivables Schedule, (B) the 10% penalty payable on the Tax Receivable and (C) interest accrued on the amount in clause (A) from the July 1 of the Fiscal Year following the Fiscal Year in which such Tax Receivable first became delinquent to and excluding the Sale Date at the rate of 1.5% per month, less (D) any Collections thereon paid to the Certificate Purchaser and allocated to such amounts as of such particular date. For all purposes of this Agreement, Collections received with respect to any Tax Receivable shall be allocated (i) first, to interest accrued on the amount in clause (iv) on the Tax Receivable from and including the Sale Date, (ii) second, to interest accrued on the amount in clause (iv) from July 1 of the Fiscal Year following the Fiscal Year in which such Tax Receivable first became delinquent to and excluding the Sale Date, (iii) third, to the 10% penalty payable on the Tax Receivable, and (iv) fourth, to the delinquent property taxes payable to the District shown with respect to such Tax Receivable on the Tax Receivables Schedule.

“Tax Receivable” means with respect to a Property for a particular Purchased Fiscal Year, the portion of a delinquent installment of ad valorem property taxes on the secured tax roll and on the supplemental tax roll of the County that:

(i) was levied by the County on one of the Properties listed on the Tax Receivables Schedule for such Purchased Fiscal Year, and is allocable to the District in accordance with the Revenue and Taxation Code of the State,

(ii) was levied during such Purchased Fiscal Year, was delinquent as of the Cut-off Date and was shown as such on the Delinquent Tax Roll maintained by the County for such Purchased Fiscal Year,

(iii) had not been received by or on behalf of the District as of the Cut-off Date,

(iv) is due and owing to the District in an amount equal to the amounts of taxes, penalties and accrued interest set forth on the Tax Receivables Schedule,

(v) includes all penalties and accrued interest thereon to the date of collection, and

(vi) has not become a Defective Tax Receivable

“Tax Receivables Schedule” means the Schedule on the Compact Disk-ROM attached hereto as Exhibit A as such Schedule may be amended from time to time in accordance with Section 3.01(e) hereof.

#### **Section 1.02. Other Definitional Provisions.**

(a) All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein.

(b) As used in this Agreement and in any certificate or other document made or delivered pursuant hereto or thereto, accounting terms not defined in this Agreement or in any such certificate or other document, and accounting terms partly defined in this Agreement or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under generally accepted accounting principles. To the extent that the definitions of accounting terms in this Agreement or in any such certificate or other document are inconsistent with the meanings of such terms under generally accepted accounting principles, the definitions contained in this Agreement or in any such certificate or other document shall control.

(c) The words “hereof”, “herein”, “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; Article, Section, Schedule and Exhibit references contained in this Agreement are references to Articles, Sections, Schedules and Exhibits in or to this Agreement unless otherwise specified; and the term “including” shall mean “including without limitation”.

(d) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(e) Any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time amended, modified or supplemented and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein; references to a Person are also to its permitted successors and assigns.

(f) The phrases “to the knowledge of the District,” “to the District’s knowledge,” “to the best knowledge of the District” or other similar phrases used herein or in any certificate delivered pursuant hereto, shall mean that the Responsible Officer of the District signing this Agreement or such certificate, as the case may be, had no actual knowledge that the information referred to in connection with such phrase was incorrect in any material respect.

## **ARTICLE II PURCHASE AND SALE OF TAX RECEIVABLES**

**Section 2.01. Purchase and Sale of Tax Receivables.** (a) In consideration of the Authority’s promise to deliver on the Funding Date to or upon the order of the District the purchase price of the Tax Receivables in an amount equal to \$«Total» (the “Purchase Price”), the District does hereby sell, transfer, assign, set over and otherwise convey to the Authority, without recourse (but subject to the obligations herein), all right, title and interest of the District on the Sale Date, whether now owned or hereinafter acquired, in and to:

- (i) the Tax Receivables;
  - (ii) all Collections in respect of the Tax Receivables since the Cut-off Date;
- and
- (iii) the proceeds of any and all of the foregoing.

(b) The Authority shall be entitled, from and after the Funding Date, to receive all amounts collected by the County (whether as payments by property owners, as proceeds of sale of the related tax-defaulted properties or otherwise), on the property taxes of which the Tax Receivables are a portion, which has been allocated to the District in accordance with Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code of the State of California, including but not limited to the following: (i) the District’s allocable share of the delinquent taxes payable, (ii) the 10% penalty payable thereon in accordance with Section 2618 of the California Revenue and Taxation Code, (iii) interest accruing at the rate of 1.5% per month in accordance with Section 4103 of the California Revenue and Taxation Code, (iv) all administrative costs levied in connection therewith that are distributable to the District, and (v) any other charges (including but not limited to attorney fees and costs) authorized by law to be paid to the District.

(c) On the Funding Date, the Authority shall pay or cause to be paid the Purchase Price in immediately available funds as follows:

- (i) an amount equal to \$«Taxes» shall be paid by federal funds wire to the County Auditor-Controller for distribution to the District in accordance with Section 6516.6(c)(4)(A) of the California Government Code; and

(ii) an amount equal to \$«Supplemental» shall be paid by federal funds wire to the Monterey County Office of Education for the account of the District.

**Section 2.02. Closing Conditions.** The obligation of the Authority to purchase the Tax Receivables and pay the Purchase Price thereof will be subject to the accuracy of the representations and warranties of the District herein, to the accuracy of statements to be made by or on behalf of the District, to the performance by the District of its obligations hereunder and to the following additional conditions precedent:

(a) *Executed Agreement.* At the Closing Date, this Agreement must have been authorized, executed and delivered by the respective parties thereto, and this Agreement and all official action of the District relating thereto must be in full force and effect and not have been amended, modified or supplemented.

(b) *Closing Documents.* The Authority must receive the following opinions and certificates (which may be consolidated into a single certificate for convenience), dated the Closing Date and acceptable to the Authority:

(1) *Legal Opinion of Bond Counsel.* An approving opinion of Bond Counsel to the effect that the obligations of the District and of the Authority under this Agreement are valid, binding and enforceable, and as to certain other matters, addressed to, and in form and substance satisfactory to, the District, the Authority and the Certificate Purchaser. At the option of Bond Counsel, such opinion may be addressed to the District and the Authority, with reliance letters given to the other parties.

(2) *Certificate of the District.* A certificate signed by an appropriate official of the District to the effect that (i) the District is duly organized and validly existing as a school district under the laws of the State, (ii) the representatives of the District who executed this Agreement have been duly authorized to do so on behalf of the District, (iii) the representations, agreements and warranties of the District herein are true and correct in all material respects as of the Closing Date, (iv) the District has complied with all the terms of this Agreement which are required to be complied with by the District prior to or concurrently with the Closing Date, and (v) the execution and delivery of this Agreement have been approved by resolution duly adopted by the governing board of the District, which resolution was duly and regularly adopted in accordance with all applicable legal requirements.

(3) *No Litigation Certificate.* A certificate signed by an appropriate official from the District stating that no litigation or other proceedings are pending or, to the knowledge of the District, threatened against the District in any court or other tribunal of competent jurisdiction, state or federal, in any way (A) restraining or enjoining the execution or delivery of this Agreement or the consummation of the transactions described in this Agreement, (B) contesting or affecting the validity of this Agreement or any transaction described in this Agreement, (C) questioning or affecting the organization or existence of the District or the title to office of the officers thereof or (D) questioning or affecting the power and authority of the District to enter into this Agreement and perform its obligations hereunder.

(4) *Certified Resolution.* A certificate, together with fully executed copies of the resolution approving this Agreement and the transactions described herein, of the clerk of the governing board of the District to the effect that (i) such copies are true and correct copies of said resolution; and (ii) said resolution was duly adopted and has not been modified, amended, rescinded or revoked and is in full force and effect on the Closing Date.

(5) *Other Documents.* Such additional legal opinions, certificates, proceedings, instruments and other documents as the Authority, the Certificate Purchaser or Bond Counsel may reasonably request to evidence compliance (i) by the Authority and the District with legal requirements, (ii) the truth and accuracy, as of the Closing Date, of the representations of the District herein contained, (iii) the due performance or satisfaction by the Authority and the District at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Authority and the District.

(c) *Issuance of Certificate of Participation.* The Certificate of Participation must have been executed and delivered to the Certificate Purchaser, and the Certificate Purchaser must have paid the purchase price of the Certificate of Participation in full. All conditions to the execution and delivery of the Certificate of Participation must have been satisfied and all actions required to execute and deliver the Certificate of Participation must have been taken.

**Section 2.03. Right to Terminate.** If the District is unable to satisfy the conditions set forth in Section 2.02 hereof as determined by the Authority or the Certificate Purchaser, this Agreement may be canceled either in part or in its entirety by the Authority at any time. Notice of such cancellation shall be given to the District in writing, or by telephone confirmed in writing.

**Section 2.04. Pledge and Security Interest.** (a) Although the parties hereto intend that the sale of the Tax Receivables by the District to the Authority be characterized as an absolute sale rather than a secured borrowing, in the event such transaction is deemed to be a secured borrowing, in order to secure the District's obligations to the Authority hereunder, the District hereby pledges, assigns and grants a security interest to the Authority in the following (the "Collateral"):

- (i) the Tax Receivables;
- (ii) the Collections; and
- (iii) all proceeds of the foregoing.

(b) The District consents to the filing by the Authority of Uniform Commercial Code financing statements in the appropriate filing offices in order to perfect the foregoing pledge, assignment and security interest, in the event and to the extent any such filing is required by law.

(c) The District represents and warrants to the Authority that: (i) this Agreement creates a valid and continuing security interest (as defined in the Uniform Commercial Code of California) in the Collateral in favor of the Authority, which security interest is prior to all other

liens, and is enforceable as such as against creditors of and purchasers from the District; (ii) the District owns and has good and marketable title to the Collateral free and clear of any lien, claim or encumbrance of any person; (iii) the District has caused or will have caused, within ten days, the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under applicable law in order to perfect the security interest in the Collateral granted to the Authority hereunder, in the event and to the extent any such filing is required by law; (iv) other than the security interest granted to the Authority pursuant to this Agreement, the District has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Collateral; (v) the District has not authorized the filing of and is not aware of any financing statements against the District that include a description of collateral covering the Collateral other than any financing statement relating to the security interest granted to the Authority hereunder or that has been terminated; and (vi) the District is not aware of any judgment or tax lien filings against the District. Such representations and warranties shall survive the Closing and may not be waived.

**Section 2.05. Release of Collateral upon Repurchase of Tax Receivables.** Any Tax Receivable which is repurchased by the District in accordance with this Agreement shall be released from the Collateral when the required payment is made pursuant to Section 3.01(e) of this Agreement. Promptly upon such release, the Authority shall amend the Tax Receivables Schedule to reflect the release of such Tax Receivable from the terms of this Agreement. Such Tax Receivable shall cease to be a part of the Collateral and be released from, and no longer be subject to, the pledge of this Agreement. The Authority agrees to take or cause to be taken such actions and to execute, deliver and record such instruments and documents as may be set forth in a written request of the District to release such Tax Receivable from the lien of this Agreement.

**Section 2.06. Assignment of Enforcement Rights.** The District hereby assigns and transfers to the Authority, and its assigns, all of the District's rights to enforce the Tax Receivables under common law or any other legal authority, subject only to such restrictions as are contained in this Agreement. The District acknowledges and agrees that the Authority will further assign the foregoing rights to enforce the Tax Receivables to the Certificate Purchaser.

### **ARTICLE III THE TAX RECEIVABLES**

**Section 3.01. Representations and Warranties as to the Tax Receivables.** (a) The District hereby represents and warrants to the Authority and the Certificate Purchaser that (1) as of the Closing Date for the Tax Receivables the information set forth in the Tax Receivables Schedule will be correct in all material respects as of the Sale Date, and (2) as to each Tax Receivable transferred hereunder, as of the Sale Date:

- (i) the District was the sole owner of such Tax Receivable;
- (ii) the District had full right and authority to sell such Tax Receivable as provided in this Agreement;
- (iii) the District sold such Tax Receivable free and clear of any and all liens, pledges, charges, security interests or any other statutory impediments to transfer created

by or imposed upon the District encumbering such Tax Receivable (but subject to the right of redemption by the related Property Certificate Purchaser), except for liens that will be discharged by the application of the proceeds of the sale thereof;

(iv) the sale of such Tax Receivable by the District did not contravene or conflict with any laws, rules or regulations or any contractual or other restriction, limitation or encumbrance applicable to the District;

(v) the property taxes of which the Tax Receivable constitutes a portion were validly levied by the County in accordance with all applicable provisions of the laws, rules and regulations of the State and of the County;

(vi) the amount of the Tax Receivable includes the District's allocable share of the installments of ad valorem property taxes on the secured tax roll and on the supplemental tax roll which have been levied within the County during the applicable Purchased Fiscal Year which were delinquent as of the Cut-off Date;

(vii) such Tax Receivable was secured by a legal, valid, binding and enforceable lien on the fee interest in the related Property and an enforceable obligation of the related Property Certificate Purchaser to pay the Redemptive Value thereof;

(viii) the Property encumbered by the lien of the Tax Receivable was, as of the Sale Date, not encumbered by a tax lien securing any delinquent property taxes assessed with respect to any fiscal year ending on or prior to June 30, 2008;

(ix) the related Tax Lien represented a lien on the related Property, the priority of which was subject only to other Tax Liens on such Property for which the related Tax Receivables were being sold under this Agreement and to certain other priorities prescribed by statute;

(x) the amount of such Tax Receivable payable by the related Property Certificate Purchaser includes a 10% penalty on the portion of such Tax Receivable consisting of delinquent property taxes;

(xi) interest payable by the related Property Certificate Purchaser has accrued and will continue to accrue on the delinquent property taxes of which the Tax Receivable constitutes a portion from July 1 of the Fiscal Year following the Fiscal Year in which such Tax Receivable first became delinquent to the date of payment of such taxes at the rate of 1.5% per month;

(xii) such Tax Receivable had not been discharged or disallowed (in whole or in part) in a bankruptcy proceeding;

(xiii) such Tax Receivable had not been compromised, adjusted or modified (including by the granting of any discounts, allowances or credits, but not including installment payment plans in accordance with law);

(xiv) such Tax Receivable was not subject to a foreign government's diplomatic immunity from enforcement or treaty with the United States of America;

(xv) there existed no fact, condition or circumstance that would prevent the County from being able to sell the related Property in a tax sale upon the expiration of a period of five years from July 1 of the Fiscal Year after the Fiscal Year in which the related property taxes became delinquent;

(xvi) no right of rescission, setoff, counterclaim or defense had been asserted with respect to such Tax Receivable;

(xvii) such Tax Receivable does not relate to a Property owned by a Property Certificate Purchaser that is subject to any bankruptcy proceeding commenced prior to the Sale Date; and

(xviii) such Tax Receivable does not have any of the following characteristics:

(1) the related Property has a delinquency from Fiscal Year 2008 or prior;

(2) an aggregate lien-to-value ratio greater than 5.0%;

(3) a Property value less than \$75,000;

(4) any waived penalty and interest; or

(5) the related Property has any of the following Use Codes:

(i) Rural Use Codes 3A through 3H, 3J, 3M or 3N;

(ii) Institutional Use Codes 7A through 7H; or

(iii) Miscellaneous Use Codes 8A through 8H, 8J, 8K, 8L, 8M, 91 or 99.

(b) The District acknowledges that the Authority will assign to the Certificate Purchaser all of its rights and remedies with respect to the breach of any representations and warranties of the District under this Agreement. It is understood and agreed that the representations and warranties set forth in this Section 3.01 and Sections 2.04 and 4.04 shall survive the consummation of the sale of the Tax Receivables on the Closing Date and shall inure to the benefit of the Authority and the Certificate Purchaser.

(c) Upon discovery by the District or the Authority, the Certificate Purchaser (based on information provided by the County, examination of the Delinquent Tax Roll or otherwise) of a breach of any of the foregoing representations and warranties (without regard to any knowledge qualifier) that materially and adversely affects the value of any Tax Receivable (such Tax Receivable, a "Defective Tax Receivable"), the party making such discovery shall notify the District and the Administrative Agent of such discovery. The Certificate Purchaser may, at its

option, require the District to repurchase the Defective Tax Receivable. Under no circumstances will the District have the right to require the resale of a Defective Tax Receivable to the District. The District shall have no right to substitute another Tax Receivable for a Defective Tax Receivable. If the Certificate Purchaser elects to require the District to repurchase a Defective Tax Receivable, the Certificate Purchaser shall give written notice to the District. Such notice must (i) identify the Defective Tax Receivable and describe in reasonable detail the nature of the breach, (ii) if the Tax Receivable Balance as of the Sale Date is determined to be less than the amount thereof shown on the Tax Receivables Schedule, the amount of such deficiency and (iii) be accompanied by documentation from the County which reasonably establishes the factual basis for the determination of the breach. For purposes of clause (ii) of the preceding sentence, if the adjustments to the Tax Receivable Balance result from adjustments to the Delinquent Tax Roll provided by the County, the Certificate Purchaser will use its best reasonable efforts to obtain the reason(s) for the adjustments from the County, but if the Certificate Purchaser is unable to obtain such reasons despite using its best reasonable efforts to do so, such inability shall not be grounds for rejection or disallowance of the adjustment.

(d) By way of illustration and not limitation, it is understood and agreed that amounts due with respect to a Tax Receivable may be reduced as a result of changes in assessed value, changes in any applicable exemptions of the related Property pursuant to a tax appeal proceeding or changes in the property tax percentage allocation of the District in the year Collections on the Tax Receivable are received. The rights of the parties hereto shall be governed as if any such reduction constitutes a breach by the District of its representation and warranty as to the amount of the related Tax Receivable as set forth on the Tax Receivables Schedule. If any Tax Receivable becomes a Defective Tax Receivable solely as a result of the determination that the Tax Receivable Balance as of the Sale Date (or applicable Repurchase Date) was less than the amount set forth on the Tax Receivables Schedule, then only the amount of the reduction of such Tax Receivable shall be deemed to be repurchased and such Tax Receivable, at its reduced Tax Receivable Balance, shall continue to be a Tax Receivable for all purposes of this Agreement.

(e) As to any Defective Tax Receivable, on or prior to the next Repurchase Date following the day on which such Tax Receivable becomes a Defective Tax Receivable, the District shall, at its option, either (A) cure or cause to be cured such breach or (B) pay to the Certificate Purchaser, in immediately available funds, the Defective Tax Receivable Purchase Amount. If any Tax Receivable is determined to be a Defective Tax Receivable prior to the time the Purchase Price is paid on the Funding Date, the Defective Tax Receivable Purchase Amount may, at the option of the Certificate Purchaser, be netted against the Purchase Price payable to the District on the Funding Date. The obligations of the District under this Section 3.01(e) shall constitute the sole remedies available to the Authority and the Certificate Purchaser with respect to a Defective Tax Receivable and the District shall not incur any other liability to the Authority or the Certificate Purchaser or any other Person because of any inaccuracy of any representation or warranty made under this Section 3.01 with respect to the Tax Receivables. Upon the repurchase of a Defective Tax Receivable by the District, the Authority shall cause the Tax Receivables Schedule to be amended to delete the Defective Tax Receivable therefrom, and the District shall have no further liabilities or obligations with respect to such Defective Tax Receivable.

(f) The District hereby irrevocably grants and pledges to the Authority, to the extent permitted by applicable law, a first lien and claim in and to all property tax revenues to which the District is entitled under State law during each of the Fiscal Years subsequent to each applicable Purchased Fiscal Year in order to secure its obligation to make any payment to the Certificate Purchaser under Section 3.01(e) above.

(g) The Certificate Purchaser shall forward the Certificate Purchaser's calculations and/or recalculations of any adjustments made under this Section 3.01 to the Monterey County Office of Education from time to time for the purpose of enabling the County Auditor-Controller to report the "tax receipts" of the District under Section 75.70 of the California Revenue and Taxation Code and Section 6516.6(c)(4) of the California Government Code. The Authority and the Certificate Purchaser shall have no responsibility for any such report made by the County Auditor-Controller, or any failure by the County Auditor-Controller to make any such report.

**Section 3.02. Protection of Title; Payment of Collections.** (a) The Certificate Purchaser shall be entitled to assert all right, title, and interest of the District in the enforcement and collection of the Tax Receivables, including but not limited to the District's lien priority and the District's right to receive the Collections on the Tax Receivables. From and after the Sale Date, the District shall have no rights whatsoever in and to said Tax Receivables, including but not limited to the right to receive any Collections in respect of said Tax Receivables, except with respect to Defective Tax Receivables repurchased by the District in accordance with Section 3.01 hereof. The District shall cooperate fully with the Authority and the Certificate Purchaser as may be reasonably required by the Authority and the Certificate Purchaser to exercise any rights granted to the Authority under this Agreement and assigned to the Certificate Purchaser. The District shall take all actions as may be required by law fully to preserve, maintain, defend, protect and confirm the interests of the Authority and the Certificate Purchaser in the Tax Receivables and the Collections.

(b) On or before the Closing Date, the District shall mark its appropriate records so that, from and after the Closing Date, records of the District shall indicate that such Tax Receivables have been sold. The District hereby agrees to execute, deliver and cause to be approved and/or recorded all documents, and take all actions, as may be required to assign the Tax Receivables and the Collections to the Authority under this Agreement, and to notify the County of the assignments made under this Agreement. The District shall take all actions as may be required to cause the Collections, when remitted by the County to the Monterey County Office of Education, to be immediately remitted by the Monterey County Office of Education to the Certificate Purchaser by federal funds wire transfer. The District agrees to take all actions required by it to cause to be remitted all Collections by no later than two Business Days after the date the Collections are actually made available to the District, including but not limited to delivering to the Monterey County Office of Education on the Closing Date irrevocable instructions to make such remittances no later than two Business Days after the date the Collections are remitted by the County to the Monterey County Office of Education for the account of the District. The District agrees that it will take no action to attempt to revoke such irrevocable instructions. If any Collections are not remitted to the Certificate Purchaser by such date, the District agrees to pay to the Certificate Purchaser upon demand interest on the amount of such unpaid Collections at the rate of 10% per annum for each day such Collections remain unpaid after such date.

**Section 3.03. Consent to Assignment.** (a) The District acknowledges that all of the Collections have been assigned by the Authority to the Certificate Purchaser and that the Certificate of Participation evidences the right of the Certificate Purchaser to receive the Collections. The District hereby consents to (i) such assignment of the Collections and (ii) the sale of the Certificate of Participation to the Certificate Purchaser. The District hereby waives any right of setoff it may have against the Authority with respect to the Collections and agrees to pay or cause to be paid to the Certificate Purchaser or to the designee of the Certificate Purchaser all Collections free and clear of any such claims or right of setoff.

(b) The District acknowledges that the rights of the Authority under this Agreement to enforce the obligations of the District under this Agreement have been assigned by the Authority to the Certificate Purchaser. The District hereby consents to such assignment and agrees that the right to enforce the obligations of the District under this Agreement have vested in the Certificate Purchaser.

(c) The District acknowledges that the financing of the purchase of the Tax Receivables hereunder has been financed or may be refinanced from time to time by the issuance of securities that may require the rating of such securities by securities rating agencies, and the District agrees to provide the Certificate Purchaser with such further certifications and opinions after the Closing Date that may be reasonably required by the Certificate Purchaser to obtain such securities ratings, provided that the out-of-pocket costs to the District of obtaining any such certifications and opinions shall be borne by the Certificate Purchaser.

#### **ARTICLE IV THE DISTRICT**

**Section 4.01. Representations of District.** The District makes the following representations on which the Authority is deemed to have relied in acquiring the Tax Receivables. The representations speak as of the Sale Date and as of the Closing Date, and shall survive the sale of the Tax Receivables to the Authority and the pledge thereof to the Certificate Purchaser pursuant to the Certificate Purchase Agreement.

(a) *Due Organization, Existence and Authority.* The District is a school district duly organized and validly existing under the laws of the State, has full legal right, power and authority under the Constitution and laws of the State to enter into this Agreement, to sell the Tax Receivables and the Collections to the Authority, and to carry out and consummate all transactions contemplated hereby, and by proper action the District has duly authorized the execution and delivery of this Agreement.

(b) *Due Execution.* By all necessary official action of the District, the District has duly authorized and approved the execution and delivery of, and the performance by it of the obligations contained in this Agreement, and, as of the date hereof, such authorizations and approvals are in full force and effect and have not been amended, modified or rescinded.

(c) *Valid, Binding and Enforceable Obligations.* This Agreement constitutes the legal, valid and binding obligation of the District, enforceable in accordance with its terms,

except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or affecting creditors' rights, generally.

(d) *No Conflicts.* The District is not in a breach of or in default under any applicable constitutional provision, law or administrative rule or regulation of the State or the United States, or any applicable judgment or decree or any trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument to which the District is a party or is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or event of default or event of default under any such instrument; and the authorization, execution and delivery of this Agreement and compliance with the provisions of this Agreement does not and will not conflict with or constitute a breach of or default under any applicable constitutional provision, law or administrative rule or regulation of the State or the United States, or any applicable judgment, decree, license, permit, trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument to which the District (or any of its officers in their respective capacities as such) are subject, or by which it or any of its properties are bound; nor will any such authorization, execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of its assets or properties or under the terms of any such law, regulation or instrument, except as may be provided by this Agreement.

(e) *Consents and Approvals.* No consent or approval of any trustee or holder of any indebtedness of the District or of the voters of the District, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) *No Litigation.* No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, is pending or threatened (1) in any way questioning the corporate existence of the District or the titles of the officers of the District to their respective offices; (2) contesting the validity of Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California or the power and authority of the District to sell the Tax Receivables to the Authority, or affecting, contesting or seeking to prohibit, restrain or enjoin the execution and delivery of this Agreement, the sale of the Tax Receivables by the District to the Authority or the payment of Collections on the Tax Receivables to the Certificate Purchaser, or in any way contesting or affecting the validity of this Agreement or the consummation of the transactions contemplated hereby; or (3) which may result in any material adverse change relating to the District.

**Section 4.02. Expenses.** The District shall pay any expenses incident to the performance of its obligations hereunder, except that the Authority shall pay the reasonable fees and disbursements of legal counsel engaged by the District relating to the approval, execution and delivery of this Agreement and the consummation of the sale of the Tax Receivables hereunder on the Closing Date. The Authority shall also pay any expenses incident to the performance of its obligations hereunder, including but not limited to the following: (i) the cost

of its proceedings in adopting and approving this Agreement; and (ii) the fees and disbursements of Bond Counsel and other any professional services engaged by the Authority in connection with the transactions described in this Agreement.

**Section 4.03. Payment of County Administrative Costs.** As provided in Section 6516.6(c)(4)(C) of the Government Code of the State, the Authority shall be responsible for, and shall pay, or cause the Certificate Purchaser to pay, directly to the County, all reasonable and identifiable administrative costs and expenses of the County which are incurred as a direct result of the compliance of the Treasurer-Tax Collector of the County or the County Auditor-Controller, or both, with any new or additional administrative procedures required for the County to comply with 6516.6(c) of said Code.

**Section 4.04. Additional Representations and Agreements.** The District makes the following additional representations and agreements on which the Authority is deemed to have relied in acquiring the Tax Receivables:

(1) The District has transferred the Tax Receivables to the Authority pursuant to this Agreement for the purchase price specified in this Agreement in cash. The consideration paid to the District represents the fair market value of the Tax Receivables. This consideration was agreed upon as the result of arm's length negotiations. The District has determined that the transactions contemplated by this Agreement and the related documents provide the maximum available financial benefits to the District consistent with other objectives and requirements of the District.

(2) The consideration for the District's sale of the Tax Receivables accrues strictly to the District, and the District's use of such consideration is not restricted by the Authority.

(3) The District properly treats the transfer of the Tax Receivables to the Authority as a sale pursuant to generally accepted accounting principles.

(4) There are no other agreements between the District and the Authority relating to or affecting the Tax Receivables, other than this Agreement.

(5) The District does not receive any payments with respect to the Tax Receivables, except pursuant to this Agreement.

(6) The District will mark its appropriate records so that they indicate the Tax Receivables have been sold. Such records of the District may be in the form of a computer tape, microfiche, or other electronic or computer media.

(7) The District intends the transfer of the Tax Receivables to the Authority pursuant to this Agreement to be a sale and not a secured borrowing.

(8) The District at all times has maintained and will maintain its respective books, financial records and accounts (including, without limitation, inter-entity transaction accounts) in a manner so as to identify separately the assets and liabilities of the District from the Authority.

(9) The District at no time has commingled or will commingle any of its assets, funds, liabilities or business functions with the assets, funds, liabilities or business functions of the Authority or any other person or entity.

(10) The District at all times has observed and will observe all applicable corporate or trust procedures and formalities, including, where applicable, the holding of regular, periodic and special meetings of governing bodies, the recording and maintenance of minutes of such meetings, and the recording and maintenance of resolutions, if any, adopted at such meetings.

(11) None of the transactions with respect to which this Agreement is being delivered have been entered into by the District with the intent to hinder, delay or defraud any of the creditors of the Authority. The District will not be consensually merged or consolidated with the Authority.

(12) All transfers of assets or funds between the District on the one hand and the Authority on the other hand have been and will be on terms that are fair and equitable and consistent with arms-length negotiations.

(13) All transactions and agreements between the District on the one hand and the Authority on the other hand have reflected and will reflect the separate legal existence of each entity and have been and will be formally documented in writing. The pricing and other material terms of all such transactions and agreements have been and will be fair and equitable and consistent with arms-length negotiations.

(14) All transactions and agreements between the District and third parties have been and will be conducted in the name of the District as an entity separate and independent from the Authority.

(15) The District has paid and will pay its liabilities and losses from its own separate assets. In furtherance of the foregoing, the District has compensated and will compensate all consultants, independent contractors and agents from its own funds for services provided to it by such consultants, independent contractors and agents.

(16) The District has not at any time jointly contracted or done business, or will jointly contract or do business, with vendors or service providers or share overhead expenses with the Authority. To the extent that the District or the Authority has contracted or done business or will contract or do business with vendors or service providers where the goods or services in question are wholly or partially for the benefit of the other, then the costs incurred in so doing at all times have been or will be fairly and non-arbitrarily allocated to the entity for whose benefit such goods or services have been or will be provided, with the result that each such entity has borne or will bear its fair share of all such costs.

(17) The District at all times will have separate annual financial statements, prepared in accordance with generally accepted accounting principles, that reflect the separate assets and liabilities of such entity and all transactions and transfers of funds involving such entity, and the District has paid or borne the cost and will pay or bear the

cost of the preparation of its own financial statements regardless whether such statements (whether audited or unaudited) have been or will be prepared internally or by a certified public accounting firm that has prepared or will prepare the financial statements of more than one of such entities.

(18) Neither the District nor any of its affiliates has made or will make any inter-entity loans, advances, guarantees, extensions of credit or contributions of capital to, from or for the benefit of the Authority without proper documentation or accounting satisfactory to its and the Authority's outside accountants.

(19) The District in its papers and in the statements of its officials at all times has referred and will refer to the Authority as a separate and independent legal entity.

(20) Sales of assets to the Authority by the District, including but not limited to the Tax Receivables, at all times have constituted and will constitute absolute transfers and conveyances, for fair and reasonably equivalent consideration, of all of the seller's right, title and interest in, to and under those assets for all purposes.

(21) If the District is a member of the Authority, in becoming a member of the Authority, the District has relied and is relying upon the fact that the Authority at all times has been and will continue to remain an entity the legal existence of which is separate and distinct from that of the District.

(22) The District at no time has taken or will take any action that is inconsistent with any of the foregoing assumptions and that has given or will give (a) any creditor or future creditor of the Authority cause to believe mistakenly that any obligation incurred by the District has been or will be not only the obligation of the District, but also of the Authority, or (b) any creditor or future creditor of either the District or the Authority cause to believe mistakenly that the District and the Authority have not been or will not continue to remain entities separate and distinct from the Authority.

(23) The District is duly organized and validly existing under the laws of the State of California.

(24) No document or agreement to which the District is a party or by which it is bound, or order of any judicial or governmental authority, prohibits or conflicts in any material way with the Joint Powers Agreement, this Agreement, or the understanding of facts or the assumptions set forth herein.

(25) The District and the Authority each understand and acknowledge that School Services of California, Inc. ("SSC") provides certain services to the Certificate Purchaser in connection with the Certificate Purchaser's business in California and the transaction contemplated herein and may also provide services to other districts in the County, for which SSC receives compensation from the Certificate Purchaser and the districts, if applicable.

**ARTICLE V**  
**MISCELLANEOUS**

**Section 5.01. Amendment.** This Agreement may be amended by an instrument in writing signed by the District, the Authority and the Certificate Purchaser.

Prior to the execution of any amendment to this Agreement, the Certificate Purchaser shall be entitled to receive and rely upon an Opinion of Counsel stating that the execution of such amendment is authorized or permitted by this Agreement.

**Section 5.02. Entire Agreement.** This Agreement shall constitute the entire agreement between the parties hereto and is made solely for the benefit of the parties hereto. No other person shall acquire or have any right hereunder by virtue hereof, except as provided herein.

**Section 5.03. Notices.** All notices or communications to be given under this Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon actual receipt after deposit in the United States mail, postage prepaid, or (b) in the case of personal delivery to any person, upon actual receipt. The Authority or the District may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the Authority: Monterey County Educational Delinquent Tax Finance Authority  
c/o Monterey Peninsula Unified School District  
700 Pacific Street  
Monterey, CA 93940  
Attn: Chief Business Officer

If to the District: «District»  
«Address»  
«City», CA «Zip»  
Attn: «Title\_»

**Section 5.04. Assignment by the District.** Notwithstanding anything to the contrary contained herein, this Agreement may not be assigned by the District.

**Section 5.05. Limitations on Rights of Others.** The provisions of this Agreement are solely for the benefit of the District, the Authority and the Certificate Purchaser, which is expressly made a third-party beneficiary of this Agreement, and nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

**Section 5.06. Severability.** Any provision of this Agreement that 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.

**Section 5.07. Separate Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

**Section 5.08. Headings.** The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

**Section 5.09. Governing Law.** (a) This Agreement shall be construed in accordance with the laws of the State, without reference to its conflict of law provisions, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws.

(b) To the extent permitted by law, the parties hereto agree that any and all claims asserted by or against the District arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in San Francisco, California (“Federal Court”) or in the courts of the State (“California State Courts”) located in San Francisco, California. To effect this Agreement and intent, the Authority agrees:

(i) If the District initiates any action against the Authority in Federal Court or in California State Court, service of process may be made on the Authority either in person, wherever such Authority may be found, or by registered mail addressed to the Authority at its address as set forth in this Agreement, or to such other address as the Authority may provide to the District in writing;

(ii) With respect to any action between the District and the Authority in California State Court, the Authority hereby expressly waives and relinquishes any rights it might otherwise have (A) to move to dismiss on grounds of forum non conveniens; (B) to remove to Federal Court; and (C) to move for a change of venue to a California State Court outside California County;

(iii) With respect to any action between the District and the Authority in Federal Court located in San Francisco, California, the Authority expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside of San Francisco, California; and

(iv) If the Authority commences any action against the District in a court located other than in the District and State of California, upon request of the District, the Authority shall either consent to a transfer of the action to a court of competent jurisdiction located in the District and State of California or, if the court where the action is initially brought will not or cannot transfer the action, the Authority shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in San Francisco, California.

(c) If any provision of this Section is held unenforceable for any reason, each and all other provision shall nevertheless remain in full force and effect.

**Section 5.10. Nonpetition Covenants.** Notwithstanding any prior termination of this Agreement, the District shall not, prior to the date which is one year and one day after the

termination of this Agreement with respect to the Authority, acquiesce, petition or otherwise invoke or cause the Authority to invoke the process of any court or government authority for the purpose of commencing or sustaining a case against the Authority under any Federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of the Authority or any substantial part of its property, or ordering the winding up or liquidation of the affairs of the Authority.

**Section 5.11. Successor Is Deemed Included in All References to Predecessor.** Whenever in this Agreement either the District, the Authority or the Certificate Purchaser is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement by or for the benefit of the District, the Authority and the Certificate Purchaser shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 5.12. Waiver of Personal Liability.** No member, officer, agent or employee of the Authority or the District shall be individually or personally liable for the payment of any amount due hereunder or be subject to any personal liability or accountability by reason of the transactions described herein; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

[Next page is signature page]

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year first above written.

«**DISTRICT**»

By \_\_\_\_\_  
Name:  
Title:

**MONTEREY COUNTY EDUCATIONAL DELINQUENT  
TAX FINANCE AUTHORITY**

By \_\_\_\_\_  
Name:  
Title:

Attest:

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

**TAX RECEIVABLES SCHEDULE**

(See attached CD-ROM)